

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

Complaint no.	:	04 of 2025
Date of Filing:		08.01.2025
Date of Decision:		14.11.2025

1. Rekha

2. Neeraj Hooda

R/O: Flat no. D-702, Shri Durga CGHS Ltd.,
Plot no. 6A, Sector-11, Dwarka, South West
Delhi, Delhi - 110078

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
Sh. Shubham

Advocate for the complainants
Advocate for the respondent

**HAREERA
GURUGRAM**

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.	1103, 11 th floor, tower-F [Page 37 of complaint]
6.	Unit area admeasuring	1760 sq. ft.
7.	Increased area	2049 sq. ft. (as per offer of possession dated 11.11.2024)
8.	Allotment Letter	13.11.2014 (page no. 37 of complaint)
9.	Date of flat buyers' agreement	13.11.2014 (page no. 41 of complaint)
10.	Tripartite agreement	08.03.2018 (page no. 78 of complaint)

11.	Payment Plan	Construction linked plan
12.	Date of approval of building plan	07.06.2012 [As per information obtained by planning branch]
13.	Possession clause	<p><u>2. Possession</u></p> <p><i>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..."</i></p> <p>[Page 49 of complaint]</p>
14.	Due date of possession	07.12.2015 [including grace period of 180 days]
15.	Total sale consideration	Rs. 1,39,90,560/- (as per SOA at page 107 of complaint)
16.	Amount paid by the complainants	Rs. 84,32,384/- (as per SOA at page 107 of complaint)
17.	Occupation certificate	24.10.2024 (page no. 112 of complaint)
18.	Offer of possession (OP)	11.11.2024 (page no. 106 of complaint)
19.	Cancellation letter	13.12.2024 (page no. 109 of complaint)

B. Facts of the complaint

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

- I. That the original allottee i.e., Mr. Rajesh Talreja purchased flat no. F-1103, measuring 1760 sq. ft. from Tashee Land Developers Private Limited. On 30.12.2010, the original allottee submitted a pre-printed application form. The original allottee booked the said flat under the construction link plan.
- II. That on 11.11.2014, the original allottee issued a formal letter requesting the transfer of rights and interest in residential unit no. 1103, tower-F, measuring 1760 square feet, situated in Capital Gateway, Sector-111, Gurgaon.
- III. That subsequently on 13.11.2014, the respondent no. 1 issued an allotment letter in respect of said unit in favour of complainants i.e. Rekha and Neeraj Hooda.
- IV. That on 13.11.2014 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 07.12.2015 including 180 days grace period. That this Hon'ble Authority in CRN 128 of 2020 titled "*Rekha Hooda and Neeraj Hooda Vs. Tashee Land Developers Private Limited & Anr.*" has deemed 07.12.2015 as the due date of possession for the complainant's unit. The sale consideration of the unit is Rs. 72,09,800/-.

V. That the complainants availed a home loan amounting to Rs 65,74,000/- from State Bank of India, Branch - Janakpuri, New Delhi and a tripartite agreement was entered into between complainants, respondent no.1 and the bank on 08.03.2018.

VI. That the respondent(s) continued to raise demands and the complainants, in good faith made payments in response to each demand raised by the respondents against their unit. Notably, despite fulfilling all payment obligations the complainants repeatedly requested the respondents to hand over possession of their unit, as the stipulated deadline had lapsed. Regrettably, the respondents failed to provide any meaningful updates or communication regarding the possession of the unit leaving the Complainants in a state of uncertainty.

VII. Despite having paid more than 100% of the total consideration, amounting to Rs. 84,32,384/- as per the payment schedule of the builder buyer agreement, the complainants observed that there was no progress in the construction of their unit for an extended period. The complainants, being ready and willing to pay the remaining instalments (if any), repeatedly raised their grievances with the respondents, emphasizing the need for progress in the construction of their unit.

VIII. 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. The respondents failed to deliver the flat despite many promises which is a serious wrongdoing.

IX. That the complainants, being aggrieved by the respondent's actions and misconduct, approached the Hon'ble Authority and filed a complaint vide CRN 128 of 2020 titled "**Rekha Hooda and Neeraj Hooda versus Tashee Land Developers Pvt Ltd. & Anr**". The complainants sought relief to obtain possession of their unit, along with delayed possession charges. This Hon'ble Authority passed an order on the said complaint on 09.07.2021.

X. That the respondents failed to fulfill their obligations and deceived the complainants with false assurances. Despite repeated requests, the complainants could not get physical possession of their unit, with all pleas falling on deaf ears. After an expiry of 09 years from the due date of possession, on 11.11.2024 the respondent(s) issued the offer of possession for the complainant's 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:

- Basic sale price increase due to cost escalation in construction amounting to Rs. 34,77,443/- and on account of increase in area. The area of the unit was increased without informing the allottee and in 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. 8,19,600/- which are baseless and unknown.
- Interest charges of Rs. 4,76,628/- which are highly unjustified.

- Service Tax/VAT/GST charges of Rs. 9,98,191/- which are unlawful and unjustified.

XI. Moreover, the total consideration mentioned at clause 1.2 of the BBA, was Rs 70,77,800/- which was inclusive of basic price, EDC, IDC, PLC, club membership and car parking, whereas in the said offer of possession the respondents has separately demanded these charges.

XII. 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.

XIII. That the complainants, being the decree-holders, are entitled for the delayed possession charges from the original due date of possession i.e. 07.12.2015 till 24.11.2020 and then from 25.11.2020 till 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 as on 11.11.2024 is Rs. 84,98,172/- payable by the respondents.

XIV. That the delayed possession charges are still payable to the complainants and the unreasonable demand raised by the respondents/builders in their offer of possession are liable to be struck off. The complainants are willing to settle legitimate dues and take possession of their unit.

XV. That the respondents initially failed to deliver possession of the complainant's unit by the due date prompting the complainants to file complaint no. 128 of 2020, seeking possession and delayed possession charges. Despite obtaining a decree on 24.11.2020 in favour of the complainants, the respondents have refused to comply with the order.

Undeterred, the respondents continued to abuse their dominant position.

XVI. That the DTP issued a conditional occupation certificate on 24.10.2024 for Tower A to G and EWS 1 & 2 and Commercial - 1, Moreso, the respondents 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. It is further pertinent to mention here 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.

XVII. 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. 34,77,443/- in construction.
- vi. Direct the respondents to refrain from charging possession charges of Rs. 8,19,600/- which are baseless and unknown and any other charges undefined, vicious & other charges such transfer / bounce charges as mentioned in his current offer of possession letter (s).
- vii. Direct the respondents to refrain from charging Interest charges of Rs. 4,76,628/- which are unjustified.
- viii. Direct the respondents to refrain from charging service Tax/VAT/GST charges of Rs. 9,98,191/- 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. 34,77,443/- in construction.
- (vi) Direct the respondents to refrain from charging possession charges of Rs. 8,19,600/- which are baseless and unknown and any other charges undefined, vicious & other charges such transfer / bounce charges as mentioned in his current offer of possession letter(s).
- (vii) Direct the respondents to refrain from charging Interest charges of Rs. 4,76,628/- which are unjustified.
- (viii) Direct the respondents to refrain from charging service Tax/VAT/GST charges of Rs. 9,98,191/- 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 complainants booked a unit bearing no. 1103 on 11th floor in tower-F. The builder buyer agreement was executed between the parties on 13.11.2014. 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/128/2020 seeking handover of possession and payment of delay possession charges and vide order dated 24.11.2020, the said reliefs were granted in favour of the complainants. The 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/128/2020 against the subject unit before the Authority seeking possession along with payment of delay possession charges. Thereafter, vide order dated 24.11.2020, the respondents were directed to handover possession and to pay delay possession charges w.e.f. 07.12.2015 till the date of offer 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 24.11.2020 in the former complaint bearing no. CR/128/2020. 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.

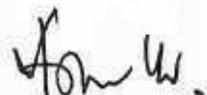
1[Explanation VII.—The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding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

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Dated: 14.11.2025