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**BEFORE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL
MUMBAI**

**APPEAL NO. AT00600000053353
IN
COMPLAINT NO. CC006000000161300**

Godrej Greenview Housing Pvt.Ltd]
A company registered under the]
Provisions of the Companies Act]
2013, having its office at 5th floor]
Godrej One, Pirojsha Nagar,]
Eastern Express Highway,]
Vikhroli [E], Mumbai-400 079.]

.. Appellant

-VS-

Jay Prakash Pandey]
Age: 38 years, Occupation-Service]
Residing at 203, Prestige Hill view,]
Ghodbunder Road, Thane (W),]
400 615.]

... Respondent

Mr. Naushad Engineer, Advocate for Appellant.
None for Respondent.

**CORAM : INDIRA JAIN J., CHAIRPERSON &
DR. K. SHIVAJI, MEMBER (A)**

DATE : 13th January, 2022.

(THROUGH VIDEO CONFERENCE)

JUDGMENT

This appeal takes an exception to the order dated 22nd June 2021 passed by the learned Member, MahaRERA in Complaint No.CC006000000161300 directing the promoter to refund amount paid by

complainant after deducting the booking amount or 10% of the total amount paid by complainant whichever is less within a period of 3 months from the date of order considering the Covid-19 pandemic situation.

2] Appellant is promoter. Respondent in appeal is flat purchaser. For the sake of convenience, we would refer appellant and respondent in their original status as promoter and complainant as referred before the Authority.

FACTUAL MATRIX

3] (i) On 15th August 2018 complainant booked flat No.2204 in Tower 3 of Godrej Emerald Building at Ghodbander Road, Thane. Agreement for Sale was executed for the said flat on 25th September 2018. Vide communication dated 18th February 2019 promoter terminated allotment of flat on the ground of non-payment of certain installments by complainant despite demand notices. Being aggrieved by termination allottee filed complaint before MahaRERA. Authority disposed of the complaint directing promoter to refund amount paid by complainant after deducting booking amount or 10% of total amount paid by complainant whichever is less within a period of 3 months from the date of order. It is this order which is the subject matter of challenge in instant appeal.

(ii) Appellant referring to para Nos.5 to 11 of the order contended that Authority has categorically recorded that there is no violation of Sections 12 and 18 of the Real Estate (Regulation and Development) Act 2016 (for short "the Act") and still in para No.11 came to the conclusion that promoter is not entitled to include forfeiture clause in the agreement as the same is not in consonance with Model Agreement for sale. Appellant submits that conclusion arrived at in para 11 and the directions

to refund being contrary to the judgments of the Hon'ble Supreme Court in i] **Shree Hanuman Cotton Mills & Ors. Vs. Tata Aircraft Ltd. [1969 (3) SCC 552]**, ii] **Satish Batra Vs. Sudhir Rawal [2013 (1) SCC 345]** and judgment of this Tribunal in **Oberoi Constructions Ltd. Vs. Asset Auto (I) Private Ltd.** in Appeal No.AT006000000010502 of 2018 do not sustain in law and urged to set aside the impugned order.

(iii) Respondent though duly served remained absent and therefore appeal has been proceeded ex parte against respondent.

4] From the above a simple point that arises for our consideration is whether impugned order is sustainable in law and to this our finding is in the negative for the reasons to follow –

REASONS

5] It is not in dispute that registered agreement for sale was executed on 05.10.2018. Appellant has alleged that despite several demands raised by promoter, respondent failed to clear dues and therefore in view of clauses 20.1 of agreement the same was terminated. Referring to clause 20.2 in the agreement, appellant submits that on failure of the purchaser to fulfill contractual obligations, promoter was entitled to forfeit the amount as per the agreement.

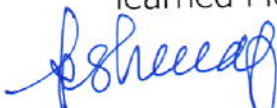
6] It is pertinent to note that termination of agreement remained valid as Authority has not considered the grievances of complainant to that effect in the impugned order.

7] Having considered the submissions made on behalf of appellant and findings recorded in the impugned order particularly paragraph Nos.11 and 12, we find that findings are contrary to clause 20.2 read with clause 20.1 of the agreement for sale entered into between the

parties. Appellant has stated on affidavit that despite several demands raised by promoter, complainant failed to clear the dues and therefore in view of terms of agreement particularly clause 20.2 promoter was entitled to forfeit the amount as per agreement for sale dated 5th October 2018. Facts stated in the affidavit have remained uncontroverted by respondent. Under these circumstances impugned order does not sustain in law and same is liable to be interfered with in this appeal. Hence the following order-

ORDER

- (i) Appeal is partly allowed.
- (ii) Impugned order is set aside in so far as it directs promoter/appellant to refund the amount paid by complainant after deducting the booking amount or 10% of the total amount paid by complainant whichever is less.
- (iii) No order to costs.
- (iv) In view of the provisions of Section 44(4) of the Act of 2016, copy of this order shall be sent to the parties and to the learned Member, MahaRERA.


(DR. K. SHIVAJI)


(INDIRA JAIN, J.)