



# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

## 1. COMPLAINT NO. 1272 OF 2021

Vivek Sanghi ...COMPLAINANT

VERSUS

Ashiana Realtech Pvt. Ltd. ....RESPONDENT

## 2. COMPLAINT NO. 1466 OF 2021

Prem Singh Malik ...COMPLAINANT

VERSUS

Ashiana Realtech Pvt. Ltd. ....RESPONDENT

## 3. COMPLAINT NO. 2391 OF 2019

Yashpal ...COMPLAINANT

VERSUS

Ashiana Realtech Pvt. Ltd. ....RESPONDENT

## 4. COMPLAINT NO. 2392 OF 2019

Gurpreet Kaur ...COMPLAINANT

VERSUS

Ashiana Realtech Pvt. Ltd. ....RESPONDENT

**5. COMPLAINT NO. 2393 OF 2019**

Hawa Singh ...COMPLAINANT

VERSUS

Ashiana Realtech Pvt. Ltd. ....RESPONDENT

**6. COMPLAINT NO. 2394 OF 2019**

Jagdev Singh ...COMPLAINANT

VERSUS

Ashiana Realtech Pvt. Ltd. ....RESPONDENT

**7. COMPLAINT NO. 2395 OF 2019**

Rajesh Khoja ...COMPLAINANT

VERSUS

Ashiana Realtech Pvt. Ltd. ....RESPONDENT

**8. COMPLAINT NO. 2396 OF 2019**

Kuldeep Singh ...COMPLAINANT

VERSUS

Ashiana Realtech Pvt. Ltd. ....RESPONDENT

**9. COMPLAINT NO. 2631 OF 2019**

Venus &  
Others ...COMPLAINANT

VERSUS

Ashiana Realtech Pvt. Ltd. ....RESPONDENT



**10.COMPLAINT NO. 176 OF 2022**

Ritu Raj Tyagi ...COMPLAINANT

VERSUS

Ashiana Realtech Pvt. Ltd. ....RESPONDENT

**11.COMPLAINT NO. 260 OF 2021**

Sandeep Yadav ...COMPLAINANT

VERSUS

Ashiana Realtech Pvt. Ltd. ....RESPONDENT

**12.COMPLAINT NO. 758 OF 2021**

Vijaywanti Sehrawat & Devinder Singh ...COMPLAINANT

VERSUS

Ashiana Realtech Pvt. Ltd. ....RESPONDENT

**13.COMPLAINT NO. 929 OF 2021**

Seema Gupta ...COMPLAINANT

VERSUS

Ashiana Realtech Pvt. Ltd. ....RESPONDENT

**14.COMPLAINT NO. 1273 OF 2021**

Tulika Sanghi ...COMPLAINANT

VERSUS

Ashiana Realtech Pvt. Ltd. ....RESPONDENT



**15.COMPLAINT NO. 1394 OF 2020**

Santosh Jain ...COMPLAINANT

VERSUS

Ashiana Realtech Pvt. Ltd. ....RESPONDENT

**16.COMPLAINT NO. 1395 OF 2020**

Ajit Prasad Jain ...COMPLAINANT

VERSUS

Ashiana Realtech Pvt. Ltd. ....RESPONDENT

**17.COMPLAINT NO. 1396 OF 2020**

Rajesh Chand Jain ...COMPLAINANT

VERSUS

Ashiana Realtech Pvt. Ltd. ....RESPONDENT

**18.COMPLAINT NO. 1397 OF 2020**

Yogesh Kumar Jain ...COMPLAINANT

VERSUS

Ashiana Realtech Pvt. Ltd. ....RESPONDENT

**19. COMPLAINT NO. 1398 OF 2020**

Pranab Kumar Jain ...COMPLAINANT

VERSUS

Ashiana Realtech Pvt. Ltd. ....RESPONDENT



**CORAM: Rajan Gupta  
Dilbag Singh Sihag**

**Chairman  
Member**

**Date of Hearing: 27.04.2022**

**Hearing: 2<sup>nd</sup> (in sr. no. 10)**

3<sup>rd</sup> (in complaint no. 2,15,16,17,18 and 19)

5<sup>th</sup> (in complaint no. 11,13,)

6<sup>th</sup> (in sr. no. 3,4,5,6,7,8,9,12,)

7<sup>th</sup> (in sr. no.1 and14)

**Present: - Mr. Shikhar Bajpai, ld. Counsel for the complainant through VC (in sr. no. 1 and 4)**

Mr. Sunil Kumar, ld. Counsel for the complainant through VC  
(in sr. no. 2, and 12)

Mr. Vikram Bishnoi and Mr. S.K. Yadav, ld. counsel for the  
complainant (in sr. no.3,4,5,6,7,8,9,)

Mr. Surinder Kumar ld. Counsel for the complainant though VC  
(in sr. no. 10)

Mr. Kunal Thapa, ld. Counsel for the complainant though VC  
(in sr. no. 11)

Mr. Jaswant Kalra, ld. Counsel for the complainant (in sr. no. 13)

Mr. D.D. Singla, proxy counsel for the complainant (in sr.no.  
15,16,17,18,19,)



**ORDER (RAJAN GUPTA - CHAIRMAN)**

1. Captioned bunch of 19 complaints have been taken up together for disposal. Facts of complaint No. 1272 of 2021 titled "Vivek Singh Vs. Ashiana Realtech Pvt.Ltd. is being taken as lead case. The facts averred in this case are stated below:-

2. Complainant had booked a unit in the project named "The CUBIX" promoted by respondents. It is situated in Sector-23, Dharuhera, District Rewari. Builder-Buyer Agreement (BBA) between parties was executed on 28.02.2013. As per agreement, possession of apartment was to be delivered by 28.02.2017. Complainant has already paid an amount of Rs.35,82,024/- against agreed basic sale consideration of Rs.30,20,000/-. Complainant is aggrieved by the fact that despite timely payment of all dues, respondent has not complied with terms of builder buyer agreement and has delayed in offering possession of the apartment. Complainant is aggrieved by the fact that possession has been offered to him with much delay on 10.11.2021. Aggrieved by above, complainant has sought relief of refund of the paid amount.

3. Respondents have submitted a standard reply in all the cases. In their reply respondents submit that the project is complete and it had been registered with Authority vide registration No. HRERA/PKL/RWR-39-2018 dated 20.08.2018. Respondents states that possession could not be handed over to complainant in time due to certain force majeure circumstances beyond control



of the respondents which includes prohibition of extraction of ground water, prohibition on sand mining, agitations in Haryana etc. Respondents further state that they have already received occupation certificate in respect of the project vide Town & Country Planning Department letter dated 08.11.2021 for which an application had been filed on 7.12.2020. Respondents have also in general terms denied averments made by complainants. Respondents have also stated that one of the reasons for delay in completion was delay in making payments by many allottees.

4. This matter had been earlier considered by the Authority on 05.04.2022. Authority had indicated its mind as to the terms on which these complaints will be disposed of, but one final opportunity was granted to both parties to arrive at an amicable settlement failing which final order was to be passed on the lines indicated in the order dated 05.04.2022.

5. The order dated 05.04.2022 passed by Authority is reproduced below: -

3. Authority observes and orders as follows: -

(i) The basic facts alleged by the complainant have not been denied by the respondent. Admittedly, against the due date of possession i.e 22.02.2017, actual offer of possession was made on 10.11.2021 i.e. after a delay of nearly 4 years. This offer however, was made after obtaining occupation certificate from the competent authorities on 8.11.2021.

(ii) The complainants herein are pressing for relief of refund for the reason that much delay has been caused in offering possession to them. The



complainants have chosen to keep quiet between the 22.07.2017 which was the due date for offering possession and 10.11.2021 when the offer of possession was actually been made. The Real Estate (Regulation and Development) Act, 2016 has been enacted by Parliament to attain twin objectives i.e. regulation, growth and development of the real estate sector and secondly to redress grievances of the allottees.

Section 18 of the Act entitles an allottee to seek possession along with interest or refund of the amount paid in case the project is not completed in terms of the agreement for sale.

Authority has to strike a balance between overall interest of the project, interest of entire group of allottees of a project, interest of individual complainants. Authority has taken a consistent view that where a project has been completed or is likely to be completed shortly, the relief of refund will not be granted. However, relief of refund will be granted where the project is stalled, or its completion is uncertain or a defined time frame cannot be given for obtaining occupation certificate etc.

Admittedly, this is a completed project and a valid offer of possession has been made after obtaining occupation certificate.

**4. In above circumstances, Authority is not in a position to allow the prayer of refund as being pressed by complainants. Instead, Authority will ask the complainants to take possession of the apartments but they will be entitled to interest at the rate prescribed in Rule 15 of the HRERA Rules, 2017 for the entire period of delay caused. Before passing final orders in the matter, Authority allows an opportunity to both the parties to arrive at amicable settlement failing which the final orders will be passed on the lines indicated above.**



6. None of the parties have put forward any substantive arguments in respect of aforesaid orders of Authority. Accordingly, it confirms the said order dated 05.04.2022 and rejects the prayer for refund of the amount paid by complainants.

7. Authority further orders as follows: -

i) All the complainants are entitled to interest for the entire period of delay caused in handing over the possession of apartments as per the provision of Rule 15 of RERA Rules i.e., from the deemed date of offering possession up to the date when actual possession was offered after obtaining occupation certificate. The admissible interest has been got calculated from the Accounts Department of Authority as shown in the table below: -

Sr. No.	Complaint Number	Builder Buyer Agreement	Deemed Date of Possession	Total Paid Amount	Paid amount after deducting EDC/IDC and service charge	Delay Interest @9.40% till 10.11.2021
1.	1396 of 2020	14-12-2013	14-12-2017	3195619/-	2783119/-	1023517/-

4

2.	176 of 2022	01-04-2-- 014	01-04- 2018	3665559/-	3173841/-	1048932/-
3.	1466 of 2021	10-05-2013	10-05- 2017	10,53,405/-	924705/-	391984/-
4.	929 of 2021	22-04-2014	22-04- 2018	3609930/-	3098000/-	1036396/-
5.	758 of 2021	17-05-2013	17-05- 2017	2722734/-	2332734/-	984644/-
6.	1272 of 2021	28-02-2013	28-02- 2017	3582024/-	3075882/-	1360113/-
7.	1273 of 2021	28-02-2013	28-02- 2017	3312343/-	2809501/-	1242323/-
8.	260 of 2021	01-08-2013	01-08- 2017	2378401/-	1898401/-	764156/-
9.	1394 of 2020	25-11-2013	25-11- 2017	3283867/-	2871367 /-	1070021/-
10.	1395 of 2020	29-11-2013	29-11- 2017	3239739/-	2827239/-	1050664/-
11	1397 of 2020	17-05-2014	17-05- 2018	3239563/-	2827063/-	927555/-

12	1398 of 2020	24-04-2014	24-04-2018	2944206	2531706/-	845645/-
13	2631 of 2019	25-05-2013	25-05-2017	3327902/-	2915402/-	1224581/-
14	2391 of 2019	25-11-2013	25-11-2017	3164757/-	2774757/-	1034019/-
15.	2392 of 2019	06-05-2013	06-05-2017	3210581/-	2820581/-	1198554/-
16.	2393 of 2019	15-05-2013	15-05-2017	3822725/-	3342725/-	1412681/-
17.	2394 of 2019	15-05-2013	15-05-2017	3370631/-	2958131/-	1250147/-
18	2395 of 2019	15-05-2013	15-05-2017	3130202/-	2740202/-	1158047/-
19.	2396 of 2019	27-04-2013	27-04-2017	3327902/-	2915402/-	1245604/-

(In complaint no. 1466 of 2021, complainant has submitted receipts of Rs. 10,53,405/- against claimed amount of Rs. 13,35,405/-. Authority directs him to submit receipts to respondent for remaining amount and claim delay interest @

9.40% after deducting EDC/IDC and service charges from the deemed date of possession till the date of offer of possession.)

- ii. In all the complaints, delay interest is calculated after deducting EDC/IDC charges and Service tax from the total paid amount/receipts. The amount of such taxes are not payable to the builder and are rather required to be passed on by the builder to the concerned revenue department/authorities. If a builder does not pass on this amount to the concerned department the interest thereon becomes payable only to the department concerned and the builder for such default of non-passing of amount to the concerned department will himself be liable to bear the burden of interest.
- iii. Respondents are liable to pay the delay interest as shown in the table above.
- iv. Respondent is directed to send a fresh statement of accounts to the complainants showing therein the amount receivable after duly accounting for delay interest payable by respondents to the complainants.
- v. Complainants shall take possession of the units upon receipt of such statement of accounts immediately.

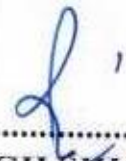


vi. Based on above, Authority decides to dispose of this matter with the direction that respondents shall within a period of 30 days issue a fresh statement of accounts duly incorporated therein, the delay interest payable to all the complainants as recorded in this order and complainant shall take possession immediately thereafter.

6. **Disposed of.** Files to be consigned to record room after uploading of order on website.



RAJAN GUPTA  
[CHAIRMAN]



DILBAG SINGH SIHAG  
[MEMBER]