

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

Complaint no. : 4552 of 2022
Date of filing : 13.07.2022
Date of decision: 05.08.2025

Capital Gateway Homebuyers Welfare Association
R/o: - Flat no. 1404, Block B-1, Uniworld Unigarden ,
Sector-47, Gurugram.

Complainant

Versus

1. M/s KNS Infracon Pvt. Ltd.

2. Mr. KN Shukla

Both Regd. Office at: 18th Floor, Narain Manzil, 23,
Barahama Road, Connaught Place, New Delhi-110001.

Respondents

CORAM:

Shri Arun Kumar
Shri Ashok Sangwan

**Chairman
Member**

APPEARANCE:

Sh. Harbir Singh Gulati (Advocate)
Sh. Rishab Jain (Advocate)

**Complainant
Respondent**

ORDER

1. The present complaint dated 13.07.2022 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 provisions of the Act or the Rules and regulations made thereunder or to the allottee as per the agreement for sale executed *inter se*.

A. Facts of the complaint

2. The complainant-association has made the following submissions: -

- I. That the complainant i.e. Capital Gateway Home Buyers Welfare Association formed by the aggrieved home Buyers of Capital Gateway, Sector- 110A/111, Gurgaon, Haryana.
- II. That the respondent-builder M/s KNS Infracon Pvt. Ltd, who had started a township project under the name of Capital Gateway, Sector-110A/111, Gurgaon in August 2010 with the promise to give the possession of the flats to all the home Buyers before 30.06.2015.
- III. That even after waiting seven years, the project has not been completed. Builders always make false promises, which have not been fulfilled till date.

B. Relief sought by the complainant:

3. The complainant has sought following relief(s):

- I. Direct the Respondent to deposit an amount equivalent to Seventy percent of the amount already realized and to be realized (including towards over dues, unsold inventory and construction which is yet to be completed) by it from the allottees of the units in a separate Bank Account as per the RERA regulations, which shall be used solely for the construction and development of the project in compliance with the provisions of Rule 4 of the HRERA rules.

- II. Direct the respondent Not to further sell, mortgage any flats in the society to anybody whatsoever.
- III. Direct the respondent to stop raising any invoices on the allottees towards the payment of the unit booked by them.
- IV. Direct the Respondents to complete the entire project according to the BBA signed by home buyers & builder's representative's and handover the possession of all the apartments within a maximum of 6 months from the date of this complaint.
- V. Direct the Respondents to submit phase wise completion schedule with your good offices.
- VI. Direct the Respondent to produce the complete books of accounts and the complete records so that your good self could validate and get the same audited / investigated by an independent agency to verify and ensure that the entire consideration amount paid / payable by the allottees of the units is used solely for the construction and development of the project in compliance with the provisions of HRERA Rules.
- VII. Direct the Respondent to re-infuse requisite money in the separate Bank Account/dedicated development account required for completing the project in compliance with the provisions of HRERA.
- VIII. Direct the Respondents to rectify the on-time schedule for construction of the project as stated by them in the RERA application

and the Affidavits attached thereto in terms of Rule 4(1)(b) of HRERA Rules.

- IX. Direct the Respondents to ensure that any money shall be paid from the dedicated development account only after the prior written approval of the Authorized Representatives of the complainant.
- X. Direct the Respondent to reimburse the amount incurred by the complainant or engaging such agencies including chartered engineers, architect and/or chartered accountants.
- XI. Order conducting a forensic technical as well as financial audit of the entire project of the Respondent company to cover the availability of funds, land bank available with the company, the entire saleable area in the project, the inventory of the flats sold and unsold, the amount collected from the home buyers and the amount spent on the project, the details of the different Bank Accounts of the Respondent Company as provided to the Honourable Authority and the Accounts where the money is actually being deposited by the Respondent Company together with all the supporting documents.
- XII. Order conducting an enquiry whether the Respondent has deposited the funds collected in a separate account in accordance with the provisions of the RERA and HRERA?
- XIII. Order conducting an enquiry on the EDC and the IDC collected from home buyers and deposited to the concerned authorities and whether

not depositing it after collecting from the allottees is in violation of the RERA / HRERA?

XIV. Order conducting an enquiry whether the respondent has deployed the entire amount collected from the members of the complainant Association in the project of the allottees of CAPITAL GATEWAY project in construction and development of the project or it has taken the amount for self-use by over valuing the cost of the land and license?

XV. Direct the attachment of all bank accounts of the builder, partners & family;

XVI. Direct the attachment of all movable & immovable properties of the builder and his family;

XVII. Direct this association viz "CAPITAL GATEWAY HOME BUYERS WELFARE ASSOCIATION" to take over the project along with the unsold inventory if the respondent is unable to complete and hand over the project within six months of the date of this complaint

4. 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.

C. Reply by the respondent no. 1.

5. The respondent has contested the complaint on the following grounds: -

- i. The respondent has been developing and marketing a Residential Group Housing Colony 'Capital Gateway' on the land measuring 10.462 acres

situated at Sector 110A and 111, Gurugram, in two phases, i.e., Phase I consisting Tower A to G and Phase II consisting of Tower H to J. The said project also consists of two towers for Economically Weaker Sections (EWS), two commercial buildings, one community building and a nursery school. There is a total of 551 units in the said project, which includes 538 residential units and 13 commercial units.

- ii. That the license bearing no.34 of 2011 dated 16th April, 2011, for the said project was granted by the Directorate of Town and Country Planning Haryana, which was renewed from time-to-time and is valid up to 15th April, 2024. The respondent has also obtained all requisite permits and approvals for the development of the said project from the competent authorities.
- iii. That initially, the Haryana Real Estate Regulatory Authority, Panchkula (Interim RERA) issued a Registration Certificate in the form REP-III as prescribed under the Haryana Real Estate (Regulation and Development) Rules, 2017, vide Registration No. 12 of 2018 dated 10th January, 2018. The validity of RERA registration for Phase-I (Tower A to G) was up to 31st December, 2020 + six months of Covid-19 extension, i.e., till 30th June, 2021 and for Phase II (Tower H to J) was up to 31st December, 2021 + six months of Covid-19 extension, i.e., till 30th June, 2022.
- iv. The Haryana Real Estate Regulatory Authority, Gurugram, after obtaining requisite documents and registration fees for the said project from the respondent, issued an extension of registration certificate under Section 6

of the Act, 2016, vide no. RC/REP/HARERA/GGM/12 of 2018/7(3)/2022/3 dated 9th August, 2022. At present, the RERA registration for the said project is valid up to 30th June, 2025, for both the phases.

- v. That the respondent had applied for Environment Clearance on 20th October, 2011. The decision and issuance of certificate to the promoter/developer remained in abeyance for a long time due to sudden demise of the Chairman of Environmental Impact Assessment (EIA) Committee in an unfortunate road accident. The developer finally got the Environment Clearance on 17th June, 2013. Owing to this, the construction work of the project itself started late.
- vi. That the respondent had applied for the revision in building plans of the said project before the appropriate authority. However, for no fault of the respondent, 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.
- vii. That at present, it is a matter of record that the structure of the said project in question is complete, and few instalments are due and payable by the allottees of the said project. Moreover, it is pertinent to state that the respondent is in the process of applying for obtaining the occupation certificate of the said project as all the construction and development activities are complete.

- viii. That the respondent has inter alia represented that performance of obligations and duties of the respondent is contingent upon approval of the unit plans of the said project by the Director, Town & Country Planning, Haryana, Chandigarh and any subsequent amendments/modifications in the unit plans as may be made from time to time by the Company & approved by the Director, Town & Country Planning, Haryana, Chandigarh from time-to-time.
- ix. That, for the reasons beyond the control of the respondent, the said project has been delayed. As a matter of fact, economic meltdown, financial crisis, sluggishness in the real estate sector, increase in cost of construction, default by allottees in making timely payments, multiple disputes between the workforce, labour and contractors resulting into shortage of labour and workforce and change in contractors, non-availability of sufficient water for construction due to restrictions imposed by local administration, restricted construction activities towards protection of the environment as directed by the local administration and the NGT and moreover, obstruction in construction due to Covid-19 outbreak are some of the impeding reasons beyond the control of the respondent.
- x. That, simultaneously, the Respondent is aware of the obligations and duties to complete the said project and that is why promoter approached the 'SWAMIH Investment Fund I' of SBICap Ventures Limited. The Investment Committee of the SWAMHI Investment Fund I vide letter dated 29th November, 2021 communicated to the promoter that it has accorded

an in-principle approval to invest up to ₹80.00 crore and an additional ₹27.92 crore. The project is a sick project wherein imposition of compensation/penalty/interest will put a lot of burden over the project and its proponents including the promoter.

- xi. That After receipt of SWAMHI Investment Fund, the respondent was able to resume the construction activities at a very large scale in expeditious manner. The development at the project site is in full swing, in order to complete the project and handover the possession to the allottees at the earliest. At present, more than three hundred nineteen (300) labourers of different contractors are working at the project site to complete the project 'Capital Gateway'. Therefore, the respondent has arranged resources and funds to complete the project.
- xii. That hand of the respondent is tied with regard to management of funds for the said project. After the receipt of the SWAMHI Investment Fund, any amount of money received towards the said project is being monitored by the Investment Committee of the said fund. As a result, the funds cannot be used for compensation/penalty/interest purposes in any manner whatsoever and the money so collected has to be utilised for the purposes of construction only. Further, due to financial crunches the Respondent is not in a position to pay money for compensation and/or delayed possession interest. At present, the first priority of the respondent is to complete the said project and deliver homes to the restive allottees.

- xiii. That the respondent has always made efforts for completion of the said project. Initially, the Interim RERA granted RERA registration on 10th January, 2018 till 31.12.2020 for Phase I (Tower A to G) and 31.12.2021 for Phase II (Tower H to J). From time-to-time construction activities were impeded due to poor air quality in the Delhi NCR region.
- xiv. The mayhem caused by deadly corona virus is known to the whole world. The Ministry of Housing & Urban Affairs, Government of India vide its Office Memorandum dated 13th May, 2020 issued advisory for extension of registration of real estate projects. The Town and Country Planning Department, Government of Haryana issued its Notification dated 28 July, 2020 regarding approval of moratorium for the period from 01.03.2020 to 30.09.2020 for existing projects. The Ld HARERA, Gurugram vide order dated 26th May, 2020 extended RERA registration of all projects for a period of 6 months.
- xv. That moreover, after imposition of lockdown on 24th March, 2020 which extended from time-to-time till July, 2020, the construction activities were completely impeded. Thereafter, the local administration has issued directions for lock-down in the region for Gurugram being a hot-spot zone. The District Administration, Gurugram vide order dated 30th April, 2021 imposed lock-down starting from 30 April, 2021, which was extended till April, 2022.
- xvi. That the development activities in the said project have been vastly affected due to non-payment of allottees. There is a huge amount of

contributory negligence on the part of allottees due to which the construction activities were impeded, and huge financial burden increased over the respondent.

xvii. The present complaint is devoid of any merit and has been preferred with the sole motive to harass the respondent. In fact the present complaint is liable to be dismissed on the ground that the said claim of the complainant is unjustified, misconceived and without any basis and is against the respondent no.1. The present complaint is baseless and flagrant abuse of process of law to harass the respondent no.1.

6. All other averments made in the complaint were denied in toto.
7. The respondent-promoter no. 2 has failed to file a reply despite several opportunities granted by the authority. It shows that the respondent is intentionally delaying the procedure of the Authority by avoiding filing the written reply. In view of the above, Hence, in view of the same, the Authority has no option but to proceed the ex-parte against the respondents no. 2.
8. 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.

D. Jurisdiction of the authority

9. 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

10. 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.

D. II Subject matter jurisdiction

11. 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.

12. 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.

E. Findings on the relief sought by the complainants.

E.I Direct the Respondent to deposit an amount equivalent to Seventy percent of the amount already realized and to be realized (including towards over dues, unsold inventory and construction which is yet to be completed) by it from the allottees of the units in a separate Bank Account as per the RERA regulations, which shall be used solely for the construction and development of the project in compliance with the provisions of Rule 4 of the HRERA rules.

E.II Direct the respondent to re-infuse requisite money in the separate Bank Account/dedicated development account required for completing the project in compliance with the provisions of HRERA.

13. The above-mentioned reliefs no. E. I and E.II as sought by the complainant is being taken together as these reliefs are interconnected.
14. Section 4(2)(I)(D) of the RERA Act read with Rule 4 of the HRERA Rules mandates that 70% of the amounts realized from allottees, from time to time, shall be deposited in a separate bank account maintained in a scheduled bank to be used only for the cost of construction and the land cost of that project.
15. The respondent is directed to deposit an amount equivalent to seventy percent of the total amount realized and to be realized (including overdue amounts, unsold inventory, and future collections) in a dedicated project bank account in compliance with Section 4(2)(I)(D) of the Act. Further, the respondent shall also submit quarterly statements of account as per Rule 4 of HRERA Rules to ensure that funds are utilized solely for the construction and development of the project.

E.III Direct the respondent Not to further sell, mortgage any flats in the society to anybody whatsoever.

16. As per Section 11(4)(h) of the Act, a promoter cannot mortgage or create any charge on a booked apartment without the prior consent of the allottee. The respondent is hereby restrained from creating any further mortgage, lien, or sale of units in the project "Capital Gateway" without prior approval.

E.IV Direct the respondent to stop raising any invoices on the allottees towards the payment of the unit booked by them.

17. As per Section 13 and 19(6) of the Act, the promoter can demand payments as specified in the agreement for sale. Therefore, respondent is directed to raise demands in accordance with the agreement executed between the parties.

E.V Direct the respondents to complete the entire project according to the BBA signed by home buyers & builder's representative's and handover the possession of all the apartments within a maximum of 6 months from the date of this complaint.

18. The respondent is directed to complete the project in all aspects as per specifications of buyer's agreement and handover the possession of the allotted unit to the complainant, failing which the affected allottees shall be at liberty to invoke the relevant provisions of the Act, 2016 for redressal of their grievances.

E.VI Direct the respondents to submit phase wise completion schedule with your good offices.

19. Rule 4(1)(b) of the HRERA Rules mandates submission of project-wise and phase-wise time schedule. The respondent shall submit a detailed phase-wise

completion plan of the project and said plan shall be supported by a Chartered Engineer's and Architect's certificate, showing percentage completion and remaining works. It is further observed that proceedings are pending in the Authority under Section 7 (3) of the Act, 2016 in the present project of the respondent. The said issue will be dealt in the said proceedings.

E.VII Direct the respondent to produce the complete books of accounts and the complete records so that your good self could validate and get the same audited / investigated by an independent agency to verify and ensure that the entire consideration amount paid / payable by the allottees of the units is used solely for the construction and development of the project in compliance with the provisions of HRERA Rules.

20. The complainants have not submitted any specific grounds for pressing the above relief. In view of the above no finding is returned in this regard.

E.VIII Direct the respondents to rectify the on-time schedule for construction of the project as stated by them in the RERA application and the Affidavits attached thereto in terms of Rule 4(1)(b) of HRERA Rules

21. Rule 4(1)(b) and Section 11(4)(a) require that the project timelines declared at registration must reflect accurate progress. It is further observed that proceedings are pending in the Authority under Section 7 (3) of the Act, 2016 in the present project of the respondent. The said issue will be dealt in the said proceedings.

E.IX Direct the respondents to ensure that any money shall be paid from the dedicated development account only after the prior written approval of the Authorized Representatives of the complainant.

22. There is no such provision under the Act, 2016 which can be invoked for pressing the above relief. The respondent is directed to comply with the provisions of Section 4 , Rule 4 (1) (a) and (b) read with Regulations issued by this Authority from time to time in this regard.

E.X Direct the respondents to reimburse the amount incurred by the complainant or engaging such agencies including chartered engineers, architect and /or chartered accountants.

23. Neither any cause for such relief has been agitated by the complainant association nor is there any provision or circumstances under which such relief can be allowed. In view of the above, the above relief sought is declined.

E.XI Order conducting a forensic technical as well as financial audit of the entire project of the Respondent company to cover the availability of funds, land bank available with the company, the entire saleable area in the project, the inventory of the flats sold and unsold, the amount collected from the home buyers and the amount spent on the project, the details of the different Bank Accounts of the Respondent Company as provided to the Honourable Authority and the Accounts where the money is actually being deposited by the Respondent Company together with all the supporting documents

E.XII Order conducting an enquiry whether the Respondent has deposited the funds collected in a separate account in accordance with the provisions of the RERA and HRERA?

E.XIII Order conducting an enquiry on the EDC and the IDC collected from home buyers and deposited to the concerned authorities and whether not depositing it after collecting from the allottees is in violation of the RERA / HRERA?

E.XIV Order conducting an enquiry whether the respondent has deployed the entire amount collected from the members of the complainant Association in the project of the allottees of CAPITAL GATEWAY project in construction and development of the project or it has taken the amount for self-use by over valuing the cost of the land and license?

E.XV Direct the attachment of all bank accounts of the builder, partners & family.

E.XVI Direct the attachment of all movable & immovable properties of the builder and his family.

E.XVII Direct this association viz "CAPITAL GATEWAY HOME BUYERS WELFARE ASSOCIATION" to take over the project along with the unsold inventory if the respondent is unable to complete and hand over the project within six months.

24. The above-mentioned reliefs no. E. XI to E.XVII as sought by the complainant is being taken together as these reliefs are interconnected

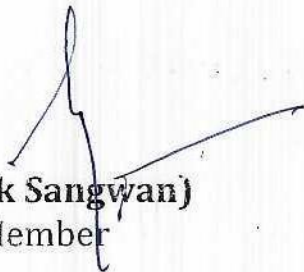
25. There are no grounds elaborated by the complainant-association on which above said reliefs can be granted. So far as declaration of certain aspects of the plans, EDC, IDC etc. are concerned, the same shall be disclosed by the promoter as per obligations laid down under Section 11 and 17 of the Act, 2016. It is further observed that proceedings are pending in the Authority under Section 7 (3) of the Act, 2016 in the present project of the respondent. A public notice was issued in the said proceedings in three newspapers, two English "The Tribune" & "The Times of India" dated 08.07.2025 and one Hindi "Navbharat Times" dated 08.07.2025. All parties, including the complainants were at liberty to file their objections with regard to the project. Therefore, the above reliefs sought are declined.

F. Directions of the Authority:

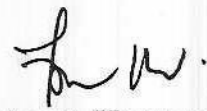
26. Hence, in view of the factual as well as legal positions detailed above, the complaint filed by the complainant seeking above reliefs against the respondents is decided in terms of paras 13 to 25 above. Ordered accordingly

27. Complaint stands disposed of.

28. File be consigned to registry.



(Ashok Sangwan)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

05.08.2025