

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

Complaint no. : 3610 of 2025
Date of complaint : 22.01.2025
Date of order : 13.01.2026

Surender Kumar,
R/o: - 1044, Apna Villa Apartment, Sector 10,
Dwarka, New Delhi.

Complainant

Versus

1. M/s KNS Infracon Private Limited.
Registered office at: 517A,
Nariman Manzil, 23, Barakhambha Road,
Connaught Place, New Delhi-110001
2. M/s Tashee Land Developers Pvt. Ltd
Registered Office at: - Flat no. 312, 3rd floor, Ansal
Bhawan Plot no. 16, Kasturba Gandhi Marg, Connaught
place, New Delhi

Respondents

CORAM:

Arun Kumar

Chairman

APPEARANCE:

Shri Surender kumar

None

None

Complainant in person

Respondent No.1

Respondent No.2

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 allottee 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.	Project name and location	'Capital Gateway, Sector-111, Gurugram (Phase 1)
2.	Project area	10.462 acres
3.	Nature of the project	Group Housing
4.	DTCP license no. and validity status	34 of 2011 dated 16.04.2011 valid upto 15.04.2024 Renewed vide letter dated 01.08.2024, valid upto 15.04.2029
5.	Name of licensee	KNS Infracon Pvt. Ltd. and others
6.	Unit no.	F-302, 3 rd floor, Tower-F, Unit type-3BHK [As per allotment at page 92 & FBA at page 100 of complaint]
7.	Unit area admeasuring	1695 sq. ft. (2pprox.) [Page 92 & 100 of complaint]
8.	Date of allotment	10.09.2014 [Page 92 of complaint]
9.	Date of Flat Buyers Agreement [FBA]	23.04.2016 [Page 98 of complaint]
10.	Payment Plan	Construction Linked Plan

		[Page 133 of complaint]
11.	Date of approval of building Plan of phase 1	07.06.2012 [As per information obtained by Planning Branch]
12.	Possession clause	<u>2. Possession</u> <i>2.1 "...THE First Party/Confirming Party proposes to handover the possession of the Flat to the Purchaser within approximate period of 48 months from the date of sanction of the building plans and other necessary Government approvals thereon, of the said Colony. The Purchaser agrees and understands that the First Party/Confirming Party shall be entitled to a grace period of 180 (One Hundred and Eighty) days, after the expiry of 48 months, for applying and obtaining the occupation certificate in respect of the Colony from the concerned authority."</i> [As per FBA at page 107 of complaint.]
13.	Due date of possession	07.06.2016 [As per information obtained by Planning Branch] [Note: Grace period of 180 days not allowed.]
14.	Consideration [inclusive of BSP, EDC, IDC, PLC if any, Club membership and for covered parking.]	Rs.68,47,355/- [As per FBA at Page 102 of complaint] [exclusive Electric connection, firefighting charges, power backup, IFMS]
15.	Amount paid by the complainant	Rs.52,40,266/- [As alleged in pleadings at page 15 of complaint] Rs.46,14,116/- [As per receipts attached at page 135-142 & 147 of complaint.]
16.	Occupation certificate	24.10.2024

	[Part OC for tower-A,B,C,D,E,F,G & EWS-1&2, Commercial-1 Lower & upper basement (phase-1)]	[As per data available on DTCP website and OC attached wat page 285 of complaint]
17.	Notice of possession	Not offered
18.	Email Communications	[Page 148-164]
19.	Letter by complainant to respondent to complete the project and handover possession, statement of account and copy of sanctioned drawing.	24.05.2017 and 19.02.2019 [Page165 & 170 of complaint] [sent through speed post receipt of same attached.]
20.	Legal notice by complainant to respondent to pay DPC and compensation	27.03.2021 [Page 174 of complaint]

B. Facts of the complaint

3. The complainant has made the following submissions: -
- I. That around the year 2010-11, the respondents had launched a group housing project namely "Capital Gateway" situated at Sector-111, Gurugram, Haryana. The respondent no. 1 is the license holder/confirming party and the respondent no. 2 is developing and marketing the above said project. The respondent companies belong to the same group, both having their office presently at Flat No. 312, 3rd Floor, Ansal Bhawan, Plot No. 16, Kasturba Gandhi Marg, Connaught Place, Central Delhi, New Delhi, Delhi, India, 110001.
 - II. That in the month of January 2011, believing the assurances and promises made by the officials of the respondents, the complainant and his friend Sh. Kulwant Kalson, jointly booked a 3BHK unit measuring 1695 sq. fts. in the above said project in the name of the complainant's friend Sh. Kulwant Kalson, who had made the investment on the advice and suggestion of the complainant. The payment against the booking amount of the said flat was

made jointly by both the complainant Sh. Surender Kumar as well as his friend Sh. Kulwant Kalson on 10.01.2011. Thereafter, a Flat Buyer Agreement dated 16.07.2013 was executed in the name of the friend of the complainant Sh. Kulwant Kalson and subsequently an Allotment Letter dated 10.09.2014 was issued by the respondents.

- III. That the respondents had got executed the Flat Buyers' Agreement dated 16.07.2013 fully loaded with biased terms and conditions in their favor, as they had already received a huge amount from the complainant and his friend at the time of execution of the agreement and the complainant and his friend were under pressure/compulsion to sign the same. As per Clause 2.1 of the FBA dated 16.07.2013, the possession of the captioned flat was to be handed over by the respondents to the allottee/purchaser within approximate period of 36 months from the date of the sanction of building plans of the said colony. That the builder is not entitled to sell flats prior to the sanctioning of the building plan. Hence the time period for the purpose of offer of the possession of the flat should start from the date of the booking of the flat if it is earlier to the date of the sanctioning of building plan. Hence in the present case the time period should start from 10.01.2011 i.e. the date of the booking of the flat as the official of the respondents had assured the complainant that they possess all the requisite sanctions from the relevant authorities at the time of booking of the flat.
- IV. That in the year 2016, due to the inordinate/unexplained delay in the construction/development of the project in question, Sh. Kulwant Kalson got frustrated and lost his interest in the said project and the unit in question had to be transferred in favor of the complainant after completing the documentary formalities and clearing the share of payment of Sh. Kulwant Kalson by the complainant. A fresh Flat Buyers' Agreement dated 23.04.2016 was executed between the complainant & the respondents, at the

respondents' instance. That in the subsequent agreement dated 23.04.2016, the time period of 36 months for possession (mentioned in the earlier agreement dated 16.07.2013) was clandestinely mentioned by the respondents as 48 months, with ulterior motive and malafide intention which amounts to cheating as well as deficiency in services. This agreement is also totally biased and fully loaded with builder favouring clauses.

- V. That the complainant was allotted Flat/Residential Unit No. F-302 in Tower-F on 3rd Floor having super area of 1695 sq. fts. in the project in question at a total basic price of Rs. 3350/- sq. ft. amounting to Rs.56,78,250/- plus other charges.
- VI. That after the booking of said flat till 02.03.2016, the complainant had paid a total sum of Rs.52,40,266/- to the respondents out of the total basic price of Rs. 56,78,250/- against the booked flat.
- VII. That despite having received a substantial payment of Rs.52,40,266/- from the complainant till 02.03.2016, the construction was stopped and the project was abandoned by the respondents and the possession of the unit in question was not offered by the respondents within the stipulated period. The respondents started making excuses and delayed things on one or the other pretext. The complainant visited the office of the respondents and the construction site several times. The complainant also wrote many letters/notices to the respondents, but the respondents ignored the same and did not pay any heed towards them.
- VIII. That the complainant accordingly filed a complaint before the Authority, Gurugram bearing Complaint No. 3764 of 2021, claiming possession of the flat in question along with compensation for delay in handing over possession against the respondents, against which the respondents had filed their written statement/reply which is annexed herewith. The said complaint was decided by this Hon'ble Authority vide Judgement/Award

dated 10.12.2021, whereby the Respondents were directed to pay delay possession charges to the complainant @ 9.30% per annum w.e.f. 07.06.2016 till the date of handing over possession. In the said order, this Hon'ble Authority did not issue directions for possession of the flat in question due to the non-availability of Occupation Certificate (OC) by the respondents at that time.

- IX. Thereafter, the complainant had to file an Execution Petition bearing no. 2373 of 2022 before the Adjudicating Officer, HARERA, Gurugram for the execution of the above said award, wherein, on 02.08.2024 the complainant received an amount of Rs.19,91,263/- as Delay Possession Charges and adjusted a sum of Rs.16,07,889/- against the remaining sale consideration of the captioned flat. As on 14.07.2025, the respondents have to pay a further sum of Rs.15,24,959/- as DPC to the complainant, and the execution of the same is still pending.
- X. That now the complainant has come to know that the Respondents have obtained the Occupation Certificate [OC Memo No. ZP-723/JD(RD)/2024/32566 dated 24.10.2024 issued by DTCP Haryana. Despite obtaining the OC, the Respondents have not handed over the possession of the subject flat to the Complainant, in violation of their contractual and statutory obligations under Section 11(4)(a) and Section 18(1) proviso of the RERA Act, 2016.
- XI. That the Complainant has repeatedly approached the respondents requesting possession, but to no avail. The conduct of the respondents amounts to continued deficiency in service and failure to fulfill their statutory obligations under the Act and the Flat Buyers' Agreement.
- XII. That respondents have collected the complete sale consideration of the flat in question from the complainant and since then they are using the complainant's hard earned money for their personal interest and delayed the

construction of the above said project and failed to deliver the possession of the above said flat in a time bound manner due to which the complainant has suffered huge pecuniary losses, harassment, mental agony as well as physical pain, difficulties merely owing to the false and inducive promises, representations and deficient and negligent services on the part of the respondents/promoters.

- XIII. That the cause of action to file the complaint is continuing in nature as the respondents/promoter have failed to comply with the terms and conditions of the Flat Buyers' Agreement and failed to deliver the possession of the flat in question to the complainant as per the settled terms.
- XIV. That the complainant has diligently discharged all his obligations as per the Flat Buyer's Agreement, whereas, the respondent have failed to perform their obligations stipulated in the Agreement. The respondents have failed to develop the project as promised at the time of initial allotment.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- I. Direct the respondent to immediately handover possession of flat no. F-302, Tower-F in habitual condition along with all promised amenities.
 - II. Direct the respondent to execute Conveyance Deed of the unit in question.
 - III. Direct the respondent to refrain from charging Club Membership charge as there is no such club in project.
 - IV. Direct the respondent to refrain from charging Car parking charges as the car parking is covered in basement which has been paid under common area
 - V. Direct the respondent to refrain from charging maintenance/holding charges.
 - VI. Direct the respondent to indicate fix rates which are likely to be charges against the head "other charges", if any

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. Despite due service of notice and specific direction for filing reply in the matter, neither anyone has put in appearance on behalf of respondents before the Authority, nor any written reply to the present complaint has been received from it. Thus, the respondents were proceeded ex-parte. In view of the above, the Authority is deciding the complaint on the basis of these undisputed documents available on record and submissions made by the complainant.
7. Copies of all the relevant documents have been filed and placed on the 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.

E. Maintainability of complaint:

8. In the present complaint, the complainant intends to continue with the project and is seeking direction to the respondent to handover the possession of the unit, execution of conveyance deed and not to charge illegal charges i.e. club membership charge, car parking charges, maintenance and any other charge. The complainant has submitted that a complaint bearing no. CR/3764/2021 was filed by him seeking handover of possession and payment of delay possession charges and vide order dated 10.12.2021, the said reliefs were granted in favour of the complainant along with a direction not to charge anything which is not part of buyer agreement. The complainant further states that in the order dated 10.12.2021, there was no direction for possession of the flat in question due to non-availability of occupation certificate.

9. The complainant filed an execution petition bearing no. 2373 of 2022 wherein on 02.08.2024 complainant received Rs.19,91,263/- as DPC & adjusted Rs.16,07,889/- against remaining sale consideration. Remaining DPC is still pending on part of respondent. It is important to note that Occupation certificate was received by the respondent on 24.10.2024 and despite obtaining of occupation certificate the respondent have not handed over the possession of the unit. Thus, the present complaint has been filed by the complainant.
10. The Authority observes that the complainant has previously filed a complaint bearing no. CR/3764/2021 against the subject unit before the Authority seeking possession along with payment of delay possession charges. Thereafter, vide order dated 10.12.2021, the respondents were directed to pay delay possession charges w.e.f. 07.06.2016 till offer of possession plus 2 months after obtaining occupation certificate. At the time of disposal of the earlier complaint, a specific relief seeking handover of possession of the unit was duly prayed for. However, while disposing of the said complaint, no explicit direction was issued with respect to the handover of possession. It is important to note that the right to obtain possession of the allotted unit is an inherent and vested right of the complainant arising out of the allotment and the contractual relationship between the parties. Merely because a specific direction was not expressly recorded in the earlier order does not extinguish or defeat such right. The respondent, being under a corresponding legal and contractual obligation, cannot deny or withhold the handover of the unit on this ground. Accordingly, the respondent remains bound to comply with its obligation to deliver possession of the unit to the complainant in accordance with law and the terms of the allotment.
11. 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 10.12.2021 in the former complaint bearing no. CR/3764/2021. Further, if any party fails to abide by the directions mentioned 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.*

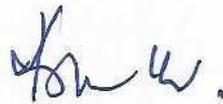
Explanation V.—*Any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purposes of this section, be deemed to have been refused.*

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.]”

12. 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.
13. File be consigned to the registry.



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.01.2026