

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

Complaint no. : 2532 of 2021
Date of filing of complaint: 19.07.2021
Date of decision : 08.07.2025

1. Jayant Johri
2. Kanika Johri

R/o: M-20, Ground Floor, Lajpat Nagar-II, New
Delhi-110024.

Complainant

Versus

M/s KNS Infrakon Pvt. Ltd.

Office: 517A, Narainmanzil, 233, Barakhamba
Road, Cannaught Place, New Delhi-110001.

Respondent

CORAM:	
Shri Arun Kumar	Chairman
Shri Ashok Sangwan	Member
APPEARANCE:	
Sh. Mohan Kumar	Advocate for the complainants
Sh. Rishab Jain	Advocate for the respondent

ORDER

1. The present complaint dated 19.07.2021 has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that

the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made there under or to the 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(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

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 regd. No. 12 of 2018 dated 10.01.2018
7.	Units no.	1204, 12 th floor, tower D 1401, 13 th floor, Tower-C
8.	Date of execution of buyers' agreement for unit no. 1204, Tower-D	11.12.2015 (pg. 81 of complaint)
9.	Due date of delivery of possession (within 48 months from the date of sanction of building plan which is 07.06.2012 and other necessary government approvals)	07.12.2016
10.	Date of execution of buyers' agreement for unit no. 1401, Tower-C	06.10.2015

11.	Due date of delivery of possession (within 48 months from the date of sanction of building plan which is 07.06.2012 and other necessary government approvals)	07.12.2016
12.	Payment plan	Construction linked payment plan
13.	Total sale consideration (Unit no. 1401)	Rs. 1,30,65,860/-
14.	Total sale consideration (Unit no. 1204)	Rs. 1,14,086,980/- (pg. 85 of complaint)
15.	Total amount paid by the complainant	Rs. 1,66,11,610/- (CRA)
16.	Offer of possession	Not offered
17.	Occupation certificate	Not obtained

B. Facts of the complaint

The complainant has made the following submissions in the complaint: -

- That in **year 2015** builder/agents/representative on behalf of the respondent approached to complainant and induced by their architect's plan, sale plans, advertisements, warranties and furthermore that flat is free from all encumbrances and there is no legal defect in the title of the same other flavorous payments method by saying there is No down payment Scheme.
- That on 06.10.2015, complainant booked unit/flat for sale consideration of Rs.1,30,65,680/-, admeasuring approximately 1990 square feet and on 08.12.2015, complainant booked unit/flat for sale consideration of Rs.1,14,86,980/-, admeasuring approximately 1695 square feet in the project namely "CAPITAL GATEWAY" at Gurgaon, Haryana.

5. That the complainant was made to believe that the integrated township would be complete with a proper social clubhouse with all modern amenities and facilities which would be available for the complainant and their families use at the time of possession. It is respectfully submitted that all such claims of the respondent was nothing but a bunch of lies which was accompanied with the misleading advertisements with the intention to induce the public at large.
6. That vide allotment letter dated 06.10.2015, the respondent-builder allotted unit no. 1401, 13th Floor, C Tower admeasuring approximately 1990 square feet to the complainant and later on, vide allotment letter dated 08.12.2015, the respondent allotted unit no. 1204, 12th Floor, D Tower Sector - 111, Gurgaon Haryana.
7. That as per the assurance given by the respondent, complainant approached and applied with the LICHFL for grant and sanction of home loan with account no. 310300004007 for Rs.1,00,00,000/- for unit No 1401, and applied with the PNBHFL for grant and sanction of home loan with account no. HOU/DEL/1115/249942 for Rs. 85,47,235/- for unit no. 1204.
8. That, further tripartite agreement was executed between the respondent, financial institution and complainant to the effect that in case buyer don't intent to retain the flat, the builder/developer shall repay the loan amount back to financial institution.
9. That the complainant demanded the builder buyer agreement from the opponent party "**CAPITAL GATEWAY**". The builder buyer agreement cum allotment letter was not sent to complainant, after repeated mails and requests.
10. That thereafter, in a surprise and shocking manner on **23.10.2015**, LICHFL instead of disbursing the loan amount as per the construction linked plan disbursed amount of **Rs.87,00,000/-**, directly to the builder/developer bank

account quickly in a single shot payment mode without verifying the actual stage of the construction of the said project which was to be handed over in **October, 2019** (inclusive of the grace period) and PNBHFL instead of disbursing the loan amount as per the construction linked plan disbursed amount of **Rs.79,11,610/-**, on **28.12.2015** directly to the builder/developer bank account quickly in a single shot payment mode without verifying the actual stage of the construction of the said project which was to be handed over in **January 2017**.

11. That after almost **2 years** neither the respondent neither could get the completion certificate from appropriate authority nor he could handover the possession of the above said flat to complainant. Thus the respondent himself is guilty of breach buyer agreement. That the complainant did not receive the possession of his flat as per the commitment made by the respondent which leads to heavy liability on the complainant. Complainant also stated that he is financially suffering as there is no income from property by owner due to delay possession of the said flat.
12. That thereafter, financial institution LICHFL and PNBHFL started sending reminders for payment and also sent notices for EMI bounce to complainant. That complainant sent repeated communication and reminders as well as repeatedly visited the builder/developer's office to pay the EMIs to LICHFL as promised by the builder/developer. That as substantial period has lapsed, whereupon time is the essence of the contract and the project has been inordinately delayed and there was no response to our genuine grievances and concern, arising out of brazen misrepresentation, fraud and cheating, complainant had sought cancellation of the allotment of the flat by sending a surrender letter vide email to Tashee Builders with cc to LICHFL. That there

was no response from either the Builder/Developer or LICHFL to the over stated emails. Thus, respondent is liable to arrange and clear the entire dues/amount with interest payable to complainant. The amount as mentioned, legally due should be payable to complainant.

13. That, thereafter complainant sent a legal notice **dated 22.02.2021** to opposite party, for the refund of the amount Disbursed by the financial institution, compensation, and another monetary losses suffered by the complainant by the acts of opposite party. No reply has been received of the said notice from the opposite party till date.
14. It is submitted that the complainant is entitled to immediate refund along with interest and compensation for delay. The complainant is suffering from financial burden, as he has to make the payments towards the EMI as well, which was promised by the respondents.

C. Relief sought by the complainant: -

15. The complainant has sought following relief(s):
- I. Direct the respondent to refund the entire amount paid by the complainant along with prescribed rate of interest.
 - II. Direct the respondent to pay the litigation cost.
16. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent

17. The respondent has contested the complaint on the following grounds.

- I. The answering respondent is a leading and distinguished name in the Real Estate Sector, is developing a Residential Group Housing Society by name "Capital Gateway" at Sector 111, Gurugram, Haryana. The company KNS Infracon Private Limited is the land-owning company. It is developing the present project in furtherance of the license obtained vide license no. 34 of 2011 and all other requisite permits and approvals from the Directorate of Town and Country Planning Haryana and other regulatory authorities. The company Tashee Land Developers Private Limited is doing the marketing and sale of the aforesaid project. All the responsibilities relating to sell, issue of demand and collection of the project is of Tashee Land Developers Private Limited.
- II. It is stated that the complainant herein had booked the unit in the said project and made payment towards their said bookings which are duly acknowledged by the complainant vide receipts issued against the said payments. The Project was launched by the respondent herein with a bonafide intention to complete the construction within the stipulated time frame and hand over the flats of good quality and facilities as advertised and committed to the respective allottees. It would be relevant to state herein that the construction at the project site is going on in full swing. The project is 90% complete and is nearing completion and ready for possession.
- III. The respondent has already formally applied for the completion certificate and occupancy certificate (OC) with Director Town and Country Planning (DTCP), Chandigarh, Haryana. (Reference No. 4553), of Phase-1 of "Capital Gateway" at sector-111, Gurgaon. It is anticipated that thereafter and subject to the receipt of the said certificates and approvals, the apartments in tower will be ready for delivery very shortly this year itself. As soon as occupancy

certificate will issue by Director Town and Country Planning (DTCP), respondent will hand over the physical possession of the flat to the complaint.

- IV. The sub-structure (including the excavation, laying of foundation, basement, waterproofing of sub structure) and superstructure of the building (including the stilt, walls on floor, staircases, lift wells and lobbies) has been completed 100% far back. Further, the lifts have been now installed in all towers of Phase 1. Further the mechanical work, electricity including the wiring and plumbing work, internal plastering / painting of walls, external and internal wall tiling has also been finished for more than 90% and is nearing completion. Now, the doors and window panels are being installed and the internal entrance lobby is about to be finished.
- V. In year 2020, when the project was ready and final touches were given to the apartments and towers, before the offer of possession was to be made, the work was obstructed by COVID-19 pandemic. Not only was the lockdown was put in force by the government, there has been a large scale immigration of labours and workers back to their home states and towns. The supply of raw materials, machinery etc. was completely stopped from the source itself owing to non-plying of trucks and vehicles. This disabled the payments to the construction workers and discouraged the availability of materials and machinery for the continuation of the work at the site. When the work started again, there was acute shortage of workforce, which compounded the delay to the present situation.
- VI. It is submitted that the real estate projects need multiple compliances, such as fire safety, environment, building plans and licence etc. These in general take time. But due to the current pandemic the process has become even more

complicated and tardy. In the present case the delivery of existing projects got pushed back, due to irregular input supply-chain and labour availability.

18. All other averments made in the complaint were denied in toto.

19. 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

20. 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

21. 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

22. 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.

23. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.
24. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.*** "2021-2022(1)RCR(C), 357 and followed in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and

scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

25. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the objection raised by respondent

F.I Objection regarding force majeure conditions:

26. The respondent-promoter has raised the contention that the construction of the project was delayed due to reasons beyond the control of the respondent such as COVID-19 outbreak, lockdown due to outbreak of such pandemic and shortage of labour on this account. The authority put reliance judgment of Hon'ble Delhi High Court in case titled as ***M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/2020 and I.As 3696-3697/2020*** dated 29.05.2020 which has observed that-

"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself."

27. In the present complaint also, the respondent was liable to complete the construction of the project in question and handover the possession of the said unit by 07.12.2016. The respondent is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be

used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself and for the said reason the said time period is not excluded while calculating the delay in handing over possession

G. Findings on the relief sought by the complainant

- I. Direct the respondent to refund the entire amount paid by the complainant along with prescribed rate of interest.
- II. Direct the respondent to pay the litigation cost.

28. Vide allotment letter dated 06.10.2015, the respondent-promoter allotted Unit No. 1401, 13th Floor, C Tower, admeasuring approximately 1990 square feet, to the complainant. Subsequently, vide another allotment letter dated 08.12.2015, the respondent allotted unit no. 1204, 12th Floor, D Tower, located in Sector 111, Gurgaon, Haryana.
29. The counsel for the complainant's state that the complainants did not receive the possession of their flat as per the commitment made by the respondent which leads to heavy liability on the complainants. The complainants also stated that he is financially suffering as there is no income from property by owner due to delay possession of the said flat. The complainants cannot wait endlessly for handing over of unit and hence, he is entitled for refund of the amount deposited by them.
30. On the contrary, the respondent stated that the payment for the unit was entirely made through a bank loan, which had already been settled with the concerned bank and no amount remains outstanding between the parties.
31. It is a matter of grave concern that the financial institutions have not exercised due diligence in releasing the loan amount to the respondent and have released the complete of the loan amount in one tranche without confirming the status

of construction of the project. This appears to be a case of connivance between the respondent and the financial Institutions to lure the unsuspecting home-buyer into obtaining a loan to finance the project of the respondent. In many such cases, the promoter fails to repay the loan amount or EMIs to the financial institutions, putting the home-buyer at serious financial risk. In fact, in a recent judgement, the Hon'ble Apex Court have directed a CBI enquiry into similar transactions.

32. Vide proceedings dated 11.03.2025, the complainants were directed to clarify the exact amount paid by them and by the bank to the respondent, along with relevant documentary evidence. On 06.05.2025, the complainants submitted a calculation, stating that they had paid Rs. 14,00,000/- towards the said unit and sought a refund of the same. However, after consideration of the facts, the Authority is of view that the complainants failed to submit proof of the payment of Rs. 14,00,000/- against the subject unit
33. It is observed that the loan amount disbursed by the bank had already been settled, and no dues remained between any of the parties. Therefore, the relief sought by the complainant is not maintainable and same is dismissed.
34. 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.*** (supra), has held that an allottee is entitled to claim compensation & litigation charges 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 & litigation expense 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 & legal expenses. The complainant is at liberty to approach the Adjudicating

Officer of the Authority for seeking relief with regard to litigation expenses and losses/harassment faced by the complainant as a result of the conduct of the respondent.

35. The complaints stand disposed of.

36. Files be consigned to registry.



Ashok Sangwan
Member



Arun Kumar
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 08.07.2025