BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY, MUMBAI

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

Complaint No. CC006000000210161

1. **ANAND KEDAR** **...COMPLAINANTS**
2. **ASHWINI KEDAR**

Vs

1. **SUNTECK REALTY LTD.** **...RESPONDENTS**
2. **KAMAL KHETAN**
3. **MANISHA KAMAL KHETAN**
4. **M/S. SATGURU CORPORATE SERVICES PVT. LTD.**

MahaRERA Project Registration No. P51800023072

O R D E R
(19.09.2025)
(*Date of Hearing: 06.11.2024)*

Coram: Shri. Ravindra Deshpande, Member II, MahaRERA

Adv. Shweta Jain for Complainants
None for Respondent Nos. 1 to 3
Adv. Rupesh Geete for Respondent No. 4

1. The Complainants have filed the present complaint on 28.02.2022 seeking directions against the Respondents to refund the amount of Rs. 29,44,919/- (Rupees Twenty-Nine Lakhs Forty-Four Thousand Nine Hundred and Nineteen Only) paid for the flat No. 2404, 4th Avenue, Tower A, Floor No. 24, Sunteck City at Somani Gram, Ram Mandir Road, Goregaon (West), Mumbai, Oshiwara District Centre, a 2bhk flat admeasuring at about 644.33 Sq. Ft. (RERA Carpet Area) (hereinafter referred to as the **"said flat"**), to pay interest @ 24% p.a. on the above said amount as per the Real Estate (Regulatory and Development) Act, 2016 (hereinafter referred to as the **"said Act"**), to pay compensation to the

Complainants for delay in handing over the possession of the said flat as per the said Act and to provide cost of the present complaint.

2. The brief facts of the complaint are as follows:
3. On 04.12.2019, the Complainants had visited Respondents' site of residential project under construction and showed interest in purchasing a flat in one of the Respondents' buildings known as 4TH AVENUE Sunteck City, ODC, Goregaon West registered under MahaRERA Project Registration No. **P51800023072** (hereinafter referred to as the **"said project"**) and booked the said flat for a total consideration amount of Rs. 1,61,58,196/- (Rupees One Crore Sixty-One Lakhs Fifty-Eight Thousand One Hundred and Ninety-Six Only) + GST 5% + Government Taxes and Charges of Registration. The total of the total consideration amount and taxes, charges of registration amounts to Rs. 1,79,81,598/- (Rupees One Crore Seventy-Nine Lakhs Eighty-One Thousand Five Hundred and Ninety-Eight Only) and extra amenities charges (on possession) to be paid by the Complainants to the Respondent.
4. The Respondents' project is registered under C. P. RERA No. A51800006605 having CP Name – Changod Consultancy Service and CP details is Mr. Bhautik Barot and at the time the Respondents had orally mentioned the date of possession as within 2-3 years. On trusting the Respondents word, the Complainants decided to book the said flat including one car parking. The Complainants paid an amount of Rs. 1,00,000/- (Ruppes One Lakh Only) on 04.12.2019 by Credit Card and then gave 2 cheques worth Rs. 2,00,000/- (Rupees Two Lakhs Only) each to the Respondent.
5. The Complainants kept making payments as per the Respondents payment schedule for the said flat till August 2020 without any default and so Complainants have paid Rs. 27,99,495/- (Rupees Twenty-Seven Lakhs Four Hundred and Ninety-Five Only) + GST of Rs. 1,21,187/- (Rupees One Lakh

Twenty-One Thousand One Hundred and Eighty-Seven Only) to the Respondents.

6. The Respondents did not inform Complainants at the time of booking that after making 10% payment, the Complainants would have to opt for registration of Sale Agreement by making more payment to the Respondents + Registration Charges of the said flat immediately as per the RERA guidelines. Suddenly after payment of booking amount, the Respondents called upon the Complainants to register the said Agreement for Sale.
7. After hearing this, the Complainants were in a state of shock but because they had already paid the booking amount, the Complainants requested for some time to arrange for more money for registration of Sale Agreement. As a result, at that time, the Complainants couldn't register the said Agreement as per Respondents hurry.
8. Even after receiving the above-said amount which was more than 10% of the amount paid to the Respondents before the execution of the said Agreement for Sale and as per the said Act, on 10% payment of booking of the flat, an Agreement for Sale should be executed and registered, which shows that the Respondents have violated that rub too.
9. From December 2019 till May 2021, the Complainants had been continuously writing letters and trying to communicate with the Respondents through phone and emails, but the Respondents had been paying no heed and neglected all the communications from the Complainants.
10. On 12.12.2020, the Complainants sent an email to the Respondents requesting to register the said flat by executing an Agreement for Sale. But the Complainants just kept on waiting for Respondents' reply. On 11.09.2020, the Complainants received an email from the Respondents side stating to share the bank details of the Complainants to make payments for Registration of Agreement. But before that draft Agreement for Sale was neither shared nor discussed with the

Complainants. Neither other details in reference to registration were shared by the Respondents with the Complainants.

11. On 28.12.2020, the Respondents replied to the Complainants email only when the Complainants made several phone calls to the Respondents and then the Respondents sent a reply mail stating that the Respondents won't be able to give time to the Complainants for 40% payment to be made from the booking date within 18 months and neither relied to the Complainants problems.
12. On 29.12.2020, again the Complainants wrote one more email to Respondents stating that before lockdown, he had made all scheduled payments on time but due to pandemic he needed some time to make 40% payment scheduled to be paid from the booking date. But the Respondents instead of genuinely understanding the Complainants problem was adamant on Respondents part. The Complainants even suggested the Respondents 3 alternatives and requested the Respondents to discuss the same. But all the efforts of the Complainants were in vain.
13. Although the Respondents did not realize that the Respondents had already taken more than 10% payment from the Complainant and that the Respondents were still not ready to register the Agreement for Sale for the said flat and neither replied to Complainants' problems.
14. The Complainants were left with no option but to take personal loan of Rs. 3,53,663/- (Rupees Three Lakhs Fifty-Three Thousand Six Hundred and Sixty-Three Only) to process registration of the said flat as suggested by the CP named Mr. Bhautik Barot. Still Complainants are paying EMI for the said loan taken by the Complainants during this Pandemic due to the Respondents non-corporation and inhumanity.
15. On 03.02.2021, the Respondents sent an email to the Complainants that too only when the Complainants pointed out on 20.01.2021 that the Respondents were supposed to reply to the Complainants' email within 3-4 working days. The

Respondents then replied to drop email and communicate which the Complainants had been already doing constantly till that day. Thereafter, the Complainants just kept on waiting patiently for Respondents' reply in any form. But the Respondents were never vigilant of doing the same. This showed that the Respondents just wished to extract money from the Complainants for the said flat with no proper service or assistance from the Respondents side. Due to bad response from the Respondents side, the Complainants decided to cancel the booking of the said flat as they had also missed the 2% stamp duty scheme due to Respondents irresponsible behavior and hence the Complainants requested the Respondents to process 100% refund of their money as per the RERA Rules.

16. From 07.02.2021 till 05.08.2021, the Complainants have been continuously writing emails to the Respondents for Respondents co-ordination and co-operation. But the Respondents never responded which ultimately left the Complainants with no option but to cancel the said booking. On 07.08.2021, the Complainants received an email from the Respondents for the final cancellation of the said flat booked by the Complainants in the said project and it was informed that the amount of Rs. 29,44,919/- (Rupees Twenty-Nine Lakhs Forty-Four Thousand Nine Hundred and Nineteen Only) paid by the Complainants was forfeited and also Rs. 6,00,920/- (Rupees Six Lakhs Nine Hundred and Twenty Only) was levied by the Respondents on the Complainants as delayed payment charges as on date including taxes.
17. On 13.05.2020, the Complainants had informed the Respondents that due to shortage of fund because of pandemic, the Complainants had requested for 24 months extension of payment for registration Agreement for Sale. Still the Respondents sent a final cancellation email on 07.08.2021.
18. The Respondents' irresponsible behavior shows that the Respondents have cheated the Complainants and even after taking an amount of Rs. 29,44,919/- (Rupees Twenty-Nine Lakhs Forty-Four Thousand Nine Hundred and Nineteen

Only) which was hard earned money of the Complainants, the Respondents kept the Complainants in dark and didn't even bother to inform the Complainants regarding delay in project completion, as per promise of the Respondents. Still the Complainants kept patience but then suddenly this cancellation letter sent by the Respondents was shocking for Complainants, which shows that the Respondents had bad intentions regarding not handing over the possession of the said flat on time as promised by the Respondents and the Respondents have even taken away the entire amount paid to the Respondents by the Complainants for the said flat.

19. In the Respondents payment schedule for the said flat, it is mentioned that the in case of non-adherence of payment for more than 60 days and for non-registration of definitive Agreement within 30 days of intimation received then the total amount paid for 10% of total consideration value or whichever is less shall be forfeited and allotment shall stand cancelled without further notice.
20. On Complainants visiting the site of the said project, the Complainants were shocked to see that after so many years to the construction work it was not completed even 50% and rest all debris was lying down which clearly made it sure that the Respondents won't be able to complete the work anytime nearby and the Complainants had to further wait for a long time for possession of the said flat.
21. The Respondent No. 4 has uploaded it's reply and contested the present complaint. The brief defense of the Respondent No. 4 is as under: -
22. Despite the repeated directions of this Authority recorded in Roznama dated 28.02.2024 and 16.05.2024, the Complainants have failed and neglected to firstly promptly upload the complaint as directed by this Authority failed to serve the copy of the complaint to the Respondent No. 4 and that the reply was being filed to a limited extent and on the basis of the complaint as filed as on the date of the reply on the portal of this Authority. As of the date of filing the reply, the

Complainants have uploaded an unaffirmed copy of the complaint containing some statements, prayers and a few documents. The upoloaded statements/prayers were not supported by any affidavit in support of the said statements proving the genuineness of the contents therein and as a result, the complaint filed by the Complainants deserves to be dismissed.

23. The Respondent No. 4 is the promoter of the said project, the Complainants have made the Respondent Nos. 1 to 3 as party who are neither concerned with the said project nor have they executed any documents with the Complainants. They have not received any amount from the Complainants and therefore, there is no privity of the contract between the Complainants and the Respondent Nos. 1 to 3. The Complainants have made the Respondent Nos. 1 to 3 party to the present complaint only to harass these Respondents and the same is nothing but an arm-twisting tactic of the Complainants to pressurize the Respondents to accept the illegal demands of the Complainants. The present complaint is not maintainable due to misjoinder of the parties as the Respondent Nos. 1 to 3 and the Complainants have no privity of contract between themselves and on this ground, the complaint deserves to be dismissed.

24. From the pleadings in the complaint and documents annexed thereto show that the Complainants are not an aggrieved person in terms of Section 31 of the said Act and is attempting to approach this Authority under the cloak of being an aggrieved person and has grossly misused and abused the provisions of the said Act.

25. The Complainants agreed to purchase the said flat (floor Number has been mentioned as 15th floor) for the lump sum consideration of Rs. 1,79,81,598/- (Rupees One Crore Seventy-Nine Lakhs Eighty-One Thousand Five Hundred and Ninety-Eight Only) and accordingly executed Client Information Form dated 04.12.2019. As per the said booking form, the booking was made in Developer Subvention Scheme with specified payment plan of 20:40:40 ratio. Thus, the

Complainants were supposed to make payment of 20% of total consideration within 105 days of booking i.e. on or before March 2020.

26. As per the payment schedule and 6 months after due timelines, vide email dated 11.09.2020, the Complainants were asked to make payment of stamp duty and registration charges towards the registration of the Agreement for Sale for the said unit. However, neither the Complainants responded to the said request siting any difficulty in accumulating funds nor did he made payment of the stamp duty amount and registration charges.

27. As per the agreed terms, after payment of 10% consideration/booking amount, the Complainants were supposed to pay stamp duty and register the Agreement for Sale and make payment of 40% consideration amount as per the agreed payment schedule. However, vide their email dated 12.12.2020, the Complainants requested for substantial variation in the payment schedule than what was agreed between the parties, and further informed the Respondent that he can proceed with the registration formalities only if his payment terms are agreed with. The Complainants were requesting 10-12 months deferred payment terms, which was not acceptable and the same was informed to him vide the Respondent No. 4's email dated 28.12.2020 and the Complainants were asked to complete the formalities of registration of the Agreement for Sale.

28. Under the Client Information Form, the Complainant agreed and accepted that he would make the payment as per the payment schedule and the time was of the essence. However, the Complainant failed and neglected to make timely payment. Thus, vide its email dated 06.02.2021, the Complainant was once again asked to make the balance payment of Rs. 4,48,305/- (Rupees Four Lakhs Forty-Eight Thousand Three Hundred and Five Only), however, in response thereto, the Complainants asked the Respondent to cancel his booking and refund the amounts paid by him vide his email dated 07.02.2021. Vide the said email, the

Complainants also tried to blame the Respondent for the cancellation of the said unit.

29. By letter dated 25.05.2021, the Respondent was constrained to send a letter of intimation of cancellation and called upon the Complainants to make the payment of Rs. 4,48,305/-(Rupees Four Lakhs Forty-Eight Thousand Three Hundred and Five Only) within a period of 7 days (which was residual of 1st trench of 20% payment), failing which the Respondent would issue cancellation letter and booking of the said Unit shall stand cancelled.
30. Despite the aforesaid, the Complainants failed and neglected to make the balance payment of Rs. 6,00,920/- (Rupees Six Lakhs Nine Hundred and Twenty Only) (inclusive of interest and taxes) and therefore Respondent issued a letter dated 07.08.2021 and informed the Complainant that the booking created in favour of the Complainants stand cancelled and the Complainants were informed that the amount of Rs. 29,44,919/- (Rupees Twenty-Nine Lakhs Forty-Four Thousand Nine Hundred and Nineteen Only) was forfeited.
31. That the present complaint is nothing but an afterthought as the Respondent had cancelled the allotment in favour of the Complainants in terms of the agreed terms between the parties due to breach of the said terms by the Complainants.
32. It was denied that the Respondent mentioned the date of possession as within 2-3 years as alleged or at all. As per the details submitted with this Authority, the date of completion for the said project is 30.12.2025 and the same was also communicated to the Complainants. The Complainants never executed Agreement for Sale with the Respondent, wherein the date of possession could have been reflected.
33. It was further denied that the Complainants kept making payments as per the Respondent's payment schedule as alleged or at all. In fact as per the agreed payment schedule at the time of booking i.e. 04.12.2019, the Complainants case was a special payment case where the payment terms were 20%-40%-40% i.e. at

Booking 20% (which was to be paid in parts and stretched over upto 100 days from booking), thereafter 40% during construction (i.e. 25% on completion of 15th slab or 15 months and 15% on completion of 18th slab or 18 months) and thereafter balance 40% was payable on possession. The Complainant did not even complete 1st 20% payment. Also, it was denied that the Respondent did not inform Complainants at the time of booking that after making 10% payment, the Complainants have to opt for registration of the Sale Agreement by making more payment to Respondents plus registration charges of the said flat as the RERA guidelines as alleged or at all. The Client Information Form specifically mentions that the Complainants have to execute the definitive Agreement within 30 days of intimation received and therefore, the Complainants at this stage cannot say that the Respondent No. 4 did not inform about the registration of the definitive Agreement for the said unit. Vide email dated 11.09.2020, the Respondent No. 4 called upon the Complainants to come forward for registration of the Agreement, however, the Complainants failed and neglected to comply with the request and/or requisitions contained in the said email dated 11.09.2020. the Respondent No. 4 called upon the Complainants to execute and register the Agreement for Sale in respect of the said unit in accordance with the provisions of the said Act, however, the Complainants failed and neglected to comply with the same.

34. It was denied that on 12.12.2020, the Complainants sent an email to the Respondents mentioning to register the said flat by executing an Agreement for Sale as alleged. On the contrary, the Respondent No. 4 had vide its email dated 11.09.2020 had asked the Complainants to make the payment of stamp duty and registration charges and as mentioned in the Complainants email dated 12.12.2020, the Complainants showed its inability to adhere to the terms and conditions agreed between the parties.

35. If the Complainants at all had any grievance about the non-disclosure of the draft of the Agreement for Sale, he had never raised this till the filing of the present complaint.

36. The Respondent No. 4 denied that the Complainants didn't receive an intimation letter dated 25.05.2021 regarding the cancellation of the said flat as alleged or at all. Due to the failure on the part of the Complainants to adhere to the terms and conditions agreed between the parties, the Respondent No. 4 has in terms of the agreed terms cancelled the allotment of the said unit. It was further denied that the cancellation letter dated 25.05.2021 was not sent to the Complainants as alleged. In any case, the Complainants had already informed the Respondent No. 4 in February 2021 itself that he wished to cancel his booking therefore assuming he had not received the aforesaid letter dated 25.05.2021, the non-receipt of the said letter by the Complainants could not have any bearing on his decision. It is not the case of the Complainants that after informing the Respondent to cancel his booking, the Complainants had reversed his decision and was wiling to continue with the booking. Nonetheless, the Respondent No. 4 once again vide its letter dated 20.10.2021 sent cancellation letter to the Complainants and denied that the Respondent No. 4 had bad intentions regarding not handing over the possession of the said flat on time as promised as alleged or at all.

37. The Complainants have filed rejoinder to the reply filed by the Respondent No. 4, whereby, the Complainants have mainly repeated and reiterated the contents of the complaint and hence, the same are not repeated herein for the sake of brevity. The brief contents of the rejoinder of the Complainants are as follows:-

38. The authorized signatory of the Respondent No. 4 without producing on record any authority letter or resolution passed by the Respondent No. 4 in favour of the authorized signatory has filed the present reply as a result, the said reply is inadmissible in law.

39. Since the reply of the Respondent No. 4 is parawise reply to the complaint filed by the Complainants, hence, there is no scope of seeking leave for additional affidavit to be filed in furtherance to the same.
40. The Respondent Nos. 1 to 4 have cheated, misguided and took undue advantage of the Complainants signing the client information form dated 04.12.2019 for which the Complainants had no option but to sign the said form to pay booking amount. Rather it is the Respondents including the Respondent No. 4 who did not respond timely to the Complainants' emails and queries.
41. The statement of the authorized representative of the Respondent No. 4 is confusing since on one hand she is saying that she is the representative of the Respondent No. 4 and on the other hand makes a statement that the Respondent Nos. 1 to 3 are not concerned with the said project. This shows that that her emphasis on the Respondent Nos. 1 to 3 of not being the correct and concerned parties creates doubts of they having been in hands and gloves with each other. It is quite evident from the client information form that the said project belongs to Sunteck India (Sunteck) i.e. the Respondent Nos. 1 to 4 and is also evident from the client information form that only cheques are to be drawn in favour of the Respondent No. 4. Also all emails received and replied by the Complainants were in the name of Sunteck via their employees. Although the authorized signatory i.e. Gayatri Tikale was appearing for and on behalf of the Respondent No. 4 still she was much concerned with the Respondent Nos. 1 to 3.
42. As per the Respondent No. 4, documents annexed ex-facie shows that the Complainant is not aggrieved whereas those documents are on record and admitted by the Respondent No. 4 too by annexing the same documents alongwith their reply. The Complainants were compelled to file this complaint due to the irresponsible behavior of the Respondents, which led to mental and financial loss to the Complainants during lock down.

43. At the time of booking and while paying the booking amount, the Complainants were never informed that after 10% payment, they have to proceed for registration of the said flat by paying the registration charges, stamp duty amount to the Respondents alongwith more payment, whereas, after the booking date i.e. 19.12.2019, it was approximately 10 months wherein suddenly the Respondents pounded for registration and stamp duty amount rather than gap of 30 days.
44. The Respondent No. 4 mentions that for lump sum amount of Rs. 1,79,81,598/-, the said flat was booked whereas the client information form already mentions total consideration value of Rs. 1,61,58,196/- + GST, which makes it evident that the Respondent No. 4 does not have good intentions and would have asked more money from the Complainants.
45. The variation for payment was requested by the Complainants due to lockdown in 2020. The Complainants had explained their problem and were requesting to give some time which as per situation and humanity was but obvious to be understood. But after a gap of 16 days i.e. on 28.12.2020, the employee of the Respondent Nos. 1 to 3 replied that nothing would be considered and the Complainants would have to make payments for registration, so the Complainants were forced to take personal loan and that too when they were struggling for daily bread and butter due to lockdown.
46. After taking personal loan, paying EMI for the same, making several calls and writing emails mentioning other alternates for adjusting purchase amount with other projects of the Respondent No. 4, ultimately, the Complainants were so harassed and depressed that they were on the verge of cancelling booking of the said flat and since lockdown was still implemented, the Complainant couldn't visit the Respondent No. 4 and do nothing rather than just sending emails or calls.
47. The Complainants did not receive any such email/intimation letter either on his email or by postal services mentioning cancellation of the said booking. Rather on 13.05.2021, the Complainant themselves had once again informed that due to

pandemic they were facing shortage of funds so it might be considered as genuine reason for not able to pay the amount for registration. Still overlooking the said email, the office bearers of the Respondent No. 4 sent the email of final cancellation of booking and forfeited the entire amount of Rs. 29,44,919/- paid by the Complainants to the Respondent No. 4.

48. Although the time and schedule at which the payment was done by the Complainants were into mutual understanding and consent and also the Respondent No. 4 was agreeing to all payment terms at that time, then at that instance "time is an essence" was not an issue with the Respondent No. 4.

49. The matter was lastly heard on 06.11.2024, when the Complainants were present through their Advocate and the Respondent No. 4 was represented through its Advocate. Adv for the Complainant submitted that the Complainants had paid Rs. 29,44,919/- to the Respondent. The said amount was paid till August 2020. Agreement for sale was not yet executed. Even the draft agreement was not shared and that in May 2021, a cancellation letter was shared by the Respondent to the Complainants. On 07.08.2021, an email was sent by the Respondent and in that email, the cancellation letter was mentioned, which also said that due to the outstanding reminder for payment, the Respondent was forced to send intimation letter for cancellation dated 25.05.2021 and that in any circumstances even the supreme court ruling said that such kind of terms and conditions which were unreasonable and unfair in a contract were not admissible in law. It was further submitted that from the period of December 2019 to May 2021, the Complainants were continuously sending emails and trying to do conversation on phone but there was no response from the Respondent and that email sent by the Complainants was replied to after 2 to 3 months. Out of all these emails, in one of the emails dated 29.12.2020, the Complainants gave three options due to pandemic. All the Respondents are related to the said project, the company is Sunteck realty India. The Respondent No. 4 was just there to collect the finance

on behalf of the Respondent Nos. 1 to 3. Adv for the Respondent No. 4 submitted that allotment letter was dated 04.12.2019. The Complainant accepted the flat in question after accepting the terms and conditions of allotment letter. On 11.09.2020, the Respondent No. 4 called upon the Complainant for payment of stamp duty and registration of the agreement. Admittedly, the Complainants have failed to pay this amount. It was submitted that the Complainants had not paid the amount as per demand by the Respondent which was admitted by the Complainants in the complaint and that on 06.02.2021, the Respondent called upon the Complainants to make payment as per demand. However, no payment was made. On the contrary, the Complainants sought time of 12 to 18 months to make the balance payment as per the agreed terms. In view of the breach of terms of allotment on 25.05.2021, the intimation of cancellation was sent to the Complainants, whereby, another opportunity for payment was given to the Complainants. However, the Complainants failed to make any payment. Consequently, on 07.08.2021, the Respondent No. 4 cancelled the allotment and forfeited the amount paid. The Respondent No. 4 is the promoter. The Respondent Nos. 1 to 3 were not necessary or proper party to the complaint. The terms of allotment letter are as per the said Act and Rules which was signed and accepted by the Complainants after perusing the same and that the complaint was not verified. Hence, the complaint deserves to be dismissed. However, Adv for the Complainant submitted that complaint is duly notarized. The parties were given the liberty to upload their written arguments on or before 21.11.2024, thereafter, this matter will be reserved for order.

50. In pursuance of the direction of this Authority, the Respondent No. 4 filed written submissions before this Authority, wherein mainly the Respondent No. 4 has repeated and reiterated the contents of its reply, hence same are not repeated herein for the sake of brevity. The brief submissions of the Respondent No. 4 are as follows:-

51. The Respondent No. 4 drawn reference to relevant terms and conditions of client information letter which dealt with the cancellation of allotment which are as follows:-

52. "overdue payments under payment scheduled and other charges shall attract interest at the State Bank of India Highest Marginal Cost of leading rate plus 2% per annum as per RERA."

53. "In the event of non – adherence to the payment schedule for more than 60 days or non- registration of definitive agreement within 30 days of intimation received, or for any reason whatsoever OR 10% of total Consideration value or, whichever is less shall stand forfeited, and the allotment shall stand cancelled without further notice."

54. Under the aforesaid clauses, the Complainant was made aware about the terms and conditions mentioned in the Client Information Form, which clearly states that the Respondent's right to cancel the Allotment without notice in the event of non–adherence of payment schedule for more than 60 days or non- registration of definitive agreement within 30 days of intimation received, or for any reason whatsoever OR 10% of total Consideration value or, whichever is less shall stand forfeited.

55. As per the Client Information Form, the booking was done in Developer Subvention Scheme with specified payment plan of 20:40:40 ratios on 04.12.2019. Within 45 days of booking (i.e. by 17th January 2020), the Complainants were supposed to make 10% payment of total flat cost and applicable taxes and further was required to complete the formalities of payment of stamp duty and registration charges in order to register the Agreement for sale for the said flat. As per the agreed booking terms, the Complainants were supposed to make payment of 20% of total consideration within 105 days of booking i.e. on or before March 2020;

56. As per the payment scheduled and 6 months after due timelines (considering Covid situation), vide email dated 11.09.2020, the Complainants were asked to make payment of stamp duty and registration charges towards registration of the Agreement for sale for the said flat. However, the Complainant did not respond to the said request.

57. As per the agreed terms, after payment of 10% consideration/ booking amount, the Complainants were supposed to pay stamp duty and register the Agreement for sale and make payment of remaining 10% out of initial instalment of 20% and thereafter within 105 days of booking the Complainants were to make payment of 40% consideration amount as per the agreed payment schedule. However, vide its email dated 12.12.2020 (i.e. 1 year after date of booking), the Complainants requested for substantial variation in the payment schedule than what was agreed between the parties, and further informed the Respondent that the Complainants can proceed with the registration formalities only if the payment terms proposed by the Complainants are agreed and accepted by the Respondent No. 4. The Complainants were requesting more 10-12 months deferred payment terms, which was not acceptable and the same was informed to the Complainant No. 1 vide email dated 28.12.2020 and Complainant was asked to complete the formalities of registration of the Agreement for sale.

58. Under the Client Information Form, the Complainants agreed and accepted that he will make payment as per the Payment Schedule and time is of the essence. However, the Complainants failed and neglected to make timely payment. Thus, vide its email dated 06.02.2021, the Complainants were once again asked to make the balance payment of Rs. 4,48,305/-, however, in response thereto, the Complainants asked the Respondent to cancel the booking and refund the amount paid by them vide email dated 07.02.2021. Vide the said email, the Complainants also tried to blame the Respondent No. 4 for the cancellation of the said flat.

59. The Complainants never executed an Agreement for Sale with the Respondent, wherein the date of possession could have been formally reflected.
60. By letter dated 25.05.2021, Respondent was constrained to send a letter of intimation of cancellation and called upon the Complainants to make the payment of Rs. 4,48,305/- within a period of 7 days (which was residual of 1st trench of 20% payment) failing which Respondent was entitled to issue cancellation letter and to cancel the booking of the said flat.
61. Despite the aforesaid, Complainants failed and neglected to make the balance payment of Rs. 6,00,920/- and therefore the Respondent issued a letter dated 07.08.2021 and informed the Complainants that the booking created in favour of the Complainants stood cancelled and the Complainants were informed that the amount of Rs. 29,44,919/- stood forfeited.
62. The Respondent, after multiple reminders to the Complainants to fulfil the payment obligations as per the agreed terms and condition in the Client Information Form, has not received the balance payments from the Complainants. Despite numerous attempts by the Respondent, the Complainants have failed and neglected to make the balance payments. Consequently, the Respondent was compelled to exercise its right under the Client Information Form to initiate cancellation procedures as per the terms of the Client Information Form.
63. The Complainants have filed their written submissions with this Authority on 03.02.2025, wherein mainly the Complainants have repeated and reiterated the contents of their complaint and rejoinder, hence the same are not repeated herein for the sake of brevity. The brief submissions of the Complainants are as follows:-
64. The Respondent No. 4 was just providing their service to the said project but officially the said project was under and advertised in the name of Sunteck i.e. Respondent Nos. 1 to 3.

65. Considering the rival contentions of the parties to the complaint, the following points arise for my determination. My findings thereon are recorded as under for the reasons stated below:

REASONS

Sr. No.	Points	Findings
1.	Whether the Complainants are entitled to refund of booking amount?	Partly affirmative
2.	What Order?	As per Final Order

Reasons as to point Nos. 1 and 2

66. I have gone through the pleadings and written submission of the parties. At the outset, it is imperative that admitted facts are taken on record. The parties signed the Client Information Form on 04.12.2019. It is the contention of the Complainants that they have paid an amount of Rs. 29,44,919/- (Rupees Twenty-Nine Lakhs Forty-Four Thousand Nine Hundred and Nineteen Only) alongwith taxes to the Respondent No.4, which fact is not negated by the Respondent. As per payment terms of the said Client Information Form, the Complainants were required to make payment of the entire consideration amount in 20%-40%-40% ratio i.e. at Booking 20% (which was to be paid in parts and stretched over upto 100 days from booking), thereafter 40% during construction (i.e. 25% on completion of 15th slab or 15 months and 15% on completion of 18th slab or 18 months) and thereafter balance 40% was payable on possession.

67. Also, as per the terms of the Client Information Form, in the event of non – adherence to the payment schedule for more than 60 days or non- registration of definitive agreement within 30 days of intimation received, or for any reason whatsoever OR 10% of total Consideration value or, whichever is less shall stand forfeited, and the allotment shall stand cancelled without further notice.

Admittedly, the Respondent No. 4 has received an amount of Rs. 29,44,919/- including taxes from the Complainant before execution of Agreement for Sale. In this behalf, it is submitted by the Complainants that the Complainants were never informed that on paying 10% of the total consideration amount, the Complainants would have to enter into an Agreement for Sale and to register the same with the appropriate Authority which in the opinion of the Complainants was not complied with by the Respondent No. 1, whereas, it is the contention of the Respondent No. 4 that the Complainants were informed at the time of booking about the requirement of registration of Agreement. Having said this, the Complainant is not justified in asserting that the Complainants were not informed about the requirement of registration of Agreement on making payment of the 10% amount of the total consideration amount since ignorance of law is no excuse. On one hand, the Complainants are asserting that they were not informed about this requirement of registering the Agreement for Sale on paying 10% of the total consideration amount and on the other hand, the Complainants are claiming reliefs under Section 18 more particularly of refund and interest under the said Act itself. Hence, the statements made in this behalf by the Complainants are contradictory. Since as agreed in the Client Information Form, the Complainants failed to pay even 20% of the total consideration within the stipulated time frame, the Respondent No. 4 forfeited the entire the amount paid by the Complainants.

68. It is also the contention of the Complainants that as per the Client Information FOrm, the Respondent No. 4 was required to register the Agreement within 30 days of the booking, however, on perusal of the specific term, it is observed that the said clause states that on intimation to execute and register the Agreement for Sale, the Complainants would have to execute and register the Agreement for Sale, which as per the contention of the Respondent No. 4, the Complainants were requested to execute and register the Agreement for Sale vide their email dated 11.09.2020 i.e. after the lapse of 6 months from the actual date of requirement of

registration of the Agreement for Sale considering the Covid 19 Pandemic. Not only this, the Complainants have even admitted that the Complainants failed to execute and register the Agreement for Sale as requested by the Respondent No. 4 for the reason of financial crunch.

69. It is also the contention of the Complainants that the Respondents had mentioned orally that the possession of the said flat would be handed over in 2-3 years, however, no documentary evidence has been produced before this Authority by the Complainant. Not only this, the said Client Information Form also lacks the date of possession. The proposed date of completion as per the MahaRERA Website is 30.12.2025.

70. From the facts of the present case, it is seen that the Complainants has filed the present complaint for the refund of the amounts paid by them to the Respondents. Section 18 of said Act deals with **Return of amount and compensation".** Section 18 is as follows:

> *18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building, –*
>
> *(a) in accordance with the terms of the agreement to sell or, as the case may be, duly completed by the date specified therein; or*
>
> *(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*
>
> *he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:*
>
> *Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed;*
>
> *(2) not relevant to the present case*
>
> *(3) not relevant to the present case*

71. The relevant provisions of Section 18 states that if the promoter fails to complete or is unable to give possession of the apartment as per terms of Agreement for Sale, duly completed by the date, he is liable on demand to the allottee in case the allottee wishes to withdraw from the project without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act. The proviso says that where an allottee does not intend to withdraw from the project, he shall be paid by the promoter interest for every month of delay till handing over of possession as may be prescribed.

72. In this case, after perusing the submissions made by both the parties, MahaRERA has noticed that admittedly, the Complainants have booked the said flat by signing the Client Information form and that an amount of Rs. 29,44,919/- has been paid including taxes by the Complainants to the Respondent. As per the provisions of the said Act, the Respondent No. 4 was required to execute and register the Agreement for Sale with the Complainants before accepting more than 10% of the total consideration amount. The 10% of the total consideration amount with respect to the sale and purchase of the said flat comes to Rs. 16,15,819.6. Admittedly, the Respondents have accepted more than 10% of the total consideration amount from the Complainants without first executing and registering the Agreement for Sale. As a result, the Respondents have defaulted the provisions of Section 13 in this behalf.

73. Since neither an Agreement has been executed between the parties nor Client Information Form has the agreed date of possession, this Authority shall proceed on the documents submitted by the Respondent at the time of registration of the said Project and as per the said documents, the Respondent No. 4 is liable to complete the said project by 30.12.2025 and the said date is yet to arrive.

74. Whilst holding that the Respondent has not faulted the proposed date of completion, signing of the Client Information Form does not in itself create a binding contract between the Complainants and the Respondent No. 4 since by signing the Client Information Form, the Complainants have shown their intention to book the said flat in the Respondent's project.

75. In this case, the refund of the amount paid to the Respondent / promoter cannot be demanded as per Section 18 of the said Act on the ground that promoter failed to give possession on the agreed date or failed to complete the project as per the terms and conditions of the agreement for sale. The transaction in the instant case is not governed by Section 18 of the said Act. Though, the claim of the Complainants from this complaint is not governed by specific provision of the said Act, it is necessary to consider that object of the said Act is to protect the interests of the consumers. The said Act is the social legislation with primary purpose and objective with legislative intend to safeguard the interest of the allottees and thus the Respondent cannot be allowed to act contrary to the spirit of the said Act.

76. It is seen that Complainants booked the said flat on 04.12.2019 and requested cancellation in or about the year 2021-2022. The fact that the Respondent accepted more than 10% of the total consideration amount i.e. against the provisions of Section 13 of the said Act cannot be negated. Therefore, forfeiture of the entire amount paid by the Complainant in my considered opinion is erroneous and against the object and purpose of the said Act which is enacted as beneficial legislation to abate the hardship of home buyers.

77. In order to prove their respective case, both the parties have relied upon judgments. The Complainants have relied upon the judgments of Pioneer Urban Land and Infrastructure Vs. Govindan Raghvan passed by the Hon'ble Supreme Court in Civil Appeal No. 12238 of 2018 in order to prove that forfeiture of the entire booking amount is unlawful as per the said Act. Having due respect to the

said judgment, in my opinion, the said judgment is not applicable in the present case since facts of the said judgment are not identical with the present complaint. Moreover, in the case before the Hon'ble Supreme Court, the parties had entered into an Apartment Buyer's Agreement, which admittedly is not the case in the present case. The Complainants have also relied upon the judgment passed by the Learned Appellate Tribunal passed in the matter of Dinesh Humane Vs. Piramal Estate Private Ltd. I have gone through the said judgment, however, vide an order dated 20.03.2023, the order dated 17.03.2021 passed by the Learned Appellate Tribunal was set aside in terms of the Consent Terms. Hence, the said order of the Learned Appellate Tribunal would not hold good in the present case. Likewise, the Respondent No. 4 has relied upon the judgment passed by the Hon'ble Supreme Court in the matter of Shree Hanuman Cotton Mills Vs. Tata Aircraft Ltd., in order to prove that earnest money represents that the contract will be fulfilled and it is forfeited when the transaction falls through by reason of the default of the purchaser. The right of the seller to forfeit the money in case of non-fulfilment of the contract by the buyer is valid and legal and the same can be exercised by the seller against the buyer. However, in my opinion, having due respect to the said judgment, the said judgment is not applicable in the present case since the transaction giving rise to the dispute is not the sale and purchase of real estate property but is sale of aero-scrap. Secondly, the Respondent No. 4 has relied upon the judgment of Learned Appellate Tribunal passed in the matter of Oberoi Construction Vs. Asset Auto, in order to prove the validity of the forfeiture clause in an agreement for sale and permitted forfeiture up to 20% of the total sale consideration. However, on perusal of the said judgment, it is observed that the facts of the said judgment are not identical with the present case, hence, the same is not applicable in the present case.

78. As far as the claim of the Complainants towards refund along with interest, sought under the provisions of the said Act, MahaRERA has noticed admittedly,

there is no allotment letter/ agreement for sale signed by the Complainants showing any agreed date of possession, which has lapsed. Further, the Complainants have failed to show any agreed date of possession mentioned in the Client Information Form duly signed by them at the time of booking. Moreso, the Complainants admittedly have sought refund since they were facing financial crunch during the Covid 19 Pandemic period, seems to be a personal issue and not due to any default on the part of the Respondent No. 4. Hence, the said claim of refund sought by the Complainants cannot be considered favorably under the provisions of the said Act.

79. In this regard, it is pertinent to note that MahaRERA has recently issued the above mentioned Order No. 35/2022 with respect to the prescribed format of allotment letter, which permits the promoter to forfeit 2% amount of the cost of the unit in case of any cancellation done by the allottee. Although the aforesaid MahaRERA order is issued recently (in the year 2022), earlier there was no prescribed format of allotment letter issued by MahaRERA (even in this case no specific written cancellation policy before execution of the agreement for sale has been brought before this Authority by either of the parties to the present complaint).

80. Now the settled principle for cancellation of the booking (before the execution of agreement for sale is executed) has been prescribed by MahaRERA by way of such order. Hence, the Complainant is entitled to seek refund as per the said MahaRERA Order No. 35 dated 12.08.2022 without interest. Hence, I answer point No. 1 in partly affirmative and I proceed to pass following order:

O R D E R

1. The complaint is partly allowed as follows:
2. The Respondent No. 4 is directed to refund the amount paid by the Complainant to the Respondent towards the purchase of the said flat without interest after deducting 2% of the cost of the said flat (excluding the statutory dues paid to the government/brokerage, if any) within 45 days from the date

of this order, failing which an interest at the rate 2% above SBI's Higher Marginal Cost of Lending Rate shall be payable till the realization of the said amount.

3. No order as to costs.

RAVINDRA PADMAKARAO DESHPANDE

Digitally signed by RAVINDRA PADMAKARAO DESHPANDE
Date: 2025.09.19 16:39:12 +05'30'

(Ravindra Deshpande)
Member-II, MahaRERA

Date : 19.09.2025