BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY, MUMBAI

1. Complaint No. CC006000000262092

Girish Jabarsingh Purohit ... Complainant

Versus

Piramal Estates Private Limited ... Respondent

2. Complaint No. CC006000000303270

Devendra Vijay Makhija ... Complainant

Versus

Piramal Estates Private Limited ... Respondent

3. Complaint No. CC006000000303282

Vicky Vijay Makhija ... Complainant

Versus

Piramal Estates Private Limited ... Respondent

MahaRERA Project Registration No. P51700003283

Coram: **Shri. Mahesh Pathak, Hon'ble Member – I/MahaRERA.**

Ld. Adv. Vipul Shah appeared for the complainant at sr. no. 1,

Ld. Adv. Rakesh Pathak appeared for the complainants at sr.nos. 2 and 3.

Ld. Adv. Saloni Sulakhe appeared for the respondent.

ORDER

(Order Pronounced on Monday, 13th January 2025)

(Matter reserved for order on 03-09-2024)

(Through Video Conferencing)

1. The complainants above-mentioned have filed these 3 separate online complaints before MahaRERA on 04-08-2022 (sr.no. 1) and on 10-12-2022 (sr.nos. 2 and 3)

mainly seeking directions from MahaRERA, to the respondent to refund the amounts paid by them along with interest and compensation (more particularly mentioned in the table below at para 5) as prescribed under the provisions of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA'), in respect of the booking of their respective flats (hereinafter referred to as 'the said flats') of the respondent's registered project known as **"Vaikunth Cluster 4"** bearing MahaRERA registration no. **P51700003283,** located Thane West (hereinafter referred to as the said project).

2. These complaints were clubbed together and the same were heard finally on 03-09-2024 on merits as per the Standard Operating Procedure dated 12-06-2020 issued by MahaRERA for hearing of complaints through Video Conferencing. Both the parties have been issued prior intimation of this hearing and they were also informed to file their written submissions if any. Accordingly, the parties appeared and made their respective submissions. The MahaRERA heard the arguments of both the parties and also perused the available records.

3. After hearing the argument of both the parties, the following Roznamas were recorded in these complaints –

<u>On 11-06-2024-</u>

"Both the parties are present. Despite directions, the respondent has not filed any replies except in complaint at s.no.25 (CC006000000303270) and that too, it is uploaded today. The respondent is given one last chance to file replies in s.nos. 16 and 26 along with its written arguments within a period of three weeks i.e. by 2-7-2024. Further three weeks' time is granted to the complainants to file their rejoinders along with their written submissions i.e. by 23-7-2024. The complainants in s.no.16, 25 & 26 have pointed out that the respondent has already sold the flats and has forfeited the entire amounts despite changing its stands from termination to demanding further amounts. Therefore, the complainants filed these complaints in August 2022 after the allotment letters

which were issued in February, 2018. However, the complainant also contends that the loan could not be obtained for the said flats. However, the respondent refutes both the contentions of the complainants and claims that despite requests for signing of the agreement for sale the complainant did not come forward for the same and hence the allotment was terminated and as per the clause of the RFR and allotment letter, 10% of the consideration has been forfeited. Regarding the complainants at s.no. 25 (CC006000000303270) and 26 (CC006000000303282) the respondent in its reply (in s.no.25 - CC006000000303270) has contended that the date of possession was always four years from signing of the agreement for sale and in the project registration as well as in the allotment letter of February, 2018 the completion was December 2022. However, the complainant has refuted this contention of the respondent and claims that because the date of possession mentioned at the time of signing of the Request for Reservation (RFR) and payment of the amounts in 2017 was December, 2020 which was subsequently changed to December 2022, they did not wish to continue with their allotments. Be that as it may, these matters are adjourned to a suitable date after 23-7-2024 for final arguments by both sides. List the matter for next hearing on 03-09-2024."

<u>*On 03-09-2024*</u>

"Both the parties are present. The respondent has filed replies to the complaints and the complainants have filed rejoinders (as applicable). However, the complainants are granted one week's time i.e. till 10-09-2024 to file their rejoinder along with their written arguments if not done so already. The respondent has contended that the complainants are defaulters in making timely payments and hence, these complaints are not maintainable. Moreover, despite requesting the complainants to execute an agreement for sale, they have failed to come forward for the same and therefore, there is no case to be made out under section 18 of the RERA. The respondent has complied with the terms of the RFR which was issued prior to issuance of the said allotment letters. Admittedly, the

allotment letters were issued in 2017 & 2018 (as applicable) after signing of the RFR but the terms and conditions mentioned in the RFR were applicable to the allotment letters as well. Therefore, the complainants have prayed that the date of possession was mentioned as three years however, at the time of RFR the CC for their floors was not in place. However, the respondent refutes this contention of the complainants. The complainants have also pointed out that they were unable to obtain a loan from the banks for execution of the agreements for sale, as the CC was not valid (as applicable) and that when the agreement for sale was shared, the date of possession was mentioned as December, 2022. Therefore, the complainants wish to withdraw from the project with a refund along with interest and compensation for the delay. The respondent on the other hand has pointed out that it has cancelled the allotments in 2019 itself and has forfeited the amounts as per the terms and conditions mentioned in the RFR/allotment letter which is 10% of the total consideration of the said flats. Therefore, the respondent may file sur rejoinder if any and its written arguments within a further period of one week i.e. 17-09-2024. Accordingly, these matters are reserved for orders suitably after 17-09-2024 based on the arguments of both sides as well as the reply, rejoinder, sur rejoinder if any and written arguments filed in the complaint and the record. "

4. Pursuant to the aforesaid directions given by the MahaRERA, the complainants have uploaded rejoinder/additional written submission on record of MahaRERA on 10-09-2024 and 04-10-2024(sr. no. 1) and on 02-09-2024 (sr. nos. 2 and 3). The respondent has uploaded its written arguments on record of MahaRERA on 20-12-2024. The said submissions are accepted and taken on record in the compliances with the principles of natural justice.

5. The complainants by filing these online complaints have prayed for following reliefs as mentioned in the table below. The information provided by them in these online complaints is as follows :–

Sr. No. **Complaint No.** **Flat No.** **Total Consideration** **Consideration Paid**	**Date of RFR** **Allotment Letter** **Date of possession**	**Reliefs**
1. **CC006000000262092** 2 Flats Nos. 807 and 808, 1BHK on 8th floor Rs. 86,49,900/- for each flat. **Paid**-Rs. 9,70,924/-	RFR- 25-5-2017 AL- 19-2-2018 (revised -flat nos. 807 and 808) Possession- on or before December 2022 (As per complaint)	Refund along with interest and compensation **<u>Additional prayers</u>**- prayed for refund along with interest and compensation as specifically mentioned in clause 8.1(a) and 8.2(b) in the said application and to restrain from handling over possession of said flats which have been sold in violation of provision of the act.
2. CC006000000303270 Flat nos. **2701 (present complaint)** and 2702 on 27th Floor, 2 BHK	RFR- 2-03-2017 (copy not uploaded) – Flat no. 2701 **Allotment letter**-27-12-2017 uploaded (flat 2701)	Refund along with Interest and compensation

Rs.94,02,123/- (flat no. 2701) (As pr complaint) Rs. 97,06,152/- (As per revised AL) **Paid**-Rs. 9,82,523/-	**Revised allotment letter**-19-02-2018 (flat 2701) Possession-2020	
3. CC006000000303282 Flat No. **2702 (present compliant**) on 27th floor **Total Consideration**-Rs. 94,02,123/- (flat no. 2701) Rs. 97,06,152/- (As per revised AL) **Paid**-Rs. 9,82,523/-	RFR- 2-03-2017 (copy not uploaded) – Flat no. 2702 **Allotment letter**-27-12-2017 uploaded (flat 2702) **Revised allotment letter**-19-02-2018 (flat 2702) Possession-2020	Refund of token amount.

6. It is the case of the complainant at **sr. no. 1** that he booked said two adjoining residential flats and paid a substantial amount as mentioned in the table above. Thereafter, the respondent issued a booking confirmation memo. However, the respondent failed to handover possession on or before December 2022 as agreed and informed to him. Further, the commencement of the project has been delayed since the respondent was waiting for the 'No Objection Certificate' from the **Tree authorities**. Upon payment of second instalment, the respondent issued a **revised allotment Letter** to him on 19-02-2018 intimating that letter of allotment issued earlier was cancelled. Further, he issued several cheques in the year 2017 which amounted to Rs. 19,41,854/-. Thereafter, he received an email on 11-10-2018 from the respondent informing that the Thane Municipal Corporation has

approved its proposal, and it has received necessary clearances to commence the work. The respondent informed him that the work has been started on site, and it will update him from time to time. The same was intimated on 02-05-2019 and a photograph was attached. As per the said photo it was understood that the building would not be completed by December 2022 due to delay in commencement. Notably, on 02-07-2019 the respondent issued Termination Letter to the complainant referring to its earlier correspondences intimating that an amount of Rs. 10,98,192/- is outstanding and payable by him and if not paid, the said booking would be cancelled and terminated without any further reference. After December 2019, the covid-19 pandemic started, resulting in major lockdown, closure of businesses and the international markets were badly affected during this period. Thereafter, the complainant informed the respondent to provide the details of the outstanding amount payable by him. The complainant also informed that his loan has been sanctioned and a copy of the sanction letter will be provided. Therefore, the complainant requested to either refund the money with interest or to give the details of the amount payable by him in order to continue in the project. However, the respondent did not accept his request and did not provide the details of the forfeited amount. Notably, the respondent has sold said flat, which was sold to the complaint. The complainant was in regular contact with the respondent from 02-07-2019, however, it was never informed that the cancellation letter sent to him is final and effective. The same is also apparent from the fact that in the month of October 2019 the respondent intimated the complainant about the overdue amount and also in the month of December 2019 intimated the status of the project. Hence, the cancellation letter dated 02-07-2019 does not have any effect. Being aggrieved with the above actions of the respondent, he has filed the present complaint for refund along with interest and compensation.

7. It is the case of the complainants **in sr. nos. 2 and 3** that they booked the said two adjoining flats (Jodi Flats) in the said project registered by the respondent (as per

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the details mentioned in the aforesaid table at para- no. 5). The respondent has promised to handover the possession of the said flats to them on or before 31-12-2020. Thereafter, the respondent without consent and knowledge had escalated the consideration amounts in respect of the said flats. In addition to this, respondent even without commencement of construction work had arbitrarily raised demand of payment from the complainants. Thereafter, the respondent had sent a draft agreement for sale dated 26-10-2017 in respect of said flats and again on 27-02-2018 sent a revised draft agreement for sale. In the said revised agreement draft clause 6 was pointed out, wherein it is specifically mentioned that the due date of the possession of the said flat will be on or before 31-12-2022 and in addition to this respondent was also entitled for reasonable grace period of 12 months over and above the said due date of 31-12-2022. Further, the complainants in sr. no. 2 pointed out to several litigations and various technical glitches like non - issue of NOC by various local authorities. Under such circumstances, the complainants had declined to execute the agreement for sale in respect of the flats. Thereafter, the complainants in 2019 visited the construction site of the said project, however it was found that no construction activities were going at the said construction site. Thereafter, the complainants immediately informed in writing and orally about non-execution of the agreement for sale to the respondent for the aforesaid reasons. Consequently, respondent with mala fide intention sent termination letter dated 24-04-2019 whereby it forfeited the token amount of Rs.9,82,523/- each for the said two flat nos. 2701 and 2702 aggregating to Rs.19,65,046/-. Since respondent failed to give possession of the said flat in the year 2020 therefore, they were not ready and willing to execute agreement for sale in respect of the said flats. Further, due to the surge of Covid-19 pandemic caused severe financial burden and due to this the complainant had suffered financial crises. Thereafter, complainants through their Advocate sent a request letter to respondent, requesting to refund the token amount aggregating to Rs.19,65,046/- in respect of residential flat no.2701 and 2702. On 07-07-2021 the respondent replied to the legal notice of the complainants thereby denying refund of the said aggregate amount of Rs.19,65,046/-. In the meantime, complainants herein had tried to negotiate and settle the dispute amicably with the respondents but all in vain. Notably, Mr. Vicky Makhija and Ms. Prisha Vicky Makhija, have filed separate complaints in respect of flat no.2702 (sr. no. 3). Notably, Ms. Nidhi Jaiswal had assured and promised that in future due to any reason whatsoever, if complainants want to cancel the booking of said proposed Jodi flat, in that event the respondent will refund the token amount to the complainants without making any deduction thereto. Being aggrieved by the forfeiture of aforesaid token amount by respondent, complainants have no other option, but to approach the MahaRERA by way of the present complaint.

8. The complainant in **sr. no. 1** has uploaded additional prayers to the existing prayers on record of MahaRERA on **07-01-2023**. They prayed for refund along with interest and compensation as specifically mentioned in clause 8.1(a) and 8.2(b) in the said application and to restrain from handing over possession of the said flats which have been sold in violation of the provisions of the RERA.

9. The complainant in **sr. no. 1** has uploaded written submissions on record of MahaRERA **on 07-06-2024**, the facts of which are identical to the present complaint. The complainant has referred to the judgement passed by the MahaRERA in case of Ajit Dabhade v/s Godrej Greenview Housing Private Limited, in support of his claim. The complainant has reiterated the reason for non-payment and the reason for withdrawal from the project.

10. The respondent refuted the contentions of the complainants and uploaded its reply in the complaint at sr.no. 2 on 11-06-2024 and filed replies in hardcopies in sr.nos. 1 and 3 on 03-09-2024 which were taken on record by the MahaRERA. It was submitted by the respondent that the complainants are defaulters who have

defaulted in making the due payments to the respondent. The respondent further raised preliminary objections that the complaints are not maintainable. At the outset it was submitted that the MahaRERA has no jurisdiction to entertain these complaints. These complainants were seeking refund of the amounts paid by them towards the booking of their respective flats on the ground that the respondent had breached the oral agreement allegedly given by the complainants. As per the draft agreement shared with the complainants, the date of possession of the said flats was given as 31-12-2022 instead of the year 2020 on the basis of which the complainants had made the booking with the respondent. The complainants have themselves stated that they had declined to execute the agreement, therefore since they had of their own volition failed to execute and register the agreement and the complainants are now at this stage estopped from claiming otherwise. The complainants have also violated provisions of section 13 of the RERA by failing to execute the agreement. The respondent has already terminated the provisional allotment of the complainants vide letters dated 02-07-2019 (sr.no. 1) and 24-04-2019 (sr.no. 2 and 3) as per section 11(5) of the RERA. The complainants have not challenged the termination which is still binding upon them, instead filed these complaints under section 18 of the RERA which itself is not maintainable. The respondent further submitted that, in the absence of the agreement, section 18 of the RERA cannot be made applicable, as the complainants were called upon to execute the agreement from time to time. However, they themselves refused to execute the same, hence section 18 cannot be made applicable in these complaints. The respondent has duly complied with the provisions of the said act and thus section 18 has no application to the present case. The complainants have with malafide intentions defaulted on the payments of the sale consideration and have breached the terms and conditions of the said Request for Reservations (RFR). Furthermore, under various provisions of the said act, it was provided that the allottee is entitled to refund of monies only in the event that the promoter fails or is unable to handover the possession in accordance with the agreement for sale. However, in these complaints, admittedly there was no agreement executed between the parties. Therefore, the MahaRERA has no jurisdiction to entertain these complaints. As mentioned herein, the complainants are defaulters and in view thereof the respondent was constrained to terminate the provisional allotment letter which was not challenged by the complainants and thus the termination has attained finality.

11. **The respondent with respect to the complaint at sr.no. 1** submitted that they have attempted to take shelter behind covid-19 pandemic and they have defaulted in payment prior to onset of covid-19 pandemic. They alleged in their complaint that the project was initially delayed for non-receipt of the NOC from the Tree Authority of the Thane Municipal Corporation. However, the complainants initially neither alleged fraud nor suppression on part of the respondent regarding the said NOC. By way of an afterthought, the complainants filed the application for additional prayers thereby seeking refund, interest and compensation alleging violation of sections 7(1)(c) & (d) as well as section 12 of the said act. These violations are not supported by any pleadings and thus are meritless and made only to harass the respondent. Thus, the additional prayers be dismissed. Furthermore, on 11-10-2018, an email was addressed to the complainants informing that the tree committee of Thane Municipal Corporation has approved the proposal, and necessary clearances have been received. A draft AFS and the letters of intimation giving the details about the stamp duty, registration charges was also attached to complete the formalities. No delay was caused due to the receipt of tree NOC in the completion of the said project and the said email was addressed to the complainants as a matter of information. Further, this complaint suffers from delay and laches. The complainants alleged that as per the status update of the said project shared by the respondent vide email dated 02-05-2019, construction would not be completed by December 2022. Hence, the complainants formed an opinion that the said project would not be completed in time. The law does not protect those who sleep over their rights and fail to approach the court within a reasonable time frame to avoid disturbing

rights which may be ensured to benefit third parties such as in the present case as the respondent has already sold the flats. Therefore, the complaint having been filed after an unreasonable delay ought to be dismissed.

12. **With respect to the complainants at sr. no. 3,** the respondent submitted that the present complaint suffers from delay and laches as the complainants visited the project construction site on 09-02-2019 and that no construction was underway. Hence, they formed an opinion that the said project will not be completed in time. The cause of action arose on 09-02-2019, however complainants waited for 4 years to initiate the legal proceedings against the respondent. Furthermore, considering the input tax credit of the complainants at sr.nos. 2 and 3 of Rs. 2,08,201/-, the respondent revised the sale consideration of the said flat to Rs. 97,06,152/- exclusive of taxes and other charges. Accordingly in view of the above, the respondent issued a revised allotment letter and a revised price sheet on 19-02-2018 to the complainants. The benefit of Input Tax Credit was also duly passed on the complainants at sr.no. 3 on 19-02-2018 and to the complainants at sr.no. 2 on 13-03-2018. The respondent submitted that, pursuant to the termination of the RFR, the respondent has already sold the said flats to the third parties. The complainants (sr. nos. 2 and 3) on 13-05-2021 issued a legal notice to the respondent calling upon the respondent to refund the paid amounts and the said legal notice was duly responded vide a letter dated 07-07-2021 wherein the respondent denied the allegations of the complainants. Despite the cause of action having accrued in 2019, the complainants filed these complaints in 2023.

13. The respondent further submitted basic facts with respect to these complaints which were identical to the complainants' submissions. The respondent has mainly relied upon clause 6, 7, 9A.1 and 9A.2 of the RFRs. As per the aforesaid clauses, it was clearly stated under 7 that timely payment of balance sale consideration for the said flats as per the payment schedule shall be the essence of the RFR. In the event there is any delay the respondent shall have the right to

terminate the reservation/provisional allotment of the complainants. Thereafter, clause 9A.2 stated that, if there is any default by the complainants of any terms and conditions of the RFR, then the respondent will be entitled to deduct 10% of the sale consideration as elaborated in the RFR. Furthermore, as per the RFR clause 9A.1, the date of possession stated was 4 years from the date of AFS, which admittedly has not been executed by the complainants. The date of completion of the said project was 30-12-2023. The respondent further submitted that the area of the said flats was increased from earlier areas due to introduction of the said act (from the earlier MOFA). The same also led to an increase in total agreement value as well. Hence letters to that effect were issued to the complainants along with revised allotment letters. Furthermore, the respondent stated that despite much follow up with the complainants regarding the execution of agreements for sale and demands raising payment of balance amount along with interest and overdue amounts to be paid by the complainants, the complainants failed to execute the agreements as well as to pay the demands raised by the respondent. The respondent also gave the final opportunity to the complainant at sr. no. 1 and pre-termination letter to the complainants at sr.nos. 2 and 3 to comply with the said demands and informing them regarding the forfeiture, however the complainants failed to comply with the same. Hence owing to the failure to make payment of outstanding dues, the respondent issued termination notices to the complainants at sr. no. 1 on 02-07-2019 and on 24-04-2019 (sr.nos. 2 and 3). The respondent further replied to the submissions of the complainants in para-wise **manner and prayed for dismissal** of these complaints.

14. The complainants in **sr. no. 1** have uploaded rejoinder on record of MahaRERA on 10-09-2024. The complainants stated that the respondent has deliberately suppressed the information regarding this crucial matter of the non-availability of the NOC from the Tree Authorities. The NOC from the Tree Authorities was received in October 2018, while the 10% advance payment was collected from us in May 2017. Moreover, the project was not completed and the respondent kept

sending demand notes without any development at the site. On the other hand, the respondent has admitted that they sent demand notices for interest. Further, the complainants referred to the recent order of the Hon'ble Appellate Tribunal in the case of Sachin Tomar And Shivaji Tomar Vs Ensaara Metropark Luxora Infrastructure Pvt, Ltd [Appeal No 4T004000000031625 Of 2019] wherein it was held that a written express agreement for sale between the allottee and the promoter is not a prerequisite for the allottee to avail the rights stipulated under Section 18 of the RERA Act. Furthermore, the defence held by the respondent that the termination letter has not been challenged is baseless. Further, the complainants submitted that what has been terminated via Termination Letter dated 02.07.2019 is the RFR and not the Revised Allotment Letter dated 19.02.2019, which was issued after approving and accepting the RFR. Hence, on this ground itself, the Termination Letter has no validity. Further, the respondent has admitted that the Occupation Certificate was received in December 2023, despite the promised date of December 2022. The respondent's defence of the COVID-19 pandemic is misplaced and incorrect. At the time of booking the flat in 2017, when there was no COVID-19 pandemic. In the email dated 12-11-2019 it was specifically mentioned to Mr. Jabbar Singh Achalingji Purohit and it also very categorically mentions that "Please note that the account details mentioned below are for the flat number: 0807 at Tower name: Vidit in Project Name: Piramal Vaikunt". Further, the complainants submitted that the respondent sold both flats on 29.03.2022. Further, the complainant clarified that there has been no delay in filing the present complaint. Neither is there a default in making payments. Hence, the complainants have prayed for the said reliefs.

15. The complainants have uploaded their rejoinder on record of MahaRERA on 02-09-2024 (**Sr. nos. 2 and 3**), wherein they have submitted that they have objected to the said draft of agreement for sale which was sent by the respondent, specifically the date of possession mentioned in the said agreement as against the date of possession informed by the respondent at the time of taking booking of

the said flat. The complainants made several attempts to connect via emails and phone calls with the respondent to discuss and clear the matter or cancel the booking of the said flat. However, the respondent did not agree to any of the solutions and unilaterally terminated the booking and forfeited the paid amount. Further, the complainants pointed out to the respondent that in the RFR it is mentioned that completion period is 4 years from the date of AFS, but the respondent assured to the complainants that the date of possession will be mentioned as December 2020 in agreement, which was not adhered to by the respondent. Furthermore, the respondent has mentioned the date of completion as 30-12-2023, whereas in the draft agreement date of completion is mentioned 31-12-2022. Further, the respondent sold out the said flat to a third party, without resolving the matter with the complainants, which is also a case of cheating.

16. The complainants in **sr. no. 1** have uploaded additional written submissions on record of MahaRERA on 10/09/2024. The complainants have submitted various documentary evidence that made it evidently clear that the respondent had taken more than 10% advance money from the complainants in 2017 but the actual construction of the building started only after October 2018 due to which the possession was delayed by about 1 year. Further, the complainants also requested vide email dated 17-09-2019 that as per their discussion with Mr. Clifford they will make the payment as soon as the bank loan processing would be completed. The complainants reiterated the relevant facts and evidence as has been presented in their complaint, rejoinder and subsequent submissions. The respondent's actions, including the acceptance of payments without initiating work, the concealment of crucial information and the attempt to forfeit the entire amount based on their own delays and defaults are in clear violation of the RERA regulations. Therefore, the present complaint is filed.

17. The complainants in **sr. no. 1** have uploaded additional written submissions on record of MahaRERA on **04/10/2024.** In the said submissions, the complainants

submitted the order in Appeal No. 800060000053392/21, in the case of Rajeshwari Ramesh Pillai vs. Aishwarya Avant Builders LLP. The facts of this case were similar to the facts of the complainants' case, and since the order is yet to be passed, the complainants are relying on the order of the Hon'ble Tribunal in the above case in support of their complaint. Thereafter, the Newtech promoters and developers Pvt. ltd. judgement is also referred.

18. The complainants have uploaded an application on record of MahaRERA on 30-12-2024. In the said application the complainants have requested before this Hon'ble authority not to consider the written submissions filed by the respondent after 93 days from the date, the matter was closed for order.

19. **The respondent also** uploaded its written submissions on 20-12-2024 on the record of the MahaRERA, reiterating all the submissions as mentioned in its replies. The respondent has relied upon several judgments passed by Hon'ble MahaREAT and MahaRERA. On the matter of Rajeshwari Ramesh Pillai & Anr vs Aishwarya Avant Builders LLP, which the complainants at sr. no. 1 have relied upon wherein the Hon'ble MahaREAT directed to refund the amounts for booking of the amount with interest; however, such order cannot be relied upon as the facts of the said matter are different and not applicable to these matters. Furthermore, it is well settled that refund if any has to be as per the terms of the RFR as the said flats were also unavailable for sale post 2019. Thus, the respondent has also suffered due to the defaults of the complainants and had to incur additional costs for marketing the said flats along with other costs. The MahaRERA in the matter of Tasneem Sadikot vs Glider Buildcon Private Limited has taken a view that when the date of handing over of the possession for a flat is yet to arrive, then a case under section 18 of the RERA is not maintainable as the same is premature. In view of the above, the forfeiture of 10% of the agreement value is reasonable and the same was duly agreed by the complainants. In support of the aforesaid reliance was placed on the following

judgments: Para 5,6,7 of the judgment passed by the Hon'ble MahaREAT in the matter of Godrej Greenview Housing Pvt. Ltd vs Jay Prakash Panday, Para 25 of the judgment passed by the Hon'ble Supreme Court in the matter of Shree Hanuman Cottin Mills & Ors vs Tata Aircraft Ltd., Para 15,17,23 and 24 of the judgment passed by the Hon'ble MahaREAT in the matter of Oberoi Constructions Ltd vs Asset Auto (I) Private Limited, and Para 15,16 and 17 of the judgment passed by the Hon'ble Supreme Court in the matter of Satish Batra vs Sudhir Rawal. From the above rulings, it was amply clear that in the event of default by a purchaser for adherence to the terms of the contract the seller is entitled to forfeit the amount deposited towards performance of the contract. Therefore, the respondent, in view of the aforesaid submissions, it prayed for the dismissal of these complaints.

20. The MahaRERA has examined the rival submissions made by both the parties and also perused the available record. The complainants herein claiming to be the allottees of the said project registered by the respondent, by filing these complaints under section 31 of the RERA have approached the MahaRERA mainly seeking various reliefs such as refund of the booking amounts along with interest as specifically mentioned in the aforesaid para-no. 5 above.

21. The complainants have agitated their claims by virtue of the RFR/ Allotment letters issued by the respondent towards the said bookings (as per the details mentioned in the aforesaid table at para- no.5). The complainants have sought a refund of the booking amount paid by them for the booking of their respective flats.

22. The complainants have mainly contended that the respondent has already sold the said flats booked by them to the third parties and has also forfeited 10% of the total consideration amounts. Further, the said termination was done by the

respondent on account of non payment of further amount demanded by it. They further stated that the amount could not be paid by them since they could not get the loan sanctioned by the bank mainly because no valid CC was provided to them by the respondent (as applicable). Further, although the respondent has committed the date of possession as 3 years at the time of booking i.e. RFR, however, while sending the draft agreement for sale, it has extended the date of possession till 31-12-2022 from 31-12-2020. Further, the complainant at sr. no. 1 has also contended that although the respondent has issued termination notice cancelling the said booking of two flats, it has sent various emails calling upon him to make the further payments. Hence, he has contended that the said termination notice has no validity. The complainants also contended that they were continuously, pursuing with the respondent for refund of the said booking amount, however, the respondent ignored the same and has forfeited 10% of the consideration amount from the actual amounts paid by them. Hence, they prayed to allow these complaints.

23. The respondent has assailed the aforesaid contentions made by the complainants and contended that the said terminations notices were issued by it due to non-payment of outstanding dues as per the RFR. It has also contended that despite calling upon them to execute the registered agreements for sale, they failed to do so. Also, the complainants have not made out any case for violation of section 18 of the RERA, since their bookings were cancelled in the year 2019 itself. Further, although the allotment letters were issued to these complainants subsequently, to the RFR signed by them, the terms and conditions mentioned in the said RFR were applicable to the said allotment letters. Hence, it has cancelled the said bookings and forfeited the amount (10% of the total consideration amounts) as per the said terms. On account of the said default they have failed to come forward to sign the same. The respondent, therefore, prayed for dismissal of these complaints.

24. However, in the present case, on bare perusal of the submissions made by both

the parties and also after perusing the available record, the following observations are noteworthy in all 3 complaints :-

i) As far as all these 3 complaints are concerned, admittedly the said complainants have booked their respective flats by signing RFR in the year 2017/2018 and the allotment letters were issued in the year 2018-2019 (as applicable). Admittedly, the complainants have paid nearly 10% of the total consideration amount towards the said booking (as per the details mentioned in the aforesaid table at para-no. 5 above).

ii) Admittedly, there is no specific date of possession mentioned in the said RFR submitted by these complainants (as applicable). Moreso, the complainants have claimed that the date of possession mentioned in the said RFR was 31-12-2020, which was subsequently extended till 31-12-2022, in the agreement for sale. However, no specific date of possession (i.e. 31-12-2020) seems to be mentioned in the said RFR as alleged by the complainants. Hence, the MahaRERA cannot rely upon the contentions made by the complainants (as applicable) that the agreed date of possession was 31-12-2020.

iii) Furthermore, the MahaRERA has also noticed that the respondent has terminated the said booking by issuing termination letters to these complainants on 02-07-2019 (sr. no.1), on 28-02-2019(sr. no.2) and on 24-04-2019 (sr. no. 3). However, it seems that these complainants have filed these complaints only on 04-08-2022 (in sr. no. 1 and on 10-12-2022 (sr. nos. 2 and 3) seeking refund of the entire money paid by the along with interest. Meaning thereby that the complainants after more than 3 years from the said terminations have approached the MahaRERA seeking reliefs by virtue of the said RFR as well as the allotment letters. Admittedly, the complainants have not explained the said delay in their complaints.

iv) As far as the complaint at sr. no. 1 is concerned, although the said complainant has contended that after issuance of the said termination notice on 2-07-2019, the respondent has raised various demand letters for making further payments, the MahaRERA is of the view that the said demand letters seem to be system generated letters. However, the said complainant has failed to submit any letter issued by the respondent whereby, the said booking cancelled by the respondent vide the said termination letter dated 2-09-20219 was reinstated.

v) Be that as it may, as stated hereinabove, admittedly, no agreements for sale have been signed and executed between the parties herein. Also, there is no specific date of possession mentioned in the said allotment letters (as per the details mentioned in the aforesaid para-no. 5) issued in favour of these complaints. Hence, in absence of any agreed date of possession, the MahaRERA needs to consider the date of completion of the said project mentioned by the respondent on the MahaRERA website.

vi) However, on bare perusal of the webpage information uploaded by the respondent promoter, it appears that the respondent has mentioned the proposed date of completion of the said project as 31-12-2022, which is revised and extended till 31-12-2023. Further, the record also shows that, respondent has completed the said project and obtained OC for the same on 27-12-2023, ostensibly before the said extended date of completion of the said project. Hence, the MahaRERA sees no violation of section 18 of the RERA by the respondent. Hence, the claim of refund along with interest sought by these complainants has no legal substance under section 18 of the RERA.

vii) Furthermore, the complainants have not cited violation of section 12 of the RERA by the respondent, whereby, they have been provided any false information/notice etc. by the respondent due to which they have suffered from any loss. Hence, the claim of these complainants for refund along with interest cannot be considered favourably by the MahaRERA under section 12 of the RERA.

viii) However, in the present case, it is pertinent to note that the respondent after cancellation of the said booking done by these complainants, has resold the said flats to the other allottees. It shows that the respondent has not suffered from any loss on account of the non-payments of the dues / or by cancellation of the said booking done by these complainants.

ix) However, the MahaRERA has noticed that the respondent promoter while cancelling the said booking has forfeited the entire amount paid by the said complainants as per the RFR which is 10% of the total consideration amounts of the said flats. However, the respondent while terminating the said booking is seeking forfeiture of the entire amount as 10% forfeiture of the total consideration value of the said flats. Such forfeiture is sought by the respondent, as per clauses of the said booking application form as per the respondent. However, such forfeiture by the respondent (which is more than 10% of the total consideration of the said flats) is not legal and proper as per the provisions of the RERA, as there is no explicit provision under RERA to forfeit such amount.

x) In this regard, it is pertinent to note that the MahaRERA has recently issued an Order No. 35/2022 dated 12-08-2022 with respect to the prescribed format of allotment letter, which permits the promoter to forfeit 2% amount in case of any cancellation done by the allottee beyond the period of 45 days. Although the aforesaid MahaRERA order was issued recently (in the year 2022), however, earlier there was no prescribed format of allotment letter issued by the MahaRERA. Now, the settled principle for cancellation of the booking (before the execution of agreement for sale is done) has been prescribed by the MahaRERA by way of such order and action on the part of the respondent of such forfeiture of nearly 10% of the total consideration amount as sought by the respondent, is not in consonance with the said circular dated 12-08-2022 issued by MahaRERA. Since this project is registered with the MahaRERA, the said MahaRERA Order can be made applicable while deciding such cases on merits. Moreso, as per the webpage information uploaded by the respondent on the MahaRERA website, the respondent has not uploaded any deviation report to the said Order No. 35 dated 12-08-2022 issued by the MahaRERA. Hence, the MahaRERA is of the view that the complainants are entitled to seek refund as per the said MahaRERA order dated 12-08-2022 in case of any cancellation done by them before execution of the registered agreements for sale.

25. In view of these facts , the following order is passed:-

a) These complaints are partly allowed.

b) The claim of the complainants towards refund along with interest stands rejected.

c) The respondent is directed to refund the money paid by the said complainants towards the consideration of the said flats without any interest, after deducting 2% of the total consideration (value) of the said flat (excluding the statutory dues paid to the government/ brokerage if any) within a period of 30 days from the date of this order.

26. With these directions, all 3 complaints stand disposed of.

(Mahesh Pathak)

Member – 1/MahaRERA