

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

Appeal No. AT00600000053392/21

In

Complaint No. CC0060000000171648

Rajeshwari Ramesh Pillai)
Ramesh Subramaniam Pillai; Both Adult)
Indian currently residing at 405, Dosti)
Paradise 5, Behrampur, Vasai Road(West))
Palghar- 401202.) **.. Appellants**

Versus

Aishwarya Avant Builders LLP., a)
Partnership firm registered under the)
Provisions of the Limited Liability)
Partnership Act, 2008 having its)
Registered office at 522, 5th Floor,)
The Summit Business Bay, Andheri)
Kurla Road, Off Western Express)
Highway, Adjacent to Western Express)
Highway Metro Station, Gate No.3,)
And Guru Nanak Petrol Pump, Andheri)
(East), Mumbai 400 069.) **Respondent.**

Adv. Mr. Aman Shukla for Appellants.

Adv. Mr. Tushar Kadam for Respondent.

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

DATE : 27th September, 2024

(THROUGH VIDEO CONFERENCING)

JUDGEMENT

[PER : SHRIRAM R. JAGTAP, MEMBER (J)]

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1. This appeal arises from the Order dated 12th January 2021 passed by the Learned Member-1 MahaRERA (For short "Authority") in the complaint No.CC006000000171648 filed by the allottees, whereby Learned Authority has directed the parties to execute a registered agreement for sale as per the provisions of Section 13 of RERA and the relevant Rules made there under within a period of one month in accordance with the allotment letter dated 20.05.2019. The Appellants who are complainants, have preferred present appeal raising grievance that the Learned Authority has not satisfactorily granted reliefs as sought by them in the complaint.
2. The appellants and respondents hereinafter will be referred to as "Allottees and "Promoter" respectively for the sake of convenience.
3. The facts as gathered from the record indicate that promoter is an owner of land bearing Plot No.26 (Part-1), C.T.S. No.157, 157/1 to 55, admeasuring about 1115.2 sq.mtrs. along with land bearing C.T.S.No.158, 158/1 to 33, Plot No.25 (Part-1) admeasuring 1028.50 sq.mtrs. and the land bearing C.T.S. 192 (Part) situated at Village Majas, Taluka Andheri, Jogeshwari (East), Mumbai 400 060. The promoter was intending to develop the land by constructing two buildings as a result thereof the promoter has launched a project namely "Avant Heritage". The allottees have jointly booked Flat No.1603 on 16th Floor, admeasuring 417 sq.ft. in the subject project for total consideration of Rs.1,15,00,110/-. The allottees have paid Rs.13,50,000/- to promoter. The promoter has issued the

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allotment letter dated 28th May 2019 for the said booking to allottees. The allottees have sought to avail home loan from HDFC bank. However, the same was denied by the bank because the signature of one of the allottees was missing on the letter of allotment. Though the allottees have jointly booked the said flat in the project of the promoter, but the promoter has issued the allotment letter in the name of Mrs. Rajeshwari Pillai. Therefore, the allottees were not in position to go ahead with the transaction of the purchase of flat mainly due to administrative lapses on the part of the promoter. Because of this the allottees have informed the promoter about their inability to continue in the project and sought refund of the monies paid by them. However the promoter has failed and neglected to make the refund of the amount to allottees. By letter dated 4th July 2019 allottees asked the promoter to refund the money paid by them. The promoter did not respond to the said letter and failed to refund the amount to allottees. Having received 10% amount out of the total consideration, the promoter without executing the register agreement for sale with allottees has raised the demand of amount and thereby violated the provisions of Section 13 of RERA Act. Being dissatisfied with the conduct of the promoter allottees have filed complaint and sought relief of refund amount with interest.

4. The promoter has put his appearance in the complaint and remonstrated the claim of the allottees by filing the reply contending therein that complaint is not maintainable as there is no violation of provisions of Sections 12 and 18 of RERA Act by

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him and on this preliminary issue the promoter has prayed for dismissal of the complaint. At the time of booking the price of the subject flat was Rs.1,15,00,110/-. However the allottees had desired to avail the special offer on the eve of "Akashay Tritya festival" the promoter had agreed to give discount and discounted price of the flat was fixed at Rs.1,04,00,000/-. The discounted price was subject to payment of instalments by allottees as per payment schedule agreed at the time of booking. As per the payment schedule the allottees ought to have the upfront payment of Rs.20 lakhs by 10th June 2019. Besides the allottees have agreed to pay Rs.51,12,935/- at the time of registration of the Agreement for Sale.

5. The promoter has further contended that it was agreed by the allottees that remaining payment shall be made as per the schedule annexed to the allotment letter. The time for payment of all the amounts mentioned in the allotment letter is essence of the contract, failing which the discounted and concessional sale rate offered to allottees shall stand withdrawn ipso facto and allottees shall be liable to pay total consideration of Rs. 1,15,00,110/- or the allotment shall be terminated, cancelled or revoked and the promoter shall be entitled to forfeit the amount of 10% of the total sale consideration as liquidated damages and refund the balance, if any, without any interest thereon. The allottees have committed default in making payment of Rs.20 lakhs by 10th June 2019. By letter dated 15.06.2019 the allottees informed the promoter that they would require seven more working days time to pay balance amount. By letter dated 29th

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June 2019 the promoter has requested allottees to deposit due amount of Rs.6,50,000/- failing which interest at the rate of 2% will be charged for delayed payment. The allottees vide letter dated 30th June 2019 and 4th July 2019 expressed their inability to comply with the terms of payment as they could not secure loan from HDFC bank and requested the promoter to cancel the allotment of the flat. The allottees further vide letter dated 9th August, 2019 tried to raise various frivolous defences that provisional allotment letter is not binding upon them and asked the promoter to refund the amount paid by them. In the said letter the allottees have suggested the promoter that promoter may deduct Rs.10,000/- from the paid amount. There were several correspondence between the parties. Despite opportunities to make payment of the instalments the allottees have failed to make payments as per schedule. With these contentions the promoter has prayed for dismissal of the complaint.

6. After hearing the parties the learned Authority has passed the impugned order holding that complainants are seeking refund for violation of Section 13 of RERA Act by promoter, but the said provision does not talk about refund of the amount to the allottees. The learned Authority came to the conclusion that no relief towards refund can be granted to the complainants u/s. 13 of RERA Act. Therefore, learned Authority has directed both parties to register agreement for sale as per the provisions of Section 13 of RERA Act in accordance with allotment letter dated 20.05.2019 failing which money paid by the complainants be

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refunded as agreed by the respondent within period of next one month.

7. We have heard the arguments of Advocate Mr. Aman Shukla for Appellants and Advocate Mr. Tushar Kadam for respondent. The submissions advanced by the learned counsel appearing for respective parties are nothing but reiteration of the contents of complaint, reply filed by the promoter to the complaint and written submissions. We have given thoughtful consideration to the submissions advanced by the learned counsel appearing for respective parties.
8. After examination of the pleadings of the parties, impugned order and material produced on record by the parties, following points arise for our determination and we have recorded our findings thereon for the reasons to follow:-

Sr. No.	Points	Findings
1.	Whether impugned Order warrants interference in this Appeal?	In the affirmative.
2.	Whether the appellants are entitled to reliefs as sought in the complaint?	Partly in the affirmative.
3.	What Order	As per final Order

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9. On scanning the pleadings of the parties reveals that it is not in dispute that allottees had booked subject flat in the project of the respondent for a total consideration of Rs. 1,15,00,110/-. The allottees have paid Rs.13,50,000/- to promoter towards part consideration which is obviously more than 10% of total consideration. It is not in dispute that despite having received more than 10% amount of total consideration the promoter did not execute the registered agreement for sale. On the other hand, by the letter dated 29th June 2019 the promoter has raised demand of Rs.6,50,000/- to allottees. This conduct of the promoter redounded allottees to exit from the project. The allottees decided to withdraw from the project and to get refund of the amount. Accordingly, allottees by letter dated 30th June 2019 requested the promoter to cancel the booking and to refund the amount. However, promoter has neither refunded the amount to allottees nor executed an agreement for sale in favour of allottees.

10. On examination of broad factual account of events as above, it appears that considering the allegations made in the complaint and relief sought therein, the learned Authority had a doddle task to consider the issue of violation of provisions of Section 13 of RERA Act 2016 and decide the entitlement of reliefs sought in the complaint by the allottees in the light of provisions primarily u/s. 18 of RERA Act 2019. It is seen from the impugned order that the learned Authority has directed parties to execute a registered agreement for sale as per provisions of Section 13 of RERA Act failing which money paid by the complainants be

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refunded as agreed by the respondents within a period of next one month. However the learned Authority has not awarded interest on the paid amount to allottees.

11. Section 13 of RERA Act 2016 casts an obligation on the promoter that not to accept from allottee a sum more than 10% of the cost of the apartment without first entering into a written agreement for sale with allottees. Sub-section 1 of Section 13 of RERA Act 2016 relates to no deposit or advance to be taken by promoter without first entering into agreement for sale. It is not in dispute that allottees have paid Rs.13,50,000/- to promoter which is more than 10% of the total cost of the subject flat. Despite this, by letter dated 29th June 2019 the promoter has again demanded Rs.6,50,000/- from the allottees. This is a sheer violation of Section 13 of RERA Act 2016 by promoter. Section 18(3) of RERA Act states that where the promoter fails to discharge any other obligations under the Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, promoter shall be liable to pay such compensation to the allottees, in the manner as prescribed under the Act. Having received more than 10% amount of total consideration the promoter has again raised demand of Rs.6,50,000/- to allottees. This act of the promoter is contrary to the provisions of Section 13 of RERA Act 2016. Therefore, we are of the view that allottees are entitled to invoke the provisions of Section 18 of RERA Act. The impugned order records that if the parties to the complaint failed to execute agreement for sale the promoter shall refund the entire amount



to allottees. Despite these directions the promoter has not refunded the entire amount to allottees till date. On the contrary it is specific contention of the promoter that upon termination of the allotment the promoter is entitled to deduct 10% of the total flat consideration from the amount paid by the allottees. In spite of this learned Authority has directed the promoter to refund the entire amount to allottees in case parties to the complaint failed to execute an agreement for sale. It is worthy to note that in spite of these directions there is nothing on record to show that pursuant to the impugned order promoter had shared a draft agreement of sale with allottees. It is not in dispute that the promoter has also not refunded the entire amount to allottees as per order of the learned Authority.

12. There is no express provision in RERA Act 2016 by which the promoter is entitled to forfeit earnest amount on account of cancellation of booking by allottee or promoter. The Act is silent on the point of permissible deduction, if allottee or promoter for whatsoever reason cancels booking. We are of the view that there should be some reasonable logic while forfeiting the amount deposited by the allottees. There is nothing on record to show that because of cancellation of booking by allottees promoter has suffered damages or loss. This signifies that the conduct of the promoter to forfeit the entire amount without any justifiable reason is contrary to the object of RERA Act 2016. If promoter is allowed to forfeit earnest money without any justifiable reason it will defeat the very object of the statute, as it is a social legislation. In a case of **M/s. Newtech Promoters**

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and Developers Pvt. Ltd. Vs. State of U.P. & Ors. (Civil Appeal Nos.6745-6749 of 2021 dated 11th November 2021), the Hon'le Apex court has observed that:

"9. The statement of object and reasons of the Act indicates that the primal position of the regulatory authority is to regulate the real estate sector having jurisdiction to ensure compliance with the obligation cast upon the promoter. The opening statement of objects and reasons which has a material bearing on the subject reads as follows:

"The real estate sector plays a catalytic role in fulfilling the need and demand for housing and infrastructure in the country. While this sector has grown significantly in recent years, it has been largely unregulated, with absence of professionalism and standardization and lack of adequate consumer protection. Though the Consumer Protection Act, 1986 is available as a forum to the buyers in the real estate market, the recourse is only curative and is not adequate to address all the concerns of buyers and promoters in that sector. The lack of standardization, has been a constraint to the healthy and orderly growth of industry. Therefore, the need to regulating the sector has been emphasized in various forums.

2. In view of the above, it becomes necessary to have a Central legislation, namely, the Real Estate (Regulation and Development) Bill, 2013, in the interest of the effective

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consumer protection, uniformity and standardization of business practices and transactions in the real estate sector. The proposed Bill provides for the establishment of the Real Estate Regulatory Authority (the Authority) for regulation and promotion of real estate sector and to ensure sale of plot, apartment or building, as the case may be, in an efficient and transparent manner and to protect the interest of consumers in real estate sector and establish the Real Estate Appellate Tribunal to hear appeals from the decisions, directions or orders of the Authority."

10.It was introduced with an object to ensure greater accountability towards consumers, to significantly reduce frauds & delays and also the current high transaction costs, and to balance the interests of consumers and promoters by imposing certain responsibilities on both, and to bring transparency of the contractual conditions, set minimum standards of accountability and a fast-track dispute resolution mechanism. It also proposes to induct professionalism and standardization in the sector, thus paving the way for accelerated growth and investment in the long run."

The Hon'ble Apex Court has further observed that:

"13.

.....
.....The buyer borrows money to pay for a house and simultaneously plays the role of a financier as

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building projects collect money upfront and this puts the buyer in a very vulnerable position the weakest stakeholder with a high financial exposure. *The amendment to the Insolvency and Bankruptcy Code, 2018 recognized the home buyers as financial creditors and the present enactment is the most important regulatory intervention in favour of the home buyers and it's had an impact and with passage of time, has become a yardstick of laying down minimum standards in the market.*

.....”

The transaction is governed by RERA Act 2016. Though the claim of the appellants for refund of amount is not governed by any specific provision of RERA Act, but it cannot be ignored that the object of RERA Act is to protect the interest of consumers. So, whatever amount paid by the home buyers to the promoter should be refunded to home buyers on his withdrawal from the project. Regulation 39 of Maharashtra Real Estate Regulatory Authority (General) Regulation, 2017 speaks about saving of inherent powers of the Authority. It reads as under:

“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”

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Similarly, Regulation 25 of the Maharashtra Real Estate Appellate Tribunal, 2019 speaks about saving of inherent powers of the Tribunal;

"25(1) Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent power of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent the abuse of the process of the Tribunal".

It means the Regulatory Authority as well as the Appellate Tribunal have inherent powers under the Regulations framed under RERA Act, 2016 to pass such Orders which are necessary to meet the ends of justice. In exercise of powers thereof in the instant case, it is in the interest of justice to direct the Promoter to refund the total amount paid by Allottees accordingly.

13. It is not in dispute that the allottees have paid Rs.13,50,000/- to promoter in the month of May and June 2019. Despite directions of the learned Authority promoter has neither shared draft agreement for sale nor refunded the amount of Rs.13,50,000/- to allottees. It means promoter has disobeyed the order of learned Authority. Since 2019 the promoter has been utilizing the said amount for commercial purpose i.e. for development of the project. We would like to reiterate that sub section 3 of Section 18 of RERA Act 2016 entitles the allottees to seek compensation from promoter on account of failure to discharge any other obligation imposed on him under the Act or rules or regulations made thereunder. In such circumstances, we are of the view that the promoter can be directed to pay interest on the paid amount till realization of the entire amount in lieu of compensation as per provisions of Section 18(3) of RERA Act 2016.

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14. Therefore, for the foregoing reasons, we have come to the conclusion that the impugned order warrants interference in this appeal. The appellants are entitled to relief of refund of the amount with interest from the date of payment till realization of the entire amount. Consequently, we proceed to pass following order.

ORDER

- (a) Appeal No.AT00600000053392/21 is partly allowed.
- (b) The impugned Order dated 12.01.2021 passed in Complaint No.CC0060000000171648 is set aside.
- (c) Respondent/promoter is directed to refund the amount of Rs.13,50,000/- to appellants with interest at the rate of 2% above the State of Bank of India highest Marginal Cost Lending Rate from the dates of the payment till realization of the entire amount.
- (d) Parties shall bear their own costs.
- (e) Copy of this Order be communicated to the Authority and the respective parties as per Section 44(4) of RERA Act, 2016.

(SHRIKANT M. DESHPANDE)

(SHRIRAM R. JAGTAP)

vss