

C.M.S.A.Nos.25 & 26 of 2025

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DATED: 29-07-2025

CORAM

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

CMSA Nos. 25 & 26 of 2025

R. Santhi Pitchaiya Nattar

Appellant(s) in both the appeals

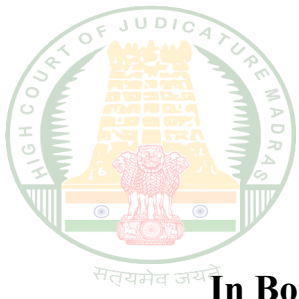
Vs

Homefinders Housing Ltd
Rep. by its Chairman and Managing
director, K.S.Ramalingam, Old Flat
No.2C, Race view towers, 71 Mount
road, Guindy, Chennai- 600032. At
present Block No.10, Homefinders
Estate, Thiruvalluvar Salai,
Ramapuram, Chennai-600089.

Respondent(s) in both the appeals

COMMON PRAYER

These Civil Miscellaneous Second Appeals have been filed under Section 58 of the Real Estate (Regulation and Development) Act, 2016 read with Section 100 of CPC to set aside the order passed by the Honble Tamil Nadu Real Estate Appellate Tribunal, Chennai dated 21.02.2025 made in Appeal Nos.25 & 26 of 2022 and reversing the order of the Honble adjudicating officer in CCP Nos.92 & 93 of 2020, dated 28.02.2022 by the Tamil Nadu Real Estate Regulatory Authority, Chennai.



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In Both the Appeals:

For Appellant(s): M/s.M.Yogaa

For Respondent(s): Mr. K. Harishankar for
Mr.P. Mano Rajan

COMMON JUDGMENT

(Judgment delivered by P.DHANABAL J.)

These Civil Miscellaneous Second Appeals have been preferred against the order dated 21.02.2025 passed by the Tamil Nadu Real Estate Appellate Tribunal, Chennai in Appeal Nos.25 & 26 of 2022, reversing the order passed by the Adjudicating Officer, Tamil Nadu Real Estate Regulatory Authority, Chennai, in CCP.Nos.92 & 93 of 2022, dated 21.10.2024.

2. Since the relief sought for in both the Civil Miscellaneous Second Appeals are identical and the grounds of appeal are also similar, both appeals are being disposed of by way of this common order.

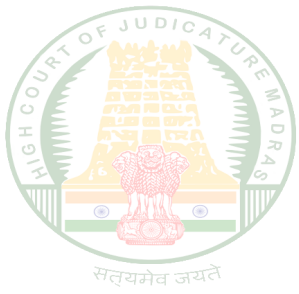
3. The appellant/complainant filed two petitions before the Tamil Nadu Real Estate Regulatory Authority, Chennai, in CCP.Nos.92 and 93



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of 2020, alleging that she had booked Apartment Nos.13A and 16B in the respondent's project 'Elegant Palm' Situated in Aatchikadu Village, Tindivanam Taluk, Villupuram District, which were allotted to her. She paid a sum of Rs.1,04,079/- on June 04, 2012, as part of booking amount, and subsequently, she paid an additional amount of Rs.19,60,045/- on June 19, 2012. The construction agreement was executed on June 7, 2012 and the sale deed for the undivided share of land (UDS) was registered on June 29,2012 as Document No.1941 of 2012, before the Sub-Registrar Office, Marakkanam, in respect of the said apartments. As per the agreement, the appellant was required to pay a further sum of Rs.1,04,079/- at the time of handing over possession. However, despite receiving the entire sale consideration, the respondent failed to complete the construction and hand over possession of the apartments as agreed. The respondent stated various reasons for the delay, including shortage of materials and flood issues. Since the respondent breached the terms of the contract, the appellant decided to cancel the booking and filed petitions in CCP.Nos.92 and 93 of 2020 seeking a refund of the amount paid with interest.

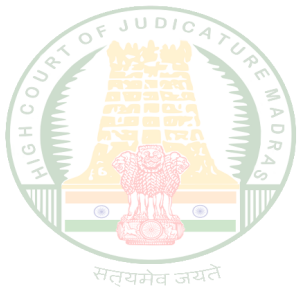


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4. The respondent denied the above said averments by filing a counter affidavit, stating that the appellant/complainant made payments of Rs.1,04,079/- on 04.06.2012, as part booking amount and in total a sum of Rs.19,60,045/- was realized from the appellant/claimant for each flat and the balance amount payable by the appellant as on 19.06.2012 was a sum of Rs.58,603,50/- + service tax and the incidental charges for each flat and till date, the appellant has not paid the same. It is further contended that at the request of the appellant/complainant, the flooring was upgraded from ceramic to granite, the cost of which has not been paid by the appellant/complainant. It is further contended that construction of the project was completed on 20.06.2014 and the same was also communicated to the appellant/complainant and however, the appellant/complainant failed to take possession of booked flats and also not paid the balance sum of Rs.58,603,50/-, for which she demands payment with 24% p.a interest.

5. Before the Tamil Nadu Real Estate Regulatory Authority, both sides have examined the witnesses and marked the documents.



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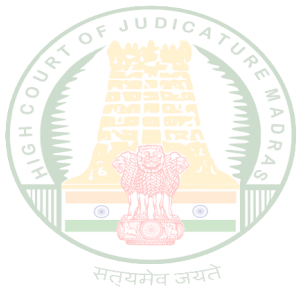
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6. Based on the evidence adduced, the authority of TNRERA, has allowed the petitions directing the respondent to deduct a sum of Rs.1,17,207/- as payable with interest and refund the money to the appellant/complainant.

7. Aggrieved by the said order, the respondent herein has preferred appeals before the Tamil Nadu Real Estate Appellate Tribunal (hereinafter referred to as TNREAT) in Appeal Nos.25 and 26 of 2022 and the appellate authority allowed the appeals by setting aside the common order dated 28.02.2022 passed by the learned single member in C.C.P.Nos.92 and 93 of 2020. Aggrieved by the said common order, the present Appeals have been preferred by the appellant /complainant.

8. In both the CMSAs, the following Substantial Questions of Law were raised.

1. *Whether the Hon'ble Appellate Tribunal is correct in holding that the respondent's projects would fall under exemption of rule 2(h)(iii) of TNRERA 2017?*
2. *Is the learned appellate tribunal right in holding that the*



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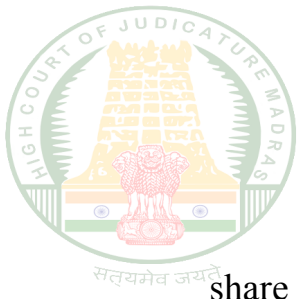


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appellant was incapable of paying Rs.1,04,079/- to the respondent in 2013, despite having already paid 98% of the construction charges in 2012?

3. *Whether the Hon'ble Appellate Tribunal right in holding that the respondent is entitled to claim exemption under Section 2(h)(iii) of the TNRERA Rules, 2017, despite failing to hand over the project within the stipulated time and obtaining the completion certificate only in 2017?*
4. *Whether the Appellate Tribunal was right in holding that a completion Certificate issued by a private architect is sufficient, despite the absence of a valid Completion Certificate from the competent Authority?*
5. *Whether the Hon'ble Appellate Tribunal's decision prejudiced the appellant's rights and wrongfully denied the appellant's rightful claim for refund with interest?*
6. *Whether the appellate tribunal, after holding that the project is unregistered under TNRERA, still has the jurisdiction to pass and order and grant relief to the appellant?*

9. The learned counsel appearing for the appellant would submit that the appellant booked two flats bearing Nos.13A and 16B in Block No.EO2, each measuring 482 sq.ft., along with 177 sq.ft of undivided

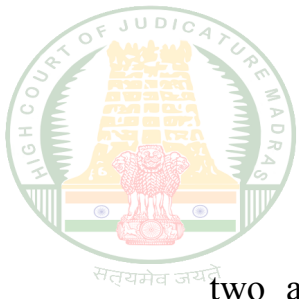


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share over common area in real estate project, namely 'Palm Coast', at Aatchikadu Village, Tindivanam Taluk, Villupuram District. The appellant paid a sum of Rs.1,04,079/- on June 04, 2012, as part of booking amount, and subsequently, she paid an additional amount of Rs.19,60,045/- on June 19, 2012, even prior to the date of execution of sale deeds and construction agreements. Thereafter, the respondent executed the construction agreement on 07.06.2012 and also executed a sale deed of undivided share of land on 29.06.2012. The appellant was required to pay a balance sum of Rs.1,04,079/- at the time of handing over the possession. As per the agreement, the respondent failed to complete the construction and not handed over the possession to the appellant.

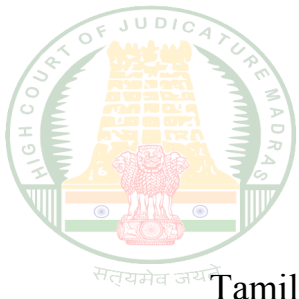
9.1. Therefore, the appellant filed petition before the the Tamil Nadu Real Estate Regulatory Authority (TNRERA) in CCP.No.93 and 94 of 2020 seeking cancellation and refund of the payment made by the her and the same were allowed by directing the respondent to refund the payment after deducting an amount of Rs.1,17,207/- out of Rs.20,64,124/-. Aggrieved by the said orders, the respondent preferred



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two appeals before the Tamil Nadu Real Estate Appellate Tribunal, Chennai, and the Tribunal erroneously held that “the Real Estate (Regulation and Development) Act, 2016 came into force on 01.05.2016 and Section 3 of the said Act came into force subsequently on 01.05.2017. The Tamil Nadu Government also framed Tamil Nadu Real Estate (Regulation and Development) Rules, 2017, which came into force on 22.06.2017. Rule 2(h)(iii) of the said rules, exempts certain real estate projects completed prior to 01.05.2017 from registration with TNRERA as on “Ongoing Project”, subject to certain conditions. As per rule 2(h)(iii) of the said rules, the list of completed project as on 01.05.2017 was notified in the official website of the concerned Authorities as per the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017. The real estate project promoted by the appellant/promoter was also included in the said list of completed projects and therefore, it cannot be disputed that the real estate project was completed long back. Therefore the authority has no jurisdiction to dealt with the complaints in respect of the unregistered real estate project” and the above said findings are against the law. The learned counsel further submits that the respondent had not completed the project till 2017, therefore, the authority under



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Tamil Nadu Real Estate (Regulation and Development) Rules, 2017 issued notice to the respondent and there is no record to show that the project was already completed before the commencement of the Act. Without considering the same, the appellate authority has allowed the appeal and set aside the order of TNRERA.

10. The learned counsel for the respondent would submit that the appellant booked apartments in the respondent's "Elegant Palm" project and and she has been allotted flat Nos.13A and 16B and she has not paid the entire amount as agreed by her and she only paid only paid a sum of Rs.9,91,396/- for each apartment and balance of Rs.58,063/- + service tax and charges for each flat was not paid till date. Therefore, the respondent also filed petitions before the Tamil Nadu Real Estate Regulatory Authority in CCP.Nos.92 and 93 and the same were allowed by directing the respondent to refund the amount after deducting the a sum of Rs.1,17,207/-.

10.1. Learned counsel further submits that the project was already completed in the year 2014 itself and they also sent a communication to

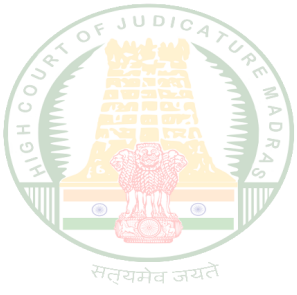


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the appellant in that regard, but the appellant failed to take possession of the above said apartments, but contra, she filed petitions for refund of amount and the same were allowed. Since, the project in respect of the appellant's apartment was already completed in the year 2014 itself and the Real Estate (Regulation and Development) Act, 2016 came into force on 01.05.2016 and Section 3 of the said Act was came into force on 01.05.2017 and the authority has no jurisdiction to entertain this petition.

10.2. Moreover, the Tamil Nadu Government also framed the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017, which came into force on 22.06.2017 and as per Rule 2(h)(iii) of the said rule, exempts certain real estate projects completed prior to 01.05.2017, from registration with TNRERA as “ongoing project” subject to certain conditions. As per the condition, the completion of the project has been promptly intimated to the concerned Local Planning Authority and Regional Deputy Director of Town and Country Planning Department on 04.07.2017 along with completion report of the competent architect, well within the period 15 days from 22.06.2017.



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10.3. In this case, the list of completed projects as on 01.05.2017 was notified in the official website of the concerned authorities as per the Rules. Therefore, the TNRERA authority, without considering the same, directed to refund the amount after deducting a sum of Rs.1,17,207/-. Therefore, the respondent preferred appeals before the appellate authority and the appellate authority after considering the rule position of 2(h)(iii) of the Tamil Nadu Real Estate (Regulation and Development) Rules correctly allowed the appeal as the authority has no jurisdiction to entertain the appeal without registration. Therefore, there is no perversity or illegality in the order passed by the appellate authority and there is no substantial questions of law arises in this case and the substantial questions of law framed by the appellant are wrong, therefore, these appeals are liable to be dismissed.

11. Heard both sides and perused the records.

12. It is admitted fact that the appellant purchased the apartments in the respondent's project and sale deed was executed on 29.06.2012 and thereafter there is dispute arose between the parties in respect of taking

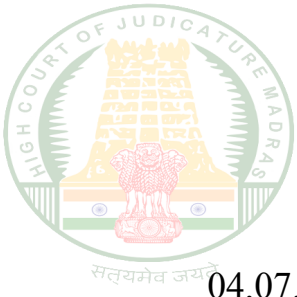


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over the possession of the property. According to the appellant the construction was not completed within the time, but according to the respondent they already completed the projects and they issued notice, informing the completion of the project, however the appellant failed to take possession of the flats.

13. According to the respondent, the Act itself is not applicable to the project, as the same was completed prior to the commencement of the TNRERA Act, 2016. In this context, we have to look into the Real Estate Regulation and Development Act 2016 which came into force on 01.05.2016 and the Section 3 of the said Act came into force only on 01.05.2017, thereafter, the Tamil Nadu Government also framed the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017, which came into force on 22.06.2017. The respondent relied upon the Rule 2(h)(iii) of the above said rules and as per the said rule, the respondent has to intimate the completion of the project to the concerned Local Planning Authority and Regional Deputy Director of the Town and Country Planning Department, within 15 days from 22.06.2017. The respondent also informed the same to the concerned authorities on



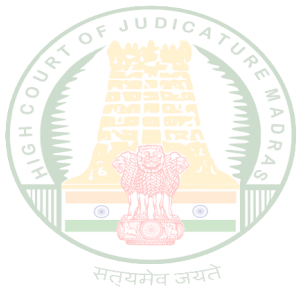
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04.07.2017 and the same was notified on 01.05.2017. The project was completed and on 01.05.2017 it was notified in the official website.

Therefore, the appellate authority allowed the appeals.

14. The TNRERA has not considered the Rule 2(h)(iii) of the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017 and has not discussed the applicability of the Act to the case of the complainant, whereas the appellate authority, after relying upon all the relevant rules came to a conclusion that since the project was completed before 01.05.2017 and same was informed to the authorities concerned within the time specified under the 2(h)(iii) of Tamil Nadu Real Estate (Regulation and Development) Rules, 2017, the project was exempted from registration before the TNRERA as ongoing project. The Tamil Nadu Real Estate Regulating Authority has no jurisdiction to entertain the petition with respect to unregistered real estate projects. Therefore, the appellate Tribunal has dismissed the petition, by allowing the appeals.



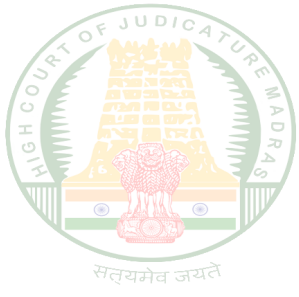
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15. Further the appellate authority relied upon the judgement of this Court dated 20.09.2023 made in CMSA No.29 and 24 of 2020 in the case of “*M/s. Devinaryan Housing and Property Developments Private limited and 2 others vs. Manu Karan and 2 others*”. As per the above said judgment, if any person is aggrieved on the unregistered real estate project, they have to approach either Civil Court or Consumer Forum in accordance with law and not before RERA. Therefore, the appellate authority has passed a well reasoned order and this Court does not find any perversity or irregularity in the order passed by appellate Tribunal in order to interfere with the same.

16. As for as the substantial questions of law framed in the appeal are concerned, on a careful perusal, this Court finds that no substantial questions of law is involved to entertain the present appeal.

17. In view of the above discussion, this Court is of the opinion that these appeals have no merits and deserve to be dismissed.



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18. Accordingly, Civil Miscellaneous Second Appeal stands dismissed. No costs.

(R.SURESH KUMAR J.)

(P.DHANABAL J.)

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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

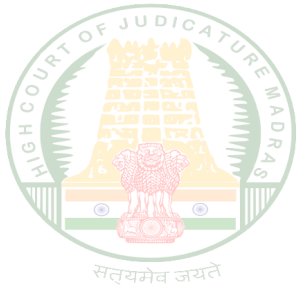


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1.Homefinders Housing Ltd
Rep. by its Chairman and Managing
director, K.S.Ramalingam, Old Flat
No.2C, Race view towers, 71 mount
road, guindy, Chennai- 600032. At
present Block No.10, Homefinders
Estate, Thiruvalluvar Salai,
Ramapuram, Chennai-600089.

2. The Tamil Nadu Real Estate
Appellate Tribunal, Chennai.
3. The Adjudicating Officer,
Tamilnadu Real Estate
Regulatory Authority,
Chennai.



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