

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 19.03.2021
CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. No.15981 of 2020
and
MP No.19891 of 2020

M/s.North Town Estates Private Ltd.,
having registered office at
No.3, Ganapathy Colony,
3rd Street,
Off. Cenotaph Road,
Teynampet,
Chennai - 600 018.
Represented by its Director,
K.Narasappan ... Petitioner

Vs

1. The Tamil Nadu Real Estate
Appellate Tribunal,
No.1A, 3rd Floor,
Gandhi Irwin Bridge Road,
Egmore,
Chennai - 600 008.
2. The Adjudicating Officer,
Tamil Nadu Real Estate Regulatory Authority (TNRERA),
No.1A, 1st Floor,
Gandhi Irwin Bridge Road,
Egmore,
Chennai - 600 008.

3. Julian Abraham

4. Deepa Lucia Julian

5. M/s.PVP Ventures Limited,
Having office at KRM Centre,
9th Floor,
No.2, Harrington road,
Chetpet, Chennai - 600 031. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus directing Hon'ble The Tamil Nadu Real Estate Appellate Tribunal, No.1A, 3rd Floor, Gandhi Irwin Bridge Road, Egmore, Chennai - 600 008, the First Respondent herein to entertain and hear the appeal,

against the order dated 23.10.2020 made in CCP No.113 of 2020 on the file of the Second Respondent, without insisting for pre-deposit as per the provisions of section 43(5) of the Real Estate (Regulation and Development) Act, 2016.

For petitioner ... Mr.G.Vivekanand

For respondents ... Mr.K.Surendarnath for R1
Mr.S.Siva Shanmugam for R3, R4
R2 & R5 - Served -
No appearance

ORDER

This writ petition has been filed for a Mandamus seeking for a direction to the first respondent to entertain and hear the appeal filed by the petitioner as against the order dated 23.10.2020 made in CCP No.113 of 2020 on the file of the second respondent without insisting for pre-deposit, as per the provisions of Section 43(5) of the Real Estate (Regulation and Development) Act, 2016.

2. The petitioner has filed this writ petition since there is no provision available under the Real Estate (Regulation and Development) Act (hereinafter referred to as the "RERA Act"), 2016 for waiver for pre-deposit amount as stipulated under Section 43(5) of the "RERA Act", 2016. The petitioner has preferred an appeal as against the order dated 23.10.2020 passed by the second respondent in CCP No.113 of 2020 before the first respondent but however, the said appeal has been filed with a delay. The petitioner has also filed a condone delay petition before the first respondent seeking for condonation of the delay in filing the statutory appeal. Since Section 43(5) of the "RERA Act 2016", mandates payment of pre-deposit by the petitioner, the petitioner has filed this writ petition seeking waiver.

3. The learned counsel for the petitioner submitted that in the decision rendered by the Hon'ble Division Bench of this Court in the case of T.Chitty Babu vs Union of India reported in 2020- 4 LW 213, it was made clear that no waiver can be granted with regard to the pre-deposit amount as stipulated under Section 43(5) of the "RERA Act", 2016. He would further submit that aggrieved by the Hon'ble Division Bench judgement referred to supra, the aggrieved party has preferred an SLP before the Hon'ble Supreme Court and an interim stay of the Division Bench judgment was granted by the Hon'ble Supreme Court. It is submitted by the learned counsel for the petitioner as well as the learned counsel for the respondents 3 and 4 that subsequent to grant of interim stay by the Hon'ble Supreme Court, the

first respondent is now entertaining applications seeking for waiver of pre-deposit amount as stipulated under Section 43(5) of "RERA Act", 2016. However, the learned counsel for the petitioner would submit before this Court that even though the petitioner's condone delay application to file the statutory appeal has been numbered and since no orders have been passed in the condone delay application, till date, by the first respondent, the petitioner may be granted liberty to challenge any order passed by the first respondent in the application filed by the petitioner seeking for waiver of pre-deposit amount as stipulated under 43(5) of "RERA Act" 2016, in case, the first respondent rejects the petitioner's application on the ground of maintainability in view of the stipulation prescribed under Section 43(5) of "RERA Act", 2016.

4. This Court is of the considered view that no prejudice will be caused to any of the respondents, if such a liberty is granted by this Court only for the said limited purpose. Accordingly, this writ petition is disposed of. However, liberty is granted to the petitioner to challenge in accordance with law, if the first respondent rejects the petitioner's application seeking for waiver of pre-deposit amount. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Vsi2

To

1. The Tamil Nadu Real Estate
Appellate Tribunal,
No.1A, 3rd Floor,
Gandhi Irwin Bridge Road,
Egmore, Chennai - 600 008.

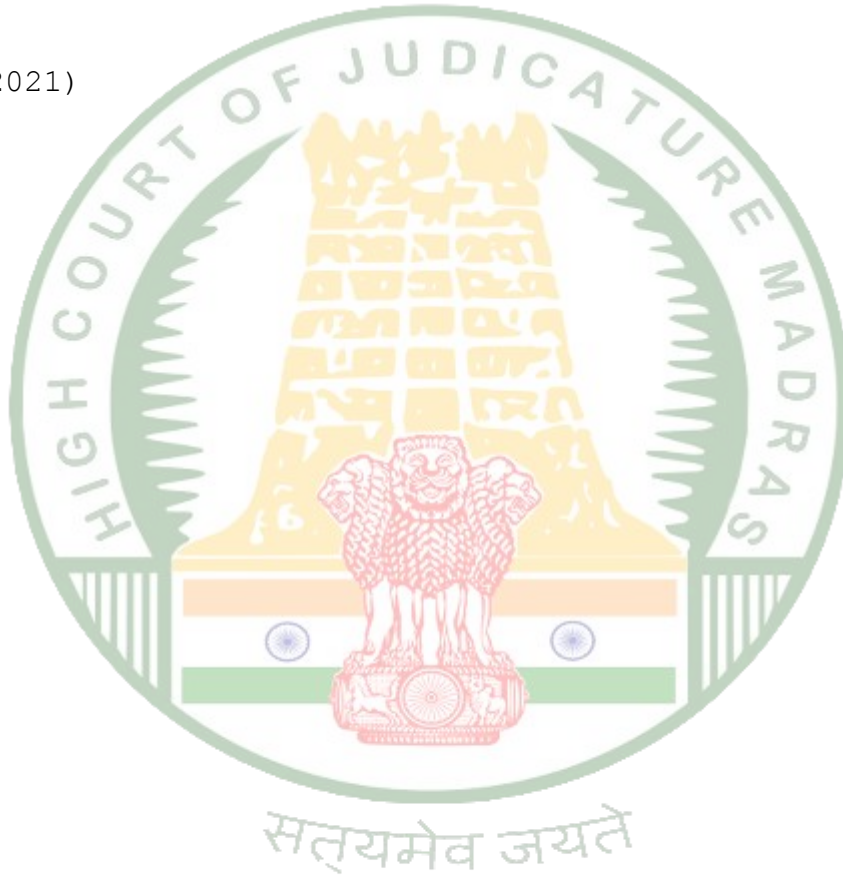
2. The Adjudicating Officer,
Tamil Nadu Real Estate Regulatory Authority (TNRERA),
No.1A, 1st Floor,
Gandhi Irwin Bridge Road,
Egmore, Chennai - 600 008.

3. M/s.PVP Ventures Limited,
Having office at KRM Centre,
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+lcc to Mr.K.Surendarnathn, Advocate, S.R.No. 18152

W.P. No.15981 of 2020

NMI (CO)
GN(30/06/2021)



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