



Complaint No. 1236 of 2024

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint No.:	1236 of 2024
Date of Filing:	16.10.2024
First Date of Hearing:	03.12.2024
Date of Decision:	20.02.2026

Enrique Nameirakpam S/o Mr. Vincent Nameirakpam
R/o F-1801, Heritage Max, Sector-102,
Dwarka Expressway, Gurugram, Haryana-122505

.....COMPLAINANT

VERSUS

M/s Eldeco Infrastructure and Properties Limited
Through Managing Director, 201-212, 2nd Floor,
Splendor Forum Jasola, District Centre New Delhi-110025

.....RESPONDENT

Coram: **Sh. Chander Shekhar** **Member**

Hearing: 5th

Present: Mr. Anuj Dewan, Advocate, for the Complainant.
Mr. Anuj Kohli, Advocate, for the Respondent.

ORDER:

Present complaint was filed on 16.10.2024 by the complainant under Section 31 of The Real Estate (Regulation and Development) Act, 2016 (for short Act of 2016) read with Rule 28 of The Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS:

2. The particulars of the project, details of sale consideration, amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:

Sr. No.	Particulars	Details
1.	Name of the project	Eldeco Aranya, Village Kot Behla, Sector 16, Panchkula Extension, Haryana
2.	Nature of the project	Residential
3.	DTCP License No.	132 of 2019 dated 12.12.2019
4.	RERA Registered/not Registered	Registered vide Registration No. HRERA-PKL-PKL-221-2020 dated 17.12.2020
5.	Details of Unit	Villa No. B1-67, measuring 111.41 sq. yds.

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6.	Application Form	16.02.2024 (Allotment letter not issued)
7.	Date of Apartment Buyer Agreement	Not executed
8.	Due Date of Possession	Not Mentioned
9.	Basic Sale Consideration	₹1,06,00,000/- (As mentioned in the application form)
10.	Amount Paid by the Complainant	₹17,28,824/-
11.	Whether Occupation Certificate received or not.	Not Obtained
12.	Handing over possession/Possession certificate	Possession not offered
13.	Pre cancellation letter	05.06.2024
14.	Final Notice for Pre-cancellation	06.09.2024

B. FACTS OF THE PRESENT CASE AS STATED BY THE COMPLAINANT IN THE COMPLAINT:

3. Brief facts of the case are that the respondent promoter demonstrated themselves as a developer of the project, namely, "Eldeco Aranya" situated at Village Kot Behla, Sector-16, Panchkula Extension, Haryana-134109 and made a luring offer to deliver the said project by 30.11.2024.

4. The complainant stated that the respondent represented that Pigeon Properties Limited is the lawful owner of the project land admeasuring 13.087 acres and DTCP has granted License no. 132 of 2019 dated 12.12.2019 to the owner alongwith approval of the layout plan. Further, the complainant also mentions that the respondent had registered the said project with the Haryana Real Estate Regulatory Authority, Panchkula on 17.12.2020 under registration no. HRERA-PKL-221-2020, copy of registration certificate is annexed as Annexure C-2.

5. The complainant stated that he applied for booking of Villa no. B1-67, measuring 111.41 sq. yards in the said project for a total sale consideration of ₹1,06,00,000/- by signing an application form dated 16.02.2024 and the same is annexed as Annexure C-3. The complainant mentioned that the respondent booked the said villa in favor of the complainant and assured that the allotment letter would be issued within a week from the signing of the application, however, till date, no allotment letter has been issued by the respondent.

6. The complainant stated that he paid an amount of ₹1,00,000/- towards the booking amount of the said villa on 14.02.2024 and 15.02.2024, which was duly mentioned in the said application form issued by the respondent. The complainant mentioned that the respondent further demanded ₹2,00,000/- and the same was paid on 21.03.2024. Further, the respondent

issued a demand letter of ₹14,21,500/- on 03.04.2024, copy of the said demand letter is annexed at Annexure C-4. Accordingly, the complainant paid an amount of ₹3,00,000/- on 16.04.2024 and ₹11,28,824/- on 06.05.2024 through Bank transfer. The complainant alleged that the respondent, despite not issuing the allotment letter, raised various demands from the complainant. Demand and reminder letters are annexed as Annexure C-5.

7. The complainant mentioned that the respondent sent an agreement to sell dated 22.03.2024 which was strongly opposed by the complainant for containing arbitrary and one-sided clauses. Copy of the Agreement to Sell dated 22.03.2024 is annexed as Annexure C-6. The complainant mentioned following clauses to be arbitrary:

"1.10 The Allottee has paid a sum of Rs.2,36,190/- as booking amount being part payment towards the Total Price of the Villa for Residential usage at the time of Application; the receipt of which the Promoter hereby acknowledges and the Allottee hereby agrees to pay the remaining price and other charges of the Villa for Residential usage as prescribed in the Payment Plan mentioned in Schedule V. Provided that if the Allottee delays in payment towards any amount which is payable, he/she shall be liable to pay interest at the rate described in Schedule III."

"7.1 Schedule for possession of the Villa for Residential usage - The Promoter agrees and understands that timely offer of possession of the Villa for Residential usage to the Allottee(s) and the Common Areas to the association of allottees or the competent authority, as the case may be, as provided under Rule 2(1)G) of Rules, 2017 is the essence of the Agreement.

The Promoter assures to offer possession of the Villa for Residential usage as per agreed terms and conditions unless there is delay due to "force majeure", Court orders, Government policy/guidelines. decisions, due to war, flood, pandemic, lock down, law and order, drought, fire, cyclone, earthquake or any other calamity affecting the regular

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development of the real estate project or reasons beyond the control of the Promoter ("Force Majeure Events"). If, the completion of the Project is delayed due to the above Force Majeure Events, then the Allottee agrees that the Promoter shall be entitled to the extension of time for offer possession of the Villa for Residential usage.

The Allottee agrees and confirms that in the event it becomes impossible for the Promoter to implement the Project due to Force Majeure Events and abovementioned conditions, then this allotment shall stand terminated and the Promoter shall refund to the Allottee, the entire amount received by the Promoter from the Allottee. The Promoters shall intimate the Allottee about such termination at least thirty days prior to such termination. After money paid by the Allottee, the Allottee agrees that he/she shall not have any rights, claims etc. against the Promoter and the Promoter shall be released and discharged from all its obligations and liabilities under this Agreement."

"7.5 Cancellation by Allottee - The Allottee shall have the right to cancel/withdraw his/her allotment of the Villa the Project as provided in the Act. Provided that where the Allottee proposes to cancel/withdraw from the Project without any fault of the Promoter, the Promoter herein is entitled to forfeit the booking amount being 10% of the Basic Price paid for the allotment as well as 'Non-Refundable Amount'. 'Non Refundable Amount' for the purpose of this Agreement shall hereinafter collectively mean (i) Interest (The rate of interest payable by the Allottee to the Promoter shall be the State Bank of India highest marginal cost of lending rate plus two percent) on any overdue payments; and (ii) brokerage paid by the Promoter to the broker in case the booking is made through a broker and (iii) any taxes paid by Promoter to the statutory authorities (iv) amount of stamp duty and registration charges to be paid on registration of the Agreement to sale, if Agreement to Sale is registered (v) administrative charges as per Promoter's policy; (vi) any other taxes, charges and fees payable by the Promoter to the government authorities.

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The Promoter shall refund the balance amount of money paid by the Allottee from the sale proceeds as and when realized from re-allotment of the Villa. In the event Allottee is untraceable and/or unreachable and /or does not accept a refund amount, in such case the Promoter shall not be responsible in any manner, whatsoever. If, for any reason, the re-allotment or sale realization from such re-allotment is delayed, the refund to the Allottee shall be accordingly delayed without any claim towards interest/compensation for such delay."

"9.3 The Allottee shall be considered under a condition of Default, on the occurrence of the following events:

- i. In case the Allottee fails to make payments demands made by Promoter, despite having been issued notice in that regard, the Allottee shall be liable to pay interest to the Promoter on the unpaid amount @ MCLR + 2% as described in Schedule III;
- ii. The Allottee commit/s any default and/ or breach of the terms and conditions of this Agreement.
- iii. In case of default by Allottee under the condition listed above continues for a period beyond 60 days despite notice from the Promoter in this regard, the Promoter may cancel the allotment of the Villa for Residential usage and refund the money paid to it by the Allottee by forfeiting the booking amount paid and Non Refundable Amount. The balance amount of money paid by the Allottee shall be returned by the Promoter to the Allottee subject to deduction of applicable taxes/charges only out of the sale proceeds, when realized from the re-allotment of the Villa. On such default, the Agreement and any liability of the Promoter arising out of the same shall thereupon, stand terminated. Provided that, the Promoter shall intimate the Allottee about such termination at least thirty days prior to such termination."

"15. GENERAL COMPLIANCE WITH RESPECT TO THE VILLA:

- a) The Allottee shall, after taking possession of the Villa, be solely responsible to maintain the Villa at his/her own cost and expenses and shall not do anything in or to the Villa which may be in violation of any applicable laws or rules of any competent authority. The Allottee shall not do anything which damages the Common Areas, adjoining Villa/areas etc. or cause any kind of breakage of abutting road or violates the rules or bye-laws of the local authorities or the Association.
- b) The Promoter will return to the Association on transfer of Common Areas (net of Cumulative Defaults). It is clarified that in case there is any amount deducted from an allottee's IFSD, then he/she shall be obliged to make good the deficit within 7 days of deduction.
- c) The Allottee/ Association further undertakes, assures and guarantees that he/she would not put any signboard/name-plate, neon light, publicity material or advertisement material etc. on the face / facade of the Villa or anywhere on Common Areas. Further the Allottee shall not store any hazardous or combustible goods in the Villa. The Allottees shall not create any hindrance by way of locking, blocking, parking or any other manner in right of passage or access or Common Areas which otherwise are available for free access.
- d) The Allottee shall plan and distribute its electrical load in the Villa in conformity with the electrical systems installed by the Promoter. The

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Allottee shall be responsible for any loss or damages arising out of breach of any of the aforesaid conditions. The Allottee shall have to directly take individual electricity connection for his/her/their Villa from the electricity distribution company at its own cost and expenses. The Promoter is not under obligation to provide electrical connection to the Villa, however, if the electrical connection is facilitated by the Promoter, then the proportionate cost/expenses of such facilitation shall be borne and payable by the Allottee."

8. The complainant informed that his father has undergone kidney surgery due to which the complainant's father was in dire need of money to take care of his huge medical expenditure. Since, the respondent has failed to send the Allotment Letter, despite explicitly mentioned in the application form, as well as in the Agreement after the removal of the arbitrary clauses, the complainant refused to pay the further amount to the respondent and demanded back the paid amount from them. On the contrary, the respondent threatened the complainant to either pay the demanded amount with interest or face the cancellation of the said Villa, with the condition that in the cancellation scenario, the amount paid would be forfeited. The complainant also stated that owing to the severe health conditions of his father, he requested an extension in the payment schedule. Copies of medical reports of the complainant's father are annexed as Annexure C-8.

 9. The complainant stated that he had paid an amount of ₹17,28,824/- as on date, the details of which are as follows:

Sr. No.	Amount (₹)	Cheque No./ RTGS/NEFT	Transaction date
1.	2,000/-	404581261403	14.02.2024
2.	48,000/-	404581317763	14.02.2024
3.	2,000/-	404615555452	15.02.2024
4.	48,000/-	404620892914	15.02.2024
5.	2,00,000/-	408118694989	21.03.2024
6.	3,00,000/-	410717961453	16.04.2024
7.	11,28,824/-	DEA8290768	06.05.2024
	Total- ₹17,28,824/-		

10. The complainant stated that he sent a legal notice dated 31.08.2024 to the respondent calling upon to refund an amount of ₹17,28,824/- alongwith interest @18% per annum from the respective payments till its realization within seven days from the receipt of the said notice. The respondent received the said notice on 02.09.2024 and 03.09.2024 through speed post. Legal notice is annexed as Annexure C-10 with the complaint. Further, the complainant stated that the respondent issued a Pre-cancellation Letter dated 05.06.2024, just to avoid the complainant's requests for issuance of the Allotment Letter and removal of the aforesaid arbitrary Clauses in the said agreement. A copy of the Pre-cancellation Letter is annexed as Annexure C-7.

11. The complainant has also submitted rejoinder on 24.04.2025 wherein the complainant stated that the document annexed as the Occupation Certificate by the respondent has not been issued by the competent Authority. The complainant in its written submissions submitted on 11.02.2026 wherein the complainant again reiterated the facts and allegations made against the respondent. He stated that it is an admitted fact that an amount of ₹1,00,000/- was paid at the time of submission of the application form, accordingly, only the said amount can be construed as earnest money and no amount beyond the same is liable to be deducted by the respondent in case of refund.

C. RELIEF SOUGHT:

12. The complainant in his complaint has sought the following relief:-

- (i) To direct the respondent to refund an amount of ₹17,28,824/- alongwith interest @18% per annum from the actual date of payment till institution of complaint (25.09.2024) i.e. ₹1,33,432/- alongwith pendente lite interest and future interest @18% per annum from the institution of complaint i.e. 25.09.2024 till its realization.

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D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

13. Upon receipt of notice, the respondent filed its reply on 13.01.2025. The respondent stated that the complainant approached the

respondent after surveying the real estate market in the area with an intention to purchase a villa in the project. The respondent denied the alleged representation or assurances that the allotment letter would be issued within a week from the date of signing of the application form or that no allotment letter has been issued or that any alleged requests have been made in this regard by the complainant. The respondent sent the agreement for sale dated 22.03.2024 for execution on immediate basis, however, the complainant malafidely avoided to sign and execute the same and the instant complaint hence deserves to be dismissed for this reason alone.

14. The respondent vehemently denied that any payment had been taken from the complainant contrary to the agreed terms. The respondent submitted that the contention of the complainant with respect to the non-issuance of the allotment letter is baseless, irrelevant and illogical as the non-issuance of the allotment letter causes no harm to the complainant because the same villa which was requested after submitting the application form has been allotted to the complainant directly through agreement to sell and covering letter dated 22.03.2024. However, since the complainant despite being aware of the amount due to be paid by him as per the schedule, did not make the payment, consequently, the demand letters for the outstanding amount as on said date were duly issued to him giving the opportunity to pay the amount but he chose not to make the payment. Rather his father has claimed in the e-mail

that the said agreement has been misplaced and has now put up this concocted story through this complaint.

15. The respondent further denied that issuing of any alleged allotment letter was ever promised to the respondent or that the agreement dated 22.03.2024 was ever sent with malafide intention or that the said agreement was arbitrary or one sided or was ever opposed by the complainant. The respondent mentioned that chronology of the events clearly shows that the respondent has been acting bonafidely at all stages because it is evident that the complainant as on 21.03.2024 had paid only ₹3,00,000/- and immediately thereafter the endeavours were made by the respondent to get the agreement executed between the parties but the complainant kept delaying the things for obvious reasons. The respondent denied that any clauses of the agreement sent to the complainant were arbitrary, much less Clause No. 1.10, 7.1, 7.5, 9.3 or 15. The respondent submitted that the said averments have been made by the complainant malafidely in an attempt to gain undue advantage.

16. The respondent stated that the subject villa has already been completed in all respects and the Occupation Certificate dated 28.10.2024 for the subject villa has already been obtained. The respondent stated that owing to the chronic default at the end of the complainant, the respondent was constrained to issue pre-cancellation letter dated 05.06.2024 and another final notice to pre cancellation letter dated 06.09.2024 because the complainant even after giving an opportunity to deposit the outstanding amount after the first

pre-cancellation letter dated 05.06.2024, again defaulted in timely payments. However, it is denied that the said letter was issued to avoid complainant's alleged requests for issuance of allotment letter and alleged removal of alleged arbitrary clauses in the agreement.

17. The respondent denied that the complainant's father is a kidney patient and had undergone kidney surgery and further denied that the respondent has failed to send the allotment letter or the agreement allegedly after removal of alleged arbitrary clauses or the complainant refused to pay further amount owing to any such alleged reason or demanded the same from them.

18. The respondent further stated that the complainant is well aware of the consequences of the default committed by him and the averments made. The complaint is nothing but a blatant attempt at circumventing the process of law and misuse the process of this Hon'ble Authority because the natural, contractual and general trade practice consequences of non-payment and default in payment are cancellation with forfeitures which have been upheld up to Hon'ble Supreme Court of India and hence well settled principle and the complainant cannot escape the consequences of his conduct wherein he has remained a chronic defaulter.

19. The respondent denied that the complainant allegedly having no choice left was constrained to send an alleged legal notice dated 31.08.2024. He submitted that the notice in totality along with all its contents is denied.

20. The respondent denied that the complainant is entitled to the refund of the entire alleged paid amount of ₹17,28,824/- along with interest @ 18% p.a. from the date of payment till institution of complaint along with pendente lite interest and future interest @ 18% p.a. from the institution of the complaint till realisation. He stated that out of the aforesaid amount an amount of ₹81,976/- has been paid as GST to the Income Tax department and hence the same cannot be considered for the present controversy even otherwise.

F. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

21. During oral arguments, learned counsel for the complainant reiterated the facts and allegations made against the respondent promoter in the complaint, rejoinder and written submissions.

22. Learned counsel for the respondent reiterated arguments as were submitted in the written statement. He further stated that the complainant has nowhere stated that it was respondent who did not complete the project in time rather the complainant based his claims on the fact that complainant's father had undergone surgery. He further informed that as per the records submitted by the complainant the surgery was performed in December 2023 i.e. before

submission of application form to the respondent for purchasing the subject Villa. He also stated that the Occupation Certificate submitted in the reply has been issued by an Architect under self certification for residential houses or individual plots, falling within licensed residential plotted colonies in Haryana, policy dated 16.11.2022 of the DTCP, Haryana.

23. Further the respondent counsel quoted Schedule VIII clause 7.5 of the application form and Orders dated 29.11.2023 of Haryana Real Estate Regulatory Authority, Gurugram in *Mrs. Vandana Sharma v. BPTP Limited in compliant no.5879 of 2022*, for advancing his arguments that earnest money has to be deducted in case of refund. Clause 7.5 of the application form dated 16.02.2024 is as follows:

Cancellation by Allottee - The Allottee shall have the right to cancel/ withdraw his/her allotment of the Villa in the Project as provided in the Act:

Provided that where the Allottee proposes to cancel/ withdraw from the Project without any fault of the Promoter, the Promoter herein is entitled to forfeit the booking amount being 10% of the Basic Price paid for the allotment as well as 'Non-Refundable Amount'. 'Non Refundable Amount' for the purpose of the Agreement shall hereinafter collectively mean (i) Interest (The rate of interest payable by the Allottee to the Promoter shall be the State Bank of India highest marginal cost of lending rate plus two percent) on any overdue payments; and (ii) brokerage paid by the Promoter to the broker in case the booking is made through a broker and (iii) any taxes paid by Promoter to the statutory authorities (iv) amount of stamp duty and registration charges to be paid on registration of the Agreement to sale, if Agreement to Sale is registered (v) administrative charges as per Promoter's policy; (vi) any other taxes, charges and fees payable by the Promoter to the government authorities.

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The Promoter shall refund the balance amount of money paid by the Allottee from the sale proceeds as and when realized from re-allotment of the Villa or within 90 days of such cancellation; whichever is later. In the event Allottee is untraceable and/or unreachable and/or does not accept a refund amount, in such case the Promoter shall not be responsible in any manner whatsoever. If, for any reason, the re-allotment or sale realization from such re-allotment is delayed, the refund to the Allottee shall be accordingly delayed without any claim towards interest/compensation for such delay.

G. ISSUE FOR ADJUDICATION

24. Whether the complainant is entitled to refund of the amount deposited by him alongwith interest in terms of Section 18 of Act of 2016?

H. OBSERVATIONS AND DECISION OF THE AUTHORITY

25. The Authority has duly examined the contentions and submissions presented by both the parties. Based on the factual matrix outlined above and a review of the arguments advanced, the Authority makes the following observations:

(i) Admittedly, the complainant in this case had booked a Villa in the project of the respondent in the year 2024 for a total sale consideration of ₹1,06,00,000/- against which an amount of ₹17,28,824/- has been paid by the complainant. The paid amount has been admitted by the respondent in its reply. Copy of online transaction receipts is annexed as Annexure C-9 of the complaint. Out of the said paid amount, the respondent claimed that ₹81,976/- has been paid towards GST, however no proof highlighting the same is annexed.

(ii) The complainant as on date, had paid only an amount of ₹17,28,824/- against basic sale price of ₹1,06,00,000/-. The respondent had submitted a copy of occupation certificate with respect to the villa in question but the same was issued by Jai Shri Architecture on dated 28.10.2024. With regard to delay caused in handing over possession, the complainant was defaulted in making payments of total sale consideration despite reminders.

(iii) The respondent had specifically represented in the application form that an allotment letter would be issued and any demand exceeding 10% of the booking amount would be raised only thereafter. However, no allotment letter was ever issued to the complainant. Instead, the respondent promoter directly forwarded a copy of the Agreement to Sell, thereby acting in breach of its own representations.

(iv) The Authority has carefully examined the conduct of the complainant throughout the transaction and the sequence of events emerging from the record. It is observed that the complainant initially applied for booking of the plot in the year 2024 for a basic sale consideration of ₹1,06,00,000/-. Pursuant thereto, in terms of the application form dated 16.02.2024, the respondent sent a copy of the Agreement to sell to the complainant on 22.03.2024. The complainant did not execute the Agreement to sell. Another significant aspect noted by the Authority is that the Completion Certificate for the project had already

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been obtained by the respondent on 08.08.2023, which was prior to booking of the subject Villa. The record further reflects that the respondent issued several reminder letters dated 01.04.2024, 11.04.2024, 20.07.2024, 25.07.2024, 04.08.2024, 14.08.2024 and 24.08.2024 yet the complainant failed to clear the outstanding dues after last payment of ₹11,28,824/- made on 06.05.2024. Further, the respondent sent a Pre-Cancellation letter on 05.06.2024 and also final notice for Pre-cancellation on 06.09.2024. During these course of events, the complainant sent a legal notice dated 31.08.2024 to the respondent demanding refund of the total amount paid.

(v) The complainant has not disputed the receipt of demand letters. Rather, both the parties have placed on record the said demand notices, thereby establishing that the complainant was fully aware of his contractual payment obligations. The conduct of the complainant reflects failure to comply with contractual terms, thereby disentitling him from seeking equitable relief against the respondent.

(vi) However, aforesaid observation does not change the fact that the complainant has been wronged by the respondent by illegally retaining the paid amount since the year 2024. Fact remains that no amount has been refunded by the respondent to the complainant. The respondent is not entitled to wrongfully enrich itself over the hard earned money of the complainant. Therefore, equity demands that the

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complainant is entitled to receive a refund of his paid amount from the respondent. Said refund shall be subject to forfeiture of earnest money in terms of agreement/RERA, Act 2016.

(vii) The complainant as well as the respondent has not specified any deemed date of possession. The Authority observes that the allotment letter for the villa in question was issued to the allottee on 16.02.2024. But Builder Buyer Agreement has not been executed till date and there is no clause pertaining to the deemed date of possession in the application form. In absence of a specific clause for the deemed date of possession, it cannot rightly be ascertained as to when the possession of said villa was due to be given to the complainant. In *Appeal No. 273 of 2019 titled as TDI Infrastructure Ltd Vs Manju Arya*, Hon'ble Appellate Tribunal has referred to the observation of Hon'ble Apex Court in "2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr." in which it has been observed that period of three years is reasonable time for completion of construction work and delivery of possession. In the present complaint, the villa was booked vide application form dated 16.02.2024 by the respondent. Accordingly, taking a period of three years from the date of application as a reasonable time to complete development works in the project and to handover possession to the complainant, the deemed date of possession comes to 16.02.2027. Hence, the captioned complaint is a premature complaint as

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complainant has filed this complaint on 16.10.2024, wherein due date of handing over of possession is 16.02.2027, which is yet to come.

(viii) The complainant has categorically pleaded in the complaint that he seeks refund of the amount paid by him along with interest on account of deteriorating health condition of his father. The said prayer clearly flows from the continuing contractual relationship between the parties, which has neither been validly terminated nor lawfully brought to an end by the respondent. Accordingly, this Authority holds that the contractual relationship between the parties continues to subsist and the respondent's objection regarding the maintainability of the present complaint is devoid of merit and is hereby rejected.

(ix) Since the complainant is in no position to pay installments due to deteriorating health conditions of his father and the respondent is at fault for not processing the refund as required and the complainant for prematurely seeking relief before the agreed possession date. The respondent is obligated to process the refund in accordance with the terms and conditions of the pre-cancellation letter. But the same has not been complied with till date. Accordingly, the respondent shall refund the amount deposited by the complainant after deducting earnest money paid at the time booking of the Villa, which is strictly in accordance with contractual terms and settled principles of law.



27. In the interest of justice, the respondent is duty bound to refund the amount of ₹17,28,824/- subject to forfeiture of the earnest money. Earnest money is defined by **Hon'ble Supreme Court in judgment dated 03.02.2025 passed in Godrej Projects Development Limited vs Anil Karlekar & Ors.** Civil Appeal no. 3334 of 2023.

"This Court in the case of Satish Batra v. Sudhir Rawal (supra), after considering the earlier judgments of this Court, has observed this:

"15. The law is, therefore, clear that to justify the forfeiture of advance money being part of "earnest money" the terms of the contract should be clear and explicit. Earnest money is paid or given at the time when the contract is entered into and, as a pledge for its due performance by the depositor to be forfeited in case of nonperformance by the depositor. There can be converse situation also that if the seller fails to perform the contract the purchaser can also get double the amount, if it is so stipulated. It is also the law that part-payment of purchase price cannot be forfeited unless it is a guarantee for the due performance of the contract. In other words, if the payment is made only towards partpayment of consideration and not intended as earnest money then the forfeiture clause will not apply.

16. When we examine the clauses in the instant case, it is amply clear that the clause extracted hereinabove was included in the contract at the moment at which the contract was entered into. It represents the guarantee that the contract would be fulfilled. In other words, "earnest" is given to bind the contract, which is a part of the purchase price when the transaction is carried out and it will be forfeited when the transaction falls through by reason of the default or failure of the purchaser. There is no other clause that militates against the clauses extracted in the agreement dated 29-11-2011.

We are, therefore, of the view that the seller was justified in forfeiting the amount of Rs 7,00,000 as per the relevant clause, since the earnest money was primarily a security for the due performance of the agreement and, consequently, the seller is entitled to forfeit the entire deposit. The High Court has, therefore, committed an error in reversing the judgment of the trial court."

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28. The respondent has issued a pre cancellation letter with a request to make the payment of outstanding dues within seven days but the complainant has failed to make such payment within stipulated time as no proof in this regard has been placed on record. Hence, in terms of cancellation and withdrawal by the allottee from the project, the Authority is duty bound to forfeit earnest money @10% of the total sale consideration from the paid amount and to refund the balance amount. In view of the respondent's failure to refund the amount despite being bound by the terms of the application form and cancellation, the Authority orders the refund of the said amount to the complainant, subject to deduction of the earnest money and payment of applicable interest.

29. The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation.-For the purpose of this clause-

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;

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30. Consequently, as per the website of the State Bank of India, i.e., <https://sbi.co.in>, the highest marginal cost of lending rate (in short MCLR) as on date i.e. 20.02.2026 is 8.80%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.80%.

31. Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

“Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19] (1) For the purpose of proviso to section 12; section 18, and sub sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%: Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public”.

32. Thus, the respondent will be liable to pay the complainant interest from the date the amounts were paid till the actual realization of the amounts. The Authority directs the respondent to refund the paid amount of ₹6,68,824/- (after deducting ₹10,60,000/- earnest money i.e. 10% of the Basic Sale Price which is ₹1,06,00,000/-) along with interest to the complainant at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e. at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2% which as on date i.e. 20.02.2026 which works out to be 10.80% (8.80% + 2.00%) from the date the amount was paid till the actual realization of

the amount. The Authority has got calculated the total amount along with interest calculated at the rate of 10.80% till the date of this order and total amount works out to ₹7,98,645/- as per detail given in the table below:

Sr. No.	Principal Amount in ₹	Date of payment	Interest Accrued till 20.02.2026
1.	₹6,68,824/-	06.05.2024	₹1,29,821/-
	Total Payable to the Complainant	₹6,68,824/- + ₹1,29,821/-	₹7,98,645/-

I. DIRECTIONS OF THE AUTHORITY

33. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter/respondent as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

(i) The respondent is directed to refund the paid amount of ₹7,98,645/- (₹6,68,824/- Principal amount + ₹1,29,821/- interest) to the complainant. It is further clarified that the respondent will remain liable to pay interest to the complainant till the actual realization of the amount.

(ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.

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34. **Disposed of.** File be consigned to the record room after uploading of the order on the website of the Authority.


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(CHANDER SHEKHAR)
MEMBER

20.02.2026
Monika
(Law Associate)