IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on: 28.03.2024

Judgment pronounced on: 08.04.2024

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA,
CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.A.No.3328 of 2023

Chennai Hiranandani Residents Welfare Association,
Rep. by its President,
Regd. Office: Ground floor, Amalfi Tower,
House of Hiranandani, 5/63, Rajiv Gandhi Salai,
Egattur, Chennai - 600 130.

cause title accepted and substituted the President
as Authorised Signatory of the Appellant by deleting name
and designation of Secretary, vide order of Court,
dated 16.11.2023 made in C.M.P.No.24022 of 2023
in W.A.SR.No.97737 of 2023. .. Appellant

Versus

1. The Secretary,
   Housing and Urban Development Department,
   State of Tamil Nadu,
   Secretariat, Chennai - 600 009.

2. Directorate of Town and Country Planning,
   124, GST Road, Periyar Shopping Complex,
   Chengalpattu - 603 001.

3. Hiranandani Developers Private Limited,
   1st Floor, Olympia, Central Avenue,
   Hiranandani Business Park, Hiranandani
   Gardens, Powai, Mumbai - 400 076.

Also at :
Chennai Office, 5/63, Old Mahabalipuram Road,
Opp. SIPCOT IT Par, Egattur village,
Chennai - 600 130. .. Respondents

Prayer : Writ Appeal under Clause 15 of the Letters Patent to set aside the order, dated 04.07.2023 passed in W.P.No.3935 of 2023 and allow the said Writ Petition as prayed for.

Prayer in WP.3935 of 2023: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent in DTCP approval bearing Na.Ka.No.2081/2020/MLPC(C.M-5) dated 19.11.2020 and to quash the same, as illegal and contrary to law and consequently, forbear the 3rd respondent from continuing with the illegal construction of new towers, namely Octavius and Verona in the location of the clubhouse for Phase II and from marketing / selling flats in the 3rd respondent's development "House of Hiranandani" situated in Egattur, Chennai, without abiding by the original DTCP plan approved in 2016 and complete the construction of the second Clubhouse in Phase II strictly, in accordance with the plan approved in 2012 vide Na.Ka.No.9787/2012 dated 15.06.2012 along with building

permit No.Mu.U.KA.No.59 dated 15.10.2012 issued by Muttukkadu Gram Panchayat and revised and renewed by Mamallapuram Local Planning Authority on 28.01.2016.

For Appellant : Mr.K.Ravi, Senior Counsel
for Mr.Rahul Balaji

For Respondents : Mr.A.Edwin Prabakar,
State Government Pleader,
Asst. by Mr.T.K.Saravanan,
Government Advocate,
for RR-1 and 2

: Mr.Srinath Sridevan, Senior Counsel
for Mr.M.S.Murali,
for M/s.R & P Partners, for R3

JUDGMENT

(Judgment made by the Hon'ble Mr Justice D.Bharatha Chakravarthy)

A. The Writ Appeal :

This Writ Appeal is directed against the order of the learned Single Judge, dated 04.07.2023 in W.P.No.3935 of 2023. By the said order, the learned Single Judge dismissed the Writ Petition filed by the appellant Association with a cost of Rs.1,19,500/-. In the said Writ Petition, the appellant had challenged the DTCP approval, dated 19.11.2020 with a prayer to quash the same and consequently, to forbear the third respondent from continuing with the illegal construction of new towers namely Octavius and Verona in the location of the clubhouse for Phase -

II and from marketing/selling the flats in the third respondent's development "House of Hiranandani" situated in Egattur, Chennai without abiding by the original DTCP approved plan in respect of Phase - II, dated 15.06.2012 along with building permit, dated 15.10.2012 which is renewed on 28.01.2016.

B. The case of the appellant:

2. The appellant is a society registered under the Tamil Nadu Societies Registration Act, 1975. It is the association of homeowners in Hiranandani Upscale, a residential complex situated at No.5/63, Old Mahabalipuram Road, Egattur Village, Chennai. The third respondent namely, M/s.Hiranandani Developers Private Limited permitted a township proposing to be a gated community project of building integrated tower blocks of apartments of varying sizes under the name and style 'House of Hiranandani' earlier known as 'Hiranandani Upscale'. It is developed over the land measuring 120 acres in phases. The third respondent initially obtained plan approval from the second respondent namely, the Directorate of Town and Country Planning, Chengalpattu for the development of 14 towers in two phases along with a school, and two clubhouses, one for each phase, the first one in

Phase - I and the second in Phase - II in the year 2012. The third respondent commenced construction of Phase - I in the year 2009 consisting of seven towers simultaneously and the individual flats were handed over to the buyer from the year 2012 onwards. The clubhouse for Phase - I was completed and was made operational in the year 2014.

2.1. The third respondent, thereafter, commenced construction of Phase - II in the year 2014. It originally consisted of seven towers namely, Bayview, Edina, Sinovia, Tiana, Amalfi, Anchorage and Seagull. Unlike Phase - I, the construction of all towers was not taken up simultaneously and the towers namely Edina and Sinovia were completed in the year 2014. Bayview was completed in the year 2016. Tiana and Amalfi were completed in the year 2019. The construction of Seagull has not yet been done. Though Phase - II is almost complete, steps were not taken for the construction of clubhouse in the Phase - II. While so, the third respondent started building two new towers namely, Octavius and Verona in the exact location in which the clubhouse for Phase - II is shown as per the approved plan vide Na.Ka.No.9787/2012, dated 15.06.2012 and the building permit No. Mu.U.Ka.No.59, dated 15.10.2012 issued by the Muttukkadu Gram Panchayat and revised and

renewed by Mamallapuram Local Planning Authority on 28.01.2016. A change of use or such conversion is impermissible. Such change in the planning approval can be effected only after all the co-owners provide a No Objection Certificate. No such No Objection Certificate has been provided by the members of the appellant Association. This apart, the common facility which was promised cannot be withdrawn or altered after the completion of the sales of the apartments.

2.2. The availability of two clubhouses was expressly promised during the launching and marketing of the flats. All the brochures and marketing material, furnished to the buyers of the flats in all the 13 towers approved in the year 2016, clearly show the clubhouse as an amenity. The appellant Association, on enquiry, came to know that the third respondent had obtained a revised plan from the DTCP on 19.11.2020 for the construction of twin towers namely, Octavius and Verona. A statutory obligation is cast upon the third respondent to hand over all the common areas to the association of allottees under the provisions of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'RERA Act'). The new plan is sanctioned by the authorities in violation of Section 14(2)(ii) of the RERA Act. The

homeowners are severely affected because the third respondent did not adhere to the promises made concerning the amenities. Only based on the original plan that they will have the common area, space, number of towers etc., the decision has been made by the homeowners to buy the houses at the price offered by the third respondent and after selling the flats, unilaterally, alteration of plan, abandoning the clubhouse for Phase - II and putting up of two new residential towers to be sold to prospective purchasers, completely violates rights of the homeowners of the appellant Association and hence the Writ Petition.

C. The case of the respondents :

3. The Writ Petition was resisted by the respondents. On behalf of the second respondent, the Assistant Director, District Office of Town and Country Planning, Chengalpattu filed a counter-affidavit. In the counter-affidavit, the earlier plan approvals and building permission granted by the authorities in the years 2012 and 2016 are admitted. It is stated that the third respondent applied for revision and additions to planning permission No.38/2012 on 05.06.2020. Among the other things, they deleted the clubhouse Block No.36 (2 Basement + Ground Floor + 4 Floors of total building area 10413.50 Sq.Meters). In the same

location, the residential Block No.50 (2 Basement + Stilt + 18 Floors) and Block No. 51(2 Basement + Stilt + 18 floors) are added. The third respondent also revised the space and Block No.37 which originally consisted of 3 Basement + Ground Floor of a building area of 923.53 Sq.meters into Ground Floor + First Floor building area of 1687.47 Sq.meters as sports hall and clubhouse block. The same was duly examined and technical clearance No.176/2020 was issued by the Director of Town and Country Planning vide his proceedings, dated 21.08.2020.

3.1. The clearance was given with special conditions. Under condition Sl. No.12, Government Pleader opinion is to be obtained for sold-out flat UDS details. Accordingly, a legal opinion was obtained on 07.11.2020 which opined that the third respondent still owns the balance extent of 90.88 acres and is the General Power of Attorney of another 7.58 acres of land which gives it a right to apply for revised sanction of planning permission for additions, deletions and revisions of the earlier approved plan. Accordingly, the second respondent issued planning permission No.17/2020, dated 19.11.2020. A specific condition was also imposed in the planning approval that the promoter can advertise,

market, book, sell, or offer for sale or invite persons to purchase in any manner any plot, apartment or building only after registering the Real Estate project with the Real Estate Regulatory Authority.

3.2. It is further submitted by the second respondent that as per Rule 11 of the Tamil Nadu Combined Development and Building Rules, 2019, there are limitations for the permission granted. Permission granted by the competent authority shall not mean responsibility or clearance of the aspects of (a) title or ownership of the site or building; (b) easement rights; (c) structural reports, structural drawings and structural aspects; (d) workmanship, soundness of structure and materials used; (e) quality of building services and amenities in the construction of building; (f) other requirements or licenses or clearances required for the site or premises or activity under various other laws. Therefore, it is the case of the second respondent that it only took into account the title and availability of the land and the floor space index and whether or not the existing residents are entitled to the amenity of the building and whether any other requirement is required is not its lookout as per Rule 11(e) and (f) of the said Rules.

3.3. The third respondent filed an affidavit. In paragraph No.9 of the affidavit, the earlier planning approvals, dated 15.06.2012, 15.10.2012 and 28.01.2016 are all admitted. It is the case of the third respondent that they completed the buildings of Phase - I comprising six towers in the name and style of Seawood, Pinewood, Brentwood, Greenwood, Birchwood and Bridgewood. The third respondent has completed part of Phase - II of the township which comprised seven towers in the name and style of Oceanic, Edina, Bayview, Sinovia, Tiana, Amalfi and Anchorage. The third respondent is in the process of developing Octavius, Verona, Bayheaven in Phase - I. Based on the sanctioned plans, the officials of the third respondent made relevant marketing material namely, the brochures to market the said township to prospective customers. The said market brochures provide information concerning the various aspects of the said township. It gave the master plan with the relevant floor plans for each of the towers for the relevant phase of the said township. The master plan and floor plan given in the said marketing brochure earmarked a clubhouse - I and a clubhouse and sports hall - II.

3.4. Only per the said marketing material, apartments in the

township are offered for sale and the third respondent executed and registered the necessary documents namely, the agreement for sale, construction/development agreements and deed of sale of undivided share of lands with various allottees. All the agreements and deeds are uniform and pari materia except to the extent of their dwelling unit and other relevant particulars. Clause - 10.3 of the construction agreement recorded that each of these allottees gives their specific consent and empowers the third respondent to file necessary renewal/revision application with the appropriate authority and to comply with any statutory requirement for such deemed consent given by the allottees of the said township which includes the members of the appellant Association. The said consent enables the third respondent to make necessary modifications/changes in the sanctioned plans as deemed necessary for the benefit of the said township. The allottees have acquiesced to the terms and conditions recorded in the construction agreement and cannot seek to retract from the same under any circumstances. Even though the RERA Act and TNRERA Rules have come into force, such contractual terms are recognised as consent under Section 14 of the RERA Act. Explanation to Rule 4 of the TNRERA Rules saves the contractual terms.

3.5. While things stood thus, the third respondent applied for further revision of the sanctioned plan in the year 2020. Considering the market conditions and demands, the third respondent chose to develop a few villas in the said township due to an increase in demand for such property. That resulted in the reduction of the density of the residents in the said township. Resultantly, 119.57 acres of plot area became available for development. Therefore, the third respondent, in its commercial wisdom, applied to the second respondent and other relevant authorities for revision of plan approval and the impugned plan approval was granted for the development of the said towers namely, Octavius and Verona.

3.6. Even as per the impugned plan approval, the third respondent only sought to move the amenity namely, the clubhouse, behind the said towers, Octavius and Verona. Thus, the clubhouse is as per the directions given in the revised sanction plan. This is, by no stretch of imagination, a withdrawal of common facility by the third respondent.

3.7. Thus, the third respondent does not have to procure a separate

No Objection Certificate/consent from each of the allottees including the appellant for the revision. The township is an ongoing project. The third respondent had acted in consonance with Explanation - II of Rule 4 and Section 14 of the RERA Act. The appellant has only 239 residents as part of its association, whereas, the township has more than 2000 occupants and therefore, lacks the requisite majority to present the Writ Petition. The appellant Association is well aware that the clubhouse is presently used by all of its members without any complaints. The third respondent has also procured the relevant RERA registrations for the towers Octavius and Verona separately on 20.12.2021. As per the same, the construction of 107 dwelling units in the Octavius Tower and 178 dwelling units in Verona Tower have been in progress for the past two years and midway through the development, the Writ Petition was filed. The appellant Association also filed a rejoinder to the counter-affidavit.

D. Findings of the learned Single Judge:

4. The learned Single Judge, thereafter, considered the case of the parties and by the order under appeal, dated 04.07.2023, found that a separate right is available under the RERA Act for omission or deletion of facility or amenity, as promised. The aggrieved purchaser or flat

owner can move the Special Court under the RERA Act, but, if any illegality is alleged to have been committed by the authorities in granting approval, modification or revision, such action of the planning authorities can be challenged only by a Writ Petition as the official respondents who approved the impugned plan are not amenable to the jurisdiction of the RERA Court and consequently, held that the Writ Petition as maintainable under Article 226 of the Constitution of India.

4.1. The learned Single Judge, thereafter, considered Section 14 of the RERA Act and Explanation - II of the TNRERA Rules and found that the consent, as contemplated under Section 14 of the RERA Act, has to be a specific consent which is to be obtained upon a full disclosure by the developer of the entire project including construction timeline, nature, units to be constructed, amenities to be provided, etc., with supporting documents which will enable the purchaser to take a specific decision at the time of buying the unit. The learned Single Judge found that the approval for the original plan was granted even before the coming into force and commencement of the RERA Act and therefore, Explanation - II to Rule 4 of the TNRERA Rules apply to the facts of this case and therefore, the subject matter plan is exempted from getting the

consent as contemplated under Section 14 of the RERA Act. As per Section 14 of the RERA Act, there has to be a specific consent and however, such consent was exempted for categories that fall under Explanation - II to Rule 4 of the RERA Rules.

4.2. Further, the learned Single Judge found that a reading of recital 'L' and Clause - 10.3 of the construction agreement, the allottees have also specifically consented and empowered the third respondent to file necessary renewal/revision application and therefore the third respondent did not have to procure any fresh consent of two-third of the allottees to act on the revised plan. The authorities have duly taken into account the limitations of permission as contained in Rule 11 of the Tamil Nadu Combined Development and Building Rules, 2019 and the project is taken up in a phased manner and the third respondent is only sought to move the amenity to the new location as proposed in the revised plan. Thus, after proper scrutiny of the documents and requirements, the impugned plan has been granted.

4.3. Further, the learned Single Judge found that the space, in which the clubhouse is originally scheduled to be put up, is not covered

in the sale deeds issued to the members of the appellant Association. But, it is shown only as an amenity. No other person owns undivided share in respect of the site, on which, the new clubhouse is to be located. Therefore, the learned Single Judge found no merits in the twin contentions raised in the Writ Petition namely, the requirements of a consent under Section 14 of the RERA Act or that they were deprived of the usage of the clubhouse.

4.4. Regarding the contention that there is a violation of the Tamil Nadu Apartment Ownership Act, 2022, the learned Single Judge found that the project is an ongoing project and the property, which the appellant has purchased, falls under Phase - II and not under Phase - III. If any right in the amenities or its use is violated, the same can be taken up in the RERA Court and not in the present Writ Petition. Even in the communication produced before the Writ Court, the appellant Association and the third respondent were predominantly asking for a waiver of non-active membership charges and they wanted a free membership. The learned Single Judge found that there were two sets of the original plan and revised plan, which were produced by the learned Advocate General before the Writ Court and as per the planning

permission issued in the year 2012, the Block No.21 - Ground Floor, 25A - Ground Floor, 35, 36 46 are clubhouses and Block Nos.37 and 40 is sports hall are amenities to the purchasers. After the revised plan, except for Block No.36 which is revised as residential Block Nos.50 and 51, Block No.37 is used as a sports hall and clubhouse while it was earlier sports hall alone. The appellant suppressed a material fact and obtained interim orders. Therefore, the learned Single Judge quantified costs at the rate of Rs.500/- per individual member in all totalling to Rs.1,19,500/-. For the above findings, the learned Single Judge dismissed the Writ Petition with the costs as aforementioned. Aggrieved by which, the appellant Association has filed the present appeal.

E. The Submissions :

5. Heard Mr K. Ravi, learned Senior Counsel for the appellant; Mr A.Edwin Prabakar, learned State Government Pleader for the respondent Nos.1 and 2 and Mr Srinath Sridevan, learned Senior Counsel for the third respondent.

5.1. Mr K. Ravi, learned Senior Counsel for the appellant would

submit that it is an indisputable fact that the third respondent applied to the second respondent for certain alterations to be made in the sanctioned plan of the project. The second respondent approved the alterations without adverting to the requirement of the allottees' consent as per Section 14 of the RERA Act. The learned Single Judge dismissed the Writ Petition mainly on the finding that such consent is not required where the original plan was sanctioned before the coming into force of the Act given the Explanation to Rule 4 of the TNRERA Rules and consent was given through recital 'L' and Clause - 10.3 of the construction agreement.

5.2. The second respondent is duty bound to consider the provisions of the RERA Act more specifically Section 14 which mandates that the developer shall not alter the original sanctioned plan without the prior written consent of two-thirds of allottees in the project and if the project is intended to be developed in phases, then, without the prior written consent of two-third of allottees in the phase concerned. The impugned order did not consider any consent at all. The impugned order is violative of Section 14 of the RERA Act. The term 'common areas' in Section 14(2) of the RERA Act has been defined

to include the entire area of the project or the phase as the case may be and also community and commercial facilities. The clubhouse is a community facility as per recital 'K' and Annexure - IV of the construction agreement. In view of the same, as per the definition in Section 2(n)(i) and (vii) of the RERA Act, the consent is mandatory.

5.3. The learned Senior Counsel for the appellant would further submit that it is not the case of the respondents that the impugned order is passed in terms of Section 54(1) of the Tamil Nadu Town and Country Planning Act, 1971. Therefore, the second respondent does not have any power or jurisdiction to modify a sanctioned plan. In support of his submissions, the learned Senior Counsel also relied upon the judgment of a Co-ordinate Bench of this Court, dated 20.01.2023 in Abbotsbury Owners' Association Vs. The Member Secretary, Chennai Metropolitan Development Authority and Ors. (W.P.No.5765 of 2020), wherein, it has been held that by the clever drafting of the agreement, the rights of the purchasers of flats and their rightful UDS in the total land cannot be defeated and the developer cannot cull out any land from it and retain it for themselves.

5.4. Mr A.Edwin Prabakar, learned State Government Pleader for the respondent Nos.1 and 2 would restate the stand of the second respondent as contained in the counter-affidavit and submit that because of Rule 11 of the Tamil Nadu Combined Development and Building Rules, 2019, approval is not an indication that all the licenses etc., are obtained by the developer nor it is a guarantee for all amenities which are promised to the buyers.

5.5. Mr.Srinath Sridevan, learned Senior Counsel for the third respondent would submit that the order under challenge is the order of the planning authority and the appellant Association claims that they cannot approve a plan modification and they are barred from doing so by Section 14 of the RERA Act. The modification does not concern any of the lands over which the members of the Appellant Association had any undivided interest. The lands on which the planning is modified are the lands exclusively belonging to the third respondent. The term 'phase' is not defined under the RERA Act. It would mean a phase of development. The third respondent is developing each tower along with appurtenant land as an independent phase. Each phase has an independent RERA registration. The members of the appellant

Association never had nor have an undivided interest in the land on which the erstwhile Building No.37 (called as "clubhouse") was located. It is also not a part of their respective RERA registration.

5.6. The appellant Association claimed that the clubhouse in Building No.37 is a part of their 'phase' based on the brochure. That is a deliberate misreading of the brochure. The brochure promises an amenity and the third respondent is still committing to provide the amenity. The brochure cannot be used to decide the legal definition of the term 'phase'. The third respondent is registering each tower (and appurtenant land) under the RERA Act thereby, making each tower a phase. The same is also in consonance with the planning approval.

5.7. Therefore, the originally proposed clubhouse building is not the common area within the meaning of the Act and that building is not part of the relevant phase of any of the members of the appellant Association. As far as the promised amenities are concerned, there is a blue turtle clubhouse which is open to the members of the association and the other residents. The extent of the Club House area in the old Building No.37 is preserved and is being relocated in the area as

indicated in the revised plan. That will also be opened to the members of the appellant Association and the other respondents. There is no diminution in the amenities available to the members of the appellant Association.

5.8. The third respondent does not require the consent of two-thirds of allottees under Section 14(2)(ii) of the Act as is being alleged by the appellant Association. Firstly, the entire township is on 120 acres of land and is being constructed in a phase-wise manner. Given the size of the entire township, except the towers/blocks that were completed and handed over pre-RERA, each of the towers/blocks has been individually registered as a project under the RERA. As stated above, these are to be considered as individual phases. The planning permission and sanctioned plan for the entire township was obtained way back in October 2012 and then revised and renewed in January 2016. This is all before the Act. The sanctioned plan is once again revised in November 2020. Therefore, the entire township falls perfectly under the exemption provided under Explanation - II to Rule 4 of the TNRERA Rules as (a) the entire township is being developed in phases; (b) the plans are approved before the date of coming into force of sub-section (1) of

Section 3 of the RERA Act. In such an event, the term 'existing allottee' will mean all the allottees existing as of the year 2020 (when the sanctioned plan was being revised).

5.9. Further, the second part of the Explanation - II states that "provided the scheme of developing the project in a phased manner has been agreed upon by the allottee and promoter in the agreements executed between them". This has also been agreed between the members of the association and the third respondent in accordance with recital 'L' and Clause - 10.3 of the construction agreements. Explanation - II is to be harmoniously read with Explanation - III. Explanation - III further supports the third respondent's contention that each tower is being registered as a project with the authority and in such case, once again consent of two-thirds of the allottees is not required.

5.10. Mr.Srinath Sridevan, learned Senior Counsel would further contend that the agreement of sale, construction agreement and deed of sale of undivided share of lands clearly exclude the clubhouse from the common area and will therefore not attract the mandate under Section 14(2)(ii) of the RERA Act. The third respondent is exempted from

obtaining the consent of two-thirds of the allottees. The judgment in Abbotsbury Owners' Association's case (stated supra), relied upon by the learned Senior Counsel for the appellant, is entirely misplaced and is different from the facts of the present case. Therefore, the learned Single Judge has correctly decided the Writ Petition and the same does not call for any interference.

F. The Discussion and Findings :

6. We have considered the rival submissions made on either side and perused the material records of the case.

6.1. Firstly, it is admitted that the brochure which is produced at page No.273 of Volume - II of the appeal paper book is the brochure prepared by the third respondent for marketing the apartments in the township. It contains the master plan for the development of the entire township. As per the master plan, Building No.17 is shown as a clubhouse and sports hall for Phase - I and Building No.18 is shown as a clubhouse for Phase - II. However, upon consideration of the detailed floor-wise plan of Building No.18 of Phase - II, it can be seen that only two floors of the said building are proposed as a club house and the rest

of the floors/built-up areas are saleable commercial areas as shops and retail spaces. The construction agreements are accepted as pari materia and uniform with respect to the clauses and covenants between the parties. Clause - H of the said agreement reads as follows:-

> " H. The Promoter has already completed the Buildings of Phase I comprising of 6 (six) towers by the name of Seawood, Pinewood, Brentwood, Greenwood, Birchwood, and Bridgewood and handed over its possession to the respective customers. The Promoter is in the process of constructing Phase II Buildings comprising of 7 (seven) towers by the name Oceanic, Edina, Bayview, Sinovia, Tiana, Amalfi, and Anchorage (comprising of Phase I and II Complex). The possession of the individual residential Units of the completed Building in Phase I and Phase II have been largely offered to/handed over to the Allottees in due compliance of the then prevailing law read with the provisions of the Real Estate Regulatory Act,

2016 and the applicable Tamil Nadu Real Estate (Regulation and Development) Rules, 2017 ("the Act"). The various phases in which the said land is proposed to be developed has been explained to the Allottee and the Allottee has/have satisfied himself/herself/itself with the proposed phased development of the said land."

6.2. Clause - L of the said agreement reads as follows :-

"L. The Promoter has obtained requisite sanctions, authorizations, consents, no objections, permissions and approvals from the appropriate authorities for construction and development of the Project vide planning approval No. 9787/2012 from Directorate of Town and Country Planning dated 15/06/2012, along with Building Permit No.MU.U.KA No. 59/2012-13 dated 15/10/12, issued by the Mutthukkadu Gram Panchayat and as revised and renewed Approval by the Mamallapuram

Local Planning Authority dated 28/01/2016 (hereinafter collectively referred to as the "Sanctioned Plans"). The Allottee understands that the balance area of the said land or thereabout may be modified in future to the extent as may be required /desired by the Promoter and the Promoter shall be free to carry out /develop it in any manner as it may deem fit and/or pursuant/consequent to any directions / approvals made by the DTCP."

6.3. Clause 10.3 of the said agreement reads as follows :-

" 10.3. The Allottee is aware that the present plans sanctioned by the competent authority is valid for specific term, the Promoter shall be responsible to get the approvals duly renewed / revised, the Allottee hereby give their specific consent and empower the Promoter to file necessary renewal/ revision application with the appropriate authority and to comply with

any statutory requirement for such renewal/revisions."

6.4. Clause - 17.2 of the said agreement reads as follows :-

"17.2. AMENITIES & FACILITIES

The common facilities and amenities of the said Building will be the common amenities of the said Building and common amenities in the Development which are in form of common pathways, open areas shall be common to the said Complex and all the phases thereof, as more specifically given hereunder in Annexure III and Annexure IV."

6.5. The relevant portion of Annexure - IV of the said agreement reads as follows :-

"CLUB HOUSE:

1. The Promoter shall provide access to a Club House having facilities such as Swimming

Pool, Gymnasium, Squash, Badminton Court, Aerobics center, Spa & Salon, Table Tennis, Tennis Court, Cafe, Locker rooms near sports facilities, etc. and/or such amenities as may be desired by the Promoter. The Allottee by virtue of his ownership of the said unit stands eligible for a membership into the club house subject to payment of the necessary one time membership payment, annual subscription charges and usage charges in respect of the availing of facilities, as my be provided by the Promoter."

6.6. The approval for the development of the entire project was originally granted on 12.07.2017 and was revised by the order, dated 15.06.2012. The translated version of the relevant portion reads as follows :-

"Mamallapuram Local Planning Authority; Kanchipuram District- Chengalpet Taluk, Muttukad Panchayat - Thiruporur Panchayat Union - Egatur Village- S. S.Nos.1/1,

clubhouse/commercial area was to be situated, they have decided to build new two towers which are residential complexes of 107 and 178 units amounting to 2 Basement + Stilt + 18 Floors namely, Octavius and Verona. After declaring that it had completed Phase - I and Phase - II in the year 2020, the third respondent made an application on 28.07.2020, based on which, the impugned proceedings of the second respondent, dated 19.11.2020 were passed, thereby, granting revised plan approval. The details of the blocks that are already built, blocks that are sought to be removed, and the blocks that are newly proposed including the total FSI, and building area are all furnished in the impugned order itself in detail and the parameters containing the overall particulars are reproduced hereunder :-

"Site area - 483923.10 sq.m

Total FSI area - 1198001.49 sq.m

+ Non FSI area

= 202422.53 sq.m

Total building area- 1400424.02 sq.m

Total block - 60 Blocks

OSR Area 48347.39 sq.m already gifted to local body

Details of already built 16 blocks	Block 1 to 10 and 11, 11A, 13 and 14 block-34 (School Building) block-35 (Club House)
Details of earlier approved building but construction not commenced (27 blocks have been stationed without any change)	Block-15B, 17, 19B, 21, 22A, 22B, 23, 25A, 25D, 26A, 26B, 27A, 27B, 28A, 28B, 30A, 30B, 31A, 31B, 40, 44, 45, 46, 46B, 47, 48 & 49
Details of earlier approved existing blocks to be removed (14 blocks)	Block- 15A, 16, 18, 19A, 19C, 20, 25B, 25C, 29, 32A, 32B, 33 & 36
Details of earlier approved blocks that have to be halted (3 blocks)	Block 12, 37, 48
Details of New Proposed Block	Villa 101 to 109, 201 to 211, 301 to 311, 401 to 410 and Block no 24, 50, 51, 52, 53, 54.

Details of earlier approved block now to be removed and altered and additional blocks to be built

1. Area of blocks deleted =3,28,759.67 sq.m
2. Area of revised blocks = 49,671.91 sq.m
3. Area of proposed blocks =1,20,741.21 sq.m"

6.8. It is also specifically mentioned in the impugned order that ock No.36 consisting of the club ground floor + 4 floors measuring 0413.80 Sq.meters is removed from approval. Similarly, the details of e new two blocks in Block Nos.50 and 51 (residential) are also given. n a perusal of the entire impugned order, it can be seen that except entioning the details and that the technical approval is being granted, ecial conditions and the regular conditions, there is no application of ind as to how far the project has been executed and under which rovision, the modification is sought for and after executing the project part, whether such modification can be obtained and if so, under hat provision and once the project is registered under the RERA Act, hat are the requirements of the RERA Act. The counter-affidavit entions that the Director of Town and Country Planning had ordered grant of approval after obtaining a legal opinion from the Government leader. The respondents themselves have chosen to extract legal pinion granted to them in the counter-affidavit filed. There is no eference to the RERA Act or the requirements thereunder in the said gal opinion.

6.9. The RERA Act was enacted with the primary objective of

place. Though the Consumer Protection Act, 1986 was available to cater the demand of homebuyers in the real estate sector but the experience shows that this mechanism was inadequate to address the needs of the homebuyers and promoters in the real estate sector.

7. At this juncture, the need for Real Estate (Regulation) Bill was badly felt for establishing an oversight mechanism to enforce accountability to the real estate sector and providing an adjudicating machinery for speedy dispute redressal mechanism and safeguarding the investments made by the homebuyers through legislation to the extent permissible under the law.

8. The Statement of Objects and Reasons of the Act indicates that the primal position of the Regulatory Authority is to regulate the real estate sector having jurisdiction to ensure

compliance with the obligation cast upon the promoters. The opening Statement of Objects and Reasons which has a material bearing on the subject reads as follows:

> "The real estate sector plays a catalytic role in fulfilling the need and demand for housing and infrastructure in the country. While this sector has grown significantly in recent years, it has been largely unregulated, with absence of professionalism and standardisation and lack of adequate consumer protection. Though the Consumer Protection Act, 1986 is available as a forum to the buyers in the real estate market, the recourse is only curative and is not adequate to address all the concerns of buyers and promoters in that sector. The lack of standardisation, has been a constraint to the healthy and

orderly growth of industry. Therefore, the need for regulating the sector has been emphasised in various forums.

2. In view of the above, it becomes necessary to have a Central legislation, namely, the Real Estate (Regulation and Development) Bill, 2013, in the interests of the effective consumer protection, uniformity and standardisation of business practices and transactions in the real estate sector. The proposed Bill provides for the establishment of the Real Estate Regulatory Authority (the Authority) for regulation and promotion of real estate sector and to ensure sale of plot, apartment or building, as the case may be, in an efficient and transparent manner and to protect the interest of consumers in real estate sector and

establish the Real Estate Appellate Tribunal to hear appeals from the decisions, directions or orders of the Authority."

9. It was introduced with an object to ensure greater accountability towards consumers, to significantly reduce frauds and delays and also the current high transaction costs, and to balance the interests of consumers and promoters by imposing certain responsibilities on both, and to bring transparency of the contractual conditions, set minimum standards of accountability and a fast-track dispute resolution mechanism. It also proposes to induct professionalism and standardisation in the sector, thus paving the way for accelerated growth and investments in the long run.

10. Some of the relevant Objects and Reasons are extracted as under:

"4. (d) to impose liability upon the promoter to pay such compensation to the allottees, in the manner as provided under the proposed legislation, in case if he fails to discharge any obligations imposed on him under the proposed legislation;

***

(f) the functions of the Authority shall, inter alia, include—

(i) to render advice to the appropriate Government in matters relating to the development of real estate sector;

(ii) to publish and maintain a website of records of all real estate projects for which registration has been given, with such details as may be prescribed;

(iii) to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents

under the proposed legislation;

***

(i) to appoint an adjudicating officer by the Authority for adjudging compensation under Sections 12, 14 and 16 of the proposed legislation;""

6.11. Section 3 of the RERA Act provides that no promoter shall advertise, market, book, sell or offer for sale or invite persons to purchase in any manner any plot, apartment or building without registering the Real Estate Regulatory Authority under the Act. It specifically provides that ongoing projects on the date of commencement of the Act, for which, the completion certificate has not been issued, the promoter shall make an application. Section 14 of the RERA Act provides for adherence to the sanctioned plans and project specifications by the promoter. It is essential to extract the entire Section 14 which reads as follows:-

" 14. (1) The proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout

plans and specifications as approved by the competent authorities.

(2) Notwithstanding anything contained in any law, contract or agreement, after the sanctioned plans, layout plans and specifications and the nature of the fixtures, fittings, amenities and common areas, of the apartment, plot or building, as the case may be, as approved by the competent authority, are disclosed or furnished to the person who agree to take one or more of the said apartment, plot or building, as the case may be, the promoter shall not make—

(i) any additions and alterations in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described therein in respect of the apartment, plot or building, as the case may be, which are agreed to be taken, without the previous consent of that person:

Provided that the promoter may make such minor additions or alterations as may be required by the allottee, or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by an authorised Architect or Engineer after proper declaration and intimation to the allottee.

Explanation.—For the purpose of this clause, "minor additions or alterations" excludes structural change including an addition to the area or change in height, or the removal of part of a building, or any change to the structure, such as the construction or removal or cutting into of any wall or a part of a wall, partition, column, beam, joist, floor including a mezzanine floor or other support, or a change to or closing of any required means of access ingress or egress or a change to the fixtures or equipment, etc.

(ii) any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such building.

Explanation.—For the purpose of this clause, the allottees, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, etc., by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.

(3) In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of

the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act."

Thus, a careful reading of Section 14(2) of the RERA Act which is a non-obstante clause states that once the promoter discloses the sanctioned plan and layout plan, no addition or alteration can be made in the building of that particular person under Section 14(2)(i) of the Act without the previous consent of that person.

6.12. As per Section 14(2)(ii) of the Act, the promoter is prohibited from making any other alterations or additions to the sanctioned layout

plans and specifications of the buildings or the common areas within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter who had agreed to take apartments in such building. Section 89 of the Act also provides that the Act shall have overriding effect notwithstanding anything inconsistent contained in any other law for the time being in force. Thus, it can be seen that Section 14(2)(ii) of the Act is a clear and categorical embargo on the promoter from making any additions or alterations to the project once agreements have been entered into with the prospective buyers without the previous written consent of atleast two-thirds of the allottees.

6.13. Section 84 of the Act confers the power of the appropriate Government to frame rules for carrying out the purposes of the Act. In exercise thereof, the Government of Tamil Nadu has framed rules called the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017. Rule 4 of the said Rules reads as follows :-

> " 4. Disclosure by promoters of existing projects.- (1) On the date of coming into force of sub-section (1) of section 3 of the Act, promoters of all ongoing projects shall within the time

specified in the said sub-section, make an application to the Authority in the form and manner provided in rule 3.

Explanation I.- Any agreement already entered between the promoter and the allottee before commencement of these rules shall not be affected.

Explanation II .- If the project has been conceived to be developed in phases, where the plans for the initial phase are approved by the planning authority prior to the date of coming into force of sub-section (1) of section 3 of the Act, then for such projects the requirement of obtaining two third consent from existing allottee, under clause (ii) of sub-section (2) of section 14 of the Act is exempted for addition/revision/modification of plans for subsequent phase/s of development, provided the scheme of developing the project in phased manner has been agreed upon by the allottee

and promoter in the agreements executed between them;

Explanation III.- If the approval from the planning authority is obtained for larger extent of land, but where the development is conceived to be in phases, the promoter shall be permitted to register each phase as an independent project with the Authority. In such case, the requirement of obtaining two third consent from existing allottee under clause (ii) of sub- ection (2) of section 14 of the Act is exempted for addition/revision/modification of plans for subsequent phases of development, provided the development in phases has been agreed upon by the allottee and promoter in the agreements executed between them, when there is no reduction in the common area and there is no change in the total built up area of the registered phase/project.

Explanation IV.- It is not mandatory to

substitute the prescribed form of agreement for sale, construction or any other documents executed by the allottee, in respect of the apartment, plot or building for the on going projects prior to the date of coming into force of sub-section (1) of section 3 of the Act, the same shall be legally valid and enforceable and shall not be construed to limit the rights of the allottee under the Act and the rules and regulations made thereunder.

(2) The promoter shall disclose all project details as required under the Act and the rules and regulations made thereunder, including the status of the project and the extent of completion.

(3) The promoter shall disclose the size of the apartment based on carpet area even if earlier sold on any other basis such as super area, super built up area, built up area, etc., which shall not affect the validity of the agreement entered into

between the promoter and the allottee to that extent.

(4) In case of plotted development, the promoter shall disclose the actual area of the plot even if earlier sold on any other basis such as including the cost of Open Space Reservation area and splay area, development charges, etc., which shall not affect the validity of the agreement entered into between the promoter and the allottee to that extent."

6.14. A reading of Section 14(2)(ii) of the RERA Act along with Explanation – II to Rule 4 of the Rules, it would be clear that unless there is consent from two-thirds of the allottees, there cannot be any addition, revision or modification of the plan. Explanation - II only clarifies that if a project is to be developed in phases, the promoter holds out the details of the development of the particular phase to the allottees and there may be excess/rest of the lands which are to be developed in the subsequent phases, in which case, when it develops the subsequent phases, in respect of any addition or revision or modification of the subsequent

phases, it needs to take consent from the respective allottees of the subsequent phase alone and the consent of the earlier phase need not be taken. The same is also in sync with the purposes of the Act and Section 14(2) of the RERA Act as all the details of the development in respect of the phases which are to be developed in a later date will not be disclosed to the buyers. In essence, if a promoter discloses the details as to the number of towers, number of residential occupants, and of the extent of the common areas, amenities etc., after holding out to the buyer and making them to purchase/inviting them to purchase the apartment, thereafter, he loses the right to unilaterally alter or make additions unless there is consent of the two-thirds of the allottees.

6.15. In this regard, Section 2(n) of the Act defines common areas which is as follows :-

> "2....
> .
> .
> .
> (n) "common areas" mean—
>
> (i) the entire land for the real estate project or where the project is developed in phases and registration under this Act is sought for a phase, the entire land for that phase;

(ii) the stair cases, lifts, staircase and lift lobbies, fir escapes, and common entrances and exits of buildings;

(iii) the common basements, terraces, parks, play areas, open parking areas and common storage spaces;

(iv) the premises for the lodging of persons employed for the management of the property including accommodation for watch and ward staffs or for the lodging of community service personnel;

(v) installations of central services such as electricity, gas, water and sanitation, air-conditioning and incinerating, system for water conservation and renewable energy;

(vi) the water tanks, sumps, motors, fans, compressors, ducts and all apparatus connected with installations for common use;

(vii) all community and commercial facilities as provided in the real estate project;

(viii) all other portion of the project necessary or convenient for its maintenance, safety, etc., and in common use;"

Thus, it includes the entire land for the real estate project or where the project is developed in phases and registration under the Act is sought for a phase, the entire land for that phase. It also includes all the community and commercial facilities as provided in the real estate project.

6.16. The entire Building No.18, as per the master plan, was a community and commercial facility which is provided to the residents. Though the shops, hotels, residences etc., may be saleable, it must be seen that the same are commercial facilities which are provided in the real estate project and the clubhouse is certainly a facility for the community.

6.17. As a matter of fact, in the counter-affidavit filed by the third respondent in the Writ Petition, it is the specific case of the respondents that the two new towers are part of Phase - I. Paragraph No.10 of the counter-affidavit is extracted hereunder :-

" 10. I state that pursuant to the said

Sanctioned Plans, the Third Respondent completed the buildings of Phase I comprising of six towers in the name and style of Seawood, Pinewood, Brentwood, Greenwood, Birchwood and Bridgewood. I state that the Third Respondent has completed part of Phase II of the said Township which comprises seven towers in the name and stye of Oceanic, Edina, Bayview, Sinovia, Tiana, Amalfi and Anchorage and is in the process of developing Octavius, Verona, Bayhaven (Phase-I)."

(emphasis supplied)

6.18. As per the clause in the construction agreement, it was contended that the entire project is being executed in Phase - I and Phase - II which was extracted supra. Paragraph No.7 of the counter-affidavit filed in the present Writ Appeal is as follows:-

" 7. I state that after obtaining the relevant sanctions, the 3rd Respondent completed the buildings of Phase I, which comprises of six

towers, namely, Seawood, Pinewood, Brentwood, Greenwood, Birchwood and Bridgewood that comprised of 1094 Units/Apartments. I state that the 3rd Respondent has partly completed Phase II of the Project, namely, seven towers that have been completed are, Oceanic, Edina, Bayview, Sinovia, Tiana, Amalfi and Anchorage that comprised of 1174 Units/Apartments. There are three structure/towers under development, namely, Octavius, Verona and Bayhaven -Villas (which forms part of Phase II)."

(empahsis supplied)

Thus, the version as per the counter-affidavit filed in the Writ Appeal is that these new towers are part of Phase - II.

6.19. During the reply arguments, Mr Srinath Sridevan learned Senior Counsel would submit that the entire interpretation of the term 'phase' by the third respondent is incorrect as per the RERA Act. Accordingly to him, the term 'phase' is loosely used without adverting

to its correct meaning as per the Act. As per Section 2(n) of the RERA Act, a phase would mean as per the registration under the Act and the present project has been registered as a separate project and therefore, the original holding out in the agreement or the averment in the counter-affidavit would not make all the lands as common areas. The members of the appellant Association can treat the land, on which the particular building is built alone as the common area in their respect.

6.20. In this regard, it is also relevant to advert to the definition of the project under Section 2(zj) of the Act which reads as follows:-

> "(zj) "project" means the real estate project as defined in clause (zn);"

6.21. Section 2(zn) of the Act defines the Real Estate project as follows:-

> "(zn) "real estate project" means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into

plots or apartment, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;"

Though it could mean individual buildings, it includes the common areas, the development works and the easement rights and appurtenances belonging thereto.

6.22. We have already extracted the definition of 'common area' to include all the community and commercial facilities provided in the Real Estate project, thereby, the entire Building No.18 is a common area. It is pertinent to state here that the entire township is developed as a gated community and each building does not have any access road which is gifted to the local authority.

6.23. On the contrary, the promoter had undertaken upon itself to

develop it as a complex with shared facilities and amenities. Therefore, even going by the arguments of the learned Senior Counsel, Mr.Srinath Sridevan, that each of the buildings should be considered as a separate phase by itself, the clubhouse and the commercial complex comprised in Block/Building No.18 is a common area as it is represented as the club and commercial facility for the seven buildings which are originally termed as Phase - II and thus, cannot be altered without the consent of the two-third owners in respect of each of the seven towers. It must be seen that the very purpose of the Act is to prevent the promoters from holding out one thing and thereafter carrying out another. Any purchaser of the apartment in all these seven buildings of Phase - II agreed for a particular price by taking into account the number of residential towers which are coming up within the gated community. If there are going to be more number of towers than the original one which is promised, then, the entire land topography and occupancy changes.

6.24. The price of the original apartment is agreed upon considering the original master plan which is held out to the buyer. Therefore, accepting the arguments of the learned Senior Counsel for

the third respondent, that an equivalent clubhouse area will be provided in another new building/floor of the sports complex would defeat the very purpose of Section 14 of the Act. From the wordings of Section 14 of the Act which is a non-obstante clause and Section 89 of the Act, by which, the provisions of the Act are to override the other regulations, it would be clear that the second respondent cannot grant a modification or revision of the building approval in violation of Section 14 of the RERA Act. Rule 11 of the Tamil Nadu Combined Development and Building Rules, 2019 only states that mere granting of approval by itself will not mean the responsibility or clearance of the aspects mentioned therein. But, that does not in any manner enable the second respondent to ignore the mandate of the RERA Act and grant permission for an illegal modification. Especially when the project is partly executed after the registration with the RERA authority and the buildings are allotted/sold/occupied by the parties. Therefore, we hold that impugned planning approval, granting modification without the consent of two-thirds of the members of the allottees of each of the 7 buildings in Phase - II, to which, the block in question is held out is a common area that is being community facility for a clubhouse and commercial facility, as illegal and is liable to be quashed.

6.25. The learned Single Judge has already held that the planning authorities do not come within the ambit and jurisdiction of the Special Court under the RERA Act and therefore, the challenge to the impugned plan cannot be made by the statutory proceedings under the RERA Act. No arguments to the contrary is also made on behalf of the respondents. For the forgoing findings, the finding of the learned Single Judge that in respect of the project already registered, exemption is granted under Rule 4 of the TNRERA Rules is absolutely incorrect on a plain reading of RERA and the Rules.

6.26. Secondly, such consent is to be with reference to the change which is to be made. Clause - 10.3 of the agreement which is extracted would only be in respect of renewal/revision which may become necessary to comply with any statutory requirements. The same cannot be consent for altering the community facility namely, the clubhouse specifically promised in Annexure - IV to the agreement.

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.

6.28. Even as per the case of the promoter, the third respondent, the change was undertaken by it, only considering market conditions in the year 2020 and therefore, what was not contemplated at the time of agreeing could not have been consented upon by the parties. In any event, consent that is granted by a particular owner is different from the

written consent of two-thirds of the allottees. In respect of a building or flat of a particular buyer/allottee, if any change in plan is made, then, the consent which is taken in the agreement with that particular allottee may hold good. But the nature of consent which is required under Section 14(2) of the Act is the written consent of two-thirds of the allottees and means the coming together of two-thirds of the owners and deciding to permit the variation or alteration since it is going to affect all the occupants. Thus, the decision of the two-thirds majority is imposed on the rest of the persons. Therefore, the finding of the learned Single Judge that they have consented to the development agreement is also absolutely incorrect in law. We also do not find that the appellant has suppressed any material facts which are relevant to the issue.

6.29. On the other hand, it is the builder who is changing its version on every occasion. When the third respondent is developing the entire area of 128 acres into a gated community and township, it has to stick to its plan concerning the number of buyers, dwelling units, commercial areas etc. It cannot keep on adding the number of towers etc., to render the original price, in which, it sold flats meaningless. The very purpose of the RERA Act and its registration is to safeguard such

purchasers from this kind of changes, that is, the promoters of a single building putting up additional floors and promoters of composite township putting up additional buildings than promised. Thus, we hold that this is a fit case for our interference as the Appellate Court in the findings of the learned Single Judge as the findings are completely not in tune with the express provisions or the purposes of the RERA.

G. The Result :

7. Accordingly, this Writ Appeal is allowed on the following terms:-

(i) The order of the learned Single Judge in W.P.No.3935 of 2023, dated 04.07.2023 is set aside;

(ii) W.P.No.3935 of 2023, filed by the appellant is allowed on the following terms:-

(a) the approval granted by the second respondent vide proceedings in Na.Ka.No.2081/2020/MLPC(C.M-5), dated 19.11.2020 shall stand quashed;

(b) it would be open for the third respondent to approach the owners/allottees of the flats in respect of the seven buildings namely, Bayview, Edina, Sinovia, Tiana, Amalfi, Anchorage and Seagull, to which, the Block No.18 is held out as club/commercial area, for their

consent to alter the same and if two-third of the occupants of each of the buildings consent, the third respondent will be entitled to approach the second respondent once again for such alteration/modification and upon such re-application, the second respondent shall consider the same in accordance with law and pass orders thereon.

(iii) There shall be no order as to costs. Consequently, C.M.P.No.20445 of 2023 is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub-Assistant Registrar

grs

To
1. The Secretary,
Housing and Urban Development Department,
State of Tamil Nadu,
Secretariat, Chennai - 600 009.

2. Directorate of Town and Country Planning,
124, GST Road, Periyar Shopping Complex,
Chengalpattu - 603 001.

+1cc to M/s.Rahul Balaji, Advocate SR.No.31914
+5cc to M/s.R & P Partners, Advoate SR.No.32378, 31922
+1cc to State Government Pleader SR.No.32716

W.A.No.3328 of 2023

SSN(CO)
GN(17/04/2024)

HIGH COURT OF JUDICATURE
MADRAS
S.R. No. 31914
Carbon Copy Application
made 08/04/2024
Application Returned 20
Application Represented 20
Copy made ready 18/04/2024
Copy delivered 18/04/2024

18/04/24

18/4

Section Officer
Current Section