

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2021

CORAM :

The Honourable Mr.Justice T.S.SIVAGNANAM  
and  
The Honourable Ms.Justice R.N.MANJULA

C.M.S.A.No.33 of 2021  
and  
C.M.P.No.3459 of 2021

M/s.Medhika Infrastructures,  
Represented by its Sole Proprietor  
Mrs.S.Tamilselvi ...Appellant

Vs

1. Mrs.Santhakumari
2. Crescentz Homes and  
Infrastructures Private Limited,  
Represented by its Director  
Mr.Zubair Ahmed Thajudeen
3. Altimiz Infrastructures Limited,  
Represented by its Director  
Mr.Zubair Ahmed Thajudeen
4. M/s.Crescentz Square,  
Represented by its Partner  
Mr.Jalal Ahmed ...Respondents

Appeal filed under Section 100 of Civil Procedure Code read with Section 58 of the Real Estate (Regulation and Development) Act, 2016 to set aside the order in Appeal No.51 of 2020 dated 17.12.2020 on the file of Hon'ble Tamil Nadu Real Estate Appellate Tribunal (TNRERAT), confirming the order in I.A.No.105 of 2019 in C.C.P.No.261 of 2019 dated 20.03.2020 on the file of the Adjudication Officer, TNRERA, Chennai.

For Appellant: Mr.K.M.Vijayan, Sr. Counsel  
for M/s.K.M.Vijayan Associates

JUDGMENT  
(Delivered by T.S.Sivagnanam,J)

This appeal has been filed challenging the order dated 17.12.2020 passed in Appeal No.51 of 2020 by the Tamil Nadu Real Estate Appellate Tribunal confirming the order dated 20.03.2020 passed in I.A.No.105 of 2019 in C.C.P.No.261 of 2019 on the file of the Tamil Nadu Real Estate Regulatory Authority, Chennai ('RERA' for brevity).

2. We have elaborately heard Mr.K.M.Vijayan, learned Senior Counsel appearing for the appellant.

3. In the array of parties before the RERA in C.C.P.No.261 of 2019, initially there were two respondents, namely Crescentz Homes and Infrastructure Private Limited and Altimiz Infrastructure Limited. Subsequently, on account of the order passed by the RERA, the complaint was not pressed against the aforementioned two parties and M/s.Crescentz Square was impleaded as a respondent. The first respondent before us, namely Mrs.Santhakumari, had filed I.A.No.105 of 2019 in C.C.P.No.261 of 2019 seeking to implead the appellant herein as well as M/s.Crescentz Square as respondents 3 and 4.

4. This interlocutory application was resisted by the appellant herein by filing a counter affidavit stating as to how there is no privity between the appellant and the first respondent herein and there was an earlier memorandum of understanding between the three parties, to which the first respondent was not a signatory and several other matters touching upon the factual issue.

5. In sum and substance, the appellant before us vehemently objected the impleaded and sought for dismissal.

6. The RERA, by order dated 20.03.2020, after considering the facts, allowed the application, wherein it has observed as to whether the appellant before us along with the other respondents are liable for the reliefs claimed by the first respondent/petitioner in the complaint, will have to be decided after giving an opportunity of being heard to both sides and on the merits of the case. Consequent to such order, the appellant and M/s.Crescentz Square, fourth respondent before us, were impleaded as parties in C.C.P.No.261 of 2019. Aggrieved by such order passed by the RERA, the appellant preferred appeal before the Tribunal. The Tribunal considered the case and agreed with the authority stating that the appellant before us would be a necessary party to the proceedings, so as to have a binding adjudication. Aggrieved by the order of the Tribunal, the appellant is before us.

7. The contention of the learned Senior Counsel appearing for the appellant is that fraud has been played by not pressing the complaint against the second respondent, who was originally impleaded and subsequently seeking for impleadment of the appellant and the fourth respondent by a person, who was never a party to the earlier proceedings of the Tribunal in C.Nos.370 to 291, 396 and 397 of 2019 dated 21.11.2019. Further, it is submitted that the first respondent has no locus standi to implead the appellant herein in the proceedings and the RERA and the Tribunal committed serious error in impleading the appellant. Further, it is contended that the RERA and the Tribunal failed to take note of the fundamental principles of law with regard to the impleadment of parties by taking note of Order I Rule 10 of CPC.

8. After we have elaborately heard the learned Senior Counsel appearing for the appellant, we are of the considered view that the appellant cannot be said to be prejudiced on account of the order passed by the RERA impleading them as respondent nor the order passed by the Tribunal affirming the order passed by the RERA. We say so because the RERA has rightly held that the question whether the appellant along with other respondents are liable for the reliefs claimed by the first respondent in the complaint will have to be decided after giving an opportunity of being heard to both sides and on the merits of the case. On the same lines, the Tribunal has also confirmed the order and also observed, for a binding adjudication, the appellant would be a necessary party.

9. The provisions of Order I Rule 10 of CPC are clear in the sense that the Court may at any stage of the proceedings either upon or without the application of either parties and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the proceedings.

10. That apart, the RERA and the Tribunal have not rendered any finding as regards the appellant's liability, but impleaded the appellant and the fourth respondent herein, so that the matter could be effectively adjudicated. The discretion exercised by the authority and the Tribunal cannot be faulted.

11. We make it clear that it will be open to the appellant to file a comprehensive counter before the RERA both as facts as well as law, which the authority would consider and take a

decision on merits and in accordance with law, after hearing all the parties.

12. The learned Senior Counsel submitted that a time frame may be fixed within which the RERA may take up the matter and consider the issue.

13. Since we are not aware as to the number of cases which are pending before the RERA, we cannot stipulate any specific time, but we would request the RERA to consider an earlier hearing in the matter, since the complaint is of the year 2019.

14. With these observations, the Civil Miscellaneous Second Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-  
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

hvk

To

1.The Tamil Nadu Real Estate Appellate Tribunal,  
Chennai.

2.The Real Estate Regulatory Authority,  
Chennai.

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C.M.S.A.No.33 of 2021  
and  
C.M.P.No.3459 of 2021

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