

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

**APPEAL (K-REAT) NO. 347/2020**

**DATED THIS THE 08<sup>TH</sup> DAY OF OCTOBER 2021**

**BETWEEN:**

M/s Mahendra Homes Private Limited  
No. 51, 12<sup>th</sup> Main, 17<sup>th</sup> Cross, HSR 6<sup>th</sup> Sector,  
HSR Layout, Bangalore – 560 102.  
Represented by Managing Director,  
B T Nagaraj Reddy, S/o Late B N Thimma Reddy,  
Aged about 54 years  
Project :- MAHENDRA AARNA.

**:APPELLANT**

**AND:**

1. The Karnataka Real Estate Regulatory Authority  
No.1/14, Ground Floor, Silver Jubilee Block,  
Unity Building Backside, CSI Compound,  
3<sup>rd</sup> Cross, Mission Road,  
Bengaluru-560 027.
2. Mrs Potluri Mounica  
No. 1389, 32<sup>nd</sup> Ward,  
Vivekananda Nagar,  
Krishna District - 583201  
Andhra Pradesh

**...RESPONDENTS**

**Hon'ble Judges/Coram**

**PRESENT**

**HON'BLE JUSTICE B SREENIVASE GOWDA, CHAIRMAN**

**AND**

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

**AND**

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

**Counsels:**

(By Smt A P Hamsalatha, Advocate for appellant)  
(R1 RERA Served, Unrepresented)  
(Sri E Suhail Ahmed for M/s Trial Base Advocate for R2)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 before this Tribunal, to set aside the order dated 04.07.2020 in Complaint No. CMP/191208/0004926 passed by the Adjudicating Officer, RERA Respondent No.1.

This appeal having coming up for pronouncement of Judgment this day, the **Judicial Member**, Made the following:

**JUDGMENT**

This appeal is filed under Sec 44 of the Real Estate (Regulation and Development) Act, 2016 read with Rule, 33 of Karnataka Real Estate (Regulation and Development) Rules, 2017 (herein after referred in short as ("**The Act and The Rules**") against the impugned order dated 04.07.2020 passed by the Adjudicating Officer. The operative portion of the impugned order reads as under:

“ಮೇಲೆ ಚರ್ಚಿಸಿದ ಕಾರಣಗಳಿಗಾಗಿ ಫಿರ್ಯಾದು ಸಂಖ್ಯೆ.ಅಬಕ/191208/0004926 ಅನ್ನು ಭಾಗಶಃ ಮಂಜೂರುಗೊಳಿಸಿದೆ.

1. ಡೆವಲಪರ್ ಇವರು ಫಿರ್ಯಾದುದಾರರಿಗೆ ರೂ 4,12,364/-ಗಳನ್ನು ಇಂದಿನಿಂದ 30ದಿನಗಳ ಒಳಗೆ ಫಿರ್ಯಾದುದಾರರಿಗೆ ಹಿಂತಿರುಗಿಸತಕ್ಕದ್ದು. ಒಂದುವೇಳೆ ತಪ್ಪಿದ್ದಲ್ಲಿ 31ನೇ ದಿನದಿಂದ ಸದರಿ ಮೊತ್ತದ ಮೇಲೆ State Bank of India ಅವರು ಗೃಹ ಸಾಲಕ್ಕೆ

ಈ ದಿನದಂದು ನಿಗದಿ ಪಡಿಸಿರುವ ಬಡ್ಡಿಗಿಂತ ಶೇಕಡಾ 2% ರಷ್ಟು ಹೆಚ್ಚುವರಿ ಬಡ್ಡಿಯನ್ನು ಕೊಡುವಂತೆ ಆದೇಶಿಸಿದೆ.

2. ವ್ಯಾಜ್ಯದ ಖರ್ಚು ಅಂತ ಡೆವಲಪರ್ ಇವರು ರೂ 5,000/-ಗಳನ್ನು ಕೊಡುವುದು.”

## **2. BRIEF FACTS OF THE CASE:**

The appellant- “Mahendra Homes Private Limited” is a company incorporated under the Companies Act, 1956 and is engaged in the business of development of real estate projects. The appellant-promoter has come up with construction of a multistoried apartment complex under the name and style “MAHENDRA AARNA” situate in Sy.No.110, Kammasandra village, Attibele Hobli, Anekal Taluk, Bangalore District, and is duly registered with RERA.

3. The 2<sup>nd</sup> respondent herein, approached the appellant-promoter in the 1<sup>st</sup> week of December 2018 and after due discussions and negotiations, the 2<sup>nd</sup> respondent agreed to purchase Flat No. B1-907 in the project “MAHENDRA AARNA” and paid an advance amount of Rs.25,00,000/- through cheques and Rs.13,00,000/- through RTGS to the appellant confirming booking of the flat.

4. That the appellant-promoter, as per the request of the 2<sup>nd</sup> respondent-allottee sent the original agreement duly stamped through courier on 07.6.2019 to the 2<sup>nd</sup> respondent and requested her to send a copy of the signed agreement for their record. Even after several requests and follow ups, the 2<sup>nd</sup> respondent did not send the signed

agreement copy to the appellant. However, during the month of August-September, 2019 the 2<sup>nd</sup> respondent expressed her intention to cancel the booking of the flat as the object of buying a flat to stay near her daughter who was taking treatment was not required as she was shifting to Hyderabad.

5. After several communications and discussions, finally the 2<sup>nd</sup> respondent confirmed to cancel the booking, which was accepted by the appellant on 11.10.2019. Consequently, the appellant has refunded the advance amount of Rs.33,87,056/- to the 2<sup>nd</sup> respondent by RTGS after deducting Rs.4,07,144/- on account of GST, which was already paid to the Government Account while filing monthly GST returns and Rs.5,800/- towards stamp paper purchased for execution of sale agreement.

6. As could be seen from the memorandum of appeal that even after cancellation and refund, the 2<sup>nd</sup> respondent once again evinced interest to buy a flat and approached the staff of the appellant, who arranged for a site visit on 11.11.2019 and the 2<sup>nd</sup> respondent visited the project site. However, when the transaction did not materialize, the 2<sup>nd</sup> respondent filed a complaint under Section 31 of the Act against the appellant before the 1<sup>st</sup> respondent-RERA praying to award

compensation for holding sum of Rs.38,00,000/- for 10 months, on the following grounds:

- that in spite of paying Rs.38,00,000/- towards advance, the appellant denied to give her the flat at agreed price as per the policy of referral commission to the customers;
- that out of Rs.38,00,000/- paid by her, only a sum of Rs.33,87,056/- has been returned after deducting the amount towards GST and cost of Stamp paper, which is not permissible under law;
- that though the appellant-company agreed to return the entire amount with interest and compensation, it has failed to do so.

7. The appellant-promoter filed statement of objections to the complaint before RERA *inter alia* contending that on confirmation of the cancellation of the flat by the 2<sup>nd</sup> respondent, the appellant has returned the advance amount after deducting the amount paid towards GST and purchase of stamp paper for execution of agreement. That though the company has a policy of referral commission to the customers, the 1<sup>st</sup> respondent has failed to do any referrals as agreed by her due to which the discount on account of referral is not applicable. Further, the amount paid towards GST has already been paid to the Government while filing GST returns and the amount spent

towards purchase of stamp paper has been utilised for preparing agreement of sale which is accepted by the 2<sup>nd</sup> respondent.

8. It was further averred that the complainant has not approached the authority with clean hands and the complaint is filed with a mala fide intention for monetary gains and defaming the appellant-company's good will. The appellant denied all other allegations made in the complaint and prayed for dismissal of the complaint, with costs.

9. The learned Adjudicating Officer, after considering the complaint filed by the allottee, statement of objections and documents filed by the promoter, passed the impugned order as stated supra. The learned Adjudicating officer held that since the flat can be sold to another purchaser and the promoter will collect GST from such purchaser also, the promoter is liable to return the GST collected from the 2<sup>nd</sup> respondent-complainant as he cannot collect the GST from both purchasers. Further, the appellant can also seek refund of GST amount from the appropriate authority, in accordance with GST Act and Rules. With respect to refund of amount towards purchase of stamp paper, the learned Adjudicating Officer has held that the appellant can seek refund of the cost of stamp paper by returning the unused papers to the department in accordance with the provisions of the relevant Act.

Accordingly, after deducting 10% of the value of stamp paper i.e.,Rs.580/- towards cost of stamp paper, the learned Adjudicating officer directed the appellant to return a sum of Rs.4,12,364/- within 30 days from the date of order.

10. Aggrieved by the said order of the learned Adjudicating Officer, the appellant-promoter has preferred this appeal praying to allow the appeal and set aside the impugned order.

11. Heard Smt A.P. Hamsalatha, learned counsel for appellant and Sri E. Suhail Ahmed for M/s Trial Base, learned counsel for the 2<sup>nd</sup> respondent and perused the appeal memo, synopsis of argument and relevant records.

12. Respondent No.1- RERA though served, remained unrepresented.

13. In view of the rival contentions of the parties, the points that arise for our consideration are:

(I) **Point No. 1: Whether the impugned orders dated 04.07.2020 passed by the Adjudicating Officer suffers from infirmity which warrants interference from this Tribunal?**

(II) **Point No. 2: What order?**

Our answer to the above are as under:

- 1) Point No. 1: In the Affirmative**
- 2) Point No. 2: As per the final order**

For the following:

### **REASONS**

14. **Point No. 1:** At the outset, learned counsel for the appellant contended that allottee is not entitled for any relief much less refund of GST and cost of Stamp Paper as per the Impugned Order. On account of lapses on the part of the allottee, appellant-company has suffered huge loss as it is unable to sell the flat to another purchaser. Though the appellant was willing to execute agreement of Sale and prepared the Stamp Paper, the allottee kept it with herself and did not return the same to the appellant even after several requests and follow ups. Finally the booking of flat was cancelled at the instance of allottee and the appellant has promptly refunded the advance amount after deducting the amount of GST and the amount paid towards purchase of stamp paper for execution of agreements.

15. Learned counsel for the appellant contended that after obtaining Occupancy Certificate in respect of the project "MAHENDRA AARNA", the sale of flats would amount to sale of immovable property



and since it is not a supply under the provision of Goods & Service Taxes Act, 2017 (for short, GST Act), the GST collected for a particular flat and paid to government could not be reversed, if it is beyond the time limit specified under the said Act. It is stated that since flat was booked by the allottee even before obtaining the Occupancy Certificate, GST has been collected and credited to the Government Account.

16. In support of the above contention, learned counsel for the appellant has filed a Paper Book and written arguments furnishing the extracts of relevant provisions of GST Act and notifications of Central Government pertaining to the rate of GST on construction services. It is stated that the allottee has cancelled the booking of flat during August/September, 2019 and requested to refund the advance amount. He further submits that as per the provisions of the GST Act appellant is not liable to pay GST on sale of Flats from 01.04.2019 i.e., after obtaining OC/CC of the project dated 29.03.2019 and in view of amendment to the GST provision of sale of Construction services from 01.04.2019. Therefore, he submits that the GST collected from the allottee has already has been remitted to the department at the time of collecting the advance from the buyer and cannot be refunded to the prospective buyer of the cancelled flat. Along with the written arguments filed on 19.7.2021, learned counsel has also filed copies of notifications, Ledger statement of prospective Buyer, C A certificate,

Occupancy Certificate details of GST paid and clarification issued by the Central board of Excise and Customs and Commercial Taxes Department.

17. With regard to refund of amount paid toward purchase of Stamp paper learned counsel submitted that the expenses made towards stamp papers has been already utilized and the sale agreement has been printed on the same. Hence, the amount paid towards stamp paper cannot be recovered from District Registrar's office, to refund the same to the Respondent-2/Allottee, as directed in the Impugned Order.

18. On the above submissions, the learned counsel for the appellant prayed the Tribunal to allow the appeal and to set aside the Impugned Order.

19. Sri. Suhail Ahmed learned counsel for the Allottee while reiterating the contentions urged in the complaint, contended that the appellant issued only receipts to the allottee towards payment of advance amount without indicating any details regarding GST collected from the allottee. He submitted that as per GST Rules and Regulations refund of Taxes by the Government can only be made to the appellant-company as it is a registered entity under the provisions of GST Act and there is no restriction or time limit for refund of the GST paid on

Advances. On the other hand, the allottee cannot claim any refund from the department.

20. The learned counsel for the allottee submits that the appellant neither issued the Tax invoice nor any statement showing the amount collected towards taxes and on the other hand the account statement provided by the appellant differs from time to time. It is alleged that the statements provided on 18.01.2021 is created for the purpose of filing this appeal now, as the vouchers mentioned therein relate to the transactions of 2019. This clearly shows that GST entry dated 31.12.2018 was not reflected and made available earlier.

21. Learned counsel for the allottee submits that GST is leviable on supply. For a transaction to be considered as supply, there should be an agreement entered into between the parties. In the instant case, though allottee made advance payment towards booking of a flat, there is no sale agreement as such made or entered into between the parties.

22. In support of the above argument, the learned counsel has furnished details of amounts paid and legal provisions of GST Act pertaining to applicability of GST and refund, along with the synopsis of arguments filed on 27.7.2021. He further submits that Refund under GST Act has to be paid to the registered person who has paid taxes to government and not the end customer. Even in case where there is a

supply and tax invoice to issued, to nullify the same a credit note has to be raised under Sec 34 of GST Act, and refund to be claimed within 2 years from that time. In the instant case there is no supply (purchase of Flat) and refund can be claimed for the advance which is paid and there is no time limit to claim refund.

23. In support of this contention, learned counsel for the appellant has furnished a copy of the order dated 25.08.2020 passed in appeal no. NA/GST/A-III/MUM/84/2020-21 by the Commissioner of GST and Central Excise(Appeals), Mumbai in the case of HARESH V KAGRANA (HUF) Vs DEPUTY COMMISSIONER REFUND CGST AND CX, wherein the commissioner, observing that since the consideration has been returned, no service has been provided to the appellant. Therefore, refund becomes admissible on cancellation of flat booking under the GST law. IN the said decision, the Commissioner has observed that:

"(i) since the consideration has been returned, no service has been provided to the appellant. Therefore, refund becomes admissible under the GST law;

(ii) Taxes so paid are in the nature of the deposit and there is no limitation of time;

(iii) Doctrine of unjust enrichment not applicable; since the builder has borne the incidence of service tax

whose refund is being claimed. Therefore, the claim is not hit by the doctrine of unjust enrichment”

24. In view of the above, the learned counsel submitted that the appellant who is a registered person under GST is entitled for refund of GST in respect of advance paid towards flat which has been subsequently cancelled.

25. It is submitted that as could be seen from Annexure -E copy of the printed agreement to sell dated 05.06.2019 in respect of Flat No. B-1-907 proposed to be purchased in favour of Potluri Mounica-Allottee produced by the appellant along with appeal memo, the allottee herself has paid a sum of Rs.7,398/- (Seven thousand three hundred and ninety eight only) towards stamp duty. Therefore, it is contended that the appellant is liable to refund the said amount.

26. A short point that arises for consideration in appeal on hand is whether appellant/promoter is legally entitled to withhold the GST amount collected from the Respondent/allottee while returning the booking amount paid for purchase of a flat in the project developed by it. Admittedly, the promoter has received the booking amount from the allottee in December, 2018 and subsequently in the month of August/September, 2019 the allottee proposed to cancel the booking of the flat for which the promoter agreed. On 11.10.2019

promoter/appellant has refunded an advance amount of Rs.33,87,056/- by RTGS after deducting 4,07,144/- towards GST amount paid to the said authority. Further a sum of Rs. 5,800/- paid towards stamp papers purchased for execution of agreement was withheld by the promoter and aggrieved by the conduct of the promoter in withholding the amount the allottee moved the learned Adjudicating Officer by filing complaint No. CMP/191208/0004926 against the promoter for recovery of said amount. The learned Adjudicating Officer by his impugned order dated 04.07.2020 allowed the complaint partly. The present appeal is directed against the impugned order of the Adjudicating Officer.

27. The reasons assigned by the Adjudicating Officer in the impugned order that the promoter is going to sell the flat booked by the allottee to the proposed buyer in future by collecting GST from him and it amounts to collection of GST from both the proposed allottee and Respondent herein and hence the appellant is liable to refund the GST amount to the Respondent is totally a misconception of law. Once occupancy certificate is obtained the flat becomes an immovable property and the promoter cannot adjust the GST already paid for cancelled booking towards the sale of the same flat to the proposed allottee as the sale of an immovable property falls outside the purview of GST. However, when the booking is cancelled the promoter can

always seek refund of the GST amount collected from the allottee and paid to the GST authority within a prescribed period.

28. Admittedly, appellant-promoter has obtained the occupancy certificate in respect of the project and hence cannot adjust the GST already paid to the department in respect of the transaction to be materialized with the proposed buyer. The learned counsel for the appellant contended that the transaction in question was cancelled due to the conduct of the respondent/allottee and the promoter cannot claim refund of the GST already paid to the Authority. Admittedly, the appellant-promoter agreed for refund of the booking amount and refunded a sum of Rs.33,87,056/- deducting 4,07,144/- towards GST amount and Rs.5,800/- towards stamp paper price. The appellant having agreed for the refund of amount unconditionally now cannot come around and say that the transaction could not be materialized due to conduct of the allottee and that the appellant could not seek refund of amount already paid to the GST Authority, as the time prescribed for claiming refund is lapsed. It is relevant to note that the transaction took place after the advent of Karnataka RERA Act. Under Section 13 of the Act, the promoter cannot collect more than 10% of the consideration amount from the allottee prior to entering into an agreement. The appellant has collected advance amount of Rs.33,86,056/- from the allottee without any agreement and in gross

violation of the provisions of the RERA Act. The appellant having collected the booking amount from the allottee in excess of the percentage of amount prescribed under the Act and paid GST to the concerned authority and the allottee has no role in deducting GST amount for the said transaction. The contention of the appellant is that the allottee has to approach the GST authority and seek refund of the GST amount. On the contrary, the respondent-allottee has contended that the appellant has not issued tax invoice nor statement showing the amount collected towards taxes for the relevant period. It is contended that the statement provided on 18.01.2021 is created for the purpose of filing the present appeal, as the voucher mentioned therein relate to the transaction of the year 2019. It clearly shows that GST entry dated 31.12.2018 was not reflected and made available here.

29. For better appreciation of the law on the subject, it is appropriate to refer to the relevant provisions of the GST Act and the same is reproduced hereunder:

**Section 31. Tax Invoice.—(1)** *A registered person supplying taxable goods shall before or at the time of. ---*

- (a) *Removal of goods for supply to the recipient, where the supply involves movement of goods; or*
- (b) *Delivery of goods or making available thereof the recipient, in any other case.*



*Issue a tax invoice showing the description, quantity and value of goods, the tax charged thereon and such other particulars as may be prescribed:*

*Section 49(6) The balance in the electronic cash ledger or electronic credit ledger after payment of tax, interest, penalty, fee or any other amount payable under this Act or the rules made there under may be refunded in accordance with the provisions of Section 54.*

**Section 54 Refund of Tax.**—(1) *Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two year from the relevant date in such from and manner as may be prescribed:*

*Provided that a registered person, claiming refund of any balance the electronic cash ledger in accordance with provisions of sub-section(6) of Section 49, may claim such refund in the return furnished under Section 39 in such manner as may be prescribed.*

**49. Payment of tax, interest, penalty and other amounts –**

**Xxxx**

**(6)** *The balance in the electronic cash ledger or electronic credit ledger after payment of tax, interest, penalty, fee or any other amount payable under this Act or the rules made thereunder may be refunded in accordance with the provisions of Section 54.*

**54(4)** *The application shall be accompanied by. ---*

- (a) *Such documentary evidence as may be prescribed to establish that a refund is due to applicant; and*

- (b) *Such documentary or other evidence (including the documents referred to in Section 33) as the applicant may furnish to establish that the amount of tax and interest, if any, paid on such tax or any other amount paid in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such tax and interest had not been passed on to any other person.*

Rule 89 of Central Goods and Services Tax Rules, 2017 is also relevant which reads thus:

**"89. Application for refund of tax, interest penalty, fees or any other amount.**-(1) *Any person, except the persons covered under notification issued under Section 55, claiming refund of any tax, interest penalty, fees or any other amount paid by him, other than refund of integrated tax paid on goods exported out of India, may file an application electronically in FORM GST RFD-01 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:*

*Provided that any claim for refund relating to balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of Section 49 may be made through the return furnished for the relevant tax period in FORM GSTR-3 or FORM GSTR-4 or FORM GSTR-7, as the case may be".*

30. A plain reading of the provisions of Section 54 (1) shows that any registered person claiming refund of any tax and interest if any paid on such tax or any other amount paid by him may make an

application before the expiry of two years from the relevant date in such a form and manner as may be prescribed.

Provided further, that such registered person claiming refund of any balance as per electronic cash ledger in accordance with the provisions sub-section (6) of Section-49, may claim such a refund in a return furnished under Section-39 in such manner as prescribed. Section 49 (6) provides that the balance in the electronic cash ledger or electronic credit ledger after payment of tax, interest, penalty, fee or any other amount payable under this Act or the Rules made there under may be refunded in accordance with the provisions of Section-54.

31. From the above provisions of the GST Act, it is clear that a registered person can seek refund of the tax in accordance with the provisions of sub-section (6) of Section-49 on the basis of the return furnished under Section-39 of the GST Act, by making an application before the expiry of two years from the relevant date in such form. In other words, it is only the registered person who has paid the tax can seek refund of the same U/S. 54 read with sub-section (6) of Section-49 of the GST Act on the basis of the return furnished under Section-39 of the Act. It is pertinent to note that cancelation of the transaction taken place on 11.10.2019 and the appellant has paid the tax in the

year 2018 and hence, there was sufficient time for the appellant-promoter to seek refund of the GST paid. The payment of GST by the appellant and cancellation of the transaction was within the stipulated time of two years prescribed under the GST statute for seeking refund of the tax amount. The fact being this, the appellant now cannot plead his difficulty by putting-forth the defence of lapse of the prescribed time for claiming refund of the Tax. Further, it is contended by the learned counsel for respondent No.2 that since the consideration amount has been returned, no service has been provided to the allottee and, therefore, refund becomes admissible on cancellation of flat booking under GST law. In support of his contention learned counsel for the respondent No.2 has furnished a copy of the order dated 25.08.2020 passed in appeal No.NA/GST/A-III/MUM/2020-21, the Commissioner of GST and Central Excise (Appeals), Mumbai in the case of ***Haresh V Kagrana (HUF) vs Deputy Commissioner refund CGST and CX*** wherein the Commissioner has observed that:

“(i) since the consideration has been returned, no service has been provided to the allottee. Therefore, refund becomes admissible under the GST law;

(ii) Taxes so paid are in the nature of deposit and there is no limitation of time;

(iii) doctrine of unjust enrichment not applicable; since the builder has borne the incidence of service tax whose refund is being claimed. Therefore, the claim is not hit by doctrine of unjust enrichment.”

32. So, to sum up, on combine reading of the provisions of the GST Act referred supra, it is for the registered person who has recovered and paid the tax to the authority and in possession of the relevant documents can alone seek refund of the tax paid when the sale transaction is not completed and when there is no transfer of goods or service under GST law.

33. The other point involved in this appeal is regarding refund of the amount of Rs.5,800/- paid towards purchase of stamp paper at the time of execution of sale agreement. Admittedly, the stamp paper has been purchased in the name of the allottee for preparing the sale agreement. The learned Adjudicating Officer in the impugned order referred to the provisions of the Stamp Act 1899 regarding allowance for stamps not required for use. Section-54 of the Stamp Act, 1899 contemplates that

**“54. Allowance for stamps not required for use -**  
*When any person is possessed of a stamp or stamps which have not been spoiled or rendered unfit or useless for the purpose intended, but for which he has no immediate use,*

*the Collector shall repay to such person the value of such stamp or stamps in money, deducting ten naye paise for each rupee or portion of a rupee, upon such person delivering up the same to be cancelled, and providing to the Collector' satisfaction –*

- (a) that such stamp or stamps were purchased by such person with a bona fide intention to use them; and
- (b) that he has paid the full price thereof; and
- (c) that they were so purchased within the period of six months next preceding the date on which they were so delivered:

Provided that, where the person is a licensed vendor of stamps, the Collector may, if he thinks fit, make the repayment of the sum actually paid by the vendor without any such deduction as aforesaid."

34. The plain reading of the above provision shows that un-used stamp paper can be cancelled by the collector by deducting 10 paise per each rupee or a portion of rupee provided stamps were purchased by such person with a bonafide intention to use them and that he has paid the full price thereof; and that they were so purchased within the period of six months next preceding the date on which they were so delivered for cancellation. From the above it is clear that the collector can cancel the stamp paper by deducting 10 paise per each of rupee if the stamp paper was purchased within the period of six months next preceding

day on which they were delivered for cancellation. In the present case on hand, the stamp was purchased on 5<sup>th</sup> June, 2019 and the transaction was cancelled during August/September, 2019 and the promoter could have very well sought for cancellation of the stamp paper seeking refund of the amount. The promoter has not made sincere attempt to claim refund of GST as well as the price paid for stamp papers during relevant period and simply with held the said amount due to the allottee on the pretext that the allottee shall have to approach the concerned authority for refund of the amount. Hence, the finding of the learned Adjudicating Officer on this issue is well founded. Accordingly, we are of the considered view that the appellant-promoter cannot withhold the GST amount and the stamp paper amount while refunding the booking amount on cancellation of the transaction. Accordingly, point No (i) is answered in the affirmative.

35. Point No.(ii): In view of our discussion on point No (i), we proceed to pass the following:

**ORDER**

- i) The appeal is dismissed;
- ii) The impugned order dated 4<sup>th</sup> July, 2020 passed by the learned Adjudicating Officer in CMP/191208/0004926 is hereby confirmed;

- iii) The amount deposited by the appellant while preferring the appeal as per proviso to Section 43(5) of the Act as per the impugned order is ordered to be released in favour of second respondent along with interest, if any accrued after the appeal period, by issuing a cheque/DD after following due procedure;
- iv) The Registrar shall comply with the provisions of Section 44(4) of the RERA Act and to return the records to RERA;
- v) The Registrar shall mark a copy of this judgment to the learned Adjudicating Officer and members of the RERA;

No order as to the costs;

**Sd/-  
HON'BLE CHAIRMAN**

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

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