BEFORE THE TAMIL NADU REAL ESTATE APPELLATE TRIBUNAL (TNREAT)

(Tamil Nadu, Puducherry, Andaman & Nicobar Islands)

Under the Real Estate (Regulation and Development) Act, 2016

Reserved on: 24.08.2026

Delivered on: 02.09.2026

Coram : Hon'ble Mr.Justice M.Duraiswamy, Chairperson
Mr.K.Babu, Judicial Member

Appeal Nos.33 & 37 of 2026
and
M.A.No.99 of 2026 in Appeal No.33 of 2026
and
M.A.Nos.102 & 103 of 2026 in Appeal No.37 of 2026

Appeal No.33 of 2026

M/s. Prestige South City Holdings
rep. by its Partners: Prestige Estate Projects Ltd. &
M/s.South City Properties (India) Pvt. Ltd
now rep. by its Authorized Signatory
Nagaraj.C. ... Appellant

Vs.

1. Prestige Silver Springs Villa Owners Association
   rep. by its Secretary/Authorized Signatory

2. Ratnavara Developers LLP
   rep. by its Partner, Rathan Raj ... Respondents

Appeal has been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 to allow the appeal and to set aside the order passed by the Tamil Nadu Real Estate Regulatory Authority, Chennai dated 04.02.2026 in C.No.89 of 2024 and dismiss the complaint.

For Appellant : Mr.Raghavendra Ross Divakar
for M/s.DUA Associates

For Respondents : Mrs.Chithra Sampath, Senior counsel
for Mr.T.S.Baskaran (R1)

: Ms.Aparna Raju (R2)

Appeal No.37 of 2026

Prestige Silver Springs Villa Owners Association
rep. by its Secretary
M.Parthiban ... Appellant

Vs.

1. Prestige South City Holdings
rep. by its Partners: Prestige Estate Project Ltd. &
M/s.South City Properties (India) Pvt. Ltd.

2. Ratnavara Developers LLP
(formerly M/s.Ratnavara Developers Pvt. Ltd.)
rep. by its Partner, Rathan Raj ... Respondents

Appeal has been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 (a) to set aside the impugned order dated 04.02.2026 in C.No.89 of 2024 by the Tamil Nadu Real Estate Regulatory Authority insofar as it rejects the claim of the Appellant Association for the transfer of the one-time Club House membership fee; b) consequently, to direct the respondents to transfer and hand over to the appellant Association the entire one-time Club House Membership Fee/Corpus collected from the allottees aggregating a sum of Rs.3,72,00,000/-, together with interest @ 24% per annum from 01.04.2023 until the amount is paid to the complainant; c) to set aside the finding in the impugned order directing separate conveyance of Club House land and hold that all common areas, including Club House, vest in the entire plot owners under the project; and (d) to set aside the impugned order insofar as it fails to grant relief in respect of Service Plots 4 and 5 (II), and consequently direct the respondents to hand over the vacant possession of the Service Plot 4 and 5 (II) to the appellant Association within a time frame fixed by this Hon'ble Tribunal.

For Appellant : Mrs.Chithra Sampath, Senior counsel for Mr.T.S.Baskaran

For Respondents : Mr.Raghavendra Ross Divakar for M/s.DUA Associates (R1)

: Ms.Aparna Raju (R2)

COMMON ORDER

Challenging the order passed in C.No.89 of 2024 dated 04.02.2026 on the file of the Tamil Nadu Real Estate Regulatory Authority, the complainant has filed the appeal in A.No.37 of 2026 and the 1st respondent/promoter has filed the appeal in A.No.33 of 2026.

2. The complainant filed C.No.89 of 2024 seeking for the following reliefs:

(i) to direct the respondents to register the Prestige Silver Springs Project under TNRERA Act.

(ii) To direct the respondents to pay the balance Corpus Fund of Rs.95,32,945/- (Rupees Ninety Five Lakhs Thirty Two Thousand Nine Hundred and Forty Five only) to the complainant jointly and severally which was collected by the respondents from the Villa owners, together with interest at 24% from 01.04.2023 until the amount is paid to the complainant within a time frame fixed by the Authority.

(iii) to direct the respondents to pay the Clubhouse Membership Fee to the complainant jointly and severally aggregating Rs.3,72,00,000/- which was collected by the respondents from the members of the complainant, together with interest at 24% p.a. from 01.04.2023 until the amount is paid to the complainant within a time frame fixed by the Authority.

(iv) to direct the respondents to hand over the vacant possession of the Service Plot Nos.4 & 5 (II) to the complainant within a time frame fixed by the Authority.

(v) to direct the respondents to hand over the original title documents pertaining to the project "Prestige Silver Springs" to the complainant within a time frame fixed by the Authority.

(vi) Impose penalty as per Section 59 of the TNRERA Act against the respondents for failure to register the project "Prestige Silver Springs" under Section 3 of the Act.

3.Since the issues involved in the above appeals are common and the complainant and the respondents in both the appeals are same and the real estate project is also one and the same, by consent of the learned counsel on either side, both the appeals are disposed of by this common order. For the sake of convenience, the parties hereinafter will be referred to as per their rank and status in Appeal No.37 of 2026.

4.The brief case of the complainant is as follows:

The appellant/complainant is the Prestige Silver Springs Villa Owners Association representing the purchasers of the Villa in the project "Prestige Silver Springs" situated at ECR Link Road, Sholinganallur, developed by the 1st respondent/promoter and the 2nd respondent/landowner over an extent of 18.06 acres. According to the appellant/complainant, pursuant to the Joint Development Agreement dated 05.09.2011, the Supplementary Development Agreement dated 21.11.2013 and the CMDA approved layout Planning Permit dated 23.08.2013, 125 plots were developed and on 04.07.2013 internal roads and OSR were gifted to the local authorities. According to the appellant/complainant, the layout formed and sold was not a mere plotted development, but a Villa project with common amenities such as Club House, Swimming Pool, Tennis Court, parks and other common facilities and from 2019, composite Sale Deeds were also executed for land, together with Villas. The respondents have constructed luxury and deluxe Villas, provided with amenities like club house, swimming pool, tennis court, park (open space reservation) etc. As per the Joint Development Agreement dated 05.09.2011 between the respondents 1 & 2, 54% of the total developed area falls to the share of the 1st respondent and 46% of the total developed area belongs to the 2nd respondent's share.

5.The 2nd respondent gifted the roads, open spaces in the project to the Corporation of Chennai by way of Gift Deed dated 04.07.2013. Thereafter, a Power of Attorney was executed in favour of the 1st respondent by the 2nd respondent authorizing them to apply for all permissions relating to the project and approval for the layout of the project was received vide a sanctioned plan dated 29.08.2013. Pursuant to the same, the respondents 1 & 2 entered into a Supplementary Development Agreement and Sharing Agreement dated 21.11.2013 by way of which the project area was reduced to 18.06 acres from the originally planned area of 18.52 acres in the Joint Development Agreement dated 05.09.2011. After identifying their respective share of the plots in the project by the respondents, they proceeded to sell their respective shares of Plots in the project to the purchasers. During the sale of Plots in the project, dispute arose between the respondents, which was referred to Arbitration on the basis of Joint Development Agreement and the Supplementary Development Agreement and an Arbitral Award was passed on 20.04.2021.

6.According to the appellant/complainant, the respondents have executed Sale Deeds in favour of the purchasers with respect to their respective plots under Annexures II and III in the Joint Development Agreement. Based on the Sale Deeds, the 1st respondent had entered into Construction Agreements with the purchasers of Plots for construction of the Villa. However, from 2019 onwards, the respondents jointly executed Sale Deeds wherein the land with Villas were sold together under a Single Deed. Besides the land and construction costs, the respondents have collected Corpus Fund of Rs.30/ per sq. ft., Advance Maintenance Charges at Rs.30/- per sq. ft., Club House Membership Fee of Rs.3,00,000/- per Villa, infrastructure development charges at Rs.75/- sq. ft. etc.

7.The appellant/complainant further averred that while the project was progressing, the construction of the Club House was completed in April 2017, whereas, only certain Villas were completed at that time. As per the terms of the Joint Development Agreement, the respondents promoted a Property Maintenance Company in the name of "Prestige Property Maintenance Services Chennai" (PPMSC) for the maintenance of all the common areas and facilities in the project for one year.

8.The appellant/complainant Association was formed and registered on 11.10.2018 under the Tamil Nadu Societies Registration Act. The Maintenance Agency, PPMSC had been looking after the maintenance of the project as agreed between the parties till 31.03.2023. Though the appellant/complainant Association was formed in 2018, they had not taken charge of maintenance of the project due to various issues like arrears of maintenance charges, poor collections and non completion of amenities such as metro water, etc.

9. When the appellant/complainant Association went through the data provided by the respondents regarding the status of CAM, DG and water charges, the Association came to know that considerable amount of maintenance charges was outstanding as on 08.01.2023 from the 2nd respondent and their assignees, who were holding several Villas.

10.The above fact was communicated to the 1st respondent vide e-mail dated 10.01.2023. Rather than addressing the above issues, as a counter attack, PPMSC through the 1st respondent, sent an e-mail dated 24.01.2023 calling upon the appellant/complainant to take over the maintenance of common areas and to enter into Maintenance Agreement on or before 28.02.2023 for maintaining the project from April 2023 (i.e.) 01.04.2023, failing which, PPMSC shall not continue its services beyond 31.03.2023, knowing fully well that the Association was not in a position to take over the maintenance while the above issues remained unresolved.

11.On the date of coming into force of some of the provisions of the Real Estate (Regulation and Development) Act, 2016 (i.e.) as on 01.05.2017, the project Prestige Silver Springs was not completed, amenities like water and sewerage connections from CMWSSB were not provided. Though the internal roads were gifted to the local authority, common areas remained incomplete/undeveloped. Several amenities mentioned in the Brochure, which were to be provided to the Villa Owners, were not completed.

12. The 1st respondent, in response to the complainant's rejoinder dated 12.03.2024, had issued a reply on 15.04.2024 alleging that 'Prestige Silver Springs' project is not an ongoing project. The respondents had not provided water and sewerage connections for the Villas until 2023. The Villas were provided with water sewerage connection only on 06.06.2023 and the same was communicated on 07.06.2023. According to the appellant/complainant, the project "Prestige Silver Springs" was not completed on the date of coming into force of RERA Act, therefore, it is an ongoing project. According to the appellant/complainant, the TNRERA is having jurisdiction to adjudicate the complaint, hence, they have filed the complaint before the TNRERA.

The complainant sought for the following reliefs:

(vii) to direct the respondents to register the Prestige Silver Springs Project under TNRERA Act.

(viii) To direct the respondents to pay the balance Corpus Fund of Rs.95,32,945/- (Rupees Ninety Five Lakhs Thirty Two Thousand Nine Hundred and Forty Five only) to the complainant jointly and severally which was collected by the respondents from the Villa owners, together with interest at 24% from 01.04.2023 until the amount is paid tot the complainant within a time frame fixed by the Authority.

(ix) to direct the respondents to pay the Clubhouse Membership Fee to the complainant jointly and severally aggregating Rs.3,72,00,000/- which was collected by the respondents from the members of the complainant, together with interest at 24% p.a. from 01.04.2023 until the amount is paid to the complainant within a time frame fixed by the Authority.

(x) to direct the respondents to hand over the vacant possession of the Service Plot Nos.4 & 5 (II) to the complainant within a time frame fixed by the Authority.

(xi) to direct the respondents to hand over the original title documents pertaining to the project "Prestige Silver Springs" to the complainant within a time frame fixed by the Authority.

(xii) Impose penalty as per Section 59 of the TNRERA Act against the respondents for failure to register the project "Prestige Silver Springs" under Section 3 of the Act.

13. The brief case of the 1st respondent in the complaint is as follows:

According to the 1st respondent, the project was developed by both the respondents 1 & 2 on Joint Development basis to construct Villas on individual plots with amenities. On 05.09.2011, a Joint Development Agreement was entered between the respondents 1 & 2 and layout approval was obtained from CMDA on 29.08.2013 and subsequently, approval from Corporation of Chennai was obtained on 17.09.2013.

14.On 21.11.2013, the 1st respondent entered into a Supplementary Development Agreement with the 2nd respondent. Thereafter, the respondents 1 & 2 proceeded to sell their respective shares of plots in the project to the purchasers and also executed Construction Agreements with the purchasers for construction of Villas on the plots purchased by them.

15.The disputes that arose between the respondents 1 & 2 were referred for Arbitration and an Arbitral Award was passed on 20.04.2021.

16.On 04.01.2024, the appellant/complainant issued notice calling upon the respondents 1 & 2 to return the Corpus Fund, the Membership Fee collected for the Club House and to hand over possession of Service Plot Nos. 4 & 5 (II) in the project and to handover the original title documents. The 1st respondent sent a reply on 21.02.2024. The appellant/complainant had issued a rejoinder to the notice vide its letter dated 12.03.2024, wherein, the complainant had raised the issue of registration of the project with the TNRERA. The averments in the rejoinder were denied by the 1st respondent. The layout approval and CMDA approval were obtained before the RERA Act came into force. The project did not fall within the jurisdiction of the TNRERA. According to the 1st respondent, the complainant is not entitled to any relief, hence, the complaint is liable to be dismissed.

17.The appellant/complainant, in their reply to the counter, had stated that the respondents had collected Corpus Fund from the Villa owners for maintaining it in an interest bearing "Special Purpose Account" for being utilized for any capital expenditure. The respondents are obligated to transfer the sum to the complainant as and when it is formed. On the other hand, the Villa owners are also obligated to pay the CAM Charges to the maintenance agency/PPMSC (Partnership Firm formed by the respondents). Thus, the respondents cannot withhold Corpus Fund towards arrears in CAM charges as both are independent obligations.

18.The appellant/complainant had no obligation to ensure payment of arrears in CAM charges to PPMSC.

19.The appellant/complainant was compelled to take over the maintenance of the project, despite the respondents' refusal to provide necessary data and the entire amount of Corpus Fund together with interest payable to the complainant. Due to the same, the maintenance of the project is at a stake.

20.The Villa Owners became members of the complainant Association by virtue of the provisions in the Sale Deed. In these circumstances, the 1st respondent cannot brush aside the fact that the 2nd respondent and its assignees are significantly liable to pay their arrears of CAM charges to PPMSC on the ground that the 2nd respondent and its assignees are the members of the complainant.

21.The 1st respondent had failed to provide important data required for taking over the possession and maintenance of the common areas. From the data available with the complainant, a calculation sheet was submitted.

22.For the purpose of getting access to the Club House, one-time Club House Membership Fee was collected by the respondents from each of the Villa Owners. The fee does not form part of the sale price of the individual Plot/Villa as alleged. The 1st respondent had handed over the possession of the Club House including the underlying land to the appellant/complainant and the same is evident from its letter dated 01.08.2022. Once the Club House had been handed over to the appellant/complainant Association, the 1st respondent has no right to retain the one-time Club House Membership Fee, which was paid by each of the Villa Owners for a lifetime membership. Therefore, according to the complainant Association, the respondents are liable to pay the entire Club House Membership Fees collected from the Villa Owners at the time of Sale of the Villas to the complainant.

23.The land on which the Club House is built absolutely belongs to the Villa Owners. Since the said land belongs to the Villa Owners, the respondents expressed willingness to execute necessary documents for conveyance. Further, the respondents, in the Supplementary Development Agreement & Sharing Agreement dated 21.11.2013, divided the plots with Villas and the public purpose plots alone among themselves, as the remaining lands including the land where the Club House and service plots would vest on the Villa Owners as they are common areas providing common facilities.

24.The service plot Nos.4 and 5(ii) absolutely belonged to the Villa Owners. The respondents cannot change the usage of the service plots without notice and consent of the Villa Owners. When the respondents have sold the plots with Villas based on the layout approval obtained in Layout No. PPD.No.32/2013, they cannot revise/change the usage of the plots subsequently according to their whims and fancies without the consent of the assignees/Villa Owners.

25.According to the appellant/complainant, the respondents have not provided any completion certificate from the Corporation/CMDA in respect of the construction of each individual villa on the completion of the project. Therefore, the 1st respondent's allegation in the counter statement that plan approvals were obtained from the Corporation prior to the construction of Villas, is irrelevant.

26.As per Schedules D, E to the Sale Deed which deals with the rights and obligations of Purchasers, the Villa owners are restricted from modifying/altering their Villas, etc. proves that the project is not a plotted development.

27.As per Clause D of the Joint Development Agreement, the term "Project" refers to construction and development of the residential villa project. The respondents have not obtained the Completion Certificate for the project till date. The Completion Certificate dated 13.04.2017 is only for the Club House and not for the project as a whole. According to the appellant/complainant, the 1st respondent paid the charges for the sewerage connection only after the commencement of the TNRERA Act, therefore, the delay in obtaining sewerage connection is due to the delay caused by the 1st respondent.

28.The brief case of the 2nd respondent in the complaint is as follows:

The 2nd respondent had stated that they had entered into a Joint Development Agreement dated 05.09.2011 with the 1st respondent for development of the layout project and for construction of Villas. The 2nd respondent had executed a Power of Attorney in favour of the 1st respondent. According to the 2nd respondent, they got approval from the planning authorities and Corporation of Chennai. Both the respondents 1 & 2 had promoted Property Maintenance Company in the name and style of “Prestige Property Maintenance Services Chennai” (PPMSC). The 2nd respondent also asserted that the Members of the complainant Association are entitled to the usage of the Club only on payment of Maintenance Fee and they have no right of ownership over the underlying land property.

29.According to the 2nd respondent, there were certain odd plots within the layout which were not sold and were retained by the respondents 1 & 2. The Plots also include the land over which the Club House has been built are classified as CRZ-II and the Service Plot Nos.4 and 5. It was agreed between the respondents before the Arbitrator that the plots of land over which the Club House was built would be handed over to the complainant free of cost as a gesture of goodwill by the respondents while the 2nd respondent would continue to retain ownership over service plots 4 and 5. There were 7 Service Plots owned by the respondents 1 & 2 meant for public usage as per the sanctioned plan. The Arbitral Tribunal also confirmed that the Service Plot Nos. 4 and 5 would be retained by the 2nd respondent. As per the settlement in the Arbitration proceedings, the 1st respondent had given up their right over the land measuring 1,130 sq. mts. which came within CRZ-II and the same is out of the scope of development approval given by the Authorities to the complainant.

30.The 2nd respondent had also stated that the project is not an ongoing project. As per the provisions of the RERA Act, the project is a completed one, since the Completion Certificate was obtained in the year 2015. The 2nd respondent relied upon the judgment of Hon'ble Kerala High Court reported in **2024 SCC Online Ker 4893 [P.V.Nidish and another Vs. Sivaprakash]**, in support of their contention that Completion Certificate is a conclusive proof for completion of the project. The 2nd respondent also relying upon the judgment of the Hon'ble Madras High Court reported in **2023 (6) CTC 858 [Devinarayanan Housing and Property Developments Private Limited, rep by its Managing Director and 2ors Vs. Manu Karan and 2 ors]** where the appeal was dismissed considering the facts and the provisions of the RERA Act 2016 contended that the present complaint before the TNRERA is not maintainable and the TNRERA has no jurisdiction. Hence, the 2nd respondent prayed for the dismissal of the complaint for lack of jurisdiction.

31.Heard both sides.

32.The Authority, by the impugned order dated 04.02.2026, held that the project is a real estate project and an ongoing project and directed the 1st respondent to register under RERA. Further, the TNRERA directed the 1st respondent to refund the corpus fund to the Association. But, however with regard to refund of Club House Membership Fee, the TNRERA rejected their claim of refund and instead directed the land where the Club House has been constructed and amenities be conveyed to individual owners proportionate to their UDS under registered Sale Deeds. With regard to service Plot Nos. 4 & 5, the authority declined to decide the issue and left the issue open.

33.Aggrieved by the said order, the appellant/complainant filed the appeal in Appeal No.37 of 2026 regarding the "Disallowed Portions" of impugned order viz., (i) refusal to direct refund/transfer of Club House one-time Membership Fee (ii) challenging the direction requiring separate conveyance of Club House land (iii) Challenging the order refusing to hand over service plots 4 & 5 to the Association.

34.The 1st respondent/promoter filed Appeal No.33 of 2026 against the order passed by the TNRERA in C.No.89 of 2024 challenging the reliefs granted viz., (i) Holding that the project is an ongoing project and directing the 1st respondent/promoter to register the project under RERA Act and (ii) directing the 1st respondent to refund the corpus fund of Rs.95,32,945/- to the complainant Association.

35.Since the complainant is the appellant in Appeal No.37 of 2026 and the 1st respondent/promoter in the complaint is the appellant in Appeal No.33 of 2026, the owner of the property has been shown as 2nd respondent in both the appeals. For the sake of convenience, the parties in Appeal No.37 of 2026 has been referred as appellant and the respondents as per their rankings.

36.The preliminary objection raised by the learned counsel appearing for the 1st respondent was that the complaint filed by the appellant Association is not maintainable, since, the project is a layout project/plotted development which was approved by CMDA and that the road and open spaces were gifted to the local body much prior to the commencement of the RERA Act, therefore, the RERA Act is not applicable to this project. Further, it has been contended that it is not an ongoing project as per Rule 2(h)(i) of the TNRERA Rules, hence, the RERA Act does not have jurisdiction.

37.The learned counsel appearing for the appellant/complainant contended that the claim of the 1st respondent that the project is a layout project is not correct and that in the Joint Development Agreement dated 05.09.2011 and in the Agreement to sell dated 01.07.2021 and in the Sale Deed dated 06.10.2021 said to be executed in favour of Deviga with respect to Plot No.27, it has been clearly stated that for construction of Villa in Plot No.27, the properties had been sold by the 1st respondent/promoter. Further in the Joint Development Agreement dated 05.09.2011, it has been mentioned only as Villa and not layout, hence, the claim of the 1st respondent that the project is a layout project and that the complaint is not maintainable are not correct.

38.To find out the 1st respondent's project is a layout project or a Villa project, it is necessary to consider the documents filed by the appellant in support of the said contentions viz., Agreement to Sell dated 01.07.2021 said to be executed between the respondents 1 & 2 and one Deviga. On a perusal of the said Agreement to sell document dated 01.07.2021 and Sale Deed dated 06.10.2021, it is clear that the said documents were executed by the respondents 1 & 2 in favour of Deviga. In the said documents the respondents were sellers and had sold the completed Villa in Plot No.27 in 'Prestige Silver Springs'. Though, the 'Prestige Silver Springs' project was formed in the year 2013, Plot No.27 in the said project, with constructed Villa, was conveyed in the year 2021 to the purchaser Deviga.

39.Further, it is relevant to consider the following Clauses in the Joint Development Agreement dated 05.09.2011 as to whether the project is layout project. Clause (D) of the Joint Development Agreement reads as follows:

> "...
> (D) "The Owner is desirous of developing the Property by facilitating the construction and development of residential villas thereupon, and has consequently had discussions with the Developer, who is in the business *inter alia* of real estate construction and development, to so develop the Property in accordance with the terms and conditions set out herein below. Such developmental activity towards construction and development of the residential villa project in and upon the Property is hereinafter referred to as the "Project".
> ...."

40.Further, Clauses 1.16 & 1.18 in the Joint Development Agreement reads as follows:

"

...

1.16. "Project" shall refer to the construction and development of residential villas, and such allied development as may be mutually agreed upon, in and upon the Property by the Developer in full compliance and in accordance with the sanctioned Building Plan and as per the Specifications."

...

"1.18. "Saleable Super Built-up Area" referred to herein and elsewhere in this Agreement comprises:

(i) The plinth area of the Units/Villas, which includes all the wall thickness, garage space/car parking/s, deck space and sit out/s;

(ii) The common areas including club house, security rooms, sumps, overhead tanks, swimming pool, D.G. rooms, etc. and other built-up areas of common use in the Project".

..."

41.Hence, a perusal of the aforesaid Clauses and Annexure to the Joint Development Agreement, would show that the terms and conditions, restrictions and rights of the parties mentioned in the Joint Development Agreement did not indicate the project as a layout project. It is well planned Group Housing Scheme comprising of Villas. A perusal of the Sale Deeds executed in favour of Mr.Sanjay Jayapal and Mrs.Roshana Sanjay dated 23.06.2017 with respect to the Villa No.57, would clearly show that the project is not a layout project and it is a project where the sale of land is effected with the construction of individual Villas (Buildings) as rightly contended by the learned counsel appearing for the appellant.

42.The learned counsel appearing for the 1st respondent/promoter contended that the TNRERA erred in holding that the project should be registered under the RERA Act. Further, Section 3(2)(1)(a) of the Act provides that a project is to be registered only if "the area of the land proposed to be developed does not exceed 500 sq. m. or number of apartments proposed to be developed does not exceed 8" inclusive of all phases. According to the learned counsel appearing for the 1st respondent/promoter, the impugned order failed to consider that the project is in the nature of layout project and is not an ongoing project and further, the sanctioned plan was obtained by the appellant on 29.08.2013 prior to the Act coming into force. Hence, according to the learned counsel, without considering all those factors directing the 1st respondent to register the project is not in accordance with law and is contrary to the decision of the Hon'ble Madras High Court made in **2023 (6) CTC 858 [Devinarayanan Housing and Property Developments Private Limited, rep by its Managing Director and 2ors Vs. Manu Karan and 2 ors].**

43.Hence, according to the learned counsel appearing for the 1st respondent the TNRERA did not have jurisdiction to entertain the complaint since the project was not an ongoing project in terms of the Act and Rules and the finding of the TNRERA that the project is registrable under the Act is contrary to law, hence, the finding of the TNRERA is liable to be set aside.

44.On the other hand, the learned counsel appearing for the appellant/complainant Association contended that the claim of the 1st respondent/promoter is not sustainable, since the project is an ongoing project and it was not completed on the date on which the RERA Act come into force (i.e.) on 01.05.2017. Since water and sewerage connections from CMWSSB were provided only on 06.06.2023, many Villas remained unsold, common areas remain incomplete and undeveloped and several amenities promised in the Brochure had not been completed. On that basis, the appellant contended that the project is an ongoing project and is liable to be registered with the TNRERA.

45.The term "ongoing project" has been defined under Rule 2(h) of the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017, which reads as follows:

> "...
> 2(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) in layout projects i.e., where land is developed into plots, the roads and open spaces gifted to the local body concerned;
> ..."

46.From a bare reading of the above mentioned provision, it can be clearly construed that ongoing project have to be registered under the Real Estate (Regulation and Development) Act 2016, provided, if a project has been issued a completion certificate then the same would not fall under the ambit of being an ongoing project and such project where completion certificate has been issued are exempted from registering under Real Estate (Regulation and Development) Act.

47. While considering whether the project is ongoing and whether it is to be registered under the Act, it is relevant to consider Agreement to Sell dated 01.07.2021 and Sale Deed dated 06.10.2021 said to be executed in favour of one Deviga with respect to Plot No.27. The said documents were executed by the respondents 1 & 2 on 01.07.2021 and 06.10.2021 in the capacity as sellers to the purchaser Deviga and on perusal of those documents would show that the respondents 1 & 2 sold the completed Villa to the purchaser Deviga only in the year 2021.

48. Further, Clause 5(d) the Construction Agreement said to have been executed in favour of Mr.Sanjay Jayapal and Mrs.Roshana Sanjay by the 1st respondent/promoter on 08.03.2017 reads as follows:

> ...
> "5(d) Possession of the Villa shall be delivered to the Purchaser by the Developer after the same is ready for use and occupation, subject to receipt of all the amounts due and payable by the Purchaser under this Agreement and Agreement to Sell."
> ...

49.As per the aforesaid Clause, the Villa shall be delivered to the purchaser by the developer after the same is ready for use and occupation. The said Construction Agreement in which the 1st respondent as a Party had executed the said document on 08.03.2017, which would show that on the date of the execution of the Construction Agreement, the building was not completed and was an ongoing project. The RERA Act came into force on 01.05.2017. Whileso, the 1st respondent entered into Construction Agreement on 08.03.2017, with the purchasers Sanjay Jayapal and Roshana Sanjay for construction of Villa in Plot No.57 in the "Prestige Silver Springs" Villa.

50. While considering the definition of an ongoing project which is referred under Rule 2(h) of the TNRERA Rules, 2017, means "a project where the development is going on and for which completion certificate has not been issued".

51. In the case on hand, the construction has not been completed and the Construction Agreement has been entered only on 08.03.2017 and the RERA Act came into force on 01.05.2017, which means there was only 53 days between the signing of the Construction Agreement and the RERA Act coming into force and the construction of more than 6,000 sq. ft. was not possible within a span of 53 days. Hence, the Construction was going on and the Villas were not completed on 01.05.2017 (i.e.) the date on which the RERA Act came into force. Moreover, the Sale Deed of completed Villa executed by the 1st respondent in favour of Deviga on 06.10.2021 would show that on the date of RERA Act coming into force, the construction was not fully completed, hence, the project is to be treated as an ongoing project as rightly held by the TNRERA. Therefore, it is a registrable project under Section 3 of the RERA Act.

52.Though there is no dispute with regard to the ratio laid down in the judgment relied upon by the 1st respondent, Prestige South City Holdings, since the facts of the said case is different from the case on hand, the same is not applicable. As far as the present case is concerned, the appellant had sought for registering the project with the TNRERA but in the case relied upon by the learned counsel appearing for the 1st respondent, no such prayer was sought by the party therein. In such circumstances, the said judgment relied upon by the learned counsel appearing for the 1st respondent is not applicable to the facts of the present case.

53.Moreover, in the judgment of the Division Bench of Hon'ble Madras High Court dated 10.01.2025 made in C.M.S.A.No.66 of 2024 **[M/s.Colorhome Developers Private Limited, rep. by its Managing Director Vs. M/s.Kanchipattinam Villa Owners Association Karai]** in para 18 it has been held as follows:

> "...
> The villa project promoted as Layout project by the appellant by getting DTCP approval for a layout project, necessarily has to be registered with the TNRERA as the project is an ongoing project. When the appellant admitted that the assured amenities are not provided so far, the project should be termed as an ongoing project and required to be registered with TNRERA.
> ..."

54.In the case on hand, the project has not been completed and the Completion Certificate for the project has not been obtained by the 1st respondent/promoter and in fact, as discussed earlier, the respondents entered into Agreement with the purchasers Sanjay Jayapal & Roshana Sanjay with respect to the Plot No.57 on 08.03.2017 and sold the completed Villa to Deviga on 06.10.2021 which would show that the project is an ongoing project and further, it has been contended that the amenities, as per their project Brochure have not been provided and it has been contended by the learned counsel appearing for the appellant that the water and sewerage connections were provided only on 06.06.2023 and many Villas remained unsold, common areas remain incomplete and several amenities promised in the Brochure have not been completed. To disprove the said contention of the learned counsel appearing for the appellant, no acceptable evidence was produced before the TNRERA and moreover, the documents discussed earlier would show that the Plots in the projects were sold even in the years 2017 and 2021, which would also support the case of the appellant that the project remained incomplete on the date when the RERA Act came into force. In such circumstances, the aforesaid judgment in C.M.S.A.No.66 of 2024 is squarely applicable to the facts of the case on hand and since the project is an ongoing project, necessarily it has to be registered under Section 3 of the RERA Act. Hence, the contention of the learned counsel appearing for the 1st respondent is not sustainable and the TNRERA has rightly came to the conclusion that the appellant's project is an ongoing project and necessarily has to be registered under Section 3 of the Act.

55.The next contention of the learned counsel appearing for the 1st respondent/promoter is that the TNRERA erred in holding that the appellant Association is entitled to receive the corpus fund of Rs.95,32,945/- which has been collected from the Villa owners and is liable to be set aside.

56.The said contention was repudiated by the learned counsel appearing for the appellant Association that the claim of the 1st respondent is not sustainable since the corpus fund has been collected and it has been utilized for incurring any capital expenditure on replacement of any equipment/machinery/Generator etc. and the appellant Association is entitled to the said amount. It would be appropriate to extract Clause 9(c) of the Construction Agreement dated 08.03.2017, which reads as follows:

> "...
> 9(c). The Purchaser, in addition to the maintenance charges stated above shall at the time of handing over of the Villa contribute a sum of **Rs.30/-** per sq. ft. of Villa towards the "Corpus Fund". The whole of the Corpus Fund made up of the contributions by the owners of the Villa in Prestige Silver Springs shall be maintained in an interest bearing "Special Purposes Account" and Corpus Fund will be utilized for incurring any capital expenditure on replacement any equipment/machinery, generators etc shall be transferred to the Association of Owners of the Villa in Prestige Silver Springs as and when it is formed."

57.Hence, from the perusal of the aforesaid Clause it would be clear that the corpus fund collected from the Members should be transferred to the Association by the 1st respondent. In such circumstances, the contention of the learned counsel appearing for the 1st respondent claiming that the 1st respondent is not entitled to transfer the corpus fund to the appellant Association cannot be accepted. The TNRERA, after analyzing all the materials, rightly directed the 1st respondent to refund the balance corpus fund of Rs.95,32,945/- to the appellant Association together with interest.

58.The learned counsel appearing for the appellant contended that as per the terms of Agreement to Sell dated 01.07.2021 and Construction Agreement dated 08.03.2017 it was agreed between the parties that the Villa owners have to pay one-time membership fee to get admitted into the Club and the TNRERA failed to appreciate that the one-time Club House Membership Fee was collected exclusively for common amenities usage and not as part of consideration for the sale of the Villa. The promoter holds the said amount in Fiduciary capacity for the benefit of the allottees and the same is to be transferred to the Association. The TNRERA without considering Sections 11 & 17 of the Real Estate (Regulation and Development) Act, 2016 failed to appreciate that the one-time Club House Membership Fee collected from the allottees constitutes a dedicated corpus for the management and Administration of the Club House and the same is to be required to be transferred to the Association, but the TNRERA rejected the said claim erroneously.

59.Further it has been contended that the Club House is a common area under Section 2(n) of the Act and the promoter cannot retain control over the same or retain the funds collected for its maintenance. Hence, the order of the TNRERA is liable to be set aside.

60.On the other hand, learned counsel appearing for the 1st respondent contended that as per the Agreement to Sell and Construction Agreement, no owner of the Villa in this project shall claim any exclusive right or ownership over the Club and its facilities or assets, hence, the claim of the appellant is not sustainable and liable to be rejected.

61. With respect to the said contention, it would be appropriate to extract Clause 7(b) of the Construction Agreement dated 08.03.2017, which reads as follows:

> "...
> 7(b) The Owners/Occupants of Villas in Prestige Silver Springs are required to pay one time membership fee stipulated in Annexure II to get admitted to this Club however, no owner of an Villa in Prestige Silver Springs shall claim any exclusive right or ownership over the Club and /its facilities/assets. The Purchaser and his immediate family are entitled to be enrolled as members of the Club without payment of any additional consideration. In the event the Villa is leased / rented out by the Purchaser, the occupant of the Villa shall be entitled to make use of the Club facilities and the Purchaser shall not be entitled to use the Club facilities.
> ...
> "

62.As per the aforesaid Construction Agreement, the 1st respondent/ promoter had stipulated a condition that the owners of the Villas are required to pay one-time Membership Fee to get access to the Club. No owner of the Villa in this project shall claim any exclusive rights or ownership over the club and its facilities or assets.

63.The learned counsel appearing for the appellant contended that the one-time membership fee was collected separately and it is not part of the Sale Consideration and the Club House is to be considered as common area under Section 2(n) of the Act. Once, the Club House has been classified as a common area, the promoter cannot retain control over the same or retain funds collected for the maintenance.

64. In view of the fact that it has been clearly agreed by the parties in the Construction Agreement that one-time membership fee paid for getting admission to the Club and no owner of the Villa shall claim any exclusive ownership over the Club House or its assets, Clause 7(b) of the Construction Agreement bars the appellant from claiming the membership fee paid by the Members of the Club House.

65. Moreover, as per the letter dated 01.08.2022 sent by the 1st respondent, they had agreed to convey the land over which Club House and other amenities exists, to the complainant Association or the individual Villa Owners, in such circumstances, in view of the expression of interest by the 1st respondent and in the absence of any right which has been created to the purchaser under the Agreement, the TNRERA rightly directed the 1st respondent to execute the Conveyance Deed.

66.The next contention of the learned counsel appearing for the appellant that Plot Nos.4 and 5 (II) form part of the approved layout and were intended for common usage and the 1st respondent/promoter cannot retain the portions earmarked in the sanctioned layout for common benefit, the TNRERA failed to consider the said aspect and retaining the service plots by the respondents is contrary to the sanctioned plan and the TNRERA also failed to decide the said issue, hence, the order of TNRERA with regard to the said issue is liable to be set aside.

67.On the other hand, the learned counsel appearing for the 1st respondent contended that the claim of the appellant is not sustainable. There was a dispute between the 2nd respondent/owner and the 1st respondent/promoter in the subject project. As a result the matter was referred to Arbitration and as per the Arbitral Award, Plot Nos. 4 and 5 (II) of the project were retained by the 2nd respondent, hence, the claim of the appellant is not sustainable.

68.The Villa owners purchased the Villas as per the CMDA sanctioned plan. The sanctioned plan clearly mandates that all common areas shall not be utilized otherwise than as indicated in the sanctioned plan. Further, in the Arbitration proceedings, the appellant Association was not a party and the findings of the Arbitration proceedings in which the appellant Association was not a party shall not bind them. The land owner or the builder cannot be allowed to violate the sanctioned plan. In such circumstances, service Plot Nos.4 & 5 (II), which form part of the approved layout in the sanctioned plan, cannot be utilized or retained by the 1st respondent.

69.The learned counsel appearing for the appellant contended that the 1st respondent did not return the original documents pertaining to the project, hence, all the original documents should be returned to the Association. The said claim was repudiated by the learned counsel appearing for the respondents and contended that the claim of the appellant are false. With respect to the return of all original documents pertaining to the project, Clause 23 of the Joint Development Agreement dated 05.09.2011 clearly states that,

> "...
> 23. All original title documents that pertain to the Property (morefully listed out in Annexure-2 herein) shall, upon completion of the Project, be handed over to the Developer for handover to the Association of owners of the Units/Villas upon its formation.
> ..."

70. In the above circumstances and also in view of the expression of interest by the 1st respondent by a letter dated 01.08.2022, the 1st respondent is bound to hand over all the original documents of all common area and amenities including Club House, hence, the contention of the learned counsel appearing for the appellant that the original documents should be handed over to the appellant Association is acceptable. The TNRERA rightly directed the 1st respondent to hand over all the original documents to the appellant.

71.In view of the above discussions, the claim of the appellant in Appeal No.37 of 2026, with respect to the service Plot Nos. 4 & 5 (II) is sustainable and the service plot Nos.4 & 5 (II) cannot be utilized other than the purpose for which they have been provided, hence the respondents 1 & 2 are directed to hand over the vacant possession of the service Plot Nos.4 & 5 (II) as per the Sanctioned Plan to the appellant Association.

72.All other claims made in Appeal No.37 of 2026, with regard to the transfer of one-time Club House Membership Fee and the order of separate conveyance of Club House land are all liable to be rejected as devoid of merits.

73.The appellant in Appeal No.33 of 2026 is not entitled for any relief and the appeal is devoid of merits and liable to be dismissed.

74.In view of the above discussions, the appeal in Appeal No.33 of 2026 is dismissed and Appeal No.37 of 2026 is partly allowed. The respondents 1 & 2 are directed to hand over the vacant possession of the service Plot Nos.4 & 5 (II) as per the Sanctioned Plan to the appellant Association within a period of 2 months from the date of receipt of a copy of this order. With respect to the other reliefs sought in Appeal No.37 of 2026, the appeal is dismissed. Consequently, the Miscellaneous Applications in M.A.No.99 of 2026, M.A.Nos.102 & 103 of 2026 are closed.

75.Since we have dismissed the appeal in Appeal No.33 of 2026, the complainant Association is entitled to get the sum of Rs.97,08,638/- together with accrued interest, if any, which amount was deposited by the promoter under Section 43(5) of the Act.

Sd/- xxxx
JUSTICE M.DURAISWAMY
CHAIRPERSON
02.09.2026

Sd/- xxxx
K.BABU
JUDICIAL MEMBER
02.09.2026

Copy to

1. The TNRERA

2. Prestige South City Holdings,
   rep. by its Partners: Prestige Estate Project Ltd. &
   M/s.South City Properties (India) Pvt. Ltd.
   now rep. by its Authorized Signatory Nagaraj.C.
   Prestige Falcon Towers, No.19, Brunton Road,
   Craig Park Layout, Bengaluru,
   Karnataka - 560 025.

3. Prestige Silver Springs Villa Owners Association
   rep. by its Secretary/Authorized Signatory
   M.Parthiban
   Having office at:
   K.K.Salai, ECR-OMR Link Road, Sholinganallur,
   Chennai - 600 119.

4. Ratnavara Developers LLP
   (formerly M/s.Ratnavara Developers Pvt. Ltd.)
   rep. by its partner Rathan Raj
   No. 208, Workafella Business Centre 37,
   TTK Road, Alwarpet, Chennai - 600 018.