

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

Complaint no.	:	439 of 2025
Date of Filing:		11.02.2025
Date of Decision:		31.10.2025

Harbir Singh Gulati

R/O: House no. A1/26, GF, DLF Valley, Near
Amravati Enclave, Panchkula - 134107**Complainant**

Versus

1. Tashee Land Developers Pvt. Ltd.
2. KNS Infracon Pvt. Ltd.

Regd. office: Flat no. 312, 3rd Floor, Plot no.
16, Ansal Bhawan, Kasturba Gandhi Marg,
Connaught Place, Central Delhi, New Delhi -
110001**Respondents****CORAM:**

Shri Arun Kumar

Chairman**APPEARANCE:**Sh. Harbir Singh Gulati
Sh. Rishabh JainComplainant in Person
Advocate for the respondents**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 allottees 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. N.	Particulars	Details		
1.	Name of the project	Capital Gateway, sector-111, Gurugram		
2.	Nature of the project	10.462 ACRES		
3.	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)		
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.	401, 4 th floor, tower-A [Page 82 of complaint]		
6.	Unit area admeasuring Increase in area: 9.8%	<table><tr><td><i>initially allotted super area -</i> 1295 sq. ft. [as per agreement at page 82 of complaint]</td><td><i>Increased super area-</i> 1422 sq. ft. [as per offer of possession at page 133 of complaint]</td></tr></table>	<i>initially allotted super area -</i> 1295 sq. ft. [as per agreement at page 82 of complaint]	<i>Increased super area-</i> 1422 sq. ft. [as per offer of possession at page 133 of complaint]
<i>initially allotted super area -</i> 1295 sq. ft. [as per agreement at page 82 of complaint]	<i>Increased super area-</i> 1422 sq. ft. [as per offer of possession at page 133 of complaint]			
7.	Date of flat buyers' agreement	30.09.2015 [Page 79 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	<p>2. Possession</p> <p>2.1 "...the First Party/Confirming Party proposes to handover the possession of the Flat to the Purchaser within approximate period of 48 months from the date of sanction of building plans and necessary government approvals thereon, 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 48 months, for applying and obtaining the occupation certificate in respect of the Colony from the concerned Authority..."</p> <p>[Page 88 of complaint]</p>
11.	Due date of possession	<p>07.12.2016</p> <p>[calculated from the date of approval of building plans including grace period of 180 days]</p>
12.	Sale consideration	<p>Rs.49,88,583/-</p> <p>[As per payment plan at page 114 of complaint]</p>
	Total sale consideration	<p>Rs. 87,63,897/-</p> <p>(as per SOA at page no. 133 of complaint)</p>
13.	Amount paid by the complainant	<p>Rs. 54,62,500/-</p> <p>(as per SOA at page no. 133 of complaint)</p>
14.	Letter for handover of possession	<p>31.01.2020</p> <p>(page no. 118 of complaint)</p>
15.	Occupation certificate	<p>24.10.2024</p> <p>[Page 122 of complaint]</p>
16.	Offer of possession (OP)	<p>20.11.2024</p> <p>(page no. 132 of complaint)</p>
17.	Cancellation letter	<p>13.12.2024</p> <p>(page no. 142 of complaint)</p>



18.	Revocation of cancellation by builder	18.12.2024 (page no. 143 of complaint)
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B. Facts of the complaint

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

- I. That originally flat was booked in the name of the complainant's wife who died on 4th Dec 2014.
- II. That thereafter the respondents asked the complainant to sign a fresh FBA. As maximum payments had been extracted from the complainant and his family the complainant was left with no choice but to put his pen to the paper wherever he was told to sign by the respondents.
- III. That the respondents executed a fresh FBA dated 30th Sept 2015. The complainant was after this handed over the FBA, acceptance of request for change in name dated 28.08.2015 & a new allotment letter dated 12th Sept 2015.
- IV. That as per para no.2.1 of the agreement dated 21 July 2012, 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.
- V. 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.

- VI. 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 in the site apart from 2-3 guards. No one was there to address the queries of the complainant. Telephone calls were mostly unanswered.
- VII. That the only intention of the respondents was to take payments for the flat without completing the work and not handing over the possession on time. The respondents have mala-fide and dishonest motives, their intentions were to cheat and defraud the complainant. That despite receiving all the payments on time for various demands raised by the respondents for the said flat and despite repeated requests and reminders over phone calls & personal visits of the complainant, the respondents have failed to deliver the possession of the allotted flat to the complainant within stipulated period.
- VIII. That as per clause 2.3 of the agreement it was agreed by the respondents that in case of failure to offer possession within a period of 45 months from the date of sanction of building plans, the respondent shall pay to the complainant a compensation @25/- per sq. ft. for every month of delay thereafter until the actual date fixed by the respondents for handing over of the possession.
- IX. That the respondents merely want to escape their liability just by mentioning a compensation clause in the agreement. It can be seen clearly that the respondents have incorporated certain clauses making it a one-sided buyer's agreement and offered to pay a sum of 25/- 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 respondents charges @ 18-24% per annum



compounded interest on delayed payment. This should be as per para 15 of The Hry. Real Estate (Regulation and Development) Rules 2017' which says that the interest rate shall be the State Bank of India highest marginal cost of lending rate (Referred to as MCLR hereinafter) + 2%.

- X. That on the ground of parity and equity the respondents should also be subjected to pay the same rate of interest as they charged from the complainant.
- XI. That, as per para 2.4 of the FBA the respondents have laid down a holding charge of Rs.5/-per sq. ft. on the total super area of the flat if the complainant do not take possession withing 30 days from the "Notice of Possession'. The holding charge is an arbitrary clause which is illegal and cannot be charged by the promoters.
- XII. That the respondents sent a letter dated 31.01.2020 regarding the handover of the flat alongwith a demand note for Rs. 23,32,407/-. Being an illegal demand since no OC had been received by the respondents the complainant asked them to give him a copy of OC so he could take over the flat. No reply was received from the respondents in this regard. The complainant made the said payment under protest on 20th Feb 2020.
- XIII. That after an expiry of almost 9.5 years from the due date of possession vide letter dated 20.11.2024 the respondents issued a conditional offer of possession for the complainant's unit. Vide this they informed the complainant that they have received the occupancy certificate in respect of phase 1 of the project. One of the conditions imposed by the respondents was to execute an indemnity cum undertaking, which is legally untenable. The have also increased the super area from 1295 sq.

ft. to 1422 sq. ft. without any increase in the carpet area and without the consent of the complainant the allottee in this case.

- XIV. Further the offer of possession also includes unreasonable, unjustified & illegal demands, such as car parking charges, club membership charges, IFMS, possession charges, basic sale price increase due to cost escalation in construction, Interest Charges, VAT/Service Tax/GST charges.
- XV. That the original plan consisted of a community center. However, the respondents have illegally and unilaterally changed the original plan and replaced the community center with club house.
- XVI. That the respondents sent various letters for payment of same illegal charges. The respondents sent another letter dated 07.12.2024 to the complainant. The complainant sent a letter dated 08.12.2024 to bring out the discrepancies in the demand letters via email and speed post. However, the respondents did not reply to the same, numerous calls were also made to the provided numbers in the letter, but no one responded.
- XVII. That the respondents in a unilateral decision issued a cancellation letter dated 13.12.2024. This cancellation is illegal & unjust when the complainant has already paid the 100% consideration earlier only.
- XVIII. That the alleged offer of possession issued by the respondents is more of a paper formality which has no legal validity and is therefore unacceptable to the complainant. There is a deliberate attempt by the respondents to extract additional payments

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).

- i. Direct the respondents to handover the legal and rightful physical possession of the flat along with car parking to the complainant.
 - ii. Direct the respondents to pay interest @ prescribed rate @ 11.10% per annum.
 - iii. To set aside the arbitrary charges pertaining to car parking, club membership, IFMS, possession charges, cost escalation, interest charges, VAT/Service Tax/GST, vide letters dated 20.11.2024, 29.11.2024, 07.12.2024.
 - iv. To set aside the holding charges.
 - v. To charge only as per carpet area not as per super area.
 - vi. To award compensation for mental agony, despair and giving a false sense of hope causing emotional harassment to the complainant of Rs. 5,00,000/-.
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. The present complaint was filed on 11.02.2025. The authority observes that vide proceedings dated 23.05.2025, 22.08.2025 and 24.10.2025 none on behalf of respondents appeared, not filed the reply of the complaint in the registry of the Authority till date. Despite multiple opportunities for filing reply on 23.05.2025, 22.08.2025 and 24.10.2025 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 off the defence of the respondents and proceeded ex parte vide order dated 31.10.2025.

7. 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 these undisputed documents and submission made by the parties.

D. Jurisdiction of the authority

8. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D.I Territorial jurisdiction

9. 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

10. 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.

11. 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:

- i. **Direct the respondents to handover the legal and rightful physical possession of the flat along with car parking to the complainant.**
12. The respondents have obtained the occupation certificate on 24.10.2024 and subsequently offered the possession on 20.11.2024 but till date not handed over the possession of the unit. The respondents are directed to handover physical possession of the subject unit within 30 days from the date of this order as occupation certificate of the project has already been obtained by it from the competent authority.
- ii. **Direct the respondents to pay interest @ prescribed rate @ 11.10% per annum.**
13. 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)

14. 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 **48 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)

15. **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.

16. 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.
17. 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., 31.10.2025 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.

18. 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;"*

19. 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.
20. 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 30.09.2015 the possession of the subject unit was to be delivered within 48 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 07.06.2016 further there shall be an additional grace period of 180 days after the expiry of 48 months

for applying and obtaining the occupation certificate in respect of the unit colony from the concerned authority.

21. 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."

22. 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 **07.12.2016**.

23. 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 30.09.2015 executed between the parties. The occupation certificate for the project was received on 24.10.2024. The respondents vide letter dated 20.11.2024 offered the possession of the unit.

24. 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., 07.12.2016 till offer of possession (20.11.2024) after obtaining occupation certificate plus two months i.e., 20.01.2025 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.

iii. To set aside the arbitrary charges pertaining to car parking, club membership, IFMS, possession charges, cost escalation, interest charges, VAT/Service Tax/GST, vide letters dated 20.11.2024, 29.11.2024, 07.12.2024.

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

iv. To set aside the holding charges.

26. The authority has decided this in the complaint bearing no. **4031 of 2019** titled as **Varun Gupta V/s Emaar MGF Land Ltd.** wherein the authority has held that the respondent is not entitled to claim holding charges from the complainant/allottee at any point of time even after being part of the buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.

27. Therefore, in light of the above, the respondents shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed.

v. To charge only as per carpet area not as per super area.

28. The Authority observes that clause 1.2 of the model agreement for sale mentioned as Annexure A in the Real Estate (Regulation and Development) Act, 2016 categorically provides that the total price for the unit alongwith parking (if applicable) based on carpet area. Further clause 1.7 of the model agreement for sale provides that any increase or decrease in area affects the price only if carpet area changes. No reference is made to super area. Therefore, the respondents are liable to charge only as per carpet area and not as per super area.

vi. To award compensation for mental agony, despair and giving a false sense of hope causing emotional harassment to the complainant of Rs. 5,00,000/-.

29. 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

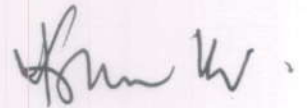
Pvt. Ltd. V/s State of UP & Ors. (Decided on 11.11.2021), has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer 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:

30. 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 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., 07.12.2016 till offer of possession 20.11.2024 after obtaining occupation certificate plus two months i.e., 20.01.2025 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. The respondents are not entitled to charge holding charges from the complainant/ allottee at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in Civil Appeal nos. 3864-3889/2020 on 14.12.2020.
31. Complaint as well as applications, if any, stands disposed off accordingly.
32. File be consigned to registry.



(Arun Kumar)
Chairman

HARERA
GURUGRAM

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 31.10.2025