

**BEFORE THE HARYANA REAL ESTATE REGULATORY  
AUTHORITY, GURUGRAM**

Complaint no. : 5867 of 2023  
Date of complaint : 22.12.2023  
Date of order : 09.07.2025

Sampl Communications Pvt. Ltd.

**Having Office at:** - C-54, Anupam Apartments,  
Vasundhara Enclave, New Delhi-110096.

**Complainant**

Versus

1. Tashee Land Developers Pvt. Ltd.

**Having Registered Office at:** - 517 A,  
Narain Manzil, 23 Barakhamba Road,  
Cannaught Place, New Delhi- 110001.

2. KNS Infracon Pvt. Ltd.

**Having Registered Office at:** - Pent House, 18<sup>th</sup>  
Floor, Narain Manzil, 23 Barakhamba Road,  
Cannaught Place, New Delhi- 110001.

3. Axis Bank

**Having Registered Office at:** - Himalya House,  
1<sup>st</sup> Floor, 23, K.G Marg, New Delhi-110001.

**Respondents**

**CORAM:**

Ashok Sangwan

Member

**APPEARANCE:**

Vishal Verma (Advocate)

Subham (Advocate)

Ajay Singh (Advocate)

Complainant

Respondent No.1 & 2

Respondent No.3

**ORDER**

1. This complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section



11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made thereunder or to the allottee as per the agreement for sale executed *inter se*.

**A. Unit and project related details**

2. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Heads	Information
1.	Project name and location	'Capital Gateway, Sector-111, Gurugram
2.	Project area	10.462 acres
3.	Nature of the project	Residential
4.	DTCP license no. and validity status	34 of 2011 dated 16.04.2011 valid upto 15.04.2024
5.	Name of licensee	KNS Infracon Pvt. Ltd. and others
6.	RERA registered/ not registered	Registered vide regd. No. 12 of 2018 dated 10.01.2018
7.	Unit no.	B-703, 7 <sup>th</sup> floor, Tower B (pg. 37 of complaint)
8.	Date of execution of buyers' agreement with original allottee w.r.t unit in question	22.07.2015 (page 96 of complaint)
9.	Transfer/Endorsement letter in favour of the complainant	06.03.2021 (page 114 of complaint)
10.	Date of execution of buyers' agreement with complainant	09.12.2021 (page 34 of complaint)
11.	Payment plan	Construction linked
12.	Total sale consideration	Rs.1,08,54,884/- (pg. 45 of complaint)

13.	Total amount paid by the complainant	Rs.1,08,54,884/- (as per page 114 of complaint)
14.	Due date of delivery of possession	31.12.2020 (as per clause 7.1 of BBA)
15.	Occupation certificate	24.10.2024 (as per DTCP website)
16.	Offer of possession	Not offered

### B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That the complainant booked a residential unit bearing flat no.703, Tower B, measuring about 2102 sq. ft. in super area in the group housing project named "Capital Gateway" of respondents no.1 and 2.
- II. That the subject property was first booked by one Mr. Shrinivas Prasad Pathak bearing customer id no. BR - 0776 for around Rs.1,33,17,110/- which had to be paid in installments subsequently. Towards purchasing the same, the first allottee took a loan of Rs.91,29,000/- from respondent no. 3. Subsequently, vide allotment letter dated 16.05.2015, the subject property was allotted to the first allottee. At the time of allotment, the first allottee paid Rs.19,00,000/- to the respondents as booking amount.
- III. That on 22.07.2015, the first allottee signed a builder buyer agreement with the respondents. At the time of signing such BBA, Rs.9,00,000/- were paid by the first allottee to the respondents. Thereafter, on 24.07.2015, the first allottee entered into a tripartite agreement with the respondents. In terms of clauses 8 and 9 of the said tripartite agreement, it was agreed by the parties that in case the first allottee fails to repay the loan amount of Rs.91,29,000/- to Axis Bank (respondent no. 3), respondent no. 3 shall have the right to substitute the borrower/first allottee with a third party – receive its outstanding



dues from the third party and get the unit registered in the name of the new borrower/ third party.

- IV. That on 13.08.2015, the first allottee paid an installment of Rs.68,49,354 to respondent nos. 1 and 2. On 21.08.2015, the first allottee, further paid an additional sum of Rs.12,05,530 to respondents no. 1 and 2. Thus, the first allottee paid a total sum of Rs.1,08,54,884/- to respondents no.1 and 2. Subsequently, due to certain personal circumstances, the first allottee was unable to honour his payment obligations with respect to the home loan towards respondent no.3. The first allottee along with respondent no.3 jointly approached the complainant and on carrying out some discussions, respondent no.3 nominated the complainant to undertake the first allottee's payment obligations towards respondent no.3. Thus, the present complainant was substituted as the buyer and the subject property was transferred in his name. Towards this repayment of the loan taken by the first allottee, respondent no.3 settled with the complainant for approximately an amount of Rs.75,00,000/-. The complainant paid Rs.75,00,000/- in two installments.
- V. That on receiving this settlement amount of Rs.75,00,000/-, respondent no.3 issued a no-objection certificate in favour of the complainant with respect to the subject property, categorically stating that it had no pending dues/ stake in the subject property.
- VI. Pursuant to some deliberations, respondents no. 1 and 2 offered the subject property for a sum of Rs.1,08,54,884/- to the complainant, as is reflected in the agreement for sale dated 09.12.2021. As such, since complete payment of this amount has already been made by the first allottee, the complainant does not owe any dues to respondents no.1 and 2.



VII. That the agreement for sale contemplated that the project would be completed in a time bound manner by the respondents. as per clause 5 of the agreement, it was agreed between the parties that time shall be of essence for this transaction and the respondents shall abide by the time schedule for completing the project as disclosed at the time of registration. Further, as per the agreed commercial understanding in terms of clause 7.2 of the agreement for sale, it was decided that within three months of obtaining the occupancy certificate or part thereof in respect of the project along with the requisite permission for parking space from the competent authority, the opposite parties will call upon the complainant in writing, to take possession of the subject property. Despite the fulfilment of contractual obligations and full payment having been made in advance, the complainant was generally not apprised about the development status of the project by the respondents.

VIII. That in terms of the registration certificate, the completion of the Capital Gateway Project (Phase-1, Tower A to G) was due by 31.12.2020 i.e. even prior to the agreement for sale. Thus, there has been an unjustified inordinate delay by the respondents in granting possession of the subject property to the complainant. However, despite having paid the total sale consideration for the unit and despite sending repeated reminders, the respondents have failed to deliver possession of the subject property till date. Hence, the present complaint.

**C. Relief sought by the complainant:**

4. The complainant has sought following relief(s):

- I. Direct the respondents to handover possession of the flat and to pay delay possession charges.
- II. Direct the respondents to pay litigation charges.

**D. Reply by the respondents.**

5. The respondent no.2 & 3 put in appearance through Advocate and marked attendance on 22.05.2024, 17.07.2024, 29.09.2024 and 08.01.2025. Despite specific directions for filing of reply, both the respondents have failed to comply with the orders of the Authority. It shows that the respondent no.2 & 3 were intentionally delaying the procedure of the court by avoiding filing of written reply. Accordingly, vide proceedings dated 08.01.2025, the defence of the respondent no.1 & 2 was struck off. However, in the interest of justice, an opportunity was granted to the respondents to file written submissions in the matter. Accordingly, the respondent no.2 & 3 on 25.02.2025, filed their written submissions and has contested the complaint on the following grounds:

- i. That the complainant has bought the unit on resale from the previous allottee. The original allottee has bought the unit for a total sale consideration of Rs.1,33,17,110/-, whereas the complainant has bought the unit only after negotiation with the respondents for a total sale consideration of Rs.1,08,54,884/-. The complainant has sought waiver/discount from the respondents with an understanding that no future claim would be raised towards delay. Thus, it is apparent from the face of it, the complainant in the present case is not consumer rather 'investor' who falls outside the purview of the Act, 2016 more specifically in view of the preamble of the Act, 2016 which states to protect the interest of the consumers.
- ii. That on 09.12.2021, the agreement for sale was executed between the parties, wherein flat bearing no. B-703, 7<sup>th</sup> Floor, B Tower was allotted to the complainant.



- iii. That the structure of the said project in question is complete. That the respondent has obtained the occupation certificate for Phase-I of the said project as all the construction and development activities are complete.
- iv. That for the reasons beyond the control of the respondents, the said project has been delayed. As a matter of fact, economic meltdown, financial crisis, delay in granting sanctions and approvals from the concerned government departments, sluggishness in the real estate sector, increase in cost of construction, default by allottees in making timely payments, multiple disputes between the workforce, labour and contractors resulting into shortage of labour and workforce and change in contractors, non-availability of sufficient water for construction due to restrictions imposed by local administration, restricted construction activities towards protection of the environment as directed by the local administration and the NGT and moreover, obstruction in construction due to Covid-19 outbreak are some of the impeding reasons beyond the control of the respondents.
- v. That simultaneously, the respondent is aware of the obligations and duties to complete the said project and that is why promoter approached the 'SWAMIH Investment Fund I' of SBICap Ventures Limited.
- vi. That the development activities in the said project have been vastly affected due to non-payments of allottees.
- vii. That the provisions of the Act, 2016 have been propagated for the benefit of innocent customers and not the investor like the complainant in the present complaint.
- viii. That there is no further deficiency as claimed by the complainant against the respondents and no occasion has occurred deeming





indulgence of the Hon'ble Authority. Hence, the present complaint is liable to be dismissed.

6. The respondent no.3 vide its application to strike out its name from the array of respondents dated 17.05.2024, has submitted that the complainant has neither any cause of action, nor any relief has been sought against the respondent no.3. The respondent no.3 has financed the subject property by disbursing a loan amount of Rs.91,23,000/- on 13.08.2015. The subject property was mortgaged to respondent no.3, which was released back to the allottee in 2019 after closure of the loan account. Further, no objection certificate dated 18.12.2019 was also issued by the Axis Bank. Copies of the same is available on record. In view of the above, the application filed by the respondent no.3 is allowed and the name of the respondent no.3 i.e. Axis Bank, is hereby deleted from the array of parties.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

**E. Jurisdiction of the authority**

The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E.I Territorial jurisdiction**

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram





District, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

**E.II Subject matter jurisdiction**

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

**Section 11**

.....

(4) The promoter shall-

*(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

**Section 34-Functions of the Authority:**

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

10. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter.

**F. Findings on the objections raised by the respondents.**

**F. I Objection regarding the complainant being investor.**

11. The respondents have taken a stand that the complainant is investor and not a consumer. Therefore, it not entitled to the protection of the Act and is not entitled to file the complaint under section 31 of the Act. The Authority observes that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the agreement for sale dated 09.12.2021, it is revealed that the complainant is a buyer, and it has already paid the entire sale consideration to the promoter towards



purchase of an apartment in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

*"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"*

In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the agreement, it is crystal clear that the complainant is an allottee as the subject unit was allotted to it by the promoter. Further, the concept of investor is not defined or referred in the Act. Moreover, the Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as **M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.** has also held that the concept of investor is not defined or referred in the Act. In view of the above, the contention of promoter that the allottee being investor is not entitled to protection of this Act stands rejected.

#### **F.II Objections regarding force majeure.**

12. The respondents/promoter have raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as delay on part of govt. authorities in granting approvals and other formalities, shortage of labour force in the NCR region, ban on the use of underground water for construction purposes, default by allottees in making timely payments, various orders passed by NGT, major spread of Covid-19 across worldwide, etc. The Authority is of view that the time taken in governmental clearances cannot be attributed as reason for



delay in project. Further, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, the promoter/respondents cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

**G. Findings on the relief sought by the complainant.**

**G. I Direct the respondent to handover possession of the flat and to pay delay possession charges.**

13. The original allottee i.e., Mr. Shrinivas Prasad was allotted a flat bearing no. 703, Tower B, measuring about 2102 sq. ft. in super area in the group housing project named "Capital Gateway" of respondents no.1 and 2 vide buyer's agreement dated 22.07.2015. Thereafter, due to certain personal circumstances, the original allottee sold the subject unit to the complainant and the subject property was transferred and acknowledged in its name by the respondent no.2 vide transfer letter dated 06.03.2021. Subsequently, an agreement for sale was also executed between the parties on 09.12.2021. The occupation certificate for the tower in which the unit of the complainant is situated was obtained by the respondents from the competent authority on 24.10.2024. However, possession of the apartment in question has not been offered to the complainant till date. The complainant vide present complaint is seeking possession of the subject unit along with delay possession charges as per the provisions of the Act, 2016.
14. The complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.



**"Section 18: - Return of amount and compensation**

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

*(Emphasis supplied)*

15. **Due date of possession and admissibility of grace period:** In view of clause 7.1 of the agreement for sale dated 09.12.2021, the due date of possession is determined as 31.12.2020 i.e. the date declared by the promoter for completion of the project.
16. **Admissibility of delay possession charges at prescribed rate of interest:** Proviso to Section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

**Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]**

- (1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

*Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*

17. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
18. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as





on date i.e., 09.07.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.

19. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

*"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation. —For the purpose of this clause—*

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

20. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10% by the respondents/promoter which is the same as is being granted to the complainant in case of delay possession charges.
21. In the instant case, the unit in question was originally allotted to Mr. Shrinivas Prasad vide buyer's agreement dated 22.07.2015, which was subsequently transferred in the name of complainant by the respondent no.2 and a fresh buyer's agreement dated 09.12.2021 against the said unit was executed between them for a total sale consideration of Rs.1,08,54,884/-, which was fully paid at the time of allotment/transfer. As per clause 7.1 of the buyer's agreement executed between the parties, the construction of tower in which the unit of the complainant is situated was to be completed by 31.12.2020, whereas the subject apartment was transferred/endorsed in name of the



complainant vide transfer letter dated 06.03.2021. Considering the above-mentioned facts, the Authority is of the view that the complainant herein is a subsequent allottee who had purchased the apartment from the previous subsequent allottee on 06.03.2021 i.e., after the due date. It simply means that the complainant was well aware about the fact that the construction of the tower where the subject unit is situated has not been completed and occupation certificate qua that part of project is yet to be obtained. However, it still chosen to proceed with execution of the agreement voluntarily which means that the complainant had accepted the factum of the delay. Moreover, he has not suffered any delay as the subsequent allottee-complainant herein came into picture only on 06.03.2021, when the subject unit was transferred in its favour. Hence, in such an eventuality and in the interest of natural justice, delay possession charges can only be granted to the complainant from the date of transfer letter dated 06.03.2021 i.e., date on which the complainant stepped into the shoes of the original allottee. The Authority is of considered view that there is delay on the part of the respondents/promoter to offer of possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 09.12.2021. Hence, it is the failure of the respondents/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.

22. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with proviso to Section 18(1) of the Act on the part of the respondents is established. As such, the allottee shall be paid by the promoter interest on the amount paid, for every month of delay from the date on which the complainant stepped into the shoes of the original



allottee (date of transfer letter) i.e., 06.03.2021 till the date of offer of possession plus 2 months or actual handing over of possession, whichever is earlier; at prescribed rate i.e., 11.10% p.a. as per proviso to Section 18(1) of the Act read with Rule 15 of the Rules.

23. Further as per Section 11(4)(f) and Section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainant. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question. The occupation certificate for the tower in question was obtained by the respondents from the competent authorities on 24.10.2024. However, possession of the subject unit has not been handed over to the complainant till date. In view of the above, the respondents/promoter is directed to handover possession of the unit and to execute conveyance deed in favour of the complainant in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within a period of three months.

**G.II Direct the respondents to pay cost of litigation.**

24. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation and litigation charges under Sections 12,14,18 and Section 19 which is to be decided by the Adjudicating Officer as per Section 71 and the quantum of compensation and litigation expense shall be adjudged by the Adjudicating Officer having due regard to the factors mentioned in Section 72. The Adjudicating Officer has exclusive jurisdiction to deal with the complaints in respect of compensation.



Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of compensation.

**H. Directions of the authority**

25. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondents/promoter is directed to pay interest to the complainant against the paid-up amount at the prescribed rate i.e., 11.10% p.a. for every month of delay from the date of transfer i.e., 06.03.2021 till offer of possession plus 2 months or actual handing over of possession, whichever is earlier, as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules;
- ii. The arrears of such interest accrued from 06.03.2021 till the date of order by the Authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottee before 10th of the subsequent month as per Rule 16(2) of the Rules.
- iii. The respondents/promoter shall not charge anything from the complainant which is not the part of the buyer's agreement.
- iv. The respondents/promoter is directed to handover possession of the unit in question and execute conveyance deed in favour of the complainant in terms of Section 17(1) of the Act of 2016, on payment of stamp duty and registration charges within a period of three months.
- v. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e.,





**HARERA**  
**GURUGRAM**

Complaint No. 5867 of 2023

11.10% by the respondents/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delay possession charges as per section 2(za) of the Act.

- vi. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.

26. Complaint stands disposed of.

27. File be consigned to registry.

**(Ashok Sangwan)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.07.2025

**HARERA**  
**GURUGRAM**