

**IN THE KARNATAKA REAL ESTATE APPELATE TRIBUNAL,  
BENGALURU**

**DATED THIS THE 29<sup>th</sup> DAY OF JANUARY 2021**

**PRESENT**

**HON'BLE SRI K P DINESH, JUDICIAL MEMBER**

**AND**

**HON'BLE SRI P S SOMASHEKAR, ADMINISTRATIVE MEMBER**

**APPEAL (K-REAT) NO.256/2020**

**BETWEEN:**

Smt. Suman Rupanagudi,  
W/o Sri Venkappa Gujjanudu,  
Residing at Sobha Aster Flats,  
No.1072, 6<sup>th</sup> Cross,  
Vijaya Bank Colony,  
Bilekahalli,  
Bengaluru-560 076.  
Trough her constituted attorney,  
Mr. G V Subbanna.

**APPELLANT**

(Rep. by Sri Promod Nair Advocate for M/s Arista Chambers)

**AND**

1. Adarsh Developers,  
A Company registered under the  
Companies Act, 1956,  
Having its registered Office at 10,  
Vittal Mallya Road,  
Bengaluru-560 001.
2. Real Estate Regulatory Authority  
Karnataka,  
1<sup>st</sup>/2<sup>nd</sup> floor, Silver Jubilee Block,  
Unity Building,  
CSI Compound,  
3<sup>rd</sup> Cross, Mission Road,  
Bengaluru,  
Karnataka-560 027.

**RESPONDENTS**

(Rep. by Sri V.B Shivakumar, Advocate for Respondent No.1)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, to set aside the order dated 31.01.2020 passed in CMP/190912/0004118 by the Adjudicating Officer, RERA, Karnataka.

This appeal, coming on for hearing, the same having been heard and reserved for pronouncement of Judgment this day, the Judicial Member delivered the following:

### **J U D G M E N T**

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 r/w Rule 33 of Karnataka Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred in short as '**The Act and the Rules**') against the impugned order dated 31<sup>st</sup> January 2020 passed by the learned Adjudicating Officer (A.O), Real Estate Regulatory Authority (RERA).

#### **2. Facts of the appellant's case in brief are that:**

- a) The appellant had executed an agreement to sell dated 03.09.2014 with the 1<sup>st</sup> respondent for purchase of a residential apartment bearing No.V-401, 4<sup>th</sup> floor, 'B' block, Adarsh Premia being constructed by the 1<sup>st</sup> respondent along with a

proportionate undivided share in the schedule-A property described in the agreement. The sale of the apartment is subject to the clause No.15 of the agreement and shall be completed within 36 months with a grace period of three months ie., by December 2017, provided that the purchaser has paid the entire amount due. The 1<sup>st</sup> respondent, by letter dated 27.04.2017, informed the appellant that the completion time schedule of the project has been revised and the appellant was coerced to enter into a supplementary agreement dated 27.04.2017, according to which the schedule property would be completed and handed over by the end of December 2018.

- b) The appellant was not afforded time to consider and evaluate the terms of the supplementary agreement and was pressurised to sign the same. When the appellant and her husband visited the construction site in May 2018, found that the construction had not been in progress as per the revised time schedule and it was informed that the project might require another three to four years to

complete. Since time revision was unilateral and without informing the appellant, the appellant cancelled the booking as per the letter dated 24.05.2018 seeking refund of the amount paid along with interest and compensation.

- c) The 1<sup>st</sup> respondent, by its letter dated 02.06.2018, agreed for cancellation of the agreement to sell and refund the amount paid by the appellant within 60 days forfeiting 10% of the booking amount. The forfeiture of 10% of the booking amount by respondent No.1 was arbitrary and for no fault of the appellant, who adhered to the terms and conditions of the agreement to sell. The 1<sup>st</sup> respondent failed to comply with the timeline indicated by it in the previous communications and to refund the said amount. The 1<sup>st</sup> respondent simply ignored the numerous communications from the appellant and failed to refund the amount and the appellant was constrained to issue legal notice dated 05.09.2018. In spite of legal notice, the 1<sup>st</sup> respondent failed to comply with the demands made in the notice and sought for three months time (until the end of

January, 2019) to process the refund. The appellant, once again issued a legal notice dated 31.10.2018, calling upon the 1<sup>st</sup> respondent to refund the consideration amount with interest and compensation. There was no response from the 1<sup>st</sup> respondent even for the second legal notice and the appellant was constrained to file a complaint CMP/190212/0002077 before the 2<sup>nd</sup> respondent.

d) On 24.04.2019, 1<sup>st</sup> respondent informed the appellant that the refund of the advance amounts would be through two post dated cheques for Rs.50,00,000/- and Rs.99,20,268/- dated 30.05.2019 and 30.06.2019, respectively. The appellant agreed to collect the post dated cheques under protest since the 1<sup>st</sup> respondent had refused to pay any interest and compensation, which was causing financial distress to the appellant.

e) Subsequently, 1<sup>st</sup> respondent informed the appellant that the refund cheques would be handed over only if the appellant signs a cancellation deed drafted by the 1<sup>st</sup> respondent. The terms of the

cancellation deed were fundamentally unfair and one sided and consequently, appellant suggested certain changes to the draft, however, the changes suggested by the appellant were rejected by the 1<sup>st</sup> respondent. The 1<sup>st</sup> respondent informed the appellant that the refund of the amount paid by the appellant towards TDS would have to be obtained by the appellant directly from the Taxing authorities and deducted the TDS amount of Rs.1,37,206/- from the post dated cheque issued to the appellant for Rs.99,20,268/-. The appellant was constrained to sign the cancellation deed dated 24.05.2019 "under protest" as the 1<sup>st</sup> respondent rejected the changes suggested by the appellant and no hearing had been scheduled before the 2<sup>nd</sup> respondent-RERA till the date. The 1<sup>st</sup> respondent, by e-mail dated 29.05.2019, requested the appellant not to present the cheque dated 30.05.2019 until 10.06.2019 and postpone the presentation of the cheque to 10.06.2019. Despite several requests, the 1<sup>st</sup> respondent has failed to pay the interest, compensation and TDS amounts due to the appellant.

f) Pending hearing of the complaint, there were changes in the facts and the events in the case of the appellant and the learned A.O advised the appellant/complainant to withdraw the complaint as there was no scope for amendment of the complaint. Accordingly, the appellant/complainant withdrawn the complaint on 30.08.2019. The complainant/appellant, thereafter filed the second complaint bearing No.CMP/190912/0004118 seeking interest and compensation along with TDS amount from the 1<sup>st</sup> respondent. On 31.01.2019, learned A.O. passed the impugned judgment dismissing the complaint and aggrieved by the said order, complainant preferred the present Appeal on the following grounds:

- The impugned judgment passed by the learned A.O. is contrary to law, facts and the materials on record.
- The learned A.O. has erroneously observed that as per the supplemental agreement, the date of completion of the Flat was June/July 2020 and Appellant had

prematurely cancelled the booking of the Flat in May 2018.

- The learned A.O. has selectively relied on paragraph-8 of the recital of the supplemental agreement and come to the conclusion that the time for completion of Flat was 36 months from the date of signing the agreement of sale and construed it that 36 months period was to be calculated from the date of supplemental agreement in April 2017; whereas the supplemental agreement makes it clear that the revised date of completion of the Flat was December 2018.
- The complaint and the document filed along with it were adequately clear that the appellant was forced to cancel the booking when she was informed by the 1<sup>st</sup> respondent's representatives at the site in May 2018 that the Project required a few more years to be completed. The appellant has never contractually or otherwise



agreed to the 1<sup>st</sup> respondent's revised date of June 2020.

- The impugned judgment has wrongly proceeded on the assumption that appellant has contractually agreed to the date of completion of the Project in June 2020.
- In the impugned judgment, it is erroneously observed that the appellant has failed to explain the reasons for signing the cancellation deed under protest and the appellant had kept quiet for a period of four months after the execution of the cancellation deed. The reasons for signing the cancellation deed under protest were adequately addressed in the complaint. The learned A.O. has failed to consider the circumstances, under which the appellant was made to sign the cancellation deed.
- The finding of the learned A.O. that there was no contract between the parties as on

the date of second complaint by the appellant is fundamentally erroneous,

- The appellant did not waive her statutory right under RERA Act and Rules to seek interest and compensation by signing the cancellation deed under protest. The 1<sup>st</sup> respondent has rejected most of the changes suggested by the appellant to the draft of the cancellation deed and the appellant having been left with no other choice than to accept the onerous provisions imposed by the 1<sup>st</sup> respondent and was constrained to sign the cancellation deed on 24.05.2019 under protest.
- The appellant is entitled for interest and compensation as per the provisions of Section 18 of the RERA Act r/w Rule 17 of RERA Rules.
- Further, the learned A.O. has failed to pass an order regarding TDS and there was no discussion or reasoning on this aspect. For

the foregoing reasons and the grounds stated in the Appeal, the impugned order of the A.O. is liable to be set aside by allowing the Appeal:

3. Heard arguments of the appellant's Counsel and the respondent's Counsel. After hearing the appellant's Counsel and the respondent's Counsel, perusal of Appeal memo, impugned order and the documents produced, following points arise for our consideration:

**Point No.1:** Whether the finding of the learned A.O. that appellant is not entitled for interest and compensation in view of the execution of cancellation deed dated 24.05.2019 under protest is in accordance with law in a given situation?

**Point No.2:** Whether the impugned order of the A.O. is erroneous and interference of this Tribunal is warranted?

**Point No.3:** What order?

Our findings on the above points are:

**Point No.1:** Negative

**Point No.2:** Partly in the affirmative

**Point No.3:** As per the final order

For the following:

**REASONS**

4. **Point Nos.1 and 2:** Since both points involve common question of law and facts, same are taken together for discussion.

Admittedly, appellant had executed an agreement to sell dated 03.09.2014 for purchase of a residential Apartment bearing No.V-401, 4<sup>th</sup> floor, "B" block, Adarsh Premia, constructed by the 1<sup>st</sup> respondent and the construction of the Apartment shall be completed within 36 months from the date of agreement with a grace period of three months i.e., by December 2017 on payment of entire amount due to the 1<sup>st</sup> respondent. It is the contention of the appellant that the 1<sup>st</sup> respondent unilaterally revised the time stipulated for completion of construction under the agreement and coerced the appellant to enter into a supplemental agreement dated 27.04.2017 postponing the date of completion by the

end of December 2018. When appellant and her husband visited the spot it was told that Project might require another three to four years to complete and under the circumstance appellant sought for cancellation of booking as per the letter dated 24.05.2018 seeking refund of the amount with interest and compensation. Though 1<sup>st</sup> respondent agreed for cancellation of the booking, forfeited 10% of the booking amount arbitrarily for no fault of the appellant and postponed the refund process which constrained appellant to issue two legal notices dated 05.09.2018 and 31.10.2018 calling upon the 1<sup>st</sup> respondent to refund the consideration amount with interest and compensation. Since there was no response from the 1<sup>st</sup> respondent, appellant was constrained to file a Complaint CMP/190212/0002077 before the 2<sup>nd</sup> respondent. Subsequently, 1<sup>st</sup> respondent issued two post dated cheques dated 30.05.2019 and 30.06.2019 for Rs.50,00,000/- and Rs.99,20,268/-, respectively, and the appellant agreed to accept the same under protest. Subsequently, the 1<sup>st</sup> respondent informed the appellant that it would hand over the refund cheques only if appellant signs the cancellation

agreement containing unfair and one sided terms and conditions. It is the contention of the appellant that the 1<sup>st</sup> respondent even fails to refund the TDS amount of Rs.1,37,206/-. Due to the changed circumstance during the pendency of the Complaint, appellant was constrained to withdraw the said Complaint and the present Complaint bearing No.CMP/190912/0004118 came to be filed seeking interest and compensation along with TDS amount from the 1<sup>st</sup> respondent. The learned A.O. has dismissed the said Complaint. Aggrieved by the said impugned order, the present Appeal came to be filed.

On the contrary, the learned Counsel for respondent No.1 contended that the appellant has accepted the refund of the earnest amount through two cheques by executing cancellation deed dated 24.05.2019 cancelling the original agreement dated 03.09.2014 and thereby ceases to be an allottee, estopped from claiming interest and compensation on the date of filing the Complaint under the Appeal. It is the contention of the learned Counsel for respondent No.1 that the appellant, having signed the cancellation

deed stated supra, is estopped from claiming any benefits under the RERA Act and if she were to dispute the cancellation deed, her remedy would be before the Civil Court.

5. The learned Counsel for the appellant, in order to substantiate her contention, relied on the following judgment:

- 1) (2013) 5 SCC 470 (Rajasthan State Industrial Development and Investment Corporation & Another vs. Diamond and Gem Development Corporation Limited & Another)

The learned Counsel for the respondent, in order to substantiate his contention, relied on the following judgments:

- (1) AIR 2000 SC 2003 :: 2000 AIR SCW 1861 (Ghaziabad Development Authority vs. Union of India & another) and
- (2) AIR 2006 SC 2331 :: 2006 AIR SCW 3101 (M/s. Bhagwati Prasad Pawan Kumar vs. Union of India)

6. From the facts averred above, it is clear that the date for completion of the Project under the principal agreement dated 03.09.2014 has been revised and postponed to December 2018 by supplemental agreement dated 27.04.2017 and in the meanwhile the appellant sensing the situation that the Project may not be completed even by the end of December 2018, opted for cancellation of the agreement by a letter dated 24.05.2018 addressed to the Developer and the Developer has agreed for the same as per the letter dated 02.06.2018. However, the appellant did not agree the terms of the letter *inter alia* regarding deduction of booking amount and TDS as per the letter dated 24.05.2018 addressed to the Developer. Subsequently, the cancellation deed dated 24.05.2018 came to be executed by the appellant "under protest". The learned Counsel for the respondent, relying upon the cancellation deed dated 24.05.2018 executed by the appellant, contends that the Complainant's appeal for interest and compensation is not sustainable and the impugned order of the A.O. dismissing the Complaint of the appellant, holding that the provisions of the RERA Act is not applicable, is well founded. It is further contended that the grievance of the appellant, if any, regarding the cancellation deed could be agitated before the Civil Court and this Tribunal



cannot go into the aspect of legality or otherwise of the cancellation deed in question.

6.1 The learned counsel for the appellant contended that the complainant is entitled for interest including compensation as per Section 18 of the Act. For better appreciation of the provision of law Section 18 is reproduced here under to the extent it is relevant for the case

*Sec. 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 for sale or, as the case may be, duly completed by the date specified therein; or*

*b).....*

*.....*  
*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.*

6.2 Admittedly, there was a delay in completion of the Project by the promoter, which prompted the appellant/allottee to opt for withdrawal from the Project and execution of the cancellation deed dated 24.05.2019. The appellant is entitled for interest and compensation under Section 18 of the Act by all means but for the cancellation deed in question dated 24.05.2019 executed "under protest". It is the contention of the appellant that she has executed the cancellation deed "under protest", as evidenced from the very document itself. The appellant has clearly stated in the Complaint the circumstance under which she was constrained to sign the cancellation deed. Having regard to the contentions raised by the parties, it is obligatory on our part to go into the agreements in question under Appeal. From a bare reading of the "supplemental agreement" as well as "cancellation deed", it is crystal clear that the recitals in the agreements in question are not mutually balanced and appears to be lopsided. Absence of free consent of parties is evident in the agreement which is the basic requirement under Section

10 of the Contract Act, 1872. According to section 14 of the Contract Act, a "consent" is said to be free when it is not caused by

- 1) Coercion, as defined in Section 15, or
- 2) Undue influence, as defined in Section 16, or
- 3) Fraud, as defined in Section 17, or
- 4) Mis-representation, as defined in Section 18, or
- 5) Mistake, subject to the provisions of Section 20, 21 and 22.

6.3 In the present case on hand, consent is said to be not free as it is caused by undue influence as defined in Section 16 of the Contract Act. Section 16 of the said Act defined "undue influence" in a contract as where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other. Undoubtedly, in the case on hand, respondent being a Developer is in a position to dominate the will of the appellant/Allottee for a simple reason that the appellant has already parted with huge sum in favour of the Developer. Admittedly, there was a delay in completion of the Project and there existed a compelling situation for the appellant to sign the subsequent agreements in question apprehending

refund of the earnest amount. Further, in Civil Appeal No.12238/2018 between Pioneer Urban Land and Infrastructure Limited vs. Govindan Raghavan, Her Lordship Justice Indu Malhotra of Hon'ble Supreme Court of India, observed that

“6.8. A term of a contract will not be final and binding if it is shown that the flat purchasers had no option but to sign on the dotted line, on a contract framed by the builder. The contractual terms of the agreement in the said case are ex facie one-sided clauses in an agreement constitutes an unfair trade practice since it adopts unfair method or practices for the purpose of selling the flats by the builder”

6.4 The Court observed that in these circumstances, the flat purchasers could not be compelled to obtain possession, which was offered almost two years after the grace period under the agreement had expired. The Law Commission of India, in its 199<sup>th</sup> report, addressed the issue of “unfair (procedural and substantive) terms in contract”. The Law Commission inter alia recommended that a legislation be enacted to counter such unfair terms in the contracts.

The draft legislation provided in the report, it was stated that:

*"a contract or a term thereof, is substantively unfair if such contract or the term thereof is in itself harsh, oppressive or unconscionable to one of the parties."*

Further, as stated in Anson's Law Contract:

"a basic principle of the common law of contract is that the parties are free to determine for themselves what primary obligations they will accept .....Today, the position is seen in a different light. Freedom of contract is generally regarded as a reasonable, social, ideal only to the extent that equality of bargaining power between the contracting parties can be assumed and no injury is done to the interest of the community at large.

Further, the Court assumes:

"that the parties to the contract are reasonable persons, who seek to achieve reasonable results, fairness and efficiency ..... In a contract between the joint interest of the parties and the intent of the reasonable person, joint intent trumps, and the Judge should interpret

the contract accordingly. (*vide judgment of the Hon'ble Apex Court in (2013) 5 SCC 470 (Between Rajasthan State Industrial Development and Investment Corporation and Another vs. Diamond and Gem Development Corporation Limited and Another)*) stated supra.

6.5 In the present case on hand, we do come across terms and conditions in the supplemental agreement as well as cancellation deed in question containing one-sided stipulations, which are favourable to the Developer. It is pertinent to note that Clauses 1.5 to 1.10 of the principal agreement are absolutely one-sided. In the same way, the terms and conditions in the supplemental agreement in question are also one-sided. The stipulations in the cancellation agreement "under protest" in question are also lopsided beneficial to the Developer. A perusal of the agreements in question, stated supra, reveals stark incongruities between the remedies available to both the parties. When consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused. Any such contract may be set aside either absolutely or, if the party who

was entitled to avoid it as received any benefit thereunder, upon such terms and conditions as to the Court may seem just, as per Section 19A of the Contract Act.

The learned Counsel for the respondent vehemently argued that this Court cannot go into the legality or otherwise of the agreement and if the appellant has got grievance, if any, regarding the terms and conditions recourse should be to Civil Court. It is true that to set aside the agreement as a whole and to claim compensation by way of damages and other substantial reliefs, the recourse open to the appellant is before a Civil Court. However, this Tribunal under the Act regard being had to the one-sided terms and conditions of the supplemental agreement and cancellation deed in question can certainly go into the legality of the agreements for a limited purpose of determining the relief of interest and compensation contemplated under Section 18 of the Act. The supplemental agreement and the cancellation deed under protest are drafted by respondent No.1 to defeat the benefits enshrined under Section 18 of the Act. The

said agreement and the deed are formulated much against the letter and spirit of the statutory provision and accordingly a contract contrary to law. When the terms and conditions of supplemental agreement and the cancellation deed got executed by respondent No.1 are prejudicial to the interest of the appellant/Allottee in terms of the provisions of Section 18 of the Act, certainly this Tribunal can go into the legality of those documents for determining the legitimate right of the Allottee under the Act.

6.6 Admittedly, the respondent No.1/Developer could not complete the Project as per the principal agreement dated 03.09.2014 and persuaded the Allottee to execute supplemental agreement dated 27.04.2017 and the cancellation agreement dated 25.04.2019 contemplating the terms and conditions prejudicial to the interest of the appellant/Allottee. It may be noted that the respondent No.1/Developer has forfeited 10% of the booking amount and also refused to refund the GST amount paid by the Allottee at the time principal agreement dated 03.09.2014. The appellant, without any option, set her signature on the cancellation deed



under protest and thereby showing her unwillingness regarding forfeiture of booking amount, GST and waiver of interest and compensation. The Developer, having cancelled the agreement, is bound to return the GST amount paid by the Allottee. Under the law as well as on equity, the Developer is liable to refund the entire amount paid by the appellant along with GST amount and interest and compensation to the Allottee when the cancellation of the agreement is at the instance of the Developer. It may also be noted that the Allottee, being a senior citizen, parted with huge amount to secure an apartment for her occupation during life time, has been betrayed by the Developer. Further, coming to the impugned order of the A.O. at para-12, it is stated that no explanation is given by the Complainant (appellant) as to what are the circumstances to make her to put the signature in the cancellation deed. Further, she has to explain to the Authority the circumstances made her to write as "under protest" while putting her signature. This observation of the A.O. in the impugned order is patently wrong and contrary to the materials on record. The Complainant (appellant) has categorically stated in her Complaint the circumstance under which she was

constrained to sign the cancellation deed in question and hence the impugned order is unsustainable on this score. The learned counsel for the respondent No.1 took us through the Judgment of the Hon'ble Supreme Court reported in 2006 SC 2331 stated Supra by referring to Section 8 of the contract Act. In the instant case, the railways made an offer to the appellant laying down the condition that if the offer was not acceptable the cheque should be returned forthwith, failing which it would be deemed that the appellant accepted the offer in full and final satisfaction of its claim. It was further clarified by providing that the retention of the cheque and / or encashment thereof will automatically amounts to satisfaction in full and final settlement of the claim. Thus, if the appellant accepted the cheques and encashing them without anything more, it would amount to an acceptance of the offer made in the letters of the railways.

6.7 There cannot be two views on the above proposition of law laid down by the Hon'ble Supreme Court having regards to the facts in the instant case however, the facts of the case on hand totally differs. In

the present case on hand no such condition as laid down in the said case that if the offer was not acceptable the cheque should be returned forthwith, failing which it would be deemed that the appellant accepted the offer in full and final satisfaction of its claim. It is also not further clarified by providing that the retention of the cheque or encashment will automatically amount to satisfaction in full and final settlement of the claim. On the contrary the appellant shown her dissatisfaction by executing the cancellation deed in question "under protest". So on facts case on hand differs and the judgment relied on by the respondent No.1 is not applicable to the case on hand.

6.8 It may not be out of place to mention that the First Respondent on 24.05.2018 much prior to the execution of the cancellation deed in question has issued notice as per Annexure-IV claiming refund of the earnest amount with interest. It is also borne out from records that the Respondent has sent e-mail to the Appellant for replacement of the last page of the cancellation deed in question which contains a recital "under protest". This is obviously because the Respondent No.1 knew the

consequence of the recital "under protest" in the last page of the cancelation deed in question.

6.9 We also thought it fit to place on record the very preamble of the Act, and accordingly, reproduced here under:

***"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 of 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 the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto".***

From the preamble the intent of the legislation is very clear that the enactment came into force to ensure sale of plot, apartment of building, or sale of real estate project, in an efficient and transparent manner and further **"To protect the interest of consumers/home buyers in the real estate sector"**.

6.10 So to sum up, the Respondent having received nearly one and half Crore Rupees towards

earnest from the Appellant has delayed in completing the project and handing over the apartment as per the principle agreement and got executed the cancellation agreement in question under protest much against the provisions of RERA Act as well as will and wish of the Appellant. Having regard to the above facts and circumstance this Tribunal can certainly go into the legality of the cancellation deed in question for a limited purpose of determining the legitimate right of the appellant and obligation of the respondent under Section 18 of the Act regarding interest and compensation. Accordingly the contention of the Respondent No.1 that this Tribunal cannot entertain the claim of the appellant on the basis of the legality or other wise of the agreement in question is not acceptable. We are also not inclined to accept the views of the Adjudicating Officer that Appellant is not entitled for claim of interest, compensation & GST amount. However, the findings of the Adjudicating officer regarding the denial of the damages relaying on the Judgment of the Hon'ble Supreme Court is well founded and does not warrants interference. The matter requires to be relegated to the Adjudicating officer for determining the quantum of

compensation. Accordingly point No. 1 is answered in the negative and point No.2 is answered partly in the affirmative.

7. Before parting with the case we state that as per Section 44(5) of the Act, the appeal shall be disposed of within sixty days from the date of receipt of appeal. The appeal was filed before this Tribunal in March, 2020. Thereafter to secure the appearance of the parties sufficient long time was taken. Further there was a lock down due to Covid-19 pandemic and for all forgoing reasons the appeal could not be disposed of within the time prescribed under Section 44(5) of the Act.

8. In view of our findings on point No. 1&2 we proceed to pass the following:

**ORDER**

- 1) Appeal filed by the Appellant is partly allowed. The impugned order of the Adjudicating officer is modified in so far as it relates to the claim of interest, compensation & GST amount is concerned and partially rejected in respect of claim of damages.
- 2) The matter is relegated to the Adjudicating officer for considering the quantum of interest and compensation.
- 3) The Adjudicating officer is directing to dispose of the matter at the earliest not later than three months from the date of

appearance of the parties. The parties are directed to appear before the Adjudicating officer on their own without expecting further notice from the Adjudicating officer. The hearing date before the Adjudicating officer is fixed on 10.02.2021 and for any reason the said date is declared holiday the subsequent day would be the hearing date.

- 4) The Registrar of the Tribunal is directed to comply with section 44(4) of the Real estate (Regulation and Development) Act, 2016.
- 5) The office is directed to return the records.

No order as to cost.

**Sd/-**  
**HON'BLE JUDICIAL MEMBER**

**Sd/-**  
**HON'BLE ADMINISTRATIVE MEMBER**