



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Order reserved on : 16.12.2025

Order pronounced on : 30.01.2026

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THE HONOURABLE MR JUSTICE P.B. BALAJI

CRP.No.5064 of 2025& CMP.No.25532 of 2025

M/s.Sare Shelters Project Private Limited,
Sare Shelter Project Office,
Crescent Park,
Dewy Terrace Residential Complex,
Sare Homes, Sowbagya Vijayan Nagar,
Thiruporur, Chengalpet District – 603 110.

... Petitioner

Vs.

Sare Squires Association,
F-3, Block Basement,
Crescent Park, Sare Homes,
Sowbagya Vijayam Nagar,
Tiruporur, Chengalpet District – 603 110.

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the impugned order dated 09.04.2025 in E.P.No.27 of 2024 in C.No.212 of 2019 on the file of the Tamil Nadu Real Estate Regulatory Authority, Chennai and to consequently strike off E.P.No.27 of 2024 in C.No.212 of 2019 as the same cannot be prima facie be instituted.



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For Petitioner : Mr.T.Gowthaman
Senior Counsel
for M/s.KNS Law Chambers

For Respondent : Mrs.Hema Sampath
Senior Counsel
for Mr.R.Manimuthu

ORDER

The petitioner is the judgment debtor, who has suffered an order in E.P.No.27 of 2024, the execution petition arising out of the proceedings under the Tamil Nadu Real Estate (Regulation and Development) Act, 2016.

2.I have heard Mr.T.Gowthaman, learned Senior Counsel for M/s.KNS Law Chamber, learned counsel for the revision petitioner and Mrs.Hema Sampath, learned Senior Counsel for Mr.R.Manimuthu, learned counsel for the respondent Association of the flat owners.

3.Mr.T.Gowthaman, learned Senior Counsel appearing for the revision petitioner would submit that the petitioner suffered an interim order



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in I.A.No.43 of 2021 before the Real Estate Regulatory Authority, Chennai on 05.01.2023. Insofar as I.A.No.43 of 2021, the directions issued in the said IA, learned Senior Counsel would invite my attention to the liberty granted by the Regulatory Authority, to the respondent to file an execution petition in the event of the promoter failing to comply with the the directions issued by the authority on or before 31.03.2023. The learned Senior Counsel would however contend that the said interim order dated 05.01.2023 is superseded by final orders dated 15.12.2023 in C.No.212 of 2019.

4.It is therefore the primordial submission of Mr.T.Gowthaman, learned Senior Counsel that the directions issued on 05.01.2023 by way of interim orders stood merged with the final orders which did not reserve any such right on the respondent/Association and in such circumstances, without even an application being taken out, seeking attachment of the immovable properties, the respondent could not have filed the execution petition for attachment of the unsold apartments and further contends that the executing Court ought not to have straight away allowed the prayer sought for, by granting an injunction restraining the promoter from dealing with 48 flats.



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5.It is also the submission of the learned Senior Counsel, Mr.T.Gowthaman that the 48 flats which remain unsold, even according to the respondent/Association, a charge has already been created in favour of a third party financier and therefore by passing such an order in the execution petition, the executing Court has committed a grave error which prejudices the interest of the petitioner as well as the third party financier. The learned Senior Counsel would therefore pray for the revision being allowed.

6.Per contra, Mrs.Hema Sampath, learned Senior Counsel appearing for the respondent/Association would first and foremost contend that the revision petition is not maintainable under Article 227 of Constitution of India as an alternate and effective remedy is available under Section 44 of the Real Estate (Regulation and Development) Act, 2016. It is also the submission of Mrs.Hema Sampath, learned Senior Counsel that neither the interim order dated 05.01.2023 nor the final order dated 15.12.2023 have been challenged in the manner known to law and therefore, there is absolutely no impediment for the respondent/Association to seek enforcement by way of filing the execution petition.



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7.Mrs.Hema Sampath, learned Senior Counsel would further contend that under Order XXI Rule 53 of CPC r/w Section 36 of RERA Act, 2016, the respondent has also sought for interim attachment and in fact, the petitioner was represented by a counsel in the said proceedings and despite several opportunities given to the petitioner, the petitioner was not ready to get along with the matter and was only bargaining for time on the ground that the promoter was willing to settle the matter with the respondent/Association. It is only in this back drop that the impugned order came to be passed on 09.04.2025, restraining the promoter from alienating the flats pending the execution proceedings.

8.The learned Senior Counsel for the respondent would further state that the said order has been communicated to the Sub-Registrar, Thiruporur, and the injunction continues to be in force as on date. She would further state that even thereafter when the execution petition was called for hearing before the authority on 10.09.2025 also the petitioner and his counsel were not present and it is thereafter on 07.10.2025 that the present revision has been filed. In support of her submissions, she relies on the decision of the Hon'ble Supreme Court in *Rikhab Chand Jain Vs. Union of India and*



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others, reported in 2025 INSC 1337. She would therefore pray for dismissal of the revision petition.

9.I have carefully considered the submissions advanced by the learned Senior Counsel on either side.

10.The promoter is the revision petitioner, challenging the order passed by the authority on 09.04.2025, in and by which the authority has directed the respondent not to alienate the remaining unsold apartments, till disposal of the execution petition. The said order is under challenge in the present revision petition. Firstly, I am unable to see that the said order came to be passed without notice to the respondent.

11.It is the specific contention of the learned Senior Counsel for the petitioner/promoter that without taking out an execution application in the pending EP, the order of injunction restraining alienation of remaining unsold apartments ought not to have been passed. However, on a perusal of the order dated 09.04.2025, it is seen that the counsel for the revision petitioner was present in Court on the said date and the Court has recorded



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the fact that the counsel has again sought for time for filing compliance affidavit.

12. In such circumstances, taking into account the submissions of the counsel for the execution petitioner that 48 apartments have already been sold by the revision petitioner, in the interest of the decree holder/execution petitioner, the authority has passed an interim order directing the respondent not to alienate the remaining unsold apartments till disposal of the execution petition. I do not see how this order can be said to have been passed behind the back of the petitioner, as, it was only at the instance of the petitioner that the proceedings were repeatedly adjourned and noticing that the petitioner has been repeatedly taking time to comply with the order passed by the authority, as a measure of interim protection alone, the Court has directed the respondent not to alienate the remaining unsold apartments. The executing Court has not passed any order of attachment.

13. In fact, the prayer sought for in the execution petitioner is only for attachment of the unsold flats in the apartment. The reliefs prayed for in the execution petition are to recover Corpus Fund, Interest Free Security



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Deposit and Maintenance Charges payable by the promoter by attaching the unsold flats in the apartments. Therefore, I do not see how the said order has been passed in violation of principles of natural justice or in defiance of the mandate of any law. The order is not a final order, but only an interim measure of protection which has been given to the decree holder, since the petitioner taking advantage of the pendency of proceedings, has already alienated 48 flats.

14. In fact, it is seen from the case diary extract that even after the impugned order came to be passed on 09.04.2025, the petitioner has only sought for time to comply with the orders of the authority on 25.06.2025. On 23.07.2025, the next hearing date in the execution petition, the respondent was absent and the matter was adjourned to 06.08.2025. On 06.08.2025, the petitioner sought for time on the ground that settlement talks are going on between the parties. At the request of the petitioner, the EP was again adjourned to 10.09.2025, on which date, the respondent was present and taking note of the fact that the counsel for the petitioner had assured the authority that settlement would be reached and reported within a month and despite the said assurance, there is no representation, the interim order



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restraining sale of unsold flats was extended and the EP was adjourned to 13.10.2025, for reporting settlement or arguments. On 13.10.2025, the petitioner was absent and after hearing the counsel for the respondent, the authority has reserved orders. It is at that stage that the present revision has been filed and interim stay was granted by this Court on 23.10.2025.

15.From the above, it is clear that the petitioner has no bonafide intention to comply with the orders passed by the authority. Admittedly, the interim order dated 05.11.2023 and also the final order dated 15.12.2023 have not been challenged before the competent Appellate Authority and the said orders have become final. The contention of Mr.T.Gowthaman, learned Senior Counsel that the order dated 09.04.2025 has been passed without giving an opportunity to the petitioner is also clearly falsified in view of the above narration. The said order was passed only in the presence of the counsel for the revision petitioner and that too, it is not the order that was sought for in the execution petition by way of attachment or other reliefs, but only an interim injunction restraining the petitioner from further alienating unsold flats in the apartment.



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16. Section 44 of the RERA Act, 2016, provides for appeals to the Appellate Tribunal against any direction or order or decision of the Authority or adjudicating officer. An appeal is preferable within a period of 60 days from the date on which copy of the direction or order, decision is made by the authority or the adjudicating officer, is received by the aggrieved person. The Tribunal is also empowered to condone the delay, if the appeal is preferred beyond the period of 60 days and provided sufficient cause is shown. In the light of the above, the order passed on 09.04.2025 is clearly in the nature of an order against which statutory appeal lies under Section 44 of the RERA, 2016.

17. The Hon'ble Supreme Court in *Rikhab Chand Jain's case*, after referring to the Constitution Bench in *A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Washwani*, held that when the petitioner had on account of his own fault, disabled himself from availing statutory remedy, then the discretionary remedy under Article 227 of the Constitution of India would not be available to such person and the Hon'ble Supreme Court held that when there is a remedy in separate jurisdiction which was equally efficacious, the invocation of writ jurisdiction could not



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be entertained.

18.The learned Senior Counsel, Mr.T.Gowthaman, has relied on the decision of the Hon'ble Supreme Court in *Bhudev Mallick Alias Bhudeb Mallick and another Vs. Ranajit Ghoshal and others*, reported in 2025 INSC 175, where the Hon'ble Supreme Court held that the supervisory jurisdiction of the High Court under Article 227 of Constitution of India is meant to take care of situations where an opportunity is denied to either of the parties to the lis. Taking into account the ratio laid down by the Hon'ble Supreme Court in the above case, it would be just and proper to afford an opportunity to the petitioner to advance submissions in the EP and the authority shall pass orders after taking note of the objections of the petitioner.

19.The ratio laid down in *Rikhab Chand Jain's case*, would apply to the facts of the present case. In view of the above, the revision petition is also not maintainable and is liable to be dismissed on that limited score alone. Even otherwise, as I have already found, the order passed on 09.04.2025 is only by way of interim order and not a final order which has caused any serious prejudice to the revision petitioner. In view of the above,



I do not find any merit in the revision and the revision is liable to be dismissed. However, considering the fact that the authority has reserved orders in the execution petition and the petitioner has not made his submissions, despite opportunities being given for submission of arguments, I am inclined to direct the authority to post the execution petition on a particular date for the petitioner's arguments and it is open to the petitioner to avail of the said opportunity to advance submissions in the EP and upon hearing the petitioner, who is the respondent in the execution petition, the authority shall pass final orders, after affording an opportunity by way of reply to the respondent/Association. In the event of the petitioner not availing of the opportunity to make submissions on the assigned date, then it shall be open to the authority to pass orders, as orders have already been reserved in the matter.

20. With the above direction, the Civil Revision Petition is dismissed.

No costs. Connected Civil Miscellaneous Petition is closed.

30.01.2026

Neutral Citation: Yes
Speaking Order



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To

Tamil Nadu Real Estate Regulatory Authority, Chennai.

P.B. BALAJI, J.

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Pre-delivery order made in
CRP.No.5064 of 2025
& CMP.No.25532 of 2025

30.01.2026