BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Order pronounced on: 17.11.2026

Name of the Promoter		Tashee Land Developers Pvt. Ltd. and KNS Infracon Pvt. Ltd.	
Project Name		Capital Gateway	
S. No.	Complaint No.	Complaint title	Attendance
1.	CR/256/2025	Pradyumn Kumar Awasthi V/s Tashee Land Developers Pvt. Ltd. and KNS Infracon Pvt. Ltd.	Sukhbir Yadav (Complainant) None (Respondent No.1) Abhay Jain (Respondent No.2)
2.	CR/1523/2025	Priyanjan Mohanty and Jaya Rawat V/s Tashee Land Developers Pvt. Ltd. and KNS Infracon Pvt. Ltd.	Sukhbir Yadav (Complainant) None (Respondent No.1) Abhay Jain (Respondent No.2)

CORAM:	
Arun Kumar	Chairman

ORDER

1. This order shall dispose of both the complaints titled as above filed before this Authority in form CRA under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, Capital Gateway being developed by the same respondents/promoter i.e., KNS Infracon Pvt. Ltd. and Tashee Land Developers Pvt. Ltd. The terms and conditions of the builder buyer's agreements fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question,

seeking award of possession, execution of conveyance deed, adjustment of delay possession charges and setting aside of cancellation/offer of possession and illegal demands mentioned therein.

3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, offer of possession, total sale consideration, amount paid up, and reliefs sought are given in the table below:

Project: Capital Gateway, Sector-110A & 111, Gurugram						
Occupation certificate- 24.10.2024 (as per DTCP Website) ***DTCP License no. 34 of 2011 dated 16.04.2011*** - KNS Infracon Pvt. Ltd. & 4 Ors. are the licensees for the project as mentioned in land schedule of the project. ***RERA registration*** – 120 of 2018 dated 10.08.2018 valid upto 31.12.2020 for phase-I (tower A to G) and 31.12.2021 for phase- II (tower H to J).						
Sr. No	**Complaint no./title/ date of complaint**	**Unit No.**	**Date of execution of apartment buyer's agreement**	**Offer of possession**	**Total sale consideration and amount paid by the Complainant**	**Relief Sought**
1.	CR/256/2025 Pradyumn Kumar Awasthi V/s Tashee Land Developers Pvt. Ltd. and KNS Infracon Pvt. Ltd. **DOF-** 22.01.2025 **Reply-** Not Received	403, 4th floor, Tower F (page 70 of complaint)	23.04.2013 (page 66 of complaint)	15.11.2024 (page 133 of complaint)	BSP: Rs.58,96,000/- (page 70 of complaint) AP: Rs.89,38,655/- (page 109 of complaint) **Previous complaint decided by Authority-** CR/723/2019 **Execution No.** 3632/2020	Possession, CD, adjustment of DPC and setting aside of cancellation/offer of possession and illegal demands.

2.	CR/1523/2025 Priyanjan Mohanty and Jaya Rawat V/s Tashee Land Developers Pvt. Ltd. and KNS Infracon Pvt. Ltd. **DOF-** 19.03.2025 **Reply-** Not Received	1203, 12th Tower E (page 36 of complaint)	13.01.2014 (page 34 of complaint)	11.11.2024 (page 94 of complaint)	BSP: Rs. 61,60,000/- (pg. 37 of complaint) AP: Rs.77,09,012/- (page 72 of complaint) **Previous complaint decided by Authority-** CR/303/2018 **Execution No. 4208/2020**	Possession, CD, adjustment of DPC and setting aside of offer of possession and illegal demands.

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:
Abbreviations Full form

DOF- Date of filing complaint
BSP- Basic Sale Price
AP- Amount paid by the allottee(s)

4. The aforesaid complaints were filed by the complainant against the promoter on account of violation of the builder buyer's agreement executed between the parties *inter se* in respect of said unit for seeking award of possession, execution of conveyance deed, adjustment of delay possession charges and setting aside of cancellation/offer of possession and illegal demands mentioned therein.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoters/respondent in terms of Section 34(f) of the Act which mandates the Authority to ensure compliance of the obligations cast upon the promoter, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s)are also similar. Out of the above-mentioned case, the particulars of lead case

CR/256/2025 titled as Pradyumn Kumar Awasthi V/s Tashee Land Developers Pvt. Ltd. and KNS Infracon Pvt. Ltd. are being taken into consideration for determining the rights of the allottee(s) qua possession and delay possession charges.

A. Project and unit related details

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

CR/256/2025 titled as Pradyumn Kumar Awasthi V/s Tashee Land Developers Pvt. Ltd. and KNS Infracon Pvt. Ltd.

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.	Allotment letter	02.04.2013 (page 62 of complaint)
8.	Unit no.	403, 4th floor, Tower F (page 70 of complaint)
9.	Area	1760 sq.ft. (super area) (page 70 of complaint)
10.	Date of execution of buyers' agreement	23.04.2013 (pg. 66 of complaint)
11.	Date of sanction of building plans	07.06.2012 (As per project details)
12.	Payment plan	Construction linked
13.	Basic Sale consideration	Rs. 58,96,000/- (page 70 of complaint)

14.	Total amount paid by the complainant	Rs. 89,38,655/- (page 109 of complaint)
15.	Occupation certificate	24.10.2024 (page 130 of complaint)
16.	Offer of possession vide email	15.11.2024 (page 133 of complaint)
17.	Intimation regarding cancellation	09.12.2024 (page 143 of complaint)
18.	Withdrawal of cancellation	18.12.2024 (as per page 144 of complaint)

B. Facts of the complaint

8. The complainant has made the following submissions: -

I. That the complainant was searching for a residential flat and came across "Tashee Capital Gateway" promoted by Tashee Land Developers Private Limited. 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 after a detailed discussion, the complainant chose one unit i.e., Flat No. 403 on the 4th Floor of Tower – E (later on revised to Tower-F), in the project. It is pertinent to mention here that the representative of the respondents stated that the said unit has been booked/undertaken by Mrs. Kamla Dhull (Initially, the said unit was booked in the name of Ms. Usha Gupta, who subsequently sold/transferred it to Ms. Kamla Dhull), however, the said unit is available for resale. It was represented by the representative of the respondents that they will facilitate the said transaction and it will be treated like a fresh booking and a fresh BBA shall be executed with the complainant.

III. That relying on the respondents' representations, the complainant signed and executed an affidavit along with other relevant documents for the booking of the above-stated unit. Notably, the complainant purchased a 1695 sq. which was later revised to a 1760 sq. ft. flat under a construction-linked payment plan, with a total sale consideration of Rs. 77,09,640/- (including BSP, EDC, IDC, Car Parking, CMC, IFMS, and PLC) from Mrs. Kamla Dhull. The respondents transferred all rights with regards to Unit No. 403 on the 4th Floor of Tower – F, in the Capital Gateway project, and an amount of Rs. 14,56,116/- was also transferred in the name of the complainant by the respondents from the name and account of the original allottee on 10.11.2012. It is relevant to note here that at the time of booking, the wife of the complainant (Ms. Padma Awasthi) was also a co-applicant, however, on 18.06.2013, she relinquished her rights as a co-applicant, and the complainant became the sole applicant of the above-stated unit.

IV. That on 02.04.2013, the respondents sent an allotment letter confirming the allotment of a 3 BHK Unit No. 403 on the 4th Floor in Tower-F measuring 1760 Sq. Ft in the name of the complainant. Subsequently, on 23.04.2013, 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. It is important to note here that at the time of booking the unit was booked for 1695 Sq. Ft, however, the BBA was executed for 1760 Sq. Ft super area. Subsequent to the initial payments, the complainant diligently continued to pay the remaining installments as per the demand raised by the respondent(s). As per the records, the complainant had paid a total sum of Rs. 89,38,655/-, which accounts for more than 100% of the total sale consideration. 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 before the Haryana Real Estate Regulatory Authority, Gurugram, under section 31 of the Real Estate (Regulation & Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation & Development) rules, 2017, against the respondents vide complaint No. 723 of 2019 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 Authority pronounced the final decision/judgment on the above-said complaint on 16.05.2019 and issued the following directions to the respondents:

> *(i) The respondent is directed to pay interest at the prescribed rate @10.65% p.a. for every month of delay on the amount paid by the complainant from due date of possession till the offer of possession.*
> *(ii) The Complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.*
> *(iii) The promoter shall not charge anything form the complainant which is not a part of the said flat buyer's agreement.*
> *(iv) Interest on the due payments from the complainant shall be charged at the prescribed rate of interest i.e., 10.65% by the promoter which is the same as is being granted to the complainant in case of delayed possession.*
> *(v) The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter, monthly payment of interest till offer of possession shall be paid before 10th of subsequent month.*

V. That the respondents failed to comply with the directions of this Authority. As a result, the complainants filed an execution petition (No. 3632 of 2020) to ensure compliance with the order. That under the proceedings, on 19.12.2022, the Court of Adjudicating Officer directed the issuance of a Recovery Certificate. Consequently, Recovery Certificate No. 578 dated 02.11.2023 for Rs.71,62,488/-

till, 30.09.2023. It is pertinent to note that the Recovery Certificate incorrectly states the amount paid by the complainant as less than the actual amount paid. The complainant has paid a total sum of Rs.89,38,655/-. As per the updated calculations following the Recovery Certificate, the respondents are obligated to pay delay possession charges amounting to Rs.43,64,571/-.

VI. That it is worth noting that, until the execution petition was filed, the respondents still hadn't handed over possession of the complainant's unit. As a result, the complainant, being the decree-holder, calculated the delayed possession charges from the original due date of possession to 07.06.2015, and then from that date to the date of issuance of the offer of possession letter dated 11.11.2024 on the amount paid by the complainant. as per the calculations, the decretal amount is Rs.43,64,571/- payable by the respondents.

VII. 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.

VIII. 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 11.11.2024, the respondent(s) issued a new demand in the name of the offer of possession for the complainants' 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, such as cost escalation in construction of Rs.36,22,336/- and on account of increase in area, possession charges of Rs.8,19,600/- which are baseless and unknown, other charges of Rs.2,31,349/-. It is necessary to provide a detailed breakdown of these charges, specifying what specific expenses are included within this amount, interest charges of Rs.3,57,075/- which are unjustified, Service Tax/VAT/GST charges of Rs.10,44,829/- which are unlawful and unjustified. It is pertinent to mention here that the said offer of possession is not a valid offer of possession. Thus, the demand and offer of possession dated 11.11.2024, is null and void, being legally invalid. Furthermore, the notice of possession included multiple charges beyond the scope of the agreement. It is also worth noting that the respondent is demanding an unreasonable demand of Rs.56,93,429/-. 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 letter dated 11.11.2024. The respondents' insistence on these illegitimate demands is entirely without merit.

IX. That it is highly pertinent to mention here 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 2049 sq. ft.

X. That on 13.11.2024, the respondents again shared the said offer of possession with the complainant through email. In response, the complainant sent a detailed letter dated 14.11.2024 and, thereafter, an email to the respondent on 15.11.2024, highlighting concerns regarding the unreasonable and incorrect charges levied in the offer of possession letter dated 11.11.2024. The email meticulously outlined each issue. It is germane to highlight here that the complainant was always willing to settle outstanding dues, provided that the delayed possession charges, as ordered by this Authority, are duly adjusted and paid by the respondent to the complainant.

XI. That the respondents deliberately ignored the complainant's correspondence and efforts, failing to provide any response. Instead, they sent a reminder on 25.11.2024, demanding payment of their unreasonable and unjustified demands outlined in their offer of possession letter dated 11.11.2024 insisting on payment of their incorrect demands enhanced to Rs.88,07,085/- lakh with additional illegal interest. The complainant's email dated 13.11.2024 remained unanswered, as the respondents failed to provide a response. Thereafter, the respondents shared the said reminder for demand dated 25.11.2024 vide their email on 26.11.2024 as well.

XII. That it is worth mentioning here that the delayed possession charges as per the calculations are far more than the actual/genuine amount payable by the complainant to the respondents/builders as per their offer of possession. The complainant is willing to settle legitimate dues 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 possession charges.

XIII. That the respondents initially failed to deliver possession of the complainant's unit by the due date, prompting the complainant to file complaint no. 723 of 2019, seeking possession and delayed possession charges. Despite obtaining a favourable decree on 16.05.2019, the respondents refused to comply, forcing the complainant to file Execution Petition No. 3632 of 2020. Undeterred with consequences of contempt of courts orders, the respondents continued to abuse their dominant position. They did not hand over possession on or before the due date of possession and subsequently issued an unlawful offer of possession, laden with unreasonable and exorbitant demands. Furthermore, the respondents threatened to cancel the unit if the complainant failed to pay the unjustified demands outlined in the offer of possession, which is a clear injustice. It is pertinent to mention that, in an interim order dated 20.11.2024, passed in the execution petition proceedings filed by the complainant, the respondents' counsel undertook before the Court of Adjudicating Officer that they would not demand payments from the complainants until further orders from the Hon'ble High Court. In light of the undertaking given by the respondents' counsel, they are stopped from demanding payments from the complainants towards their illegal and unjustified demands.

XIV. That despite providing an undertaking before the Hon'ble Court, the respondent, in a shocking and arbitrary move, cancelled the complainant's unit via their letter dated 09.12.2024. This cancellation was reasoned as and purportedly due to non-payment of the demand raised by the respondent in the offer of possession letter dated 11.11.2024 and the reminder letter with further enhanced demand of Rs 88,07,085/- .

XV. That the respondents' actions reek of duplicity, as evidenced by their email dated 18.12.2024, wherein they withdrew their cancellation letter dated 09.12.2024. The reason cited was that "M/s Catalyst Trusteeship Limited had filed a petition in the High Court of Chandigarh, bearing No. CWP No. 15494 of 2024, in which the Complainant is also a party". Notably, the respondents' withdrawal of the cancellation letter is temporary and without prejudice to their right to pursue recovery of the unjustified demands from the complainants. In light of these developments, it is imperative that this Authority sets aside the cancellation letter dated 09.12.2024, along with the offer of possession dated 11.12.2024. The respondents' actions are a blatant disregard for the complainants' rights, and it is essential that this Authority takes a firm stance against such unscrupulous behavior.

XVI. 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 18(1) proviso, the promoters are obligated to pay the interest at the prescribed rate for every month of delay till the handing over of the possession. That the present complaint is not for seeking compensation, without prejudice, complainant reserves the right to file a complaint to adjudicating officer for compensation.

XVII. That the matter which is directly and substantially in issue in the present complaint is the illegal demands made by the respondent in the offer of possession letter and cancellation of the unit on non-payment of the same and the same is not directly and substantially in issue in the former complaint. Hence, a fresh cause of action has arisen due to said illegal demands and the present matter does not fall under the ambit of res-judicata.

C. Relief sought by the complainant:

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

i. Direct the respondent to set aside cancellation/offer of possession and illegal demands mentioned therein.

ii. Direct the respondent to handover possession, execute conveyance deed and payment/adjustment of delay possession charges.

10. 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.

11. 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 (Tashee Land Developers Pvt. Ltd.) nor any reply to the present complaint has been filed on its behalf till date. In view of the above, vide proceedings dated 13.10.2026, the respondent no.1 was proceeded ex-parte. Further, despite specific directions for filing of reply, no reply has been received from the respondent no.2 (KNS Infracon Pvt. Ltd.). Accordingly, vide proceedings dated 0.3.09.2025, the defence of respondent no.2 was struck off. However, in the interest of justice, vide proceedings dated 13.10.2026, the respondents were given an opportunity to file written submissions in the matter within a period of two weeks, but the same has not been filed by it till date. In view of the above, the Authority is deciding the present complaint on the basis of documents available on record as well as submissions made by the complainant.

12. 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:

13. The Authority observes that the complainant has previously filed a complaint bearing no. *CR/723/2019* before the Authority seeking handover of possession and payment of delay possession charges and the said relief was allowed in favour of the complainant vide order dated 16.05.2019 with further directions to the respondent to not to charge anything which is not part of buyer's agreement.

However, the respondent failed to comply with the said order. Accordingly, the complainant filed an execution petition bearing no. 3632/2020 and the same is still pending before the Authority. Subsequently, post receipt of occupation certificate dated 24.10.2024 from the competent authority, the respondents/promoter offered possession of unit to the complainant on 11.11.2024, subject to payment of outstanding dues, but has again failed to adjust the pending delay possession charges from the dues payable as per buyer's agreement and ultimately on non-payment, even during the pendency of execution petition, the allotment of the unit was cancelled by the respondents vide cancellation letter dated 09.12.2024. Now, the complainant has filed the present complaint seeking possession, execution of conveyance deed, adjustment of delay possession charges and setting aside of cancellation/offer of possession and illegal demands mentioned therein. The respondent no.2 (KNS Infracon Private Limited) vide its application for dismissal of complaint has submitted that the above-mentioned complaint has already been decided by the Authority on 16.05.2019 vide CR/723/2019 and the present complaint is barred by doctrine of res-judicata.

14. After considering the documents available on record as well as submissions made by the complainant, it is observed that the respondents/promoter has withdrawn all the cancellation letters including the one issued in the present matter as recorded at para 3.2 in the order dated 19.12.2024 passed by the Hon'ble High Court of Punjab and Haryana in CWP No 15494 of 2024 (O&M) titled as *"Catalyst Trusteeship Limited V/s State of Haryana and Ors"*. The respondents in this regard have also sent an email dated 28.12.2024 to the complainant stating that *".... this email is sent to inform you that the cancellation of your allotment issued to you are being withdrawn...."*. The Authority is of the view that since, the cancellation letter issued to the complainant has already been withdrawn by the respondents/promoter, the relief sought by the complainant with regard to setting aside of cancellation becomes redundant and is not in issue at the present stage.

15. As far as the issue regarding setting aside of offer of possession and illegal demands mentioned therein, direction to the respondent to handover possession, execution of conveyance deed and payment/adjustment of delay possession charges is concerned, it is determined that vide order dated 16.05.2019 in the former complaint bearing no. CR/723/2019, the Authority has specifically directed the respondents/promoter to pay delay possession charges and to not to charge anything which is not part of buyer's agreement. It is to be noted that the direction for grant of delay possession charges inherently encompasses a direction with respect to possession as the same having been awarded on account of delay in handing over of possession. Thus, the Authority is of the considered view that the present complaint is not maintainable before the Authority as is barred by the principle of res-judicata as provided under Section 11 of the Code of Civil Procedure, 1908(CPC) as the matter in issue between the parties has already been heard and decided by the Authority vide order dated 16.05.2019 in the former complaint bearing no. CR/723/2019 and this Authority cannot re-write its own orders and lacks the jurisdiction to review its own orders. 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. The complainant, therefore, cannot seek adjudication of matters already covered by the aforesaid order by instituting a separate complaint before this Authority. 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.]"*

16. Further, Section 40(2) of the Act, 2016 prescribes that if any Adjudicating Officer or the Regulatory Authority or the Appellate Tribunal, as the case may be, issues any order or directs any person to do an act, or refrain from doing any act, which it is empowered to do under that Act or rules or regulations made thereunder, then in case of failure by any person to comply with such order or direction, the same shall be enforced, in such manner as may be prescribed. Furthermore, Rule 27(1) of the Rules, 2017 prescribes that every order passed by the Adjudicating Officer or the Regulatory Authority or the Appellate Tribunal, as the case may be, under the Act or Rules and the Regulations made thereunder, shall be enforced by an Adjudicating Officer or the Regulatory Authority or the Appellate Tribunal in the same manner as if it were a decree or an order made by a civil court in a suit

pending therein. Section 40 of the Act, 2016 as well as Rule 27 of the Rules, 2017 are reproduced as under for ready reference:

Section 40: Recovery of interest or penalty or compensation and enforcement of order, etc.

40. (1) "If a promoter or an allottee or a real estate agent, as the case may be, fails to pay any interest or penalty or compensation imposed on him, by the adjudicating officer or the Regulatory Authority or the Appellate Authority, as the case may be, under this Act or the rules and regulations made thereunder, it shall be recoverable from such promoter or allottee or real estate agent, in such manner as may be prescribed as an arrears of land revenue.

(2) If any adjudicating officer or the Regulatory Authority or the Appellate Tribunal, as the case may be, issues any order or directs any person to do any act, or refrain from doing any act, which it is empowered to do under this Act or the rules or regulations made thereunder, then in case of failure by any person to comply with such order or direction, the same shall be enforced, in such manner as may be prescribed."

***Rule 27.** (1)*

"Every order passed by the adjudicating officer or the Authority or the Appellate Tribunal, as the case may be, under the Act or rules and the regulation made thereunder, shall be enforced by an adjudicating officer the Authority or Appellate Tribunal in the same manner as if it were a decree or a order made by a civil court in a suite pending therein; and it shall be lawful for the adjudicating officer or the Authority or the Appellate Tribunal, as the case may be, in the event of its inability to execute the order, send such order to the civil court, to execute such order."

17. Moreover, Section 47 of Code of Civil Procedure, 1908 provides that all questions arising between the parties relating to the execution, discharge or satisfaction of the decree/order shall be determined by the executing court and not by a separate suit/complaint. Section 47 CPC is reproduced as under:

> *"**47. Questions to be determined by the Court executing decree. — (1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.**"*
>
> *(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.*
>
> *[Explanation I .-For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.*
>
> *Explanation II .- (a)For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and*
>
> ***(b) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the***

execution, discharge or satisfaction of the decree within the meaning of this section.]

18. 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.

19. In the instant case, it is an admitted position that the complainant has already instituted an execution petition bearing No. 3632/2020 for enforcement of the order dated 16.05.2019 passed in the earlier complaint, which is presently pending adjudication before this Authority. Accordingly, the grievances raised in the present complaint, insofar as pertaining to setting aside of the offer of possession and the alleged illegal demands raised therein, issuance of directions for handing over possession, execution of the conveyance deed and payment/adjustment of delayed possession charges, are matters substantially connected with execution of the aforesaid order dated 16.05.2019. Therefore, this Authority is of the considered view that the complainant is required to agitate the aforesaid grievances in the pending execution proceedings, rather than by instituting a separate complaint seeking substantially similar or consequential reliefs. Any adjudication of such issues in the present proceedings would amount to reopening matters which are already the subject matter of the pending execution proceedings and would not be legally warranted.

20. In view of the foregoing facts, circumstances and legal position, the present complaint stands dismissed being not maintainable. However, the complainant is

at liberty to approach the executing authority for redressal of his grievance in accordance with law.

21. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

22. The present complaint as well as application if any, stands disposed of accordingly.

23. File be consigned to registry.

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

Dated: 17.11.2026

HARERA
GURUGRAM