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C.M.S.A.No.55 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	:	10.12.2024
PRONOUNCED ON	:	24.01.2025

CORAM:

THE HON'BLE MRS. JUSTICE J.NISHA BANU

AND

THE HON'BLE MR. JUSTICE R.SAKTHIVEL

C.M.S.A.No.55 of 2024

and C.M.P.Nos.18241, 18242 & 18245 of 2024

Emerald Haven Realty

Developers (Paraniputhur) Pvt.Ltd.,

Rep. By its Managing Director,

1st Floor, Greenways Towers,

No.119, St.Mary's Road,

Abhiramapuram, Chennai 600 018

... Appellant

-VS-

1) S.V.Ramesh

2) The Principal Commissioner

of GST & Central Excise,

Chennai North, GST Bhawan,

26/1, Mahatma Gandhi Road,

Nungambakkam, Chennai 600 034

... Respondents



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** R2 impleaded vide Court Order dated 04.09.2024 made in C.M.P.No.19574/2024.*

PRAYER: Civil Miscellaneous Second Appeal filed under Section 58 of the TNRERA Act, 2017 r/w section 100 of Civil Procedure Code, 1908, against the judgment of the Tamil Nadu Real Estate Appellate Tribunal ('Tribunal'), Chennai dated 07.08.2024 passed in Appeal No.18 of 2024 ('impugned judgment') confirming the judgment passed by the Tamil Nadu Real Estate Regulatory Authority, Chennai dated 26.04.2023 in C.C.P.No.233 of 2021.

For Appellant : Mr.Satish Parasaran,
Senior Counsel for Mr.Rahul Balaji

For R-1 : Mr.Devaraj

For R-2 : Mr.Siddharath Bhandari

J U D G M E N T

(Judgment of this Court made by J.Nisha Banu, J.)

The appellant has approached this Court under Section 58 of the Real Estate (Regulation and Development) Act, read with Section 100 of the Civil Procedure Code against the judgment of the Tamil Nadu Real Estate Appellate Tribunal, Chennai dated 07.08.2024 passed in Appeal No.18 of 2024, confirming the judgment passed by the Tamil Nadu Real Estate Regulatory Authority, Chennai dated 26.04.2023 in C.C.P.No.233 of 2021.



WEB COPY 2. The essential facts of the case would run thus:-

2.1. A flat bearing No.B-102, with undivided share of land measuring 1203 sq.ft and having carpet area of 1236 sq.ft., type 4 BHK 3T in the first floor, Block B, along with a balcony area of 101 square feet, in the residential cum commercial building complex known as TVS Emerald “Green Enclave” project was originally booked by the father of the first respondent for a base price of Rs.1,03,74,276/- i.e. Rs.17,98,485/- being the land cost and Rs.85,75,791/- being the civil construction cost. Pursuant to the same, construction agreements and sale agreements were entered into by and between the parties on 10.02.2020 and the expected delivery of the apartment was fixed during the month of October 2023.

2.2. Subsequently, the father of the first respondent has paid a sum of Rs.47,08,604/- to the appellant/Promoter towards the amount payable for the purchase of the flat. All of a sudden, the first respondent's father died on 05.09.2020, due to illness which ultimately resulted in huge medical expenses on the side of the first respondent. After the sudden demise of the



first respondent's father, his mother decided to settle in Kerala itself and owing to reduction of 50% of salary of the first respondent due to COVID pandemic, the first respondent decided not to purchase the subject flat. Therefore, the first respondent sent an email dated 24.11.2020 to the appellant/Promoter requesting to sort out the issue raised by him.

2.3. In this regard, the appellant/Promoter has suggested the first respondent that instead of cancelling the 4 BHK flat, the first respondent shall prefer to purchase a 2 BHK flat, so that, the first respondent can save the cancellation fees, which is 10% of the total consideration, which has been already mentioned under the terms of the unregistered construction agreement. Therefore, the first respondent decided to swap the 4BHK apartment with a 2BHK apartment for a total consideration of Rs.59,50,821/-, wherein the appellant/Promoter's representatives have assured the first respondent that one reserved car parking will be part and parcel of the 2BHK flat. On 20.01.2021, the appellant/Promoter sent a letter to the first respondent, to confirm the provisional allotment of flat No.D-103 to the first respondent.



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2.4. Meanwhile, after 20.01.2021, one Ms.Gayathri, staff of the appellant/Promoter's firm, visited the residence of the brother of the first respondent, who is the Power Agent of the first respondent and the new agreements, allotment letter, payment demand letter of newly allotted Unit D 103 along with Cancellation Agreement dated 19.01.2021 with respect to B-102 were handed over on 20.01.2021. In return, she has taken the unregistered original Construction and Sale Agreements dated 27.01.2020 with respect to B-102 and did not return the authorized copy of the signed cancellation agreement. When the same was questioned by the first respondent, he was informed that the same would be given to him, when the first respondent signs the unregistered Sale and Construction Agreements with respect to the newly allotted flat D 103.

2.5. Later when the first respondent perused the draft sale and construction agreements for flat D103, he realized that contrary to the discussion had with the appellant/Promoter's representatives at the time of swapping of the flats, the newly allotted flat D 103 did not have reserved



covered car parking. Therefore, the first respondent did not agree with the terms of the Construction agreement and did not sign the agreements for D 103 and vide email dated 28.02.2021, the first respondent has informed the appellant/ Promoter that he was not interested in purchasing the 2 BHK flat, if he is not provided with covered car parking. But then, there was no effective remedy provided from the side of the appellant/ Promoter to address the grievance of the first respondent. Again on 27.04.2021, the first respondent had sent an email to the appellant/ Promoter stating that he is not satisfied with the appellant/ Promoter's service and therefore, he is not interested in purchasing the 2 BHK flat and further requested for immediate return of his money paid in respect of Flat B 102.

2.6. In reply to the aforesaid email of the first respondent, the appellant/ Promoter sent an email dated 30.04.2021 stating that the first respondent shall have the choice of either swapping the flats (4Bhk with 2BHK) and choose from the available units in 2 or 2.5 BHK or if not, he can continue with Flat No.B 102 or if he still prefers to withdraw from Flat No.B 102, then there will be 10% deduction charges as per the Agreement Clause.



Again, the first respondent, vide email dated 01.05.2021 informed the appellant/ Promoter that the options given by the appellant/ Promoter are totally unacceptable. Despite covered car parking facilities being provided for certain 2 BHK flats, the appellant/ Promoter has deliberately misinterpreted that there were no covered car parking for 2 BHK and if the first respondent wanted a covered car parking, then he has to opt for 2.5 BHK or larger flats. Subsequently, on 08.05.2021, the appellant/ Promoter sent an email to the first respondent persuading him to opt for 2.5 BHK or larger flats for availing covered car parking facility and immediately, on the very same day, i.e. on 08.05.2021, the first respondent has informed the appellant/ Promoter that he is not interested in buying any flat in the appellant/ Promoter's project.

2.7. On 10.05.2021, the appellant/ Promoter sent an email to the first respondent requesting for the confirmation of cancellation charges and GST Loss, resulting in a total deduction of Rs.21,77,803/- and has further stated that upon confirmation of the same, payment will be processed within 30 days time. Aggrieved against the same, the first respondent sent a lawyer's



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notice dated 21.05.2021 to the appellant/ Promoter to refund the principal amount of Rs.47,08,604/- along with interest and compensation. In reply to to the same, the appellant/ Promoter on 26.06.2021 stated that as per the provisions of RERA, the appellant/ Promoter shall have the right to deduct the booking amount towards registrations and claims of the complainant, if cancellation charges are refuted on baseless grounds. Moreover, the deduction of GST loss for a sum of Rs.11,40,376/- cannot be permitted when the possession is not handed over and when construction of the said flats is under process. Thereafter, on 28.07.2021, an email was sent from the side of the appellant / Promoter intimating to collect the final refund payment of Rs.25,30,801/- thereby attaching a copy of the scanned cheque No.872349 dated 27.07.2021 drawn on State Bank of India issued by the appellant/ Promoter, after deducting the cancellation charges and the GST loss.

2.8. Aggrieved against the above actions of the appellant/ Promoter, the 1st respondent filed a complaint in CCP No.233 of 2021 before the Tamil Nadu Real Estate Regulatory Authority, Chennai on 04.08.2021. Thereafter, on 06.08.2021, the power agent of the first respondent, who is the



brother of the first respondent received a notice from the appellant / Promoter along with original cheque dated 27.07.2021 bearing No.872349 drawn on State Bank of India for a sum of Rs.25,30,801/- in favour of the first respondent. Without prejudice to his rights, the first respondent received the above said amount, which is part payment of his claim amount. The Tamil Nadu Real Estate Regulatory Authority, Chennai, vide order dated 26.04.2023 partly allowed the complaint filed by the first respondent, by awarding refund of an amount of Rs.11,40,376/- with interest pertaining to GST and in so far as 10% cancellation charges are concerned, the TNRERA held the same in favour of the appellant / Promoter by stating that the first respondent was terminating the Agreement and cancelling the allotment for personal reasons.

2.9. In this regard, both the appellant/Promoter as well as the first respondent filed separate appeal petitions against the order of the Tamil Nadu Real Estate Regulatory Authority, Chennai. The first respondent filed an appeal in Appeal No.63 of 2023 challenging the cancellation charges, which came to be dismissed at the admission stage itself. Whereas, the



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appellant / Promoter filed Appeal No.18 of 2024, challenged the order with regard to the refund granted towards GST to the first respondent. The Appellate Tribunal vide impugned order dated 07.08.2024 permitted the first respondent to withdraw the entire pre-deposit amount paid by the appellant/ Promoter by holding that the appellant/ Promoter did not take steps to apply for refund. Therefore, aggrieved against such order of the Appellate Tribunal, the appellant/Promoter has preferred the present Civil Miscellaneous Second Appeal before this Court.

3. Mr.Satish Parasaran, learned Senior Counsel, assisted by Mr.Rahul Balaji, learned counsel for the appellant/ Promoter presented the following substantial questions of law:-

- (i) Whether an allottee is entitled to refund of amounts paid towards GST from the Promoter, when cancellation of apartment takes place after the cut-off date for issuance of a credit note under Section 34 of the Central Goods and Services Tax Act, 2017?
- (ii) Whether a promoter has the option of applying for refund of GST/issuance of credit note after the cut-off date mentioned



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in Section 34(2) of the Central Goods and Services Tax Act, 2017?

(iii) Whether the liability to apply for refund of GST is on the promoter or the allottee in case of cancellation of an apartment, considering Section 54 of the Central Goods and Services Tax Act, 2017 read with Rule 89(2)(ka) of the Central Goods and Services Rules, 2017?

(iv) Whether an allottee can be permitted to withdraw the pre-deposit amount made by the Promoter before the Appellate Tribunal under the RERA Act, 2016 when the allottee's application for refund of GST amounts under Section 54 of the CGST Act, 2017 is pending before the tax authorities?

(v) Whether penalty for non-registration of a sale agreement/construction agreement can be imposed when the allottee has not come forward for registration of the documents, which have otherwise been relied upon and recognised?

(vi) Whether the impugned judgment dated 07.08.2024 passed by the Hon'ble Tamil Nadu Real Estate Appellate Tribunal in Appeal No.18 of 2024 is ex-facie contrary to the evidence on record?

(vii) Whether the impugned judgment dated 07.08.2024 passed by the Hon'ble Tamil Nadu Real Estate Appellate Tribunal in Appeal No.18 of 2024 has arrived at a conclusion



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without any basis i.e., a case of no evidence?

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The learned Senior Counsel campaigned his views in support of the appellant/ Promoter in the following manner:

3.1. The learned counsel for the appellant/ Promoter did not dispute the aforesaid facts of the case. In so far as deduction of amounts already paid in respect of GST is concerned, the GST is computed and payable by the developer on demands raised by the developer on the customer and not based on the receipt of payments from customers. As on the date of the Agreement, the milestone completed was with respect to the “completion of the fourth-floor slab” and the appellant is required to raise such demand on the customer up to the milestone completed by the appellant/ Promoter and the same to be reflected in the GSTR returns of the appellant/ Promoter for the said month. In accordance with the said requirement, the appellant/ Promoter raised demands upto the amounts in respect of the said milestone as per the schedule to the construction agreement between the parties and the same has also been disclosed in the GSTR-1 returns of the Appellant.



3.2. He further submitted that the GST amount in respect of the first respondent's apartment having already been disclosed and remitted/filed to the Authorities concerned by the Appellant/ Promoter in February 2020, a credit note pursuant to termination of the agreement with respect to the apartment booked in the Financial Year 2019-2020 could be issued by the Appellant/Promoter only till the month of September 2020 (Prior to Amendment in 2022) as per Section 34(2) of the Central GST Act. It is to be noted that the cancellation of the apartment was not confirmed by the first respondent even until May 2021, in spite of several reminders from the Appellant/Promoter. Due to the statutory time bar, the Appellant/Promoter cannot issue a credit note for the GST on the amount paid by the first respondent. If the cancellation had been done by the 1st respondent before September 2020, then the Appellant/Promoter could have issued a credit note and refunded the GST amount to the first respondent, since the output tax liability of the Appellant/Promoter would have reduced.

3.3. It is further submitted that the above said issue was also recognised by the GST Council in its 48th Meeting, dated 17.12.2022,



wherein the issue of refund of GST to buyers, who cancel their apartments

when the construction is in progress has been discussed as thus:

"Measures for Facilitation of Trade:

2. Refund to Unregistered Persons: *There is no procedure for claim of refund of tax borne by the unregistered buyers in cases where the contract/ agreement for supply of services, like construction of flat/house and long-term insurance policy, is cancelled and the time period of issuance of credit note by the concerned supplier is over. The Council recommended amendment in CGST Rules, 2017, along with issuance of a circular, to prescribe the procedure for filing application of refund by the unregistered buyers in such cases."*

3.4. The learned Senior counsel further submitted that even for the subsequent sale of the same apartment, the Appellant/ Promoter is required to remit/file the GST amounts/returns since service is being provided by the Appellant/ Promoter to the new buyer and an invoice is being issued in the name of the new buyer. Under the GST law, under such circumstances, no refund or adjustment is permitted to the Appellant/ Promoter. Therefore, the



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Appellant/ Promoter was entitled to deduct the amounts towards GST since the Appellant/ Promoter had remitted the GST amounts both the times and has not retained any part of it with itself, and is also unable to presently obtain a refund of the said amounts on account of the delay of confirmation of cancellation of the flat by the 1st respondent's.

3.5. It is the further submission of the learned Senior Counsel that it is open for the 1st respondent to approach the GST authorities for the refund of the said amounts, which option the 1st respondent has exercised during the pendency of the Appeal before the Tamil Nadu Real Estate Appellate Tribunal by filing an application dated 29.07.2024 for refund of GST. As this does not preclude the right of a recipient of service from filing an application for refund of tax amounts on a service that has been subsequently canceled, under Section 54 of the CGST Act, 2017, with specific reference to the same, Rule 89(2)(ka) of the CGST Rules, 2017 provides for a mechanism of refund of tax that a non-registered person can avail *"in a case where the refund is claimed by an unregistered person, where the agreement or contract for supply of service has been cancelled or terminated and the time period of*



issuance of credit note by the concerned supplier is over.”

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3.6. The learned Senior Counsel further drew the attention of this Court to the Circular of the Central Board of Indirect Taxes and Customs, Ministry of Finance in Circular No.188/20/2022-GST dated 27.12.2022 which specifically deals with a case such as the present case. The relevant portion reads as follows:

“Instances have been brought to the notice where the unregistered buyers, who had entered into an agreement/ contract with a builder for supply of services of construction of flats/ building, etc. and had paid the amount towards consideration for such service, either fully or partially, along with applicable tax, had to get the said contract/ agreement cancelled subsequently due to non-completion or delay in construction activity in time or any other reasons. In a number of such cases, the period for issuance of credit note on account of such cancellation of service under the provisions of section 34 of the Central Goods and Service Tax Act, 2017 (hereinafter referred to as 'CGST Act') may already have got expired by that time. In such cases, the supplier may refund the amount to the



buyer, after deducting the amount of tax collected by him from the buyer.”

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3.7. The learned Senior Counsel stated that in the present case, during the pendency of the Appeal filed by the Appellant/ Promoter, the first respondent, pursuant to an affidavit of undertaking, filed an application as contemplated under Section 54 of the Act read with Rule 89(2)(ka). In spite of the opposition raised by the Appellant/ Promoter for the withdrawal of the pre-deposit, the Appellate Tribunal dismissed the Appeal and permitted the withdrawal of pre-deposit by the 1st respondent, which is perverse and the same needs the interference of this Court.

3.8. He also submitted that, in respect of imposition of penalty of Rs.1,00,000/-, the TNRERA failed to take into account the fact that the agreements entered into in February 2020 could not be registered for the sole reason that the impending COVID- 19 made it impossible for the agreements to be registered, and the 1st respondent himself was not in India at the relevant point of time.



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3.9. The learned Senior Counsel concluded his arguments by stating that the the second respondent has made it clear before this Court that the Appellant/ Promoter is entitled to deduct GST charges before refunding the amounts, as the Appellant/ Promoter would not be able to file an application for a refund/ credit note. Further it was also clarified by the second respondent before this Court that the first respondent would be eligible to file an application claiming for refund. He contended that the Appellate Tribunal erred in allowing the first respondent to withdraw the deposit made by the appellant/promoter even after the first respondent having filed the application for refund with the Authorities, during the pendency of the appeal before the Tribunal. Hence, the learned Senior Counsel summarized the facts that the first respondent is only eligible for making an application for refund of GST before the competent Authorities.

3.10. Furthermore, the learned Senior Counsel submitted that the appellant/ Promoter never gave any consent before the Appellate Tribunal to pay the refund amount back to the first respondent nor for the first



respondent to withdraw the pre-deposit amount. He also filed an additional written submission on 16.12.2024 before this Court to substantiate the above said submission and vehemently, argued that the order passed by the Appellate Tribunal was not a consent order. Therefore, the learned Senior Counsel seeks the interference of this Court to the judgment of the Tamil Nadu Real Estate Appellate Tribunal ('Tribunal'), Chennai dated 07.08.2024 passed in Appeal No.18 of 2024, thereby setting aside the same and allow this appeal.

4. Mr.Devaraj, learned counsel appearing for the first respondent made the following submissions:

4.1. The main contentions raised by the learned counsel is that when the Appellant/ Promoter sent an email dated 10.05.2021 requesting the confirmation of cancellation charges and GST Loss, the said GST loss was added for the first time in the email, without assigning any valuable reasons and there was also no clause pertaining to such GST deduction in the unregistered Construction Agreement, which clearly shows the malafide attitude of the Appellant/ Promoter.



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4.2. Even though the 1st respondent had informed his cancellation of flat i.e on 24.11.2020, till 10.05.2021, the appellant/ Promoter had not informed the first respondent about the deduction of GST loss. When the first respondent sought for returning the paid money, the appellant/ Promoter has come up with a statement that they will deduct GST loss charges Rs.11,40,376/- from the total amount paid by the 1st respondent. According to the learned counsel for the first respondent, the appellant/ Promoter had sold the 4 BHK flat to another purchaser and he also paid GST towards the same flat. Till date, the appellant/ Promoter has not produced any proof to substantiate the fact that he has paid two times GST for the very same flat B-102 to the 2nd respondent.

4.3. When Appeal No.18 of 2024 was filed before the Appellate Tribunal by the appellant / Promoter, on the date of 1st hearing i.e. on 12.04.2024, the Appellate Tribunal, after hearing both sides and noticing the order passed in Appeal No.63 of 2023 dated 11.10.2023, which was filed by the first respondent, did not admit the appeal No.18 of 2024 and was likely to



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dismiss the same. At that time, the learned counsel appearing for the appellant represented that as per Section 34 of the Central Goods and Services Tax Act, 2017 and the Circular No.188/20/2022-GST issued by the Government of India, Ministry of Finance dated 27.12.2022, the allottee has to apply for the refund of the GST paid by the Promoter within two years from the date of cancellation and the appellant would execute the Cancellation Deed within a week from that day. Thereafter, when the Appellate Tribunal asked the 1st respondent counsel about the amicable settlement, the learned counsel submitted before the Tribunal that the 1st respondent will apply for refund as per the new Circular issued by the 2nd respondent but the same shall be after the withdrawal of pre deposit made by the appellant/ Promoter before the Tribunal since it is the money of the first respondent lying with the appellant for more than 4 years. Considering the submission made by the learned counsel, the Appellate Tribunal ordered the first respondent to file an undertaking affidavit to that effect.

4.4. Thereafter, on 24.04.2023, the first respondent filed an Affidavit of undertaking dated 20.04.2024 stating that after the withdrawal of pre-



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deposit amount, he will apply for the refund of GST and will refund the said amount immediately to the appellant. By orders dated 12.04.2024 and 24.04.2024, it clearly shows that it was upon the clear consent of the learned counsel for the appellant that he will execute the Cancellation deed afresh for the purpose of applying refund of GST application, since the earlier executed cancellation deed ,dated 19.01.2021 got expired as on 24.04.2024 to apply as for refund of GST. Therefore, for the said purpose, the Appellate Tribunal has directed the appellant to give all relevant documents regarding GST paid by them before the 2nd respondent and at that time, before the Appellate Tribunal, Mr. Vishnu Mohan, learned counsel for the Appellant, undertook to handover all the relevant documents as mentioned in Para 2.1 of the Circular No.188/20/2022-GST dated 27.12.2022. Thereafter only the respondent had applied the refund application through his auditor and submitted the application before the Tribunal on 07.08.2024.

4.5. With regard to the argument of consent given by the Appellant/ promoter before the Appellate Tribunal, the learned counsel for the first respondent submitted that if the appellant has not really given consent on



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12.04.2024 and 24.04.2024 before the Appellate Tribunal, then they should not give a fresh cancellation agreement and all necessary documents as agreed by the appellant / promoter on 24.04.2024. After agreeing the same and after application filed by the 1st respondent before the 2nd respondent as per the Undertaking, now, the learned counsel for the appellant/ Promoter has come up with a new stand that they have not given any consent on the day of hearing before the Appellate Tribunal.

4.6 According to the learned counsel for the first respondent, if the Appellant/ Promoter has not given consent, then, they should have challenged the order dated 12.04.2024 and 24.04.2024 instead challenging impugned dismissal judgment dated 07.08.2024. But the learned counsel for the appellant / Promoter has chosen to remain silent till 07.08.2024 and now has challenged the same that the 1st respondent is not entitled to get the pre-deposit amount once the refund application is pending before the 2nd respondent. Till date, there is no proof to show that the appellant had paid two times GST for the very same flat.

4.7. The main contention of the learned counsel for the first respondent



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is that the above circular is issued on 27.12.2022, when the Claim petition in C.C.P No.233 of 2021 is pending before the TNRERA. Even during the pendency of the claim petition, the appellant never raised that the circular is issued on 27.12.2022 to get refund through allottee and not come for amicable settlement. As per the GST Rules, the appellant/promoter has to get refund amount within 2 years of the execution of cancellation once the construction agreement was canceled. According to the learned counsel for the first respondent, the appellant was squatting over this issue for more than two years from the date of cancellation of agreement i.e on 19.01.2021 which is in the custody of appellant which is admitted by the appellant in the email communication and they have suppressed the real fact and giving false information before this Court to get a favourable order.

4.8. The learned counsel for the first respondent further submitted that as per the unregistered Construction Agreement, the appellant/Promoter is entitled to deduct 10% of total sale consideration, which is already deducted by them. Now the appellant/ Promoter has challenged the GST refund which is unsustainable in law and facts and hence, prayed for dismissing the appeal.



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5. Heard the learned Senior counsel appearing for the appellant/Promoter as well as the learned Counsel appearing for the first respondent and the second respondent and perused the materials placed before this Court.

6. Perusal of records would go to show that the father of the first respondent has initially booked the apartment under the appellant/Promoter's Project. Due to the sudden demise of his father, the first respondent has decided to call off the proposal and also informed the appellant/ promoter, explaining his situation through email. It was the appellant/ Promoter, who has evinced interest in convincing the first respondent by stating that instead of wasting 10% of the sale consideration towards cancellation charges, it would be an apt thought for the first respondent to invest in a smaller apartment that would cost Rs.59,50,821/-. Since the first respondent has already paid Rs.47,08,604/- towards the earlier booked apartment, if he cancels the same, then a cancellation charge of 10% which amounts to Rs.10,37,427/- would be deducted from the total amount paid by the first respondent. Therefore, the appellant/ Promoter has advised the first



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respondent to invest the remaining amount i.e. Rs.12,42,217/- that shall be paid in order to complete the sale consideration of the newly allotted apartment.

7. It is for the appellant / Promoter to set the record straight before the first respondent, when he wanted to convince the first respondent on purchasing of an alternative apartment, with the points regarding cancellation charges as well as deduction of GST Loss. In the present case on hand, the appellant / Promoter has been insisting the first respondent through email regarding the deduction of 10% cancellation charges only and did not spill the beans with regard to deduction of GST loss. It was only when the first respondent refused to purchase any other apartment under the appellant/ promoter's Project, the appellant/ Promoter has revealed about the further deduction of GST Loss which amounts to Rs.11,40,376/-.

8. Moreover, the primary contention raised by the learned Senior Counsel is that the appellant / Promoter is burdened as he is made to remit GST charges twice for the same apartment. But in order to substantiate the above contention, there is no valid proof submitted on the side of the



appellant/ Promoter, where the appellant has paid two times GST before the Competent Authority for the very same apartment. As per the provisions of *Section 104* of the *Bharatiya Sakshya Adhiniyam*, the burden of proof lies on the party who asserts the existence of any fact. This means that if a party claims that a certain fact is true, it is their responsibility to provide evidence supporting that claim. In the present case on hand, it is for the appellant/ Promoter to prove that he has paid GST two times for the same apartment before the competent Authority, which has not been done in the present case.

9. On a perusal of the Sale and Construction Agreements entered into between the appellant/ Promoter and the first respondent, dated 10.02.2020, no where it has been specifically mentioned about the deduction of GST loss, in case of cancellation of purchase made by the first respondent. Furthermore, it is also to be taken into consideration that before the Appellate Court, the first respondent has filed an undertaking stating that on receipt of the GST amount received from the Department for the refund application submitted by him, he would pay the refunded amount to the appellant/ Promoter immediately. The Appellate Court, having been



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convinced by the said undertaking, permitted the first respondent to withdraw the pre-deposit amount of Rs.11,40,376/- deposited by the Appellant / Promoter, together with accrued interest and also directed the first respondent to intimate the progress of the refund application to the appellant/ Promoter once in two weeks.

10. In the considered opinion of this Court, the Appellate Court has rightly dismissed the appeal filed by the appellant/ Promoter, thereby upholding the order passed by the learned member, TN RERA, which this Court finds no infirmity or reasons to interfere with the same. Accordingly, this Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed. Mr.Siddharath Bhandari, learned counsel appearing for the second respondent shall ensure that the application made by the first respondent for the refund of GST amount already paid, shall be processed and disposed of within a period of two months from the date of receipt of a copy of this judgment.



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(J.N.B.J) (R.S.V.J)
24.01.2025



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Internet : Yes/No

Index: Yes/No

Speaking Order: Yes/No

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To:

- 1) The Tamil Nadu Real
Estate Appellate Tribunal,
Chennai.
- 2) The Tamil Nadu Real
Estate Regulatory Authority,
Chennai



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J.NISHA BANU, J.
and

R.SAKTHIVEL, J.

sts

Judgment made in
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Dated:
24.01.2025