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Writ Petition No.3935 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.03.2023 and 27.03.2023

PRONOUNCED ON : 04.07.2023

Coram:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Writ Petition No.3935 of 2023

and

WMP Nos.3999 & 6484 of 2023

Chennai Hiranandani Residents Welfare Association,
Rep. by its Secretary Mr.N.Venkatathri,
Regd. Office: Ground Floor, Amalfi Tower,
House of Hiranandani,
5/63, Rajiv Gandhi Salai, Egattur,
Chennai – 600 130
Petitioner

....

Vs.

1. The Secretary,
Housing and Urban Development Department,
State of Tamil Nadu,
Secretariat, Chennai – 600 009.

2. The Directorate of Town and Country Planning,
124, GST Road, Periyar Shopping Complex,
Chengalpattu – 603 001.

3. Hiranandani Developers Private Limited ,
1st Floor, Olympia, Central Avenue,
Hiranandani Business Park,
Hiranandani Gardens, Powai, Mumbai – 400 076

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Also at:
Chennai Office, 5/63, Old Mahabalipuram Road,
Opp. SIPCOT IT Part, Egattur Village,
Chennai – 600 130.
Respondents

....

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent in DTCP approval bearing Na.Ka.No.2081/2020/MLPC(C.M-5) dated 19.11.2020 and to quash the same, as illegal and contrary to law and consequently, forbear the 3rd respondent from continuing with the illegal construction of new towers, namely Octavius and Verona in the location of the clubhouse for Phase II and from marketing / selling flats in the 3rd respondent's development "House of Hiranandani" situated in Egattur, Chennai, without abiding by the original DTCP plan approved in 2016 and complete the construction of the second Clubhouse in Phase II strictly, in accordance with the plan approved in 2012 vide Na.Ka.No.9787/2012 dated 15.06.2012 along with building permit No.Mu.U.KA.No.59 dated 15.10.2012 issued by Muttukkadu Gram Panchayat and revised and renewed by Mamallapuram Local Planning Authority on 28.01.2016.

For Petitioner: : Mr. Rahul Balaji

For Respondents
for R1 & R2 : Mr.R.Shanmuga Sundaram,
Advocate General,
Assisted by Mrs.S.Mythreye Chandru
Spl. Govt. Pleader.



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For R3 : Mr.AR.L.Sundaresan, Sr. Counsel,

Mr.P.S.Raman, Sr. Counsel

For Mr.G.Vivekanand and
Ms.Varuni Mohan

ORDER

By consent of both the parties, main writ petition itself is taken up for final disposal and orders have been passed, after hearing all the parties.

2. The petitioner is a registered association of homeowners in Hiranandani Upscale, a residential complex, situated in the petition mentioned premises.

3. The writ petition is filed challenging the DTCP approval bearing Na.Ka.No.2081/2020/MLPC(C.M-5) dated 19.11.2020 issued by the 2nd respondent to the 3rd respondent (henceforth referred to as the “Impugned Plan Approval”) in as much as the DTCP Plan approved in 2012 vide Na.Ka.No.9787/2012 dated 15.06.2012, along with building permit



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No.Mu.U.KA.No.59 dated 15.10.2012 issued by Muttukkadu Gram Panchayat and revised and renewed by Mamallapuram Local Planning Authority on 28.01.2016 has been amended, primarily on the ground that without consent of the owners of the flats and without even informing them of the same.

4. The short facts that are relevant for the determination of this *lis*, are as under:

(i) The petitioner is an Association of the Owners of Flats whereupon the 3rd respondent, Hiranandani Realtors Private Limited (HRPL) promoted a Township, Gated Community project of building integrated Tower Blocks of Apartments of varying sizes under the name and style, “House of Hiranandani”, earlier known as “ Hiranandani Upscale”.

(ii) As per the affidavit of the petitioner, House of Hiranandani (HOH), Chennai, is a township project being developed by the 3rd respondent over the land measuring 120 acres in the village Egattur, Chennai, in phases. The 3rd respondent initially obtained plan approval from the 2nd respondent in 2012 as stated above for development of 14 towers in two phases along with a school, and two Club Houses one for each phase, first one in Phase-I and the



second in Phase-II.

(iii) The 3rd respondent commenced construction of Phase-I in 2009 consisting of seven towers, Greenwood, Brentwood, Bridgewood, Brichwood, Pinewood, Seawood and Oceanic. All seven towers were constructed parallelly and were handed over to the buyers from 2012. The Club House for Phase-I was completed and was made operational only in 2014.

(iv) After the inauguration of the Phase-I Club House in 2014, the 3rd respondent commenced construction of Phase-II in the year 2014 consisting of Bayview, Edina, Sinovia, Tiana, Amalfi, Anchorage and Seagull. Unlike Phase-I, construction of all towers was not taken up parallelly, Edina and Sinovia were completed in 2014, Bayview was completed in 2016 and Tiana and Amalfi were completed in 2019, construction of Seagull has been deferred by the 3rd respondent for reasons best known to them.

(v) It is a specific plea raised by the petitioner that though Phase-II is almost complete, there is no step taken or commencement of construction of a Club House in Phase-II. On the contrary, the 3rd respondent has started



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building two towers namely Octavius and Verona in the exact location in which the Club House for Phase-II is shown in the approved plan and building permit was revised on 28.01.2016.

(vi) (a). The plea of the petitioner in their affidavit is specific to the point that a change in the use or such conversion is impermissible. This is for the reason that any change in planning approval, can be effected only after all the co-owners express 'No Objection'. In the instant case, no such NOC has been obtained. Further, there cannot be a withdrawal of a common facility viz., Club House, after completion of sales of apartments.

(b) There are allegations of irregularities, in the operation of the first Club House in Phase-I and failure to construct the second Club House has resulted in a serious prejudice to the rights of all homebuyers in both phases of the complex and the same is now being made impossible by obtaining a revised plan and hence, the writ petition.

5. The 3rd respondent filed an affidavit in the vacate stay petition i.e. WMP No.6484 of 2023, with a memo to treat the same as the counter in the main writ petition. The sum and summary of averments are as under:



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(i) (a) The writ petition has no merits and to be dismissed *in limine*.

The petitioner is guilty of *suppressio veri suggestio falsi* and has not approached this Court with clean hands. The petitioner is a vexatious litigant who has filed this writ petition to arm twist the 3rd respondent to succumb to the illegal demands of the petitioner and the filing of the present writ petition is tantamount to forum shopping and abuse of process of law and ought to be nipped in the bud.

b) *Assuming arguendo* that the contentions and allegations made by the petitioner require adjudication, the same sought to be adjudicated before the Tamil Nadu Real Estate Regulatory Authority (in short, “TNRERA”) as the alleged violation complained of is one which squarely falls under the provisions of the Real Estate (Regulation and Development) Act, 2016 (“RERA Act”)

(ii) It is alleged that the petitioner has sought to grossly misrepresent the relevant facts and circumstances to this Court and have obtained the ad interim *ex-parte* order dated 10.02.2023 (interim order) from this Court. The petitioner has sought to conceal material documents from this Court and obtained the Interim Order on complete false and baseless grounds.



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(iii) The main points, viz., factual issue that are found in the counter are summarised as hereunder:

(a) The impugned plan approval namely the approval issued by the 2nd respondent bearing Na.Ka.No.2081/2020/MLPC(C.M.S) is dated 19.11.2020.

(b) The said impugned plan approval has been submitted before the TNRERA and the same has been accepted by TNRERA which has been materially suppressed by the petitioner.

(c) The said Octavius and Verona towers are not constructed in lieu of the Club House but the same are constructed after relocating the Club House to east of the earlier plan of the year 2016.

(d) The petitioner has sought to belatedly agitate the same before this Court knowing well that the construction of Octatius and Verona towers commenced as early as in the year 2021 which has substantial progress towards completion and that the relevant consent was procured from all the residents of



the entire Township in their respective agreements, for carrying out any revisions.

(iv) (a) The petitioner is only an association purposely formed without any authority and the members are scattered from all the towers, when there are individual associations formed tower wise and there is an apex association under the name and style “Union of Towers Association, Hiranandani Egattur” (UOTA). There are 13 associations with around 2022 aggregate members till date who have recognized UOTA as the apex body. Hence, the said UOTA who is the apex body shall have right to represent the entire township. Therefore, the petitioner Association which has only 239 members alone shall neither form two third majority nor have right to represent the entire owners of the Township.

(b) The said member of UOTA stood by their consent in their contracts and accepted the modifications in the Sanctioned Plans, which is not challenged by the said UOTA till date.

(v) Pursuant to the Sanctioned Plans, the 3rd respondent completed

the buildings of Phase-I comprising of six towers in the name and style of



Seawood, Pinewood, Brentwood, Greenwood, Birchwood and Bridgewood.

The 3rd respondent has completed part of Phase-II of the said Township which comprises seven towers in the name and style of Oceanic, Edina, Bayview, Sinovia, Tiana, Amalfi and Anchorage and is in the process of developing Octavius, Verona, Bayhaven (Phase-I).

(vi) Reliance is also placed upon the Recital 'L' and clause 10.3 of the Construction Agreement for the purpose of the competency of the 3rd respondent in going for the revision of the plan in respect of the additional area which are not covered under the schedule of the property to the petitioner Association herein.

(vii) It is the specific case of the 3rd respondent in the counter that, even as per the impugned plan approval, the 3rd respondent has only sought to move the amenity namely Club House proposed in the Sanctioned Plans behind of the said Towers namely Octavius and Verona. The 3rd respondent has merely sought to relocate the Club House as per the directions given in the revised Sanction Plan namely the impugned plan approval.



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(viii). The 3rd respondent has not sought to act in deviation to the revised Sanction Plan namely the Impugned Plan Approval nor has it sought to withdraw any common amenity / facility from any of its allottees including the petitioner. The Club House-I given by the 3rd respondent is presently fully functional in the name and style of “Blue Turtle Club House”.

(ix). The second Club House proposed to be developed by the 3rd respondent is in the process of being constructed and is to be completed in due course. The 3rd respondent have furnished the photographs of the construction of the Club House as per the Impugned Plan Approval.

(x). The 3rd respondent also raised a specific plea that the petitioner has suppressed the material facts in order to get an interim order from this Court.

6. The official respondent viz., 2nd respondent filed a counter, that has been adopted by the 1st respondent as well. The short facts that are culled out from the counter are as follows:



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(i) The 3rd respondent submitted his application dated 26.04.2012 to construct a Residential Group Development additional buildings at Chengalpattu District, Tiruporur Taluk and Panchayat Union, Muttukadu Panchayat, Egattur Village, Survey Nos.1/1, 3; 4/1, 2, 3, 4, 5; 7/4B; 13/2; 14/1, 5A; 15/2A, 2B; 18; 19/2pt, 2A; 20/1, 2B; 21/1,2; 22/1A, 1B, 2A, 2B; 23/1A, 1B, 1C, 2, 3A, 3B, 3C, 4; 24; 25/1B1, 1B2, 1C, 1D, 1E, 1F, 1G, 1H, 1I, 1J, 1K, 1L, 1M, 2A, 2B; 26/1A, 1B, 2; 27/1A, 1B, 2A, 2B; 28/1,2,3; 29/1, 2A1, 2B1; 32; 33/2; 34/1A, 1B; 35; 43; 44/1 with total site extent of 118.37 Acres and the same was duly examined and technical clearance No.140/2021 was issued by the Director of Town and Country Planning in his proceedings No.9787/2012/Spl Cell dated 15.06.2012 & 18.07.2012. Accordingly, the 2nd respondent issued planning permission No.38/2012 in his proceedings Nos.389/2012/MLPA dated 11.10.2012. Further, final approval was given by the President, Muttukadu Panchayat, on 15.10.2012.

(ii) The 3rd respondent submitted his application to extend the Time Extension for Planning permission No.38/2012 on 01.10.2015 and 28.01.2016.

The 2nd respondent considered the 3rd respondent's request and issued the Time



Extension period as per Section 50 of Town and Country Planning Act, 1971 from 11.10.2015 to 10.10.2018, for Planning Permission No.38/2012.

(iii) The 3rd respondent submitted his application for revises and additions to planning permission No.38/2012 on 05.06.2020. That is, among the other revisions and additions, deleted the Club House Block No.36 (2 Basement + Ground Floor + 4 Floors of total building area 10413.50 sq.m). In the same location of the Block No.36, the Residential Block No.50 (2 Basement + Stilt + 18 Floors) and the Residential Block No.51 (2 Basement + Stilt + 18 Floors) is added and the sports hall Block No.37 (3 Basement + Ground Floor of total building area 923.53 sq.m) is revised as sports hall and Club House Block No.37 (Ground Floor + First Floor of total building area 1687.47 sq.m), addition to Egattur Village S.No.31 & 42 to extent of 4,867.71 sq.meter and the same was duly examined and technical clearance No.176/2020 was issued by the Director of Town and Country Planning in his proceedings No.10127/2020 spl. Cell dated 21.08.2020.

(iv) Thereafter, as per Special Conditions SI No.12, opinion of Government Pleader was sought for and on 07.11.2020, the learned Government Pleader in his legal opinion has stated that M/s.Hiranandani



Realtors Pvt. Ltd still own the balance extent of 90.88 acres and an GPA for 7.58 acres of land which gives them right to apply for revised sanction of planning permission from DTCP/MLPA/Local Body for addition, deletions and revisions to the earlier approved plan. The said right is also derived from the Recital Clause M and Clause 6.6 of and / or similar clauses in the various Agreements for Sale and Construction Agreements which provides them the right to apply for revised plan and obtain sanction from/to DTCP/MLPA for deletion, revision and addition of various buildings in the site.

(v) The 2nd respondent issued planning permission No.17/2020 in his proceedings No.2081/2020/MLPA dated 19.11.2020.

(vi) The 2nd respondent in his proceedings dated 19.11.2020 has given planning approval with special conditions as follows:

“The Tamil Nadu Government in G.O.Ms.No.112, Housing and Urban Development Department dated 22.06.2017 have approved the Tamil Nadu Real Estate (Regulation & Development) Act, 2016. The promoter has to advertise, Market, book/sell or offer for sale, or invite persons to purchase in any manner, any plot, apartment or building, as the case may be, in any Real Estate project or part of it, only after registering the Real Estate project with the Real Estate Regulatory Authority”



Thereafter, the same was forwarded to local authorities for final approval and final approval was given by the local authority on 23.12.2020.

(vii) As per the Tamil Nadu Combined Development Control Rules, 2019, Rule No.11-The Limitation of Permission, was duly followed.

7. On the above pleadings, arguments of the learned counsel for the petitioner-Mr.Rahul Balaji, learned Senior Advocates Mr.P.Raman and Mr.AR.L.Sundaresan, appearing for the 3rd respondent and learned Advocate General-Mr.R.Shanmugasundaram, were heard and perused the typed set of papers along with new plan and revised plan.

8. The learned counsel for the petitioner could contend that what was originally shown as 'Club House' is being converted into 'Twin Tower, therefore, Building Agreement-Annexure-IV of Building contract are altered.

9. The learned senior advocate Mr.AR.L.Sundaresan, appearing for the 3rd respondent contended that what was promised with the Annexure-IV has still been retained and also the modified plan of the Annexure-IV has been



retained and therefore, the petitioner has no grievance and the said alleged grievance is only imaginary projected to prejudice the mind of the Court.

10. Further, Mr.AR.L.Sundaresan, learned senior advocate, for the 3rd respondent raised the issue of maintainability of the writ petition, under Article 226 of the Constitution of India, as the grievance alleged by the petitioner is purely a question that falls within the jurisdiction of the Special Court constituted under the Tamil Nadu Real Estate Regulatory Authority, in short, 'TNRERA'.

11. In reply, the learned counsel for the petitioner stated that since he challenged the modified approved plan issued by the 2nd respondent viz., Directorate of Town and Country Planning and the modification of the already approved plan, against which the Special Court constituted under the TNRERA, has no jurisdiction.

12. Learned Senior Advocate Mr.P.S.Raman, who is also appearing for the 3rd respondent would contend that by "suppressing the material fact", the petitioner had obtained interim injunction resulting in heavy loss due to



stoppage of work and also contended that the DTCP approval given by the 2nd respondent, was before the coming into force and commencement of the RERA Act and therefore, regulation under Explanation (II) to the Rule 4 of the TNRERA Rules alone is applicable to the facts of the case and further contended that as per the above regulation, it is an 'informed consent'. This 'material fact' has been suppressed.

13. The learned Senior Advocate-Mr.P.S.Raman, vehemently contended that the exchange of notice between the parties, prior to the institution of the writ petition, will amply demonstrate that the petitioner Association is indulging in arm-twisting the 3rd respondent to give, free of cost, membership to the Club House and also for other facilities as noted in the said notice.

14.(a) After going through the prayer in the writ petition, and the counter filed by the 2nd and 1st respondents, I find that 239 members alone have filed the writ petition and they are challenging the revised plan (impugned order) on the ground that necessary consent as contemplated under Section 14(2) (II) of the TNRERA Act has not been complied with.



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(b) In short, as per the said Section, when any project is developed in phases, modification, if any, in an already approved plan, can be allowed only with the approval of the two third of the existing flat owners. However, no such approval was obtained from any of the flat owners to amend the original plan of 2016. In fine, no change of the approved plan can be made by the 3rd respondent, without the consent of the owners.

15. (a) Therefore, the contention of the learned counsel for the petitioner is that in the impugned plan approval dated 19.11.2020, there are changes in both common and total built up areas, in turn, in the impugned approved plan, it is cancelled and Club House in Phase –II was revised.

(b) I find that while a separate right is available under Real Estate (Regulation and Development) Act, 2016 (in short “RERA Act”), for omission or deletion of facility or amenity, as promised, the aggrieved purchaser / flat owner can move the Special Court under RERA. However, if any illegality alleged to have been committed by the authorities in granting approval or modification or revision, such action of the Planning authorities, can be



challenged only by a writ petition, since the official respondents who have approved the impugned plan are not amenable to the jurisdiction of the RERA Court and hence, I have no hesitation to hold that the writ petition filed for the above said prayer is maintainable before this Court under Article 226 of the Constitution of India.

(c). Accordingly, I answer the point raised on behalf of the 3rd respondent, in negation and hold that this Writ Petition filed under Article 226 of Constitution of India, challenging the impugned plan approval dated 19.11.2020, *is maintainable*.

16. The respective parties have been heard on other allegations and the same is discussed infra.

17. The prime contention of the learned counsel for the petitioner is that the impugned plan approval is violative of the rights of the owners of the flats, as enshrined under Article 21 of the Constitution of India.

18. It is the specific case projected by the petitioner that there are

variations and violation of changes, in common area and total built up areas.



The impugned plan approval also affects the serenity and visibility of the entire township and the proposed 'twin towers' are a high rise of 19 floors including stilt, which will be standing mammoth in the place where it were to have only low building of two floors for a Club House with lots of open space for free air circulation and ventilation and the same has been emphasized in Ground 'D' raised in the writ petition.

19. Learned counsel for the petitioner by relying upon the Section 14(2)(II) of RERA Act would contend that there exists a violation of DTCP Plan approved in 2016 by making amendment to this plan, by replacing 'twin towers' for the second Club House and the same was done without consent of the owners of the flats and without even putting them on notice and drew my attention to Section 14(2), which reads as follows:

“Section 14-Adherence to sanctioned plans and project specifications by the promoter” - The Real Estate (Regulation and Development Act, 2016)

(1) The proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authorities.

(2) Notwithstanding anything contained in any law, contract or agreement, after the sanctioned plans, layout plans and specifications and the nature of the fixtures, fittings, amenities and common areas, of the apartment, plot or building, as the case may be, as approved by the competent authority,



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are disclosed or furnished to the person who agree to take one or more of the said apartment, plot or building, as the case may be, the promoter shall not make-

(i) any additions and alterations in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described therein in respect of the apartment, plot or building, as the case may be, which are agreed to be taken, without the previous consent of that person:

Provided that the promoter may make such minor additions or alterations as may be required by the allottee, or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by an authorised Architect or Engineer after proper declaration and intimation to the allottee.

Explanation

For the purpose of this clause, "minor additions or alterations" excludes structural change including an addition to the area or change in height, or the removal of part of a building, or any change to the structure, such as the construction or removal or cutting into of any wall or a part of a wall, partition, column, beam, joist, floor including a mezzanine floor or other support, or a change to or closing of any required means of access ingress or egress or a change to the fixtures or equipment, etc.

(ii) any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such building.

Explanation

For the purpose of this clause, the allottees, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, etc., by whatever name called, booked in

<https://www.mhc.tn.gov.in/judis> his name or booked in the name of its associated entities or related enterprises,



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shall be considered as one allottee only.”

20. Per contra, learned Senior Advocates Mr.P.S.Raman and Mr.AR.L.Sundaresan, drew my attention to Explanation II to Rule 4 of TNRERA Rules, which reads as under:

“Explanation II .- If the project has been conceived to be developed in phases, where the plans for the initial phase are approved by the planning authority prior to the date of coming into force of sub-section (1) of section 3 of the Act, then for such projects the requirement of obtaining two third consent from existing allottee, under clause (ii) of sub-section (2) of section 14 of the Act is exempted for addition/revision/modification of plans for subsequent phase/s of development, provided the scheme of developing the project in phased manner has been agreed upon by the allottee and promoter in the agreements executed between them;” [emphasis supplied]

21. On a combined reading of the above two clauses, I find that consent as contemplated under Section 14 of the RERA Act has to be a specific consent, which is to be obtained upon a full disclosure by the developer of the entire project including construction timeline, nature, units to be constructed, amenities to be provided, etc., with supporting documents which will enable the purchaser to take a specific decision at the time of buying the unit.

22. It is relevant to refer to the terms, 'consent', 'free consent', and



'informed consent'.

(a) As per Section 13 of the Contract Act, 1872, “Consent” is defined as follows:

(i) “two or more persons are said to consent when they agree upon the same thing in the same sense”.

(ii) Further, 'Consent' in law means, an affirmative and positive act. 'Consent' must imply a knowledge of the necessary facts and materials which leads to the consent and a consent cannot be said to have been given in abstract.

(b) As per Section 14 of the Contract Act, 1872, “Free consent” is defined, as follows:

“Consent is said to be free when it is not caused by— (1) coercion, as defined in section 15, or (2) undue influence, as defined in section 16, or (3) fraud, as defined in section 17, or (4) misrepresentation, as defined in section 18, or (5) mistake, subject to the provisions of sections 20, 21 and 22. Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake.”



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(c) The phrase, 'informed consent', relates to an agreement to do something or to allow something to happen only after all the relevant facts are known. In contracts, an agreement may be reached only if there has been full disclosure by both parties of everything each party knows which is significant to the agreement.

(d) Further, the word 'consent' referred to here need not necessarily be an express consent and an implied consent can be spelt out from the agreement itself.

(e) Where a 'consent' is given substantially, the Court cannot look very minutely into the form, in which it is given.

23. (a) At this juncture, on factual matrix, it is relevant to state that application for the layout plan building approval was submitted by the 3rd respondent on 26.04.2012 and technical clearance was issued on 15.06.2012 and 18.07.2012. Planning permit was issued by the 2nd respondent on 11.10.2012 and final approval was given by the President Muttukadu Panchayat on 15.10.2012. On the application for time extension for planning



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permit, it is extended from 11.10.2015 to 10.10.2018 and the subject matter of the planning permission request was made on 05.06.2020 as detailed above.

(b) Further, as extracted in the counter, the lands in Egattur Village S.No.31 and 42 to an extent of 4,867.71 sq.meters, were added and deleted the Club House Block No.36 consisting of 2 Basement + Ground Floor + 4 Floors of total building area 10413.50 sq.m. In the same location of the Block No.36, the Residential Block No.50 (2 Basement + Stilt + 18 Floors) and the Residential Block No.51 (2 Basement + Stilt + 18 Floors) are added and the sports hall Block No.37 (3 Basement + Ground Floor of total building area 923.53 sq.m) is revised as sports hall and Club House Block No.37 (Ground Floor + First Floor of total building area 1687.47 sq.m). The technical clearance was granted on 21.08.2020.

24. On perusal of the above factual matrix, I find that the approval for original plan was granted even before coming into force and commencement of the TNRERA Act and accordingly, I find that on the factual matrix, the explanation (II) to Rule 4 of the RERA Rules shall apply to the facts of this case and consequently, the subject matter of the plan is **exempted** from getting the consent as contemplated under Section 14 of the RERA Act as projected by the



petitioner.

25. Furthermore, as per Section 14 of the RERA Act, it has to be a specific consent and however, such consent was exempted, for categories that are falling under Explanation II to Rule 4 of RERA Rules.

26. At this juncture, it is pertinent to know that Recital 'L' of the said Construction Agreement specifically records that every individual allottee understands and consent that the balance area of the said land or thereabout may be modified in the future to the extent as may be required/desired by the 3rd respondent and as such the 3rd respondent shall be free to carry out / develop it in any manner and it may deem fit and/or pursuant/consequent to any directions/approvals made by the 2nd respondent herein.

27. It is also relevant to deal with Clause 10.3 of the said Construction Agreements, which recorded that each of these allottees have given their 'specific consent' and 'empower' the 3rd respondent to file 'necessary renewal/revision application' with the appropriate authority and to comply with any statutory requirement for such the deemed consent given by the allottees of



the said Township including the members of the petitioner enabling the 3rd respondent to make necessary modifications/changes to the Sanctioned Plans.

28. Thus, I find that, in view of the contention raised by Mr.P.S.Raman, learned Senior Advocate in the counter affidavit, on the factual matrix and on a combined reading of the various dates and events enumerated in the preceding paragraphs and Recital 'L' of the Construction Agreement coupled with Clause 10.3 of the Construction Agreement, there is no new special and separate consent need be obtained by the 3rd respondent in respect of the proposed revised plan before submission of the impugned planning permit.

29. Accordingly, I have no hesitation to reject the petitioner's contention and further I hold that there was no necessity for the 3rd respondent to procure any fresh consent of two-third of the allottees to act on the revised plan namely, the impugned Plan Approval. Thus, the 3rd respondent has acted in consonance with the terms stipulated under the RERA Act and TNRERA Rules.



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30. (a) After perusing the counter affidavit and after hearing the submissions of the learned Advocate General appearing for the respondents 1 and 2, I find that even as per the impugned plan approval, the 3rd respondent has only sought to move the amenity viz. Club House proposed in the Sanctioned Plans behind the said towers viz., Octavius and Verona and I do not find any deviation in the revised sanctioned plan viz, the impugned plan approval.

(b) Thus, I find that the respondents 1 and 2 have properly taken into consideration the law on the point of agreement between the parties, as referred to in the preceding paragraphs, the total extent of land and the fact that it is a “project in phased manner” and has also taken note that in addition to the existing lands, the lands in Egattur Village in Survey Nos.31 and 42 to an extent of 4,867.71 sq.meter, the approval plan has been extended while shifting the Club House to a nearby place away from the originally located place and by no stretch of imagination tantamount to be deemed to be a withdrawal of a common facility by the 3rd respondent as alleged by the petitioner.

(c) I find that the plan approval by the respondents 1 and 2 is as per



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the Tamil Nadu Combined Development Rules 2019 and the Limitation of Permission as stated in Rule 11 of the said Rules was duly taken note of by respondents 1 and 2.

31. Before issuing technical clearance and planning approval, the respondents 1 and 2 have scrutinized the documents submitted by the 3rd respondent and having satisfied with the compliance of the statutory requirement, it appears that the authority has considered that the 3rd respondent is having right to develop the subject land.

32. For clarification, the matter was posted and called in the open Court on 27.03.2023 and in the presence of the learned Advocate for petitioner and the contesting respondents, the old plan and the new revised plan were shown to the respective counsels and this Court has put the following three questions to them viz.,

(i) The first question was, whether the situs of the building originally scheduled as club house has been conveyed to the petitioners or not, for which, the learned counsel for the petitioner Association stated that it is not covered under the sale deed, however, only in the building plan, it is shown as an



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amenity;

ii) The second question was also on the similar line, whether the proposed site on which the club house, as per the revised plan, has been sold to any of the petitioners herein as an undivided share, for which the same reply has emerged from the petitioner counsel; and

iii) the third question that has been put to the petitioner counsel is that whether any part of the land, as per the new proposed plan shown in the map, has been sold (or) conveyed to the petitioners, which lead to the same answer that the petitioners have not purchased any piece of undivided share either under the original site of the club house or the proposed site of the club house or the new proposed plans.

(c) The clarification issued by the respective counsel, is hereby recorded.

(d) Learned counsel for the petitioner Association has represented to me that under the building contract, those places are shown as amenities and that the members of the petitioner's Association, are entitled for 'amenity



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interest', therein.

33. The grounds raised in the writ petition are two fold. One is before revision of the plan, the official respondents ought to have emphasized upon the consent of the earlier owners of the land, as required under Section 14(2)(II) of the RERA Act, which stands negatived for the reasons stated in paragraph No.29.

34. The next contention is that they were deprived of the usage of Club House and in the place of Club House, the 3rd respondent is constructing the twin towers consisting of multiple floors. As per the original plan as produced by the learned Government advocate in the open Court, it goes to show that the the original site is for Club Ground Floor + four floors consisting of seven rooms and hotels proposed to be constructed and the same has been revised and the original Club House has been shifted to a nearby place. This is a factual position.



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35. At page No.34 of the typed set of papers in Sl.No.14 with regard to Block No.36, it is mentioned that building removed from the earlier approval, Club Ground floor + 4 floors, FSI and non-FSI area has been mentioned as 10,413.80. However in the revised plan, the building for Club House, more or less equal to the earlier measurement, has also been provided. Ofcourse, it has been shifted. Hence, the second contention raised by the petitioner also stands negatived.

36. As regards to the other contention of the petitioner counsel that the impugned plan based upon the application, which is violative of the Tamil Nadu Apartment Ownership Act, as it interferes with the vested right over the amenities, which is the Club and in the instant case, it was replaced with multi-storeyed building in a place where only four buildings were originally planned. At the risk of repetition, it is to be stated that it is an ongoing project as evidenced from the approved plan and with regard to the schedule of the property in which the petitioners have purchased the property, falls under the Phase- II and not under Phase-III.

<https://www.mhc.tn.gov.in/judis> 37. With regard to the alleged vested right over the amenities, it is for



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the petitioner to move to the competent Court under the RERA Act and not before this Court.

Cost:

38. The learned senior counsel Mr.P.S.Raman appearing for the 3rd respondent placed reliance upon the decision in ***Ramrameshwari Devi and others Vs. Nirmala Devi and others***, reported in (2011) 8 SCC 249, and submitted that heavy and exemplary costs has to be imposed upon the petitioner.

39. There are 239 persons as per the list annexed in the typed set of papers at page no.251 with the Flat Numbers and the name of the towers.

40. Learned Senior Advocate appearing for the 3rd respondent drew my attention to the notice exchanged between the parties before filing the writ petition viz., letter sent by the petitioner to the 3rd respondent dated 26.08.2022, reply letter of the 3rd respondent to the petitioner on 18.10.2022 and email sent by the 3rd respondent in response to the letter, are taken note of.

41. In the communication exchanged between the parties prior to the

<https://www.mhc.tn.gov.in/judis>

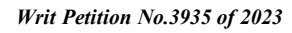


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writ petition, the petitioners were predominantly asking for waiver of non active membership charges and they wanted a free membership. Hence, I find that the contention raised by the learned Senior Advocate Mr.P.S.Raman that it is this grievance that has catapulted in this writ petition.

42. In fact, in the reply dated 18.10.2022 sent by the 3rd respondent, it is stated that two club houses will be constructed, as assured and that the same has been taken note of by the petitioner, assumes significance.

43. From the exchange of notice, as stated supra and also the two sets of original plan, revised plan that has been produced by the learned Advocate General and perused by me in the open Court, I find that as per planning permission issued in 2012, the Block numbers 21-Ground Floor, 25A-Ground Floor, 35, 36 46 are Club houses and Block Numbers 37 and 40 is sport hall which are amenities to the purchasers. In continuation of revised plan approval in 2020, the above mentioned all the blocks are as it is as per previous approval i.e. 2012, except block number 36 revised as residential blocks 50 and 51, block number 37 utilised as sports hall and club house earlier as sports hall alone. This factual position appears to have been suppressed by the petitioner.



45. As raised in the counter affidavit and as projected by the learned Senior Advocate Mr.P.S.Raman, the notices exchanged between the parties clearly indicates that the Association wanted to arm-twist the 3rd respondent in getting free membership in certain amenities provided by the builder which even as per the building agreement, separate costs has to be paid by the owners or the residents, as the case may be, for the service provided in the amenities centre or in the Club House. However, taking cue on the approval plan, they have projected the writ petition as if there is a gross error in the facts of the case and projected the case, as if the plan was approved by the 1st respondent for an extraneous consideration from the 3rd respondent and hence, I find that it is a fit case to award costs and accordingly, as stated supra, Rs.500/- per head is awarded i.e. Rs.500/- x 239 = Rs.1,19,500/- [Rupees One Lakh Nineteen



Thousand Five Hundred only] to be paid by the petitioner association to the 3rd respondent for causing inconvenience and for pecuniary loss by suppression of material facts.

46. In fine,

(a) the consent as required under Section 14 of the RERA Act, is to be a 'specific consent', whereas 'such a consent' was exempted for categories falling under Explanation II to Rule 4 of the RERA Rules.

(b) On factual matrix, as discussed in paragraph Nos.28 and 29, there is a 'specific consent', empowering 3rd respondent to file revision application with appropriate authority.

(c) on factual position, as per recital 'L' of the Constructions Agreement and Clause 10.3 of the Constructions Agreement, the individual members of the Association in their respective Building Agreements has specifically given their consent. As such, there is a specific consent.

(d) The impugned approval given by the 1st and 2nd respondent for the 3rd respondent is not violative of any legal right of petitioners and the same is held to be permissible and the same is passed by the 1st and 2nd respondent after following due process of law on compliance of the necessary procedures.

47. In the result,



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(i) I find that none of the legal rights of petitioners, is violated and the planning permit issued by the 1st respondent and 2nd respondent in favour of the 3rd respondent, is held to be sustainable in law.

(ii) the writ petition is devoid of merits and dismissed with costs, as stated supra.

(iii) the stay granted in W.P.No.3999 of 2023, shall stand vacated and the vacate stay petition in WMP No.6484 of 2023, is allowed.

(iv) the petitioner association is at liberty to move the appropriate forum for the appropriate relief, if they feel that the amenities guaranteed by the 3rd respondent is not provided to them.

(v) Cost of Rs.500/- per head awarded i.e. Rs.500/- x 239 = Rs.1,19,500/- [Rupees One Lakh Nineteen Thousand Five Hundred only] to be paid by the petitioner association to the 3rd respondent, within a period of eight weeks from the date of receipt of a copy of this order.

04.07.2023

Index : Yes
Speaking order
Neutral Citation: Yes
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RMT.TEEKAA RAMAN,J

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To

1. The Secretary,
Housing and Urban Development Department,
State of Tamil Nadu,
Secretariat, Chennai – 600 009.

2. The Directorate of Town and Country Planning,
124, GST Road, Periyar Shopping Complex,
Chengalpattu – 603 001.

Pre-delivery order in

Writ Petition No.3935 of 2023

04.07.2023