

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

Appeal No. AT006000000041967

In

Complaint No. CC006000000089770

1. Mr. Dinesh R. Humane

2. Mrs. Ranjana D. Humane

Both having address at:

Flat No. 207/B, Kasturi, Maitri Vatika,
Parsik Nagar, Kalwa West,
Thane-400605.

**... Appellants/Allottees
(Original Complainants)**

Versus

Piramal Estate Private Ltd.

Through its Authorised Signatory

Mr. Nagamallesh Gattu

Having office address at:

8th floor, Piramal Tower,
Ganpat Rao Kadam Marg,
Lower Parel, West,
Mumbai-400013.

**... Respondent/Promoter
(Original Respondent)**

Adv. Sunil Kewalramani for Appellants.

Adv. Abir Patel for Respondent.

**CORAM : SUMANT KOLHE, MEMBER (J)
S. S. SANDHU, MEMBER (A)**

DATE : 17th MARCH, 2021

JUDGMENT

[PER: SUMANT KOLHE, MEMBER (J)]

Appellants have challenged the impugned order dated 3rd October, 2019 passed by learned Member-1 of MahaRERA in Complaint No. CC006000000089770, whereby Respondent is directed to refund the booking amount in accordance with the booking form signed by both the parties.

2. Appellants are Allottees. Respondent is Promoter. we will refer the parties as per their status of Allottees and Promoter.

3. Brief facts need to be stated for deciding the Appeal are as under:

Allottees agreed to purchase and Promoter agreed to sell flat No. 807 in the project namely "**Vaikunth Cluster-2**" at Thane. Allottees have submitted form of "request for reservation of flat" on 29th January, 2019 and paid an amount of Rs. 1,12,393/- as booking amount. Allottees have also paid Rs. 4,49,574/- on 1st March, 2019 towards price of the flat to Promoter. On account of medical emergency in the family of Allottees, they decided to cancel the flat booking. Accordingly, they e-mailed to Promoter and requested to cancel the flat booking and to refund the total amount of Rs. 5,61,967/- (Five Lacs Sixty-One Thousand Nine Hundred Sixty-Seven only). Promoter replied vide e-mail dated 20th May, 2019 that the amount paid by Allottees is forfeited on account of cancellation

of booking by Allottees. Complaint No. CC006000000089770 came to be filed by Allottees for recovery of amount of Rs. 5,61,967/- (Five Lacs Sixty-One Thousand Nine Hundred Sixty-Seven only) from Promoter.

4. MahaRERA conducted inquiry and passed impugned order thereby directing the Promoter to refund the booking amount to Allottees in accordance with booking form signed by both the parties.

5. Being dissatisfied with the order Allottees have preferred the Appeal and challenged propriety, correctness and legality of the order.

6. Heard learned counsel for Allottees. Perused the impugned order. Heard learned counsel for Promoter. Read the papers.

7. Following points arise for our determination.

POINTS

- i) Whether impugned order is correct, proper and legal?
- ii) What order?

8. Our findings on the above points for the reasons stated below are as under.

- i) Negative.
- ii) As per final order.

REASONS

9. Impugned order is passed without proper application of mind and without correct appreciation of facts of the dispute. In the instant case, Allottees have submitted printed form of "request for reservation" of the flat on 29th January, 2019 to Promoter and paid booking amount of Rs. 1,12,393. Admittedly, Allottees have again paid an amount Rs. 4,49,571/- on 1st March, 2019 towards price of the flat. So, Allottees have paid total amount of Rs. 5,61,967/- (Five Lacs Sixty-One Thousand Nine Hundred Sixty-Seven only) to Promoter. Allottees informed the Promoter on 18th May, 2019 that Allottees have cancelled the booking due to some reason and requested to return the amount paid to Promoter. Copy of form of "request for reservation" is at exhibit -A. It is revealed from exhibit-A that it is signed by Allottees. Detailed information of Allottees is mentioned in the said form. Terms and conditions recited in Annexure-A are to be followed and observed by Allottees only. Exhibit-A is not signed by Promoter. Now, as per impugned order amount is to be refunded in accordance with the **booking form signed by both the parties**. It may be pointed out that Annexure-A is not styled as "booking form". There is no document having nomenclature as "booking form" which is signed by Allottees or by both the parties. Impugned order is passed on the basis of booking form signed by both the parties. Thus, impugned



order is based on such document which does not exist on record. Moreover, execution and operation of the impugned order will be according to the booking form signed by both the parties and it is not in existence and on record. So, impugned order is incorrectly and wrongly passed by giving reference of signatures of both the parties thereon and it is not executable by the parties.

10. Project involved in the matter is registered and governed by RERA. Rights and liabilities of the parties are also governed by provisions of RERA. In the instant case Allottees entered into the transaction of purchase of the flat on 29th January, 2019. Within period of four months, Allottees cancelled the transaction by informing Promoter to that effect on 20th May, 2019 and demanded refund of the amount paid to Promoter. Promoter replied to Allottees that the amount paid by Allottees stands forfeited as per clause 17 of form of "request for reservation" i.e., Annexure-A. We are aware that RERA is social and beneficial legislation. One of the objects of RERA is to protect the interest of consumers i.e., Allottees. Promoter has relied on clause 17 of Annexure-A. It reads as under:

"The Applicant(s) shall not withdraw this Request for Reservation. If the Applicant(s) withdraw this Request for Reservation, the Company shall be entitled to forfeit 10% of the Sale consideration or the amounts paid by the Applicant(s) till such date, whichever is less and balance (if any) will be refundable in 60 days without any interest. Provided however the taxes and outgoings,

including GST if any, already paid (including on the forfeited amount) or due and payable by the Applicant(s) in respect of the said Residential Flat shall be borne by the Applicant(s) and the company shall not be liable to refund/reimburse the same. Applicant(s) agrees not to raise any objection in future whatsoever".

11. It cannot be ignored that agreement for sale between Allottees and Promoter had not taken place yet. Moreover, Promoter had neither issued confirmation letter nor allotment letter to the Allottees. The only document signed by Allottees is the printed form which is styled as "request for reservation". So, at the time of making request for reservation of the flat on the part of Allottees, Promoter obtained the signatures of Allottees on such form of request which consists of 33 different terms and conditions to be observed and complied by Allottees only. As per clause 17, Allottees have no right to withdraw their request for reservation. This is absolutely unfair and unreasonable and one-sided condition imposed on the Allottees. Allottees cannot be restrained from exercising their right of withdrawing the request. Right to make request for reservation of flat includes the right to withdraw such request for reservation of flat. Clause 17 providing forfeiture of 10% amount of the total price of flat or the amount paid till date whichever is lesser in case of withdrawal by Allottees is ex facie unreasonable, unfair and inequitable. Existence of such a condition in the printed form of "request for reservation" to be filed in by Allottees is against the object and purpose of RERA. In fact, clause 17 being

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against statute of RERA, it is not binding on the parties. So, Promoter is not entitled to forfeit any amount as per clause 17 of request form.

Assuming for the sake of argument that the transaction between Allottees and Promoter is revealed from request form, we would like to point out that such unreasonable and unfair transaction cannot be enforced.

The Hon'ble Supreme Court, while deciding the case in favour of an Allottee, held the view in ***Pioneer Urban Land and Infrastructure Vs. Govindan Raghavan in Civil Appeal No. 12238 of 2018 on 02.04.2019*** signifying that court will not enforce an unreasonable, unfair contract or an unreasonable and unfair clause in a contract where contracting parties are not equal in bargaining power and where a man has no choice or rather a meaningful choice but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form... as a part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rule may be."

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In the instant case, while applying for the flat, Allottees had no choice but to sign the printed form of request prepared one-sided by the Promoter. Thus, Promoter cannot take undue advantage of such one sided and unreasonable condition.

12. Learned counsel for Promoter argued that Allottees have claimed relief on the basis of clause 18 of "model agreement" for sale as given under rules of RERA. He also submitted that there is no violation of the provisions of RERA or rules and regulations thereunder. According to him, complaint under Section 31 of RERA is not maintainable unless there is violation. He further argues that clause of forfeiture is given in model agreement under RERA rules and it is not against the spirit of RERA. He also argued that Allottees cannot cancel the booking on personal ground for claiming the refund.

13. In the instant case the transaction of sale and purchase of the flat is cancelled at initial stage. Allottees merely booked the flat and paid some amount towards booking and executed letter for request of reservation of the flat in printed form. Thereafter there is no progress in the transaction and neither allotment letter nor confirmation letter is issued by Promoter. Agreement for sale is not executed between the parties. Parties never reached to the stage of executing agreement for sale. There was no attempt to execute agreement on the part of either party. In such circumstances, Allottees cannot claim refund on the basis of binding effect at clause (18) of "model agreement" for sale under rules of RERA. In fact, claim of Allottees for refund cannot be supported by clause 18 of model agreement for sale under RERA rules. Refund of amount paid to Promoter can be demanded as per Section 18 of RERA on the ground that Promoter fails to give possession on agreed date or fails to complete the project as

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per terms and conditions of agreement for sale. Transaction in the instant case is not governed by Section 18 of RERA. In this peculiar matter, though the claim of refund is not governed by any specific provision of RERA, it cannot be ignored that object of RERA is to protect interest of consumer. So, whatever amount is paid by home-buyer to the Promoter should be refunded to the Allottee on his withdrawal from the project.

14. It cannot be ignored that Regulations are framed to carry out purposes of the Act. Regulation 39 of Maharashtra Real Estate Regulatory Authority (general regulation 2017) is in respect of saving of inherent powers of Authority. It reads as under.

Regulation 39:

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

15. Similarly, Regulation No. 25 of Maharashtra Real Estate Appellate Tribunal Regulation, 2019 is in respect of inherent powers of the Tribunal. It reads as under.

25(1)

"Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent powers 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”.

16. So Regulatory Authority and Appellate Tribunal are having inherent powers under the Regulations framed under RERA to pass such orders which are necessary to meet the ends of justice. In exercise thereof in the instant case, it is in the interest of justice to direct the Promoter to refund the total amount paid by Allottee accordingly. In our view, the impugned order is not correct, proper and legal and therefore it deserves to be set-aside. We pass the order accordingly as follows.

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ORDER

- i) Appeal No. AT006000000041967 is allowed.
- ii) Impugned order dated 3rd October, 2019 passed in Complaint No. CC006000000089770 is set-aside.
- iii) Complaint No. CC006000000089770 is allowed as under:
 - (a) Promoter shall pay Rs. 5,61,967/- (Rupees Five Lacs Sixty-One Thousand Nine Hundred Sixty-Seven) to Allottees.
- iv) Parties to bear their respective costs throughout.
- v) Copy be sent to both the parties and MahaRERA as per Section 44(4) of RERA.


(S. S. SANDHU)


(SUMANT KOLHE)