BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No. 502 of 2025

Date of Decision:May 29, 2026

Karan Khanna, R/o 319, B Block, Sushant Lok, Gurugram, Haryana

...Appellant/Allottee

Versus

M/s Clarika Infra Pvt. Ltd. Office at 711/92, Depali, Nehru Place, New Delhi-110019. Also at: ATS Tower, Plot No. 16, Sector-135, Noida, Gautam Budh Nagar, U.P. -210305.

...Respondent/promoter

CORAM
Justice Rajan Gupta **Chairman**
Dinesh Singh Chauhan **Member (Technical)**

Present: Mr.Yash Pal Sharma, Advocate for the appellant.
Mr.KamalJeetDahiya, Advocate for the respondent.

O R D E R:

RAJAN GUPTA, CHAIRMAN

Present appeal is directed against order dated 21.05.2025 passed by the Haryana Real Estate Regulatory Authority, Gurugram (for short, "the Authority") in Complaint No. 1211 of 2024whereby the Authority upheld the cancellation of the appellant's allotment of Plot No. Basil-11 in the project "Bonheur Avenue" developed under the DDJAY Policy, 2016. The Authority held that the respondent-promoter was justified in cancelling the allotment on account of non-payment of dues by the allottee and accordingly directed the promoter to refund the paid up amount after deducting 10% of the sale consideration along with interest.Operative part thereof reads as under:

"G. Directions of the authority

21. Hence, the authority hereby passes this order and issues 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) of the Act:

i. The respondent/promoter is directed to refund the paid-up amount of Rs. 69,59,444/- after deducting 10% of the sale consideration being earnest money along with interest on such balance amount at the rate of 11.10%, as prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from 06.04.2024 till its actual 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.

22. Complaint stands disposed of.

23.File be consigned to registry."

2. Factual matrix of the case is that the respondent-promoterdeveloped an affordable plotted colony named "Bonheur Avenue" under DDJAY[1] Policy, 2016 at Sector-35, Village Dhunela, Sohna Road, Gurugram, under Licence No. 16 of 2022 and RERA Registration No. 81 of 2022 dated 12.09.2022.The appellant applied for allotment of a plot in the said project and was allotted Plot No. Basil-11, measuring 139.27 sq. mtrs., vide allotment letter dated 03.11.2022.Agreement for Sale was executed between the parties on 01.11.2022fora total sale consideration of Rs.1,74,28,120/-. Initially, the appellant opted for a 40:60 payment plan which was subsequently revised, on the appellant's request dated 04.04.2023 and acceptance by the respondent vide email dated 12.04.2023, to 40:55:5 payment plan, whereby 55% of the consideration was

[1]DeenDayal Jan AwasYojna

payable at the stage of application for OC/CC[2] and the remaining 5% at the time of offer of possession.

3. It is undisputed that the appellant paid an amount of Rs.69,59,444/-towards the sale consideration.As per Clause 7 of the agreement, possession of the plot was to be delivered by September 2024 with a grace period of six months, bringing the due date of possession to March,2025. The respondent claimed to have applied for completion certificate on 26.06.2023 and thereafter on 30.04.2024 and ultimately completion certificate to the project was granted on 18.06.2024. During the subsistence of allotment, the respondent raised demand notice on 17.10.2023after changing the payment plan and reminders dated 23.11.2023 and 14.12.2023 alleging default in payment and eventually issued a final notice for termination on 28.12.2023. Apprehending cancellation of the allotment and being aggrieved by the demands raised by the respondent, the appellant-allottee approached the Authority by filing Complaint No. 1211 of 2024 on 28.03.2024. The appellant sought, inter alia, directions restraining the respondent from cancelling the allotment, setting aside the allegedly illegal demand notices, directing the respondent to raise further demands only upon a valid application for OC/CC in terms of the revised payment plan, and handing over possession of the allotted plot. However, during the pendency of the said complaint, the respondent-promoter proceeded to cancel the allotment vide cancellation letter dated 06.04.2024.

4. Before the Authority, the appellant-allotteecontended that after revision of the payment plan, the respondent could raise demand for 55% amount only upon a valid application for OC/CC

[2]Occupation Certificate/ Completion Certificate

and not earlier. It was argued that the project was incomplete and even the architect certificate dated 31.12.2023filed by the respondent reflected incomplete development works. The appellant further asserted that the demands raised by the promoter were contrary to the mutually revised payment plan and that despite repeated objections through emails, the respondent illegally proceeded with cancellation of the allotment.

5. Per contra,the respondent-promoter contested the complaint on the groundthat the appellant was a defaulter who failed to honour payment obligations despite repeated reminders and notices. It was contended that the respondent had validly applied for OC/CC on 26.06.2023 and therefore the milestone for raising the 55% demand stood achieved. Relying upon Clause 9.3 of the Agreement, the respondent justified the cancellation on 06.04.2024 on the ground that the appellant failed to clear outstanding dues despite repeated opportunities.

6. After considering rival contentions of the parties, the Authority disposed of the complaint vide impugned order, operative part whereof has been reproduced in para 1 of this order.

7. Aggrieved by the impugned order, the appellant filed the present appeal contending that the Authority failed to examine the legality of the cancellation and the demands raised by the respondent. It was argued that no valid stage for raising the 55% demand had arisen as the project was incomplete and the application for completion certificate was not in accordance with law. Accordingly, the appellant sought quashing of the cancellation and restoration of the allotment.

8. Per contra, learned counsel for the respondent supported the impugned order and submitted that the appellant was a

persistent defaulter who failed to clear the outstanding dues despite repeated notices and opportunities. It was contended that the demand was validly raised upon filing of the application for completion certificate and that, in view of the continued default, the allotment was rightly cancelled under Clause 9.3 of the Agreement. The respondent further submitted that third-party rights had already been created in the plot.

9. We have heard learned counsel for the parties and have carefully perused the record.

10. The primary question arises for consideration is whether the respondent-promoter was justified in cancelling the allotment of the appellant during the pendency of Complaint No. 1211 of 2024 wherein the very legality of the demand notices and proposed cancellation was under challenge before the Authority.

11. It is not disputed that the appellant had filed a complaint before the Authority on 28.03.2024 seeking protection against cancellation of allotment, challenging the demands raised by the promoter and seeking directions for handing over possession in accordance with the Agreement for Sale. It is also undisputed that during the pendency of the said complaint, the respondent proceeded to cancel the allotment vide letter dated 06.04.2024.

12. The record reveals that the dispute between the parties was not confined merely to non-payment of dues. The appellant had specifically questioned the legality of the demand itself by contending that under the revised payment plan dated 12.04.2023, the milestone for raising the demand of 55% consideration had not been achieved since no valid application for completion certificate had been made in accordance with law and the project development

remained incomplete. These issues were directly pending adjudication before the Authority.

13. Once the appellant had approached the Authority and invoked its jurisdiction to adjudicate upon the validity of the demands and the notice of cancellation, the respondent was required to maintain status quo with respect to the allotment pending the adjudication of the dispute. The matter having become *sub-judice*, the parties were governed by the doctrine of lispendens. Any unilateral action affecting the subject matter of the proceedings during their pendency would undermine the statutory adjudicatory process and render the proceedings infructuous. Permitting the promoter to cancel the allotment while the complaint was pending would amount to allowing a party to overreach the judicial process and frustrate the effective adjudication of the dispute.

14. We find that the Authority failed to examine this crucial aspect. The Authority proceeded on the assumption that since there was alleged default in payment, the cancellation automatically stood justified. However, before examining the consequence of non-payment, it was incumbent upon the Authority to determine whether the demands had been validly raised under the revised payment plan and whether the promoter could proceed with cancellation during the pendency of the complaint.

15. Even assuming that the respondent had a contractual right to cancel the allotment under Clause 9.3 of the Agreement, such right could not be exercised in a manner that defeats pending adjudicatory proceedings. A party cannot be permitted to overreach the judicial process by taking unilateral action during the pendency of the dispute.

16. In view of the above, we are of the considered view that the cancellation letter dated 06.04.2024, having been issued during the pendency of Complaint No. 1211 of 2024 concerning the same subject matter, cannot be sustained and is liable to be set aside.

17. As regards the respondent's plea that third-party rights have been created, no material has been placed on record to substantiate the same. In any event, such rights cannot defeat the appellant's entitlement arising from the illegal cancellation.

18. Consequently, the cancellation dated 06.04.2024 and the impugned direction for refund after deduction of earnest money are set aside. The respondent is directed to restore the allotment of Plot No. Basil-11 in favour of the appellant, subject to payment of outstanding dues, if any. In the alternative, the respondent shall offer a plot of similar dimensions and consideration. Compliance shall be made within 90 days from the date of uploading of this order.

19. The appeal stands allowed in the aforesaid terms. Pending applications, if any, also stand disposed of.

20. Copy of this order be sent to the parties/their counsel and the Authority.

21. File be consigned to records.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Dinesh Singh Chauhan
Member (Technical)

May 29,2026
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