BEFORE THE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL MUMBAI

Appeal No. AT006000000083862 of 2022

IN

Complaint No.CC006000000195808

Rahul Kalyan Raghuwanshi)
Flat No.507, Executive Tower-M)
Business Bay, Dubai, UAE.) ... APPELLANT

-Versus-

1. M/s Accord Builders)
Omkar House, Off Eastern Express)
Highway, Sion- Chunabhatti Signal, Sion)
(East), Mumbai - 400022 and)
at 3403, Aspin Tower, Sheikh Zayed)
Road, Dubai, UAE P.0. 121868.)

2. Omkar Realtors & Developers Pvt. Ltd.)
Omkar House, Off Eastern,)
Express Highway, Sion - Chunabhatti)
Signal, Sion (East) Mumbai - 400022.)

3. Anatomy Realtors Pvt Ltd)
Omkar House, Off Eastern,)
Express Highway, Sion - Chunabhatti)
Signal, Sion (East) Mumbai - 400022.) ... RESPONDENTS

ALONGWITH

Appeal No. AT006000000083863 OF 2022

IN

Complaint No. CC006000000196143

Rahul Kalyan Raghuwanshi)
Flat No. 507, Executive Tower-M)
Business Bay, Dubai, UAE) ... APPELLANT

-Versus-

1. M/s Accord Builders)
Omkar House, Off Eastern Express)
Highway, Sion- Chunabhatti Signal, Sion)
(East), Mumbai - 400022 and)
at 3403, Aspin Tower, Sheikh Zayed)
Road, Dubai, UAE P.O. 121868.)
2. Omkar Realtors & Developers Pvt. Ltd.)
Omkar House, Off Eastern Express)
Highway, Sion- Chunabhatti Signal, Sion)
(East), Mumbai - 400022)
3. Anatomy Realtors Pvt Ltd)
Omkar House, Off Eastern,)
Express Highway, Sion - Chunabhatti)
Signal, Sion (East) Mumbai - 400022.) ... RESPONDENTS

Adv. Mr. Aman Kacheria for Appellant/Allottee

Adv. Mr. Arthav Sanghvi for Respondents/Promoters

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

RESERVED ON : 15th JUNE 2026

PRONOUNCED ON : 1st JULY 2026

(THROUGH VIDEO CONFERENCE)

JUDGMENT

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

1. The captioned appeals take exception to the impugned order dated 23.02.2022 passed by the learned Chairperson, Maharashtra Real Estate Regulatory Authority (for short "the Authority"), in Complaint Nos. CC006000000195808 and CC006000000196143 filed by the Complainant/Allottee, wherein the learned Authority disposed of the complaints with a direction to the parties to abide by the terms and conditions of the Allotment Letters.

2. For the sake of convenience, "Appellant" will hereinafter be referred to as "Allottee" and "Respondents" will hereinafter be referred to as "Promoters".

3. The factual matrix of the matter is that Appellant/Allottee booked Flats No. B-1008 and A-1001 in real estate project known as "Omkar Meridia" situated at Kurla, Mumbai, pursuant to Allotment Letters dated 27.02.2015 and 17.07.2015 respectively. The agreed consideration amount for the said flats was Rs.2,35,30,000/- and Rs.3,17,82,000/- respectively. The Appellant/Allottee had paid an amount of Rs.48,73,313/- and Rs.66,56,993/- out of the aforesaid agreed consideration which is approximately 20% of the consideration amount. It is pertinent to note that, despite receipt of the said amount, no agreement for sale has been executed by the Respondents/Promoters in respect of the said apartments.

4. According to the Allotment Letters, the Respondents/Promoters promised that possession would be given on or before April 2017. However, possession was not offered within the promised period. It is important to note that the Respondents obtained Occupancy Certificate on 27.05.2018, thereafter disputes arose when the drafts of the proposed agreement for sale were exchanged between the parties.

5. The Appellant/Allottee contended that various discrepancies, factual mistakes and errors from the original understanding contained in the Allotment Letters were noticed in the draft agreement for sale. The Appellant/Allottee repeatedly requested Respondents to correct and align the drafts of agreements for sale. Despite repeated requests, the Respondents/Promoters insisted upon payment of remaining consideration amount without correcting the draft agreements. However, the Appellant/Allottee submitted that he showed willingness to make payment, subject to receiving the corrected draft agreements for sale as per the Allotment Letters. However, since the Promoters failed to address the objections raised by him, the Allottee treated the conduct of the Respondents/Promoters as breach of their obligations and sought refund of the part consideration amount paid. Thereafter, the Appellant/Allottee filed

complaints before MahaRERA seeking refund of the consideration amounts paid along with interest.

6. The learned Authority, by the impugned order, held that the Allottee would be entitled to refund. However, the Authority directed that such refund shall be subject to the terms and conditions of the Allotment Letters. Being aggrieved by the said direction, the Appellant/Allottee has preferred the present appeals.

7. The Appellant/Allottee submitted that the impugned order passed by learned Chairperson, MahaRERA, by making refund subject to the terms of the Allotment Letters, would demonstrate that the Respondent No.1 has struck an unconscionable bargain with the Appellant. The Appellant/Allottee further submitted that the said Allotment Letters, particularly Clause 12, *ex facie* demonstrate the Appellant's assertion.

> *"12. Upon termination/cancellation of this Letter of Allotment for the said Unit as stated in paragraph 11 above: -*
>
> *i. You shall have no right, title, claim, interest, lien, demand or dispute of any nature whatsoever either against us or in respect of the said Unit and/or said Project or any part thereof in any manner whatsoever whether pursuant to this Letter of Allotment or the Booking Form or otherwise howsoever;*
>
> *ii. We shall be entitled to deal with and dispose of the said Unit to any person/s as we deem fit without any further intimation act or consent from you;*
>
> *iii. Refund (after making adjustments pursuant to Clauses 12(iv) and 12(v) before the Purchase Price paid by you to us, without interest only after (i)deduction and/or adjusting from the*

balance amounts Service Tax, VAT and/or any other amount due and payable by you and/or paid by us in respect of the said Unit and (ii) only after the said Unit has been allotted to a new purchaser and all the amounts including the entire Purchase Price in respect thereof has been received by us from the new purchaser;

iv. *We will entitled to forfeit 10% of (i) the Purchase Price as paid by you to us and (ii) all costs, charges and expenses suffered/paid by us on account of the sale of the said Unit to the new purchaser (post termination) including brokerage paid with respect to booking of the said Unit together with applicable taxes as cancellation charges which you agree, confirm and acknowledge constitutes a reasonable, genuine and agreed pre-estimate of damages that will be caused to us and that the same shall be in the nature of liquidated damages and not penalty*

v. *You agree that the said Unit has been offered to you at a substantial discount and very favourable terms (being payment of the balance Purchase Price on Possession) on the understanding that you will comply with your obligations herein contained, Ordinarily, you would have paid the balance Purchase Price in accordance with the construction link plan set out in Annexure 'A' hereto ("construction link plan") and any default in payment of any instalment would have attracted interest at the rate of 1.5% per month on the amount in respect of which the delay/default had occurred. Accordingly. simultaneously with the forfeiture mentioned in clause 12(iii) above, we will compute the amount from the date hereof till the date of termination at the rate of 1.5% per month and we will be entitled to make adjustments against the purchase price paid by you to us. You agree confirm and acknowledge that the interest under the sub-clause constitutes a reasonable genuine and agreed pre-estimate of damages that will be caused to us and the same shall be in the nature of liquidated damages and not penalty;*

vi. *In case we receive a credit/refund of the service tax amount paid on this transaction from the statutory authorities then in such case the same shall be refunded by us to you without any interest thereon;"*

The Appellant/Allottee submitted that by holding that the Appellant is entitled to refund, the MahaRERA has held in Appellant's favour. However, by making such refund subject to the terms of Allotment Letters, the MahaRERA has defeated its own order, rendering the same otiose, to the extent that it is entirely unconscionable that the Appellant's refund of monies paid is contingent to the Respondents' first securing a new purchaser for the subject flats and recovering the entire sale proceeds from such purchaser.

8. The Appellant/Allottee further submitted that, the said Clause also permits the Respondents/Promoters to effect deductions, forfeitures and adjustments from the amount otherwise refundable to the Appellant/Allottee. In this context, it is laid down by this Hon'ble Tribunal that the terms that are one-sided, unreasonable and unfair shall not be enforced against flat purchasers, in its judgment dated 17.03.2021, in the case of Dinesh R. Humane and Ors. v. Piramal Estate Pvt. Ltd., [Appeal No. AT006000000041967 in Complaint No. CC006000000089770], observed and held as follows:

"1. 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 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." 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.

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.

6.4. In terms of the aforesaid, despite the respondent in the aforesaid matter taking technical objections as to the nature and form of complaint filed by the complaint therein, as also documents executed, this Hon'ble Tribunal upheld the principles espoused by the Hon'ble Supreme Court of India in Pioneer Urban Land and Infrastructure Vs. Govindan Raghavan [Civil Appeal No. 12238 of 2018 on 02.04.2019], to inter alia hold that unreasonable terms cannot be enforced against allottees."

9. The Appellant/Allottee further submitted that the learned Authority has erred in making the refund subject to Clause-12 of the Allotment Letters, thereby the Appellant's refund has been made conditional to several arbitrary terms, which in essence defeats, any order of

refund in the Appellant's favour. Being aggrieved with such arbitrary order, the Appellant prayed for refund of the consideration amount paid to the Respondents together with interest from the date of payment till final realization.

10. Per contra, Respondents/Promoters submitted that demand notices dated 22.05.2018 and 08.01.2018, towards intimation of possession cum payment of balance sale consideration of Rs.2,11,57,978/- and Rs.2,85,43,421/- and maintenance deposit of Rs.3,06,038/- and Rs.3,35,349/-, but the Appellant/Allottee failed to pay the balance consideration amounts and execute agreements for sale. The Respondents further submitted that by emails dated 08.03.2018 and 07/03/2018 Appellant was requested to execute and register agreements for sale simultaneously upon payment of balance purchase price and other charges including the amount of stamp duty and registration charges. But the Appellant neglected the above mail and did not come forward to execute the agreements for sale and pay the balance purchase price and other charges. Therefore, the Respondent No.1 by notice dated 15.11.2018 terminated the Allotment Letters and informed the Appellant that as per Clause 12, the part consideration amount paid and various other amounts stood forfeited in favour of the Respondent No.1. The Respondents further submitted that there is no breach on the part of the Respondent

No.1 and the impugned order is fair and equitable as it considers the contractual rights and obligations of the parties. In fact the Allotment Letters constituted binding contracts between the parties and the Allottee, having voluntarily accepted the terms thereof, could not subsequently challenge the same as unfair and unreasonable. Without prejudice to the aforesaid, the Appellant out of free will and complete commercial understanding, signed and accepted the Allotment Letters.

11. The Respondent No.1 further submitted that as per Clauses 5(b), 9(a), 10, 11 and 12 of the said Allotment Letters, the terms of payment, failure to make timely payment of consideration amount and interest liability, the Respondent No.1 Developer's right to terminate the Allotment Letters was defined and detailed. The aforesaid terms are acceptable industry practices under valid commercial practices. The same are not violate any law in force in India.

12. The Respondents/Promoters further submitted that the Allotment Letters were executed by the Appellant out of free will and accord. The Appellant was aware and conscious of his obligation to pay the entire consideration amount at the time of possession on demand. The Appellant is estopped from now claiming that the terms of Allotment Letters were unfair and unreasonable for him.

13. We have heard arguments of Advocate Mr. Aman Kacheria appearing for Appellant/Allottee and Advocate Mr. Arthav Sanghvi appearing for Respondents/Promoters. The submissions advanced by the respective parties are nothing but reiteration of the contents of Complaints, Affidavit-in-Replies, Appeal Memos and Submissions made in Affidavit-in-Replies.

14. Adv. Mr. Aman Kacheria appearing for Appellant/Allottee placed his reliance on the following citations:

    i. *Pioneer Urban Land and Infrastructure Limited Versus Govindan Raghavan* [Civil Appeal No.12238 of 2018] a/w Pinoneer Urban Land and Infrastructure Limited Versus Geetu Gidwani Verma and Another [Civil Appeal No. 1677 of 2019] decided by the Hon'ble Supreme Court of India on April 2, 2019.

    ii. *Ireo Grace Realtech Private Limited Versus Abhishek Khanna and Others* [Civil Appeals No.5785 of 2019 a/w other connected appeals] decided by Hon'ble Supreme Court of India on January 11, 2021.

    iii. *Mr. Dinesh R. Humane and Anr. Versus Piramal Estate Private Ltd.* [Appeal No.AT006000000041967 in Complaint No.CC006000000089770] decided by Maharashtra Real Estate Appellate Tribunal, Mumbai on 17th March 2021.

iv. Godrej Projects Development Limited Versus Anil Karlekar And Others [Civil Appeal No.3334 of 2023] decided by the Hon'ble Supreme Court of India on February 3, 2025.

15. After considering the submissions advanced by Advocate Mr. Aman Kacheria appearing for Appellant/Allottee and Advocate Mr. Arthav Sanghvi appearing for Respondents/Promoters, pleadings of 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. Nos.	Points	Findings
1.	Whether the impugned order dated 23.02.2022, passed by the Chairperson, MahaRERA, in the Complaint Nos. CC006000000195808 and CC006000000196143 filed by the Appellant/Allottee, warrants interference in the captioned appeals?	In the Affirmative
2.	Whether the Appellant/Allottee is entitled to relief sought in the captioned appeals?	In the Affirmative
3.	What Order?	As per final Order

REASONS

16. Upon careful examination of pleadings of the parties, material placed on record and submissions advanced by the learned Counsel appearing for respective parties, it is clearly revealed that the Appellant/Allottee has booked flat Nos. B-1008 and A-1001 in real estate project "Omkar Meridia". The parties have executed Allotment Letters dated 27.02.2015 and 17.07.2015 wherein the agreed date of possession was mentioned as latest by April 2017 for agreed consideration of Rs.2,35,30,000/- and Rs.3,17,82,000/- respectively. The Appellant/Allottee has paid an amount of Rs.48,73,313/- and Rs.66,56,993/- out of the aforesaid agreed consideration, which is approximately 20% of the consideration amount. It is not in dispute that, despite part consideration payment by the Allottee, no registered agreements for sale were executed by the Respondents/Promoters in respect of the said flats. The record further reveals that the said project is completed and Occupancy Certificate obtained on 27.05.2018 however, possession of the subject flats were not handed over to the Appellant/Allottee.

17. The dispute arose when both parties exchanged drafts of the proposed agreements for sale and the Appellant pointed out several discrepancies therein, which according to him are inconsistent with

the terms originally agreed under Allotment Letters. The Respondents/Promoters insisted upon payment of balance consideration amount without addressing the objections raised by the Appellant/Allottee.

18. It is pertinent to note that Section 4 (1) of the Maharashtra Ownership of Flats Act, 1963 provides that the promoter shall, before he accepts any sum of money as advance or deposit, enter into a written agreement for sale with the allottees. In the instant case, the Allottees/Appellants have paid approximately 20% of the consideration amounts, but Promoters failed to execute registered agreements for sale as prescribed under Section 4 (1) of MOFA. As such, we are of the view that the developers have contravened the provisions of MOFA, 1963.

19. It is also pertinent to note that the RERA Act, 2016 safeguards the rights of flat purchasers and ensures certainty in contractual obligations between Promoters and flat buyers. Section 18 of RERA Act, 2016 provides that *"If the promoter fails to complete or is unable to give possession of an apartment, in accordance with the terms of the agreement for sale, he shall be liable to return the amount received by him in respect of the apartment, with interest at such rate as may be prescribed, if the allottee wishes to withdraw from the project."* In the instant case, the material on record clearly

establishes that the allottee paid to Respondents/Promoters a part consideration amount of Rs.48,73,313/- and Rs.66,56,993/-. The Respondents failed to complete the said project as agreed and hand over possession of flats to the Allottee. Therefore, the promoters are liable to return the amount received in respect of the subject flats along with interest. We are of the view that the allottees are legally entitled for refund of consideration amount along with interest under Section 18 of RERA Act, 2016.

20. The Appellant/Allottee contended that the Clauses contained in the Allotment Letters, particularly Clause-12, are heavily loaded in favour of the Respondents/Promoters. Clause-12 of the Allotment Letters indicates that even after termination, the Appellant would not be entitled to immediate refund of the monies paid by him. The refund is made contingent upon the Promoters securing a fresh purchaser for the subject unit and receiving the said consideration from such purchaser. Simultaneously, the Promoters reserve themselves the right to make deductions, adjustments and forfeiture of various amounts.

21. The Appellant/Allottee has rightly relied upon the observations made by this Tribunal in Dinesh R. Humane and Ors. v. Piramal Estate Pvt. Ltd., wherein it was held:

> *"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 against statute of RERA, it is not binding on the parties."

22. The Respondents/Promoters cannot insist upon enforcement of Clause-12 of the Allotment Letters, which is against the rights of Allottee under RERA framework. In the present case, we are of the view that the aforesaid principles apply. The effect of the said clause is that the refund of the part consideration amount would remain indefinitely dependent upon the Respondent's finding a new buyer and recovering the entire consideration amount from such buyer. Such a condition is arbitrary, unreasonable and unconscionable. The Respondents/Promoters have already availed and used part consideration amount of the Appellant/Allottee for several years, and now cannot be permitted to postpone refund indefinitely by making it contingent upon future sale of the flats, which is solely within the Promoter's control.

23. Perusal of the impugned order dated 23.02.2022 clearly establishes that the Appellant would be entitled to refund, however, the

Authority committed an error in directing that such a refund would be subject to the terms and conditions of the Allotment Letters. Once the Authority came to the conclusion that the Appellant was entitled to refund on withdrawal from the project, the refund ought not to have been subjected to contractual conditions that operate to frustrate and nullify the refund entitlement. The impugned order recognizes the right of Allottee for refund but subjects the right to conditions that render the refund nominal, therefore, it suffers from inherent contradiction.

24. While explaining the scope of Section 18 of RERA Act, 2016, the Hon'ble Supreme Court in a case of M/s Newtech Promoter and Developers Pvt. Ltd. V/s. State of Uttar Pradesh [2021 SCC Online 1044] dated 11 November, 2021 Civil Appeal Nos. 5745, 6749 and 6750 to 6757 of 2021] has held in para 25 as under:

> *"Para 25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner*

provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

In the present case, the Respondents/Promoters, having accepted part consideration amount, failed to execute agreements for sale and handover possession of the subject flats on agreed date of delivery, violated the provisions of MOFA, 1963 and RERA Act, 2016. It is not the case of Promoters that the Allottee in any way caused delay in handing over the possession of the said flats.

25. In view of the foregoing discussion, we are of the opinion that the Appellant/Allottee is entitled to refund of the entire amount paid towards part consideration of the subject flats, together with interest as prescribed under the Act. Therefore, the impugned order warrants interference in the captioned appeals. We answer point Nos. 1 to 3 accordingly. Consequently, we proceed to pass the following order.

ORDER

1. Appeal Nos. AT006000000083862 of 2022 and AT006000000083863 of 2022 are allowed.
2. The Respondents/Promoters are directed to refund part consideration amount of Rs.48,73,313/- and Rs.66,56,993/- paid by the Appellant/Allottee, with interest towards the subject flats.

3. The Respondents/Promoters are directed to pay interest from the respective dates of payment till final realization at the rate of State Bank of India's Marginal Cost of Lending Rate (MCLR) + 2% to the Appellant/Allottee.
4. The Respondents/Promoters are directed to pay costs of Rs.25,000/- to the Appellant/Allottee.
5. Copy of this order be communicated to the learned Authority and respective parties as per Section 44(4) of RERA Act, 2016.

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

V. K. Bhople_