BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	:	**4410 of 2025**
Date of complaint	:	**26.08.2025**
Date of order	:	**08.09.2026**

Pradipta Mitra and Bindu Mitra Mitra,
Through POA Holder Amit S Amist,
Both R/o: - H.No. 950, Riviera Court, San Jose, California, USA-95129.

Complainants

Versus

1. KNS Infracon Pvt. Ltd.
2. M/s Tashee Land Developers Pvt. Ltd.
Both Having Registered Office at: -
517 A, Narain Manzil, 23 Barakhamba Road, Cannaught Place, New Delhi- 110001.

Respondents

CORAM:
Arun Kumar — Chairman

APPEARANCE:

Gaurav Rawat (Advocate)	Complainants
Rishabh Jain (Advocate)	Respondent No.1
Neelaksh Chopra (Advocate)	Respondent No.2

ORDER

1. This complaint has been filed by the complainant/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of Section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made thereunder or to the 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 complainants, 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.	G-1002, Tower- G (pg. 66 of complaint)
8.	Area	1695 sq.ft. (super area) (page 50 of complaint) Increase in area- 1874 sq.ft. 1004 sq.ft. (carpet area) (page 64 of complaint)
9.	Application form	15.07.2011 (page 50 of complaint)
10.	Date of execution of buyers' agreement	Not executed
11.	Basic sale consideration	Rs.67,10,830/- (page 66 of complaint)
12.	Total amount paid by the complainant	Rs.68,96,690.63/- (page 66 of complaint)
13.	Possession clause as per application form	***13. Schedule for possession of the said Unit*** *"The Developer shall offer possession of the said flat to the Applicant within a* ***period of 3 (three years (with a grace period of six months) from the date of accompanying application.*** *The Developer shall be entitled*

		to reasonable extension in delivery of possession of the said flat to the Applicant in the event of any default or negligence attributable to the Applicant..."
14.	Due date of delivery of possession	15.01.2015 (including grace period being unqualified)
15.	Occupation certificate	24.10.2024 (as per DTCP Website)
16.	Notice of Possession	08.02.2025 (page 64 of complaint)
17.	Reminders and demand notice	09.05.2025, 28.05.2025 (page 62-63 of complaint)
18.	Final cancellation letter	01.07.2025 (page 69 of complaint)
19.	Payment plan	Construction linked (page 61 of complaint)

B. Facts of the complaint

3. The complainants have made the following submissions: -

I. That the respondents advertised about its new project namely 'Capital Gateway situated at Sector - 108, Gurugram and thereby invited applications from prospective buyers for the purchase of unit in the said project. The complainants while searching for a unit were lured by such advertisements and calls from the brokers of the respondents for buying a residential unit in their project. Relying on various representations and assurances given by the respondents company and on belief of such assurances, allottee, booked a unit in the project by paying an amount of Rs.9,62,913/- towards the booking of the said unit bearing no. 1002, tower-G, 10th floor, having super area measuring 1695 sq.ft. to the respondents dated 05.07.2011 and the same was acknowledged by the respondents.

II. That at the time of booking the complainants was assured that project of the respondents company will be completed within 36 months and agreement will be executed within period of 2 months but same has not been executed till date despite repeated reminders and requests. As per clause 13 of the booking application form respondent undertook to complete the construction of the unit within period of 36 months from the booking application form. Hence, due date of possession comes out to be 05.07.2014.

III. That respondents sent the confirmation to the complainants confirming the booking of the unit dated 05.07.2011, allotting a unit no. 1002, tower-G, 10th floor, measuring 1695 sq.ft. in the aforesaid project of the developer for a basic sale consideration of the unit i.e. Rs.49,15,500/- and other specifications of the allotted unit and providing the time frame within which the next instalment was to be paid.

IV. That after repeated reminders and follow ups with the respondents. Respondents till date failed to issue allotment letter and execution of the agreement. It is pertinent to note here that complainants duly and timely made all the payments when demanded but respondents till date have failed to issue allotment letter and execution of the agreement.

V. That respondents sent demand letters to the complainants and timely made all the payments when demanded but respondents till date have failed to issue allotment letter and execution of the agreement. In the present case respondents has collected approx Rs.68,96,690/- till date without executing the builder buyer agreement.

VI. That respondent sent a reminder dated 17.01.2011, 01.07.2014, 11.08.2014, 09.05.2025 and 28.05.2025 to complainants levying interest at rate of 24% per annum and till date has collected Rs.4,57,591/- and demanding 2,89,235/-. It is pertinent to mention here that after coming into force of the RERA Act,2016, builder cannot charge interest against the interest rate provided under the RERA Act,2016 and HARERA Rules framed thereafter.

VII. That respondent sent letter of offer of possession dated 08.02.2025 to the complainant, mentioning that the construction of the said unit has been completed and the occupation certificate for said has been received. The unit is ready for the possession and the same can be legitimately offered by the developer to you. Further stating that the super area of your unit stands revised from earlier communicated 1695 sq. ft. to 1874 sq. ft. and that all the sums payable as mentioned herein below have been calculated on the basis of the super area of your unit i.e. 1874 sq. ft.

VIII. That along with the above said letter of offer of possession, respondent raised several illegal demands on account of electrical meter charges Rs.25,000/-, delay payment interest Rs.2,89,235/- IFMS of Rs.1,40,550, maintenance charges Rs.99,509/- and sinking fund of Rs.13,267/-, which was never the part of the payment plan provided along with allotment letter. Furthermore, respondent had arbitrarily increased the super area also from 1695 sq. ft. to 1874 sq. ft. without obtaining the consent of the complainants.

IX. That offering possession by the respondent on payment of charges which the buyer is not contractually bound to pay, cannot be considered to be a valid offer of possession. It would be noticed from the details provided above that those charges were never payable by the complainants as per the allotment, by the complainants and hence the offer of possession.

X. That on 01.07.2025, it was shocking for the complainants that representatives of the respondents informed the complainants that their unit has already been stands cancelled on 01.07.2025, when complainants asked to provide the copy of the cancellation letter as they never received the same till date but same was provided later on. It is pertinent to mention here that it was very shocking to complainants despite paying 100% of the amount respondent cancelled the allotment without providing justification nor the refundable amount has been refunded and charging interest @24% and even failed to compensate the complainants on account of delay for more than 11 years. Hence, the said demands are void, illegal and needs to be quashed including cancellation letter dated 01.07.2025.

XI. Those complainants, having no option left, got legal notice dated 01.07.2025 served through counsel to the respondents but all in vain no satisfactory response till date. During the period the complainants went to the office of respondents several times and requested them to resolve the issue and accept the amount and allow them to visit the site but it was never allowed saying that they do not permit any buyer to visit the site during construction period, once complainants visited the site but was not allowed to enter the site and even there was no proper approached road. The complainants even after paying amounts still received nothing in return but only loss of the time and money invested by them.

XII. That the complainants contacted the respondents on several occasions and were regularly in touch with the respondents with regard to execution of the builder buyer agreement. The respondents were never able to give any satisfactory response to the complainants regarding the status of the agreement, construction, loan sanction and were never definite about the delivery of the possession.

XIII. That the complainants are the one who has invested their life savings in the said project and are dreaming of an apartment/flat for themselves and the respondents have not only cheated and betrayed them but also used their hard-earned money for their enjoyment.

XIV. That the complainants(s) being an aggrieved person filing the present complaint under section 31 with the authority for violation/ contravention of provisions of this Act. The complainants after losing all the hope from the respondents company, having their dreams shattered of owning a shop & having basic necessary facilities in the vicinity of the project and also losing considerable amount, are constrained to approach this Authority for redressal of their grievance.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
   I. Set aside cancellation, quash illegal demands and maintenance charges.
   II. Direct the respondents to execute buyer's agreement, handover possession, execute conveyance deed and to pay delay possession charges.

D. Reply by the respondent no.1.

5. The respondent no.1 has contested the complaint on the following grounds:

i. That the respondent had applied for environment clearance on 20.10.2011. However, the decision and issuance of certificate to the promoter/developer remained in abeyance for a long time due to sudden demise of the Chairman of Environmental Impact Assessment (EIA) Committee in an unfortunate road accident. The developer finally got the environment clearance on 17.06.2013. Owing to this, the construction work of the project itself started late.

ii. That the respondent had applied for the revision in building plans of the said project before the appropriate authority. However, for no fault of the respondents, the plans were approved by the department only after a delay of 2 years. Owing to this, the construction of project could not be started in a timely manner.

iii. That the complainants in the present case are not consumers rather 'investors' who falls outside the purview of the Act, 2016 more specifically in view of the preamble of the Act, 2016 which states to protect the interest of the consumers.

iv. That the complainants booked the flat no. 1002, 10th Floor, G Tower, Sector 110A-111, Gurugram. The complainants were raised due demands as pe the notice of possession dated 08.02.2025 and due to non-payment, the allotment was cancelled vide cancellation letter dated 01.07.2025.

v. That the structure of the said project in question is complete and few installments are due and payable on account of the complainants. However, the complainants have failed to pay the same. Moreover, the respondent has obtained occupation certificate for phase-I on 24.10.2024.

vi. That for the reasons beyond the control of the respondent, the said project has been delayed. As a matter of fact, economic meltdown, financial crisis, delay in granting sanctions and approvals from the concerned government departments, sluggishness in the real estate sector, increase in cost of construction, default by allottees in making timely payments, multiple disputes between the workforce, labour and contractors resulting into shortage of labour and workforce and change in contractors, non-availability of sufficient water for construction due to restrictions imposed by local administration, restricted construction activities towards protection of the environment as directed by the local administration and the NGT and moreover, obstruction in construction due to Covid-19 outbreak are some of the impeding reasons beyond the control of the respondent.

vii. That simultaneously, the respondent is aware of the obligations and duties to complete the said project and that is why promoter approached the 'SWAMIH Investment Fund I' of SBICap Ventures Limited.

viii. That the development activities in the said project have been vastly affected due to people like complainants who have failed to pay their dues in timely manner.

ix. That the provisions of the Act, 2016 have been propagated for the benefit of innocent customers and not the investors like the complainants in the present complaint.

x. That there is no further deficiency as claimed by the complainants against the respondent and no occasion has occurred deeming indulgence of the Hon'ble Authority. Hence, the present complaint is liable to be dismissed.

6. Despite due service of notice through speed post and specific direction for filing reply in the matter, no reply has been received from respondent no.2 with regard to the present complaint. Therefore, the defence of the respondent no.2 was struck off vide proceedings dated 08.09.2026.

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 parties.

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

8. 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

9. 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.*

10. 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 objections raised by the respondent.

F. I Objection regarding the complainant being investor.

11. The respondent has taken a stand that the complainants are investors and not a consumer. Therefore, they are not entitled to the protection of the Act and is not entitled to file the complaint under Section 31 of the Act. The Authority observes that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the application form, it is revealed that the complainants are buyers, and they have paid a considerable amount to the promoter towards purchase of an apartment in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

> *"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"*

In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the agreement, it is crystal clear that the complainants are allottees as the subject unit was allotted to them by the promoter. Further, the concept of investor is not defined or referred in the Act. Moreover, the Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as ***M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.*** has also held that the concept of investor is not defined or referred in the Act. In view of the above, the contention of promoter that the allottees being investor are not entitled to protection of this Act stands rejected.

F.II Objections regarding force majeure.

12. The respondent/promoter has raised the contention that the construction of the tower in which the unit of the complainants is situated, has been delayed due to force majeure circumstances such as delay on part of govt. authorities in granting approvals and other formalities, shortage of labour force in the NCR region, ban on the use of underground water for construction purposes, default by allottees in making timely payments, various orders passed by NGT, major spread of Covid-19 across worldwide, etc. However, all the pleas advanced in this regard are devoid of merit. First of all, the possession of the unit in question was to be offered by 15.07.2014. Further, a grace period of six months being unqualified has already been granted to the complainant. Further, the events alleged by the respondent do not have any impact on the project being developed by the respondent. Moreover, time taken in governmental clearances cannot be attributed as reason for delay in project. Furthermore, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, the promoter/respondent cannot be granted any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

G. Findings on the relief sought by the complainant.

G.I. Set aside cancellation, quash illegal demands and maintenance charges.

G.II. Direct the respondents to execute buyer's agreement, handover possession, execute conveyance deed and to pay delay possession charges.

13. In the instant case, vide application form dated 05.07.2011, the complainants booked a unit measuring 1695 sq.ft. in the project of the respondents named Capital Gateway at Sector-111, Gurugram and was

allotted a unit a unit bearing no. G-1002, Tower- G measuring 1695 sq.ft. (super area).

14. The complainant has submitted that the respondents has collected approx. Rs.68,96,690/- from them till date without executing the builder buyer agreement. The respondent sent letter of offer of possession dated 08.02.2025 to the complainant, mentioning that the construction of the said unit has been completed and the occupation certificate for said has been received. Further stating that the super area of your unit stands revised from earlier communicated 1695 sq. ft. to 1874 sq. ft. and raised several illegal demands on account of electrical meter charges Rs.25,000/-, delay payment interest Rs.2,89,235/- IFMS of Rs.1,40,550, maintenance charges Rs.99,509/- and sinking fund of Rs.13,267/-, which was never the part of the payment plan. On 01.07.2025, it was shocking for the complainants that representatives of the respondents informed them that their unit has already stands cancelled on 01.07.2025. The respondent has submitted that the complainants booked the flat no. 1002, 10th Floor, G Tower, Sector 110A-111, Gurugram. The complainants were raised due demands as pe the notice of possession dated 08.02.2025 and due to non-payment, the allotment was cancelled vide cancellation letter dated 01.07.2025. Now the question before the Authority is that whether the cancellation made by the respondent vide letter dated 01.07.2025 is valid or not.

15. After considering the documents available on record as well as submissions made by the parties, it is observed that as per the application form the due date of possession was 15.01.2015. The occupation certificate with respect to the Tower in question was obtained by the respondents from the competent authority on 24.102024 and thereafter the possession of the unit was offered to the

complainants vide notice of possession letter dated 08.02.2025 vide which the respondent unilaterally enhanced the super area of the subject unit from 1695 sq. ft. to 1874 sq. ft., thereby effecting an increase of approximately 10.56%, and raised an additional demand on account thereof. The respondent further raised a demand of Rs.7,49,600/- on account of possession charges, despite the fact that no such charges were contemplated or agreed upon between them and levied unlawful interest amounting Rs.7,46,826.51/- on account of delay payment without any bifurcation and justification. Thereafter, the respondent proceeded to cancel the allotment of the subject unit without even adjusting the outstanding delay possession charges. It is further observed that Clause 4 of the application form purports to permit an increase in the area up to 10%. Thus, the demand raised on account of enhancement of the super area beyond 10%, levy of possession charges and unlawful interest on delay payment is arbitrary in nature and cancellation made by the respondent in continuation of the above demands without adjustment of outstanding delay possession charges is in contravention to the provisions of the Act, 2016 as well as Rules, 2017. In view of the above, the above said demands as well as cancellation made by the respondent vide letter dated 01.07.2025 cannot be held valid in the eyes of law and is hereby set-aside.

16. With regard to the issue of maintenance charges, the Authority observes that the occupation certificate for the tower in question was obtained by the respondent on 24.10.2024, whereas possession of the unit was offered to the complainants only on 08.02.2025. Therefore, the demand on account of maintenance charges can only be demanded by

the respondent at the time of offer of possession of unit to the complainants and not before.

17. 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.""*
>
> *(Emphasis supplied)*

18. Clause 13 of the application form dated 15.07.2011 provides for handing over of possession and is reproduced below:

> ***13. Schedule for possession of the said Unit***
> ***"The Developer shall offer possession of the said flat to the Applicant within a period of 3 (three years (with a grace period of six months) from the date of accompanying application.** The Developer shall be entitled to reasonable extension in delivery of possession of the said flat to the Applicant in the event of any default or negligence attributable to the Applicant..."*

19. **Due date of possession and admissibility of grace period:** The respondents/promoter proposed to hand over the possession of the said unit within a period of 36 months from the date of application from along with a grace period of six months. The said grace period being unqualified is allowed to the respondents. Therefore, the due date of handing over possession comes out to be 15.01.2015.

20. **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.

21. 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.

22. 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., 08.09.2026 is **8.80%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.80%**.

23. The definition of term 'interest' as defined under Section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.
Explanation. —For the purpose of this clause—
(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;"

24. Therefore, interest on the delay payments from the complainants 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 complainants in case of delay possession charges.

25. 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 13 of the application form, the due date of possession was 15.01.2015. However, the respondents have failed to handover possession of the subject apartment till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. Further, the authority observes that as per the DTCP website the occupation certificate for the tower in question has been granted to the respondents/promoter on 24.10.2024. Thereafter the possession of the apartment was offered to the complainants on 08.02.2025. Copies of the same have been placed on record. The Authority is of the considered view that there is delay on the part of the respondents to offer physical possession of the subject flat and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the application form to hand over the possession within the stipulated period.

26. 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 was granted by the competent authority on 24.10.2024. The respondents offered the possession of the unit in question to the complainants only on 08.02.2025, so it can be said that the complainants came to know about the occupation certificate only upon the date of offer of

possession. Therefore, in the interest of natural justice, the complainants should be given 2 months time from the date of offer of possession. These 2 months of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically they has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit, but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e. 15.01.2015 till the expiry of 2 months from the date of offer of possession (08.02.2025) which comes out to be 08.04.2025.

27. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with Section 18(1) of the Act on the part of the respondents is established. As such the complainants are entitled to delay possession at prescribed rate of interest i.e., 10.80% p.a. w.e.f. 15.01.2015 till the expiry of 2 months from the date of offer of possession (08.02.2025) which comes out to be 08.04.2025 as per provisions of Section 18(1) of the Act read with Rule 15 of the Rules and Section 19(10) of the Act.

28. 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 complainants. Whereas, as per section 19(11) of the Act of 2016, the allottees are also obligated to participate towards registration of the conveyance deed of the unit in question.

29. The possession of the subject unit has already been offered to the complainant after obtaining occupation certificate on 24.10.2024. Therefore, the respondents/promoter is directed to get the conveyance deed of the allotted apartment executed in favour of the complainants

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.

30. The complainants are seeking further relief with respect to execution of buyer's agreement. The complainants have submitted that despite receipt of more than 10% of the sale consideration from them, the respondents have failed to enter into a registered buyer's agreement with the complainants.

31. The Authority observes that despite receipt of an amount of Rs.68,96,690.63/- against the basic sale consideration of Rs.67,10,830/- from the complainants, the respondents-promoter have failed to enter into a written agreement for sale against the unit in question and have failed to get the unit registered in their name till date. Hence, it is violation of the provisions of the Act and shows its unlawful conduct. As per Section 13(1) of the Act, 2016, the promoter is obligated to not to accept more than 10% of the cost of the apartment, plot or building as the case may be, as an advance from a person without entering into a written agreement for sale with such person and register the said agreement for sale. Thus, in view of Section 13 of the Act of 2016, the respondents-promoter are directed to enter into a registered buyer's agreement with the complainants as per the 'agreement for sale' annexed with the Haryana Real Estate (Regulation and Development) Rules, 2017 within a period of 60 days from the date of this order.

H. Directions of the authority

32. 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 cancelation letter dated 01.07.2025 as well as demand raised by the respondents/promoter on account of super area beyond 10% and demand on account of possession charges is set aside.

ii. The respondents/promoter is directed to pay interest to the complainants against the paid-up amount at the prescribed rate i.e., 10.80% p.a. for every month of delay from the due date of possession i.e., 15.01.2015 till the expiry of 2 months from the date of offer of possession (08.02.2025) which comes out to be 08.04.2025 as per provisions of Section 18(1) of the Act read with Rule 15 of the Rules and Section 19(10) of the Act;

iii. The respondents/promoter is directed to supply a copy of the updated statement of account after adjusting delay possession charges within a period of 30 days to the complainants.

iv. The complainants are directed to pay outstanding dues, if any, after adjustment of delay possession charges within a period of 60 days from the date of receipt of updated statement of account.

v. The respondents/promoter is directed to enter into a registered buyer's agreement with the complainants as per the 'agreement for sale' annexed with the Haryana Real Estate (Regulation and Development) Rules, 2017 within a period of 60 days from the date of this order

vi. The respondents/promoter shall not charge anything from the complainants which is not the part of the application form dated 15.07.2011.

vii. The respondents/promoter is directed to handover possession and to execute conveyance deed of the allotted unit in favour of the complainants in terms of Section 17(1) of the Act of 2016.

viii. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.80% by the respondents/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delay possession charges as per section 2(za) of the Act.

ix. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

33. Complaint stands disposed of.

34. File be consigned to registry.

(Arun Kumar)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 08.09.2026