BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	**:**	**206 of 2025**
Date of complaint	**:**	**22.01.2025**
Date of order	**:**	**13.10.2026**

Tarun Khurana,
R/o: - 31.23, West Patel Nagar, Delhi-110008. **Complainants**

Versus

1. M/s Tashee Land Developers Pvt. Ltd.
2. M/s KNS Infracon Private Limited.
Both Having Registered Office at: - Flat No. 312, 3rd Floor, Plot No. 16, Ansal Bhawan, Kasturba Gandhi Marg, Connaught Place, New Delhi. **Respondents**

CORAM:
Arun Kumar **Chairman**

APPEARANCE:

Sukhbir Yadav (Advocate)	Complainant
None	Respondent No.1
Abhay Jain (Advocate)	Respondent No.2

ORDER

1. The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of Section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S. No.	Heads	Information
1.	Project name and location	'Capital Gateway, Sector-111, Gurugram
2.	Project area	10.462 acres
3.	Nature of the project	Residential
4.	DTCP license no. and validity status	34 of 2011 dated 16.04.2011 valid upto 15.04.2024
5.	Name of licensee	KNS Infracon Pvt. Ltd. and others
6.	RERA registered/ not registered	Registered vide no. 12 of 2018 dated 10.01.2018 valid upto 31.12.2020 for phase-I (tower A to G) and 31.12.2021 for phase- II (tower H to J)
7.	Unit no.	302, 3rd floor, tower A (pg. 51 of complaint)
8.	Area	1295 sq.ft. (super area) (page 51 of complaint)
9.	Date of execution of buyers' agreement	31.01.2013 (pg. 49 of complaint)
10.	Date of sanction of building plans	07.06.2012 (As per project details)
11.	Payment plan	Construction linked
12.	Basic sale consideration	Rs. 35,67,725/- (pg. 53 of complaint)
13.	Total amount paid by the complainant	Rs. 48,39,049/- (page 112 of complaint)
14.	Possession clause	**Clause 2.1** "Subject to Clause 9 herein or other circumstances....., *the First Party/Confirming Party proposes to handover the possession of the flat to the purchaser within approximate period of* ***48 months from the date of sanction of the building plans and other necessary***

		Government approvals thereon, 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 expiry of 48 months, for applying and obtaining occupation certificate in respect of the Colony from the concerned authority.....”*** (Emphasis supplied)
15.	Due date of delivery of possession	07.12.2016 (Calculated from the date of sanction of building plans + Grace period of 6 months is allowed to the respondent in view of order dated 08.05.2023 passed by the Hon'ble Appellate Tribunal in ***Appeal No. 433 of 2022 tilted as Emaar MGF Land Limited Vs Babia Tiwari and Yogesh Tiwari***)
16.	Occupation certificate	24.10.2024 (page 114 of complaint)
17.	Offer of possession vide email	21.11.2024 (page 111 of complaint)
18.	Intimation regarding cancellation	13.12.2024 (page 117 of complaint)

B. Facts of the complaint

3. The complainant has made the following submissions: -

I. That in 2011, the complainant received a marketing call from Tashee Land Developers Pvt Ltd. regarding investment in their residential group housing project, "Tashee Capital Gateway," located in Sector-111, Gurugram, Haryana. The complainant visited the project site with his family and met with the marketing staff and office bearers of the respondent. The local staff provided a brochure, application form, and payment plan, assuring possession within 36 months.

II. That relying on the respondents' representations, the complainant purchased a 1295 sq. ft. flat under a construction-linked payment plan, with a total sale consideration of Rs.47,55,380/- (including BSP, Car Parking, IFMS, and PLC) unit No. 302 on the 3rd Floor of Tower –A, in the Capital Gateway project from Mr. Dinesh Sachdeva, and an amount of Rs. 9,14,898/- were transferred in the name of the complainant by the respondents from the name and account of the original allottees on 22.09.2011.

III. That on 30.01.2013 an allotment letter with respect to the flat was issued in favour of the complainant and thereafter on 31.01.2013, an arbitrary and one-sided, flat buyer agreement was executed between the respondents and the complainant. As per clause 2 sub-clause 2.1 of the BBA, the respondent party has to give possession of the flat within 36 months from the date of sanction of the building plans of the said colony. It is pertinent to mention here that the building plans were approved on 07.06.2012, therefore, the due date of possession was 07.06.2015.

IV. That as per clause 1.2 of the said BBA the total sale consideration of the said unit comes out to be Rs.47,55,380/- and the complainant paid a total sum of Rs. 49,42,272/- including TDS, which accounts for more than 100% of the total sale consideration. The payment details are substantiated by the statement of account dated 26.12.2017 issued by the respondents, which provides a clear record of the transactions made. Despite paying more than 100% of the total sale consideration, the complainant is yet to receive possession of the unit. It is pertinent to mention here that as per SOA dated 20.11.2024, the respondent acknowledges the payment of Rs. 48,39,049/-. Despite numerous efforts, the complainant has been unable to obtain possession of the

allotted flat since 2015. Repeated visits were made to the respondents' office and the construction site, only to be met with disappointment. Thereafter aggrieved by the acts, conducts, and deficiencies of the builder/respondent(s), the complainant filed a complaint against the respondent before the National Consumer Dispute Redressal Commission and filed a complaint vide Consumer Case No. 1268 of 2017 titled "*Lt. Col Manoj Asthana(Retd) & Usha Asthana & Ors. Versus M/s Tashee Land Developers Pvt. Ltd. & 2 Ors.*", for the possession of the said flat along with prescribed interest per annum from the promissory date of delivery of the flat in question till the actual date of delivery of the flat. The Hon'ble National Consumer Dispute Redressal Commission pronounced the final decision/judgment on the above-said complaint on 12.01.2023. The Hon'ble National Consumer Dispute Redressal Commission, issued the following directions to the respondents:

(i) *The Opposite Parties are directed to complete the construction of the flats allotted to the Complainant in all respects, duly obtaining the requisite Occupancy Certificate at their own cost and responsibility and offer and give possession of the respective Units to the Complainant within 06 months of this order.*

(ii) *The Opposite Parties shall pay to the Complainant delay compensation @ 8% per annum from the proposed date of possession as per the respective Agreements which will include the grace period, till the offer of possession or obtaining Occupancy Certificate whichever is later. Any delay beyond 06 months, will attract an interest rate of 12% per annum for the same period. The date of possession shall be calculated in terms of date of execution of the respective Agreement.*

(iii) *If the opposite Parties fail to complete the construction of the project within 6 months of this order, the Complainant shall have the option to seek refund. The Complainant can file application for refund to the Opposite Parties and the Opposite Parties shall refund the entire amount deposited by the respective Complainant/Buyers along with delay compensation @ 9% per annum on the deposited amount from the respective dates of*

deposits till realization, within a period of six weeks of application for refund. Any delay beyond six weeks, will attract an interest rate of 12% per annum for the same period.

V. That it is worth noting that despite the said order of NCDRC, the respondents have not yet handed over the possession of the complainant's unit. Hence, in accordance with the said order, the complainant is authorised for delay compensation from the original due date of possession i.e. 07.12.2015 including six months of grace period till issuance of the offer of possession letter dated 21.11.2024 at the rate of 8% per annum on the amount paid by the complainant. Moreover, after a lapse of six months from the date of said order, the respondents are liable to give compensation at enhanced rate of interest i.e. 12% per annum.

VI. That the complainant has been consistently visiting the respondents' office and the construction site, endeavouring 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 complainant has been very patient and diligent, trying every possible way to get the flat. The complainant has made many visits, sent emails, and made phone calls, but the respondents have not responded or taken any action.

VII. That the respondents failed to fulfil their obligations and deceived the complainant with false assurances. Despite repeated requests, the complainant did not get physical possession of his unit, with all pleas falling on deaf ears. After an expiry of 9.5 years from the due date of possession, on 21.11.2024, 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 complainant. Moreover, this offer of possession is conditional, requiring the complainant to execute an indemnity cum undertaking, which is legally untenable. Furthermore, the respondents have unilaterally increased the area of the complainant's unit without justification or clarification, resulting in an increased cost. This appears to be a deliberate attempt by the respondents to extract additional payments. The offer of possession also includes unreasonable and unjustified demands. Thus, the offer of possession dated 21.11.2024, is null and void, being legally invalid. Furthermore, the notice of possession included multiple charges beyond the scope of the agreement. It was also conditional upon the complainant's acceptance of a pre-drafted indemnity cum undertaking and declarations. It is also worth noting that the respondent is demanding an unreasonable demand of Rs. 55,24,183/-. Furthermore, the respondents are obligated to provide a detailed justification for the interest charges they are levying, including specifics on the payments to which these interest charges pertain. Additionally, they must furnish accurate area calculations to support their demands. Notably, the complainant has already remitted more than 100% of the total sale consideration. Consequently, he is not liable to pay the unlawful and unjustified charges demanded by the respondents in their mail dated 21.11.2024. The respondents' insistence on these illegitimate demands is entirely without merit.

VIII. That the DTCP issued a conditional Occupation Certificate on 24.10.2024 for Tower A to G and EWS 1 & 2 and Commercial – 1, more so, the respondent increased the area of the flat but as per said OC the Achieved FAR is less than the Sanctioned FAR, therefore, there is no chance of increase in the area. Furthermore, the department imposed

composition fees of Rs.19,99,942/- for violations in the building plans. 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 1295 sq. ft.

IX. That the respondents initially failed to deliver possession of the complainant's unit by the due date, prompting the complainant to file a complaint vide consumer Case No. 1268 of 2017, seeking possession and delayed possession charges. Despite obtaining a favourable decree on 12.01.2023, the respondents refused to comply.

X. That despite an order of Hon'ble NCDRC for payment of compensation, the respondent, in a shocking and arbitrary move, cancelled the complainant's unit via their letter dated 13.12.2024 without following the due process of law. This cancellation was purportedly due to non-payment of the demand raised by the respondent in the offer of possession letter dated 21.11.2024. It is apposite to mention that the respondent's actions constitute a blatant disregard and contempt for the law, as well as a wilful violation.

XI. That the complainant vide letter dated 15.12.2024 objected to the cancellation of the allotment and asked for restoration of the allotment of the flat.

XII. That it is worth mentioning here that delay compensation charges as per the said order of NCDRC are far more than the legitimate dues of the complainant as per BBA. The complainant is willing to settle legitimate dues (if any) and take possession of his unit. To facilitate this, the respondents are required to issue a fresh and genuine demand notice, enabling the complainant 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 compensation charges.

XIII. That the respondents have misused their dominant position to harass the allottee. Hence, the allottee is entitled for the delay possession charges against the payment made by the allottee from the date of payment till the valid offer of possession.

XIV. That the complainant does not want to withdraw from the project. The promoters have not fulfilled their obligation therefore as per obligations on the promoter under section 14(3) and 18(1) proviso of the Act, and the promoters are obligated to pay the interest at the prescribed rate for every month of delay till the handing over of the possession.

C. Relief sought by the complainant:

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

   I. Set aside offer of possession dated 21.11.2024 since the said is in violation of provisions and directions of NCDRC order.
   II. Issue fresh offer after removing illegal demands and adjustment of delay possession charges.
   III. Revoke cancellation, handover possession, execute conveyance deed.

5. On the date of hearing, the Authority explained to the respondents/promoter about the contraventions as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.

6. The Authority observes that despite due service of notice and specific direction for filing of reply, neither anyone has appeared on behalf of respondent no.1 nor any reply to the present complaint has been filed on its behalf till date. Accordingly, the respondent no.1 was proceeded ex-parte vide order dated 13.10.2026. Further, despite specific directions for filing of reply, no reply has been received on behalf of

respondent no.2 with regard to the present complaint. In view of the above, vide proceedings dated 03.09.2025, the defence of respondent no.2 was struck off.

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the complainant.

D. Maintainability of complaint:

8. In the present complaint, the complainant intends to continue with the project and is seeking direction to set aside offer of possession dated 21.11.2024 since the said is in violation of provisions and directions of NCDRC order, Issue fresh offer after removing illegal demands and adjustment of delay possession charges, revocation of cancellation, handover of possession and execution of conveyance deed. The complainant has submitted he has previously filed a complaint against the respondent before the National Consumer Dispute Redressal Commission and filed a complaint vide Consumer Case No. 1268 of 2017 titled *"Lt. Col Manoj Asthana (Retd) & Usha Asthana & Ors. Versus M/s Tashee Land Developers Pvt. Ltd. & 2 Ors."*, for the possession of the said flat along with prescribed interest per annum from the promissory date of delivery of the flat in question till the actual date of delivery of the flat. The Hon'ble National Consumer Dispute Redressal Commission pronounced the final decision/judgment on the above-said complaint on 12.01.2023 in favour of the complainant. However, the respondents failed/neglected to comply with the directions as per the aforesaid order(s) dated 12.01.2023. Further, despite an order of Hon'ble NCDRC for payment of compensation, the respondent, in a shocking and arbitrary move, cancelled the complainant's unit via their letter dated

13.12.2024 without following the due process of law. This cancellation was purportedly due to non-payment of the demand raised by the respondent in the offer of possession letter dated 21.11.2024. The respondent's actions constitute a blatant disregard and contempt for the law, as well as a wilful violation. The respondents have misused their dominant position to harass the allottee. Hence, the allottee is entitled for the delay possession charges against the payment made by the allottee from the date of payment till the valid offer of possession.

9. 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 National Consumer Dispute Redressal Commission, New Delhi vide order dated 12.01.2023 in the former consumer complaint bearing no. 1268 of 2017 titled "*Lt. Col Manoj Asthana (Retd) & Usha Asthana & Ors. Versus M/s Tashee Land Developers Pvt. Ltd. & 2 Ors.*". Further, if any party fails to abide by the directions mentioned in the said order, then the same shall be enforced by the executing court as provided under Section 71 of the Consumer Protection Act of 2019. 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.]"*

10. 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.

(Arun Kumar)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 13.10.2026

HARERA
GURUGRAM