



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.05.2021

Pronounced on :
28.07.2021

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CORAM :

THE HONOURABLE MR. JUSTICE R. SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

C.M.S.A. Nos. 49 to 53 of 2021
and
C.M.P. Nos. 8683 to 8687 of 2021

1.SPR & RG Constructions Private Limited,
Represented by its Managing Director,
Mr.Hitesh Kumar P. Kawad

2.Mr.Hitesh P. Kawad

3.Mr. M.G.Surendranath ... Appellants in all C.M.S.A.s

-vs-

1.Mr. K.Venkataramanan

2.Mrs. Latha Venkataramanan
... Respondents in C.M.S.A. No.49 of 2021

1.Ms.Anju Anna Thomas

2.Mrs.Annie Thomas ... Respondents in C.M.S.A. No.50 of 2021

1.Mr. S.Suresh

2.Mrs. S.Srividhya ... Respondents in C.M.S.A. No.51 of 2021

Ronald Lamech ... Respondent in C.M.S.A. No.52 of 2021

P. Suresh ... Respondent in C.M.S.A. No.53 of 2021

COMMON PRAYER:- Civil Miscellaneous Second Appeals filed under Section 58 of the Real Estate (Regulations & Development) Act, 2016 read with Section 151 of C.P.C., (a) to allow the appeals by setting aside the order of the Tamil Nadu Real Estate Appellate Tribunal, Chennai, dated 19.04.2021 made in Appeal Nos. 13 to 17 of 2021 and the order of the Tamil Nadu Real Estate Regulatory Authority, Chennai, dated 04.02.2021 made in I.A. Nos. 5 to 9 of 2021 in C. Nos. 21, 38, 39, 40 and 41 of 2020; (b) to dismiss the complaints in C. Nos. 21, 38, 39, 40 and 41 of 2020 as not maintainable due to lack of jurisdiction.



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For Appellants :Mr.S.Prabhakaran, Senior Counsel
for Mr. R.Satishkumar

For Respondents:Mr. Ravikumar Paul, Senior Counsel
for M/s. Paul and Paul

C O M M O N J U D G M E N T
(through video conference)

Heard Mr. S.Prabhakaran, Learned Senior Counsel appearing for the Appellants and Mr. Ravikumar Paul, Learned Senior Counsel appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Appellants in these appeals are the 'promoters' of the multi-storied building project known as 'Osian Chlorophyll' comprised in S. Nos. 148/5A, 148/7A, 137/1 and 138/1 situated at Karambakkam Village, Ambattur Taluk, Tiruvallur District. The Respondents in each of these appeals are the 'allottees' of some apartments in that project of the Appellants. According to the Respondents, it had been represented to them by the Appellants that in terms of the Planning Permit No. 7125 dated 20.07.2012, it was proposed to construct only 950 units of residential buildings in the said project. Though the apartments allotted to the Respondents had been handed over to them after construction in the years 2017 and 2018, to their shock and surprise, they came to know that the Appellants had clandestinely revised the initial plan without any intimation or consent from them and had made several deviations and the total number of dwelling units had been increased from 950 to 1050, apart from failure of the Appellants to provide for all the amenities that had been promised to them. It is the specific case of the Respondents that the said project of the Appellants is covered by the provisions of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the 'Real Estate Act' for short) and the Appellants have miserably not followed the mandatory provisions of that statute, which is prejudicial to their interests. In that backdrop, the Respondents had on 13.01.2020 filed separate complaints in C. Nos. 21 and 38 to 41 of 2020 before the Tamil Nadu Real Estate Regulatory Authority (hereinafter referred to as 'TNRERA' for short) under Section 31 of the Real Estate Act claiming the following reliefs:-

- (i) to direct the Appellants to register the project 'Osian Chlorophyll' comprised in New S. Nos.148/5A, 148/7A, 137/1 and 138/1 situated at Karambakkam Village, Maduravoyal Taluk, Tiruvallur District with the Real Estate Regulatory Authority under the Real Estate Act and the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as the 'TN Real Estate Rules' for short);



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- (ii) to direct the Appellants to provide club houses and other amenities as provided in the original approved plan and agreement, or alternatively to provide equivalent alternate club house spaces and amenities;
- (iii) to direct the Appellants to provide the periodic local body inspection reports;
- (iv) to direct the Appellants to produce evidence to show the buildings are structurally safe in the wake of the Appellants putting up a Mezzanine floor above the basement contrary to the original approved plan;
- (v) to direct the Appellants to refrain from putting up or altering any constructions unilaterally contrary to the terms of the agreement;
- (vi) to direct the Appellants to complete the entire project by providing all amenities agreed to by the Appellants in the agreement with the complainants;
- (vii) to direct the Appellants to provide car parks as per the CMDA/Development Control Rules including visitors parking and as per the agreement with the Respondents;
- (viii) to direct the Appellants to pay such compensation which is deemed fit as well as costs to the Respondents;
- (ix) to initiate appropriate action against the Appellants for violations of the Real Estate Act and the TN Real Estate Rules;
- (x) to hand over all the original parent documents on formation of the association, to the office bearers of the association within 15 days of intimation of association formation; and
- (xi) to transfer the corpus fund to the association within 15 days of intimation of formation of the association by the office bearers.

The Respondents have also sought for orders of interim injunction restraining the Appellants or any of their agents, representatives acting on their behalf and Directors from alienating or dealing in any manner with the unsold apartments in the project until the project is completed.

3. The Appellants, who had entered appearance in the said complaints filed by the Respondents before TNRERA, raised preliminary objection on maintainability in I.A. Nos. 5 to 9 of 2021, contending that the complaints do not relate to an 'ongoing project' under the purview of the Real Estate Act, relying upon the order dated 19.06.2019 in Appeal No. 2 of 2019 passed by the Tamil Nadu Real Estate Appellate Tribunal (hereinafter referred to as 'TNREAT' for short) in respect of another allottee of the same project of the Appellants. The Respondents had filed their Counter-Affidavit and after hearing both parties, TNRERA by order dated 04.02.2021 overruled the objections raised by the Appellants by holding that the order of TNREAT relied by the Appellants had been set aside by the Division Bench of this Court by order dated 15.09.2020 in C.M.S.A. No. 22 of 2019 and directed the Appellants to file Counter-Affidavit with specific reference



to the relief prayed for by the Respondents before 18.02.2021 as a last chance. The Appellants were also restrained from marketing or booking or selling the unsold apartments in their project until further orders from TNRERA and direction was issued to the concerned Sub-Registrar Office not to register any agreement or sale-deed in respect of unsold apartments in the project of the Appellants until further orders, and the matter was posted for next hearing on 04.03.2021. Aggrieved thereby, the Appellants had preferred appeals on 18.02.2021 in Appeal Nos. 13 to 17 of 2021 before TNREAT under Section 44 of the Real Estate Act. It was the contention of the Appellants in those appeals that as they have preferred Petition for Special Leave to Appeal in S.L.P. (Civil) No. 14103 of 2020 under Article 136 of the Constitution of India before the Hon'ble Supreme Court of India against the order dated 15.09.2020 in C.M.S.A. No. 22 of 2019 passed by the Division Bench of this Court, the question as to whether the provisions of the Real Estate Act could be resorted by the Respondents for the project of the Appellants has not yet attained finality and till the same was ultimately decided, the complaint before TNRERA could not be proceeded on merits. TNREAT by order dated 19.04.2021 passed in the said appeals declined to accept the said arguments by pointing out that the Hon'ble Supreme Court of India has not stayed the order dated 15.09.2020 in C.M.S.A. No. 22 of 2019 passed by the Division Bench of this Court, in which a direction has been issued to TNRERA to proceed with the complaint of the concerned allottee before TNRERA on merits after giving opportunity to both parties with the time-frame, and dismissed those appeals.

4. The Appellants have preferred these Second Appeals against the common order dated 19.04.2021 in Appeal Nos. 13 to 17 of 2021 passed by TNREAT, under Section 58 of the Real Estate Act, which provides that any person aggrieved by any decision or order of the Appellate Tribunal, may file an appeal to the High Court on any one or more of the grounds specified in Section 100 of the Code of the Civil Procedure, 1908, which are extracted below:-

"(1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.

(2) An appeal may lie under this section from an appellate decree passed exparte.

(3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(5) The appeal shall be heard on the question so



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formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question."

In furtherance thereof, the Appellants have raised the following substantial questions of law in their memoranda of grounds of appeals before this Court:-

- (i) Whether the Respondents seeking for invocation of the Real Estate Act against the Appellants can be continued to be maintained in the light of the fact that the contesting Respondents and other allottees have taken possession of their respective flats. When there is no pending lis between the parties, how can they still maintain the litigation?
- (ii) When the contesting Respondents have taken possession of their fully constructed flats, whether they are estopped from continuing with further proceedings under the Real Estate Act?
- (iii) Whether the project of the Appellants is a structurally completed project as on the date of notification of the TN Real Estate Rules and whether the project of the Appellants has been exempted under the TN Real Estate Rules?
- (iv) Whether when TNRERA was established in Tamil Nadu on 22.06.2017, the project of the First Appellant was listed as completed project as per the Rule 2(h)(ii) of the TN Real Estate Rules immediately after the notification of the TN Real Estate Rules and further, whether the said facts were corroborated by entry No. 53 in the list titled 'List of Completion Certificate Applications submitted in CMDA prior to 22.06.2017 for Chennai Metropolitan Area' published in the website of TNRERA itself?
- (v) Whether the project of the Appellants is structurally completed project well early before the date of notification of the Real Estate Act and the TN Real Estate Rules?
- (vi) Whether the project of the Appellants is exempted by satisfying section 2(h)(ii) of the TN Real Estate Rules?
- (vii) Whether the Appellants are entitled to market or book or sell the unsold apartments in the above structurally completed project and accordingly, to register any agreement or sale-deed in respect of the unsold apartments in the above structurally completed project?



5. It is sought to be canvassed by the Appellants in substantial question of law nos. (i) and (ii) that an 'allottee', who has taken possession of his constructed apartment from the promoter, cannot seek any redressal of grievances by way of complaint under Section 31 of the Real Estate Act. Before proceeding further to examine the said questions sought to be raised, it would be useful here to read the Statement of the Objects and Reasons of the Real Estate (Regulation and Development) Bill, 2013, as follows:-

" The real estate sector plays a catalytic role in fulfilling the need and demand for housing and infrastructure in the country. While this sector has grown significantly in recent years, it has been largely unregulated, with absence of professionalism and standardisation and lack of adequate consumer protection. Though the Consumer Protection Act, 1986 is available as a forum to the buyers in the real estate market, the recourse is only curative and is not adequate to address all the concerns of buyers and promoters in that sector. The lack of standardisation has been a constraint to the healthy and orderly growth of industry. Therefore, the need for regulating the sector has been emphasised in various forums.

2. In view of the above, it becomes necessary to have a Central legislation, namely, the Real Estate (Regulation and Development) Bill, 2013 in the interests of effective consumer protection, uniformity and standardisation of business practices and transactions in the real estate sector. The proposed Bill provides for the establishment of the Real Estate Regulatory Authority (the Authority) for regulation and promotion of real estate sector and to ensure sale of plot, apartment or building, as the case may be, in an efficient and transparent manner and to protect the interest of consumers in real estate sector and establish the Real Estate Appellate Tribunal to hear appeals from the decisions, directions or orders of the Authority.

3. The proposed Bill will ensure greater accountability towards consumers, and significantly reduce frauds and delays as also the current high transaction costs. It attempts to balance the interests of consumers and promoters by imposing certain responsibilities on both. It seeks to establish symmetry of information between the promoter and purchaser, transparency of contractual conditions, set minimum standards of accountability and a fasttrack dispute resolution mechanism. The proposed Bill will induct professionalism and standardisation in the sector, thus paving the way for accelerated growth and investments in the long



On perusal, it is apparent that the Real Estate Act is a sister enactment of the Consumer Protection Act, 1986, to achieve the same objectives more effectively. In that context, it must be recapitulated here that the Hon'ble Supreme Court of India in the decision in Lucknow Development Authority -vs- M.K.Gupta [(1994) 1 SCC 243] has explicated the manner in which the provisions of the Consumer Protection Act, 1986, have to be construed, in the following words:-

"2.it appears appropriate to ascertain the purpose of the Act, the objective it seeks to achieve and the nature of social purpose it seeks to promote as it shall facilitate in comprehending the issue involved and assist in construing various provisions of the Act effectively. To begin with the preamble of the Act, which can afford useful assistance to ascertain the legislative intention, it was enacted, 'to provide for the protection of the interest of consumers'. Use of the word 'protection' furnishes key to the minds of makers of the Act. Various definitions and provisions which elaborately attempt to achieve this objective have to be construed in this light without departing from the settled view that a preamble cannot control otherwise plain meaning of a provision. In fact the law meets long felt necessity of protecting the common man from such wrongs for which the remedy under ordinary law for various reasons has become illusory. Various legislations and regulations permitting the State to intervene and protect interest of the consumers have become a haven for unscrupulous ones as the enforcement machinery either does not move or it moves ineffectively, inefficiently and for reasons which are not necessary to be stated. The importance of the Act lies in promoting welfare of the society by enabling the consumer to participate directly in the market economy. It attempts to remove the helplessness of a consumer which he faces against powerful business, described as, 'a network of rackets' or a society in which, 'producers have secured power' to 'rob the rest' and the might of public bodies which are degenerating into storehouses of inaction where papers do not move from one desk to another as a matter of duty and responsibility but for extraneous consideration leaving the common man helpless, bewildered and shocked. The malady is becoming so rampant, widespread and deep that the society instead of bothering, complaining and fighting against it, is accepting it as part of life. The enactment in these unbelievable yet harsh realities appears to be a silver lining, which may in course of time succeed in checking the rot....

<https://hcservices.ecourts.gov.in/hcservices/> The provisions of the Act thus have to be



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construed in favour of the consumer to achieve the purpose of enactment as it is a social benefit oriented legislation. The primary duty of the court while construing the provisions of such an Act is to adopt a constructive approach subject to that it should not do violence to the language of the provisions and is not contrary to the attempted objective of the enactment."

The said principles of interpretation would equally apply to the Real Estate Act also. Having due regard to the common course of natural events, human conduct and public and private business, it would be usually only after the allottee obtains possession of the apartment from the promoter that he would be in a position to ascertain whether what had been represented or promised in the contract has been carried out in the construction by the promoter in entirety and it is for the shortcomings in that regard that the resort to the redressal mechanism in the Real Estate Act would be made. A plain reading of the various provisions of the Real Estate Act do not give any scope to even speculate that taking possession of the apartment by an allottee would forfeit his right to make any complaint against the promoter under Section 31 of the Real Estate Act. In such circumstances, the substantial question of law nos. (i) and (ii) sought to be raised by the Appellants have to be necessarily answered against them at the threshold itself.

6. The substantial question of law nos. (iii) to (vi) sought to be raised by the Appellants are matters, which have been extensively deliberated on the same project in the order dated 15.09.2020 in C.M.S.A. No. 22 of 2019 passed by the Division Bench of this Court, where it has been held as follows:-

- (i) as on the date of the commencement of the Real Estate Act on 01.05.2017, the First Appellant has not applied for the Completion Certificate and therefore, the project of the First Appellant is an 'ongoing' project;
- (ii) the Appellants cannot take shelter under Rule 2(h)(ii) of the TN Real Estate Rules stating that the First Appellant has applied for the Completion Certificate on 29.05.2017 as the said Rule gives an exemption only to the developers who applied for the Completion Certificate on or before 01.05.2017;
- (iii) according to the First Appellant, the entire project was completed on 03.05.2017, whereas the First Appellant applied for the Completion Certificate on 29.05.2017;
- (iv) after completion of the project on 03.05.2017, the First Appellant applied for revised approval plan on 20.07.2018 for dwelling units of 1050, altering the original dwelling units of 950 and the revised plan was obtained on the very same day on 20.07.2018;
- (v) after completion of the entire project, the Environmental Clearance Certificate was obtained on 27.06.2018 only as a formality;



(vi) admittedly there is no Environmental Clearance Certificate obtained before commencement of the construction of the project by the First Appellant as stated in the Environmental Clearance Certificate itself;

(vii) the application for the Completion Certificate without Environmental Clearance Certificate is a defective application in the eye of law and it cannot be called as an application for the Completion Certificate; and

(viii) the State Level Environmental Impact Assessment Authority cannot issue post facto Environmental Clearance Certificate, inspite of the admission made by the First Appellant in his letter of apology/commitment dated 01.07.2013 that is violating EIA Notification, 2006. The construction activities have already been started without mandatory prior environmental clearance from the competent authority.

The aforesaid conclusions arrived in that binding decision of the Co-ordinate Bench of this Court clinches the issue against the Appellant. It would be necessary at this juncture to refer to the ruling of the Hon'ble Supreme Court of India in *Hero Vinoth (Minor) -vs- Seshammal* [(2006) 5 SCC 545], while summarising the principles relating to Section 100 of the Code of Civil Procedure, 1908, it has been observed as follows:-

"24.... (ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal issue. A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law."

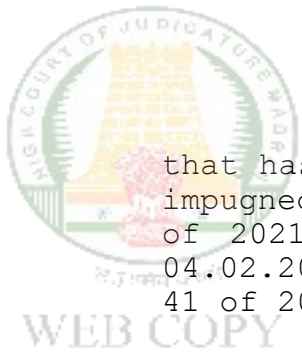
Applying the said principles, it is evident that the impugned orders of TNRERA and TNREAT are in consonance with the dictum laid down by the Division Bench of this Court in the order dated 15.09.2020 in C.M.S.A. No. 22 of 2019 and as such, the Appellants cannot re-agitate the same controversy which has already been decided against them qua these appeals.

7. The remaining substantial question of law no. (vii) sought to be raised by the Appellants is as to whether the Appellants are entitled to market or book or sell the unsold



apartments in the structurally completed project and register any agreement or sale-deed in respect of unsold apartments in their project. Learned Senior Counsel appearing on behalf of the Appellants submits that the directions issued in this regard by TNRERA in the order dated 04.02.2021 in I.A. No. 5 to 9 of 2021 in C. Nos. 21 and 38 to 41 of 2002 is working against the financial interests of the Appellants causing undue hardship by depriving them of their entitlement to reap the benefits after completing the entire construction in the project. It must, at once, be noticed here that the said order passed by TNRERA is an interim order granted under Section 36 of the Real Estate Act until further orders, meaning thereby that like any other interlocutory relief granted during the pendency of the main legal proceeding, application to vacate or vary the same could be made by placing the change in circumstances or such other facts warranting modification before TNRERA. In the present case, it has been pointedly contended by the Respondents that at the time when they booked for apartments in the project of the Appellants, it had been represented that only 950 dwelling units were to be constructed as per the approved plan obtained from the Competent Authority, but the same has been increased to 1050 dwelling units behind their back without their consent, which they have come to know only after they have taken possession of their allotted apartments. It would not be out of place here to highlight that Section 14(2) of the Real Estate Act contains an overriding provision that alteration and addition in the sanctioned plans and specifications of the common areas within the project cannot be made without the previous written consent of the atleast two-thirds of the allottees other than the promoter who has agreed to take apartments in such building. The Division Bench of this Court in the order dated 15.09.2020 in C.M.S.A. No. 22 of 2019 has expressly held that the revised plan approval dated 20.07.2018 increasing the number of dwelling units from 950 to 1050 made after obtaining Completion Certificate on 29.05.2017 for the entire project is contrary to law. The inference that could be drawn from this fact situation borne out from the record is that the construction of the apartments in excess of 950 dwelling units being prima facie illegal, it would not be fair or proper to allow the Appellants to transfer the same in favour of third parties, which would cause unnecessary further legal complications till the disputes raised by the Respondents against the Appellants in that regard is resolved. As such, when the grant of the said interim order appears to be justified, it does not warrant any interference by this Court at this pre-mature stage of the legal proceedings. It is hastened to add here that the aforesaid observations made in this order shall not inhibit or influence the exercise of powers by TNRERA to modify the interim order based upon the evidence to be produced by the parties in accordance with law.

8. The result of the foregoing discussion is that there is no question of law, much less any substantial question of law



that has arisen in these Second Appeals, to interfere with the impugned common order dated 19.04.2021 in Appeal Nos. 13 to 17 of 2021 passed by TNREAT confirming the common order dated 04.02.2021 in I.A. Nos. 5 to 9 of 2021 in C. Nos. 21 and 38 to 41 of 2020 passed by TNRERA.

9. In the upshot, these Second Appeals, which do not deserve to be entertained, are dismissed. Consequently, the connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

Sm/vjt

To

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+5ccs to Mr.E.Sathishkumar, Advocate SR.No.27168 to 27172

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C.M.S.A. Nos. 49 to 53 of 2021

SJ(CO)
GMY(19/08/2021)