BEFORE THE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL MUMBAI

Appeal No. AT005000000134212 of 2022
IN
Complaint No. CC005000000085250

Godrej Skyline Developers Pvt. Ltd.,	)	
5th Floor, Godrej One, Pirojshanagar,	)	
Eastern Express Highway,	)	
Vikhroli (E),	)	... Appellant
Mumbai- 400 079	)	

-Versus-

Mr. Joy Salve	)	
Brahmand Complex, Phase-6,	)	
Building E1/204, Azadnagar,	)	
GB Road, Thane (W),	)	... Respondent
Thane- 400 607	)	

Adv. Mr. Abhijeet K. Mangade for Appellant
Adv. Mr. S. V. Darveshi for Respondent

CORAM : SHRI S. S. SHINDE (J.), CHAIRPERSON, &
DR. RAJAGOPAL DEVARA, MEMBER (A)

RESERVED ON : 07th July, 2026

PRONOUNCED ON : 03rd September, 2026

(THROUGH VIDEO CONFERENCE)

JUDGMENT

[PER: DR. RAJAGOPAL DEVARA, MEMBER (A)]

1. The captioned appeal takes exception to the impugned order dated 27th October, 2022 passed by the Member-1, Maharashtra Real Estate Regulatory Authority (for short "the Authority") in Complaint No. CC005000000085250 filed by the complainant/ Allottee on the grounds set out in the appeal.

2. The brief facts culled out from the pleadings of the parties, impugned order and material on record revealed that the Respondent booked a flat No. 903 on the 9th Floor of Tower B 5 in the project known as "Godrej Park Greens", situated at Mamurdi, Pune, admeasuring 52.88 sq. metres approximately (carpet area), for a total consideration of Rs. 40,87,968/-. The Application Form dated 16.03.2019 containing various terms and conditions relating to payment of sale consideration was signed by the Respondent/Allottee. Thereafter, the Respondent/Allottee has paid Rs. 4,27,173.50/- as part consideration amount, which included Rs. 31,642.52/- towards GST. Following the said payment, the Allotment Letter dated 30.04.2019 was executed between the parties. The Respondent/Allottee initially expressed

an intention to upgrade the flat by e-mail dated 20.06.2019, but on 31.07.2019 sought cancellation and refund citing unavoidable circumstances. The Appellant/Promoter has issued reminders requiring execution and registration of Agreement for Sale, followed by Pre-Termination letter dated 18.11.2019 and Termination Mail Letter dated 12.12.2019. The Respondent/Allottee thereafter sought further time and, on 15.05.2020, again requested cancellation and refund, which was rejected by the Appellant/Promoter on the ground that the Allotment Letter had already been terminated for non-payment of installments as per the terms and conditions of the said Allotment Letter.

3. Learned counsel Mr. Abhijeet K. Mangade appearing for the Appellant/Promoter submitted that the Application Form dated 16.03.2019 contained various terms and conditions including clauses (c), (l), and (n) entitling the Appellant/Promoter to cancel the Allotment and forfeit the earnest money paid, in case of default. It is further submitted that the Appellant had paid a total amount of Rs.4,27,173.50/- including Rs. 31,642.52/- paid towards GST.

4. Learned counsel appearing for the Appellant/Promoter further submitted that the Respondent/Allottee had paid only 9.67% of the total consideration amount and failed to execute the Agreement for Sale despite repeated notices issued by the Appellant/Promoter. It was therefore contended that the cancellation of Allotment Letter was solely attributable to the Respondent/Allottee and the Appellant/Promoter was entitled to forfeit the earnest money paid by the Respondent/Allottee.

5. The Appellant/Promoter further submitted that it has issued reminders dated 13.07.2019, 08.04.2019, and 16.08.2019 to the Respondent/Complainant to complete the execution and registration of the Agreement for Sale within the stipulated period. Thereafter, the Appellant/Promoter has issued a Pre-Termination Letter dated 18.11.2019 and Termination Letter dated 12.12.2019.

6. The Appellant/Promoter further submitted that the Respondent/Complainant disputed the termination and, by email dated 14.12.2019, called upon the Appellant/Promoter not to sell the flat to any third party without his consent. But the Respondent/Allottee, vide e-mail dated 15.05.2020, requested

cancellation of the allotment and refund of Rs.4,27,173.50/-, stating that he would not be able to make further payments. However, the Appellant/Promoter rejected the request, stating that the booking had already been terminated due to non-payment and that no refund was payable under the terms of the agreement.

7. The Learned Counsel for the Appellant further submitted that the MahaRERA Order No. 35/2022 dated 12.08.2022 was prospective and could not apply to a transaction terminated in 2019.

8. In support of the Appellant/Promoter's contention regarding validity of forfeiture of earnest money, reliance was placed by the Appellant/Promoter on the following judgments:

   a. *Satish Batra vs. Sudhir Rawal* [(2013) 1 SCC 345]
   b. *Shree Hanuman Cotton Mills vs. Tata Aircraft Ltd.* [MANU/SC/0086/1969]
   c. *Oberoi Construction vs. Asset Auto,* [Appeal No. AT006000000010502 of 2018 decided on 22.08.2019]
   d. *Loknath Mohpatra & Ors. vs. IREO Pvt. Ltd.* [MANU/CF/0123/2024]

e. *Saurav Sanyal vs. M/s Ireo Grace Pvt. Ltd.* [MANU/CF/0293/2022]

f. *Godrej Projects Development Limited vs. Anil Karlekar and Ors.* [MANU/SC/0138/2025]

g. *BSNL vs. Tata Communications Ltd. & Ors* [MANU/SC1222/2022]

h. *Asst. Excise Commissioner, Kottayam vs. Esthappan Cherian & Ors* [MANU/SC/0604/2021]

i. Commissioner of Income Tax vs. Vartika Township Private Limited [MANU/SC/0810/2014]

j. *Rajesh Mitra & Ors. vs. Karnani Properties Ltd.* [MANU/SC/1043/2024]

9. The learned Counsel further submitted that cancellation of bookings causes substantial financial loss to the Appellant/Promoter on account of capital investment, approvals, administrative expenses, infrastructure costs, brokerage and other overheads. The Appellant therefore prayed that the impugned order be quashed and set aside and the appeal be allowed.

10. Learned Counsel Mr. S.V. Darveshi appearing for Respondent/Allottee submitted that no Agreement for Sale was ever executed and registered, therefore, the parties were governed by the Application Form and Allotment Letter. Since the Respondent/Allottee had sought cancellation of flat booking before execution of Agreement for Sale, the Appellant/Promoter was not entitled to forfeit the entire amount paid as part consideration amount. The forfeiture clauses in Allotment Letter were arbitrary, unreasonable and contrary to the provisions and objectives of the Real Estate (Regulation and Development) Act, 2016.

11. Learned advocate appearing for the Respondent further submitted that MahaRERA Order No. 35/2022 prescribes deduction of only 2% of the total consideration where cancellation occurs before execution of Agreement for Sale. It is further submitted that although the said order was prospective, the principle underlying it was rightly applied by the Authority in the impugned order. Therefore, the learned counsel for the Respondent/Allottee sought dismissal of the appeal and confirmation of the impugned order dated 27.10.2022.

12. After considering the submissions advanced by the learned counsel appearing for respective parties, written submissions filed by the parties, impugned order, and material placed on record, the following points arise for our determination, and we have recorded our findings thereupon for the reasons to follow: -

Sr. No.	Points	Findings
1.	Whether the Appellant/Promoter is entitled to the reliefs sought in Appeal No. AT006000000134212 of 2022?	In the negative
2.	Whether the impugned order dated 27.10.2022 passed by the Member-1, Maharashtra Real Estate Regulatory Authority, warrants interference in this appeal?	In the negative
3.	What order?	As per final order

13. On ensemble of pleadings of the parties, the material placed on record, and upon perusal of the impugned order, it is revealed that the Respondent/Allottee had booked flat No. 903 in Tower B 5 of the project "Godrej Park Greens" for a total consideration of

Rs.40,87,968/-. The Respondent/Allottee had paid an amount of Rs. 4,27,173.50/-, including GST, and thereafter, the Allotment Letter dated 30.04.2019 came to be issued by the Appellant/Promoter. It is also not in dispute that no Agreement for Sale was executed and registered between the parties. The dispute which arises for consideration is whether the Appellant/Promoter was justified in forfeiting the entire amount paid by the Respondent/Allottee on the basis of the terms and conditions contained in the Application Form, and the Allotment Letter dated 30.04.2019. It is not in dispute that the Respondent/Allottee had paid approximately 9.67% of the total consideration amount at the time of execution of the Allotment Letter.

14. It is worthy to note that the Application Form dated 16.03.2019 and the Allotment Letter dated 30.04.2019 contained various terms and conditions, and the parties are bound by the contractual terms mutually accepted by them. However, such contractual terms cannot be considered in isolation and have to be consistent with the provisions and overall objectives of the Real Estate (Regulation and Development) Act, 2016. It is important to note that RERA Act, 2016 is a beneficial legislation intended to

protect the interests of all Allottees and ensure transparency, fairness, and accountability in the real estate sector.

15. Learned Adv. Mr. Abhijeet K. Mangade, appearing for the Appellant/Promoter, contended that the amount paid was earnest money deposited by the Respondent/Allottee. This contention is devoid of merit. We do not agree with the same. Perusal of the Application Form and the Allotment Letter clearly establishes that the amount paid by the Respondent/Allottee was part of the consideration amount agreed between the parties. Further, though the Respondent/Allottee had admittedly not entered into an Agreement for Sale, the Allotment Letter dated 30.04.2019 contained all the ingredients, such as the flat number, area, floor number, consideration amount, and schedule of payment. The provisions of RERA Act, 2016 specifically refer to the consideration amount. However, there is no reference to any earnest deposit payable by the Respondent/Allottee. In view of the above, we are of the opinion that the amount paid by the Respondent/Allottee was, in fact, part of the consideration amount paid towards the value of the subject flat.

16. In the present case, the Appellant/Promoter further contended that the Allotment Letter contained forfeiture clauses and therefore justified forfeiture of the entire amount paid by the Respondent/Allottee. We are unable to accept the contention of the Appellant/Promoter that the mere existence of such a clause confers a right upon it to forfeit the entire amount paid by the Respondent/Allottee as part consideration amount. A forfeiture clause cannot be enforced mechanically, particularly where the transaction has not finally culminated in execution or registration of an Agreement for Sale. Further, the material placed on record does not demonstrate the financial loss corresponding to the entire amount sought to be forfeited.

17. It is pertinent to note that the Respondent/Allottee, in the exchange of mails, had expressed his intention to upgrade the flat. Later on, owing to loss of employment and unavoidable circumstances arising on account of the COVID-19 pandemic, the Respondent/Allottee sought cancellation of the said flat booking. The material on record further shows that the Respondent/Allottee continued to communicate with the Appellant/Promoter and subsequently, on 15.05.2020, requested cancellation and refund of the part consideration amount paid to

the Appellant/Promoter. In the facts and circumstances of the case, the conduct of the Respondent/Allottee cannot be treated as an attempt to obtain undue advantage or to cause deliberate loss to the Appellant/Promoter.

18. The Appellant/Promoter further contended that the Respondent/Allottee has committed default in payment and failed to execute the Agreement for Sale. By virtue of the aforesaid, the Appellant/Promoter sought to justify forfeiture of the entire amount paid towards consideration. Learned Adv. Mr. Abhijeet Mangade, appearing for the Appellant/Promoter relied upon judgments concerning earnest money and forfeiture to justify the forfeiture of the total consideration amount paid by the Respondent/Allottee. The decisions relied upon by the Appellant/Promoter relate to the earnest money deposited by the suppliers, whereas, in the present case, the amount paid by the Respondent/Allottee was towards part consideration and not the earnest money, as contended by the Appellant/Promoter. Therefore, the decisions relied upon by the Appellant/Promoter cannot be applied to a transaction governed by the provisions of RERA.

19. Learned Adv. Mr. S. V. Darveshi, appearing for the Respondent/Allottee, contended that the forfeiture clauses in the Allotment Letter were arbitrary and contrary to the provisions and objectives of RERA. We find substance in the contention of the learned counsel. As a matter of fact, the amount paid towards consideration cannot be treated or described as earnest money. In the present case, a portion of the amount paid included statutory GST and other taxes paid to Government Authorities. The Application Form and the Allotment Letter demonstrate that the transaction was in relation to the booking of the flat by the Respondent/Allottee. Thus, in a real estate project developed by the Appellant/Promoter, the amount paid by the Respondent/Allottee was towards the consideration amount agreed between the parties and is governed by the various provisions of RERA and Rules and Regulations framed thereunder.

20. In relation to the Order No. 35/2022 dated 12.08.2022, learned Adv. Mr. Abhijeet K. Mangade, appearing for the Appellant/Promoter, contended that the said order operated prospectively. We do appreciate the said contention. However, the principle of proportionality and fairness reflected in the aforesaid order can legitimately be considered while examining the dispute

in the present case in relation to the Appellant/Promoter's claim of complete forfeiture of the part consideration amount paid by the Respondent/Allottee. In the present case, while examining the validity and reasonableness of forfeiture of the amount paid by the Respondent/Allottee, we are conscious of Order No. 35/2022, which was issued subsequent to the final termination notice given by the Appellant/Promoter. The said order provides guidance regarding what would constitute reasonable deduction in circumstances where the Agreement for Sale itself had not been executed.

21. The Appellant/Promoter further contended that the cancellation of booking caused financial loss on account of capital investment, statutory approvals, administration expenses, infrastructure, brokerage and other overhead expenses. We do not dispute that the Appellant/Promoter would incur such expenses in developing a real estate project. However, there is no material placed on record to establish the actual loss suffered on account of the cancellation of the said flat transaction. Further, the Appellant/Promoter could not establish that, after termination of the Allotment Letter in relation to the subject flat, could not be sold or allotted to another prospective purchaser and thereby

incurred any loss on account of cancellation by the Respondent/Allottee. Therefore, we are of the view that, even if termination is contractually permissible, the extent of forfeiture ought to have been reasonable and fair to the Respondent/Allottee.

22. In these circumstances, we are of the considered view that the Appellant/Promoter was not justified in forfeiting the entire amount of Rs. 4,27,173.50/- paid by the Respondent/Allottee. In the present case, in the absence of a registered Agreement for Sale and the circumstances of termination of the Allotment Letter and the amount actually paid by the Respondent/Allottee, the deduction contemplated in the impugned order appears to be fair and justifiable. Therefore, we find no irregularity or error in the impugned order dated 27.10.2022 warranting interference in the present appeal. Thus, the contention of Appellant/Promoter that it is entitled to forfeit the entire part consideration amount paid by the Respondent/Allottee is consequently rejected.

23. We, therefore, answered point nos. 1 and 2, and consequently proceed to pass the following order: -

ORDER

a. Appeal No. AT005000000134212 of 2022 is dismissed.

b. The Appellant/Promoter shall pay costs of Rs. 25,000/- to the Respondent/Allottee.

c. The amount deposited by the Appellant/Promoter in the Registry of this Tribunal be released in favor of the Respondent/Allottee.

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

(DR. RAJAGOPAL DEVARA) **(S. S. SHINDE, J)**

Z. Q. Pathan