HARERA GURUGRAM

BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. :	**355 of 2022**
Date of filing :	**31.01.2022**
First date of hearing:	**23.02.2022**
Order reserved on :	**02.03.2023**
Order pronounced :	**01.08.2023**

	AVL 36A Social Welfare Society **R/o:** House no. 208, Block-9, AVL 36 Gurugram, Sector 36aA, Gurugram- 122004	**Complainant**
	Versus	
1.	AVL Infrastructure Private Limited **Regd. office:** Plot no.1, Green Park Main, New Delhi-110016	
2.	The Department of Town and Country Planning **Regd. office:** Huda Complex, Sector 14	
3.	Commissioner Municipal Corporation, Gurugram **Regd. office:** C1- Hero Honda Chowk Flyover, Info Technology Park, Sector 34	**Respondents**

CORAM:	
Shri Vijay Kumar Goyal	**Member**
Shri Ashok Sangwan	**Member**
Shri Sanjeev Kumar Arora	**Member**

APPEARANCE WHEN ARGUED:	
Shri. K.K. Kohli (Advocate)	Complainant
Shri. Gaurav Gupta (Advocate)	Respondent no. 01
None	Respondent no. 02
Shri Sachin Bhardwaj proxy counsel	Respondent no. 03

ORDER

1. The present complaint has been filed by the complainant-association 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) and 14 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 and adherence to lay out plans.

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	**Registered**	
		Vide registration no. 106 of 2017 dated 24.08.2017	
		Valid up to	31.12.2019
7.	Unit no.	1003 on 10th floor, block-13 (Category-A1)	

		[As per page no. 45 of the complaint]
8.	Building plan approvals	27.08.2014 [As per project details]
9.	Environment clearance	24.11.2015 [As per project details]
10.	Consent to establish granted by HSPCB on	02.01.2016
11.	Occupation certificate	17.12.2019 [As per project details]
12.	Completion certificate	10.11.2022 (As per site of DTCP)

B. Facts of the complaint

3. That the members of the complainant-association ("AVL-Society"), despite having taken the possession, binding themselves as per the said policy and having signed the sale deed, are being perpetually harassed by the AVL Infrastructure Private Limited. It has not only failed to adhere to the terms and conditions of the flat buyer's agreement ("FBA") but have also illegally extracted money from the members of the AVL-Society under many pretext details violating the policy laid by the respondent no. 2.

4. That the members of the AVL-Society being the allottees as per the third re-draw are filing this petition mainly for the issues such as equalization amount, entry/exit road into and from the complex -innocent owners cheated by the builder, changing the definition of carpet area and then charging of

extra amount for increase in the carpet area by 14 sf. ft. for 2 BHK homes at from 606 sq. ft. to 620 sq. ft. from time of booking to the time of sale deed with no communication at all in violation of the car parking policy for the affordable housing project, violating fire corridor norms risking the lives of thousands of residents and changing of the plan without the approval of the 2/3rd of the allottees as is required under Section 14 of Act, 2016 and the rules framed thereunder.

5. The complainant was made to believe at the time of filling up the application form being addendum-3 to application form. for the re-draw for the units in Affordable Housing Project namely "AVL36Gurgaon" Sector 36A, Gurgaon, pursuant to arising of vacancy(ies) in the project due to withdrawal/ surrender by applicant(s)/allottee (s) that as per the Affordable Housing Policy, the complainant has to pay an equalization amount (interest as per policy) @ 15% p.a. to rank pari-passu with the original applicants in the project for the period from 02.01.2016 i.e. the commencement date of the project till the date of subsequent allotment.

6. However, the emphasis as would be noticed is on "interest as per policy", a condition which does not find a mention at all in the entire Policy of 2013 or the amendments to the said Policy. This amounts to extraction of amount illegally and also a fit case to be referred to the Economic Offence Wing of the Haryana Police.

7. That a clarification was sought regarding schedule of payment with interest from subsequent allottees out of the re-draws, by AVL Society, from the office of Senior Town Planner to which, it was replied and the Directorate of Town & Country Planning, Haryana vide letter dated 30.01.2019 clarified that the dues may be demanded strictly in accordance with the provisions of Affordable Policy dated 19.08.2013. That since as per Affordable policy dated 19.08.2013, there is no clause to charge the overdue interest from the subsequent allottees of the project to rank pari-passu with the original allottees, it is therefore prayed that the AVL Infrastructure Pvt. Ltd. may be ordered to refund the amount collected towards the equalization amount with interest till date.

8. That as evident from the approved maps for the said project dated 25.08.2014, the entry and the exit point to and from the complex has been shown from a 12-meter-wide road by the respondent-builder. Subsequently, the respondent-builder submitted a map, while getting the registration done with the Authority, wherein keeping the entry/exit at the same point, an additional entry/exit point has been shown, through green belt, connecting to a Kacha road being the revenue rasta, which is at the back of the complex, absolutely 180 degrees opposite to the approval/ sanctioned entry/exit into and from the complex.

9. This therefore means that the respondent-builder has not been able to provide access to the society, from the main road, as was assured at the time of selling the apartment. It is a major issue which was brought to the notice of the respondent no. 2 but no action, has been taken by the respondent no. 2 against respondent-builder. As on the date of filing this complaint there is no access available from the point as approved by the respondent no. 2 and same is being informed to respondent-builder and its team members. Hence, by falsely ensuring a smooth and proper access for the entrance to the Society, which factually is not there on the ground, the members of the complainant society have been subjected to unethical/unfair trade practice as well as subjected to harassment. All such act and omissions on the part of the respondent has caused an immeasurable mental stress and agony to the members of the complainant-society apart from no entry/access to the complex. The builder therefore has misrepresented to the innocent buyers and is still misrepresenting resulting in the buyers being cheated by the builder, an offence punishable under Indian Penal Code.

10. That the office of Town & Country Planning, Government of Haryana being the respondent no. 2, also knew very well that because of the upcoming Dwarka Express Way, the exit of the complex on the service lane as per Town & Country Planning approvals, would not be possible as the land where the service lane was proposed by the builder does not belong to him. In spite of

having known the fact, respondent no. 2 still issued the occupation certificate to the license are left in the lurch and have been provided and exit/entry from back side of the complex through a "Kaccha Road" making the owners travel approx. 4-5 km through very congested village road before connecting the main road.

11. The complainants are the owners of different units and the details of the names of the owners, their unit no.s, their area at the time of booking and the area charged at the time of sale deed and the additional amount collected by the respondent-builder are also provided. It is submitted that the members of the complainant-society have accordingly been asked to pay an additional amount as per the statement. The definition of "carpet area" has been defined under the Affordable Housing Policy 2013. Hence, charging for an additional area is absolutely illegal and unjustified and against the law and the guidelines laid in the Affordable Housing Policy. If there is an increase in the area, the same has to be approved by the relevant authorities for getting the revised lay out plans sanctioned. The fact is that the revised plans were neither submit nor approved.

12. That due to such increase the members of the complainant-society has also suffered additional financial losses such as additional cost, additional taxes to both centre & state, government levies, additional stamp duty, additional maintenance to the society. In view of above, the additional amount collected

by the respondent-builder without any approvals from respondent no. 2 and without any intimation to the complainant-society, may kindly be refunded with interest.

13. That the Principal Secretary to Govt. Haryana, Town and Country Planning Department through its letter to DTCP vide Memo No. PF-27(VOL-III)/2020/2-TCP/41 dated: 04.01.2021 informed about the amendment in the Affordable Housing Policy-2013 dated 19.08.2013. In the present case, the respondent-builder is allotting car parking at his own whims and fancies without following the policy. Moreover, the colonizer as per the policy cannot provide car parking in the stilt area but unfortunately this is being done by the respondent-builder and despite of the repeated complaints on this issue to the office of DTCP as well as the CM Window, no action has been taken as yet against this sale of illegal car parking, by the respondent without following the norms. Car parking has been sold/allotted to an owner against the policy and similarly marking specific car numbers in the stilt area is also evidence to the fact that the car parking are being given in total violation of the car parking policy in the affordable housing projects. Our humble submission here, kindly give direction for fair allotment of these parking by draw system

14. That the National Building Code from time to time has been laying down clear safety rules more specifically for the fire safety and fire fighting vehicles and their movements.

15. That the width of means of access shall be 6m for residential occupancy and not less than 12m for other occupancies depending on the length of the means of access. In addition, the road shall not terminate in a dead-end. The respondent-builder, as evident from the two sets of maps has changed the entire parking from the outskirts of building to the inner lanes of the complex, which in fact is supposed to be fire corridor for the movement of the fire tenders, which needs a minimum width of 6 m with no obstructions at all. The said maps is the one which has been approved by the office of DTCP, Haryana and the one which has been submitted to this Authority at the time of registration of the project.

16. This change of parking from the outskirts not only has been done without the permission of the office of DTCP, Haryana but subsequent to this change, even the parking of two wheelers has been brought to the centre of the entire fire corridor area resulting in the fire corridor being reduced to approximately five meters.

17. The members of the complainant-association have been regularly complaining to the concerned authorities about the gross violation of the fire safety norms by the respondent no. 2 and this has been repeatedly brought

to the notice of the respondent no. 3 being the Commissioner, Municipal Commissioner, Gurugram, but unfortunately no action has been taken by it against the respondent-builder. It should have in fact taken immediate action against the respondent-builder as it is about safety and security of lives of the persons living in and around these buildings.

18. Their attitude fortifies apprehensions of corruption in selectively applying the fire norms and issuance of no objection certificate and using or not using the powers of disconnecting water and electricity to the buildings who did not comply with the fire safety norms. It is the duty of the respondent-builder and respondent no. 3 to clear the apprehensions that complainant is being victimized. Thus, immediate action may kindly be ordered to rectify the illegal changes made by it in the parking plan for the two wheelers and respondent no. 3 may be ordered to act against the respondent no. 3.

19. That as per Section 14(3), in case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time,

the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.

20. That the respondent-builder has not only changed the entire access ingress and egress but has also changed the entire two-wheeler parking and hence, may kindly be ordered to reinstate to the original parking plans as approved and original ingress and egress as approved.

21. The respondent-builder has reduced the size of front park on ground level. The park size is not existing as per the approved plan. The office of DTCP has also issued a show cause notice on 24.11.2022 to the respondent. However, it has not taken any corrective action till date as per our knowledge. The play area of small kids and also area for relaxation of senior citizens has been decreased due this reason.

22. That it is charging maintenance against the AHP-2013 policy, which is illegal and against the interest of Affordable Housing Project. The complainant humbly request this Court to kindly direct to the respondent to refund/reimburse the amount collected for maintenance and reserve fund with interest, which is against the AHP-2013 policy. It has been charging a maintenance amount of Rs 3.50 per sq. ft in addition to a reserve fund of Rs. 20,000 +7500 per house per flat.

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

23. The complainant has sought following relief(s):

(i) Direct the respondent no.1 to refund the equalization amount collected from the complainant, together with the interest from the date of such payment till the date of refund.

(ii) Direct the respondent no. 1 to refund the additional amount collected from the complainant, towards the carpet area together with the interest from the date of such payment till the date of refund.

(iii) Direct the respondent no. 1 to submit the correct sanctioned plan for registration with the Authority, based on the approval granted by the DTCP vide approval dated 26.08.2014.

(iv) Direct the respondent no. 1 to keep the two-wheeler parking as was approved by the DTCP vide approval dated 26.08.2014 ensuring free movement of the fire tender. However, if it wishes to make any alterations to the existing sanctioned plan the same may only be permitted, after following the rules and regulations laid down in Section 14 of the Act of 2016.

(v) Direct the respondent no. 1 to provide for the entry/exit to the complex as per the approved plans and as per the plans shown at the time of offer of the flats based on which the complainant agreed to be a part of the project and hence applied for the re draw, signed the flat buyer's agreement and executed the sale deed.

(vi) Direct the respondent no. 1 to rectify the changes made on account of the increased carpet area, changes in the parking policy, changes in the fire corridor route, changes in the parking of the two wheelers which are all violative of Section 14 of the Act of 2016 and to be restored as per the laws.

(vii) Direct the respondent no. 1 to pay exemplary costs for committing fraud to the complainant.

24. 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) & 14 of the Act to plead guilty or not to plead guilty.

25. Reply has been filed by respondent no. 3 i.e. Commissioner Municipal Corporation, Gurugram wherein stating that stating that the matter pertains to license granted where necessary actions are to be taken up by DTCP (respondent no. 2) and no action on behalf of respondent no. 3 is required. It is observed by the Authority that the reliefs sought by the complainant are not against respondent no. 03. Further, neither any written reply not any appearance has been made on behalf by respondent no. 2.

D. Reply by the respondent no. 1

26. The respondent has contested the complaint on the following grounds.

i. That the project "AVL36GURGAON", i.e. the project in question, developed by respondent no. 1 is a leading, 'State of the Art' and exemplary affordable project constructed under Government of Haryana's Affordable Housing Policy ("AHP-2013") at Gurugram, which is in excellent shape. Not only has the project been completed well before time, the project in fact stands out in terms of its quality, when compared to any such other project. Further, due to the exemplary quality of the project developed by it, all the units in the project, totalling 1480 in number have been completely sold out and as on date, there is not even a single unit available/vacant in the project.

ii. That the affordable housing has been constructed as per the approved/ sanctioned drawings by the Department of Town & Country Planning (DTCP).

Out of total 1,480 flats, more than 1,380 flats have been registered in the name of their respective flat-allottees. Approximately, 1,350 families are presently living in the project. There are more than 5,000 persons living happily and peacefully in the project. It is important to state that the building is a model project under the AHP-2013. The project is also most cost beneficent, when compared to any other project under AHP-2013. Even, the complainant, having duly satisfied itself, about the quality and all the amenities of the project decided to purchase the same and entered into a contract with open eyes. It is only now that the complainant having purchased a flat in this model project, and derived all benefits, thereof, is now, in a completely mala fide manner, has filed this present complaint to pressurise respondent no. 1 into acceding to its illegal demands.

iii. That the respondent no. 1 is a highly responsible, exemplary and law-abiding coloniser. No department/authority has ever pointed out any irregularity or violation of law on its part with regard to the development and construction of the present project. Not just all existing laws, but also specifically the AHP-2013 has never been violated by the colonizer ever. The project therefore has been developed in complete consonance with the AHP-2013 and all other applicable laws.

iv. That the complaint is liable to be dismissed with heavy costs as it has been improperly instituted with an ulterior motive. The complaint has been filed by an imposter /fraud entity, claiming to be an organisation. However, this so-called organisation is neither registered nor has any legal existence. It has been repeatedly held that any proceedings initiated by an entity, having no

legal existence or improper existence cannot be sustained at all and must be dismissed at the threshold.

v. That the complainant has tried to create a false impression that it is the actual residents' association of the project, which is aggrieved of respondent no. 1 and has approached the Authority. However, it is pertinent to mention here that the complainant has deliberately suppressed the fact that the main organisation, actually representing the interests of the apartment owners under the Haryana Apartment Ownership Act, 1983 and rules made thereunder, is actually "AVL36GURGAON APARTMENT OWNERS ASSOCIATION" and not this imposter complainant society.

vi. That it is a settled position of law that once there is a validly constituted and subsisting society formed for a project, under the Haryana Apartment Ownership Act, 1983 and Rules made thereunder, then any other ancillary bodies, misrepresenting and claiming themselves to the residents' association should not be permitted to do so and file any proceedings claiming to be the same, as they have no locus or legal validity/existence in the eyes of law.

vii. That the complainant has deliberately not disclosed as to who are members of this so-called organisation. In fact, they has not even placed on record any proper resolution or authority in favour of Mr. Ishwar Singh Yadav by any such so called aggrieved person(s) authorising him to institute the present proceedings on their behalf. The present complaint is liable to be dismissed on this ground alone.

viii. That the complainant deliberately keeps mentioning throughout the complaint, in a completely vague and non-specific manner that certain persons are purportedly aggrieved by the alleged actions of the respondent.

ix. That the complainant have deliberately failed to disclose the fact that almost all the issues raised in the present complaint have already been agitated before various authorities, that too, repeatedly and such complaints have been duly rejected by all of such authorities. Some of the instances where complaints were raised by the complainant and other such similar mischief makers, unsuccessfully against the developer are:

a. Reply sent by respondent no. 1 to the email received on 14.02.2020 from DTP Gurugram (AVL/AGHC/2020/159) that the grievances of certain persons pertained to external development infrastructure i.e. road connectivity, water supply line, electricity, storm water and sewage main line in the periphery of the project, and stated that the developer has completed the project before time and obtained the occupation certificate on 17.12.2019. Moreover, the development of external infrastructure /services i.e. water supply, electricity, sewage/storm main line and roads etc. in the periphery are under the ambit of Govt. of Haryana/competent authorities and completion of the same is entirely within the domain of the government authorities.

b. On 15.06.2020, (AVL/AGHC/2020/159-A), a reply was given by respondent no. 1 to the complaint ticket raised on 12.06.2020. Respondent no. 1 replied that the concern raised by certain persons with respect to external developmental infrastructure has been raised by the developer

company with various govt. authorities on multiple occasions with needful reminders and follow ups, right from the commencement of the project, but all such issues are within the exclusive domain of the authorities and not respondent no. 1. The respondent also duly mentioned that it had paid all the 'External Development Charges' (EDC) fully with the Govt., thus being fully compliant with all laws in this regard.

c. On 03.07.2020 (AVL/AGHC/2020/159-A1), a reply was given to the complaint ticket raised on 03.07.2020.The developer duly informed the authority that the project is approachable from the 5 karam wide revenue rasta, which is duly verified and certified by the competent department(s), while granting full occupation certificate to the project. In fact, the developer has no alternative other than to use the revenue rasta at the moment. It was pointed out that in the front side of the project, there is the central periphery road (CPR) which is 150 mtr. wide planned road in the approved master plan of Gurugram with 18-meter green belt and 12-meter service road on both side of CPR. Unfortunately, the Govt. did not acquire the land falling under 18-meter green belt and 12-meter service road and only balance central part there of (i.e. 90 meters) has been acquired by the State Govt. However, the State Govt. eventually left out 30-meter width falling on either side of CPR under service road and green belt, from the ambit of acquisition, citing lack of funds. The said central portion of land falling under 90 meters wide was thereafter handed over to NHAI by the State Govt. As a result, the service road, external development works in the

HARERA
GURUGRAM

periphery of the project has not been developed by the authorities despite having received the full EDC for this purpose.

d. The respondent-builder relied to various other tickets raised on various dates such as 03.07.2020, 08.07.2020, 31.07.2020, 09.09.2020, 16.11.2020, 08.03.2021, 29.04.2021, 21.05.2021, 21.06.2021, 05.07.2021 12.11.2021, 13.12.2021, 01.03.2022 and 03.03.2021.

e. On 08.12.2020 (AVL/AGHC/2020/159-A6), a reply was given by respondent no. 1to the complaint ticket raised on 08.12.2020.The Developer informed herein that the department has granted full occupation certificate of the whole project and all the requisite compliances have also been done, including depositing of whole EDC with the competent authority/department. All the internal development works/services of the project are complete, duly functional and the project is fully occupied. Thus, there is nothing pending on the part of the developer.

f. On 02.08.2021 (AVL/AGHC/2021/171), a reply was given by respondent no. 1 to the complaint ticket on CM portal raised on 05.07.2021.Respondent No. 1 reiterated all its previous requests to the authorities and mentioned that despite completing one of the best affordable projects, that too before time, and putting best efforts for sustaining the colony even in such a difficult time of Covid without availability of external infrastructure. Respondent no. 1 is being abused/ harassed/ misbehaved with/ and being made subject of false propaganda for no fault of its, only due to non-development/ availability

of external public health services/facilities, which is completely the responsibility of department of Government of Haryana and not the Developer.

x. This shows the systematic abuse, harassment and identical complaints being filed by such groups in connivance with each other, which respondent no. 1 is having to endure for such a long time. Even the authorities, being duly satisfied about the replies furnished by respondent no. 1, have been either rejecting these complaints or duly treating them as closed. Despite having made many of such above-mentioned attempts to harass the developer, the complainant has deliberately concealed the factum of dismissal of these complaints.

xi. That vide order dated 05.07.2021 of the CM Window Action Taken Report, it was duly held that with regard to the issue of supply of water, GMDA has to supply the water and it has already applied for this purpose. Further, while replying complaint ticket on CM Portal raised on 12.11.2021 vide letter dated 20.12.2021 (AVL/AGHC/2021/177), it was submitted to the authority highlighting the fact that 6-meter road for the fire tender movement is very much present and the demarcation of the two-wheeler parking has been done in complete consonance with the "As Built Drawings" duly, certified by DTCP before issuing the occupation certificate. Only after due and through inspection the fire department, it issued NOC for the project. If there had been any irregularity with the project, as alleged, the concerned departments would have never given any necessary permission, occupation certificate etc. to it. Moreover, the respondent also highlighted that there has been no-

alteration in the two-wheeler parking demarcation and the same has been done as per the 'As-Built Drawings'. On the contrary, majority of residents are having cars and bringing them forcefully inside the colony, parking here and there, including right at the 6-meter road for the fire-tender. It has requested the department to direct that the association should permit only two-wheelers of the residents at the earmarked places and restrict the entry of four wheelers within the colony, which is not in accordance with the policy. Pursuant thereto, vide order dated 21.12.2021 the relevant authority also directed the president RWA not to allow any car entry/car parking in the project, as the same is not permitted under the Affordable Housing Policy, 2013.

xii. That vide letter dated 27.04.2022, the respondent no. 1 even provided photos/videos showing availability of required turning radius for fire tender movement and also the photos/videos of cars being parked inside the colony.

xiii. That the respondent no. 1 wrote to DTP Gurugram w.r.t levy of equalization charges & marked a copy to Director General, Chandigarh Haryana on 27.12.2017 highlighting that advertisement for third re-draw for subsequent allottees had been given to fill vacancies which arose from surrender/withdrawal of successful allottee. Thereafter, it wrote a letter dated 22.01.2018 and 09.04.2018 bearing reference number AVL/AGHC/2017/094 to seek confirmation that the levy of equalization amount (interest as per policy) is a valid levy and is being charged as per AHP-2013. The department agreed to consider the matter and issued a necessary clarification after assessing the complete position. In fact, being the

bona fide entity that respondent no. 1 is, despite there being no stay on collection of applicable interest as per policy by any authority, it voluntarily agreed to submit an undertaking dated 02.05.2018, wherein it stated that till the time a necessary clarification is issued respondent no.1 will not charge any equalization levy (interest as per policy).

xiv. Subsequently, Vide Memo No. LC-3036-JE(BR)-2018/2715 dated 30.01.2019, the DTCP gave clarification to STP, Gurugram and marked a copy to respondent no. 1 that it can charge the amounts as per the policy. The issue was treated closed as no further communication/clarification was issued by the department.

xv. In any event, the issue regarding levy of 'equalisation amount/ interest as per policy' by respondent no. 1 is no longer res integra. The said position has already been decided in favour of respondent no. 1 by the Authority, in a recent proceeding involving respondent no. 1, wherein this Authority was pleased to hold that the levy of equalisation amount by respondent no. 1 for the present project is a completely legal and justified levy and was not violative of the AHP-2013 in any manner whatsoever.

xvi. It is necessary to mention that the advertisements/public notices clearly stipulated that the subsequent allottees would have to pay equalisation charges (interest as per policy). Even the application form where the complainant has signed on the agreed terms, mentions that such equalization charges (interest as per policy) need to be paid, in order to rank pari-passu with the original applicants. The schedule of payment applicable to the complainant categorically states that equalisation charges will be applicable

in case of subsequent allotment. More specifically, clause 4 of the flat allotment letter dated 04.08.2018, read with addendum-4 of the application form, issued in favour of the complainant, categorically states that the allottee, i.e., the complainant, will have to pay the equalisation charges. Therefore, the contention of the complainant that it is not liable to pay any equalisation charges is incorrect. The advertisement/public notice for the draw of lots, as well as the flat allotment letter and the application form duly filled by the complainant and signed, categorically state that equalisation charges(interest as per policy) are to be paid and it had expressly agreed for payment of the same.

xvii. The complainant was completely aware of the situation before buying the said flats, infact when the complainant bought the flats in 2018, the project was at an advanced stage of construction and complainant knew at that time that external development infrastructure including service road has not been developed in the periphery of the project, which was to be developed by concerned government departments/authorities only.

xviii. Additionally, it is important to mention that vide letter dated 06.06.2017 bearing reference No. AVL/AGHC/2017/078, it wrote to the Chief Administrator HUDA, Panchkula, highlighting the fact that the competent department has processed the award only for strip of land falling under 90-meter-wide central portion of 150 mtr. road/width of the Central Periphery Road (CPR), leaving both sides green belt and service road of CPR notified in Gurgaon-Manesar Urban Complex Master Plan. Whereas, the land acquisition notice published in the newspaper dated 10.08.2013 for acquiring land was

for 150 -meter-wide V2(e) type road including 18 mtr. wide green belt and 12 mtr. service road on both side (CPR). Moreover, it was specifically requested to the concerned authority/department to acquire and award the land falling under service road and green belt along with 90-meter-wide road of CPR. The said letter dated 06.06.2017 was forwarded vide memo no.: STP/PW/17/10749 DATED 21.07.2017 to DTP and Land Acquisition officer, Gurugram by the Zonal Administrator to examine respondent no. 1's representation & send a report on the same as early as possible.

xix. Vide letter memo no.: CTP/STP(S)/AM/194954 dated 27.09.2018, the said letter dated 06.09.2018 was sent by the Chief Town Planner HSVP, Panchkula to Administrator HSVP, Gurugram. Thereafter, vide memo dated 07.03.2019 bearing no. DTP(G)/2019/2163, the DTP acknowledged that the service road and green belt were not acquired.

xx. Thereafter, vide letter dated 04.04.2019 bearing no. AVL/AGHC/2019/115, it wrote to zonal administrator that the service road and green belt have not been acquired and the 90m road acquired has been handed over to NHAI. It even requested to connect the colony with the NHAI service road till the time sectoral service road is acquired and built by the competent authority/department.

xxi. Thereafter, multiple correspondences were exchanged between the authorities and respondent no. 1 till 10.03.2022. It is pertinent to mention that till date, respondent no. 1 continues to write to concerned authorities/departments for development of public health services, service road etc. in the periphery of the project and the same being a public property

cannot be developed by it, but has to be developed by the public authorities/departments.

xxii. Moreover, the complainant itself admits that the 12-meter service road does not belong to respondent no. 1. Infact, during the site visit and while signing the flat buyer agreement, the complainant was well aware that due to no fault of respondent no. 1, the development of external infrastructure including service road has been delayed.

xxiii. It is relevant to mention at the outset that vide Memo No. Misc-504/7/16/2006-2TCP dated 24.01.2011, Principal Secretary to Govt. Haryana, clarified to DTCP that minimum 4 Karam (22-feet) wide rasta linking to higher order road/public rasta is sufficient to grant licence to colonisers, as it would enable the colonizers to undertake development, as also the occupants would also be able to access the project till the sectoral service roads/ internal circulation roads are developed, since there is no time frame to develop sectoral service roads/ internal circulation roads of the notified master plan of the city. Moreover, respondent no. 1 got the OC only after completion of project as per sanctioned drawings & submitting the 'As-Built Drawings' in consonance with the office order dated 04.03.2014. The fact that the occupancy certificate has been granted to respondent no. 1 by the authorities/departments, shows that there was no irregularity in any document submitted by it.

xxiv. The issue regarding the allegation of change in carpet area in the present project of respondent no. 1 is also no longer res integra and has been duly

clarified recently by the Authority in case CR/6427/4325/2019 titled Charan Singh vs AVL Infrastructure Private Limited.

xxv. Another issue raised by the complainant is that it has violated the car parking and fire corridor norms for the affordable housing. Since the OC had been granted already on 17.12.2019 to respondent no. 1's project, therefore, the aforesaid notification which came subsequently on 04.01.2021 is not applicable to respondent no. 1 and/or its project.

xxvi. The complainant has categorically agreed to the two-wheeler parking of the respondent in the application form, FBA. Moreover, vide clause 17 (xviii) of approval/sanction letter of the project bearing memo. no. ZP-1003/AD(RA)/2014/20245 dated 27.08.2014 issued by DTCP, it was duly mentioned that the provision of parking means utilising the earmarked/designated area for parking as per already sanctioned drawings. It is submitted that it is the prerogative of the developer to plan/earmark the parking in the designated/approved area of parking, as long as the same is in accordance with the policy and all applicable laws.

xxvii. It is categorically made clear here that there has been no change whatsoever in the parking norms/provisions approved and/or provided in the project, as is sought to be falsely alleged by the complainant with a deliberate view to mislead the Authority. The developer has duly demarcated the fire corridor, which is 6 (six) mtr. wide on the site as per provisions proposed for fire safety and fire-fighting measures by competent fire department, which are also duly verified and certified by DTCP through the 'As Built Drawings' before granting occupation certificate. It is no fault of respondent no. 1, that the

residents, including the complainant illegally park their cars inside the colony, whereas the policy only allows for 2-wheeler parking.

xxviii. However, it may be clarified at this stage that, without prejudice to the contentions of respondent no. 1, that although the aforesaid submissions make it amply clear that even as per thepolicy, the allottees in the project are only entitled to two-wheeler parking at the moment, however, if the allottees want to take benefit of the amended parking provisions of AHP-2013, and approach respondent no. 1 formally, for making an application with the competent authorities for permission to implement the amended parking provisions of AHP-2013 in the colony, it would certainly consider the same within the parameters of law, for the collective goods of all.

xxix. Not just this, with respect to the above mentioned issues, it is important to note that on 11.11.2021 & ,13.12.2021, three identical complaints were filed before the CM window alleging due to change in earmarking of two wheelers parking sites from the approved/sanctioned parking plan, there is no space for the fire tender to move and in case of an untoward incident, there will be loss of life and property, purportedly due to the builder. Further, it was alleged that the plans submitted by the builder to RERA are different from the ones implemented actually which were replied by the respondent vide letter dated 20.12.2021 wherein submitting that there is no change in the fire tender route of the project. The earmarking and allocation of the parking sites has been done as per the 'As Built Drawings' submitted and duly certified by DTCP. Further, the fire NOC and occupancy certificate were only granted after thorough inspection at site in terms of 'As Built Drawings'. Only due to

forceful and unauthorized car parking by the residents/occupants, the route of the fire tender had been blocked and even till date continues to be blocked. Therefore, vide order dated 21.12.2021, the DTCP disposed of the complaint dated 11.11.2021 wherein RWA was directed to not allow any car parking in the affordable housing colony.

xxx. The complainant, at page 51 of the complaint has alleged that it has changed the entire parking from the outskirts of the building to the inner lanes of the complex. Moreover, it is further alleged that one map was approved by the DTCP but another map was submitted to the authority while obtaining the registration. It is submitted that the allegations are completely false and baseless. The Developer submitted the approved sanctioned drawings only for registration of project with the authority.

xxxi. The fact that there has been no change in any plan/drawings submitted by respondent no. 1 can be further ascertained from the fact that it was only after due deliberation and consideration of the 'As Built Drawings', which the authorities found completely in order, that the concerned authority/department granted the occupation certificate. Had there been any change in the plan/drawings, the OC would not have been granted. The grant of OC proves that the aforesaid allegations of the complainant are completely false.

xxxii. There has been no alteration in the two-wheeler demarcation at site as alleged by the complainant. Marking of the two-wheeler parking had been done as per the duly certified 'As Built Drawings' for the residents/ occupants. Only after due verification and inspection of the fire provisions

provided in the project, fire department had issued NOC for the project before DTCP issued occupation certificate.

xxxiii. Neither the flat buyer agreement, nor the allotment letter nor the policy states that any specific location in the project has to be given for the said two-wheeler parking. The policy merely provides that the developer has to earmark and allocate only one two-wheeler parking space of 0.80Mtr X 2.50 Mtr. anywhere in the project for the allottee. In consonance with this, respondent no. 1 has adequately provided one two-wheeler parking space of 0.80mtr x 2.50 mtr. for each allottee, as per the policy. Consequently, there has been no change in the parking space. The complainant seems to harbour some misconception that they are entitled to some specific location of parking under the policy, which is completely wrong and misleading and the same is not borne out from any document whatsoever, much less from the AHP-2013. Had there been any change in the sanctioned plans and/or as built drawings, the department itself would have never granted the OC. Furthermore, it is a settled position of law, that grant of valid OC, is itself a presumption under law that the building has been duly completed in accordance with approved/sanctioned drawings and specifications.

xxxiv. Further, as and when the 150 mtr. wide road (CPR) is built by the authorities (for which respondent no. 1 is repeatedly making pleas even as on date), till then the present 5 karam is being treated as the alternate access to the colony by the department itself. Thus, there is no change in the access also, as is sought to be falsely projected by the complainant as a violation of Section 14.

27. All other averments made in the complaint were denied in total.

28. 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 based on these undisputed documents.

29. 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 and have been perused.

E. Jurisdiction of the authority

30. 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

31. 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

32. 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.

33. 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.

F. Findings on objections raised by the respondent.

F.I Issue w.r.t maintainability of complaint on ground that the said complainant is not a registered association.

34. The respondent-builder raised an objection that the complainant has tried to create a false impression that it is the actual residents' association of the project, which is aggrieved. However, it is pertinent to mention here that the complainant has deliberately suppressed the fact that the main organisation, actually representing the interests of the apartment owners under the Haryana Apartment Ownership Act, 1983 and rules made thereunder, is actually "AVL36GURGAON APARTMENT OWNERS ASSOCIATION" and not this imposter complainant society. The complainant on the other hand submitted that it is a society duly registered under the Haryana Registration and Regulation of Societies Act, 2012 (Haryana Act No. 1 of 2012) and is

legally entitled to represent the allottees of the residential group housing colony project "AVL 36".

35. The Authority observes that the issues involved in the present complaint can either be raised by individual apartment owner or by an association of apartment owners. There are 1480 flats in the project and after receipt of OC, possession of the same has been handed over to them on different dates. However, the present complaint is filed by some of the apartment-owners (numbering 30 as per board resolution on page no. 70 of complaint). Now the issue arises before the Authority that whether an association or group of persons or even society can approach the Authority seeking relief(s) under the Act of 2016.

36. As per Section 31 of Act of 2016 which provides filing of complaint before Authority, enumerates "any aggrieved person" may file a complaint against the allottee/ promoter or agent before the Authority for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder. Precisely, any "aggrieved person" can file a complaint before the Authority against three categories- allottee/ promoter / agent. However, the term "person" has been further detailed under Section 2(zg) of Act. The relevant sections of the Act is reproduced hereunder: -

> ***31. Filing of complaints with the Authority or the adjudicating officer.***—*(1)* *Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder, against any promoter, allottee or real estate agent, as the case may be.*
> *Explanation.—For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.*

Section 2: Definitions

(zg) "Person" includes,—
(i) an individual;
(ii) a Hindu undivided family;
(iii) a company;
(iv) a firm under the Indian Partnership Act, 1932 (9 of 1932) or the Limited Liability Partnership Act, 2008 (6 of 2009), as the case may be;
(v) a competent authority;
(vi) an association of persons or a body of individuals whether incorporated or not;
(vii) a co-operative society registered under any law relating to co-operative societies;
(viii) any such other entity as the appropriate Government may, by notification, specify in this behalf;

37. The Authority observes that as per point (vi) & (vii) of Section2 (zg) which provides *"an association of persons or a body of individuals whether incorporated or not"* and *"a co-operative society registered under any law relating to co-operative societies;"* i.e. which means that the Act nowhere mandates that only a registered or corporated group of persons/association/society can falls under definition of "person". Therefore, the plea taken by respondent in this regard that the complaint is liable to be dismissed in ground of existence of officially registered association is devoid of merits and hence, not tenable.

G. Findings on the reliefs sought by the complainant

G.I Direct the respondent no.1 to refund the equalization amount collected from the complainant, together with the interest from the date of such payment till the date of refund.

a. The complainant submitted that at the time of filling up the application form for the re-draw for the units in Affordable Housing Project namely

"AVL36Gurgaon" Sector 36A, Gurgaon, pursuant to arising of vacancy (ies) in the project due to withdrawal/ surrender by applicant(s)/ allottee (s) that as per the Affordable Housing Policy, the complainant has to pay an equalization amount (interest as per policy) @ 15% p.a. to rank pari-passu with the original applicants in the project for the period from 02.01.2016 i.e. the commencement date of the project till the date of subsequent allotment. On the other hand, the respondent submitted that vide memo no. LC-3036-JE(BR)-2018/2715 dated 30.01.2019, the DTCP gave clarification to STP, Gurugram wherein providing that it can charge the amounts as per the policy.

38. The Authority observes that the aforesaid issue has been deliberated at length in complaint bearing no. ***CR/6427/2019 titled as Charan Singh Vs AVL Infrastructure Private Limited*** wherein upholding the levy of 15% interest by the name of equalization charges as per Clause 5(iii)(b) of Affordable Group Housing Policy,2013 and taking into account the fact that 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. The relevant para of the same is reproduced hereunder: -

> *"33.......... 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*

<u>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., 2nd 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</u> result of 2nd 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. <u>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</u>"

39. Keeping in view the finding of Authority in ***CR/6427/2019 titled as Charan Singh Vs AVL Infrastructure Private Limited,*** the respondent-builder is entitled to charge equalization charges. However, it is further clarified that the respondent cannot deny providing calculation of same to the respective complainant.

G.II Direct the respondent no. 1 to refund the additional amount collected from the complainant, towards the carpet area together with the interest from the date of such payment till the date of refund.

G.III Direct the respondent no. 1 to submit the correct sanctioned plan for registration with the Authority, based on the approval granted by the DTCP vide approval dated 26.08.2014.

40. The aforesaid reliefs are being taken together being inter-connected.
41. The complainant submitted that there is an increase in the area of the unit as it was at the time of booking and that of at the time of sale deed. They have been charged additional amount by the respondent-builder despite of the fact that the definition of "carpet area" has been defined under the Affordable Housing Policy 2013. Even the revised plans were neither submit nor approved and it is a move by the respondent-builder to collect an additional

amount from the innocent members of the society. The respondent on the other hand submitted that there has been no change in building plans and occupancy certificate were only granted after thorough inspection at site in terms of 'As Built Drawings'.

42. The Authority observes that on the face of it, one of the objective of the Policy was to provide supply of affordable housing with pre-defined rates, timelines and area. The relevant portion of the policy is reproduced hereunder:

> *2. ii) This policy is intended to encourage the planning and completion of „Group Housing Projects" wherein apartments of „pre-defined size" are made available at „pre-defined rates" within a „Targeted time-frame" as prescribed under the present policy to ensure increased supply of „Affordable Housing" in the urban housing market to the deserving beneficiaries.*
>
> *4. (ii)*
> *b. The carpet area of the apartments shall range from 28sqm to 60sqm in size.*
> *c. The term "carpet area" shall mean the net usable covered floor area bound **within the walls of the apartment but excluding the area covered by the walls and any balcony which is approved free-of-FAR**, but including the area forming part of kitchen, toilet, bathroom, store and built-in cupboard/ almirah/ shelf, which being usable covered area shall form part of the carpet area.*

Not only this, the policy also provides clear demarcation for area to be covered under purview of "carpet area" under Section 4(iii)(b) and (c) and the same is reproduced above. Further, it has been the submissions of the respondent-builder that there has been no change in the carpet area of the unit and made reference to order of Authority dated 17.05.2022 in ***complaint bearing no.6427 of 2019 titled as Charan Singh Vs AVL Infrastructure Private Limited.*** The Authority observes that as per the submission of

respondent, that this project was one of the initial projects 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, resulting in such increase. Though there has been no actual increase in the carpet area of the unit. The Authority made reference to definition of carpet area as defined under Section 2(k) of Act of 2016, which clearly provides that the same shall include internal partition walls. The relevant portion of the Act is reproduced hereunder: -

> *2 (k) "carpet area" means the net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area,* ***but includes the area covered by the internal partition walls of the apartment.***

Thus, the plea of the respondent is valid. Furthermore, the occupation certificate and completion certificate for the said project has already been obtained on 17.12.2019 and 10.11.2022 respectively. An occupation certificate has been granted after taking into various aspects such as building plans, etc. Thus, at this stage where the OC and CC of the project has already been obtained from the competent Authority, it is safe to conclude that the project has been constructed as per approved buildings plan. Thus, no finding to this effect.

G.IV Direct the respondent no. 1 to keep the two-wheeler parking as was approved by the DTCP vide approval dated 26.08.2014 ensuring free movement of the fire tender. However, if it wishes to make any alterations to

the existing sanctioned plan the same may only be permitted, after following the rules and regulations laid down in Section 14 of the Act of 2016.

G.VI Direct the respondent no. 1 to rectify the changes made on account of the increased carpet area, changes in the parking policy, changes in the fire corridor route, changes in the parking of the two wheelers which are all violative of Section 14 of the Act of 2016 and to be restored as per the laws.

43. Since issues No. iv and vi are inter-connected, so the same are being taken up together.

44. That complainant submitted that Director, Town and Country Planning Department, Haryana, Chandigarh vide Memo No. PF-27(VOL-III)/2020/2-TCP/41 dated: 04.01.2021 informed about the amendment in the Affordable Housing Policy-2013 dated 19.08.2013 and as per same the respondent-builder is allotting car parking at his own whims and fancies without following the policy. The complainant further alleged that the colonizer as per the policy cannot provide car parking in the stilt area but unfortunately this is being done by the respondent-builder and despite of the repeated complaints on this issue to the office of District Town & Country Planning, Gurugram as well as the CM Window, no action has been taken as yet against this sale of illegal car parking, by the it without following the norms. Further, as per National Building Code, the width of means of access shall be 6m for residential occupancy and not less than 12m for other occupancies depending on the length of the means of access. In addition, the road shall not terminate in a dead-end. This change of parking from the outskirts not only has been done without the permission of the office of DTCP, Haryana but subsequent to this change, even the parking of two wheelers has been brought to the centre of the entire fire corridor area resulting in the fire

corridor being reduced to approximately five meters. The members of the complainant-association have been regularly complaining to the concerned authorities about the gross violation of the fire safety norms by the respondent no. 2 and this has been repeatedly brought to the notice of the respondent no. 3 being the Commissioner, Municipal Commissioner, Gurugram, but unfortunately no action has been taken against the respondent-builder, by it

45. The respondent-builder on the other hand submitted that the developer has duly demarcated the fire corridor, which is 6 (six) mtr. wide on the site as per provisions proposed for fire safety and fire-fighting measures by competent fire department, which are also duly verified and certified by DTCP through the 'As Built Drawings' before granting occupation certificate. Further, the policy only allows for 2-wheeler parking. The complainant and other allottees of the project are forcible parking the cars instead of two wheelers.

46. The Authority observes that the Policy of 2013 in its clause 4(iii) provides for availability of two-wheelers parking and the same is reproduced hereunder:

4(iii)

a. The Parking space shall be provided at the rate of half Equivalent Car Space (ECS) for each dwelling unit.
b. Only one two-wheeler parking site shall be earmarked for each flat, which shall be allotted only to the flat owners. The Parking bay of the two wheelers shall be 0.8mx2.5m unless otherwise specified in the zoning plan.
c. No car parking shall be allotted to any apartment owner in such projects.
d. The balance available parking space, if any, beyond the allocated two wheeler parking sites, can be earmarked as free visitor car parking space.
e. Additional parking norms and parameters, if any, can be specified in the zoning plan.

The aforesaid provision of Policy makes it very clear that no car parking shall be allotted to any of the owner i.e. successful allottees and balance available parking space, if any, beyond the allocated two-wheeler parking sites, can be earmarked as free visitor car parking space. Further, the said issue with regards to two-wheelers parking has already been dealt by DTCP vide its order dated 21.12.2021 wherein directing the association/RWA to not to allow any car entry/car parking in the affordable group housing colony. Further, the fact cannot be ignored that the occupation certificate has already been obtained by the competent authority on 17.12.2019 which is only granted when the construction has been made as per the approved building plans under the Policy and after grant of NOC from fire department. Therefore, in view of matrix of present complaint, the Authority directs respondent no. 1 as well the RWA to adhere to the parking norms as provided under clause 4(iii) of Affordable Housing Policy, 2013.

47. The complainant has sought the relief under Section 14 of Act of 2016, the ***Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.,*** has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and 72. Therefore, for claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainant may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

G.V Direct the respondent no. 1 to provide for the entry/exit to the complex as per the approved plans and as per the plans shown at the time of offer of the flats based on which the complainants agreed to be a part of the project and hence applied for the re draw, signed the flat buyer's agreement and executed the sale deed.

48. The complainant submitted that as per the approval dated 25.08.2014, the entry and the exit point to and from the complex has been shown from a 12-meter-wide road by the respondent-builder. Further, in the layout plan of the colony, as annexed with the flat buyer agreement, the entry/exit has been shown at the same point as in the sanctioned plan. Unfortunately, this has been the only entry/exit available to the residents and the one being shown as the earlier approved/sanctioned entry/exit is not available to the residents at all as it has no access to the road outside. It is a major issue which was brought to the notice of the respondent no. 2 but no action, has been taken by the respondent no. 2 against respondent-builder. As on the date of filing this complaint there is no access available from the point as approved by the respondent no. 2 and same is being informed to respondent-builder and its team members. The builder therefore has misrepresented to the innocent buyers and is still misrepresenting resulting in the buyers being cheated by the builder, an offence punishable under Indian Penal Code.

49. The respondent submitted that the they were completely aware of the situation before buying the said flats, the project was at an advanced stage of construction and complainant knew at that time that external development infrastructure including service road has not been developed in the periphery of the project, which was to be developed by concerned government departments/authorities only. Yet, they voluntarily chose to enter into flat buyer agreements respectively which are binding on them. Additionally, it is important to mention that vide letter dated 06.06.2017 bearing reference No. AVL/AGHC/2017/078, it wrote to the Chief Administrator HUDA, Panchkula,

highlighting the fact that the competent department has processed the award only for strip of land falling under 90-meter-wide central portion of 150 mtr. road/width of the Central Periphery Road (CPR), leaving both sides green belt and service road of CPR notified in Gurgaon-Manesar Urban Complex Master Plan. Whereas, the land acquisition notice published in the newspaper dated 10.08.2013 for acquiring land was for 150 -meter-wide V2(e) type road including 18 mtr. wide green belt and 12 mtr. service road on both side (CPR). It has also highlighted that requisite external development charges (EDC) which were deposited with the Government and if service road is not made by the department, it would lead to lot of legal issues. Moreover, it was specifically requested to the concerned authority/department to acquire and award the land falling under service road and green belt along with 90-meter-wide road of CPR. The said letter dated 06.06.2017 was forwarded vide memo no.: STP/PW/17/10749 DATED 21.07.2017 to DTP and Land Acquisition officer, Gurugram by the Zonal Administrator to examine respondent no. 1's representation & send a report on the same as early as possible. Thereafter, multiple correspondences were exchanged between the authorities and respondent no. 1 till 10.03.2022. It is pertinent to mention that till date, respondent no. 1 continues to write to concerned authorities/departments for development of public health services, service road etc. in the periphery of the project and the same being a public property cannot be developed by it, but has to be developed by the public authorities/departments.

50. The Authority observes that there has been scenario where the respondent seeks exemption for reason of delay on account to lack of proper services such as road provided by the governmental services. Further, the fact that the completion certificate for any project has been given keeping in mind that the project is complete in all aspect including connectivity to roads as per the

approved plans. Moreover, in the instant matter, the occupation certificate and completion certificate of the project has already been obtained. Such certificates are granted by the competent authorities after assuring the compliance of many parameters including but not limited to construction as per the approved building plans. Thus, at this stage, where the similar issue has already been taken before CM Window and OC & CC of the project has already been obtained, no direction to this effect.

G.VII Direct the respondent no. 1 to pay exemplary costs for committing fraud to the complainant

51. The complainant is seeking relief w.r.t. compensation in the above-mentioned reliefs. ***Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.,*** has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, for claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainant may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

H. Directions of the authority

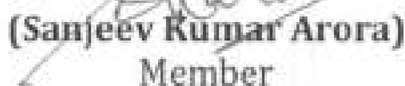
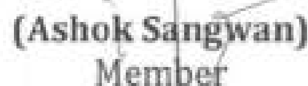
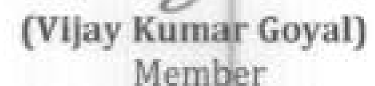
52. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

a. The respondent no. 1 and RWA are directed to not to allow car parking and allotment of car parking in the said project as per the provision of clause 4(iii) of Affordable Housing Policy, 2013. Further, if any revision in parking plan is required, the RWA of the complex may approach DGTCP being the competent Authority before any allocation in parking is affected/altered.

b. The issue of free maintenance of the colony in terms of section 4(v) of Affordable Housing Policy stands referred to the Government by the authority and clarification would be issued by DTCP, Haryana as and when the approval is received from the Government and hence, the issue of maintenance charges of the colony would be regulated in terms of the orders of the Government.

c. Keeping in view the factual and legal position that occupation as well as completion certificate of project concerned has been obtained on 17.12.2019 and 10.11.2022 respectively; no directions are being issued w.r.t other reliefs to be governed by other departments/competent Authorities.

53. Complaint stands disposed of.
54. File be consigned to registry.

(Sanjeev Kumar Arora) Member	(Ashok Sangwan) Member	(Vijay Kumar Goyal) Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 01.08.2023