

CRP.No.2124 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

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Order reserved on : 04.08.2025

Order pronounced on : 29.08.2025

CORAM

THE HON'BLE MR. JUSTICE P.B.BALAJI

CRP.No.2124 of 2024
& CMP.No.11284 of 2024

Metrozone Apartment Owners Association,
Represented by its President
Mr.J.Sathiyamurthy
Having office at
No.44, Pillaiyarkoil Street,
Off Jawaharlal Nehru Salai,
Anna Nagar, Chennai – 600 040.

..Petitioner

Vs.

M/s.Ozone Projects Private Limited,
Represented by Deputy Manager – Legal
Mr.M.Premnath,
having its registered
office at New No.63, Old No.32,
Gopathy Narayana Chetty Road,
T.Nagar, Chennai – 600 017.

..Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order passed in I.A.No.5 of 2023 in O.S.No.7244 of 2022 dated 22.04.2024 on the file of the XVII Assistant City Civil Court, Chennai.



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For Petitioner : Mr.N.Nandhakumar

For Respondent : Mr.R.Venkatraman
for M/s.TATVA Legal

ORDER

An interesting question that arises for consideration is as to whether a suit for common law remedy, namely a relief of permanent injunction, can be sought before the Real Estate Regulatory Authority or not.

2.I have Mr.N.Nandhakumar, learned counsel for the petitioner and Mr.R.Venkatraman, learned counsel for M/s.TATVA Legal, for the respondent.

3.The learned counsel for the petitioner would state that the suit instituted in O.S.No.7244 of 2022 by the respondent / developer is not maintainable, in view of the bar under Section 79 of the RERA Act, 2016. Pointing out to the nature of relief sought for and corresponding provisions under the RERA Act, learned counsel for the petitioner would state that the Tribunal constituted under RERA Act alone is competent to try the issues that have been raised by the respondent/plaintiff. He would also point out that the revision petitioner has already approached RERA with serious complaints against the respondent and the Tribunal has also taken cognizance of the same



and therefore, the present suit is nothing but a counter blast to the action already initiated by the respondent.

4.The learned counsel for the petitioner would draw my attention to Sections 37 and 38 of the RERA Act and contend that the authority is empowered to grant the relief of injunction and therefore, the suit has to be necessarily struck down as there is a bar under law, invoking Order VII Rule 11(d) of CPC. In support of his contentions, the learned counsel for the petitioner would also rely on the following decisions:

1.Yadavalli Venkata Gopalam and Another Vs. Sai Siddhant Developers and Another (2003 SCC Online BOM 3196).

2.Lavasa Corporation Limited Vs. Jitendra Jagdish Tulsiani and Another (2018 Online BOM 2074).

3.Joy Deep Roy and Another Vs. Srijan Residency LLP and Others (2023 SCC Online Cal 3408).

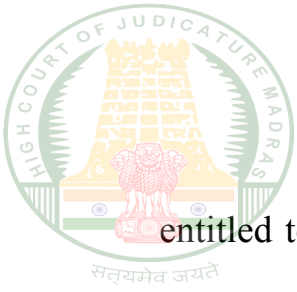
4.Imepria Structures Limited Vs. Anil Patni and Another (2020) 10 SCC 783).

5.M.Ahuja Vs. Shakipunj Engineers Privated Limited, High Court of Chattisgarh, Bilaspur (WPC.No.2374 of 2018).

6.Anathula Sudhakar Vs. P.Buchi Reddy and Others (2008) 4 SCC 594).

7.New Tech Promoters and Developers Private Limited Vs. State of Uttar Pradesh and Others (2021) 18 SCC 1).

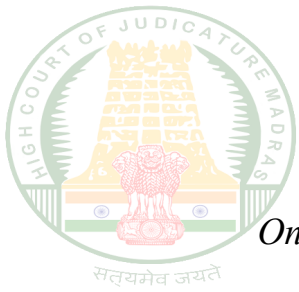
5.Per contra, learned counsel for the respondent/developer, Mr.R.Venkatraman, would contend that the suit being only for a bare permanent injunction, it is an equitable remedy for which the plaintiff is



entitled to approach the Civil Court. Referring to Section 36 and 37 on which reliance was placed on by the counsel for the petitioner, learned counsel for the respondent would contend that both the Sections operate in different spheres and platforms altogether and the authority under the Act is not empowered to grant the relief of permanent injunction.

6. Referring to Section 40 of the RERA Act, learned counsel for the respondent would contend that Section 40 only enables the authority to execute its orders and directions, akin to Order XXI of CPC. He would therefore state that the ouster clause in Section 79 does not take away the right of the plaintiff to seek for the relief of permanent injunction. That apart, learned counsel for the respondent would emphasize on the fact that the plaint can be rejected only on placing reliance on the plaint averment and suit documents and not on any other extraneous materials and circumstances. He would further state that in the present case, the plaintiff is admittedly in possession and he only seeks for the said possession not being disturbed, except by due process of law and such a relief would be very well maintainable before the Civil Court and the plaintiff cannot be shunted out, directing him to approach the authority under RERA Act. In support of his contention, the learned counsel for the respondent would place reliance on the following decisions:

1. Tejas Shoor Vs. Godrej Vestamark LLP (2023 SCC



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Online Dis Crt (Del) 14).

2.Pyramid Saimira Theatre Limited Vs. S.Murugan and Others (2009-1-LW 866).

3.Kasinathan and Another Vs. P.Shanmugam, (Appeal No.66 of 2023 dated 20.09.2023).

4.Ankit Poddar Vs. Lohit Sharma (Order of the Real Estate Regulatory Authority, Assam dated 24.08.2022).

5.Raman Gopi Vs. Kunju Raman Uthaman (2011 SCC Online Ker 4028).

6.Standard Chattered Bank Vs. Dharminder Bhohi and Others (Manu/SC/1004/2013).

7.Punjab National Bank Vs. Modipan Limited and Others (Manu/DD/0035/2019).

7.I have carefully considered the submissions advanced by the learned counsel on either side.

8.In order to effectively adjudicate the core issue that arises for consideration in the present revision, I deem it necessary to extract the relevant provisions of the RERA Act, 2022, that have been relied on by the counsel for the parties.

36. Power to issue interim orders:

Where during an inquiry, the Authority is satisfied that an act in contravention of this Act, or the rules and regulations made thereunder, has been committed and continues to be committed or that such act is about to be committed, the Authority may, by order, restrain any promoter, allottee or real estate agent from carrying on such act until the conclusion of such inquiry or until further orders, without giving notice to such party, where the Authority deems it necessary.



37. Powers of Authority to issue directions:

The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.

40. Recovery of interest or penalty or compensation and enforcement of order, etc:

(1) If a promoter or an allottee or a real estate agent, as the case may be, fails to pay any interest or penalty or compensation imposed on him, by the adjudicating officer or the Regulatory Authority or the Appellate Authority, as the case may be, under this Act or the rules and regulations made thereunder, it shall be recoverable from such promoter or allottee or real estate agent, in such manner as may be prescribed as an arrears of land revenue.

(2) If any adjudicating officer or the Regulatory Authority or the Appellate Tribunal, as the case may be, issues any order or directs any person to do any act, or refrain from doing any act, which it is empowered to do under this Act or the rules or regulations made thereunder, then in case of failure by any person to comply with such order or direction, the same shall be enforced, in such manner as may be prescribed.

79. Bar of jurisdiction

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

9. In terms of Section 79, no Civil Court can assume jurisdiction and



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entertain a suit in respect of any matter which the authority or the adjudicating officer or the appellate Tribunal is empowered by, or under the RERA Act to determine and consequently no injunction can be granted by any Court or authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

10.Insofar as the second limb of Section 79 of th RERA Act, imposing restriction on grant of injunction by any Court or authority, it relates only to action taken or to be taken in pursuance of any power conferred by or under the RERA Act and therefore, the same would not apply to the facts of the present case. However, the first limb of Section 79 clearly raises a bar of jurisdiction for entertaining a suit in respect of a subject matter which the authorities under the Act have been empowered. This limb of Section 79 is contended, by the counsel for the petitioner, to be a bar under law, to non suit the plaintiff by seeking rejection of the plaint.

11.Even according to the learned counsel for the petitioner, the only two provisions which have been relied on to bring the application for rejection of plaint within the scope of Section 79 are Sections 36 and 37 of RERA Act. I



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have already extracted the above provisions.

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12. Section 36 enables the authority acting under the Act, during enquiry, if satisfied that there has been an Act in contravention of the provisions of the Act or Rules and Regulations and such Act has been committed or continues to be committed or about to be committed, then the authority is entitled to pass a restraint order, restraining the promoter, allottee or real estate agent from carrying on such act, until the conclusion of the enquiry or until further orders, without even giving notice to the other party, if circumstances warrant so. The object of Section 36 is therefore only to protect the interest of parties who are before the authority in a pending enquiry and one of them complains about the contravention of the provisions of the Act.

13. Section 37 enables the authority to issue directions from time to time to promoters, allottees or real estate agents as it may consider necessary for the purposes of discharging its functions under the provision of the Act or Rules or Regulations thereunder.

14. Section 40, as rightly contended by the learned counsel for the



respondent is only the power conferred on the authorities under the Act to issue orders or directions, when there is a failure by any person to comply with such orders or directions, in order to ensure enforcement. Therefore, I do not see Section 40 applying to the facts of the present case. Even Section 36 is only with regard to passing interim orders, pending enquiry and therefore, I do not see how this power would prevent the plaintiff from seeking the equitable remedy of permanent injunction which is by no stretch of imagination an interim order. Section 37 is only a general power of issuing directions vested with the authority under the Act and as seen from the language employed in Section 37, it is only for the purposes of discharging the functions of the authority and not for any other purpose. The relief that is sought for in the present suit is as follows:

“Permanent injunction restraining the defendants, their men, agents, representatives or any one on their behalf from dealing with the schedule mentioned property either by sale, alienation, Mortgage, Lease or in any other manner.

B. Permanent Injunction restraining the defendant or their men, agents, servants nor anyone claiming through them from interfering in the plaintiff's possession and enjoyment of the suit properties except in accordance with law.”

15. On a reading of the plaint, I am able to see that the plaintiff/promoter has approached the Civil Court, contending that the plaintiff is in peaceful enjoyment of the disputed suit property and the defendant is attempting to interfere with the possession of the plaintiff. I am unable to satisfy myself that



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the said reliefs could be sought for by the promoter under sections 36 and 37 of the Act or for that matter Section 40(2) of the Act.

16.Coming to the decisions that have been relied on by the learned counsel for the parties, In *Yadavalli Venkata Gopalan's case*, the Bombay High Court held that the suit seeking mandatory directions to the developer to adhere to the terms and conditions of the agreement and also for injunction to restrain the developer from selling, transferring, alienating or creating third party rights in respect of the subject flat was not maintainable, in view of bar under Section 79 of RERA Act, being absolute and also adequate mechanism, being available for the plaintiff to get the said relief by seeking remedy under RERA Act. The Bombay High Court also found that the suit was filed for adherence to terms and conditions of the agreement and fulfilment of statutory obligations and there being an obligation cast on the promoter under the provisions of the RERA Act, held that performance of such obligations can be sought for only under RERA Act, especially Section 19(3) which entitles an allottee and the association being entitled to claim possession of common areas.

17.In *Lavasa Corporation Limited's case*, the Bombay High Court referring to the statement of objects and reasons for enacting RERA Act, held



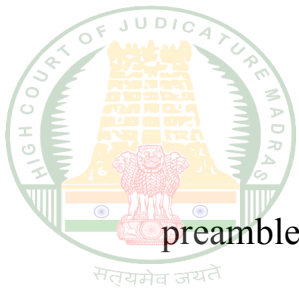
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that on the facts of the said case, the plaintiffs being fully aware of jurisdiction of the Regulatory Authority to adjudicate the issue had approached the competent authority under RERA Act and in parallel also filed a civil suit and in such circumstances, it was held that the suit was bad.

18.In *Imepria Structures Limited's*, the Hon'ble Supreme Court held that Section 79 of the Act does not bar the Consumer Forums to entertain any complaint under the Consumer Protection Act, held that the Consumer Fora cannot be called a Civil Court and Section 18 of the RERA Act itself specifies the remedy under Section 18 was without prejudice to any other remedy available.

19.In *Joy Deep Roy's case*, the Calcutta High Court, in a case where the plaintiff challenged the cancellation of the booking, held that under the scheme of the Act, promoters interest are also safeguarded and the provisions of the Act are required to be construed and interpreted keeping in mind the objects and reasons of the Act. It was only a case where a dispute pertaining to an agreement of lease, there being no sale or transfer would come within the purview of the provisions of the RERA Act.

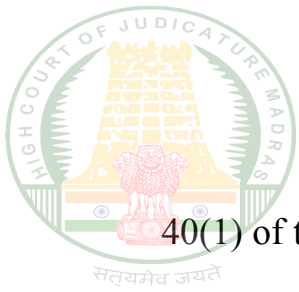
20.In *M.Ahuja's case*, the Chattisgarh High Court, referring to the



preamble of RERA Act as well as its statement of objects and reasons of the said Act, held that the Act was brought in to the statute book to ensure greater accountability towards consumers and significantly reduce frauds and delays and the Act imposes certain obligation upon the promoter to ensure transparency and that the Act also provides for fast track dispute resolution mechanism.

21.In *Anathula Sudhakar's case*, the Hon'ble Supreme Court laid down the legal position with regard to suits for prohibitory injunction relating to immovable property and requirement of seeking a relief for declaration.

22.In *New Tech Promoters and Developers Private Limited's case*, the Hon'ble Supreme Court held that it is well established principle of interpretation of law that the Court should read a Section in literal sense and cannot rewrite it to suit its convenience; nor does any canon or construction permit the Court to read the Section in such a manner as to render it to some extent otiose. The Hon'ble Supreme Court held that in terms of the scheme of the RERA Act, what is to be returned to the allottee being only his own life savings with interest as computed and quantified by the authority becomes recoverable and that such arrear becomes enforceable in law under Section



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40(1) of the Act.

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23.In *Tejas Shoor's case*, the learned Additional District Judge, Delhi, held that there is no provision in the RERA Act under which an allottee is entitled to claim amount paid by him in case, cancellation is done by the allottee himself and not by the promoter and that in the absence of provision under RERA Act, jurisdiction cannot be made available to approach RERA and a suit would consequently maintainable.

24.In *Pyramid Saimira's case*, the Hon'ble Division Bench of this Court, while dealing with exclusion of civil Courts jurisdiction and matters covered by SARFAESI Act and RDB Act, held that ouster class in any statute will have to be strictly construed and if the relief does not pertain to indebtedness and the mode over enforcement of a debt by a secured creditor, then the Civil Courts jurisdiction would not stand excluded.

25.In the order passed by the Regulatory Authority of Assam, relying on Section 88 which makes it clear that the provisions of the RERA Act are only in addition to and not in derogation of provisions of any other law for the time being enforced, held that the decision of the Civil Court which is in ceisen of



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the matter would have to be awaited before any orders as passed by the authority under the RERA.

26.In *Kasinathan's case*, the Tamil Nadu Real Estate Appellate Tribunal, has held that a relief to declare a settlement deed as null and void and for consequential prayers can be sought for only before the competent Civil Court and not before the authorities under RERA.

27.On a careful appreciation of the ratio laid down in all the above cases and applying the same to the facts of the present case, I do not see that the suit filed by the plaintiff claiming the relief of permanent injunction can be said to be barred under Sections 36 or 37, which clearly operate in different fields altogether. The common law equitable remedy of permanent injunction not being available to the plaintiff under any of the provisions of the RERA Act, the civil suit instituted by the respondent is certainly maintainable and cannot be rejected as being barred under law invoking Order VII Rule 11(d) of CPC.

28.The Trial Court has rightly, in my considered opinion, found that the power to grant injunction is not available under the provisions of the RERA



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Act and the cause of action as set out in the plaint clearly entitles the plaintiff to maintain the civil suit. The Trial Court has also rightly refused to look into the application filed by the revision petitioner before RERA, as it is alien for consideration in an application for rejection of the plaint. Even otherwise, the Trial Court has also found that the cause of action for the present suit is entirely different from the complaint filed by the revision petitioner before the Tribunal and has rightly proceeded to dismiss the application for seeking rejection of the plaint. I do not find any grounds being available to the revision petitioner to seek interference under Article 227 of Constitution of India.

29.In fine, the Civil Revision Petition is dismissed. There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

29.08.2025

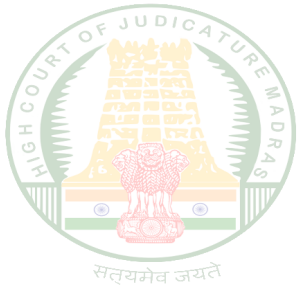
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Index : Yes/No

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To

The XVII Assistant City Civil Court, Chennai.



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P.B.BALAJI.J.

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Pre-delivery order made in
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