

**BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY  
AUTHORITY, MUMBAI**

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

**Complaint No. CC006000000193718**

**Kishore Shamji Chheda**

**..Complainant/s**

**Vs**

**Godrej Properties Limited**

**..Respondent/s**

**MahaRERA Project Registration No. P51800000158**

**O R D E R**

**(29.10.2024)**

*(Date of Hearing: 26.06.2024)*

**Coram: Shri. Ravindra Deshpande, Hon'ble Member 2, MahaRERA**

*CA Ashwin Shah for Complainant/s*

*Ld. Adv. Abhijit Mangade for Respondent/s*

1. The complainant has filed the present complaint requesting to direct the respondent to refund the entire booking amount of Rs.15,00,000/- paid towards the part payment of the consideration of the said apartment alongwith applicable interest and also requested that respondent may be directed to pay amount of Rs.50,000/- towards cost of the complaint for legal expenses incurred in connection with the filing of the complaint.
2. In short the facts of the complaint can be narrated as follows:
3. It is the case of the complainant that complainant booked flat no. S-0604 having carpet area approx. 1332 sq. ft. in the building 'S' alongwith two car parking in the project of the respondent 'The Trees, Origins', situated at the part of the CTS No. 51/B situated at Kurla, within the registration district and sub-district of Mumbai City. The above flat no. S-0604 is called as 'Suit flat' hereinafter in the order.

4. The complainant on 24.09.2017 booked the suit flat for a consideration of Rs.4,39,11,500/- (Rupees Four crores thirty nine lakhs eleven thousand five hundred only) and paid Rs.15,00,000/- (Rupees Fifteen lakhs only) through cheque bearing no. 76524 drawn on Bank of India in favour of the respondent. Respondent sent an acknowledgement receipt vide email dated 05.05.2017 to the complainant. On 08.05.2017, the complainant sent email to the respondent showing his inability to continue with the booking and requested the respondent to cancel the booking application form and refund the booking amount. The complainant mentioned the emergency emerged in the family which was the reason to cancel the booking within short span of 15 days. On 10.05.2017, the respondent sent a demand letter despite the fact that cancellation request was made by the complainant on 08.05.2017. The complainant again wrote a email dated 12.05.2017 to the respondent with reference to email dated 08.05.2017, which was replied by the respondent stating that the respondent will communicate with the complainant after discussing the issue. The complainant sent reminder email for cancellation, but respondent sent changed details of bank for making further payment, which was responded by the complainant, stating their cancellation request. The respondent sent letter dated 31.05.2017, stating with reference to the cancellation request dated 17.05.2017 that amount paid as part payment of sale consideration of Rs.15,00,000/- stands forfeited, the cancellation request was made on 08.05.2017 i.e. four (4) days after acknowledging of receipt of payment amount.
5. According to the complainant, he followed up with the respondent questioning about unreasonable deduction of the booking payment amount forming part of the sale consideration to the tune of 100% through telephonic conversation and by visiting the site but is futile. The complainant is a senior citizen and due to emergency in the family, he had to cancel the booking and booking was cancelled within four days of the acknowledgement from the respondent, then also the respondent did not consider the plight of the complainant and forfeited

the entire amount under the pretext of clause (n) of the application form, which is prima facie one sided and unilateral clause inserted by the respondent. The complainant on 02.09.2017 again wrote a letter to the respondent requesting to refund of an amount of Rs.15,00,000/- stating the reason of withdrawal and pleaded again the withdraw forfeiture clause. There is no loss being caused to the respondent so as to forfeit large amount of money i.e. 100% of entire amount as the respondent has sold the suit flat to the third party within one year at substantially larger consideration amount so there is no loss or damage caused to the respondent. The respondent has retained the amount forfeited unilaterally for nearly 42 months and thereby complainant is put to loss on account of non-earning of interest thereon. Being aggrieved and dissatisfied with the conduct of the respondent and non refund of the booking amount paid towards part payment of sale consideration, the complainant constrained to file the present complaint.

6. According to the complainant, the Application form on which respondent is relying on is unreasonable unfair contract with unequal bargaining power. According to the complainant, the complainant had no choice or chance to alter the dictatorial of unilateral terms of the agreement form but to give their assent to a contract or to sign on the dotted line in a prescribed standard form as part of the contract. However, unfair, unreasonable and unconscionable a clause in that contract or form may be. It is settled law as held by the Apex Court in the Pioneer Urban Land and Infrastructure vs. Union on India that the respondent cannot be allowed to act disadvantageously to the interest of the complainant by making the complainant sign on dotted lines of the one sided and inequitable terms of the application form. Contract should be equitable for forfeiture. As per clause (n) of the application if the complainant withdraws or cancels the application form then the respondent shall be entitled to forfeit all the amount but as per clause (c) the respondent is entitled to reject or cancel the application form at its discretion and only the Principal amount

will be refunded to the complainant which itself portrays the unreasonableness, unfairness, of the respondent towards the complainant.

7. According to the complainant Section 74 of the Indian Contract Act, provides that if there is any damage or loss is being suffered by the party then reasonable amount of compensation shall be deducted. In the present case, here neither the loss or damage is being suffered, then also large amount is forfeited without providing any basis of loss suffered by the respondent which is gross violation of law. Hence, the complainant has requested that respondent may be directed to refund the entire amount of Rs.15,00,000/- paid towards the part payment of the consideration of the said apartment alongwith applicable interest.
8. The respondent has filed reply and contested the matter contending that the contentions of the complainant are false, frivolous, baseless and devoid of merits, contrary to and inconsistent with the facts of the case at hand. The respondent has denied all the averments, contentions contended in the present complaint. According to the respondent, the complainant has not made out any case as to how he is entitled for reliefs claimed.
9. According to the respondent, this Authority lack jurisdiction to adjudicate this complaint. The complainant had booked the suit flat for a consideration of Rs.4,39,11,500/-. Till date the complainant has only made payment of Rs.15,00,000/- on 24.04.2017 towards earnest money in accordance with the terms of the application form. This Authority is having jurisdiction to adjudicate the dispute between the promoter and an allottee in Real Estate Project. This Authority had accorded the promoter status to the present respondent on 05.07.2017. Dispute is beyond the legislative intent and authority conferred under the RERA to this Authority. The booking form which was signed by the complainant was dated 24.04.2017 and request to cancel was made by the complainant on 08.05.2017 and then confirmed by email dated

12.05.2017. In view thereof, the complainant's cause of action arose way before the said project was registered with the Authority. Hence, remedy available to the complainant would lie before appropriate forum and not before this Authority. Hence, the present complaint cannot be adjudicated by this Authority when there is an efficacious remedy open to the complainant.

10. According to the respondent, jurisdiction of the Authority is confined to enforcing statutory rights and obligations contained in RERA Act and cannot try, decide, adjudicate upon issues which operate within the realm of contract between the parties. Section 31 of RERA Act, says that any aggrieved person can approach the Authority for any violation or contravention of the provisions of RERA Act or Rules and Regulations made thereunder. Chapter III of RERA Act, which contains Section 11 to 18, casts various obligations upon promoter which can be broadly stated to be in nature of true and correct disclosures, timely performance and execution of the project and delivering flats as promised to the allottees. Chapter III of RERA Act nowhere deals with the issues pertaining to forfeiture of earnest money which operates within realm of private contract between the parties and not amenable to the jurisdiction of this Authority. Thus, this Authority has no jurisdiction to entertain and pass orders on a subject which is not covered by the statutory framework of RERA. The RERA Authority are discharging functions under the provisions of the RERA Act, which are in the nature of quasi judicial functions are expected to adhere to the settled principles of Law and has no jurisdiction to rewrite the contract terms which parties have agreed upon. The complainant has failed to mention under which Section of RERA Act, he is seeking for reliefs. The complainant has failed to substantiate the basis on which he is seeking the reliefs sought, when the same is clearly beyond the statutory mandate of the RERA Act.

11. According to the respondent, the cause of action in the complaint to seek refund arose on the date he sought cancellation and refund of the amount i.e. on 12.05.2017. Further, the present complaint was filed by the complainant some time in August, 2020. The complainant kept sleeping on his rights and remedies for a period of approx. 1186 days which is way beyond a reasonable time to move before an appropriate authority for adjudication of one's claim. The conduct of the complainant makes it manifestly clear that the present complaint is an afterthought. The delay of 1186 days that had occurred in filing the present complaint can be construed to be deliberate and intentional act as the complainant is not aggrieved by the forfeiture and that the present complaint afterthought to extract monies from the respondents by filling this complaint before this Authority.
12. According to the respondent, the respondent has forfeited the amount as per the clauses (h), (n) and (o) of the application form. After perusal of above mentioned clauses in the application form it can be easily concluded that the respondent is well within its rights to forfeit earnest money. The complainant had voluntarily agreed to the terms and conditions of the application form. Approx. 3.5% of the total consideration forming part of the non-refundable amount (as defined in the application form) being part of the earnest money, paid by the complainant to the respondent. The application form was filled and duly signed by the complainant by his own freewill. The complainant paid non-refundable amount which included earnest money of Rs.15,00,000/- simultaneously upon booking the flat. The terms and conditions of the application form states that if the complainant cancels the booking for any reason not attributable to the respondent, then the respondent would be entitle to forfeit non-refundable amount. The complainant of his own accord had opted to cancel the booking, then the complainant is not entitled to any refund of the amount including booking amount of Rs.15,00,000/-. The complainant has signed application form after reading all the terms and conditions and now

complainant cannot unilaterally rewrite the terms agreed between the parties at the time of booking. The complaint is without any basis and the complainant is not entitled to seek any refund. The complainant is bound by the terms and conditions of the application form. Any contravention of terms and conditions of the application form shall have to be dealt with in accordance with the terms of the application form.

13. According to the respondent, the Authority is required to appreciate the fact that the respondent also incurred heavy cost in capital investment, management, approvals, documentations, advertisements, office expenses, office infrastructure, staff salaries, commission to the agents etc. It will be extremely difficult for the respondent to conduct business in such a scenario, wherein the burden of such untimely and unplanned cancellation of booking would fall on heads of the respondent for no fault of their whatsoever.
14. According to the respondent, complainant is not an allottee as per Section 2(d) of the RERA Act, 2016 as at the time of booking, the project was not registered under MahaRERA Authority and that the complainant has cancelled booking even before project was registered in accordance with the new regulations as applicable to the real estate project. Hence, the complainant cannot institute complaint under the provisions of Act, since he does not satisfy requirement to be covered under the ambit of Act. The complainant has wrongly mentioned the project address as part of CTS 51B, situated at Kurla but the actual address is new CTS no. 51B situated at Phirozshah Nagar, Vikhroli (East), Mumbai - 400079. The complainant has admitted that he had voluntarily sought cancellation of the unit on account of some personal difficulty and thus on this very ground the complaint should be dismissed. According to the respondents, the respondent apprised the complainant that the cancellation comes with forfeiture of the amount and therefore, also made attempts to retain the complainant and requested the complainant to reconsider the decision and as



far as demand letter is concerned, it is as per milestone i.e 10% within 30 days from booking. The forfeiture done so far according to the terms and conditions of the application form which was admittedly signed by the complainant. The respondent does not agree with the contents in para 4.12 and 4.13 of the complaint. The respondent has denied that clause (n) of the application form is prima facie one sided and unilateral clause. At the time of booking, the complainant has not raised any single objection regarding the clause (n) from the application. The respondent also denied the contents from para 4.14, 4.15, 4.16 and 4.17 of the complaint. It is denied by the respondent that respondent is relying on unreasonable, unfair contract with unequal bargaining power. It is also denied that the complainant had no choice or chance to alter dictatorial or unilateral terms of application form. The respondent has never forced the complainant to sign the application form. The complainant has signed form on his own freewill after reading all the terms and conditions. It is denied that there is one sided clause in application form and that all the entitlements, rights, unequivocal consents are with the promoter. All the these clauses (e),(n)(i)(o) and (s) mentioned by the complainant in the complaint were also present at the time of signing the application form. The complainant does not raised any single objection at that time of applying for flat. There is convenient exit for the respondent. The respondent has denied the contents of para (g) and (h) of the complaint. The Section 73 of the Indian Contract Act states that party who has broken contract is liable to pay compensation. In the present complaint, it was the complainant who has breached the contract and who wants to cancel the booking without the fault of the respondent. The respondent has denied that the respondent has not suffered any loss and respondent could sell off said apartment at the higher amount. The expenses incurred for reselling the flat and wait over period cannot be neglected. It is denied that the respondent has is liable to refund the principal amount with interest to the complainant. It is denied that as per Section 74 of the Indian Contract Act, if there is any damage



or loss suffered by party, then compensation shall be deducted. The Section 74 of the Indian Contract Act, states that compensation received from the party who breached the contract, a reasonable compensation not exceeding the amount is named in the contract as the amount to be paid in case of breach. The respondent denied that that without suffering any loss, the respondent has deducted the large amount of the complainant. The respondent is not liable to refund the amount of Rs.15,00,000/- as it has forfeited merely 3.41% of the total consideration amount. The respondent is not liable to pay Rs.50,000/- towards the legal expenses. The respondent lastly requested to dismiss the complaint with costs.

15. The complainant uploaded the rejoinder and reiterated the facts from the complaint. It is denied by the complainant that cause of action arose before the enactment of the RERA and MahaRERA does not have jurisdiction. Booking cancellation was done after 01.05.2017 and non-payment of forfeited amount continues till date. The cause of action of cancellation of booking was done post RERA enactment and non-payment of dues continued till date and therefore Complainant has valid relief to be claimed before RERA which is a welfare legislation. The complainant has relied upon the provisions of Section 11(4)(a) of RERA Act, 2016. According to the complainant, RERA Authority has valid jurisdiction to decide the quantum of forfeiture to protect the interest of home buyers in terms of obligations of the promoter u/s 11(4)(a) of the Act. The complainant prayed that the complaint is well within the statutory mandate of RERA. According to the complainant, it is necessary to note that the communication has been made by the complainant regarding cancellation of on 02.09.2017 with continued request of to refund the hard earned monies of the complainant which has been withheld by the Respondent under dominance. The said communication dated 02-09-2017 is attached as Exhibit I to the complaint petition filed by the complainant. Therefore, the complaint is filed well within the limitation period of three years and the contention of the

respondent on the point of limitation is baseless and invalid. According to the complainant clause 'C' of the Application form states that the Allotment is the Provisional reservation and shall remain such until the execution and agreement for sale. There is no loss to the respondent, hence there cannot be forfeiture of the amount paid by the complainant as per provision of Law and the ruling set by the Apex Court. The respondent has failed to prove the quantification of loss incurred by the respondent on cancellation of the apartment by the complainant. According to the complainant, reply of the respondent is not maintainable as the vague and baseless.

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

### REASONS

No.	Points	Findings
1	Whether the complainant is entitled for the refund of the amount as prayed?	Affirmative
2	What Order?	As per final order.

#### **Reasons as to point no. 1**

17. The matter was listed on 28.05.2024. The advocate for the complainant submitted oral argument and submitted that complainant booked flat on 24.04.2017. The respondent issued payment receipt on 05.05.2017. On 08.05.2017, there was email from the complainant for voluntary cancellation of the flat. It is submitted the flat was booked for a consideration of Rs.4.39 Crores, out of it Rs.15,00,000/- was paid by the complainant. It is submitted that there is an order of MahaRERA dated 12.08.2022. It is also submitted that by a letter issued by MahaRERA giving guidelines for forfeiture if cancellation is within 15 days, no forfeiture of the amount. It is submitted that flat in question was

sold by the respondent within 6 to 8 months, Index II uploaded in the said respect. The said flat sold for a consideration of Rs.4.71 Crores. It is submitted that no loss caused to the respondent. MahaRERA has jurisdiction u/s 11(4)(a). It is submitted that the respondent has challenged the complaint on the ground of limitations. The complainant submitted that last communication of forfeiture was on 02.09.2017 and after that Covid period started from March, 2020. The complainant filed present complaint in the month of August, 2020. Thereafter, the matter listed on 26.06.2024. The advocate of respondent submitted that respondent has forfeited 3.41% of the amount of total consideration. It is also submitted that there is an Arbitration clause in the application, therefore, dispute between the parties is required to be settled by the Arbitrator. It is also submitted that there are orders of MahaRERA in this regard that when there is Arbitration clause in the application, then complainant has to avail arbitration remedy, they cannot take recourse of RERA. It is also submitted that the complaint is time barred. Cancellation was confirmed on 12.05.2017 and complaint is filed in August, 2020. The complaint is filed nearly 1200 days of cancellation. It is submitted that there is general limitation for filing complaint of three years.

18. It is submitted on behalf of the respondent that respondent has forfeited amount as per clause (h)(n) and (o) of the application. The said application is duly signed by the complainant. It is submitted that MahaRERA Circular is of dated 12.08.2022 about the forfeiture of the amount and same is having prospective effect. It is submitted that complainant has wrongly interpreted the Section 73 and 74 of the Contract Act.

19. Parties were given liberty to upload written submissions, if any, on or before 10.07.2024 and thereafter, the matter reserved for order and the same is mentioned in the Roznama dated 26.06.2024.

20. The complainant uploaded written argument. The respondent also uploaded written arguments on MahaRERA website on 10.06.2024. I have gone through the written arguments uploaded by the parties. The complainant reiterated the facts from the complaint through written arguments.
21. In my opinion, firstly it is necessary to mention admitted facts. The complainant booked the flat No. S-0604 in the Bldg.'S' alongwith one car parking in the project of the respondent 'The Trees, Origins', situated at the part of the CTS No. 51/B situated at Kurla. The complainant booked the said flat on 24.09.2017 for a consideration of Rs.4,39,11,500/- and paid Rs.15,00,000/- through cheque drawn on Bank of India in favour of the respondent. The respondent vide email dated 05.05.2017 sent the acknowledge receipt. On 08.05.2017, the complainant sent email to the respondent showing his inability to continue with the booking and requested the respondent to cancel the booking application and refund the entire amount. On 10.05.2017, the respondent sent demand letter despite the fact that cancellation request was made by the complainant on 08.05.2017. The complainant again wrote email dated 12.05.2017 to the respondent with reference to email dated 08.05.2017 which was replied by the respondent stating that respondent will communicate with the complainant after discussing the same. Thereafter, the complainant sent reminder email for cancellation. The respondent sent change details of bank for making further payment which was responded by the complainant stating their cancellation request. Thereafter, respondent sent letter dated 31.05.2017 stating with reference to the cancellation request dated 17.05.2017 that amount paid as part payment of the sale consideration of Rs.15,00,000/- stands forfeited.
22. It is seen that the complainant has filed present complaint for refund of the amount paid to the respondent towards consideration of the suit flat. Considering the above mentioned prayer of the complainant, in my opinion the

complainant has filed present complaint as per Section 18 of Real Estate (Regulation and Development) Act, 2016. Admittedly, the complainant has not mentioned any Section in his complaint under which he filed the present complaint. It is necessary to see the provisions of Section 18 of Real Estate (Regulation and Development) Act, 2016. Section 18 is in respect of **Return of amount and compensation**". The section 18 states that :

*18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building, –*

*(a) in accordance with the terms of the agreement to sell or, as the case may be, duly completed by the date specified therein; or*

*(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*

*he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:*

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed;*

23. The relevant provisions of Section 18 states that if the promoter fails to complete or unable to give possession of the apartment as per terms of Agreement for Sale, duly completed by the date, he is liable on demand to the allottee in case the allottee wishes to withdraw form the project without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act. The proviso says that where an allottee does not intend to withdraw from the project, he

shall be paid by the promoter interest for every month of delay till handing over of possession as may be prescribed.

24. It is submitted and defence case of the respondent that RERA is implemented in the month of May, 2017 and thereafter, Authority had accorded the promoter's status to the present respondent on 05.07.2017. The dispute in question is prior to legislative intend and authority conferred under the RERA to this Authority. The booking application form signed by the complainant on 24.04.2017. The request for cancellation was made by the complainant on 08.05.2017 and confirmed vide email dated 12.05.2017. The complainant's cause of action arose way before the said project was registered with this Authority. Therefore, the present complaint cannot be adjudicated by this Authority.

25. It is seen from proviso of sub-section (1) of Section 3 of Real Estate (Regulations and Development) Act, 2016

*Provided that projects that are ongoing on the date of commencement of this Act, for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act.*

26. It is not in dispute that this Authority had accorded the promoter status to the present respondent on 05.07.2017. It means at that time the present project of the respondent was ongoing on the date of commencement of the RERA Act and completion certificate has not been issued and therefore, the respondent promoter filed application to this Authority for registration of the said project and accordingly, the project in question is registered with this Authority. In my opinion, as the complainant booked flat on 24.04.2017 and on 08.05.2017 there was email from complainant for cancellation of the booking of the flat and then confirmed by email dated 12.05.2017 and respondent registered the project with this Authority on 05.07.2017, in my opinion on that ground, it cannot be said that

there is no jurisdiction to this Authority to adjudicate the present dispute between the parties.

27. It is also contention of the respondent that the cause of action for the complainant to seek refund arose on the day he sought cancellation and refund of money i.e 12.05.2017. The complainant filed the present complaint in August, 2020. The complainant did not avail any legal recourse for a period of approx. 1186 days. Hence, it is contention of the respondent that it is beyond the limitation period and therefore, deserves to be rejected. It is contention of the complainant that communication has been made by the complainant on 02.09.2017 with continued request to refund the amount paid by the complainant which has been withheld by the respondent. The said communication dated 02.09.2017 uploaded by the complainant in this proceeding it is at Ex.'I'. It is a letter from complainant to the respondent in regard to booking and cancellation of flat S-0604 in the 'Trees Origin'. It is seen that the complainant has filed present complaint on 14.08.2020 and Ex.'I' letter from complainant to respondent about booking and cancellation of suit flat is of dated 02.09.2017 then it can be safely said that present complaint is filed within a period of three years from the last communication between complainant and the respondent.

28. It is contention of the respondent that respondent has forfeited the amount as per clause (h), (n) and (o) of the application form. On perusal of above mentioned clauses from the application form it can be easily concluded that the respondent is well within rights to forfeit the earnest money. The complainant had voluntarily agreed the terms and conditions of the application form and put his signature. However, it is contention of the complainant that application form on which the respondent is relying is unfair contract. The same is unreasonable with unequal bargaining powers. It is also mentioned in the application form that complainant has no choice or chance to alter the dictatorial or unilateral terms of application form but to give their assent to a contract or to sign on the



dotted line in the prescribed form as a part of the contract. It is submitted that it is held by the Apex Court in Pioneer Urban Land and Infrastructure vs. Union of India that the respondent cannot be allowed to act disadvantageously to the interest of the complainant by making the complainant sign on the dotted lines of the one sided and inequitable terms of the application form. The Hon'ble Apex Court, also laid down that contract will no longer be one sided contract of adhesion but in such form as may be prescribed which balances the rights of both the promoters and allottees. There are various one sided clauses in the application form. According to the complainant clause (c) of the application form states that the allotment is the provisional reservation and shall remain such until the execution of the agreement. Hence, it is submitted by the complainant that as the terms of the application form are one sided and considering the observations of the Hon'ble apex Court in case of Pioneer Urban Land and Infrastructure vs. Union of India the forfeiture of amount is illegal.

29. It is contention of the respondent that as per clause (nn) of the application form, in case any dispute arising in relation to the terms of the application form shall be adjudicated upon through Arbitration. The advocate of the respondent in written argument submitted that Ld. Chairperson of Maharashtra Real Estate Regulatory Authority (MahaRERA) in order dated 14.01.2022 in the matter of **Aiyaz Khan and Sabakhan Vs. Era Realtors Pvt. Ltd. and others in complaint no. CC006000000194835** noted that if the recourse agreed to in agreement for sale is Arbitration and the agreement for sale has been executed prior to the Promulgation of RERA, then the parties cannot be take recourse of RERA and must go by the dispute resolution mechanism contractually and the same principle followed in the case of Vijay Vasudev Awalgaonkar Vs. CCI Project Pvr. Ltd. and 51 connected matters and again in the case of Rajaram Subramaniam and anr. Vs CCI Project Pvt. Ltd and 13 connected matters. I have gone through the orders from above mentioned cases. It is seen that it is mentioned in the same that if the recourse agreed to in agreement for sale is

Arbitration and the agreement for sale has been executed prior to the Promulgation of the RERA, then the parties cannot take recourse to RERA. In the present case, no any agreement for sale executed between the parties and only application form signed by the complainant. In my humble opinion, in the present case there is no agreement for sale executed between the parties. There is no signature of the authorized signatory of the respondent on the application form. Therefore, in my opinion, the observations from above mentioned complaints not applicable to the facts of the present case.

30. The advocate of the respondent submitted that the complainant paid a non-refundable amount which included earnest money of Rs.15,00,000/- simultaneously upon booking the flat. The terms and conditions accompanying the application form clearly states that if the complainant cancel the booking for any reason, not attributable to the respondent then the respondent would be entitled to forfeit the non-refundable amount. The complainant unilaterally and for his own accord had opted to cancel the booking vide email dated 17.05.2017, therefore, the complainant is not entitled to any refund including application money / booking of Rs.15,00,000/-.

31. The advocate of the respondent relied upon the Judgment of Supreme Court in the Case of **Satish Batra Vs. Sudhir Rawal (2013)SCC-345**. In the reported case, plaintiff instituted suit no. 764/0806 before the Additional Dist. Judge, Delhi for recovery of Rs.7 lakhs from the seller-Defendent for the earnest money paid by him. The Defendant contested the suit stating that as per the agreement he is entitle to forfeit the amount of earnest money, if there was failure on the part of the purchaser / plaintiff in paying the balance amount of Rs.63 lakhs. The trial court dismissed the suit holding that defendants are entitled to retain the amount of earnest money since the plaintiff had failed to pay the balance amount of Rs. 63 lakhs before 05.03.2006. Aggrieved by the said judgment, plaintiff took the matter in appeal before the Hon'ble High Court , the High

Court placing reliance on the Judgement of this court, in **Fatechand Vs. Balkishan Das AIR 1963 Supreme Court 1405** took the view that the seller is entitled to forfeit only a nominal amount and not the entire amount of rupees seven lakhs. The High Court further held that the seller can forfeit an amount of Rs.50,000/- out of the amount of rupees seven lakhs and he is bound to refund the balance amount of Rs..6.50 lakhs to the purchaser. Aggrieved by the said Judgment, the seller has filed an appeal before Hon'ble Supreme Court. The question before the Hon'ble Supreme Court whether the seller can retain the entire amount of earnest money depends upon the terms of the agreement. In para no. 17 the Hon'ble Apex Court has observed that

*Law is, therefore, clear that to justify the forfeiture of the advance money being part of the earnest money the terms of the contract should be clear and explicit. Earnest money is paid or given at the time when the contract is entered into and, as a pledge for its due performance by the depositor to be forfeited in case of non-performance by the depositor. There can be a converse situation also that if the seller fails to perform the contract, the purchaser can also get the 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 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 be applied.*

32. The advocate of the respondent for the same purpose relied upon the decision of the Privy Council in **Kunwar Chiranjit Singh vs. Harsh swaroop (1926) 23LW172** wherein it has held that earnest money is part of the purchase price when the transaction goes forward and the same is forfeited when the transaction falls through by reason of the fault or failure of vendee.
33. The advocate of the respondent also relied upon the case **Shree Hanuman Cotton Mills Vs. Tata Aircraft Ltd. (1969) 3 SCC 522**. It is submitted that Hon'ble Apex court observed that earnest money represents that the contract will be fulfilled and it is forfeited when the transaction falls through by reason of the default of the purchaser.

34. In case of **Oberoi Construction Vs. Asset Auto Hon'ble Tribunal in Appeal No. AT006000000010502 of 2018** upheld the validity of the forfeiture clause in an agreement for sale and permitted forfeiture upto 20% of the total sale consideration. The advocate of the respondent also relied upon and placed reliance that RERA Authority of Haryana in case **Shakti Singh Vs. Bestech India Pvt. Ltd.** observed that in case of the refund, the builder shall be allowed to retain 10% of the total sales consideration as earnest money. The similar order passed by RERA Authority of Haryana in **Ankur Dhanuka Vs. Godrej Project Development Ltd.** Authority ordered, builder to forfeit 10% of the total sales consideration and refund the balance.
35. The advocate of the respondent also relied upon **Loknath Mohpatra and ors, Vs. Ireo Pvt. Ltd. Hon'ble NCDRC** held that 10% of the basic sales price is reasonable amount to be forfeited as earnest money. It is submitted that the complainant after going through the contents of the application form with free mind, put signature on the application form and admitted the terms and conditions of the application form and therefore, it is submitted that the respondent has rightly forfeited the amount of Rs.15,00,000/- paid by the complainant.
36. It is not in dispute that the complainant paid Rs.15,00,000/- through cheque to the respondent. It is also not in dispute that the complainant agreed to purchase the suit flat for a consideration of Rs.4,39,11,500/- and paid Rs.15,00,000/- 24.04.2017. The application form which is uploaded shows that there is only signature of the 1st applicant i.e. complainant. The said form not having signature of signatory of the respondent. In the present case, there is no agreement for sale executed between the parties. Hence, in my opinion as there is no agreement for sale executed between the parties, hence the ratio above mentioned authorities are not applicable as facts are not identical.

37. It is contention and submitted by the respondent in the reply and written argument that as per Section 31 of RERA Act, any aggrieved person may file a complaint with the Authority for any violation or contravention provisions of this Act or the Rules and Regulations made thereunder against any promoter, allottee or real estate agent. It is submitted that Section 11 to 18 of the Real Estate (Regulations and Development) Act, 2016 deals with various obligations of promoter in the nature of true and correct disclosers, timely performance and execution of the project and delivering flats as promised to the allottees. Chapter III of RERA nowhere deals with issues pertaining to forfeiture of earnest money which operate within the realm of private contract between the parties. Section 19 of the RERA Act, deals with Rights and Duties of the Allottees and said Section nowhere deals with or touches upon or prohibits issues pertaining to forfeiture of earnest money which operates within the realm of private contract between the parties and not amenable to the jurisdiction of this Authority. Therefore, this authority has no jurisdiction or occasion to try, entertain and pass orders on the subject which is not covered by the statutory framework of RERA. The complainant has failed to mention under which section of RERA Act he is seeking a relief. It is the contention of the respondent that the none of the section of the RERA Act entitle complainant to refund the entire booking amount paid when the cancellation of booking is sought by the complainant itself on his own violation.

38. I have gone through the Judgement and order of Maharashtra Real Estate Appellate Tribunal, Mumbai in appeal No. AT006000000041967 of 2019 Dinesh Humane and others Vs. Piramal Estate Pvt. Ltd. It is observed that

*The refund of the amount paid to the respondent promoter, cannot be demanded as per Section 18 of RERA on the ground that promoter fails to give possession on agreed date or fails to complete the project as per terms and conditions for agreement for sale. Transaction in the instant case, is not governed by Section 18 of RERA. In this peculiar matter, though claim of the refund is not governed by*

*the specific provisions of RERA, it cannot be ignored that object of RERA is to protect interest of the consumer. So, whatever amount paid by home buyer to the promoter should be refunded to the allottee on his withdrawal from the project.*

39. In my opinion the facts of present complaint and above mentioned case are mostly similar. In this case also the refund of the amount paid to the respondent / promoter cannot be demanded as per Section 18 of RERA Act on the ground that promoter failed to give possession on the agreed date or fails to complete the project as per the terms and conditions of the agreement for sale. The transaction in the instant case also is not governed by Section 18 of RERA Act. Though, claim of the refund is not governed by specific provision of RERA, it is necessary to consider that object of RERA is to protect interest of the consumer. The Real Estate (Regulations and Development) Act, 2016 is the social legislation with primary purpose and objective with legislative intend to safeguard the interest of the allottees.

40. It is seen that complainant booked the flat on 24.04.2017 and cancelled on 08.05.2017 and confirmed the cancellation on 12.05.2017. Thus in a period of less than one month, no significant variation / diminution in sale price / market price of the flat is brought to our knowledge by the respondent to show any liquidated damage alongwith any loss that may have occurred on account of cancellation of flat to warrant forfeiture of the amount paid by the complainant. Therefore, forfeiture of amount paid by the complainant in my considered opinion is erroneous and against the object and purpose of the Act which is enacted as beneficial legislation to abate the hardship of home buyers. Moreover, the respondent has sold the said flat for a consideration of Rs.4.71 crores. Hence, the forfeiture of the amount is improper. Therefore, in my opinion the complainant is entitled to refund of the amount of Rs.15,00,000/- (Rupees fifteen lakhs only) without interest. Hence, I answer point no. 1 in the affirmative and I proceed to pass following order:

**ORDER**

1. The complaint is allowed as follows:
2. The respondent / promoter is directed to refund the amount of Rs.15,00,000/- (Rupees fifteen lakhs only) on or before 30.11.2024 failing which an interest at the the rate 2% above SBI's Higher Marginal Cost of Lending Rate shall be payable w.e.f. 01.12.2024 till realisation of the amount as above.
3. No order as to costs.

**(Ravindra Deshpande)**  
**Member-2, MahaRERA**

**Date : 29.10.2024**