BEFORE THE TAMIL NADU REAL ESTATE APPELLATE TRIBUNAL (TNREAT)

(Tamil Nadu, Puducherry, Andaman & Nicobar Islands)

(Under the Real Estate Regulation And Development Act 2016)

DATED 17-04-2023

Coram : Hon'ble Mr.Justice M.Duraiswamy, Chairperson
Ms.Leena Nair, Administrative Member
Mr.R.Padmanabhan, Judicial Member

Review Petition Nos.2 and 3 of 2023 in

M.A.Nos.185 and 186 of 2021 in

Appeal Nos.134 and of 135 of 2021

M/s. Pacifica (Chennai Project) Infrastructure Co. Pvt. Ltd.,
Rep. by its Deputy General Manager, Marketing,
S. Vijayaraghavan (Authorized Signatory)

... Review Petitioner/Applicant/Appellant in both the Review Petitions

- Vs -

1.P.N.Vidya

2.A.P.Manikandan ... Respondents/Respondents/Respondents in Review Petition No.2 of 2023

M.G.Sarangan ... Respondent/Respondent/Respondent in Review Petition No.3 of 2023

These Review Petitions have been preferred by the Review Petitioner/ Applicant/Appellant to review the order passed by this Tribunal on 06.12.2021 in M.A.Nos.185 and 186 of 2021 in Appeal Nos.134 and 135 of 2021.

For Review Petitioner : Mr.M.S.Swathish Kumar
(in both the Review Petitions)

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COMMON ORDER

The appellant has filed the above review petitions to review the orders passed in M.A.Nos.185 and 186 of 2021 in A.Nos.134 and 135 of 2021 on the file of this Tribunal.

2. By order dated 06.12.2021, this Tribunal rejected the case of the appellant to waive the payment of pre deposit as contemplated under Section 43(5) of the Act. It is not in dispute that TNRERA had passed the orders impugned in the appeals directing the appellant to pay the compensation and to refund the amounts to the respondents. When an order was passed for refund and for payment of the compensation as contemplated under Section 43(5) of the Act, the entire amount should be deposited as pre deposit under Section 43(5) before filing the appeal before the TNREAT.

3. The Hon'ble Supreme Court in the judgment reported in ***2021 SCC OnLine SC 1044*** (M/s.Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP and others) has categorically held that the appellant, who suffers an order for payment of compensation or for refund, must deposit 100% of the amount awarded against them.

4. In the case on hand, when the TNRERA has passed the order directing the appellant to refund and for compensation, they should have deposited the entire amount awarded by the TNRERA. In view of the ratio laid down by the Hon'ble Supreme Court, this Tribunal has no jurisdiction to waive the payment of pre deposit as contemplated under Section 43(5). By order dated 06.12.2021, this Tribunal has rightly rejected the case of the appellant and directed them to make the pre deposit.

5. A Review Petition can be entertained only if there is an error apparent on the face of the record. The Review Petition cannot be construed as an appeal in disguise. That apart, the appellant cannot reargue the appeal in a Review Petition.

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6. In such view of the matter, we do not find any error apparent on the face of the record, warranting interference in the Review Petitions. The Review Petitions are devoid of merits and the same are liable to be dismissed. Accordingly, the Review Petitions are dismissed.

Sd/- XXXX
CHAIRPERSON

Sd/- XXXX
ADMINISTRATIVE MEMBER

Sd/- XXXX
JUDICIAL MEMBER

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