

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

Complaint no. : 583 of 2025
Date of complaint : 13.02.2025
Date of order : 13.10.2026

Mahima Jain through SPA holder Rishabh Jain,
R/o: - 864, Sector 4, Gurugram-122001.

Complainant**Versus**

1. M/s Tashee Land Developers Pvt. Ltd.

2. M/s KNS Infracon Pvt. Ltd.

Both Having Registered Office at: -

517 A, Narain Manzil, 23 Barakhamba Road,
Connaught Place, New Delhi- 110001.

Respondents**CORAM:**

Arun Kumar

Chairman**APPEARANCE:**

Kanika (Advocate)

None

Rishabh Jain (Advocate)

Complainant**Respondent No.1****Respondent No.2****ORDER**

1. This 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 provision of the Act or the Rules and regulations made thereunder or to the allottees 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.	402, 4 th floor, Tower-C (pg. 41 of complaint)
8.	Area	1990 sq.ft. (super area) (page 41 of complaint) Revision of super area- 2102 sq.ft. (page 73 of complaint)
9.	Date of execution of buyers' agreement	11.02.2014 (page 39 of complaint)
10.	Date of sanction of building plans	07.06.2012 (As per project details)
11.	Basic sale consideration	Rs. 66,16,750/- (page 42 of complaint)
12.	Total amount paid by the complainant	Rs. 85,19,750/- (page 30 of complaint)
13.	Possession clause	Clause 2.1 "Subject to Clause 9 herein or other circumstances....., the First Party/Confirming Party proposes to handover the possession

		<p><i>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....."</i></p> <p>(Emphasis supplied)</p>
14.	Due date of delivery of possession	<p>07.12.2016</p> <p>(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 <i>Appeal No. 433 of 2022 tilted as Emaar MGF Land Limited Vs Babia Tiwari and Yogesh Tiwari</i>)</p>
15.	Occupation certificate	<p>24.10.2024</p> <p>(as per DTCP website)</p>
16.	Notice of Possession	Not on record

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That the grievance of the complainant relates to breach of contract, false promises, gross unfair trade practices and deficiencies in the services committed by the respondents in regard to the Flat No.402, 4th Floor Tower C measuring 1990 square feet of super area in the

project 'Capital Gateway' situated at Sector 111, Gurugram, Haryana, bought by the complainant paying her hard-earned money.

- II. That in the flat buyer's agreement dated 11th February, 2014, it is stated that the respondents, Tashee Land Developers Private Limited and KNS Infracon Private Limited in collaboration with individual landlords is in absolute possession of land admeasuring approx. 10.462 acres situated at Sector 111, Village Chauma, District Gurugram, Haryana and the Director, Town & Country Planning, Haryana vide license bearing no. 34 of 2011 had granted permission for construction and development of an Group Housing Colony to be known as 'Capital Gateway'. After the grant of the licence, the respondents collected a huge amount from gullible and naïve buyers including the complainant from 2011 onwards and kept on promising the complainant for the delivery of possession of her flat on time as per the agreement. The complainant paid all payable amounts, as and when demanded by the respondents, a total of ₹85,19,750- till June, 2017 for the flat.
- III. That the genesis of the present complaint lies in the gross indifference, refusal and failure of the various obligations on the part of the respondents. The respondents initially enticed various customers including the complainant to pay her hard-earned money for the purchase of the flat in the project.
- IV. That the original allottee, Shri Sharad Jain of Arihant Projects originally booked a flat measuring 1990 square feet in the project 'Capital Gateway' in Sector 111, Gurugram on 18th February, 2011. The complainant, Smt. Mahima Jain purchased the flat from the original allottee, Shri Sharad Jain of 'Arihant Projects' on 13 July, 2012 and applied for transfer of the same in the records of the respondents.



The original allottee had already paid Rs.25,89,260/- to the respondents against the said flat. Therefore, the said amount was credited in the name of the complainant by the respondents after accepting the transfer of said flat in the name of the complainant. Thus, the complainant became the purchaser of flat having super area of 1990 square feet in the project, 'Capital Gateway' of the respondents.

- V. That as per the flat buyer's agreement, the respondents promised to deliver the possession by 7th June 2015, (36) months from the date of sanction of the building plans (7th June, 2012) as mentioned in clause 2.1, of the agreement. The complainant had paid all payable amounts, as and when demanded by the respondents, a total of ₹85,19,750/- which is more than 100% of the total cost of the flat. Now, even after a delay of more than nine (9) years and seven (7) months, the respondents have failed to fulfil its obligations as per the agreement and deliver legitimate and lawful possession of the flat to the complainant in timely manner. Thus, the respondents are liable to pay interest on the amount deposited by the complainant due to delay in delivery of possession of the flat.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- I. Direct the respondents to handover possession, execute conveyance deed and to pay delay possession charges.
 - II. Direct the respondents to pay compensation.
5. The Authority observes that despite due service of notice neither anyone has appeared on behalf of respondent no.1 nor has any reply to the present complaint been filed on its behalf till date. Further, despite specific direction for filing of reply, no reply has been received on behalf of respondent no.2 till date. In view of the above, vide proceedings dated



13.10.2026, the respondent no.1 was proceeded ex-parte and defence of respondent no.2 was struck off.

6. 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.

E. Jurisdiction of the authority

The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

7. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

8. 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.

9. 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.

F. Findings on the relief sought by the complainant.**F.I Direct the respondent to handover possession, execute conveyance deed and to pay delay possession charges.**

10. The complainant intends to continue with the project and is 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."

(Emphasis supplied)

11. Clause 2.1 of the flat buyer's agreement dated 11.02.2014 (in short, agreement) provides for handing over of possession and is reproduced below:

2.1 Possession

"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..."

12. **Due date of possession and admissibility of grace period:** The respondents/promoter proposed to hand over the possession of the said unit within a period of 48 months from the date of sanction of building plans. The building plans were approved on 07.06.2012.



Therefore, the due date of handing over possession comes out to be 07.06.2016. It is further provided in agreement that promoters shall be entitled to a grace period of 180 days for applying and obtaining the occupancy certificate in respect of the colony from the concerned authority. The said grace period is allowed in terms 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*** 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 portion of the order dated 08.05.2023, is reproduced as under: -

*"As per aforesaid clause of the agreement, possession of the unit was to be delivered within 24 months from the date of execution of the agreement i.e. by 07.03.2014. As per the above said clause 11(a) of the agreement, a grace period of 3 months for obtaining Occupation Certificate etc. has been provided. The perusal of the Occupation Certificate dated 11.11.2020 placed at page no. 317 of the paper book reveals that the appellant-promoter has applied for grant of Occupation Certificate on 21.07.2020 which was ultimately granted on 11.11.2020. It is also well known that it takes time to apply and obtain Occupation Certificate from the concerned authority. As per section 18 of the Act, if the project of the promoter is delayed and if the allottee wishes to withdraw then he has the option to withdraw from the project and seek refund of the amount or if the allottee does not intend to withdraw from the project and wishes to continue with the project, the allottee is to be paid interest by the promoter for each month of the delay. 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."*

13. 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. Therefore, including a grace period of 180 days, the due date of handing over of possession comes out to be 07.12.2016.

14. **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.

15. 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.
16. 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., 13.10.2026 is **8.80%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.80%**.
17. The definition of term 'interest' as defined under Section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which

the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) 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;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

18. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.80% by the respondents/promoter which is the same as is being granted to the complainant in case of delay possession charges.
19. On consideration of the documents available on record and submissions made by both the parties, the Authority is satisfied that the respondents are in contravention of the Section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 2.1 of the buyer's agreement executed between the parties, the possession of the subject apartment was to be delivered within a period of 48 months from date of sanction of building plans which comes out to be 07.06.2016. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession was 07.12.2016. The occupation certificate was granted by the concerned authority on 24.10.2024. However, the possession of the subject unit has not been offered to the complainant till date of this order. The Authority is of the considered view that there is delay on the part of the respondents to offer possession of the subject unit and it is failure on part of the promoter to fulfil its obligations and

responsibilities as per the buyer's agreement dated 11.02.2014 to hand over the possession within the stipulated period.

20. 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 allottee shall be paid, by the promoter, interest at prescribed rate i.e. 10.80% p.a. on the amount paid, for every month of delay from due date of possession i.e., 07.12.2016 till valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority 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.
21. Further, as per Section 11(4)(f) and Section 17(1) of the Act of 2016, the promoter is under an obligation to handover possession of the unit and to get the conveyance deed executed in favour of the allottee. 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. The occupation certificate for the subject Tower has already been obtained by the respondents/promoter from the competent authority on 24.10.2024. In view of the above, the respondents/promoter is directed to handover possession of the 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 from the date of this order.

F.II Direct the respondents to pay compensation.

22. The complainant is seeking above mentioned relief w.r.t compensation. The Hon'ble Supreme Court of India *in civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s*

State of Up & Ors. has held that an allottee is entitled to claim compensation and litigation charges under Sections 12,14,18 and Section 19 which is to be decided by the Adjudicating Officer as per Section 71 and the quantum of compensation and litigation expense shall be adjudged by the Adjudicating Officer having due regard to the factors mentioned in Section 72. The Adjudicating Officer has exclusive jurisdiction to deal with the complaints in respect of compensation and legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of compensation and litigation expenses.

G. Directions of the authority

23. Hence, the Authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under Section 34(f):
- i. The respondents/promoter is directed to pay interest to the complainant 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., 07.12.2016 till valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority 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 and Section 19(10) of the Act;
 - ii. The respondents/promoter is directed to supply a copy of the updated statement of account after adjusting delay possession charges within a period of 30 days to the complainant.

- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of delay possession charges within a period of 60 days from the date of receipt of updated statement of account.
 - iv. The respondents/promoter shall not charge anything from the complainant which is not the part of the flat buyer's agreement dated 11.02.2014.
 - v. The respondents/promoter is directed to handover possession and to get the conveyance deed of the flat/unit executed in favour of the complainants in terms of Section 17(1) of the Act of 2016.
 - vi. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged 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 the allottee, in case of default i.e., the delay possession charges as per Section 2(za) of the Act.
 - vii. A period of 90 days is given to the respondents/promoter to comply with the directions given in this order and failing which legal consequences would follow.
24. Complaint stands disposed of.
25. File be consigned to registry.



(Arun Kumar)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.10.2026