



CMSA.No.66 of 2024

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

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**Reserved On: 21.12.2024**

**Delivered On: 10.01.2025**

**CORAM:**

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

**C.M.S.A.No.66 of 2024**

M/s.Colorhome Developers Private Limited  
Rep. By its Managing Director  
Thiru D.Ramesh

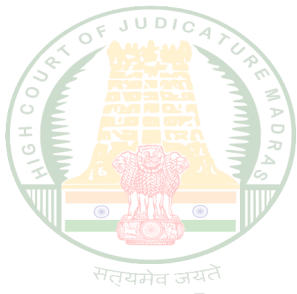
Presently  
Rep. By its Authorized Signatory  
V.Durairaj  
S/o.P.Venkatesan  
Having its registered office at  
No.37, A Block, 6<sup>th</sup> Street,  
Anna Nagar East, Chennai-600 102

... Appellants

**VS.**

M/s.Kanchipattinam Villa Owners  
Association Karai  
(Reg.S.No.SRG)/Kancheepuram/31/2019)  
A Registered Society, Rep. By its Secretary  
Mr.D.Saravanan, No.124B, Kanchipattinam  
Color Homes, Karai Village  
Kanchipuram-631 552

... Respondents



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Prayer :- CMSA 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 17.11.2023 rendered in Appeal No.60 of 2023, on the file of the Tamil Nadu Real Estate Appellate Tribunal (TNREAT) and confirming the order passed by the Regulatory Authority in C.No.66 of 2022, dated 02.03.2023 on the file of Tamil Nadu Real Estate Regulatory Authority (TNRERA), by allowing this CMSA and to grant such other reliefs that this Court may deem fit and proper in the circumstances of the case and render justice.

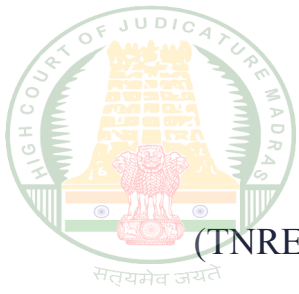
For Appellants : Mr.Ralph V.Manohar

For respondents : Mr.L.Senthil Kumar

### **JUDGMENT**

**J.NISHA BANU, J.**

This appeal is filed by Developer/builder praying to set aside the order dated 17.11.2023 passed in Appeal No.60 of 2023 on the file of Tamil nadu Real Estate Appellate Tribunal (TNREAT) , whereby, the Appellate Tribunal confirmed the order passed by the Regulatory Authority in C.No.66 of 2022, dated 02.03.2023 on the file of Tamil nadu Real Estate Regulatory Authority



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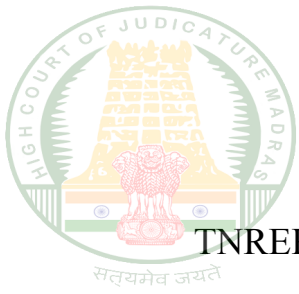
2. The developer/builder raise the following substantial questions of law for consideration of this CMSA.

(i) When the project is developed only as a residential layout project as per the approval granted by the competent authorities and exempted from registration under Rule 2(h) (iii) whether the authority under the Act is empowered to direct registration of the project under Section 3 of the Act as a gated community project.

(ii) Whether the promoter could be made liable to register the entire project as a gated community, when the purchasers of the plots have constructed their Villas by third party builder.

(iii) Whether the promoter could be held liable under the provisions of Section 11, 12, 13 and 14 of the RERA Act, when the promoter has not constructed the Villas in the project.

3. (a) In this case, the complainant is M/s.Kanchipattinam Villa Owners" Association KARAI. They submitted a complaint before the

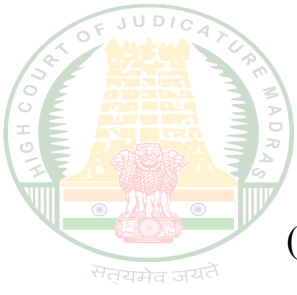


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TNRERA against the developer/builder viz., M/s.Colorhome Developers Pvt Ltd in respect of the residential layout called Kanchipattinam situated at Vedal Village, Karai, Kanchipuram, stating that they are builder of the Villas in the layout.

(b) It is stated that the respondent-developer advertised the project as Gated Community in media stating that the residential project is formed in 120 Acres of land with all world class 50 plus amenities. Among other amenities, 16 amenities which were promised to be provided to the gated community project within one year from the date of signing of the construction agreement, the respondent failed to provide any amenities to the buyers till date of the complaint. The said 16 amenities are as follows;-

- (i) Ultra Modern Club House which includes (a) Swimming Pool (b) A/C Gym © Indoor Games (d) Badminton Court
- (ii) Community Hall
- (iii) Play School
- (iv) Super Market
- (v) Parks (with Yoga Hut & Senior Citizen Area)



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- (vi) Volleyball Court
- (vii) Basketball Court
- (viii) Cricket Pitch
- (ix) Jogging Track
- (x) Common Lighting
- (xi) Underground Drainage/Sewerage Treatment Plan (STP)/Water
- (xii) Underground water storming
- (xiii) Underground Electricity Cables along with Phase E.B.Supply will be provided. Power backup vide Diesel Generator shall be provided for Community Hall and Club House.
- (xiv) Drinking water pipelines.
- (xv) Outer Compound wall with appropriate gates, utmost safety and hi-tech security (24 x7) shall be provided for the project. However the part of the second part is prohibited to fence the schedule mentioned plot as the party of the first part shall demark the measurements and boundaries during the execution of the sale deed.
- (xvi) Street lights with possible solar power/necessary power backups at the discretion of the party of first part shall be provided.



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**WEB COPY** (c) The complaint also states that the project has not been completed till date; many construction activities are pending including club house and other amenities mentioned above. But the respondent had failed to register the project with TNRERA and has not obtained any exemption and hence the respondent is covered under the purview of TNRERA.

(d) It is further submitted that TNRERA by its orders dated 30/06/2021 in C.No.471/2019 had directed the respondent-builder to register the Kanchipattinam project before the TNRERA on or before 31.07.2021. However the respondent had failed to comply with the orders of TNRERA.

(e) The complainant has sought for a direction to the respondent to register the project with TNRERA and other directions such as to complete, hand over and maintain the amenities etc.

4. In the counter affidavit filed by the respondent-builder, it has been submitted that the Real Estate project, Kanchipattinam is a residential layout

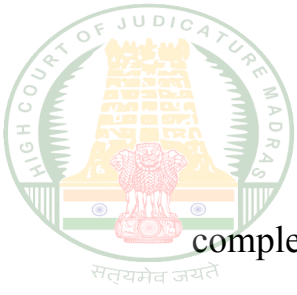


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approved by DTCP. Layout was formed and the common areas, roads, open spaces etc were gifted to the local body as early as 16.06.2014 under the Deed of Gift registered as Document No.3139 of 2014.

(b) The respondent-builder submitted that this project is exempted from registration under Rule 2(h)(i) of Tamil Nadu Real Estate (Regulation and Development) Rules, 2017. The promoter does not construct the individual villas and he has not obtained any building approval from the authorities for construction of villas or other amenities in the project. It is the purchasers of the plot who construct their own villas, subsequently by entering into a separate construction agreement with the builder.

(c) It is also submitted that the respondent was the promoter of the project viz. residential layout plots alone. Subsequently the purchasers out of their own will and volition come forward and requested the promoter to construct the residential villa in their plot. The individual purchasers enter into a construction agreement with the respondent and the respondent in the construction agreement becomes the builder. So his work as a promoter was



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complete as early as 16.6.2014 and therefore, in the construction agreement

the respondent is referred to as the Builder. In respect of the construction of the Villa, the building approval and all other connected approvals were obtained by the respective purchasers. The respondent only acts as a builder to construct the Villa as per the approved plan.

(d) it is further submitted that as per clause in the agreement of sale, the purchasers have the option to engage any other builder of his own choice and hence it cannot be said that the promoter is responsible for the construction of the villas also in the project. It is the choice of the purchasers.

(e) the project is a residential layout which is completed in all respects on the date of notification of the Act and the Rules and the project is exempted from registration under Rule 2(h)(i) of the Rules, 2017.

(f) other amenities which are to be utilized by the purchasers is on payment of maintenance charges; club house, school and shops stipulated has been excluded from the construction agreement. Purchasers have to pay and



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use the amenities such as club house, school and designated shop areas. For membership and usage of club house facilities along with super market and A/C Gym, only on payment of requisite fee.

5. The TNRERA after examining the complaint and counter affidavit held as follows:-

(a) The brochure promises a club house and it is described as 20,000 sqft ultra modern extravagant club house filled with luxuries. The brochure also provides the plan and elevation of various types of villas in this real estate project. So, on the basis of the brochure issued by the respondent, this real estate project is very much a residential villa project with common amenities like club house etc.

(b) Clause 17 of the Construction Agreement specifies the list of amenities to be provided in this real estate project within a period of two years from the date of agreement, the agreement date is 16.06.2017. Amenities such as club house provided by the respondent promoter is on 'use and pay' basis; amenities namely club house, school and shops shall be



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owned by the builder exclusively. But the fact remains that these facilities has not been provided so far.

(c) On the basis of the brochure and construction agreement, this real estate project is a residential villa project with common amenities such as club house, and not merely a residential layout project.

(d) Since promised amenities have not been completed so far and put into use, it is an ongoing project and directed the promoter to register the residential villa project with this authority before 30.04.2023.

(e) The authority rejected the submission of the respondent that they are not a promoter and also rejected the contention that they are not able to get investors for the facilities such as club house.

(f) The promoter has categorically promised the facilities in the Brochure and stated that facilities like Club House, School, Shops etc will be owned by the respondent and the Authority directs the respondent-Promoter



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to construct and complete these amenities before 31.03.2024.

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(g) The Authority further directed to construct and complete the other amenities mentioned in Clause 17 of Construction Agreement before 30.09.2023, if they have not been completed already; shall rectify the defects as per Section 14(3) of the Act, in respect of the Villas, common amenities and common areas constructed by it.

(h) The Authority also given other directions regarding maintenance of common areas, handing over of relevant documents etc.

6. Aggrieved over the said directions, the Builder/Developer filed appeal in Appeal No.60 of 2023 before the Tamil Nadu Real Estate Appellate Tribunal and contended that the allottees have no absolute right over the club house having facilities like gym, swimming pool, indoor games, badminton court and community hall, super market and play school as they were excluded in the Construction Agreement and these amenities can be enjoyed by the plot purchasers only on membership basis by paying membership fees



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and on payment of necessary charges.

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7. The Appellate Tribunal referring to a Clause in the Agreement for Sale, pointed out that the Appellant prevents the purchaser of a plot for a period of 3 years, from engaging any other Builder, except them to build a residential house in the said plot. The real intention of the appellant to develop a villa project by themselves and in that case, the appellant ought to have obtained DTCP approval for a villa project instead of a layout project. The appellant cannot be allowed to develop a villa project by getting DTCP approval for a layout project.

8. The learned Appellate Tribunal referring to Section 2(zk)(v) of the Real Estate (Regulation and Development) Act, 2016 held that any person who acts himself as a Builder is also a Promoter of a real estate project.

9. Referring to clause 17 of the Construction Agreement, the Tribunal pointed out that appellant agreed to provide various amenities listed out therein and in the brochure published by them. It is further pointed out that

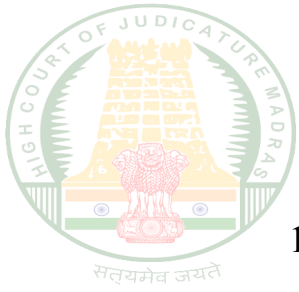


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there is no specific mention in the brochure that the allottees of plots can enjoy the club house facilities only on membership/payment basis.

10. The Appellate Tribunal also directed the project necessarily has to be registered with the TNRERA as the project is an ongoing project. It is further pointed out that the appellant admitted that the assured amenities are not provided so far, the project should be termed as an ongoing project and required to be registered with TNRERA.

11. Mr.Ralph V.Manohar, learned counsel for the appellant would submit that the promoter/appellant is the project developer and his part as a promoter came to an end, as and when an individual plot had been sold to the purchasers in the layout. The promoter/appellant had not undertaken to construct all the Villas and other additional amenities for the use of the purchasers. The said amenities and the land belonged to the promoter as per all the agreements executed with the purchasers.



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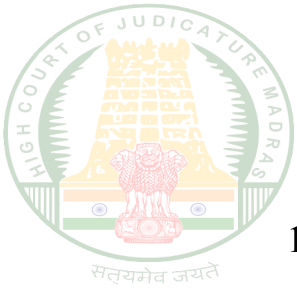
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12. The other contention is that the appellant is not the sole builder of

the Villas in the project; there are other builders also involved in the project.

The appellant counsel reiterated submissions in respect of payment of requisite fee for usage of club house facilities etc. The appellant in his capacity as a promoter had not entered into any agreement for constructing of all the Villas and to handover the amenities such as Club House, Community Hall etc. The said amenities were not intended to be handed over to the purchasers as per the Agreement.

13. The appellant counsel further submits that project is a layout project and the House/Villas are constructed by the individual purchasers is no way connected to the project. The defect liability clause would arise only when the promoter had obtained a project approval of constructing villas and other amenities. The defect liability clause as per the RERA Act is applicable to the project where completion of the project and handing over possession go hand in hand. The provisions under Section 14(3) of the RERA Act is not attracted in this case as another builder services is utilized in the project.



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14. It is further submitted by the learned counsel for the appellant that the residential layout of the plots which happens to be completed in all respect as early on 16.06.2014. The alleged defect liability is not applicable to the present project as the project is complete in terms of Rule 2(h)(i) of the Real Estate (Regulation and Development) Rules, 2017.

15. It is also submitted by the learned counsel for the appellant that the sale consideration paid by the purchaser for the construction of the Villa excludes the above amenities. These amenities absolutely belong to the appellant and the purchasers do not have a say in the manner in which the said amenities have to be dealt by the appellant. Since the appellant has completed the project in all respects, the project is exempted from registration as per the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017.

16. Per contra, the learned counsel for the respondent Association would submit that the entire project has not been completed till date, many construction activities are pending including club house and other amenities.

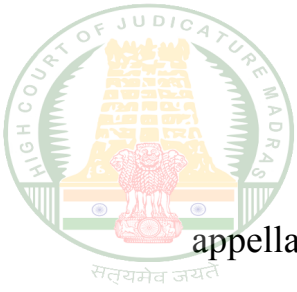


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The appellant failed to register the project with TNRERA and have not obtained any exemption. The appellant being Builder/Developer/Promoter as per Clause 3.3 has only given sub contract to ColorHome Developers, Proprietorship concern, for the construction of other villa in the layout so there is no third parties involved. The learned counsel further submitted that the promised amenities in the gated community project need to be completed and the registration under the purview of TNRERA as directed by the Authority and the Appellate Tribunal, required to be complied with by the appellant.

17. Heard both sides and perused the records carefully.

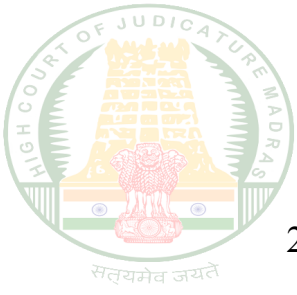
18. It is the admitted case of the appellant that the project is a gated community project. Further the appellant admitted that the assured amenities are not provided so far. The appellant has not given any acceptable reason for not providing those amenities. The contention of the appellant that the project is completed in all respects cannot be accepted as the appellant himself has accepted that due to prevailing marketing conditions, the



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appellant could not identify investors to invest in the amenities such as club house, schools and shops. Admittedly, when the amenities promised in the brochure and promised to be provided in the project land are not provided so far by the appellant. The villa project promoted as layout project by the appellant by getting DTCP approval for a layout project, necessarily has to be registered with the TNRERA as the project is an ongoing project. When the appellant admitted that the assured amenities are not provided so far, the project should be termed as an ongoing project and required to be registered with TNRERA.

19. In view of the aforesaid discussions, in opinion of this Court, the dispute involved in this case is squarely covered under the Real Estate (Regulation and Development) Act, 2016 which provides special provisions for dealing with the dispute arising under the Act, 2016. This Court finds no reason to interfere with the findings of the learned RERA and Appellate Tribunal and the same is accordingly, confirmed.



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20. In the result, this CMSA is dismissed. The appellant is directed to comply with the directions of the TNRERA and the Appellate Tribunal, forthwith. No costs.

[J.N.B.J.]

[R.S.V.J.]

10.01.2025

Index: Yes/No

Internet: Yes/No

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**To**

1) The Hon'ble Chairperson,

Tamil Nadu Real Estate Appellate Tribunal (TNREAT).

Chennai.

2) The Chairperson,

Tamil Nadu Real Estate Regulatory Authority (TNRERA),

Chennai.



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**J.NISHA BANU,J.**

**And**

**R.SAKTHIVEL, J.**

nvsri

**Judgment in  
CMSA.No.66 of 2024**

10.01.2025