BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY, MUMBAI

Virtual Hearing held through video conference as per MahaRERA Circular No.: 27/2020

Complaint No. CC005000000064485

ASHOK BABAJI SABLE **...COMPLAINANT**

Vs

GODREJ SKYLINE DEVELOPERS PVT LTD **...RESPONDENT**

MahaRERA Project Registration No. P52100023129

O R D E R
(13.12.2024)
(*Date of Hearing:02.05.2024)*

Coram: Shri. Ravindra Deshpande, Hon'ble Member II, MahaRERA

Adv. Nisha Kulkarni for Complainant
Adv. Prabhakar Narwane for Respondent

1. The Complainant has filed the present complaint on 08.08.2020 seeking direction against the Respondent to refund the part consideration amount of **Rs. 2,02,070/- (Rupees Two Lakhs Two Thousand and Seventy Only)** paid by the Complainant along with interest at the rate of 24% from the date of payment till the date of realization, to pay compensation of Rs. 50,000/- towards mental agony and physical stress which they have suffered due to fraudulent conduct of Respondent, to pay the legal expenses to the tune of Rs.1,50,000/- which they have incurred in filing the complaint in respect of the booking of the flat bearing No. 1205 on the 12th floor in the Tower No. A2 admeasuring carpet area of 587 Sq. Ft. (hereinafter referred to as the **"said flat"**), in the Respondent's registered project known as "Forest Grove at Godrej Park Greens" bearing MahaRERA registration No. **P52100023129** (hereinafter referred to as the **"said project"**).
2. The brief facts put forth by the of the Complainant in his rejoinder are as follows:

3. The Complainant decided to purchase a residential flat from the said project and subsequently booked the said flat in the name of the Complainant for a mutually agreed consideration of **Rs.42,66,775/- (Rupees Forty Two Lakhs Sixty Six Thousand Seven Hundred and Seventy Five Only**. Out of which, as per the mutual understanding, the Complainant paid an amount of Rs. 2,02,070/- (Rupees Two Lakhs Two Thousand and Seventy Only) as a booking amount at the initial stage. The payment made by the Complainant is admitted and accepted by the Respondent. However, after the payment of the initial booking amount, the Complainant started suffering through financial problems and due to the insecurity of the income source, the Complainant thought to withdraw from the said project.
4. After discussing his intention with the representative of the Respondent, the representative of the Respondent verbally allowed to return the entire booking amount. As per the said discussion, the Complainant sent an email of cancellation of the said flat to the Respondent in the month of April 2020 i.e. the exact period of the COVID-19 pandemic. However, the representative of the Respondent in reply to the said email, accepted the request for cancellation of the said flat and sent one cancellation form which was to be signed by the Complainant. In this cancellation form, there was no reference for a refund and on the contrary, it was clearly stated that the entire booking amount will be forfeited. Therefore, the Complainant did not sign the said cancellation form and on 25.07.2020 sent a legal notice to the Respondent seeking refund of the amount of Rs. 2,02,070/-, which was replied by the Respondent vide its's Advocate's reply dated 10.09.2020 denying the request of the refund of the Complainant. Being aggrieved and dissatisfied with the fraudulent conduct of the Respondent, the Complainant has approached this Authority.
5. It is submitted by the Complainant that while filling and signing the booking form, the Complainant was helpless and did not have any other option but to sign the said form to proceed with the said draft of booking form and that the terms and conditions of the said booking form were completely one sided, biased and therefore denied by the Complainant subsequently.
6. The Respondent has uploaded it's reply and contested the present complaint. The brief defense of the Respondent is as under: -

7. The Complainant has failed to justify his case with relevant facts and has sought improper reliefs from the Authority without making a valid case against the Respondent, hence, the complaint is liable to be dismissed and that this complaint is not maintainable on the ground that the Complainant has failed to prove his alleged financial difficulty on the basis of which the Complainant is claiming refund.
8. The Respondent has lawfully adopted the process of forfeiture as per the agreed terms and conditions of the application form dated 19.01.2020 signed by the Complainant after being fully satisfied with the terms and conditions of the Application form and that the Complainant has only paid a sum of Rs. 2,02,070/- and willfully neglected to make any further payments. It is submitted by the Respondent that in accordance with the process and agreed terms and conditions of the booking, the Respondent had issued the allotment letter dated 30.01.2020 and by virtue of para [v] of the allotment letter, the Respondent is entitled to forfeit the booking amount in case of cancellation of the allotment of the said flat and same was agreed by the Complainant by accepting the Allotment letter.
9. On 12.03.2020, the Complainant got loan sanction letter from State Bank of India and hence, the question of financial difficulty regarding the payment of the sale consideration against the said flat does not arise and the Complainant has not come before this Hon'ble Authority with clean hands.
10. On account of non-payment of the sale consideration as per payment plan, the Respondent sent an interest letter dated 30.03.2020 to the Complainant, which was never complied with by the Complainant. Subsequently, the Complainant sent an email dated 21.04.2020 to the Respondent and requested the Respondent to cancel the said flat in the said project due to ongoing pandemic COVID- 19. The said cancellation request was accepted, and the Cancellation request form dated 24.04.2020 was signed by the Complainant. As per the agreed terms and conditions of the Application form, the booking of the said flat was cancelled at the instance of the Complainant and without any default on the part of the Respondent and accordingly, as per clause (m) read with clause (k) of the Application form, in the event of withdrawal/ cancellation of the Application Form by the Complainant for reasons not attributable to the Respondent's default, the Respondent was entitled to forfeit Rs.2,02,070/- (Rupees Two Lakhs Two Thousand and Seventy Only) towards the cancellation of the booking of the

said flat. Accordingly, the said amount was forfeited by the Respondent. The Complainant has filed his written submissions wherein, the Complainant has repeated and reiterated the contents of the rejoinder filed by him to the reply/written statement filed by the Respondent and requested to allow the complaint.

11. The Respondent has filed Written Submissions before this Authority wherein the Respondent repeated and reiterated the contents of it's reply filed in reply to the Complaint and stated that the Complainant had booked the said flat for a total consideration of Rs. 39,22,940/-.

12. This complaint was finally heard on 02.05.2024 merits. At the time of hearing, it was inter alia submitted by the Complainant that due to COVID – 19, the salary of the Complainant was deducted. Therefore, he could not proceed further with the agreement for sale. On account of which, the Complainant initiated cancellation procedure of booking through email, however, the Respondent refused to return a single penny, which led the Complainant to filing the present complaint. The Respondent submitted that the object of the said Act is for the growth of the real estate sector and when allottee books a flat and cancels the booking himself, Promotor is not in fault for cancellation. It is also submitted by the Respondent that a booking form has the status of a contract and as per the Order 35/2022 of MahaRERA if an allottee cancels a booking within 60 days from the booking then 2% amount can be forfeited by the promoter. It was also submitted by the Respondent that in the present case, the allottee has cancelled the booking on 24.04.2020, therefore, this regulation does not apply to this case. It was further submitted that in the allotment letter, there is a clause with regards to forfeiture of 20% of the booking amount and the Respondent has forfeited only 5% of the booking amount. Both the parties were given liberty to file the written submissions, if any, on or before 15.05.2024.

13. Both the parties had already uploaded their written submissions on the record of MahaRERA on 13.03.2024 and on 19.04.2024, respectively i.e. before the last date of hearing and pursuant to the aforesaid direction issued by MahaRERA on 08.05.2024, the Respondent filed additional written submissions for incorporating additional judicial precedents and the same is taken on record. It was submitted in the additional

written submissions that the Booking Form dated 19.01.2020 which was duly signed by the Complainant in pursuance of which the Allotment Letter dated 30.01.2020 was issued by the Respondent and the same is binding contract between the parties, till the execution and entering into the Agreement for Sale. Thus, by virtue of clauses mentioned in the Booking Form and Allotment Letter, the Respondent was permitted to forfeit the booking amount paid by the Complainant.

14. Considering the contentions of the parties to the complaint, following points arise for my determination. My findings thereon recorded as under for the reasons stated below:

REASONS

No.	**Points**	**Findings**
1	Whether the complainant is entitled to a refund of the booking amount?	Affirmative
2	What Order?	As per Final order

Reasons as to point nos. 1 and 2

15. It is the case of the Complainant that he had booked the said flat in the Respondent's project by paying booking amount of Rs. 2,02,070/- **(**Rupees Two Lakhs Two Thousand and Seventy Only). However, after the payment of the initial booking amount, the Complainant started suffering through financial problems and due to the insecurity of the income source, the Complainant thought to withdraw from the said project. After discussing this intention with the representative of the Respondent, the representative of the Respondent verbally allowed to return the entire booking amount. As per the said discussion, the Complainant sent an email of cancellation of the said flat to the Respondent in the month of April 2020 i.e. the exact period of the COVID-19 pandemic.

16. The representative of the Respondent, in reply to the said email, accepted the request for cancellation of the said flat and sent one cancellation form which was to be signed by the Complainant. In this cancellation form, there was no reference for a refund and on the contrary, it was clearly stated that the entire booking amount will be forfeited.

17. The Respondent on the other hand has refuted the aforesaid contentions raised by the Complainant and stated that the Complainant has failed to prove his alleged financial difficulty on the basis of which the Complainant is claiming refund and that the

Respondent has lawfully adopted the process of forfeiture as per the agreed terms and conditions of the application form dated 19.01.2020 signed by the Complainant after being fully satisfied with the terms and conditions of the Application Form. It is further stated by the Respondent that the Complainant has only paid a sum of Rs. 2,02,070/- (Rupees Two Lakhs Two Thousand and Seventy Only) and willfully neglected to make any further payments. The Respondent in accordance with the process and agreed terms and conditions of the booking, had issued the allotment letter dated 30.01.2020 and by virtue of paragraph [v] of the allotment letter, the Respondent is entitled to forfeit the booking amount in case of cancellation of allotment of the said flat by the Complainant. It has been further submitted by the Respondent that on 12.03.2020, the Complainant got loan sanction letter from the State Bank of India, and hence the question of financial difficulty regarding the payment of the sale consideration against the said flat does not arise. It is the contention of the Respondent that on account of non-payment of the sale consideration as per payment plan, the Respondent sent an interest letter dated 30.03.2020 to the Complainant, which was never complied with by the Complainant. Subsequently, the Complainant sent an email dated 21.04.2020 to the Respondent and requested the Respondent to cancel the said flat in the said project due to ongoing pandemic COVID- 19. The cancellation request was accepted, and the Cancellation request form dated 24.04.2020 was signed by the Complainant. As per the agreed terms and conditions of the Application form, the booking of the said flat was cancelled at the instance of the Complainant and without any default on the part of the Respondent and accordingly, as per clause (m) read with clause (k) of the Application form, in the event of withdrawal/ cancellation of the Application Form by the Complainant for reasons not attributable to the Respondent's default, the Respondent was entitled to forfeit Rs.2,02,070/-(Rupees Two Lakhs Two Thousand and Seventy Only) towards the cancellation of the booking of the said flat. In view of the above submissions, the Respondent requested to dismiss the present complaint.

18. It is seen that the Complainant has filed the present complaint for refund of the booking amount paid to the Respondent towards consideration of the suit flat without mentioning the Section of the Real Estate (Regulations and Development) Act, 2016 under which he has filed the present complaint. **Section 12, 18 and 19(4) of the Real Estate (Regulations and Development) Act, 2016** deals with the refund of the amount.

Section 12 says that if any person makes deposit on the basis of the information contained in the notice advertisement or prospectus etc. and sustains loss by reason of incorrect, false statement included therein, he shall be compensated by the promoter and if he intends to withdraw from the project, he shall be returned his entire investment alongwith interest at such rate as may be prescribed and the compensation in the manner provided under this Act. **Section 18 and 19(4)** say that if the promoter fails to complete or is unable to give possession of the apartment as per terms of agreement for sale, duly completed by the date, he is liable on demand to allottee in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot or building as the case may be with interest as such rate as may be prescribed in this behalf including compensation in the manner provided under this Act.

19. In the case at hand, it is seen that the Respondent while terminating the booking of the Complainant, forfeited the entire amount paid by the Complainant. The Respondent has claimed that as per booking application form the Respondent is entitled to forfeit 20% of the total consideration amount paid towards the earnest money. It is not in dispute that parties have executed the document i.e. application form, allotment letter and cancellation letter forwarded by the Respondent to the Complainant. The booking form uploaded by the Respondent on the website of MahaRERA is not legible. The Complainant has not disputed regarding signing of the booking form. By signing the booking form, the Complainant has shown his intention to book the said flat in the Respondent's project. It is necessary to mention here that on the perusal of the allotment letter, it is observed that the terms of the said allotment letter are one sided which can be evidenced from clause (v) of the allotment letter. The said clause says that if the Respondent does not receive the duly signed allotment letter within 7 days from the date of the said allotment letter, it was to be deemed that the allottee had accepted the allotment of the said flat on the terms and conditions specified therein. This cannot be a valid contract if the consent on the same is on account of coercion and the clause (v) of the allotment letter is nothing but a good example of the same. The advocate of the Complainant in this regard placed reliance upon Judgement passed by Hon'ble Supreme Court in the case of **Pioneer Urban Land and Infrastructure Vs. Govind Raghavan Civil Appeal No. 12238 of 2018 dated 02.04.2019** observed that

court will not enforce an unreasonable and unfair contract where contracting parties are not equal in bargaining power and where a man has no choice or rather meaningful choice, but to give his assent to a contract or to sign on the dotted lines in a prescribed or standard form as a part of the contract, however, unfair, unreasonable and uncontainable a clause in that contract or form or rule may be.

20. The Respondent in order to support his contention that Respondent having right to forfeit earnest money has relied upon the case of **H.O.D.A Vs. Keval prishan Goel reported in 1996 4 SCC 249.** The Hon'ble Supreme Court has observed that

> *A combined reading of the aforesaid these clauses of letter of allotment together with the advertisement issued indicates that the scheme of allotment was that an applicant could make an application alongwith 10% of the tentative price of the land as earnest deposit. On receipt of the allotment, he is required to indicate either his letter of acceptance or letter of refusal within 30 days from the date of receipt of the allotment letter. In case of acceptance, he would be further required to make an additional deposit which deposit together with the earnest money already deposited would constitute 25% of the total tentative price. If he fails to accept the allotment within 30 days from the date of receipt of the letter, then the authority is entitled to forfeit the earnest money. Further, the balance amount could be deposited in installments.* ***Thus under the allotment in question an allottee was required to deposit 10% of the tentative price of the land as earnest money which is given to bind the contract and the said earnest money could be forfeited by the Authority in case the allottee does not communicate the letter of refusal within 30 days from the date of receipt of the allotment letter.***

21. The next question that arises for consideration is that, where the allottee accepts the allotment and indicates that same within the stipulated period and makes additional deposits on installment basis and thereafter intimates the Authority that he will not be in a position to pay up the balance amount and makes a request for refund of he money deposited, which of the authority would be justified in forfeiting the earnest money which had been deposited alongwith the application form. The answer to this question depends upon the basic concept of 'earnest'. In the case of **Shri Hanumant Cotton Mills Vs. Tata Aircraft Ltd. (1969) 3 SCCS22,** the Supreme Court has laid down the following regarding 'earnest'. (SCCP31, para 21)

    a. It must be given at the moment at which the contract is concluded.
    b. It represents a guarantee that the contract will be fulfilled or in other words 'earnest' is given to bind the contract;
    c. It is a part of the purchase price when the transaction is carried out;

d. If it is forfeited when the transaction falls through by reason of the default or failure of the purchaser(s) unless there is anything to the contrary in the terms of the contract, on default committed by the buyer, the seller is entitled to forfeit the earnest".

This being the legal position and the allottee having accepted the allotment and having made some payment on installment basis then made the request to surrender the land, has committed default on his part and therefore, the Competent Authority would be fully justified in forfeiting the earnest money which had been deposited and not the 10% of the amount deposited as held by the Hon'ble High Court. The High Court was totally in error in issuing the direction in question on the ground that the respondents were not in a position to deliver the possession of the land to the allottee. It may be stated that in the letter of allotment, no period was stipulated within which the possession of the land was stipulated within which the possession of the land was to be delivered. The land in question was required to be developed and then to be delivered and in the absence of any period in the letter of allotment, it was required to be delivered within reasonable period in the facts and circumstances it cannot be said that the reasonability had lapsed particularly when the allottee had not paid up the entire installment due and merely paid a part thereof.

22. In my opinion, the facts of the above reported case and the facts of the case at hand are not identical because in clause (c.) of the application form, which is quoted by the Respondent. In its reply, it is mentioned that the term earnest money has been defined as 20% of the total sale consideration. Admittedly, at the time of booking the said flat, the Respondent has accepted only an amount of Rs.2,02,070/- (Rupees Two Lakhs Two Thousand and Seventy Only) which does not qualify to be the 20% of the total consideration amount. Hence, the amount paid by the Complainant is not termed as Earnest Money.

23. The advocate of the Respondent has also relied upon the Judgement of Supreme Court **Satish Batra Vs. Sudhir Rawal (2013) SCC 345.** In the said case, Hon'ble Supreme Court has observed that

"The Law is therefore clear that to justify the forfeiture of advance money being part of the "earnest money" the terms of the contract should be clear and explicit. Earnest money is

paid or given at the time when the contract is entered into and as a pledge for its due performance by the depositor to be forfeited in case of non-performance by the depositor. There can be a converse situation also that if the seller fails to perform the contract the purchaser can also get double the amount, if it is so stipulated. It is also the law that part payment of purchase price cannot be forfeited unless it is guarantee for the due performance of the contract. In other words, if the payment is made only towards part payment of consideration and not intended as earnest money then the forfeiture clause will not apply."

24. I have to say with due respect to the ratio of above authority that the ratio of above authority is not applicable as facts are non-identical. In the case at hand, no contract has been entered between the parties.

25. The advocate of the Respondent has relied upon the Judgement of National Consumer Dispute Redressal in the case of **M/s. Ocus Skyscrapers Realty Ltd. Vs. Kirti Bajpai dated 13.03.2020.** In the said case, the National Consumer Disputes Redressal has observed that :

The above referred principles were reiterated in Satish Batra Vs. Sudhir Rawal (2013) 1 SCC 345. It would thus be seen that only that amount would constitute earnest money which is paid ***at the time the contract is concluded between the parties.*** *Any payment made after the contract is concluded, cannot be said to be part of the earnest money. In the case before us, admittedly only sum of Rs.63,469/- was paid to the petitioner company at the time the deal was concluded between the parties. Therefore, in view of the abovesaid referred authorities pronouncement of the Hon'ble Supreme Court, only the aforesaid forfeited amount can constitute earnest money.*

Forfeiture of earnest money under a contract for sale of property moveable or immoveable if the amount is reasonable does not fall within Section 74. That has been decided in several cases. (1) ***Kunwar Chiranjit Singh Vs. Hal Swarrop (I) Roshanlal Vs. The Delhi Cloth and General Mills Co. Ltd. Delhi (2) Muhammed Habibullah Vs. Muhammad Shalp (3) Bishan Chanol Vs. Radha Kishan Das.*** *These cases are easily explained for forfeiture of a reasonable amount paid as earnest money does not amount to imposing a penalty. But if forfeiture is of the nature of penalty S.74 applies.*

It would thus be seen that only a reasonable amount can be forfeited as earnest money in the event of default on the part of the purchaser and it is not permissible in law to forfeit any amount beyond reasonable amount, ***unless it is shown that person forfeiting the said amount had actually suffered loss to the extent of the amount forfeited by him.*** *In our opinion, 20% of the sale price cannot be said to be a reasonable amount which the petitioner company could have forfeited on account of default on the part of the complainant unless it can be shown that it had only suffered loss to the extent of the amount was forfeited* *by it. In our opinion, in absence of evidence of actual loss, forfeiture of any amount exceeding 10% of the sale price cannot be said to be a reasonable amount.*

For the reason stated herein above, we hold that (i) an amount exceeding 10% of the total price cannot forfeited by the seller, since forfeiture beyond 10% of the sale price would be unreasonable and (ii) ***only the amount which is paid at the time of concluding the contract can be said to be the earnest money. The petitioner company, therefore, was entitled to forfeit only the sum of Rs.63,469/- which the complainant had deposited with them at the time of booking of the apartment. We therefore, direct the petitioner company to pay the balance amount of Rs.81,534/- to the complainant within four weeks from today, failing which, the said amount shall*** *carry interest of 12% p.a. from the date of this order till payment. However, in the facts and circumstances of the case we find no justification for grant of any compensation of cost of litigation to the complainant. The order barred by the District Forum and State Commission stand modified accordingly.*

26. In my considered opinion, the ratio of the above case is also not applicable as the facts are not identical because in the case at hand contract is not entered between the parties and the Complainant has filled the application form and paid Rs. 2,02,070/- (Rupees Two Lakhs Two Thousand and Seventy Only) to the Respondent.

27. In the present matter, the Respondent failed to show that said amount of Rs.2,02,070/- (Rupees Two Lakhs Two Thousand and Seventy Only) forfeited towards actual loss suffered by the Respondent. Moreover, in the present case, parties have not entered into a registered agreement, therefore, in my opinion as the facts of reported cases are not identical hence, ratio of above authority is not applicable.

28. The advocate of the Respondent has also relied upon the case **National Consumer Dispute Redressal in the case of Prateek Realtors Pvt. Ltd. Vs. Vivek Kumar Gupta Reported in 2018 SCCONine NCRDC 378.** In the said case, the National Consumer Disputes Redressal has observed that

As held by this commission ***In DLF Ltd. Vs. Bhagwan Narula, 1(2015) CPJ (NC)*** *(i) an amount exceeding 10% of the total price cannot be forfeited by the seller, since forfeiture beyond 10% of the sale price would be unreasonable and (ii)* ***only the amount, which is paid at the time of concluding the contract can be said to be the earnest money.***

29. I have to state that in the case at hand no contract has been entered into between the parties therefore, the said amount cannot be treated as earnest money. Hence, the ratio of above Judgement is not applicable as facts are not identical.

30. The advocate of the Respondent has also relied upon the case **Jaypee Greens Vs. Yogesh Kumar Garg (NCRDC).** In the said case, the National Consumer Disputes Redressal has observed that

> *In booking application Rs.,7,00,000/- has been mentioned as earnest money.* ***Supreme Court in Fatech Chand Vs. Balkishan Das ARR 1963 SC 1405, Maula Bux Vs. Union of India (1969) 2 SCC 564 and Kailashnath Associate Vs. Delhi Development Authority (2015) 4 SCC 136,*** *held that forfeiture of earnest money for breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provision of Section 74 of Contract Act, 1872 are attracted and the party so forfeiting must have actual damage. After cancellation of allotment, the flat will remain with the opposite party as such there is hardly any actual damage. This commission in* ***CC/436/2019 Rupesh Malhotra Vs. EMMAR MGF land Ltd. (Decided on 29.06.2020) CC/3328/2017 Mrs. Prerana Bannerjee Vs. Puri Construction Ltd. (Decided on 07.02.2022) and Mr. Saurav Sanyal Vs. Ireao Grace Pvt. Ltd. (Decided o 13.04.2022)*** *held that 10% of basic sale price is reasonable amount to be forfeited as "earnest money".*

31. In my considered opinion, the above mentioned judgement is not applicable as facts of the referred case and the facts of present case are not identical. In the present case, since there is no contract between the parties, in the absence of the execution of an agreement, the ratio of above authority is not applicable. Not only this, for a contract to be valid, there must be two parties and admittedly, the booking form is only signed by the Complainant and not by the Respondent and hence, there is no contract between the parties for the present case. As rightly said in the above authorities / judgements only that amount would constitute as earnest money which is paid at the time when the contract is concluded between the parties. As per the terms of the application form, 20% amount of total consideration was to be termed as earnest money. The transaction between the parties would have been completed, if the Complainant had paid the total 20% amount of the total consideration, however, in the present case, the same has not been done and the Complainant had only paid a booking amount to book the said flat and not to conclude the transaction. In the present case, since the contract is not

completed between the parties, the above judgements are not applicable to the case in hand.

32. The advocate of the Respondent has also relied upon the **Judgement of this Authority passed in Complaint No. CC00500000064775 Manish Joshi and Smt. Rupali Manish Joshi Vs. Pearlite Real Properties Pvt. Ltd. (2) Shri Karan Singh Bolaria (3) Shri Amandeep Singh (4) Shri Ravikant Sharma (5) C3-Comfi Home-Bhumika Sadhwani dated 23.12.2022** in the said case, this authority has made the following observations:

> *From the facts and submissions of the Parties it is clear that the OC for the said apartment was already in place at the time of filing of the complaint. Thus, there is no delay in possession issue involved in the captioned complaint. Further it is also clear that the Complainants have only paid the booking amount of Rs. 4,96,944/- for the booking of the said apartment which is around 5% of the total consideration. That there is no agreement for sale registered between the Parties herein.*
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> *Since the said Project is a complete project, hence there is no violation of the said Act and hence the said complaint is not maintainable for seeking any remedy envisaged under the said Act. The Complainant seeks refund of the amounts paid by him towards the booking of the said apartment with interest. In this case this Authority has no role to play as the terms of the said booking form filled and signed by the Complainants shall stand and action as per the same may be taken by the respondent herein. This Authority sees no ground to intervene in the said issue as there is no violation of any of the provisions of the said Act. Needless to say, that the Parties herein to strictly abide by the terms of the said booking application. Thus, the complaint is dismissed as not maintainable. The answer to the issue at para No. 6 is answered in negative. No order as to costs.*

33. The above mentioned Judgement, in my opinion, is not applicable to the present case because in the above mentioned case, facts of the case are totally different. In the said case, the project was completed and in the present case the project is yet to be completed on the date of this order and hence, the said judgement is not applicable in the present case.

34. The advocate of the Respondent has relied upon Judgement of the **Maharashtra Real Estate Appellate Authority in the case of Mrs. Jyoti Narang & Anr. Vs. CCI Projects in appeal No. AT006000000010841** has made follow observations:

So, in view of clause '18 and 19 of allotment letter, I am of the opinion that the allotment letter is binding on promoter and allottees and the transaction which is revealed from the allotment letter is of sale of flat by promoter to the allottees as per the terms and conditions mentioned in the said allotment letter.

35. In the case in hand the Respondent has failed to produce before this Authority an allotment letter which is signed by the Complainant admitting the terms and conditions therein and hence, in the absence of an executed allotment letter in the present case the said judgement is not applicable in the present case.

36. I have stated above that the terms of the said allotment letter are one sided because clause (v) of the allotment letter says that **If the Respondent does not receive the duly signed letter within seven days from the date of the said allotment letter, it was deemed that the allottee had accepted the allotment of the said flat on the terms and conditions specified therein.** The said clause shows that the allottee is required to sign an allotment letter and send the same to the Respondent within 7 days from the date of the said allotment letter. At the same time, said clause discloses that if the Respondent does not receive the duly signed allotment letter, then also it was deemed that the allottee had accepted the allotment of the said flat on the terms and conditions specified therein. It shows that it is one sided clause. The advocate of the Complainant in support of the contentions of the Complainant that it is one sided clause has relied upon the judgement of Hon'ble Supreme Court **Pioneer Urban Land and Infrastructure Vs. Govind Raghavan (Supra).** It is observed by the Hon'ble Supreme Court that the court will not enforce an unreasonable and unfair contract where contracting parties are not equal in bargaining power and where a man has no choice or rather meaningful choice but to give his assent to a contract or to sign on the dotted lines in a prescribed or standard form as a part of the contract, however, unfair and uncontainable a clause in that contract on form or rule may be. Moreover, in the present case, no contract / agreement has been entered into between the Complainant and Respondent.

37. In support of the case, the advocate of the complainant has relied upon the case **Dinesh Humane and others Vs. Piramal Estate Pvt. Ltd. appeal No. AT006000000041967 of**

2019 the Hon'ble Maharashtra Real Estate Appellate Tribunal, Mumbai and the Appellate Tribunal has observed that

> *In the instant case the transaction of sale and purchase of the flat is cancelled at initial stage. Allottees merely booked the flat and paid some amount towards booking and executed letter for request of reservation of the flat in printed form. Thereafter there is no progress in the transaction and neither allotment letter nor confirmation letter is issued by Promoter. Agreement for sale is not executed between the parties. Parties never reached to the stage of executing agreement for sale. There was no attempt to execute agreement on the part of either party. In such circumstances, Allottees cannot claim refund on the basis of binding effect at clause (18) of "model agreement" for sale under rules of RERA. In fact, claim of Allottees for refund cannot be supported by clause 18 of model agreement for sale under. RERA rules. Refund of amount paid to promoter can be demanded as per Section 18 of RERA on the ground that promoter fails to give possession on agreed date or fails to complete the project as per terms and conditions of agreement for sale. Transaction in the instant case is not governed by Section 18 of RERA. In this peculiar matter, though the claim of refund is not governed by any specific provision of RERA, it cannot be ignored that object of RERA is to protect interest of consumer. So, whatever amount is paid by home-buyer to the promoter should be refunded to the Allottee on his withdrawal from the project.*
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> *It cannot be ignored that Regulations are framed to carry out purposes of the Act. Regulation 39 of Maharashtra Real Estate Regulatory Authority (general regulation 2Ot7) is in respect of saving of inherent powers of Authority. It reads as under.*
>
>> *Regulation 39: "Nothing in the Regulations shall be deemed to limit or otherwise affect the inherent power of the Authority to make such orders as may be necessary for meeting the ends of justice or to prevent the abuse of the process of the Authority.'*

38. According to my considered opinion, the facts of the present case and above mentioned case are mostly similar. In the case at hand also the refund of the amount paid to the Respondent promoter cannot be demanded as per section 18 of the said Act on the ground that the promoter failed to give possession on the agreed date or fails to complete the project as per the terms and conditions of the agreement for sale. The transaction in the instant case also is not governed by section 18 of the said Act. Though the claim of the refund is not governed by specific provision of the said Act, it is necessary to consider that the object of the said Act is to protect the interest of the consumers. The said Act is the social legislation with primary purpose and objective

with legislative intent to safeguard the interest of the allottees and thus the Respondent cannot be allowed to act contrary to the spirit of the said Act by devising formats which are ambiguous, unreasonable and inequitable.

39. It is seen that the Complainant booked the flat on 19.01.2020 and cancelled in the month of April, 2020. Thus, in a period of less than 3 months, no significant variations / domination in sale price / market price of the said flat is brought to the knowledge of this Authority by the Respondent to show any liquidated damage alongwith any loss that may have occurred on account of cancellation of the said flat to warrant forfeiture of the amount paid by the the Complainant. Therefore, the forfeiture of the amount paid by the Complainant in my considered opinion is erroneous and against the object and purpose of the said Act which is enacted as beneficial legislation to abate the hardship of home buyers. Hence, the forfeiture of the amount is improper. Therefore, in my opinion, the Complainant is entitled to refund the amount of Rs.2,02,070/- (Rupees two lakhs two thousand seventy only) without interest. Hence, I answer point no. 1 in the affirmative and proceed to pass following order:

O R D E R

1. The complaint is allowed as follows:
2. The Respondent / promoter is directed to refund the amount of Rs. 2,02,070/- (Rupees Two Lakhs Two Thousand and Seventy Only) on or before 15.01.2025 failing which an interest at the rate 2% above SBI's Higher Marginal Cost of Lending Rate shall be payable w.e.f. 16.01.2025 till the realization of the said amount.
3. Both parties to bear their own costs.

RAVINDRA PADMAKARAO DESHPANDE

Digitally signed by RAVINDRA PADMAKARAO DESHPANDE
Date: 2024.12.13 14:26:03 +05'30'

(Ravindra Deshpande)
Member-II, MahaRERA

Date : 13.12.2024