



WEB COPY



C.M.S.A.No.51 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.01.2024

CORAM

THE HONOURABLE Mr.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE Mr.JUSTICE MOHAMMED SHAFFIQ

C.M.S.A.No.51 of 2023
and
C.M.P.No.26234 of 2023

M/s.Prathiksha Properties,
A partnership firm represented by its
partner K.S.Ramakrishnan,
son of A.S.Krishnasamy,
Having business at
No.116, A1, 1st Street,
Dr.Jaganathan Nagar,
Civil Aerodrome Post,
Coimbatore – 14.

.. Appellant

Vs.

Kotteeswari,
Wife of G.Athmanathan,
No.19-A, T.R.R.Nagar,
Gobichettipalayam,
Erode District – 638 476.

.. Respondent

Civil Miscellaneous Second Appeal filed under Section 58 of the Real
Estate (Regulation and Development) Act, 2016, read with Section 100 CPC



C.M.S.A.No.51 of 2023

against the order dated 20.09.2023 passed in Appeal No.47 of 2023 on the file of the Tamil Nadu Real Estate Appellate Tribunal, Chennai, by confirming the order dated 12.10.2022 passed in C.No.01 of 2022 on the file of the Tamil Nadu Real Estate Regulatory Authority, Chennai.

For Appellant : Mr.K.Vasanthanayagan

For Respondent : Ms.T.Sudha Gandhi

JUDGMENT

[Judgment of the court was delivered by R.MAHADEVAN, J.]

The appellant herein viz., M/s. Prathiksha Properties, is a construction company. They have preferred this Civil Miscellaneous Second Appeal against the order dated 20.09.2023 passed by the Tamil Nadu Real Estate Appellate Tribunal in Appeal No. 47 of 2023 confirming the order dated 12.10.2022 passed by the Tamil Nadu Real Estate Regulatory Authority in Complaint No.1 of 2022.

2.According to the appellant, they entered into a registered agreement on 15.06.2017 with the respondent / complainant for construction of flat C-1 on the third floor of the building with an extent of 1744.5 sq.ft.



C.M.S.A.No.51 of 2023

Thereafter, they entered into another registered agreement on 05.03.2020 with the respondent for construction of flat A2 on the first floor of the building with an extent of 1547.5 sq.ft. Both the flats are situated in Coimbatore City. The respondent had paid Rs.54,00,626/- and Rs.55,30,969/- for respective flats C1 and A2 and the remaining amounts payable by her are Rs.7,30,733/- and Rs.9,77,166/- respectively, totally Rs.17,07,899/-. Since the balance payment was not paid by the respondent, the possession of the flats have not been handed over to her; and the appellant sent demand notices dated 27.01.2022 calling upon the respondent to pay the remaining amounts, so as to complete the pending works and hand over the possession. On receipt of the same, the respondent preferred Complaint No.1 of 2022 before the Tamil Nadu Real Estate Regulatory Authority, Chennai, requesting to hand over the possession of the flats as per the construction agreement dated 15.06.2017 and 05.03.2020. The appellant filed its counter denying the allegations raised in the complaint. By order dated 12.10.2022, the TNRERA, without considering the pleadings, counter statement of the appellant and evidence adduced, in proper perspective, directed the appellant to hand over the possession of the flats to the



C.M.S.A.No.51 of 2023

respondent on or before 31.12.2022. Challenging the same, the appellant preferred Appeal No.47 of 2023 before the TNREAT, which also dismissed the appeal, by order dated 20.09.2023. Therefore, the present appeal came to be filed by the appellant before this court.

3.The main contention of the learned counsel for the appellant is that without considering the grounds raised by the appellant, the TNREAT dismissed the appeal preferred by them, at the admission stage itself, thereby directing them to hand over the possession of the two flats to the respondent. It is also contended that no opportunity was provided to the appellant to substantiate their case before the Appellate Tribunal. Therefore, it would suffice, if the matter is directed to be remitted to the Appellate Tribunal for re-consideration.

4.Heard the learned counsel for the respondent, who has no objection for granting such relief to the appellant.



C.M.S.A.No.51 of 2023

5.Considering the facts and circumstances of the case and as agreed by the learned counsel appearing for both sides, this court, without expressing any opinion on the merits of the case, sets aside the order impugned herein and remand the matter to the Tamil Nadu Real Estate Appellate Tribunal, Chennai, for fresh consideration. The Appellate Tribunal shall consider the matter and pass orders afresh, on merits and in accordance with law, after affording reasonable opportunity to both the parties, by placing submissions and documentary evidence. Such an exercise shall be completed within a period of three months from the date of receipt of a copy of this judgment.

6.Accordingly, this appeal stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D., J.] [M.S.Q., J.]
05.01.2024

Index: Yes / No
Speaking order/ Non-speaking order
Neutral Citation: Yes / No
nsd

5/6



WEB COPY



C.M.S.A.No.51 of 2023

R.MAHADEVAN, J.
AND
MOHAMMED SHAFFIQ, J.

nsd

To

- 1.The Tamil Nadu Real Estate Regulatory Authority,
Chennai.
- 2.The Tamil Nadu Real Estate Appellate Tribunal,
Chennai.

C.M.S.A.No.51 of 2023

05.01.2024