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

Complaint No. :4367-2024
Date of Decision: 02.11.2026

1. Smt. Sadhna Sharma W/o Sh. Kamal Kumar Gaur, 2. Sh. Kamal Kumar Gaur S/o Sh. Narender Kumar Sharma, both residents of W-96, GF, Uppal Southend, Sohna Road, Gurugram-122101.

..... Complainants.

Versus

M/s Ashiana Dwellings Pvt. Ltd., Corporate Office at: 3H, Plaza M6, Dist. Center, Jasola, New-Delhi- 110025, Registered Office at: 5F, Everest 46/C, Chowringhee Road Kolkata, West Bengal-700071.

..... Respondent

APPEARANCE

For Complainants: **Mr. Deepak Kaushik, Advocate.**
For Respondent: **Mr. Akshat Jain, Advocate.**

ORDER

This is a complaint, filed by Smt. Sadhna Sharma and Sh. Kamal Kumar Gaur (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).

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2. Briefly stated, according to complainants, they booked a Unit/Plot no. A-212 in Tower-3 of residential apartment, area of the project 10.25 acres, carpet area of the unit 994.16 sq. ft., on 06.06.2020, in the respondents' project namely, "Ashiana Mulberry" located in Sector-2, Sohna, Gurugram, Haryana. The date of execution of BBA was 02.07.2020. The due date of delivery of possession as per clause 7.1 (ii) of BBA was December, 2020. The total sale consideration of the said unit was agreed to be Rs.73,47,310/-. The total amount paid by the complainants/allottees till date is Rs. 73,47,310/- plus other applicable charges.

3. That the respondent is in violation of Section 11 (4) (a) of the Act of 2016. The respondent has resorted to unfair practices by way of making incorrect, false and misleading statements over the possession and thereby violated provisions of Section 12 of the Act.

4. That the respondent has failed to provide requisite facilities, amenities and services as agreed at the time of booking. The respondent by using its dominant position is dictating its unreasonable demands to the complainants without showcasing any proficient progress. The respondent has substantially failed to discharge its obligations, imposed upon them under the Act of 2016 as well as rules and regulations made thereunder.

5. That from Section 71 of Act of 2016 it is clear that an adjudicating officer is empowered to adjudge compensation under section 12, 14, 18 & 19 of the Act. As per section 18 (3), if the 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, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.

6. Citing facts as mentioned above, complainants have prayed for following reliefs: -

I. to award compensation towards costs of litigation expenses amounting to Rs.1,50,000/- along with RERA prescribed interest of the amount that the Adjudicating Officer may deem fit as per the findings recorded in para no. 48 by the Authority in its Order/Judgment dated 30.05.2023;

II. to award compensation towards mental agony, harassment and financial loss suffered due to illegal and invalid offer of possession issued by the respondent as contemplated under section 18 (1) proviso read with section 71 of the RERA Act and for raising demands under the head which were never the part of the agreement for sale;

III. to award compensation towards reimbursement of transportation expenses amounting to Rs.50,000/- incurred in

attending the proceedings over the entire duration of the litigation;

IV. to award compensation towards the cost of the complainant's time and effort, quantified at Rs.5,00,000/- spent over the entire duration of the litigation;

IV. to impose penalty upon the respondent promoter for blatant and continuous violations of the provisions of the RERA Act, 2016.

7. 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), no one can be penalized twice for same cause of action. 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 Judgments 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.

8. 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.

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

10. 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.

11. Admittedly, the complainants had approached the Authority seeking delayed possession compensation (DPC) by filing a complaint no.7695 of 2022. Said complaint was allowed by the Authority vide order dated 30.05.2023 and the respondent has been directed to pay interest at the prescribed rate i.e. 10.70% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 30.06.2021 till the date of offer of possession i.e. 03.11.2022 plus two months i.e. 03.01.2023, apart from some other reliefs.

12. It is submitted 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 section 72 of Act of 2016.

13. 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.**

14. 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.

15. 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."***

16. Similar was finding of Haryana Real Estate Appellate Tribunal in case "TATA Housing Development Company Limited vs. Nitin Singhal &

Surendra Kumar Singhal, Appeal No.737 of 2023 decided on February 17,2026.

17. When the 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.

18. Even otherwise on 17.08.2026, the complainants through their counsel stated at bar that they abandoned all their reliefs except the relief of litigation expenses.

19. In view of facts discussed above, when the complainants are not entitled for any compensation, even relief of litigation expenses cannot be granted.

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

Announced in open Court.
today i.e. **on 02.11.2026.**

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

Present: Mr. Deepak Kaushik, 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.02.11.2026