IN THE KARNATAKA REAL ESTATE APPELLATE TRIBUNAL, BENGALURU

APPEAL (K-REAT) NO. 68/2022

DATED THIS THE 12TH DAY OF DECEMBER 2022

BETWEEN:

Purvankara Limited
No. 130/1, Ulsoor Road,
Bengaluru-560 042,
Represented by its
Authorised Signatory
Mr. Jatin Ujjini **:APPELLANT**

AND:

1. Ms. Anitha K.S
   Aged about 47 years
   D/o Late K.G. Shambulingappa,
   R/at F-No.1301, FIJI,
   Purva Palm Beach, ELU'S Road,
   Near CEO Centre,
   Hanumanthappa Layout,
   Bengaluru-560 043.

   And at
   No. 323, 3rd Block, Embassy Heritage,
   8th Main, Malleshwaram,
   Bangalore-560 003.

2. Karnataka Real Estate Regulatory Authority
   #1/14, 2nd Floor, Silver Jubilee Block,
   Unity Building, CSI Compound,
   3rd Cross, Mission Road,
   Bengaluru-560 027.
   Represented by its Secretary …**RESPONDENTS**

Hon'ble Judges/Coram

PRESENT

HON'BLE JUSTICE B SREENIVASE GOWDA, CHAIRMAN

AND

HON'BLE K P DINESH, JUDICIAL MEMBER

Counsel:

(By Sri Anandarama, Advocate for appellant)
(Sri Y.C Shivakumar for M/s Y.C Shivakumar and Associates, Advocate for R1)
(Sri I.S Devaiah, Advocate for R2-RERA-Absent)

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 04.06.2022 in Complaint No. CMP/201016/0006868 passed by the RERA-Authority, Respondent No.2.

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 04.06.2022 passed by the RERA-Authority, Respondent No.2. The operative portion of the impugned order reads as under:

> "In terms of the powers vested with the Authority under Sec.37 of the Act, the respondent-promoter is hereby directed to refund an amount of Rs.7,31,566/- with the applicable interest in accordance with Rule 16 of the Karnataka Real Estate (Regulation and Development) Rules, 2017, for the period commencing from 12-02-2020 to the actual date of refund."

2. BRIEF FACTS OF THE CASE:

The appellant- "Puravankara Limited" is a company incorporated under the Companies Act, 1956 and is engaged in the business of development of real estate projects under the name and style "Purva Palm Beach" situated in FIJI, ELU'S Road, Near CEO Centre, Hanumanthappa Layout, Bengaluru-560043 and is duly registered with RERA.

3. The 1st Respondent had booked two flats bearing No. PB-WE-901 and PB-WF-1301 in the project known as "Purva Palm Beach" developed by the appellant, that the 1st Respondent has paid total sum of Rs.23,14,918/- towards booking of the apartment No. PB-WE-901, that subsequently the complainant cancelled the booking of the aforesaid apartment as per cancellation deed dated 12.02.2020, that upon cancellation a sum of Rs.15,84,352/- has been adjusted towards the payment in respect of apartment No. PB-WF-1301 and the

remaining amount of Rs.7,31,566/- claimed to have been paid towards GST, that the 1st Respondent approached Assistant Commissioner of GST, and thereafter, the Joint Commissioner of Commercial taxes, GST seeking refund of the said amount but the claim was not allowed by the GST department, that there was exchange of lawyers notice between the appellant and the respondent on this issue for refund of the GST amount with interest, that the respondent has filed the complaint before the 2nd Respondent and after the notice appellant resisted the complaint contending that GST amount having been deposited with the Government any claim for refund of such amount shall be made before the proper forum under GST Act; that the GST Act being a special enactment in view of Section 162 of the KGST Act, that RERA Authority did not have the jurisdiction to deal with the complaint. It is contended that the complainant having approached the Authorities under GST Act for refund of the GST amount ought to have pursued it and taken to its logical end. It is contended that the appellant had raised the demand note based on schedule of payment and has charged GST at 12% on the full value of demand note which is the rate of tax fixed under GST Law; that in view of the provisions of GST, the appellant cannot issue credit note; that the tax has been collected based on demand note as per provisions of section 13 of the CGST Act, that the credit note on cancellation of the units cannot be issued as the time limit to issue the

credit note has been expired, that the complainant has rightly claimed the refund before the GST authorities but failed to pursue the same and that for the above reasons and contention urged in the statement of objections sought for dismissal of the complaint.

4. The RERA Authority-2nd respondent after considering the arguments and materials on record has allowed the complaint by its impugned order dated 04.06.2022 directing the Appellant herein to refund the amount of Rs.7,31,566/- being the GST amount with applicable interest in accordance with Rule 16 of the KRERA (Regulation and Development) Rules, 2017, from 12.02.2020 till the date of refund.

5. Being aggrieved by the impugned order appellant preferred the present appeal on the following:

GROUNDS:

1. The impugned order passed by the Regulatory Authority is wholly erroneous, illegal, contrary to law and provisions of GST Act and RERA act, unsustainable and liable to be set aside.

2. The impugned order suffers from non-application of mind and the Authority has not considered the submissions made by the Appellant and no reasons are forthcoming in the impugned order.

3. The summary analised by the Authority regarding the Tax Law without application of the same to the facts of the case and the approach of the Authority is contrary to law and the findings are wholly unsustainable.

4. The finding of the Authority that the jurisdiction vested with it to look into the complaints with regard to the amounts refundable to the allottee which has not been refunded is totally erroneous as the appellant has refunded the amount payable to the respondent. A separate provision is made under the GST Act for refund of the tax amount and the Authority under the RERA Act has no jurisdiction over the Tax matters which the Authority has failed to appreciate.

5. The RERA Authority in directing refund only on consideration of comparative hardship without there being any legal basis for the same is holly erroneous and unsustainable.

6. The RERA Authority has committed an error of law in directing payment of interest on the GST amount as per Rule 16 of RERA Rules, 2017. The appellant has not retained the GST amount and the same has been remitted to the department under the circumstance there is no unjust enrichment by the appellant and the issue is not the one pertaining to an adjudication under Section 18 and 12 of the RERA Act.

7. It is contended that a combined reading of the provisions of Section 34, Section 2(119) and entry No.6(a) of Schedule-II of the CGST Act, clearly goes to show that the cancellation of

the unit does not fall within the meaning of any of the situations contemplated therein.

6. Heard Sri Anandarama, learned counsel for appellant, Sri Y.C Shivakunar, learned counsel for the 1st respondent and perused the appeal memo, written arguments filed by the 1st Respondent and relevant records.

7. There is no representation for 2nd Respondent-RERA.

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

(I) **Point No. 1 : Whether RERA Authority/Appellate Tribunal lacks jurisdiction over the subject matter of the appeal under Section 18 of the Act?**

II) **Point No. 2: Whether the complaint under appeal is hit by the Doctrine of Election.**

III)**Point No. 3: Whether appellant justifies that respondent's remedy for refund of GST is with GST Authority and not with the appellant ?**

(IV) **Point No. 4: What order?**

R E A S O N S

9. **Point No. 1 & 2:** It is the submission of the learned counsel for the appellant that the respondent who is the complainant before the Authority approached the appellant herein who is the respondent before the Authority and booked two apartments bearing No.PB-WE-901 and PB-WF-1301 in the project known as "Purva Palam Beach" developed by the appellant and paid a total sum of Rs.23,14,918/- towards the booking amount in respect of apartment No. PB-WE-901, that the respondent cancelled the booking of the aforesaid apartment as per cancellation deed dated 12.02.2020, and an amount of Rs.15,84,352/- was refunded by way of transfer against the other apartment No. PB-WF-1301 towards the installments due in respect of said apartment excluding the GST amount of Rs.7,31,566/- shown to have been remitted to the Government, that the complainant approached the Assistant Commissioner of State Tax, GST who has negated the claim of refund on the ground that the respondent is not the registered assessee, that the respondent further approached the Joint Commissioner of Commercial Taxes, GST seeking refund of the GST amount on the ground that there was no mechanism under the provisions of the Act for such refund.

10. It is the further submission of the learned counsel that the respondent has rightly claimed refund of the Tax before the GST

Authorities but failed to pursue the matter to its logical end and rushed to the RERA Authority for the relief under complaint, that the appellant has collected and remitted the GST at 12% on the full value of demand note as per GST Law; that the time limit to issue the credit note has been expired, that the Regulatory Authority ought not have allowed the complaint filed by the Respondent as per the impugned order dated 04.06.2022 for refund of the GST amount under Section 37 of the RERA Act with interest as per Rule 16 of the KRERA (Regulation and Development) Rules, 2017.

11. It is the submission of the learned counsel that the RERA Authority inter alia failed to consider the jurisdiction of the Authority on the GST issue, that the GST Act itself contained a provision for consumer to claim refund of the GST amount, that the respondent having chosen remedy under the GST Act without taking it to the logical conclusion cannot seek remedy under RERA Act, that the RERA Authority fails to appreciate the aforesaid crucial aspect of the matter. That the appellant ought to have issued credit note for cancellation of the services and should have refunded or adjusted the tax element to other future transactions and it is contrary to Section 34 of the GST Act and that combined reading of the Section 34, Section 2(119) and entry No.6(a) of Schedule II GST Act clearly goes to show that the cancellation of the unit does not fall within the meaning of any of the

situations contemplated therein. On the above submission the learned counsel sought for rejection of the complaint by setting aside the impugned order.

12. On the contrary learned counsel for the 1st Respondent submitted that bar of jurisdiction under section 162 of the GST Act and Section 79 of the RERA (Regulation & Development) Act, 2016 is in respect of civil courts. It is also submission of the learned counsel that there is overriding effect under Section 89 of the Act. It is contended that the Respondent approached the GST Authorities as per the advice of the appellant; that LGSTO-45 Indiranagar has given an endorsement on 18.05.2020 stating that only registered person are eligible to claim refund; that the JCCT issued an endorsement dated 01.06.2020 stating that there is no mechanism as yet to consumer approaching authorities for refund in whatever circumstances. It is contended that the appellant has sold the apartment to one Prashanth Verma and his wife Mrs. Shewtha Rani for higher price of Rs. 85,12,800/- as against the agreement amount of Rs.76,68,400/- entered into with the respondent. It is the submission of the learned counsel that Section 89 of the RERA Act contemplates overriding effect and the same prevails over Section 162 of GST Act. It is submitted by the learned counsel that Government of India, Ministry of Finance, Department of Revenue, vide their FAQs on Real Estate dated 07.05.2019, with the examples, have stated that

in a similar situations of 1st Respondent, they are eligible for refund of the GST amount. The learned counsel by referring to Section 34 GST Act and the Rules submitted that sub Section 1 of Section 34 provides for issue of credit note where goods or services or supply of both are found to be deficient, sub Section 2 provides for adjustment for tax liability on such credit note for the month during which such credit note has been issued, but later than 30th day of September following the end of the financial year, that the Government of India, Ministry of Finance, Department of Revenue further clarified the issue of credit note and claiming of refund, vide its circular dated 30th April 2020 and that at serial No. 2 of the clarifications issued by the above circular squarely applicable to the facts of the case on hand and a copy of circular dated 30th April 2020 marked as annexure-G. With the above submissions sought for dismissal of the appeal by upholding the orders of the Authority.

13. On perusal of the appeal papers the contentious issues between the parties in the case on hand are whether RERA-Authority has jurisdiction to entertain a complaint in respect of refund of GST collected by the Promoter from the allottee and remitted to the department concern, whether the allottee having opted a fora under GST Act for refund without taking it to a logical end can amidst the line of appellate hierarchy can withdraw and approach the RERA-Authority

by filing the complaint under appeal and that whether the promoter is liable to refund the GST amount to the allottee. Now let us take up the above issue one by one. As far as the jurisdiction of the RERA to take up the matter of refund of GST amount paid by the allottee to the promoter is concerned it is borne out from the records that the allottee has paid the booking amount/the 1st installment for purchase of the unit in question in the above said apartment. The total price payable to the unit in question viz PB-WE-901 was Rs.76,68,400/- and the promoter has raised tax incidence in respect of the entire sale price, collected the same from the allottee out of the 1st installment paid by her and remitted GST to the department. There is no covenant in the agreement regarding tax incidence but obviously the GST is paid by the promoter out of the 1st installment paid by the allottee. There is nothing on record to show that the promoter has distinctly collected GST amount from the allottee excluding sale price and the same is made known to the allottee. It is pertinent to note that in para 2 of the cancellation agreement there is a specific stipulation regarding the reservation of right of the refund of stamp duty and registration charges by the allottee from the respective authorities as per due process of law but no such stipulation is found regarding GST in the said agreement. Under the circumstance whatever amount paid by the allottee is towards the 1st installment for allotment of the unit and accordingly the same is

refundable when the transaction is incomplete or cancelled. Even under the GST regime when service is not completed the registered assessee is not liable for tax and if at all paid is entitled for refund of the same. When transaction is not materialized the promoter is liable to refund the entire amount paid by the allottee with interest as per Section 18 read with Rule 16 of the RERA Act and Rules and accordingly the amount refundable with interest becomes the subject matter of RERA. And now once the refund becomes subject matter of RERA the jurisdiction vests with RERA Authority by operation of law.

14. Act to have overriding effect as per Section 89 of the Act. The said provisions contemplates that this Act shall have effect, notwithstanding anything inconsistent there with contained in any other law for the time being enforce. The learned counsel Sri Anandarama for the appellant submitted that both GST Act as well as RERA Act are Central Acts having overriding effect but GST Act being subsequent enactment supersedes the provisions of RERA Act particularly regarding the incidence of GST. The learned counsel for the appellant relied on a Judgment reported in **(2019) 8 SCC 416 in Pioneer Urban Land and Infrastructure limited Vs. Union of India and Ors.** in support of his contentions that RERA Act has no jurisdiction over the subject matter of GST Act and the GST Act being subsequent to RERA Act has got superseding effect on the provisions of the RERA Act. The learned

counsel has also relied on Judgment in ***State of Rajasthan Vs. Union of India and Ors. reported in (2018) 12 SSC 83*** regarding Doctrine of election.

15. Learned counsel for the appellant in the course of his argument relying on the Judgment of the Apex Court in Pioneer Urban Land stated supra contended that even though both RERA Act and GST Act contemplates non obstinate clause the GST being subsequent to RERA Act supersedes the provisions of the RERA Act. Admittedly, Section 89 of RERA Act and 162 of GST Act contemplates bar on Jurisdiction of Civil Courts with a non obstinate clause. Further Section 88 of the RERA Act speaks of the effect of the provisions of the act notwithstanding anything inconsistent therewith contained in any other law for the time being in force. The Hon'ble Apex Court while dealing with the overriding effect under Section 238 of the insolvency and bankcreptacy court 2016 vis-a-vis the Real Estate Regulation and development Act 2016 in Pioneer case stated supra observed that remedies before RERA Authority would come into effect only 01.05.2017 making it clear that the provisions of the code which came into force on 01.12.2016 would apply in addition to RERA. The Hon'ble Appex Court referring to Judgment in ***KSL and Industries Limited Vs. Arihant Threads Limited (2015) I SCC 166 : (2015) I SCC (Civ) 462*** observed that sub Section 2 However, makes the RDDB Act

addition to and not in derogation and annulment of the five Act i.e., the Industrial Finance Corporation Act 1948: the State Finance Corporation Act, 1951: the Unit Trust of India Act, 1963: The Industrial Reconstruction Bank of India Act, 1984 and the Sick Industrial Companies (Special Provisions) Act, 1985. It is further observed by referring to section 34 sub-Section 2 of the RDDB Act added w.e.f 17.01.2022 by Act I of 2000 there is no doubt that when an Act provides, as here, that its provisions shall be in addition to and not in derogation of another law or laws, it means that the legislature intends that such an enactment shall coexist along with the other Acts. It is clearly not the intention of the legislature, in such a case, to annual or detract from the provisions of other laws. In para 27 of the judgment it is observed that in view of the Section 34(2) of the recovery Act, this court held that despite the fact that the non obstante clause contained in Recovery Act is later in time than the non obstante clause contained in the Sick Act, in the event of a conflict, the Recovery Act i.e., the later Act must give way to the Sick Act i.e., the earlier Act. In para 28 referring to Judgment in Bank of India V. Ketan Parekh (2008) 8 SCC 148 this court held that Section 9-A of the Special Court (Trial of Offences Relating to transactions in Securities) Act. 1992 (hereinafter referred to as "the Special Court Act') must be considered to be legislation that is subsequent to the Recovery act, since Section 9-A

was introduced by amendment, into the special court Act after the recovery Act. Needless to add, both statutes contained non obstante clauses in para 28 it is observed that in the present case both the two acts i.e. the act of 1992 and the Act of 1993 start with the non obstante clause. Section 34 of the Act of 1993 starts with non obstante clause, likewise Section 9-A (sic 13) of the Act of 1992. But incidentally, in this case Section 9-A came subsequently i.e it came on 25.01.1994. Therefore, it is a subsequent legislation which will have the overriding effect over the Act of 1993. ***But cases might arise where both the enactments have the non obstante clause then in the case, the proper perspective would be that one has to see the subject and the dominant purpose for which the special enactment was made and in case the dominant purpose is covered by that contingencies, then not withstanding that the act might have come at a later point of time still the intention can be ascertained by looking to the objects and reasons.***

The Hon'ble Apex Court in the Pioneer case held overriding effect of amended Section 9-A of special court (TORTS) Act came into force subsequently on 25.01.1994 and therefore a subsequent legislation will have overriding effect over the Act of 1993. The Hon'ble Apex Court while holding the above proposition observed that notwithstanding that the Act may come at a later point of time still the intension can be

ascertained by looking into the objects and reasons. So we emphasis the word "objects and reasons" to ascertain the intension of the legislature in bringing the enactment. It is in the above perspective we have to deal with the issue in the context of RERA Act and GST Act. The object of RERA is to see that real estate projects come to fruition within the stipulated period and to see that allottees of such projects are not left in lurch and are finally able to realize their dream of a home, or be paid compensation if such dream is shattered, or at least get back monies that they had advanced towards the project with interest. In the above backdrop of the matter it is relevant to refer to the preamble of the RERA Act and same is reproduced here under for better appreciation of the factual and the legal issue involved in the case on hand.

16. **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 of the Act it is clear that the Act was passed to protect the interest of the consumer in the real estate sector

and to establish an adjudicating mechanism for speedy dispute redressal. Further to establish Appellate Tribunal to hear appeals from the decisions, directions or orders of the regulatory Authority and the adjudicating officer in respect of the matters connected therewith or incidental thereto. Here again we emphasis the word **connected therewith or incidental thereto.** The letter and the spirit of the preamble of the Act is crystal clear that the intension of introducing the Act was to protect the interest of the consumer in real estate sector and to establish the Regulatory Authority/Appellate Authority to deal with the matters connected therewith or incidental thereto. The GST incidence being incidental to the matter connected with RERA the Authorities and the Appellate Authority under the Act have got jurisdiction to deal with it. On facts we have discussed about the plight of the allottee in getting refund of the GST referring to the various provisions of the GST Act in para 17 to 21 of this judgment. When an allottee not being a registered person/assessee is not entitled for refund of the GST collected by the promoter and paid to the GST Authority it is not just and reasonable on the part of the promoter to drag the allottee to the door steps of GST Authority to claim refund.

The learned counsel for the appellant submitted that the allottee/respondent having approached the Deputy Commission of GST and Joint Commissioner of GST regarding refund of the tax without

taking the matter to its logical end by approaching the Appellate Authority amidst withdrew from the Appellate hierarchy and approached the RERA Authority and hence complaint is hit by the doctrine of election envisaged under order 7 Rule XI and Section 9 of the code of civil procedure. The learned counsel for the 1st Respondent took us to Section 53 of the RERA Act where powers of the Tribunal is described and the same is reproduced hereunder:

> **Section 53 Powers of Tribunal:-** (1) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice.
>
> (2) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure.
>
> (3) The Appellate Tribunal shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872 (1 of 1872)

As per Section 53 of the Act the Tribunal is not bound by the procedure laid down in the code of civil procedure, 1908 or the rules of evidence contained in the Indian Evidence Act, 1872 but shall have power to regulate its own procedure. Hence, the RERA Regulatory Authority/Appellate Tribunal under the Act is not strictly bound by the provisions of the code of civil procedure but to adopt and guided by the principles of natural justice. Further the Hon'ble Apex Court in the Judgment reported in Air 2021 SC 17 in M/s Imperial Structures Limited

Vs. Anil Patni and Another while dealing with the jurisdiction of consumer protection Act Section 2(d)(r) and section 23 of Real Estate (Regulation & Development) Act, Sections 79 and 18 observed that in so far cases where proceedings under CP Act are initiated after the provisions of the RERA Act came into force, there is nothing in RERA Act which bars such initiation. The absence of bar under Section 79 to the initiation of proceedings before a fora which cannot be called a Civil Court and express savings under Section 88 of the RERA Act, makes the position quite clear. Further, Section 18 itself specifies that the remedy under the said section is 'without prejudice to any other remedy available'. Thus, the parliamentary intent is clear that a choice or discretion is given to the allotee whether he wishes to initiate appropriate proceedings under Consumer Protection Act or file an application under RERA Act. Since Section 18 gives a right 'without prejudice to any other remedy available', in effect, such other remedy is acknowledged and saved subject always to the applicability of Section 79, 100 of 2019 Act is akin to Section 3 of the CP Act. ***The Hon'ble Apex Court in Judgment reported in (2020-21) 3SCC 241 Ireo Grace Realtech Private Limited vs. Abhishek Kanna and others.*** Reiterated that remedies under the RERA Act are without prejudice to any other remedy available. Hence RERA Act does not in any way effect the jurisdiction of the consumer fora- equally remedies under consumer

protection Act are in addition to, and not in derogation of provisions of any other law for the time being in force.

(Emphasis supplied)

In view of the above preposition of law the contention of the learned counsel for the appellant is not acceptable and accordingly, point No. 1 & 2 answered in the negative.

17. **Point No. 3:-** Now coming to the point of liability to refund the GST is concerned the appellant in para 16 of the appeal memo has clearly admitted that the respondent is entitled to claim refund of the GST amount under Section 54 (1) of the GST Act, but contended that the appellant is not liable to refund the GST amount and the allottee shall approach the GST Authority under section 54(1) of the Act for the said purpose. The learned counsel for the appellant referring to various provisions of the Act viz., Section 13, Section 2(119) and entry No.6 (a) of the Schedule II contended that the appellant cannot issue credit note or demand voucher since the circumstances contemplated under the Act do not arise and hence not liable to refund the GST amount to the respondent. It is further contended that the time prescribed for seeking refund has already lapsed and the claim is barred by limitation. Sri Y.C Shivakumar, learned counsel for the 1st Respondent contended that the two years period prescribed under the GST Act for claiming

refund of Tax incidence was not barred by time when the transaction was cancelled as per the cancellation deed dated 12.02.2020. It is the submission of the learned counsel that the appellant simply slept over the matter without availing the benefit under the Act and now putting blame on the 1st Respondent.

Once the subject matter falls within the ambit of RERA statute and the Authority under the Act is vested with the jurisdiction the appellant is liable to refund the GST amount which is a part of the consideration amount paid by the allottee. The ratio of law is covered by the judgment of this Tribunal in ***Appeal No. (K-REAT)347/2020 between M/s Mahendra Homes Private Limited V.s Karnataka Real Estate Regulatory Authority and Another*** dated 08.10.2021 unless the learned counsel for the appellant is able to show that the above judgment has been reversed by any Appellate Court. Be that as it may we deem it appropriate at the cost of repetition to elaborate on the issue on the facts and circumstances of this case.

18. 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 39in 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".*

19. 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.

20. 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 defense 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."

21. It is pertinent to note that para 2 of the cancellation agreement dated 12.02.2020 the appellant made provision for claim of refund of the stamp duty by the Respondent from the respective authorities as per due process of law, whereas no such covenant in the said cancellation agreement regarding the refund of tax amount to be claimed by the allottee from the GST Authority. The legal inference that can be drawn from the above circumstance is that the appellant never intended allottee to approach GST Authority for refund of the GST incidence. As per Annexure-H page 106 of the appeal paper appellant has issued a letter stating that the appellant is a registered assessee bearing No.29AAACP2550R1ZX and collected tax amount of Rs.7,31,566/- from allottee and included in the total tax liability for the month of December-2017 to February-2018 and the same is included in our tax returns and paid accordingly. The transaction between the appellant and respondent came to be cancelled on 12.02.2020 as per the cancellation deed and hence, the appellant had ample time to seek refund of the GST amount within two years prescribed under GST Act. The provisions of the GST Act stated supra abundantly demonstrate

that it is only a registered Assessee who can claim refund of the GST amount if the transaction is not materialized or for any other reasons envisaged under the Act. The submission of the learned counsel for the appellant that as per 54(1) of the GST Act "**Any Person"** can claim refund of tax and interest and need not be a registered assessee is not acceptable. The phrase "**Any Person"** occurring in Section 54(1) of the GST Act does not mean any general public or strangers but a registered assessee who has paid tax under the Act. Admittedly, appellant is registered assessee as already discussed above and allottee is not a registered assessee or a person. Even assuming without admitting that a provision is made for claiming refund of the GST by other persons in case of non electronic cash account, in the present case on hand no material is placed on record by the appellant to show that any attempt was made for refund of the balance Tax. It may not be out of place to state that the appellant being a registered assessee certainly could have claimed refund of tax balance in electronic cash account rather than shifting the liability on the 1st respondent. Accordingly, the above point is answered in the negative.

22. So, to sum up, on combine reading of the provisions of the GST Act referred supra, it is for the registered person who has collected and paid the tax to the Authority and is 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. In view of the above discussion point No.3 is answered in the negative.

23. 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. Thereafter to secure the appearance of the parties and LCR sufficient long time was taken. Further the counsel appearing for parties have also taken time to argue the case. Hence appeal could not be disposed off within the period stipulated under section 44(5) of the Act.

24. **Point No.(4):** In view of our discussion on point No (1,2 and 3) we proceed to pass the following:

ORDER

i) The appeal is dismissed;

ii) The impugned order dated 04.06.2022 passed by the RERA Authority in CMP/201016/0006868 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 1st respondent along with accrued interest, 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 members of the RERA;

No order as to the costs;

Sd/-
HON'BLE CHAIRMAN

Sd/-
HON'BLE JUDICIAL MEMBER