

BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.

605 of 2023

Date of complaint

20.02.2023

Date of order

23.07.2025

Ravi Kumar,

R/o: - VPO- Raghunathpura, Tehsil- Chirawa,

District- Jhunjhunu, Rajasthan.

Complainant

Versus

1. M/s Tashee Land Developers Pvt, Ltd.

2. M/s KNS Infracon Private Limited.

Both Having Registered Office at: - 517A, Nariman Manzil, 23, Barakhambha Road, Connaught Place, New Delhi-110001.

3. IDBI Bank

Having Office at: -1st Floor, Videocon Tower, E-1, Jhandewalan Extension, New Delhi-110055.

Respondents

CORAM:

Ashok Sangwan

Member

APPEARANCE:

Ankur Bansal (Advocate) Rishabh Jain (Advocate) None

Complainant Respondent No.1 & 2 Respondent No.3

This complaint has been filed by the complainant/allottee under section 1. 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 Page 1 of 17



thereunder or to the allottee as per the agreement for sale executed interse.

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	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.	904, 9th floor, tower J (pg. 37 of complaint)
8.	Date of execution of buyers' agreement	(pg. 33 of complaint)
9.	Payment plan	Construction linked
10.	Total sale consideration	Rs.2,14,33,150/- (pg. 69 of complaint)
11.	Total amount paid by the complainant	(as per page /2 & /9 of complaint)
12.	Due date of delivery of possession (within 50 months (48 months from the date of sanction of building plan which in 07.06.2012) (grace period of 6 month is not allowed)	of is
13.	Occupation certificate	Not obtained for tower in question
14.	Offer of possession	Not offered
15.	Tripartite agreement	31.12.2016



B. Facts of the complaint

- 3. The complainant has made the following submissions: -
 - I. That the complainant booked a residential flat by filling an application form dated 29.12.2016 in respect of flat no.904, 9th Floor, Tower 'J' having super area about 3350 sq. ft. in the project of the respondent no. 1 & 2 named Capital Gateway at Sector-111, Gurugram for a total sale consideration of Rs.2,11,81,100/- including all charges and opted for 'subvention payment plan' approved by respondent no.3.
 - II. That the complainant made an initial payment of Rs.10,00,000/- in favour of the respondent no.1 & 2 on 12.12.2006 and thereafter the respondent no.1 & 2 issued an allotment letter and executed a flat buyer agreement both dated 30.12.2016 in favour of complainant detailing all the terms and conditions of booking.
- III. That vide agreement dated 30.12.2016 it was specifically agreed by respondent no.1 & 2 that they shall deliver to the complainant the said flat by 30.12.2018. However, respondent no.1 & 2 has till date failed to issue any letter to the complainant regarding possession of the said flat and to abide by the terms and conditions of the said agreement and moreover, the said project is no-where nearing completion nor any construction activities are going on in the said project.
- IV. That as and when respondent no.1 & 2 had been raising demands against payment of due instalments the same were duly paid within the due date without any default. It is further submitted that complainant out of his own accord has till date paid a sum of Rs.74,62,565/- towards the sale consideration of the said flat to respondent no.1 & 2 and respondent no.3 has till date paid a sum of Rs.98,54,999/- to respondent no.1 & 2 against demands of payment towards sale consideration of the said flat. The said payments have



been duly accepted and acknowledged by the respondent by issuance of receipts in favour of complainant. As such, the complainant has paid a total sum of Rs.1,73,17,564/-.

- That the respondent no.1 & 2 had issued a letter dated 31.12.2016 to V. IDBI Bank Ltd. (respondent no.3) as no objection towards mortgaging the said flat under the SPP plan and further the complainant, respondent no.1 & 2 and respondent no.3 further entered into a tripartite agreement as per the SPP Plan for an amount of Rs.98,54,999/- by mortgaging the said Flat in favour of IDBI Bank under the SPP Plan as agreed by the respondent. It was further agreed under the said tripartite agreement that respondent no.1 & 2 shall pay all the interest EMIs on the loan amount of Rs.98,54,999/- to the IDBI Bank from date of disbursal till the possession of the flat is given by the respondent no.1 & 2 to the complainant. It is pertinent to mention here that respondent no.1 and 2 paid monthly interest EMI's to respondent no.3 w.e.f January 2017 till March 2019. However, to utter shock, the respondent no.1 & 2 had stopped paying further interest w.e.f. April 2019 without completing the project nor even giving the possession of the said flat to the complainant. It is further submitted that since the complainant was not legally entitled to and was neither in position to pay the interest to IDBI Bank, IDBI Bank has declared the said account as NPA (Non-Performing Asset) and has also started taking appropriate legal action against complainant and has also damaged the CIBIL score of the complainant. It is submitted that the entire liability to pay regular interest EMI's till possession was of respondent no.1 & 2.
- VI. That the complainant visited the office of the respondent no.1 & 2 on various occasions from April, 2019 till date and also telephonically



contacted the various officials of respondent no.1 & 2 in order to enquire about the status of the project and the likely date of completion of the project as it was agreed to be delivered by December, 2018 as stated above, and it was only informed by respondent no.1 & 2 that the completion of the project has got delayed due to various reasons, however, respondent is endeavouring to complete the project soon. further, respondent no.1 & 2 again gave assurance to the complainant that the project will be competed very soon and the same shall be intimated to the complainant in written.

- VII. That subsequently, the complainant had been contacting the officials of the respondent and had been regularly visiting their offices to enquire about the project and non-payment of interest EMI's, as the complainant was not receiving any demand letters or communication from respondent no.1 & 2 however, no positive response was given by them to the complainant and it was only assured that the booking of the complainant with respondent no.1 & 2 is safe and said flat shall be delivered in the near future.
- VIII. That despite taking the aforesaid sum from the complainant, respondent no.1 & 2 has not at all complied with the performance of their part of agreement to attain the object of the same. It is submitted that the complainant has performed his part of contract and has paid the required amount as and when demanded from him by respondent no.1 & 2.
 - IX. That since the respondent has failed to deliver possession of the flat by the date stipulated in the said agreement in this regard, the complainant has approached this Authority seeking refund of the entire deposited amount along with interest.



C. Relief sought by the complainant:

- The complainant has sought following relief(s):
 - Direct the respondent no. 1 & 2 to refund the paid-up amount along with interest.
 - II. Direct the respondent no.1 and 2 to make payment of dues and penalty, if any to respondent no.3.

D. Reply by the respondent no.1 & 2.

- 5. The respondents have contested the complaint on the following grounds:
 - i. That the respondent had applied for environment clearance on 20.10.2011. However, the decision and issuance of certificate to the promoter/developer remained in abeyance for a long time due to sudden demise of the Chairman of Environmental Impact Assessment (EIA) Committee in an unfortunate road accident. The developer finally got the environment clearance on 17.06.2013. Owing to this, the construction work of the project itself started late.
 - ii. That the respondent had applied for the revision in building plans of the said project before the appropriate authority. However, for no fault of the respondent, the plans were approved by the department only after a delay of 2 years. Owing to this, the construction of project could not be started in a timely manner.
 - iii. That the complainant in the present case is not a consumer rather an '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.
 - iv. That on 30.12.2016, the flat buyer's agreement was executed between the parties, wherein flat bearing no.904, 9th Floor, J Tower was allotted to the complainant.
 - v. That the complainant vide agreement to sell dated 01.02.2017 with Geemed Land & Building Developers Private Limited had created third



party rights which the complainant has not disclosed before the Authority. Further, vide agreement dated 01.02.2017, the complainant has no rights against the subject flat. Moreover, in furtherance of the aforesaid agreement, the respondent has transferred the subject unit in favour of the Geemed Land & Building Developers Private Limited.

- vi. That the structure of the said project in question is complete.

 Moreover, it is pertinent to state that the respondent has initiated the process for obtaining occupation certificate for Phase-I of the said project as all the construction and development activities are complete.
- vii. That for the reasons beyond the control of the respondent, 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 respondent.

viii. 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.



- ix. That there is no further deficiency as claimed by the complainant against the respondent and no occasion has occurred deeming indulgence of the Hon'ble Authority. Hence, the present complaint is liable to be dismissed.
- 6. Despite due service of notice through email, no reply has been received from respondent no.3 with regard to the present complaint and also none has put in appearance on its behalf before the Authority. In view of the above, vide proceedings dated 03.04.2024, the respondent no.3 was proceeded ex-parte.
- 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.



Subject matter jurisdiction

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 noncompliance of obligations by the promoter.
- Findings on the objections raised by the respondent no.1 & 2. F.
 - F. I Objection regarding the complainant being investor.
- 11. The respondents have taken a stand that the complainant is an investor and not a consumer. Therefore, he is 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 30.12.2016, it is revealed that the complainant is a buyer, and he 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 him 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 has 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. However, all the pleas advanced in this regard are devoid of merit. First of all, the possession of the unit in question was to be offered by 07.06.2016. Moreover, time taken in



governmental clearances cannot be attributed as reason for delay in project. Further, the events alleged by the respondents do not have any impact on the project being developed by the respondents. Furthermore, 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 respondents/promoter cannot be granted any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

F.II Objections regarding maintainability of complaint.

13. The counsel for respondents vide its reply has contended that complainant vide agreement to sell dated 01.02.2017 with Geemed Land & Building Developers Private Limited had created third party rights which the complainant has not disclosed before the Authority. Further, vide agreement dated 01.02.2017, the complainant has no rights against the subject flat. Moreover, in furtherance of the aforesaid agreement, the respondents have transferred the subject unit in favour of the Geemed Land & Building Developers Private Limited. The complainant vide written submissions dated 09.07.2025 has submitted that he has never transacted with the Geemed Land & Building Developers Private Limited and there is no financial transaction of the complainant with it. After considering the above, the Authority observes that there was no sale consideration mentioned in the said agreement to sell dated 01.02.2017 and no transfer paper of possession has been handed over by the complainant. Further, it is evident from the record that no such sale deed has been executed as stipulated in the said agreement and the property still stands in the name of the



complainant. In view of the above, the objection of the respondents w.r.t maintainability of complaint stands rejected.

Findings on the relief sought by the complainant.

Direct the respondent no.1 & 2 to refund the paid-up amount alongwith interest.

Direct the respondent no.1 and 2 to make payment of dues and G.II penalty, if any to respondent no.3.

14. The complainant intends to withdraw from the project and is seeking return of the amount paid by him in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

"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.-

(a). in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b). due to discontinuance of his business as a developer on account

of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: 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."

15. Clause 2.1 of the apartment buyer's agreement (in short, agreement) provides for handing over of possession and is reproduced below:

2.1 Possession

"Subject to clause 9 or any other circumstances not anticipated and beyond control of the first party/conforming party and any restraints/restrictions from any court/authorities and subject to the purchaser having complied with all the terms of this agreement including but not limited timely payment of total sale consideration and stamp duty and other charges and having complied with all provisions, formalities documentation etc. as prescribed by the first party/conforming party proposes to handover the possession of the flat to the purchaser within approximate period of 48 months from the date of sanction of building plans of the said colony. The purchaser agrees and understands that the first



party/conforming party shall be entitled to a grace period of 180 days after the expiry of 48 months for applying and obtaining OC in respect of the colony from the concerned authority..."

(Emphasis supplied)

- 16. Due date of possession and admissibility of grace period: The respondents/promoter proposed to hand over the possession of the said unit within a period of 48 months from the date of sanction of building plans. The building plans were approved on 07.06.2012. The said possession clause incorporates qualified reason for grace period/extended period of 6 months. Since possession clause 2.1 of the BBA incorporates qualified reason which provides a pre-condition that the entitlement of said grace period of 6 months is dependent of the situation of respondents applying for or obtaining occupation certificate from the competent Authority but as per the given facts it has failed to apply for occupation certificate to the competent authority within the stipulated time. Accordingly, the Authority literally interpreting the same and disallows this grace period of 6 months to the promoter at this stage (inadvertently grace period of 6 months was allowed in proceedings dated 24.07.2024). Therefore, grace period of six months as per clause 2.1 of buyer's agreement is disallowed and not included while calculating the due date of handing over of possession. Hence, the due date for handing over of possession comes out to be 07.06.2016.
 - 17. Admissibility of refund at prescribed rate of interest: The complainant is seeking refund of the amount paid by him at the prescribed rate of interest in respect of the subject unit with interest at prescribed rate as provided 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]



For the purpose of proviso to section 12; section 18; and subsections (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.

- 18. 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.
- 19. 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., 23.07.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
- 20. On consideration of the documents available on record as well as submissions made by the parties, the Authority is satisfied that the respondents are in contravention of the Section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 2.1 of the buyer's agreement executed between the parties, the possession of the subject apartment was to be delivered within a period of 48 months from date of sanction of building plans. The date of sanction of building plan was 07.06.2012. Further, the grace period of 6 months is disallowed for the reason quoted above. As such the due date of handing over of possession comes out to be 07.06.2016. However, occupation certificate for the tower in question has not been obtained by the respondents/promoter till date.
 - 21. Keeping in view the fact that the complainant/allottee wishes to withdraw from the project and is demanding return of the amount received by the promoter in respect of the unit with interest on failure Page 14 of 17 ./



of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein, the matter is covered under Section 18(1) of the Act of 2016.

22. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondents/promoter. The Authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in *Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021:*

".... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project......"

23. Further, the Hon'ble Supreme Court of India in the cases of Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra) reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022. observed as under:

"25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."



- 24. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under Section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as he wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by the promoter in respect of the unit with interest at such rate as may be prescribed.
- 25. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with Section 18(1) of the Act on the part of the respondents is established. As such, the complainant is entitled to refund of the entire amount paid by him i.e. Rs.1,73,17,564/- at the prescribed rate of interest i.e., @11.10% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in Rule 16 of the Rules, 2017.
- 26. Out of total amount so assessed, the respondents/promoter shall refund the amount paid by respondent no.3/bank in its account and shall get the complainant's loan account closed after settling the dues with the bank from the above refundable amount. The respondents/promoter shall deduct/adjust the amount paid by it towards pre-EMI, from the above refundable amount after submitting proof of the same to the complainant and thereafter, balance if any, shall be refunded to the complainant.



H. Directions of the authority

- 27. 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 respondent no.1 & 2 are directed to refund the paid-up amount i.e. Rs.1,73,17,564/- received by it from the complainant along with interest at the rate of 11.10% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.
 - ii. Out of total amount so assessed, the respondent no.1 & 2 shall refund the amount paid by respondent no.3/bank in its account and shall get the complainant's loan account closed after settling the dues with the bank from the above refundable amount. The respondent no.1 & 2 shall deduct/adjust the amount paid by it towards pre-EMI, from the above refundable amount after submitting proof of the same to the complainant and thereafter, balance if any, shall be refunded to the complainant.
 - iii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
 - 28. Complaint stands disposed of.
 - 29. File be consigned to registry.

(Ashok Sangwan)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.07.2025