



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

Complaint no. : 3606 of 2024
Date of filing: 05.08.2024
Date of decision: 27.05.2025

Capital Gateway Homebuyers Welfare Association
R/o: - Flat no. 1404, Block B-1, Uniworld Unigarden ,
Sector-47, Gurugram.

Complainant

Versus

1. **M/s KNS Infracon Pvt. Ltd.**
Regd. Office at: 517A, Narainmanzil, 23, Barahama Road, Connaught Place, New Delhi-110001.
2. **M/s KNS Infracon Pvt. Ltd.**
Regd. Office at: 517A, Narainmanzil, 23, Barahama Road, Connaught Place, New Delhi-110001
3. **Department of Town and Country planning**
Regd. Office at: SCO-71 -75, Sec-17-C, Chandigarh
4. **Office Of Senior Town and Country Planning Gurugram Circle.**
Address: Sec-14, HSVP Complex 3rd Floor.

Respondents

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Chairman
Member
Member

APPEARANCE:

Sh. Shri Harjeet Singh Gulati (vice president of complainant-association)
Sh. Abhay Jain (Advocate)

Complainant

Respondent

ORDER

1. The present complaint dated 11.11.2022 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 provisions of the Act or the Rules and regulations made thereunder or to the allottee as per the agreement for sale executed *inter se*.

A. Facts of the complaint

2. The complainant-association has made the following submissions: -
 - I. That the complainant is an association of the home buyers of capital Gateway housing colony, registered under the Haryana Registration and Regulation of Societies Act, 2012 with the District Registrar of Firms and Societies, Gurugram, Haryana bearing registration no 02458 of 2022. The present complaint has been filed by the president in accordance with the memorandum of association and by-laws of the society.
 - II. That in July-August 2010 the respondent no 1 had floated an advertisement on various platforms and medium for construction of a housing colony in the name of "CAPITAL GATEWAY". The location of the project was at Sector 110A/111, Gurugram, Haryana, spread over the area of 10.462 acres. Thereafter, in 2011 the respondent no 1 claimed to have got the building plan and Zonal plan approved by the Department of Town & Country Planning, Gurugram, Haryana. The project was envisaged in two phases, Phase-I had Towers A to G with Ground plus 13 floors, while, Phase-II had towers H to J,

each having Ground plus 10 floors. The total saleable units as per original plan were 532 flats, 107 SER/EWS units. Total parking proposed was 1095 no of parking slots with the provision of both the phases having two level basement parking (lower basement and upper basement). Further there were provisions for 1 Community Hall within the premises of Phase I (for reference "Hall no 1"), another community hall within the premises of phase II (for reference "Hall no 2"), a commercial center within the premises of Phase II and a nursery school across the road.

- III. That, thus, the members of the complainant booked their respective flats in individual capacity. The builder-buyer agreements were signed between the respective buyers and M/s Tashee Developers Pvt Ltd. and KNS Infracon Pvt Ltd in 2012. Thereafter, the project was continued by KNS Infracon Pvt Ltd.
- IV. That the license granted in favour of the respondent no 1 bearing no 34 of 2011 dated 16.04.2011, for the said project was granted by the Directorate of Town and Country Planning Haryana, which was renewed from time-to-time and was valid till 15/04/2024.
- V. That after the enactment of the Real Estate (Regulation and Development) Act 2016 and the framing of rules under the Haryana Real Estate (Regulation and Development) Rules 2017 the project came within the ambit of the aforesaid laws.
- VI. That, thus, the project was registered in favour of KNS Infracon Pvt Ltd with the Haryana Real Estate Regulatory Authority, Panchkula, (Interim RERA) vide RERA registration no 12 of 2018 dated 10/01/2018 in the form REP-III as prescribed under the Haryana Real Estate (Regulation and Development)

Rules, 2017. The validity for Phase- I (Towers A to G) was till 30/12/2020 with six-month Covid extension till 30/06/2021, while the validity for Phase-II (Towers H to J) was 30/12/2021 with six month Covid extension till 30/6/2022. Thereafter, the respondent no 1 sought to get the RERA registration renewed. The Authority, however, after inviting objections from the homebuyers through newspaper notice and obtaining consent in writing, granted a further extension. Thus, this further extension was granted and the same being valid till 30/6/2025 for both the Phases vide Registration Certificate under Section 6 of the Act, 2016, vide no. RC/REP/HARERA/GGM/12 of 2018/7(3)/2022/3 dated 09/08/2022.

- VII. That 25% of the total consideration of the respective flats were paid by the buyers at the time of the signing of the builder- buyer agreements. The expected date of delivery of the flats was 30/06/2015.
- VIII. That, however, between July 2012 to June 2015, the respondent no 1 without making much effort towards completion of the project, kept demanding the payments. The respondent no 1 rather kept the buyers under false impression, misrepresenting the progress by projecting misleading and false pictures. Moreover, those who insisted upon the execution of the project as per the agreement and plan resisted making payments as per demands of the respondent no 1. Thereafter, the respondent no 1 started demanding interest to the tune of 18% towards delay in payments. Moreover, the Respondent No 1 increased the area in some flats unilaterally and demanded an enhanced consideration from the respective buyers. Whereas the respondent no 1 decreased the area of a few other flats unilaterally. However, the respondent

no 1 refused to refund the differential consideration against the reduced area.

- IX. That, nevertheless, the buyers had paid almost 90-95% of their respective amounts of consideration by December 2015. However, the respondent no 1 showed lackadaisical attitude and he managed to complete only about 75-80% in Phase-I and only 40-45% in Phase-II. occupation certificate is yet to be obtained by the respondent no 1 from the Department of Town and Country Planning even for the Phase-I.
- X. That the buyers sent emails to the respondent no 1 from 2016-2018 to enquire about the progress of the project. However, the respondent no 1 refused to respond to and answer the queries from the buyers.
- XI. That, however, in the meantime the respondent no 1 submitted the revised building and zonal plans and obtained approval thereof. It may not be out of place to mention that no prior intimation was sent to the respective buyers neither any consent was obtained from such respective buyers. The aforesaid approval was obtained by the respondent no 1 unilaterally.
- XII. That, thereafter, in 2018, the respondent no 1 called a meeting of a few homebuyers and assured to expedite and complete the project if the respective buyers paid the entire remaining amount towards consideration. Thus, allured by the assurances towards speedy completion and possession of their flats, a considerable number of buyers made the payments of the balance consideration (100 per payment).
- XIII. That, however, the respondent no 1 handed over the possession of a few flats despite the fact that they were incomplete. The basic amenities like,

electricity, water supply, lift and other security such as fire safety and such other had not been provided and occupation certificate had not been obtained yet. Those who accepted the possession, however, could not continue to stay and were compelled to move out as the flats were not in a condition to live in due to the aforesaid reasons. However, there are still two occupants residing in 2 flats in Phase-I despite no provisions for safety such as fire safety, basic amenities and occupation certificate.

- XIV. That as there was no progress in the project the respective homebuyers sought legal action. Thus, they formed an association in 2022 and got the association registered as Capital Gateway Homebuyers Welfare Association vide registration no 02458/2022 dated 07/04/2022. Thereafter, a complaint dated 02/07/2022 had been filed against the Respondent before the Ld. Real Estate Regulatory Authority, Gurugram due to delay in handing over the possession of respective flats to the homebuyers bearing number 4552 of 2022 titled Capital Gateway Home Buyers Welfare Association vs M/s KNS Infracon Pvt. Ltd. and another.
- XV. That in addition, a few homebuyers filed individual petitions seeking compensation/penalty against the respondent towards the delay in handing over the possession. However, the respondent failed to honour the orders passed therein. Thus, the aforesaid individual home buyers filed their execution petitions and the same are pending.
- XVI. That in the meantime the respondent no 1 received financial assistance from SWAMIH Investment Fund I of SBICap Ventures Ltd to provide funds for projects that are stuck for various reasons. The Investment Committee of the

SWAMIH Investment Fund 1 vide letter dated 29th November 2021 communicated to the promoter that it has accorded an in-principle approval to invest up to Rs.80.00 crore and an additional Rs.27.92 Crore. It is worth mentioning that the respondent no 1 has offered towards collateral security and mortgaged those flats of the respective buyers that had already been sold, without prior intimation or consent from the respective buyers. Moreover, as per the agreement between the respondent no 1 and SWAMIH, the respective buyers shall be required to obtain NOC from the latter for possession.

- XVII. That in the meantime while the respondent no 1 has failed to handover timely delivery of the flats, the respondent no 1 has sought the extension of licence and RERA registration repeatedly from time.
- XVIII. That, moreover, there had been unscrupulous attempts by the respondent no 1 to usurp the status, power and position of the complainant. Thus, the respondent no 1 has been creating welfare associations under various names and styles. The respondent no 1 initially formed the DEDICATED WELFARE ASSOCIATION bearing number 02517 and got it registered on 27/07/2022 before the Ld. District Registrar, Firms and Societies, Gurugram, i.e. after filing the complaint no 4552/2022 against delay in the project. The same had been brought before the notice of the Authority vide complaint dated 13/07/2022, bearing no 2539/2022. An inquiry was directed by the Authority with respect to the contentions regarding the creation of the subsequent association by the respondent no 1 and inquiry Officer was appointed.

- XIX. That the inquiry officer had submitted his report with the findings that "as dedicated welfare association was registered after registration done by Capital Home Buyers Welfare Association, on the ground also, Capital Gateway Home Buyers Welfare Association has the prima facie to be considered as the genuine Resident Welfare Association."
- XX. That, thereafter, this Hon'ble Regulatory Authority had been pleased to pass an order dated 02/03/2023 wherein this Hon'ble Regulatory Authority had been pleased to accept the finding of the Inquiry Report. However, it was inadvertently recorded in the last Para of the order dated 02/03/2023 that the that the "Later Association" are to be considered prima facie as the genuine welfare association.
- XXI. That thus, an order dated 17/10/2023 had been passed by the authority wherein it was recorded that the Complaint herein was a genuine association. However, no conclusive directions were passed in that regard.
- XXII. That the complainant has written to the respondent no 1 and sought his confirmation regarding the acceptance of the association of the complainant as the recognized association of home buyers. However, the respondent no 1 has failed to respond to the aforesaid letters of the complainant.
- XXIII. That, however, during the pendency of the application dated 05/04/2023 and rectification of the ambiguity, the respondent no 1, taking benefit of the ambiguity in order dated 02/03/2023, initiated the registration of another association by the name Capital Gateway Sector 111 Residents Welfare Association. Thus, the respondent filed an application dated 11/08/2023 through one of the buyers, Smt. Vasanti Dubey, w/o Sh. Satish Dubey, seeking

the approval of the name of Capital Gateway Sector 111 Residents Welfare Association before the Department of Industries and Commerce, Haryana. It is worth mentioning that the aforesaid Sh. Satish Dubey was working at a senior post with the respondent no 1 Company. Further, the same was approved vide office memo no 2023-08-005128 dated 08/09/2023 issued by the Department of Industries and Commerce, Gurgaon, Haryana. The respondent No 1 was required to proceed for the registration of the aforesaid Association within 180 days of the date of approval.

XXIV. That, thereafter, the complainant submitted an application dated 30/10/2023 before the Ld. District Registrar, Firms and Societies. The complainant herein raised objection against the approval and registration of Capital Gateway Sector 111 Residents Welfare Association seeking declaration in favour of the aforesaid association setting aside of the approval dated 08/09/2023 with regard to the resident welfare association formed by the respondent no 1 and the prayers as mentioned in Para 14 (a) and (d) and that the respondent no 1 may be restrained from proceeding with registration of any other society/association apart from the aforesaid association as mentioned in Para 14 (b).

XXV. That, however, inadvertently, there is no clarity in directions issued in the above-mentioned order 19/01/2024 with respect to prayer mentioned in Para 14 (a) to (d). Thus, the complainant herein submitted an application dated 16/04/2024 and 29/04/2024 seeking for clarification and rectification to be issued in respect of order made by Office of the District Registrar, firms & Societies, Gurugram, Endst. No. DR/DIC/GGM/244-45, Dated 19/01/2024

in respect of the petition submitted by General Secretary, Capital Gateway Home Buyers Welfare Association, Sector -47, Gurugram.

- XXVI. That the complainant shall also initiate proceedings for getting the registration of Dedicated Welfare Association cancelled in terms of the order dated 02/03/2023 and 17/10/2023. Vide the aforesaid orders this Hon'ble Regulatory Authority has been pleased to hold that the association of the complainant being prior in time is the only genuine association.
- XXVII. That in the meantime the respondent no 1 has tried to change the layout and has altered the number of saleable units, provisions of the common facilities, parking, EWS SER etc.
- XXVIII. That, thus, in place of G+10 floors in each tower as per the original sanctioned plan of 2011, the project now has G+12 floors in towers G to H in Phase II. The total saleable units as per original plan of 532 flats, 107 SER/EWS units have now been changed to 538 units of flats, 96 EWS units and 54 SER units under Block D.
- XXIX. Moreover, in place of 2 community buildings and 1 commercial center, as was sanctioned in the original building plan of 2011/12, now the project has provision for 1 community building and 2 commercial centers, with changes in their locations too.
- XXX. That, thus, community building no 1 that was part of the premises of phase-I has now been removed from the plan and converted into a commercial center no 1 along with the change in location of the structure. Thus, Phase I no longer has any community building.

- XXXI. That, similarly, the community building no 2 in the premises of phase-ii has been replaced by the nursery school. Noteworthy, the nursery school that existed outside the premises across the road in the original plan has been brought within the premises of Phase II. The commercial center that existed within the premises of phase II as per original plan is now being labeled as Club for which the Respondent No 1 has charged separately. Moreover, the nursery school that existed outside the premises across the road has been replaced by a commercial center (for reference commercial center no 2).
- XXXII. That, besides, the parking facilities have also been altered. Thus, under the revised plan there is no mention of lower basement in the parking of Phase II. Total parking slots have also been reduced to 958 against 1095 no of parking slots in the original plan.
- XXXIII. That, it is submitted that seeing the continued construction on the site in deviation from the original plan the homebuyers decided to enquire about the situation. Thus, the member homebuyers of the Complainant enquired and were shocked to learn about a revised plan of 2016. Moreover, they came to know that there was a newspaper cutting that showed an advertisement seeking no objection in this regard. In addition, the respondent no 1 had also submitted a letter stating that there was no objection from any homebuyer. As if this was not enough, the respondent no 1 had also forged and fabricated postal receipts purported to be a proof of letters sent to the homebuyers seeking no objection in this regard. However, no such letter was received by any of the addressees of the postal receipts. Moreover, it is worth mentioning that otherwise the respondent no 1 communicated through emails with the

homebuyers. However, no such emails had been received by the homebuyers in this regard either.

- XXXIV. That, thus, the members of the complainant contemplated taking action in this regard. however, as the possession had been inordinately delayed one of the homebuyers, Mr. Anil Kumar issued a letter dated 10/04/2023 expressing his surprise on the revision of the plan. Moreover, it was categorically stated that the homebuyers wanted the facilities as proposed in the original plan even during the subsistence of the revised plan.
- XXXV. That, thus, an email was served by Tashee Welfare Association /Dedicated Welfare association dated 12/04/2023 with several attachments. One such attachment was a letter that stated that a few homebuyers under the name Dedicated Welfare Association had approached the Respondent No 1 for increase in club house area to 7000sq ft. Thus, with this email for the first time the homebuyers were officially informed categorically about a revised plan that existed and the same was obtained from the Respondent No 2, i.e., Department of Town and Country Planning, Haryana, Chandigarh vide Memo number ZP-723/AD(RA)/2016/26863 dated 09/12/2016.
- XXXVI. That it is further submitted that considering the progress of the project it is very likely that the project would not be completed by 30/6/2025, i.e till the extended validity of the RERA registration no 12 of 2018.
- XXXVII. That, thus, in order to wriggle out of the deadline of 30/06/2025, the respondent no 1 has, without the prior consent of the complainant, applied in 2023 before the respondents No 2 and 3 Department of Town and Country Planning to enhance the Floor Area Ratio in terms of the Transit Oriented

Development policy dated 09/02/2016. It may not be out of place to mention that if such enhancement is allowed this would provide grounds for further extension of the RERA Registration and cause further delay in completion of the project.

XXXVIII. That vide the aforesaid email the Respondent No 1 has clandestinely sought the approval of the homebuyers by stating that he would like to enhance the area of the CLUB and SOME USFEUL CHANGES in Phase-II. It is worth mentioning that the respondent no 1 has particularly and maliciously not specified about the application of the enhancement of floor area ratio. It was at this time that the complainant came to know about the application of the respondent no 1 for enhancing the floor area ratio. The communication in this regard was sent as an attachment to the aforesaid email. In this context it is worth mentioning that the respondent no 1 has malafide intentions of increasing the number of floors as against the previously sanctioned plans of G+10 floors in Phase-II. The respondent no 1 has already constructed two additional floors making it G+12 floors with provisions for further construction of more floors. Whereas the foundation was laid to support only G+10 floors as the foundation was laid and the entire super-structure was ready by 2014-15. Thus, increasing the number of floors with the current foundation would be detrimental to the safety of the building and the interests of the homebuyers. Further the common facilities like parking, sewerage system, water tank, electricity load/transformer were also accordingly planned designed and constructed as per the original sanctioned plan for G+10 floors. Moreover, the homebuyers booked their flats

considering the density of population and the facilities as per the original sanctioned plan of 2011. The complainant being the association of the majority homebuyers have filed their objections. The proceedings are pending.

XXXIX. That, however, upon learning incidentally about the Respondent No 1's tacit approach to get approval from TCP Haryana for FAR increase clandestinely without intimating the homebuyers as forwarded by STP Gurugram vide Memo no STP /GV2023/527 dated 23/08/2023 to TCP Haryana for "Request of enhancement of FAR from 175 to 225 under the TOD Policy dated 09/02/2016", the Complainant put its strong objection in writing. The proceedings are pending. When the respondent no 1 learnt about the same, in order to execute its nefarious design, the respondent no 1 issued an email on 03/02/2024 to individual homebuyers under the heading "Update on Capital Gateway" and purposely mentioned a confusing line in between, "to get the sanction to increase the club area some more useful changes to be made in Phase-2" and deliberately did not provide any specific changes that the Respondent no 1 intended to make. It was further stated in the aforesaid email that "Your non reply will be assumed as your consent and we move accordingly". Homebuyers have vehemently objected to this proposal individually as well through the association. The matter is pending disposal with TCP Haryana.

XL. That it may not be out of place to mention that the Respondent No 1 is trying to form association of buyers despite the existence of the Complainant. The association formed at the behest of the respondent no 1 would help him

obtain the approval of 2/3rd majority for his intentions to get the floor area ratio enhances, to change the approved layout and make such other adjustments so to avail the benefits of the transit-oriented development Policy of 2016, and extend the RERA Registration beyond 30/06/2025. This is significant because the respondent no 1 was required to handover the possession of the flats in 2015 itself. While the respondent no 1 has applied for enhancement in 2023. Thus, the respondent no 1 is trying to take advantage of his own wrongs to the detriment of the rights and interests of the complainant.

- XLI. That the respondents have violated the provisions of the Real Estate (Regulation and Development) Act, 2016, the Haryana Real Estate (Regulation and Development) Rules, 2017, the Haryana Registration and Regulation of Societies Act, 2012, and the Haryana Apartment Ownership Act, 1983 by repeatedly trying to form associations of homebuyers to the detriment and during the subsistence of the complainant. The respondent has also violated the provisions of the Real Estate (Regulation and Development) Act, 2016, the Haryana Real Estate (Regulation and Development) Rules, 2017, by violating the building and zonal plans and adopting nefarious and malafide tactics against the interests of the complainant who have purchased the flats in 2010-2011 according to the approved building and zonal plans with respect to floor area ratio and other amenities.

B. Relief sought by the complainant:

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

- I. The respondent no 1, its promoter, or his agent or assignee or any allottee or anybody acting through him shall not be granted any further extension of HRERA Registration no 12 of 2016 beyond 30/06/2025 i.e. the expiry of the current registration.
- II. The respondent no 1, its promoter, or his agent or assignee or any allottee or anybody acting through him be restrained from creating, registering any association of homebuyers till the subsistence of Capital Gateway Home Buyers Association by any other nomenclature, modification or amendment.
- III. Set aside /Cancel the revised zonal and building plan issued by the respondent no 2, i.e. Department of Town and Country Planning, Haryana, Chandigarh vide Memo number ZP-723/AD(RA)/2016/26863 dated 09/12/2016 retrospectively and restore the original approved building and zonal plans dated 16/04/2011.
- IV. Set aside the memo dated STP (G) /2023/427 dated 23/08/2023 issued by the Respondent no 3, i.e. Office of the Senior Town Planner, Gurugram Circle, Gurugram, Department of Town & Country Planning, Haryana thereby not allowing the Respondent any further extension of Floor Area Ratio and that the Respondent shall abide by the original Zonal and building plan dated 16/04/2011.
- V. Restrain the Respondents No 2 and 3 from granting any further enhancement of Floor Area Ratio or change/modify/revise the original Zonal and building plan dated 16/04/2011.

- VI. The Respondent No 1, its promoter, or his agent or assignee or any allottee or anybody acting through him shall not be allowed any further change in building and zonal plans in the Plan dated 16/04/2011 as approved in 2013.
- VII. Direct the Respondent No 1, its promoter, or his agent or assignee or any allottee or anybody acting through him to demolish the additional 2 floors in Phase-II constructed against the original sanctioned floors of 10 and no further enhancement in number of floors shall be made.
- VIII. Direct the Respondent No 1, its promoter, or his agent or assignee or any allottee or anybody acting through him to compensate the respective buyers in the wake of the demolition of the additional 2 floors in Phase-II constructed in violation of the original sanctioned floors of 10.
- IX. The Respondent no 1, its promoter, or his agent or assignee or any allottee or anybody acting through him shall restore and follow the provision of basic amenities and common areas, common buildings, without altering, modifying, amending the nomenclature, location and purpose, especially with respect to the Community Buildings as per the original building and Zonal Plan dated 16/04/2011."
4. On the date of hearing, the authority explained to the respondent /promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

C. Reply by the respondent no. 3 and 4.

5. The respondent has contested the complaint on the following grounds: -

- i. That it is submitted that the main reliefs sought by the complainant is only against respondent No. 1. Hence, the answering respondent is filling a short reply to the averments made in the complaint relating to the Department of Town and Country Planning. The detailed reply to the complaint, if necessary or if so, directed by the Authority
- ii. That brief facts of the case are that Licence No. 34 of 2011 dated 16.04.2011 under the provisions of the Haryana Development and Regulation of Urban Areas Act 1975 (in short called as the Act No. 8 of 1975) and Rules, 1976 made thereunder for setting up of a Group Housing Colony on the land measuring 10.462 acres falling in Sector-111, Gurugram was granted by the answering respondent in the name of some individual land owners entering into collaboration agreement with respondent no. 1 i.e. KNS Infracon Pvt. Ltd. The said licence is valid upto 15.04.2029.
- iii. That the zoning plans of the above said colony were approved by the answering respondent vide Drawing No. DGTCP-2849 dated 03.11.2011. The building plans of the colony were approved vide office memo no. 9794-99 dated 07.06.2012. Further on the request of respondent no. 1, the revised building plans for the project in question were also approved vide office memo no. 26863 dated 09.12.2016. It is however clarified that no zoning plan or building plans were approved by the answering respondent vide letter dated 16.04.2011 as is being alleged by the complainant in the complaint.

- iv. That it is also brought to the kind notice of the Authority that before final approval of the revised building, in principle approval of the revised building plans was granted vide office memo no. 20268 dated 26.09.2016. Inter-alia, one of the conditions of the in-principle approval was that respondent no. 1 shall invite objections from the existing allottees regarding the said amendment/ revision in the building plans through advertisement to be issued in at least three newspapers having wide circulation within a period of 10 days from the issuance of the approval. Further existing allottees were also to be informed about the proposed revision through a registered post with a copy endorsed to Senior Town Planner, Gurugram clearly indicating the last date for submission of objections to the building plans.
- v. That in compliance of the above said letter, respondent no. 1 issued advertisement in three newspapers i.e. The Tribune, Indian Express and Dainik Bhaskar inviting objection from the existing allottees. The colonizer also hosted the revised plans on company's website for information of all the existing allottees. As per information given by the Senior Town Planner, Gurugram vide letter dated 17.11.2016, no objections were received from any of the allottee in respect of the proposed amendments in the revised building plans. The colonizer has also filed affidavit dated 04.11.2016 stating that he has sold 467 units in the said project and that the company has not received any objection from existing customers against the revised building plans.

- vi. That grievance of the complainant association i.e. no notice from the colonizer regarding the proposed amendments in the Building Plans was received by any of the allottee. Further, it is also alleged that as per the revised building plans, one community building has been sanctioned instead of two as per the building plans approved earlier vide letter dated 07.06.2012 and that the location of nursery school and commercial area were also changed is misconceived, baseless, erroneous and hence liable to be rejected.
- vii. The final approval for the revised building plans was issued vide letter dated 09.12.2016 only after the colonizer had complied with the conditions of the in-principle approval regarding inviting objections from the existing allottees as per the provisions of Section 14(2) of RERA Act, 2016. Hence, the plea taken by the complainant society that they have come to know about revision of the building plans only after about 7 years from the date of approval of the revised building plans is misconceived and liable to be rejected. Even otherwise, when the development works have already been executed at site as per the revised building plans, frivolous objection being raised by the complainant association at this belated stage is not maintainable.
- viii. That even otherwise no legal right of the allottees of the project has been infringed on account of the revision of the building plans. The same are in accordance with the permitted FAR and the norms already laid down by the Department.

- ix. That in the earlier building plans approved vide letter dated 07.06.2012, the proposed/ achieved FAR was 171.63% against the permissible limit of 175% (in case of group housing colony), whereas, in the building plans approved vide letter dated 09.12.2016, proposed/achieved FAR is 174.98% against the permissible limit of 175%. Accordingly, with the increase of achieved FAR, number of dwelling units increased from 532 to 538 which are within the permissible FAR limit. Respondent no. 1 has accordingly constructed additional two floors in the licence area project. This also necessitated proportionate increase in no. of dwelling units of EWS category. In this regard, it is submitted that the revised building plans dated 09.12.2016 are as per norms.
- x. Further, regarding provision of the Nursery School and Community Building, it is submitted that as per norms dated 24.11.1998 & 16.06.2010, for provision of the community facilities in Group Housing Colony, 1 No. Nursery School of 0.20 acre for every 2500 population is required. 2 no. of nursery schools are required only if the population of the colony is more than 5000. Similarly, one community center for every 10,000-15,000 population in area of 2 acres is required. The proposed density of the present project is 3062 i.e. less than 5000. Accordingly, though respondent no. 1 had earlier proposed to construct one Nursery School and two community sites, however, in the revised building plans he proposed to construct only one community center and one nursery school as per norms of the Department. Thus, there is no illegality found in the approval of the revised building plans vide which the proposed changes were made.

Hence, no action for demolishing the additional two floors is required to be taken.

- xi. That regarding registration of another association of the allottees of the apartment in the project in question, it is submitted that this is an issue to be decided by the Registrar of Firms and Societies. Moreover, perusal of the complaint also reveals that there is an inter-se dispute between the complainant association and another association which has not been impleaded as a respondent in the case. However, as already submitted answering respondent cannot interfere in such matters.
- xii. That regarding delay in handing over possession of the flats to the allottees, beyond the period as stipulated in the apartment buyer's agreement executed by and between the allottees and the developer, it is submitted that this issue is to be decided in accordance with the terms and conditions of the builder-buyer agreement executed by and between the colonizer and the allottees. The answering respondents cannot interfere in such matters in view of the judgment by the Hon'ble Supreme Court in the case of DLF Universal Ltd. and others V/s Director, Town and Country Planning, Haryana and others while deciding Civil Appeal No. 550,551 of 2003 and 1611 of 2003 vide order dated 19.11.2010 (2010(2) HLR-575), wherein it was observed that:

"In our considered opinion, the Director is not authorized to interfere with agreements voluntarily entered into by and between the owner/ colonizer and the purchasers of plots/ flats. The agreed terms and conditions by and between the parties do not require the approval or ratification by the Director nor is the Director authorized to issue any direction to amend, modify or alter any of the clauses in the agreement entered into by and between the parties."

Even otherwise, this Ld. Authority has extended registration of the project till 30.06.2025.

- xiii. That it is also brought to the kind notice of this Hon'ble Authority that though respondent no. 1 had submitted application for grant of Occupation Certificate for towers A to G and EWS-1, Commercial -1, lower basement and upper basement for the project in question vide letter dated 25.02.2019, but on receipt of report from the field offices, it was observed that EWS tower is under construction and approach to EWS tower was not constructed. Further, flooring work in Tower F 8 G was not complete, doors and windows were not fixed. Accordingly, respondent no. 1 was advised by the District Town Planner, Gurugram vide letter dated 18.06.2019 to complete the work and apply a fresh. However, respondent no. 1 had not complied with the above said directions. Even as per report of DHBVN, received vide letter dated 11.03.2021, electrification plan was not approved. Hence, the occupation certificate could not be issued to respondent no. 1. even the fresh application for grant of occupation certificate of Phase-I submitted by respondent no. 1 vide letter dated 16.07.2024 was incomplete. Accordingly, vide letter dated 06.08.2024, this office had again directed respondent no. 1 to remove the deficiencies.
- xiv. That regarding contention of the complainant that respondent no. 1 had submitted application for grant of benefit of additional FAR under TOD policy which would further require revision of the building plans and thus there would be delay in completion of the project, it is submitted that though respondent no. 1 had submitted application for grant of benefit of

additional FAR under TOD policy dated 09.02.2016, but the same is still under consideration of the Department. The letter dated 23.08.2023 issued by respondent no. 3 to the answering respondent is only regarding forwarding of the site report sent by District Town Planner Gurugram to respondent no. 3. Hence, it would be pre-mature to give any comments on this issue at this stage.

xv. It is submitted that the colonizer applied for the request of enhancement of FAR from 175 to 225 under the TOD policy dated 09.02.2016 for the licenced land measuring 10.462 acres vide PUC dated 14.07.2023, however, it was found that the colonizer did not clear the outstanding dues and technical proposal as per dated 10.10.2017 was not received. The same was returned and conveyed to the colonizer vide office memo dated 14.09.2023. Further, the colonizer applied for Part Occupation Certificated for Tower-A, B, C, D, E, F, G & EWS-1 & 2, Commercial-1, Lower Basement and Upper Basement (Phase-1) vide PUC dated 18.07.2024, wherein after the recommendation of DHBVN and intimation by HSVP that the services laid at site are complete in all respect, operational/functional an suit with master services laid/to be laid by HSVP, the same was approved vide office memo dated 24.10.2024.

xvi. That it is respectfully prayed that the above affidavit may kindly be brought on record of this Hon'ble Authority.

6. All other averments made in the complaint were denied in toto.
7. The respondent-promoter no. 1 and 2 have failed to file a reply despite several opportunities granted by the authority. It shows that the respondent is

intentionally delaying the procedure of the Authority by avoiding filing the written reply. In view of the above, Hence, in view of the same, the Authority has no option but to proceed the ex-parte against the respondents no. 1 and 2.

8. 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.

D. Jurisdiction of the authority

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

D. I Territorial jurisdiction

10. 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.

D. II Subject matter jurisdiction

11. 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.

12. 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 leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

E. Findings on the relief sought by the complainants.

E.I The respondent no 1, its promoter, or his agent or assignee or any allottee or anybody acting through him shall not be granted any further extension of HARERA Registration no 12 of 2016 beyond 30/06/2025 i.e the expiry of the current registration.

13. It is observed that the Authority is granted approved to the promoter for permitting the registration to remain enforce upto 30.06.2025 under the provisions of Section 7(3) of the Act, 2016 vide order dated 09.08.2022 in the interest of completion of the project. The matter regarding further grant of extension of registration in this regard shall be considered by the Authority on merits after due diligence as per due process. No such relief can be granted at this stage.

E.II The respondent no 1, its promoter, or his agent or assignee or any allottee or anybody acting through him be restrained from creating, registering any association of homebuyers till the subsistence of Capital

Gateway Home Buyers Association by any other nomenclature, modification or amendment.

14. The above relief falls entirely under the jurisdiction of the Registrar General Firms and Societies Haryana and this Authority has no jurisdiction in the matter. In view of the above no relief can be granted in this regard.

E.III Set aside /cancel the revised zonal and building plan issued by the respondent no 2, i.e. Department of Town and Country Planning, Haryana, Chandigarh vide Memo number ZP-723/AD(RA)/2016/26863 dated 09/12/2016 retrospectively and restore the original approved building and zonal plans dated 16/04/2011.

E.IV Set aside the memo dated STP (G) /2023/427 dated 23/08/2023 issued by the Respondent no 3, i.e. Office of the Senior Town Planner, Gurugram Circle, Gurugram, Department of Town & Country Planning, Haryana thereby not allowing the Respondent any further extension of Floor Area Ratio and that the Respondent shall abide by the original Zonal and building plan dated 16/04/2011.

E.V Restrain the respondents no 2 and 3 from granting any further enhancement of floor area ratio or change/modify/revise the original Zonal and building plan dated 16/04/2011.

E.VI The respondent no 1, its promoter, or his agent or assignee or any allottee or anybody acting through him shall not be allowed any further change in building and zonal plans in the plan dated 16/04/2011 as approved in 2013.

E.VII Direct the respondent no 1, its promoter, or his agent or assignee or any allottee or anybody acting through him to demolish the additional 2 floors in Phase-II constructed against the original sanctioned floors of 10 and no further enhancement in number of floors shall be made.

E.VIII The respondent no 1, its promoter, or his agent or assignee or any allottee or anybody acting through him shall restore and follow the provision of basic amenities and common areas, common buildings, without altering, modifying, amending the nomenclature, location and purpose, especially with respect to the community buildings as per the original building and zonal plan dated 16/04/2011.

15. The above-mentioned reliefs no. E.III, E. IV, E. V, E.VI and E.VII as sought by the complainant is being taken together as these reliefs are interconnected.
16. The complainant states that the members of the Complainant booked their respective flats in individual capacity. The builder-buyer agreements were signed between the respective buyers and M/s Tashee Developers Pvt Ltd. and KNS Infracon Pvt Ltd in 2012. Thereafter, the project was continued by KNS Infracon Pvt Ltd. the buyers had paid almost 90-95% of their respective amounts of consideration by December 2015. However, the Respondent no 1 showed lackadaisical attitude and he managed to complete only about 75-80% in Phase-I and only 40-45% in Phase-II. Occupation Certificate is yet to be obtained by the Respondent no 1 from the Department of Town and Country Planning even for the Phase-I. The buyers sent emails to the Respondent No 1 from 2016-2018 to enquire about the progress of the project. However, the Respondent No 1 refused to respond to and answer the queries from the

buyers. However, the respondent no 1 handed over the possession of a few flats despite the fact that they were incomplete. The basic amenities like, electricity, water supply, lift and other security such as fire safety and such other had not been provided and occupation certificate had not been obtained yet. Those who accepted the possession, however, could not continue to stay and were compelled to move out as the flats were not in a condition to live in due to the aforesaid reasons. However, there are still two occupants residing in 2 flats in Phase-I despite no provisions for safety such as fire safety, basic amenities and occupation certificate.

17. The complainant association further states that the respondent no 1 has tried to change the layout and has altered the number of saleable units, provisions of the common facilities, parking, EWS SER etc. in place of G+10 floors in each tower as per the original sanctioned plan of 2011, the project now has G+12 floors in towers G to H in Phase II. The total saleable units as per original plan of 532 flats, 107 SER/EWS units have now been changed to 538 units of flats, 96 EWS units and 54 SER units under Block D. Moreover, in place of 2 Community Buildings and 1 Commercial Center, as was sanctioned in the original Building plan of 2011/12, now the Project has provision for 1 Community Building and 2 Commercial Centers, with changes in their locations too. The parking facilities have also been altered. Thus, under the revised plan there is no mention of lower basement in the parking of Phase II. Total parking slots have also been reduced to 958 against 1095 no of parking slots in the original plan.

18. On the contrary, the respondents no. 3 and 4 state that before approval of revised building plan, the respondent no.1 issued advertisement in three newspapers i.e. The Tribune, Indian Express and Dainik Bhaskar inviting objections from the existing allottees. As per information given by STP, Gurugram vide letter dated 17.11.2016, no objections were received from any of the allottee in respect of the proposed amendments in the revised building plan. It is further stated that no legal right of the allottees of the project has been infringed on account of the revision of the building plans. The same are in accordance with the permitted FAR and the norms already laid down by the Department. Accordingly, With the increase of FAR, number of dwelling units increased from 532 to 538 which are within the permissible FAR limit. The respondent no.1 accordingly constructed additional 2 floors in the license area project. It is also pertinent to mention that the building plans were revised by the concerned Authority prior to the commencement of RERA Act, 2016.

19. The Authority is of the view that the above reliefs pertain entirely to the jurisdiction of respondents no. 3 and 4 which are the competent Authorities in this regard. The complainant-association may seek redressal of their grievances, if any, the addressing the same to the competent Authority in this regard.

E.IX Direct the respondent no 1, its promoter, or his agent or assignee or any allottee or anybody acting through him to compensate the respective buyers in the wake of the demolition of the additional 2 floors in Phase-II constructed in violation of the original sanctioned floors of 10.

20. The complainant in the aforesaid relief is seeking relief w.r.t compensation.

Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech*

Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has held that an allottee is entitled to claim compensation 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 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.

F. Directions of the Authority:

21. Hence, in view of the factual as well as legal positions detailed above, the complaint filed by the complainant seeking above reliefs against the respondents is decided in terms of paras 13 to 20 above. Ordered accordingly.
22. Complaint stands disposed of.
23. File be consigned to registry.

(Ashok Sangwan)
Member

(Vijay Kumar Goyal)
Member

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

27.05.2025