



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 2418 OF 2022

Ashiana Realtech Pvt. Ltd. ...COMPLAINANT

VERSUS

KULDEEP SINGH ...RESPONDENT

2. COMPLAINT NO. 2426 OF 2022

Ashiana Realtech Pvt. Ltd. ...COMPLAINANT

VERSUS

MR PREM SINGH MALIKRESPONDENT

3. COMPLAINT NO. 2446 OF 2022

Ashiana Realtech Pvt. Ltd. ...COMPLAINANT

VERSUS

MR MEER ALTAP ALI AND MRS NASIMA KHATUNRESPONDENT

4. COMPLAINT NO. 2450 OF 2022

Ashiana Realtech Pvt. Ltd. ...COMPLAINANT

VERSUS

RUCHIKA CHAWLARESPONDENT

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5. COMPLAINT NO. 2454 OF 2022

Ashiana Realtech Pvt. Ltd. ...COMPLAINANT

VERSUS

MR JAIVEER YADAV ...RESPONDENT

6. COMPLAINT NO. 2455 OF 2022

Ashiana Realtech Pvt. Ltd. ...COMPLAINANT

VERSUS

MANOJ KUMAR YADAVRESPONDENT

7. COMPLAINT NO. 2457 OF 2022

Ashiana Realtech Pvt. Ltd. ...COMPLAINANT

VERSUS

ARUN KUMARRESPONDENT

8. COMPLAINT NO. 2542 OF 2022

Ashiana Realtech Pvt. Ltd. ...COMPLAINANT

VERSUS

SANDEEP YADAVRESPONDENT

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

Nadim Akhtar Member

Date of Hearing: 11.04.2023

Hearing: 1st

Present :Ms. Navneet, Advocate, counsel for the complainants.

None 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 quite 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. Authority observes that similar applications against the respondent in the same project with similar facts and grievances were filed by the promoter/applicant which were not taken up earlier for rectification in bunch along with other matters. Therefore, Authority deems fit to dismiss the said applications in terms of order dated 29.11.2022 in rectification application bearing Complaint no. 2420 of 2022. Relevant part of the order dated 29.11.2022 is reproduced below:

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.

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

Geeta Rathee

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DR. GEETA RATHEE SINGH
(MEMBER)

Nadim Akhtar

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NADIM AKHTAR
(MEMBER)