

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

Complaint no. : **6418 of 2024**
Date of complaint : **02.01.2025**
Date of order : **09.12.2025**

Kamal Rana,

R/o: - H. No. 18/6, Shakti Nagar, Delhi-110007.

Complainant

Versus

1. M/s Tashee Land Developers Pvt. Ltd.

2. M/s KNS Infracon Private Limited.

Both Having Registered Office at: - 517A,
Nariman Manzil, 23, Barakhambha Road,
Connaught Place, New Delhi-110001.

Respondents

CORAM:

Arun Kumar

Chairman

Phool Singh Saini

Member

APPEARANCE:

Sanjeev Sharma (Advocate)

Complainant

None

Respondent No.1

Rishabh Jain (Advocate)

Respondent No.2

ORDER

1. The present 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 provisions 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. Unit and project related details

2. 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. No.	Heads	Information
1.	Project name and location	'Capital Gateway, Sector-111, Gurugram
2.	Project area	10.462 acres
3.	Nature of the project	Residential
4.	DTCP license no. and validity status	34 of 2011 dated 16.04.2011 valid upto 15.04.2024
5.	Name of licensee	KNS Infracon Pvt. Ltd. and others
6.	RERA registered/ not registered	Registered vide no. 12 of 2018 dated 10.01.2018 valid upto 31.12.2020 for phase-I (tower A to G) and 31.12.2021 for phase- II (tower H to J)
7.	Unit no.	104, 1 st floor, Tower E (pg. 24 of complaint)
8.	Date of execution of buyers' agreement	07.12.2012 (pg. 20 of complaint)
9.	Possession clause	<p>Clause 2.1</p> <p>"Subject to Clause 9 herein or other circumstances....., 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 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 expiry of 36 months, for applying and obtaining occupation certificate in respect of the Colony from the concerned authority....."</p> <p>(Emphasis supplied)</p>

10.	Date of sanction of building plans	07.06.2012 (As per project details)
11.	Due date of delivery of possession	07.12.2015 (Calculated from the date of sanction of building plans + Grace period of 6 months is allowed to the respondent in view 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)
12.	Basic sale consideration	Rs.57,20,000/- (pg. 24 of complaint)
13.	Total amount paid by the complainant	Rs.72,95,445/- (As per page 54 of complaint)
14.	Occupation certificate	24.10.2024 (as per DTCP website)
15.	Offer of possession	11.11.2024 (page 52 of complaint)

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That a complaint was filed vide complaint no. CR/80/2024 whose order was pronounced on 15-05-2024 with following observations and directions:
 - i. *The respondents are to pay delayed possession charges at the prescribed rate of interest i.e., 10.85% p.a. for every month of delay on the amount paid by the complainant to the respondents from the due date of possession (i.e., 07.06.2015) till offer of possession plus 2 months after obtaining OC or handing over of possession whichever is earlier.*
 - ii. *The respondents shall not charge anything from the complainant which is not the part of the flat buyer's agreement.*
 - iii. *The rate of interest chargeable from the allottees by the promoter, in Case of default shall be charged at the prescribed rate i.e., 10.70% 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.*

- 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 one month after receipt of occupation certificate from the competent authority.*
- v. *The respondents are directed to pay arrears of interest accrued within 90 days from the date of order of this order as per rule 16(2) of the rules.*
- II. That under clause 1 of builder buyer agreement, the actual sale consideration was @2900/- per sq. feet with other additional charges.
- III. That the respondent did not execute the order passed by the Authority. The respondent chooses not to pay the amount directed by the Authority nor adjusted the amount against any demand which remained pending at the time of possession. Meanwhile, occupation certificate is received by the respondent in the later months of the year 2024. The respondent issued offer of possession letter for handing over the possession with huge illegal demands which are neither part of builder buyer agreement nor even logical to ask for. This complaint is filed as such anomalies were not part of the previous complaint decided by the Authority. It requires a fresh direction from the Authority viz-a-viz to fresh illegalities commenced by the respondent.
- IV. That the respondent has further threatened to cancel the unit if such illegal demands are not paid immediately for taking possession.

C. Relief sought by the complainant:

- 4. The complainant has sought following relief(s):
 - I. Direct the respondent to handover the possession immediately keeping the dispute of amount between allottee and builder pending.
 - II. Direct the respondent to pay delay possession charges.
- 5. On the date of hearing, the Authority explained to the respondents/promoter about the contraventions as alleged to have

been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.

6. Despite due service of notice and specific direction for filing reply in the matter, neither anyone has put in appearance on behalf of respondent no.1 before the Authority, nor any written reply to the present complaint has been received from it. Thus, the respondent no.1 was proceeded ex-parte vide proceedings dated 12.11.2025. Further, despite specific direction for filing reply in the matter, no reply has been received from respondent no.2 with regard to the present complaint. Therefore, the defence of the respondent no.2 was struck off vide proceedings dated 12.11.2025. In view of the above, the Authority is deciding the complaint on the basis of these undisputed documents available on record and submissions made by the complainant.
7. 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. Maintainability of complaint:

8. In the present complaint, the complainant intends to continue with the project and is seeking direction to the respondent to handover the possession immediately keeping the dispute of amount between allottee and builder pending and to pay delay possession charges. The complainant has submitted that a complaint bearing no. CR/80/2024 was filed by him seeking handover of possession and payment of delay possession charges and vide order dated 15.05.2024, the said reliefs were granted in favour of the complainant. However, the respondent neither paid the amount as directed by the Authority nor adjusted the amount against any demand which remained pending at the time of

possession. Meanwhile, occupation certificate was received by the respondent in the later months of the year 2024 and offer of possession was made to the complainant. The respondent has offered possession with huge illegal demands which are neither part of builder buyer agreement nor even logical to ask for. Thus, the present complaint has been filed by the complainant.

9. The Authority observes that the complainant has previously filed a complaint bearing no. CR/80/2024 against the subject unit before the Authority seeking possession along with payment of delay possession charges. Thereafter, vide order dated 15.05.2024, the respondents were directed to handover possession and to pay delay possession charges w.e.f. 07.12.2015 till offer plus 2 months after obtaining OC or till actual handover of possession, whichever is earlier. The respondent was further directed to not to charge anything from the complainant which is not part of the buyer's agreement.
10. After considering the documents available on record as well as submissions made by the parties, the Authority is of the view that the present complaint is not maintainable before the Authority as is barred by the principle of res-judicata as the matter in issue between the parties has already been heard and decided by the Authority vide order dated 15.05.2024 in the former complaint bearing no. CR/80/2024. Further, if any party fails to abide by the directions mentioned in the said order, then the same shall be enforced by the executing authority as provided under Section 40 of the Act of 2016 read with Rule 27 of the Haryana Real Estate (Regulation and Development) Rules, 2017, in such manner as may be prescribed. No doubt, one of the purposes behind the enactment of the Act was to protect the interest of consumers. However, this cannot be fetched to an extent that basic principles of jurisprudence

are to be ignored. Therefore, subsequent complaint on same cause of action is barred by the principle of res-judicata as provided under Section 11 of the Code of Civil Procedure, 1908(CPC). Section 11 CPC is reproduced as under for ready reference:

"11. Res judicata.—No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I.—The expression "former suit" shall denote a suit which has been decided prior to a suit in question whether or not it was instituted prior thereto.

Explanation II.—For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.—Any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purposes of this section, be deemed to have been refused.

Explanation VI.—Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

1[Explanation VII.]—The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII.—An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.]"

11. The Authority is of view that though the provisions of the Code of Civil Procedure, 1908 (CPC) is, as such, not applicable to the proceedings

under the Act, save and except certain provisions of the CPC, which have been specifically incorporated in the Act, yet the principles provided therein are the important guiding factors and the Authority being bound by the principles of natural justice, equity and good conscience has to consider and adopt such established principles of CPC as may be necessary for it to do complete justice. Moreover, there is no bar in applying provisions of CPC to the proceedings under the Act if such provision is based upon justice, equity and good conscience. Thus, in view of the factual as well as legal provisions, the present complaint stands dismissed being not maintainable. File be consigned to the registry.



(Phool Singh Saini)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.12.2025