



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 2420 OF 2022

Ashiana Realtech Pvt. Ltd.

...COMPLAINANT

VERSUS

MRS VIJAYWANTI SEHRAWAT AND DAVINDER SINGHRESPONDENT

2. COMPLAINT NO. 2422 OF 2022

Ashiana Realtech Pvt. Ltd.

...COMPLAINANT

VERSUS

VIVEK SANGHI

....RESPONDENT

COMPLAINT NO. 2423 OF 2022

Ashiana Realtech Pvt. Ltd.

...COMPLAINANT

VERSUS

GURPREET KAUR

....RESPONDENT

COMPLAINT NO. 2424 OF 2022

Ashiana Realtech Pvt. Ltd.

...COMPLAINANT

VERSUS

JAGDEV SINGH

....RESPONDENT

COMPLAINT NO. 2427 OF 2022

Ashiana Realtech Pvt. Ltd.

...COMPLAINANT

VERSUS

YASH PAL

....RESPONDENT

COMPLAINT NO. 2428 OF 2021

Ashiana Realtech Pvt. Ltd.

...COMPLAINANT

VERSUS

HAWA SINGH

....RESPONDENT

COMPLAINT NO. 2429 OF 2021

Ashiana Realtech Pvt. Ltd.

...COMPLAINANT

VERSUS

VENUS AND ANOTHER

....RESPONDENT

COMPLAINT NO. 2430 OF 2021

Ashiana Realtech Pvt. Ltd.

...COMPLAINANT

VERSUS

SEEMA GUPTA

....RESPONDENT

COMPLAINT NO. 2431 OF 2021

Ashiana Realtech Pvt. Ltd.

...COMPLAINANT

VERSUS

RAJESH CHAND JAIN

....RESPONDENT

COMPLAINT NO. 2432 OF 2021

Ashiana Realtech Pvt. Ltd.

...COMPLAINANT

VERSUS

SANTOSH JAIN

....RESPONDENT

COMPLAINT NO. 2434 OF 2021

Ashiana Realtech Pvt. Ltd.

...COMPLAINANT

VERSUS

YOGESH KUMAR JAIN

....RESPONDENT

COMPLAINT NO. 2435 OF 2021

Ashiana Realtech Pvt. Ltd.

...COMPLAINANT

VERSUS

AJIT PRASAD JAIN

....RESPONDENT

COMPLAINT NO. 2436 OF 2021

Ashiana Realtech Pvt. Ltd.

...COMPLAINANT

VERSUS

RAJESH KHOJA

....RESPONDENT

COMPLAINT NO. 2448 OF 2021

Ashiana Realtech Pvt. Ltd.

...COMPLAINANT

VERSUS

KRISHNA KANT DUBEY

....RESPONDENT

COMPLAINT NO. 2451 OF 2021

Ashiana Realtech Pvt. Ltd.

...COMPLAINANT

VERSUS

SARLA

....RESPONDENT

COMPLAINT NO. 2452 OF 2021

Ashiana Realtech Pvt. Ltd.

...COMPLAINANT

VERSUS

MR SHYAM SUNDAR CHAUHAN AND ANR

...RESPONDENT

COMPLAINT NO. 2453 OF 2021

Ashiana Realtech Pvt. Ltd.

...COMPLAINANT

VERSUS

RAJNEESH KUMAR

....RESPONDENT

COMPLAINT NO. 2456 OF 2021

Ashiana Realtech Pvt. Ltd.

...COMPLAINANT

VERSUS

SATYENDER SINGH

....RESPONDENT

COMPLAINT NO. 2459 OF 2021

Ashiana Realtech Pvt. Ltd.

...COMPLAINANT

VERSUS

ANURAG SHARMA

....RESPONDENT



COMPLAINT NO. 2460 OF 2021

Ashiana Realtech Pvt. Ltd.

...COMPLAINANT

VERSUS

MR SHIV KUMAR SINGH AND ABHINAV SINGH

....RESPONDENT

COMPLAINT NO. 2461 OF 2021

Ashiana Realtech Pvt. Ltd.

...COMPLAINANT

VERSUS

MR DEVENDRA PANDEY

....RESPONDENT

COMPLAINT NO. 2462 OF 2021

Ashiana Realtech Pvt. Ltd.

...COMPLAINANT

VERSUS

MR YADRAM YADAV AND MRS SHASHI YADAV

....RESPONDENT

COMPLAINT NO. 1272 OF 2021

Ashiana Realtech Pvt. Ltd.

...COMPLAINANT

VERSUS

MRS VIJAYWANTI SEHRAWAT AND DAVINDER SINGH

....RESPONDENT

COMPLAINT NO. 2463 OF 2021

Ashiana Realtech Pvt. Ltd.

...COMPLAINANT

VERSUS

BIJENDER KUMAR AND ANITA DHIMAN

....RESPONDENT

COMPLAINT NO. 2465 OF 2021

Ashiana Realtech Pvt. Ltd.

...COMPLAINANT

VERSUS

MRS BIMLA KAUSHIK AND MR HARIOM KAUSHIK

....RESPONDENT

COMPLAINT NO. 2466 OF 2021

Ashiana Realtech Pvt. Ltd.

...COMPLAINANT

VERSUS

RAJESH KUMAR

....RESPONDENT

COMPLAINT NO. 2467 OF 2021

Ashiana Realtech Pvt. Ltd.

...COMPLAINANT

VERSUS

PRANAB KUMAR JAIN

....RESPONDENT

COMPLAINT NO. 2541 OF 2021

Ashiana Realtech Pvt. Ltd.

...COMPLAINANT

VERSUS

RITU RAJ TYAGI

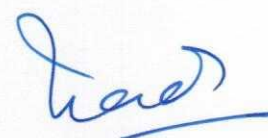
....RESPONDENT

CORAM: **Dr. Geeta Rathee Singh** Member

Nadim Akhtar Member

Date of Hearing: 29.11.2022

Hearing: 1st



Present :Mr. Kamaljeet Dahiya, Advocate, counsel for the complainant,

Ms. Priyanka Aggarwal, Advocate counsel for the respondent.

Mr. Sudhir Sharma, counsel for the respondent.

Mr. Shreenath Khemka, counsel for the respondent.

Mr. Sudhir Rana, counsel for the respondent.

ORDER (NADIM AKHTAR - MEMBER)

Present rectification applications have been filed for rectification of orders dated 27.04.2022 passed by this Authority in a bunch complaints bearing 1272 of 2021 titled Vivek Sanghi vs Ashiana Realtech Pvt. Ltd. as a lead case. In all the said cases, the allottees had sought relief of refund but on account of the fact that the project had been completed and the promoter had received occupation certificate of the project, request for refund was declined and instead relief of possession was granted. Relevant part of the order dated 27.04.2022 is reproduced below;

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.

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.

ii. 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.

iii. Complainants shall take possession of the units upon receipt of such statement of accounts immediately.

iv. 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.

2. Complainant (M/s Ashiana Realtech Pvt. Ltd.) have filed above captioned applications seeking review of the aforementioned part of order to the effect that occupation certificate was applied on 07.12.2020 and the same was received on 08.11.2021. He argued that delay interest in all cases be re-calculated not from the receipt of occupation certificate dated 08.11.2021 but from the date of application i.e. 07.12.2020 for occupation certificate. He further submitted that they should be given relaxation of period of covid-19 and lockdown. Secondly, he submitted that Authority in its order had taken up the wrong SBI MCLR rate i.e 7.40% whereas the alleged SBI MCLR rate prevailing was 6.40%. Third


issue raised by the complainant is that the Authority had granted relief of delay interest to the original complainants whereas the complainants in the original complaints had sought relief of refund.

3. Learned counsel for respondents argued that under section 39 of the Act this Authority has power of rectification of orders only when mistake is apparent on face of record and not otherwise. He submitted that all the issues have been dealt by the Authority in detail and no review is needed. They further argue that allottees had also suffered loss during covid -19 period and not allowing this time period in calculation of delay interest will lead to injustice towards allottees.

4. Authority observes that all the issues raised by the complainant (M/s Ashiana Realtech Pvt. Ltd.) had been dealt by Authority in detail. There is no issue which is left undisputed. Authority had passed a very detailed order which enumerates reasoning for all the issues raised by complaint (M/s Ashiana Realtech Pvt. Ltd.) Authority has decided the matter on the basis of evidence adduced. There is no scope left to be covered. For the clarification of the calculation of delay interest it has been calculated as per Rule 15 of the HRERA Rule, 2017 and there is no clerical mistake apparent on record to allow this application under section 39 of RERA Act, 2016. Now after final decision/judgment, complainant (M/s Ashiana Realtech Pvt. Ltd.) cannot be allowed to make such pleadings which are already decided on merits. Further, relief sought by the applicant complainant i.e. the promoter company is in the nature of

review application and if the relief is allowed the same shall result in change of the operative/substantive part of the judgment of the Authority. Furthermore, Authority under section 39 of the RERA Act, 2016 only have the power to rectify clerical mistake apparent on the face of record. The RERA Act, 2016 does not entrust the power of review on the Authority. If the legislature ever intended to entrust such powers upon the Authority the same would have been specifically provided in the Act itself, which is a comprehensive and exhaustive power of legislature. In Fact the proviso 2 to section 39 categorically provides that the Authority "shall not" while rectifying any mistake apparent from record, amend substantive part of its order passed under the provisions of the Act. Therefore, Authority disallows the prayer of complainant (M/s Ashiana Realtech Pvt. Ltd.) and dismiss these complaints..

5. Cases are **disposed of as dismissed.** Files be consigned to record room after uploading of order on the website of the Authority.


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DR. GEETA RATHEE SINGH
[MEMBER]


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NADIM AKHTAR
[MEMBER]