

BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER, HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM.

Complaint No. :3968-2025

Date of Decision: 30.04.2026

Satya Vrat and Asha Dhankar, both residents of Flat No. C805, Paras Dews, Sector-106, Dwarka Expressway, Gurugram.

..... **Complainants**

Versus

M/s Ashiana Dwellings Pvt. Ltd., having its Office at 3H, Plaza M6, District Centre, Jasola, New-Delhi- 110025 through its authorized person.

..... **Respondent**

APPEARANCE

For Complainants:

Mr. Garvit Gupta, Advocate.

For Respondent:

Mr. Akshat Jain, Advocate.

ORDER

1. This is a complaint, filed by Mr. Satya Vrat and Ms. Asha Dhankar (allottees) under section 31 of The Real Estate (Regulation and Development), Act 2016 (in brief Act of 2016) against M/s Ashiana Dwellings Pvt. Ltd. (promoter).

2. Briefly stated, according to complainants, they are simple, law abiding and peace-loving persons. It (respondent) offered for sale units in

a Group Housing Complex known as 'Ashiana Mulberry' which claimed to comprise of multi-storied apartments, residential units, car parking spaces, recreational facilities, gardens etc. on a piece and parcel of land situated in village Sohna, Sector-2, Gurugram. The respondent also claimed that it (respondent) was entitled to construct, develop and sell the residential group housing project over the project land and that it would throughout act strictly as per the law, rules, regulations and the provisions laid down by the concerned authorities.

3. That they (complainants) received a marketing call from the office of respondent in the month of May, 2015 for booking in its said residential project. They (complainants) were induced by the assurances and representations made by the respondent and decided to book a residential unit. They (complainants) required a house in a time bound manner, for their own use and occupation. This fact was also brought to the knowledge of the officials of the respondent, who confirmed that the possession of the apartment will be given to them (complainants) within the agreed time frame.

4. That they (complainants) made the payment of Rs.2,00,000/-, Rs.3,00,000/- and Rs.1,74,675/- at the time of booking. Accordingly, the respondent issued a provisional allotment letter dated 27.10.2015 vide

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which the respondent allotted Flat no. C-506, Fifth Floor, Tower T2 admeasuring 1210 sq. ft. in its said project. A copy of the Buyer's Agreement (BBA) was sent to them (complainants) which was a one-sided document containing totally unilateral, arbitrary, one-sided and legally untenable terms, favoring the respondent and totally against the interest of the purchaser i.e. complainants herein. Said agreement contained several clauses, which were totally discriminatory and biased in favour of the respondent.

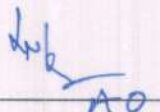
5. That they (complainants) made vocal their objections to the arbitrary and unilateral clauses of the BBA to the respondent. They (complainants) repeatedly requested the respondent for execution of a BBA with balanced terms. However, during such discussions, the respondent summarily rejected the bonafide request of the complainants and stated that the agreement terms were non-negotiable and would remain as they were. The respondent/promoter threatened the complainants to forfeit the previous amounts paid by them, if further payments are not made. They (complainants) had made payment of approximately of Rs.6,74,645/- before the execution of the Agreement and hence they (complainants) were left with no other option but to accept the lopsided and one-sided terms of the BBA. Since the complainants had duly

paid a huge amount out of their hard-earned money, they felt trapped and had no other option but to sign on the dotted lines.

6. That the respondent in violation of the mutually agreed payment plan, sent demand notices dated 17.10.2017 and 10.11.2017 seeking the payment towards the 'Completion of the Internal Plaster' which constituted 40% of the total cost of the unit.

7. That they (complainants) made the payment of Rs.76,15,707/- (Rs.666/- was TDS which was deducted) out of the total sale consideration amount of Rs.69,33,250/- strictly as per the terms of the allotment and the construction linked payment plan and no default in making timely payment towards the instalment demands has been committed by the complainants. The respondent/promoter used to provide a short time span to make the payment of all the payment demands. Yet, all the payments were made by the complainants without any delay.

8. That despite the Buyer Agreement dated 27.10.2015, containing terms very much favourable as per the wishes of the respondent, still the respondent miserably failed to abide by its obligations thereunder. The respondent/promoter even failed to perform the most fundamental obligation of the agreement, which was to handover the possession of the flat within the promised time frame.

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9. Contending all this, complainants sought following reliefs: -
- i. to direct the respondent to make payment of Rs.13,64,000/- towards the loss of rental income.
 - ii. to direct the respondent to make payment at the rate of 6% of the amount deposited by the complainants to be calculated from the date of each payment till realization as compensation towards mental harassment, trauma and distress caused to the complainants by the respondent computing to Rs.23,72,344/-.
 - iii. to direct the respondent to make payment of Rs.1,50,000/- lacs towards the litigation cost.
 - iv. any other order, the Hon'ble Forum may deem fit.

10. The respondent contested the complaint by filing a written reply. It is averred that the averments made in the complaint under reply may be considered to have been specifically denied and controverted, unless specifically admitted hereinafter. According to it (respondent), it is a settled proposition of law that no one can be penalized twice for same cause of action and any litigation initiated after a relief already been granted by another court/tribunal of parallel jurisdiction. This complaint is not maintainable and is liable to be dismissed.

11. It is further averred that once complainants have been awarded interest on the amount paid by them, such interest on the deposited amount is nothing but compensation to the complainants in lieu of delay in handing over possession, loss of opportunity and loss of rent

etc. Therefore, the complaint under reply is in direct infringement of principle of res-Judicata. Complainants have already been granted compensation in lieu of delay in handing over possession of the unit. Thus, allowing the complaint under reply would lead to double jeopardy and violation of Article 20 of The Constitution of India.

12. The respondent prayed for dismissal of complaint.

13. Both of the parties filed affidavits in support of their claims. I have heard learned counsels appearing for both of parties and perused the record.

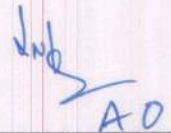
14. It is admitted by learned counsel for the complainants that his clients i.e. the complainants approached the Authority seeking delayed possession charges by filing a complaint (No.609 of 2023). Said complaint was allowed by the Authority vide order dated 16.02.2024. The respondent has been directed to pay interest at the prescribed rate i.e.10.85 % per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 27.07.2019 till the date of actual handover of possession.

15. It is contended by learned counsel for the complainants that despite said order of the Authority, it is for the Adjudicating Officer to allow compensation for delay in handing over possession, in view of

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section 72 of Act of 2016. Learned counsel reminded that this Forum (AO) has jurisdiction to allow compensation in view of Sections 12, 14, 18 and 19 of said Act. Section 18 (3) prescribes for liability of promoter to pay compensation to the allottees, if same (promoter) fails to discharge any other obligation imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale. Learned counsel claims that where the respondent (promoter) failed to discharge its obligation of handing over possession in agreed time, as per terms and conditions of BBA, same is liable to pay compensation.

16. As per Section 18 (1) of Act of 2016, if promoter fails to complete or unable to give possession of an apartment, plot or building, (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein, (b)-----, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot or building, as the case may be, with interest at such rate as may be prescribed in this behalf **including compensation, in the manner as provided under this Act.**



17. It is worth mentioning here that the complainants did not wish to withdraw from the project but prayed for delayed possession compensation, by filing a complaint with the Authority. The said complaint has already been allowed. Proviso added to sub section (1) of section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid by the promoter interest for every month of delay till handing over of possession, at such rate as may be prescribed. The parliament did not intend to provide compensation other than DPC in case allottee does not intend to withdraw from the project.

18. Upholding that the claim of compensation and interest can be allowed only in case the allottee seeks to withdraw from the project as per Section 18 (1) of Act of 2016, following was held by Uttar Pradesh Real Estate Appellate Tribunal in case **“Greater Noida Industrial Development Authority vs. Ranjan Misra” Appeal No. 70 of 2023 decided on 20.04.2023-----;**


“13.9. If we closely examine the above two provisions, it comes out that in a case where the Allottee exists the projects, the Act expressly provides INTEREST AND COMPENSATION both, but in cases where the Allottee tends to stay in the project the Allottee is only entitled for interest

of every month till the handing over of the possession. Thus, the intention of the legislature was to provide Compensation only to those Allottees who exit the project and not to those who tends to stay in the project."

19. When complainants have already been allowed delayed possession compensation by the Authority for delay in handing over possession of allotted unit, there is no reason to allow separate compensation for same cause of action i.e. delay in delivering of possession.

20. Complaint in hands is thus dismissed. File be consigned to the record room.


Announced in open Court
today i.e. on **30.04.2026**.


(Rajender Kumar)
Adjudicating Officer,
Haryana Real Estate Regulatory,
Gurugram.

Present: Mr. Garvit Gupta, Advocate for the complainants.
Mr. Akshat Jain, Advocate for the respondent.

Complaint is disposed of, vide separate order today.

File be consigned to record room.


(Rajender Kumar)
Adjudicating Officer,
Gurugram.30.04.2026