

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

Complaint No. 6516-2025

Date of Decision: 29.07.2026

Mr. Prashanth KP S/o K Prabhakar Upadhya, R/o T2 C 806, Ashiana Mulberry Sector 2, Gurugram Sohna Road, Opp K R Mangalam University Sohna, Gurugram- 122103.

..... Complainant

Versus

M/s Ashiana Dwellings Pvt. Ltd. Through its Directors/Authorized Representatives, having its registered office at 5F, Everest, 46/C, Chowringhee Road, Kolkata- 700 071, also at 3H, Plaza M6, District Centre Jasola, New-Delhi- 110025 and also at Sector 2 A, Opp to GD Goenka World School Sohna, Gurugram.

..... Respondent

APPEARANCE

For Complainant:

Mr. Gunity Singh, Advocate.

For Respondent:

Mr. Bhavya Sareen, Advocate.

ORDER

1. This is a complaint, filed by Mr. Prashanth KP (allottee) 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 complainant, he vide Agreement for Sale dated 21.02.2018 was provisionally allotted Apartment No. C-806, Tower T-2 (2 Bedroom +2 Toilets) in residential Project of the respondent namely "Ashiana Mulberry" situated at Sector-2, Dist. Sohna, Gurugram, Haryana, having Carpet area of 697.83 Sq. ft. for a total sale price of Rs.61,10,450/- inclusive of several charges such as the club development charges, power backup installation charges, piped cooking gas installation charges, electrical substation charges etc. In the said agreement, the respondent had clearly specified that the possession would be offered by 30.06.2019.

3. That clause 1.10 of Agreement for Sale stated that the complainant has paid a sum of Rs.6,72,000/- and shall pay the balance amount as per the payment plan. As per clause 7.1 (ii) the respondent promised to deliver the possession of the Apartment by 30.06.2019.

4. That he (complainant) availed home loan services from Housing Development Finance Corporation Limited to finance the purchase of above said apartment. Further in April 2018, a Tripartite Agreement was executed between HDFC Bank, the respondent and the complainant. The said agreement was made jointly by the complainant and the respondent to raise a loan of Rs.50,00,000/-. As per clause 3 of the

Tripartite Agreement the liability of payment of pre-EMI, i.e. payments from the date of first disbursement till offer of possession, was to be borne by the respondent.

5. That the parties had agreed on the subvention till offer of possession payment plan. In pursuance to this and the issuance of the loan, the complainant made the payments at the time of the booking as well as on subsequent dates complying with all the demands raised by the respondent from time to time. The said payments were acknowledged by the respondent vide receipts issued on the given dates.

6. That the complainant being disappointed by the conduct of the respondent, but hopeful that the final offer of possession would contain the promised adjustments continued to make the pre-EMI payments. However, even in March 2020, the respondent failed to offer possession, thereby increasing the burden of the pre-EMI on the complainant. Hence, the complainant paid a huge sum of Rs.13,49,489/- till October 2022 towards the pre-EMI from May 2019 till October 2022.

7. That after long delay of more than 3 years and 5 months, the respondent vide letter dated 03.11.2022 informed the complainant that it had received the Occupation Certificate dated 02.11.2022 from Directorate of Town & Country Planning, Chandigarh. To the utter shock and dismay of

the complainant, the respondent did not adjust the pre-EMI amounts till October 2022. Instead, the respondent raised several illegal demands.

8. Contending all this, complainant sought following reliefs: -

- i. To award a decree of compensation towards mental agony, pain, harassment and financial loss suffered by the complainant at the hands of the respondent, to the tune of Rs.25,00,000/-,
- ii. To award a decree of Rs.5,00,000/- towards costs incurred towards engagement of Advocates, other costs and expenses incurred by the complainant for all the litigations from initiation till date,
- iii. To award a decree of compensation towards the market loss of Rs.60,00,000/- suffered by the complainant,
- iv. To award interest at the rate of MLCR + 2% along with the abovementioned prayers,
- v. To pass any other order that the Hon'ble Forum may deem fit in the facts and circumstances of the case.

9. 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 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, is not

maintainable and is liable to be dismissed. The Hon'ble Supreme Court of India in catena of Judgment^h has held that the interest awarded is to be treated as compensation towards the loss suffered by the allottee for the delay in handing over possession of the unit.

10. It is further averred that once complainant has been awarded interest on the amount paid by him, such interest on the deposited amount is nothing but compensation to the complainant 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} ~~principle~~ of Res-Judicata. Complainant has 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.

11. Contending all this, respondent prayed for dismissal of complaint.

12. Both of the parties filed affidavits in support of their claims.

13. I have heard learned counsels appearing for both of parties and perused the record.

14. Admittedly, the complainant had approached the Authority seeking delayed possession charges by filing a complaint no. 92 of 2023.

Said complaint was allowed by the Authority vide order dated 22.12.2023 and the respondent has been directed to pay delay possession charges at the prescribed rate of 10.85% p.a. for every month of delay on the amount paid by the complainant to the respondent from the due date of possession 30.06.2019 till the date of actual handover of possession, apart from some other reliefs.

15. It is contended by learned counsel for the complainant 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 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 respondents (promoters) 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 complainant 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.

Ans
AD

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. Similar was held by Haryana Real Estate Appellate Tribunal in Appeal No.737 of 2023 titled as “TATA Housing Development Company Limited vs. Nitin Singhal & Surendra Kumar Singhal, decided on February 17,2026.

20. When complainant has 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.

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

Announced in open Court
today i.e. **on 29.07.2026.**



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

Present: Mr. Gunity Singh, Advocate for the complainant.
Mr. Bhavya Sareen, Advocate for the respondent.

Complaint is disposed of, vide separate order today.

File be consigned to record room.


(Rajender Kumar)
Adjudicating Officer,
29.07.2026