



C.M.S.A.No.59 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

C.M.S.A.No.59 of 2023

and

C.M.P.No.27903 of 2023

1.Y.Sudarsana Rao

2.Jayamalathi Sudarsana Rao

3.A.Sekar

Power of Attorney for Y.Sudarsana Rao &
Jayamalathi Sudarsana Rao

4.Sanjay Dutt,
M.D & CEO,
Tata Value Homes / THDCL,
E-Block, Votas Compound,
T.B.Kadam Marg,
Chinchpokil, Mumbai,
Maharastra – 400 033.

.. Appellants

Vs.

1.P.Venkat Rayudu

2.Pramod Bish,
Regional, Business Head-South,
Tata Realty and Infrastructure Limited,
Corniche Al-Latheef, No.25, Cunningham Road,
Bangalore – 560 052.



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3.Balaji Ramaswamy,
Project Manager,
TATA Santorini Project Office,
No.451, Irulapalayam Road,
Kuthambakkam, Chennai – 600 124.

4.Santorini Apartment Owners Association,
Pyros Tower, Tata Santorini,
No.451, Irulapalayam Road, Kuthambakkam,
Chennai – 600 124.

.. Respondents

Prayer: 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, praying to allow the Civil Miscellaneous Second Appeal by setting aside the order dated 21.08.2023 in A.No.41 of 2022 passed by the Tamil Nadu Real Estate Appellate Tribunal, Chennai, in C.No.85 of 2020 on the file of Tamil Nadu Real Estate Regulatory Authority, Chennai.

For Appellants : Mr.Srinath Sridevan
Senior Counsel
for Mr.P.Vinod Kumar

For R1 : Mr.D.Daniel

For R4 : Mr.R.Veeramani

J U D G M E N T

The appellants have filed the present Civil Miscellaneous Second Appeal under Section 58 of the Real Estate (Regulation and



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Development) Act, 2016, (hereinafter referred to as 'the Act') read with Section 100 of Code of Civil Procedure against the order passed by the Tamil Nadu Real Estate Appellate Tribunal, (TNREAT) Chennai, dated 21.08.2023.

2.The 1st respondent along with three others filed a complaint before the Tamil Nadu Real Estate Regulatory Authority (TNRERA) against the appellants herein by seeking for the following reliefs:

“5.Relief(s) sought:

[Specify below the relief(s) claimed explaining the grounds of relief(s) and the legal provisions (if any) relied upon]

1.The entire SANTORINI project to be registered with RERA (Please go through the judgement for Appeal No.5 of 2018 of Real Estate Appellate Tribunal dt.11.01.2019).

2.All the benefits of RERA registration for the already completed 6 blocks of SANTORINI project to be ensured.

3.Approval planning permit for the project was given with specific conditions under Letter No.B3/16272/2013, dt.27.01.2014 by The Member Secretary, Chennai Metropolitan Development Authority, Chennai. But the builder has wilfully deviated from the plan approval as below:



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- a) By encroaching upon Pond Area and Temple Land even after giving the undertaking deed. The respondents should not encroach the above said areas to avoid future complications and dispute.
- b) Stilt car park roof open terrace is only temporary and not permanent structure as per the original approval. Contrary to this even after giving the Undertaking Deed, the builders converted the said temporary terrace into podium garden for marketing purpose without the consent of the allottees.
- c) The 1 wheeler parking as shown in the approved plan is allotted to some of the allottees as car parking areas, so far they have not provided 2 wheeler parking. Most of the allottees being from the Low Income Group and Middle Income Group, the 2 wheeler parking area mentioned in the approved plan has to be allotted to these allottees.
- d) The respondents while advertising for marketing purpose in the media and brochures stated that they obtained OC/CC for 6 already constructed blocks and Club house, which is absolutely false. They received only partial completion certificate for 6 blocks and no OC/CC from the



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competent authorities. This misleads the public who are interested in buying apartments in SANTORINI project. The respondents should not publish false information in the media.”

3.The Tamil Nadu Real Estate Regulatory Authority (TNRERA)

dealt with this complaint in complaint No.75, 84, 85 and 86 of 2020 and rendered the following findings:

“64. Therefore, these 5 Blocks as well as Block No.10 for which Partial Completion Certificate was issued on 10.08.2018 are also required to be registered with this Authority.

65. The Authority notes that the Promoter has already registered with this Authority in respect of Blocks-7, 8, 9 and 16.

66. At the cost of repetition, this Authority holds that as per Section 3 of the Act and as per the Ruling of the Hon'ble Supreme Court referred above, this entire real estate project "Santorini" has to be registered with, this Authority and accordingly this Authority directs the Respondent Promoter of this real estate project to register the Blocks which have not been registered and other common areas to register with this Authority, before 30.09.2022 without fail.

67. Regarding the prayer that all the benefits of RERA registration for the already completed 6 Blocks of "Santorini" project to be ensured, this Authority has already held in this Order that they have to be registered with this



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Authority.

68.Regarding the prayer 3(a) relating to encroachment of pond area and temple land, the Respondents have clarified that the temple land is completely secluded from the development area with boundary wall and that there is no encroachment by the Promoter Company into the temple land or pond area as they are completely secluded from the development area. Therefore, this prayer is disposed of accordingly.

69. Regarding the prayer 3(b) relating to podium garden at the Stilt car park roof open terrace, the Respondent Promoter has submitted that CMDA has issued Completion Certificate only after inspection of open terrace area. The stilt car park open terrace is not converted into a podium garden. It is only a slab above the stilt level utilized for landscaping and beautification purposes. The same has been disclosed in all the plan approvals and CMDA has confirmed the same.

70.This Authority accepts the above submission of the Respondent Promoter.

71.Regarding 2 wheeler parking, the Respondent has submitted that they have provided 2 wheeler parking lots as evidenced from the revised Planning Permit dated 11.02.2021 that both the car parking and 2 wheeler parking requirements are provided at large, to the actual requirement.

72.This Authority accepts the above submission of the Respondent Promoter, as provision of car parking and 2 wheeler parking is as per the revised Planning Permission accorded by CMDA.”



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4.The Tamil Nadu Real Estate Regulatory Authority (TNRERA) also dealt with the interim order that was sought for in the complaint wherein, the complainant prayed that an Association should not be formed in a phased manner as the common amenities have not been provided in full as per the construction agreement and sale deed. With respect to this interim order, the Tamil Nadu Real Estate Regulatory Authority (TNRERA) rendered the following findings:

“82.This Authority finds rather strange that the Complainant Allottees are against the formation of Association of Allottees. In such a large project each Phase/Block may have an Association of Allottees for the purpose of maintenance of common areas and on completion of the entire real estate project and Apex Society of Associations of Allottees may be formed for maintenance of common amenities relating to all the Blocks.

83.Therefore, this Authority holds that the formation of Association of Allottees as per the provisions of the Real Estate (Regulation and Development) Act, 2016 is very much in order and holds that the prayer of an Interim Order not to form Association of Allottees in a phased manner has become infructuous and is devoid of merit.”



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5.The complainant aggrieved by the order passed by the Tamil Nadu Real Estate Regulatory Authority (TNRERA), filed an appeal before the Tamil Nadu Real Estate Appellate Tribunal (TNREAT) and specifically challenged paragraph Nos.71 & 72 and 82 & 83 of the Tamil Nadu Real Estate Regulatory Authority (TNRERA) order dated 10.06.2022.

6.During the pendency of the appeal, the Director of Company viz., the 4th appellant herein filed an affidavit before the Appellate Authority and for proper appreciation, the relevant portions are extracted hereunder:

*“1.I submit that as directed by the Hon'ble Appellate Tribunal, I undertake to instruct Tata Value Homes Limited ("**Promoter**"), to carry out construction of the club house as per the original planning permit no. 8610, file no. B3/16272/13 dated 27.01.2014 obtained with respect to the project named "Santorini" pursuant to the relevant approvals from CMDA. The Promoter will apply for renewal / modification of the planning permit with the authority concerned and post approval from the authority complete the construction of the club house as part of Phase II development of the project.*

2.The Appellant, in his Memo dated 03.08.2023 had alleged non-compliance of



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*condition specified in clause (xvi) under special conditions of operation phase provided in the Environmental Clearance Letter No. SEIAA/TN/F.640/EC176/8(a)/2013 dated 13.06.2013 or as may be modified ("**Environmental Clearance**") i.e., "Application of solar energy should be incorporated for illumination of common areas, lighting for gardens and street lighting in addition to provision for solar water heating. A hybrid system or fully solar system for a portion of the apartments shall be provided".*

3.It is submitted that the Promoter has already provided solar water heating to the apartments as per feasibility and the same has been inspected and approved by the Tamil Nadu Pollution Control Board, while issuing the Consent to Operate. The Promoter will duly comply with the condition as set out in the above environmental clearance, with respect to illumination of common areas, lighting for gardens and street lighting while completing Phase II development.

4.The Appellant had further alleged non-compliance of condition specified in clause (xxvi) under special conditions of operation phase provided in the Environmental Clearance i.e., "To facilitate easy disposal and making the solid waste disposal less laborious, chute shall be provided in each floor with a collection bin (wheeled bins with top lid arrangement) in the bottom of the chute to be kept in the ground floor level which the bins shall be transferred to the solid waste disposal area identified within the facility".

5.It is submitted that the chutes are provided in high rise buildings to collect dry and wet



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waste. However, since Santorini being a low-rise building (i.e., ground + 3 floors), separate bins are provided in every block for easy segregation and disposal of wet and dry waste. The same has been implemented successfully within the project and the same has been inspected and approved by the Tamil Nadu Pollution Control Board, while issuing the Consent to Operate.”

7.The Appellate Authority disposed of the appeal by order dated 21.08.2023 by recording the undertaking given by the 4th appellant. While doing so, at paragraph No.12 of the order, a direction has been issued to the appellants to complete the entire work and provide all the amenities as mentioned in the construction agreement / brochure in the project land within a period of nine (9) months from the date of the order.

8.The appellants are aggrieved by the time limit that has been fixed by the Appellate Authority and the present Civil Miscellaneous Second Appeal has been filed before this Court.

9.When the matter came up for hearing on 12.12.2023, this Court passed the following order and formulated the substantial questions of law:



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“The appellants herein are developers and promoters of housing apartments. The subject matter of this case relates to a project of the apartment that goes by the name 'TATA Santorini'. This project comprises of three phases: Phase 1 A, Phase 1 B and Phase 2. Phase 1 A and Phase 1 B have been completed, and Phase 2 is under construction. For all three phases, the promoter had promised a club house comprising two floors, which is to be constructed on the project land. While so, one of the purchasers of an apartment in Phase 1 A approached the Regulatory Authority with a complaint that some of the amenities were not provided. The Regulatory Authority, vide its order dated 10.06.2022, negated the contentions of the complainant about the non completion of the amenities that he had listed in the complaint, but still indited the bill promoted on the ground that it had not registered it under the Real Estate Regulation and Development Act, 2016. Aggrieved by the same, the complainant approached the Appellate Authority. One of the issues which was not part of the complaint was about an alleged non completion of the club house. According to the appellant / promoter, even though this is not an issue raised in the complaint yet, in due difference to the Appellate Tribunal, it had filed an affidavit dated 18.08.2023, where under, it undertook to complete it after obtaining renewal of the approval earlier obtained by it from the Town Planning Authorities. This was recorded by the Appellate Authority, and it directed that the club house be completed but stipulated nine



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months time for the same.

2.The present appeal is laid challenging the stipulation as to time provided for completion of the construction of club house in the order of the Appellate Authority.

3.Mr.Srinath Sridevan, learned Senior Counsel for the appellants submitted that the promoter had unwittingly walked into a situation which even the complainant did not contemplate. In other words, even though, the complainant did not raise the issue regarding non completion of the club house, the promoter volunteered to make an affirmative statement through his affidavit about its willingness to complete it. The learned counsel submitted that the promoter is anxious to standby the statement that it had made in its affidavit dated 18.08.2023 before the Appellate Authority. However, stipulating nine months time for completing it is unrealistic and unreasonable since necessary renewal of approval may have to be approved by the Town Planning where things are not moving fast. Secondly, the club house is a common facility for all the three phases, and the construction of the second phase of the apartment is not yet completed. Once the second phase is completed, the club house will also be completed.

4.In a scenario such as this, by stipulating a specific time for completion, the Appellate Authority has created certain anxious moments for the promoter, in the eventuality of it not completing the work within the time stipulated



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for reasons beyond its control, it may invite certain adverse consequences. In fitness of things, the Tribunal either should have accepted the affidavit of the appellant without stipulation as to time since time factor is not part of the undertaking, or else should have confined its order within the scope of the appeal before it. To reiterate, arguing the learned counsel, the allegation regarding non completion of the construction of club house is not even a dispute raised by the complainant either before the Regulatory authority or before the Appellate Authority.

5.Procedurally, the complainant was again on the back foot since he did not chose to implead the promoter of the project but had opted to implead only its officials.

6.This Civil Miscellaneous Second Appeal is admitted to decide the following Substantial Questions of Law:

(a) Whether the Appellate Tribunal in exercise of its powers under the RERA Act can grant reliefs that were not sought by the complainant (Respondent No.1) in the original proceedings or in the appellate proceedings ?

(b) Whether the impugned order passed in Appeal No.41 of 2022 is valid under law when the Appeal filed by the Respondent No.1 before the Appellate Tribunal was



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not maintainable due to non-joinder of a necessary party and misjoinder of parties ?

(c) Was not the Appellate Authority in error in stipulating a condition as to time of completion of the club house when it was not even an issue before it ?

7.Notice to the respondents, returnable by 10.01.2024. Private notice is also permitted. The Registry is directed to make available the records of the Courts below as per the circular of this Court issued in Roc.No.27484/2018/F1 dated 18.05.2018, and post the matter on 10.01.2024.”

10.Heard the learned Senior Counsel for the appellants, learned counsel for 1st respondent and the leaned counsel for 4th respondent.

11.The crux of the grievance that was expressed by the learned Senior Counsel appearing on behalf of the appellants is that the order passed by the Tamil Nadu Real Estate Appellate Tribunal (TNREAT) in stipulating the time limit for the completion of the club house went beyond the undertaking affidavit that was filed by the 4th appellant. It was further submitted that the direction that has been issued by the Appellate



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Authority goes beyond the reliefs sought for by the complainant in the original proceedings.

12.The learned counsel for the 1st respondent submitted that the appellants had specifically undertaken to provide with all the amenities in the construction agreement and in the brochure and the completion of the club house also formed part of the amenities which is bound to be provided by the appellants. Therefore, when a specific undertaking was given before the Appellate Authority, it was recorded by the Appellate Authority and a reasonable time was fixed for providing the amenities and that the same does not require interference of this Court.

13.The learned counsel appearing on behalf of the Association which is the 4th respondent in this appeal submitted that the appellants had promised to provide all the amenities as mentioned in the construction agreement / brochure and they are bound to comply with the same within a reasonable time.

14.The only issue that arises for consideration in the present case



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pertains to providing the amenities as mentioned in the construction agreement/brochure in the project alone. The amenities included providing solar power unit, illumination of common areas, lighting, providing solid waste disposal area and providing a club house. The affidavit filed by the 4th appellant touched upon all these amenities and an undertaking was given that these amenities will be provided. The undertaking affidavit is merely a reiteration of whatever was promised earlier in the construction agreement/brochure. The grievance of the appellants only pertains to the time limit that was fixed by the Appellate Authority for providing all the amenities and particularly touching upon the completion of the construction of the club house.

15.The undertaking affidavit of the 4th appellant merely stated that the construction of the club house will be completed as a part of Phase-II development of the project. It was therefore contended that insisting for the completion of the construction of the club house even before the completion of Phase-II was not even contemplated in the undertaking affidavit and therefore, the Appellate Authority ought not to have fixed a time period for the completion.



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16.The learned counsel for the 1st respondent raised certain issues before this Court and submitted that the amenities that were promised to be provided have not been provided and apart from that certain other issues were raised. This Court therefore had put a question to the learned counsel for the 1st respondent as to whether the matter has to be remanded back to the file of the Appellate Authority to deal with the appeal on merits or the order passed by the Appellate Authority can be sustained by merely removing the time limit fixed by the Appellate Authority. The learned counsel for the 1st respondent submitted that remanding the matter once again to the Appellate Authority will again prolong the completion of the work and therefore, this Court can give an indication that all the amenities must be provided as per the construction agreement / brochure in the project land within a reasonable time.

17.In the light of the above submission made by the learned counsel for the 1st respondent, who is the complainant in the case, the order passed by the Appellate Authority is interfered only in so far as stipulating the time period for the completion of providing for the amenities. Since the affidavit of undertaking has been filed in this case,



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whatever has been undertaken in that affidavit shall be fulfilled by the appellants as expeditiously as possible within a reasonable time.

18.The substantial questions of law framed by this Court are answered in favour of the appellants to the limited extent of setting aside the time limit that was fixed by the Tamil Nadu Real Estate Appellate Tribunal (TNREAT) and directing the appellants to complete the process of providing all the amenities as per the construction agreement / brochure in the project land as expeditiously as possible within a reasonable time.

19.This Civil Miscellaneous Second Appeal is disposed of in the above terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

12.06.2024

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No



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To

- 1.The Tamil Nadu Real Estate Regulatory Authority,
Chennai.
- 2.The Tamil Nadu Real Estate Appellate Tribunal,
Chennai.
- 3.The Section Officer,
VR Section, Madras High Court,
Chennai.



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N.ANAND VENKATESH, J.

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