



*C.M.S.A.Nos.48, 52, 53, 54,55,57,58,
59, 60, 61, 63 and 65 of 2022*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **06.06.2024**

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

**Civil Miscellaneous Second Appeal Nos.48, 52, 53, 54, 55, 57, 58,
59, 60, 61, 63 and 65 of 2022
and Connected Miscellaneous Petitions**

State Bank of India Officers Association
Chennai Circle (SBIOACC)
Rep. by its General Secretary Shri R.Balaji
No.84, Rajaji Salai, Parrys Corner, Chennai.

...Appellant
in CMSA No.48 of 2022

Vs

1. Padma Srinivasan

.... 1st Respondent
in CMSA No.48 of 2022

2. M.Mohan,
Ex.Chairman SBIOACC
Q-156, SBIOA Unity Enclave,
Mambakkam-Medavakkam Road,
Mambakkam, Chengalpattu District.
Pincode 600 127.

... 2nd Respondent
in CMSA No.48 of 2022



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These Civil Miscellaneous Second Appeals are filed under Section 100 of the Code of Civil Procedure read with Section 58 of TNRERA Act, 2017, to set aside the the common order dated 05.01.2022 in Appeal Nos.22 of 2021 on the file of Appellate Tribunal.

For Appellants : Mr.S.Mukunth, Senior Counsel
for M/s.Sarvabhauman Associates
(in all the petitions)

For 1st Respondent : Mr.A.Sittrarasu, for R1
in CMSA Nos.48, 53, 54, 55, 58,
59, 60, 61, 63 and 65 of 2022

Mrs.Vasudha Thiagarajan, for R1
in CMSA Nos.52 and 57 of 2022

Mr.N.Bhuvaneswaran,
for R2 in all the petitions

COMMON JUDGMENT

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

Challenge in these Appeals is to the order of the Appellate Authority constituted under the Real Estate (Regulation and Development) Act, 2016, hereinafter referred to as “the Act”),



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2. The short background facts that are necessary for the disposal of the Appeals are as follows:

The appellant which is the Chennai Circle to the State Bank of India Officers Association had with an object of benefitting the employees of State Bank of India and their kith and kin promoted a Housing Project. It had purchased vast extent of land by collecting money from its members in its name and has entered into construction agreements with its members and others, who are allowed to purchase flats in the project. Problems arose during the implementation of the construction project and several of the allottees chose to move the Tamil Nadu Real Estate Regulatory Authority complaining that the project has not been completed and there are several lapses on the part of the promoter viz. the appellant in completion of the project.

3. The complaints were resisted by the appellant mainly contending that it cannot be termed as a promoter within the meaning of Section 2(zk) of the Act, since its role is only to facilitate construction on behalf of the members and whatever was done by the Association was only



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on behalf of the members with the approval of the members. Therefore, it cannot be termed as a promoter strictly within the meaning of the term promoter defined under Section 2(zk) of the Act.

4. The Regulatory Authority rejected the contention and concluded that in view of the wide language in which the definition is couched, the appellant would answer the description as a promoter and therefore, it would be liable to perform the obligations that are statutorily imposed upon a promoter under Section 11 of the Act. Upon such finding, the Authority issued a slew of directions aimed at implementation of the project as envisaged in the agreements. Aggrieved by the directions, the Appeals were preferred by the appellant before the Appellate Authority viz. the Tamil Nadu Real Estate Appellate Tribunal (TNREAT). The Tribunal after examining the rival contentions rejected the claim of the appellant and dismissed the Appeals, hence these Civil Miscellaneous Second Appeals.

5. While admitting the Appeals, the following questions of law were framed.

1. Whether the Appellate Tribunal is correct in



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*directing the Appellant without impleading the 3rd party
contractors who are the actual builders/ promoters as
they are proper and necessary parties;*

*2.Whether Appellate Tribunal is correct in
terming the Appellant as a promoter under Section 2 of
the TNRERA Act when the Appellant did not perform in
a commercial nature as a promoter.*

6. We have heard Mr.S.Mukunth, learned Senior Counsel appearing for M/s. Sarvabhauman Associates, for the appellant in all the Appeals, Mrs. Vasudha Thiagarajan, learned counsel appearing for the first respondent in CMSA Nos.52 and 57 of 2022, Mr.A.Sittrarasu, learned counsel appearing for the first respondent in all the other Appeals and Mr.P.N.Bhuvaneswaran, learned counsel appearing for the second respondent in all the Appeals.

7. There are two Civil Miscellaneous Petitions in CMP Nos.11214 and 11217 of 2024 for impleading. While CMP No. 11214 of 2024 is by the SBIOA Unity Enclave Owners Welfare Association and CMP No.11217 of



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2024 is by an individual owner. The sum and substance of the Appeals lies in very short campus. In view of the limited scope of the questions of law that have been framed in these Appeals, we do not think the proposed parties are either necessary or proper parties to these Appeals. They being third parties to the proceedings before the Tribunal and the Regulatory Authority cannot canvas the correctness of the orders in these Appeals filed by the appellant. Hence these Petitions for impleading are dismissed.

8. The questions of law read as follows:

Whether the Appellate Tribunal is correct in directing the Appellant without impleading the 3rd party contractors who are the actual builders/promoters as they are proper and necessary parties;

Whether Appellate Tribunal is correct in terming the Appellant as a promoter under Section 2 of the TNRERA Act when the Appellant did not perform in a commercial nature as a promoter.

Since both are interconnected and answer to the first question will be dependent on the answer to the second question both are taken up together.

9. The only contention of the learned Senior Counsel for the



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appellant is that it cannot be termed as a promoter as it has acted for on behalf of its members. The term promoter is defined under Section 2(zk) of the Act, which reads as follows:

2 (zk) “**promoter**” means,—

(i) *a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or*

(ii) *a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or*

(iii) *any development authority or any other public body in respect of allottees of—*

(a) *buildings or apartments, as the case may be, constructed by such authority or body on lands owned*



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by them or placed at their disposal by the Government;

or

(b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or

(iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or

(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or

(vi) such other person who constructs any building or apartment for sale to the general public.

Explanation.—*For the purposes of this clause, where*



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the person who constructs or converts a building into apartments or develops a plot for sale and the person who sells apartments or plots are different person, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder;

The definition is so widely worded that it would take in any person who carries out developmental activities in any land either with or without construction for the purposes of sale to others would become a promoter, whether it is done for on behalf of the members of an association which takes up those activities or not is not really material. The profit motive is also not relevant. If it is shown that a person as defined under Section 2(zg) of the Act takes up any development work in respect of any land with an object of developing it and selling it to others then it would automatically become a promoter under Section 2(zk) of the Act.

10. The definition of a person in Section 2 (zg) is an inclusive one



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and Clause (vi) of the said Sub Section includes an Association of persons or a body of individuals whether incorporated or not. It is therefore, crystal clear that an Association of persons which takes up a development work on behalf of its members will also become a promoter. It is seen from the facts that were placed before the Original Authority as well as the Appellate Tribunal that the appellant Association has purchased vast extent of land in its name and had entered into construction agreements with its members as well as others, who are allottees of the flats in the project and has agreed to sell a particular undivided share to each of the allottees. This activity is squarely covered under Sub Clause 1 of Section 2(zk). Therefore, the inescapable conclusion is that the appellant is a promoter within the meaning of Section 2(zk) and it is obliged to perform its duties as enumerated under Section 11 of the Act.

11. Once the second question is answered against the appellant, it automatically follows that the contractors, who are engaged by the appellant, are not promoters they only remain as contractors and they cannot be termed as promoters within the meaning of Section 2(zk) of the Act. If they are not promoters within the meaning of Section 2(zk) of the Act, they are wholly



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unnecessary parties to the proceedings before the Tribunal. It is for the appellant Association to comply with the directions issued by the Regulatory Authority as confirmed by the Appellate Tribunal either through the same contractors or through others.

12. In view of the above, we see no merit in the Appeals, the Appeals are accordingly **dismissed**. Since it is stated that some progress is made towards compliance with the directions of the Original Authority as confirmed by the Tribunal, we desist from imposing costs on the appellant.

(R.SUBRAMANIAN, J.) (R.SAKTHIVEL, J.)
06.06.2024

Index: No
Internet: Yes
Speaking order
Neutral Citation: No
jv



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To

1. The Tamil Nadu Real Estate
Appellate Tribunal (TNREAT)
Chennai.
2. The Tamil Nadu Real Estate
Regulatory Authority (TNRERA)
(Tamil Nadu, Andaman & Nicobar Islands)
Egmore, Chennai 600 008.
3. The Section Officer,
V.R.Section,
Madras High Court.



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R.SUBRAMANIAN, J.

and

R.SAKTHIVEL, J.

(jv)

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