

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

Complaint no. :	6430 of 2024
Order reserved on:	12.09.2025
Order pronounced on:	10.10.2025

Syed Samir Ahmed

R/O: Flat no. 562, The Bahawalpur CGHS Ltd.,
Plot no. 1, Sector-4, Dwarka, New Delhi-
110075

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. Sukhbir Yadav
Sh. Rishabh Jain

Advocate for the complainant
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-D [Page 120 of complaint]	
6.	Unit area admeasuring Increase in area: 10.5%	<i>initially allotted super area -</i> 1695 sq. ft. <i>[as per offer of possession at page 120 of complaint]</i>	<i>Increased super area-</i> 1874 sq. ft. <i>[as per offer of possession at page 120 of complaint]</i>
7.	Date of booking in favour of original allottee Mr. Deepak Sharma/Balram Singh	18.01.2011 [Page 120 of complaint]	
8.	Endorsement/Subsequent allottee/ Transfer of rights in favour of Mr. S. Salim Ahmed (Syed Samir Ahmed)	31.10.2011 [Page 47-56 of complaint]	

9.	Date of flat buyers' agreement	29.01.2013 [Page 61 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	<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 69 of complaint]</p>
13.	Due date of possession	07.12.2015 [including grace period of 180 days]
14.	Basic sale consideration	Rs.62,77,900/- [As per statement of account at page 120 of complaint]
	Total sale consideration	Rs.1,38,00,183/- [as per offer of possession at page 120 of complaint]
15.	Amount paid by the complainant	Rs.71,21,965/- [As per statement of account at page 120 of complaint]
16.	Occupation certificate	24.10.2024 [Page 122 of complaint]
17.	Offer of possession (OP)	11.11.2024

18.	Cancellation letter	09.12.2024
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B. Facts of the complaint

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

- I. That the complainant was searching for a residential flat and came across "Tashee Capital Gateway" promoted by Tashee Land Developers Private Limited. In 2011, the complainant received a marketing call from Tashee Land Developers Pvt Ltd. regarding investment in their residential group housing project, "Tashee Capital Gateway," located in Sector-111, Gurugram, Haryana. The complainant visited the project site with his family and met with the marketing staff and office bearers of the respondents. The local staff provided a brochure, application form, and payment plan, assuring possession within 36 months.
- II. That the local representative of the developer allured the complainant with a brochure and various advantages like top-notch amenities and particularly timely completion of the said project promised by the developer. After a detailed discussion, the complainant chose one unit i.e., flat no. 401 on the 4th floor of tower - D, in the project. The representative of the respondents stated that said unit has been jointly booked/undertaken by Mr. Deepak Sharma and Balram Singh, therefore, said unit is available for resale. It was represented by the representative of the respondents that they will facilitate the said transaction and it will be treated like a fresh booking and a fresh BBA shall be executed with the complainant.
- III. That relying on the respondent's representations, the complainant signed and submitted an application form on 18.10.2011. The

complainant purchased a 1695 sq. ft. flat under a construction-linked payment plan, with a total sale consideration of Rs. 70,40,585/- (including BSP, Car Parking, IFMS, and PLC). The breakup of the total cost of the complainant's unit is produced below:

Area	1695	
BSP	3350	56,78,250/-
Development charges	328	5,55,960/-
Club membership		1,50,000/-
IFMS	75	1,27,125/-
Car Parking		2,75,000/-
PLC	50	84,750/-
Fire Fighting Charges + Power Back up	100	1,69,500/-
	Total	70,40,585/-

IV. That on 29.01.2013, an arbitrary and one-sided flat buyer agreement was executed between the respondents and the complainant. As per clause 2 sub-clause 2.1 of the BBA, the respondents have to give possession of the flat within 36 months from the date of sanction of the building plans of the said colony. The building plans were approved on 07.06.2012 therefore, the due date of possession was 07.06.2015.

V. Subsequent to the initial payments, the complainant diligently continued to pay the remaining instalments as per the demand raised by the respondent(s). As per the records, the complainant paid a total sum of Rs. 71,21,966/-, which accounts for more than 100% of the total sale consideration.

VI. Despite numerous efforts, the complainant has been unable to obtain possession of the allotted flat since 2015. Repeated visits were made to the office of respondents and the construction site. The complainant

was consistently kept in the dark regarding the actual stage of construction.

VII. Thereafter aggrieved by the acts, conducts, and deficiencies of the builder/respondent(s), the complainant 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 vide complaint no. 3276 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 Authority pronounced the final decision on the above-said complaint on 09.07.2021.

VIII. That the respondents failed to comply with the directions of this Hon'ble Authority. As a result, the complainant filed an execution petition No. 5064 of 2021 to ensure compliance with the order. That vide proceedings dated 19.12.2022, the Hon'ble Court of Adjudicating Officer directed the issuance of a recovery certificate. Consequently, recovery certificate no. 520 dated 06.10.2023 for Rs. 21,86,753/- till, 15.09.2023. As per the updated calculations following the recovery certificate, the respondents are obligated to pay delay possession charges amounting to Rs. 23,79,923/-.

IX. That the respondents failed to fulfil their obligations and deceived the complainant with false assurances. Despite repeated requests, the complainant did not get physical possession of his unit, with all the pleas falling on deaf ears. After an expiry of 9.5 years from the due date of possession the respondent(s) issued the offer of possession on

11.11.2024. This offer of possession is conditional, requiring the complainant to execute an indemnity cum undertaking, which is legally untenable. Furthermore, the respondents have unilaterally increased the area of the complainant's unit without justification or clarification, resulting in an increased cost. This appears to be a deliberate attempt by the respondents to extract additional payments. The offer of possession also includes unreasonable and unjustified demands, such as:

Cost Escalation in construction of Rs. 33,12,962/- on account of increase in area. 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. 13,56,470/- which are unjustified.
- Service Tax/VAT/GST charges of Rs. 8,27,021/- which are unlawful and unjustified.

X. 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. It was also conditional upon the complainant's acceptance of a pre-drafted indemnity cum undertaking and declarations. The respondents are demanding an unreasonable demand of Rs. 66,78,219/-. Furthermore, the respondents are obligated to provide a detailed justification for the interest charges they are levying, including specifics on the payments

to which these interest charges pertain. Additionally, they must furnish accurate area calculations to support their demands.

- XI. 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 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.
- XII. That on 13.11.2024, the respondents again shared the said offer of possession with the complainant through email. In response, the complainant sent a detailed email to the respondents, highlighting concerns regarding the unreasonable and incorrect charges levied in the offer of possession letter dated 11.11.2024.
- XIII. That the respondents deliberately ignored the complainant's correspondence and efforts, failing to provide any response. The respondents again sent a reminder on 07.12.2024, insisting on payment of their incorrect demands. Further to highlight that reminder demand letter dated 07.12.2024 was further inflated to Rs. 86,87,781/- from earlier Rs. 66,78,219/-.
- XIV. That the delayed possession charges as per the calculations are far more than the actual/genuine amount payable by the complainant to the respondents/builders as per their offer of possession. The complainant is willing to settle legitimate dues and take possession of his unit. To facilitate this, the respondents are required to issue a fresh and genuine demand notice, enabling the complainant to make the necessary payment for the outstanding dues. Furthermore, the

respondents are also required to issue the fresh demand notice after adjustment of the above-stated delayed possession charges.

XV. That the respondents in a shocking and arbitrary move cancelled the complainant's unit via their letter dated 09.12.2024. Despite sending numerous emails, the respondents callously ignored the complainant's legitimate concerns and queries. The complainant has already made payments exceeding 100% of the total sale consideration, demonstrating his commitment to the purchase. In spite of this, the respondents have continued to raise unjustified demands, cancelled the complainant's unit arbitrarily, and shown a complete lack of regard for the complainant's rights and interests.

XVI. That the delayed possession charges as per the updated calculation following the recovery certificate dated 06.10.2023 are far more than the unreasonable demand raised by the respondents/builders in their offer of possession. The complainant is willing to settle legitimate dues (if any) and take possession of his unit. To facilitate this, the respondents are required to issue a fresh and genuine demand notice, enabling the complainant to make the necessary payment for the outstanding dues. Furthermore, the respondents are also required to issue the fresh demand notice after adjustment of the above-stated delayed possession charges.

C. Relief sought by the complainant:

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

- To set aside the alleged offer of possession dated 11.11.2024.
- Direct the respondents to revoke the cancellation letter dated 09.12.2024 issued against the unit of the complainant.

- iii. Direct the respondents to not create any third-party rights in the unit of the complainant.
- iv. Direct the respondents to issue a fresh, genuine, and legal offer of possession with a reasonable demand to be paid by the complainant after adjustment of the delayed possession charges/interest.
- v. Direct the respondents to refrain from charging cost escalation of Rs. 33,12,962/- in construction.
- vi. Direct the respondents to refrain from charging possession charges of Rs. 7,49,600/- 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. 13,56,470/- which are unjustified.
- viii. Direct the respondents to refrain from charging service Tax/VAT/GST charges of Rs. 8,27,021/- which are unlawful and unjustified.
- ix. Direct the respondents to provide verifiable / measurable 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 at earliest not exceeding 3 months.
- 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 respondent party 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 respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.
6. The present complaint was filed on 03.01.2025. The counsel for the respondents neither appeared nor filed the reply in the complaint. Despite multiple opportunities for filing reply on 07.02.2025, 11.04.2025. 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, in view of order dated 04.07.2025, 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 complainant at a later stage.

E. Findings on the relief sought by the complainant:

- (i) **To set aside the alleged offer of possession dated 11.11.2024.**
- (ii) **Direct the respondents to revoke the cancellation letter dated 09.12.2024 issued against the unit of the complainant.**

- (iii) Direct the respondents to not create any third-party rights in the unit of the complainant.
- (iv) Direct the respondents to issue a fresh, genuine, and legal offer of possession with a reasonable demand to be paid by the complainant after adjustment of the delayed possession charges/interest.
- (v) Direct the respondents to refrain from charging cost escalation of Rs. 33,12,962/- in construction.
- (vi) Direct the respondents to refrain from charging possession charges of Rs. 7,49,600/- 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. 13,56,470/- which are unjustified.
- (viii) Direct the respondents to refrain from charging service Tax/VAT/GST charges of Rs. 8,27,021/- which are unlawful and unjustified.
- (ix) Direct the respondents to provide verifiable / measurable 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 at earliest not exceeding 3 months.

(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 respondent party 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. 401 on 4th floor in Tower D and thereafter the said unit was transferred in favour of the complainant on 31.10.2011. The builder buyer agreement was executed between the parties on 29.01.2013. The occupation certificate for the project was received on 24.10.2024 and subsequently unit was offered to the complainant vide letter dated 11.11.2024.

14. The complainant has filed the present complaint and has sought specific relief w.r.t the setting aside of the cancellation letter dated 09.12.2024. The complainant has submitted that complainant earlier filed a complaint bearing no. CR/3276/2020 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 complainant. Thereafter when respondents failed to adhere to the order complainant filed an execution bearing no 5064/2021 with Adjudicating officer. The decretal amount is Rs. 23,79,923/- which is payable by the respondents. 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.

15. The Authority observes that the complainant has previously filed a complaint bearing no. CR/3276/2020 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 complainant 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/3276/2020. Further, there was a direction to the respondent 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

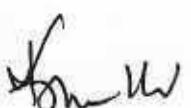
judicata in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.]"

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.



HARERA
GURUGRAM

Haryana Real Estate Regulatory Authority, Gurugram



(Arun Kumar)
Chairman

Dated: 10.10.2025