



CMSA.No.38 of 2022

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

WEB COPY

|               |            |
|---------------|------------|
| Reserved on   | 13.11.2024 |
| Pronounced on | 08.04.2025 |

**CORAM :**

**THE HONOURABLE MRS.JUSTICE J.NISHA BANU**  
**and**  
**THE HONOURABLE MR.JUSTICE R.SAKTHIVEL**

**C.M.S.A.No.38 of 2022**  
**and**  
**C.M.P.No.8563 of 2022**

1.M/s.Alliance Projects,  
Represented by its POA,  
Ravindranath Singh

2.M/s.Alliance Orchid Tech Park Private Limited,  
Represented by its POA,  
Ravindranath Singh

... Appellants/ Appellants/  
Respondents

vs.

Uma Maheshwari

... Respondent/Respondent/  
Complainant

Prayer :- Civil Miscellaneous Second Appeal is filed under Section 58 of the Real Estate (Regulation and Development) Act, 2016 r/w. Section 100 of CPC, praying to set aside the order dated 28.01.2022 rendered in Appeal No.71 of 2021, on the file of the Tamil Nadu Real Estate Appellate Tribunal (TNREAT) and confirming the order passed by the

Page No.1 of 22



CMSA.No.38 of 2022

Adjudicating Authority in C.C.P.No.263 of 2021, dated 23.02.2021 on the file of Tamil Nadu Real Estate Regulatory Authority (TNRERA), by allowing this CMSA and to grant such other reliefs.

For Appellants : Mr.P.H.Manoj Pandian  
For Respondent : Mr.N.Alagu Narayanan

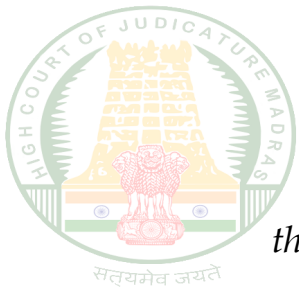
### JUDGMENT

**(Judgment of the Court was delivered by J. NISHA BANU, J.)**

This Civil Miscellaneous Second Appeal is preferred as against the order dated 28.01.2022 passed in Appeal No.30 of 2021, on the file of the Tamil Nadu Real Estate Appellate Tribunal (TNREAT), whereby, the order dated 23.02.2021 passed in C.C.P.No.263 of 2021 on the file of Tamil Nadu Real Estate Regulatory Authority (TNRERA), has been confirmed.

2. In this appeal, the appellants/developers have raised the following substantial questions of law:

*“a) Whether the learned Adjudicating Officer, TNRERA and the Hon'ble Tamil Nadu Real Estate Appellate Tribunal can exercise jurisdiction in respect of a project blocks*



WEB COPY

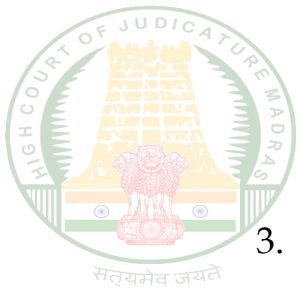
that was completed prior to 01.05.2017.

b) Whether the “Orchid Springs” project not being a project registered/registrable under RERA and consequently, whether the same cannot be subject to any proceedings under the Act, having applied for the completion certificate prior to the commencement of the Act or the Rules and having subsequently obtained the completion certificate?

c) Whether the impugned order is passed beyond the scope of the appeal itself, without hearing the parties on the orders passed, thereby rendering the impugned order null and void for violation of principles of natural justice and the principles of audi alteram partem, forming part thereof?

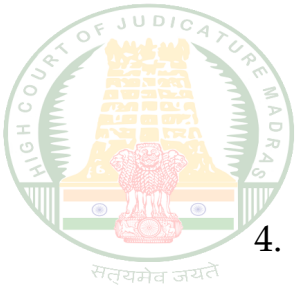
d) Whether an allottee is entitled to receiving compensation under Section 18 of the Act when they are hit by the provisions of Rule 19(2) provision of the Rules?

e) Whether the learned Adjudicating Officer and the Hon'ble TNREAT have failed to consider the implications of the judgment of this Court in Subashini Thulasirani Vs SPR and RG Constructions Private Limited (2020 SCC Online Mad 2020 : (2020) 4 LW 865) and the order of the Hon'ble Supreme Court in M/s. New Tech Promoters Vs. The State of Uttar Pradesh and others (2021 SCC Online SC 1044), which was binding on the said authorities and have consequently passed judgments, which are per incuriam?”



3. The appellants are the developers and the respondent is the

complainant. The respondent availed a housing loan for the purchase of a flat and booked a flat with the appellants. They entered into an agreement of sale dated 16.07.2012 and also entered into a tripartite agreement with the finance company. The respondent in total paid a sum of Rs.74,49,847/- to the appellants. Subsequently, the finance company refused to release further amount as the construction work was stalled. On 22.01.2014, the 1<sup>st</sup> appellant cancelled the agreement alleging default in payment and stated that a cheque was attached for refund of the amount. Thereafter, on 03.05.2016, the appellants sent another letter for choice of flooring and further assured to hand over the property within 24 months with a grace period of six months. The respondent has been paying EMI to the finance company and living in a rental accommodation on payment of monthly rent of Rs.18,000/-. Since the appellants failed to register the agreement of sale and to hand over possession of the flat as per the terms of the agreement, the respondent filed a complaint before the Tamil Nadu Real Estate Regulatory Authority (TNRERA) vide C.C.P.No.263 of 2019, seeking refund of the amount with interest, compensation and cost.

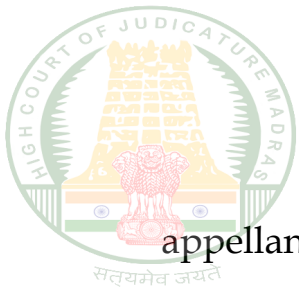


CMSA.No.38 of 2022

4. The Tamil Nadu Real Estate Regulatory Authority (TNRERA) ruled in favour of the respondent/complainant vide its order dated 23.02.2021, directing the appellants/developers to pay the amount of Rs.74,49,847/- with 10.05% interest; Rs.5,00,000/- towards compensation for mental agony and inconvenience and Rs.20,000/- toward legal expenses.

5. Challenging the said order passed by the Regulatory Authority, the appellants/developers filed appeal before the Tamil Nadu Real Estate Appellate Tribunal (TNREAT) in Appeal No.71 of 2021.

6. The Appellate Tribunal, after considering the case of the parties, held that having received the unpaid amount with interest, the appellants cannot choose the termination clause by sending termination notice dated 22.01.2014 and further held that the appellants have not only adhered to the tripartite agreement, but also failed to pay the balance amount of Rs.63,32,370/- payable to the respondent as per the notice dated 22.01.2014. The Appellate Tribunal further finding that the



CMSA.No.38 of 2022

appellants have enriched unlawfully from the amount of the respondent as well as the financier and in turn, the respondent has to repay the loan amount to the financier with interest, held that awarding of interest as per Rule 18 of the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017 (in short hereinafter referred to as 'the Rules') for the refund amount is permissible under law and accordingly, the Tribunal confirmed the order of the Adjudicating Officer.

7. Challenging the said order passed by the Tamil Nadu Real Estate Appellate Tribunal, the appellants have filed this Civil Miscellaneous Second Appeal.

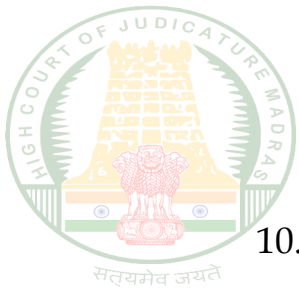
8. The learned counsel appearing for the appellants/developers would further submit that the matter of refund of the total amount is not maintainable before the Adjudicating Officer and in support of the said proposition, the learned counsel relied on a judgment of the Hon'ble Apex Court in *Newtech Promoters and Developers Private Limited Vs. State of Uttar Pradesh and others* reported in (2021) 18 SCC 1. He further submitted that in the event of delay/default in



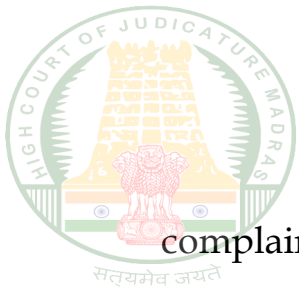
CMSA.No.38 of 2022

payment/cancellation/termination by the purchaser, 15% of the total cost of construction shall be retained by the appellants and the balance amount shall be refunded to the purchaser by virtue of the delay/default in payment/cancellation/termination clause as stipulated in the construction agreement.

9. The learned counsel appearing for the appellants/developers would further submit that pending this appeal, the parties have entered into a joint memo of compromise with regard to the undisputed amount of Rs.63,32,370/- after deducting Rs.11,17,477/- towards 15% of the total sale consideration namely, Rs.74,49,847/- upon cancellation of the agreement. Out of the undisputed amount of Rs.63,32,370/-, a sum of Rs.57,05,623/- deposited by the appellants before the TNREAT, was released to the respondent and a sum of Rs.6,26,747/- was paid by the appellants to the respondent by way of Demand Draft. The above amounts were paid without any interest or compensation. Now a sum of Rs.11,17,477/- being 15% of the total sale consideration deducted towards liquidated damages on cancellation of the agreement, is the subject matter of adjudication before this Court.

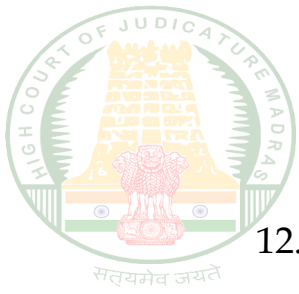


10. Learned counsel would further contend that the payment of Rs.63,32,370/- under the terms of the joint memo does not extinguish the appellants' right to challenge the fundamental issue of jurisdiction. The appellants, in entirety, submits that the matter must be remanded back to the authority for fresh consideration, with necessary parties, particularly the Financier, being impleaded in the proceedings. According to the learned counsel, the involvement of the financier is crucial to resolve the dispute, as the financier's interests and the financial arrangements made between the parties directly affect the substance of the claims and counterclaims. The absence of the financier as a party to the proceedings creates a procedural deficiency that may lead to an incomplete and skewed consideration of the issue at hand. He further submitted that despite repaying a significant sum of Rs.63,32,370/- as per the agreed terms, the property in question remains unsold and the appellants continue to incur substantial financial losses. Despite their compliance with the repayment, the unresolved status of the property has prevented its sale or transfer, leaving the appellants burdened with ongoing maintenance costs and unable to recover their investment or generate any return. According to the appellants, the



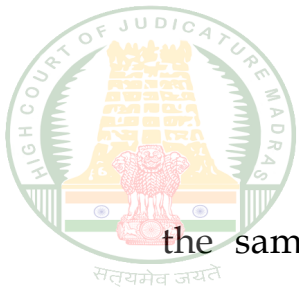
complaint filed by the respondents before the Adjudicating Officer is a clear case of abuse of process of law. The respondent's only reason for withdrawing from the project was due to their own financial incapacity and not due to any default on part of the respondent. Therefore, the learned counsel prayed for allowing the Civil Miscellaneous Second Appeal.

11. Per contra, the learned counsel appearing for the respondent would submit that the concept of partial completion certificate is not recognized under the Act and that the appellants cannot take umbrage under such defence. The adjudicating authority is empowered under Sections 71 and 72 of the Act to adjudicate the matters pertaining to award of compensation and interest thereon as stated under Section 18 of the Act. Therefore, the award of Rs.5,00,000/- as compensation and cost of Rs.20,000/- by the adjudicating authority is well within the scope and powers of the authority as stipulated in the Act. By virtue of the memo of compromise dated 11.08.2022, the appellants had paid the undisputed amount of Rs.63,32,370/- and that the respondent had received the same.



12. The learned counsel appearing for the respondent would

further submit that the respondent is entitled to the disputed amount of Rs.11,17,477/- along with interest that has been awarded by the TNREAT. The learned counsel would further contend that though the appellants contended that they are entitled to deduct Rs.11,17,477/- being 15% of the total sale consideration towards liquidated damages upon termination of the agreement, the agreement was neither cancelled at the instance of the respondent nor on the ground of delay in payment by the respondent. It is an established fact that the respondent had paid 80% of the total cost of the flat as of July, 2013 when the foundation itself was not laid. Therefore, the contention of the appellants that there was a delay in payment is untenable. The appellants failed to deliver possession within 24 months from the date of agreement. The appellants having received 80% of the flat cost, failed to keep up their promise and caused inordinate delay in completing the construction. The completion certificate was issued only in July 2017. He further submitted that the appellants had issued a unilateral cancellation letter on 22.01.2014, stating that the booking amount after deducting the cancellation charges is refunded. On the contrary, the booking amount was not refunded and



CMSA.No.38 of 2022

the same had been accepted by the appellant. Therefore, it clearly

establishes the intention and ulterior motive of the appellants.

Therefore, the appellants are not entitled to deduct the cancellation charge of Rs.11,17,477/- and that they are liable to pay the same with interest. Thus, the learned counsel prayed for dismissal of this appeal.

13. Heard both sides and perused the records.

14. On perusal of the materials available on record, it is seen that pending this appeal, the parties have entered into a joint memo of compromise, dated 11.08.2022, and the terms of such compromise are as follows:

#### “JOINT MEMO OF COMPROMISE

It is humbly submitted by both the Appellants and Respondents as below:

*1. The subject CMSA has been preferred by the Appellants against the order of the Hon'ble Tamil Nadu Real Estate Appellate Tribunal (TNREAT) dated 28.01.2022 passed in A.No.71 of 2022 which was in turn filed challenging the order dated 23.02.2021 passed by the Learned*



Adjudicating Officer, TNRERA in CCP No. 263 of 2021.

WEB COPY

2. That the Respondent had paid to the Appellants a total sum of Rs. 74,49,847/- out of the Respondent without prejudice to her rights, has agreed to receive the undisputed sum of Rs.63,32,370/-

3. That the Appellants have deposited a sum of Rs.57,05,623/- before the Hon'ble TNREAT towards statutory compliance of mandatory deposit U/s 43(5) of the RERA Act 2016. The Appellants have agreed to release the above stated deposit to the Respondent by way of providing No Objection (NOC) to the Respondent to take steps to withdraw the Rs.57,05,623/- deposited before the Hon'ble TNREAT along with accrued interest

4. That the balance undisputed amount of Rs. 6,26,747/- shall be paid by the Appellants to the Respondent by way of Demand Draft dated 11.08.2022 in DD No. 032309 drawn at Katak Mahindra Bank Anna Salai Branch in favour of the Respondent on the date of signing of the Memo.

5. That upon receipt of the undisputed amounts, the Respondent shall not take any steps towards executing the order of attachment in the execution petition filed by the



WEB COPY



CMSA.No.38 of 2022

*Respondent in order dated 12.05.2022 in E.P No. 36 of 2021 passed by the Learned Adjudicating Officer.*

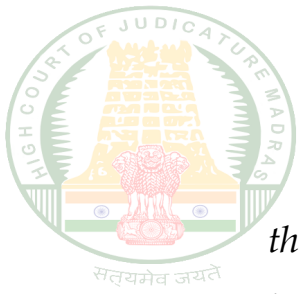
*6. That the remaining disputed amounts of Rs. 11,17,477/- along with interest and compensation that has been awarded by the Hon'ble TNREAT shall be subject matter of adjudication before this Hon'ble Court.*

*7. This memo may be taken on record and this Hon'ble Court may be pleased to pass suitable orders as it may deem fit in the interest of Justice."*

15. When the matter came up for hearing on 14.08.2024, this Court passed the following order:

*"When the matter is taken up for hearing today, the learned counsel for the respondent would state that as per the joint memo of compromise dated 11.08.2022 entered between the appellants and respondent, the appellants have agreed to release the amount of Rs.57,05,623/- deposited before the Tamil Nadu Real Estate Appellate Tribunal, Chennai towards statutory compliance, by way of providing No Objection Certificate to the respondent. Accordingly, the respondent is entitled to withdraw Rs.57,05,623/- along with accrued interest.*

*2. Learned counsel for the appellant would state that*



WEB COPY

*they have already given no objection certificate, but the TNREAT is not releasing the amount stating that the matter is pending litigation before the Court.*

*3. It is seen that in view of settlement arrived between the parties by way of Joint Memo of Compromise dated 11.08.2022, the appellants have agreed to release the deposit amount to respondent by way of providing No Objection Certificate in order to withdraw Rs.57,05,623/-. It is the specific case of the respondent that based on memo, she is entitled for the above amount.*

*4. In view of the above, the Tamil Nadu Real Estate Appellate Tribunal, Chennai shall permit the respondent to withdraw the amount of Rs.57,05,623/- along with the accrued interest on filing appropriate application before the Tribunal.*

*5. Post the matter on 28.08.2024 for final hearing."*

16. As aforesaid, pending appeal, the parties have entered into a joint compromise memo, by which, the appellants have agreed to pay the undisputed sum of Rs.63,32,370/-, as against the total sum of Rs.74,49,847/- paid by the respondent, after deducting a sum of Rs.11,17,477/- being 15% of the total amount paid by the respondent towards liquidated damages upon termination of the agreement. Thus,



the question remains to be considered is whether the balance amount of

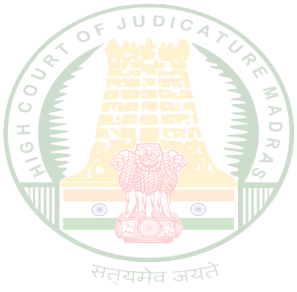
Rs.11,17,477/- is liable to be paid by the appellants or not.

17. Before answering the above question, let us extract the relevant clause of the construction agreement entered into between the parties regarding default in payments:

"DELAY / DEFAULT IN PAYMENT /  
CANCELLATION/TERMINATION

*In the event of delay/default by the Second Party to pay the balance cost of construction and payment Schedule, the Developer is entitled to terminate this Agreement by issuing a notice upon the Second Party to pay the unpaid amounts due within Fifteen days from the date of such notice and if the Second Party fail to pay the same even after receipt of such notice Agreement shall be terminated at the discretion of the Developer.*

*In the event of termination as aforesaid or at the instance of the Second Party, the Developer is entitled to recover from the Second Party 15% of the total cost of construction reserved liquidated damages by adjusting the same against the amounts paid by the Second Party till the termination and refund the balance, if any, within Sixty days from the date of cancellation of Agreement. In which event the Agreement to Sell also stands terminated automatically the terminus in nature after forfeiture of 15% of sale price stipulated therein and 15% of*



WEB COPY



CMSA.No.38 of 2022

*cost of Schedule 'C' Property stipulated therein.*

*Upon termination of this Agreement, the Second party shall not have any claim over the Schedule Apartment and on the Agreement to Sell and on the Schedule 'B' property and the Developer entitled to deal with the same as they may deem fit for their benefit without reference to Second Party.*

*If however, the Second Party pays up the arrears within the time stipulated in the notice of termination the right to terminate this Agreement would lapse for such default alone and this Agreement to be valid.*

*However the Developer at their discretion may agree to receive the unpaid sums with calculated at the rate of 24% per annum from due date stated in the demand till entire payment sums."*

18. In the above delay/default in payment/cancellation/termination clause, five parts have been incorporated. The first part states that if the respondent failed to pay the unpaid amount after the notice from the appellants, the appellants are entitled to terminate the agreement at their discretion. As per the second part, the appellants are entitled to recover 15% of the total cost of construction from the respondent in the event of termination of the agreement. The third clause states that upon termination, the appellants



are entitled to deal with the property and the respondent has no claim over the property after the termination. The fourth clause states that if the respondent pays the arrears amount within the time stipulated in the notice of termination, the right to terminate would lapse. The fifth clause deals with the discretion of the appellants to receive the unpaid sums with interest at the rate of 24% per annum.

19. Perusal of records shows that when the first payment request was made by the appellants for release of Rs.52,59,839/-, the respondent paid a sum of Rs.25,00,000/- only. However, even after sending reminder, finding that the remaining amount was not paid, the appellants did not opt for termination of the agreement. In this context, it is relevant to extract below the transaction details between the parties set out in the impugned order:

*"As per page 37 of the typed set of the appellant the first payment request that the 'foundation has been completed for Palam Block. You are requested to release an amount of Rs.52,59,839/-. The home buyer paid as per the column up to 3.12.2012 a sum of Rs.25,00,000/- only. On 25.1.2013 payment due*



WEB COPY



CMSA.No.38 of 2022

*reminder was sent by the promoter. On 10.5.2013 another payment request third floor slab has been completed and requested to release Rs. 37,96,965/-. Another payment request on 29.6.2013 requested to release Rs.25,00,000/- for the same third floor slab has been completed. On 14.7.2013 another request letter for the 6th floor slab has been completed and demanded Rs.17.40.344/-, On 6.12.2013 payment reminder for a sum of Rs.27.21.105/The above said payment demand notices only produced by the appellant/promoter. But in the termination notice at page No.63 of the typed set of the appellant has stated that the demand notices were sent on five dates The above said dates are not correlated with the demand notices produced by the appellant. The appellant/promoter can choose any one of the mode contemplated in the default clause of the construction agreement. On the first demand notice itself the promoter demanded Rs.52,59,889/- on that date the home buyer so far paid only Rs.25,00,000/-. In such circumstances the promoter can very well invoke the termination clause but he has not done so. The promoter has opted the last clause namely discretion clause to receive the unpaid sums with interest at the rate of 24% per annum."*

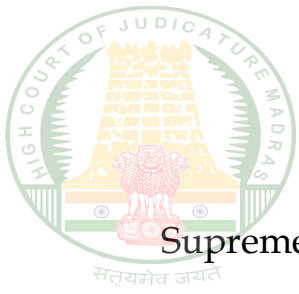


WEB COPY 20. In the abovesaid factual background, the appellate Tribunal relied upon the judgment of the Hon'ble Supreme Court in *Ireo Grace Realtech Pvt. Ltd. vs Abhishek Khanna*, wherein, the doctrine of election was discussed as under:

*"The Doctrine of Election clearly suggests that when two remedies are available for the same relief, the party to whom the said remedies are available has the option to elect either of them but that doctrine would not apply to cases where the ambit and scope of the two remedies is essentially different."*

21. Relying upon the doctrine of election, the appellate Tribunal held that the appellants having opted the fifth clause of the default clause, they cannot choose the termination clause by sending termination notice dated 22.01.2014 and therefore, the said notice itself is against the verdict of the Apex Court judgment (supra).

22. Though the appellants relied upon a judgment of the Hon'ble



CMSA.No.38 of 2022

Supreme Court in *Newtech Promoters and Developers Private Limited*

**WEB COPY** *Vs. State of Uttar Pradesh and others* reported in (2021) 18 SCC 1, for a

proposition that matter of refund of the total amount is not maintainable before the Adjudicating Officer, the parties are bound by the terms agreement entered into between themselves. As stated supra, the appellants having opted the fifth clause by exercising their discretion to receive the unpaid sums with interest, they are not entitled to invoke the termination clause for terminating the agreement and deduct 15% of the sale consideration upon such termination. Such termination itself, in our view, is contrary to the agreement entered into between the parties and also against the doctrine of election enunciated in the above extracted Apex Court's judgment. Thus, we hold that the respondent is entitled to get refund of Rs.11,17,477/- being 15% of the total amount paid by the respondent towards liquidates damages upon termination of the agreement. The appellants are directed to pay the abovesaid sum of Rs.11,17,477/- to the respondent by way of demand draft, within a period of eight weeks from the date of receipt of a copy of this judgment.



CMSA.No.38 of 2022

WEB COPY

23. With the above direction, the Civil Miscellaneous Second Appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

**[J.N.B.,J.] & [R.S.V.,J.]**  
**08.04.2025**

NCC : Yes / No  
Index : Yes / No  
Internet : Yes  
bala/ps

To

- 1.The Tamil Nadu Real Estate Appellate Tribunal (TNREAT).
- 2.The Tamil Nadu Real Estate Regulatory Authority (TNRERA).



WEB COPY



CMSA.No.38 of 2022

J.NISHA BANU, J.  
and  
R.SAKTHIVEL, J.

bala/ps

JUDGMENT MADE IN  
C.M.S.A.No.38 of 2022  
DATED : 08.04.2025