

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

Complaint no. : 67 of 2025
Date of filling of complaint : 07.01.2025
Order pronounced on : 12.03.2026

**Mrs. Neelam Sachdeva & Mr. Pawan
Kumar Sachdeva**

**R/o - C-803, Lovely Home Apartment,
Plot No. 5, Sector -5, Dwarka, New Delhi
- 110075**

Complainants

Versus

M/S KNS Infracon Private Ltd.

M/S Tashee Land Developers Pvt. Ltd.

**Regd. Office at: - Flat no. 312, 3rd floor,
Ansal Bhawan, plot no. 16, Kasturba
Gandhi Marg, Connaught Place, Central
Delhi, New Delhi, Delhi, India, 110001**

Respondents

CORAM:

Shri Phool Singh Saini

Member

APPEARANCE:

Priyanka Agarwal (Advocate)

Rishabh Jain (Advocate)

None

**Complainants
Respondent no.1
Respondent no.2**

ORDER

1. The present complaint dated 07.01.2025 has been filed by the complainants/allottees 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 provision of the Act or the Rules and regulations made thereunder 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. No.	Particulars	Details	
1.	Project name and location	"Capital Gateway", Sector- 111, Gurugram.	
2.	Project area	10.462 acres	
3.	Nature of the project	Group housing colony	
4.	DTCP license no. and validity status	34 of 2011 dated 16.04.2011 valid till 15.04.2024	
5.	Name of licensee	KNS Infracon Pvt Ltd	
6.	RERA Registered/not registered	Registered vide no. 12 of 2018 dated 10.01.2018	
7.	RERA registration valid up to	31.12.2020 for phase-I (tower A to G) and 31.12.2021 for phase- II (tower H to J)	
8.	Extension of RERA registration	RC/REP/HARERA/GGM/12 of 2018/7(3)/2022/3 dated 09.08.2022	
9.	Validity of extension	30.06.2025 for both the phases, phase-I (tower A to G) for phase- II (tower H to J)	
10.	Unit no.	802, 8 th floor, tower-E (As per page no. 36 of the complaint)	
11.	Unit measuring (super area)	Initial area: 1695 sq. ft. (As per page no. 36 of the complaint)	Revised area: 1874 sq. ft. (As per page no. 81 of the complaint)

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12.	Date of execution of flat buyer's agreement	21.12.2012 (As per page no. 35 of the complaint)
13.	Allotment letter	21.12.2012 (As per page no. 21 of the complaint)
14.	Possession clause	Clause 2.1 <i>Subject to clause 9 or any other circumstances not anticipated and beyond control of the first party/conforming party and any restraints/restrictions from any court/authorities and subject to the purchaser having complied with all the terms of this agreement including but not limited timely payment of total sale consideration and stamp duty and other charges and having complied with all provisions, formalities documentation etc. as prescribed by the first party/conforming 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/conforming party shall be entitled to a grace period of 180 days after the expiry of 36 months for applying and obtaining OC in respect of the colony from the concerned authority.</i> (As per page no. 39 of the complaint)
15.	Basic sale consideration	Rs.54,36,474/- (As per SOA on page no. 83 of the complaint)
16.	Total sale consideration	Rs.60,86,300/- (As alleged by the complainants on page no. 18 of the complaint)
17.	Total amount paid by the complainants	Rs.64,18,345/- (As per SOA on page no. 83 of the complaint)
18.	Due date of delivery of possession	07.06.2015 As per information obtained by planning branch building plan approved i.e., 07.06.2012. (Note: Grace period is not allowed as neither OC applied nor obtained within the time limit)

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		prescribed by the promoter in the apartment buyer's agreement.)
19.	Occupation certificate	24.10.2024 [as per DTCP site]
20.	Offer of possession cum demand letter	11.11.2024 [Pg.78 of complaint]
21.	Demand letter	11.11.2024 (As per intimation of cancellation on page no. 86 of the complaint)
22.	Reminder letter	25.11.2024 & 07.12.2024 (As per intimation of cancellation on page no. 86 of the complaint)
23.	Intimation of cancellation	09.12.2024 (As per page no. 86 of the complaint)

B. Facts of the complaint:

3. The complainants have made following submissions by filing the present complaint: -

- i. That the complainants are a law-abiding citizen and consumer who have been cheated by the malpractices adopted by the respondent is stated to be a builder and is allegedly carrying out real estate development. Since many years, the complainants being interested in the project because it was a housing project and the complainants needed an own Home for their family.
- ii. That the complainants were subjected to unethical trade practice as well as subject of harassment, flat buyer agreement many hidden charges, building plan approval clause which will forcedly imposed on buyer at the time of possession as tactics and practice used by builder guise of a biased, arbitrary and one sided.
- iii. That based on the promises and commitment made by the respondent, complainants booked a flat admeasuring 1695 sq ft, along with one covered car parking in unit no. 802, Tower-E in



- residential Project "Capital Gateway", Sector 111 Gurugram, Haryana. The initial booking amount of Rs.3,00,000/- (including tax) was paid through receipt no. TCG0466 dated 11.01.2011 (more than 13 years back).
- iv. That the complainants were allotted the flat no. 802, 08th floor, Tower -E admeasuring 1695 sq. ft in Capital Gateway, Sector-111, Gurugram, Haryana.
 - v. That the respondent to dupe the complainants in their nefarious net even executed flat buyer agreement Signed Between M/s Tashee Land Developers Pvt. Ltd. & M/s KNS Infracon Pvt. Ltd and Mrs. Neelam Sachdeva & Mr. Pawan Kumar Sachdeva on dated 21.12.2012. Just to create a false belief that the project shall be completed in time bound manner and in the garb of this agreement persistently raised demands due to which they were able to extract huge amount of money from the complainants
 - vi. That the total cost of the said flat is Rs 60,86,300/- (As per BBA Clause 1.2 of BBA Excluding Taxes) and paid total amount of Rs: 64,18,345/- (including EDC, IDC, Taxes, etc.) by the complainants in time bound manner.
 - vii. That according to the statement and payment proof the complainants paid a sum of Rs 64,18,345/- (including EDC, IDC, Tax, etc.) to the respondent till now and before this builder was demanded more than 95% of total sale consideration amount without doing appropriate work on the said project, which is illegal and arbitrary. So, after extracting 90% amount which is illegal and arbitrary.

- viii. That as per section 19 (6) the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act) complainants have fulfilled his responsibility in regard to making the necessary payments in the manner and within the time specified in the said agreement. Therefore, the complainants herein are not in breach of any of its terms of the agreement.
- ix. That the complainants were sanctioned home loan of rupees 12,50,000/- from LIC Housing Finance Ltd which was taken for buying this flat, and EMI created extra financial burden on complainants.
- x. That complainants booked apartment dated 11.01.2011. (more than 13 years ago) and as per flat buyer agreement builder liable to offer possession on before 07.06.2015 (Including Grace Period).
- xi. The contents of clause no.2.1 of the BBA is reproduced as hereinunder:
- “First Party/Confirming Party proposes to hand over the possession of the flat to the purchaser within approximate period of 36 months from the date of sanction of the 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 occupation certificate in respect of the colony.”*
- xii. That the builder was started construction work almost 10 years back still respondent want to more years to complete the project 8- 10 years, long-period make adverse effect on construction quality of project.



- xiii. That the respondent has indulged in all kinds of tricks and blatant illegality in booking and drafting of FBA with a malicious and fraudulent intention and caused deliberate and intentional huge mental and physical harassment of the complainants and his family and cruelly been dashed the savored dreams, hopes and expectations of the complainants to the ground and the complainants is eminently justified in seeking return of the entire money with interest.
- xiv. That keeping in view the snail paced work at the construction site and half-hearted promises of the respondent, the chances of getting physical possession of the assured unit in near future seems bleak and that the same is evident of the irresponsible and desultory attitude and conduct of the respondent, consequently injuring the interest of the buyers including the complainants who have spent his entire hard earned savings in order to buy this home and stands at a crossroads to nowhere. The inconsistent and lethargic manner, in which the respondent conducted its business and their lack of commitment in completing the project on time, has caused the complainants great financial and emotional loss.
- xv. That aggrieved by the aforesaid illegal acts of the respondents, the complainants filed a complaint bearing no. RERA-GRG-3025-2020 before the Authority seeking Delayed Possession Charges and possession.
- xvi. That the Authority, after due deliberation & adjudication, had passed the final order/judgment dated 10.12.2021 against the respondents, directing them to pay delayed possession charges on the paid



amount at the rate of 9.30% p.a. from the due date of possession till the actual handing over of possession.

- xvii. That the respondents were liable to comply with the aforesaid Order dt. 10.12.2021 within 90 days, however, the respondents failed to do so and thus, aggrieved by the direct non-compliance of the respondents, the complainants filed the execution petition bearing no. RERA-GRG-4579-2022 which is still pending adjudication before the Ld. Adjudicating Officer
- xviii. That the respondents offered the possession of the complainants' unit after a delay of more than 9 years and raised the final demand vide offer of possession cum demand letter dated 11.11.2024. However, the complainants were absolutely shocked and surprised to see that the respondents have illegally increased the super area of the complainants' unit from 1695 sq. ft. to 1874 sq. ft. without any prior consent of the complainants and had raised a demand for a whopping sum of Rs. 63,79,846/- which is absolutely illegal.
- xix. That the respondents further sent reminder letter dated 25.11.2024 to the complainants, vide demand letter dated 25.11.2024, and the complainants raised their objections to the aforesaid illegal demands of the respondents through email dated 25.11.2024.
- xx. That instead of considering the objections of the complainants, the respondents started to send reminder letters within the gap of a week, and even sent cancellation letter dated 09.12.2024 to the complainants, in order to threaten the complainants to succumb to their illegal demands.

- xxi. That the respondents illegally increased the super area of the complainants' unit without prior consent of the complainants and thereafter raised additional illegal demand on the said increased super area
- xxii. That the respondent has raised a demand of Rs. 28,68,926/- on account of cost escalation. That there is no such provision of Cost escalation given in the agreement to sell.
- xxiii. That the respondent has further imposed interest to the tune of Rs.17,73,822/- which is absolutely illegal as the complainants has paid all the demands as and when demanded by the respondent in a time bound manner, except the last demand which was due at the time of possession, which is raised by the respondent on 11.11.2024, thus, there is no reason for interest to be charged by the respondent
- xxiv. That, the actual last demand which is due to be paid by the DH in accordance of the agreement to sell comes out to be Rs.7,21,870/- Only.
- xxv. That the actual last demand which the complainants are legally liable to pay in accordance with the BBA, is way less than the due amount of DPC payable by the respondents in compliance of Order dated 10.12.2021. Thus, the respondents are illegally withholding the possession of complainants as it was not part of the decree/judgment dated 10.12.2021, due to which the complainants are again constrained to approach the Authority to seek lawful possession
- xxvi. That the cause of action to file the instant complaints have occurred within the jurisdiction of the Authority as the apartment which is the

subject matter of this complaint is situated in Sector 111, Gurugram which is within the jurisdiction of the Authority.

C. Relief sought by the complainant:

4. The complainants has sought following relief(s):

- I. Direct the respondents quash the illegal cancellation letter dated 09.12.2024 and maintain status quo of the complainants' unit.
 - II. Direct the respondents to immediately hand over the legal physical possession of unit in habitable condition with all amenities mentioned in brochure.
 - III. To pass the order for forensic audit of builder because the builder has illegally increased the super area of the complainants' unit from 1695 sq. ft. to 1874 sq. ft. without the prior consent of the complainants and is now raising illegal demands.
 - IV. Direct the respondents to not to raise any illegal demands which is not the part of the BBA.
 - V. Direct the respondents to execute conveyance deed in favour of the complainants.
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 respondent no.1 put in appearance through its counsel and marked attendance on 30.01.2025, 15.05.2025, 28.08.2025 and 18.12.2025. Despite specific directions for filing of reply, the respondent no.1 has failed to comply with the orders of the Authority. It shows that the respondent was intentionally delaying the procedure of the court by

avoiding filing of reply in the matter. The respondent no.2 neither put in appearance nor filed reply. Therefore, in view of above, the defence of the respondents were struck off vide proceedings dated 18.12.2025. However, in the interest of justice, vide proceedings dated 18.12.2025, the respondents were given an opportunity to file written submissions in the matter, but the same has not been filed by it till date. The respondent no.2 neither put in appearance nor filed reply. Hence, respondent no.2 is hereby proceeded ex-parte vide proceedings dated 12.03.2026

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 those undisputed documents and submissions made by the parties.

D. Jurisdiction of the authority

8. The authority observes that it has territorial as well as 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, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. 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. Maintainability of complaint:

12. In the present complaint, the complainants intend to continue with the project and is seeking direction to the respondents to handover the possession immediately. The complainants have submitted that a complaint bearing no. CR/3025/2020 was filed by him seeking payment of delay possession charges and vide order dated 10.12.2021, the said reliefs were granted in favour of the complainant. However, the respondent neither paid the amount as directed by the Authority nor adjusted the amount against any demand which remained pending at the time of possession. Meanwhile, occupation certificate was received by the respondent on 24.10.2024 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.

13. The Authority observes that the complainants have previously filed a complaint bearing no. CR/3025/2020 against the subject unit before the Authority seeking possession along with execution of conveyance deed, which was decided by the Authority vide order dated 10.12.2021, wherein the respondents were directed pay delay possession charges w.e.f. 07.06.2015 till handing over of possession of allotted unit after obtaining OC from competent authority. The respondent was further directed to not to charge anything from the complainants which is not part of the buyer's agreement.
14. 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/3025/2020. 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.]”*

15. 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. File be consigned to the registry.

Dated: 12.03.2026



Phool Singh Saini
(Member)
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM