

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

Complaint no.	:	6129 of 2024
Date of Filing:		13.12.2024
Date of Decision:		21.11.2025

Amit Arora

R/O: B-2, Surajmal Vihar, New Delhi-110092

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. Aditya Gupta

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.	Project area	10.462 acres
3.	Nature of the project	Group Housing Colony
4.	RERA Registered or not	Registered Vide no. 12 of 2018 dated 10.01.2018 valid upto 31.12.2020 (for phase I) 31.12.2021 (for phase II)
5.	DTCP License no.	34 of 2011 dated 16.04.2011 valid upto 15.04.2019
6.	Allotment Letter	18.01.2013 (page no. 24 of complaint)
7.	Buyer's agreement	22.01.2013 (page no. 25 of complaint)
8.	Unit no.	D-203, 2 nd floor (page no. 31 of complaint)
9.	Unit area admeasuring	1695 sq. ft. (page no. 31 of complaint)
10.	Increased super area	1874 sq. ft. (as per SOA at page no. 118 of complaint)
11.	Possession clause	1. 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.
12.	Approval of building plan	07.06.2012 (as per project details)
13.	Due date of possession	07.12.2015 (as per possession clause including grace period of 6 months)
14.	Sale consideration	Rs. 1,79,66,337/- (as per SOA at page no. 118 of complaint)
15.	Amount paid by the complainant	Rs. 70,86,837/- (as per SOA at page no. 118 of complaint)
16.	Occupation certificate	24.10.2024
17.	Offer of possession	11.11.2024 (page no. 117 of complaint)
18.	Cancellation letter	09.12.2024 (page no. 131 of complaint)

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
- I. That on 18.01.2013 the respondents allotted the unit bearing no. D-203 on 2nd Floor, in tower 'D' admeasuring 1695 sq. ft. in the project 'Capital Gateway' in favour of the complainant. Accordingly, the complainant herein is subsequent allottee of the unit in question.
 - II. That thereafter, a flat buyer's agreement dated 22.01.2013 was executed between the parties wherein as per clause 2.1, the possession was to be handed over within 36 months from date of sanction of building plans and other necessary government approvals + 180 days grace period, i.e. by 07.12.2015.
 - III. That thereafter, the complainant kept making payments in accordance with the demands raised by the respondents. Till date, the complainant has paid a total sum of Rs. 70,86,837/- in accordance with the demands

of the respondents as against the total BSP of Rs. 56,78,250/-.

- IV. That when the respondents failed in handing over the possession on the due date, i.e. 07.12.2015, the complainant visited the site only to find out that that the project was nowhere nearing completion. Subsequently, the complainant made several calls, held meetings with the respondents and wrote mails in order to find out the exact date of completion of the project and handover of possession but to no avail.
- V. That the complainant along with the other apartment owners regularly and repeatedly followed up with the representatives of the respondents and enquired about the status of the project. However, the representatives of the respondents on every occasion made false and vague assurances that the possession of the flat would be delivered soon and kept on prolonging the matter unjustifiably without any cogent reason thereby inflicting great mental agony and hardship upon the complainant.
- VI. That while the construction was going on at a very slow pace, the respondents kept raising demands by sending demand letters in complete contrast to the construction status. Further, upon refusing to make payments unless being demanded in consonance with the construction status and construction linked payment plan, the respondents threatened to impose hefty delayed payment charge to be compounded annually. The respondents informed vide letter dated 18.02.2017 that there was an increase in the super area from 1695 sq. ft. to 1874 sq. ft. and upon visiting the project site and upon further inquiry, the complainant came to know that there was no increase in the carpet

area of the unit and there was increase in super area only due to some increase in lift area and other common areas thus rendering the alleged increase in super area absolutely unjustified and aimed at defrauding the complainant of his hard earned money.

- VII. That the complainant had asked the respondents to clarify about the one-sided and unfair clauses in the agreement, namely stark contrast between the interest being charged by the respondents on the delayed payments and the delayed possession charges for which the complainant was entitled on account of delay in handing over possession in violation of the buyer's agreement, to which the latter verbally replied that the delayed payment interest, if any, will be charged on the basis of the agreement and the delay in handing over possession of the flat was beyond the control of respondents.
- VIII. That upon getting no respite from the respondents in terms of smooth construction progress and timely handover, the Complainant was constrained to file a complaint bearing no. RERA-GRG-2757-2019 before the Hon'ble Authority against the respondents seeking delayed possession charges.
- IX. That vide judgment dated 22.01.2020 passed an order with the directions to the respondents to pay delayed possession charges @ 10.20% per annum from the due date of 07.12.2015 till the date of order within 90 days of the order and thereafter, monthly interest on or before 10th of each subsequent calendar month.
- X. That the complainant then contacted the respondents seeking adherence to the order passed by the Hon'ble Authority but to no avail and having no other option left, the complainant was constrained to file execution

petition bearing no. RERA-GRG-2294-2023 against the respondents seeking execution of the judgment dated 22.01.2020 passed by the Hon'ble Authority for a decretal amount of Rs. 72,47,254/-.

- XI. That thereafter, after many hearings in the execution petition, vide order dated 01.08.2024, the adjudicating officer directed recovery of some amount (on pro rata basis) and an amount of Rs. 57,97,365/- was recovered from the respondents. At present, the execution proceedings are in continuance for the remaining amount.
- XII. That thereafter, the complainant received a letter dated 11.11.2024 thereby informing that occupation certificate for phase 1 of the project in question had been received and a fresh statement of account was issued wherein the complainant was asked to clear the dues in order to take physical possession of their unit. However, to the utter shock of the complainant, by way of said statement of account, the respondents had raised an invoice of Rs. 1,08,79,500/- that was almost double the basic sale price (BSP) of the unit in question.
- XIII. That by way of aforesaid letter dated 11.11.2024, the respondents sought to levy various unjustified charges namely-
- Increase in BSP from Rs. 56,78,250/- to Rs. 62,77,900/- on account of increase in super area without any actual increase in carpet area;
 - Car parking charges amounting to Rs. 2,75,000/- for stilt/open parking labeling stilt parking as covered parking;
 - Increase in EDC/IDC charges on account of increase in super area;

- Possession charges amounting to Rs. 1,40,550/-;
 - Basic sale price increase due to cost escalation in construction amounting to Rs. 33,12,962/-;
 - Interest charges amounting to Rs. 50,53,656/-
- XIV. That the complainant immediately contacted the office of the respondents by way of mails and calls in order to enquire about the said letter but again the respondents failed in giving any reply.
- XV. That from Nov'2024 till date, the complainant has been painstaking pursuing the respondents to waive off the unjustified charges and to complete the unit and offer a fresh offer of possession letter with fresh calculation after removing the unjustified charges, but all in vain. On 09.12.2024, the respondents raised another payment demand vide letter dated 07.12.2024 with additional amount of Rs. 31,87,893/- on account of 'LESS Balance DPC' thereby increasing the payable amount to Rs. 1,40,67,393/-. The said unjustified and arbitrary increase in payable amount totaling to triple of the BSP charges is out rightly illegal and solely an afterthought aimed at duping the complainant of his hard earned money and taking vengeance for the portion of decretal amount so recovered by the complainant.
- XVI. That thereafter, on 10.12.2024, the complainant received another letter dated 09.12.2024 titled as 'Intimation regarding Cancellation of your booking' whereby the respondents arbitrarily cancelled the booking of the unit in question of ground of non payment of the arbitrary demands so raised.
- XVII. That the respondents have breached the fundamental term of the contract by inordinately delaying in delivery of the possession as the

project was to be completed and possession to be handed over by 2015. The respondents has committed various acts of omission and commission by making incorrect and false statements in the advertisement material as well as by committing other serious acts as mentioned in preceding paragraph which itself highlights the serious misconduct on the part of respondents company.

XVIII. That the complainant has been severely exploited at the hands of the builder/respondents. The aforesaid series of events clearly portray the amount of harassment and mental agony the complainant has gone through right from the date of booking till date. Even after a lapse of more than 12 years from booking, the complainant has been left empty handed, under financial distress thereby duping the complainant of his hard earned money and causing him great mental trauma. Hence, this complaint.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
 - i. Direct the respondents to waive off arbitrary cost escalation charges namely:
 - Increase in EDC/IDC charges on account of increase in super area;
 - Increase in BSP on account of increase in super area;
 - Car parking charges amounting to Rs. 2,75,000/-
 - Possession charges amounting to Rs. 1,40,550/-;
 - Basic sale price increase due to cost escalation in construction amounting to Rs. 33,12,962/-;
 - Interest charges amounting to Rs. 50,53,656/-
 - 'LESS Balance DPC' amounting to Rs. 31,87,893/-.

- ii. Direct the respondents to charge only on the basis of the admeasuring carpet area of the unit in question and withdraw any payment demand on account of increase in super area.
 - iii. Direct the respondents to withdraw the cancellation letter dated 09.12.2024 and restore the unit in favour of the complainant with immediate effect.
 - iv. Direct the respondents to handover a complete unit to the complainant in accordance with the specifications mentioned in the agreement.
 - v. Direct the respondents to issue offer of possession post fresh calculation.
 - vi. Direct the respondents to not threaten the complainant for cancellation of unit.
 - vii. Direct the respondents to charge maintenance only upon actual handing over.
 - viii. Direct the respondents to not charge any holding charges from the complainant in future.
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 13.12.2024. 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, 21.03.2025, 16.05.2025 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, in view of order dated 16.05.2025, 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. Direct the respondents to waive off arbitrary cost escalation charges namely:
 - Increase in EDC/IDC charges on account of increase in super area;
 - Increase in BSP on account of increase in super area;
 - Car parking charges amounting to Rs. 2,75,000/-
 - Possession charges amounting to Rs. 1,40,550/-;
 - Basic sale price increase due to cost escalation in construction amounting to Rs. 33,12,962/-;
 - Interest charges amounting to Rs. 50,53,656/-
 - 'LESS Balance DPC' amounting to Rs. 31,87,893/-.
- ii. Direct the respondents to charge only on the basis of the admeasuring carpet area of the unit in question and withdraw any payment demand on account of increase in super area.
- iii. Direct the respondents to withdraw the cancellation letter dated 09.12.2024 and restore the unit in favour of the complainant with immediate effect.
- iv. Direct the respondents to handover a complete unit to the complainant in accordance with the specifications mentioned in the agreement.

- v. Direct the respondents to issue offer of possession post fresh calculation.
 - vi. Direct the respondents to not threaten the complainant for cancellation of unit.
 - vii. Direct the respondents to charge maintenance only upon actual handing over.
 - viii. Direct the respondents to not charge any holding charges from the complainant in future.
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 complainant booked a unit bearing no. 203 on 2nd floor in Tower D in the project of the respondents namely, Capital Gateway, sector- 111, Gurugram. The allotment letter dated 18.01.2013 was issued by respondents in favour of complainant. The builder buyer agreement was executed between the parties on 22.01.2013. 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/2757/2019 seeking handover of possession and payment of delay possession charges and vide order dated 22.01.2020, 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 2294/2023 with

Adjudicating officer. The decretal amount is Rs. 72,47,254/- 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 complainant. 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 complainant.

15. The Authority observes that the complainant has previously filed a complaint bearing no. CR/2757/2019 against the subject unit before the Authority seeking possession along with payment of delay possession charges. Thereafter, vide order dated 22.01.2020, the respondents were directed to handover possession and to pay delay possession charges w.e.f. 07.06.2015 till the date of offer 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 22.01.2020 in the former complaint bearing no. CR/2757/2019. 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.

HARERA
GURUGRAM



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.11.2025