



C.M.S.A.No.50 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2025

CORAM :

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

C.M.S.A.No.50 of 2025

Venkatesh Ramasamy .. Appellant

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

Prayer: Appeal filed under Section 58 of the Real Estate (Regulation and Development) Act, 2016, r/w Section 100 of the Code of Civil Procedure, against the common order dated 21.02.2025 passed in Appeal No.13 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.83 of 2023 on the file of the Tamil Nadu Real Estate Regulatory Authority (TNRERA) at Chennai.

For the Appellant : Ms.K.Subashini
for M/s.Chennai Law Associates

JUDGMENT

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

This civil miscellaneous second appeal has been directed against the order passed by the Tamil Nadu Real Estate Appellate Tribunal, Chennai, [in short, "TNREAT"] in Appeal No.13 of 2025 dated 21.02.2025.



C.M.S.A.No.50 of 2025

WEB COPY

2. In fact, the order impugned dated 21.02.2025 is a common order, where, many number of appeals, that is Appeal Nos.5 to 14 of 2025 have been dealt with and a common order has been passed.

3. The appellant, along with similar persons or similar allottees who have got allotments of residential flats from the respondent Promoter, have approached the Tamil Nadu Real Estate Regulatory Authority, Chennai, [in short, "TNRERA"], by filing various RCPs, which includes R.C.P.No.84 of 2023, filed by the appellant.

4. Their common grievance appears to be that they have been allotted flats and also have been allotted car parking, which according to them, forms part of the flat or an integral part of the flat. Therefore, once the cost of the flat has been fixed and the entire consideration has been paid by each of the allottees, the Promoter has no right to secure any additional charge or a charge to the extent of Rs.3 lakhs from each of the allottees for the allotment of car parking in the stilt area. Therefore, the sum of Rs.3 lakhs, paid by each of them to the Promoter, has to be refunded by



C.M.S.A.No.50 of 2025

the Promoter. In order to seek such refund only, those RCPs were filed by the respective allottees including the appellant.

5. The TNRERA, by the common order dated 13.09.2024, has considered the issue in detail and having considered the case and the counter case projected before it, the TNRERA, having gone through the provisions under the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017, [for brevity, hereinafter referred to as "the Rules of 2017"], especially Rule 2(k) for the meaning of "Reserved Car Park" and also having gone into the judgment of the Hon'ble Supreme Court, which has been mainly relied upon by the parties, in the case of **Nahalchand Laloochand Pvt. Ltd. vs. Panchali Cooperative Housing Society Limited¹**, has come to the conclusion that, as has been held by the Hon'ble Supreme Court in the said judgment of **Nahalchand** (cited *supra*), the Promoters have no right to sell any portion of such building, which is not a flat within the meaning of Section 2 (a-1), however, insofar as the charges for the car parking area is concerned, it has been held that the Promoter is having the only right that it has to charge the cost thereof in proportion to the carpet area of the flat from each flat purchaser.

1 (2010) 9 SCC 536



C.M.S.A.No.50 of 2025

WEB COPY

6. Therefore, having taken clue from the said holding of the Hon'ble Supreme Court in the case of **Nahalchand** (cited *supra*) and also having taken note of the rule position in Rule 2(k) of the Rules of 2017 and also taking note of the specific allotment of reserved car parking, allotted by the Promoter to each of the allottees including the appellant herein, the TNRERA has ultimately come to the conclusion that the allottees, who are the complainants before the TNRERA, have no right to seek refund of Rs.3 lakhs each from the Promoter.

7. That is how the TNRERA decided the complaints against the complainants by the common order dated 13.09.2024, against which, the allottees filed appeals in Appeal Nos.5 to 14 of 2025 before the TNREAT. The TNREAT, by the common order dated 21.02.2025, rejected all those appeals including the appeal filed by the present appellant, that is Appeal No.13 of 2025.

8. We have heard *Ms.K.Subashini*, learned counsel appearing for the appellant and we have gone through the impugned order passed by the TNREAT.



C.M.S.A.No.50 of 2025

WEB COPY

9. The law which has been held by the Hon'ble Supreme Court in **Nahalchand** (cited *supra*) case has been extracted by the TNREAT and we have also gone through the said judgment which has been produced by the learned counsel appearing for the appellant. In paragraph 39, the following has been held by the Hon'ble Supreme Court:-

"39. We have now come to the last question namely-- what are the rights of a promoter vis-à-vis society (of flat purchasers) in respect of stilt parking space/s. It was argued that the right of the promoter to dispose of the stilt parking space is a matter falling within the domain of the promoter's contractual, legal and fundamental right and such right is not affected. This argument is founded on the premise, firstly, that stilt parking space is a 'flat' by itself within the meaning of Section 2(a-1) and in the alternative that it is not part of 'common areas'. But we have already held that 'stilt parking space' is not covered by the term 'garage' much less a 'flat' and that it is part of 'common areas'. As a necessary corollary to the answers given by us to question nos. (i) to (iii), it must be held that stilt parking space/s being part of 'common areas' of the building developed by the promoter, the only right that the promoter has, is to charge the cost thereof in proportion to the carpet area of the flat from each flat purchaser. Such stilt parking space being neither 'flat' under Section 2(a-1) nor 'garage' within the meaning of that provision is not sellable at all."



C.M.S.A.No.50 of 2025

WEB COPY

10. On reading of the said judgment, we can easily cull out the point that has been held by the Hon'ble Supreme Court, that it must be held that the stilt parking place, being part of common area of the building developed by the Promoter, the only right that the Promoter has is to charge the cost thereof in proportion to the carpet area of the flat from each flat purchasers. This is the proposition that has been held in unequivocal terms by the Hon'ble Supreme Court in the said judgment, which has also been relied upon by the appellant, which has been mainly taken into account by the TNRERA as well as the TNREAT. The right of the Promoter to charge the cost thereof in proportion to the carpet area of the flat has never been taken away and it has been confirmed by the Hon'ble Supreme Court.

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.



C.M.S.A.No.50 of 2025

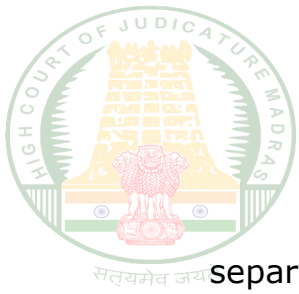
WEB COPY

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 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



C.M.S.A.No.50 of 2025

WEB COPY

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 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

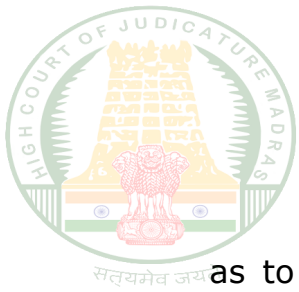


C.M.S.A.No.50 of 2025

WEB COPY

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



C.M.S.A.No.50 of 2025

WEB COPY

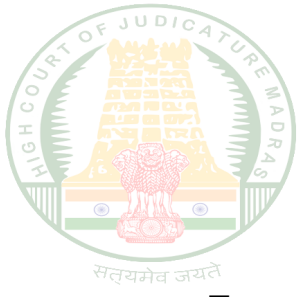
as to the proposition that has been held by the Hon'ble Supreme Court.

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 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.

(R.S.K., J.) (P.D.B., J)
29.07.2025

Speaking Order/Non-Speaking Order
Index:Yes/No
Internet:Yes/No
Neutral Citation:Yes/No
drm



C.M.S.A.No.50 of 2025

WEB COPY

To:

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



WEB COPY



C.M.S.A.No.50 of 2025

R. SURESH KUMAR, J.
AND
P. DHANABAL, J.
(drm)

C.M.S.A.No.50 of 2025

29.07.2025