BEFORE THE TAMIL NADU REAL ESTATE APPELATE TRIBUNAL (TNREAT)

(Tamil Nadu, Puducherry, Andaman & Nicobar Island)

(Under the Real Estate Regulation and Development Act 2016)

Dated : 15.10.2019

Coram : Mr.Justice B.Rajendran, Chairperson
Mr.N.Balasubramanian, Judicial Member
Ms.Leena Nair, Administrative Member

Appeal No. 5 of 2019

Casa Grande Engineering Pvt.Ltd.
Rep. by its Managing Directors,
Mr.Arjun Mn & Mr.Anirudh Iyer,
NPL Devi, New No.111,
Old No.59 L.B Road,
Thiruvanmiyur, Chennai-600 041 ... Appellant / Respondent

Vs

Mr.K.Ganesan & Mrs.V. Mahalakshmi,
No.16, II Floor, Metro Flats,
Velachery Main Road, Sembakkam,
Chennai - 600 073 ... Respondents/Complainants

The appellant/promoter is the respondent in the complaint preferred by the complainant/allottee before the Adjudicating Officer. The complainant/allottee preferred a complaint and sought for the relief of refund of Rs.64,31,192/- along with 18% interest, compensation of Rs.15,00,000/- After contest, the learned Adjudicating Officer ordered refund of Rs.64,31,192/- along with interest at the rate of 10.70% and awarded compensation at the rate of 9% per annum on the amount of Rs.64,31,192/- along with cost of Rs.25,000/- . Aggrieved upon that, the appellant/promoter preferred this appeal.

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2. This appeal came up for final hearing on 23.9.2019 in the presence of advocates M/s.Ganesh & Ganesh for appellant and M/s.Chennai law Associates, counsel for respondent. On perusal of the arguments of both sides and documents and having stood over for consideration till this date, this Tribunal delivered the following:

ORDER

Facts of the Case in brief:

3. According to the respondent/allottee as per the letter of the appellant/promoter dated 15.4.2017, the appellant has allotted flat No.B-205, in CG Bellissimo at 2nd floor measuring 1635 sq.ft with adequate covered car park along with undivided share of land measuring 797 sq.ft out of the total extent of 2,98,661 sq.ft of land to the respondent/allottee . Along with the letter the respondent/allottee paid a sum of Rs.1,00,000/- on 16.2.2017 and Rs.9,00,000/- on 8.4.2017 in trust and good faith and believing the appellant's words and representations with regard to amenities, facilities and self proclaimed timely completion of the project which the appellant highlighted during the meeting the respondent had with appellant at appellant's office. While collecting the money as advance the appellant assured that the flat will be handed over to the respondent/allottee by December 2018 including the grace period of 3 months on 2.3.2019. The respondent and the appellant entered into two agreements namely Agreement of Sale of undivided share (UDS) of land and Construction Agreement. As per the agreement the respondent/allottee have to pay a sum of Rs.30,88,000/- within a period 50 days there from. The respondent/allottee paid a sum of Rs.54,36,192/- on 30.6.2017 which included the sum of Rs.30,88,000/- . Even after the receipt of the entire sale consideration for the undivided share of land the appellant had not registered the agreed 797 sq.ft of UDS in the immovable property. When the respondent came to know that even the foundation work had not commenced even though the appellant collected Rs.64,31,192/-. In the last week of December 2017 the appellant handed over another construction agreement printed on Rs.20/- stamp paper by affixing appellant's company seal though not signed by the appellant's authorized signatory and wanted the respondent/allottee to sign in all pages bearing the typed word 'allottee'. While going

through the said unsigned documents, the respondent/allotttee noticed that without any reason the appellant extended the date of completion to Nov 2019 in clause 4(a) of the said agreement. Since the respondent/allottee refused to sign the said agreement and insisted upon a letter from the appellant confirming that the appellant will adhere to the time schedule as per two agreements dated 2,6,2017, the appellant issued another payment letter dated 4.1.2018 asking respondent to pay a further sum of Rs.14,48,050/- and giving the due date as 18.1.2018,

4. In view of the above breach of trust and shift of stance by appellant, the respondent/allottee had lost faith in appellant and the respondent/allottee were left with no other option, but, to request for the cancellation of the allotment due to him and also issued letter on 22.2.2018 to that effect and also sought for refund of Rs,64,31,192/- with interest at the rate of 18% per annum from the dates of receipt of part payments received by the appellant from the respondent and also gave no objection to allot the very same flat to another 3rd party of appellant's choice. Again the respondent issued another letter dated 10.3.2018 to comply the above request. On receipt of the said letter the appellant sent e-mail dated 15.3.2018 in which it was stated that the cancellation was under process and refund process might take 60-90 working days. Surprisingly the respondent received a letter from the appellant by denying the averments and gave irrelevant reasons and threatened the respondent/alottee to make remaining payments within 7 days. Aggrieved upon that, the respondent/allottee preferred the complaint before the Adjudicating Officer for refund of money with interest and compensation.

Contention of the appellant side in the appeal:

5. The learned counsel for the appellant would submit that the respondent is not entitled to invoke Sec.18 of the Act unless the promoter fails to complete or is unable to give possession of the apartment in accordance with the terms of the agreement of sale or due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act. But in this case the promoter has not failed to complete the construction of the said apartment within the timeline as prescribed in the agreement of sale dated 2.6.2017. As per the said agreement, including the grace

period the time line to completion the construction of the apartment is March 2019. The promoter is also carrying out the subject development as per the scheduled scheme. But, the respondent has preferred to cancel the agreement of 22.2.2018 which was also conceded by the promoter by e-mail communication dated 15.3.2018, It is a clear case wherein Sec.18 of the Act is wrongly invoked only to harass the promoter and the respondent/allottee is not entitled to claim any interest for the advance paid and compensation relying on Sec.18.

6. As per Clause-9 of the construction agreement dated 2.6.17 it has been agreed that construction of the flat shall be completed within 18 months with a grace period of 3 months provided the respondent make the payment as agreed. The said clause also contains the compensation of Rs.5 per sq.ft, per month, if any delay occurs to the said time stipulation.

7. The respondent/allottee entered into agreement with full knowledge and consent and the respondent has also acted upon the terms of the agreements till they preferred to cancel the same. The agreement dated 2.6.2017 were valid and binding on the parties till the same was cancelled on 22.2.2018 by the respondent/allottee.

8. The payments made by the respondent/allottee stands as an evidence and proof that the respondent/allottee was satisfied with the course and progress of the construction as per the agreed schedule. Factually the case is not that the promoter is not able to complete the subject apartment and give possession to the respondent/allottee as per the terms of the agreement dated 2.6.2017. The complaint has also been preferred without any cause. Hence it is not maintainable.

9. The promoter proposed for revised agreements when RERA Act was introduced, considering the impact of the RERA provisions and the larger magnitudes of the project. However, it is an admitted fact that the said revised agreements were not executed. Therefore the terms and conditions of the agreements dated 2.6.2016 prevailed between the parties. In such a case, the allottee would have an entitlement to claim only if the promoter failed to perform and honour the terms of the said agreement.

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10. There is no failure of performance or non performance to the terms and conditions of the agreements. There is also no cost made out by this case as per Sec.31 of the RERA Act as the promoter has not committed any violation or contravention of the provisions of the Act, of the Rules or Regulations made there under. Further the respondent has not established or pleased on how Sec.31 of the Act shall be applicable to the case on hand. Respodent/allottee have no case to invoke Sec.31 of the Act.

11. There is no dispute that the cancellation was preferred by the respondent/allottee and not by the promoter. The cancellation as preferred is not arising out of any non performance or failure of performance of the promoter. The agreement was subsisting and time to perform the contract as agreed was fully available to the promoter. Under such circumstances, the respondent/allottee preferred the cancellation. Therefore it is crystal clear that the repayment of advance shall be without interest and the respondent/allottee would not be entitled for compensation. The promoter has never committed breach of trust. When the respondent/allottee have withdrawn themselves from the scheme of development by preferring the cancellation of agreement, what entitlement would they have to plead for compensation or interest, when the promoter has not committed breach of trust or failure to perform?

12. Any proposal for revision of contract is not uncommon. More particularly any proposal for revision of contract would not directly conclude that the agreed contracts would end in failure. In such a case the respondent/allottee cannot put a burden of responsibility on the heads of the promoter and further try to penalize the promoter by seeking compensation.

13. The cancellation of the agreement was opted and preferred by the respondent/allottee for reasons best known to them. Certainly there can be tenable factors attributable to the appellant for such preference of cancellation by the respondent/allottee. In this case cancellation was opted by the respondent/allottee for no default or violation committed by the promoter. In such case the promoter is not liable to pay any compensation as per Law as well as on facts.

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14. The promoter never denied repaying the advance to the complainant. All the correspondences say that the promoter agreed to repay as per the terms of the agreement. The respondent/allottee denied and failed to receive the refunds by insisting on interest and compensation which are not applicable as per the terms and conditions as well as in terms of Law. By way of the said letter dated 16.4.2018 the promoter has communicated their willingness to make the repayments within the prescribed time from the date of cancellation of the agreement. The promoter has not violated Secs.12,14,18, 19 and 31 of the RERA Act, Therefore claim of the respondent/allottee has to be dismissed. The promoter has further communicated to the respondent/allottee that for the reasons stated in the reply notice of the promoter, the claim of Rs.79,31,192/- as made by the vide their legal notice is not legally tenable and such claim is unsustainable in terms of facts and law. It was further communicated to the respondent/allottee that without prejudice to all the rights of the promoter agreed to repay a sum of Rs.49,81,642/- by deducting a sum of Rs.14,49,550/- towards 10% cancellation charges and damages. The promoter has also informed the respondent/allottee that upon their consent in writing for the said repayment the promoter shall arrange for the repayment within 30 working days from the date of receipt of the said consent. A cancellation shall have to be signed between the parties when the said repayment is made as said above. The respondent/allottee has hastily approached the RERA tribunal for harassing the promoter to extort monies despite the above said exchange of communications between the parties. Therefore the claims of the respondent/allottee have no merits to be considered and the same are liable to be dismissed.

Contention of the respondent / in the appeal:

15. The learned counsel for the respondent/allottee would submit that on 16.2.2017, the respondent/allottee paid a sum of Rs.1 lakh and on 8.4.2017 the respondent/allottee paid a sum of Rs.9 lakhs and after that on 2.6.2017 the promoter has executed two agreements titled as (1) Agreement of Sale of undivided share of land(UDS) and (2) Construction agreement. As per the agreement of sale of UDS dated 2.6.2017, the respondent/allottee is required to pay Rs.30,88,000/- within a period

of 50 days there from. The respondent/allottee paid a sum of Rs.54,36,192/- on 30.6.2017 which included the said amount of Rs.30,88,000/-. After receipt of the entire sale consideration for the undivided share of land and receiving more than Rs,34/- lakhs towards advance under the Construction Agreement dated 2.6.2017, the promoter has not registered the UDS, when the respondent/allottee enquired at their office in the last week of December 2017 even the foundation work had not commenced even though the promoter has collected Rs.64,31,192/- on 30.6.2017.

16. In the last week of December 2017, the promoter has handed over another construction agreement printed on Rs.20/- stamp paper by affixing promoter's company seal though not signed by authorized signatory and wanted the respondent/allottee to sign in all the pages bearing the typed word 'allottee'. While going through the said unsigned documents the respondent/allottee came to know that without any reason the promoter has extended the date of completion to November 2019. Since the respondent/allottee refused to sign the said agreement and insisted upon a letter from the promoter confirming that they will adhere to the time schedule as per two agreements dated 2.6.2017 and the promoter has issued another demand letter dated 4.1.2018 asking the respondent/allottee to pay a further sum of Rs.14,48,050/- giving the due date as 18.1.2018. Hence the respondent/allottee came to a conclusion that seeking signature from the respondent/allottee in the new agreement by unilaterally extending the time for completion till November 2018, it amounts to breach of trust. Hence the respondent/allottee came to a conclusion that as per the terms of contract and time schedule the promoter is not willing to complete the construction and already received Rs.64,31,192/- without any progress in the construction. Hence the claimant claimed interest for the amount paid by them at the rate of 18% per annum and also seeking for cancellation of the agreement since they lost faith on the promoter. The respondent/allottee has also gave consent magnanimously to the promoter to sell the flat allotted to the respondent/allottee to a 3rd party and expressed their no objection for the same.

17. For the above said letter the promoter sent a e-mail that cancellation is under process on 15.3.2018. After one month on 16.4.2018, the promoter sent another letter by admitting the allegations in para No.1&2 of the letter of the respondent/allottee and in the last paragraph the promoter has said that refund shall be made only after the sale of the subject flat to another prospective purchaser after deducting the necessary charges as per the agreement. Hence the claimants were constrained to issue legal notice by claiming compensation of Rs.15,00,000/- since there is no fault on the part of the claimant in performing their part of contract, for the payment as per the schedule even without showing any progress in construction. Even then the promoter insisted respondent/allottee of making refund of paid amount along with interest claiming deductions of charges extra, the claimant has paid 5 instalments in addition to the advance of Rs.10,00,000/- before the date of agreement, even then the promoter miserably failed to commence the construction. In such a circumstance the attitude of the promoter certainly leads to entitlement of the compensation and the promoter without doing any progress of construction he enriched with the amount paid by the claimant. The claimant is absolutely entitled for interest at the rate of 18% per annum as stated in the agreement itself.

18. Further the learned counsel would submit that without the consent and knowledge of the respondent/allottee the promoter asked the respondent/allottee to sign in a fresh sale agreement and construction agreement which was not agreed upon between the parties. It is the cause of action for the cancellation of agreement by the respondent/allottee. For which the promoter have not replied directly and formally replied with the usual practice in the real estate sector and it is also not uncommon regarding proposal of supplementary agreement. Such an attitude is unknown to law. Hence the learned Adjudicating Officer has correctly come to a conclusion and there is no infirmity in that finding.

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19. Points for consideration:

i) Whether the proposal of supplementary agreement amounts to Breach of Trust?

ii) Whether the appellant's contention that Sec.18 of the RERA Act cannot be invoked by the allottee is tenable?

iii) Whether the contention of the appellant that Sec.31 of the RERA Act is not applicable to the facts of this case since the appellant has not violated in provisions of the RERA is true?

iv) Whether the appeal is deserves to be allowed?

Point i :

20. According to the respondent/allottee up to 30.06.2017 they paid a sum of Rs.64,31,192/- it was also not disputed by the appellant. As per the construction agreement the above said amounts to be paid stage by stage. The respondent/allottee paid so far nearly about 50 % of the total purchase amount to the promoter, but the promoter has not commenced the construction even the foundation. But in the month of December 2017, the appellant/promoter came forward with the supplementary agreement which was marked as Ex.A8 and Ex.A9 before the Adjudicating Officer in the above said construction agreement at page no.5, the payment schedule mentioned in which 50 days from the date of booking the amount mentioned as Rs.30,00,137/- but in original Ex.A7 agreement, payment on 50 days from the date of booking is mentioned as Rs.19,48,097/-, the total amount mentioned in Ex.A8 is Rs.92,95,265/-. In Ex.A7 original construction agreement, the total amount mentioned is Rs.82,43,225/-. In Ex.A8 new construction agreement, at page No.7 the period of completion of handing over of possession of allotment is by November 2019. But in Ex.A7 original agreement, completion is mentioned in page no.4 column No.9 as 'construction of the plot within 8 months with a grace period of 3 months'.

21. The above said new agreement Ex.A8 & Ex.A9 is proposed by the appellant/ promoter and nobody has signed in that agreements. The above said agreements were supplied to the respondent/allottee and asked to sign. Admittedly, before furnishing the supplementary agreement, the appellant/promoter have not consulted the respondent/allottee and have not obtained the consent of the respondent/allottee.

Surprisingly, the appellant/promoter asked the respondent/allottee to put his signature by increasing the sale price to the tune of Rs.10,00,000/- and extended the period of completion for further period of 8 months. It is also without the consent of the respondent/allottee. The respondent also came to the knowledge that at the time of furnishing the supplementary agreement that the foundation of the construction also not yet commenced even after the payment of 50% of the construction cost and even after the period of 6 months from the date of 50% of the cost, the person who paid the amount without any progress of construction furnishing the supplementary agreement unilaterally. At that stage, the respondent/allottee cannot express anything except withdrawal from the contract. The respondent/allottee already framed the cost of construction in their mind and framed the dream of three bedroom house at the affordable cost within their reach. But surprisingly, when the appellant/promoter unilaterally impose cost of construction to the tune of Rs.10,00,000/- and unilaterally extend the handing over of the plot for another 8 months, caused the respondent/allottee disappointment and they without any expression of anger or hatred, they magnanimously sent a letter for the refund of advance amount paid by them and requested the promoter to allot the house to a third party as per the choice of the promoter and requested to cancel the agreement. The sudden rising of cost of construction and period of handing over constrained the respondent/allottee to take a decision of cancellation of agreement because, the claim of the appellant/promoter exceeded the estimate and budget of the respondent/allottee. Hence he has voluntarily withdrawn. Why he withdrew? The attitude and arbitrariness of the appellant / promoter and his high handedness and the inability of the respondent/allottee made him to take such a decision. The respondent/allottee trusted the appellant/promoter that he is going to purchase a dream home from the reputed promoter with his huge hard earned money but all the dreams of the respondent/allottee smashed and destroyed by the promoter by furnishing Ex.A8 and Ex.A9 is the supplementary agreement and insisted him to pay the extra cost and extra duration. The entire unilateral episode narrated by the appellant /promoter leads to breach of trust upon the promoter. The root cause for the request for cancellation of Ex.A8 and Ex.A9, supplementary agreements. If supplementary agreements are not furnished as planned by the respondent/promoter

they will pay the balance. Because even without any construction for foundation the allottee has paid to the tune of 50% of the construction cost. In the 1st letter of the allottee he has simply requested the appellant/promoter only for simple interest only. Only after the claim of the appellant for cancellation, the claim of penal cost instigated the respondent/allottee to claim compensation. On the side of the appellant it was stated that cost of construction is no way affected and the time for completion increase due to the implementation of the RERA Act. The reason adduced by the promoter for the revised agreement is that when RERA Act was introduced considering the impact of the RERA provisions and the larger magnitudes of the project. The RERA provisions have not directed the promoter to increase the duration of the handing over of the flats. The purpose of the RERA provisions is to regularize real estate sector and to ensure sale of plot, apartment or building or sale of real estate project in an efficient and transparent manner and to protect the interest of the consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal. These are the objects and reasons behind the enactment of RERA Act. In the above said reasons and objects there is no ways and means for the supplementary agreement or increasing of cost or increasing the period of handing over.

22. The Learned counsel for the appellant also would submit that the cancellation is not arising out of any non performance or failure on the part of the promoter the agreement was subsisting and time to perform the contract as agreed was fully available to the promoter. The previous agreement dated 02.06.2017 is in existence, hence the promoter has never committed breach of trust.

23. The respondent /allottee as per the construction agreement he performed his part of contract more than 50% but on the side of the appellant/promoter has not performed even one percent on their part. At this juncture the appellant/promoter insisted the respondent/allottee to sign in a supplementary agreement in such a situation how the respondent/allottee can believe the promoter furthermore. The respondent/allottee lost his confidence on the attitude of standardization of the promoter and he is not able to fight with the promoter equally. He silently withdrew from the contract. In such as situation he cannot be termed as cancellation of the agreement was

opted and preferred by the respondent /allottee for his own reason, is not acceptable. At this juncture, it is relevant to quote the passage regarding renunciation.

Pollock and Mulla.

The Indian Contract and Specific Relief Acts

14th Edition 2012

Volume 1 at page 787 and 788 with regard to Section 39 of the Indian Contract Act.

24. "In Hochster V. De la Tour[1] the defendant engaged the plaintiff as his courier on a continental tour from June 1 for three months at GBP 10 a month. Before the scheduled day, the defendant changed his mind and wrote to the plaintiff that the services were not wanted. The plaintiff immediately, before June 1, sued the defendant for breach of contract. The defendant contended that the plaintiff should have waited till June 1 before bringing his action, as the contract could not be considered as broken till then. It was held, that the contract had been broken by express renunciation, and the plaintiff was not bound to wait until the day of performance."

25. As per the above passage, the appellant/promoter need not wait as per original agreement till March 2019. Since the contract been broken by express renunciation by supplying the new agreement. The above said case is very opt for this case in hand. So the attitude of the appellant/promoter pave way for the cancellation of the agreement by the respondent/allottee due to breach of trust. Furthermore the appellant himself has admitted that they have sold the flat, allotted to the allottee, to a 3rd party during the pendency of this dispute before the Adjudicating Officer, without paying or depositing the amount said by the respondent/allottee. It also leads to breach of trust. The above point is answered accordingly.

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1 95 RR 747.

Point No.i i :

26. According to the appellant/Promoter on 02.06.2017, they have entered into a sale agreement and as well as construction agreement with the respondent/allottee. As per the time schedule of the agreement the allottee then have to pay Rs.19,48,097/-, fifty days from the date of booking, at the foundation stage Rs.12,59,025 to be paid by the allottee, at the stage of 1st floor slab Rs.6,29,513/- has to be paid by the allottee, 2nd floor, 3rd floor and 4th floor slab the allottee has to be paid Rs.6,29,513/- each, at the time of brick work and plastering a sum of Rs. 18,88,538/- to be paid by the allottee. After the registration of sale deed and at the time of handing over a sum of Rs.6,29,513/- has to be paid by the allottee, totally the allottee has to pay Rs.82,43,225/-. Further a sum of Rs.5,64,135/- is agreed to be paid by the allottee towards service tax and Rs.50,000/- is agreed to be paid by the allottee as corpus fund. These are the time schedule for the payment of amount by the allottee to the promoter. In addition to that at the time of booking the allottee has paid Rs.10,00,000/-. The promoter agreed to hand over the constructed flat within 18 months from the date of agreement with grace period of 3 months. These are the important ingredients for the agreement dated 16.02.2017.

27. According to the allottee on 16.02.2017 they paid a sum of Rs.1,00,000/- and on 08.04.2017 they paid Rs.9,00,000/- After that only on 15.04.2017 allotment letter was issued by the promoter. Then on 02.06.2017 both agreements were executed by both the parties within 50 days of the booking of sum of Rs.30,88,000/- has to be paid. On 30.06.2017, the allottee paid a sum of Rs.54,31,192/-. These payments were admitted by the promoter and there is no dispute in it. As per the agreements Ex.A7 construction agreement the allottee has to pay to the promoter stage by stage. Before entering into Ex.A6 and Ex.A7 agreements, through Ex.A2 and Ex.A3 a sum of Rs.10,00,000/- was paid on 15.04.2017. Ex.A1 allotment letter was issued by the promoter. On 30.06.2017 as per Ex.A4 and Ex.A5 the allottee has paid Rs.4,31,192/- and Rs.50,00,000/- respectively and totally Rs.54,31,192/-. On 30.06.2017 total amount paid by the allottee to the promoter was a sum of Rs.64,31,192/-. As per the payment schedule, the 50th day from the date of booking ended on 12.04.2017. On that day so

far the allottee paid Rs.10,00,000/- after entering into sale as well as construction agreement on 02.06.2017, the allottee paid Rs.54,31,192/- i.e at the stage of 3rd floor slab. According to the allottee as per Ex.A10 at page 2 in para no.2

> ***"when we enquired at your office in the last week of December 2017 even the foundation work had not commenced even though you have collected Rs.64,31,192/- as early as 30.06.2017 itself".***

28. The promoter has categorically admitted that the above said facts about the non commencement of the foundation work in 16.04.2018 letter addressed to the allottees which was marked as Ex.B8 in which it has been stated as follows:

> ***"(2) we admit averments and allegations made in paragraph 1 & 2 of your letter and states that it is a fact that in usual manner when we starts any project used to advertise in all the medium which are available at that point of time in order to make public aware of our project and to draw their attention towards of our project and like this, we start residential project in the name of CG-BELLISSIMO advertise about the project in various mediums and it is also the fact you has evinced interest in purchase of flat in our prestigious project and booked Flat No.B 205, 2nd floor, and as a matter of fact you has completely and thoroughly verified about our credibility in the Real Estate industry and book the flat as stated above."***

29. The developer has not denied the allegations of non commencement of the construction even the foundation.

The allottee further stated in para No.2 of Ex.A10 that :

> **"In the last week of December 2017 you have handed over another construction agreement printed on Rs.20/- stamp paper by affixing by your company's seal though not signed by your authorized signatory and wanted us to sign in all pages bearing the typed word "Allottee". While going through the said unsigned document we noticed that without any reason you have extended the date of completion to November 2019 in clause 4(a) of the said agreement since we refused to sign the said agreement and insisted upon a letter from you confirming that you will adhere to the time schedule as per the two agreements dated 02.06.2017 you have issued another letter dated 04.01.2018 asking us to pay a further sum of Rs.14,48,050/- and giving the due date as 18.01.2018".**

30. This allegation of the allottee was also categorically admitted by the promoter in Ex.B8. For the above said allegations through Ex.B8 the promoter simply stated that

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it is usual manner to give such advertisements to invoke and attract customers and to create awareness of the project. But the promoter cleverly avoided to answer for the allegations regarding attempt to get the signature in the subsequent agreement by extending the time for another six months in Ex.B8. With regard to the allegations about subsequent agreement in Ex.B10 reply notice also, the promoter has not whispered anything about the supplementary agreement. But during the course of argument the Learned counsel would submit that any proposal for revision of contract is not uncommon. More particularly any proposal for revision of contract would not directly conclude that the agreed contracts would end in failure. In such a case the allottee cannot put a burden on the heads of promoter and further try to penalize the respondent by seeking compensation. From the submission made by the appellant's counsel, it can be easily inferred that the proposal of subsequent agreement or revised contract are all not uncommon. According to them it is quite natural. Now the appellant have answered in the grounds of appeal in page no.3 with regard to subsequent agreement as " the appellant proposed for revised agreement when RERA Act was introduced considering the impact of the RERA provisions and larger magnitudes of the project. However it is an admitted fact that the said revised agreements were not executed. Therefore the terms and conditions of the agreement dated 02.06.2017 prevailed between the parties. The new clause intended by the appellant has impact of RERA provisions are the root cause for the seeking of subsequent agreement. This fact was not stated earlier during the time of Ex.B8 and Ex.B10.

31. According to the allottee the attempt made by the promoter for supplementary agreement was termed by the allotte as breach of trust. But the appellant termed as it is not uncommon. The allottee expressed his displeasure with regard to the attitude of the promoter and promoter went to the extent of inducting new supplementary agreement unilaterally and without consent of the allottee. Further more, the allottee paid towards the agreement at the stage of completion of 3rd Floor slab. But the promoter has not taken any steps even for the commencement of the foundation. At this juncture, the allottee lost confidence on the promoter. The allottee has performed their part of contract by paying the time schedule amount due upto the 3rd floor slab.

Even though the foundation has not yet commenced by the promoter and also demanded further sum of Rs. 14,48,050/- within a period of 14 days. In such circumstances the allottees left with no other option but for request for cancellation of allotment. These are the reasons adduced by the allottee for request for cancellation of the allotment.

32. The appellant completely shifted the burden as if the allottee voluntarily requested for cancellation and put forth the contention that Section 18 of the Act cannot be invoked. The learned counsel for the appellant has also interpreted how the section 18 of the RERA which is section 18 (1) (a) is applicable to this case and the appellant has not refused to complete the project during March 2019. They are having chance to complete the project after 2018 March only Section 18 can be invoked. Section 18 is as follows:

> ***Section 18(1) "Return of amount and compensation:- clearly states as if the promoter fails to complete or is unable to give possession of an apartment, plot or building;***
>
> ***(a) In accordance with the terms of the agreement for sale or as the case may be duly completed by the date specified therein he shall be liable on demand to the allottees in case the allottee wishes to withdraw from the project without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.***

33. According to the allottee as per the agreement Ex.A6, Ex.A7 they have paid as per the time schedule during the 3rd floor slab. At that time i.e. on 30.06.2017 the promoter has not at all even commenced the foundation. Instead of completing up to 3rd floor slab the promoter even failed to commence the foundation. As per the agreement ExA.7 he ought to have been completed 3rd floor slab but he failed to complete the construction till 30.06.2017. Hence the allottee wishes to withdraw from the project. So, the promoter shall be liable to the allottee for the return of the amount received by him with interest as per Section 18 (1) (a).

34. The allottee sent a demand through Ex.A10 letter and expressed his willingness, it is specific, it is violation against the promoter and also stated the reason for withdrawal. For which the promoter send a Email Ex.A12 (B7) in which he has stated "please to inform that we have received your cancellation letter. We have forwarded to the concerned department. Your cancellation is under process the revised process will take 60 to 90 days. The concerned person from the concerned department will call you shortly". After Ex.A12 through Ex.A13 on 16.04.218 the promoter sends a letter in which also the promoter has not expressed any convincing words by stating that the supplementary agreement itself a usual course, and the original agreement dated 02.06.2017 is in existence and they will complete the project as agreed. Instead of that the promoter went to the extent of saying that they have not promised anything or any claim and after verification the allottee booked with them and also threatened and demanded the allottee to pay the balance amount within 7 days as per the agreement, failing which they shall be forced to cancel the allotment and if done so and the refund shall be made only after the sale of the subject flat to another prospective purchaser after deducting the necessary charges as per the agreement.

35. The allottee elaborately adduced reason for the withdrawal from the project for which the promoter has failed to realize the failure of his part of the performance of contract. In such circumstances, invoking of section 18 of RERA by the allottee is tenable and defence put forth by the appellant is not tenable. The point is answered accordingly.

Point No.iii :

36. According to the appellant, the appellant has not contravened any of the provisions of the RERA's rules and regulations. Hence section 31 of the RERA cannot be invoked by the allottee. In point No.1 it is already decided that the promoter has acted in a contravention of the Section 18 (1) (a). As per section 31 of RERA any aggrieved person may file a complaint with the Authority or the Adjudicating Officer, as the case may be, for any violation or contravention of the provisions of the act or the rules and regulations. In this case, the promoter has violated and contravened the

section 18 (1) (a) and due to the violation the allottees were aggrieved and made a complaint before the Adjudicating Officer by invoking section 31. The allottee has rightly invoked the Section 31 of the RERA Act. Therefore the contention of the appellant is not sustainable. The point is answered accordingly.

Point No.iv :

37. The allottee by invoking Section 31 of the RERA made a complaint in form 'M' before the Adjudicating Officer after contest and after elaborate discussion of both side documents. The Learned Adjudicating Officer allowed the complaint and by fixing interest at the rate of 10.70% and compensation at the rate of 9% and cost of Rs.25,000/- totally by way of interest and compensation fixed 19.70% per annum. It comes to Rs.12,39,291.86 in addition to the refund amount of Rs.64,31,192/-. Regarding interest is concerned the Tamil Nadu Real Estate (Regulation and Development) Rules 2017, Rule 18 prescribed the rate of interest. So as per the said provision the rate of interest was fixed by the adjudicating officer. Regarding compensation is concerned Learned adjudicating officer fixed the compensation at the rate of 9%. The learned adjudicating officer while fixing the compensation for the sale price of the subject flat to the 3rd party, the promoter was silent regarding the price for which subject flat was sold to 3rd party. Hence considering the same fixed the rate of compensation as 9% per annum. Certainly it is without any basis. Moreover, the sought for 18% interest only along with compensation of Rs.15,00,000/-. The fixation of compensation on the basis of subsequent sale price is not fair. It is usual and normal practice that the subsequent price fixation normally occurred on the basis of prevailing market rate at the time of sale. The entered into sale agreement in the year 2017 subsequent sale made in the year 2019. So normally there is a chance for increase of sale price. So it cannot be taken into account for fixing compensation. For the money withheld by the appellant he was penalized by payment of 12.70% interest. Regarding compensation, nearly the same amount by imposing by way of compensation is also not fair. Due to disappointment, mental agony the respondent/allottee cancelled the allotment of flat. The above said disappointment and mental agony cannot be measured in terms of money. To heal the same awarding just compensation will fulfill

the ends of justice. What is just compensation is defined by the Apex Court in the following verdict: (AIR 2003 SC 4172).

> **In Divisional Controller, KSRTC vs Mahadeva Shetty the Supreme Court held that the expression "just" denotes equitability, fairness and reasonableness. The Supreme court held as under:-**
>
> ***"It has to be borne in mind that the compensation is not expected to be a wind fall for the victim. Statutory provisions clearly indicate the compensation must bye "just" and it cannot be a bonanza, not a source of profit, but the same should not be a pittance. The Courts and Tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measures of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just" a side discretion is vested on the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness and non-arbitrary. If it is not so it cannot be Just".***

38. On the basis of the above principle laid down by the Apex Court the just compensation has to be fixed. This tribunal fixed the just compensation as a lumpsum of Rs.1,00,000/- as compensation. Therefore this Tribunal comes to a conclusion that this appeal is partly allowed with modification of compensation amount to the tune of Rs.1,00,000/- regarding other aspects the findings of the Learned adjudicating officer is confirmed.

Verified by PSCRTC

39. In the result this appeal is partly allowed by modifying the fixation of just compensation as Rs.1,00,000/- instead of 9% p.a. Regarding other aspects, the appeal is dismissed namely refund of sale price paid by the allottee along with interest and cost, and the order of the Learned adjudicating officer in CCP No.54 / 2018 dated 08.01.2019 is confirmed. No costs in the appeal. The original principal amount of Rs.64,31,192/- is already deposited in Court which the respondent is entitled to withdraw

This order was dictated to the Stenographer, transcribed and computer typed by the Stenographer and corrected and pronounced by us in the open court on15.10.2019

Sd/- XXXXX
CHAIRPERSON

Sd/- XXXXX
ADMINISTRATIVE MEMBER

Sd/- XXXXX
JUDICIAL MEMBER

Since the documents which were marked before the Adjudicating Officer omitted to be mentioned in the judgment of the Adjudicating Officer, it is annexed with this appeal judgment.

List of documents filed by the Respondent / Allottee

Ex.A1	15.04.2017	Allotment letter
Ex.A2	21.02.2017	Booking acknowledgment letter issued by respondent and also acknowledged the receipt of Rs.1,00,000/-
Ex.A3	08.04.2017	Receipt issued by respondent towards the payment of Rs.9,00,000/- paid by complainants
Ex.A4	30.06.2017	Receipt issued by respondent towards the payment of Rs.4,31,192/- paid by the complainants
Ex.A5	30.06.2017	Receipt issued by respondent towards the payment of Rs.50,00,000/- paid by the complainants
Ex.A6	02.06.2017	Agreement of sale of undivided share of land
Ex.A7	02.06.2017	Construction agreement

Ex.A8	27.12.2017	Construction agreement
Ex.A9	27.12.2017	Agreement of sale
Ex.A10	22.02.2018	Letter issued by Appellants with acknowledgement card
Ex.A11	10.03.2018	Letter sent by appellants with acknowledgement card
Ex.A12	15.03.2018	Email issued by respondent
Ex.A13	16.04.2018	Reply letter by respondent in response to letter dated 22.02.2018 issued by complainants
Ex.A14	21.04.2018	Legal notice with acknowledgment cards
Ex.A15	17.05.2018	Form M
Ex.A16	16.06.2018	Reply by respondent's counsel in response to notice dated 21.04.2018
Ex.A17	04.06.2018	Notice No.TNRERA/1362/2018 issued by the Principle Secretary to Government Housing and Urban Department and Chairperson to Respondents
Ex.A18	03.07.2018	Rejoinder notice issued by the appellants
Ex.A19	16.07.2018	Letter No.TNRERA/1362/2018 issued by the Principle Secretary to Govt Housing and Urban Department and Chairperson to Appellants
Ex.A20	16.07.2018	Letter No.TNRERA/1362/2018 issued by the Principle Secretary to Government Housing and Urban Department and Chairperson to Appellants
Ex.A21		Interest calculations
Ex.A22		Address Proof of appellants

List of documents filed by the appellant / Promoter

Ex.B1	04.04.2018	Copy of Board Resolution
Ex.B2	08.04.2017	Copy of Booking Form
Ex.B3	15.04.2017	Allotment Letter
Ex.B4	02.06.2017	Agreement of sale
Ex.B5	02.06.2017	Construction Agreement
Ex.B6	22.02.2018	Letter for cancel the allotment by applicant
Ex.B7	15.03.2018	Email communication
Ex.B8	16.04.2018	Reply letter by respondent
Ex.B9	21.04.2018	Legal notice sent by applicant
Ex.B10	16.06.2018	Reply notice sent by respondent

Sd/- XXXXX
CHAIRPERSON

Sd/- XXXXX
ADMINISTRATIVE MEMBER

Sd/- XXXXX
JUDICIAL MEMBER