

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM**

Date of decision: 09.01.2026

NAME OF THE BUILDER		CLARION PROPERTIES LTD.	
PROJECT NAME		THE HIVE	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/4827/2025	Dayanand Kataria V/s Clarion Properties Ltd. & Shyam Kumar & Rama Kumar	Sh. Nipun Rao Sh. Deepanshu Bohra
2.	CR/4828/2025	Dayanand Kataria V/s Clarion Properties Ltd. & Shyam Kumar & Rama Kumar	Sh. Nipun Rao Sh. Deepanshu Bohra

CORAM:

Shri. Arun Kumar

Chairman

ORDER

1. This order shall dispose of both the complaints titled as above filed before this authority in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

- The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the projects, namely, 'The Hive' being developed by the same respondent promoters i.e., M/s Clarion Properties Ltd.
- The details of the complaints, reply to status, unit no., date of agreement, & allotment, due date of possession, offer of possession and relief sought are given in the table below:

Project Name and Location	"The Hive", Sector 102, Gurugram, Haryana.	
Possession clause: <i>That the company shall under normally circumstances, complete the construction of the said space within a period of 42 months of the start of construction of building or the execution of this agreement with an additional grace period of 6 months.</i>		
OC: 06.02.2023 Offer of possession: Not Offered		
Comp no.	CR/4827/2025	CR/4828/2025
Unit no. and area	G-129, Ground floor, admeasuring 291 sq. ft.	G-131, Ground floor, admeasuring 291 sq. ft.
Builder agreement original allottee and respondent	buyer 17.06.2017 (page 17 of complaint)	b/w 17.06.2017 (page 17 of complaint)
Total consideration	sale ₹39,97,240/- [pg. 84 of complaint]	₹39,97,240/- [pg. 85 of complaint]
Amount paid	₹31,88,079/- [pg. 84 of complaint]	₹31,88,079/- [pg. 85 of complaint]
a. Obtain OC AND offer possession b. Conveyance deed		

- It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the

promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under the Act, the rules and the regulations made thereunder.

5. The facts of all the complaints filed by the complainants/ allottees are also similar. Out of the above-mentioned cases, the particulars of lead case **CR/4827/2025 titled as Dayanand Kataria V/s Clarion Properties Ltd. & Shyam Kumar & Rama Kumar** are being taken into consideration for determining the rights of the allottees qua delay possession charges, quash the termination letter get executed buyers' agreement and conveyance deed.

A. Unit and project related details

6. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, date of buyer's agreement etc, have been detailed in the following tabular form:

CR/4827/2025 titled as Dayanand Kataria V/s Clarion Properties Ltd. & Shyam Kumar & Rama Kumar

S. No.	Heads	Information
1.	Name and location of the project	"The Hive", Sector-102, Gurugram
2.	Nature of the project	Office space
3.	License no.	31 of 2014 dated 12.06.2014 valid upto 11.06.2026 30 of 2014 dated 12.06.2014 valid upto 11.06.2026
4.	RERA registered/ not registered	316 of 2017 dated 17.10.2017 valid upto 16.11.2024

5.	Unit no.	G-129, ground floor
6.	Unit area	291 sq. ft. (super area)
7.	Buyers' agreement	17.06.2017 (page 17 of complaint)
8.	Possession clause as per BBA	7.1 <i>That the company shall under normal circumstances, complete the construction of the said space within a period of 42 months of the start of construction of building or the execution of this agreement with an additional grace period of 6 months.</i>
9.	Due date of possession	17.12.2020 (as per possession clause)
10.	Total sale consideration	Rs. 39,97,240/- [as per customer ledger on Page 85 of complaint]
11.	Total amount paid by the complainant	Rs. 31,88,079 /- [as per customer ledger on Page 85 of complaint]
12.	Reminder letters	08.07.2019, 06.03.2018, 03.05.2018, 23.07.2019, 08.08.2019, 06.01.2022
13.	Final reminder	15.01.2019, 23.08.2019
14.	Last & final opportunity	06.02.2019, 08.09.2019
15.	Pre- cancellation letter	21.02.2019, 23.09.2019, 05.12.2019, 30.12.2019, 15.01.2020, 13.02.2020, 14.03.2022
16.	Cancellation letter	08.04.2022 (page 115 of reply)
17.	Occupation certificate	06.02.2023 (page 98 of reply)

18.	Offer of possession	N/A
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B. Facts of the complaint

7. The complainant has submitted as under:

- i. That the respondents gave advertisement in various leading newspapers about their forthcoming project named "The Hive", in Sector 102, Gurugram promising various advantages, like world class amenities and timely completion/execution of the project etc. Relying on the promises and undertakings given by the respondents in the aforementioned advertisements, the complainant booked a unit in the said premises in aforesaid project of the respondents in the year 2014.
- ii. That thereafter many requests the buyer's agreement was executed on dated 17.06.2017 and as per BBA the respondents had allotted a unit bearing number G-129, Ground Floor, having Super Area of 291 Sq. Ft./27.03 Sq. Mtr. (Approx), Builtup Area of 160 Sq. Ft./14.86 Sq. Mtr. (Approx) and Carpet area of 147.25 Sq. Ft./13.58 Sq. Mtr. to the complainant. The total sale consideration of the said unit was Rs. 34,55,625/-.
- iii. The complainant made payment of Rs. 41,63,749.5/- to the respondents vide different cheques on different dates, the details of which are as annexed.
- iv. As per para no. 7.1 of the agreement, the respondent had agreed to deliver the possession of the unit within 42 months of the start of construction of building or the execution of this agreement with an additional grace period of 6 months.
- v. That the complainant used to telephonically ask the respondent about the progress of the project and the respondent always gave false

impression that the work is going in full mode and accordingly asked for the payments which the complainant gave on time and the complainant when visited to the site was shocked & surprised to see that construction work is not in and no one was present at the site to address the queries of the complainant. It appears that respondents have played fraud upon the complainant. The only intention of the respondents was to take payments for the unit without completing the work and not handing over the possession on time. The respondent's mala-fide and dishonest motives and intention cheated and defrauded the complainant.

- vi. That despite receiving of more than 100% payments on time for all the demands raised by the respondents for the said unit and despite repeated requests and reminders over phone calls and personal visits of the complainant, the respondents have failed to deliver the possession of the allotted unit to the complainant within stipulated period.
- vii. That it could be seen that the construction of the space in which the complainant unit was booked with a promise by the respondents to deliver the unit within 42 months but was not completed within time for the reasons best known to the respondents, which clearly shows that ulterior motive of the respondents was to extract money from the innocent people fraudulently.
- viii. That due to this omission on the part of the respondents the complainant has been suffering from disruption on his living arrangement, mental torture, and agony and also continues to incur

severe financial losses. This could have been avoided if the respondents had given possession of the unit on time.

- ix. That on the grounds of parity and equity the respondent also be subjected to pay the same rate of interest hence the respondent is liable to pay interest on the amount paid by the complainant from the promise date of possession till the unit is actually delivered to the complainant.
- x. That on dated 07.07.2025, the complainant also issued legal notice through his counsel to the respondent but the respondent did not pay any heed on that request of the complainant.
- xi. That the complainant has requested the respondent several times on making telephonic calls and also personally visiting the offices of the respondent to deliver possession of the unit in question along with prescribed interest on the amount deposited by the complainant, but respondents has flatly refused to do so. Thus, the respondent, in a pre-planned manner, defrauded the complainant with his huge hard-earned money and wrongfully gains himself and caused wrongful loss to the complainant.

C. Relief sought by the complainant:

8. The complainant has sought following relief(s):
 - i. Direct respondent No.1 to hand over the possession of the subject unit along with prescribed interest per annum from the promised date of delivery of the unit in question till handing over/actual delivery of the said unit after obtaining the Occupation Certificate from the concerned authorities.

- ii. Direct respondent no. 1 to execute a conveyance deed for the unit of the complainant and to hand over the physical/symbolic possession of the unit booked by the complainant(s) to them, complete and ready in all respects.
 - iii. The respondent no. 1 be restrained from demanding any amount from the complaints at the time of offer of possession which do not form a part of the agreements made between the parties.
9. On the date of hearing, the authority explained to the respondent /promoters about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

10. The respondent has contested the complaint on the following grounds:
- i. At the very outset, the respondent takes an objection on the ground of limitation and submits that the complaint is grossly barred by limitation, having been filed long after the cancellation of the allotment (on 08.04.2022), and thus is liable to be dismissed at the threshold. In Kamal Singhal vs. M/s Emaar MGF Land Limited (Complaint No. 1885 of 2024, HRERA Gurugram, Order dated 09.07.2025), the Authority has given a clear finding on limitation, dismissing the complaint as barred by delay.
 - ii. The respondent respectfully submits that the present complaint is grossly barred by limitation as per the provisions of the Limitation Act, 1963. Under Section 3 of the Limitation Act, any suit, appeal, or application filed beyond the period prescribed in the Act must be dismissed, even if limitation is not pleaded as a defense. Article 113 of

- the Schedule to the Limitation Act provides that, in the absence of a specific provision, a period of three years from the date when the right to sue accrues is the applicable timeframe for instituting such proceedings. In the present matter, the cause of action, if any, arose on the date of cancellation/allotment or offer of possession, and the instant complaint has been filed after a substantial delay, far exceeding the prescribed limitation period. The law assists those who are vigilant and does not condone indefinite delay. Accordingly, the complaint deserves to be dismissed at the threshold as barred by limitation in accordance with Sections 3 and Article 113 of the Limitation Act, 1963.
- iii. The facts of the present case are even better placed than the afore cited judgement. The allotment in this case stood cancelled on 08.04.2022., and the complaint has been filed now after a delay of more than three years.
 - iv. It is respectfully contended that the complainant has failed to approach this Hon'ble Authority with bona fide intent, being guilty of both suppressio veri and suggestio falsi. The Complainant has deliberately withheld material and relevant facts and, in addition, presented distorted, inaccurate, and misleading statements before this Hon'ble Authority. The complainant has concealed the aspect about cancellation of the Unit way back in the year 2022 and other relevant aspects which disentitle the complainant from approaching this forum.
 - v. Without prejudice to the respondent's rights and contentions, and without admitting any assertions made in the complaint or acknowledging that any cause of action has arisen in favour of the complainant to initiate the present proceedings, it is submitted that the

complaint is, in any event, wholly untenable. The respondent asserts that the complaint has been instituted with mala fide motives, solely to secure undue advantages and benefits at the respondent's expense, despite the complainant himself acting contrary to the law.

- vi. The complainant in the year 2017 showed interest and willingness in the project called 'The Hive' and provisionally applied vide application, dated 08.02.2017 for a unit no. G-131 in the project of the respondent, developed by the respondent.
- vii. Following the application form, the respondent duly sent the 2 copies of the buyer's agreement of the said unit alongwith letter dated 27.02.2017 for the complainant to sign and return for further action. It is pertinent to mention that in the aforementioned letter the complainant was specifically requested to go through all the terms of the buyer's agreement and it was mentioned that only once they have read and accepted the terms of the agreement, they were to return the agreement for the signatures. It was further stated that in case they do not wish to go ahead with the execution of the agreement, then they had an option to withdraw from the scheme and were entitled to seek refund of their monies. This shows that the complainant from the start was well aware of all the terms and conditions of the buyer's agreement and had opted to abide by the same by executing the buyer's agreement.
- viii. Accordingly, a buyer's agreement, dated 17.06.2017 was executed with complainant qua the unit no.-G-131" for total basic sale price of Rs. 34,55,625/- excluding tax(s) & other charges.
- ix. The respondent respectfully submits that as per its records, a total sum of Rs. 31,88,079/- was received from the complainant towards the

subject Unit up to the date of cancellation, i.e., 08.04.2022. Upon perusal of the averments made in the complaint and subsequent verification of the respondent's accounts, it has been observed that an additional amount of Rs. 7,50,000/- was credited to the Company's account on 07.03.2024 through RTGS. However, the said remittance was never intimated to the respondent by the complainant, nor was any correspondence made providing the RTGS reference or details enabling the respondent to verify the said transaction. Consequently, the aforesaid amount remained in the suspended account of the Company.

- x. In terms of the buyer's agreement, the respondent company undertook that the company shall, under normal circumstances, complete the construction of the said retail unit/space within a period of 42 months of, the start of construction of building in which the said space is booked or execution of the buyer's agreement, whichever is later, with an additional grace period of 06 months subject to force majeure conditions, and subject to such additions, deletions, alterations, modifications in the layout plans, change in number, dimensions, height, size, area or change of entire scheme, which the company may consider or may be required by any competent authority to be made in them or any of them.
- xi. That the complainant has, with mala-fide intent, activity and purposefully concealed the fact that timely construction of the said unit is subject to force majeure conditions and timely payment on part of the complainant, both of which have a bearing upon the facts of the present complaint.

- xii. That in March, 2020, the world was struck with Covid-19 pandemic, which apart from inflicting havoc to lives of millions, destroyed the momentum and disrupted the workflow of many industries including construction work. These were the unprecedented and unexpected times which could not have been foreseen at the time signing of buyer's agreement. The contingency plan to these situations finds its resort in the force majeure and other related clauses including its description and mentions in buyer's agreement at many places. At multiple instances and for elongated durations, the work at construction sites was halted, both, due to unavailability of essential materials, workmen & other related factors and due to explicit notifications by various government authorities specifically barring the construction activities.
- xiii. It is submitted that clause 5 of the said agreement provides that the complainant agrees and understands that the time is the essence with respect to the payment of the total price and other charges, deposits and amounts payable by the complainant as per the said agreement and/or as demanded by the respondent from time to time and also to perform/observe all the other obligations of the complainant under the said agreement. It was further agreed between the parties that the respondent could only complete the project if complainant makes the payments as per the schedule of payment and agrees not to hold the respondent responsible/ liable for delay in completion of the project due to default of the complainant in making timely payments.
- xiv. It is submitted that the claimant is a defaulter and defaulted time and again for making the payments due from him. The respondent had issued following letters/ reminders to complainant for making the

payments to the complainant without there being under any obligation, calling upon him to make payment of the part consideration for the said Unit: G-131 Hive.

- xv. The respondent has even addressed the aforementioned letters to the complainant without being under any obligation, calling upon him to make payment of the part consideration amount towards said unit. in view of the above, it is submitted that the complainant is a chronic defaulter as the complainant failed and neglected to make timely payments with respect to the said unit despite numerous reminders addressed to the complainant. The above default has been committed by the complainant, despite knowing the fact that timely payment of the consideration of the said unit is a matter of essence as per clause 5 of the said agreement.
- xvi. The parties had agreed that in case the Complainant fail to perform any obligations or commit breach of any of the terms and conditions, mentioned in the said Agreement, including but not limited to the occurrence of any event of default as stated in the said Agreement, the Complainant agrees, consents and authorizes the Respondent to cancel the allotment and on such, the Complainant authorizes the Respondent to forfeit the Earnest Money; brokerage; interest on delayed payments along with non-refundable taxes paid to the government. Thereafter, the Complainant shall be left with no right, interest and lien on the Unit.
- xvii. Meanwhile, the respondent had applied for the occupation certificate on 02.08.2022 which was received by the respondent on 06.02.2023, well within the time granted by RERA and well within the time period calculated as per the terms of the buyer's agreement. Thereafter, the

respondent had approached the complainant on multiple occasions for clearance of the balance payment and handover of the possession of the said unit. However, the claimant miserably failed to pay the balance payment and ignored the call letters for handing over of the possession of the said unit by respondent to the complainant.

- xviii. It is pertinent to mention that the complainant is a chronic defaulter and has defaulted in making payment against the demands for the said unit as per the agreed terms and conditions under the said agreement, against which the respondent had also issued several reminder letters to the complainant for clearing the outstanding dues as per the "payment plan". Yet when the payment was not made, after various warnings, the allotment of the Unit was cancelled vide letter dated 08.04.2022
- xix. It is reiterated that owing to the complainant's persistent and wilful defaults in clearing the outstanding dues despite repeated reminders, call letters, and notices, the respondent, in exercise of its contractual right under the buyer's agreement, was constrained to cancel the allotment of unit no. G-131 allotted to the complainant. In this regard, the respondent issued a formal pre- cancellation letters dated 21.02.2019, 23.09.2019, 05.12.2019, 30.12.2019, 15.01.2020, 13.02.2020, 14.03.2022 and cancellation letter dated 08.04.2022, specifically intimating the complainant about the termination of the allotment, reasons for cancellation, and the resultant forfeiture of the earnest money, along with the requirement to return the original buyers agreement in order to process the refund of balance amounts paid.

- xx. The cancellation letter was duly sent and acknowledged, yet the complainant failed to comply with the clear requirements contained therein. This omission on the part of the complainant forms the primary cause of action for the purposes of limitation, rendering the present complaint patently barred under law, having been filed long after the cancellation and refund offer.
- xxi. In terms of the cancellation of the letter dated 08.04.2022, the respondent company specified that on account of the default of the complainant the company is well within the rights to cancel the allotment in terms of the buyer's agreement. Accordingly, unit bearing No. G-131, stand cancelled due to default on the part of the complainant for non-performance of his obligation under the buyer's agreement. It is further intimated that the complainant left with no right, title, interest, charge, or lien over the referred unit and buyer's agreement stand cancelled for all purposes and requested to return the original documents and take the refund of the payment.
- xxii. In the present case, the complainant has failed to make the timely payment despite multiple reminders and thus the respondent is liable to charge interest on the delayed payments. Further, the complainant has wilfully defaulted in taking over the possession of the said unit by pressurising the respondent through this complaint so that the complainant can evade the interest and penalties accrued on him due to his faults.
11. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be

decided on the basis of those undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

12. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

E. I Territorial jurisdiction

13. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject-matter jurisdiction

14. Section 11(4) (a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4) (a) is reproduced as hereunder:

Section 11(4) (a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be.

Section 34-Functions of the Authority:

34(f) *to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

15. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Relief sought by the respondent.

F.I. Direct respondent No.1 to hand over the possession of the subject unit along with prescribed interest per annum from the promised date of delivery of the unit in question till handing over/actual delivery of the said unit after obtaining the Occupation Certificate from the concerned authorities.

F.II Direct respondent no. 1 to execute a conveyance deed for the unit of the complainant and to hand over the physical/symbolic possession of the unit booked by the complainant(s) to them, complete and ready in all respects.

F.III The respondent no. 1 be restrained from demanding any amount from the complaints at the time of offer of possession which do not form a part of the agreements made between the parties.

16. The above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
17. In the present complaint, the complainant was allotted a plot bearing G129, Ground Floor admeasuring 291 sq. ft., under construction linked payment plan, for the sale consideration of Rs.39,97,240/-. Thereafter, a builder buyer agreement was executed between the complainant-allottee and the respondent-promoter on 17.06.2017.
18. The complainant-allottee have paid a total amount of Rs.31,88,079/- against the sale consideration of Rs.39,97,240/-. The plea of the complainant is that the plot of the complainant was cancelled by the

respondent vide termination letter dated 08.04.2022 on account failure of the complainant to make payment of the outstanding dues.

19. Herein, the complainant intends to continue with the project and are seeking quashing of notice for termination dated 08.04.2022. The Authority has gone through the payment plan which was duly agreed between the parties and the same is reproduced below for ready reference:

ANNEXURE III: Payment Plan

Instalment	Percentage of total sale consideration
At the time of registration	Rs. 3/4/5 lakhs
Within 30 days	Complete 10% of BSP
Within 90 days	10% of BSP
On start of excavation	7.5% of BSP
On commencement of lowest basement floor slab	7.5% of BSP
On commencement of top basement floor slab	7.5% of BSP
On commencement of 1 st floor slab	7.5% of BSP
On commencement of 2 nd floor slab	25% of EDC/IDC
On commencement of 3 rd floor slab	7.5% of BSP
On commencement of 5 th floor slab	7.5% of BSP +25% of EDC/IDC
On commencement of 7 th floor slab	7.5% of BSP +25% of EDC/IDC
On commencement of 9 th floor slab	7.5% of BSP +25% of EDC/IDC
On commencement of top floor slab	5% of BSP
On commencement of brickwork	5% of BSP
On commencement of flooring work	5% of BSP
At the time of offer for possession	5% of BSP + other applicable charges

20. It is matter of record that the complainant booked the aforesaid plot under the above-mentioned payment plan and paid an amount of Rs.31,88,079/- towards total consideration of Rs.39,97,240/-. The complainant has submitted that as per payment plan agreed between the parties vide buyer's agreement dated 17.06.2017, the complainant was obliged to make payments as per the payment plan and the same were not paid by him. Several reminders were issued to the complainant on 08.07.2019, 06.03.2018, 03.05.2018, 23.07.2019, 08.08.2019,

06.01.2022 however the complainant failed to make the payment of outstanding dues. Therefore, the respondent have submitted that they have raised all the demands as per the payment plan, but the complainant had miserably failed in making the complete payment, upon which, the respondent had issued more than seven reminders, and upon the continuous non-compliance on part of the complainant, a last and final opportunity letter was issued by the respondent on 06.02.2019 and 08.09.2019 which categorically noted that upon the non-payment by the complainant, the complainant will have noted to have waived his allotment. Upon the continuous act of non-payment, the unit was terminated on 08.04.2022. Now, the question before the Authority is whether the cancellation made by the respondent is valid or not.

21. On consideration of documents available on record and submissions made by both the parties, the authority is of the view that as per the payment plan agreed between the parties, the complainant was obliged to make payments on time. It is notable that the respondent has sent several reminders on 08.07.2019, 06.03.2018, 03.05.2018, 23.07.2019, 08.08.2019, 06.01.2022 for the payment as agreed between the parties, before issuing a final demand notice dated 06.02.2019 and 08.09.2019 giving last and final opportunity to the complainant to comply with its obligation to make payment of the amount due. Thereafter, several pre-cancellation letters have also been issued on 21.02.2019, 23.09.2019, 05.12.2019, 30.12.2019, 15.01.2020, 13.02.2020, 14.03.2022, but the same having no positive results and ultimately leading to cancellation of unit vide termination letter dated 08.04.2022. Further, Section 19(6) of the Act of 2016 casts an obligation on the allottees to make necessary

payments in a timely manner. Hence, cancellation of the unit in view of the terms and conditions of the payment plan annexed with the buyer's agreement dated 17.06.2017 is held to be valid. But while cancelling the unit, it was an obligation of the respondent to return the paid-up amount after deducting the amount of earnest money. However, the deductions made from the paid-up amount by the respondent are not as per the law of the land laid down by the Hon'ble apex court of the land in cases of ***Maula Bux VS. Union of India, (1970) 1 SCR 928 and Sirdar K.B. Ram Chandra Raj Urs. VS. Sarah C. Urs., (2015) 4 SCC 136***, and wherein it was held that *forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage.* National Consumer Disputes Redressal Commissions in ***CC/435/2019 Ramesh Malhotra VS. Emaar MGF Land Limited*** (decided on 29.06.2020) and ***Mr. Saurav Sanyal VS. M/s IREO Private Limited*** (decided on 12.04.2022) and followed in ***CC/2766/2017*** in case titled as ***Jayant Singhal and Anr. VS. M3M India Limited decided on 26.07.2022***, held that *10% of basic sale price is reasonable amount to be forfeited in the name of "earnest money"*. Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was framed providing as under:

"5. AMOUNT OF EARNEST MONEY

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as

there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment /plot /building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."

22. Keeping in view the aforesaid factual and legal provisions, the respondents/promoter is directed to refund the paid-up amount of Rs.31,88,079/- after deducting 10% of the basic sale consideration of Rs.39,97,240/- being earnest money along with an interest @10.80% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount, from the date of cancellation i.e., 08.04.2022 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*. However, in the present matter, it is observed that, inadvertently, the present complaint is not maintainable being barred by limitation hence the same stands dismissed and the complainant can take refund after returning the registered BBA to the respondent, were allowed in the proceedings dated 09.01.2026. The same is hereby being corrected in the present order, in light of the proper reasoning set out in the preceding paragraphs.

H. Directions of the authority

23. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations

cast upon the promoter as per the function entrusted to the authority under section 34(f):

- I. The respondents/promoter is directed to refund the paid-up amount of Rs. 31,88,079/- after deducting 10% of the sale consideration of Rs. 39,97,240/- being earnest money along with an interest @10.80% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount, from the date of cancellation i.e., 08.04.2022 till its realization.
- II. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
24. Complaint as well as applications, if any, stands disposed off accordingly.
25. Files be consigned to registry.

Dated: 09.01.2026

HARERA
GURUGRAM


(Arun Kumar)
Chairman
Haryana Real Estate
Regulatory authority,
Gurugram