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 21.08.2023

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

Appeal (SR) No.535 of 2023

M/s. Eco Bay Developers and Builders Pvt. Ltd.,
Represented by its Director,
Jayaraj H ... Appellant

- Vs -

K.Saravana Eswaran ... Respondent

Prayer: Appeal has been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 to modify the order made in E.P.No.28/2021 in C.C.P.No.64/2019 dated 03.01.2022 on the file of the learned Adjudicating Officer, TNRERA.

Appellant : Mr.Jayaraj H and
Mr. Christopher Wilson Fernandes
Party-in-person

ORDER

Heard Mr.Jayaraj H and Mr.Christopher Wilson Fernandes, Directors of the appellant-Company, appearing in person.

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2. The Registry raised a query regarding the maintainability of the appeal for the reason that the appellant failed to deposit the pre-deposit amount as contemplated under Section 43(5) of the Act.

3. The appellant is challenging the order passed by the learned Adjudicating Officer, TNRERA in E.P.No.28/2021 in C.C.P.No.64/2019 wherein the learned Adjudicating Officer directed issuance of recovery warrant under Section 40(1) of the RERA Act.

4. In the judgment reported in **2021 SCC OnLine SC 1044 (M/s. Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP and others),** the Hon'ble Supreme Court has categorically held that the provisions of Section 43(5) is mandatory.

5. In view of the ratio laid down by the Hon'ble Supreme Court in the said judgment and also as per the provisions of Section 43(5) of the Act, the appeal filed by the appellant, without making the pre-deposit, cannot be entertained and the same is not maintainable.

6. Accordingly, the appeal is dismissed as not maintainable.

Sd/- xxxx

CHAIRPERSON

Sd/- xxxx

JUDICIAL MEMBER

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