

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

Date of order: 13.02.2026

NAME OF THE BUILDER		M/s KNS Infracon Private Limited – R1 M/s Tashee Land Developers Private Limited – R2
PROJECT NAME		“Capital Gateway”, Sector- 111, Gurugram, Haryana
Sr. No.	Case No.	Case title
1.	CR/403/2025	Sangeets Singh and Harpal Singh Vs. M/s KNS Infracon Private Limited & M/s Tashee Land Developers Private Limited
2.	CR/405/2025	Pankaj Walia Vs. M/s KNS Infracon Private Limited & M/s Tashee Land Developers Private Limited
3.	CR/406/2025	Tarun Jawa Vs. M/s KNS Infracon Private Limited & M/s Tashee Land Developers Private Limited

CORAM:

Shri Arun Kumar

Chairman**APPEARANCE:**

Shri Harbir Singh Gulati, Advocate

Complainants

Shri Rishabh Jain, Advocate

Respondents**ORDER**

1. This order shall dispose of 03 complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as “the Act”) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as “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 its obligations,

responsibilities and functions to the allottees as per the agreement for sale executed inter se parties.

- The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Capital Gateway", Sector - 111, Gurugram, Haryana being developed by the respondents/promoter i.e., M/s KNS Infracon Private Limited & M/s Tashee Land Developers Private Limited. The terms and conditions of the allotment letter, buyer's agreements, fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question seeking award of possession and delayed possession charges and execute the conveyance deed and others.
- The details of the complaints, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	"Capital Gateway", Sector- 111, Gurugram, Haryana.
Project area	10.462 Acres
Nature of the project	Group Housing Project
DTCP license no. and other details	34 of 2011 dated 16.04.2011 Valid up to 15.04.2029
Name of licensee	M/s KNS Infracon Private Limited and 4 others
RERA Registered/ not registered	Registered Vide no. 12 of 2018 dated 10.01.2018 For Phase - I (A to G) & Phase - II (H to J) Valid up to 30.06.2021
RERA Extension	RC /REP /HARERA /GGM /12 of 2018 /7(3) /2022 /3 dated 09.08.2022 Valid up to 30.06.2025 PROJECT CONTINUATION- RC/REP/HARERA/GGM/12 OF 2018/ 7(3)/2022/03 DATED 10.12.2025 Validity extended up to 30.06.2027
Possession clause as per buyer's agreement	"2. POSSESSION <i>"2.1 ... the First Party/Confirming Party proposes to handover the possession of the Flat to the</i>

	<i>Purchaser within approximate period of 36 months from the date of sanction of the building plans of the said colony. The Purchaser agrees and understands that the First Party/Confirming Party shall be entitled to a grace period of 180 days (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..."</i>
Date of approval of building plan	07.06.2012
Date of Environment Clearance	17.06.2013
Due date of possession	07.12.2015 [including grace period] (Note: 36 months from the date of sanction of building plans i.e., 07.06.2012 plus grace period of 180 days) <i>(Grace period is allowed in view of the order dated 08.05.2023 by Hon'ble Appellate Tribunal in Appeal No. 433 of 2022)</i>
Occupation certificate	OC for the Tower in which unit of the complainants is situated has not been obtained till date.
	24.10.2024 [For Tower-A, B, C, D, E, F & G, EWS 1 & 2] (As per copy of OC available at TCP, Haryana Official website)
Offer of possession	Not Offered

S. No.	Complaint no., Case title, Date of filing of complaint and reply status	Unit no. and size	Allotment Letter And BBA	Total sale consideration and Total amount paid by the complainant in Rs.	Relief sought
1.	CR/403/2025 Sangeets Singh and Harpal Singh Vs. M/s KNS Infracon Private Limited - R1	404, 4 th floor, Tower-I 2675 sq. ft. (super area) [Page 35 of complaint]	AL: Not Provided BBA: 16.07.2012 [page no. 33 of complaint]	TSC: Rs.77,57,500/- (as per BBA at page 37 of complaint) AP: Rs.1,06,40,715/-	DPC along with Possession and others

	M/s Tashee Land Developers Private Limited - R2 DOF: 11.02.2025 RR: Not filed			(As alleged at para 4(v) at page 9 of complaint also as per SOA at page no. 71 of complaint)	
2.	CR/405/2025 Pankaj Walia Vs. M/s KNS Infracon Private Limited - R1 M/s Tashee Land Developers Private Limited - R2 DOF: 11.02.2025 RR: Not filed	901, 9 th floor, Tower-J 3350 sq. ft. (super area) [Page 27 of complaint]	AL: - Not Provided BBA: 20.11.2012 [Page 26 of complaint]	TSC: Rs.97,15,000/- (as per BBA at page 28 of complaint) AP: Rs.1,02,89,847/- (As alleged at para 4(iii) at page 7 of complaint also as per SOA at page 53 of complaint)	DPC along with Possession and others
3.	CR/406/2025 Tarun Jawa Vs. M/s KNS Infracon Private Limited - R1 M/s Tashee Land Developers Private Limited - R2 DOF: 11.02.2025 RR: Not filed	201, 2 nd floor, Tower-1 2675 sq. ft. (super area) [Page 29 of complaint]	AL: - Not Provided BBA: 07.04.2015 [Page 27 of complaint]	TSC: Rs.1,01,59,325/- (as per payment plan at page 62 of complaint) AP: Rs.1,02,89,891/- (As alleged at para 4(iii) at page 7 of complaint)	DPC along with Possession and others

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviation	Full form
DOF	Date of filing of complaint
RR	Reply received by the respondent
AL	Allotment Letter
BBA	Builder Buyer's Agreement
TSC	Total sale consideration
AP	Amount paid by the allottee/s

4. The aforesaid complaints were filed against the promoter on account of violation of the apartment buyer's agreement and allotment letter against the allotment of units in the project of the respondent/builder and for not handing over the possession by the due date, seeking award of possession along with delayed possession charges.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/ respondent in terms of Section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case **CR/403/2025** titled as **Sangeets Singh and Harpal Singh Vs. M/s KNS Infracon Private Limited and M/s Tashee Land Developers Private Limited** are being taken into consideration for determining the rights of the allottee(s) qua delayed possession charges along with interest and others.

A. Project and unit related details

7. The particulars of the project, the details of 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:

CR/403/2025 titled as **Sangeets Singh and Harpal Singh Vs. M/s KNS Infracon Private Limited and M/s Tashee Land Developers Private Limited**

S. N.	Particulars	Details
1.	Name of the project	"Capital Gateway", Sector-111, Gurgaon
2.	Nature of the project	Group Housing Project
3.	Area of project	10.462 Acres
4.	License no. and validity	34 of 2011 dated 16.04.2011 Valid up to 15.04.2029

5.	Name of licensee	KNS Infracon Private Limited and 4 others
6.	RERA Registered/ not registered	Registered Vide no. 12 of 2018 dated 10.01.2018 For Phase - I (A to G) & Phase - II (H to J) Valid up to 30.06.2021
7.	Extension in RERA Registration	RC /REP /HARERA /GGM /12 of 2018 /7(3) /2022 /3 dated 09.08.2022 Valid up to 30.06.2025 PROJECT CONTINUATION- RC /REP /HARERA /GGM /12 OF 2018/ 7(3) /2022 /03 DATED 10.12.2025 Validity extended up to 30.06.2027
8.	Unit no.	404, 4 th floor, Tower-I [as per FBA at page 35 of complaint]
9.	Unit admeasuring area	2675 sq. ft. (super area) [Page 35 of complaint] 2990 sq. ft. (Revised super area) [increased by 10.53%] (As alleged at para 4(iii) at page 6 of complaint)
10.	Flat agreement buyer	16.07.2012 (page no. 33 of complaint)
11.	Payment Plan	Construction linked Plan
12.	Possession clause	<u>2. POSSESSION</u> <i>"2.1 ... the First Party/Confirming Party proposes to handover the possession of the Flat to the Purchaser within approximate period of 36 months from the date of sanction of the building plans of the said colony. The Purchaser agrees and understands that the First Party/Confirming Party shall be entitled to a grace period of 180 days (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..."</i> [as per FBA at page 41 of complaint]
13.	Date of approval of building plan	07.06.2012

14.	Date of Environment Clearance	17.06.2013
15.	Due date of possession	07.12.2015 [including grace period] (Note: 36 months from the date of sanction of building plans i.e., 07.06.2012 plus grace period of 180 days) (Grace period is allowed in view of the order dated 08.05.2023 by Hon'ble Appellate Tribunal in Appeal No. 433 of 2022)
16.	Basic sale consideration	Rs.77,57,500/- (as per BBA at page 37 of complaint)
17.	Total sale consideration	Rs.1,01,25,575/- (As alleged at para 4(v) at page 9 of complaint)
18.	Total Revised sale consideration	Rs.1,11,56,110/- (As alleged at para 4(v) at page 9 of complaint)
19.	Amount paid by the complainant	Rs.1,06,40,715/- (As alleged at para 4(v) at page 9 of complaint also as per SOA at page no. 71 of complaint)
20.	Occupation certificate	OC for the Tower in which unit of the complainant is situated has not been obtained till date. 24.10.2024 [For Tower-A, B, C, D, E, F & G, EWS 1 & 2] (As per copy of OC available at TCP, Haryana Official website)
21.	Offer of possession	Not Offered

B. Facts of the complaint:

8. The complainants have made the following submissions in the complaint: -

- I. That the respondents floated an advertisement on various platforms and medium for construction of a housing colony in the name of "CAPITAL GATEWAY". The promoter's promised world class amenities and timely completion/execution of the project etc. The location of the project was 11

OA/111, Gurugram, Haryana, spread over an area of 10.462 acres. That the license was granted in favour of the respondent no.2 bearing no.34 of 2011 dated 16.04.2011 for the said project. Thereafter enactment of the Real Estate (Regulation and Development) Act 2016 and the framing of Rules under the Haryana Real Estate (Regulation and Development) Rules 2017 the project came within the ambit of the aforesaid laws.

- II. The complainant(s) booked flat no.404 on 4th floor in 'I' Tower, proposed to be constructed in "Capital Gateway" situated in, Sector-111, revenue estate of Village Chauma, Tehsil and Distt. Gurgaon, Haryana on 13.12.2010 by paying an advance amount of Rs.4,00,000/-. The flat buyer's agreement was executed by the promoter on 16.07.2012. Vide para 1.2 of the flat buyer's agreement, the base sale price was fixed@Rs.2,900/- per sq. ft. i.e., a total of Rs.77,57,500/-, for a total flat super area of 2675 sq. ft.
- III. That the complainant(s) were shocked suddenly to receive a letter from respondent(s) dated 26.04.2017 wherein they noticed in the demand that the respondent(s) had arbitrarily revised the allotted super area of the flat from 2675 sq. ft. to 2990 sq. ft. No basis or explanation for the same was given by them. No concurrence was taken from the complainant(s) regarding the increased super area. The complainant(s) sent an email to the respondent(s) objecting to the increased area and also bringing out the fact that the increased area as per FBA was to be settled at the time of possession. However, no reply was received even after a follow up email. But a demand for the increased area was raised by respondent no.1. Whereby, the base sale price along with other allied charges as per para 1.2 of FBA stood revised automatically. No intimation or breakdown was provided by the respondent(s).
- IV. That the respondent(s) also charged the complainant(s) an interest of Rs.1,85,000/-; without specifying the rate of interest or the basis of these

arbitrary charges. All queries have fallen on deaf ears. It seems the respondent(s) have arbitrarily revised the rate of interest without any rational basis.

- V. That the complainant(s) till date has made a total payment of Rs.1,06,40,715/- inclusive of taxes to the respondents vide different cheques on different dates, the details of which are as annexed.
- VI. That as per para no.2.1 of the agreement, the respondent had agreed to deliver the possession of the flat within 36 months from sanctioning of building plan (07.06.2012) which comes to 07.06.2015, excluding an extended grace period of 180 days.
- VII. That it is relevant here to comment on the possession clause of the FBA wherein the possession has been subjected to all kinds of terms & conditions. Even though the complainant may not be in default under any provisions of the FBA and its compliance with all provisions, formalities & documentation as prescribed by the promoters but the drafting of this & other clauses with incorporation of conditions which are vague and uncertain but are also heavily loaded in favour of the promoters and against the complainant that even a single default by him in fulfilling formalities etc. as prescribed by the respondent(s) may make the possession clause irrelevant for the purpose of the complainant and the commitment date for handing over possession lose its meaning. That the incorporation of such clauses in the FBA by the respondent(s) are just to evade the liability towards timely delivery of the unit and deprive the complainant of his right accruing after delay in possession. This is just to highlight as to how the respondent(s) have used their dominant position and drafted such mischievous clause in the agreement and the complainant was left with no option but to sign on the dotted lines.

- VIII. That the complainant(s) used to regularly ask the respondent's staff about the progress of the project, and they completely kept the complainant under dark about the actual and true status of the construction of the said unit and kept saying that the flat would be ready as per the commitments and the promises made to the complainant and kept raising demands for payments which the complainant kept paying.
- IX. When the complainant(s) visited the site, they were shocked & surprised to see that construction work was not going on as per plan. They saw that there was just one odd person present in the site apart from 2-3 guards. No one was there to address the queries of the complainant. Telephone calls were mostly unanswered.
- X. That there was no doubt left of the fact that it was appearing that the respondents had no intentions of keeping their promises. There seemed to be an intent to play fraud upon the complainant(s). The only intention of the respondents was to take payments for the flat without completing the work and not handing over the possession on time. The respondents mala-fide and dishonest motives and intention cheated and defrauded the complainant(s). That despite receiving all the payments on time for various demands raised by the respondents for the said flat and despite repeated requests and reminders over phone calls & personal visits of the complainant(s), the respondents have failed to deliver the possession of the allotted flat to the complainant within stipulated period.
- XI. That it could be seen that the construction of the block in which the complainant flat was booked with a promise by the respondents to deliver the flat within 36 months from the date of sanction of the building plan which comes to 07.06.2015 but was not completed within time for the reasons best known to the respondents, which clearly shows that the

ulterior motive of the respondents was to extract money from the complainant(s) fraudulently.

- XII. That due to this omission on the part of the respondents the complainant(s) have been suffering from disruption on their living arrangements, mental torture, and agony and also continues to incur severe financial losses. This could have been totally avoided if the respondents had given possession of the flat on time. The respondents keep sending messages in emails and otherwise that flat is ready for possession, and they have applied for OC in this regard. However, all these communications were just to give a false sense of hope and to mislead the complainant(s) by the respondent(s).
- XIII. That as per clause 2.3 of the agreement it was agreed by the respondent that in case of failure to offer possession within a period of 45 months (which in itself is incorrect as vide Para 2.1 of FBA it was 36 months with a grace period of 180 days, it comes to 42 months) from the date of sanction of building plans, the respondent shall pay to the complainant(s) a compensation @ Rs.5/- per sq. ft. for every month of delay thereafter until the actual date fixed by the respondent(s) for handing over of the possession. Now, vide clause of the FBA vide para 1.15 the respondent is charging an interest of 18% (arbitrarily revised to 24%) p.a. compounded at the time of every succeeding instalment or three months, whichever is earlier. This is a clear case of exploitation by the respondent(s) wherein he is charging the complainant(s) 18/24% p.a. compounded and he himself wants to pay a compensation at a highly reduced rate of Rs.5/- per sq. ft. per month for the period of delay. And also, has extended the waiting period to 45 months arbitrarily. This is unjust and the respondent has exploited the complainant by not providing the possession of the flat even after a delay from the agreed possession plan.

- XIV. The respondent(s) merely want to escape their liability just by mentioning a compensation clause in the agreement. It can be seen clearly that the respondent(s) have incorporated certain clauses making it a one-sided buyer's agreement and offered to pay a sum of Rs.5/- per sq. ft. for every month of delay. If we calculate the amount in terms of financial charges it comes to approximately @2% per annum rate of interest whereas the respondent charges @24% per annum compounded interest on delayed payment. It is humbly submitted that this should be as per Para 15 of 'The Hry. Real Estate (Regulation and Development) Rules 2017' which says that the interest rate shall be the State Bank of India highest marginal cost of lending rate + 2%.
- XV. That on the ground of parity and equity the respondent should also be subjected to pay the same rate of interest as he has charged the complainant. Hence the respondent is also liable to pay interest on the 12. amount paid by the complainant(s) from the promised date of possession till the flat is actually delivered to the complainant(s) @24% or SBI MCLR +2%, as this court deems fit, on the amount paid by the complainant(s) from the promised date of possession till the flat is actually delivered to the complainant(s).
- XVI. That, as per Para 2.4 of the FBA the respondent(s) have laid down a holding charge of Rs.5/- per square feet on the total super area of the flat if the complainant(s) do not take possession withing 30 days from the 'Notice of Possession'. The holding charge is an arbitrary clause and needs to be deleted. Also, the possession should be allowed to be taken by the purchaser within a period of two months of the occupancy certificate being issued as laid down by the RERA Act, 2016 vide para 19 sub para (10).
- XVII. That the respondent received financial assistance from SWAMIH, a venture of the State Bank of India to provide funds for projects that are stuck for

various reasons. It is worth mentioning that the Respondent has offered the flat of the complainant(s) towards collateral security and mortgaged their flat without prior intimation or consent from the complainant(s). The respondent(s) have put up a condition that the complainant has to obtain a 'No Objection Certificate' from SWAMIH which is not only against the FBA entered between the parties but also puts a further challenge before the complainant to get NOC in view of the illegal demands raised by the respondent(s). The aforesaid clause and act of the respondents are arbitrary, unreasonable & unfair. This is strongly objected to.

- XVIII. That the complainant(s) have requested the respondent several times telephonically and made numerous personal visits to the offices of the respondent to deliver possession of the flat in question along with prescribed interest on the amount deposited by the complainant(s), but respondents has flatly refused to do so. That, the respondents have breached the fundamental term of the contract by inordinately delaying in delivery of the possession. The respondents have committed gross violation of the provisions of Section 18 (1) of the Act by not handing over the timely possession of the flat in question and not giving the interest and compensation to the complainant(s) as per the provisions of the Act.

C. Relief sought by the complainants: -

9. The complainants have sought following relief(s):
- I. Direct the respondent to give delayed possession charges to the complainant(s) on completion of 36 months from the date of approval of the building plan (07.06.2012) which comes to 06.06.2015 till actual date of handing over of possession;
 - II. Direct the respondents to complete the construction of the apartment along with common area facilities and amenities like Community centre, Parking, parks etc. immediately and hand over the legal & rightful possession of the apartment to the complainant;

- III. Direct the respondent(s) are to hand over the physical possession of the Flat after obtaining occupation certificate (OC) from the Town & Country Planning, Haryana in a time bound manner;
 - IV. It is humbly prayed that the default interest charged by the respondent(s) @ 24% should be @SBI MCLR +2% prevailing at the time of charge. The respondent(s) are liable to refund the excess amount charged from the complainant(s) with interest from the date of remittance till finally paid; @highest SBI MCLR+2%.
 - V. Direct the respondents not to charge anything extra which is not a part of the FBA.
 - VI. Direct the respondent(s) not to involve SWAMIH or any other agency for the purpose of obtaining NOC from them or in any way whatsoever and give the rightful possession directly after obtaining OC of the flat to the complainant(s) without creating any hindrances.
10. 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.
11. The complaint was filed on 11.02.2025 and the Authority issued a notice dated 14.02.2025 of the complaint to the respondents by speed post EH092292347IN to R1 and EH092292355IN to R2 and also on the given email address at info@tashee.in for filing reply within 4 weeks. The delivery reports have been placed in the file. The counsel for the respondents appeared however, not filed the reply of the complaint in the registry of the Authority till date. Despite multiple opportunities for filing reply on 22.08.2025, 31.10.2025, 12.12.2025 and 13.02.2026, it failed to comply with the orders of the Authority. It shows that the respondents were intentionally delaying the procedure of the Authority by avoiding to file written reply despite a lapse of more than 1 year from the date of filing of complaint. Therefore, the Authority assumes/ observes that the respondents have nothing to say in the present matter and accordingly the authority struck of the defence of the respondents.

12. The complainants have filed the complaint against R1 and R2 in which R1 is the landowner of the project land and R2 is the developer/promoter. The flat buyer's agreement has been executed with both the respondents and the payments have been made to R2 only. The registered office address of both the respondents as mentioned in the flat buyer's agreement is same. The respondent no. 1 i.e., KNS Infracon Private Limited was granted licence by the Director, Town and Country Planning, Haryana vide licence no. 34 of 2011 to develop and construct the residential group housing project in Sector-111, Gurugram. Though the flat buyer's agreement has been executed with both the respondents and payments have been made to the respondent no. 2 but the respondent no.1 cannot escape its responsibility and obligations to the allottees of the project being licensee of the project and is covered under the definition of promoter within the meaning of 2(zk)(i), (v).
13. The promoter has been defined in section 2(zk) of the Act of 2016. The relevant portion of this section reads as under:
- "2. Definitions. — In this Act, unless the context otherwise requires —*
(zk) "promoter" means, —
(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or
(ii) xxx
(iii) xxx
(iv) xxx
(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale;"
14. As per aforesaid provisions of law, respondent no.1 & 2 will be jointly and severally liable for the completion of the project. Whereas the primary responsibility to discharge the responsibilities of promoter lies with respective promoter in whose allocated share the apartments have been bought by the buyers.

15. 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.

D. Jurisdiction of the Authority:

16. 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

17. 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

18. 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.

19. 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. Findings on the relief sought by the complainant.

- E.I Direct the respondent to give delayed possession charges to the complainant(s) on completion of 36 months from the date of approval of the building plan (07.06.2012) which comes to 06.06.2015 till actual date of handing over of possession;
- E.II Direct the respondents to complete the construction of the apartment along with common area facilities and amenities like Community centre, Parking, parks etc. immediately and hand over the legal & rightful possession of the apartment to the complainant;
- E.III It is humbly prayed that the default interest charged by the respondent(s) @ 24% should be @SBI MCLR +2% prevailing at the time of charge. The respondent(s) are liable to refund the excess amount charged from the complainant(s) with interest from the date of remittance till finally paid; @highest SBI MCLR+2%.
20. On 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 reliefs.
21. 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. 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."

22. Clause 2.1 of the buyer's agreement provides for handing over of possession and is reproduced below:

2. Possession

*2.1 "...the First Party/Confirming Party proposes to handover the possession of the Flat to the Purchaser within approximate period of **36 months from the date of sanction of building plans** of the said Colony. The Purchaser agrees and understands that the First Party/Confirming Party shall be entitled to a **grace period of 180 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)

23. **Due date of handing over of possession and admissibility of grace period:**

By virtue of clause 2.1 of the agreement executed between the parties on 21.07.2012 the possession of the subject unit was to be delivered within 36 months from the date of sanction of building plans. The date of sanction of building plans is 07.06.2012. Therefore, the due date of possession comes out to be 07.06.2015 further there shall be an additional grace period of 180 days after the expiry of 36 months for applying and obtaining the occupation certificate in respect of the unit colony from the concerned authority.

24. The Authority put reliance on the judgement of the Hon'ble Appellate Tribunal in appeal no. **433 of 2022 tilted as Emaar MGF Land Limited Vs Babia Tiwari and Yogesh Tiwari**, wherein it has been held that if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. The relevant para is reproduced below:

"...In our opinion if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. So, in view of the above said circumstances, the appellant-promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the Occupation Certificate. Thus, with inclusion of grace period of 3 months as per the provisions in clause 11 (a) of the agreement, the total completion period becomes 27 months. Thus, the due date of delivery of possession comes out to 07.06.2014."

25. Therefore, in view of the above judgement and considering the provisions of the Act, the Authority is of the view that, the promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the occupation certificate. Thus, the due date of handing over of possession comes out to be 07.12.2015.

26. **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.

27. 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.
28. 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., 13.02.2026 is **8.80%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.80%**.
29. 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
30. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.80% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.
31. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, 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 flat buyer's agreement executed between the parties, the possession of the subject unit was to be delivered within a period of 36 months from date of sanction of building plans. The date of sanction of building plans is 07.06.2012. As such the due date of handing over of possession comes out to be 07.12.2015 (including grace period of 180 days). The respondents have failed to handover possession of the subject unit till date. Accordingly, it is the failure of the respondents/promoter 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 possession of the allotted unit to the complainant as per the terms and conditions of the flat buyer's agreement dated 16.07.2012 executed between the parties. It is pertinent to mention over here that even after a passage of almost 14 years neither the construction is complete nor an offer of possession of the allotted unit has been made to the allottee by the builder. Further, the Authority observes that there is no document on record from which it can be ascertained as to whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of the tower in which unit of the complainants is situated. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottee.

32. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate for the tower in which unit of the complainants is situated has not been obtained till date. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 07.12.2015 till the expiry of 2 months from the date of offer

of possession after obtaining occupation certificate from the competent authority or date of actual handing over of possession, whichever is earlier.

33. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the flat buyer's agreement 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., 07.12.2015 till valid offer of possession after obtaining occupation certificate from the competent authority plus two 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.

G.IV Direct the respondent(s) are to hand over the physical possession of the Flat after obtaining occupation certificate (OC) from the Town & Country Planning, Haryana in a time bound manner;

34. The respondents are legally bound to meet the pre-requisites for obtaining occupation certificate from the competent authority. It is unsatiated that even after the lapse of more than 10 years from the due date of possession, the respondents have failed to complete the construction and apply for OC to the competent authority. The promoter is duty bound to obtain OC and hand over possession only after obtaining OC.
35. 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. However, there is nothing on the record to show that the respondents have applied for occupation certificate or what is the status of the development of the tower in which unit of the complainants is situated in the above-mentioned project. In view of the above, the respondents

are directed to handover possession of the flat/unit and execute conveyance deed 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 after obtaining occupation certificate from the competent authority.

G.V Direct the respondents not to charge anything extra which is not a part of the FBA.

G.VI Direct the respondent(s) not to involve SWAMIH or any other agency for the purpose of obtaining NOC from them or in any way whatsoever and give the rightful possession directly after obtaining OC of the flat to the complainant(s) without creating any hindrances.

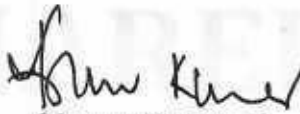
36. The respondents shall not charge anything from the complainants which is not part of the flat buyer's agreement.

F. Directions of the Authority:

37. Hence, the Authority hereby passes this order and issue the following directions under Section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under Section 34(f) of the Act:

- i. The respondents/ promoter 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 delay from the due date of possession i.e., 07.12.2015 till offer of possession after obtaining occupation certificate plus two months or actual taking over of possession, whichever is earlier, as per Section 18(1) of the Act read with Rule 15 of the Rules.
- ii. The arrears of such interest accrued from 07.12.2015 till the date of order by the Authority shall be paid by the promoter to the allottee(s) 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 allottee(s) before 10th of the subsequent month as per Rule 16(2) of the Rules.
- iii. The complainants are directed to pay outstanding dues, if any remains as per the buyer's agreement, after adjustment of delay possession charges.

- iv. The rate of interest chargeable from the allottees by the promoter, in case of default shall be at the prescribed rate i.e., 10.80% 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.
- v. The respondent/promoter shall handover possession of the flat/unit and execute conveyance deed in favour of the complainant(s) 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 obtaining occupation certificate from the competent authority.
- vi. The respondents shall not charge anything from the complainant, which is not the part of the buyer's agreement
38. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order wherein date of allotment letter, date of execution of buyer's agreement and details of paid-up amount is mentioned in each of the complaints.
39. Complaint as well as applications, if any, stand disposed off accordingly.
40. Files be consigned to registry.


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.02.2026