

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

Complaint no.: 136 of 2024
Date of filing of complaint: 23.01.2024
Date of order: 09.10.2025

Sharad Kumar
R/o: B-1/4, "L" Pak, Mahanagar Extension,
Lucknow-226006

Complainant

Versus

1. M/s KNS Infracon Private Limited.
2. M/s Tashee Land Developers Pvt. Ltd.
Both having Regd. office at: 517A, Narain
Manzil, 23, Barakhamba Road, Connaught
Place, New Delhi-110001

Respondents

CORAM:

Shri Phool Singh Saini
Shri Arun Kumar

**Member
Chairman**

APPEARANCE:

Sh. Sukhbir Yadav (Advocate)
Sh. Rishabh Jain (Advocate)

Complainant
Respondents

ORDER

1. This complaint 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 provision of the Act or the Rules and regulations made thereunder or to the allottee as per the agreement for sale executed *inter se*.

A. Project and unit related details:

2. The particulars of the project, the details of 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.	Particulars	Details
1.	Project name and location	"Capital Gateway", Sector- 111, Gurugram.
2.	Project area	10.462 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	34 of 2011 dated 16.04.2011 valid till 15.04.2024
5.	Name of licensee	KNS Infracon Pvt Ltd
6.	RERA Registered/not registered	Registered vide no. 12 of 2018 dated 10.01.2018
7.	RERA registration valid up to	31.12.2020 for phase-I (tower A to G) and 31.12.2021 for phase- II (tower H to J)
8.	Extension of RERA registration	RC/REP/HARERA/GGM/12 of 2018/7(3)/2022/3 dated 09.08.2022
9.	Validity of extension	30.06.2025 for both the phases, phase-I (tower A to G) for phase-II (tower H to J)
10.	Unit no.	802, 8 th floor, tower-I (As per page no. 28 of the complaint)
11.	Unit measuring	2990 sq. ft. (super area) (As per page no. 28 of the complaint)
12.	Revised building plan	09.12.2016 (As per page no. 65 of the reply)
13.	Allotment letter	04.11.2017 (As per page no. 22 of the complaint)

14.	Date of execution of flat buyer's agreement	04.11.2017 (As per page no. 26 of the complaint)
15.	Possession clause	Clause 2.1 <i>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.</i> (As per page no. 35 of the complaint)
16.	Total sale consideration	Rs.97,59,360/- (As per page no. 30 of the complaint)
17.	Total amount paid by the complainant	Rs.1,04,48,341/- (As per page no. 20 of the complaint)
18.	Due date of delivery of	09.06.2021

	possession	(Note: Due date to be calculated 48 months from the date of sanction of building plans i.e., 09.12.2016) (Grace period of 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.)
19.	Occupation certificate	Not obtained
20.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:
 - I. That the complainant Sharad Kumar is a law-abiding person and presently R/o B-1/4, "L" Park, Mahanagar Extension, Lucknow.
 - II. That the complainant had purchased a unit in the "Orion Galaxy" project being developed by Soni Infratech Pvt Ltd. It is pertinent to mention here that the complainant paid a sum of Rs.1,04,48,341/- against the unit purchased by him in the "Orion Galaxy" project.
 - III. That the company i.e., Soni Infratech Private Limited, after a certain period abandoned its project Orion Galaxy or did not complete the construction of the same, therefore, on 06.07.2017, the complainant requested to Soni Infratech Private Limited to cancel the unit allotted to him and asked for the refund of the paid amount i.e., Rs. 1,04,48,341/-. On 12.07.2017, the complainant received a letter from Soni Infratech Private Limited, and the said letter was a confirmation of the request made by the complainant. As per the said letter, the complainant's money was adjusted against the allotment of 4BHK unit bearing no. 802 on the 8th floor in Tower-I measuring 2990/- sq. ft. situated in the "Capital Gateway" project

which belongs to the respondent(s) of the present complaint. Thereafter the respondent(s) issued an allotment letter on 04.11.2017 in favour of the complainant and confirmed the allotment of aforementioned unit.

- IV. That on the same day i.e., 04.11.2017, a unilateral, arbitrary, ex-facie flat buyer's agreement was executed inter-se the complainant and the respondent(s). As per the possession clause of the said FBA i.e., clause no. 2, the respondent(s) were obligated to deliver the physical possession of the unit in question to the complainant within 48 months from the date of approval of the building plans. The building plans for the respondent's project were sanctioned on 09.12.2016. Hence, the due date of possession was 09.12.2020 (48 months from the BR Approval), however, the respondent(s) have not even offered the possession with respect to the complainant's unit till today. The sale consideration of the complainant's unit is Rs.97,59,360/- inclusive of BSP, EDC, IDC, PLC (if any) and club member charges.
- V. That on 28.12.2017, the respondent(s) issued a credit note of Rs.27,937/- on account of broker's account adjustment in the name of the complainant.
- VI. That the respondent(s) did not hand over the possession to the complainant on or before the due date of possession. The complainant paid several visits to the project site as well as to the office of the respondent(s) party, however, no positive response was ever received by the complainant. The respondent(s) have failed to honour their obligation despite many telephonic conversations and visits made by the complainant.

- VII. That the complainant has paid more than 100% sale consideration to the respondent(s), still the respondent(s) party has not even offered possession of his unit.
- VIII. That since 2020, the complainant has regularly visited the office of the respondent(s) as well as the construction site and made efforts to get possession of his allotted unit, but all in vain. Despite several visits, the complainant has neither been able to know the actual due date of possession. It has been more than 6 years since the execution of buyer's agreement, however, the respondent did not hand over the possession to the complainant. It is apparently clear that the respondent had malafide intentions to get benefit from the hard-earned money deposited by the complainant.
- IX. That the main grievance of the complainant in the present complaint is that despite the complainant paid more than 100% of the actual amount and being ready and willing to pay the remaining amount (if any), but the respondent party(s) have failed to deliver physical possession of the allotted unit.
- X. That due to the above acts of the respondent(s) and the terms and conditions of the builder buyer's agreement, the complainant has been unnecessarily harassed mentally as well as financially, therefore the opposite party is liable to compensate the complainant on account of the aforesaid act of unfair trade practice.
- XI. That for the first-time cause of action for the present complaint arose in Nov 2017, when the buyer's agreement containing unfair and unreasonable terms was, for the first time, forced upon the allottee. The cause of action further arose in December 2020, when the respondent party failed to hand over possession of the unit after obtaining a valid OC from the competent department and

hence, the cause of action arose on various occasions, including on a) Feb 2021; b) May 2021; c) Nov 2022 d) February 2023; e) December 2023, and on many times till date, when the protests were lodged with the respondent(s) party about their failure to deliver the project and the assurances were given by them that the possession would be delivered by a certain time. The cause of action is alive and continuing and will continue to subsist till such time as this Hon'ble Authority restrains the respondent party by an order of injunction and/or passes the necessary orders.

- XII. That the complainant wants to withdraw from the project and wants a refund of paid money along with interest as per Act of 2016 read with Rules and regulations thereunder.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- Direct the respondents to pay delayed possession interest from the due date of possession till the handing over of the unit is complete in all aspects.
 - Direct the respondents to deliver physical possession of the subject unit complete in all aspects.
 - Direct the respondents to get the registration of the conveyance deed of the unit.
5. The authority issued a notice dated 23.01.2024 of the complaint to the respondents by speed post and also on the given email address at kumardsharad@gmail.com, info@tashee.in and adv.sukhbiryadav@gmail.com for filing reply within 4 weeks. The delivery reports have been placed in the file. The counsel for the respondents neither put in appearance on 14.03.2024, 09.05.2024, and 25.07.2024 nor filed reply to the complaint within the stipulated

period despite given ample opportunities. It shows that the respondent was intentionally delaying the proceedings by avoiding filing of written reply despite a lapse of more than 18 months from the date of filing of complaint and hence no further wait is justified. Therefore, in view of above, the defence of the respondent was struck off on 14.08.2025.

6. The complainant has filed the complaint against R1 and R2 in which R1 is the landowner of the project land and R2 is the developer/promoter. The flat buyer's agreement has been executed with both the respondents and the payments have been made to R2 only. The registered office address of both the respondents as mentioned in the flat buyer's agreement is same. The respondent no. 1 i.e., KNS Infracon Pvt. Ltd. was granted licence by the Director, Town and Country Planning, Haryana vide licence no. 34 of 2011 to develop and construct the residential group housing project in Sector-111, Gurugram. Though the flat buyer's agreement has been executed with both the respondents and payments have been made to the respondent no. 2 but the respondent no.1 cannot escape its responsibility and obligations to the allottees of the project being licensee of the project and is covered under the definition of promoter within the meaning of 2(zk)(i),(v).
7. The promoter has been defined in section 2(zk) of the Act of 2016. The relevant portion of this section reads as under:

"2. Definitions. — In this Act, unless the context otherwise requires —

(zk) "promoter" means, —

(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or

(ii) xxx

(iii) xxx

(iv) xxx

(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the

holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale;"

8. As per aforesaid provisions of law, respondent no.1 & 2 will be jointly and severally liable for the competition of the project. Whereas the primary responsibility to discharge the responsibilities of promoter lies with respective promoter in whose allocated share the apartments have been bought by the buyers.
9. 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 complainant.

D. Jurisdiction of the authority:

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

D.I Territorial jurisdiction

11. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana 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

12. 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)(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.

13. So, in view of the provisions of the Act of 2016 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 complainant at a later stage.

E. Findings on the relief sought by the complainant:

E.I Direct the respondents to pay delayed possession interest from the due date of possession till the handing over of the unit is complete in all aspects.

E.II Direct the respondents to deliver physical possession of the subject unit complete in all aspects.

14. The above sought relief(s) by the complainant are taken together being inter-connected.
15. In the present complaint, the complainant intend to continue with the project and is seeking possession of the subject unit and delay possession charges as provided under the provisions of 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."

16. The flat buyer's agreement was executed between the parties. As per clause 2.1 of the agreement, the possession was to be handed over

within 36 months from the date of sanction of building plans. The clause 2.1 of the buyer's agreement is reproduced below:

2. Possession

*2.1 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)

17. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of the agreement, and the complainant not being in default under any provisions of the agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottees that even a single default by him in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment time period for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees of their right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and

drafted such mischievous clause in the agreement and the allottees is left with no option but to sign on the dotted lines.

18. **Admissibility of grace period:** As per clause 2.1 of buyer's agreement, the respondents/promoters have proposed to handover the possession the said unit within a period of 48 months from date of sanction of building plans. Therefore, the due date of possession comes out to be 09.12.2020. It is further provided in agreement that promoters shall be entitled to a grace period of 180 days for applying and obtaining the occupancy certificate in respect of the colony from the concerned authority. The said grace period is allowed in terms of order dated 08.05.2023 passed by the Hon'ble Appellate Tribunal in ***Appeal No. 433 of 2022 tilted as Emaar MGF Land Limited Vs Babia Tiwari and Yogesh Tiwari*** wherein it has been held that if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. The relevant portion of the order dated 08.05.2023, is reproduced as under:

"In our opinion if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. So, in view of the above said circumstances, the appellant-promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the Occupation Certificate. Thus, with inclusion of grace period of 3 months as per the provisions in clause 11 (a) of the agreement, the total completion period becomes 27 months. Thus, the due date of delivery of possession comes out to 07.06.2014."

19. Therefore, in view of the above judgement and considering the provisions of the Act, the authority is of the view that, the promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the occupation certificate. But in the present complaint, the grace period of six 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 is already given. Therefore, another grace period of 6 months for applying and obtaining occupation certificate cannot be allowed. Thus, the due date of handing over of possession comes out to be 09.06.2021 including grace period of 6 months on account of Covid-19.

20. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges. However, proviso to section 18 provides that where an allottee(s) does not intend to withdraw from the project, they 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.

21. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest. 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., 09.10.2025 is of 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
22. 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;"*

23. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, 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 flat buyer's agreement executed between the parties, the possession of the subject unit was to be delivered within a period of 48 months from date of sanction of building plans. Date of sanction of building plan is taken from the reply submitted by the respondent i.e., 09.12.2016. As such the due date of handing over of possession comes out to be 09.06.2021. The respondents have failed to handover possession of the subject unit till date. Accordingly, it is the failure of the respondents/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the considered view that there is delay on the part of the respondents to offer possession of the allotted unit to the complainant as per the terms and conditions of the flat buyer's agreement dated 04.11.2017 executed between the parties. It is pertinent to mention over here that even after a passage of almost 8 years neither the construction is complete nor an

offer of possession of the allotted unit has been made to the allottee by the builder. Further, the authority observes that there is no document on record from which it can be ascertained as to whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottee.

24. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate has not been obtained. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 09.06.2021 till the expiry of 2 months from the date of offer of possession plus two months after obtaining OC or handing over of possession whichever is earlier.
25. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the flat buyer's agreement 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., 09.06.2021 till actual handing over of possession or offer of possession plus two months, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

E.III Direct the respondents to get the registration of the conveyance deed of the unit.

26. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in

favour of the complainant. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.

27. The occupation certificate is yet to be obtained by the respondent. Thus, the respondents are directed to handover the possession of the unit after obtaining occupation certificate and get the conveyance deed executed in terms of section 17 of the Act of 2016.

F. Directions of the authority:

28. 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 respondents are directed to pay interest to the complainant against the paid-up amount at the prescribed rate of 10.85% p.a. for 09.06.2021 till actual handing over of possession or offer of possession after obtaining occupation certificate plus two months, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- ii. The respondents are directed to execute the conveyance deed after payment of requisite stamp duty and registration charges by the complainant in terms of section 17(1) of Act of 2016.
- iii. The respondents shall not charge anything from the complainant which is not the part of the flat buyer's agreement.
- iv. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period and the respondents shall handover the possession within a period of two month after receipt of occupation certificate from the competent authority.

- v. The arrears of such interest accrued from due date of possession i.e., 09.06.2021 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 allottees before 10th of the subsequent month as per rule 16(2) of the rules.
- vi. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
29. Complaint stands disposed of.
30. File be consigned to registry.



(Phool Singh Saini)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority,
Gurugram
Dated: 09.10.2025