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W.P.Nos.33993, 34858, 25244, 24555, 24558, 24560, 24563, 24573, 25233, 25239 and 24568 of 2024; 4042, 4203, 9196, 3040, 3050, 3052, 3055, 3058, 3060, 3064, 3066, 3074, 3078, 3124, 3403, 3404, 3413, 3416, 4026, 4027, 4037, 4702, 4800, 4808, 9199, 3111, 3114, 4031, 4033, 4034, 4036, 3085, 3090, 3093, 3096 and 3105 of 2025 & W.M.P.Nos.37788, 36805, 26887, 26892, 27568, 26870, 36804 and 26877 of 2024; 5219, 5220, 5319, 10301, 10303, 10306, 10307, 3313, 5320, 5328, 3780, 3362, 3364, 3374, 3380, 3405, 3407, 3415, 3418, 3421, 3424, 3790, 3791, 3795, 3797, 4515, 4516, 4517, 4518, 4520, 4523, 4524, 4526, 4540, 4690, 4692, 5329, 3314, 3335, 3336, 3344, 10300, 4539, 3373, 3346, 3352, 3353, 3355, 3357, 3394, 3395, 3340, 3437, 3438, 3381, 3384, 3386, 3338, 3339, 3347, 3348, 3350, 3342, 3341, 4527, 4528, 4529, 4535, 4536, 4530, 4532, 4533, 3781, 3782 and 3783 of 2025

**D.BHARATHA CHAKRAVARTHY. J.,**

These matters are listed under the caption for ‘being mentioned’.

The learned counsel prays that separate cause title in respect of all the cases shall be listed in the order. As such, the Registry to type out the cause titles of all the cases and upload the order.

2. This apart, the learned counsel appearing on behalf of the Housing Board submits that though the matter was taken up together, there were individual facts in each and every case which he brought to the notice of the Court and therefore the same can be observed.



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3. In view thereof, it is also observed that, even though the matters are disposed of as a batch matter, the individual arguments in respect of each and every case was also considered by this Court and accordingly, all these cases can be treated as an individual case also for the purposes of considering the services of the learned Standing counsel of the Housing Board with respect to his fees.

**20.08.2025**

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**D.BHARATHA CHAKRAVARTHY. J.,**

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W.P.No.33993 of 2024 etc., (batch cases)

20.08.2025



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

Orders reserved on : 17.04.2025

Orders pronounced on : **02.06.2025**

CORAM :

**THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.P.Nos.33993, 34858, 25244, 24555, 24558, 24560, 24563, 24573, 25233, 25239 and 24568 of 2024; 4042, 4203, 9196, 3040, 3050, 3052, 3055, 3058, 3060, 3064, 3066, 3074, 3078, 3124, 3403, 3404, 3413, 3416, 4026, 4027, 4037, 4702, 4800, 4808, 9199, 3111, 3114, 4031, 4033, 4034, 4036, 3085, 3090, 3093, 3096 and 3105 of 2025  
& W.M.P.Nos.37788, 36805, 26887, 26892, 27568, 26870, 36804 and 26877 of 2024; 5219, 5220, 5319, 10301, 10303, 10306, 10307, 3313, 5320, 5328, 3780, 3362, 3364, 3374, 3380, 3405, 3407, 3415, 3418, 3421, 3424, 3790, 3791, 3795, 3797, 4515, 4516, 4517, 4518, 4520, 4523, 4524, 4526, 4540, 4690, 4692, 5329, 3314, 3335, 3336, 3344, 10300, 4539, 3373, 3346, 3352, 3353, 3355, 3357, 3394, 3395, 3340, 3437, 3438, 3381, 3384, 3386, 3338, 3339, 3347, 3348, 3350, 3342, 3341, 4527, 4528, 4529, 4535, 4536, 4530, 4532, 4533, 3781, 3782 and 3783 of 2025

**In W.P.No.33993 of 2024:-**

D.Hamsa Sundaramoorthy

.. Petitioner

**Versus**

1. The Managing Director,  
Tamilnadu Housing Board,  
CMDA Complex, E&C Market Road,  
Koyambedu,  
Chennai - 600 107.



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2. The Executive Engineer,  
Tamilnadu Housing Board,  
Executive Engineer and Administrative Officer,  
Anna Nagar Division,  
Sales and Office Complex,  
Thirumangalam, Chennai - 600 101.

3. The Principal Secretary,  
Housing and Urban Development Department,  
Government of Tamilnadu,  
Fort St. George, Chennai - 600 009.

.. Respondents

**Prayer in W.P.No.33993 of 2024 :** Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus, to quash the letter, dated 29.04.2024, in கடித எண்.அ ந கோ 7/952/2022 limited to GST portion issued by the 2nd respondent, consequently direct the respondent to register the said apartment at the earliest without insisting on the payment of GST, as the same is inbuilt in the total cost consequently direct the 2nd respondent to promptly hand over the allotted flat with compensation for withheld payments at 18% per annum or at least 12% per annum for the 26-month delay, including Rs.16,50,000/- for rental income loss (22 months at Rs.75,000 per month).



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For Petitioner : Mr.K.Suresh Kumar,  
(in W.P.No.33993 of 2024)

: Mr.T.N.Rajagopalan,  
(in W.P.No.4203 of 2025)

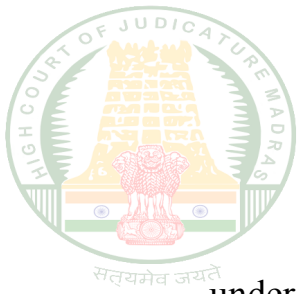
: Mr.K.S.Viswanathan, Senior Counsel,  
for M/s.T.Hemalatha  
(in remaining W.Ps)

For Respondents : Mr.R.Viduthalai, Senior Counsel  
for Mr.D.Veerasekaran,  
Standing Counsel (TNHB)  
(in all W.Ps)

### **COMMON ORDER**

Since all these Writ Petitions are for identical grievances and are interconnected, they are addressed collectively and resolved through this common order.

2. The brief factual background leading to the filing of these Writ Petitions is that the Tamil Nadu Housing Board (hereinafter referred to as 'TNHB') is a body corporate, created and incorporated by the Tamil Nadu Housing Board Act, 1961. It is fully owned, sponsored, and operated by the State of Tamil Nadu. It engages in the formation of housing projects



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under various schemes throughout Tamil Nadu. These Writ Petitions concern the development of land through a Real Estate Project into residential flats within the city of Chennai, specifically (i) in Nandanam division and (ii) in Anna Nagar Division. It suffices to state that there is no subsidiary or special entitlement involved in these projects. Like any other Real Estate Developer, TNHB issues advertisements for the development and sale of the flats, upon which, prospective purchasers book the flats at the market value that is advertised and agreed upon by the parties. If there are a larger number of prospective purchasers, TNHB has its own procedure for drawing lots, by which, it allocates the residential flats according to preference. Accordingly, the flats are sold on an outright sale basis.

3. The project at Nandanam, Chennai, is for the construction of 102 high-income group flats. The planning permission for the construction was obtained on 22.07.2021, and the project was registered and approved under the Real Estate (Regulation and Development) Act, 2016 (RERA) on 28.09.2021. The project was advertised in all leading



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newspapers on 14.11.2021. In the advertisement, it was clearly stated that the price of the flat was Rs.9892/- per Sq.ft., inclusive of G.S.T. The petitioners state that the display board at the site also clearly indicates that the price advertised is inclusive of the G.S.T. Both the Tamil and English advertisements made this very clear. Based on this representation, the petitioners paid the initial amount. The lots were conducted and individual flats were allotted to each of the petitioners. The selected applicants were thereafter required to pay the remaining 95% on various dates as per the schedule.

4. Initially, an agreement was entered into that mentioned only the cost quoted in the advertisement. A completion certificate was issued and the keys were handed over in April 2024. On 16.08.2024, identical notices were issued to all the petitioners, requiring them to additionally pay 5% of the total sale consideration as G.S.T within 30 days from the date of receipt of the notice. They were also directed to pay the belated interest and reconcile their accounts regarding other dues that may be payable so that the execution of sale deeds may proceed further.



Aggrieved by this, the petitioners who opted to purchase the flats are before this Court.

5. Of the 102 flats pertaining to the said project, 37 allottees are before this Court. While 6 of the allottees are reported to have paid the 5% G.S.T, sale deeds were also issued for two persons. Similarly, regarding Annanagar, the project was to construct 72 high-income group flats. The planning approval was obtained on 01.02.2021 and the project was registered and approved with RERA on 23.02.2021. On 18.08.2021, an advertisement was published in all the leading newspapers concerning the project, setting the cost at Rs.10,500/- per Sq.ft and specifically stating it as inclusive of G.S.T. Similarly, the petitioners applied and by following a similar procedure, have now paid the entire original sale consideration that was agreed upon and notices were issued requesting them to pay the 5% of the total sale consideration as G.S.T. It is noted that out of the 72 units, 60 persons have already paid the 5% G.S.T, and only 11 are before this Court. Among these 11 individuals, 8 have already made payments without prejudice to their rights in the Writ



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Petition. Sale deeds were also executed for 24 purchasers. The simple case of the petitioners is that when TNHB holds out, through clear and categorical advertisements and notices, that the cost fixed per square foot is inclusive of G.S.T, they are thereafter estopped from claiming G.S.T additionally.

6. The Writ Petition is resisted by the respondents through the filing of a counter-affidavit. They argue that the price of the flat is calculated according to the regular guidelines followed by TNHB. The advertisement alone does not represent the total value of the flat. It is noteworthy that the agreement or subsequent communications between TNHB and the parties did not specifically state that it is inclusive of G.S.T. Furthermore, the working sheet regarding Nandanam, detailing how the cost is determined, has been produced by TNHB and the same is reproduced hereunder:



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| TAMIL NADU HOUSING BOARD<br>NANDANAM DIVISION                                                                                                                                                                                                                                                                         |                                                                                  |           |          |          |          |          |          |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------|-----------|----------|----------|----------|----------|----------|
| Name of Work : Final selling price proposal for the Construction of 102 HIG MSB Flats (Basement + Stilt + 17 Floors) at New Tower Block in T.S.No.3902pt, 3903Pt, 3904 pt, 3905 pt & 3906 Pt, Block No.85 of Mylopore Village & Taluk in Chennai District Under Self Financing Scheme. (construction and Development) |                                                                                  |           |          |          |          |          |          |
| ANNEXURE III (c)<br>SALEABLE ECONOMICS STATEMENT - AS PER MARKET RATE                                                                                                                                                                                                                                                 |                                                                                  |           |          |          |          |          |          |
| Sl. No.                                                                                                                                                                                                                                                                                                               | Type                                                                             | HIG FLATS |          |          |          |          |          |
| 1                                                                                                                                                                                                                                                                                                                     | No of Flats                                                                      |           |          |          |          |          |          |
| 2                                                                                                                                                                                                                                                                                                                     | Total No. of Flats                                                               | A         | B        | C        | D        | E        | F        |
| 3                                                                                                                                                                                                                                                                                                                     | Proportionate Plot Area in Sq.m.                                                 | 17        | 17       | 17       | 17       | 17       | 17       |
| 4                                                                                                                                                                                                                                                                                                                     | Proportionate Plot Area in Sq.Ft.                                                | 38.56     | 37.99    | 40.38    | 36.47    | 37.43    | 37.47    |
| 5                                                                                                                                                                                                                                                                                                                     | DEVELOPED LAND COST                                                              | 415.00    | 409.09   | 435.00   | 393.00   | 403.00   | 403.00   |
| 6                                                                                                                                                                                                                                                                                                                     | Land Cost for @ Rs174699.72/- Sqm. or Rs. 16230/-Sq.Ft.                          |           |          |          |          |          |          |
| 7                                                                                                                                                                                                                                                                                                                     | Construction                                                                     | 6735450   | 6638070  | 7060050  | 6378390  | 6540690  | 6540690  |
| 8                                                                                                                                                                                                                                                                                                                     | Plinth area per sq.m                                                             |           |          |          |          |          |          |
| 9                                                                                                                                                                                                                                                                                                                     | Plinth area per sq.ft                                                            | 136.72    | 134.68   | 143.17   | 129.29   | 132.69   | 132.85   |
| 10                                                                                                                                                                                                                                                                                                                    | Construction Cost Rs.56005/- per sq.m or Rs.5203 /sq.ft .                        | 1472      | 1450     | 1541     | 1392     | 1428     | 1430     |
| 11                                                                                                                                                                                                                                                                                                                    | Total construction cost                                                          | 7658816   | 7544350  | 8017823  | 7242576  | 7429884  | 7440290  |
| 12                                                                                                                                                                                                                                                                                                                    | Selling Price (land + construction cost)                                         | 7658816   | 7544350  | 8017823  | 7242576  | 7429884  | 7440290  |
| 13                                                                                                                                                                                                                                                                                                                    | Selling Price                                                                    | 14394266  | 14182420 | 15077873 | 13620966 | 13970574 | 13980980 |
| 14                                                                                                                                                                                                                                                                                                                    | Selling Price Per Sqft. ( Excluding Car parking)                                 | 14395000  | 14183000 | 15078000 | 13621000 | 13971000 | 13981000 |
| 15                                                                                                                                                                                                                                                                                                                    | Final Selling Price already appd per sq.ft                                       | 9779      | 9781     | 9785     | 9785     | 9784     | 9777     |
| 16                                                                                                                                                                                                                                                                                                                    | Final Selling Price already appd pricing meeting dt 30.07.2020 / Now             | 9784      | 9784     | 9784     | 9784     | 9784     | 9784     |
| 17                                                                                                                                                                                                                                                                                                                    | Covered Car parking cost @ Rs.1,50,000/- 1 parking space                         | 14403000  | 14187000 | 15078000 | 13620000 | 13972000 | 13992000 |
| 18                                                                                                                                                                                                                                                                                                                    | Final Selling Price(including covered Car Parking)                               | 150000    | 150000   | 150000   | 150000   | 150000   | 150000   |
| 19                                                                                                                                                                                                                                                                                                                    | Final Selling Price already appd pricing meeting dt 30.07.2020 / Now recommended | 14553000  | 14337000 | 15228000 | 13770000 | 14122000 | 14142000 |
| 20                                                                                                                                                                                                                                                                                                                    | rate per sq.ft                                                                   | 14554000  | 14338000 | 15229000 | 13770000 | 14122000 | 14143000 |
| 21                                                                                                                                                                                                                                                                                                                    | GST 5% for service                                                               | 9887      | 9883     | 9883     | 9892     | 9889     | 9890     |
| 22                                                                                                                                                                                                                                                                                                                    | Final selling price including GST 5%                                             | 727700    | 716900   | 761450   | 688500   | 706100   | 707150   |
| 23                                                                                                                                                                                                                                                                                                                    | After adding GST rate per sq.ft                                                  | 15281700  | 15054900 | 15990450 | 14458500 | 14828100 | 14850150 |
| 24                                                                                                                                                                                                                                                                                                                    |                                                                                  | 10382     | 10383    | 10377    | 10387    | 10384    | 10385    |



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7. Furthermore, the cost breakdown under various categories is also filed before this Court and is extracted hereunder:



TAMILNADU HOUSING BOARD  
NANDANAM DIVISION

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| Name of the scheme :                                                                                                                                                                            |                                                                |             |                            |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------|-------------|----------------------------|
| Construction of 102 HIG (Stilt + 17 floors) in T.S.No.3902 part,3903 part, 3904 part, 3905 part, 3906 part Block No.85 of Mylapore Village & Taluk,Nandanam , Chennai under Self Finance Scheme |                                                                |             |                            |
| Board Resolution No:- 4.05 Dated 10.09.2018                                                                                                                                                     |                                                                |             |                            |
| F.S value: Rs. 6972.00 Lakhs                                                                                                                                                                    |                                                                |             |                            |
| Agreement No. SE/CC/37/2018-2019 & Agreement Value of Rs.414700000.00                                                                                                                           |                                                                |             |                            |
| Sl. No.                                                                                                                                                                                         | Description of work                                            | F.S.Value   | Total Expenditure Incurred |
| 1                                                                                                                                                                                               | 2                                                              | 3           | 4                          |
| 1                                                                                                                                                                                               | Construction Work                                              |             |                            |
| 1                                                                                                                                                                                               | Main Construction Work                                         | 390,939,891 | 370,267,857                |
|                                                                                                                                                                                                 | GST 12%                                                        | 46,912,787  | 44,432,143                 |
|                                                                                                                                                                                                 | difference in GST (12% to 18%)                                 |             | 5,131,912                  |
| 5                                                                                                                                                                                               | Sub Total - I                                                  | 437,852,678 | 419,831,912                |
| 6                                                                                                                                                                                               | Statutory Heads                                                |             |                            |
| 7                                                                                                                                                                                               | Provision for getting planning permission for CMDA             | 13,700,000  | 374,574                    |
| 8                                                                                                                                                                                               | Provision for getting NOC from local body                      | 1,000,000   | 10,000,000                 |
| 9                                                                                                                                                                                               | Payment for CMWSSB for water supply, sewage connection charges | 2,040,000   | 7,040,000                  |
| 10                                                                                                                                                                                              | Provision for EB connection charges                            | 1,560,000   | 1,397,946                  |
| 11                                                                                                                                                                                              | Provision for NOC from required departments                    | 1,000,000   | 0                          |
| 12                                                                                                                                                                                              | Advertisement Charges                                          | 1,400,000   | 947,961                    |
| 13                                                                                                                                                                                              | External electrical including transformer                      | 2,800,000   | 8,129,450                  |
| 14                                                                                                                                                                                              | Charges for PMC consultant                                     | 0           | 5,434,000                  |
| 15                                                                                                                                                                                              | Provision for getting FSI CMDA fees                            | 156,444,000 | 156,444,000                |
| 16                                                                                                                                                                                              | Provision for providing STP                                    | 0           | 0                          |
| 17                                                                                                                                                                                              | Special provision for elegant front elevation                  | 0           | 0                          |
| 18                                                                                                                                                                                              | Sub Total - II                                                 | 179,944,000 | 189,767,931                |
| 19                                                                                                                                                                                              | Sub total ( I + II )                                           | 617,796,678 | 609,599,843                |
| 20                                                                                                                                                                                              | Price adjustment clause 3%                                     | 11,527,415  | 0                          |
| 21                                                                                                                                                                                              | Contingencies at 1 %                                           | 4,316,678   | 4,326,678                  |
| 22                                                                                                                                                                                              | Petty supervision 1%                                           | 4,369,947   | 4,369,947                  |
| 23                                                                                                                                                                                              | T L W F @1%                                                    | 3,990,404   | 6,166,589                  |
| 24                                                                                                                                                                                              | Supervision charges at 12.5%                                   | 55,170,544  | 77,539,507                 |
| 25                                                                                                                                                                                              | Sub Total - V                                                  | 79,381,988  | 92,402,721                 |
| 26                                                                                                                                                                                              | Total                                                          | 697,181,666 | 702,002,564                |
| 27                                                                                                                                                                                              | intrest on expenditure upto 31/03/2022                         |             | 68,687,834                 |
| 28                                                                                                                                                                                              |                                                                |             | 770,690,398                |
| 29                                                                                                                                                                                              | Total Provision                                                | 697,200,000 | 770,700,000                |
| 30                                                                                                                                                                                              | Total                                                          | 697,200,000 | 770,700,000                |
| 31                                                                                                                                                                                              | Grand Total (Say)                                              | 697,200,000 | 770,700,000                |
| 32                                                                                                                                                                                              | F.S Provision in Rs.                                           |             | 697,200,000                |
| 33                                                                                                                                                                                              | Total actual Expenditure incd & to be incd in Rs.              |             | 770,700,000                |
| 34                                                                                                                                                                                              | Total Savings over the F.S                                     |             | -73,500,000                |
|                                                                                                                                                                                                 | Total plinth area for 102 flats                                |             | 148,121                    |
|                                                                                                                                                                                                 | Construction cost per Sq.m (with over heads)                   |             | 5.203                      |



Thus, they argue that when the cost was originally calculated for the construction works contract outsourced to third parties, the 12% G.S.T was included in the cost per square foot that was determined. Therefore, the advertisement stated that it is inclusive of G.S.T.

8. However, only subsequently, a claim was made by the authorities under the G.S.T, demanding 5% of G.S.T in respect of its projects. As a matter of fact, by the order dated 04.10.2024, the Housing Board was directed to pay a total sum of Rs.1,01,08,42,597/- which includes the current projects as well. Aggrieved by this decision, TNHB has filed W.P.No.39171 of 2024 and inter *alia* contended that it is not permissible to combine several assessment years and make one claim. The Court also granted an interim stay order on 21.12.2024. It is stated that the claim is challenged on various other grounds. Be that as it may, since the Department is already claiming 5%, which includes the current projects as well, the impugned demands are made.

9. It is the case of the TNHB that at the time of advertisement,



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G.S.T was levied at 12% for under-construction properties and 18% for the composite supply of works contracts in the Real Estate Sector, traceable to Section 2(119) of the Central Goods and Services Tax Act, 2017. However, there is also an additional tax of 1% on flat purchased under the affordable housing policy and 5% G.S.T on other categories. Only the G.S.T payable at the rate of 12% for under-construction properties was factored into the price cost, which is why it was mentioned as inclusive of G.S.T in the advertisement. However, since this is not affordable housing, an additional 5% is also payable, which was not already factored into the flat cost. Therefore, the same cannot be used against TNHB.

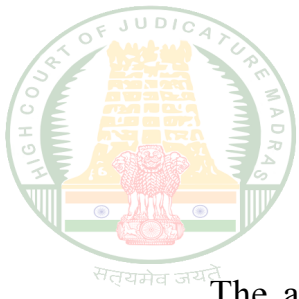
10. While it may be stated that the advertisement mentioned the cost per square foot as inclusive of G.S.T, with reference to the Housing Board, the petitioners always knew that the final cost would be worked out later. The agreement or any other *inter se* communications did not promise that the entire sale consideration was inclusive of G.S.T at the rate mentioned therein. TNHB is a non-profit organization and except



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for adding a 9% profit only for its maintenance and upkeep, no other profit is added. Therefore, the amount claimed is only the tax that is to be borne by the flat purchaser under law. The mere omission to mention this in the agreements cannot be held against TNHB. When substantial rights of the parties are involved and public interest requires, the principle of promissory estoppel or estoppel shall give way. Therefore, this is not a circumstance in which TNHB should be knocked down to its original price and be restrained from calculating and demanding the 5% G.S.T, which is a lawful due to the State to be borne only by the purchasers.

11. Heard *Mr.K.Suresh Kumar*, learned Counsel for the petitioner in W.P.No.33993 of 2024; *Mr.T.N.Rajagopalan*, learned Counsel for the petitioner in W.P.No. 4203 of 2025; *Mr.K.S.Viswanathan*, learned Senior Counsel for the petitioners in the remaining Writ Petitions; *Mr.R.Viduthalai*, learned Senior Counsel, assisted by *Mr.D.Veerasekaran*, learned Standing Counsel (TNHB) for the respondents, who reiterated the above submissions in detail and also relied upon certain judgments.



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The arguments overlap. It suffices to mention that they reiterated the contentions mentioned above, in addition to making further submissions on the G.S.T. issue.

12. I have considered the rival submissions in detail.

13. The first contention of the learned Senior Counsel for the Housing Board that the non-joinder of the authorities under the G.S.T Act is fatal to the Writ Petition cannot be accepted. In this case, the decision to be made cannot in any manner determine the liability of TNHB to pay G.S.T to the authorities or otherwise, including the quantum, delay, or non-compliance with procedure, etc. The Writ Petition revolves around whether, after agreeing to a particular price and expressly mentioning it to be inclusive of G.S.T, the additional amount also claimed as G.S.T can be pursued by the Housing Board or not. In the light of this, I hold that the authorities under the G.S.T are not necessary parties.



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14. The second point is to consider the additional prayer that is made in some of the Writ Petitions with reference to delay in handing over possession. Regarding the said additional relief prayed, I hold that the petitioners have an alternative remedy under the RERA Act, which requires consideration of several factors to determine whether there was a delay and whether the petitioners are entitled to compensation. Therefore, although the learned Senior Counsel for TNHB argues based on *Bihar Eastern Gangetic Fishermen Co-operative Society Ltd., Vs. Sipahi Singh and Ors.*<sup>1</sup>, I believe that since the project is registered under the RERA and a specific remedy is available for the petitioners under this Act, this contention is not addressed, while keeping open the liberty of both sides in that regard.

15. The facts in this case are not under dispute. The 100% cost required by TNHB, which was determined and directed to be paid for the petitioners by TNHB, has already been paid. According to the advertisement issued, it explicitly states that this amount is inclusive of G.S.T. Nothing contrary is mentioned in the allotment letter or the

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<sup>1</sup> (1977) 4 SCC 145



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agreement entered into between the parties. It should be noted that TNHB is in a dominant position to draft the clauses of the said agreement, and, in fact, the prospective purchasers must sign the common format determined solely by TNHB. The advertisement clearly states that the amounts are only Rs.9462/- and Rs.10,500/- per Sq.ft respectively for each of the projects. Given that the project is a straightforward real estate venture as per market value, the respondent, as a real estate promoter and an entity of the Government, cannot retreat from the contractual obligation while being fully aware of the circumstances. Since the amount was held out as inclusive of G.S.T, the respondent cannot renegotiate or backtrack from the promises made. In this regard, the following portion of the judgment of the Division Bench (in which I am also a party) in ***Chennai Hiranandani Residents Welfare Association Vs. The Secretary, Housing and Urban Development Department and Ors.*** in W.A.No.3328 of 2023 by the order dated 08.04.2024 is relevant and should be extracted as follows:-

"6.27. Section 3 of the *Indian Contract Act, 1872* which defines consent is as follows :-

" 3.Communication, acceptance and revocation of proposals.—The



communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances, respectively, are deemed to be made by any act or omission of the party proposing, accepting or revoking by which he intends to communicate such proposal, acceptance or revocation, or which has the effect of communicating it."

Therefore, at the relevant point in time, when it was expressly held out that there would be 6 + 7 residential towers only, it cannot be said that the allottees of the flat have acceded to or consented that the promoter is allowed to put any number of towers or to do away with the clubhouse and commercial facility."

16. Therefore, TNHB, being in a dominant position and not including any clause to the contrary, the *contra proferentem* rule is also applicable. In this regard, it is relevant to quote the following passage of the judgment of the Division Bench (in which I am one of the parties) in ***The General Manager (Contracts Cell), India Oil Corporation Ltd., Vs. Jyothi Constructions, Rep. by its Managing Partner V.Surya*** in W.A.Nos.1728 and 1729 of 2022, by the order dated 30.03.2023, which is as hereunder:-

" 4.1. As per the clause extracted above in 1.10(b), it is the appellants who strictly instructed the tenderers to carefully and properly read all the tender documents and fill up the application form. Any prudent / reasonable man cannot sign the Declaration-I



as contained in the form at the time of submitting the tender. If the bidders mechanically sign them, again they will be violating the above clause which requires them to read carefully and fill up. Even though the writ petitioners signed, it is pleaded that the consultant who gave them advice, struck off the portion at the time of uploading. In that view of the matter, when learned Senior Counsel appearing on behalf of the appellant accepts that the declaration could have been worded better, the rule relating to *contra proferentem* would squarely apply in the instant case. The useful reference can be made to paragraph No.6 of the judgment of the Hon'ble Supreme Court of India in **United India Insurance Co. Ltd.**'s case (cited *supra*) which reads as

*"where the words of a document are ambiguous, they shall be construed against the party who prepared the document".*

4.2. The Hon'ble Supreme Court of India, also in **Central Bank of India Vs. Virudhunagar Steel Rolling Mills Limited and Ors.** [(2015) 16 SCC 207], held in paragraph No.6 as hereunder:-

*"6..... It is the appellant Bank which drafted the guarantee deed, and in case of doubt, the document would be read against it. This is the contra proferentem rule, which is of a vintage which brooks no contradiction."*

17. Now, the only question to be determined is whether this case portrays an exceptional circumstance where, due to the genuine mistake of not noticing or considering a tax liability, TNHB should be permitted an additional amount of 5%.



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18. Firstly, it can be seen that the tax liability now sought to be collected is 5% of the sale consideration. Already, 9% of the sale consideration is added as profit; therefore, even if there is any G.S.T, that is left out, that will only reduce the profit of TNHB to 4%. Thus, the argument relating to overriding public interest to wriggle out of the contractual obligation cannot be countenanced.

19. Furthermore, a review of the saleable and economic standards, i.e., filed by TNHB, reveals the following:

(i) For instance, in Type-I 9 flats (as per statement filed in page No.158 of the typed set of papers on behalf of TNHB) the advertised price includes the land cost at the rate of Rs.11,000/- per Sq.ft, totalling Rs.62,26,000/-. Additionally, the project period interest for the land cost at a rate of 8.5% is also charged, totalling Rs.7,93,815/-. Thus, the total land cost amounts to Rs.70,19,815/-.

(ii) The construction cost includes the construction and additional development cost at the rate of Rs.4,113/- per Sq.ft., amounting to Rs.64,89,761/-. Subsequently, since the Housing Board engages external



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contractors for building and construction, 18% GST is added, equating to Rs. 740/- per Sq.ft., totalling Rs.11,68,157/-. Following this, interest on expenditure, 9% profit, and premium FSI cost are included, resulting in a total construction cost of Rs.91,98,313/- and rounding off to Rs.91,99,000/-.

(iii) Thereafter, the car parking cost of Rs.1,50,000/- was added, resulting in a total sale consideration of Rs.1,63,69,000/-, which has been paid. Now, by calculating 5% on the entire sale consideration of Rs.1,63,69,000/-, another Rs.8,18,450/- is demanded.

Thus, it can be seen that if the Housing Board itself had carried out the construction, the total construction cost would have been less by Rs.11,68,157/-. This would amount to Rs.1,51,99,971/-. If 5% G.S.T is calculated on the above sum, it would only come to Rs.7,59,999/-. Adding both, the total would be Rs.1,59,59,970/-. The Housing Board had already collected from the petitioners a sum of Rs.1,63,69,000/-. The Housing Board having paid Rs.11,68,157/- is thus having the tax credit, which is in any event greater the sum now demanded from the petitioners. The same is the position in respect of all the flats and only



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the amounts may vary. Therefore, the entire plea of the Housing Board, as if it is put to loss, is not sustainable in law and also on facts.

20. As a matter of fact, when they had collected the sale consideration at the rate of Rs.10,500/- per Sq.ft., as per Rule 35 of the Central Goods and Services Tax (CGST) Rules, 2017, the calculation would be  $\text{Rs.10,500/-} \times 5\% / 105\% = 500$ , meaning the price is Rs.10,000/- and the G.S.T component is 500. Therefore, TNHB only has to reconcile its accounts and properly pay the GST to the authorities, and it cannot involve the prospective purchaser who has already paid the entire amount in this exercise. It would be open for the TNHB to suitably calibrate the sale price and the GST within the amount that is paid by the petitioner, as they have specifically mentioned the same in their advertisement. This apart, for their default as per the GST Act, if TNHB has to pay any penalty or interest for the belated payment and non-issue of invoices, it must pursue the matter in the manner known to law in the Writ Petition that is said to be pending, and that has got nothing to do with the petitioners herein.

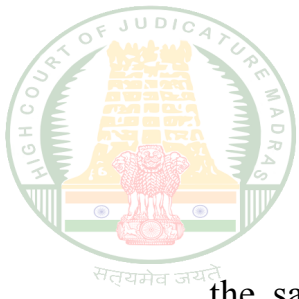


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21. The rights of TNHB vis-à-vis the petitioners have nothing to do with the numerous contentions made by TNHB with reference to the claim made by GST authorities. In fact, even if any further benefit accrues to TNHB due to its litigation or claim with the G.S.T authorities, nothing further needs to be refunded to the petitioners herein. Therefore, for the petitioners who have already paid the full flat cost, TNHB is not entitled to claim any additional amount, and the sale deed must be executed. For the petitioners who have, without prejudice, also paid the additional 5%, the extra sum collected from them must be refunded. Accordingly, the necessary sale deeds shall be executed in favour of the petitioners.

22. In view thereof, these Writ Petitions are allowed on the following terms:-

(i) In respect of the petitioners herein who have paid the 100% sale price as calculated according to the advertisement rate, TNHB, without insisting on any further payment of G.S.T, shall appropriately calculate



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the sale price and the G.S.T, and by mentioning the sale price, shall execute the sale deed in favour of the petitioners;

(ii) Regarding the petitioners who have, without prejudice, also made the additional payment, the aforementioned exercise shall be conducted in addition to refunding the extra 5% collected from them;

(iii) The above exercise shall be completed within eight weeks from the date of receipt of a web copy of this order without waiting for a certified copy of this order;

(iv) There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

02.06.2025

Neutral Citation : yes  
grs

To

1. The Managing Director,  
Tamilnadu Housing Board,  
CMDA Complex, E&C Market Road,  
Koyambedu,  
Chennai - 600 107.
2. The Executive Engineer,  
Tamilnadu Housing Board,  
Executive Engineer and Administrative Officer,



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Anna Nagar Division,  
Sales and Office Complex,  
Thirumangalam, Chennai - 600 101.

3. The Principal Secretary,  
Housing and Urban Development Department,  
Government of Tamilnadu,  
Fort St. George, Chennai - 600 009.



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**D.BHARATHA CHAKRAVARTHY, J.**

grs

W.P.No.33993 of 2024 etc., (batch cases)

02.06.2025