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W.P.No.23866 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2024

CORAM :
THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Writ Petition No.23866 of 2024
and W.M.P.Nos.26119 & 26120 of 2024

M/s.Puravankara Limited (Previously Puravankara Projects Limited),
Rep. by its Authorised Signatory/Representative,
Senior Manager-Legal-Mr.Aravindhann.S.
No.33, 2nd Street, South Beach Avenue,
MRC Nagar, Raja Annamalaipuram,
Chennai – 600 028.

... Petitioner

Vs.

1.Principal Secretary to Government,
Housing and Urban Development Department,
Secretariat, Chennai – 600 009.

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

3.Chennai Metropolitan Development Authority,
Thalamuthu-Natarajan Maaligai,
No.1, Gandhi Irwin Bridge Road, Chennai – 600 008.

4.C.Uma

... Respondents

Writ Petition filed under Article 226 of Constitution of India, praying
for issuance of Writ of Certiorarified Mandamus calling for the records



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pertaining to the order dated 17.05.2024 passed by the second respondent in RCP.No.7 of 2022 and quash the same and consequentially direct the second respondent to exclude Puravankara Project at Medavakkam and Pallikaranai Village from registering before the Tamil Nadu Real Estate (Regulation and Development) Authority.

For Petitioner : Mr.R.Alvin Manoj Raj
for RRN Legal

For Respondent 1 : Mr.V.Veluchamy,
Additional Government Pleader

For Respondent 2 : Mrs.R.Varalakshmi

For Respondent 3 : Mr.Akhil Akbar Ali

For Respondent 4 : Mr.R.Venkatesh

ORDER

The present writ petition has been filed to call for the records pertaining to the order dated 17.05.2024 passed by the second respondent in RCP.No.7 of 2022 and quash the same and consequentially direct the second respondent to exclude Puravankara Project at Medavakkam and Pallikaranai Village from registering before the Tamil Nadu Real Estate (Regulation and Development)



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Authority.

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2. The case of the petitioner is that the petitioner is a promoter and Developer. They intended to construct a multi storied building in Medavakkam and Pallikaranai Village and received Environmental Impact Assessment Clearance from the State Level Environment Impact Assessment Authority in Letter No.SEIAA/Tamil Nadu/F.19/EC/8(b)/331/2012 dated 08.07.2014 and further obtained a planning permission from the third respondent in CMDA Planning Permission No.C/PP/MSB/12 (A to X)/2015 in letter No.C3(S) 13988/14, dated 16.03.2015.

2.1. The petitioner has also obtained partial completion certificate on 10.06.2016, 08.09.2016 and 01.09.2017 respectively. After completion of all the developmental works in the month of January 2017, the petitioner applied for completion certificate on 10.02.2017 before the third respondent. Subsequently, the Real Estate (Regulation and Development) Act, 2016 (For brevity RERA Act) came into effect on 01.05.2017. As per Section 3 of the RERA Act, three months time was granted from the date of commencement of RERA Act for registering the ongoing projects before the second respondent.

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Since all the developmental works of the project were completed in the month of January 2017 and an application for completion certificate was also submitted to the third respondent on 10.02.2017, the project was not registered with the second respondent under the said Act. In the meantime, the fourth respondent, who is the purchaser of the flat from the petitioner filed a complaint in RCP.No.7 of 2022 before the second respondent stating that she joined the petitioner's project named "Purvan Windermere" and was allotted flat No.A2-103 to an extent of 2400 sq.ft. and for the same, the fourth respondent has paid a sum of Rs.3,00,000/- on 25.01.2021 as advance and the petitioner has also assured the fourth respondent to execute a sale agreement within a stipulated time and the booking shall not be cancelled in future. However, in the event of cancellation of booking in the future, the fourth respondent shall be eligible for refund of the entire amount of Rs.3,00,000/- with simple interest at 12% per annum.

2.2. The fourth respondent paid the demanded amount of Rs.3,00,000/- to the petitioner and also gave a post dated cheque for a sum of Rs.14,88,600/-. However, the petitioner failed to provide the agreement copies of execution to the fourth respondent. Subsequently, the petitioner has



sent agreement copies which was different from what had been orally assured to her. Therefore, the fourth respondent decided to come out of the project and asked for a refund of sum of Rs.3,00,000/-, which was paid as an advance amount. This being the case, the petitioner has returned the aforesaid post dated cheque issued by the fourth respondent and subsequently sent a communication, informing the fourth respondent that out of Rs.3,00,000/-, they are willing to refund only a sum of Rs.2,00,000/- and a sum of Rs.1,00,000/- has been obtained(taken, deducted) as cancellation charges. Therefore, the fourth respondent made a complaint before the second respondent for refund of sum of Rs.3,00,000/-. After conducting an adjudication, the second respondent passed an impugned order dated 17.05.2024, directing the petitioner to pay a sum of Rs.3,00,000/- with interest at the rate of 7.30% per annum and further directed to submit an application for registration of project with second respondent within 30 days and imposed a sum of Rs.1,00,000/- as penalty. Aggrieved over the said order dated 17.05.2024, the petitioner has come forward with the present writ petition.

3. Learned counsel for the petitioner would submit that the petitioner



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has filed this writ petition only in regard to conditions 3 & 4 of the second respondent's order dated 17.05.2024.

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4. Learned counsel for the petitioner would further submit that admittedly, the RERA Act came into force only on 01.05.2017, whereas the application for completion certificate was submitted before the third respondent on 10.02.2017 for in action of the third respondent will not be held against the petitioner and admittedly, the project was completed prior to 01.02.2017. Hence, the direction issued by the second respondent in respect of registration and the penalty is not sustainable. Accordingly, he prayed for allowing of this writ petition.

5. Per contra, learned counsel appearing for the second respondent would submit that the issue arises in this writ petition is no longer res-integra and the same was decided by the Hon'ble Apex Court in the case of ***New Tech Promoters and Developers Pvt. Ltd., Vs. State of Up & Others. Etc.,*** and was followed by RERA Authority. Accordingly, he prayed for dismissal of this writ petition.



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6. Heard the learned counsel on either side and perused the materials available on record.

7. The issue arising in the writ petition is whether the petitioner need not register under RERA authority in terms of RERA Act. Admittedly, the fourth respondent joined the project named “Purvan Windermere” and further on non completion of the said project, the fourth respondent approached the RERA for refund of the advance. Though the petitioner claims that they have completed three project, they have not disclosed whether the project is related to “Purvan Windermere” or different projects. Though he claims that he obtained a partial completion certificate on 10.06.2016, 08.09.2016 and 01.09.2017 after completing all developmental works in the Month of January 2017 and applied to the third respondent for the completion certificate on 10.02.2017, he has not the obtained the completion certificate till the RERA act had come into force i.e., 01.05.2017. In this background, it is pertinent to extract the the decision rendered by the Hon'ble Apex Court in the case of ***New Tech Promoters and Developers Pvt. Ltd., Vs. State of Up & Others.***



Etc., and was followed by RERA Authority and the same reads as follows:

“52. The Parliament intended to bring within the fold of the statute the ongoing real estate projects in its wide amplitude used the term “converting and existing building or a part thereof into apartments” including every kind of developmental activity either existing or upcoming in future under Section 3(1) of the Act, the intention of the legislature by necessary implication and without any ambiguity is to include those projects which were ongoing and in cases where completion certificate has not been issued within fold of the Act.”

8. The decision itself makes it clear that every kind of development activity either existing or upcoming in the future is covered under Section 3(1) of the RERA Act. The intention of the legislature, by necessary implication and without any ambiguity, is to include those projects which were ongoing and cases where completion certificate has not yet been obtained are to be within the hold of Act. Then, they have to mandatorily register the project under the RERA Authority. Hence, the direction issued by the second respondent for registration cannot be interfered with, however, the penalty imposed by the second respondent can necessarily be interfered with and the same is modified to the extent of Rs.50,000/- instead of one lakh rupees. Accordingly, the petitioner is directed to pay the modified penalty of sum of



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Rs.50,000/-.

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9. This writ petition is allowed with above terms. No costs.

Consequently, connected miscellaneous petitions are closed.

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vm

Index : Yes/No

Speaking Order : Yes/No

Neutral Citation : Yes/No

To:

- 1.Principal Secretary to Government,
Housing and Urban Development Department,
Secretariat,
Chennai – 600 009.
- 2.The Tamil Nadu Real Estate Regulatory Authority (TNRERA),
No.1A, 1st Floor, Gandhi Irwin Bridge Road,
Egmore,
Chennai – 600 008.
- 3.Chennai Metropolitan Development Authority,
Thalamuthu-Natarajan Maaligai,
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Chennai – 600 008.

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M.DHANDAPANI,J.

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