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C.M.S.A.No.41 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	:	09.12.2024
PRONOUNCED ON	:	10.01.2025

CORAM:

THE HON'BLE MRS. JUSTICE J.NISHA BANU

AND

THE HON'BLE MR. JUSTICE R.SAKTHIVEL

C.M.S.A.No.41 of 2022

and C.M.P.Nos.9256 of 2022

P.Anandasundaresan

... Appellant

-VS-

M/s.Akshaya Pvt. Ltd.
Rep. by its Director, Mr.J.Ravi,
No.117/1, LB Road, 7th Floor,
Adyar, Chennai 600 020

... Respondent

PRAYER: Civil Miscellaneous Second Appeal filed under Section 58 of the TNRERA Act, 2017 r/w section 100 of Civil Procedure Code, 1908, against the order of the Tamil Nadu Real Estate Appellate Tribunal, Chennai dated 07.03.2022 passed in Appeal No.103 of 2021 on the file of TNREAT, by



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reversing the order dated 30.03.2020 passed in CCP No.30 of 2020 on the file of TNRERA, Chennai.

For Appellant : Mr.C.K.Chandrasekar
For Mrs.W.R.Subhashini

For Respondent : Mr.Mani Sundaragopal

J U D G M E N T

(Judgment of this Court made by J.Nisha Banu, J.)

The appellant has approached this Court under Section 58 of the Real Estate (Regulation and Development) Act, read with Section 100 of the Civil Procedure Code against the order of the Tamil Nadu Real Estate Appellate Tribunal, Chennai dated 07.03.2022 passed in Appeal No.103 of 2021 on the file of TNREAT, which reversed the order dated 30.03.2020 passed in CCP No.30 of 2020 on the file of Tamil Nadu Real Estate Regulatory Authority (TN RERA), Chennai filed by the appellant herein.

2. The essential facts of the case would run thus:-

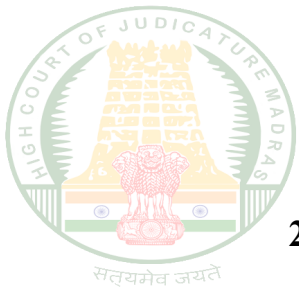
2.1. The appellant herein is a retired General Manager of Bharath Petroleum Corporation Limited, a Public Sector Undertaking. The respondent /Promoter has advertised for constructing a residential apartment



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complex at Thaiyur Village, Chengalpet Taluk in Thiruporur bearing the project name “January”. The said project comprised of construction of residential flats measuring 1396 sq.ft. in an undivided share of land, in a total land measuring about 5 Acres and 23.79 cents. The appellant being interested in the same, approached the respondent/ Promoter and on 30.07.2011, the appellant entered into a Memorandum of Agreement with the respondent/ Promoter. The total cost payable by the appellant was fixed at Rs.46,38,000/- (Rupees Forty-Six Lakhs Thirty-Eight Thousand Only) by the respondent/ Promoter for the allotted plot.

2.2. The schedule of payments, the specification of the flat and the amenities were provided under the Project name "January" as mentioned in the above said Memorandum of Agreement. As per the said Agreement, the flat was to be constructed within a period of 30 months, with a grace period of 90 days from the date of obtaining the sanction from the Authorities concerned. The respondent/ Promoter also agreed to provide ten other amenities which includes Club House, ATM, Restaurant, Supermarket, Gymnasium ...etc. apart from other common facilities.



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2.3. As per the aforesaid Agreement dated 30.07.2011, the respondent /Promoter has to complete the construction and deliver the flat at least, on or before 30th April 2014. But the respondent / Promoter handed over the keys of the flat only on 24.02.2018 and the club house facilities were handed over only on 26.01.2021. Therefore, the respondent/ Promoter has handed over the possession of the flat with a long delay of nearly 4 years from 30.04.2014 to 24.02.2018 and with regard to the other club house facilities, a delay of 7 years has been incurred on the side of the respondent/ Promoter.

2.4. Aggrieved against the delay incurred in handing over of the flat by the respondent/ Promoter, the appellant filed a complaint before TNRERA, seeking a direction to the respondent/ Promoter to pay a compensation of Rs.7,56,358/- (Rupees Seven Lakh Fifty-Six Thousand Three Hundred and Fifty-Eight Only), with interest at 18% per annum. By an order, dated 30.03.2021, the learned Adjudicating Officer, TNRERA, Chennai, directed the respondent / Promoter to pay a sum of Rs.5,56,358/- as compensation for delay and interest on the said amount at 10.05% per annum from the date of filing of the complaint until the date of payment, and a further sum of



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Rs.1,00,000/- towards compensation of mental agony, loss and hardship and additionally a sum of Rs.20,000/- towards litigation expenses.

2.5. Challenging the aforesaid order of the learned Adjudicating Officer, TNRERA, Chennai, the respondent/ Promoter has filed an appeal before the Tamil Nadu Real Estate Appellate Tribunal. The Appellate Tribunal reversed the order of the learned Adjudicating Officer, TNRERA, Chennai, vide order, dated 07.03.2022 made in Appeal No.103 of 2021, on the file of TNREAT, Chennai, thereby allowing the appeal filed by the respondent/ Promoter by holding that the project “January” of the respondent/ Promoter was 'not an ongoing project' and therefore, the same does not attract the provisions of the TN RERA Act and also inferred that the complaint made by the appellant is not maintainable. Since the Appellate Tribunal reversed the order of the learned Adjudicating Officer, TNRERA, Chennai, aggrieved against the same, the appellant has approached this Court by way of filing this civil miscellaneous second appeal.

3. Mr.C.K.Chandrasekar, learned counsel appearing on behalf of Mrs.W.R.Subhashini, learned counsel for the appellant, canvassed the



following arguments before this Court.

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3.1. According to the learned counsel for the appellant, there was a delay in construction. Despite the delay that incurred on the side of the respondent/ Promoter, demand was made by the respondent/Promoter through email, to the appellant insisting on making payment of installments. Even then, the appellant has paid those installments promptly. Apart from the above said amount of Rs.46,38,000/-, the respondent/ Promoter has collected amount towards Service Tax, VAT, interest for delayed payment, infrastructure and basic amenities charges, amounting a total sum of Rs.3,93,368/- . Therefore, a total sum of Rs.50,31,368/- (Rupees Fifty Lakhs Thirty One Thousand Three hundred and Sixty Eight only) was paid by the appellant to the respondent / Promoter for the purchase of the flat.

3.2. Further, the learned counsel submitted that the appellant has purchased the apartment with a Housing Loan of Rs.35,00,000/- availed from M/s.Corporation Bank and the payments were released to the respondent/ Promoter directly by the Bank starting from December 2011 to November 2013. The minor delays in release of payments to the respondent/Promoter

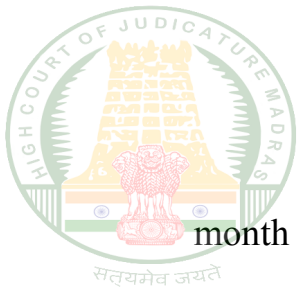


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was due to the delay in submission of information sought by the Bank from the respondent/ Promoter. Nevertheless, the appellant paid the interest element on receipt of Demand Notice from the respondent/ Promoter. An amount of Rs.16,58,091/- was paid to the bank as an interest, till taking possession of the apartment on 24-02-2018.

3.3. According to the learned counsel for the appellant, the respondent/ Promoter has admitted before the Adjudicating Officer that the project was "an ongoing project" on the date of the commencement of the Act. But the learned Appellate Tribunal has failed to consider the definition of '*completion certificate*' as per Section 2 (q) of the RERA Act, 2016. It is the contention of the learned counsel that the conclusion reached by the Appellate Tribunal is contrary to records and it ought to have discredited the document submitted by the respondent/ Promoter, which is not a completion certificate.

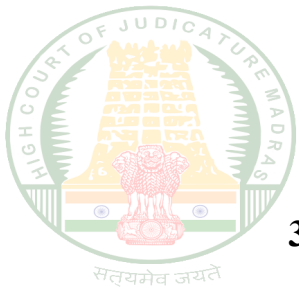
3.4. The learned counsel for the appellant drew the attention of this Court to Clause 8 of Memorandum of Agreement dated 30.07.2011, wherein the respondent/ Promoter has undertaken to pay a sum of Rs.7,500/- per



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month as compensation for the delay of delivery of possession. The respondent has revised the said amount of compensation, increasing the same from Rs.7,500/- to Rs.10,000/- per month with effect from May 2016 vide e-mail dated 26.10.2015, in respect of 'Wednesday Block', by their revised timeline. But the respondent/ Promoter has not paid any amount, towards the said compensation for delayed delivery, when they handed over the possession on 24.02.2018 and for the other amenities in the year 2021.

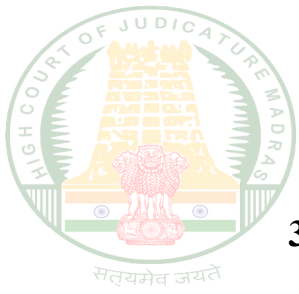
3.5. It is the contention of the learned counsel for the appellant that the Appellate Tribunal erred in considering the letter issued by the President of the Panchayat as that of "Completion Certificate" and the same is contrary to law. The said letter cannot be equated with the Completion Certificate issued by the competent authority and admittedly, the project was incomplete on the date of issuance of such letter. Moreover, the Appellate Tribunal failed to see that the respondent/ Promoter did not submit any application to the CMDA enclosing any certificate from the Architect / Licenses Surveyor/ Structural Engineer as mandated in Rule 2 (h)(ii) of the TN RERA Act, Rules 2017.



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3.6. The learned counsel vehemently argued that an application seeking completion certificate could be submitted only to the CMDA, as they are the Competent Authority to issue the certificate after verification about the compliance of the approved plan and completion of the project as per the plan. But in the present case, no such completion certificate obtained from the CMDA was furnished by the respondent/ Promoter. Moreover, at the time when the Panchayat President issued a letter on 26.02.2014, the project was still under construction, which aspect was not looked into by the Appellate Tribunal.

3.7. The learned counsel for the appellant further submitted that the Tribunal failed to see the interest statement of the builder, dated 17.2.2020 which proved that the construction itself was undertaken after 14.2.2017, where the project got extended due to the delay/fault of the Builder and respondent also collected interest at 18% for the belated payment by the buyer, for the lapse on their part in not constructing and handing over the Flat/Project within the agreed period i.e 30.04.2014.



3.8. Even though there was abundant material to prove that the construction was incomplete, handing over the flats to the owner was incomplete till 2018 and the common amenities were not even constructed as per the project plan till 2021 and maintenance was also not complete until 2017, the learned Tribunal failed to consider the same and passed an erroneous order, which deserves to be set aside.

3.9. The learned counsel for the appellant relied on the judgment of this Court made in C.M.S.A.No.27 of 2020 dated 16.02.2021, wherein the term 'completion certificate' was extensively discussed and in that case, it was held as follows:-

“.... completion must be with reference to the provisions of the Act and not based on the certificate of completion issued by the Executive Officer, Town Panchayat, who issues such certificates mostly on extraneous considerations. Thus, this Court is of the considered opinion that the certificates are not issued after inspection but obtained

.... Thus, any certificate issued by such Executive Officer, Town Panchayat cannot be taken as a conclusive factor, If



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a literal meaning is adopted, with reference to Section 3(2)(b) of the RERA Act, then many number of builders/ Developers who are all in the process of construction will escape from the clutches of law and that is not the intention of the Parliament.”

Therefore, considering the above, the learned counsel for the appellant submitted that the order of the Tamil Nadu Real Estate Appellate Tribunal, Chennai dated 07.03.2022 passed in Appeal No.103 of 2021 on the file of TNREAT is liable to be dismissed and prayed for allowing the appeal.

4. Mr.Mani Sundaragopal, learned counsel appearing for the respondent / promoter would submit that the Completion Certificate for the above said Project was issued by the Thaiyur Panchayat on 26.02.2014 and he relied on section 2(q) of the RERA Act which defines Completion Certificate as follows:-

“means the completion certificate, or such other certificate, by whatever name called, issued by the competent authority certifying that the real estate



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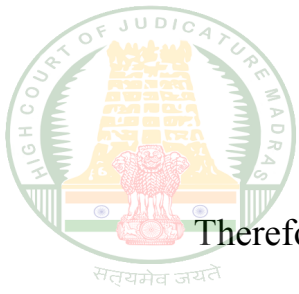


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project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority under the local laws ”.

4.2. The learned counsel further relied on Section 3 of the RERA Act which stipulates that projects for which Completion Certificate has not been issued on the date of commencement of this Act ie., on 01.05.2017 (Section 3 to 9 etc., were notified only on 01.05.2017), alone are liable to be registered under the Act. In view of the same, the provisions of the Act are not applicable in respect of the said Project, "January" and hence the complaint for Compensation u/s 18, 70 and 71 of the Act, made by the appellant is not maintainable.

4.3. The learned counsel further submitted that the appellant committed several defaults by making delayed stage-wise payments. As per Clause 8 of the Memorandum of Agreement, dated 30.07.2011 entered between the parties, the appellant becomes eligible for rental compensation only in the event of making timely stage-wise payments without any delay.



Therefore, it is the contention of the learned counsel that the appellant is fully aware that he is not entitled for rental compensation for the alleged delay in delivery of possession and that is the reason why the appellant has taken delivery of possession on 24.02.2018 without insisting on rental compensation.

4.4. Further, the learned counsel for the respondent/ Promoter submitted that the complaint for compensation was filed by the appellant on 29.11.2019 i.e., after 1 year and 7 months of taking possession and after 2 years and 6 months after commencement of the Act in respect of a Project for which Completion Certificate was issued on 26.02.2014, i.e.3 years and 3 months prior to commencement of the Act. Such an attempt would amount to giving retrospective operation to the provisions of the Act in respect of concluded past transactions, contrary to the spirit and intent of the Legislation in Sec.3 of the RERA Act and therefore, according to the learned counsel for the respondent/ Promoter, the complaint of the appellant for compensation is not maintainable.

4.5. Moreover, the learned counsel for respondent / Promoter



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submitted that the allegation made by the appellant that the Completion Certificate is a false document, merely on the basis that the delivery of possession was given on 24.02.2018 is unsustainable in law. The parameters and criteria for issuance of 'Competition Certificate' are totally different from the parameters for the issuance of 'Occupancy Certificate'. Therefore, according to the learned counsel for the respondent/Promoter, the handing over of possession does not have any significance with regard to the exemption from Registration of Projects for which Completion Certificate has been issued on the date of commencement of the Act. In view of the same, the order passed by the Tamil Nadu Real Estate Appellate Tribunal, Chennai dated 07.03.2022 in Appeal No.103 of 2021 on the file of TNREAT, by reversing the order dated 30.03.2020 passed in CCP No.30 of 2020 on the file of TNRERA, Chennai is a well – reasoned order and the same does not seek the interference of this Court and accordingly, prayed for dismissing the appeal.

5. Heard the learned counsel for the appellant as well as the respondent and perused the materials placed before this Court.



WEB COPY 6. Perusal of records would reveal that the learned Adjudicating officer, TNRERA, Chennai, vide order dated 30.03.2021 has directed the respondent/ Promoter to deposit a sum of Rs.7,90,000/- to the credit of Appeal No.103 of 2021 on the file of Tamil Nadu Real Estate Appellate Tribunal, Chennai. When this matter was taken up for hearing, this Court had granted an interim order of Status Quo, dated 15.06.2022, in C.M.P.No.9256 of 2022 with an observation that the respondent/ Promoter shall not withdraw the aforesaid amount which was earlier deposited to the credit of Appeal No.103 of 2021 on the file of Tamil Nadu Real Estate Appellate Tribunal, Chennai till the disposal of this Appeal and framed the following substantial questions of law.

(i) Whether a letter issued by President of Panchayat will be equivalent to a Completion Certificate as contemplated under Sec.2(h)(ii) of TN RERA Act?

(ii) Whether a certificate issued by an incompetent person other than CMDA will amount to a completion certificate as defined under Sec.2(h)(ii) of TNRERA Act?

(iii) Whether the Tribunal is correct in holding that the



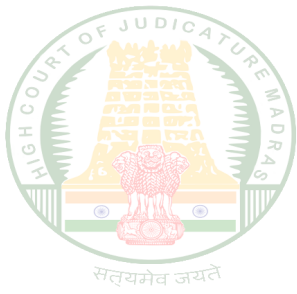
TNRERA Act is not applicable to the appellant's case, when the building and the amenities of the gated community were not completed by the builder, even after TNRERA Act came into force and therefore the Act was applicable?

(iv) Whether the statutory mandate of getting completion certificate be waived by the issuance of a mere letter by Panchayat, especially when the actual project completion was delayed by more than 4 years after 2014 and the entire gated community with amenities were not handed over by the Builder until 2018 as per the project plan?

(v) Whether the Appellate Tribunal, in the absence of material evidence hold that an ongoing project as completed and thereby take away a builder from the purview of the RERA Act, which is applicable to ongoing projects on the date of the introduction of the Act and also deprive the compensation to an affected buyer for the delayed handover?

7. Questions (i), (ii) & (iii): For the purpose of answering these issues, it would be appropriate to extract Sec.2(h)(ii) &(iii) of TN RERA Act and the same reads as under:-

“Section 2: Definitions



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(h) “Ongoing project” means, a project where development is going on and for which completion certificate has not been issued but excludes such projects which fulfill any of the following criteria on the date of coming into force of sub-section (1) of section 3 of the Act:-

(i) ...

(ii) the projects in Chennai Metropolitan Area for which application for completion certificate has been filed with Chennai Metropolitan Development Authority subject to furnishing certificate from the architect/licensed surveyor/ structural engineer associated with the project to the effect that all the buildings in the projects have been structurally completed i.e. all the columns, beams and slabs have been erected supported with photographs. Chennai Metropolitan Development Authority will issue, completion certificate for those projects in compliance with Completion Certificate norms prescribed. In Completion Certificate filed cases, if the Completion Certificate is rejected by Chennai Metropolitan Development Authority for violation of norms, such projects will be intimated to the Real Estate Regulatory Authority and will be bound for registration with Real Estate Regulatory Authority. The details of all projects where Completion Certificate application has been filed with



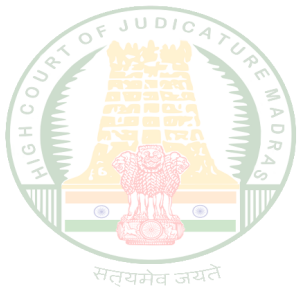
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Chennai Metropolitan Development Authority prior to notification of these rules will be disclosed to the public by publishing the list of all such projects on the website of Chennai Metropolitan Development Authority and Real Estate Regulatory Authority immediately after notification of these rules.”

(iii) in the case of projects under execution outside Chennai Metropolitan Area, as no provision and procedure has yet been prescribed for issue of completion certificate, if the construction is structurally completed meaning that all the columns, beams and slabs have been erected and certified by the architect or structural engineer/licensed surveyor associated with the project supported with photographs. Such projects shall be intimated to the concerned Local Planning Authority or Regional Deputy Director of the Town and Country Planning Department within 15 days from the date of notification of these rules with a copy marked to the office of the Director of Town and Country Planning. The Director of Town and Country Planning will make public the list of all such projects in his official website, on the 16th day of notification of the rules besides publication of the same in the website of Real Estate Regulatory Authority.”



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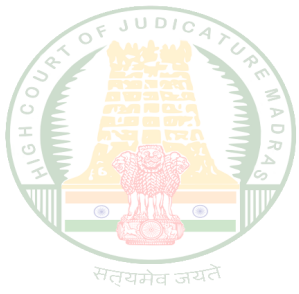
WEB COPY (a) First and foremost, it can be inferred that the completion certificate obtained by the respondent/ Promoter from Thaiyur Panchayat on 26.02.2014 cannot be considered as a valid completion certificate, since at that point of time, the construction of the subject building was not completed and the respondent/ Promoter himself has requested the buyers through an email, dated 26.10.2015 stating that they would regret for the inconvenience caused to the buyers with regard to the delay incurred in completing the Project and has rescheduled the dates of completion and also vide the same email, has revised the compensation amount for 1 BHK, 2BHK & 3BHK as Rs.5,000/-, Rs.7,500/- & Rs/10,000/- per month post the revised timeline.

(b) Obviously, this would suffice answering the issues in favour of the appellant, since the handing over of the building was made only on 24.02.2018 and handing over of the amenities mentioned by the respondent/Promoter was made only on 26.01.2021 with a long delay of nearly 4 years and 7 years respectively from 30.04.2014, which is the actual date of handing over as stated by the respondent/ Promoter.



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(c) Moreover, in the above said clause 2(h) (ii) of the TN RERA Act, the competent Authority to issue Completion Certificate will be the Chennai Metropolitan Development Authority. For projects under execution outside Chennai Metropolitan Area, as no such provision and procedure are prescribed for issue of completion certificate yet, such projects shall be intimated to the concerned Local Planning Authority or Regional Deputy Director of the Town and Country Planning Department within 15 days from the date of notification of these rules with a copy marked to the office of the Director of Town and Country Planning. After which, the Director of Town and Country Planning will make public the list of all such projects in his official website, on the 16th day of notification of the rules besides publication of the same in the website of Real Estate Regulatory Authority. Since no such procedures were found to be followed in the respondent/ Promoter's case, the Project “January” is concluded only to be '*an ongoing project*', which would fall under the provisions of the TN RERA Act. Accordingly, Issues (i), (ii) & (iii) are answered in favour of the appellant.



WEB COPY 8. Question no.(iv): When Section 2(h) (ii) of the TN RERA Act is

read in consonance with Section 11 (4)(b) of the RERA Act, which states that it is the duty of the promoter to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be. In the present case on hand, as obtaining completion certificate is not a discretionary but a mandatory one as per the provisions mandated under the TN RERA Act, the same cannot be waived by any other similar letter issued by the Panchayat under the guise of alleged completion. Hence, Question (iv) is answered in favour of the appellant.

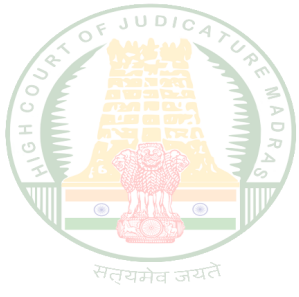
9. Question no.(v): From the submissions made by the learned counsel appearing on either side as well as the perusal of the material evidences submitted before this Court, this Court is of the considered opinion that the project 'January' of the respondent/ promoter is an ongoing project and it definitely falls under the provisions of the TN RERA Act. Therefore, the



respondent/ Promoter cannot evade from paying compensation to the appellant for delayed handover as ordered by the learned Adjudicating Officer,TNRERA, Chennai vide order dated 30.03.2020 passed in CCP No.30 of 2020. Accordingly, the Question no.(v) is also answered in favour of the appellant.

10. In the result,

- (i)** This Civil Miscellaneous Second Appeal stands Allowed;
- (ii)** The order passed by the Tamil Nadu Real Estate Appellate Tribunal, Chennai dated 07.03.2022 in Appeal No.103 of 2021 is hereby set aside and the order passed by the learned Adjudicating Officer,TNRERA, Chennai vide order dated 30.03.2020 passed in CCP No.30 of 2020 is upheld; and
- (iii)** The compensation awarded to the appellant by the learned Adjudicating Officer,TNRERA, Chennai vide order dated 30.03.2020 passed in CCP No.30 of 2020 stands confirmed. No costs. Consequently, connected miscellaneous petition stands closed.

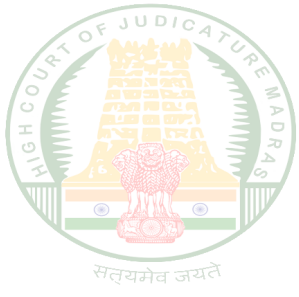


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(J.N.B.J) (R.S.V.J)
10.01.2025



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J.NISHA BANU, J.
and

R.SAKTHIVEL, J.

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Internet : Yes/No
Index: Yes/No
Speaking Order: Yes/No

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To:

The Tamil Nadu Real
Estate Appellate Tribunal,
Chennai.

Judgment made in
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Dated:
10.01.2025

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