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C.M.S.A.Nos.39 & 40 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2024

CORAM

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

**C.M.SA.Nos.39 & 40 of 2022
and
C.M.P.Nos.8789 & 8967 of 2022
and
C.M.P.No.22311 of 2023**

C.M.S.A.No.39 of 2022

Casa Grand Builder Private Limited
Represented by its Authorised Signatory
Mr.Mohan Raj

..Appellant

Vs.

1. Rajan Amuthan

2. R.Arulmozhi

..Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 58(1) of the
Real Estate (Regulation & Development) Act, 2016 against the order
dated 28.01.2022 passed by the learned Tamil Nadu Real Estate
Appellate Tribunal, Chennai in Appeal Number.144/2021 which was



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filed on appeal against the order passed by the learned Adjudicating Officer, TNRERA on 23.07.2021 in CCP.No.05/2020.

For Appellant : Mr.DLV Ganesh
M/s. Ganesh & Ganesh

For Respondents : Mr.C.A.Thiagarajan

C.M.S.A.No.40 of 2022

Casa Grand Builder Private Limited
Represented by its Authorised Signatory
Mr.Mohan Raj
New No.111, Old No.59, NPL Devi,
L.B.Road, Thiruvannamipur,
Chennai - 600 041

..Appellant

Vs.

Manikandan Nagarajan

..Respondent

Prayer:

Civil Miscellaneous Appeal filed under Section 58(1) of the Real Estate (Regulation & Development) Act, 2016 against the order dated 28.01.2022 passed by the learned Tamil Nadu Real Estate Appellate Tribunal, Chennai in Appeal Number.143/2021 which was filed on appeal against the order passed by the learned Adjudicating Officer, TNRERA on 30.12.2020 in CCP.No.53/2020

For Appellant : Mr.DLV Ganesh
M/s. Ganesh & Ganesh



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For Respondents : Mr.V.S.Senthil Kumar

J U D G M E N T

(The order of the Court was made by Mrs.J.Nisha Banu,J.)

Both these appeals have been filed challenging the orders dated 28.01.2022 made in A.No.144/2021 and A.No.143/2021 respectively passed by the Tamil Nadu Real Estate Appellate Tribunal (TNREAT) dismissing the applications for non-compliance of the order under Section 43(5) of Real Estate (Regulation and Development) Act.

2. Insofar as Appeal in CMSA.No.39 of 2023 is concerned, the Adjudicating Officer directed the promoter to refund Rs.1,77,05,071 with interest at the rate of 10.25% from the date of respective payment till repayment. The Adjudicating Officer also awarded Rs.5,00,000/- towards mental agony and inconvenience and awarded a sum of Rs.50,000/- towards litigation expenses. Against which, an appeal along with waiver application was filed. Since the conditional order has not been complied with, the Appellate Authority, dismissed the appeal for non-payment of the amount as ordered by the Tribunal.



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3. Insofar as Appeal in CMSA.No.40 of 2023 is concerned, the Adjudicating Officer directed the promoter to pay the delay compensation by way of interest at the rate of 10.05% on Rs.1,66,61,350/- from December 2018 till the date of delivery i.e., 16.11.2019. The Adjudicating Officer also awarded Rs.1,00,000/- towards mental agony and inconvenience and awarded a sum of Rs.25,000/- towards litigation expenses. Against which, an appeal along with waiver application was filed. Since the conditional order has not been complied with, the Appellate Authority, dismissed the appeal for non-compliance of the order under Section 43(5) of the said Act.

4. When CMSA.No.39 of 2022 was taken up for hearing on 13.02.2023, this Court granted conditional order of interim stay as follows:

"This court, upon considering the facts and circumstances of the case coupled with the submissions made by the learned counsel on either side, more particularly that the appeal filed by the appellant was dismissed for non-deposit of 100% of the amount ordered by the Adjudicating Officer, and not on merits, and that, the appellant only



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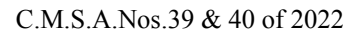


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sought time for complying with the conditional order of the Appellate Tribunal, is inclined to grant an order of interim stay on condition to deposit a sum of Rs.2.80 crores by the appellant to the credit of CCP No.5 of 2020 on the file of the Tamil Nadu Real Estate Regulatory Authority, Chennai, within a period of four weeks from today."

5. In CMSA.No.40 of 2022, this Court granted conditional order of interim stay dated 13.02.2023 as follows:

"This court, upon considering the facts and circumstances of the case coupled with the submissions made by the learned counsel on either side, more particularly that the appeal filed by the appellant was dismissed for non-deposit of 100% of the amount ordered by the Adjudicating Officer, and not on merits, and that, the appellant only sought time for complying with the conditional order of the Appellate Tribunal, is inclined to grant an order of interim stay on condition to deposit a sum of Rs.17 lakhs by the appellant to the credit of CCP No.53 of 2020 on the file of the Tamil Nadu Real Estate Regulatory Authority, Chennai, within a period of four weeks



from today."

6. Today, when both the appeals are taken up for hearing, the learned counsel for the appellant would state that the conditional orders granted by this Court on 13.02.2023 had been complied with and a sum of Rs.2,80,00,000/- as ordered by this Court had been deposited to the credit of CCP.No.5 of 2020 and a sum of Rs.17,00,000/- as ordered by this Court had been deposited to the credit of CCP.No.53 of 2020 vide two Demand Drafts dated 13.03.2023 bearing Nos.51775 and 51774 respectively drawn on ICICI Bank. Learned counsel for the appellant has also filed a common memo dated 13.03.2023 to that effect. Though a copy of the Demand Draft for payment of Rs.2,80,00,000/- was enclosed along with the common memo, a copy of the demand draft for payment of Rs.17,00,000/- was not enclosed but was ascertained that 17,00,000/- was deposited which was disputed by the respondents. The common memo filed by the learned counsel for the appellant is recorded.

7. Since the amount had been deposited by the appellant as per the interim order dated 13.02.2023 passed by this Court, we are of the view that the orders passed by the Appellate Authority have to be set aside.



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Therefore, the orders passed by the Appellate Tribunal dated 28.01.2022 in Appeal No.144/2021 and dated 28.01.2022 in Appeal No.143/2021 are set aside and the matter is remitted back to the Appellate Tribunal to pass orders afresh, on merits and in accordance with law, within a period of ten weeks from the date of receipt of a copy of this judgment. Accordingly, both the Appeals are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

(J.N.B,J.) (R.K.M., J.)
25.10.2024

Index : Yes / No
Internet : Yes
vsi

To

1. The Tamil Nadu Real Estate Appellate Tribunal,
Chennai.
2. The Adjudicating Officer,
Tamil Nadu Real Estate REgulatory Authority,
Chennai

J. NISHA BANU, J.
and
R.KALAIMATHI,J.

vsi



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