

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.12.2020

Coram

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE Mrs. JUSTICE V.BHAVANI SUBBAROYAN

C.M.S.A.No.32 of 2020 and
C.M.P.No.13123 of 2020

1. Sylvanus Builders and Developers
Limited,
Rep. by its Director,
Sanjil Ramesh Chandhani
 2. Pacifica (Chennai Project) Infrastructure
Co., Pvt., Ltd.,
rep. by its Director, Rocky Israni
Nr, SRR Engineering College,
Rajiv Gandhi Salai (OMR), Padur,
Chennai - 600 103
- .. Appellants

Vs.

K.Srikar Reddy ..Respondent

Prayer: Civil Miscellaneous Second Appeal filed under Section 100 of C.P.C. read with Section 58 of the Real Estate (Regulation and Development) Act 2016 is directed against the Order dated 16.03.2020 in Appeal No.33 of 2020 on the file of Real Estate Regulatory Appellate Tribunal pursuant to the order passed in CCP No.125 of 2019 dated 12.11.2019 on the file of the Real Estate Regulatory Authority.

For Appellants : Mr.S.Mukunth for
M/s Sarvabhauman Associates

J U D G M E N T

[Judgment of the Court was delivered by T.S.SIVAGNANAM, J.]

We have heard Mr.S.Mukunth, learned counsel appearing for M/s Sarvabhauman Associates, counsel for the appellant.

2.This Civil Miscellaneous Second Appeal has been filed under Section 100 of Civil Procedure Code read with Section 58 of the Real Estate (Regulation and Development) Act 2016 [the 'Act' for brevity] challenging the order passed by the Tamil Nadu Real Estate Appellate Tribunal ('Tribunal' for brevity) in

Appeal No.33 of 2020 confirming the order passed in C.C.P. No.125 of 2019 dated 12.11.2019 by the Tamil Nadu Real Estate Regulatory Authority ('Authority' for brevity). The authority by the said order directed mandatory pre-deposit of 40% of the amount due. The appellants sought for extension of time, which was granted, however, they did not deposit the amount and they filed an appeal before the Tribunal. The Tribunal after noting the entire facts found that the conduct of the appellants to be not appreciable that they did not deposit the amount even though extension of time was granted. Subsequently, they have not even filed a further application for extension and therefore, was of the view that the appellants have not complied with the provisions of Section 43(5) of the Act and accordingly, the appeal was rejected.

3. It is the submission of Mr.S.Mukunth, learned counsel appearing for the appellants that in terms of the Act, the appellants are required to deposit 30% and on account of financial hardship, the appellants could not comply with the conditional order.

4. On a reading of the statutory provision, it is clear that there is a discretion vested with the Authority to direct the party to deposit more than 30%, therefore, the authority has jurisdiction to pass an order to impose condition of 40%. This exercise of discretion has not been found to be erroneous or unsustainable. The conduct of the appellants was tested by the Tribunal and the appeal was rejected.

5. We find absolutely no grounds to interfere with the order passed by the Tribunal, however, with a view to give one more opportunity to the appellants, we direct the appellants to deposit 40% mandatory pre-deposit, as ordered by the Authority, on or before 28.12.2020. If they fail to do so, the appeal would stand automatically dismissed and the order passed by the Tribunal shall stand confirmed.

With the above observation, the Civil Miscellaneous Second Appeal stands disposed of. Consequently, connected miscellaneous petition is closed. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Tamil Nadu Real Estate Regulatory Authority,
Chennai.
 2. The Tamilnadu Real Estate Regulatory Appellate Tribunal
Chennai
- +1 CC to M/s. Sarvabhauman Associates sr 38924.

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NRJK (CO)
SP (10/12/2020)



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