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C.M.S.A.No. 16 of 2020, 17 of 2023, 87 & 89 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On: 23.09.2024

Delivered On: 06 .12. 2024

CORAM:

**THE HONOURABLE MRS.JUSTICE J.NISHA BANU
AND
THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI**

**C.M.S.A.No. 16 of 2020, 17 of 2023,
87 & 89 of 2022**

CMSA.No.16 of 2020

1. G.K.S. Technology Park Limited,
Rep by its Managing Director,
Tulive Developers,
No 5, 1st street, Subbarao Avenue,
Chennai- 600006

2. Suresh Vaidyanathan
The Chief Executive Officer,
G.K.S Technology Park Ltd,
Tulive Developers,
No 5, 1st street, Subbarao Avenue,
Chennai- 600006

... Appellants

VS.

1. T. Aanandhi

2. Parandhaman Shanmugham

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3. Vice Chairman

Chennai Metropolitan Development Authority

Thalamuthu Natarajan Building No.1,

Gandhi Irvin Road, Egmore,

Chennai-8

... Respondents

3rd Respondent impleaded vide court order dated 24/06/2022 made in CMP No.5919 of 2022 in CMSA No.16 of 2020 by MDJ and SMJ.

Prayer in CMSA No.16 of 2020 : Civil Miscellaneous Second Appeal filed

under Section 58 of the Real Estate (Regulation and Development) Act, 2016

Read with section 100 of Civil Procedure Code, 1908 , to set aside the order

dated 10.02.2020 passed by the Tamil Nadu Real Estate Regulatory Tribunal

in Appeal No.11 of 2020 by restoring the order of the Tamil Nadu Real

Estate Regulatory Authority in complaint No.411 of 2019 dated 19.12.2019.

CMSA.No. 17 of 2023

1. G.K.S. Technology Park Limited,

Rep by its Managing Director,

Tulive Developers,

No 5, 1st street, Subbarao Avenue,

Chennai- 600006

... Appellant

VS

1. T. Aanandhi

2. Suresh Vaidyanathan

The Chief Executive Officer,

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G.K.S Technology Park Ltd,
Tulive Developers,
No 5, 1st street,
Subbarao Avenue,
Chennai- 600006

... Respondents

Prayer in CMSA No.17 of 2020 : Civil Miscellaneous Second Appeal filed under Section 58 of the Real Estate (Regulation and Development) Act, 2016 Read with section 100 of Civil Procedure Code, 1908 , to set aside the order dated 11.11.2022 made in Appeal No.3/2022 on the file of Learned Tamil Nadu Real Estate Appellate Tribunal (TNREAT) at Egmore, Chennai to the extent of partly confirming paragraph 8(g) regarding compensation for sum of Rs.5,00,000/- (Five Lakhs) for mental agony and Rs.25,000/- (Twenty Five Thousand) towards legal expenses and Paragraph 8(e) regarding compensation for sum of Rs.50,000/-(Fifty Thousand) towards rectification of defects (as made in Order dated 30.11.2021 in C.C.P. No. 212 of 2019 on the file of the Learned Adjudicating Officer, The Tamil Nadu Real Estate Regulatory Authority at Egmore, Chennai.

CMSA.No. 87 & 89 of 2022

T. Aanandhi

... Appellant

VS

1. G.K.S. Technology Park Limited,
Rep by its Managing Director,
Tulive Developers,
No 5, 1st street, Subbarao Avenue,
Chennai- 600006



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2. Suresh Vaidyanathan
The Chief Executive Officer,
G.K.S Technology Park Ltd,
Tulive Developers,
No 5, 1st street,
Subbarao Avenue,
Chennai- 600006

... Respondents

Prayer in CMSA No. 87 of 2022: Civil Miscellaneous Second Appeal filed under Section 58 of the Real Estate (Regulation and Development) Act, 2016 Read with section 100 of Civil Procedure Code, 1908 , to set aside the order dated 11.11.2022 in Appeal No.4/2022 confirming the order dated 30.11.2021 in CCP No.212/2019 and grant enhanced compensation as prayed for in CCP No.211/2019

Prayer in CMSA No. 89 of 2022: Civil Miscellaneous Second Appeal filed under Section 58 of the Real Estate (Regulation and Development) Act, 2016 Read with section 100 of Civil Procedure Code, 1908 , to permit the petitioner to withdraw Rs.5,97,867/- along with its accrued interest @ 8.35%, w.e.f. 01.12.2021, lying into the deposit of Appeal 3/22, at Tamil Nadu Real Estate Appellate Tribunal, pending disposal of this Civil Miscellaneous Second Appeal

For Appellants : Mr. Ananth Merathia
in CMSA.16 and 17 /2023
Mrs. T.Aananthi / Party-in-person.
in CMSA No. 87 & 89/2022

For respondents : Mrs. T.Aananthi – for R1/Party-in-person
in CMSA No. 87 & 89/2022
Mr. Ananth Merathia
in CMSA No. 87 & 89/2022
Mr.K.Vijayakumar for R2



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C.M.S.A.No. 16 of 2020, 17 of 2023, 87 & 89 of 2022

in CMSA No.16/2020

COMMON ORDER

CMSA.Nos.16 of 2020 is filed by the Developer-G.K.S.Technology Park Ltd as against the order passed in Appeal No.11 of 2020 filed by T.Aananthi/complainant before the Tamil Nadu Real Estate Appellate Tribunal dated 10.02.2020. The Chairperson, TNRERAT directed as follows:-

“23. In the result, this Appeal No.11 of 2020 is allowed with cost of Rs.7,000/- payable by the 1st respondent and further directs that:

a) the Order of the Learned Authority in C.No.411 of 2019 dated 07.11.2019 is set aside and the Complaint is partly allowed only in respect of registration of sale deed, grant of the car-par, restoring it from the 3rd respondent and prohibiting the 3rd respondent from using the car park allotted to the complainant. Regarding the claim of interest by the claimant, it will be adjudicated in the pending adjudication itself in C.C.P.No.212 of 2019 by the Adjudicating Officer.

b) We also direct the builder to register the sale deed in favour of the appellant within two weeks from today after



completing the unfinished works and shifting the car park of the 3rd respondent. At the same time, the appellant is directed to pay Rs.5,59,000/- being the amount payable as admitted by her in the written argument or in the alternative take the responsibility of registering by herself at her cost by reducing the charges as in the builder's cost sheet shown in Page No.79 of the typed set.

c) In view of the same, we direct the builder/1st respondent to re-allot the car park immediately just below the complainant's flat D-101, which is now occupied by the 3rd respondent [Paranthaman Shanmugam] be given any other car park and also permit him to claim any relief against the builder in so far as to the shifting of his car park.

d) We find that it is a fit case where the builder has violated the approved plan, created extra car parks and sold the same at exorbitant rates, why necessary action should not taken by CMDA for violation of their approved plan. In this connection, we direct the CMDA to take necessary action under relevant provisions of law for all the violations done including exceeding the number of car parks as per the approved plan and selling the same to the parties. CMDA is directed to file a report of the action taken within 4 months. A copy of the judgment to be sent to the Member-Secretary, CMDA for necessary action. “



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2. C.M.S.A.No.17 of 2023 is filed by the Developer as against the order dated 11.11.2022 passed by the TN Real Estate Appellate Tribunal in Appeal Nos.3 and 4 of 2022, wherein, Appeal No.3 of 2022 has been filed by the Developer and Appeal No.4 of 2022 has been filed T.Aananthi/Complainant. In the abovesaid appeals, the Administrative Member and Judicial Member decided as under:-

“ 20. Regarding compensation for the delayed handing over of possession, both the appellant and respondent have equally contributed for the delay in handing over of possession as discussed above, Moreover the respondent has neither pleaded nor proved any loss or damage caused to her property due to the delayed handing over of possession by the appellants. The question of payment of any compensation arises only when there is a loss or damage caused to any person or to his property. But there are neither any pleadings nor any proof to show that the respondent had suffered any loss or damages required to be compensated. Therefore, the awarding of compensation by way of interest at 10.35% p.a. Due to the delayed handing over of possession by the appellants is not justified and the same is liable to be set aside.

21. Regarding the order directing refund of the excess payment of Rs.1,48,800/- on the ground of shortage of extent



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of plinth area, the same is also liable to be set aside. Because the respondent had already adjusted a sum of Rs.1,50,000/- with the registration charges, and paid Rs.15,50,000/- only as against the demand of Rs.17,00,000/- at the time of registering the sale deed on 06.03.2020. Therefore, no further payment can be awarded once again on the same ground.

22. In the facts and circumstances above discussed we are of the considered view that the order of the adjudicating officer awarding compensation on other heads is just and reasonable and there is no necessity for this Tribunal to interfere and alter the same.

23. In the result in so far as the A.No.03 of 2022 is concerned, the portion of the order of the Adjudicating Officer in C.C.P.No.212 of 2019 dated 30.11.2021, awarding compensation by way of interest under the head of delayed handing over of possession under paragraphs 8(a)& (b) and the portion of the order granting the relief of refund of Rs.1,48,800/- in favour of the respondent in paragraph 8(d) are hereby set aside. The awarding of compensation on other heads and litigation costs, contained in paragraph 8(e), 8(f) and 8(g) hold good and remain as such. Accordingly the appeal in A.No.3 of 2022 is partly allowed. No costs.

24. In the result, in sofar as the A.No.04 of 2022 is concerned, the same is hereby dismissed. No costs. Connected



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Miscellaneous applications if any pending are hereby closed. “

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CMSA.Nos.87 and 89 of 2022 are filed by the complainant for the relief of enhanced compensation and for withdrawal of the amount deposited by the developer as per the direction of the Tribunal.

3. (a) The appellant in CMSA.Nos.87 and 89 of 2022 is the complainant. It is the case of the complainant that vide allotment letter dated 12.09.2016, she was allotted flat No-D101 in the real estate project by name “VIHA” situated at No.13, V.O.C Colony, Anna Nagar East, Chennai-102.

(b) Subsequently, in April 2017, a sale agreement concerning the UDS portion and a construction agreement were entered into between the complainant and the developer. According to the construction agreement, the developer was required to finish the construction by October 2017, with a grace period extending upto 3 months. They completed the construction ahead of schedule and received a completion certificate on 24.08.2017 from



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the Chennai Metropolitan Development Authority. The same was subsequently communicated to the complainant through email on 31.08.2017. However, the complainant did not adhere to the payment schedule and has only completed 40% of the total payment, leaving an outstanding balance of Rs. 79,09,484/- as of August 31, 2017.

(c) Additionally, in accordance to the terms of the construction agreement, the developer had the right to levy interest on the overdue amount. The developer demanded overdue amount, including interest at a rate of 18% per annum, through several emails starting from 12.10.2017. However, the complainant failed to step forward and settle the outstanding balance along with the interest. The complainant expressed her inability to clear the balance amount with interest and also inquired regarding procedure to cancel the booking of flat.

(d) The developer further communicated the details of the exact amount refundable in the event of cancellation through emails dated 19.12.2018 and 27.12.2018. The complainant gave up her idea of cancellation and came forward to continue in the project. She informed the same through email dated 31.12.2018 and asked for a rebate. The



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complainant assured that the outstanding amount would be settled by

05.04.2019. However, she dragged the payment till June 2019.

4. The learned counsel for the appellant in CMSA.Nos.16 and 17 of 2023 viz., developer argued that once the payment issues were largely resolved, the complainant filed a complaint with TNRERA in C.No.411/2019 seeking a specific car parking space, which was rejected by TNRERA vide order dated 19.12.2019. Aggrieved by the same, the complainant appealed in A.No.11 of 2020 before the Appellate Tribunal.

5. The complainant admitted that after deducting the proportionate cost of Rs.1,41,000/- for shortage of 13 Sq. ft. calculated at Rs. 10850 per Sq. ft, the sum of Rs.7 Lakhs was still payable by her to the developer. The same was considered and passed final order in A.No.11 of 2020, by setting aside the order of TNRERA and by partly allowing the complaint in respect of registration of sale deed and grant of car park.



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6. The complainant succeeded in the appeal A.No.11 of 2020. The Tribunal set aside the order of the Authority dated 07.11.2019 and partly allowed the appeal in respect of registration of sale deed, grant of car-park, restoring it from 3rd respondent and prohibiting the 3rd respondent-another flat purchaser from using the car park allotted to the complainant.

7. The learned counsel appearing for the appellants/developer submitted that the Adjudicating Officer given findings pointing out the fact that the delay in transferring possession was unavoidable due to the indecisiveness of the complainant regarding the continuation and withdrawal from the project, as well as their tardiness in making payments according to the schedule set forth in Clause 2 of the Construction Agreement. However, the Adjudicating Authority awarded compensation in the form of interest at an annual rate of 10.35% on the total sum of Rs.1,42,50,000/- from the respective payment dates until handing over of possession of the apartment. The Adjudicating Officer further awarded compensation Rs.1,48,800/- for the shortage in the extent of apartment, Rs.50,000/- for rectification of defects, Rs.22,867/- for maintenance charges, Rs.5,00,000/-



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for mental agony, and Rs.25,000/- for legal expenses. Challenging the same, the developer filed appeal in A.No.3 of 2022 and on other hand, the complainant filed cross appeal seeking enhancement of compensation in A.No.4 of 2022 .

8. It is submitted by the learned counsel appearing for the Developer that the Adjudicating Authority does not have the power to adjudicate the issue of refund and interest in view of judgement of the Hon'ble Supreme Court in ***Newtech Promoters and Developers Pvt Ltd vs. State of U.P & Ors***, wherein it is held as follows:

86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the



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outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon Under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication Under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer Under Section 71 and that would be against the mandate of the Act 2016.

9. The learned counsel for the developer would further submit that as per the provisions of RERA Act, the Adjudicating Officer is authorized solely to award compensation specified in Section 12, 14, 18, and 19 of the RERA Act. But the Adjudicating Officer has exceeded his authority in issuing the order dated 30.11.2021. The Tribunal also failed to take into account the decision of the *Punjab Real Estate Appellate Tribunal* in the case of ***Omaxe New Chandigarh Extension Pvt Ltd vs. Gurmeet Kaur Gulati & Ors.***, wherein it is pointed out as follows:-



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27. Keeping in view the above and the observations made by Hon'ble Supreme Court in M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTV. VERSUS STATE OF UP & ORS, ETC., the Adjudicating Officer would have no jurisdiction to deal with the matters of refund and we therefore deem it appropriate to dispose of the appeals with a liberty to the complainants to move an appropriate application in Form M seeking refund & interest and Form N seeking compensation before the competent Authority/Adjudicating Officer.

28. In case, such applications are moved, the same shall be decided expeditiously by the Competent Authority/Adjudicating Officer as the case may be in accordance with law.

10. The learned counsel for the developer would further submit that the Tribunal failed to consider the observation of the Adjudicating Authority in Para 8 (g) of the order dated 30.11.2021 and directed the developer to pay a sum of Rs.5,00,000/- (Five Lakhs) towards compensation. As per Section 18 of the RERA Act, complainant is not entitled to any compensation. For reference, Section 18 of the RERA Act is extracted herein:

18. Return of amount and compensation. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,



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(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or
(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

11. The Tribunal failed to consider that as per Section 18 of the RERA Act, 2016, the allottee has only two options in case there is delay on the part of the promoter as follows:

- a) Withdrawal from the project; in such case the allottee is entitled to refund, interest along with compensation.
- b) Decided to continue from the project and the allottee will be entitled to claim only interest for the period of delay till handing



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over the possession.

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In the instant case, the allottee has already taken possession of the flat and did not opt for withdrawal from the project. Thus, as per Section 18, the allottee is only entitled to claim interest for every month of delay before the Tamil Nadu Real Estate Regulatory Authority. Further, Tribunal failed to consider the Ruling of the Punjab Real Estate Appellate Tribunal in the matter of **Sandeep Mann and Ors vs. Real Estate Regulatory Authority, Punjab & Ors** decided on 27.02.2019, and has held as follows:

47. Section 18(1) of the Act provides a remedy against a promoter who fails to complete the project or is unable to deliver possession of an apartment, plot or building for reasons recorded in sub-sections (a) and (b) and where the allottee wishes to withdraw from the project, he shall be entitled to return of the amounts paid by him, with interest at such rate as may be prescribed including compensation in the manner as provided under this Act. The proviso to Section 18(1), however, provides that if the allottee does not wish to withdraw from the project he shall be entitled to interest upto the delivery of possession.

48. The use of the expression "including compensation in the



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manner as provided under the Act", in Section 18(1) necessarily refers to adjudication by the Adjudicating Officer, exercising power under Section 71 read with Rule 37 of the Rules and Form N, an adjudicatory jurisdiction that even the circular accepts but would he have power to award return of amounts received by the promoter, is the question posed. The circular would require that the matter regarding return of amount and interest be placed before the Authority and compensation before the Adjudicating Officer. While dealing with Section 12 of the Act we have already held that if the violation and the cause of action are the same and one of the reliefs is compensation the entire matter should be placed before the Adjudicating Officer. The cause of action and the violation under Section 18(1) of the Act, being the same and compensation being one of the reliefs, the reliefs for refund and interest will also have to be placed before the Adjudicating Officer.

49. The proviso however, does not talk of award of compensation but of interest.

12. Regarding the report submitted by CMDA, the learned counsel for the Developer submitted that the crux of present dispute has its genesis in a car park which is enjoyed by the 3rd respondent/other flat purchaser and



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claimed by the complainant to have been allotted to her and as far as all other issues are concerned, the same had been closed. The CMDA has issued show cause notice for which the developer has also replied and the authority concerned has to decide on the same.

13. The learned counsel for the developer would further argue that the issue in respect of deviation from the planning permission is one of the substantial questions of law which has been raised in the present appeal. If the said issue is delineated in the appeal, the only issue which would remain for adjudication is

(i) as to whether the 1st respondent/complainant has to be given the car park which is now being enjoyed by the 2nd respondent/other flat purchaser;

(ii) as to whether the 2nd respondent/other flat purchaser has to take the car park which is now being enjoyed by the 1st respondent/complainant.

14. With regard to notice issued by the CMDA, it is submitted by the learned counsel for the appellant/developer that the purported excess car park falls under the jurisdiction of the 3rd Respondent-CMDA and the Appellate



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Authority without giving any appropriate opportunity to the Developer, could

not have suo motu expand the scope of the litigation filed under RERA Act.

15. The 1st respondent/complainant-Party-in-person would submit that the total expenses for the apartment including the undivided share (UDS) amounts to Rs. 1,45,56,735/-. She secured a housing loan from SBI for Rs. 1,03,27,000/-, and the remaining balance she spent personally. Following the execution of a sale agreement and a construction agreement between the Developer and her, a Tripartite agreement was also executed with SBI in April 2017. Over several occasions, she made payments of Rs. 50,00,000/- through the bank loan and Rs. 20,00,000/- as personal contribution. In total, Rs. 70,00,000/- was paid on various dates and upto September 2017.

16. The complainant-party-in-person further claims that the tripartite agreement includes a specific clause where the developer agreed to execute a proper conveyance deed or sale deed in favour of the complainant-home



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buyer, upon receiving 50% of the total costs and also agreed to deliver the registered sale deed along with the original registration fee receipt directly to the State Bank of India. To satisfy the 50% requirement outlined in the Tripartite agreement, she issued an additional payment of Rs.2,50,000/- through cheque in October 2017. However, the developer allegedly refused to accept the cheque payment in a deliberate attempt to evade executing the sale deed. Without the sale deed being registered, she was struggling to get both appellants/developer and the involved party to reach an agreement until the end of 2018.

17. The complainant-party-in-person further contended that between January 2019 and June 2019, she paid the remaining amount of Rs. 72,50,000/- from the loan and her personal contribution. Including the previous payments of Rs.70,00,000/- made in 2017, the total amount paid by the respondent reached Rs.1,42,50,000/- as of 18.06.2019, excluding registration fees. During the registration process in March 2020, following the directions of this Court, the developer requested additional amount of Rs.17,00,000/- for the outstanding sale consideration and registration costs.



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However, she only paid Rs.15,50,000/-, after deducting Rs. 1,50,000/- for a shortfall in the total plinth area of 14 sq. ft. Thus, accounting for the earlier payments of Rs. 1,42,50,000/-, the total payment to the appellants amounted to Rs.1,58,00,000/-. However, according to the final cost sheet sent by the developer through email on 12.08.2020, the total cost, including registration, was calculated to be Rs.1,56,85,823/-. Therefore, the developer should refund the excess amount collected from the 1st respondent.

18. The complainant-party-in-person would contend that the compensation for mental agony and loss of enjoyment awarded by the Adjudicating Officer is inadequate. Therefore, cross-appeal was filed before the Tribunal in A.No.4/2022 seeking enhanced compensation. However, the same was declined. She further contended that the developer who promised to rectify the defects found in the flat, ultimately failed to rectify it, forcing her to address the issues herself; the developer did not meet their contractual obligations without providing any valid explanation for the delay in registration and extending the construction time line. She patiently waited in good faith since 2016 while carrying the burden of repaying the Bank loan,



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but, she was compelled to escalate the matter from RERA to this Court.

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19. The learned counsel appearing for the 2nd respondent/other flat purchaser contends that the CMDA Plan assigns only numerical designations to the Car Parking Space for the Tulive Viha Apartment. It is the Builder/Appellants who designate and allocate the Car Parking Space to all Flat Owners after the full payment of the Sale Consideration and upon the execution of the Sale Deed. As such, on his full payment of sale consideration and execution of sale deed, he was allotted Car Parking space by the Builder and being a bonafide purchaser, his rights cannot be taken away at the instance of the complainant.

20. As per the Construction Agreement between the complainant and the Builder, the Builder holds the exclusive authority to allocate car parking slots to all flat owners in Tulive Viha Apartment. This is explicitly stated in Paragraph 10(a) of the Construction Agreement found on page 28, which reads as follows:

"10(a) It is also specifically understood by the Allottee's that the



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Builder shall be entitled to allot any areas for exclusive use as reserved parking areas, reserved/exclusive garden space, reserved/ exclusive terrace area provided that such allotment does not in any way prevent ingress or egress by the Allottee's to the said Apartment...”

In the Sale Agreement, schedule 'B' specifies that only 588.03 sq. feet of Undivided Share in the land outlined in schedule 'A' is to be transferred, and the Car Parking Space is not referenced in the Sale Agreement dated 11.11.2016 made in favour of the complainant. Therefore, the complainant cannot assert any right over the Car Parking space assigned by the Builder/Appellants to the other flat purchaser who being the bonafide purchaser paid the total sale consideration for buying the flat.

21. On September 5, 2019, the 1st respondent filed a Complaint in Form 'M' bearing Complaint No. 411/2019 and C.C.P. No. 212/2019 before the Adjudicating Officer, seeking compensation of Rs. 25,00,000. In paragraph 5 of Complaint No. 411/2019, the complainant clearly stated that



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she expressed her desire to cancel the booking of Flat No. D-101 and formally requested this cancellation from the Builder/Appellants on October 14, 2017. Further reminders regarding this request were sent to the Builder/Appellants on November 15, 2017, and by email on December 23, 2017; as well as on January 18, 2018, and April 29, 2018. The intention to cancel the Flat by the Complainant was evident and continued until December 2018. Therefore, the 1st respondent cannot assert any rights over the Car Parking space that was allocated to the 2nd respondent by the Builder/Appellants, particularly given the significant delay from the date of the Sale Agreement, which was dated November 11, 2016. It is important to note that the builder/appellant designates car parking slots to each flat owner subsequent to the execution and registration of the Sale Deed.

22. The Builder/Appellant has not allocated Car Parking slots to any of the Flat Owners during the execution of the Sale Agreement. It is important to note that the diagrams for Car Parking slots and the corresponding yellow painting lines were developed by the Builder/Appellant starting in November 2017. Additionally, in 2016, the Flat Building was still in its skeleton



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structure phase, consisting of only pillars and beams, making it impractical for the Builder/Appellant to allocate Car Parking slots during the Sale Agreement executed on November 11, 2016. Furthermore, the complainant's claim for Car Parking in November 2016 is based on an area that was designated for a Meter Room/Motor Room, as the building was still under construction at that time. The skeletal structure of the building during the construction phase made it difficult to visualize the specifics outlined in the CMDA Car Parking Plan/Sketch.

23. Since the complainant was not the owner of Flat No. D-101 until February 2020, her claim for the Car Parking slot that was allocated to Flat No. D-103 is not correct. This slot was designated by the Builder/Appellant to the 2nd respondent following the registration of the Sale Deed for Flat No. D-103 on March 27, 2018. Until February 2020, the 1st respondent/complainant had not registered her Sale Deed for Flat No. D-101, whether for the entirety of Flat No. D-101 or for the undivided share of the land. Consequently, the 1st respondent/complainant lacks the locus standi to assert any right over the Car Parking space of D-103, which was duly



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allocated and earmarked by the Builder/Appellant to the 2nd respondent on March 27, 2018. It is further contended that the 1st respondent/complainant acquired Flat No. D-101 through a registered Sale Deed dated 06.03.2020, bearing Document No. 1066/2020, following the admission of CMSA.No.16/2020 on 02.03.2020. This acquisition occurred in view of the direction issued by the Hon'ble High Court on the same date, as well as an amicable settlement reached between the Appellants/developer and the 1st respondent/complainant. The registration process taken place on 02.03.2020.

24. This Court, upon admitting CMSA No. 16 of 2020, granted an interim stay order in CMP No. 4852 of 2020 on 02.03.2020, and explicitly stated that the car parking assigned to the 2nd Respondent would depend on the final outcome of CMSA No. 16/2020, and this was clearly noted in paragraph (2) on page (2) of the order issued in CMP No. 4852/2020, dated 02.03.2020, in CMSA No. 16/2020, as under:-

“(5) Hence, there shall be an Order of ad-interim Stay of the operation of Clause (a) of paragraph No.23 of the impugned order insofar as the restoration of Car Park from the 2nd Respondent herein/ 3rd Respondent in Appeal No. 11/2020 and



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prohibiting him from using the Car Park allotted to the Complainant and clauses (c) and (d), until further Orders.”

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However, the 1st respondent occupied the car parking space designated for the 2nd respondent in Flat No. D-103, allocated by the Builder and the 1st respondent-complainant continues to occupy the car parking space that has been allocated to them for Flat No. D-101. Despite interim stay order issued by this Court on March 2, 2020, in CMP.No.4852/2020, the 1st respondent is using both car parking slots originally designated for Flat No. D-103 and Flat No. D-101. The 2nd respondent, lacking a specific car parking assignment, has been utilizing the visitor's parking slots or any other available parking spaces within the premises since August 27, 2022, with the permission of the flat owners of Tulive Viha Apartment.

25. It is also submitted that there is an acknowledged deviation in the increase of CMDA-approved car parking spaces from 109 to 160 by the Builder/Appellants. The 3rd Respondent, CMDA, in CMSA.No.16/2020, has issued a Locking, Sealing, and Demolition Notice vide dated 28.04.2022, under Reference No. EC/N-1/2236/2020. However, till date, no action has

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been taken by the CMDA deliberately due to the influence exerted by the Builder/Appellants. Therefore, this Hon'ble Court is requested to direct the CMDA to take appropriate action in accordance with the Locking, Sealing, and Demolition Notice vide dated 28.04.2022, issued to the Builder/Appellants. Further the counsel for the 2nd respondent seeks this court to consider granting the same parking allocation as was provided by the Builder/Appellants on 27.03.2018 for Flat No. D-103 at the time when the 2nd respondent registered the aforementioned Flat, which was originally assigned to the 2nd Respondent in the stilt floor of the Tulive Viha Apartment during the registration of the Sale Deed for Flat No. D-103 on 27.03.2018. Furthermore, seeks for an Allotment Order from the Builder/Appellants/Vendors for the car parking slot associated with Flat No. D-103, clearly delineating a specific slot in the Car Parking Sketch.

26. Heard learned counsel for the parties and Party-in-Person/Complainant.

27. This Court carefully weighed the rival submissions. The point that



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has been found by the Adjudicating Authority and the Tribunal is that the developer has not acted in essence with the agreement entered into between the developer and the home buyers and thereby, violated the provisions of RERA Act. As a corporate entity, the developer has not acted in good faith or with transparency in accordance with RERA Act, 2016 and the Rules, 2017. It was only after losing confidence, the complainant sought cancellation by December 2017, which was not addressed by the developer within one year, despite Rule 19 stipulating that a refund should occur within 90 days. As a builder, they were expected to resolve issues with individuals but instead prolonged conflicts, forcing her to approach this Court for the registration of the sale, which should weigh against the developer.

28. The initial correspondences between the complainant and the developer would go to show that the developer failed to provide any response for the request made by the complainant and caused delay. The adjudicating authority as well as the Tribunal concluded that the developer had intentionally caused mental agony to the complainant and awarded compensation.



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29. Insofar as CMSA.No.87 of 2022 is concerned, it has been filed seeking enhancement of compensation stating that she has been making monthly loan payments to SBI since January 2018, while the possession was only transferred to her in March 2020. Even during the lockdown, she managed to maintain her repayment without fail, which has adversely affected her economic stability to this day.

30. As far as the issue of car park raised by the complainant-party-in-person is concerned, it is evident that there was lack of transparency in the allocation of car park slots. None of the executed Sale deeds contains either a separate Schedule of Property or an enclosed marked Car Park Plan, nor do they specify a dedicated number for the car park. This was intentionally executed by the promoter to achieve undisclosed profit. While the sanctioned Plan for the basement level car park was only for 109 slots, the developer created an additional 51 slots. This infringement has been substantiated in the Report submitted by the 3rd respondent-CMDA following a physical inspection. According to this report, the common area on the ground floor,



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intended for use by all residents, has been transformed into car parks as

follows:

- i) by increasing another 30 Nos. in stilt floor
- ii) by converting landscape area into 11 Nos.
- iii) by converting 2 meter rooms into 2 Nos. of car park
- iv) by converting open space into 8 Nos. of car Park.

31. The final Car Park Plan submitted by the Promoter/Appellant, designated as an Exhibit, along with the Statement of car park allocations presented in a tabular format by the developer, shows that additional parking spots and the corresponding fee of Rs. 3,00,000 for one Car Park and Rs. 5,00,000 for two Car Parks combined, excluding the 4 open Car Parks, is firmly established beyond any reasonable doubt through their promotion details. This scenario is not a singular case of infringement within the 'Tulive Viha' project, as there are also five other cases involved.

32. By exceeding the approved capacity for the car park, the developer built for the same space in the basement three times: i) as part of the

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Common area, ii) under UDS, and iii) for individual Car park slots.

Additionally, the construction of 51 extra Car Parks beyond what was sanctioned has led to a congested basement, hindering residents from utilizing the common area.

33. In the above background, it is clear that at no point of time, the complainant's booking was cancelled at all. The complainant was insisting on the car park being given as originally allotted below D-101. As pointed out by the Tribunal, the developer even though obtained CMDA approval for 91 car parking area for 87 dwelling units and 9 for visitors, totalling 100 car parking units, but has not earmarked by number the above said car parking units while entering into sale-cum-construction agreements. While entering into sale and construction agreement, the promoter has specifically earmarked the flat number and purposely avoided to earmark the car parking units. The purpose of non numbering of car park leads to increasing the number of car parking according to will and pleasure of the promoter against the CMDA approval. To avoid, eradicate and to regulate such kind of high handedness of the promoter, the RERA Act ensure the transparency in the



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sale of flats. If the promoter had earmarked the car park by numbering transparently during the date of agreement as flat no., there is no need or necessity for the dispute of this nature between the promoter and the home buyer. For the entire dispute of this case, the promoter alone is solely responsible. The promoter has acted against the objects of RERA Act. For the fault of the promoter, the complainant cannot be penalised. In ***Nahalchand Laloochand Pvt Ltd Vs. Panchali Co-operative Housing Society Ltd., [(2019) 9 SCC 536]***, the Hon'ble Supreme Court has held that parking facility is an amenity to the flat owners. Therefore, the complainant who has entered into agreement was informed that she was allotted that particular car parking slot and therefore, changing the standard form of contract to the allottees, amounts to fraud on the allottees. The developer attempted to outreach the agreements they entered into.

34. In the light of the above observation, we have no hesitation to confirm the findings of the Tribunal dated 10.02.2020 and 11.11.2022. CMSA.Nos.16/2020, 17 of 2023 filed by the Developer and CMSA.Nos.87 and 89 of 2022 filed by the complainant are dismissed. The order passed by



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the Real Estate Appellate Tribunal dated 10.02.2020 is confirmed in respect of restoring the car-park allotted to the complainant and the complainant shall use the said car parking slot alone viz., D-101.

35. In the light of the above conclusion, the builder is directed to allot a covered car parking space to the 2nd respondent-other flat purchaser as per the agreement entered between them. The fact being the complainant and the 2nd respondent entered into sale agreement for buying different flats and not the same flat, they are entitled to a covered car parking as per the agreement.

36. The awarding of compensation by the Adjudicating Authority in the order dated 30.11.2021 in paragraph Nos.8(e), 8(f) and 8(g) was confirmed by the Tribunal. The said order dated 11.11.2022 passed by the Appellate Tribunal in Appeal Nos.3 and 4 of 2022 is upheld. Thereby, the Complainant/Party-in-Person is entitled to compensation as under:-

(i) Rectification of defects	- Rs.50,000/-
(ii) towards claim of maintenance charges paid upto March 2020	- Rs.22,867/-
(iii) compensation for mental agony	- Rs.5,00,000/-
(iv) for legal expenses	- Rs.25,000/-



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The complainant/party-in-person is permitted to withdraw the total compensation of Rs.5,97,867/- along with accrued interest @ 8.35 % per annum lying deposit of the Tribunal. No costs.

[J.N.B.J.]

[R.K.M.J.]

06.12.2024

Index: Yes/No

Internet: Yes/No

nvsri

J.NISHA BANU,J.

And

R.KALAIMATHI, J.

nvsri

Judgment in

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