

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

Date of decision: 15.07.2025

NAME OF THE BUILDER		<i>KNS Infracon Private Limited and Tashee Land Developers Private Limited</i>	
PROJECT NAME		"Capital Gateway, Sector-111, Gurugram"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/4432/2023	Ramesh Bajaj and Sikha Bajaj V/S KNS Infracon Private Limited, Tashee Land Developers Private Limited, Kashi Nath Shukla CEO, Satish Kumar Dubey Director, Anand Singh, Diplomats And Other Officers Welfare Organisation Through Ramesh Kumar Bisla	Vivin Kumar Ahuja Advocate (complainants) and Shubham Advocate (respondent no. 1 and 2)
2.	CR/4609/2023	Yoginder Sharma V/S KNS Infracon Private Limited, Tashee Land Developers Private Limited, Kashi Nath Shukla CEO, Satish Kumar Dubey Director, Anand Singh, Diplomats And Other Officers Welfare Organisation Through Ramesh Kumar Bisla.	Vivin Kumar Ahuja Advocate (complainants) and Shubham Advocate (respondent no. 1 and 2)

CORAM:

Shri Arun Kumar
Shri Ashok Sangwan

Chairman
Member

ORDER

1. The above complaints have been filed by the complainant/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in

short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Capital Gateway" situated at Sector-111, Gurugram being developed by the respondent/promoters i.e., KNS Infracon Pvt. Ltd. and others. The issue involved in both these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question and the complainants are seeking delay possession charge at prescribed rate of interest.
3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Sr. No	Complain t No., Case Title, and Date of filing of complain t	Reply statu s	Unit No.	Date of execut ion of agree ment for sale/A llotme nt	Due date of possess ion, offer of possess ion	Total Considerati on / Total Amount paid by the complainan ts (In Rs.)	Relief Sought
1.	CR/7715/2022 CR/4432/2023 Case titled as Ramesh	receiv ed – 04.09.2024	f-604, 6 th floor, tower F, 2049 SQ.FT	30.01.2018	30.06.2021 (Note: - Calculat ed from the due date of	TSC: - Rs.94,36,936 /- AP: - Rs.77,79,720 /-	1. DPC 2. Handover of possession



	Bajaj and Sikha Bajaj VS KNS Infracon Private Limited and Others - 01.10.2023				registrat ion certificat e issued by this authorit y i.e.,31.1 2.2020 + 6 months as per HARERA notificat ion no. 9/3- 2020 dated 26.05.20 20 for the projects having completi on date on or after 25.03.20 20.)	Date of offer of possession: Not offered	
2.	CR/4609/ 2023 Case titled as Yoginder Sharma VS KNS Infracon Private Limited and Others - 04.10.2023	Reply receiv ed on 04.09. 2024	I-401, 4th floor, tower I, 2990 SQ.FT	06.05.2 019 Date of allotme nt: 09.09.2 008	30.06.20 21 (Note: - Calculat ed from the due date of registrat ion certificat e issued by this authorit y i.e.,31.1 2.2020 + 6 months	TSC: - Rs.1,46,45,3 60/- AP: - Rs.82,41,000 /- Offer of possession: Not offered	1. DPC. 2. Handover of possession

					as per HARERA notificat ion no. 9/3- 2020 dated 26.05.20 20 for the projects having completi on date on or after 25.03.20 20.)		
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Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviation Full form

TSC- Total Sale consideration

AP- Amount paid by the allottee(s)

4. The aforesaid complaints were filed against the promoter on account of violation of the agreement to sell against allotment of units in the upcoming project of the respondent/builder and for not handing over the possession by the due date, seeking delay possession charges at prescribed rate and handover of possession.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/ respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. Out of the above-mentioned cases, the particulars of case **CR/4432/2023 titled as Ramesh Bajaj and Sikha Bajaj VS KNS Infracon Private Limited**

and Others. are being taken into consideration as lead case for determining the rights of the allottee(s) qua delay possession charges along with interest and handover of possession.

A. Project and unit related details

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

CR/4432/2023 titled as Ramesh Bajaj and Sikha Bajaj VS KNS Infracon Private Limited and Others.

S. No.	Heads	Information
1	Project name and location	'Capital Gateway, Sector-111, Gurugram
2	Project area	10.462 res
3	Nature of the project	Residential
4	DTCP license no. and validity status	34 of 2011 dated 16.04.2011 valid upto 15.04.2024
5	Name of licensee	KNS Infracon Pvt. Ltd. and others
6	RERA registered/ not registered	Registered vide no. 12 of 2018 dated 10.01.2018 valid upto 31.12.2020 for phase-I (tower A to G) and 31.12.2021 for phase- II (tower H to J)
7	Unit no.	F-604, 6 th floor, tower F, 2049 SQ.FT (pg. 25 of complaint)
8	Date of execution of buyers' agreement	30.01.2018 (pg. 21 of complaint)
9	Total sale consideration	Rs. 94,36,936/- (pg. 34 of complaint)
10	Total amount paid by the complainant	Rs. 77,79,720/- (As alleged by the complainant)
11	Possession clause	<i>7.1 Schedule for possession of the said Unit</i>

		<i>"The promoter agrees and understands that timely delivery of possession of the Unit alongwith parking (if applicable), if any, to the Allottee and the Common Areas to the Association of Allottees or the Competent Authority, as the case may be, as provided under the Act and Rule 2(1)(f) of the Rules, 2017, is the essence of the Agreement."</i>
12	Due date of delivery of possession	30.06.2021 (Note: - Calculated from the due date of registration certificate issued by this authority i.e., 31.12.2020 + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020.)
13	Offer of possession	Not offered
14	Part Occupation certificate	24.10.2024

B. Facts of the complaint

8. The complainants have made the following submissions: -

- I. That the complainants were induced to become a member of "Diplomat and Other Officers Welfare Organization, Gurugram" (DIPLOWOG) Respondent No. 6 for allotment of a flat in their project "Diplomats Golf Link in Sector 110, Gurugram". The complainants were in bonafide need of a residential flat for him and his family and became member of the society. The complainants paid an amount of Rs. 15,00,000/- on 16-07-2014. The society had promised the possession of the flat within 3 years.
- II. That the respondent no. 1 as promoter, respondent no.2 as conforming promoter and the complainants herein executed Agreement to Sale on 30-01-2018 for Unit No F-604, Floor 6th Tower No.F, Project Capital Gateway, Revenue Estate: Chouma, Sector 111, Gurugram, Haryana.

- III. That respondent no.2 vide their mail dated 26.04.2018 informed the complainants that the complainants will be offered possession by March 2019 for phase I allottees and by December 2019 for phase II allottees.
- IV. That the respondent no. 6 vide their mail dated 24.12.2018 demanded immediate payment of installment to make payment up to 80%. The complainants vide his mail dated 28.12.2018 informed that he has already paid an amount of Rs.5,00,000/- and balance amount shall be paid in two installments by 15th January 2019 (Rs.10,86,558/-) and second installment by 15th March 2019 (Rs.10,00,000/-). The respondent No.6 again vide mail dated 13.03.2019 demanded payment of balance payment.
- V. That the respondents got their project registered with Haryana Real Estate Regulatory Authority on 10-01-2018. The complainants have learnt that the respondents have misrepresented before this Hon'ble Authority while obtaining registration certificate. The RERA Act mandates the promoter to furnish the details of the Directors of their company with their personal data like photographs, email ids, phone number, addresses etc. The complainants verified the details of the Directors of respondent No.1 and respondent No. 2 companies. From the perusal of the aforementioned documents, it emerges that the respondents have not correctly submitted the names of Directors of the companies while applying for RERA registration of their project. Thus the respondents are liable for severe consequences for submitting false information to the Authority.
- VI. That the respondents have failed to hand over the possession of the flat within agreed time and therefore liable for payment of interest for the delayed period on the amount paid by the complainants.
- VII. That the complainants also got to know that the building plans were sanctioned of the project "Capital Gateway" on 07.06.2012 and the promoter

was liable to complete the project within the validity period of sanction of building plans. Therefore the complainants had all the reasons to believe that the project will be completed within the time frame.

C. Relief sought by the complainants:

9. The complainants have sought following relief(s):
 - i. Direct the respondent to handover the possession as per the term and condition of buyer agreement.
 - ii. Direct the respondent to pay delay possession charge alongwith prescribed rate of interest.
 - iii. Direct the respondent to adjust the interest and extra amount charged against the outstanding dues to the complainants.
10. 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.

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

11. The respondents have contested the complaint on the following grounds.
 - i. That the respondents have been developing and marketing a Residential Group Housing Colony 'Capital Gateway' on the land measuring 10.462 acres situated at Sector 110A and 111, Gurugram, in two phases, i.e., Phase I consisting Tower A to G and Phase II consisting Tower H to J. The said project also consists of two towers for Economically Weaker Sections (EWS), two commercial buildings, one community building and a nursery school. There a total of 551 units in the said project, which includes 538 residential units and 13 commercial units.
 - ii. That he license bearing no.34 of 2011 dated 16th April, 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 up to 15th

April, 2024. The Respondents have also obtained all requisite permits and approvals for the development of the said project from the competent authorities.

- iii. That the respondents had applied for Environment Clearance on 20th October, 2011. 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 17th June, 2013. Owing to this, the construction work of the project itself started late.
- iv. That the respondents had applied for the revision in building plans of the said project before the appropriate authority. However, for no fault of the Respondents, 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.
- v. That the complainants, having keen interest in the said project, approached the respondents for booking a unit in the said project. The complainants applied for a residential unit after his due diligence. It is further submitted that, after being satisfied with the Project in totality that the complainants expressed his willingness to book a unit in the Project, looking into the financial viability of the Project and its future monetary benefits, booked the unit in his name.
- vi. That in 2018, the Agreement for Sale (hereinafter referred to as "Agreement") was executed between the complainants along with other two allottees and the respondents, wherein Flat No.F-604, 6th Floor, F Tower was allotted to the complainants.

- vii. That at present, it is a matter of record that the structure of the said project in question is complete and instalments are due and payable on account of the complainants. However, the complainants have failed to pay the same. Moreover, it is pertinent to state that the respondents have applied for obtaining occupation certificate for Phase-I of the said project as all the construction and development activities are complete.
- viii. That, for the reasons beyond the control of the respondents, the said project has been delayed. As a matter of fact, economic meltdown, financial crisis, sluggishness in the real estate sector, increase in cost of construction, default by allottees in making timely payments, multiple disputes between the workforce, labour and contractors resulting into shortage of labour and workforce and change in contractors, non-availability of sufficient water for construction due to restrictions imposed by local administration, restricted construction activities towards protection of the environment as directed by the local administration and the NGT and moreover, obstruction in construction due to Covid-19 outbreak are some of the impeding reasons beyond the control of the respondents.
- ix. That, simultaneously, the respondents are 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. 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 ₹80.00 crore and an additional ₹27.92 crore. The Project is a sick project wherein imposition of compensation will put a lot of burden over the Project and its proponents including the promoter.

- x. That after receipt of SWAMHI Investment Fund, the respondents were able to resume the construction activities at a very large scale in expeditious manner. The development at the project site is in full swing, in order to complete the project and handover the possession to the allottees at the earliest.
- xi. That there was a delay in sanctions and approvals from the concerned Government departments. The respondents have been diligently pursuing the matter with various authorities and hence no delay can be attributed on the part of the respondents, if there is any.
12. All other averments made in the complaint were denied in toto.
13. 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

14. 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

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

E.II Subject matter jurisdiction

16. 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.

17. 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.

F. Findings on the relief sought by the complainants.

F. I. Direct the respondent to handover the possession as per the term and condition of buyer agreement.

ii. Direct the respondent to pay delay possession charge alongwith prescribed rate of interest.

iii. Direct the respondent to adjust the interest and extra amount charged against the outstanding dues to the complainant.

18. The above mentioned reliefs no. F.I, F.II and F.III as sought by the complainants are being taken together and these reliefs are interconnected.
19. In the complaint, the complainants intend to continue with the project and is seeking delay possession charges at prescribed rate of interest on the amount already paid by her as provided under the proviso to section 18(1) of the Act which reads as under:-

"Section 18: - Return of amount and compensation

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

.....

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

20. Clause 7.1 of the buyer's agreement dated 30.01.2018, provides for handing over possession and the same is reproduced below:

7.1 "The promoter agrees and understands that timely delivery of possession of the Unit alongwith parking (if applicable), if any, to the Allottee and the Common Areas to the Association of Allottees or the Competent Authority, as the case may be, as provided under the Act and Rule 2(1)(f) of the Rules, 2017, is the essence of the Agreement."

21. At the outset, it is relevant to comment on the present possession clause of the agreement, wherein the possession has been subjected to all kinds of terms and conditions of the agreement, and the complainants are not in default under any provisions of this agreement and have complied with all provisions, formalities, and documentation as prescribed by the promoter. The drafting of this clause and the incorporation of such conditions are not only vague and uncertain but are so heavily loaded in favour of the promoter and against the allottees that even a single default by the allottee in fulfilling formalities and documentation, etc., as prescribed by the promoter may render the possession clause irrelevant. As a result, the commitment regarding the time period for handing over possession loses its meaning. The incorporation of such a clause in the buyer's agreement by the promoter is merely an attempt to evade liability for the timely delivery of the subject unit and to deprive the allottees of their rights arising from delay in possession. This demonstrates how the builder has misused his dominant position by

drafting such a one-sided clause in the agreement, leaving the allottees with no option but to sign on the dotted line.

22. **Due date of handing over possession:** As per clause 7.1 of buyer's agreement, the due date is calculated from the due date of registration certificate issued by this authority i.e., 31.12.2020 + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020. Therefore, the due date of handing over possession comes out to be 30.06.2021.

23. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges. However, proviso to Section 18 provides that where an allottee(s) does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed. This prescribed rate has been defined under rule 15 of the Rules, reproduced below:

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 sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

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

24. The legislature, in its wisdom, has determined the prescribed rate of interest in the subordinate legislation under Rule 15 of the Rules. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it would ensure uniformity practice in all the cases.

25. 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., 15.07.2025 is 8.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
26. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

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

Explanation. —For the purpose of this clause—

the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"

27. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the Authority is satisfied that the respondent is 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 clause 7.1 of buyer's agreement, the respondent promoter had proposed to handover the possession of the subject unit **by 30.06.2021**.
28. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within two months from the date of receipt of the occupation certificate. This two-month reasonable period is granted to the complainant, keeping in mind that even after intimation of possession, the allottee

practically has to arrange a number of logistics and requisite documents, including but not limited to inspection of the completely finished unit. However, this is subject to the unit being handed over in a habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession, i.e., 30.06.2021, till the valid offer of possession after obtaining the occupation certificate from the competent authority plus two months, or actual handing over of possession, whichever is earlier.

29. It is important to note that the respondent promoter filed an application for seeking deletion of names of respondent no. 3,4, and 5 from array of parties as they do not hold any office in respondent no.1 and 2. Further, respondent no. 6 filed an application under Order I Rule 10 for deletion of its name from array of parties stating that it has no privity of contract with the complainants and it has merely liaised as a mediator between the builder and the complainants with bonafide intension of ensuring smooth communication and transaction between the two, seeing that the allotment of the present unit was done through respondent no.6. Moreover, respondent no.6 was and is not at all responsible for the delivery of the said project.
30. In view of the above, the Authority if of view that the deletion of respondents 3, 4 & 5 from array of parties is allowed as they did not hold any official position in respondent no. 1 and 2. Similarly, respondent no. 6, which acted as a mediator between the builder and the complainants, it had no contractual relationship with the complainants and was not responsible for the delivery of the project. Since respondent no. 6 was merely facilitating communication without any legal obligation in the dispute, it was considered

an unnecessary party. In view of the same name of the respondent no.6 is deleted from the array of parties.

31. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 30.06.2021 till valid offer of possession plus 2 months or actual handing over of possession whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules. The respondent no.1 and 2 are further directed to hand over the actual physical possession of the unit to the complainants alongwith the all the amenities as per the builder buyer agreement within 2 months after obtaining occupation certificate.

G. Directions of the authority

32. 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 and 2 are directed to pay delayed possession charges at the prescribed rate of interest i.e., 11.10% p.a. for every month of delay on the amount paid by the complainants to the respondent from the due date of possession 30.06.2021 till valid offer of possession plus 2 months or actual handing over of possession whichever is earlier.
- II. The respondent no.1 and 2 are further directed to hand over the actual physical possession of the unit to the complainants alongwith the all the amenities as per the builder buyer agreement within 2 months after obtaining occupation certificate.

- III. The arrears of such interest accrued from due date of possession of each case till the date of this order by the Authority shall be paid by the promoter to the allottees within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to allottee(s) before 10th of the subsequent month as per rule 16(2) of the rules.
- IV. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- V. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act. The benefit of grace period on account of Covid-19, shall be applicable to both the parties in the manner detailed herein above.
- VI. The respondents shall not charge anything from the complainant which is not the part of the buyer's agreement
33. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
34. Complaint stands disposed off.
35. File be consigned to registry.


(Ashok Sangwan)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 15.07.2025