

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 16.02.2021
CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.S.A.No.27 of 2020

M/s.SARE Shelters Project Pvt. Ltd
Sare Homes Project Office,
Crescent Parc Dewy Terraces Residential Complex
Sowbhagya Vijaym Nagar,
Thiruporur, Chengalpattu Dist-603 110 .. Appellant
vs.

1.SARE SQUIRES

Sare Homes Crescent Parc Dewy Terraces OMR Road Project
Sowbhagya Vijaym Nagar,
Thiruporur, Chengalpattu Dist-603 110

2. Dewy Terraces (Phase-1) Flat Owners' Welfare Associatoin

C-212, Phase-1 Dewy Terraces, Crescent ParC
Thiruporur, Chengalpattu Dist-603 110 .. Respondent

PRAYER : Civil Miscellaneous Second Appeal filed under Section 58 of the RERA Act 2016 r/w Section 100 of C.P.C to set aside the impugned order dated 09.09.2020 in Appeal No.58/2019 passed by the learned Tamil Nadu Real Estate Appellate Tribunal [TNREAT] of reversing the order dated 12.06.2019 passed by the learned Tamil Nadu Real Estate Regulatory Authority (TNRERA) in Complaint No.212 of 2019 and pass an order of confirming the order dated 12.06.2019 passed by the learned Tamil Nadu Real Estate Regulatory Authority (TNRERA) in Complaint No.212/2018 by allowing this appeal with costs throughout.

For Appellants : Mr.A.Priyadarshini
For Respondents : Mr.R.Singaravelan,
Senior Counsel
for Mr.I.Saddam Hussain for R1
Mr.S.Maheshkumar for R2

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O R D E R

The Civil Miscellaneous Second Appeal is filed under Section 58 of the Tamil Nadu Real Estate (Regulation and Development) Act 2016, challenging the correctness of the order of the Tamil Nadu Real Estate Appellate Tribunal dated 09.09.2020 in Appeal No.58 of 2019.

2. The learned counsel appearing for the appellant mainly raised the substantial question of law by holding that the

Appellate Tribunal erroneously interpreted Section 3(2)(b) of the RERA act by extending the jurisdiction which is otherwise not conferred under the act in respect of buildings already completed.

3. The Original Authority under the Act held that the petition filed by the owner's Association is not maintainable in view of the fact that the completion certificate was issued by the Authority. The Appellate Tribunal held that the completion certificate issued is improper and not in consonance with the provisions of the act. Therefore, for all purposes, the jurisdiction under the Act is not ousted and still, the project is to be construed as on-going project and therefore, the apartment owners are entitled to insist for registration under the RERA Act and file an application before the authority for re-dressal of their grievances under the provisions of the Act. The Appellate Tribunal further issued a direction to the Original Authority under the Act to adjudicate the issues on merits with reference to evidence and dispose of the same within a period of three months from the date of the order.

4. The learned counsel appearing for the appellant contended that the appellant is the property developer and they have developed the property by purchasing 793 plots from the original owners and accordingly, constructed flats as well as villas in the purchased lands. It is contended that the building sanction was properly approved by the competent authority and the construction was completed in all respects as per the plan approved and therefore, there is no defect or infirmity as such. The completion certificate was issued by the Executive Officer, Thirupporur Town Panchayat in the year 2014 itself. Therefore, the appellant is not coming under the purview of the provisions of the RERA Act, as far as the project in question is concerned. The learned counsel appearing for the appellant solicited the attention of this Court with reference to Section 3(2)(b) of the Act, which enumerates that "where the promoter has received completion certificate for a real estate prior to commencement of the Act, then no registration of real estate is required". Relying on the said provision, the learned counsel appearing for the appellant is of the opinion that the completion certificate was duly obtained from the Executive Officer, Thirupporur Town Panchayat and the possession was also handed over to the *bona fide* purchasers. Thus, the question of registration under the RERA Act does not arise at all. Therefore, the very application/complaint filed by the flat owner's association before the competent authority under the RERA Act is not maintainable. It is contended that the competent authority under the Act rightly interpreted Section 3(2)(b) of the act and rejected the application/complaint as not maintainable. The

Appellate Tribunal has not considered the fact that the completion certificate was issued by the Competent Authority under the Town and Country Planning Act. Therefore, the appellant is constrained to move the present second appeal.

5. The facts and circumstances required to decide the substantial question of law are to be adjudicated in the Civil Miscellaneous Second appeal.

6. Admittedly, the appellant developed the project by purchasing number of plots. It is an admitted fact that the building plan approval was obtained from the Town and Country Planning Authority and the structural buildings were raised and completed and possessions were also handed over to some of the purchasers. Some of the flats are yet to be sold and those flats or villas are with the possession of the appellants/builders. The builders are still in possession of the common amenities and project and their presence in the project is admitted by the appellants also. In other words, it is not in dispute that the builders are very much present in the project site, in respect of villas to be completed to provide other amenities, more specifically, pathway to all the purchasers of the flats and villas. It is an admitted fact that the title documents were not handed over to the office bearers of the apartment owners association. Still, the title documents, original building plan approval and all other connected documents pertaining to the project are with the custody of the appellant/builders, in view of the fact that few more flats are to be sold and villas are to be completed and sold.

7. With reference to the above facts, the learned Senior Counsel appearing on behalf of the first respondent/owners association contended that undoubtedly, the possessions were handed over to few purchasers. However, the project was not completed in entirety as promised under the builders agreement and in accordance with building plan approval and in compliance with the other relevant laws in-force. More specifically, the basic amenities including supply of water, approach road to reach the apartments are yet to be provided by the appellant/builders. It is contended that the *bona fide* purchasers are not able to reach their flats through public road. Further, the learned Senior Counsel has stated sarcastically that even if they want to reach, they have to reach the apartment through Helicopter, as no approach roads are provided and the approach road available is disputed by the HR & CE Department by holding that the said road belongs to the Deity of the Thiruporur, Kandasamy Temple. The Director of HR & CE Department also issued a stringent remarks that *"The petitioners are business firms/real estate promoters. They are running their firm commercially with profit motive. They are not doing any*

service to the General public. They are not concerned about the interest of the public, that is why they knowing constructed the apartments without the proper approach road and it is not known how they got plan approval without approach road. The petitioner who failed to disclose the fact that there was no approach road or the approach road is only temporary to their property while selling the houses to the public, cannot blame the Joint Commissioner for not considering the above facts. Further in the plan, the petitioner had shown Community hall, Fire Station and Police Station will be constructed in the land belonging to the temple. It is clearly evident that the petitioners have fraudulently and collusively obtained plan approval and they cheated the general public who purchased the plots from them. In view of this, the Executive Officer is hereby directed to send a letter and lodged a complaint before the competent authority for the fraudulent approval of the plan showing the temple land.

Therefore, for the foregoing reasons, I find no infirmity in the order passed by the Joint Commissioner, Vellore. Accordingly the order dated 27.02.2014 of Joint Commissioner, Vellore is hereby confirmed and the revision petition is dismissed as devoid of any merit"

8. Therefore, it is contended that the bona fide purchasers of plots and villas are not provided with approach roads, which causes great mental agony as the purchasers have invested their hard earned money in crores.

9. The learned Senior Counsel is of the opinion that the appellant/builders are now attempting to escape from the clutches of the act by simply stating that the completion certificate was issued by the Executive Officer, Town Panchayat. In fact, the completion certificate issued is not in consonance with the provisions of the Act and more specifically, in violation of the very scheme of the Act. Thus, the completion certificate issued in an improper manner cannot be construed as valid 'completion certificate' within the meaning of the Act. Thus, the interpretation of the provision with reference to section 3(2)(b) is required. The learned Senior Counsel further contended that the approach road now shown by the appellant/builders is being claimed by the HR & CE Department as the land belongs to the Deity, Thiruporur, Kandasamy Temple. Certain common amenities are yet to be provided, more specifically, water facilities are not provided to meet out the requirements of the people, who are residing in the project. Drainage facilities are not completed. In spite of these, construction of villas are also on-going and the appellants are continuing the project and selling the project to the innocent purchasers by providing false promises and therefore, urgent actions are required atleast to protect the public interest.

10. The learned Senior Counsel contended that Section 2(q) defines the "completion certificate": the completion certificate, or such other certificate, by whatever name called, issued by the competent authority certifying that the real estate project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority under the local laws". Therefore, the completion certificate issued must be strictly in accordance with sanctioned plan laid down and specifications as approved by the competent authority. Thus, the doubtful completion certificate obtained on extraneous consideration cannot be construed as a valid certificate within the meaning of the provisions of the Act. The learned Senior Counsel cited the manner in which the completion certificate was issued by the Executive Officer/Thiruporur Town Panchayat, which is enclosed along with typed set of papers filed by the appellant. The completion certificate reveals that, no details are provided regarding the completion of the project as specified in Section 2(q) of the Act. Even under the provisions of the Town and Country Planning Act, the completion certificate is expected to be issued by the Competent Authority, only if the building is completed in all respects with reference to the specifications approved in the building plan approval. When the Town and Country Planning Act indicates that the completion certificate is to be issued only after conducting thorough inspection and by ascertaining the fact that whether the building is completed in all respects in consonance with building plan approval. The RERA Act goes one step further in order to protect the interest of the *bona fide* purchasers (public in general) specifically from exploitations on the hands of the builders and developers, who are all commercial players.

11. Certificate issued by the Executive Officers, Thiruporur, Town Panchayat reads as under:

"திருப்போரூர் பேரூராட்சிக்குட்பட்ட திருப்போரூர் கிராமம் சர்வே எண்கள்.223/2 pt, 226/1 pt, 2pt, 3pt, 4pt, 229pt ஒப்புதலளிக்கப்பட்ட மனைப்பிரிவு மவ/நஹ இஎண்.30/2006 ல் மனை எண்கள்.1310 முதல் 1337 முடியவுள்ள 28 மனைகளை ஒருங்கிணைத்து 6355 சமீ பரப்புள்ள மனையிடத்தில் Stilt +4 தளங்களில் 126 குடியிருப்புகள் +2 incidental use குடியிருப்புக்கான கட்டுமானங்கள் கட்டி முடிக்கப்பட்டுள்ளது என சான்றளிக்கப்படுகிறது."

12. A certificate reveals that the building was completed. There is no mentioning whether the amenities are provided as per specifications. Therefore, the question arouse, whether such a certificate issued by the Executive Officer under the provisions of the Town and Country Planning Act can be construed as a valid completion certificate with reference to the provisions of the

RERA Act. These are all the question of law to be considered by this Court.

13. Citing all these anomalies as well as agonies being undergone, the *bona fide* purchasers have constituted an association. The learned Senior Counsel made a submission that the interest of the public at large are to be protected and the irregularities being committed by the builders and developers in the matter of providing basic amenities, pathways etc., are to be dealt with by the Courts, more specifically and therefore, the act is to be interpreted with reference to its object and purpose.

14. Considering the arguments, this Court is of the opinion that the scheme of the Act is to be taken note of. The statement of objects and reasons for enactment of the Tamil Nadu Real Estate (Regulation and Development) Act, 2016 states that "an act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto."

15. Section 2 of the Act provides the definition for various terms. Section 2(c) defines "agreement for sale" means an agreement entered into between the promoter and the allottee. It is defined in the context of the act, in view of the fact that certain conditions agreed between the developer/promoter and the allottee are also playing a pivotal role in deciding the issues under the provisions of the Act. The apartment is also defined under Section 2(e).

16. Section 2(n) defines "common areas" means (i) the entire land for the real estate project or where the project is developed in phases and registration under this Act is sought for a phase, the entire land for that phase; (ii) the stair cases, lifts, staircase and lift lobbies, fire escapes and common entrances and exits of buildings; (iii) the common basements, terraces, parks, play areas, open parking areas and common storage spaces; (iv) the premises for the lodging of persons employed for the management of the property including accommodation for watch and ward staffs or for the lodging of community service personnel; (v) installations of central services such as electricity, gas, water and sanitation, air-conditioning and incinerating, system for water conservation and

renewable energy; (vi) the water tanks, sumps, motors, fans, compressors, ducts and all apparatus connected with installations for common use; (vii) all community and commercial facilities as provided in the real estate project (viii) all other portion of the project necessary or convenient for its maintenance, safety ect., and in common use.

17. Reading of the definition for common areas, it is elaborately provided under the definition clauses so as to include all common facilities and amenities within the project. More specifically, Section 2(n)(v) deals with the water tanks and sanitation which is the specific complaint raised by the learned Senior Counsel in this case. Further, it is stated in clause(vii) that all community and commercial facilities as provided in the real estate project and therefore, all requirements under RERA Act are also must be complied with. Clause (viii) also contemplates that all other portion of the project necessary or convenient for its maintenance, safety etc., and in common use. Therefore, the legislation thought fit that mere construction of a building is insufficient. The completion indicates that it must be in all respects and the *bona fide* purchasers must have access and peaceful living in the agreement. Peaceful living means that they must be capable of utilizing all amenities freely, fairly and in accordance with builders agreements and including the common use namely approach road to the project and the approach road must be in commensuration with the number occupants in the project. Thus, the very idea of the Act is to ensure that the common facilities, amenities as well as the requirements of the law are to be complied with by the builders/developers in the interest of public and to protect the rights of the public who invested their hard earned money by purchasing the apartments in the present case in crores.

18. Section 2(q) as stated earlier defines "completion certificate". Thus, the completion certificate under Section 2(q) means the completion certificate within the meaning of the other provisions of the Act. The definition in Section 2(q) cannot be read in isolation and must be read cogently and in consonance with the statement of the object as well as the spirit of the other provisions so as to ensure that the provisions of the Act reached its purpose and object.

19. Section 2 (w) defines "External Development Works" means includes roads and road systems landscaping, water supply, sewage and drainage systems, electricity supply transformer, sub-station, solid waste management and disposal or any other work which may have to be executed in the periphery of, or outside, a project for its benefit, as may be provided under the local law.

20. Section 2(t) defines "development works" means the external development works and internal development works on immovable property. With reference to the above definition of Section 2(t), both the external development and internal development works are also included. Thus, the development works does not restrict with reference to the internal development works, but covers the external development works also. The external development works includes as defined in other provisions for providing of amenities, water tanks and drainage, approach road for the common usage of the plot owners etc.

21. Section 2(z) defines the "immovable property" includes land, buildings, rights of ways, lights or any other benefit arising out of land and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber, standing crops or grass". The immovable property within the meaning of RERA Act includes the land, buildings, right of ways. Therefore, undivided share registered in favour of the purchasers includes the right of ways as per builder agreement as well as in a building plan approval. The right of ways are promised by the appellant/builders. Thus, the right of the ways are coming under the definition of immovable property. In the present case, project is an immovable property. Therefore, the right of ways are also conferred on the bona fide purchaser and further such right of ways are agreed in the builders agreement and more specifically, with reference to the approved building plan.

22. Section 2(zb) defines "internal development works" means roads, footpaths, water supply, sewers, drains, parks, tree planting, street lighting, provision for community buildings and for treatment and disposal of sewage and sullage water, solid waste management and disposal, water conservation, energy management, fire protection and fire safety requirements, social infrastructure such as educational health and other public amenities or any other work in a project for its benefit, as per sanctioned plans.

23. Chapter II Section 3 requires prior registration of real estate project with Real Estate Regulatory Authority. Section 3(2) provides notwithstanding anything contained in Sub-section (1), no registration of real estate project shall be required. Sub-clause(b) contemplates that "where the promoter has received completion certificate for a real estate project prior to commencement of this Act."

24. The question arise, whether the completion certificate contemplated under Section 3(2)(b) of the RERA Act can be construed as a valid completion certificate within the meaning

of the provisions of the RERA Act. Undoubtedly, the Executive Officer/Thiruporur Town Panchayat in the present case issued a completion certificate within the meaning of Town and Country Planning Act. Thus, such a completion certificate issued without fulfilling the requirements and conditions stipulated in the Town and Country Planning Act cannot be considered as a valid completion certificate for the purpose of grant of exclusion for registration under Section 3(ii) of the RERA Act. The question arise, whether the completion certificate issued in the year 2014 admittedly can be a completion certificate for the purpose of granting exclusion.

25. Thus two circumstances arises. Firstly, the validity of the completion certificate with reference to the provisions of the RERA Act and secondly, the completion certificate issued prior to the commencement of the Act can be taken as a ground for seeking exclusion under the provision of the RERA Act.

26. Other provisions of chapter II deals with grant of registration. Chapter III of the Act deals with functions and duties of the promoters. Chapter IV deals with rights and duties of allottees. Question arises whether the registration of the appellant/builder is mandatory with reference to the facts and circumstances of the present case under the RERA Act or not?

27. Let us now consider the orders passed by the competent authority under the RERA Act. The Regulatory Authority has simply relied upon Section 3(2)(b) of the RERA Act and held that the building completion certificate was already issued by the Executive Officer, Thiruporur Town Panchayat. Therefore, the registration is not required under the provisions of the Act. Thus, the application submitted by the apartment owner's Association is not maintainable. The Regulatory Authority has not considered the scope of the Act. The constructive interpretation of the Act has not been dealt with by the Regulatory Authority. The purpose and object of the Act, which is a welfare legislation has not been discussed at all. The very idea of the legislation to protect the interest of the purchasers by flats and villas etc., has not gone into by the Regulatory Authority.

28. As far as the welfare legislations are concerned, the Courts are bound to adopt pragmatic approach and ensure that the purpose and object of the Act is dealt with in its real spirit so as to extend the fruits and benefits of the legislation in favour of the public in general and in consonance with the constitutional requirements. The very legislation is to be read in consonance with the constitutional philosophy and ethos. It is not as if the language employed alone would be sufficient to decide the issues. The language is meant to reflect the purpose

and object and it is not as if the word should be defined with a dictionary meaning. The words "employed" in such welfare legislations are required to be interpreted by adopting the principles of "progressive interpretation", which is mandatory. In view of the fact that our great nation is able to sustain the Constitution for more than 70 years, only in view of such progressive interpretations. Even pre-independence legislations are in-force even now in our great nation, because the Constitutional Courts are adopting progressive and constructive interpretations despite the change of circumstances and the social changes and developments in the Society. In spite of fast developmental activities, such pre-independence statutes are able to sustain because of such progressive interpretations. Therefore, a blanket reading of the words "employed" in the legislation would not serve its statement of purpose and object and the heart and the soul of the statutes are to be culled out for the purpose of implementation of such legislations.

29. The Regulatory Authority has absolutely failed to consider the scope of the Act. However, the Appellate Authority has filled up the subject with reference to the interpretation which is to be made based on the reliance placed on by the appellants, more specifically, the completion certificate issued by the Executive Officer, Thiruporur Town Panchayat. The Appellate Tribunal has considered the admitted facts and circumstances as well as the disputed facts between the parties. The claim of the HR & CE Department was adjudicated and the stand of the Commissioner, HR & CE Department was vindicated by the Appellate Tribunal. The factum established before the Tribunal was that the right of pathway/approach road is to be created and provided by the appellant/builder. Other grievances are also addressed by the Appellate Tribunal. However, those grievances, issues and disputes are to be adjudicated elaborately by the Regulatory Authority as the Regulatory Authority rejected the application only on the ground of maintainability. Thus, it is improper on the part of this Court to go into the disputed facts between the parties with reference to the amenities, facilities etc., to be provided in accordance with agreement and laws in-force.

30. The Appellate Tribunal in its well considered findings defined the scope of Section 11 of the RERA Act wherein the functions and duties of the promoter is provided and the same reads as under:

"(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the agreement for sale, or to

the association of allottees, as the case may be till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be: Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for which such period as is referred to in sub-section(2) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be to the allottees are executed.

(b) be responsible to obtain the completion certificate or the occupancy certificate, or both as applicable from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be:

(c) be responsible to obtain the lease certificate, where the real estate project is developed on a leasehold land, specifying the period of lease, and certifying that all dues and charges in regard to the leasehold land has been paid, and to make the lease certificate available to the association of allottees;

(d) be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees.

31. The order of the HR & CE Commissioner was extracted in paragraph No.10 of the Tribunal order. The grievances of the bona fide purchasers/flat owners with reference to Section 11(4) (c) was also considered. The appellant/promoter has admitted in their revision petition itself regarding the prevailing situation, which reads as under:

"There are about 1500 families who are using the subject property for ingress and egress from their flats to the public road. All the school going children of the said residents' are also using the approach road to reach their schools daily. All the users of the subject property would be put into irreparable loss and hardship in the event of preventing them from using the same. The Joint Commissioner has failed to consider the public utility, interest and benefit at large involved in the present matter. There is no other alternative access for the public in large except through the subject property".

32. The Appellate Tribunal further considered that many owners have taken their respective apartments and few more

flats are vacant and with the possession of the appellants/builders. This apart, the appellant/builder is continuing their construction work in the project for the purpose of construction of villas. The appellants/builders are utilizing the amenities already provided in the project for the purpose of their construction activities and the disputed approach road is also being used, which is insufficient to meet out the number of villas, flats constructed in the project. The project is being developed in 112 acres as per the Project plan of the appellant/promoter. Thus, their presence is very much available in the project even as of now. Therefore, the project cannot be said to be a completed project. It is an on-going project. The project completion means that it must be completed in all respects and the entire project was handed over to the respective buyers and all the original documents are handed over to the apartment owners association. Therefore, the builder cannot enter thereafter into the project premises as they lost their legal rights except with the permission of the owners or with reference to the agreement, if any, between the parties. Thus, the completion indicates in all respects, and in entirety and, the various definitions provided under the RERA Act also indicates that the duties and responsibilities of the builders to ensure that all the common amenities and facilities are provided in accordance with the agreement and the laws in-force. Thus, the word "completion" cannot be read in isolation and it must be in connection with the definitions enumerated in various provisions under the RERA Act. Thus, the completion certificate issued by the Executive Officer, Thiruporur Town Panchayat cannot be construed as a valid completion certificate for granting exclusion under the provisions of the RERA Act. This apart, there is no evidence to establish that such a completion certificate was issued by the Executive Officer, Town Panchayat only after conducting full-fledged inspection in the project. Every public authority is expected to issue completion certificate only after conducting an inspection with reference to the provision of the Statutes. Any certificate issued by the public authority, which is not in consonance with the provisions of the statute is to be construed as invalid or improper certificate. The invalid certificate indicates that the certificate was not in consonance with the provisions of law. The improper certificate indicates that the certificate issued was without conducting proper inspection. Thus, an improper certificate or an invalid certificate, both cannot be accepted for the purpose of justifying the completion certificate issued by the competent authority. In the present case, though the completion certificate was issued by the competent authority under the provision of the Town and Country Planning Act or under the regulations, certainly such certificate is an improper one, which is to be construed as irregular as no full-fledged inspection or enquiry was conducted nor the completion

certificate issued contains any of the particulars. Thus, such certificate would not confer any right on the parties to claim exoneration from the provision of the RERA Act, more specifically, under Section 3(2)(b) of the Act.

33. The Act being comprehensive, remedial mechanism are provided in the Act. Undoubtedly, the provisions of the Act excludes the completed project. The question arises, what is the completed project. Completed project in common parlance is that a project, which is completed in its entirety in all respects and by complying with the specifications, norms prescribed in the building plan approval and by providing all amenities, facilities as agreed between the parties. The completion indicates that the builders/developer constructed the project as a whole and handed over the entire project as well as maintenance to the owners association as far as the apartments are concerned, including the title documents. Thus, it is made clear that a project, which is completed means or within the provisions of the RERA Act is that a project, which was completed in all respects by complying with the covenants, terms and conditions in the agreement between the parties including handing over of all original title documents and all other documents etc. Thereafter, the rights of the builder to enter into the premises are restricted in accordance with the agreements, if any, between the parties. Thus, mere completion of structural building is insufficient to arrive a conclusion that it is a 'completion' within the meaning of the provisions of the RERA Act or under the Town and Country Planning Act. In such circumstances, a builder/developer may make an attempt to exploit or cheat the *bona fide* purchasers, who are all innocent purchasers. This exactly the legislators thought fit to enact the RERA Act. Large number of exploitations and cheatings are noticed in our great nations in real estate activities. Many crimes are registered in the subject of Real Estate business. Taking note of the prevailing situation in the real estate, the parliament thought fit and enacted the law in order to regulate the activities of the builders/developer. Therefore, in all respects, the Act should be applied in its real spirit so as to protect the rights of the innocent *bona fide* purchasers from the developer/builders. This apart, the developer of the on-going project cannot be allowed to escape from the clutches of the Act. It is not as if the Act grants exclusion for an on-going project or incompleted project. Therefore, the completion must be with reference to the provisions of the Act and not based on the certificate of completion issued by the Executive Officer, Town Panchayat who issued such certificates mostly on extraneous considerations. Thus, this Court is of the considered opinion that the certificates are not issued after inspection but obtained. This Court is conscious regarding the prevailing situation in the real estate business. For each and every thing,

corrupt activities are dominating the field and the competent authorities are not initiating appropriate action to control the menace of corruption in the real estate activities. Thus, every protection ensured under the statute must be adequate and proper so as to protect the interest of public in general and more specifically, the *bona fide* purchasers of the apartments or villas from the developers/promoters. Court cannot close its eyes with reference to the corrupt activities in public offices. Thus, any certificate issued by such Executive Officer, Town Panchayat cannot be taken as a conclusive factor. If a literal meaning is adopted with reference to Section 3(2)(b) of the RERA Act, then many number of builders/developers, who are all in the process of construction will escape from the clutches of law and that is not the intention of the legislation and certainly, not the intention of the parliament. That is the reason why terms are carefully defined. What are all the amenities, facilities are also well defined. Even Section 3(2)(b) of the Act states that, where the promoter has received a completion certificate for real estate project prior to the commencement of the Act. Undoubtedly, in the present case, the certificate was obtained prior to the commencement of the Act. However, such certificate obtained is improper and illegal as the certificate was not issued within the parameters stipulated even under the Town and Country Planning Act and more specifically, by not conducting any proper inspection or enquiry with reference to the actual completion of the project as defined under the provisions of the statutes and in accordance with the plan approval. Thus, this Court has no hesitation in arriving a conclusion that the completion certificate issued by the Executive Officer, Town Panchayat cannot be trusted upon nor be accepted so as to arrive a conclusion that the said certificate was issued in compliance with the building plan approval or the Statute. Thus, with reference to the RERA Act, such completion certificate cannot be considered for grant of exclusion. Thus, the completion certificate is of no avail to the appellant and the reliance placed upon by the Regulatory Authority is improper and not in consonance with the statement of the objects and reasons as well as the provisions under the Act.

34. The State Government in this regard has to issue appropriate orders to the Head of the Department to initiate action against all erring officials, who are all issuing such certificate without even conducting any proper inspection under the provisions of the Town and Country Planning Act prior to the commencement of the Act and not in consonance with approved building plan as well as specifications. No doubt, in the present case, the completion certificate was issued prior to the commencement of the RERA Act. Thus, the Executive Officer had no occasion to conduct any inspection in accordance with RERA Act. However, the Executive Officer would have conducted inspection

or enquiry with reference to the provision of the Town and Country Planning Act and more specifically, with reference to the building plan approval sanctioned by the Director of the Town and Country Planning . Thus, even considering the ground raised by the appellant that the completion certificate was issued prior to the commencement of the RERA Act, this Court is of the considered opinion that the certificate was not issued in accordance with the provisions of the Town and Country Planning Act as well as the building plan approval sanctioned by the Director of Town and Country Planning. It is relevant to note that even in common parlance, the word "completion" defines the "substantial completion" in accordance with contract. Thus, even in the absence of any statute, specifically, a completion certificate is to be issued by any Competent Authority, once if the project is completed. Substantial completion indicates providing of approach road, water facilities, including drainage etc. These are all the basic amenities to be provided, if at all the builder/promoter claims that the building is completed. If water facilitates and drainage facilities, approach roads are not provided adequately and the project is completed, then it will undoubtedly against the provisions of the Statutes. Therefore, the completion must be in all respects and in accordance with the contract between the parties. The covenants in the contract are the essential parameters, which must be the deciding factor regarding the actual completion and not mere completion of structure in the project. This being the object to be sought for, even in the absence of the RERA Act, the completion certificate issued by the Executive Officer, Town Panchayat is improper and not in consonance with the established principle for issuing a completion certificate even in a common parlance and under the Town and Country Planning Act.

35. The only question of law raised in the present second appeal is that whether the complaint/application filed by the respondent before the Regulatory Authority is maintainable or not. In view of the fact that the completion certificate issued by the Executive Officer, Town Panchayat is not in consonance either with the provisions of the Town and Country Planning Act as well as the building plan approval sanctioned by the Director of Town and Country Planning or in accordance with the provision of the RERA Act, the same cannot be construed as a valid certificate for the purpose of grant of exclusion under Section 3(2)(b) of the RERA Act. The certificate is to be construed as insignificant and irrelevant as far as the RERA Act is concerned and for all purposes, the building is to be treated as on-going project. Therefore, the appellants/builders are bound to comply with the terms and conditions in the project as well as comply with the provisions of various laws governing real estate affairs. Accordingly, this Court has no hesitation in arriving a conclusion that the application/complaint filed by the

respondents/apartment owners association is maintainable under the provisions of the RERA Act, 2016 and accordingly, the order passed by the Appellate Tribunal stands confirmed and consequently, Civil Miscellaneous Second Appeal stands dismissed. No costs.

36. The Regulatory Authority is directed to entertain the application/complaint filed by the respondents/apartment owners association and adjudicate the issues on merits and in accordance with law by affording opportunity to all the parties concerned and accordingly, pass speaking final orders within a period of three months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar (CS.VIII)

/True Copy/

Sub Assistant Registrar

To

1.Tamil Nadu Real Estate Appellate Tribunal (TNREAT),
No.1A, 3rd Floor, Gandhi Irwin Bridge Road,
Egmore, Chennai - 600008

2.Tamil Nadu Real Estate Regulatory Authority (TNRERA),
No.1A, 1st Floor,
Gandhi Irwin Bridge Road, Egmore,
Chennai - 600008.

+lcc to M/s.R.Arumugam, Advocate Sr.No.9083
+lcc to M/s.I.Saddam, Hussain, Advocate Sr.No.9245
+lcc to M/s.Rohini Ravikumar, Advocate Sr.No.9438

AKM/31.03.21/ 16P-6C/

सत्यमेव जयते

C.M.S.A.No.27 of 2020
16.02.2021

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