

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

Complaint no. : 1901 of 2025
First date of hearing : 28.08.2025
Order pronounced on : 22.01.2026

Sudesh Bohra and Devender Bohra

**R/o - Bohra Hospital, Loharu Road Opp. New Anaj
Mandi, Bhiwani, Haryana-127021**

Complainants

Versus

1. M/s KNS Infracon Private Limited**2. M/s Tashee Land Developers Private Limited,****Registered office:** Flat No. 312, 3rd Floor, Plot No.

16, Ansal Bhawan, Kasturba Gandhi Marg, Connaught
Place, Central Delhi, New Delhi-110001

Respondents**CORAM:**

Shri Phool Singh Saini

Member**APPEARANCE:**

Shri Sukhbir Yadav (Advocate)

Shri Rishabh Jain (Advocate)

Complainants**Respondents****ORDER**

1. The present complaint dated 11.04.2025 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 complainant, 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
	Name of licensee	KNS Infracon Pvt Ltd
	Renewal of licensee no. 34 of 2011	Dated 01.08.2024, valid upto 15.04.2029
5.	RERA Registered/not registered	Registered vide no. 12 of 2018 dated 10.01.2018
	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)
	Extension of RERA registration	RC/REP/HARERA/GGM/12 of 2018/7(3)/2022/3 dated 09.08.2022
	Validity of extension	30.06.2025 for both the phases, phase-I (tower A to G), for phase- II (tower H to J)
6.	Unit no.	202, 2 nd floor, tower-D, [as per FBA at pg.43 of complaint]
7.	Unit area admeasuring	<div> 1695 sq. ft. [as per BBA pg.43 of complaint] </div> <div> Final area -1874 sq. ft. [as per SOA dt. 10.01.2018 & OP at pg.102 & 97 of complaint] </div>
		179 sq. ft. increase. Resulting in approx 11% increase which is allowed as per clause 1.5 (i) of BBA at page 46 of complaint.
8.	Date of allotment	18.12.2012 [pg.36 of complaint]



9.	Payment Plan	Construction linked Plan
10.	Date of Flat buyer's Agreement [FBA]	17.12.2012 [pg.41 of complaint]
11.	Date of approval of initial building plans	07.06.2012 (As per information provided by planning branch)
12.	Possession clause	<u>3.Possession</u> 2.1 "...the 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 (One Hundred and Eighty) days , after the expiry of 36 months, for applying and obtaining the occupation certificate in respect of the Colony from the concerned authority." (Emphasis supplied) [Pg.49 of complaint]
13.	Due date of possession	07.12.2015 [as per possession clause 36 months from building plan i.e., 07.06.2012 plus 180 days grace period.]
14.	Home Loan with ICICI Bank /LIC Housing Finance Ltd. of Rs.40,00,000/- Sanctioned on	21.08.2015 [pg.76-83 of complaint]
15.	Basic sale Price [excluding PLC + Car parking + Club membership + EDC/IDC, electric connection IFMS, Possession Charge, other charges not applicable]	Rs.49,74,825/- [As per BBA at pg.45 of complaint]
16.	Basic sale consideration [excluding PLC + Car parking + Club membership + EDC/IDC, IFMS, Possession Charges]	Rs.55,00,190/- [As per Statement of account DT. 10.01.2018 at pg.102 of complaint based on increased area.]
17.	Total sale consideration [including, BSP, PLC + Car parking + Club membership + EDC/IDC, IFMS, Possession Charges, other charges of Rs.3,59,266/- , interest, Tax]	Rs.87,38,603/- [As per Statement of account at pg.102 of complaint]



18.	Amount paid by the complainant	Rs.72,89,198/- [As per Statement of account at pg.102 of complaint]
19.	Part Occupation certificate for tower-A, B, C, D, E, F, G, & EWS-1&2, Commercial-1, Lower basement & upper basement (Phase-1)	24.10.2024 [As per DTCP website & OC at pg.104 of complaint]
20.	Notice of possession	06.02.2025 [pg.97 of complaint]
21.	Cancellation Letter where all the amount paid by the complainant was forfeited.	14.07.2025 [Cancellation letter submitted while proceedings dated 24.07.2025]

B. Facts of the complaint:

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

- a. That the respondent parties (M/s Tashee Land Developers Pvt Ltd. & KNS Infracon Pvt. Ltd.) are companies incorporated under the Companies Act, 1956 having their Registered office at flat no. 312, 3rd floor, plot no.16, Ansal Bhawan, Kasturba Gandhi Marg, Connaught Place, Central Delhi, New Delhi-110001. That Tashee Land Developers Pvt. Ltd. is the Developer, and K N S Infracon Pvt. Ltd. is the license holder/confirming party. That both respondents have joint as well as several liabilities towards the complainant. The project in question is known as "Capital Gateway" situated at Sector - 111, Gurugram.
- b. That the complainants were searching for a residential flat and came across the project "Capital Gateway" promoted by Tashee Land Developers Private Limited (the respondent). In 2010, the complainants received a marketing call from Tashee Land Developers Pvt Ltd. regarding investment in their project, "Capital Gateway,". The complainants visited the project site with their family and met with the marketing staff and office bearers of the respondent. The local



- staff provided a brochure, application form, and payment plan, assuring possession within 36 months.
- c. That the complainants were persuaded by the representations made by the respondents marketing staff and decided to proceed with the purchase. Notably, when the complainants expressed interest in buying a unit, the respondents informed them that unit no.202 measuring 1695 sq. ft. on the 2nd floor of tower-D, was available for re-sale. The respondents offered to proceed with the paperwork if the complainants wished to purchase this unit. Upon inspecting the unit, the complainants decided to purchase the resale unit no.202 on the 2nd floor of tower-D, which was booked under the name of Mr. Shailendra Singh Gahlot. The respondents further assured the complainants that the necessary documents would be endorsed and payments would be transferred from the original allottee's name to the complainants name, as required.
- d. That on 03.12.2010, the complainants booked unit no.202, measuring 1695 sq. ft., on the 2nd floor of tower-D in the respondent's project, "Capital Gateway" under the construction linked payment plan. The original allottee had already made a payment of Rs.9,74,674/- for this unit. The respondents transferred this payment, along with all rights and interests, to the complainants account on 22.09.2011.
- e. Thereafter, the complainants made two payments of Rs.1,50,000/- and Rs.1,51,057/- respectively against their unit and the respondent issued the payment receipts for both the transactions on 23.02.2012. Subsequently, the respondents issued the allotment letter confirming the allotment of unit no.202, measuring 1695 sq. ft., on the 2nd floor of tower-D in the "Capital Gateway" project of the respondent. That the total consideration of the complainant's unit is Rs.64,94,795/-. The



break-up of the total cost of the complainant's unit is produced below for reference; complainants have made following submissions: -

Area	1695	
BSP	2935	4974825
Development Charges	364	616980
Club Membership		150000
PLC	225	381375
IFMS	75	96615
Car Parking		275000
	Total	64,94,795

- f. That on 17.12.2012, an arbitrary and one-sided flat buyer agreement was executed between the complainants and the respondents. As per clause 2 sub-clause 2.1 of the BBA, the respondents were obligated to give possession of the complainant's unit within 36 months from the date of sanction of the building plans of the said colony. That the building plans were approved on 07.06.2012, therefore, the due date of possession was 07.06.2015.
- g. That the complainants had applied for a home loan with the expectation of receiving possession of their unit by the stipulated deadline of 07.06.2015. Subsequently, the complainants availed a home loan of Rs.40,00,000/- from LIC Housing Finance Limited, which was sanctioned on 21.08.2015. Thereafter, the loan was transferred to ICICI Bank, and later on, the complainants diligently paid their monthly installments (EMIs) for the loan. However, the respondents failed to deliver possession of the unit by the due date, indicating that they had ulterior intentions. Notably, the complainants fully repaid the home loan availed by them.
- h. That the complainants were explicitly promised possession of their unit by the stipulated date of 07.06.2015. However, the respondents failed to fulfill this commitment, leaving the complainants without their unit despite meeting their payment obligations. In good faith,



the complainants continued to make payments, diligently fulfilling their financial obligations by paying the remaining installments as demanded by the respondents. Astonishingly, it has now been over 14 years since the complainants initially booked their unit, investing their hard-earned money in the respondents project with the expectation of receiving their home. Regrettably, they have yet to receive their unit, leaving them feeling trapped, frustrated, and betrayed.

- i. Despite numerous efforts, the complainants have been unable to obtain physical possession of the allotted flat since 2015. Repeated visits were made to the respondent's office and the construction site, only to be met with disappointment. The complainants were consistently kept in the dark regarding the actual state of construction. Although the towers appear to be built, no discernible progress has been observed on finishing and landscaping work, leaving the project's status unclear.
- j. That the complainants have been consistently following up with the respondent through phone calls and emails since 2017. Despite numerous emails highlighting their concerns and struggles, the respondent has continued to make unreasonable demands, including requests for extensions of area. When the complainants visited the project site to inspect their unit, they were initially denied entry. After a prolonged struggle, they were finally allowed to see their unit, only to discover numerous deficiencies and incomplete finishing work. The respondent failed to address the complainants' grievances, choosing instead to remain silent. Furthermore, the respondent's delay in constructing the project is evident from their email dated

06.08.2020. The reasons provided by the respondent for this delay are unjustified and lack merit.

- k. That the complainants have been consistently visiting the respondents office and the construction site, endeavoring to obtain possession of the flat. However, despite numerous telephonic conversations, their efforts have been in vain. The respondents failed to deliver the flat despite many promises, which is a serious wrongdoing. On the other hand, the complainants have been very patient and diligent, trying every possible way to get the flat. The complainants have made many visits and made phone calls, but the respondents have not responded or taken any action.
- l. That after an inordinate delay of almost 10 years, the respondents sent an 'offer of possession' letter to the complainants on 06.02.2025. However, this letter was not a genuine offer of possession but rather a demand notice, seeking an additional sum of Rs.14,49,405/-. The respondents unilaterally increased the area of the complainants' unit from 1695 sq. ft. to 1874 sq. ft. without providing any justification or obtaining prior consent from the complainants. That as per BBA the original super area was 1695 sq. ft. and as per offer of possession, the revised area is 1874 sq. ft. and carpet area 1004 Sq. ft.; furthermore, the offer of possession contains EDC/IDC on the original super area, which shows the illicit motive of the respondent builder. This unauthorized increase has resulted in a higher consideration for the unit, which the respondents are now demanding. Furthermore, the respondents are making additional demands, including possession charges of Rs.7,49,600, interest of Rs.3,59,266, and other unreasonable claims. Strangely, the complainants have not been informed about the interest calculation methodology or the





compounding frequency used to arrive at this interest amount. This lack of transparency raises concerns about the legitimacy of these demands. Additionally, the demand for Rs.1,12,777/- as maintenance charges is unjustified because, according to legal precedents, maintenance charges are only payable after the handover of possession of the unit. The law states that maintenance charges can only be collected after the developer has handed over possession of the unit to the buyer. Since this has not happened in this case, the demand for maintenance charges is premature and not legally enforceable.

- m. That the DTCP issued a conditional occupation certificate on 24.10.2024 for tower A to G and EWS 1 & 2 and commercial - 1, more so, the respondent increased the area of the flat but as per said OC the achieved FAR is less than the sanctioned FAR, therefore, there is no chance of increase in the area. Furthermore, the department-imposed composition fees of Rs.19,99,942/- for violations in the building plans. That as per the achieved FAR the area per flat is 1256.135 sq. ft. but the respondent presented the area of 1874 sq. ft.

Tower /Block No.	No. of dwelling Units	Sanctioned FAR (SQM)	Achieved FAR (Sqm.)	10.7639
A	55	4944.081	4838.257	52078.51
B	55	7352.542	7366.656	79293.95
C	55	7352.542	7366.656	79293.95
D	55	6330.715	6340.029	68243.44
E	55	6336.952	6339.155	68234.03
F	55	6336.952	6339.155	68234.03
G	55	6336.952	6339.155	68234.03
Total	385	44990.736	44929.063	483611.9
			Per unit area in Sq. Ft.	1256.135

- n. That the respondents obtained the Occupancy Certificate (OC) in October 2024, but are only now offering possession to the complainants in February 2025 - a delay of almost 4 months. This is a



clear violation of Section 19(10) of the Act, which stipulates that possession must be handed over within two months after obtaining the OC. Moreover, the so-called "offer of possession" extended by the respondents is not legitimate or valid. Instead, it's a conditional document that imposes unreasonable demands and charges on the complainants. This raises serious questions about the respondents intentions and their commitment to fulfilling their contractual obligations.

- o. That the statement of account attached to the offer of possession reveals that the respondents have already received a staggering sum of Rs.72,89,198/-, exceeding 100% of the total unit cost as specified in the BBA. Despite this, the respondents are making further demands, which is egregious. Furthermore, considering the inordinate delay in handing over possession, the respondents are liable to pay delayed possession interest to the complainants. Instead, they are threatening to levy "holding charges" if the complainants don't accept the invalid offer of possession and make the demanded payment. That this is an outrageous and unlawful tactic of the respondents, especially since the respondents remained silent about possession for 9.5 years, only to suddenly raise concerns about holding charges.
- p. That the respondents failed to fulfill their obligations and deceived the complainants with false assurances. Despite repeated requests, the complainants did not get physical possession of their unit, with all pleas falling on deaf ears. The respondents have reneged on their contractual obligations, deceiving the complainants with false promises and assurances. Despite numerous requests and pleas, the complainants were denied physical possession of their unit, with the



respondents turning a deaf ear to their grievances. Shockingly, it has been over 14 years since the complainants reposed their trust in the respondents by booking a unit in their project, yet they have not even been offered a genuine and valid possession of their unit. This inordinate delay and blatant disregard for the complainants' rights have caused them immense financial loss, mental agony, and hardship, for which the respondents are solely responsible.

- q. That the main grievance of the complainants in the present complaint is that despite the complainants paying more than 100% of the actual cost of the flat and being ready and willing to pay the remaining amount (justified) (if any) after adjustment of delayed possession charges, the respondents have not given the physical possession of the unit. Moreover, if we calculate the delayed possession charges; the same would be far more than the outstanding dues as claimed by the respondents in their invalid paper possession letter. The complainants are willing to settle legitimate dues (if any) and take possession of their unit. To facilitate this, the respondents are required to issue a genuine demand notice along with an offer of possession, enabling the complainants to make the necessary payment for the outstanding dues (if any) after adjustment of the delayed possession.
- r. That the facts and circumstances as enumerated above would lead to the only conclusion that there is a deficiency of service on the part of the respondents and as such, they are liable to be punished and compensate the complainants. That due to the acts of the above and the terms and conditions of the builder buyer agreement/buyer agreement and offer of possession, the complainants have been unnecessarily harassed mentally as well as financially, therefore the

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- opposite parties are liable to compensate the complainants on account of the aforesaid act of unfair trade practice.
- s. That there are clear unfair trade practices and breach of contract and deficiency in the services of the respondents and much more a smell of playing fraud with the complainants and others and is prima facie clear on the part of the respondents which makes them liable to answer the Authority.
- t. The cause of action for the present complaint arose on 07.06.2015 when the respondents failed to give possession to the complainants of their unit. Thereafter, the cause of action arose on 24.10.2024, when the respondents, despite having obtained the Occupancy Certificate, failed to offer possession within two months and refused to hand over physical possession of the complainants' unit. The respondents have not given possession to date; therefore, the cause of action is alive and continuing and will continue to subsist till such time as the Authority restrains the respondents by an order of injunction and/or passes the necessary orders.
- u. That the complainants being aggrieved persons filing the present complaint under section 31 with the Authority for violation/contravention of provisions of this Act as mentioned in the preceding paragraph. That as per section 12 of the RERA Act, 2016, the promoter is liable to return the entire investment along with interest to the allottees of an apartment, building, or project for giving any incorrect, false statement, etc. That as per section 18 of the RERA Act 2016, the promoter is liable to pay the interest or return of the amount and to pay compensation to the allottees of a Unit, building, or project for a delay or failure in handing over such possession as per the terms and agreement of the sale.

- v. That the complainant hereby submits to the Authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above. That the complainants do not want to withdraw from the project. The promoters have not fulfilled their obligation; therefore, as per obligations on the promoter under section 18(1) proviso, the promoters are obligated to pay the interest at the prescribed rate for every month of delay till the handing over of the possession.
- w. That the present complaint is not for seeking compensation, without prejudice, complainants reserve the right to file a complaint to Adjudicating Officer for compensation.

C. Relief sought by the complainant:

4. The complainants have sought following relief(s):
- i. Direct the respondents to issue a fresh, genuine, and legal offer of possession with a reasonable demand (if any) to be paid by the complainants after adjustment of the delayed possession charges/interest.
 - ii. Direct the respondents to hand over the physical possession of the unit.
 - iii. Direct the respondents to pay delayed possession charges for from the due date of possession i.e., 07.06.2015.
 - iv. Direct the respondents to execute and register the conveyance deed of the complainants' unit.
 - v. Direct the respondents not to levy any unlawful demands, costs, or charges such as possession charges, interest, taxes, and creating or transferring any third-party rights or interests in the complainants' unit.

- vi. Direct the respondents to refrain from charging holding charges and maintenance charges.
 - vii. Direct the respondents to provide the area calculation.
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 defence of the respondent was struck off vide order dated 18.12.2025 after giving various opportunities to file reply and pay the cost imposed. In interest of justice respondent was given opportunity to file written submissions but, he failed to do so as well.

D. Jurisdiction of the authority

7. 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

8. 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

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.

E. Findings of Authority on the reliefs sought in the complaint:

- E. I Direct the respondents to issue a fresh, genuine, and legal offer of possession with a reasonable demand (if any) to be paid by the complainants after adjustment of the delayed possession charges/interest.
 - E. II Direct the respondents to hand over the physical possession of the unit.
 - E. III Direct the respondents to pay delayed possession charges for from the due date of possession i.e., 07.06.2015.
 - E. IV Direct the respondents to execute and register the conveyance deed of the complainants' unit.
 - E. V Direct the respondents refrain from levying any unlawful demands, costs, or charges such as possession charges, interest, taxes, and creating or transferring any third-party rights or interests in the Complainants' unit.
11. The above-mentioned reliefs sought by the complainants are being taken together, as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
12. The complainants applied for allotment in a group housing project i.e., "Capital Gateway" situated in sector-111, Gurugram being developed by the respondents. The respondents issued an allotment letter dated 18.12.2012 in favour of the complainants and thereby intimated them about the allotment of unit bearing no.202, 2nd floor, tower D,





admeasuring super area 1695 sq. ft. in the said project. Subsequently, a flat buyer's agreement was executed between the parties on 17.12.2012 for a basic consideration of Rs.49,74,825/- [excluding PLC + Car parking + Club membership + EDC/IDC, electric connection IFMS, Possession Charge, other charges not applicable]. Owing to an increase in the super area from 1695 sq. ft. to 1895 sq. ft., the basic consideration amount was revised to Rs.55,00,190/-. Against the said consideration, the complainants have paid a total amount of Rs.72,89,198/- to the respondents till date. As per Clause 2.1 of the Flat Buyer's Agreement, the respondents were obligated to hand over possession of the allotted unit on or before 07.12.2025, inclusive of a grace period of six months. The respondents have offered possession of the unit on 06.02.2025 after obtaining the Occupation Certificate from the competent authority on 24.10.2024. At the time of offering possession, the respondents raised an demand of Rs.14,49,405/- towards the enhanced consideration and various charges, including possession charges, holding charges, maintenance charges, interest and applicable taxes. Thereafter, the respondents cancelled the allotment of the unit vide letter dated 14.07.2025.

Now, the question before the Authority is whether the offer of possession and cancellation is valid or not?

13. On the documents available on record and after considering the submissions advanced by both parties, the Authority observes that, in terms of Clause 1.2 of the Flat Buyer's Agreement dated 17.12.2012, the basic sale price of the allotted unit was fixed at Rs.49,74,825/-, excluding EDC/IDC, PLC, club membership charges, interest-free maintenance security, car parking charges, electric connection charges, fire-fighting charges, power backup installation charges, as applicable



at the time of possession, and other charges not applicable. The said charges were payable by the complainant in accordance with the payment plan stipulated under the agreement. Further, as per Clause 1.5 of the Flat Buyer's Agreement, the respondents had duly informed the complainants that the super area of the unit was subject to an increase or decrease up to 15%. The total sale consideration arose on account of an increase in the super area from 1695 sq. ft. to 1874 sq. ft., amounting to an increase of approximately 11%, which was within the permissible limit stipulated under the agreement. It is further noted that the respondents offered possession of the allotted unit on 06.02.2025 after obtaining the Occupation Certificate from the competent authority on 24.10.2024. The complainants, however, contended that possession was required to be offered on or before the stipulated due date, i.e., 07.12.2015, and that the purported offer of possession dated 06.02.2025, made after a delay of more than nine years, is not valid inasmuch as the respondents had raised allegedly unlawful demands, including enhanced consideration and levied charges such as possession charges, interest, and taxes.

14. Accordingly, the offer of possession dated 06.02.2025 is held to be valid, having been issued by the respondents after obtaining the Occupation Certificate from the competent authority on 24.10.2024. As per Clause 1.2(i) of the Flat Buyer's Agreement (at page 45), 'other charges' were stated to be not applicable. However, from a perusal of the statement of account dated 10.01.2018, it is evident that the respondents have levied an amount of Rs.3,59,266/- under the head 'other charges' without assigning any justification or contractual basis. In view of the foregoing, the respondents are directed to furnish a detailed clarification to the

complainants with respect to the amount charged under the head "other charges" within a period of 30 days from the date of this order.

15. Upon consideration of the documents placed on record and the submissions advanced by both parties, the Authority is of the considered view that the cancellation of the allotment by the respondents is unfair, arbitrary and unsustainable in law for the reasons enumerated hereinbelow: Firstly, it is evident from the record that the complainants had paid a sum of Rs.72,89,198/- towards the total sale consideration of Rs.87,38,603/-, amounting to approximately 83.41%, in the year 2015. At the time of offering possession, the respondents raised a demand of Rs.14,49,405/- towards the enhanced consideration and various charges, including possession charges, holding charges, maintenance charges, interest and applicable taxes. It is pertinent to note that under the Flat Buyer's Agreement dated 17.12.2012, the basic sale consideration for the subject unit admeasuring 1695 sq. ft. was fixed at Rs. 49,74,825/-, excluding PLC, car parking charges, club membership charges, EDC/IDC, electric connection charges, IFMS, possession charges and other charges, which were expressly stated to be not applicable, against the said consideration, the complainants had already paid an amount of Rs.72,89,198/-. Subsequently, owing to an increase in the super area from 1695 sq. ft. to 1874 sq. ft., the total consideration, inclusive of PLC, car parking, club membership, EDC/IDC, electric connection charges, IFMS, possession charges and other applicable charges, stood revised to Rs. 87,38,603/-. However, as per the terms of the Buyer's Agreement, 'other charges' were not leviable, and no justification has been provided by the respondents for raising such demand. Accordingly, only a sum of Rs.14,49,405/- was outstanding and payable by the complainants under



the Buyer's Agreement. Notwithstanding the same, the respondents raised an additional demand of Rs.3,59,266/- towards 'other charges' without any contractual or legal basis. Further, the respondents failed to adjust or account for any amount towards compensation payable to the complainants for the delay in handing over possession. The Authority, therefore, observes that such adjustment ought to have been made by the respondents in terms of Section 18 of the Real Estate (Regulation and Development) Act, 2016, read with Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.

16. Secondly, it is noted that the cancellation of the subject unit was affected by the respondent on 14.07.2025, whereas the present complaint had already been instituted before this Authority on 11.04.2025, after duly serving a copy thereof upon the respondent through email on 16.04.2025 and through speed post, delivery of which stood confirmed on 19.04.2025. It prima facie appears that upon being aggrieved by the filing of the complaint by the allottee, the respondent/promoter hastily raised demands against the complainant and thereafter proceeded to cancel the allotment of the unit on 14.07.2025, i.e., prior to the first date of hearing in the present complaint. Further, vide order dated 24.07.2025, this Authority had directed the respondent not to create any third-party rights in respect of the allotted unit of the complainant till further orders, and the said interim directions continued to operate. In view of the aforesaid facts and circumstances, this Authority is of the considered opinion that the cancellation of the unit by the respondent vide letter dated 14.07.2025 is not sustainable and is not valid in the eyes of law.

17. **Delayed Possession Charges and Possession:** In the present complaint, the complainants intend to continue with the project and are



seeking possession of the unit along with 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

"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."

18. Due date of handing over possession: In terms of clause 2.1 of the Agreement executed between the parties, the promoter has proposed to handover the possession within approximate period of 36 months from the date of sanction of the building plans i.e., 07.06.2012 of the said Colony with a grace period of 180 days for applying and obtaining occupation certificate. In view of the above, the due date of handing over of possession comes out to be 07.12.2015 including grace period of 180 days.

19. Admissibility of delay possession charges at prescribed rate of interest: The complainants are continuing with the project and seeking delay possession charges. Proviso to Section 18 provides that where an allottees 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

20. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules *ibid*, 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.
21. 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., 22.01.2026 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.
22. The definition of term 'interest' as defined under section 2(z) 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;"*
23. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 8.80% (marginal cost of lending rate +2%) by the respondent/promoter which the same as is being granted her in case of delayed possession charges.



24. On consideration of the documents available on record and submissions advanced by the parties with regard to the alleged contravention of the provisions of the Act, this Authority is satisfied that the respondents have contravened the provisions of Section 11(4)(a) of the Act by failing to hand over possession of the subject unit within the due date as stipulated under the agreement. By virtue of clause 2.1 of the Flat Buyer's Agreement dated 17.12.2012, the due date for delivery of possession works out to 07.12.2015. It is an admitted position that the Occupation Certificate was granted by the competent authority only on 24.10.2024. Copies of the same have been placed on record. The authority is of the considered view that here has been an inordinate delay on the part of the respondent in offering physical possession of the subject unit, which amounts to a failure to discharge its statutory obligations and contractual responsibilities under the flat buyer's agreement to hand over possession within the stipulated period.
25. Section 19(10) of the Act mandates that the allottee shall take possession of the subject unit within two months from the date of receipt of the Occupation Certificate. In the present case, although the Occupation Certificate was issued by the competent authority on 24.10.2024, the respondent offered possession of the unit in question to the complainants only on 06.02.2025. Consequently, it can reasonably be inferred that the complainants became aware of the grant of the Occupation Certificate only upon receipt of the offer of possession. Therefore, in the interest of justice and fairness, the complainants are entitled to a period of two months from the date of the offer of possession to take over the unit. The said reasonable period is being granted keeping in view the practical requirements involved in taking possession, including inspection of the fully completed unit and





arrangement of necessary logistics and documentation, subject to the condition that the unit, at the time of handing over possession, is in a fit and habitable condition.

26. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with Section 18(1) of the Act on the part of the respondent is established. As such, the allottee shall be paid by the promoter interest for every month of delay from the due date of possession i.e., 07.12.2015 till the date of valid offer of possession i.e., 06.02.2025 plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier; at prescribed rate i.e., 10.80% p.a. as per proviso to section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.

27. In view of the above, the respondent is directed to handover possession of the flat/unit as per specifications provided in the flat buyer's agreement executed between the parties and execute conveyance deed in favour of the complainants in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable.

28. **Conveyance Deed:** 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 complainants. 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.

E.VI Direct the respondents to refrain from charging Holding Charges and Maintenance Charges.

29. **Holding Charges:** The term holding charges or also synonymously referred to as non-occupancy charges become payable or applicable to be paid if the possession has been offered by the builder to the owner/allottee and physical possession of the unit not taken over by

allottee, but the flat/unit is lying vacant even when it is in a ready-to-move condition.

30. In the case of ***Varun Gupta vs Emaar MGF Land Limited, Complaint Case no. 4031 of 2019 decided on 12.08.2021***, the Hon'ble Authority had already decided that the respondent is not entitled to claim holding charges from the complainants at any point of time even after being part of the builder buyer agreement as per law settled by the ***Hon'ble Supreme Court in Civil Appeal nos. 3864-3899/2020 decided on 14.12.2020***. The relevant part of same is reiterated as under:

"134. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the apartment. Therefore, the holding charges will not be payable to the developer. Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed."

31. Therefore, in view of the above the respondents are is directed not to levy any holding charges upon the complainants
32. **Maintenance Charges:** The Authority observes that the occupation certificate for the tower in question was obtained by the respondent on 24.10.2024, whereas possession of the unit was offered to the complainant only on 06.02.2025. The Authority observes that after issuance of occupation certificate, it is presumed that the building is fit for occupation. In multi-storied residential and commercial complexes, various services like security, water supply, operation and maintenance of sewage treatment plant, lighting of common areas, cleaning of common areas, garbage collection, maintenance and operation of lifts and generators etc. are required to be provided. Expenditure is required to be incurred on a consistent basis in providing these services



and making available various facilities. Therefore, the demand on account of maintenance charges can only be demanded by the respondent at the time of offer of possession of unit to the complainant and not before. Keeping in view the facts above, the Authority is of the view that the respondent is right in demanding advance maintenance charges at the rate prescribed therein at the time of offer of possession

E.VII Direct the respondents to provide the area calculation.

33. That As per section 19(1) of Act of 2016, the allottee shall be entitled to obtain information relating to sanctioned plans, layout plans along with specifications approved by the competent authority or any such information provided in this Act or the rules and regulations or any such information relating to the agreement for sale executed between the parties. Therefore, the respondent promoter is directed to provide the area calculation relating to super area, loading and carpet area to the complainant.

F. Directions issued by the Authority:

34. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance with obligations cast upon the promoter as per the functions entrusted to the Authority under section 34(f) of the Act of 2016:
- a. The cancellation letter dated 14.07.2025, is hereby set aside and the same is bad in eyes of law. The respondents are directed to restore the unit of the complainant within a period of 30 days from the date of this order. If the originally allotted unit is not available, the respondent shall provide an alternative unit of equivalent size and specifications in accordance with the terms of the Buyer's Agreement dated 17.12.2012 within the same project.



- b. The respondents are directed to pay delay possession charges at the prescribed rate of interest @ 10.80% per annum from the due date of possession (07.12.2015) till valid offer of possession i.e., 06.02.2025 plus two months i.e., 06.04.2025 after obtaining occupation certificate or actual handing over of possession whichever is earlier as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules, *ibid*.
- c. The rate of interest chargeable from the allottees by the respondents, in case of default shall be charged at the prescribed rate i.e., 10.80% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.
- d. The respondents are directed to issue a revised statement of account after adjustment of delayed possession charges, and other reliefs as per above and also to clarify the complainant under the head of "other charges" within a period of 30 days from date of this order. The complainants are directed to pay outstanding dues if any remain, after adjustment of delay possession charges within a period of next 30 days. The respondent shall handover the possession of the allotted unit to the complainants as per the specifications of buyer's agreement executed between the parties within the next 30 days of this order.
- e. The respondent is directed to execute conveyance deed in favour of the complainants in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within three months after handing over possession to the complainant.



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- f. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement. The respondent is also not entitled to claim holding charges from the complainant/allottees at any point of time even after being part of the builder buyer agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.
- g. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

35. Complaint stands disposed of

36. File be consigned to registry.

Dated: 22.01.2026


Phool Singh Saini
(Member)

Haryana Real Estate
Regulatory Authority,
Gurugram

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