

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

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

CORAM: Ravindra Deshpande, Member II, MahaRERA

**COMPLAINT NO.: CC00600000195252**

1.SANJAY NAVINCHANDRA CHOKSI

2.HINA SANJAY CHOKSI

...COMPLAINANTS

**Vs**

M/S. KALPATARU PROPERTY VENTURES LLP

...RESPONDENT

**MahaRERA Project registration No. P51800000442**

**FINAL ORDER**

**22.01.2026**

**(Date of hearing: 30.12.2024)**

Adv. Dharmendra Damani for the Complainant

Adv. Sumeet Tyagi for Respondent

1. The Complainant has filed the present complaint for refund the entire paid amount i.e. Rs. 1,46,51,375/- along with interest at 12% per annum since the date of payment till the date of refund towards Flat No. 132 on 13th Floor in Tower 'D', Unit No. D-132, Kalpataru Yashodhan, Lallubhai Park, Opp. Andheri Fire Station, S.V. Road, Andheri (West), Mumbai. The Complainant also prayed for the compensation of Rs. 2,00,000/- and cost.
2. It is contended in the complaint that the Complainants are allottees of a residential flat in the Respondent's project known as "Kalpataru Yashodhan", wherein the Respondent is the developer and promoter of the said project. The Respondent had widely

advertised the project through brochures, hoardings and banners, assuring world-class amenities and timely completion of the project on or before 31.12.2018. Relying upon such representations and assurances, the Applicants booked Flat No. 132, Unit No. D-132, on the 13th Floor of Tower 'D', for a total consideration of Rs. 7,11,66,210/-, and paid an aggregate amount of Rs. 1,46,51,375/-, which constitutes approximately 20% of the total consideration.

3. It is contended in the complaint, that as per the oral understanding and revised allotment letter, possession of the said flat was agreed to be handed over on or before December 2018 and the balance consideration was to be paid only after issuance of Occupation Certificate. However, the Respondent failed to adhere to the promised timeline and the construction progress remained abysmally slow, with no clear or definite completion schedule. Despite accepting substantial amounts, the Respondent failed to execute and register the Agreement for Sale.
  
4. It is further contended that the Complainants had informed the Respondent that the transaction was proposed to be funded through a bank loan; however, due to prolonged delay, lack of construction progress, and refusal of the Respondent to issue any assurance or guarantee letter to the bankers, the Applicants were unable to procure the loan. Even after repeated follow-ups and meetings, the Respondent neither provided possession nor refunded the amount, but instead continued to give false assurances. Subsequently, the Applicants were shocked to discover that the Respondent had sought extension of the project completion date on the MahaRERA website without disclosing the same to the complainant. Ultimately, due to continuous delay, breach of promises, failure to execute the Agreement for Sale, and non-delivery of possession, the Applicants cancelled the booking and demanded refund.

5. It is also contended that instead of refunding the amount, the Respondent issued a forfeiture notice dated 12.02.2020, evidencing mala fide intent and unfair trade practice. Aggrieved by the Respondent's conduct, violation of Sections 4, 11, 12, 13, 18 and 19 of the RERA Act, and continued non-compliance, the Applicants have approached this Authority seeking refund of the amount paid along with interest, compensation for mental agony, litigation costs, and consequential reliefs.
6. The Respondent, by its reply dated 16.04.2024, has denied all the allegations made in the complaint and contended that the complaint is false, frivolous, and devoid of substance. It is submitted by the Respondent that the Complainants are engaged in the real estate business and are merely investors, and therefore never intended to execute or register the Agreement for Sale.
7. It is submitted by the Respondent that the Complainants approached to the Respondent expressing the interest in booking the flat in the project. After being fully appraised and completely understanding the schemes of the development of the said project the complainant decided to book the flat no. 132, 13<sup>th</sup> floor tower D, admeasuring approx. 119.01 sq.mtrs for total consideration of Rs. 7,11,66,210/-. It is submitted that the complainants filled and signed the booking application form dated 20.01.2017 in respect of the said flat and the separate cost was issued containing the detailed breakup of the total consideration amount and other terms and condition of the payment, which was duly admitted and signed by the complainants.
8. It is further submitted in the reply by the respondent that the complainants made the payment of Rs. 1,40,14,082/- towards the part consideration amount and remaining Rs.6,37,923/- was paid by the complainant towards statutory taxes and other charges. Accordingly, the complainant has paid amount of Rs. 1,46,51,375/-

towards the booking of the said flat. It is also submitted that the complainants were required to execute and register agreement for sale and also to make timely payments towards consideration and other charges; however, the complainant failed and neglected to execute and register the agreement for sale and also to pay consideration amount.

9. The Respondent submitted that due to the complainant's repeated failure to comply with the payment demands, a reminder letter dated 20.03.2017 was issued, calling upon the complainant to pay an outstanding amount of Rs. 67,89,004/- towards statutory taxes and other charges within seven days to avoid interest and late payment charges. Despite receipt of the said letter, the complainant failed to make the payment. Thereafter, a second reminder dated 06.04.2017 was issued demanding Rs. 69,14,102/-, including interest. However, the complainant continued to neglect and failed to clear the admitted outstanding dues.
  
10. It is submitted that the respondent vide letter dated 20th April 2017 requested the complainants to make payment of the stamp duty and come forward for the execution and registration of Agreement for sale. However once again the complainant failed and neglected to make payment of stamp duty and execute and register the agreement for sale. It is submitted that the complainant failed to complete their part of obligation in spite of several requests and reminder letters emails and calls.
  
11. It is submitted that further the respondent vide letter dated 8th June 2017 requested the complainant to comply and pay the MVAT amounting to Rs. 1,47,994/-. The respondent thereafter issued a letter dated 14th June 2017 requesting complainants to make the payment of the outstanding dues before 30th June 2017 that is before commencement of GST regime. It is submitted that the complainant failed and neglected to comply with the

requisitions under the aforesaid letters and pay the outstanding dues.

12. It is submitted by the respondent that the respondent issued final reminder letter dated 27th June 2019, calling upon the complainant to make the outstanding dues against the demand tax invoices along with interest. However, despite reset of the said letter the complainant once again failed and neglected to make the aforesaid payment and fail to comply with their part of obligation.
13. The Respondent submitted that, despite having no obligation, it waited for nearly two years for the complainant to clear the outstanding dues, during which the complainant took undue advantage of the leeway granted. Left with no alternative, the Respondent issued a forfeiture letter dated 12.02.2020, stating that sufficient opportunities had been given and that it could not wait indefinitely. Accordingly, the booking of the said flat was cancelled and the amount of Rs. 1,46,51,375/- paid by the complainant was forfeited.
14. It is submitted by the respondent that the complainants held the said flat without any intention to materialise the sale till February 2020. It is also submitted that due to COVID-19 the respondent was compelled to sale the said flat during the pandemic at much lower price than the price at which the flat was sold to the complainants and hence suffered a huge loss due to the misdeed committed by the complainants. It is submitted that respondent is also entitled to recover those losses from the complainants.
15. It is submitted that the Complainants through their advocates in letter dated 04.03.2020 called upon the Respondent to refund the entire amount of Rs. 1,46,51,375/-. The letter has been responded by the respondent through its advocates in letter dated 21st July 2020 disputing and denying all the claims of the complainants. The complainants vide their advocates letter dated 20th August

2020 again made various allegations against the respondent and demanded refund for the entire money paid by the complainants. The said letter has been again responded by the respondent through his advocate in letter dated 26th November 2020 again disputing and denying all the claims including the claim of refund of the entire amount.

16. The Respondent further submits that despite several requests and reminders, the Complainants failed to pay the requisite stamp duty and did not execute or register the Agreement for Sale as mandated by law and hence are not entitled to any relief. The respondent has without being obliged waited for almost 3 years for the execution and registration of the agreement for sale and almost 2 years for the payment of the outstanding dues. That the respondent was left with no other alternative but to cancel the booking of the said flat and forfeit the amount paid by the complainants towards the part consideration of the said flat in terms of the application form.
17. It is further contended that the complaint is not maintainable either on facts or in law and deserves to be dismissed at the threshold. Relying upon Section 31 of the Real Estate (Regulation and Development) Act, 2016, the Respondent submits that a complaint can be entertained only in case of a violation or contravention of the provisions of the RERA Act, rules, or regulations. According to the Respondent, there has been no such violation on its part, and in the absence of any contravention of the RERA Act, this Authority lacks jurisdiction to entertain the present complaint or grant the reliefs sought by the Complainants.
18. It is further submitted in the reply by respondent that, the complainants are guilty of suppressing the several vital correct and material facts from this authority, and hence the complainant does not deserve any consideration, and the complaint should be dismissed. It is submitted by the Respondent that the falsity of the

Complainant's claim is apparent from the documents on record, particularly the application submitted by the Respondent to the Hon'ble RERA Authority at the time of registration of the project. The said application clearly reflects that the original date of completion of the project was 30 April 2020 and the revised date of completion was 30 April 2021. Despite the above, the Respondent has completed the said project well within time and has obtained the Occupancy Certificate on 08.04.2019.

19. The respondent further submits that with regards to the balance payment there was clear understanding that the payment has to be done on the basis of obtaining the Occupancy Certificate. The Complainants are making false and frivolous statements without bringing on the documents on record which does not substantiate their arguments. The Respondents says that there is no delay in the completion of the project and the flat has been handed over to the other allottees in the project after the receipt of Occupancy certificate.
20. It is further submitted by the Respondent that the said flat is not being used by the Respondent for past four years as contended by the complainant. It is submitted that there are no agreed terms or any contractual liability between the parties and therefore the respondents are not liable to pay interest at the rate agreed in the allotment letter. It is submitted by the Respondent that in the absence of the alleged violations the present complaint is not maintainable and therefore liable to be rejected and dismissed.
21. The Complainant has filed the rejoinder dated 09.07.2024 and has submitted that the complainant have reiterated and reaffirmed all averments made in the Complaint and have categorically denied all allegations raised by the Respondent which are inconsistent, misleading, false, and contrary to the record. The Complainants submit that the Reply filed by the Respondent is an attempt to

mislead this Authority and evade its statutory obligations under the Real Estate (Regulation and Development) Act, 2016.

22. The Complainants have specifically denied the Respondent's contention that they are "Investors" and not "Purchasers." It is stated that the Complainants paid the booking amount for purchase of Flat No. D-132, 13th Floor, Tower 'D', admeasuring 3 BHK with two car parking spaces in the project "Kalpataru Yashodhan." Merely labelling the Complainants as Investors does not absolve the Respondent from its legal obligations. The Respondent's own conduct is contradictory, as on one hand it alleges that the Complainants are investors, and on the other hand claims to have called upon them for registration of an Agreement for Sale. The Complainants contend that such conduct clearly demonstrates mala fide intent to wrongfully retain the Complainants' funds since 2016-2017.
23. The Complainants further submit that under Section 2(zg) of the RERA Act, they squarely fall within the definition of "person" and are entitled to the protection granted to allottees/purchasers under the Act, including refund and compensation. The Respondent's attempt to avoid liability by misinterpreting statutory provisions is legally untenable.
24. It is further alleged that the Respondent has violated Section 13 of the RERA Act by accepting more than 10% of the apartment cost without first executing and registering an Agreement for Sale. The Complainants have paid over 20% of the total consideration as early as 2016-17, based on assurances that the amount was towards booking and registration. Despite repeated follow-ups, the Respondent neither shared nor registered the Agreement for Sale. The Respondent has also failed to produce any documentary proof or receipts relating to GST, Service Tax, TDS, or MVAT allegedly collected from the Complainants, thereby demonstrating lack of transparency and clean hands.

25. The Complainants further submit that the Respondent has admitted to forfeiting an amount of Rs. 1,46,51,375/- without any justifiable grounds. As per the agreed payment terms, the balance amount was payable only upon obtaining the Occupation Certificate (O.C.). The Respondent had promised possession by 2018; however, the building was not constructed by then. There was an inordinate delay in obtaining the O.C., which was admittedly received only in August 2019 and was never disclosed to the Complainants. The Complainants assert that despite the clear understanding that no further payment was due until O.C., the Respondent arbitrarily issued demand letters starting from 2017 and unlawfully levied interest. The Respondent itself has stated that the project completion date was revised to 30.04.2021, and therefore raising demands prior to completion was illegal and unjustified. Even till date, the Respondent has not furnished a copy of the Occupation Certificate to the Complainants. It is further contended that the Booking Application Form relied upon by the Respondent contains unilateral modifications and unsigned terms and conditions, which were never shared with the Complainants. The Respondent's own reliance on such documents exposes manipulation and forgery, rendering the said documents unreliable and unenforceable.

26. The Complainants submit that although receipt of Rs. 1,46,51,375/- is admitted, the Respondent has failed to prove service of any notice calling upon the Complainants for registration of the Agreement for Sale. Demand for balance payment was raised from March 2017 onwards, despite no amount being due at that time. The Complainants assert that a false demand does not create any lawful liability or obligation to pay interest. The Complainants further point out that the Respondent commenced the project in 2014 but failed to obtain necessary approvals or commence substantial construction even by 2016-2017 when booking was made. Payments were collected

off-site, raising serious doubts regarding transparency and regulatory compliance.

27. The Complainants have also denied receipt of alleged letters claimed to have been sent by the Respondent, including a purported letter dated 14.06.2014, which predates the Complainants' booking and is therefore fabricated and mala fide. The Complainants are not liable for any obligations allegedly arising from 2014. The email correspondence relied upon by the Respondent further supports the Complainants' case, as the email dated 07.04.2017 does not mention any payable amount, and the subsequent email dated 12.03.2019 shows a balance payable of Rs. 1,83,98,071/-, indicating that the project was far from completion and not ready. The payment structure agreed between the parties was a 20:80 plan and not a construction-linked plan, with the balance payable only upon receipt of O.C.

28. The Complainants have alleged serious fraud and unfair trade practice by the Respondent, stating that the flat allotted to them was subsequently sold to third parties without their consent and without resolving their claims. The Respondent sold the same flat on 01.12.2020 at a significantly lower value of Rs. 4,90,89,740/- as against Rs. 7,11,66,210/- charged to the Complainants. This raises grave suspicion of illegal enrichment and discriminatory conduct. The Complainants have placed on record the Index-II of the subsequent sale to substantiate this contention. In conclusion, the Complainants reiterate that the balance of convenience lies entirely in their favour, that the Respondent has acted in blatant violation of RERA provisions, and that the Complaint deserves to be allowed with costs.

29. The matter was listed for the hearing on 30.12.2024, and on that day both the parties were present through their respective advocates. The Advocate for the Complainant submitted that the

Complainant had paid a sum of Rs.1,46,51,375/-, constituting 20% of the total consideration, and that the balance 80% was payable only upon completion of the project. It was contended that despite the project not being completed, the Respondent unlawfully demanded further payments and subsequently sold the subject flat to a third party. On these grounds, the Complainant has sought refund of the amount paid along with interest. The Advocate for the Respondent submitted that the amount paid by the Complainant was only a booking amount and that the Complainant failed to execute the Agreement for Sale despite repeated demand letters. It was further submitted that the project was fully completed and possession was handed over to other flat purchasers. The Respondent claimed a contractual right to forfeit the amount paid, as stated in the reply. It was contended that the total consideration of the flat was Rs.7.11 crore, out of which only 20% (including taxes) was paid by the Complainant. The Respondent further submitted that the project was completed prior to RERA, that possession was offered earlier than the RERA-declared date, and that due to the COVID-19 period, the flat was sold at a lower price resulting in a loss. The Respondent sought time to file written arguments. The parties were granted liberty to file their written arguments on or before 30.01.2025, after which the matter was to be reserved for orders.

30. The Complainant has filed the written arguments and reiterated the facts of the case, and it is contended that possession was agreed to be handed over on or before December 2018 and that the balance 80% of the consideration was contractually payable only after obtaining the Occupation Certificate (O.C.). However, the Respondent failed to hand over possession within the stipulated period and could not specify any definite timelines, with construction being substantially delayed. The Complainants argued that despite failure to complete the project within the agreed timeline and without registration of the Agreement for Sale, the Respondent began demanding payments from 2017

onwards. It was submitted that such demands were contrary to the agreed terms, as no amount beyond 20% was payable prior to obtaining the Occupation Certificate.

31. The Complainants submitted that the Respondent illegally forfeited the amount paid by them vide forfeiture letter dated 12.02.2020. It was argued that there was no valid call for payment or lawful justification for forfeiture, rendering the action arbitrary, malafide, and contrary to RERA provisions. The Complainants contended that after obtaining the Occupation Certificate, the Respondent sold the subject flat to a third party without any intimation to the Complainants, at an allegedly discounted price of Rs. 4,90,89,740/-, significantly lower than the price agreed with the Complainants. It was argued that no opportunity was given to the Complainants to purchase the flat at such revised terms.

32. It is submitted that the Respondent has retained the Complainants' amount of Rs. 1,46,51,375/- since 2017 without refunding either the principal or interest. During mediation proceedings, the Respondent allegedly offered a meagre amount, which was unacceptable to the Complainants. The Complainants argued that the principal amount would have significantly appreciated over the last seven years and that the market value of the flat is substantially higher. It was alleged that the flat may have been sold at an undervalued consideration to avoid refund liability. The Complainants contended that the Respondent had no authority to sale the allotted flat without their consent, particularly after receiving substantial consideration. It was submitted that the Respondent ought to have given the Complainants the first right of refusal before selling the flat to a third party.

33. The Complainants submitted that officers of the Respondent repeatedly assured timely completion, inducing the Complainants to wait. However, the Respondent later refused refunds or

alternate solutions, culminating in the forfeiture notice, indicating deceptive intent. It was submitted that during the pendency of the present complaint, the Respondent sold the flat to a third party, allegedly in disregard of the Authority's jurisdiction and in violation of the doctrine of lis pendens. The Complainants asserted that forfeiture of 20% of the consideration and subsequent sale without notice constitute clear violations of RERA provisions, entitling the Complainants to refund, interest, and compensation.

34. It was contended that despite repeated follow-ups, the Respondent neither executed nor registered the Agreement for Sale, nor delivered possession, nor paid any compensation. The Complainants submitted that they later discovered through the MahaRERA website that the Respondent had sought extensions, contrary to representations made to them. It was alleged that accepting 20% without executing an Agreement for Sale violated Sections 12 and 13 of RERA. It was further submitted that the Respondent infringed the rights of allottees under Sections 19(1) and 19(2) of RERA by failing to hand over possession and by withholding material information. Based on the above facts, the Complainants sought directions for refund of Rs. 1,46,51,375/- with interest at 12% per annum, compensation for statutory violations and mental agony, legal costs, and imposition of penalties under RERA.

35. The Respondent has filed the present Written Submissions pursuant to the directions of this Hon'ble Authority issued during the hearing dated 30 December 2024. These submissions are intended to summarize the Respondent's case as already elaborated in detail in the Affidavit in Reply dated 16<sup>th</sup> April 2024 and supplemented by oral arguments advanced during the hearing. The Respondent submits that these written submissions are neither a repetition of the oral arguments nor an expansion beyond the pleadings but are in furtherance thereof.

36. The Respondent seeks dismissal of the Complaint on the grounds of lack of maintainability, absence of any violation of the Real Estate (Regulation and Development) Act, 2016 ("RERA"), and on account of admitted defaults committed by the Complainants. The Respondent denies all allegations made by the Complainants in the Complaint, Rejoinder, written submissions and oral arguments, and specifically objects to any pleadings or submissions made by the Complainants which travel beyond the scope of the original Complaint or are inconsistent with their own pleadings.
37. The Respondent submits that despite repeated demands, reminders and correspondence between March 2017 and June 2019, the Complainants failed to make payments as per the agreed schedule and also failed to pay stamp duty and execute the Agreement for Sale. Several reminders and a final notice were issued calling upon the Complainants to regularize their defaults and execute the Agreement for Sale. As the Complainants continued to remain in breach, the Respondent cancelled the booking by a forfeiture letter dated 12 February 2020 and forfeited the amounts paid in terms of the Booking Application Form and Cost Sheet. Only thereafter did the Complainants demand a refund and file the present Complaint in December 2020.
38. The Respondent submits that the Complainants have attempted to portray a false narrative of delay and non-disclosure to avoid the consequences of their own defaults. The project was duly registered with MahaRERA on 12 July 2017 with a proposed completion date of 30<sup>th</sup> April 2020, later revised to 30<sup>th</sup> April 2021. The Respondent completed the project well within time and obtained the Occupation Certificate on 8<sup>th</sup> August 2019, much prior to the revised completion date. Hence, there was no delay, breach, or violation of Section 18 of RERA. It is submitted that in the absence of an executed Agreement for Sale, the only binding

documents between the parties are the Booking Application Form and Cost Sheet. These documents do not stipulate any agreed date of possession. Therefore, the Complainants cannot invoke Section 18 of RERA, which is applicable only where a promoter fails to hand over possession as per the agreed timeline. The Respondent contends that the Complaint is premature, misconceived and not maintainable under Sections 18 or 31 of RERA. The Respondent further submits that the Complainants are investors engaged in real estate business and not genuine allottees entitled to the protection of RERA. Reliance is placed on the judgment of the Hon'ble Supreme Court in *Pioneer Urban Land and Infrastructure Ltd. v. Union of India*, wherein it was held that speculative investors cannot take advantage of beneficial legislation like RERA. The Respondent alleges that the Complainants have deliberately suppressed material facts and documents, including the Booking Application Form, Cost Sheet, and extensive correspondence evidencing their defaults. Such suppression amounts to abuse of process and disentitles the Complainants to any equitable relief. Reliance is placed on judgments of the Hon'ble Supreme Court holding that litigants approaching a judicial forum must do so with clean hands and full disclosure.

39. It is further submitted that the Complainants are defaulters under Section 13 of RERA, having failed to execute the Agreement for Sale despite repeated notices. In the absence of an executed Agreement for Sale, no enforceable possession date existed, and therefore no cause of action arose in favour of the Complainants. The Respondent contends that a party in breach cannot seek relief under Section 18 of RERA, as consistently held by this Hon'ble Authority and the Hon'ble Supreme Court. The Respondent submits that the forfeiture of the amounts paid by the Complainants is valid and lawful, being strictly in accordance with the agreed contractual terms. The amounts forfeited constitute earnest money, and the Respondent relies upon a catena of judgments of the Hon'ble Supreme Court, including *Shree*

*Hanuman Cotton Mills, Maula Bux, Satish Batra, and Godrej Projects Development Ltd.*, which recognize the right of a seller to forfeit reasonable earnest money upon default by the purchaser. The Respondent contends that it has suffered financial loss due to the prolonged default of the Complainants, who paid only a small fraction of the total consideration and blocked the inventory for several years without complying with their contractual obligations. The Respondent was therefore justified in terminating the booking and forfeiting the earnest money. In conclusion, the Respondent submits that there has been no violation of any provision of RERA on its part, that the Complaint is devoid of merit, barred by lack of maintainability, and based on suppression and false allegations. The Respondent therefore prays that the Complaint be dismissed with costs.

40. Considering the contention of both the parties, following points arise from my determinations. My findings thereon recorded as under for the reasons stated below

#### Points

SR. NO	POINTS	FINDINGS
1	Whether the Complainants are entitled to refund with interest under Section 18 of RERA due to non-delivery of possession and subsequent sale of the flat to a third party?	Affirmative
2	What Order?	As per final order

**Reasons as to point nos. 1**

41. It is seen that the Complainants paid an admitted amount of Rs. 1,46,51,375/-, constituting approximately 20% of the total consideration, towards Flat No. D-132 in the Respondent's project. The receipt of this amount is unequivocally admitted by the Respondent. Under Section 2(d) of the Real Estate (Regulation and Development) Act, 2016, any person to whom an apartment is allotted for consideration is an "allottee", irrespective of whether an Agreement for Sale has been executed. The Respondent's attempt to label the Complainants as "investors" is unsupported by any cogent evidence and is contradicted by its own conduct in issuing demand letters, seeking stamp duty, and calling upon the Complainants to execute an Agreement for Sale. Mere allegations of investment intent, without proof of speculative resale or commercial dealing by the Complainants, cannot divest them of statutory protection under RERA. Therefore, the Complainants are held to be allottees entitled to invoke provision of RERA.
42. It is further observed that, Section 13(1) of RERA expressly prohibits a promoter from accepting more than 10% of the apartment cost without first executing and registering an Agreement for Sale. In the present case, the Respondent admittedly accepted over 20% of the total consideration as early as 2016-2017 yet failed to execute and register the Agreement for Sale at any point in time. This constitutes a clear and admitted statutory violation attributable solely to the Respondent. The Respondent cannot be permitted to take advantage of its own breach by alleging that the absence of an Agreement for Sale defeats the Complainants' claim. Such an argument is legally impermissible and contrary to the settled principle that no party can benefit from its own wrong.
43. It is observed by this authority that the Complainants have consistently asserted, and the Respondent has failed to rebut with

documentary proof, that the possession was assured on or before December 2018, with the balance 80% consideration payable only upon receipt of the Occupation Certificate (O.C.), under a 20:80 payment structure. The Respondent's own pleadings disclose inconsistent dates of completion, including revised completion timelines up to 30.04.2021, which demolish its contention that possession was due earlier or that the project was completed as promised to the Complainants. The alleged issuance of demand letters from 2017 onwards is contrary to the agreed payment structure and unsupported by any registered Agreement. A false or premature demand does not create a lawful obligation, nor can non-compliance therewith be treated as default. It is also observed that the Occupation Certificate for the subject project was obtained by the Respondent only in the year 2019, thereby corroborating the Complainants' contention that possession was not available within the originally assured period.

44. It is observed that the Respondent issued a forfeiture letter dated 12.02.2020, forfeiting the entire amount of Rs. 1,46,51,375/-, without refunding any portion thereof. Such forfeiture is arbitrary, disproportionate, and violative of RERA, especially when the promoter itself was in breach of Sections 13. Crucially, the Respondent thereafter sold the very same flat to a third party, as evidenced by the Index-II dated 01.12.2020. Once the flat was sold to a third party, specific performance became impossible, and the allotment in favour of the Complainants stood irreversibly frustrated. Sale of the allotted flat without resolving the Complainants' subsisting claim amounts to unilateral termination, extinguishing the Respondent's right to retain the Complainants' money.

45. It is observed by this authority that Section 18(1)(a) mandates that where a promoter fails to complete or is unable to give possession of an apartment, the allottee is entitled to refund of the amount paid along with interest, at the prescribed interest. In the present

case, the Respondent failed to deliver possession within the assured timeline. The Respondent violated Section 13 by not executing the Agreement for Sale. It is also seen that the Respondent forfeited the amount without lawful justification and the Respondent rendered possession impossible by selling the flat to a third party. The absence of an executed Agreement for Sale cannot defeat a statutory right, as the respondent in the present case received an amount of Rs. 1,46,51,375/- from the Complainants which is more than 20% of total consideration i.e Rs. 7,11,66,210/- and inspite of that not executed Agreement for Sale section 13 of RERA Act says that promoter shall not accept a sum of more than 10% of the total cost of the apartment as an advance payment from the person without first entering into a written agreement for sale with such person and registered the said agreement for sale, it means duty is cast upon the promoter for executing and registration of agreement for sale then the promoter in such situation cannot be permitted to take defence that no any Agreement for Sale executed and therefore, the allottee cannot take recourse of section 18 of RERA Act.

46. It is seen that it is contention of the Complainants in the complaint that total consideration of flat agreed Rs. 7,11,66,210/- and they paid amount of Rs. 1,46,51,375/- and according to the Complainants, the balance consideration was to be paid only after issuance of Occupation Certificate. The Respondent in his reply contended that the Complainants repeated failure to comply with the payment demands, reminder letter dated 20.03.2017 was issued to the Complainants calling upon to pay an outstanding amount of Rs. 67,89,004/- towards statutory taxes and other charges within 7 days to avoid interest and late payment charges. It is also contended by the Respondent that the Complainants make timely payment towards consideration and other charges; however, the Complainants failed and neglected to pay the consideration amount. According to the Complainants, the Respondent arbitrarily issued demand letters starting from 2017,

and unlawfully levied interest. It is contention of the Complainants, in the complaint itself that after making payment of Rs. 1,46,51,375/- by them to the Respondent, the balance consideration was to be paid only after obtaining OC. I have gone through the first reminder for payments due letter Exhibit-C which is of dated 20.03.2017, addressed to the Complainants by the Respondent, it is mentioned that reminder for the non-payment of dues in respect of Flat No. 132 on 13th Floor in Wing - D Building, it is mentioned in the same "you are aware that as per terms of the application you are required to pay all the amounts and charges within 15 days from the date of demand made by us." You are aware that the amount becoming over due, is payable by you with interest 12% per annum from the date of demand till the date of payment thereof, the total amount overdue towards the Agreement value including service tax Rs. 67,89,004/-.

47. It is contention of the Complainants that after making payment of Rs. 1,46,51,375/-, the balance amount of consideration was required to be paid only after issuance of Occupation Certificate, however, Respondent in the year 2017 itself sent demand letter to the Complainants for payment of Agreement value. The Respondent itself in reply contended that with regards to the balance payment there was clear understanding that payment has to be done on the basis of obtaining Occupancy Certification in spite of the same, the Respondent in the year 2017 issued demand letter to the Complainants for payment of due Agreement value and issued reminder letter on 20.03.2017 and also issued letter on 27.06.2019 for payment of outstanding dues and thereafter, on 12.02.2020, issued forfeiture letter contending that sufficient opportunities had been given and that it could not wait indefinitely and cancel the booking of the flat and forfeited amount of Rs.1,46,51,375/- paid by the Complainants.

48. The above facts shows that though after payment of Rs. 1,46,51,375/- the Complainants were required to pay remaining consideration amount only after issuance of Occupation Certificate, inspite of that Respondent issued demand letters asking to pay Complainants due agreement consideration and sent reminders and as the same is not paid forfeited the amount of Rs. 1,46,51,375/- paid by the Complainants towards consideration of the flat in question.

49. Considering the above mentioned fact, this authority is of view that Forfeiture of the amount paid, especially when it exceeds 10% and when the promoter is in breach, is per se unconscionable and illegal under RERA. Further, once the flat has been sold to a third party, the Respondent cannot simultaneously retain the Complainants' money and the benefit of resale. Such conduct amounts to unjust enrichment, which RERA expressly seeks to prevent. The Complainants' money has been retained by the Respondent since 2017 and though the Complainants were required to pay balance consideration after issuance of Occupation Certificate the Respondent issued demand letters for payment of due agreements value and as the Complainants not paid the same, forfeited the amount of Rs. 1,46,51,375/-. which is not acceptable considering the above facts.

50. From the cumulative assessment of the pleadings, documents on record, and the undisputed factual position, it is evident that the Respondent accepted more than 10% of the total consideration without executing and registering an Agreement for Sale, in clear violation of Section 13 of the RERA Act. The Respondent thereafter raised premature and unlawful demands, and ultimately forfeited the Complainants' money without lawful justification. The defence of the Respondent that the absence of a registered Agreement for Sale disentitles the Complainants from relief is untenable, as the non-execution of the Agreement is attributable solely to the Respondent itself. A promoter who

violates a statutory obligation cannot be permitted to rely upon such violation to defeat the statutory rights of an allottee. The Real Estate (Regulation and Development) Act, 2016 is an act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from officers and for matters connected therewith or incidental thereto. This is a beneficial Act protecting the interest of the consumer allowing to forfeit amount paid by Complainants of Rs. 1,46,51,375/-, failure to complete the transaction illegal forfeiture, and subsequent sale of the flat to a third party, this Authority holds that the Complainants have been wrongfully deprived of their funds for several years. They are therefore legally and equitably entitled to refund of the entire amount along with interest, as provided under Section 18 of the RERA Act. The Respondent itself in reply contended that the Respondent forfeited the booking amount, amounting to Rs. 1,46,51,375/-, the Respondent not placed on record any receipt that such and such amount paid towards taxes on behalf of Complainants by them. Accordingly, Point No. 1 is answered in the Affirmative, holding that the Complainants are entitled to refund the amount paid by them with interest due to the Respondent's and subsequent sale of the allotted flat to a third party. Hence, I proceed to pass the following order.

### **ORDER**

The complaint is allowed.

1. The Respondent is directed to refund Rs. 1,46,51,375/- to the Complainant, the entire amount of Rs. 1,40,14,082/- (Rupees One Crore Forty Lakhs Fourteen Thousand and Eighty-Two only) to the

Complainant within 30 days from the date of this order. The Respondent shall pay interest on the above amount at the rate State Bank of India's Highest Marginal Cost of Lending Rate (MCLR) plus 2% p.a. as per Rule 18 of The Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules, 2017 from 01.01.2019, until actual realization of the entire amount.

2. The respondent is also directed to pay Rs. 20,000/- to the complainants towards cost of the present complaint.

**Ravindra Deshpande,  
Member II, MahaRERA**

**Date: - 22.01.2026**