

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

Complaint no.: 5811 of 2024
Date of complaint: 19.12.2024
Date of order: 07.04.2026

Adhithyaa Paliwal and Usha Paliwal
Both R/O: - Seat no. 17 (NC Jain Lane)Holl
no.08 District and session Court, Gurugram.

Complainants

Versus

1. M/s KNS Infracon Pvt. Ltd.
2. M/s Tashee land Developers Pvt. Ltd.

Regd. Office: 517A, Narainmanzil,23,
Barahama Road, Connaught Place, New Delhi-
110001.

Respondent

CORAM:
Shri Arun Kumar

Chairman

APPEARANCE:

Shri Pankaj Kumar Yadav (Advocate)
Shri Rishab Jain (Advocate)
None

Complainant
Respondent no.2
Respondent no.1

ORDER

1. The present complaint has been filed by the complainant/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 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.	1001, 10 th floor, Tower-I (pg. 7 of complaint)
8.	Area	2675 sq.ft. (page 7 of complaint)
9.	Allotment letter	10.02.2015
10.	Date of execution of buyers' agreement	11.02.2015 (page 5 of complaint)
11.	Building plan	07.06.2012
12.	Revised building plan	09.12.2016
13.	Total sale consideration	Rs. 1,87,93,700/- (page 12A of complaint)
14.	Total amount paid by the complainant	Rs. 1,79,91,936/- (page 13A 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

		<p><i>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..."</i></p>
16.	Due date of delivery of possession	07.06.2015 (calculated from the building plan)
17.	Occupation certificate	Not obtained
18.	Notice of Possession by mail	Not offered

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- I. That the respondent no.1 advertised, marketed, and launched a project named as CAPITAL GATEWAY in Sector 111, Gurugram. It is pertinent to mention that the respondents while promoting and offering to sell the units in the project made several promises pertaining to quality, completion, facilities, amenities, reputation, permission, and approvals in relation to the said project. The respondents categorically mentioned that the project shall also have club house, swimming pool/ Kids Pool, School, Pavilion, Open Air Theatre, Waterbody, Skate Park, Jogging Track, Kids' Play Area, Basketball Court, Half Tennis Court, Badminton, Lawn etc. It is pertinent to mention here that the respondents assured and promised to deliver the physical vacant possession of the dwelling unit to the proposed buyer within 36 months.
- II. That in pursuant to the representations made by the respondents, the complainant booked a flat in the said residential township project named "Capital Gateway " situated at Sector 111, Gurugram ('Project') for a Total Sale consideration price of Rs. 1,89,94,325/ for unit bearing No. 1001, 10th Floor, Tower I, Capital Gateway, Sector 111, Gurugram, Haryana. That the housing unit for a consideration of Rs. 1,89,94,325/-.
- III. That the builder buyer agreement dated 11.02.2015 mentioned that the project will be completed within 36 months from the date of sanction of the building plans of the said residential project (Clause 2.1) which is attached as Annexure C 3. the respondents got the approval of the building plans as on 07.06.2012 as informed by the respondent while raising demand on start of excavation work.

- IV. That the details of the demand raised by the respondents and amount deposited by the complainant is as per the details provided by the respondents vide annexure no C 2.
- V. That it is pertinent to mention here that the complainant also availed a bank loan of Rs. 1,20,00,000/- @ 9.50 % interest per annum from ICICI BANK Limited, Race Course Circle, Vadodara-390 007, India branch for purchase of the above-mentioned unit. The respondents had recommended the name this financing company as it had approved the said housing project. the tripartite agreement was executed by the borrower of the first part, the Builder M/S Tashee Land Developers Pvt Ltd of the second part and ICICI Housing Finance Ltd of the third part. The said agreement was additionally signed by the respondent.
- VI. The respondents unilaterally and unauthorizedly increased the super area of the booked dwelling unit by 315 sq. ft. and demanded Rs.14,40,809 but finally forced to pay Rs.8,90,809/ against Clause 1.5 of BBA which states that super area shall be determined after completion of the said colony.
- VII. That the complainant came to know about the fact that the respondents had no intention to deliver the project and was dragging their feet by indulging into delaying and dilatory tactics unfairly to fleece the complainant not caring for completing the project in promised time span. The complainant when further enquired about the same, he was shocked to figure out that the respondents are habitual of making false promises and assurances on one pretext or other not only to the complainant but to the other similarly situated persons which fact is evident from referring to numerous other complaints filed and got adjudicated in favour of the buyers and against the respondents which itself is an admission on record about various acts of omission and commission prejudicial and detrimental to the complainant in contravention to the terms and covenant of the builder buyer agreement as

well. It is reported that respondents are guilty of money laundering and are facing many trials in several court cases and complaints against them, including before the authority.

- VIII. That the complainant made efforts to find the status of the said project from the HRERA website but again it was a shocking experience. The respondents were paying scant attention and regards to the compliance of lawful instructions and directions of the Authority established under the provisions of the RERA Act, 2016. The residential project of the respondents named as Capital Gateway was registered with number 12 of 2018. There have been multiple extensions for completion of the projects by this Authority but completion of the project is nowhere in sight. It is reported that the respondents have been granted extension till June 2025 to complete the project.
- IX. That the above said facts and circumstances shows that the respondents have acted in an unlawful manner to derive unlawful gains and cause huge losses to the other buyers similarly like complainant. Initially, by making false representations, the respondents convinced the complainant to purchase a flat and thereafter failed to complete the project within promised time. Therefore, due to the said unlawful acts of the respondents, the complainants are constrained to approach this hon'ble forum for justice and exercise the legal remedy available.

C. Relief sought by the complainant:

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

- I. Direct the respondents to pay delayed interest on the amount of Rs 1,79,91,936/- collected from 02-12-2014 and paid till 24-08-2018 @ SBI MCLR+2 per cent per annum from the date of deposit of the amount till for unwarranted and unilateral increase of 315 sq ft in the super area of the flat allotted to the complainant whereas the carpet area has not increased and the said action of the Respondents against the clause 1.5 of the builder buyer agreement which provides that final super area shall be determined

on the date of possession and is in violation of Section 14 of the RERA Act, 2016.

- II. Direct the respondents to refund the amount Rs.8,90,8000/ charged unauthorizedly on account of increase in super area 315 sq. ft.
 - III. Direct the respondent to pay Rs.50,000/- towards the litigation charges of the present complaint.
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. 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 submissions made by the parties.

D. Jurisdiction of the authority

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

E.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.

E.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. Relief sought by the complainants.

E.I Direct the respondents to pay delayed interest on the amount of Rs 1,79,91,936/- collected from 02-12-2014 and paid till 24-08-2018 @ SBI MCLR+2 per cent per annum from the date of deposit of the amount till for unwarranted and unilateral increase of 315 sq ft in the super area of the flat allotted to the complainant whereas the carpet area has not increased and the said action of the Respondents against the clause 1.5 of the builder buyer agreement which provides that final super area shall be determined on the date of possession and is in violation of Section 14 of the RERA Act, 2016.

12. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges as provided under the Proviso to Section 18(1) of the Act. Section 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)

13. Clause 2 of the buyer agreement provides for handing over of possession and is reproduced below:

*"..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..." .."*

(Emphasis supplied)

14. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainant not being in default under any provisions of these agreements and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottees that even a single default by the allottees in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning. The incorporation of such clause in

the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees of their right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottees are left with no option but to sign on the dotted lines.

15. Due date of possession and admissibility of grace period: The respondents/promoter proposed to hand over the possession of the said unit within a period of 36 months from the date of sanction of building plans. The building plans were approved on 07.06.2012. Therefore, the due date of handing over possession comes out to be 07.06.2015.

16. Admissibility of delay possession charges at prescribed rate of interest:- The complainants are seeking delay possession charges however, 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, *ibid*. 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."

17. 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.

18. 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., 07.04.2026 is @ 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.
19. 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—
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 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;"
20. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.80% by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.
21. On consideration of the documents available on record and submissions made by both the parties, the authority is satisfied that the respondents are in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 2.1 of the buyer's agreement executed between the parties, the possession of the subject apartment was to be delivered within a period of 36 months from date of sanction of building plans which comes out to be 07.06.2015. However, the respondents have failed to handover possession of the subject apartment till date of this order. Accordingly, it is the failure of the respondent/promoter to

fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.

22. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the agreement dated 11.02.2015 to hand over the possession within the stipulated period. 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 allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 07.06.2015 till offer of possession plus 2 months 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.

E.II Direct the respondents to refund the amount Rs.8,90,8000/ charged unauthorizedly on account of increase in super area 315 sq. ft.

23. The above-mentioned relief was not pressed by the complainant's counsel during the course of arguments at the hearing. Furthermore, the complainant failed to provide or elaborate on any details concerning the said relief. It is noteworthy that both the allotment letter and the buyer agreement specify the unit area as 2675 sq. ft., and no additional document has been submitted by the complainant to demonstrate that the respondent increased the area of the subject unit. Hence, the authority has not returned any findings with regard to the above-mentioned relief.

E.III Direct the respondent to pay Rs.50,000/- towards the litigation charges of the present complaint.

24. The complainants are seeking the above-mentioned relief w.r.t. compensation. The Hon'ble Supreme Court of India in *Civil Appeal nos. 6745-6749 of 2021* titled as *M/s Newtech Promoters and Developers Ltd. V/s State of UP & Ors.(supra)*, has held that an allottee is entitled to claim compensation and litigation charges under Sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per Section 71 and the quantum of compensation

and litigation expense shall be adjudged by the adjudicating officer having due regards to the factors mentioned in Section 72. The Adjudicating Officer has exclusive jurisdiction to deal with the complaints in respect of compensation and legal expenses.

F. Directions of the Authority

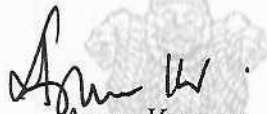
25. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- I. The respondent is directed to pay interest to the complainants against the paid-up amount at the prescribed rate of 10.80% p.a. for every month of a delay from the due date of possession, i.e., 07.06.2015 till offer of possession plus 2 months 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.
- II. The arrears of such interest accrued from 07.06.2015 till the date of order by the authority shall be paid by the promoter to the allottees within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottees before 10th of the subsequent month as per rule 16(2) of the rules.
- III. The respondents/promoter is directed to supply a copy of the updated statement of account after adjusting delay possession charges within a period of 30 days to the complainants.
- IV. The complainants are directed to pay outstanding dues, if any, after adjustment of delay possession charges within a period of 60 days from the date of receipt of updated statement of account.
- V. The respondents/promoter shall not charge anything from the complainants which is not the part of the flat buyer's agreement dated 11.02.2015.
- VI. The respondents/promoter is directed to handover possession of the flat/unit to the complainants in terms of Section 17(1) of the Act of 2016.

VII. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.80% 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.

26. Complaint stands disposed of.

27. File be consigned to registry.



Arun Kumar
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.04.2026



HARERA
GURUGRAM