BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	:	**03 of 2025**
Date of Filing:		**08.01.2025**
Date of Decision:		**14.11.2025**

1. Sanjay Kumar Verma
2. Archna Verma

R/O: Flat no. 1202, Tower E, Heritage Max, Sector-102, Gurugram, Haryana - 122505 **Complainants**

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. Sukhbir Yadav Advocate for the complainants
Sh. Shubham Advocate for the respondent

ORDER

1. The present complaint has been filed by the complainants/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 complainants, 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.	402, 4th floor, tower-F [Page 46 of complaint]
6.	Unit area admeasuring	1695 sq. ft.
7.	Increased area	1874 sq. ft. (as per offer of possession dated 11.11.2024)
8.	Allotment Letter	03.08.2012 (page no. 46 of complaint)
9.	Date of flat buyers' agreement	19.01.2013 (page no. 47 of complaint)
10.	Payment Plan	Construction linked plan
11.	Date of approval of building plan	07.06.2012 [As per information obtained by planning branch]

12.	Possession clause	**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..."* [Page 59 of complaint]
13.	Due date of possession	07.12.2015 [including grace period of 180 days]
14.	Total sale consideration	Rs. 75,91,064/-
15.	Amount paid by the complainants	Rs. 67,18,701/-
16.	Occupation certificate	24.10.2024 (page no. 110 of complaint)
17.	Offer of possession (OP)	11.11.2024 (page no. 107 of complaint)

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:

I. That on 03.08.2012, the respondents issued an allotment letter confirming the allotment of unit no. 402 on the 4th floor of tower – F measuring 1695 sq. ft. area in the 'Capital Gateway" project of the respondents. The complainants had specifically chosen a unit located

in Tower E. However, the respondents unilaterally allotted a unit in Tower F.

II. That on 19.01.2013 itself, a pre-printed, arbitrary, unilateral, and one-sided builder buyer agreement was executed between the respondents and the complainants for said unit. As per clause no. 2.1 of agreement, the respondents were obligated to hand over the possession of the unit in question within an approximate period of 36 months from the date of sanction of the building plans of the said colony. The building plans of the project were sanctioned on 07.06.2012, therefore due date of possession was 07.06.2015.

III. Subsequent to the initial payment, the complainants diligently continued to pay the remaining installments as per the demand raised by the respondent(s). As per the records, the complainants paid a total sum of Rs. 67,38,670/-, which accounts of more than 100% of the total sale consideration. The payment details are substantiated by the demand letter dated 07.12.2024 issued by the respondent. Despite paying more than 100% of the total sale consideration, the complainants are yet to receive physical possession of the unit.

IV. Despite numerous efforts, the complainants have been unable to obtain physical possession of the allotted flat since 2015. Repeated visits were made to the respondent's office and the construction site, only to be met with disappointment. The complainants were consistently kept in the dark regarding the actual state of construction. Although the towers appear to be built, no discernible progress has been observed on finishing and landscaping work, leaving the project's status unclear.

V. Thereafter aggrieved by the acts, conducts, and deficiencies of the builder/Respondent(s), the complainants filed a complaint before the Hon'ble Haryana Real Estate Regulatory Authority, Gurugram, under section 31 of the Real Estate (Regulation & Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation & Development) rules, 2017, against the respondents on 14.10.2020 vide complaint no. 3423 of 2020 for the possession of the said flat along with prescribed interest per annum from the promissory date of delivery of the flat in question till the actual date of delivery of the flat. The Hon'ble Haryana Real Estate Regulatory Authority, Gurugram, pronounced the final decision/judgment on the above-said complaint on 09.07.2021.

VI. That the respondents failed to comply with the directions of this Hon'ble Authority. As a result, the complainants filed an execution petition (No. 4569 of 2021) to ensure compliance with the order. That under the proceedings, on 04.01.2023, the Hon'ble Court of Adjudicating Officer directed the issuance of a Recovery Certificate. Consequently, Recovery Certificate No. 125 dated 27.03.2023 for Rs. 51,25,780/- till 28.02.2023 was issued. As per the updated calculations following the recovery certificate, the respondents are obligated to pay delay possession charges amounting to Rs.27,14,567/-.

VII. That the complainants have been consistently visiting the respondent's office and the construction site, endeavouring to obtain possession of the flat. However, despite numerous visits, emails, and letters, these efforts have been in vain.

VIII. That the respondents failed to fulfil their obligations and deceived the complainants with false assurances. Despite repeated requests, the complainants did not get physical possession of their unit, with all pleas falling on deaf ears. After an expiry of 9.5 years from the due date of possession, on 11.11.2024, the respondent(s) issued the offer of possession for the complainants' unit. The alleged offer of possession issued by the respondents is merely a paper formality, lacking any legal validity, and is therefore unacceptable to the complainants. The offer of possession also includes unreasonable and unjustified demands, such as:

- Cost Escalation in construction of Rs. 28,67,937/- and on account of increase in area. It is germane to highlight here that the area of the unit was increased without informing the allottee and in the absence of the consent of the allottee/complainant. Hence, the said demand is illegal and incorrect and not a part of the BBA as well.
- Possession charges of Rs. 7,49,600/- which are baseless and unknown.
- Interest charges of Rs. 2,13,681/- which are unjustified.
- Service Tax/VAT/GST charges of Rs. 8,02,492/- which are unlawful and unjustified.

IX. Thus, the offer of possession dated 11.11.2024 is null and void, being legally invalid. Furthermore, the notice of possession included multiple charges beyond the scope of the agreement.

X. That the DTCP issued a conditional occupation certificate on 24.10.2024 for Tower A to G and EWS 1 & 2 and Commercial – 1, more so, the respondent increased the area of the flat but as per said OC the

Achieved FAR is less than the Sanctioned FAR, therefore, there is no chance of increase in the area. Furthermore, the department imposed composition fees of Rs. 19,99,942/- for violations in the building plans. That as per the achieved FAR the area per flat is 1256.135 sq. ft. but the respondent presented the area of 1874 sq. ft.

XI. That on 13.11.2024, the respondents shared the said offer of possession with the complainants through an email as well. Upon receiving the said email, the complainant (Sanjay Kumar Verma) on 17.11.2024 sent a detailed email cum reply to the Respondents, highlighting concerns regarding the unreasonable and incorrect charges levied in the offer of possession letter dated 11.11.2024.

XII. That the respondents deliberately ignored the complainants' correspondence and efforts, failing to provide any response. Instead, they sent a reminder on 07.12.2024, demanding payment of their unreasonable and unjustified demands outlined in their offer of possession letter dated 11.11.2024. The complainant's email dated 17.11.2024 remained unanswered, as the respondents failed to provide a response.

XIII. That the execution petition was filed, the respondent still hadn't handed over possession of the complainant's unit. As a result, the complainants, being the decree-holder, calculated the delayed possession charges from the original due date of possession to 07.06.2015, and then from that date to the date of issuance of the offer of possession letter dated 11.11.2024 on the amount paid by the complainants. As per the calculations, the decretal amount is Rs.27,14,567/- payable by the respondents.

XIV. That the respondents initially failed to deliver possession of the complainants' unit by the due date, prompting the complainants to file complaint no. 3423 of 2020, seeking possession and delayed possession charges. Despite obtaining a favourable decree on 09.07.2021, the respondents refused to comply, forcing the complainants to file execution petition no. 4569 of 2021.

XV. Undeterred, the respondents continued to abuse their dominant position. They did not hand over possession on or before the due date of possession and subsequently issued an unlawful offer of possession, laden with unreasonable and exorbitant demands. Furthermore, the respondents threatened to cancel the unit if the complainants failed to pay the unjustified demands outlined in the offer of possession, which is a clear injustice. In an interim order dated 20.11.2024, passed in the execution petition proceedings filed by the complainants, the respondent's counsel undertook before the Hon'ble Court of Adjudicating Officer that they would not demand payments from the complainants until further orders from the Hon'ble High Court. In light of the undertaking given by the respondents' counsel, they are estopped from demanding payments from the complainants towards their illegal and unjustified demands. Furthermore, the respondents are not entitled to cancel the complainants' unit and any attempt to do so would be in contravention of their undertaking before the Hon'ble Court.

XVI. That despite providing an undertaking before the Hon'ble Court, the respondent, in a shocking and arbitrary move, cancelled the complainant's unit via their letter dated 13.12.2024. This cancellation

was purportedly due to non-payment of the demand raised by the respondent in the offer of possession letter dated 11.11.2024.

XVII. That the respondents' actions reek of duplicity, as evidenced by their email dated 18.12.2024, wherein they withdrew their cancellation letter dated 13.12.2024. The reason cited was that "M/s Catalyst Trusteeship Limited had filed a petition in the High Court of Chandigarh, bearing No. CWP No. 15494 of 2024, in which the complainants are also a party". Notably, the respondents withdrawal of the cancellation letter is temporary and without prejudice to their right to pursue recovery of the unjustified demands from the complainants.

XVIII. That despite the complainants paying more than 100% of the total sale consideration of the flat and being ready and willing to pay the legitimate demand (if any) after adjustment of delayed possession charges, the respondents have arbitrarily increased the area of the complainant's unit resulting in unreasonable increase of the cost of the unit in question which is not liable to be paid by the complainants. Moreover, the delayed possession charges as per the calculations are far more than the illegal demand of the respondents. The complainants are willing to settle legitimate dues and take possession of their unit. To facilitate this, the respondents are required to issue a fresh and genuine demand notice, enabling the complainants to make the necessary payment for the outstanding dues after adjustment of the delayed possession.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).

i. To set aside the alleged offer of possession dated 11.11.2024.

ii. Direct the respondents to revoke the cancellation letter dated 13.12.2024 issued against the unit of the complainants.

iii. Direct the respondents to not create any third-party rights in the unit of the complainants.

iv. Direct the respondents to issue a fresh, genuine, and legal offer of possession with a reasonable demand to be paid by the complainants after adjustment of the delayed possession charges/interest.

v. Direct the respondents to refrain from charging cost escalation of Rs. 28,67,937/- in construction.

vi. Direct the respondents to refrain from charging possession charges of Rs. 7,49,600/- which are baseless and unknown.

vii. Direct the respondents to refrain from charging Interest charges of Rs. 2,13,681/- which are unjustified.

viii. Direct the respondents to refrain from charging service Tax/VAT/GST charges of Rs. 8,02,492/- which are unlawful and unjustified.

ix. Direct the respondents to provide area calculation as per Law.

x. Direct the respondents to issue fresh demand after adjustment of delayed possession interest till actual handing over of the unit or valid offer of possession.

xi. Direct the respondents to hand over peaceful physical possession of the unit along with car parking.

xii. Direct the respondents to execute the conveyance deed.

xiii. Direct the respondents to refrain from charging club membership charges as there is no club in the project.

xiv. Direct the respondents to refrain from charging maintenance charges till the handover of the unit or a valid offer of possession.

xv. Direct the respondents to refrain from charging holding charges, even though it is part of the BBA, in terms of Supreme Court judgement in Civil Appeal No. 3864-3999/2020.

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 08.01.2025. The counsel for the respondents neither appeared nor filed the reply in the complaint. Despite multiple opportunities for filing reply on 17.01.2025, 21.02.2025, 18.04.2025, 18.07.2025, 17.10.2025, 07.11.2025 and 14.11.2025. Despite specific directions, 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 defence of the respondents was struck off.

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 complainants at a later stage.

E. Findings on the relief sought by the complainants:

(i) **To set aside the alleged offer of possession dated 11.11.2024.**

(ii) **Direct the respondents to revoke the cancellation letter dated 13.12.2024 issued against the unit of the complainants.**

(iii) **Direct the respondents to not create any third-party rights in the unit of the complainants.**

(iv) Direct the respondents to issue a fresh, genuine, and legal offer of possession with a reasonable demand to be paid by the complainants after adjustment of the delayed possession charges/interest.

(v) Direct the respondents to refrain from charging cost escalation of Rs. 28,67,937/- in construction.

(vi) Direct the respondents to refrain from charging possession charges of Rs. 7,49,600/- which are baseless and unknown.

(vii) Direct the respondents to refrain from charging Interest charges of Rs. 2,13,681/- which are unjustified.

(viii) Direct the respondents to refrain from charging service Tax/VAT/GST charges of Rs. 8,02,492/- which are unlawful and unjustified.

(ix) Direct the respondents to provide area calculation as per Law.

(x) Direct the respondents to issue fresh demand after adjustment of delayed possession interest till actual handing over of the unit or valid offer of possession.

(xi) Direct the respondents to hand over peaceful physical possession of the unit along with car parking.

(xii) Direct the respondents to execute the conveyance deed.

(xiii) Direct the respondents to refrain from charging club membership charges as there is no club in the project.

(xiv) Direct the respondents to refrain from charging maintenance charges till the handover of the unit or a valid offer of possession.

(xv) Direct the respondents to refrain from charging holding charges, even though it is part of the BBA, in terms of Supreme Court judgement in Civil Appeal No. 3864-3999/2020.

12. The above mentioned reliefs are interrelated to each other. Accordingly, the same are being taken up together for adjudication.

Maintainability of complaint:

13. In the present complaint, the original allottee booked a unit bearing no. 402 on 4th floor in Tower F thereafter the said unit was transferred in favour of the complainants. The builder buyer agreement was executed between the parties on 19.01.2013. The occupation certificate for the project was received on 24.10.2024 and subsequently unit was offered to the complainants vide letter dated 11.11.2024.

14. The complainants have filed the present complaint and has sought specific relief w.r.t the setting aside of the cancellation letter dated 13.12.2024. The complainants have submitted that complainants earlier filed a complaint bearing no. CR/3423/2020 seeking handover of possession and payment of delay possession charges and vide order dated 09.07.2021, the said reliefs were granted in favour of the complainants. Thereafter when respondents failed to adhere to the order complainants filed an execution bearing no 4569/2021 with Adjudicating officer. The decretal amount is Rs. 51,25,780/- which is payable by the respondents. Meanwhile, occupation certificate was received by the respondents in the later months of the year 2024 and offer of possession was made to the complainants. The respondents have 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 complainants.

15. The Authority observes that the complainants have previously filed a complaint bearing no. CR/3423/2020 against the subject unit before the Authority seeking possession along with payment of delay

possession charges. Thereafter, vide order dated 09.07.2021, the respondents were directed to handover possession and to pay delay possession charges w.e.f. 07.06.2015 till the date of handing over of possession. The respondents were further directed to not to charge anything from the complainants which is not part of the buyer's agreement.

16. 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 09.07.2021 in the former complaint bearing no. CR/3423/2020. Further, there was a direction to the respondents in the said order that they shall not charge anything which is not part of buyer's agreement. 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.]"*

17. 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.

18. Complaint as well as applications, if any, stands disposed off accordingly.

19. File be consigned to registry.

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.11.2025