



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 1362 OF 2021

Krishna Kant Dubey ...COMPLAINANT

VERSUS

Ashiana Realtech Pvt. Ltd.RESPONDENT

2. COMPLAINT NO. 77 OF 2022

Bijender kumar & Anita Dhiman ...COMPLAINANT

VERSUS

Ashiana Realtech Pvt. Ltd.RESPONDENT

3. COMPLAINT NO. 79 OF 2022

Anurag Sharma ...COMPLAINANT

VERSUS

Ashiana Realtech Pvt. Ltd.RESPONDENT

4. COMPLAINT NO. 363 OF 2022

Sarla

...COMPLAINANT

VERSUS

Ashiana Realtech Pvt. Ltd.

....RESPONDENT

5. COMPLAINT NO. 382 OF 2022

Ruchika Chawla

...COMPLAINANT

VERSUS

Ashiana Realtech Pvt. Ltd.

....RESPONDENT

6. COMPLAINT NO. 561 OF 2022

Satyender Singh

...COMPLAINANT

VERSUS

Ashiana Realtech Pvt. Ltd.

....RESPONDENT

7. COMPLAINT NO. 1354 OF 2021

Meer Altap Ali & Nasima Khatun

...COMPLAINANT

VERSUS

Ashiana Realtech Pvt. Ltd.

....RESPONDENT



8. **.COMPLAINT NO. 1360 OF 2021**

Parveen ...COMPLAINANT

VERSUS

Ashiana Realtech Pvt. Ltd.RESPONDENT

9. **COMPLAINT NO. 30 OF 2022**

Jaiveer Yadav ...COMPLAINANT

VERSUS

Ashiana Realtech Pvt. Ltd.RESPONDENT

10. **.COMPLAINT NO. 1363 OF 2021**

Bimla Kaushik & Hariom Kaushik ...COMPLAINANT

VERSUS

Ashiana Realtech Pvt. Ltd.RESPONDENT

11. **.COMPLAINT NO. 1370 OF 2021**

Rajesh Kumar ...COMPLAINANT

VERSUS

Ashiana Realtech Pvt. Ltd.RESPONDENT



12. .COMPLAINT NO. 1374 OF 2021

Shyam Sunder Chauhan & Sandeep Chauhan ...COMPLAINANT
VERSUS

Ashiana Realtech Pvt. Ltd.RESPONDENT

13. .COMPLAINT NO. 1376 OF 2021

Manoj Kumar Yadav ...COMPLAINANT
VERSUS

Ashiana Realtech Pvt. Ltd.RESPONDENT

14. .COMPLAINT NO. 1391 OF 2021

Rajneesh Kumar ...COMPLAINANT
VERSUS

Ashiana Realtech Pvt. Ltd.RESPONDENT

15. COMPLAINT NO. 1438 OF 2021

Yadram Yadav & Shishi Yadav ...COMPLAINANT
VERSUS

Ashiana Realtech Pvt. Ltd.RESPONDENT



16. .COMPLAINT NO. 1439 OF 2021

Karan Singh Yadav ...COMPLAINANT
VERSUS

Ashiana Realtech Pvt. Ltd.RESPONDENT

17. .COMPLAINT NO. 1442 OF 2021

Devendra Pandey ...COMPLAINANT
VERSUS

Ashiana Realtech Pvt. Ltd.RESPONDENT

18. .COMPLAINT NO. 1449 OF 2021

Arun Kumar ...COMPLAINANT
VERSUS

Ashiana Realtech Pvt. Ltd.RESPONDENT

19. .COMPLAINT NO. 1451 OF 2021

Shiv Kumar Singh & Abhinav Singh ...COMPLAINANT
VERSUS

Ashiana Realtech Pvt. Ltd.RESPONDENT



**CORAM: Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 27.04.2022

**Hearing: 1st (in sr. no. 5 and 6)
2nd (in sr. no. 1,2,3,4,7,8,9,10,11,12,13,14,15,16,17,18 and 19)**

**Present: Ms. Priyanka Aggarwal, Ld. Counsel for the complainant through VC
(In sr. no. 1,2,3,5,7,8,9,10,11,12,13,15,16,17,18,19,)**

**Mr. Arun Sharma in, Ld. Counsel for the complainant through VC.
(In sr. no. 6)**

**Ms. Sakshi Gupta, Ld. Counsel for the complainant through VC.
(In sr. no. 4)**

Mr. Rajneesh Kumar, complainant through VC.

Mr. Jatinder Nagpal, Ld. Counsel for the respondent through VC.

ORDER (RAJAN GUPTA - CHAIRMAN)

Captioned bunch of 19 complaints has been taken up together for disposal because facts averred are similar and pertain to same project promoted by respondents. Facts of complaint No. 1362 of 20021 titled 'Krishna Kant Dubey Vs. Ashiana Realtech Pvt. Ltd. has been taken into account treating it as lead case.

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 02.04.2013. As

per agreement, possession of apartment was to be delivered by 02.04.2017. Complainant has already paid an amount of Rs.31,72,933/- against agreed basic sale consideration of Rs.27,73,800/-.

Complainant is aggrieved by the fact that possession has been offered to him with much delay on 10.11.2021. Further, agreed super area in the BBA was 1300 sq. ft. against which complainant alleges that carpet area of only 655.95 sq. ft. has been offered. Complainant implies that unfair trade practice has been exercised by respondents and they have offered a lesser carpet area against agreed super area. Aggrieved by the this, the complainant sought relief of awarding delay interest for the entire period of delay, immediate hand over of physical possession in habitable condition, quashing of certain charges amounting to about Rs.2.27 lacs and direct respondent to clarify super area vs. carpet area ratio and revise the area and raise fresh demand accordingly. Complainant has also prayed that the respondents may be directed to charge the electricity bill as per actual government rates and repair walls which are not proper, on account of poor workmanship.

3. Respondents have submitted a standard reply in all the cases. In their reply respondents have submitted that the project is complete it had been registered with Authority vide registration No. HRERA/PKL/RWR-39-2018 dated 20.08.2018. Respondents stated that possession could not be handed over to complainant in



time due to certain force majeure circumstances beyond the control of respondents, which includes prohibition of extraction of ground water, prohibition of 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 the averments made by complainants. Respondents have also stated that one of the reasons for delay in completion of project was the delay in making payments by many allottees.

3. During hearing of the matter on 15.02.2022, Authority had observed that ratio of carpet area and super area appears highly disproportionate. In order to ascertain facts of the matter, Authority had appointed a local commissioner to visit the site and carry out actual measurement of carpet area as well as super area. Local Commissioner M/s Protech Consortium carried out site inspection on 16.04.2022. A detailed report had been submitted by the local commissioner to the Authority on 22.4.2022, whereas its soft copy had been received on 19.4.2022. Soft copy of the report was forwarded to complainants as well as respondents by email.



4. When the matter was taken up for further consideration, both parties had received the report of local commissioner. The report was discussed at length. None of the parties objected to report of the local commissioner. In fact, both parties agreed that further decision may be taken by Authority on the basis of report of local commissioner.

5. Authority has considered respective cases of both sides. It has gone through the documents placed on record as well as report of the Local Commissioner. It observes and orders as follows: -

- i) It is an admitted fact that builder-buyer agreement in lead case had been executed on 02.04.2013 and possession was due to be delivered by 02.04.2017 inclusive of the grace period permissible in the agreement.
- ii) Further, admittedly, respondents have completed the project and have obtained the occupation certificate dated 08.11.2021. An offer of possession was made to the complainants on 10.11.2021 i.e., after obtaining the Occupation Certificate. Accordingly, the offer made by respondent is a valid offer. Authority accordingly, observes that complainants are entitled to interest for the period of delay from 02.04.2017 up to 10.11.2021 in accordance with Rule 15 of RERA



Rules, 2017. The delay interest in respect of each complainant is tabulated below as calculated was Accounts Department of the Authority: -

Sr. No.	Complaint Number	Builder Buyer Agreement	Deemed Date of Possession	Total Paid Amount	Paid Amount after excluding EDC/IDC and Service Tax	Delay Interest @9.40% till 10.11.2021
1.	1354 of 2021	04-05-2013	04-05-2017	3290167/-	2810000/-	1195505/-
2.	1360 of 221	24-04-2014	24-04-2018	3377694/-	2887163/-	964376/-
3.	1370 of 2021	17-05-2013	17-05-2017	3254144/-	2775100/-	1171366/-
4.	1374 of 2021	08-05-2013	08-05-2017	3634374/-	3268283/-	1387113/-
5.	1363 of 2021	01-05-2014	01-05-2018	3825558/-	3631627/-	1206496/-

6.	1362 of 2021	02-04-2013	02-04-2017	3172933/-	2706496/-	1173774/-
7.	1391 of 2021	12-04-2013	12-04-2017	3271731/-	2787691/-	1201808/-
8.	1438 of 2021	13-02-2013	13-02-2017	3215665/-	2320471/-	1035045/-
9.	561 of 2022	01-02-2014	01-02-2018	34,37,901	2989257/-	1061604/-
10.	1376 of 2021	27-04-2013	27-04-2017	3345905/-	2955905/-	1262908/-
11	1439 of 2021	11-07-2014	11-07-2018	3345212/-	2872792/-	901868/-
12	1442 of 2021	09-05-2013	09-05-2017	2841769/-	2451769/-	1039940/-



13	1449 of 2021	27-05-2013	27-05-2017	3534872/-	3122372/-	1309908/-
14	77 of 2022	26-04-2013	26-04-2017	3316270/-	2845689/-	1216552/-
15.	79 of 2022	27-05-2013	27-05-2017	3620986/-	3317473/-	1391757/-
16.	30 of 2022	26-02-2013	26-02-2017	3281947/-	2780243/-	1230817/-
17.	363 of 2022	13-08-2014	13-08-2018	4452741/-	3972741/-	1213417/-
18	382 of 2022	27-04-2013	27-04-2017	3416245/-	2947574/-	1259349/-
19.	1451 of 2021	05-04-2014	05-04-2018	3598216/-	3107897/-	1053313/-



- iii. 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.
- iv. Arguments of respondent that the delay has been caused on account of force majeure conditions cannot be accepted. Such circumstances being cited have been prevailing for last many-many years, which could have been foreseen at the time of executing builder buyer agreements. Further, nothing extraordinary happened which could be called an act of God or a circumstance which could not have been foreseen by the respondents. Therefore, respondent plea of force majeure circumstances cannot be accepted, as such respondents shall be liable to pay interest for the period of delay caused in offering possession.
- v. Next controversy in the matter is in regard to super area of apartments. Complainant suspected that much smaller carpet area i.e., 655.95 sq.ft. is



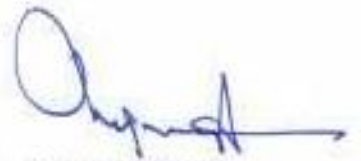
being offered to them against agreed super area of 1300 sq.ft. None of the parties have raised any objection to report of local commissioner. Accordingly, super area as calculated by Local Commissioner shall be considered correct. The local commissioner has calculated super area of 1300sq.ft. in respect of Type A flats; and 1375 sq. ft. in Type A-1 flats. Respondents shall charge from complainants on the basis of such calculation of super area.

- vi. Complainants in their written statement have also questioned certain demands raised by respondents but such demands were not argued upon nor pressed in any other manner by Id. counsel for complainants. It is, therefore, to be presumed that demands raised by respondents are acceptable to the complainants.
- vii. Authority while appointing a local commissioner had ordered that fee of local commissioner shall be paid by party who is found to be at fault. In this case, respondents have not been found at fault in respect of calculation of super area. The fee of local commissioner, therefore, fees will be paid by complainants. Ms. Priyanka Aggarwal, Id. counsel for complainants in 16 matters shall collect the fees payable to local Commissioner from each of the complainants and deposit the same with the Authority.



viii. Based on the above, Authority decides to dispose of this matter with the direction that respondents shall issue a fresh statement of accounts duly incorporating therein, the delay interest payable to all the complainants as recorded in this order, within 30 days of uploading of this order.

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



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RAJAN GUPTA
[CHAIRMAN]



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DILBAG SINGH SIHAG
[MEMBER]