BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Review Applications:	No.37 of 2022 in Appeal No.343 of 2022 No.38 of 2022 in Appeal No.345 of 2022 No.39 of 2022 in Appeal No.346 of 2022 No.41 of 2022 in Appeal No.351 of 2022 No.44 of 2022 in Appeal No.356 of 2022 Emaar India Ltd.vs. Chirau Probuild Pvt. Ltd.
	No.40 of 2022 in Appeal No.347 of 2022 Emaar India Ltd.vs.Zack Estate Pvt. Ltd.
	No.42 of 2022 in Appeal No.352 of 2022 No.43 of 2022 in Appeal No.354 of 2022 Emaar India Ltd.vs.Blossom Conbuild Pvt. Ltd.

Argued by: Shri Kunal Dawar, Shri Vipul Sharma and Shri Mayank Aggarwal, Advocates, learned counsel for the appellant with Shri Sayantan Mondal, authorised representative of the company.

Shri Akshay Bhan, Ld. Senior Advocate, with Sh. Amandeep Singh Talwar and Sh. Abhijeet Singh, Advocates, Ld. counsel for the respondent/applicant.

O R D E R

By virtue of the present common order being passed in the aforesaid appeals, the applications for review of the order dated 25.05.2022, preferred in each of the aforesaid appeals by the respondents-applicants, shall be disposed of.

2. The appellant had preferred 29 appeals to impugn the orders passed by the Haryana Real Estate Regulatory Authority, Gurugram (hereinafter called 'the Authority'). Along with the said appeals, the appellant had also preferred stay application in each of the appeal for staying the operation of the impugned order. Out of 29 appeals, in two appeals i.e. appeal no.344 of 2022 titled as 'Emaar vs. Zack Estate Pvt. Ltd.' and appeal no.353 of 2022 titled as

'Emaar vs. Blossom Conbuild Pvt. Ltd.', wherein the appellant had offered the possession of the property in dispute to the respondent on 11.11.2019 i.e. after the execution of Memorandum of Understanding (MoU) dated 21.08.2017, the application preferred by the appellant for staying the operation of the impugned order was dismissed by this Tribunal vide order dated 25.05.2022 with the following relevant observations:-

> *" 11. The appellant in this case is vehemently alleging that the respondent is not entitled for the possession of the property in question as the rights of the parties were settled with the execution of the MoU dated 21.08.2017 and the respondent company was required to fulfill the conditions provided in the said MoU, which they had never fulfilled. But, we do not find any substance in the plea raised by learned counsel for the appellant. Learned counsel for the respondent has drawn our attention to e-mail dated 11.11.2019. Vide this e-mail, the appellant had offered the possession of the property in dispute to the respondent and also has raised the demand of certain documents. This e-mail of offer of possession has been issued by the appellant after the execution of the MoU dated 21.08.2017. Thus, prima facie after offering the possession of the property in dispute, it does not lie in the mouth of the appellant to allege that the respondent is not entitled for the possession of the property in dispute. The conduct of the appellant by offering the possession disentitles it to resist the delivery of possession of the property in dispute to the respondent. Consequently, in our opinion, the appellant has no prima facie case.*
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> *12. The appellant is also not going to suffer any irreparable loss as the appellant has itself offered the possession of the property in dispute to the respondent.*

The balance of convenience also does not lie in favour of the appellant in view of its conduct.

13. Thus, keeping in view our aforesaid discussion, the present application has no merits and the same is hereby dismissed."

3. However, in the remaining 27 appeals, as the offer of possession of the disputed property was allegedly prior to the execution of the MoU dated 21.08.2017, and the said MoU executed between the appellant and MGF Developments Private Limited and its subsidiaries/entities, being an important document to adjudicate the matter properly, was not dealt with by the learned Authority in the impugned order, so, to balance the equities between the parties, this Tribunal vide order dated 25.05.2022 ordered the parties to maintain status quo with respect to the possession of the property in dispute till the decision of the appeals on merits.

4. Learned counsel for the respondents/applicants has submitted that as the factual matrix in the present appeals, in which the review applications have been preferred, is exactly the same as in appeal nos.344 of 2022 and 353 of 2022, so, the status quo order dated 25.05.2022 in the aforesaid eight appeals has been passed due to inadvertence as the factum of offer of possession was not noticed by this Tribunal at the time of deciding the stay applications. Further, it has been submitted that there is an error apparent on the face of the record and this Tribunal has power to review its own order under Section 53(4)(e) of the Act.

5. On the other hand, learned counsel for the appellant has submitted that the appellant company has received summons dated 12.05.2022 from Directorate of Enforcement, Ministry of

Finance, Government of India, under the provisions of Prevention of Money Laundering Act, 2002, seeking details of all transactions which also includes allotment of the plots now held by the respondents. Thus, in view of the said investigation, the disputed plot could be subject of attachment by the Central Bureau of Investigation ("CBI") and Directorate of Enforcement ("ED"), and the appellant apprehends that the respondents may alienate or create third party right to avoid attachment by CBI/ED.

6. We have heard learned counsel for the parties and also have perused the record meticulously.

7. Undisputedly, in appeal no.351/2022, 352/2022, 354/2022 and 356/2022, the offer of possession of the disputed plot to the concerned respondent is dated 16.11.2017, whereas in appeal no.343/2022, 345/2022, 346/2022 and 347/2022, the date of offer of possession is 09.03.2016. Since, in appeal no.351/2022, 352/2022, 354/2022 and 356/2022, the date of offer of possession i.e. 16.11.2017, is after execution of the MoU dated 21.08.2017, so, these aforesaid four appeals are squarely covered by the order dated 25.05.2022 passed in appeal no.344/2022 and 353/2022. Thus, the order of status quo with respect to the possession of plot in dispute till the decision of the present appeal, passed in the aforesaid four appeals bearing no.351/2022, 352/2022, 354/2022 and 356/2022, is hereby reviewed and it is ordered that keeping in view the fact that this date of offer of possession was not earlier brought to the notice of this Tribunal, the stay applications preferred by the appellant in these four appeals containing no merit, are hereby dismissed.

8. However, in appeal no.343/2022, 345/2022 346/2022 and 347/2022, where date of offer of possession is 09.03.2016, the review application can not be allowed as the same is prior to the execution of MoU dated 21.08.2017. As has been referred above, in the order dated 25.05.2022, in various appeals where the direction to the parties to maintain status quo with respect to the possession in dispute till the decision of the present appeal was given, it was observed by this Tribunal that the MoU dated 21.08.2017, which is a material document, has not been dealt with by the learned Authority in the impugned order, so, the stay application preferred by the appellant was disposed of with the direction to the parties to maintain status quo regarding possession.

9. Faced with the situation, learned counsel for the respondent/applicant has submitted that there is no reference of this offer of possession dated 09.03.2016 in the MoU dated 21.08.2017, so these four appeals no.343/2022, 345/2022 346/2022 and 347/2022 are also covered by the order dated 25.05.2022 passed in appeal nos.344/2022 and 353/2022.

10. Regarding this submission of learned counsel for the respondents/applicants, it is suffice to say that at this stage, when this Tribunal is dealing with review applications preferred by the respondents/applicants for review of the order, it would not be appropriate to comment on the legality of MoU dated 21.08.2017 and its implications.

11. The submission of learned counsel for the appellant that in view of the receipt of the summons dated 12.05.2022 by the appellant from the Directorate of Enforcement, Ministry of Finance, Government of

India, the status quo order regarding possession passed by this Tribunal, if altered, the same would hinder the attachment of these plots by CBI/ED; cannot be attached any credence because the dismissal of the stay applications preferred by the appellant, would not have any effect on the proceedings to be initiated by CBI/ED in accordance with the provisions of law, nor it would create any hindrance in any manner.

12. Learned counsel for the appellant has also submitted that if the order of status quo is vacated, then the concerned respondent may alienate the disputed plot or create third party right and a specific direction should be given to the respondents not to do so. This submission of the learned counsel for the respondent is not only devoid of merits, but, is also misconceived, firstly, on account of the fact that no such prayer can be entertained while deciding the review applications, that, too, preferred by the respondents/applicants and secondly, the alienation/creation of third party right, if there would be any, it would automatically be subject to the decision of the present appeals on merits.

13. Thus, as a consequence to the aforesaid discussion, in appeal no.351/2022, 352/2022, 354/2022 and 356/2022, the applications preferred by the respondents/applicants for review of the order dated 25.05.2022, are hereby allowed and the order directing the parties to maintain status quo regarding possession till the decision of these appeals would now stand altered and the stay applications preferred by the appellant in these four appeals would stand dismissed. However, in the remaining four appeals no.343/2022, 345/2022 346/2022 and 347/2022, the applications for review preferred by the respondents/applicants stand dismissed.

14. This order be attached with Appeal No.343 of 2022 and its certified copy be attached with the remaining seven appeals.

15. Now, for arguments on merits, the cases be listed for 31.10.2022, the date already fixed.

Announced:
October 18, 2022
CL

Inderjeet Mehta
Member (Judicial)
Haryana Real Estate Appellate Tribunal,
Chandigarh

Anil Kumar Gupta
Member (Technical)