

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

**Complaint no. :** 51 of 2025  
**Date of filing :** 07.01.2025  
**Date of decision:** 22.07.2025

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

**Complainant****Versus**

**M/s Kns infracon pvt.ltd.**  
**Regd. Office at:** 517A, NARAINMANZIL, 23, BARAHAMA  
ROAD, CONNAUGHT PLACE, NEW DELHI-110001.

**Respondent****CORAM:**

Shri Arun Kumar  
Shri Ashok Sangwan

**Chairman**  
**Member**

**APPEARANCE:**

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

**Complainant****Respondent****ORDER**

1. The present complaint dated 07.01.2025 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 licence 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, 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.

VIII. That the respondent had agreed to deliver the possession of the flat within 36 months from sanctioning of building plan (07.06.2012) **which comes to 07.06.2015**, excluding the extended grace period of 180 days which was the essence of the agreements.

- IX. That, around Feb 2019 the respondent started sending letters to home buyers (Phase-1) that OC is applied vide reference No. 4553 Dated 25/02/2019.
- X. That 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 I 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.
- XI. That the part occupation certificate was granted for phase-1 was granted by the Directorate of Town & Country Planning, Haryana vide Memo No. ZP-723/JD(RD)/2024/32566 dated 24/10/2024.
- XII. That the PHASE-I, members of the Complainant association in last week of Nov 24 & early Dec 2024 were suddenly surprised to receive first an email along with an attachment with the title, "Offer of possession for Unit No. .... in our project Capital Gateway situated at Sector 111, Gurugram, Haryana". The email read as, "It gives us immense pleasure in informing you that the Unit allotted to you, is ready for possession, and we have received the occupancy certificate for the unit allotted to you. Now, we are in the process

of delivering the Physical possession, subject to all documentary and monetary compliances being completed from your end.” But they were all in for a rude shock for on opening the email it was titled as STATEMENT OF ACCOUNT in which referring to Para 3 titled as “Total Sale Value of the Flat” has five additional charges which form the bone of contention in respect of the home buyers.

- a. *Firstly*- Club Membership Charges of an amount of ₹1,50,000/-. The club is not ready till date.
- b. *Secondly*-EDC/IDC:- Reference is made to the Registration Certificate of the project No. 12 of 2018/7(3)/2022/3 wherein refer Para (E)- Conditions Of Registration. In this refer sub para (viii) No separate EDC/IDC is payable by the allottees except the total sale consideration.
- c. *Thirdly*- Possession Charges, although mentioned in total & item wise calculation of the same is not specified but on scrutiny the same is found to be ₹ 400/- per sq ft. For e.g if the super area size of a three bedroom flat was 2102 Sq Ft the amount asked was ₹8,40,800/-.However as laid down in the Payment Plans in the FBA whether it is Down Payment / Flexi Payment Plan / Construction linked plan all carry the similar condition that, “On offer of possession” charges are supposed to be 5% of BSP + IFMS. Since the basic Sale price for all is different this will vary.

IFMS cannot be charged presently. Hence the Respondent has arbitrarily fixed the possession charge at ₹400/- per sq ft.

d. *Fourthly-* The IFMS is supposed to be a fixed amount & is billed separately in the demand letter. The IFMS is to be based on the common area and not of the flat area.

e. *Fifthly- Basic Sale Price Increase Due To Cost Escalation In Construction.*

This has been based on **Building Cost Indices For Delhi Issued By CPWD** and the same has been calculated by the complainant and the amount demanded by the Respondent has been unilaterally increased by 52.77%. For e.g. for a Flat of super area of 2102 Sq Ft the amount demanded is ₹31,44,762/-

It is pertinent to bring out the fact that around 23 Dec 2020, the respondent had originated a demand note that, "We are pleased to inform you that the milestone "On or Before Offer of possession has been completed. In terms of payment the following is due." Now suddenly the Respondent maliciously has brought in charges that are totally unjustified, arbitrary and have no basis at all. The same is strongly objected to and are directly violating the conditions laid down in the Registration Certificate.

XIII. That, Vide the same letter dated 20 Nov 24 in Para 12 the Respondent has incorporated a line which says that "*Please note that other charges like Cost Escalation, Maintenance Charges, Administrative Charges, Sinking Fund, Club Maintenance & Operation Charges etc. will be billed in due course of time.*" It



seems that the Respondent just wants to keep billing the home buyers every now & then on whims & fancies. This is strongly objected to as charges like Maintenance Charges, Sinking Fund, Club Maintenance & Operation charges are the prerogative of RWA and not of the respondent. The other charges mentioned like Cost Escalation, Administrative Charges etc. are all unjustified and are meant to harass the members of the complainant(s) in a planned & phased manner.

- XIV. That this demand letter was followed by first reminder of the letter termed as Demand Notice (with absolutely arbitrary demands) in just 07-10 days. 1<sup>st</sup> letter issued on 20 Nov 24, Reminder on 29 Nov 24. Strangely in this letter on close scrutiny it was noticed that the original demand Notice **Para 11** read as, "You are kindly requested to make this payment within 10 days from serving the letter failing which the overdue payment shall accrue interest as mentioned in the BBA. Further any previous outstanding payment will attract interest as applicable without prejudice to the other terms & conditions of booking." **WHEREAS** in the reminder Letter dated 29 Nov 24, **Para 11 was replaced** smartly to read as, "Kindly make the aforesaid payment immediately , failing which the overdue payment shall accrue interest as mentioned in the BBA. Further any previous outstanding payment will attract interest as applicable without prejudice to the other terms & conditions of booking. *Please ensure the timely payment of the demands made and the reminder notices issued to you against your unit, failing which the Builder shall have the discretion to cancel the unit allotted.*"



- XV. The second reminder was also issued in quick succession within a week i.e. 07 Dec 24.
- XVI. The buyer members promptly replied to the respondent asking for clarification's of the arbitrary possession charges & cost escalation of construction. However they received no reply or acknowledgments of their letters / email from the respondent.
- XVII. That certain buyers (and others in the association) after the sending of three letters in quick succession (not exceeding even a month) started receiving another shock in the form of **Cancellation Letters** around the second week of Dec 2024 using these three letter as a basis. The cancellations of flats are continuing on an arbitrary select basis. By now 20home buyers have received their cancellations and this trend is continuing.
- XVIII. That the respondent has initiated the act of cancellation of flats as an act of vindictiveness with an intent to blackmail and create pressure on the home buyers to negotiate a compromise to suit his ill intent. It is submitted that the home buyers of Phase-1 who are the portfolio holders of the complainant association are being harassed in this manner. Thereafter he has targeted all those who have filed cases to get delayed penalty interest or compensation from him in RERA & NCDRC.

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

3. The complainant has sought following relief(s):
- I. Set aside the cancellation letters of the units of the members of the Complainant Association.

- II. Direct the Respondent to restore the flats which have been cancelled by the Respondent by withdrawing the cancellation letters.
- III. Restrain and direct the respondent not to transfer, sell or create any third party interest in the units allotted to members of the Complainant Association.
- IV. Direct the Respondent not to cancel the flats of the buyers who are members of the complainant association based on possession charges and cost escalation in construction or any arbitrary clause.
- V. Set aside the illegal and arbitrary possession charges levied by the respondent.
- VI. Set aside the arbitrary IFMS charges and direct the same be charged as per common area.
- VII. Set aside the illegal and arbitrary 'Basic Sale Price increase due to cost escalation in construction based on Building Cost Indices for Delhi issued by CPWD.
- VIII. Set aside the club charges till the club is completed and operational in all respects.
- IX. Direct the respondent to hand over the physical possession & execute a registered conveyance deed in the undivided proportionate title in the common areas to complainant association as provided under section 17 of the RERA Act, 2016.
- X. Direct the Respondent(s) not to involve SWAMIH or any other agency for the purpose of obtaining NOC from them or in any way

whatsoever and give the rightful possession directly after obtaining OC of the flat to the complainant(s) without creating any hindrances.

XI. Direct the respondent (promoter) to execute a registered conveyance deed of the undivided proportionate title in the common areas in favour of the complainant association and physically hand over the physical possession of the common areas to the complainant association.

XII. The respondent(s) are liable not to charge anything extra which is not a part of the FBA or contrary to Rule 8 of the RERA Rules, 2017 pertaining to 'Agreement for Sale'. The complainant be granted adequate time period of minimum three months for payments to be made if due.

4. The respondent-promoter has 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 to file 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 respondent.

#### **D. Jurisdiction of the authority**

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

##### **D.1 Territorial jurisdiction**

6. 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**

7. 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.*

8. 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.

**D. Findings on the relief sought by the complainants.**

**D.I Set aside the cancellation letters of the units of the members of the Complainant Association.**

**D.II Direct the Respondent to restore the flats which have been cancelled by the Respondent by withdrawing the cancellation letters.**



**D.III Restrain and direct the respondent not to transfer, sell or create any third party interest in the units allotted to members of the Complainant Association.**

**D.IV Direct the Respondent not to cancel the flats of the buyers who are members of the complainant association based on possession charges and cost escalation in construction or any arbitrary clause**

**D.V Set aside the illegal and arbitrary possession charges levied by the respondent.**

**D.VI The respondent(s) are liable not to charge anything extra which is not a part of the FBA or contrary to Rule 8 of the RERA Rules, 2017 pertaining to 'Agreement for Sale'. The complainant be granted adequate time period of minimum three months for payments to be made if due.**

**D.V Set aside the illegal and arbitrary 'Basic Sale Price increase due to cost escalation in construction based on Building Cost Indices for Delhi issued by CPWD**

9. The above mentioned reliefs no. D.I, D.II, D.III, D.IV & D.V as sought by the complainant is being taken together as the findings in one relief will definitely affect the result of the other reliefs and these reliefs are interconnected.
10. The reliefs sought by the complainant association, such as setting aside of cancellation letters, restoration of cancelled flats, restraining the respondent from transferring units or raising arbitrary demands, and seeking time extension for payments, are essentially individual in nature and pertain to contractual relationships arising out of individual flat buyer

agreements executed between the respective allottees and the promoter. The Act of 2016, does not envisage collective adjudication of individual contractual disputes through a representative body like a residents association. The complainant-association, acting as a collective body, cannot substitute the right of individual allottees to seek relief regarding their respective units, especially when the allegations involve unilateral cancellation, possession charges, or demand notices based on escalation or delayed payments. Therefore, the Authority is of the view that the present complaint, filed by the complainant association seeking above mentioned reliefs is not maintainable. The appropriate remedy lies in individual members approaching the Authority separately to challenge the cancellation or raise grievances regarding arbitrary charges, enabling the Authority to adjudicate upon merits specific to each allottee.

**D.VI Direct the respondent to hand over the physical possession & execute a registered conveyance deed in the undivided proportionate title in the common areas to complainant association as provided under section 17 of the RERA Act, 2016.**

**D.VII Direct the respondent (promoter) to execute a registered conveyance deed of the undivided proportionate title in the common areas in favour of the complainant association and physically hand over the physical possession of the common areas to the complainant association.**

11. The above mentioned reliefs no. D.VI & D.VII as sought by the complainant is being taken together as the findings in one relief will definitely affect the result of the other reliefs and these reliefs are interconnected
12. The authority directs the respondent to hand over physical possession of the unit along with the registered conveyance deed of the undivided proportionate title in the common areas, in compliance with Section 17(1) of the RERA Act, 2016. This must be done upon obtaining the occupation certificate and completion of all formalities.
13. In accordance with Section 17(2) of the Act, the respondent is directed to execute a registered conveyance deed in respect of the undivided proportionate title of the common areas and to physically hand over possession of such common areas to the complainant association as required by law.  
**D.VIII Direct the Respondent(s) not to involve SWAMIH or any other agency for the purpose of obtaining NOC from them or in any way whatsoever and give the rightful possession directly after obtaining OC of the flat to the complainant(s) without creating any hindrances.**
14. The respondent is further directed not to involve third-party entities such as SWAMIH or any other agency in matters relating to issuance of No Objection Certificates or possession. The promoter is obligated under RERA to deliver rightful possession directly to the allottee upon obtaining the occupation certificate, without imposing any additional conditions.  
**D.IX Set aside the club charges till the club is completed and operational in all respects.**



15. The club charges levied by the promoter shall not be enforceable until the club is fully constructed, completed and made operational in all respects. Further, as per Section 2(n) of RERA, "common areas" include community and commercial facilities provided in the real estate project. A club, being a part of such community facilities, falls under this category. However, if such facility is not completed and operational, the promoter cannot impose charges for the same. The charges towards the club facility are premature, arbitrary, and unenforceable unless and until the said facility is fully constructed, completed, and made operational in all respects. Therefore, the respondent promoter is not entitled to demand or collect such charges until the club is made available for the actual use of allottees.

**D.X. Set aside the arbitrary IFMS charges and direct the same be charged as per common area.**

16. The promoter may be allowed to collect a reasonable amount from the allottees under the head "IFMS". The authority directs that the promoter must always keep the amount collected under this head in a separate bank account and shall maintain that account regularly in a very transparent manner. If any allottee of the project requires the promoter to give the details regarding the availability of IFMS amount and the interest accrued thereon, the promoter must provide details to the allottee. It is further clarified that out of this IFMS/IBMS, no amount can be spent by the promoter for the expenditure it is liable to incur to discharge its liability and obligations as per the provisions of section 14 of the Act.




**F. Directions of the Authority:**

17. 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 9 to 16 above. Ordered accordingly
18. Complaint stands disposed of.
19. File be consigned to registry.



**(Ashok Sangwan)**  
Member



**(Arun Kumar)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram  
22.07.2025