

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

Complaint no. :	5369 of 2024
Date of Filing:	29.10.2024
Date of Decision:	14.11.2025

Atul Khanna

R/O: House no. 158, Pocket No. 1, Jasola Vihar,
New Delhi - 110025

Complainant

Versus

1. KNS Infracon Pvt. Ltd.
 2. Tashee Land Developers Pvt. Ltd.
- Regd. office:** 517-A, Narain Manzil, 23,
Barakhambha Road, 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.	103, 1 st floor, tower-D [Page 25 of complaint]
6.	Earlier allotted Unit area admeasuring	1695 sq. ft. [page 25 of complaint]
7.	Date of flat buyers' agreement	17.07.2012 [Page 23 of complaint]
8.	Cancellation letter	18.04.2016

		(page no. 85 of reply)
9.	Agreement for sale	19.07.2018 (page 70 of complaint)
10.	Settlement b/w the parties regarding the cancellation of unit	03.10.2018 (page no. 86 of reply)
11.	Unit no. as per new agreement	103, 1 st floor, tower-D
12.	Unit area admeasuring as per new agreement	1874 sq. ft. [as per agreement to sale on page 73 of complaint]
13.	Possession clause as per agreement for sale	7. Possession of the Unit for Residential Usage 7.1 Schedule for possession of the said unit- The Promoter/confirming Party agrees and understands that timely delivery of possession of the Unit along with the parking (if applicable), if any, to the Allottee and the Common Areas to the Association of Allottees or the competent Authority, as the case may be, as provided under the Act and Rule 2(1) (f) of the Rules, 2017, is the essence of the Agreement.
14.	Due date of possession	31.12.2020

15.	Total sale consideration	Rs. 53,20,286/- [as per agreement at page 82 of complaint]
16.	Amount paid by the complainant	Rs. 48,41,736/- [as per agreement at page 87 of complaint]
17.	Occupation certificate	24.10.2024 [Page 135 of complaint]
18.	Offer of possession (OP)	NA
19.	Cancellation letter/termination of settlement agreement dated 03.10.2018	25.04.2025

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
- I. That the original booking pertaining to the allotment of the subject flat was made by the respondents on 25.04.2011 in the name of one Md. Muzammil in their residential project proposed in the vicinity of Dwarka Expressway, Gurugram.
 - II. That in the year 2012 the booking made in the name of Md. Muzammil was transferred in the name of the complainant with the consent of the respondents. The complainant entered into flat buyer's agreement dated 17.07.2012 with the respondents as regards allotment of flat no. D-103, 1st Floor in the aforesaid project developed by the respondents in the name of 'Capital Gateway' in Sector-111, Gurugram, Haryana in lieu of basic sale price @ Rs. 2900/- per sq. ft. i.e. of Rs. 49,15,500/- clause 2.1 of the flat buyer's agreement dated 17.07.2012 stipulated

that the possession of the said flat would be given to the complainant within a period of 36 months from the date of sanction of the building plan of the colony with grace period of 180 days. The due date of possession as reckoned from the date of flat buyers agreement dated 17.07.2012 i.e. 36 months + 180 days was 01.2016.

- III. That the complainant kept on paying as per the construction linked plan towards the demands raised by the respondents which was supposed to be commensurate to the status of the construction in the project but in fact it was not so. There was no construction activity going on in the Project due to some Order of the Hon'ble Company Law Board.
- IV. That in the meantime, the respondents raised demand dated 10.10.2014 on the complainant purportedly for laying of floor slabs. The respondents again made demand dated 31.10.2014 towards purported laying of ground floor slab. The respondent again raised demand dated 03.11.2014 on the complainant purportedly for construction of third floor slab.
- V. That although the complainant had paid a hefty amount of Rs. 29,85,308/- despite no construction activity on the part of the respondents in the project, the respondents vide letter dated 18.04.2016 illegally cancelled the allotment of the said flat of the complainant on the alleged ground of default in payment on the part of the complainant.
- VI. That being aggrieved of the aforesaid illegal cancellation of the allotment despite no construction activity in place, the complainant lodged an FIR No. 0396 of 2016 dated 12.08.2016 at PS Sarita Vihar,

South-East Delhi, u/s 406, 420 and 34 IPC against the respondents and their Directors/officials.

- VII. That the building plan of the project was sanctioned on dated 09.12.2016. So going liberally by clause 2.1 of the flat buyer's agreement dated 17.07.2012, the due date of possession if reckoned from the date of sanction of building plan i.e. 09.12.2016, the period of 36 months ended on 09.12.2019 and further adding grace period of 180 days made the due date of possession on 10.03.2020. On the same date of the sanction of the building plan, the complainant paid an amount of Rs. 18,56,428/- to the respondents towards consideration of the said flat, which was duly received by the respondents.
- VIII. That the complainant had paid more amount i.e. Rs. 18,56,428/- to the respondents which were duly accepted by the respondents and the respondents formally restored the allotment of the said flat in the name of the complainant revoking the aforesaid cancellation dated 18.04.2016 and thereon entered into an agreement to sale dated 19.07.2018 with the complainant in respect of allotted said flat.
- IX. That the total price of the said flat of amount of Rs. 53,20,286/- inclusive of car parking, club membership etc. By clause 1.14 of the said agreement to sale dated 19.07.2018 the respondents acknowledged that the complainant had paid total amount of Rs. 48,41,736/-.
- X. That on the insistence of the respondents the complainant also entered into a written settlement deed dated 03.10.2018 with the respondents. Cancellation letter dated 18.06.2014 has been revoked and allotment of the unit restored. The respondents filed a petition before the Hon'ble High Court of Delhi at New Delhi for quashing of

FIR No. 396 of 2016 on the basis of aforesaid settlement between the respondents and the complainant.

- XI. That the complainant was shocked to notice the false averments of the respondents in their recent application dated 30.09.2024 filed before the Hon'ble High Court of Delhi at New Delhi seeking modification of the aforesaid order dated 19.07.2024. In the said application, the respondents wrongly alleged interalia that the complainant failed to honour the agreement by not withdrawing the FIR, delaying the process and further ceasing payment for subsequent demand notices. In the said regard, it is submitted that there was no way by which the complainant could have withdrawn the FIR. The petition for quashing was in place and it was for the respondents to press for it and the complainant would have supported in the process, but the respondents withdrew the petition. As regards alleged cessation of further payment, it was duly agreed that the complainant would pay the balance payment at the time of possession. There was no demand from the respondents much less there being any requirement on the part of the complainant to make any payment. The respondents further wrongly mentioned contrary to the record that on 19.07.2024, the respondents requested to withdraw the petition due to complainant's failure to fulfill the obligations under the settlement agreement. Because of these wrong averments of the respondents, the complainant has apprehension that the respondents may illegally resort to cancel the allotment of the said flat in the name of the complainant.
- XII. That the occupation certificate in respect of the said flat of the said project has been granted by DTCP, Haryana on 24.10.2024.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
 - i. Direct the respondents to pay interest on delay in handing over the possession with effect from 13.01.2016 till realization of the same in view of the violation of section 18 of the RERA Act,2016.
 - ii. Direct the respondents to provide possession of the flat and to register conveyance/sale deed in respect of the same in favour of the complainant.

D. Reply by the respondents.

5. The respondents have contested the complaint on the following grounds.
 - I. That the present complaint filed by the complainant is devoid of merits and not maintainable. The complainant had booked a unit in the group housing project "Capital Gateway", which was cancelled on 18.04.2016 due to non-payment of outstanding dues/demands. Therefore, the complainant has no enforceable right to seek possession of the said unit or claim any compensation in the form of delay penalty.
 - II. That the complainant has filed the present complaint on 28.10.2024, after a lapse of more than eight years from the date of cancellation of the allotted unit. The said cancellation took place on 18.04.2016 due to non-payment of dues. Therefore, the present complaint is hopelessly barred by limitation and is liable to be dismissed on this ground alone.
 - III. That the complainant has already filed a complaint before Police Station Sarita Vihar, pursuant to which FIR No. 0396 dated 12.08.2019 was registered. The said matter is presently pending adjudication before the Hon'ble Saket Court, New Delhi. Therefore, the present complaint

amounts to forum shopping, and is liable to be dismissed on this ground alone.

- IV. That the cancellation of the unit in question took place on 18.04.2016 i.e., prior to the enactment and coming into force of the Real Estate (Regulation and Development) Act, 2016. Since the cause of action arose before the commencement of the Act, this Hon'ble Authority does not have the jurisdiction to entertain or adjudicate any claims relating to possession or delay penalty in respect of the said unit. Accordingly, the present complaint is not maintainable and is liable to be dismissed for want of jurisdiction.
- V. That on 29.11.2010 Mohd. Muzammil S/o Abrul Majeed R/o H. No. 6, Type-V, HV.P.N.L Colony, Jharsa Road, Gurugram-122001 has applied for booking of a flat having saleable area 1695 Sq. ft. in the group housing project "Capital Gateway" situated at Sector 111, Gurugram and submitted the booking form and a cheque of Rs. 3,00,000/- bearing cheque no. 572643 drawn on HDFC Bank Limited as booking amount.
- VI. Subsequently, Mr. Muzammil has paid Rs. 1,91,550/- for completion of 10% of total BSP of the flat on 18.02.2011. On 29.08.2011, Mr. Muzammil has submitted a Cheque of Rs. 7,68,969/- dated 27.08.2011 drawn by Mr. Atul Khanna without disclosing any facts that he has transferred the unit to Mr. Khanna.
- VII. That on 05.09.2011, Mr. Muzammil has informed the company that he has sold/transferred his right and interest in the aforesaid unit booked by him to Mr. Atul Khanna and both Mr. Muzammil and Mr. Atul Khanna has submitted the application along with requisite documents for transfer of aforesaid booking.

- VIII. Thereafter, the company has issued transfer letter to the complainant on 05.09.2011.
- IX. That complainant is not the original allottee of the flat and he has purchased the flat directly from Mr. Muzammil without any involvement of company. That on 05.09.2011, Mr. Muzammil has requested transfer of unit in favour of complainant, thereafter, the company has made transfer of unit in the name of complainant.
- X. After getting approval of building plan on 07.06.2012, the company has executed flat buyer's agreement on 17.07.2012 containing details terms and conditions.
- XI. However, after execution of flat buyer's agreement, the complainant started ignoring to pay the due amount as per the demand letter sent by the company as per flat buyer's agreement. The company had sent several demand letters and reminders to petitioner but he kept ignoring all the letter sent by the company.
- XII. Finally, on 18th April, 2016 the company has cancelled his unit and sent him cancellation letter. The company had requested him to provide the bank details to credit the refund amount in his account. However, he fails to provide the same.
- XIII. That in an effort to amicably resolve the matter, the company entered into a settlement agreement dated 03.10.2018 and revoked the cancellation on 18.04.2016 and restored the booking of unit no. D-103 in Mr. Khanna's name in terms of the settlement agreement.
- XIV. That a fresh agreement to sell was executed on 19th July 2018, reflecting the revised understanding. Additionally, the company offered a substantial discount of Rs.18,30,000/- to the complainant as

compensation for delay in possession and to amicably settle all disputes.

6. 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.

E. Jurisdiction of the authority

7. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

8. 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.

E.II Subject-matter jurisdiction

9. 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.

10. 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.

F. Findings on the relief sought by the complainant:

- i. Direct the respondents to pay interest on delay in handing over the possession with effect from 13.01.2016 till realization of the same in view of the violation of section 18 of the RERA Act, 2016.**

11. That in the present complaint, the complainant had initially booked a residential unit in the project of the respondents, namely Capital Gateway, situated at Sector-111, Gurugram. The complainant was allotted unit no. 103 on the 1st Floor in Tower-D, admeasuring 1695 sq. ft. and a flat buyer agreement in respect thereof was executed between the parties on 17.07.2012.
12. That thereafter, on account of alleged non-payment of certain outstanding dues the respondents unilaterally cancelled the said unit vide letter dated 18.04.2016. Thereafter, the parties executed a fresh agreement to sell on dated 19.07.2018 in respect of the same unit whereby inter alia the super area of the said unit was revised from 1695 sq. ft. to 1874 sq. ft. Subsequently, a settlement agreement dated 03.10.2018 was also executed between the parties in relation to the earlier cancellation dated 18.04.2016. The complainant has paid a total

amount of Rs. 53,20,286/- against the agreed sale consideration of Rs. 48,41,736/-.

13. That the occupation certificate for the said project was obtained by the respondents on 24.10.2024. However, despite having obtained the occupation certificate the respondents vide notice dated 25.04.2025 illegally and arbitrarily issued a cancellation/termination letter purporting to cancel the settlement agreement dated 03.10.2018 alleging that the complainant had failed to comply with the terms and conditions of the said settlement agreement.
14. The Authority observes that the said cancellation/termination notice dated 25.04.2025 is illegal, void, non-est in the eyes of law and unenforceable being issued after substantial compliance by the complainant, receipt of excess payment by the respondents and is nothing but a gross deficiency in service and unfair trade practice on the part of the respondents. The respondents are directed to restore the subject unit to its original position in favour of the complainant. The respondents-promoters are directed not to create third party rights. In case the respondents have already created third party rights on the unit in question, then the respondents/promoters shall offer possession of a similarly located unit/flat of same size and specifications at same rate as per the buyer's agreement/agreement to sell dated 19.07.2018 in the said project to the complainant.
15. In the present complaint, the complainant is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

(Emphasis supplied)

16. Clause 7.1 of the buyer's agreement provides for handing over of possession and is reproduced below:

7. Possession of the Unit for Residential Usage

7.1 Schedule for possession of the said unit- The Promoter/confirming Party agrees and understands that timely delivery of possession of the Unit along with the parking (if applicable), if any, to the Allottee and the Common Areas to the Association of Allottees or the competent Authority, as the case may be, as provided under the Act and Rule 2(1) (f) of the Rules, 2017, is the essence of the Agreement."

(Emphasis supplied)

17. **Admissibility of delay possession charges at prescribed rate of interest:** Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid by the promoter, interest for every month of delay, till the handing over of possession at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

18. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of

interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

19. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 14.11.2025 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
20. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. — For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

21. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., **10.85%** by the respondents/promoter which is the same as is being granted to it in case of delayed possession charges.
22. On consideration of the circumstances, the documents, submissions made by the parties and based on the findings of the authority regarding contraventions as per provisions of rule 28, the Authority is satisfied that the respondents are in contravention of the provisions of the Act. By virtue of clause 7.1 of the agreement executed between the

parties on 19.07.2018 the due date of possession comes out to be 31.12.2020.

23. The respondents have failed to handover possession of the subject apartment within prescribed time. Accordingly, it is the failure of the respondents/promoters to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the considered view that there is delay on the part of the respondents to offer of possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement/agreement to sale executed between the parties. The occupation certificate for the project was received on 24.10.2024.
24. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondents is established. As such, the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 31.12.2020 till valid offer of possession after obtaining occupation certificate plus two months or actual handing over of possession, whichever is earlier at prescribed rate i.e., 10.85 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- ii. Direct the respondents to provide possession of the flat and to register conveyance/sale deed in respect of the same in favour of the complainant.**
25. The respondents have obtained the occupation certificate on 24.10.2024 but till date not handed over the possession of the unit. The respondents are directed to handover physical possession of the subject unit within 30 days from the date of this order as occupation

certificate of the project has already been obtained by it from the competent authority.

26. Further, as per Section 11(4)(f) and Section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainant. Whereas, as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question. The respondents/builders are directed to get the conveyance deed of the allotted unit executed in favour of the complainant in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable within three months from the date of this order.

G. Directions of the Authority:

27. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. The respondents are directed to pay interest to the complainant against the paid-up amount at the prescribed rate of 10.85% p.a. for every month of delay from the due date of possession i.e., 31.12.2020 till valid offer of possession after obtaining occupation certificate plus two months or actual handing over of possession, whichever is earlier as per section 18(1) of the Act read with rule 15 of the rules.
 - ii. The complainant is directed to pay outstanding dues, if any remains as per the buyer's agreement/agreement to sale, after adjustment of delay possession charges and thereafter the

respondents shall handover the possession of the allotted unit within next 30 days.

- iii. The rate of interest chargeable from the allottees by the promoter, in case of default shall be at the prescribed rate i.e., 10.85% by the respondents/promoter, which is the same rate of interest which the promoter shall be liable to pay to the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
 - iv. The respondents shall not charge anything from the complainant, which is not the part of the buyer's agreement.
 - v. The respondents/builders are directed to get the conveyance deed of the allotted unit executed in favour of the complainant in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable within three months from the date of this order.
 - vi. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.
28. Complaint as well as applications, if any, stands disposed off accordingly.
29. File be consigned to registry.



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.11.2025