

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

Complaint no. : 197 of 2025
Date of complaint : 22.01.2025
Date of order : 19.05.2026

Nirupama Shrivastava And
Raghuvansh Shrivastava,
Both R/o:- Flat No. 603, Tower - Wt,
Windchat Experion,
Sector - 112, Bajghera

Complainant

Versus

KNS Infracon Pvt.Ltd
Regd. Office at: 517a, Narainmanzil, 23,
Barahama Road, Connaught Place,
New Delhi-110001

Respondent 1

Tashee Land Developers Private limited
Regd. Office at: Flat No. 312, 3rd Floor,
Plot No. 16, Ansal Bhawan,
Kasturba Gandhi marg, Connaught Place,
Central Delhi, New Delhi

Respondent 2

CORAM:

Arun Kumar
Phool Singh Saini

**Chairman
Member**

APPEARANCE:

Sukhbir Yadav (Advocate)
Rishabh Jain (Advocate)
Abhay Jain (Advocate)

Complainant
Respondent 1
Respondent 2

EX-PARTE 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.	Particulars	Details
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.	703 on 7 th floor in Tower F admeasuring 1760 sq.ft. (pg. 42 of complaint)
8.	Transfer of unit in favour of the complainant by the original allottee	09.06.2012 (Page 34 of complaint)
9.	Date of execution of buyers' agreement between complainant and the respondent	27.07.2012 (pg. 36 of complaint)
10.	Date of building plan	07.06.2012

11.	Possession clause	2.1 ...confirming party proposes to handover the possession of the flat to the purchaser within approx. 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... [on page 48 of complaint]
12.	Due date of possession	07.12.2015
13.	Total sale consideration	Rs. 51,53,280/- [on page 44 of complaint]
14.	Total amount paid by the complainant	Rs. 77,56,931/- [on page 104 of complaint]
15.	Letter w.r.t. the information regarding ready for possession by the respondent	11.11.2024 (page 103 of complaint)
16.	Part Occupation certificate	24.10.2024 (page 109 of complaint)

B. Facts of the complaint

3. The complainant has made the following submissions: -
 - I. 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 (hereinafter called the **Developer/Promoter/Builder/Respondent**). **It is pertinent to mention here that Tashee Land Developers Pvt. Ltd. Is the Developer and K N S Infracon Pvt Ltd. is the license holder/confirming party.** The project in question is known as **“Capital Gateway”** situated at Sector - 111, Gurugram (hereinafter called the Project).

- II. That the Original Allottee i.e. Mr. Rajiv Kumar purchased Flat No. F-703, **measuring** 1695 square feet, from Tashee Land Developers Private Limited. On 09.06.2012, the original allottee submitted a pre-printed application form, accompanied by cheques amounting to Rs. 12,72,689/- (Twelve Lakh Seventy Two Thousand Six Hundred Eighty-Nine Only), The Original Allottee booked the said flat under the Construction Link Plan as per Annexure D (page 38) of the Builder Buyer Agreement.
- III. That on 09.06.2012, the original allottee issued a formal letter requesting the transfer of rights and interest in residential unit no. 703, tower-E, measuring 1695 square feet, situated in Capital Gateway, Sector-111, Gurgaon in favour of the complainants. As per the said letter, the original allottee i.e. Mr. Rajiv Kumar transferred all rights in the said property, in favour of the complainants, thereby vesting all rights, title, and interest in the said housing unit in the complainants. Furthermore, the amount paid by the original allottee, Rs. 12,72,689/- was also credited in favor of the complainant.
- IV. That on 27.07.2012, a pre-printed, arbitrary, unilateral, and one-sided builder buyer agreement was executed between the respondents and the complainants for unit no. F-703, 7th Floor, Tower-F having a super area of 1695 sq. Ft. As per clause No. 2.1 of BBA, the respondents were obligated to hand over the possession of the unit in question within an approximate period of 36 months from the date of sanction of the building plans of the

said colony. The building plans of the project were sanctioned on 07.06.2012, therefore due date of possession was 07.12.2015 including 180 days grace period. It is pertinent to mention here that this Authority in CRN 6711 of 2022 titled "*Nirupama Shrivastava and Raghuvansh Shrivastava Vs. Tashee Land Developers Private Limited & Anr.*" has deemed 07.12.2015 as the due date of possession for the complainant's unit.

- V. That it is pertinent to mention here that the sale consideration of the unit is defined in clause 1.2 of the BBA. As per the said clause, the total sale consideration of the flat comes out to be Rs - 66,40,565/-.
- VI. That the respondent(s) continued to raise demands, and the complainants, in good faith, made payments in response to each demand raised by the respondents against their unit. Notably, despite fulfilling all payment obligations, the complainants repeatedly requested the respondents to hand over possession of their unit, as the stipulated deadline had lapsed. Regrettably, the respondents failed to provide any meaningful updates or communication regarding the possession of the unit, leaving the complainants in a state of uncertainty.
- VII. Despite having paid more than 100% of the total consideration, amounting to Rs. 77,56,931/-, as per the payment schedule of the builder buyer agreement, the complainants observed that there was no progress in the construction of their unit for an extended period. The complainant, being ready and willing to pay the remaining instalments repeatedly raised their grievances with the respondents, emphasizing the need for progress in the construction of their unit.
- VIII. The complainants have been consistently visiting the respondent's office and the construction site, endeavoring to obtain possession of the flat. However, despite numerous visits, emails, and letters, these 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, sent emails, and made phone calls, but the respondent has not responded or taken any action.

- IX. That as per the statement of accounts confirmation by the respondent issued between 01.04.2012 to 10.07.2018 the complainants have already paid a substantial sum of Rs. 77,56,931/- i.e. more than 100% of total sale consideration as enumerated above.
- X. That the respondents failed to fulfill their obligations and deceived the complainants with false assurances. Despite repeated requests, the complainants could not get physical possession of their unit, with all pleas falling on deaf ears. After an expiry of 09 years from the due date of possession, on 11.11.2024, the respondent(s) issued the offer of possession for the complainant's unit. The alleged offer of possession issued by the respondents is merely a paper formality, lacking any legal validity, and is therefore unacceptable to the complainants. Moreover, this offer of possession is conditional, requiring the complainants to execute an indemnity-cum-undertaking, which is legally untenable. Furthermore, the respondents have unilaterally increased the area of the complainant's unit from 1760 sq. ft. to 2049 sq. ft. without justification or clarification, resulting in an increased cost. This appears to be a deliberate attempt by the respondents to extract additional payments.
- XI. That on asking telephonically from the staff of the respondents, the complainants came to know that on 13.12.2024, the respondents cancelled their unit and a cancelation letter has been sent by post. It is pertinent to mention here that the complainants never received any cancelation letter but received an email to withdraw the cancelation letter.

- XII. That the respondent's action reek of duplicity, as evidenced by their email dated 18.12.2024, wherein they withdrew their cancellation letter dated 18.12.2024. The reason cited was that "M/s Catalyst Trusteeship Limited had filed a petition in the High Court of Chandigarh, bearing No. CWP No. 15494 of 2024, in which the complainants is also a party". Notably, the respondent's withdrawal of the cancellation letter is temporary and without prejudice to their right to pursue recovery of the unjustified demands from the complainants. This machiavellian tactic is a clear attempt to intimidate and coerce the complainants. In light of these developments, it is imperative that this Authority sets aside the cancellation letter dated 18.12.2024, along with the offer of possession dated 11.12.2024. The respondents' actions are a blatant disregard for the complainants' rights, and it is essential that this Authority takes a firm stance against such unscrupulous behaviour.
- XIII. That the complainants, being the decree-holders, are entitled for the delayed possession charges from the original due date of possession i.e. 07.06.2015 till 03.07.2024, and then from 04.07.2024 till the date of issuance of the offer of possession letter dated 11.11.2024 on the amount paid by the complainants. As per the calculations, the decretal amount as on 11.11.2024 is Rs.-22,28,417/- payable by the respondents.
- XIV. It is worth mentioning here that the delayed possession charges as per the calculations above are payable to the complainants and the unreasonable demand raised by the respondents in their offer of possession is liable to be struck off. The complainants are willing to settle legitimate dues and take possession of their unit. To facilitate this, the respondents are required to issue a fresh and genuine demand notice, enabling the complainants to make the necessary payment for the outstanding dues. Furthermore, the respondents are also required to issue the fresh demand notice after adjustment of the above-stated delayed possession charges.

- XV. That it is highly pertinent to mention here that the DTP issued a conditional Occupation Certificate on 24.10.2024 for Tower A to G and EWS 1 & 2 and Commercial – 1, Moreso, the respondents 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. It is further pertinent to mention here 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.
- XVI. That the main grievance of the complainants in the present complaint is that despite the complainants paying more than 100% of the total sale consideration of the flat and being ready and willing to pay the legitimate demand after adjustment of delayed possession charges, the respondents have arbitrarily increased the area of the complainant's unit resulting in unreasonable increase of the cost of the unit in question which is not liable to be paid by the complainants .Moreover, the delayed possession charges as per the calculations are far more than the illegal demand of the respondents. The complainants are willing to settle legitimate dues and take possession of their unit. To facilitate this, the respondents are required to issue a fresh and genuine demand notice, enabling the complainants to make the necessary payment for the outstanding dues after adjustment of the delayed possession.
- XVII. That the cause of action for the present complaint arose on 11 November 2024 when the respondents shared an illegal offer of possession loaded with incorrect, unlawful, unreasonable, and exorbitant demands. The cause of action further arose on 25 November 2024 when the respondents arbitrarily cancelled the unit of the complainants. The cause of action is alive and continuing and will continue to subsist till such time as this Hon'ble

Authority restrains the respondent parties by an order of injunction and/or passes the necessary orders.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- I. To get an order in their favour to set aside the alleged offer of possession dated 11.11.2024 since the said offer of possession has been issued, in violation of the provisions and directions issued by this Authority in the above-stated judgments. Justification: The delayed possession charges amount to more than the complainants' dues as per BBA.
 - II. To get an order in their favour by directing the respondents to not create any third-party rights in the unit of the complainants.
 - III. To get an order in their favour by directing the respondents to issue a fresh, genuine, and legal offer of possession with a reasonable demand to be paid by the complainants after adjustment of the delayed possession charges/interest.
 - IV. To get an order in their favour by restraining the respondents from charging cost escalation in construction amounting to Rs. 31,66,030/-.
 - V. To get an order in their favour by restraining the respondents from charging Possession charges of Rs. 8,19,600/- which are baseless and unknown.
 - VI. To get an order in their favour by restraining the respondents from charging Interest charges of Rs. 2,22,757/- which are unjustified.
 - VII. To get an order in their favour by restraining the respondents from charging Service Tax/VAT/GST charges of Rs. 11,49,946/- which are unlawful and unjustified.
 - VIII. To get an order by directing the respondent party to provide area calculation as per Law and justify the increase in area from 1760 Sq Ft to 2049 Sq Ft.
 - IX. To get an order by directing the respondent party to issue fresh demand after adjustment of delayed possession interest till actual handing over the unit or valid offer of possession.
 - X. To get an order by directing the respondent party to hand over physical possession of the unit along with car parking.

- XI. To get an order by directing the respondent party to execute the conveyance deed.
 - XII. To get an order by directing the respondent party to refrain from charging club membership charges as there is no club in the project.
 - XIII. To get an order directing the respondent party to refrain from charging maintenance charges till the handover of the unit or a valid offer of possession.
 - XIV. To get an order by directing the respondent party to refrain from charging holding charges.
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.

E. Application by respondent no. 2

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 vide order dated 10.12.2025. 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. The respondent no. 2 filed an application seeking Dismissal of complaint on 10.02.2026, which is being taken on record.
8. It is most respectfully submitted that the present complaint of the complainants is not maintainable on the facts or in law and is as such liable to be dismissed at the threshold, in light of the following preliminary objections and submissions.
9. Further, without prejudice to the generality of the submissions made in this application, it is averred that the respondent is moving this application as the complainants have filed complaint with multiple defects due to which the

rights and obligations of the parties cannot be determined in the manner the captioned complaint has been filed and thus the present complaint is liable to be rejected, and if required, the respondent be granted liberty to submit a detailed written statement-cum-reply in future. The respondent seeks leave of the Authority, Gurugram.

10. At the outset, it is most respectfully submitted that the captioned complaint cannot be heard by the Authority, as admitted by the complainants, the issues involved in the captioned complaint has already been decided by the Authority vide order dated 3-Jul-2024, in complaint no. 6711 of 2022. Therefore, the present complaint is barred by the doctrine of res judicata as the issues involved in the present complaint has already been decided by authority and the complainants are attempting to make unlawful gains by re-filing an already decided complaint between same parties.
11. Moreover, the issues involved in the captioned complaint are being reargued as the same has been decided in the complaint no. 6711 of 2022. It is pertinent to state that the relief sought in the present complaint does not arise from new cause of action but ensue from the relief granted in the earlier decided complaint bearing no. 6711 of 2022, which may be decided during the execution proceedings. It is pertinent to state that the Code of Civil Procedure, 1908, though not binding under the RERA Act, 2016 but acts as a guiding principle.
12. The instant complaint of the complainants is not maintainable on facts or in law and is as such liable to be dismissed at the threshold, as the complainants have filed a complaint without joining necessary parties and misjoinder of proper parties.
13. The present application is bona fide and in case the present application is not allowed the respondent will suffer irreparable loss which cannot be compensated in terms of money.

14. The complainants are misleading the Authority by filing a complaint without disclosing the true facts.
15. The present complaint is devoid any merit and has been preferred with the sole motive to harass the respondent. The present complaint is baseless and flagrant abuse of process of law to harass the respondent.
16. The respondent is always willing to comply with the law of the land. but the complainants have time and again adopted nefarious arm-twisting tactics so as to get unwarranted benefits from the respondent.
17. 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.

F. Maintainability of complaint:

18. In the present complaint, the complainant intends to continue with the project and is seeking direction to the respondent to set aside the offer of possession dated 11.11.2024 and not to charge illegal charges i.e. escalation cost, holding charges, possession charges, interest charges, GST/VAT etc. The complainant has submitted that a complaint bearing no. CR/6177/2022 was filed by him seeking handover of possession and payment of delay possession charges and vide order dated 03.07.2024, the said reliefs were granted in favour of the complainant along with a direction not to charge anything which is not part of buyer agreement. Occupation certificate was received by the respondent on 24.10.2024 and a letter sent by the respondent with regard to the information regarding ready for possession by the respondent on 11.11.2024
19. The complainant submits that the respondent has offered possession with huge illegal demands such as possession charges, increase in basic sale price due to cost escalation in construction, interest, VAT and other service tax,

which are neither part of builder buyer agreement nor otherwise justified. Thus, the present complaint has been filed by the complainant.

20. The Authority observes that the complainant has previously filed a complaint bearing no. CR/6177/2022 against the subject unit before the Authority seeking possession along with payment of delay possession charges. Thereafter, vide order dated 03.07.2024, the respondents were directed to handover possession and to pay delay possession charges w.e.f. 07.12.2015 till offer plus 2 months after obtaining OC 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.
21. 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 03.07.2024 in the former complaint bearing no. CR/6711/2022, the issues raised in the present complaint relate to possession and related charges, which were already decided or could have been raised in the earlier complaint.. 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.]”*

22. 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. File be consigned to the registry.



(Phool Singh Saini)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 19.05.2026

HARERA
GURUGRAM