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C.M.S.A.No.21 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :	20.12.2024
PRONOUNCED ON :	08.04.2025

CORAM:

THE HON'BLE MRS. JUSTICE J.NISHA BANU

AND

THE HON'BLE MR. JUSTICE R.SAKTHIVEL

C.M.S.A.No.21 of 2022

N.S.Mohanakrishnan (Deceased)

1) N.S.Madhanagopal

2) M. Manjula

3) N.S.M.Venkatesan

4) N.S.M.Gnanabiran

... Appellants

-VS-

1) J.Asha

2) M/s. Andavar Home Creators Pvt. Ltd.,
Rep. by its Managing Director,
Tmt.Suganthi

3) Suganthi Saravanan

... Respondents

PRAYER: Civil Miscellaneous Second Appeal filed under Section 58 of the TNRERA Act, 2017 r/w section 100 of Civil Procedure Code, 1908, against



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the order of the Tamil Nadu Real Estate Appellate Tribunal (TNREAT) dated 29.11.2021 in Appeal No.77 of 2021 confirming the order of Tamil Nadu Real Estate Regulatory Authority dated 19.04.2021 in C.No.54 of 2020.

For Appellant : Mr.V.Raghavachari,
Senior Counsel for Mr.C.Kanagaraj

For R-1 : Mr.K.V.Bhasyam Chari

For RR-2 & 3 : No Appearance

J U D G M E N T

(Judgment of this Court made by J.Nisha Banu, J.)

Aggrieved against the concurrent findings rendered by the Appellate Authority/Tamil Nadu Real Estate Appellate Tribunal (TNREAT) in Appeal No.77 of 2021, which confirmed the order of the Tamil Nadu Real Estate Regulatory Authority (TNRERA) made in C.No.54 of 2020, dated 19.04.2021, the appellants herein have preferred the present Civil Miscellaneous Second Appeal before this Court.

2. The essential facts of the case would run thus:-

2.1. The first respondent herein, viz. J.Asha is the complainant before the Tamil Nadu Real Estate Regulatory Authority (TNRERA). She was



introduced to the appellants / deceased N.S.Mohanakrishnan and

N.S.Madhanagopal, who hereinafter will be referred to as the 'Landowners'

by the second & third respondents herein, who hereinafter will be referred to as the 'Promoters'. The Promoters stated that they are developing housing apartments at Nanmanglam village in the name of “Sadagopan Enclave” along with the Landowners as Joint Development Project. Convinced by the words of the Promoters, the first respondent/ complainant agreed to purchase a flat and booked Flat No.II, 1st floor, Survey No.114/2B & 5, Flat No.4D, Nanmangalam Village, Tambaram Taluk, Kanchipuram District, ad-measuring about 1574 sq.ft with 1125 sq.ft of UDS land fixing the sale price as Rs.63,96,000/-

2.2. A Joint Development Agreement (JDA) was entered on 29.02.2008 between the Landowners and the Promoter. The sale price for the said Un-Divided Share (UDS) of land was fixed at Rs.28,12,500/- and construction cost was fixed at Rs.34,83,500/-, totalling an amount of Rs.62,96,000/- payable by the first respondent/complainant towards the purchase of the above said flat. All the three parties, viz, the first



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respondent/complainant, Landowners and the Promoters entered into separate agreements for sale and for construction on 03.08.2012.

2.3. The amount paid by the first respondent/ complainant to the Promoter, in total is Rs.65,00,000/- and the same is tabulated as follows:-

Sl.No.	Date	Amount paid
1	30.06.2012	Rs.2,00,000/-
2	04.07.2012	Rs.3,00,000/-
3	04.07.2012	Rs.5,00,000/-
4	29.10.2012	Rs.15,00,000/-
5	11.02.2013	Rs.15,00,000/-
6	25.09.2013	Rs.10,00,000/-
7	06.02.2014	Rs.5,00,000/-
8	29.07.2015	Rs.10,00,000/-
TOTAL		Rs.65,00,000/-

With regard to Sl.No.8, even though the amount paid by the first respondent/complainant was Rs.10,00,000/- the Promoter has issued receipt for Rs.9,00,000/- only. Therefore, the first respondent/ complainant has paid a sum of Rs.1,04,000/- in excess. As early in the month of August 2015, the first respondent/ complainant has approached the Promoters to register the conveyance of UDS of land in favour of the first respondent/ complainant



but the same has not been done till date.

WEB COPY 2.4. As a result of which, the first respondent/ complainant filed a Criminal Original Petition in CrI.O.P.No.28003 of 2017 before this Court and this Court vide order dated 15.12.2017, directed the Promoter to hand over the possession of the said property to the first respondent/ complainant. The Promoter, abiding by the said order, on 22.03.2018, handed over the flat, without completing the main door, rest room pipes, plumbing works etc. but promised to complete the pending works before the date of registration so that the balance outstanding amount of Rs.3,50,000/- shall be paid on the said date of registration by the first respondent/ complainant to the Promoters, which were all agreed as per the unregistered agreement.

2.5. Since the Promoters failed to complete the pending works, the first respondent/ complainant herself completed the balance works of the subject flat. In such circumstances, the untimely death of the Promoter occurred on 27.03.2019. Therefore, the first respondent/ complainant requested the wife of the Promoter, who took over the administration works carried out by her deceased husband, to complete the conveyance deed for the UDS of the first



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respondent/ complainant. But, the wife of the Promoter did not respond to the same. Aggrieved against the same, the first respondent/ complainant filed a complaint in C.No.54 of 2020 seeking for the registration of undivided share and construction agreement of the first respondent/ complainant's flat at Nanmangalam Village, Tambaram Taluk, Kanchipuram District.

2.6. The Tamil Nadu Real Estate Regulatory Authority (TNRERA), after analysing the evidences and submissions made on either sides, held that the Landowners are bound to execute and register the sale deed in respect of the UDS of land to the first respondent/ complainant allottee, viz. J.Asha without further loss of time, before 31.05.2021, thereby concluding that the Landowners and the Promoters are jointly and severally responsible for execution of the sale deed of UDS of land to the first respondent/ complainant Allottee as per the Agreement to Sell, the Deed of Construction Agreement as well as the Development Agreement between the Landowners and the Promoter.

2.7. Aggrieved against the above order passed by the TNRERA, the



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Landowners preferred an Appeal before the Appellate Tribunal in Appeal No.77 of 2021 and the Appellate Tribunal, vide its order dated 29.11.2021, dismissed the same by directing the first respondent/ complainant to deposit the admitted balance sale consideration of Rs.3,50,000/- before the Regulatory Authority within two weeks from the date of receipt of the said order and also to inform to the Landowners and Promoters about the said deposit immediately. Moreover, the Landowners and the Promoters were directed to register the sale deed for the UDS to the first respondent/ complainant's flat within two weeks from the date of deposit intimation received from the first respondent/ complainant. Thereafter, TNRERA was directed to ensure the registration of sale deed for the UDS to the first respondent/ complainant by the Landowners and the Promoters within a month from the date of deposit by the first respondent/ complainant by invoking Section 37 of the Real Estate (Regulation and Development) Act, 2016. Aggrieved against the same, the appellants have preferred the present Civil Miscellaneous Appeal.

3. Mr.V.Raghavachari, learned Senior Counsel appearing for



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Mr.C.Kanagaraj, learned counsel appearing on behalf of the appellants

canvassed his points in the following manner:-

3.1. The main contention raised by the learned Senior Counsel appearing on behalf of the appellants is that the first respondent/ complainant, never made any payment to the appellants for the subject flat. As far as the Tripartite Agreement dated 04.11.2011 entered between the Landowner, Promoter and the first respondent/ complainant, it is very clear that the payments towards the purchase of the flat have to be made directly to the appellants by the first respondent/ complainant. Therefore, with regard to the registration of UDS is concerned, the Promoter is not having any rights to receive the payment from the first respondent/ complainant. Hence, without honouring Rs.28,12,500/- (sale price) the UDS payment is a clear breach of agreement on the side of the first respondent/ complainant. According to the appellant, the Promoter is only involved in felicitating services from the first respondent/ complainant, for the purpose of registering the UDS land is concerned.

3.2. Moreover, the version of the first respondent/ complainant that she



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has paid the entire sale consideration through cheque is totally false. The first respondent/ complainant has never come forward to submit any such bank transaction receipts to the appellants to prove her bonafide. Till now, the first respondent/ complainant has not submitted any proof or evidences for the payments made on the side of the first respondent/ complainant before this Court.

3.3. According to the learned Senior Counsel, the part played by the Promoter was only to construct the structured building and he does not have the rights to sell the UDS share by bye-passing the Tripartite Agreement clauses. The main grievance of the appellants is that both the Authorities – TNRERA & TNREAT, did not recognise the difficulty of registration without payment. Without receiving the amount from the first respondent/ complainant, the appellants are not in a position to register the property in favour of the first respondent/ complainant. Further, it is the specific allegation of the appellants that both the Promoter and the first respondent/ complainant colluded among themselves to register the property without payment.



WEB COPY 3.4. Even when the first respondent/ complainant filed a criminal original petition against the appellants before this Court, seeking to hand over the flat, subsequently, at the police station, the appellants, in order to abide the order of this Court dated 15.12.2017, has given a letter of undertaking stating that on the release of the UDS payment, registration of the flat will be made to the first respondent/ complainant. Moreover, according to the learned Senior Counsel, the issue between the first respondent/ complainant, Land owner and the promoter can only be worked out through other forum of the Tamil Nadu Consumer redressal forum and not through the RERA and hence, prayed for interference of this Court, thereby setting aside the orders passed by the TNRERA and TNREAT and accordingly, allow this civil miscellaneous second appeal.

4. Conversely, Mr.K.V.Bhasyam Chari, learned counsel appearing on behalf of the first respondent expostulated the points in favour of the first respondent/complainant in the following manner:-

4.1. The first respondent/ complainant has purchased the flat from the



Promoter and she has remitted all the payments to the Promoter. As per the

Tripartite Agreement entered between the first respondent/ complainant, Landowner and the Promoter, the appellants offers to covey the UDS of land in the schedule mentioned flat to the nominee of the Promoter. The first respondent/ complainant is the nominee of the Promoter and the appellants offers to sell UDS of the land to the first respondent/ complainant for Rs.28,12,500/- In the Tripartite Agreement, clause 3 states that the first respondent/ complainant has paid advance of Rs.5,00,000/- to the appellants through the promoter and Clauses 4 & 8 state that the appellants are agreeable to convey the UDS of land to the first respondent/ complainant and the register the same in favour of the first respondent/ complainant, which all envisage the fact that the first respondent/ complainant has made her payments promptly to the promoter as per the Tripartite Agreement.

4.2. Furthermore, the learned counsel reliantly submitted that the appellants are taking advantage of the untimely death of the Managing Director of M/s. Andavar Home Creators Pvt. Ltd. and thereby with an ulterior intention to cheat the first respondent/complainant has come up with



the present civil miscellaneous second appeal, which deserves to be dismissed.

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4.3. According to the learned counsel for the first respondent/ complainant, the first respondent/ complainant has paid all the money due to the Promoters as per the terms and conditions of the Tripartite Agreement and she is no way connected or involved in the dispute between the Promoters and the Landowners and the first respondent/ complainant is made as a scapegoat in respect of the quarrels and greed between the Promoters and the Landowners. Therefore, the first respondent/ complainant is entitled for an equitable remedy of specific performance, as she has the legally valid agreement of sale, with clear record of payments with no dues and she is also in possession of the subject flat from April 2018 onwards. Even though the Promoters have received the entire agreed sale proceeds from the first respondent/ complainant, yet the Appellants failed to register the undivided share of land and construction agreement. He further added that the Promoter and the Landowner are involved in illegally enriching for themselves using unlawful gains.



WEB COPY 4.4. According to the learned counsel for the first respondent/ complainant, after analysing the submissions and scrutinizing the evidences on record, the Appellate Authority/Tamil Nadu Real Estate Appellate Tribunal (TNREAT) and the Tamil Nadu Real Estate Regulatory Authority (TNRERA) have rightly dismissed the claim of the Landowners and granted relief in favour of the first respondent/ complainant and hence, the same does not need the interference of this Court. Accordingly, the learned counsel prayed for dismissing the Civil Miscellaneous Second Appeal.

5. Heard the learned Senior counsel appearing for the appellants as well as the learned Counsel appearing for the first respondent/ complainant and perused the materials placed before this Court.

6. Perusal of records would go to show that there is no dispute of the payment made by the first respondent/ complainant to the Promoter with regard to the purchase of the subject flat from the Landowners. There exists dispute between the Landowners and the Promoter with regard to the sale



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considerations received in respect of purchase of various other flats of the said Project. The very first averment put forth by the appellant, that they had never received any payment from the first respondent/ complainant itself stands false. Since in the Tripartite Agreement entered between the Landowners, promoter and the first respondent/ Complainant, it can be observed from clause 3, wherein it has been stated that the first respondent/ complainant has paid advance of Rs.5,00,000/- to the appellants through the promoter and Clauses 4 & 8 state that the appellants are agreeable to convey the UDS of land to the first respondent/ complainant and to register the same in favour of the first respondent/ complainant, which all envisage the fact that the first respondent/ complainant has made her payments promptly to the promoter as per the Tripartite Agreement. In view of the same, this Court infers that the first respondent/ complainant is a genuine purchaser.

7. With regard to the rivalry that persists between the Promoter and the Landowner, this Court feels that the first respondent/ complainant cannot be made to suffer due to the conflicts between them, since there is no allegation raised by the Promoter with regard to the receipt of payments made towards



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the purchase of the flat by the first respondent/ complainant. Therefore, this

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Court is of the considered opinion that the the Appellate Authority/Tamil Nadu Real Estate Appellate Tribunal (TNREAT) and the Tamil Nadu Real Estate Regulatory Authority (TNRERA) have rightly held that the Land owners are bound to execute and register the sale deed in respect of the UDS of land to the first respondent/ complainant. Moreover, in the year 2018 itself, the first respondent/ complainant has taken over the possession of the subject flat and is in continuous occupation of the same. The attitude of the appellants to question the bonafide of the payments made by the first respondent/ complainant, at this juncture, is definitely inappropriate and frivolous. Anyways, the burden of proof lies on the Landowners to prove that no such payments was made by the first respondent/ complainant to the Promoter in order to substantiate their case.

8. Resultantly, this Court finds no infirmity in the orders passed by the the Appellate Authority/Tamil Nadu Real Estate Appellate Tribunal (TNREAT) and the Tamil Nadu Real Estate Regulatory Authority (TNRERA) and thereby, confirms the order of the Appellate Tribunal.



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However, it is for the Landowners and the promoters to redress their grievance, if any, in the manner known to law. Accordingly, the Civil

Miscellaneous Second Appeal stands dismissed. No costs.

(J.N.B.J) (R.S.V.J)
08.04.2025

Internet : Yes/No
Index: Yes/No
Speaking Order: Yes/No

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To:

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



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J.NISHA BANU, J.
and

R.SAKTHIVEL, J.

sts

Judgment made in
C.M.S.A.No.21 of 2022

Dated:
08.04.2025