

**MAHARASHTRA REAL ESTATE APPELLATE  
TRIBUNAL, MUMBAI.  
APPEAL NO. AT00600000021466 of 2019**

**Mrs. Rekha Navani  
B 204, Acharya Ashram CHSL,  
Near Don Bosco School,  
PM Kulkarni Marg, Borivali (West),  
Mumbai-400092**

**Appellant**

**V/s.**

**M/s. Omkar Ventures Pvt. Ltd.  
Omkar House, Off Eastern Express Highway,  
Opp. Sion Chunabhatti Signal  
Sion (East), Mumbai-400022**

**Respondent**

---

Advocate Vinay Ansurkar, Advocate for Appellant  
Advocate Mohanish Chaudhari a/w Sidharthan Nair i/b Devendra  
Patankar for Respondent

---

**CORAM : SUMANT M. KOLHE, MEMBER (J)  
S. S. SANDHU, MEMBER (A)**

**DATE : 29<sup>TH</sup> JUNE, 2020**



**JUDGMENT (PER: S.S. SANDHU)**

This Appeal challenges the order dated 18.03.2019 passed by the learned Chairperson, MahaRERA (for short, 'the Authority') in complaint No. CC006000000057632 filed by Appellant to seek refund of amount paid by her with interest.

2. Stated briefly, as per brief facts of this case, Appellant booked a flat No. 1103-G on 30.11.2017 for a total consideration of Rs. 1.36 crores in Respondent's project, 'Lawns And Beyond' Phase-2, Omkar International District situated at Andheri, Mumbai. While booking the flat at an exhibition, the channel partner of Respondent promised that in case she is found ineligible for housing loan, the amount paid will be refunded. At the time of booking she paid Rs. 1 lac towards expression of interest (EOI) and Rs. 6.95 lacs towards Application Fees. Parties executed Letter of Allotment on 05.12.2017 following which a demand notice was also issued to Appellant by Respondent to pay further amount as agreed. However, as Appellant could not procure loan from banks, she requested Respondent to cancel the flat and refund the amount she paid. After persistent follow-ups, Respondent returned Rs. 1 lac only and forfeited Rs. 6.95 lacs whereupon Appellant pursued the matter again with Respondent for refunding the forfeited amount. As Respondent did not oblige, Appellant filed the captioned complaint with the Authority seeking refund of her entire amount with interest in terms of Section 19(4) of Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the Act').



3. In the proceedings before the Authority, the Appellant canvassed that as there was no clause in the Allotment letter, which superseded the booking Application Form, to forfeit any amount, she was entitled to refund of her entire amount as per Clause 3(I)(iii) of the Allotment letter as per provisions of Sections 18 and 19 of the Act. On the other hand, Respondent argued that even though Respondent was entitled to forfeit 10% amount of the consideration price of the booked flat as per the Clause 3(I)(ii) of the Allotment letter, Respondent forfeited 5% amount as Appellant had paid only 5% amount of the total consideration. After observing that, since no agreement for sale is executed, Section 18 would not apply to the matter to grant refund to Appellant, the Authority disposed of the complaint vide impugned order by directing refund of amount, if any, to Appellant subject to terms and conditions of Allotment letter.

4. Appeal is preferred by Appellant to seek relief in terms of refund of amount paid by her with interest by setting aside the impugned order.

5. Heard parties through their learned Counsel. Respondent filed affidavit-in-reply to appeal to which rejoinder is filed by Appellant. Necessary documents are also submitted by the parties in support of their respective contentions. In their arguments both the parties reiterated the facts in detail and stuck to their respective contentions as submitted

