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: 14.10.2026

Delivered on: 28.10.2026

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

Appeal No.84 of 2026
and
M.A.No.216 of 2026

M/s.G.K.S Properties Private Limited
rep. by its Director, Gopalakrishna Shetty ... Appellant

Vs.

1. Tulive Dakshin Owners Association
   rep. by its President, Gururaj.G

2. M/s.S.S.D.Oil Mills Company Ltd.,
   rep. by its Power Agent
   Gopalakrishna Shetty &
   Suresh Vaidyanathan ... Respondents

Appeal has been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 to set aside the order of the Tamil Nadu Real Estate Regulatory Authority dated 22.06.2026 in C.No.43 of 2024 at Annexure-'1' filed hereto and allow the appeal and discharge the appellant Company of any further liability.

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For Appellant : Mr.N.P.Vijay Kumar
for Mr.Ranghasayee N.R.G.

For Respondents : Mr.B.Deepak Narayanan (R1)
: R2 - Given up

ORDER

Challenging the order dated 22.06.2026 made in C.No.43 of 2024 on the file of the TNRERA, the promoter has filed the above appeal. The 1st respondent was the complainant and the land owner was the 2nd respondent before the TNRERA.

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

(i) According to the complainant, the appellant is the promoter and the 2nd respondent was the land owner. At the request of the land owner, the promoter promoted the project known as "Dakshin" consisting of 5 Blocks of stilt, 4 Floors residential building with 320 dwelling units along with a separate Block for Club House. The complainant Association was registered on 08.10.2020 with an aim to secure safe and comfortable environment to the members of the Association.

(ii) The promoter had delayed the project and delivered the possession of the Flats to the allottees by 03.10.2019. The complainant Association was in utter shock to know that the quality of the project was not good and the building was built up with sub-standard quality materials and there was water seepage in many places during

rainy season. The complainant Association found the following specific issues/defects in the building:

a. Water stagnation and insufficient rainwater harvesting system
b. Structural issues
c. Plastering issues
d. Let-out windows
e. Water supply disturbance due to fluctuation in power supply
f. Safety measures in material movement in pump house
g. Cracks in car parking area
h. No separate compound wall in D and A block wall - South side
i. Owner unit DG power back up
j. Club house basement dining facility Vent/Exhaust
k. Excess parking allotment more than approved document
l. Quality of water
m. Swimming pool water seepage
n. Club House open area seepage
o. OTS permanent grill
p. Parent documents not handed over
q. As-built and original approved document to be provided.

(iii) In the Completion Certificate dated 14.08.2019, it was clearly mentioned that the promoter/Power Agent and the structural Engineers, who have signed the plan, are solely responsible to ensure safety after construction and also for its continued structural stability of the buildings. The complainant Association sent several e-mails dated 15.10.2020, 05.11.2020, 03.03.2021 and 13.03.2021 regarding the issue of pneumatic pumping system. The operational and maintenance cost of pneumatic pump burdened the complainant Association and they had to pay EB Bill of more than Rs.1,10,000/- per month. The annual maintenance charge was also more which put huge financial burden on the complainant Association.

(iv) Soon after the formation of the Association, the complainant Association had a meeting on 17.10.2020 regarding the problems faced in the project. The promoter had promised to solve all the problems like cracks in the ceiling in several places and plastering defects due to substandard materials and poor workmanship, which were pointed out as early as in 2020 followed by various attempts through e-mail, personal visits, etc to settle the matter with the promoter. This is evident from the e-mail dated 15.10.2020 that show the steps taken by the complainant asking the promoter to comply with the defects. The allegation in the counter has no merits and the same has been made with a conscious effort to harass the complainant.

(v) As per Section 14(3) of the Real Estate (Regulation and Development) Act, 2016, it is the duty of the promoter to rectify all the structural defects for a period of 5 years from the date of handing over possession. The report dated 22.02.2024 obtained from the Structural Engineer by the complainant Association would show that poor and inferior quality materials and improper workmanship have been deployed in the project. Inspite of the efforts made by the complainant Association to rectify the defects by the promoter, the promoter failed to rectify the defects, hence, the complaint has been filed by the complainant.

3. The averments of the promoter in the counter before the TNRERA is as follows:

(i) The promoter represented by their Authorized Signatory was duly registered and constructed the project namely, "Dakshin". The project was registered on 26.10.2017. The building had been constructed in consonance with the RERA Act, 2016 and necessary approvals/permissions were obtained as mandated by law. Neither the current residents nor the statutory authorities have made any complaints against the promoter. The defects raised by the complainant are due to wear and tear and there is no actual complaint regarding the structural defects.

(ii) According to the promoter, the construction of the project commenced in the year 2017 and the Completion Certificate was obtained on 14.08.2019 and they began to hand over possession from 03.10.2019 onwards. The Apartments were handed over to the allottees as soon as the entire Sale Consideration was made by the allottees as per the payment schedule following the willingness/readiness of the allottees to take possession of their Apartments.

(iii) The promoter had duly followed all required regulations, permits, statutory approvals and used quality materials for construction of Apartment building Units under the project "Dakshin" and handed over the Apartments to the allottees. It is not correct to state that the promoter handed over the building in a substandard manner

and also with defects. If any structural defects persisted on the date of handing over, it was the duty of the Association to have brought those defects to the knowledge of the promoter at the earliest point of time rather than filing the complaint.

(iv) The complainant should have shown some bonafide in rectifying the defects since the defects are as a result of normal wear and tear and there is no fault on the part of the promoter.

(v) Further, according to the promoter, the building was handed over in good condition to the owners and it is the responsibility of the complainant Association to perform regular maintenance of the building. In the case reported in **(2023) SCC Online NCDRC 997 [Ashish Gupa Vs. Macrotech Developers Ltd.],** it has been stated that the complainant or even the housing society is not entitled to the relief against the promoter when the defect was not pointed out at the time of possession or within a reasonable time thereafter. According to the promoter, the balance of convenience is in their favour and the complainant is not entitled to any relief, hence, the complaint is liable to be dismissed.

4. The reply statement of the 2nd respondent/land owner before the TNRERA is as follows:

The 2nd respondent/land owner M/s.S.S.D. Oil Mills Company Ltd., represented by its Director is a Company incorporated on 29.03.1983. The 2nd respondent/land

owner was engaged in the business of buying, selling, manufacturing, preparing, extracting etc. According to the 2nd respondent/land owner, they are the owners of the land measuring an extent of 4.80 acres situated at No.132, A.N.Elumalai Salai, Ayyappanthangal Village, Sriperumbudur Taluk, Kanchipuram District. The promoter approached the land owner for constructing and developing the above mentioned land. The land owner is not a party to the unregistered Construction Agreement executed by the promoter in favour of the allottees. The 2nd respondent/land owner is not a necessary party to the present proceedings and no relief has been claimed as against the 2nd respondent/land owner and is liable to be struck off from the array of parties.

5. The 2nd respondent/land owner not appeared before this Tribunal. The learned counsel appearing for the appellant made an endorsement giving up the 2nd respondent/land owner in the above appeal.

6. Heard Mr.N.P.Vijay Kumar, learned counsel appearing for the appellant/promoter and Mr.B.Deepak Narayanan, learned counsel appearing for the 1st respondent/complainant Association.

7. The main contention of the learned counsel appearing for the appellant/promoter is that the order of the TNRERA directing the appellant/promoter to rectify the defects is not sustainable. The alleged defects pointed out by the independent experts appointed by the Authority did not reflect any structural defects.

The alleged defects neither constitute structural defects nor pertain to quality of materials used or the workmanship provided by the appellant. Inspite of the appellant demonstrating that the defects pointed out by the independent experts had arisen on account of inadequate maintenance, normal wear and tear and negligence on the part of the complainant Association, without considering the same, the TNRERA directing the appellant/promoter to carry out the defects is not sustainable. Further, it has been contended that the findings in the report are mere suggestions for improvement /renovation of existing facilities to mitigate future risks and calamities. According to the learned counsel appearing for the appellant/promoter, the order passed by the TNRERA is liable to be set aside.

8. The said contention was repudiated by the learned counsel appearing for the 1st respondent/Association stating that there was delay in completing the project by the appellant/promoter and also delay in handing over possession. The appellant/promoter failed to complete the construction as per the Construction Agreement. Further, it has been contended that the building was built with substandard quality materials and several defects were found in the project. Inspite of the efforts taken by the complainant Association, the appellant/promoter failed to rectify the defects as provided under Section 14(3) of the Act, hence, the complainant Association filed the complaint before the TNRERA. The learned counsel appearing for the 1st respondent/Association contended that the TNRERA, after considering all the

circumstances, appointed individual experts and on the basis of the experts' report, the TNRERA passed an order directing the appellant/promoter to rectify the defects. The learned counsel further submitted that the claim of the appellant is not sustainable and the appeal is liable to be dismissed.

9. A perusal of the reliefs claimed in the complaint would show that the complainant has claimed as many as 25 reliefs. According to the learned counsel appearing for the appellant, the defects pointed out by the complainant Association are not structural defects and the appellant/promoter had handed over the possession of the subject Unit in structurally sound condition and the defects pointed out by the complainant Association are due to normal wear and tear and due to improper maintenance by the allottees and the Association. Considering the submissions made before the TNRERA, the TNRERA appointed a team of independent experts from the panel of Engineers working under the Authority to inspect the project in the light of the present complaint. The independent experts consisting of panel of Engineers submitted the following report after inspecting the project site "Dakshin" on 08.04.2026.

a. Defects/Issues already rectified or partially rectified:

1. Water stagnation in common areas: The inspection report records that due to improper gradient, water stagnation was noticed in common areas. It is noted that "some places it has been rectified".

2. Surface rainwater drainage: The report records that surface rainwater drainage pits were subsequently developed/provided by the Association for draining rainwater.
3. Cracks in car parking areas: Cracks in parking flooring were observed during inspection. The report records that the same has already been rectified/relaid.
4. Swimming pool terrace roofing: The swimming pool terrace/open area was earlier exposed. The report notes that the terrace/open portion is now roofed with sheets.
5. OTS protection: Wire mesh/nets have been provided in certain OTS/open areas. However, permanent protective measures are still incomplete. Replastering is done in certain locations. Replastering works has already been undertaken in some affected portions where plaster peeling/dampness existed.

b. Defects/Issues remaining unrectified:

1. Water stagnation & Drainage Deficiencies: Corridor Water Ingress-Corridor side openings are provided without windows/sunshades. Rainwater ingress and stagnation continue, particularly in upper floors including the 4th floor. Certain Blocks remain affected.
2. Improper Gradient in Common Areas: Improper floor gradients continue to cause water accumulation in several portions.
3. Vehicle Pathway Settlement: Settlement of paver Blocks in vehicle pathways may lead to pooling of rain water during rainy seasons.
4. Electrical Safety Risk in Drainage Trenches: Roof rainwater pipes are connected through trenches where electrical/power cables are also laid. The report identifies this as a safety concern during rainy seasons.

10. According to the learned counsel appearing for the appellant, the independent experts did not find any structural defect in the subject Unit and the above said report is merely suggestions for improvement and the defects pointed out in the report is due to normal wear and tear and due to improper maintenance by the complainant Association, hence, the order passed by the TNRERA is liable to be set aside.

11. The said contention was repudiated by the learned counsel appearing for the 1st respondent/Association and the learned counsel contended that the defects pointed out by the complainant Association should be rectified by the appellant/promoter under Section 14(3) of the Act and it is the duty of the appellant as a promoter to rectify the defects.

12. As per Section 14(3) of the Real Estate (Regulation and Development) Act, 2016, in the case of 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 the defects without any charge.

13. It would be appropriate to extract Section 14(3) of the Real Estate (Regulation and Development) Act, 2016, which reads as follows:

> "14. (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.

14. In the case on hand, the subject project had been completed and the Completion Certificate was obtained on 14.08.2019 and handing over the possession of the completed Apartment began from 03.10.2019 onwards. It is the case of the complainant Association that there were many defects which were found subsequent to taking possession of the subject Unit in the project "Dakshin" promoted by the appellant and the complaint has been filed in the year 2024 (i.e.) within 5 years seeking direction to the promoter to rectify the defects. As per the provisions of Section 14(3), not only the structural defects, but also any other defects brought to the notice of the promoter by the allottees within 5 years are necessarily to be rectified by the promoter. The TNRERA considering all the circumstances, rightly directed the appellant/promoter to rectify the defects. We do not find any reason to interfere with the finding of the TNRERA.

15. In view of the above discussions, the appeal is liable to be dismissed. Accordingly, the same is dismissed. Consequently, the connected Miscellaneous Application is closed.

Sd/- xxxx
JUSTICE M.DURAISWAMY
CHAIRPERSON
28.10.2026

Sd/- xxxx
K.BABU
JUDICIAL MEMBER
28.10.2026

Copy to

1. The TNRERA

2. Tulive Dakshin Owners Association
   rep. by its President, Gururaj.G
   Old No.132, New No.3/333, A.N.Elumalai Salai,
   Ayyappanthangal, Chennai - 600 056.