

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

Date of Decision: 12.09.2025

NAME OF THE BUILDER		KNS INFRACON PRIVATE LIMITED TASHEE LAND DEVELOPERS PRIVATE LIMITED	
PROJECT NAME		"Capital Gateway"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/5226/2024	Harbir Singh Gulati V/S Kns Infracon Private Limited and Tashee Land Developers Private Limited	Shri Harbir Singh Gulati Ms. Prerna (Advocates) Shri Rishabh Jain (Advocate)
2.	CR/5228/2024	Arvind Seth and Swarn Seth V/S Kns Infracon Private Limited and Tashee Land Developers Private Limited	Shri Harbir Singh Gulati Ms. Prerna (Advocates) Shri Rishabh Jain (Advocate)
3.	CR/5229/2024	Azeem Haider V/S Kns Infracon Private Limited and Tashee Land Developers Private Limited	Shri Harbir Singh Gulati Ms. Prerna (Advocates) Shri Rishabh Jain (Advocate)
4.	CR/5230/2024	Kamer Singh Rana and Rachita Rana V/S Kns Infracon Private Limited and Tashee Land Developers Private Limited	Shri Harbir Singh Gulati Ms. Prerna (Advocates) Shri Rishabh Jain (Advocate)
5.	CR/5233/2024	Rantumani Thakuria and Nandini Thakuria V/S Kns Infracon Private Limited and Tashee Land Developers Private Limited	Shri Harbir Singh Gulati Ms. Prerna (Advocates) Shri Rishabh Jain (Advocate)
6.	CR/5234/2024	Vikrant Grover and Mangat Rai Grover	Shri Harbir Singh Gulati Ms. Prerna (Advocates)

		V/S Kns Infracon Private Limited and Tashee Land Developers Private Limited	Shri Rishabh Jain (Advocate)
7.	CR/5235/2024	Harpreet Singh Dhir and Kawaljeet Beasley V/S Kns Infracon Private Limited and Tashee Land Developers Private Limited	Shri Harbir Singh Gulati Ms. Prerna (Advocates) Shri Rishabh Jain (Advocate)
8.	CR/5236/2024	Jyotsna Soyal V/S Kns Infracon Private Limited and Tashee Land Developers Private Limited	Shri Harbir Singh Gulati Ms. Prerna (Advocates) Shri Rishabh Jain (Advocate)
9.	CR/5241/2024	Karani Singh Rajput and Ravi Rajput V/S Kns Infracon Private Limited and Tashee Land Developers Private Limited	Shri Harbir Singh Gulati Ms. Prerna (Advocates) Shri Rishabh Jain (Advocate)
10.	CR/5242/2024	Pallavi Ahlawat and D.S Ahlawat V/S Kns Infracon Private Limited and Tashee Land Developers Private Limited	Shri Harbir Singh Gulati Ms. Prerna (Advocates) Shri Rishabh Jain (Advocate)
11.	CR/5243/2024	Pawan Ahlawat V/S Kns Infracon Private Limited and Tashee Land Developers Private Limited	Shri Harbir Singh Gulati Ms. Prerna (Advocates) Shri Rishabh Jain (Advocate)
12.	CR/5246/2024	Ram Niwas Jalan V/S Kns Infracon Private Limited and Tashee Land Developers Private Limited	Shri Harbir Singh Gulati Ms. Prerna (Advocates) Shri Rishabh Jain (Advocate)
13.	CR/5248/2024	Shashi Rana and Akshay Rana V/S Kns Infracon Private Limited and	Shri Harbir Singh Gulati Ms. Prerna (Advocates) Shri Rishabh Jain

		Tashee Land Developers Private Limited	(Advocate)
14.	CR/5250/2024	Subodh Kumar Singh and Archana Singh V/S Kns Infracon Private Limited and Tashee Land Developers Private Limited	Shri Harbir Singh Gulati Ms. Perna (Advocates) Shri Rishabh Jain (Advocate)

CORAM:

Shri Arun Kumar

Chairman**ORDER**

1. This order shall dispose of fourteen (14) complaints titled as above filed before this authority 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 allottee 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" being developed by the same respondents/promoters i.e., M/s Kns Infracon Private Limited and Tashee Land Developers Private Limited. The terms and conditions of the buyer's agreements, fulcrum of the issues involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking delay possession charges along with interest and other.

3. The details of the complaints, reply to 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:

Project Name and Location	"Capital Gateway" situated in Sector- 111, Gurugram.				
Project Area	10.462 Acres				
DTCP License No.	34 of 2011 dated 16.04.2011 valid till 15.04.2024				
RERA Registered	Registered Vide registration no. 12 of 2018 dated 10.01.2018 valid upto 31.12.2020 for phase I (tower A to G) 31.12.2021 for phase II (tower H to J)				
Possession Clause: -					
2. Possession					
2.1					
<i>"Subject to Clause 9 herein or any other circumstances not anticipated and beyond control of the First party/Confirming party and any restraints/restrictions from any courts/authorities and subject to the purchaser having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions 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/Confirming Party, whether under this Agreement or otherwise, from time to time, the First Party/Confirming Party proposes to hand over the possession of the Flat to the Purchaser within approximate period of 36 months from the date of sanction of the building plans of the said Colony. The Purchaser agrees and understands that the First Party/Confirming Party shall be entitled to a grace period of 180 (One Hundred and Eighty) days, after the expiry of 36 months, for applying and obtaining the occupation certificate in respect of the Colony from the concerned authority. The First Party/Confirming Party shall give Notice of Possession to the Purchaser with regard to the handing over of possession, and in the event the Purchaser fails to accept and take the possession of the said Flat within 30 days of, the Purchaser shall be deemed to be custodian of the said Flat from the date indicated in the notice of possession and the said Flat shall remain at the risk and cost of the Purchaser."</i>					
Occupation certificate: - 24.10.2024					
Approval of building plans:- 07.06.2012					
Sr. No.	Complaint no. / Title/ Date of Filing / Reply	Unit no. and area	Date of builder buyer agreement	Status of Possession	Total sale consideration and amount paid
1.	CR/5226/2024	504, 5 th	21.07.2012	07.12.2015	TSC:

	<p>Harbir Singh Gulati V/S Kns Infracon Private Limited and Tashee Land Developers Private Limited</p> <p>DOF 19.11.2024</p> <p>Reply Not filed</p>	<p>floor, Tower-C 1990 sq. ft.</p>			<p>Rs.76,22,248/-</p> <p>AP: Rs.77,06,906/-</p>
2.	<p>CR/5228/2024</p> <p>Arvind Seth and Swarn Seth V/S Kns Infracon Private Limited and Tashee Land Developers Private Limited</p> <p>DOF 18.11.2024</p> <p>Reply Not filed</p>	<p>402, 4th floor, Tower-B 1990 sq. ft.</p>	27.12.2013	07.12.2015	<p>TSC: Rs.99,50,498/-</p> <p>AP: Rs.80,58,851/-</p>
3.	<p>CR/5229/2024</p> <p>Azeem Haider V/S Kns Infracon Private Limited and Tashee Land Developers Private Limited</p> <p>DOF 20.11.2024</p> <p>Reply Not filed</p>	<p>1003, 10th floor, Tower-A 1295 sq. ft.</p>	20.02.2013	07.12.2015	<p>TSC: Rs.48,46,130/-</p> <p>AP: Rs.50,16,263/-</p>

4.	<p>CR/5230/2024</p> <p>Kamer Singh Rana and Rachita Rana V/S Kns Infracon Private Limited and Tashee Land Developers Private Limited</p> <p>DOF 20.11.2024</p> <p>Reply Not filed</p>	<p>104, 1st floor, Tower-I</p> <p>2675 sq. ft.</p>	03.08.2012	07.12.2015	<p>TSC: Rs.48,46,130/-</p> <p>AP: Rs.50,16,263/-</p>
5.	<p>CR/5233/2024</p> <p>Rantumani Thakuria and Nandini Thakuria V/S Kns Infracon Private Limited and Tashee Land Developers Private Limited</p> <p>DOF 20.11.2024</p> <p>Reply Not filed</p>	<p>902, 9th floor, Tower-C</p> <p>1990 sq. ft.</p>	20.07.2012	07.12.2015	<p>TSC: Rs.70,18,578/-</p> <p>AP: Rs.74,11,960/-</p>
6.	<p>CR/5234/2024</p> <p>Vikrant Grover and Mangat Rai Grover V/S Kns Infracon Private Limited and Tashee Land Developers Private Limited</p> <p>DOF 18.11.2024</p> <p>Reply Not filed</p>	<p>103, 1st floor, Tower-C</p> <p>1990 sq. ft.</p>	22.01.2014	07.12.2015	<p>TSC: Rs.1,07,83,725/-</p> <p>AP: Rs.75,60,555/-</p>

7.	CR/5235/2024 Harpreet Singh Dhir and Kawaljeet Beasley V/S Kns Infracon Private Limited and Tashee Land Developers Private Limited DOF 19.11.2024 Reply Not filed	504, 5 th floor, Tower-G 1760 sq. ft.	20.05.2014	07.12.2015	TSC: Rs.78,81,311/- AP: Rs.82,43,647/-
8.	CR/5236/2024 Jyotsna Suyal V/S Kns Infracon Private Limited and Tashee Land Developers Private Limited DOF 18.11.2024 Reply Not filed	904, 9 th floor, Tower-G 1760 sq. ft.	13.01.2013	07.12.2015	TSC: Rs.64,33,640/- AP: Rs.71,18,059/-
9.	CR/5241/2024 Karani Singh Rajput and Ravi Rajput V/S Kns Infracon Private Limited and Tashee Land Developers Private Limited DOF 20.11.2024 Reply Not filed	102, 1 st floor, Tower-I 2675 sq. ft.	09.07.2013	07.12.2015	TSC: Rs.89,31,825/- AP: Rs.93,33,805/-

10.	CR/5242/2024 Pallavi Ahlawat and D.S Ahlawat V/S Kns Infracon Private Limited and Tashee Land Developers Private Limited DOF 18.11.2024 Reply Not filed	1403,13 th floor, Tower-F 1760 sq. ft.	15.09.2014	07.12.2015	TSC: Rs.94,91,005/- AP: Rs.80,88,191/-
11.	CR/5243/2024 Pawan Ahlawat V/S Kns Infracon Private Limited and Tashee Land Developers Private Limited DOF 18.11.2024 Reply Not filed	1204,12 th floor, Tower-F 1760 sq. ft.	20.07.2013	07.12.2015	TSC: Rs.1,74,21,386/- AP: Rs.90,88,529/-
12.	CR/5246/2024 Ram Niwas Jalan V/S Kns Infracon Private Limited and Tashee Land Developers Private Limited DOF 20.11.2024 Reply Not filed	404,4 th floor, Tower-E 1760 sq. ft.	20.10.2015	07.12.2015	TSC: Rs.66,27,240/- AP: Rs.72,79,659/-

13.	CR/5248/2024 Shashi Rana and Akshay Rana V/S Kns Infracon Private Limited and Tashee Land Developers Private Limited DOF 18.11.2024 Reply Not filed	803,8 th floor, Tower-C 1990 sq. ft.	13.02.2014	07.12.2015	TSC: Rs.91,31,265/- AP: Rs.76,72,896/-
14.	CR/5250/2024 Subodh Kumar Singh and Archana Singh V/S Kns Infracon Private Limited and Tashee Land Developers Private Limited DOF 18.11.2024 Reply Not filed	1002,10 th floor, Tower-C 1990 sq. ft.	01.03.2013	07.12.2015	TSC: Rs.1,08,04,070/- AP: Rs.83,35,190/-

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

Abbreviation	Full form
DOF	Date of filing complaint
TSC	Total Sale consideration
AP	Amount paid by the allottee(s)

- The aforesaid complaints were filed against the promoter on account of violation of the buyer's agreement against the allotment of units in the project of the respondents/builders and for not handing over the possession by the due date, seeking award of possession along with delayed possession charges.
- It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/

respondents 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. 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/5226/2024 titled as Harbir Singh Gulati V/S Kns Infracon Private Limited and Tashee Land Developers Private Limited** are being taken into consideration for determining the rights of the allottee(s) qua delayed possession charges along with interest and others.

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name of the project	Capital Gateway, sector-111, Gurugram
2.	Project area	10.462 ACRES
3.	RERA Registered/ not registered	Registered vide no. 12 of 2018 dated 10.01.2018 31.12.2020 for phase-I (tower A to G) 31.12.2021 for phase -II (tower H to J)
4.	License no. and validity	34 of 2011 dated 16.04.2011 valid till 15.04.2024
	Licensee name	KNS Infracon Pvt. Ltd.
5.	Unit no.	504, 5 th floor, tower-C [Page 31 of complaint]
6.	Unit area admeasuring	1990 sq. ft.
7.	Date of flat buyers' agreement	21.07.2012 [Page 26 of complaint]

8.	Payment Plan	Construction linked plan
9.	Date of approval of building plan	07.06.2012 [As per information obtained by planning branch]
10.	Possession clause	2. Possession <i>2.1 "...the First Party/Confirming Party proposes to handover the possession of the Flat to the Purchaser within approximate period of 36 months from the date of sanction of building plans of the said Colony. The Purchaser agrees and understands that the First Party/Confirming Party shall be entitled to a grace period of 180 days, after the expiry of 36 months, for applying and obtaining the occupation certificate in respect of the Colony from the concerned Authority..."</i>
11.	Due date of possession	07.12.2015 [including grace period of 180 days]
12.	Total sale consideration	Rs.56,41,650/- (BSP) (as per agreement at page 33 of complaint) Rs.76,22,248/- (as alleged by complainant)
13.	Amount paid by the complainant	Rs.77,06,906/- (As per SOA at page 68 of complaint)
14.	Occupation certificate	24.10.2024 (as per TCP website)
15.	Offer of possession (OP)	NA

B. Facts of the complaint:

8. The complainant has made the following submissions in the complaint:

- I. That the complainant booked a flat bearing no. 504 on 5th floor of Tower C having super area of 1990 sq. ft. on 29th Nov 2010 proposed to be constructed in "Capital Gateway" situated in, Sector-111, revenue estate of Village Chauma, Tehsil and Distt. Gurgaon. A booking amount of Rs. 73,00,000/- was paid for the same. The flat buyer's agreement was executed on 21.07.2012.
- II. That the complainant was shocked to receive a letter from respondent no.1 in Oct 2011 that the booking area has been increased from 1990 sq. ft. to 2055 sq. ft. No reasoning or explanation was provided by respondent no.1 in this regard. No permission was taken from the complainant and no choice was given. Since the complainant had already paid a substantial amount of money for the flat, the complainant was left with no choice but to sign on the dotted line and make the payment of Rs. 47,255/-.
- III. That vide another letter dated 02.02.2017 sent by respondent no.1 the super area of the apartment was further revised to 2102 sq. ft. arbitrarily. Whereas as per Para 1.5 the final area had to be determined on the date of possession. The respondents did not respond to any queries on this aspect.
- IV. That the total sale consideration of the flat all inclusive of above first increased from Rs. 72,38,760/- to Rs. 74,61,320/- and finally to Rs. 76,22,248/-
- V. That the complainant has paid an interest of Rs. 82,489/- to the respondents who framed it arbitrarily and kept charging from the complainant. The respondents charged a delayed interest on 10% of BSP (79,910/-), 15% of BSP (63,010/-) & on 10% of BSP + 50 % EDC/IDC (9,603/-). This was inspite of the fact that all payments were made within the designated time frame. The complainant had

no choice but to pay this amount as delay was causing it to increase further:

- VI. That as per the agreement, the respondents 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.
- VII. That the complainant used to regularly ask the respondent's staff about the progress of the project and they completely kept the complainant under dark about the actual and true status of the construction of the said unit and kept saying that the flat would be ready as per the commitments and the promises made to the complainant and kept raising demands for payments which the complainant kept paying.
- VIII. That when the complainant visited the site, he was shocked & surprised to see that construction work is not going on as per plan. They saw that there was just one odd person present on the site apart from 2-3 guards. No one was there to address the queries of the complainant.
- IX. That the construction of the block in which the complainant flat was booked with a promise by the respondents to deliver the flat within 36 months from the date of sanction of the building plan which comes to 07.06.2015 but was not completed within time for the reasons best known to the respondents, which clearly shows that the ulterior motive of the respondents was to extract money from the innocent people fraudulently.
- X. That the respondents merely want to escape their liability just by mentioning a compensation clause in the agreement. The respondents have incorporated certain clauses making it a one-

sided buyer's agreement and offered to pay a sum of Rs. 75/- per sq. ft. for every month of delay. If we calculate the amount in terms of financial charges it comes to approximately @ 2% per annum rate of interest whereas the respondent's charges @ 18- 24% per annum compounded interest on delayed payment.

- XI. That on the ground of parity and equity the respondents should also be subjected to pay the same rate of interest as he has charged the complainant. Hence the respondents are also liable to pay interest on the amount paid by the complainants from the promised date of possession till the flat is actually delivered to the complainants.
- XII. That the complainant has requested the respondents several times telephonically and made numerous personal visits to the offices of the respondents to deliver possession of the flat in question along with prescribed interest on the amount deposited by the complainant, but respondents has flatly refused to do so. That, the respondents have breached the fundamental term of the contract by inordinately delaying in delivery of the possession. The respondents have committed gross violation of the provisions of section 18(1) of the Act by not handing over the timely possession of the flat in question and not giving the interest and compensation to the complainants as per the provisions of the Act.

C. Relief sought by the complainant:

9. The complainant has sought following relief(s):
- Direct the respondents to complete the construction of the apartment along with common area facilities and amenities like community centre, parking parks etc. immediately and handover the legal and rightful possession of the apartment to the complainant.

- ii. Direct the respondents to pay delayed penalty interest on completion of 36 months from the date of approval of building plan which comes out to be 06.06.2015 till actual date of handing over of possession.
 - iii. Direct the respondents not to charge anything extra which is not a part of the FBA.
 - iv. Direct the respondents to pay compensation on account of mental agony, despair and giving false sense of hope causing emotional harassment to the complainant of Rs. 2,00,000/-
 - v. To award compensation on account of litigation expenses of Rs. 1,50,000/-.
10. The present complaint was filed on 19.11.2024. The counsel for the respondents appeared however, not filed the reply of the complaint in the registry of the Authority till date. Despite multiple opportunities for filing reply on 07.03.2025, 09.05.2025, 08.08.2025 it failed to comply with the orders of the authority. It shows that the respondents were intentionally delaying the procedure of the Authority by avoiding to file written reply. Therefore, the authority assumes/ observes that the respondents have nothing to say in the present matter and accordingly the authority struck of the defence of the respondents.
11. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the parties.

D. Jurisdiction of the authority:

12. 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

13. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

14. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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.

15. 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 complainant at a later stage.

E. Findings on the relief sought by the complainant(s):

- E.I Direct the respondents to complete the construction of the apartment along with common area facilities and amenities like community centre, parking parks etc. immediately and handover**

the legal and rightful possession of the apartment to the complainant.

E.II Direct the respondents to pay delayed penalty interest on completion of 36 months from the date of approval of building plan which comes out to be 06.06.2015 till actual date of handing over of possession.

16. In the present complaint, the complainant is 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)

17. Clause 2.1 of the buyer's agreement provides for handing over of possession and is reproduced below:

2. Possession

*2.1 “...the First Party/Confirming Party proposes to handover the possession of the Flat to the Purchaser within approximate period of **36 months from the date of sanction of building plans** of the said Colony. The Purchaser agrees and understands that the First Party/Confirming Party shall be entitled to a **grace period of 180 days**, after the expiry of 36 months, **for applying and obtaining the occupation certificate** in respect of the Colony from the concerned Authority...”*

(Emphasis supplied)

18. 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.

19. 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.

20. 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., 12.09.2025 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.

21. 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—

(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;"

22. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., **10.85%** by the respondents/

promoter which is the same as is being granted to it in case of delayed possession charges.

23. On consideration of the circumstances, the documents, submissions made by the parties and based on the findings of the authority regarding contraventions as per provisions of rule 28, the Authority is satisfied that the respondents are in contravention of the provisions of the Act. By virtue of clause 2.1 of the agreement executed between the parties on 21.07.2012 the possession of the subject unit was to be delivered within 36 months from the date of sanction of building plans. The date of sanction of building plans is 07.06.2012. Therefore, the due date of possession comes out to be 07.06.2015 further there shall be an additional grace period of 180 days after the expiry of 36 months for applying and obtaining the occupation certificate in respect of the unit colony from the concerned authority.
24. The Authority put reliance on the judgement of 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 para is reproduced below:

As per aforesaid clause of the agreement, possession of the unit was to be delivered within 24 months from the date of execution of the agreement i.e. by 07.03.2014. As per the above said clause 11(a) of the agreement, a grace period of 3 months for obtaining Occupation Certificate etc. has been provided. The perusal of the Occupation Certificate dated 11.11.2020 placed at page no. 317 of the paper book reveals that the appellant-promoter has applied for grant of Occupation Certificate on 21.07.2020 which was ultimately granted on 11.11.2020. It is also well known that it takes time to apply and obtain Occupation Certificate from the concerned authority. As per section 18 of the Act, if the project of the promoter is delayed and if the allottee wishes to withdraw then he has the option to withdraw

from the project and seek refund of the amount or if the allottee does not intend to withdraw from the project and wishes to continue with the project, the allottee is to be paid interest by the promoter for each month of the delay. 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."

25. 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. Thus the due date of handing over of possession comes out to be 07.12.2015.
26. The respondents have failed to handover possession of the subject apartment within prescribed time. Accordingly, it is the failure of the respondents/promoters 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 of possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 21.07.2012 executed between the parties. The occupation certificate for the project was received on 24.10.2024. The respondents during proceedings dated 12.09.2025 stated that they has already offered the possession of the unit after obtaining occupation certificate however, there is no document on record which substantiate the claim of the respondents regarding the offer of possession.
27. 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 allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 07.12.2015 till offer of possession after obtaining occupation certificate plus two months or actual taking over of possession whichever is earlier at prescribed rate i.e., 10.85 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

28. The complainant in the present complaint is seeking relief for the possession of the unit. The occupation for the said unit was received on 24.10.2024. The respondents during proceedings dated 12.09.2025 stated that they has already offered the possession of the unit after obtaining occupation certificate however, there is no document on record which substantiate the claim of the respondents regarding the offer of possession. Therefore, the respondents are directed to offer possession of the allotted unit, if not made as well as to handover the possession of the unit within 30 days of this order.

E.III Direct the respondents not to charge anything extra which is not a part of the FBA.

29. The respondents shall not charge anything from the complainant which is not part of the builder buyer agreement.

E.IV Direct the respondents to pay compensation on account of mental agony, despair and giving false sense of hope causing emotional harassment to the complainant of Rs. 2,00,000/-

E.V To award compensation on account of litigation expenses of Rs. 1,50,000/-.

30. The complainant in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (Decided on 11.11.2021), has held that an allottee

is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation.

F. Directions of the Authority:

31. 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 respondents are directed (in all the above mentioned complaints) to pay interest to the complainant 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., 07.12.2015 till offer of possession after obtaining occupation certificate plus two months or actual taking over of possession, whichever is earlier, as per section 18(1) of the Act read with rule 15 of the rules.
 - ii. The complainant is directed to pay outstanding dues, if any remains as per the buyer's agreement, after adjustment of delay possession charges and thereafter the respondents shall handover the possession of the allotted unit within next 30 days.
 - iii. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.
 - iv. The rate of interest chargeable from the allottees by the promoter, in case of default shall be at the prescribed rate i.e., 10.85% by the

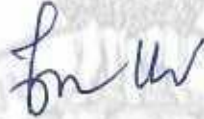
respondents/promoter, which is the same rate of interest which the promoter shall be liable to pay to the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

v. The respondents shall not charge anything from the complainant, which is not the part of the buyer's agreement.

32. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

33. Complaints stand disposed of.

34. Files be consigned to registry.



(Arun Kumar)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.09.2025

HARERA
GURUGRAM