

**BEFORE THE MAHARASHTRA REAL ESTATE  
APPELLATE TRIBUNAL, MUMBAI**

**Appeal No. AT00600000052646/20**

**In**

**Complaint No. CC006000000151210**

**M/s. Godrej Properties Limited**

Office Address:

Godrej One, 5<sup>th</sup> Floor,  
Pirojshanagar, Eastern Express Highway,  
Vikhroli East,  
Mumbai-400 079

**... Appellant**

**Versus**

**Mr. Amit Agarwal**

30 Donnington Road, Harrow,  
London, HA3 0NA, United Kingdom

Address of service

Lodha & Lodha Advocates,  
DBS Heritage House,  
Prescott Road,  
Near Cathedral Senior School,  
Fort, Mumbai-400 001

**... Respondent**

**Alongwith**

**M. A. No.574/20**

**(Disclosure & Production of Documents)**

**In**

**Appeal No. AT00600000052752/20**

**In**

**Complaint No. CC006000000151210**

**Mr. Amit Agarwal**

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... **Appellant**

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**Godrej Properties Limited**

Office Address:  
5<sup>th</sup> Floor, Pirojshanagar,  
Eastern Express Highway,  
Vikhroli East,  
Mumbai-400 079

... **Respondent**

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*Adv. Mr. Shardul Singh for Promoter*

*Adv. Mr. Tanuj Lodha for Allottee*

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**CORAM : SHRIRAM R. JAGTAP, MEMBER (J) &  
SHRIKANT M. DESHPANDE, MEMBER (A)**

**DATE : 13 August, 2024**

**(THROUGH VIDEO CONFERENCING)**

**JUDGEMENT**

**[PER : SHRIKANT M. DESHPANDE, MEMBER (A)]**

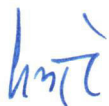
1] The captioned Appeals emanate from Order dated 13.08.2020 passed by learned Member I, MahaRERA (for short the Authority) in Complaint No.CC006000000151210 whereby the learned Authority directed the Promoter to refund amount of Rs.19,81,136/- out of the amount paid by the Allottee towards the consideration of flat D-503 and Rs.19,24,186/- for flat D-504.

2] For the sake of convenience, parties to the Appeals hereinafter will be referred to as "Allottee" and "Promoter" respectively. Since captioned Appeals are arising out of the same



Order and parties are the same, therefore, the Appeals are disposed of by this common judgment.

3] The brief facts, culled out from the pleadings, documents on record, and impugned Order are that Allottee has purchased flat bearing no.503 and 504 admeasuring 480 sq. ft. each in D-wing of "Residential Plot No.1" of the Promoter's registered project "**The Trees**" through real estate agent namely "Service for NRI" under international payment plan of 25% of the total consideration to be paid on registration of the agreement for sale, 60% of consideration to be paid on completion of the final floor slab of the building, and 15% of consideration on grant of possession (the said flats). Allottee purchased the said flats for consideration of Rs.1,41,67,000/- for each flat. The Promoter executed the agreements for sale for both the flats on 07.10.2016 (the said agreements). The Allottee has made payment of Rs.97,49,343/- against the said flats to the Promoter, which includes Rs 73,57,978 towards part consideration of the said flats, and the rest towards stamp duty, registration charges, GST and MVAT. The Promoter terminated the said agreements for sale by communication of an email dated 23.03.2018 on the ground that the Allottee defaulted on the balance payment of 60% of the total consideration as



stipulated in the agreements for sale. Further, the Promoter forfeited the amount of Rs.56,66,800/- as per Clause 13(6) of the agreements for sale and did not refund the balance amount.

4] Aggrieved by termination of the said agreements and forfeiture of 20% of the total consideration of the said flats, the Allottee filed the captioned Complaint bearing no.CC006000000151210 before the Authority *inter alia* seeking refund of the entire amount of Rs.97,49,343/- paid by Allottee to the Promoter, as well as compensation of Rs.15,00,000/- on the grounds of alleged misrepresentation and fraudulent conduct by the Promoter for alleged violation of the provisions of MOFA and RERA Act, 2016 (for short RERA). At the time of hearing of the Complaint, the Allottee gave up his claim for compensation and only sought relief of refund of the entire amount paid by Allottee to Promoter along with interest. The Allottee sought relief of refund on the ground that the terms in the said agreements for sale were unreasonable, unfair and heavily tilted in favour of Promoter to the disadvantage of Allottee.

5] The Allottee submitted to the Authority that the Promoter's international sale representative promised that after paying 25% as per the agreements at the time of registration, the balance of

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60% would be payable only after June, 2018. However, the Promoter demanded 60% of consideration in December, 2017 which was 6 months before the promised time lines and that Allottee could not arrange for the money by then. Allottee further contended that on 23.03.2018, the Promoter unilaterally terminated the agreements for sale and forfeited the amount of Rs.56,66,800/-. The Allottee protested termination of the agreements by communication of an email dated 24.03.2018. The Promoter by its letter dated 04.04.2018 demanded reinstatement fees of Rs.3,17,340/- along with the interest of Rs.9,00,825/- in case Allottee wished to continue with the said project. The Allottee further submitted that the Clause 13(b) of the agreements for sale which provides for forfeiture of 20% of the total consideration together with the amounts of interest payable by the Allottee in terms of agreements on account of default in payment are not enforceable because of unequal bargaining power of the parties to the agreements and therefore requested to refund his entire amount of Rs.97,49,343/- with interest. The Allottee further contended that while there is a forfeiture clause relating to the default of the Allottee in making payments, there is no such clause in agreements about Promoter's default and therefore the same as

one sided agreement. They were just pre-drafted, pre-printed agreements which the Allottee was required to sign. Therefore, the terms and conditions regarding the forfeiture of the Allottee's amount is unreasonable and therefore illegal. With these submissions the Allottee prayed for refund of his entire amount paid to the Promoter with interest.

6] The Promoter appeared in the Complaint and remonstrated the Complaint by filing reply. The Promoter contended that the payment schedule is already provided in the application form and the agreements for sale. Since the booking of the said flats, the Allottee was not paying the money as per the timelines specified in the agreements. There was a delay ranging from 39 days to 149 days in making the payments that the Allottee had so far paid to the Promoter. The Promoter further submitted that he kept the Allottee informed about the progress of the construction and informed the Allottee by an email of 24.12.2017 about the final slab of the building with a request to make the payments as per the payment schedule in the said agreements. Further, the Allottee failed to make the payments. Vide communication dated 26.12.2017 the Promoter asked the Allottee to make payments within the period of one month and informed that no further



extension would be acceptable. The Promoter submitted that the Allottee was informed periodically about payment timelines and construction updates and due to default in payments, the agreements were terminated on 23.03.2018. The Promoter further submitted that even after the termination, the Promoter gave the Allottee an opportunity for reinstatement as a revival of the agreements, but the Allottee failed to pay 60% of consideration as per the payment schedule. The Promoter contended that they have received Rs.37,07,464/- against flat 503 and Rs.36,50,514/- against flat 504 from the Allottee towards part consideration of the said flats. The Promoter further submitted that the Allottee has paid stamp duty, registration charges, taxes and MVAT. The Promoter had to pay non-refundable brokerage of Rs.3,54,113/- for each flat. Further, the Promoter has suffered a loss in cancelling the booking/ agreements because they had paid Rs.3,54,175/- for each flat towards the brokerage charges to the channel partners which is not refundable, and interest loss of the delayed payment of Rs.4,38,811/- for flat 503 and Rs.4,62,014/- for flat 504. With these submissions the Promoter contended that the Allottee is not entitled to get any relief prayed by him.



7] After hearing the parties, learned Authority passed the impugned Order. The Authority observed that Clause 13(b) of the agreements to forfeit 20% of the amount of total consideration and interest on delayed payment is one sided and therefore unreasonable and unfair. The Authority further observed that the Allottee did not have any bargaining power as he had to simply sign the pre-drafted and pre-printed agreements and struck down the forfeiture clause of the agreements observing the same amounting to unfair practice within the meaning of Section 7 of RERA. The Authority therefore concluded that Allottee is entitled to get refund of the amount paid by the Allottee towards the consideration of the said flats after deducting government taxes and brokerage charges. Accordingly, the Authority directed the Promoter to refund Rs.19,81,136/-, the balance amount of consideration of flat no 503 and Rs.19,24,186/- the balance amount of consideration of flat no. 504.

8] Feeling aggrieved by the impugned Order, Allottee has challenged the said Order on the following grounds:

(i) The learned Authority erred by not assigning the reasons for rejecting the interest component under Section 18 of RERA.

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(ii) The learned Authority has erred by not granting refund with interest towards stamp duty, registration charges and taxes.

(iii) The learned Authority failed to appreciate that Promoter has unilaterally terminated the agreements for sale, therefore, Allottee cannot be held liable to bear the costs of stamp duty, registration charges and taxes.

(iv) The learned Authority failed to appreciate that Allottee cannot be held liable to bear the brokerage amount paid by the Promoter to its broker. The Allottee is a third party for a contract, if any, entered between the Promoter and their brokers/ channel partners and therefore cannot be held liable for any such charges.

(v) The learned Authority failed to appreciate that the Promoter did not incur any loss in view of the flats having been sold to third party at higher price.

(vi) The learned Authority failed to appreciate that the termination notice dated 23.03.2018 for the said flats are illegal and bad in law.

(vii) The learned Authority failed to appreciate that registered deed of cancellation is required under Section 17 (1)(b) of the Registration Act, 1908, which is not executed between the parties.

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(viii) The learned Authority while passing the impugned Order has exercised discretion arbitrarily and not in a judicious manner.

9] In view of the above grounds, the Allottee has preferred Appeal No.AT00600000052752 and challenged the impugned Order and sought relief of modification of the impugned Order to the extent that:

(i) The Promoter be directed to refund the sum of Rs.37,07,464/- received from Allottee towards consideration for flat no.503 and sum of Rs.36,50,514/- towards consideration for flat no.504 along with interest under Section 18 of RERA.

(ii) The Promoter be directed to refund stamp duty, registration charges and taxes paid by Allottee along with interest under Section 18 of RERA.

(iv) The Promoter be held liable to bear the cost of brokerage Rs.3,54,175/- for each of the flats paid for by the Promoter.

10] Feeling aggrieved by the impugned Order, the Promoter has also challenged the impugned Order on the grounds such as:

(i) The impugned Order *ex-facie* transgresses and travels beyond the scope of RERA Act and its jurisdiction as the Authority cannot

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adjudicate upon issues which operate within the realm of contract between the parties.

(ii) The RERA Act nowhere deals with or touches upon or prohibits issue pertaining to forfeiture of earnest money, which operates within the realm of private contract between the parties, therefore, the Authority has no jurisdiction or occasion to try, entertain, and pass Orders on a subject which is not covered by the statutory framework of RERA. The Authority in the present case sought to exercise powers of a civil or constitutional court, by striking down Clause 13(b) of the agreements and that too without any cogent reasoning. It amounts to rewriting the contract between the parties.

(iii) The learned Authority has failed to substantiate the basis on which Allottee has been granted the reliefs sought, when the same is beyond the statutory mandate of the RERA Act and there are no enabling provisions to pass such an order. The learned Authority failed to appreciate that Clause 13(b) of the agreements provides for forfeiture of 20% of the consideration is a mandatory clause in the modal agreement under MOFA. The learned Authority has grossly misconstrued and erroneously applied provisions of Section 7 of RERA to construe and held that Clause 13(b) of the

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agreements is in violation thereto. Further, the learned Authority has erred to conclude that the clause entitling the Promoter to forfeit 20% of the consideration on termination of the agreements is an unfair practice under Section 7 of RERA Act.

(iv) The learned Authority has no jurisdiction or authority to venture in the terms as agreed between the parties and rewrite the contract between the parties. The forfeiture clause has been agreed by the Allottee which is evident in application forms, allotment letters and the agreements.

(v) The learned Authority has failed to follow the principles of law that the earnest money is liable to be forfeited when the transaction fails by reason of default of the Allottee. The learned Authority has failed to consider the duty and obligations of the Allottee under Section 19(6) and 19(7) of RERA Act which mandate payments "in the manner and within the time as specified in the said agreement for sale"

11] In view of the above grounds, the Promoter has preferred Appeal No. AT00600000052646 challenging the impugned Order and sought relief of setting aside the impugned Order.

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12] We have heard learned Advocate Mr. Shardul Singh for Promoter and Advocate Mr. Tanuj Lodha for Allottee.

13] The submissions advanced by learned Advocates are nothing but reiteration of contents of Appeals memo and written submissions. However, in addition, the learned Advocate for Promoter has submitted that there were no objections on the part of the Allottee pursuant to the understanding of all the terms and conditions as provided in the application forms, allotment letters and the agreements for sale. Learned Advocate further submitted that prior to execution of the agreements, draft of the agreements of sale were provided to the Allottee and no objection or suggestion on the same were made by the Allottee including Clause 13(b) of the agreements. Learned Advocate further argued that it is settled law that 'earnest money' is *terminus-a-qua* for performance of the contract and in case of non-performance of the same, it is liable to be forfeited as per the terms and conditions of the contract. With regard to the submissions of Allottee that he was forced to sign on the dotted lines of the contract framed by the Promoter, learned Advocate submitted that Allottee had complete understanding and grasp of the terms and conditions as enunciated in the application forms, allotment letters regarding provision of 20% of the total

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consideration of the subject flats as 'earnest money' and thereafter the Allottee proceeded to register the agreements for sale without any objection. Learned Advocate submitted that the principle of law enunciated by Hon'ble Supreme Court in the case of **Satish Batra Vs. Sudhir Raval** [Civil Appeal No.7588 of 2012] wherein Hon'ble Supreme Court has held that "earnest money" is liable to be forfeited when the transaction fails by reason of default of the purchasers. The learned Advocate further submitted that as per above legal position, the application forms and the allotment letters issued by the Promoter in favour of Allottee for the subject flats specifically provided that 20% of the sale consideration was to be treated as "earnest money" and was liable to be forfeited on termination of the contract.

14] While explaining the rationale for the provision of forfeiture, learned Advocate for Promoter submitted that in order to cover the loss and damage caused as a result of failure of payment installments in time, the forfeiture clauses are included in the agreements which is just, fair and equitable. Learned Advocate has categorically enunciated that in the judgment of Hon'ble Supreme Court in case of **Satish Batra** (supra) where the terms of a contract are clear and explicit with a part of consideration is to be



treated as 'earnest money', the same is liable to be forfeited if the purchaser defaulted in payments of the consideration, with or without any proof of loss sustained by the Promoter. As such, 'earnest money' is treated as a guarantee for due performance of the contract. Learned Advocate for Promoter also submitted that the Authority has failed to recognize the loss caused to the Promoter due to Allottee's failure to adhere to the terms of the agreements for sale in so far as the delay caused by the Allottee in making the payment of installments caused huge loss to the Promoter.

15] Learned Advocate for Promoter has placed reliance on the following citations:

(i) **Ankur Dhanuka Vs. Godrej Projects Development Ltd. & Anr.** (Order passed by Haryana RERA dated 10.04.2019 in Complaint 1757 of 2018)

(ii) **Shakti Singh Vs. M/s. Bestech India Ltd.** (Order passed by Haryana REAT dated 18.08.2021 in Appeal No.279 of 2019)

(iii) **Godrej Greenview Housing Pvt. Ltd. Vs. Jay Prakash Pande** (Order passed by MahaREAT dated 13.01.2022 in Appeal No.AT00600000053353 in Complaint No.CC006000000161300)



(iv) **Kavita Sikka Vs. Oasis Landmark LLP Godrej & Anr.** (SC in Civil Appeal No.4430/2018 dated 07.05.2018)

(v) **Kavita Sikka Vs. Oasis Landmark LLP and Anr.** (2017 SCC Online NCDRC 1641 in Consumer Care No.2790 of 2017 dated 17.10.2017)

16] Learned Advocate for Allottee Mr. Tanuj Lodha, in addition to the submissions in the Appeal memo and written submissions, has argued that the Promoter has admitted in the Appeal memo that the forfeiture clauses are included in the agreements for sale in order to cover loss and damage caused as a result of alleged non-payment or delay by Allottee. Learned Advocate has further submitted that the Promoter has already re-sold and transferred the subject flats for much higher consideration than the consideration that was agreed upon for the subject flats in the agreements for sale. Learned Advocate further submitted that the Allottee has not executed any deed of cancellation with respect to the subject flats. Learned Advocate further argued that the Promoter has not incurred any loss in view of the alleged termination of agreements for sale for the purported delay/ non-payment of consideration by the allottee, on the contrary, the Promoter has made profits by re-sale of the subject flats. Learned





Advocate has further submitted that the Promoter has failed to prove loss suffered by the Promoter as a consequence of the alleged breach of agreements for sale committed by the Allottee.

17] Learned Advocate for Allottee argued that the concept of forfeiture clauses is linked to losses suffered by Promoter, and that the Promoter cannot forfeit any monies if no loss is incurred by the Promoter. Therefore, the Promoter was not entitled to forfeit any part of the Allottee's payments towards consideration of the said flats as the Promoter did not incur any loss as a result of termination of the agreements for sale. Learned Advocate has argued that the default in paying the amount as per the agreements for sale invites liability of cancellation of agreements and it empowers the Promoter for forfeiture and recovery of the interest due to such delays, is most unjust and it exploits the Allottee. Learned Advocate has submitted that there should be deed of cancellation and it should be executed by both the parties as a prerequisite for any forfeiture by Promoter. If this requirement is not fulfilled then such unilateral deed of cancellation is void. Further, there can be no forfeiture in absence of deed of cancellation. Learned Advocate has also submitted that forfeiture linked to entire sale consideration would lead to absurd results and



would be unjust to Allottee. Learned Advocate has further submitted that the agreements for sale are documents later to earlier documents of booking forms and allotment letters. Therefore, the alleged claim of "earnest money" by the Promoter is to be taken in context of the agreements for sale and not any document prior to the agreements for sale including booking forms or allotment letters.

18] Learned Advocate for Allottee has placed reliance on the following citations:

(i) **Jagjeet Kaur Behar and Ors. Vs. Paras Sunderji Dedhia** (Order of MahaRERA dated 27.09.2019 in Complaint CC006000000078791)

(ii) **Sanvo Resorts Pvt. Ltd. Vs. Mr. Ranveer Sharma** (Order of MahaREAT dated 19.07.2019 in Appeal No.AT006000000010751 in complaint CC006000000055001)

(iii) **MahaRERA circular No.18/2018** dated 17.07.2018

18] With these contentions learned Advocate for Allottee has prayed for dismissal of the Appeal filed by the Promoter and further prayed to allow the Appeal filed by the Allottee.



19] Having considered the detailed and comprehensive submissions of the respective parties, supported by various documents, the controversy in these Appeals appears to be very limited in scope. The point that arises for our consideration and finding thereon for the reasons to follow is as under:

<b>Sr. No.</b>	<b>Points</b>	<b>Findings</b>
1	Whether the Allottee is entitled for refund of the payment made to the Promoter towards consideration of the subject flats?	In the affirmative
2	What Order?	As per the final Order

## **REASONS**

### **Point No 1**

20] On ensembling the facts as submitted above by the parties, it is not in dispute that the Allottee purchased the subject flats for consideration of Rs.1,41,67,000/- each and executed the agreements for sale dated 07.10.2016. It is also not in dispute that the Allottee has made payment of Rs.97,49,343/- to the Promoter, out of which Rs.73,57,978/- was towards part consideration of the subject flats and the rest towards stamp duty, registration charges,



GST and M-VAT. It is also not in dispute that the Allottee committed default in payment of 60% of the total consideration as stipulated in the payment milestones in the agreements for sale. The material produced on record also shows that the Promoter had given 15 days prior notice for termination of the agreements if the Allottee fails to pay an installment of 60% of the total consideration as stipulated in the said agreements and terminated the said agreements for sale on 23.03.2018 on the ground that the Allottee defaulted on the balance payment of 60% of the total consideration as stipulated in the agreements for sale. The Allottee protested against the termination of the agreements and forfeiture of Rs.56,66,800/- by the Promoter. It is also not in dispute that the Promoter did not refund the remaining amount after deducting the amount which was forfeited by him.

21] The limited point for our determination is whether the Promoter is entitled to forfeiture of the amount of 20% of total consideration of the subject flats as stipulated in Clause 13(b) of the said agreements as an 'Earnest Money'. For convenience, the said Clause is reproduced below:

*"13.b Upon termination of this Agreement by the Developer in accordance with Clause 13(a) above, the Developer shall be entitled to forfeit 20% of the Consideration together with the amount of interest payable by the Purchaser/s in terms of this Agreement from the dates*

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*of default in payment till the date of termination and refund the balance amounts (if any) to the Purchaser/s without any interest, compensation or claim for any damage or costs; charges and expenses whatsoever simultaneously upon the Parties executing and registering a Deed of Cancellation. If the Purchaser/s does/do not accede to the Developer's request to execute/ register the Deed of Cancellation within 15 (fifteen) days of termination, the Developer shall be entitled to proceed to execute/ register it with the appropriate Sub-Registrar, including as an authorized constituted attorney of the Purchaser/s, as the Purchaser/s hereby confirms. The Parties further confirm that any delay or default in such execution/registration shall not prejudice the cancellation, the Developer's right to forfeit and refund the balance to the Purchaser/s, and the Developer's right to sell/transfer the Premises to any third party for such consideration and on such terms and conditions as the Developer deems fit. It is hereby clarified that in case of joint purchaser/s, the balance amounts will be refunded to the first Purchaser as mentioned in this Agreement."*

22] The Promoter has placed reliance on 20% of total consideration of the subject flats mentioned in Clause 13(b) above an "earnest money" as specified in application forms and the allotment letters. The submission of the Promoter is that the Allottee was aware as per the application forms and allotment letters which had mentioned that 20% forfeiture of the total consideration of the said flats will be treated as "earnest money". The submission of the Promoter is that the Hon'ble Supreme Court in **Satish Batra** (supra) categorically upheld the validity of forfeiture clause and held that the advance paid by the purchaser as part of "earnest money" is liable to be forfeited on the default by the purchaser in the payment of consideration, where the clause

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in the agreements for sale are clear and explicit to this effect. Closer examination of the agreements for sale reveals that Clause 40 of the said agreements clearly provides that the said agreements supersede the previous arrangement, agreement, exchange of documents including market material, brochure, etc. This would clearly mean that the terms and conditions in application forms and allotment letters come to an end upon execution of agreements for sale. Therefore, any reference to application forms and allotment letters about "earnest money" would not automatically attract the forfeiture unless the provision of "earnest money" is explicitly mentioned in the agreements for sale. The payment schedule stipulated in para 5(d) of the agreements for sale has given the payment schedule linked to certain milestones, which clearly indicates part payments towards installments of the consideration. Further, the agreements for sale of the subject flats do not mention the term "earnest money" anywhere in the agreements.

23] Relevant part of Hon'ble Supreme Court of India in their judgment in the matter **Satish Batra** (supra) is reproduced below:

*"15. The law is, therefore, clear that to justify the forfeiture of advance money being part of "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 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 a 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] From the above judgment, it is clear that in order to justify the forfeiture or advance money being part of "earnest money", the terms of the contract must be clear and explicit to that effect. Further, the part payment of purchase price cannot be forfeited unless it is a 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. Therefore, the submission of the Promoter that Clause 13(b) which provides for forfeiture of 20% of the total consideration cannot be construed as "earnest money" and therefore Promoter is not entitled to forfeit the amount paid by the Allottee as part payment of consideration to the Promoter.

25] The Promoter has submitted that he has incurred loss as a result of termination of the said agreements for sale. However, on the contrary, the said flats have been re-sold by the Promoter on much higher consideration than that of the consideration agreed

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upon in the agreements for sale of the subject flats. The Allottee, in support of his claim that the Promoter has not suffered any loss as a result of termination of the agreements, has produced on record Index-2 for the said flats along with the details of agreements for sale for consideration of Rs.1,67,97,600/- for flat no.503 and Rs.1,62,97,600/- for flat no.504, which has not been denied by the Promoter. This clearly shows that the Promoter has not suffered any loss on account of termination of the agreements for sale of the subject flats and on the contrary gained profits.

26] The Promoter has submitted that Rules framed under the RERA and model agreement provided thereunder, stipulates the Promoter's right to adjust any **"agreed liquidated damages"** prior to refund of monies to the Allottee upon termination of the agreement for sale. Clause 4.2 of Model Form of agreement provided at Annexure 'A' of the Rules states as under:

*"4.2 Without prejudice to the right of the promoter to charge interest in terms of clause 4.1 above, on the Allottee committing default in payment on due date of any amount due and payable by the Allottee to the Promoter under this Agreement (including his/her proportionate share of taxes levied by concerned local authority and other outgoings) and on the allottee committing three defaults of payments of instalments, the Promoter shall at his own option, may terminate the Agreement: Provided that, Promoter shall give notice of fifteen days in writing to the Allottee, by Registered Post AD at the address provided by the allottee and mail at the e-mail address provided by the Allottee, of his intention to terminate this Agreement and of the specific breach or breaches of the terms and conditions in respect of which it is intended to terminate*



*the Agreement. If the Allottee fails to rectify the breach or breaches mentioned by the Promoter within the period of notice then at the end of such notice period, promoter shall be entitled to terminate the Agreement.*

*Provided further that upon termination of this Agreement as aforesaid, the Promoter shall refund to the Allottee (subject to adjustment and recovery of any agreed liquidated damages or any other such amount which may be payable to Promoter) within a period of thirty days of the termination, the instalments of the sale consideration of the Apartment which may till then have been paid by the Allottee to the Promoter”*

Since as discussed above in Para 24, that Promoter has not suffered any loss on account of termination of the agreements of sale of the subject flats, the question of adjustment and recovery of any *agreed liquidated damages* from the Allottees will not arise.

27] The Promoter has also claimed to recover Rs.3,54,175/- as brokerage he had paid to its channel partners for each of the subject flats. However, the Promoter has failed to substantiate the same with cogent documentary evidence of having paid the said brokerage nor any documentary evidence of any brokerage he had to pay when he re-sold the subject flats. Therefore, the Promoter's claim of loss on account of brokerage cannot be accepted.

28] The Promoter has argued about rationale of the forfeiture clause in the said agreements in the Appeal memo that the same are provided for to cover any loss that the Promoter would incur as a result of cancellation or termination of the agreements for sale

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on account of any default on the part of Allottee. Further, from the discussion hereinabove Promoter has not made out a case that he had indeed suffered any loss on account of termination of the said agreements by cogent documentary evidence. Therefore, we hold that the Allottee is entitled for refund of the amount paid by the Allottee towards part consideration of the said flats. Accordingly, we answer point no.1 in the affirmative.

29] Since the refund amount which was due to be paid to Allottee by the Promoter following termination of the Agreements for sale remained with the Promoter, the Promoter has used the same for commercial purposes for construction of the subject project. Hence, equity demands that we also grant the relief of interest on the refund amount from the date of termination of the said agreements upto the date of actual payment of the refund amount to the Allottee.

30] In the light of discussions hereinabove, we proceed to pass the following Order:

**ORDER**

1. Appeal No.AT006000000052646 is dismissed.
2. Appeal No.AT006000000052752 is partly allowed with following directions:



- (i) The Promoter is directed to pay Allottee Rs.73,57,978/- which has been received by the Promoter towards part consideration of the subject flats.
- (ii) The Promoter is directed to pay interest to Allottee at the rate of SBI's highest marginal cost lending rate (MCLR) plus 2% of the amount mentioned in 2(i) with effect from the date of termination of the said agreements i.e. 23.03.2018 till the date of actual payment.
- (iii) Promoter is directed to execute and register the deed of cancellation within 30 days of this order and co-operate with the Allottee for seeking refund from the concerned government authorities on the stamp duty, tax, etc. paid by the Allottee.
- (iv) Misc. Application No.574/20 also stands disposed of accordingly.

3. Parties shall bear their own cost.

4. Copy of this Order be communicated to the Authority and the respective parties as per Section 44(4) of RERA, 2016.

  
**(SHRIKANT M. DESHPANDE)**

  
**(SHRIRAM R. JAGTAP)**

MBT/