

ORDER:

Present complaint dated 10.06.2024 has been filed by the complainant under Section 31 of The Real Estate (Regulation & 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:

S.No.	Particulars	Details
1.	Name of the project	La Dimora City Phase 2, Sector-97, Faridabad
2.	RERA Registered/Not Registered	Registered vide Registration No. IIRERA-PKL-FBD-240-2021
3.	Details of the unit	G-22, measuring 155.95 sq yards
5.	Date of Builder Buyer Agreement	N/A

6.	Due Date of Possession	N/A
7.	Total Sale Consideration	₹53,76,774/-
8.	Amount paid by the Complainant	₹18,81,871/-
9.	Date of MOU	16.11.2021
10.	Offer of Possession	N/A

B. FACTS OF THE COMPLAINT

3. Facts of the complaint are that on 07.10.2021, the complainant paid an amount of ₹4,50,000/- to the respondent as a booking amount. The respondent issued an application form and allotted a residential plot to the complainant in the "La Dimora City" project located at Sector 97, Faridabad. The copy of the application form is being annexed as Annexure P-1

4. According to the details provided in the application form, the total sale consideration of the plot amounts to ₹53,76,774/- and the payment plan decided was 35:65. The complainant has already paid ₹18,81,871/- to the respondent which was acknowledged by the respondent in the application form. The respondent has demanded and accepted a sum equal to 35% of the total sale consideration for the unit without even executing the BBA which itself is a clear violation of Section 13 of RERA Act,2016. By charging more than 10% of the

cost of the apartment, the respondent has violated the mandate of Section 13 of the RERA Act, 2016. Further, the respondent has deliberately failed to execute the BBA despite repeated requests and reminders from the complainant. This act of the respondent further shows that the respondent was not following the mandate of the RERA Act, 2016 and the guidelines framed in this regard under the Affordable Housing Policy, 2013.

5. The complainant consistently reached out to the respondent, urging them to allot the residential plot but the respondent kept delaying the execution of allotment. According to the Affordable Housing Policy of 2016, the respondent is only permitted to sell 50% of the residential plots following the registration of the project with the Haryana Real Estate Regulatory Authority. The remaining 50% of the residential plot area can only be sold after obtaining the Occupation Certificate of the project. The respondent was unable to furnish a unit from the 50% allocation. They verbally asked the complainant to cancel the plot and execute the MOU since they couldn't deliver it. The complainant as a goodwill gesture sent a cancellation letter to the respondent for Plot no. G-22. The copy of the cancellation letter is annexed as Annexure P-3.

 6. On 16.11.2021, the respondent and the complainant entered into a Memorandum of Understanding whereby the respondent froze the amount paid by the complainant i.e ₹18,81,871/-, under the pretext of selecting from the next available lot of units post obtaining the Occupation Certificate of the project.

This act violates the Affordable Housing Policy, as it involves offering bookings before they are eligible for sale under the policy. As per clause 4 of the MOU the respondent froze the paid amount on the pretext to allot a different plot bearing 150.61 Sq Yards when they became available for sale which was expected to be completed within 18 months. The relevant portion of the clause being reproduced hereunder:

The Second Party applied for the allotment of a Plot no. G-22, measuring 155.95 Sq. Yards in the project "La Dimora City", Sector 97, Faridabad and deposited a sum of Rs. 18,81,871/- as booking amount, which he now wants to cancel/surrender and is willing to book a plot of his choice out of the freezed plots at the rate applied in application form submitted by the customer which includes IDC/EDC charges and plot size is 150.61 sq yards, when they become available for sale after completion of the internal development works and issue of the completion certificate for the project(expected to be completed in 18 months)

7. According to clause 5 of the Memorandum of Understanding (MOU), if the complainant fails to appear for the allotment of the new plot, the paid amount shall be refunded to the complainant. Additionally, if the complainant decides to proceed with the new plot, she must remit the remaining amount of ₹35,40,028/- to the respondent. The relevant portion of the clause is being reproduced hereunder;

That in case the Second Party does not turn up for allotment of a new plot out of the freezed plots within a period of 30 days when they become available for sale, the First Party shall remit the amount of refund which is 18,81,871/- (Rupees Eighteen Lakhs Eighty One Thousand Eight Hundred Seventy One Only) to the Second Party and the Second Party shall have no claim left against the First Party and If the Second Party wants to retain with the

allotment of plot of his own choice out of freeze plot then the Second Party will pay the balance amount of Rs 35,40,028/-which includes (IFMS & Admin Charges) to the First Party. Also the First Party will notify the Second Party about receiving OC (occupation Certificate).

The copy of the MOU dated 16.11.2021 is being Annexed as Annexure P-4.

8. On 15.11.2022, the complainant submitted an application to surrender the Plot no. M-13 and requested refund of the entire paid amount of ₹18,81,871/-. However, till date, the respondent has failed to refund the complainant's payment. The copy of application for surrender of plot dated 15.11.2022 being annexed as Annexure P-5. The complainant has made out a clear case of deficiency of service on the part of the respondent and the complainant is legally entitled to seek refund of the money deposited by her along with appropriate compensation. The complainant wants to withdraw from the project as the promoter has not fulfilled his obligation as per Section 18. Therefore, the promoter is obligated to refund the amount paid with interest.

C. RELIEF SOUGHT

9. In view of the facts mentioned above, the complainant has prayed for the following relief(s):-

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- i. To direct the respondent to refund the entire amount paid ₹18,81,871/- along with interest till date, inclusive of the booking charges & Taxes.

- ii. To direct the respondent to pay interest from the date of payment to the complainant at the prescribed rate under the Act and the rules.
- iii. Any other relief as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of the present case.

D. REPLY/OBJECTIONS SUBMITTED ON BEHALF OF RESPONDENT

10. Learned counsel for the respondent filed preliminary objections on 09.12.2024 pleading therein that the present complaint filed by the complainant has no valid cause of action against the respondent. The allegations made in the complaint are false and baseless. The respondent has not violated any provisions of the Act or breached any terms of the agreement between the parties. The complaint is liable to be dismissed as it is based on concealment and misrepresentation of important facts and documents before this Hon'ble Authority. It is a settled principle of law that a party must approach the court with clean hands. In the present case, the complainant failed to disclose that she had entered into a Memorandum of Understanding dated 16.11.2021 with the respondent company. Under this agreement, she agreed to adjust the amount already paid towards another unit that would be available after issuance of the completion certificate. In view of this agreement, the complainant has no cause of action to file the present complaint. A true copy of the Memorandum of Understanding dated 16.11.2021 is annexed as Annexure R-4.

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E. REJOINDER FILED BY THE COMPLAINANT

11. The complainant has filed a rejoinder dated 13.02.2025 in which the complainant denied/rejected all the averments made by the respondent in the preliminary objections.

F. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

12. During oral arguments, learned counsels appearing on behalf of both parties reiterated the submissions/arguments as already submitted in their complaint, preliminary objections and rejoinder respectively. Further, learned counsel for the respondent submitted that if the complainant has any grievance regarding the Memorandum of Understanding (MOU), the same can only be adjudicated by a competent civil court and not by the RERA Authority. Therefore, the present complaint is not maintainable before this Hon'ble Authority to the extent it relates to dispute arising out of the MOU.

G. ISSUES FOR ADJUDICATION

13. Whether the complainant is entitled for refund of the entire amount deposited by her under Section 18 of the Real Estate (Regulation And Development) Act, 2016, along with interest at the prescribed rate of interest as per Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017?

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H. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

14. The Authority has carefully considered the submissions made by both the parties. In light of the background of the matter as recorded in this order and the arguments advanced by the parties, the Authority observes as follows:

(i) The complainant paid for booking of the residential plot and was allotted Plot No. G-22 in the project "*La Dimora City*", Sector 97, Faridabad. The total sale consideration for the plot was fixed as ₹53,76,774/- and the complainant made a payment of ₹18,81,871/-. The complainant then sent a cancellation letter to the respondent for cancellation of plot no. G-22 and allotment of plots of her own choice out of the frozen plots, after they become available for sale as per the Deen Dayal Jan Awas Yojna, 2016. Thereafter, the complainant subsequently entered into a Memorandum of Understanding (MOU) dated 16.11.2021 with the respondent, whereby the amount paid was withheld for allotment of a future plot from the frozen stock once available after issuance of the Completion/Occupation Certificate. As per Clause 5 of the MOU on page no. 3 is reproduced below for ready reference:

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The Second Party has therefore approached the First Party and requested to cancel the allotment of plot G-22 admeasuring 155.95 Sq. Yard in the project La dimora City" Sector-97, Faridabad in his name and further requested not to refund the amount deposited and instead appropriate the same at the time of booking/allotment of a plot of his choice, out of the freezed plots, after they become available for sale as per the Policy, 2016 Deen Dayal Jan Awas Yojna which the Party has agreed.

As per Clauses 3 and 5 of the MOU under heading NOW,
THEREFORE, THIS MOU WITNESSETH AS UNDER is reproduced below for ready reference:-

"3. That the Second Party has further requested the First Pany to allot him a plot of his choice in the project "La Dimora City", Sector-97, Faridabad out of the freezed plots after they become available for sale upon completion of internal development works and issue of occupation certificate of the project by the competent authority and for the said purpose do not refund the amount in lieu of cancellation of the allotment of the aforesaid plot but appropriate this amount as application money, at the time of booking of the new plot of his choice out of the freezed plots (expected to be completed in 18 months)."

"5. That in case the Second Party does not turn up for allotment of a new plot out of the freezed plots within a period of 30 days when they become available for sale, the First Party shall remit the amount of refund which is 18,81,871/- (Rupees Eighteen Lakhs Eighty One Thousand Eight Hundred Seventy One Only) to the Second Party and the Second Party shall have no claim left against the First Party and If the Second Party wants to retain with the allotment of plot of his own choice out of freeze plot then the Second Party will pay the balance amount of Rs 35,40,028/-which includes (IFMS & Admin Charges) to the First Party. Also the First Party will notify the Second Party about receiving OC (occupation Certificate)."

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Thereafter, the complainant sent a surrender letter of plot bearing no. M-13 to the respondent and demanded a refund of ₹18,81,871/- which is not the subject unit.

(ii) The Authority has considered the submissions of both parties and perused the record. It is not in dispute that the parties executed an MOU dated 16.11.2021, whereby the amount paid by the complainant was withheld for allotment of a future plot from the frozen stock. The terms of the MOU clearly stipulate the conditions under which refund shall be payable. The complainant has not placed on record any material to show that plots from the frozen stock have become available and that the respondent has failed to offer allotment in terms of the MOU. It is a settled principle that parties are bound by the contractual terms voluntarily agreed between them, unless the same are shown to be illegal or contrary to statutory provisions. In the present case, no such illegality has been demonstrated. In view of the above, this Authority is of the considered opinion that the claim of the complainant seeking immediate refund is premature at this stage, as the contingency contemplated under the MOU has not yet arisen. However, it is clarified that in the event the respondent fails to offer allotment from the frozen stock within the stipulated period

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after issuance of Completion/Occupation Certificate, or in the event of occurrence of any contingency provided under the MOU entitling the complainant to refund, the complainant shall be at liberty to seek appropriate remedy in accordance with law.

15. Accordingly, the present complaint is **dismissed being premature**, with liberty as aforesaid. File be consigned to the record room after uploading of order on the website of the Authority.


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CHANDER SHEKHAR
[MEMBER]

27.02.2026
Gaurav Saini
(Law Associate)