

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

Complaint no. : 6125 of 2024
Date of complaint : 19.12.2024
Date of order : 07.04.2026

Sandeep Chhikara and Leela Chhikara,
**Both R/o: - 221, 1st floor, Deep Plaza Complex Opp Civil
Court, GGN.**

Complainants

Versus

1. M/s KNS Infracon Private Limited.

Registered office at: 517A,
Nariman Manzil, 23, Barakhambha Road,
Connaught Place, New Delhi-110001

2. M/s Tashee Land Developers Pvt. Ltd

**Registered Office at: - fLat no. 312, 3rd floor, Ansal
Bhawan Plot no. 16, Kasturba Gandhi Marg, Connaught
place, New Delhi**

Respondents

CORAM:

Arun Kumar

Chairman

APPEARANCE:

Shri Sanjeev Kumar Sharma (Advocate)

None

Shri. Rishab Jain (Advocate)

Complainants
Respondent No.1
Respondent No.2

ORDER

1. The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and

Development) Rules, 2017 (in short, the Rules) for violation of Section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Heads	Information
1.	Project name and location	'Capital Gateway, Sector-111, Gurugram
2.	Project area	10.462 acres
3.	Nature of the project	Residential
4.	DTCP license no. and validity status	34 of 2011 dated 16.04.2011 valid upto 15.04.2024
5.	Name of licensee	KNS Infracon Pvt. Ltd. and others
6.	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)
7.	Unit no.	104, 1 st floor, Tower-C (pg. 26 of complaint)
8.	Area	1990 sq.ft. (page 26 of complaint)
9.	Date of execution of buyers' agreement	09.07.2012 (page 22 of complaint)
10.	Building plan	07.06.2012
11.	Revised building plan	09.12.2016
12.	Basic sale consideration	Rs. 51,71,000/- (pg. 26 of complaint)
13.	Total sale consideration	Rs. 1,30,82,551/- (page 85 of complaint)



14.	Total amount paid by the complainant	Rs. 79,17,610/- (page 85 of complaint)
15.	Possession clause	2.1. Schedule for possession of the said Unit "Subject to Clause 9 herein or any other circumstances not anticipated and beyond control of the First Party/Confirming Party and any restraints/restrictions from any courts/authorities and subject to the Purchaser having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions 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/Confirming Party. whether under this Agreement or otherwise, from time to time, 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. The First Party/Confirming Party shall give Notice of Possession to the Purchaser with regard to the handing over of possession, and in the event the Purchaser fails to accept and take the possession of the said Flat within 30 days of, the Purchaser shall be deemed to be custodian of the said Flat from the date indicated in the notice of possession and the said Flat shall remain at the risk and cost of the Purchaser..."
16.	Due date of delivery of possession	07.06.2015 (calculated from the building plan)

17.	Occupation certificate	24.10.2024
18.	Notice of Possession by mail	13.11.2024 (page 80 of complaint)

B. Facts of the complaint

3. The complainant has made the following submissions: -

1. That the complainant had earlier filed complaint No. CR/1181/2022, in which the Authority passed an order dated 25.01.2024, issuing certain observations and directions under various clauses of the said order in exercise of powers under Section 37 read with Section 34(f) of the Real Estate (Regulation and Development) Act, 2016:-

- a) The respondents are to pay delayed possession charges at the prescribed rate of interest i.e., 10.85% p.a. for every month of delay on the amount paid by the complainant to the respondents from the due date of possession (i.e., 07.06.2015) till offer of possession plus 2 months after obtaining OC or handing over of possession whichever is earlier.
- b) The respondents shall not charge anything from the complainant which is not the part of the buyer agreement.
- c) The rate of interest chargeable from the allottees by the promoter, in Case of default shall be charged at the prescribed rate i.e., 10.85% 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 complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period and the respondents shall handover the possession within a period of one month after receipt of occupation certificate from the competent authority.

- e) The respondents are directed to pay arrears of interest accrued within 90 days from the date of order of this order as per rule 16(2) of the rules.
- II. That the respondent/builder did not execute the order passed by the Authority. He chose not to pay the amount directed by the Authority, nor did he adjust the amount against any demand which remained pending at the time of possession. Meanwhile, the occupation certificate was received by the respondent builder in the later months of the year 2024.
- III. That the respondent issued an offer of possession letter for handing over possession with huge illegal demands to the complainant on the pretext of the following charges, which are neither part of the builder buyer agreement nor even logical to impose: -
- Possession charges.
 - Basic sale price increases due to cost escalation in construction.
 - Other charges for (transfer / bounce charges).
 - Interest without giving any calculation of such accrual of interest.
 - GST on the amount paid before GST was implemented in July 2017 whereas Builder was supposed to handover the possession in 2015.
- IV. That the respondent has further demanded and received car parking charges for areas in the basement or other common areas allotted for parking. Common areas are already included and sold as part of the super area. Therefore, such areas cannot be sold twice.
- V. That the present complaint is being filed as such anomalies were not part of the previous complaint decided by the Authority. It requires fresh directions from the Authority to address and rectify the illegalities committed by the respondent-builder.

C. Relief sought by the complainant:

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

- I. The respondent is directed not to cancel the unit and handover the possession immediately keeping the dispute of "amount" between allottee and builder pending.
 - II. Interest for delay possession charges till the actual handover of the unit in question.
 - III. Refund the excess amount collected.
5. On the date of hearing, the Authority explained to the respondents/promoter about the contraventions as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.
 6. Despite due service of notice and specific direction for filing reply in the matter, neither anyone has put in appearance on behalf of respondents before the Authority, nor any written reply to the present complaint has been received from it. Thus, the respondents were proceeded ex-parte. In view of the above, the Authority is deciding the complaint on the basis of these undisputed documents available on record and submissions made by the complainant.
 7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Maintainability of complaint:

8. In the present complaint, the complainant intends to continue with the project and is seeking direction to the respondent to handover the possession of the unit, delay possession interest and refund the excess amount collected. The complainant has submitted that a complaint bearing no. CR/1181/2022 was filed by him seeking handover of possession and payment of delay possession charges and vide order dated 25.01.2024, 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 in the later months of the year 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.

9. The Authority observes that the complainant has previously filed a complaint bearing no. CR/1181/2022 against the subject unit before the Authority seeking possession along with payment of delay possession charges. Thereafter, vide order dated 25.01.2024, the respondents were directed to pay delay possession charges w.e.f. 07.06.2015 till offer of possession plus 2 months after obtaining occupation certificate or till actual handover of possession, whichever is earlier. The respondent was further directed to not to charge anything from the complainant which is not part of the buyer's agreement.
10. 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 25.01.2024 in the former complaint bearing no. CR/1181/2022. 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.*

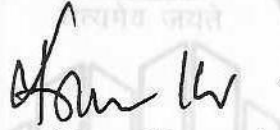
***Explanation V.**—Any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purposes of this section, be deemed to have been refused.*

***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.]"*

11. 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.
12. File be consigned to the registry.



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.04.2026

HARERA
GURUGRAM