

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

Complaint no.	:	6427 of 2019
First date of hearing:		07.02.2020
Date of decision	:	17.05.2022

Charan Singh S/o Ranbir Singh <b>R/o:</b> Village Rahitwas-140, Sidhrawali, Gurugram- 122413, Haryana	<b>Complainant</b>
Versus	
AVL Infrastructure Private Limited <b>Regd. office:</b> Plot no.1, Green Park Main, New Delhi- 110016	<b>Respondent</b>
<b>CORAM:</b>	
Dr. K.K. Khandelwal	<b>Chairman</b>
Shri Vijay Kumar Goyal	<b>Member</b>
<b>APPEARANCE:</b>	
Shri. Sukhbir Yadav	Advocate for the complainant
Shri. Gaurav Gupta	Advocate for the respondent

**ORDER**

1. The present complaint dated 11.12.2019 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, 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 obligations, responsibilities and functions under the provision of the

Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

**A. Unit and project related details**

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

S.No.	Heads	Information
1.	Project name and location	"AVL 36 Gurgaon", Sector-36A, District- Gurugram, Haryana
2.	Project area	9.06875 acres
3.	Nature of the project	Affordable Group Housing Project
4.	DTCP license no. and validity status	18 of 2014 dated 10.06.2014
		Valid up to 23.11.2019
		74 of 2014 dated 01.08.2014
		Valid up to 23.11.2019
5.	Name of licensee	Birpal and others
6.	HRERA registered/ not registered	<b>Registered</b>
		<b>Vide registration no. 106 of 2017 dated 24.08.2017</b>
		Valid up to 31.12.2019
7.	Allotment letter dated	01.01.2018 [As per page no. 26 of the complaint]
8.	Unit no.	1003 on 10th floor, block-13 (Category-A1) [As per page no. 45 of the complaint]
9.	Unit measuring	606 sq. ft.

		<p>[As per page no. 45 of the complaint]</p> <p>As per initial drawings sanctioned by DTCP where internal walls area was not included.</p> <p>Actual carpet area is 620 sq. feet by including internal walls as disclosed during proceedings by the respondent.</p>
10.	Increase in carpet area	<p>There is no increase in the carpet area. It was only a correction due to inclusion of internal walls as per definition of carpet area under section 2(k) of Act of 2016.</p>
11.	Balcony area	<p>91 sq. ft.</p> <p>[As per page no. 45 of the complaint]</p>
12.	Date of execution of buyer's agreement	<p>24.01.2018</p> <p>[As per page no. 35 of the complaint]</p>
13.	Payment plan	<p>Time linked payment plan</p>
14.	Total consideration	<p>Rs.25,25,503/- excluding GST</p> <p>Rs.29,92,837/- Total amount subject to equalization of amount after including interest so as to bring subsequent allottee at par with the existing allottee.</p> <p>Rs.2,77,825/- payable by the allottee as on 21.10.2020 including the balance amount and interest on delayed payments of instalments.</p>



		[As per page no. 32 of the additional documents filed by the respondent]
15.	Total amount paid by the complainant	Rs.24,04,651/- [As per page no. 32 of the additional documents filed by the respondent]
16.	Building plan approvals	27.08.2014
17.	Environment clearance	24.11.2015 [As per page no. 169 of the reply]
18.	Consent to establish granted by HSPCB on	02.01.2016 [As per page no. 182 of the reply]
19.	Due date of delivery of possession as per <b>clause 10.1</b> of buyer's agreement <i>(The purchaser understands and agrees that the company contemplates to complete the construction subject to grant of occupation certificate of the said project by the competent authority within period of 4(four) years from the date of grant of sanction of building plans for the said project or the date of receipt of all the environment clearances and compliances there under including but not limited to issue of consent to establish from pollution angle from Haryana State Pollution Control Board to start the construction and development of the said project, whichever is later, unless there shall be delay due to</i>	24.11.2019 [Calculated from date of environment clearance i.e., 24.11.2015 as per policy]

	<i>situations beyond the reasonable control of the of the company and/ or due to failure of purchaser(s) to pay in time the respective payments individually as well as collectively, to abide by all or any of the terms and conditions of the agreement.)</i>	
20.	Occupation certificate	17.12.2019 [As per page no. 12 of the additional documents filed by the respondent]
21.	Offer of possession	24.12.2019 [As per page no. 16 of the additional documents filed by the respondent]
22.	Cancellation of unit	30.12.2020 [As per page no. 33 of the additional documents filed by the respondent]

**B. Facts of the complaint**

- That the complainant came to know about the project of the respondent i.e., AVL Infrastructure Private Limited through its real estate agent/ authorize agent. The complainant along with his family members visited the project site and local marketing office of respondent. The location was excellent, and they consulted the local representative of the developer. The local representative of developer allured the complainant with proposed specifications of the project

and assured that said project is governed under "Affordable Housing Policy, 2013". The representative of the respondent gave a pre-printed application form and charged Rs. 1000/-.

4. That being impressed by the claims/ projections made by respondent, the complainant filled a pre-printed application form vide application no. 11751 for 2 BHK apartment and issued cheque of Rs. 1,38,292/- dated 30.10.2017 drawn on ICICI Bank.
5. That on 22.12.2017, the respondent issued a letter to inform the result of second re-draw of flats held on 21.12.2017 and intimated that the complainant has been a successful allottee in affordable housing project "AVL36GURGAON", Sector-36-A Gurugram, Haryana, held under the supervision of the committee formed under STP, as per Affordable Housing Policy-2013, Government of Haryana.
6. That on 01.01.2018, the respondent sent an allotment letter of flat no. B13-1003 in the project laying down the terms and conditions of allotment. As per clause 3 of allotment, the sale price of residential flat was calculated as per Rs. 4000/- per sq. ft. on carpet area basis and Rs. 500 per sq. ft. on balcony area basis and therefore the total sale consideration of flat was Rs. 24,69,500/-.

7. That on 24.01.2018, a pre-printed, arbitrary, one sided and unilateral flat buyer agreement (hereinafter "FBA") was executed inter-se parties. As per term/ clause 10.1 of the agreement, the respondent has to give the possession of said unit "within 4 years from the date of sanction of building plans or the date of receipt of all the environmental clearances and compliances and whichever is later". It is pertinent to mention here that DTCP granted the license no. 74 of 2014 on 01.08.2014 and the plans were approved by the town & country planning department on 27.08.2014. Therefore, the due date of possession was 27.08.2018.
8. That the respondent shared the schedule of payment and as per that, an amount of Rs 3,10,816 termed as equalisation amount was demanded from the complainant. Such an amount was neither explained by the respondent nor is a legal obligation for complainant to pay such amount. The complainant has a strong belief that it is the cheap tactic of the respondent to gain unjust enrichment on his hard-earned money. As per Affordable Housing Policy, 2013, the promoter cannot demand more than the permitted price.
9. That the complainant continued to pay the remaining installments as per the payment schedule of the buyer agreement till April 2019 and

paid a total sum of Rs. 22,94,171/- i.e., 92 % of basic sale consideration (Rs. 24,69,500/-) along with interest and other allied charges. However, it was observed that the respondent has charged an amount of Rs. 3,10,816/- for unjust enrichment and the complainant raised his grievances in this regard to it.

10. That due to aforesaid acts of the respondent and terms & conditions of the flat buyer's agreement, the complainant has been unnecessarily harassed mentally as well as financially and therefore, the opposite party is liable to compensate him on account of the aforesaid act of unfair trade practice.
11. That there is an apprehension in the mind of the complainant that the respondent has been playing fraud and there is something fishy which it is not disclosing to him just to embezzle his hard-earned money and other co-owners.
12. That the complainant being an aggrieved person is filing the present complaint under section 31 with the authority for violation/contravention of provisions of this act and as per section 11 (4) of the Act of 2016.
13. That it is pertinent to mention here that builder sold the unit/ flat with certain commitments and is now deviating from the agreed rate for



carpet area and balcony area and sending the demands at inflated price, which is more than agreed rate i.e., Rs 4,000/ sq. ft for carpet area and Rs. 500 / per sq. ft for balcony area.

14. That the complainant does not wish to withdraw from the project and the promoter has not fulfilled his obligations. Therefore, as per section 18(1) of Act of 2016, the promoter is liable to pay interest on delayed possession from due date of possession till possession of the allotted unit at the prescribed rate of interest.

**C. Relief sought by the complainant:**

15. The complainant has sought following relief(s):
- (i) Direct the respondent to pay interest at the prescribed rate for every month of delay from due date of possession till the actual handing over the possession, on amount paid by complainant.
  - (ii) Direct the respondent to adjust amount of Rs. 3,10,816/- on demand of unreasonable amount under head of equalisation.
  - (iii) Impose penalty for breaching the terms and conditions of the allotment made by respondent, according to which the carpet and balcony areas be charged at @ Rs. 4,000/- per sq. ft. and Rs. 500 per sq. ft respectively.
  - (iv) Direct the respondent to provide detailed calculations, pertaining to super, carpet and common areas along with deed of declaration.
  - (v) Direct the respondent to refrain from giving effect to the unfair clauses unilaterally incorporated in the buyer agreement.

- (vi) Direct the respondent to hand over the possession of flat to the allottee complete in all respects and execute all required documents for transferring/ conveying the ownership of the unit allotted.
- (vii) Direct the respondent to set aside the cancellation of the flat issued vide letter dated 30.12.2020.

(Additional relief sought by the complainant vide written submission dated 08.06.2021).

16. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) & 17(1) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent**

17. The respondent has contested the complaint on the following grounds.
- i. That on 09.02.2015, the said project was floated by the respondent. The initial allotment of flats was done through draw of lots on 09.09.2015. The original/first allottee of the flat (which was later allotted to the complainant), was one Mr. Om Prakash. However, he surrendered the said flat, and the entire money deposited was returned to him on 10.09.2015.
  - ii. That the respondent obtained various clearances from concerned authorities such as State Environmental Impact Assessment Authority, Haryana vide letter dated 24.11.2015, Mining Permit

vide letter dated 17.12.2015 and from Haryana State Pollution Control Board vide letter dated 02.01.2016.

- iii. That, various vacancies had arisen with regards to units in the project of the respondent due to withdrawal/surrender by the initial allottees under the affordable housing policy. The respondent to fill up the vacancies so arisen, issued various advertisements/public notices inviting applications for allotment of units. In pursuant to the above advertisements/public notices, the complainant submitted an application form dated 30.10.2017 seeking allotment of unit in the respondent's project.
- iv. That the respondent throughout the entire allotment process informed the District Town and Country Planning Authorities of steps that have been undertaken. In the re-draw of lots, the complainant was one of the successful allottee and accordingly, an allotment letter dated 01.01.2018 was issued by the respondent in his favour along with a demand notice dated 01.01.2018.
- v. That a flat buyer's agreement was executed between the parties on 24.01.2018. Subsequently, the respondent vide letter dated 24.01.2018, granted permission to the complainant to mortgage the said flat with ICICI Bank Ltd. to avail loan.
- vi. That the respondent issued various notices to the complainant as per the schedule of the payment plan such as demand notices dated 01.02.2018, 01.06.2018 and 01.12.2018. However, it is to be noted

that the complainant failed to adhere to the schedule of payment and as on 07.10.2019, he was in default of payment of sum of Rs. 7,56,028/-.

- vii. The respondent completed the project before time and applied for occupation certificate on 18.10.2019 and the same was granted by the Director Town and Country Planning on 17.12.2019. Upon receiving the occupation certificate, the respondent duly offered possession of the unit to the complainant vide letter dated 24.12.2019 subject to clearing of dues and obtaining no dues certificate.
- viii. That the complainant has not cleared outstanding dues and so, the respondent sent several reminders/notices dated 14.03.2020, 01.07.2020 and 07.10.2020 requesting him to clear the outstanding amount.
- ix. That the complainant submitted an indemnity bond dated 20.02.2020 agreeing to follow and to be bound by all the terms of the affordable housing policy, 2013. Since, the complainant failed to clear his dues, so, the respondent was constrained to cancel the allotment of the unit vide letter dated 30.12.2020 and requested him to take refund by submitting all the original documents issued to him.
- x. That after the cancellation of the flat previously allotted to the complainant, the same has now been allotted to one Ms. Anita vide



allotment letter dated 30.12.2020. The complainant, therefore, cannot be allotted the said flat in any circumstances as third-party interest has been created over the said unit.

- xi. That as per the flat buyer's agreement, the complainant's last instalment would have been due on 01.01.2019. Not just from 01.01.2019, the complainant has been in default of payment even before 01.01.2019 and continued to do so. In fact, the complainant filed the present complaint in September 2019 even before the date of completion of the project and whereas he had become a member in the project in January 2018. The project was already on the verge of completion in September 2019. The respondent has applied for the occupation certificate on 18.10.2019 and the same was received on 17.12.2019. So, seeing all this, the complainant turned greedy and tried to wriggle out of liability to pay the amount due.
- xii. That the cancellation of the complainant's unit was done as per the policy of 2013 only and which strictly prohibits that if a person, who has defaulted, does not make the payment of due amounts, after sending notice of default and thereafter, also does not make payment within 15 days of publishing such defaulter's name in the newspaper, the flat of such defaulter stands automatically cancelled, without any further communication. Thus, the respondent has acted strictly in accordance with the policy as it is

bound by the terms of the said policy. It may also be noted that even before 01.01.2019 (i.e., the date of payment of last instalment by the complainant), he has been in default of payment. Though it was not required, the respondent itself, as a goodwill measure gave an opportunity to the complainant to make the payments till 21.10.2020. Thus, the complainant was in any case, given an extension of almost two years to make payments of defaults, although he was not entitled to any such extensions either under the policy or under the agreement.

- xiii. That there was no delay in offering possession of the unit to the complainant. The respondent has adhered to the timeline as prescribed by the "Affordable Housing Policy, 2013" and as per the flat buyer's agreement entered into between parties. The clause 5(iii)(b) of the "Affordable Housing Policy, 2013" provides that possession of flats shall be offered within a period of 4 years from the date of sanction of building plan or environmental clearance, whichever is later. It is hereby clarified that this period of 4 years for delivery of the project is the same, both for the original as well as the subsequent allottee, irrespective of the stage at which the subsequent allottee becomes a member. It is also reiterated and clarified that the schedule of payment, as fixed in the policy, remains unchanged for both for original as well as the subsequent allottees. The building plans for the said project were sanctioned

on 01.08.2014. However, the certificate for consent to establish, to start construction at the site, pursuant to the environment clearance was issued only on 02.01.2016. Therefore, the date of delivery of possession of flat, as per the policy, is to be calculated from 02.01.2016. i.e., four years from 02.01.2016 which comes out to be 31.12.2019. The respondent has duly adhered to this timeline, prescribed by the "Affordable Housing Policy, 2013".

- xiv. That the respondent has offered the possession to the complainant on 24.12.2019 after obtaining occupation certificate. Thus, it is evident that there is no delay in handing over of possession of the flat to the complainant.
- xv. That the complainant claimed that the equalisation/ interest as per policy amount which was levied on him was neither explained nor was it legal. It is submitted that the said averment of the complainant is completely wrong and baseless. The 'equalisation amount/ interest as per policy' was levied as the complainant was not an original allottee when the allotment of flats was done through draw of lots on 09.09.2015. The complainant was allotted a flat only on 01.01.2018 as there was withdrawal/surrender by the original/initial allottee under the Affordable Housing Policy. Equalisation/ Interest as per policy amount was therefore levied in order to rank the complainant pari passu with the original allottees and also mentioned in the advertisement/ public notices

while inviting applications for allotment of flats as well as in the application dated 30.10.2017 submitted by the complainant while seeking allotment of flat.

- xvi. That a demand notice dated 01.01.2018 was issued to the complainant duly mentioning the equalisation amount (interest as per policy) as Rs. 2,77,514/-. It is pertinent to note that no objection was raised by him to the equalisation amount even at this point.
- xvii. That the parties entered into an FBA dated 24.11.2018 and at point 1.2 and annexure- 3 also captures the levy of equalisation charges (interest as per policy). Thus, from the aforesaid, it is evident that at all stages of allotment of the said flat to the complainant, he was informed and was aware of equalisation amount (interest as per policy). The complainant's averments that equalisation amount is not as per the agreement or was not explained is therefore meritless and baseless.
- xviii. That the affordable housing policy is not a usual housing policy. Under clause 1(iv) of that policy, the developer has to complete the project in 4 years from the date of commencement. So, the timelines start from the date of commencement and end at date of completion. For this, the policy has clearly specified under clause 1(iv) and 5(iii)(b), directions to fix the timelines for each project under AHP-2013, which would be unique for each project, because



the first date, i.e., the date of commencement, is based on the date of consent to establish to start construction at site, pursuant to the environment clearance in the present project. Clause 1(iv) of the policy is as follows:

*"All such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of this policy. The licences shall not be renewed beyond the said 4 years period from the date of commencement of project."*

Thus, the policy makes it obligatory upon the respondent to complete the project within a period of 4 years even if a large number of flats remain unallotted and/or a large number of allottees withdraw after the allotment. In other words, the policy casts an obligation upon the respondent to anyhow finish the entire project within 4 years, including the flats, amenities etc., even if, it is not able to raise sufficient finances, despite all best efforts and due to reasons beyond its control, such as lack of, or withdrawal of applicants and for no fault on the respondent's part.

- xix. That the entry and exit norms are also fixed under the Affordable Housing Policy, 2013. Any person can exit at any time and the deduction provided is only Rs. 25,000/-. Any person can enter anytime and follow the timelines as provided by the policy. Therefore, the overdue interest (interest as per policy) termed as equalisation charges are to protect the interest of those genuine

allottees who stay in the project and to ensure timely delivery to those genuine allottees and also to give them an advantage in comparison to those who join later in the project.

- xx. That it is evident from the policy that the applicants who have applied at the time floating of the project, i.e. 09.02.2015 and have been allotted flats originally, i.e. at the time of floating of the project and shall be required to invest their money and keep making periodic payments to the respondent during the course of this project as per pre-fixed schedule of payment of the project/flat, derived from the clauses of the policy.
18. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.
19. There was dispute between the parties with regard to actual amount due against the allottee. So, in order to set at right that controversy, the authority vide its order dated 17.09.2021 appointed CA of the authority to verify the accounts of both the parties with regard to the unit and who submitted his report on 29.09.2021 which would be discussed in the later part of the order.
20. Both the parties also filed written submissions to substantiate their averments made in the pleadings as well as in the documents and the same were taken on record.

**E. Jurisdiction of the authority**

21. 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**

22. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. 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**

23. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee 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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;*

*Section 34-Functions of the Authority:*

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

24. So, in view of the provisions of the Act of 2016 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 complainant at a later stage.

**I. Findings on the reliefs sought by the complainant**

- I.I Direct the respondent to pay interest at the prescribed rate for every month of delay from due date of possession till the actual handing over of the possession, on amount paid by the complainant.**
- I.II Direct the respondent to adjust amount of Rs. 3,10,816/- on demand of unreasonable amount under head of equalization.**
- I.VI Direct the respondent to handover the possession of the flat to the allottee complete in all aspects and execute all required documents for transferring or conveying the ownership of the respective flat.**
- I.VII Direct the respondent to set aside the cancellation of the allotment.**

25. Since issues No. i, ii, vi and vii are inter-connected, so the same are being taken up together.

26. It is not disputed that earlier the complainant filed a complaint bearing No. CRN/4325/2019 on 16.09.2019 before adjudicating officer of the authority and which was disposed of on 14.11.2019 keeping in view the amendments in Haryana Real Estate (Regulation & Development) Rules, 2017 vide notification no. misc- 862/1/83/2019/ITCP dated 12.09.2019. So, in pursuant of that, the complainant filed a revised complaint on 11.12.2019 before the authority vide CRN-6427 of 2019

and which remained pending before the AO for arguments. But during the pendency of that complaint, the respondent cancelled allotment of the unit on 30.12.2020 despite the fact that in pursuant to letter dated 07.10.2020 issued to the complainant, he paid the outstanding dues of Rs. 6,48,666/- on 21.10.2020. The complaint was again received on transfer from the AO in pursuant to orders dated 22.03.2021 as it was observed that the complainant was claiming relief of possession of the allotted unit, compensation, and other charges.

27. Admitted facts of the case are that the complainant is an allottee in the project of the respondent of unit no. 1003 on 10<sup>th</sup> floor of block 13 of the project known as "AVL 36 Gurgaon" District- Gurgaon (Haryana). That project was developed by the respondent under the Affordable Housing Policy, 2013 which provides for completion of the projects in a time bound manner and the payments are to be made accordingly by the allottees. The project for the group housing under that policy was launched by the respondent on 09.02.2015. The initial allotments of flats were done through draw of lots on 09.09.2015. The complainant is a subsequent allottee in place of one Om Parkash who surrendered his unit and the money deposited against it was returned to him on 10.09.2015. The complainant was allotted the unit in question on 01.01.2018 on the basis of application dated 30.10.2017 on re-draw of lots. After allotment of the unit, demand for Rs. 8,63,984/- (including equalization amount of Rs. 2,77,514/- less the amount already

received) was raised from the complainant and the same was to be paid on or before 20.01.2018. It is a fact that a flat buyer's agreement was executed between the parties on 24.01.2018 detailing the terms and conditions of allotment, sale consideration, its payment schedule and dimensions of the allotted unit, etc. The complainant admittedly sought permission from the respondent to mortgage the allotted unit with ICICI Bank Limited to avail loan and which was granted on 24.01.2018.

28. The possession of the allotted unit as per clause 10.1 of the flat buyer's agreement was to be offered within a period of 4 years from the date of sanction of building plans for the said project or the date of receipt of all environmental clearances and which admittedly comes to 24.11.2019 (The date of environment clearance being 24.11.2015 and the date of approvals of building plans is 27.08.2014.) As per section 5(iii)(b) of Affordable Group Housing Policy, 2013 the schedule of collection of payment is specified as follows-

<b>S.no.</b>	<b>% of total cost</b>	<b>Event for such demand</b>
1.	5%	At the time of application
2.	20%	At the time of allotment
3.	75%	6 equated- 6 monthly installments spread over 3-year period.

The aforesaid section of policy is reproduced as under:

*All flats in a specific project shall be allotted in one go within four months of sanction of building plans or receipt of environmental*



*clearance whichever is later, and possession of flats shall be offered within the validity period of 4 years of such sanction/ clearance. Any person interested to apply for allotment of flat in response to such advertisement by a colonizer may apply on the prescribed application form along with 5% amount of the total cost of the flat. All such applicants shall be eligible for an interest at the rate of 10% per annum on the booking amount received by the developer for a period beyond 90 days from the close of booking till the date of allotment of flat or refund of booking amount as the case may be. The applicant will be required to deposit additional 20% amount of the total cost of the flat at the time of allotment of flat. The balance 75% amount will be recovered in six equated six-monthly instalments spread over three-year period, with no interest falling due before the due date for payment. Any default in payment shall invite interest @15% per annum. The project-wise list of allottees shall also be hosted on the website of the Department (emphasis supplied)*

29. As per aforesaid section, if a person makes default in any payment, he must be held liable to pay an interest at the rate of 15% as per policy of the State Government. But keeping in view the statutory provisions under the Act of 2016, the rate of interest shall be chargeable on default in due instalments as per the rates notified under Haryana Rules, 2017 i.e. MCLR + 2%.
30. This is to be noted that the above provision of this policy is of time period before coming into force of Real Estate (Regulation and Development) Act, 2016. Accordingly, the purchaser/allottee must be held liable for payment of interest as per section 5(iii)(b) of the Affordable Group Housing Policy, 2013 for the delayed instalments before notifications of the Haryana Rules, 2017 and after that as per the Rules.

31. In the present case, the draw of allotment was done for the applications received against first draw on 09.02.2015 but due to non-payment of 2nd installment by various allottees (i.e. 20% amount of total cost due on allotment) and surrender of units by allottee, as per Policy the process of re-allotment of left out units was initiated. As a result, on 21.12.2017, a re-draw for the allotment of unit (s) was done wherein the complainant was allotted the subject unit. Now, if an allottee who has been allotted unit in the first draw makes a default in payment, has to be liable under section 5(iii)(b) of the policy as a delay payment interest. So, basically, the equalization charge is nothing but another name of interest on delay in payment by the allottees. The authority is of view that the equalization amount is nothing, but a fixed interest provided in the policy itself to bring the subsequent allottees at par with the original allottee. Since the timeline of delivery of the project is fixed for everyone, i.e. 4 years from the date of commencement, therefore it is essential to charge this interest so that no one exploits this policy by entering into the project very late and does not make full payments even after getting ready possession immediately. Although the policy is silent about it but keeping in view the principle of justice and equity, the respondent is right in charging equalization charges on due payment towards consideration of allotted unit by the allottee, irrespective of whatsoever name it is called with.



32. As per flat buyer's agreement, the allottee was allotted the subject unit of on 01.01.2018. If the complainant has been allotted unit in the first draw itself, he had already paid an amount equivalent to the 4th installment as per the payment plan on page 78 of reply. However, on 09.01.2018, an amendment has been brought in the aforesaid section where interest applicable was revised and made equivalent to that of prescribed rate under rule 15 of rules under Haryana Real Estate (Regulation and Development) Rules, 2017. But it is to be noted that the said amendment was made applicable prospectively and not retrospective. Keeping in view the spirit of amendment and principles of natural justice, till the date of coming into force of Haryana Rules, 2017 i.e. 28.07.2017 or by the due date of payment of 3rd installment the allottee must pay an interest equivalent to 15% in consonance to section 5 (iii) (b) of the Affordable Group Housing Policy, 2013 and for later instalment interest as per Haryana Rules, 2017.
33. It is contended on behalf on complainant orally as well as by way of written submissions that the respondent was not entitled to charge equalization charges as the allottee came into picture only on 01.01.2018 when he was allotted the subject unit. No doubt, the other allottees have already paid some amount towards allotment of their units but the complainant was not bound to pay the total amount paid by them up to date along with equalization amount. But the plea

advanced in this regard is devoid of merit and against the record. The equalisation/interest as per policy is the amount levied on the complainant which was explained to him at the time of submitting application on 30.10.2017 and is legal. The 'equalisation amount/interest as per policy' was levied as the complainant was not an original allottee when the allotment of flats was done through draw of lots on 09.09.2015. The complainant was allotted a flat only on 01.01.2018 as there was withdrawal/surrender by the original/initial allottee under the affordable housing policy. Equalisation/ Interest as per policy amount was therefore levied in order to rank the complainant *pari passu* with the original allottees. The complainant has concealed documents and has made false averments that equalisation amount was never explained to him. The requirement of equalisation amount/ interest as per policy was duly explained to the complainant at all stages i.e., at the time of issuing advertisement/ inviting applications on 21.09.2017/ 26.10.2017 providing payment terms inclusive of "*Equalisation Amount (interest as per policy) calculated at 15% p.a. from the Commencement date of Project, i.e., 2<sup>nd</sup> January 2016, up to the date of Subsequent (present) Allotment*" for re-draw of lots of the left-over units, (intimating vide letter dated

22.12.2017 result of 2<sup>nd</sup> draw(re-draw) of flats held on 21.12.2017, raising demand vide letter dated 01.01.2018 and also at the time of executing flat buyer's agreement dated 24.01.2018 in annexure 03 of schedule of payment respectively. The complainant accepted the equalisation amount with open eyes and without any compulsion or pressure. Thus, the plea of complainant that he is not liable to pay equalization amount demanded by the respondent is untenable and that demand was raised as per the policy of 2013.

34. Now the second issue for consideration arises as to whether the complainant adhered to the schedule of the payment against the allotted unit or not. It is provided in the policy that 5 % of the total sale consideration is to be paid at the time of application, 20% at the time of allotment and 75% in six equated- six monthly installments spread over a period of 3 years. The complainant became an allottee of the allotted unit on 01.01.2018, on the basis of application dated 30.10.2017. Though he deposited 5 % of the total sale consideration at the time of booking amount as Rs. 1,23,475/- but he was required to deposit a sum of Rs. 4,93,900/- being 20% of the total sale consideration besides equalization amount of Rs. 2,77,514/- and taxes totalling to Rs. 8,63,984/- as per demand raised vide letter dated

01.01.2018 on or before 20.01.2018. But that amount was not paid as per the schedule, and which led to issuance of reminder for 4<sup>th</sup> installment of 12.50% of the total sale consideration. The same were admittedly paid on 15.02.2018 (Rs. 13,20,533/-), 26.02.2018 (Rs. 30,900/-) and 30.06.2018 (Rs. 5,84,960/-) respectively totalling to Rs. 20,74,685/- up to 30.06.2018 against the due amount of Rs. 20,00,298/-. Since the payments due against the allotted unit were not being made as per the schedule, so the same led to issuance of demands dated 01.07.2018 and 01.01.2019 for 5<sup>th</sup> and 6<sup>th</sup> installments of 12.50% each with a reminder dated 01.12.2018 and the amounts due against these installments were paid on 12.04.2019 (Rs. 1,82,000/-), 07.06.2019 (Rs. 37,486/-) and 15.07.2019 (Rs. 50,000/-) respectively. So, in this way, the complainant has admittedly paid a total amount of Rs. 23,44,171/- against the total sale consideration of Rs. 29,92,837/- up to 15.07.2019 with respondent against the allotted unit. After completion of the project, the respondent applied for its occupation certificate on 18.10.2019 and the same was received on 17.12.2019. The complainant was offered possession of the allotted unit vide letter dated 24.12.2019 subject to clearing dues, if any and after obtaining no dues certificate. Admittedly, at that time the

complainant has already approached the authority by way of complaint dated 16.09.2019. The complainant was admittedly issued reminders dated 14.03.2020 and 01.07.2020 respectively to pay the balance amount and to take possession of the allotted unit but without any positive results. Ultimately, the respondent issued letter dated 07.10.2020 raising demand of Rs. 6,48,666/- due as on 30.09.2020 against the complainant and also by way of public notice in the newspaper of "The Hindustan Times" of the even date but only a sum of Rs. 60,480/- was paid by the complainant to the respondent against amount of Rs. 6,48,666/- and that too under protest only on 21.10.2020 leading to cancellation of the allotted unit vide letter dated 30.12.2020 and allotting the same to another allottee namely Ms. Anita. It is contended by the complainant that though he paid a sum of Rs. 1,50,000/- by way of RTGS to the respondent and that amount was also received by it but returned the same on 18.12.2020 without any justification. So, cancellation of the unit when the allottee has paid 99% of the total consideration be declared illegal. But the plea advanced in this regard is devoid of merit. While discussing the schedule of payment under the policy of 2013, the complainant was required to make payments as per the timeline. But he did not adhere

to the committed dates of payment leading to issuance of various reminders even after receipt of occupation certificate and offer of possession of the allotted unit. Though he disputed his liability to pay equalization amount stating the said amendment is not retrospective but the said notification no. PF-27/15922 inserting clause no. 5(iii)(k), does not specifies its retrospective or prospective effect, hence, the same is as per the policy of 2013 amended from time to time by the State Government. Moreover, the factum regarding charge of such "equalization charges" was duly intimated through letter dated 22.12.2017, intimating result of re-draw of flats, while raising demand vide letter dated 01.01.2018 and also at the time of executing flat buyer's agreement dated 24.01.2018 in annexure 03 of schedule of payment. The allottee was required to make payments on time and the respondent was not required to issue reminders. When he failed in this regard, the respondent was left with no alternative but to follow the due procedure for cancellation of the allotted unit after issuance of final reminder and public notice in a daily newspaper. No doubt, the complainant has deposited more than 95% of the total sale consideration but whether the respondent builder was required to wait for a year for receipt of remaining sale consideration from the

allottee even after issuance of offer after obtaining occupation certificate from the competent authority on 17.12.2019 of possession.

The answer is in the negative in view of the facts detailed above.

35. In view of aforesaid circumstances, the authority directs the respondent to refund the entire amount paid by the complainant along with interest at the rate of 9.50% (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 from the date of cancellation of unit i.e. 30.12.2020 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

**I.III Impose penalty for breaching the terms and conditions of the allotment made by respondent, according to which the carpet and balcony areas be charged at @ Rs. 4,000/- per sq. ft. and Rs. 500 per sq. ft respectively.**

**I.IV Direct the respondent to provide detailed calculations, pertaining to super area, carpet area and common area along with deed of declaration.**

36. As per the payment plan and customer ledger at 77 and 78 of reply respectively, the respondent charged as per the rate prescribed under affordable policy of 2013 only and where the carpet area is subject to be charged at a rate of Rs.4,000/ per sq. ft. and balcony area is to be charged at a rate of Rs.500/- per sq. ft. As per records, all the

calculations with regards to carpet area, balcony area and other details are annexed on page no. 32 of additional documents submitted by the respondent. The matter regarding change in carpet area in the account statement dated 07.06.2019 and 21.10.2020 was clarified by the promoter present in person that this project was one of the initial project sanctioned by the Department on carpet area basis and at that time the internal walls area was excluded from the carpet area calculations. Later, the department corrected its mistake and without change of any drawings at the time of occupation certificate, the carpet area was mentioned as 620 square feet instead of 606 sq. feet. The balcony area was 91 sq. feet which was same in both the account statement. Moreover, the sale of unit is based on carpet area as per the Affordable Housing Policy, 2013 and hence, no details of super area can be provided.

**I.V Direct the respondent to refrain from giving effect to the unfair clauses unilaterally incorporated in the buyer agreement.**

37. A buyer's agreement is a vital document that defines rights and obligation of the parties. Thus, it is of utmost important that the agreement must be drafted fairly. Whereas only specific provisions are to be declared void on account of being arbitrary, unjust or unfair. In present case, the complainant has not mentioned any one-sided clause



particularly in his complaint that to be declared unfair and unilateral. Hence, no directions to this effect can be issued.

**J. Directions of the authority**


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):

- i. The respondent to refund the entire amount paid by the complainant along with interest at the rate of 9.50% (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 from the date of cancellation of unit i.e. 30.12.2020 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017.
- 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.

38. Complaint stands disposed of.

39. File be consigned to registry.

  
**(Vijay Kumar Goyal)**  
Member

  
**(Dr. K.K. Khandelwal)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 17.05.2022**