BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	:	**2444 of 2025**
Date of complaint	:	**23.05.2025**
Date of order	:	**08.09.2026**

Sandhya Pandey and Brij Murari Pandey,
Both R/o: - Flat No. 204, Manokamna Bhawan,
Plot No. 412-413, Kailash Puri, Palam, New Delhi. **Complainants**

Versus

1. M/s 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:

Hari Om Kumar (Advocate)	Complainants
Neelaksh Chopra (Advocate)	Respondent No.1
None	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. and area	901, 9th floor, Tower I, 2675 sq.ft. (super area) (pg. 57 of complaint)
8.	Date of execution of buyers' agreement between original allottee and respondents	22.07.2012 (pg. 15 of complaint)
9.	Date of execution of buyers' agreement with complainants	27.06.2016 (pg. 55 of complaint)
10.	Possession clause as per subsequent flat buyer's agreement dated 27.06.2016	**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)
11.	Date of sanction of building plans	07.06.2012 (As per project details)
12.	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***)
13.	Basic sale consideration	Rs.96,91,200/- (pg. 53 of complaint)
14.	Total amount paid by the complainant	Rs.1,00,19,342/- (As per page 4 of app. for amendment of complaint and SOA at page 91-99 of complaint)
15.	Occupation certificate	Not obtained for subject Tower
16.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainants have made the following submissions: -

I. That the respondent no.1 advertised, marketed, and launched a project named Capital Gateway in Sector 111, Gurugram. It is pertinent to mention that the respondents while promoting and offering to sell the units in the project made several promises pertaining to quality, completion, facilities, amenities, reputation, permission, and approvals in relation to the said project. The respondents assured and promised to deliver the physical vacant possession of the dwelling unit to the proposed buyer within 36 months.

II. That in pursuant to the representations made by the respondents, Mr. Mahender Kumar Mishra booked a flat no. 901 in Tower I in Capital Gateway Project, located in Sector 111, Gurugram Haryana. Later on, Ms Ekshita Kumar got interested in the said flat and after making payment and with the consent of the respondents, the said flat was transferred in her favour. As per statement of account furnished by the respondents, the booking amount of Rs.1989314/- of Mahender Kumar was transferred on 09.08.2011 to Ekshita Kumar. A Flat Buyer Agreement was signed between Ekshita Kumar and the Respondents on 22.07.2012.

III. That the complainants got in touch with Ms. Ekshita Kumar who had booked flat no. 901 in Tower I in the said residential township project. After making payment of the sale consideration to Ms. Ekshita Kumar as per agreement to sell, the request was made to the respondents to transfer the said unit no.901 in Tower I in their favor. The respondents agreed and issued allotment letter dated 27th June, 2016, for a total sale consideration price of Rs.98,91,825/ for unit bearing No. 901, 9thth Floor, (admeasuring 2675 sq.ft. approx.), Tower I, Capital Gateway, Sector 111, Gurugram, Haryana.

IV. That the builder buyer agreement dated 22.07.2012 signed amongst respondents and the allotee, wherein it has been mentioned in Clause 2.1 that possession of the flat will be given within 36 months from the date of sanction of the building plans. Further a grace period of 180 days was allowed to the builder for applying and obtaining occupancy certificate. The respondents informed that they got the approval of the building plans as on 07.06.2012.

V. That another builder buyer agreement was signed amongst the respondents and the complainant on 27.06.2016. As per clause 2.1, the date of possession of the flat was extended from 36 months to 48 months from the date of sanction of the building plans without any reason and in an unlawful and unjust manner. Per say, the builder buyer agreement is one sided and favors the Respondents and against the spirit of the Real Estate Act. 2016.

VI. That the details of the demand raised by the respondents and amount deposited by the allottees/complainant is as per the details contained in Confirmation of Accounts and Payment receipts furnished by the respondents. The first allottee of the flat was Mr Mahender Kumar Mishra who deposited Rs. 19,89,314/-. The second allotee of the said flat deposited Rs.25,46,571/- and Rs.35,50,864/-. The complainants deposited Rs.17,62,593/- on 26.02.2018. So put together, the aggregate amount of Rs.98,49,342/- has been paid against the said unit.

VII. That the complainant also availed a bank loan from ICICI BANK Limited, for purchase of the above-mentioned unit. The respondents had recommended the name this financing company as it had approved the said housing project. The tripartite agreement was executed by the borrower of the first part, the respondent M/S Tashee Land Developers Pvt Ltd of the second part and ICICI Bank of the third part. The complainant managed to liquidate the said loan account on 14.03.2024 as it became an unviable liability due to an unending delay in handing over the possession by the respondents.

VIII. That the respondents unilaterally and unauthorizedly increased the super area of the booked dwelling unit by 315 sq. ft. and demanded Rs.8,92,681/- and complainant was forced to pay the same. The respondents have not shared the calculations for increase in the super area based on the comparison of the originally approved area and finally approved area. As such, the respondents are not allowed to raise any additional demand on account of so-called increase in super area, which is against the provisions of the Act, and are liable to refund the amount collected illegally from the complainant.

IX. That the complainant came to know about the fact that the respondents had no intention of delivering the project and was dragging their feet by indulging into delaying and dilatory tactics unfairly to fleece the complainant not caring for completing the project in the promised time span.

X. That the above-mentioned facts and circumstances show that the respondents have acted in an unlawful manner to derive unlawful gains and cause huge losses to the other buyers similarly like complainant.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):

   I. Direct the respondents to handover possession of the flat and to pay delay possession charges.

   II. Cancel unilateral increase in area of 315 sq.ft. and refund illegally amount collected against it.

   III. Direct the respondents to pay compensation and litigation cost.

D. Reply by the respondents.

5. The Authority observes that despite specific direction for filing of reply, no reply has been received on behalf of respondent no.1 till date. Further, despite due service of notice neither anyone has appeared on behalf of respondent no.2 nor has any reply to the present complaint been filed on its behalf till date. In view of the above, vide proceedings dated 08.09.2026, the defence of respondent no.1 was struck off and respondent no.2 was proceeded ex-parte.

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 complainants.

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 complainants.**

F. I Direct the respondent to handover possession of the flat and to pay delay possession charges.

10. 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)*

11. Clause 2.1 of the flat buyer's agreement dated 27.06.2016 (in short, agreement) provides for handing over of possession and is reproduced below:

> ***2.1 Possession***
> *"Subject to clause 9 or any other circumstances not anticipated and beyond control of the first party/conforming party and any restraints/restrictions from any court/authorities and subject to the purchaser having complied with all the terms of this agreement including but not limited timely payment of total sale consideration and stamp duty and other charges and having complied with all provisions, formalities documentation etc. as prescribed by the **first party/conforming 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/conforming party shall be entitled to a grace period of 180 days after the expiry of 36 months for applying and obtaining OC in respect of the colony from the concerned authority...***"
> *(Emphasis supplied)*

12. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the

complainant not being in default under any provisions of these agreements and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottees that even a single default by the allottees in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees of their right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottees are left with no option but to sign on the dotted lines.

13. **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."*

14. 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.

15. **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.*

16. 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.

17. 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%**.

18. 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;"

19. 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.
20. 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. 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. Moreover, the Authority observes that there is no document on record from which it can be ascertained as to whether the respondent has applied for occupation certificate for the subject Tower i.e. Tower- I or what is the status of construction of the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.
21. 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.

22. 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 allottees. 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. However, there is nothing on the record to show that the respondents have applied for occupation certificate for the subject Tower or what is the status of the development of the above-mentioned project. In view of the above, the respondents/promoter are directed to handover possession of the flat and execute conveyance deed 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 after obtaining occupation certificate from the competent authority.

F. II Cancel unilateral increase in area of 315 sq.ft. and refund illegally amount collected against it.

23. The complainants have submitted that the respondents unilaterally and unauthorizedly increased the super area of the booked dwelling unit by 315 sq. ft. and demanded Rs.8,92,681/- and complainant was forced to pay the same. The respondents have not shared the calculations for increase in the super area based on the comparison of the originally approved area and finally approved area. As such, the respondents are not allowed to raise any additional demand on account of so-called

increase in super area, which is against the provisions of the Act, and are liable to refund the amount collected illegally from the complainant. However, the Authority observes that there is no document available on record to substantiate the claim of the complainants that the super area of the subject unit has been increased by 315 sq.ft. as alleged by the complainants. In view of the above, the relief sought by the complainants is declined.

F.III Direct the respondents to pay compensation and litigation cost.

24. The complainants are 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 complainants are advised to approach the Adjudicating Officer for seeking the relief of compensation and litigation expenses.

G. Directions of the authority

25. 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 complainants against the paid-up amount at the prescribed rate of 10.80% p.a. for every month of delay from the due date of possession i.e., 07.12.2016 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;

ii. The arrears of such interest accrued from 07.12.2016 till the date of order by the authority shall be paid by the promoter to the allottees within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottees before 10th of the subsequent month as per rule 16(2) of the rules.

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 shall not charge anything from the complainants which is not the part of the flat buyer's agreement dated 27.06.2016.

vi. 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.

vii. 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.

26. Complaint stands disposed of.
27. File be consigned to registry.

Arun Kr.

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