



C.M.S.A.Nos.51 & 52 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2025

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CORAM :
THE HONOURABLE MR.JUSTICE R. SURESH KUMAR
AND
THE HONOURABLE MR.JUSTICE P. DHANABAL

C.M.S.A.Nos.51 & 52 of 2025

1. Mayank Dhama .. Appellants in
2. Parul .. C.M.S.A.No.51 of 2025

1. Revathi Periyasamy .. Appellant in
C.M.S.A.No.52 of 2025

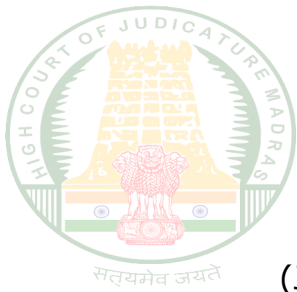
Vs.

Radiance Realty Developers India Ltd.
Rep. By its Managing Director
No.111, Radiance Towers, 1st Floor
33 Feet Road, Anna Salai, Guindy
Chennai – 600 032. .. Respondent in both CMSAs

Prayer in C.M.S.A.No.51 of 2025: Appeal filed under Section 58 of the Real Estate (Regulation and Development) Act, 2016, against the common order dated 21.02.2025 passed in Appeal No.10 of 2025 on the file of the Tamil Nadu Real Estate Appellate Tribunal (TNREAT) at Chennai, confirming the order dated 13.09.2024 in RCP No.8 of 2023 on the file of the Tamil Nadu Real Estate Regulatory Authority (TNRERA) at Chennai; and

Prayer in C.M.S.A.No.52 of 2025: Appeal filed under Section 58 of the Real Estate (Regulation and Development) Act, 2016, against the common order dated 21.02.2025 passed in Appeal No.8 of 2025 on the file of the Tamil Nadu Real Estate Appellate Tribunal (TNREAT) at Chennai, confirming the order dated 13.09.2024 in RCP No.78 of 2023 on the file of the Tamil Nadu Real Estate Regulatory Authority (TNRERA) at Chennai.

For the Appellants : Ms.K.Subashini
in both CMSAs for M/s.Chennai Law Associates



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COMMON JUDGMENT

(Judgment of the Court was made by R.SURESH KUMAR, J.)

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These two civil miscellaneous second appeals were filed against a common order passed by the Tamil Nadu Real Estate Appellate Tribunal, Chennai, in Appeal Nos.8 and 10 of 2025.

2. The issue was whether the respondent Promoter was entitled to charge a sum of Rs.3 lakhs for allotment of car parking, that is exclusive reserved car parking, to the allottees.

3. One of such appeal, that is C.M.S.A.No.50 of 2025, had been considered by us and we passed a detailed order yesterday, that is on 29.07.2025, where, we have held as follows:-

"11. Applying the said principle to the facts of the present case, which has been dealt with exhaustively by the TNRERA, where each of the allottees have been given allotment of a flat and a flat number has been given and against each of the flat numbers, an allotted car parking bay also has been given. Insofar as the appellant is concerned, car parking bay No.7 has been allotted, which is a reserved car parking.

12. Insofar as the term "Reserved Car Park" is concerned, it has been defined in Rule 2(k) of the Rules of 2017, which reads thus:-

"2(k) "Reserved Car Park" means an enclosed or unenclosed, covered or open area which is sufficient in size to park vehicles and which may be provided in basements and/or stilt and/or podium and/or independent structure built for providing parking spaces and/or parking provided



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by mechanized parking arrangements and which is not a garage."

From the meaning of "Reserved Car Park", as has been defined under Rule 2(k) of the Rules of 2017, it can easily be ascertained that "Reserved Car Park" means an enclosed or unenclosed, covered or open area which is sufficient in size to park vehicles and which may be provided in basements, stilt, podium, independent structure and etc. Therefore, such a reserved car parking area can be provided even in a stilt floor of the building.

13. Here in the case in hand, the main argument articulated by the learned counsel appearing for the appellant is that the car parking, since has been allotted only in the stilt area, which is covered in the common area and therefore, it cannot be treated as a separate car parking area apart from the common area which has already been allotted and sold to the flat allottees and therefore, such car parking area, allotted in a stilt area, cannot be charged separately even by way of charge proportionate to the flat, as has been held by the Hon'ble Supreme Court, the learned counsel contended.

14. We are not impressed with the said argument for the simple reason that, the definition given in Rule 2(k) of the Rules of 2017, for "Reserved Car Park" means it can be provided by way of an enclosed or unenclosed, covered or open area, it can be provided either in the basement or in the stilt or podium or independent structure built for providing such a car parking area. Therefore, if a car parking area, merely because is allotted in a stilt area, it cannot be stated that such car parking area shall form part of the building and therefore, even the charges which is corresponding to the construction of the stilt area which is now allotted as reserved car parking cannot be charged by the Promoter. If such a proposition is accepted, then the cost of



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the builders to construct the stilt area knowing well that it is going to be allotted only for car parking area cannot be recovered from anyone.

15. Moreover, insofar as the car parking area is concerned, there are two issues, one is that in some construction, flats might be allotted, but there won't be any reserved car parking allotted to any flat owners. That means, there would be open car parking and anyone can park their vehicles like "first come-first serve" basis or depending upon the space available for the open car parking. However, insofar as "Reserved Car Parking" is concerned, once a reserved car parking is allotted to the allottee of a flat, then, in the reserved car parking area, specifically allotted by giving a bay number, no one would be entitled to park their vehicle other than the allottee, even though the allottee has not parked any vehicle and kept it vacant forever. Such an exclusive right since is being extended or given to the allottee, for which charge is made, that too corresponding with the construction of the flat which includes car parking area, it cannot be stated that it is an extra charge. That cannot be brought under the purview by saying that it is an extra amount and therefore it cannot be recovered from the allottees, as that would amount to a double sale, as the earlier common area has already been sold to each of the allottees.

*16. If that proposition is accepted, as projected by the learned counsel for the appellant, by giving the interpretation to the meaning of "Reserved Car Park" as well as what has been held by the Hon'ble Supreme Court in the case of **Nahalchand** (cited supra), that would go contra to the provisions of the Rules as well as to the proposition that has been held by the Hon'ble Supreme Court.*

17. Therefore, looking from any angle, the view taken by the TNRERA as well as the TNREAT in deciding the issue, as has been stated herein



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*above, against the complainants/appellants, is fully justifiable and strictly in accordance with the provisions of the Rules of 2017, as well as the decision of the Hon'ble Supreme Court in the case of **Nahalchand** (cited supra).*

18. Hence, we do not have any reason to interfere with the said decision taken by the TNREAT, confirming the order passed by the TNRERA. In view of the aforesaid, this appeal fails and accordingly is liable to be dismissed, hence, it is dismissed. However, there shall be no order as to costs. Consequently, C.M.P.No.17636 of 2025 is closed."

4. In view of the order that has been passed in the said matter, as the same is covered in these appeals also, similar orders are passed. Therefore, these appeals fail and accordingly are liable to be dismissed, hence, are dismissed. However, there shall be no order as to costs. Consequently, C.M.P.Nos.18168 & 18175 of 2025 are closed.

(R.S.K., J.) (P.D.B., J)
30.07.2025

Speaking Order/Non-Speaking Order

Index:Yes/No

Internet:Yes/No

Neutral Citation: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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R. SURESH KUMAR, J.
AND
P. DHANABAL, J.

(drm)

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