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: 09.09.2026

Delivered on: 16.09.2026

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

Appeal No.31 of 2026
and
M.A.No.95 of 2026

M/s.Arun Excello Constructions LLP
rep. by its Partners
1. P.Suresh
2. P.Karthikeyan
3.A.M.Sundar
4. S.Rajaji ... Appellant

Vs.

Meenakshi.S. ... Respondent

Appeal has been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 to set aside the impugned order passed by the Tamil Nadu Real Estate Regulatory Authority, Chennai in R.C.P.No.147 of 2022 dated 26.02.2026, insofar as it: a) directs refund of the amount collected towards parking charges; and b) awards interest at the rate of SBI MCLR i.e. 7.70% per annum + 2% and consequently dismiss the complaint in entirety.

For Appellant : Mrs.R.Kamala Rani

For Respondent : No appearance

ORDER

Challenging the order passed in R.C.P.No.147 of 2022 dated 26.02.2026 on the file of the TNRERA, the respondent has filed the above appeal.

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

(i) The appellant/promoter launched a project "Arun Excello Compact Homes - Narmada" (Project) at Singaperumal Koil, Chennai. The project comprised of 336 dwelling units in four Blocks each consisting of Stilt plus 4 floors in S.No.1B/1B2, 2/2B, 2C of Venkatapuram Village & Panchayat, Chengalpet Taluk, Kanchipuram District. The complainant booked Flat No.4419 in Block No.4 on 03.10.2017 having total carpet area as 438 sq. ft. and super built-up area as 715 sq. ft. The total consideration of the Apartment was fixed at Rs.25,33,724/-. A Sale Deed and a Construction Agreement were entered on 28.05.2018. The complainant had paid the full amount as per payment schedule. The appellant/promoter is liable to refund the Input Tax Credit (ITC) to the complainant to the tune of Rs.2,51,608/- together with interest for delay at the rate of 18% per year. Despite repeated efforts made by the complainant, the appellant failed to complete their obligation of refunding the GST, ITC amount and finally replied on 17.04.2021 wherein the appellant/promoter informed that no refund of GST and ITC would be made.

(ii) An amount of Rs.2,36,000/- was collected by the appellant/promoter towards car park. The appellant/promoter in their advertisement for the project, promised to provide a covered car park and it was also mentioned in the official website. As per the approved plan permit and RERA registration application form, the appellant/promoter had confirmed that they have only three numbers of four-wheeler covered parks and 310 numbers two-wheeler covered parking area. But, the appellant/promoter had sold the car parking area to all the Flat owners and had collected an amount of Rs.2,36,000/- from each of the Flat owner, making a total amount of Rs.7,92,96,000/-.

(iii) The complainant contended that the appellant/promoter had purposely omitted the word "FOUR WHEELER CAR PARKING" in the Construction Agreement and Allotment Letter. They had just mentioned "Covered Parking Charge and One-Reserved Parking Space". Thus, the appellant/promoter had committed unfair trade practice, fraudulent activities, deficiency of service and cheated the complainant, hence, the complainant filed the complaint before the TNRERA praying for the following reliefs:

> (a) to pass an order for refund of GST ITC Rs.2,51,608/- and interest for delay at the rate of 18% per year from the respondent and their assets.
>
> (b) refund of Car Parking amount collected Rs.2,36,000/- and interest for delay at the rate of 18% per year from the respondent and their assets.
>
> (c) to pass an additional prayer to refund an excess sq. ft. amount collected Rs.8,83,630/-.

3. The brief case of the promoter is as follows:

(i) The complaint is not maintainable on the ground that it has been filed under Rule 37(1) of the Tamil Nadu Real Estate (Regulation and Development)

Rules, 2017 and in Form 'M' claiming for refund, is not maintainable. The promoter admitted the basic facts regarding the allotment of Flat No.4419 in Block 4 in the Project "Narmada" on 03.10.2017 at a cost of Rs.25,33,724/-, including additional charges of Rs.16,874/- as per Allotment Letter. However, denied the averments made in the complaint that the total consideration agreed included the car park charges of Rs.2,36,000/-. A sum of Rs.25,33,724/- was the cost inclusive of all charges including legal & documentation charges, stamp duty, registration charges, TNEB connection charges, I & A charges, allotment of covered parking space in stilt floor and one year maintenance charges and applicable GST. The carpet area of the Apartment was 438 sq. ft. and super built-up area was 715 sq. ft.

(ii) Regarding the refund of GST and ITC, the promoter averred that the complainant's husband had sent an e-mail on 17.04.2021, for which, reply was also sent by them. Subsequently, in view of the same, the GST Authorities had inspected the promoter's office and the statements given were also recorded on 23.07.2021.

(iii) It was contended by the promoter that the complainant went to the extent of threatening them vide e-mail dated 28.05.2022 demanding an amount of Rs.50,00,000/- to be paid to them in order to drop any further complaints against the promoter, which clearly shows that the complainant had ulterior motive to extract money from the promoter.

(iv) Moreover, as per Section 171 of the GST Act, benefit can be passed only on two occasions, (i.e.) (1) when there is any reduction in rate of tax on any supply of goods or services or (2) when the benefit of Input Tax Credit be passed on to the recipient by way of commensurate reduction in prices.

(v) Further, it has been contended that the project was an ongoing project which was covered by GST notification No.03/2019, with effect from 01.04.2019. The GST applicable on construction of affordable residential apartments (after deduction of value of land) was 1% without ITC on the total consideration and other than affordable residential apartments, it was 5% without ITC on total consideration. In the case of an ongoing project, as per the notification, the option was given to the promoter to pay GST at the old rates of 12% without ITC or 5% with ITC. The promoter had opted for 12% GST which was the old rate, hence, there was no reduction in the rate of tax and thus, there was no benefit. The cost of the Apartment is inclusive of the price and rate per sq ft. fixed based on the cost of materials, services along with GST components and ITC.

(vi) Furthermore, the GST charged and collected had already been remitted to the GST Authorities for the relevant period and hence, there is no question of refund of GST or ITC.

(vii) The allegation regarding the issue of car park charges of Rs.2,36,000/- said to have been collected from the complainant, is false and incorrect. There was no mention of exclusive car park in the Construction Agreement. However, the promoter had provided covered parking area in the stilt which is not mandatory. Since the promoter had not collected any amount towards car parking as alleged, they are not bound to refund Rs.2,36,000/- and it is false to state that the promoter had collected Rs.2,36,000/- from each of the Apartment owner, hence, the complaint is liable to be dismissed.

4. Before the TNRERA, on the side of the complainant, she was examined as C.W.1 and 7 documents, Exs.A1 to A7 were marked. On the side of the respondent, R.W.1 was examined and no documents were marked.

5. The TNRERA, taking into consideration the case of both parties, framed the following issues:

(i) Whether the complainant is entitled for refund of GST amount paid by her to the respondent?
(ii) Whether the complainant is entitled for refund of car parking amount to the tune of Rs.2,36,000/- paid by her to the respondent?
(iii) Whether the complainant is entitled for refund of the alleged excess sq. ft. amount to the tune of Rs.8,83,630/- by the respondent?
(iv) What are the other reliefs made out?

6. The TNRERA, after considering the oral and documentary evidences, decided the issue nos.(i) & (iii) against the complainant, thereby, rejecting the claim of the complainant regarding the refund of GST amount and also held that the respondent is not entitled for refund of the alleged excess sq. ft. amount to the tune of Rs.8,83,630/- against which no appeal has been preferred by the complainant.

7.The TNRERA, though decided issue Nos.(i) & (iii) against the complainant, decided issue No.(ii) in favour of the complainant, thereby, ordering refund of car parking amount to the tune of Rs.2,36,000/- to be paid by the appellant/promoter with highest marginal cost of lending rate of interest of SBI plus 2% per annum. Aggrieved by the said portion of the order passed by the TNRERA, the appellant/promoter has filed the present appeal.

8. Hence, the point that arises for consideration in this appeal is whether the finding of the TNRERA regarding respondent's/complainant's entitlement for refund of car parking amount of Rs.2,36,000/- with interest is in order?

9. Heard Mrs.R.Kamala Rani, learned counsel appearing for the appellant.

10. According to the learned counsel appearing for the appellant, the TNRERA failed to appreciate that the appellant has not sold any exclusive car parking space. The TNRERA failed to consider that the carpet area of the Flat was less than 600 sq. ft., hence, the appellant had not collected any specific amount towards the sale of an exclusive car park, which is not permissible. The TNRERA failed to note that the appellant had not executed any conveyance or transfer in respect of parking spaces. The TNRERA erred in the interpretation of term "common area" defined under Section 2(n) of the Real Estate (Regulation and Development) Act, 2016. The exclusion or inclusion of stilt parking cannot automatically lead to a conclusion prohibiting collection of charges. Even assuming stilt areas form part of common areas, the promoter is entitled to regulate their

use and recover proportionate costs, as per the judgment reported in ***(2010) 9 SCC 536 [Nahalchand Laloochand Pvt. Ltd. Vs. Panchali Co-operative Housing Society Ltd.]***.

11. The learned counsel appearing for the appellant further contended that there was no specific recital in the Construction Agreement or in the Sale Deed that an amount of Rs.2,36,000/- has been collected towards the parking charges. Further, it was contended that the cost of the Apartment is inclusive of all the amenities provided by the appellant, including covered parking space in the stilt. As per the Development Control Rules, the appellant is bound to provide only two-wheeler parking space for each dwelling unit, however, the appellant has provided covered parking area in the stilt, which is not mandatory. The claim of the respondent/complainant is not sustainable and without considering the same, the TNRERA directing the appellant/promoter to refund the amount of Rs.2,36,000/- with interest is liable to be set aside.

12. The averments made in the complaint was that the appellant had collected Rs.2,36,000/- for car parking and as per the approved plan permit, only 3 four-wheeler and 310 two-wheeler covered parking have to be provided. But, the appellant sold the car parking area to all the Flat owners and had collected a sum of Rs.2,36,000/- from each Flat owner, thereby, the appellant had committed unfair trade practice, hence, the complainant claimed refund of Rs.2,36,000/-

from the appellant. But the said fact of having received Rs.2,36,000/- towards the sale of parking area was denied by the appellant/promoter.

13. While considering whether an amount of Rs.2,36,000/- was received towards car parking by the appellant, it is necessary to consider the Allotment Letter said to be issued by the appellant dated 03.10.2017.

The payment schedule as per Allotment Letter is as follows:

Compact Homes - Narmada Mrs.S.Meenakshi B4-4419	
Area - sq. ft	715
Rate per sq. ft. (On Sale Area)	3190
Carpet Area - sq. ft.	438
Project Cost	22,80,850/-
Covered Parking Charge (Including GST)	2,36,000/-
Total cost	25,16,850/-

14. Further, a perusal of Clause 2(a) of the Construction Agreement would show that "the construction cost for the apartment based on the carpet area is Rs.22,85,850/- (Rupees Twenty Two Lakhs Eighty Five Thousand Eight Hundred and Fifty only). The construction cost includes the booking amount paid by the allottee to the promoter towards the Apartment, legal & documentation charges, stamp duty, registration charges, TNEB connection charges, I & A charges and one year maintenance charges" and it did not include the charges for covered car parking.

15. Further, a perusal of the Allotment Letter dated 03.10.2017, as referred above, would show that an amount of Rs.2,36,000/- had been collected towards covered parking, including the GST. If both the amounts are taken together, the total cost of the project would come to Rs.25,16,850/-. Therefore, it is clear that the total cost of the complainant's Apartment includes the sum of Rs.2,36,000/- paid towards parking charges. Hence, the contention of the learned counsel appearing for the appellant cannot be accepted.

16. The learned counsel appearing for the appellant contended that the TNRERA failed to consider the ratio laid down in the judgment reported in ***(2010) 9 SCC 536 [Nahalchand Laloochand Pvt. Ltd. V. Panchali Co-operative Housing Society Ltd.]*** The said contention raised by the learned counsel appearing for the appellant/promoter cannot be accepted for the reason that the facts of the case in the aforesaid judgment is different and moreover, on a perusal of Schedule 'C' in the Construction Agreement, it is apparent that the respondent/complainant was provided with one reserved parking space in the stilt in the residential Apartment complex. As per the aforesaid judgment, stilt parking space could not be sold as it is not a saleable area and the appellant does not have any right to sell the car parking in the stilt area. Whileso, when the appellant entered into an Agreement with the respondent, the appellant had mentioned that that one reserved parking space in the stilt, is not permissible and the TNRERA had rightly come to the conclusion that in view of the above judgment, the appellant is having no right to sell the car park in the stilt area. In such circumstances, as per the Allotment

Letter dated 03.10.2017, the appellant having received an amount of Rs.2,36,000/- towards covered parking and allotting the parking space in the stilt area is not in accordance with law and the TNRERA had rightly directed the appellant to refund the said amount with interest.

17. Further, the learned counsel appearing for the appellant relying on the order made by this Tribunal made in ***Appeal No.32 of 2023 [A.Ashok Kumar rep by his Power of Attorney T.Arumugam Vs. M/s. Kgeyes Residency (P) Ltd rep by its Managing Director and another]*** dated 13.09.2023 contended that the appellant is entitled to collect the car parking charges proportionate to the carpet area of the Flat and that the said proportion was not considered by the TNRERA.

18. The said contention raised by the learned counsel appearing for the appellant cannot be accepted for the following reasons: firstly, the facts are not similar; secondly, the claim of the appellant with regard to the car parking in Appeal No.32 of 2023 was barred by limitation and thirdly, according to the appellant/promoter in the present case, specifically they had stated in their counter that they had not collected Rs.2,36,000/- towards car park. In such circumstances, the order made in Appeal No.32 of 2023 relied upon by the learned counsel appearing for the appellant, is not applicable to the facts of the present case.

19. As discussed earlier, the TNRERA rightly came to the conclusion that the respondent/complainant is entitled to get refund of the amount of Rs.2,36,000/-

together with interest and directed the appellant/promoter to refund the said amount of Rs.2,36,000/- together with interest at the rate of highest marginal cost of lending rate of interest of State Bank of India (SBI) + 2% per annum.

20. In view of the above discussions, we do not find any merit in the appeal. Accordingly, the appeal is dismissed. Consequently, the connected Miscellaneous Application is closed.

21. Since we have dismissed the appeal, the respondent/complainant is entitled to withdraw the pre-deposit amount of Rs.3,87,800/- deposited by the appellant/promoter under Section 43(5) of the Act, together with accrued interest, if any.

Sd/- xxxx
JUSTICE M.DURAISWAMY
CHAIRPERSON
16.09.2026

Sd/- xxxx
K.BABU
JUDICIAL MEMBER
16.09.2026

Copy to

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