

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

Order pronounced on: 27.08.2025

Name of the Promoter		KNS Infracon Pvt. Ltd. and Tashee Land Developers Pvt. Ltd.	
Project Name		Capital Gateway	
S.No.	Complaint No.	Complaint title	Attendance
1.	CR/826/2023	Himanshu Kala and Shobha Kala V/s KNS Infracon Pvt. Ltd. and Tashee Land Developers Pvt. Ltd.	Gaurav Bhardwaj (Complainants) Rishabh Jain (Respondent)
2.	CR/1403/2023	Neeraj Kumar Keshtwal and Shakuntala Keshtwal V/s KNS Infracon Pvt. Ltd. and Tashee Land Developers Pvt. Ltd.	Gaurav Bhardwaj (Complainants) Rishabh Jain (Respondent)

CORAM:

Ashok Sangwan

Member

ORDER

1. This order shall dispose of both the complaints titled as above filed before this authority in form CRA under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
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 being developed by the same

respondents/promoter i.e., KNS Infracon Pvt. Ltd. and Tashee Land Developers Pvt. Ltd. The terms and conditions of the builder buyer's agreements fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of possession and delayed possession charges.

3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, offer of possession, total sale consideration, amount paid up, and reliefs sought are given in the table below:

Project: Capital Gateway, Sector-110A & 111, Gurugram
<p>7.1 Schedule for possession of the said Unit</p> <p><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></p>
<p>Due date of handing over of possession- 31.12.2020 (as per possession clause).</p>
<p>Occupation certificate- 24.10.2024 (as per DTCP Website)</p>
<p>DTCP License no. 34 of 2011 dated 16.04.2011 - KNS Infracon Pvt. Ltd. & 4 Ors. are the licensees for the project as mentioned in land schedule of the project.</p>
<p>RERA registration - 120 of 2018 dated 10.08.2018 valid upto 31.12.2020 for phase-I (tower A to G) and 31.12.2021 for phase- II (tower H to J).</p>

Sr. No.	Complaint no./title/ date of complaint	Reply status	Unit No. and area admeasurir (Carpet area)	Date of execution of apartment buyer's agreement	Due date of possession & Offer possession	Total sale consideration and amount paid by the Complainant (s)	Relief Sought
1.	CR/826/2023 Himanshu Kala and Shobha Kala V/s KNS Infracon Pvt. Ltd. and Tashee Land Developers Pvt. Ltd. DOF- 28.02.2023	Reply received on 08.02.2024	G-1202, 12 th floor, tower G (pg. 26 of complaint)	07.10.2020 (pg. 22 of complaint)	31.12.2020 Offer of possession- Not offered	BSP: Rs.60,00,548/- (pg. 34 of complaint) AP: Rs. 18,00,000/- (As admitted by the respondent at page 9 of reply)	DPC and Possession
2.	CR/1403/2023 Neeraj Kumar Keshtwal and Shakuntala Keshtwal V/s KNS Infracon Pvt. Ltd. and Tashee Land Developers Pvt. Ltd. DOF- 03.04.2023	Reply received on 20.03.2024	304, 3 rd floor, tower D (Page 17 of complaint)	27.06.2012 (page 12 of complaint)	07.12.2015 Offer of possession- Not offered	BSP: Rs.62,00,274/- (pg. 46 of complaint)) AP: Rs. 14,00,000/- (as admitted by the respondent at page 9 of reply))	DPC and Possession

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviations Full form

DOF- Date of filing complaint

BSP- Basic Sale Price

AP- Amount paid by the allottee(s)

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed

between the parties *inter se* in respect of said unit for seeking award of possession and delayed possession charges.

5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoters/respondent in terms of Section 34(f) of the Act which mandates the Authority to ensure compliance of the obligations cast upon the promoter, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case ***CR/826/2023 titled as Himanshu Kala and Shobha Kala V/s KNS Infracon Pvt. Ltd. and Tashee Land Developers Pvt. Ltd.*** are being taken into consideration for determining the rights of the allottee(s) qua possession and delayed possession charges.

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/826/2023 titled as Himanshu Kala and Shobha Kala V/s KNS Infracon Pvt. Ltd. and Tashee Land Developers Pvt. Ltd

S. No.	Heads	Information
1.	Project name and location	'Capital Gateway, Sector-111, Gurugram
2.	Project area	10.462 acres
3.	Nature of the project	Residential
4.	DTCP license no. and validity status	34 of 2011 dated 16.04.2011 valid upto 15.04.2024
5.	Name of licensee	KNS Infracon Pvt. Ltd. and others
6.	RERA registered/ not registered	Registered vide 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.	G-1202, 12 th floor, tower G (pg. 26 of complaint)
8.	Date of execution of buyers' agreement	07.10.2020 (pg. 22 of complaint)
9.	Payment plan	Construction linked
10.	Possession clause	7.1 Schedule for possession of the said Unit <i>"The promoter agrees and understands that timely delivery of possession of the Unit along with 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>
11.	Due date of delivery of possession	31.12.2020 (as per possession clause)
12.	Total sale consideration	Rs.60,00,548/- (pg. 34 of complaint)
13.	Total amount paid by the complainant	Rs.18,00,000/- (as admitted by the respondent at page 9 of reply)
14.	Cancellation letter	08.02.2022 (page 78 of complaint)
15.	Amount refunded	Rs.18,00,000/- (page 16 of reply)
16.	Occupation certificate	24.10.2024 (as per DTCP website)
17.	Offer of possession	Not offered

B. Facts of the complaint

8. The complainants have made the following submissions: -

1. That on 06.02.2020, the complainant booked a unit in the project of the respondent named Capital Gateway at Sector 111, Gurugram by making a payment of Rs.4,00,000/- against the purchase of the said unit.

- II. That on 12.02.2020, the respondent sent allotment letter allotting the flat bearing no. G-1202 in Tower G, 12th floor admeasuring 1874 sq. ft at a total basic price of Rs.60,00,548/- in the said project.
- III. That the complainants contacted the respondents to execute the builder buyer agreement, but the respondent after a delay of more than 8 months from the date of booking sent a builder buyer agreement. However, the complainant has objected to sign the undated builder buyer agreement as the date of execution of builder buyer agreement was not mentioned on the same; but upon assurance of the respondent to mention the date of execution of builder buyer agreement, the complainant signed the same. the date mentioned on the stamp consists of and the date of execution of builder buyer agreement shall be considered as 07.10.2020.
- IV. That believing on the respondent's representation, complainant kept on making payment as and when demanded by the respondents. Till date the complainant has paid a total sum of Rs.14,00,000/- towards the unit in question.
- V. That the respondent proposed to handover the possession of the unit in question as per clause 7.1 of the said buyer's agreement.
- VI. That the complainants contacted the respondent on several occasions regarding development of project and the date of delivery. However, no satisfactory answer was received from the respondent.
- VII. That on 09.02.2022, out of nowhere the respondent vide speed post sent a letter of cancellation of the said unit dated 08.02.2022 to the complainant and it was an utter shock for the complainant that despite payment being made by the complainants as and when demanded by respondent, the unit was cancelled by the respondent without giving any

reminder of payment. The complainant has been severely traumatized by such illegal acts of the respondent.

- VIII. That the complainants vide several emails requested the respondent to not cancel the unit as no demand for the payment had been received by the complainant from the respondent and construction progress of project is almost nil in last 2-3 years; but the respondent had not considered the requests of the complainant.
- IX. That on 10.01.2023, the complainants received an email dated 10.01.2023 from the respondent thereby informing them that a sum of Rs.14,00,000/- was refunded to their bank account from the bank account of a company named KN Consultant Pvt. Ltd.; was referred to as the sister concern of the respondent.
- X. That the complainants emailed the respondents in protest of the aforesaid payment of refund made into their account by the respondent without any fault of the complainant and without their approval of the cancellation.
- XI. That the respondent is liable to re-intestate or reallocate the said unit to the complainants by taking payments due as on date and further to raise the demands against the purchase of the said unit as per payment plan annexed with the builder buyer agreement.
- XII. That the respondent has failed to honor its commitment as mentioned in the builder buyer agreement and further the act of the respondent of cancelling the unit due to non-payment of entire sale consideration without giving any demand letters.
- XIII. That as per RERA registration certificate of the project, the project was to be completed by 31.12.2020 by the respondent but till 27.01.2023, the project is nowhere near completion.

C. Relief sought by the complainants:

9. The complainants have sought following relief(s):
 - i. Declare the cancellation letter dated 09.02.2022 as illegal.
 - ii. Direct the respondent to handover possession of the unit along-with prescribed rate of interest.
10. On the date of hearing, the authority explained to the respondents/ 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 respondents:

11. The respondents have contested the complaint on the following grounds.
 - i. That the respondents 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 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.
 - iii. That the complainants in the present case are not consumers rather 'investors' 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 in 2020, the agreement for sale was executed between the parties, wherein flat bearing no.1202, 12th Floor, G Tower was allotted to the complainants. Thereafter, the complainants failed to make timely payment of their dues as per the payment plan in the agreement and their allotment was cancelled due to non-payment.
 - v. That the development activities in the said project have been vastly affected due to non-payment of allottees, delay in granting sanctions and approvals from the concerned government departments, sluggishness in the real estate sector etc.
12. 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

13. 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

14. 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

15. 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.

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

F. Findings on the objections raised by the respondent:**F.I Objection regarding the complainants being investor.**

17. The respondents have taken a stand that the complainants are investor and not a consumer. Therefore, they are not entitled to the protection of the Act and are 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 07.10.2020, it is revealed that the complainants are buyers as they have paid an amount of Rs.18,00,000/- 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;"

18. 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 complainants are allottees as the subject unit was allotted to them 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 allottees being investor are not entitled to protection of this Act stands rejected.

F.II Objections regarding force majeure.

19. The respondents have raised the contention that the construction of the tower in which the unit of the complainants is situated, has been delayed due to force majeure circumstances such as delay on part of govt. authorities in granting approvals, default by allottees in making timely payments etc. However, the Authority is of view that time taken in governmental clearances cannot be attributed as reason for delay in project. Further, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, the promoter/respondents cannot be granted any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

G. Findings on the relief sought by the complainants:

- G. I Declare the cancellation letter dated 09.02.2022 as illegal.
G.II Direct the respondent to handover possession of the unit along-with prescribed rate of interest.

20. In the instant case, the complainants were allotted a flat bearing no. 1202, 12th Floor, Tower-G admeasuring 1874 sq.ft. under construction linked payment plan vide allotment letter dated 12.02.2020. Thereafter, an agreement for sale against the said allotment was executed between the parties on 07.10.2020. The complainants have submitted that on 09.02.2022, out of nowhere the respondent vide speed post sent a letter of cancellation of the said unit dated 08.02.2022 to the complainant and it was an utter shock for the complainant that despite payment being made by the complainants as and when demanded by respondent, the unit was cancelled by the respondent without giving any reminder of payment. The respondents have submitted that the complainants failed to make timely payment of their dues as per the payment plan in the agreement and their allotment was cancelled due to non-payment. After considering the documents available on record as well as submissions made by the parties, it is observed that in terms of the payment plan agreed between the parties vide agreement for sale dated 07.10.2020, the complainants have paid an amount of Rs.18,00,000/- against the sale consideration of Rs.60,00,548/- to the respondents as and when demanded by them. It is further observed that vide proceedings dated 11.12.2024, the respondents were directed to submit the demand letters issued to the complainants with proof of delivery prior to cancellation of the unit of the complainants. However, the respondents have failed to submit any demand letter which has been issued to the complainants prior to cancellation of the unit. Thus, the Authority is of considered view that while cancelling the unit, the respondents have not followed the due procedure as prescribed under clause 9.3 of the agreement for sale annexed with the Haryana Real Estate (Regulation and Development) Rules, 2017 and the said act of the respondents is in

contravention to the provisions of the Act, 2016 as well as Rules, 2017. In view of the above, the cancellation made by the respondents vide letter dated 08.02.2022 cannot be held valid in the eyes of law and is hereby set-aside.

21. Accordingly, the respondents shall handover possession of the flat/unit to the complainants in terms of Section 17(1) of the Act of 2016. Further, in case the respondents have already created third party rights on the unit in question, then the respondents shall offer possession of a similarly located unit/flat of same size and specifications at same rate as per the buyer's agreement dated 07.10.2020 in the said project to the complainants.
22. The complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

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

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

(Emphasis supplied)

23. **Due date of handing over of possession:** In view of clause 7.1 of the agreement for sale dated 07.10.2020, the due date of possession is determined as 31.12.2020 i.e. the date declared by the promoter for completion of the project.
24. **Admissibility of delay possession charges at prescribed rate of interest:** Proviso to Section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such

rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

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

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

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

25. 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.
26. 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., 27.08.2025 is 8.55%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
27. The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

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

Explanation. —For the purpose of this clause—

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

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

28. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.85% by the respondents/promoter which is the same as is being granted to the complainants in case of delay possession charges.
29. On consideration of the documents available on record and submissions made by both 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 7.1 of the buyer's agreement executed between the parties, the due date of handing over of possession was 31.12.2020. However, the respondents have failed to handover possession of the subject apartment till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. Further, the Authority observes that as per the DTCP website the occupation certificate for the tower in question has been granted to the respondents/promoter on 24.10.2024. However, possession of the apartment has not been offered to the complainants till date.
30. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the agreement dated 07.10.2020 to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with proviso to Section 18(1) of the Act on the part of the respondents is established. As such, the

allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 31.12.2020 till offer of possession plus 2 months or actual handing over of possession whichever is earlier, as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules.


H. Directions of the authority

31. Hence, the Authority hereby passes this order and issue 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 cancellation is set-aside.
- ii. The respondents are directed to pay interest to the complainants against the paid-up amount at the prescribed rate of 10.85% p.a. for every month of delay from the due date of possession i.e., 31.12.2020 till offer of possession plus 2 months or actual handing over of possession, whichever is earlier, as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules.
- iii. The arrears of such interest accrued from 31.12.2020 till the date of order by the Authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottee before 10th of the subsequent month as per Rule 16(2) of the Rules.
- iv. The respondents shall handover possession of the flat/unit to the complainants in terms of Section 17(1) of the Act of 2016. Further, in case the respondents have already created third party rights on the unit in question, then the respondents shall offer possession of a similarly located unit/flat of same size and specifications at same rate

as per the buyer's agreement dated 07.10.2020 in the said project to the complainants.

- v. The respondents shall deduct/adjust the amount refunded by it to the complainants post cancellation of the unit.
 - vi. The respondent is directed to supply a copy of the updated statement of account after adjusting delay possession charges within a period of 30 days to the complainants.
 - vii. The complainants are directed to pay outstanding dues, if any, after adjustment of delay possession charges within a period of 60 days from the date of receipt of updated statement of account.
 - viii. The respondents shall not charge anything from the complainants which is not the part of the apartment buyer's agreement.
 - ix. The rate of interest chargeable from the allottee(s) by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondents/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee(s), in case of default i.e., the delay possession charges as per section 2(z a) of the Act.
32. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
33. The complaints stand disposed of.
34. Files be consigned to registry.



(Ashok Sangwan)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 27.08.2025