Emaar India Limited
vs.
P.S. Technosystems Pvt. Ltd.

Appeal No.368 of 2022

Argued by: Shri Randeep Singh Rai, Ld. Senior Advocate with Shri Kunal Dawar, Sh. Sanjeev Sachdeva, Ms. Rubena Virmani, Ms. Tanika Goyal, Sh. Siddharth Gupta, Advocates, Ld. counsel for the appellant.

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

O R D E R

This order of ours shall dispose of an application filed by the appellant for staying the operation of the impugned order dated 22.02.2022 passed by Haryana Real Estate Regulatory Authority, Gurugram (hereinafter called 'the Authority').

2. As per averments made in the application, the impugned order suffers from patent illegality, is arbitrary and illegal and has been passed in total violation of the procedure prescribed. In case, the operation of the impugned order is not stayed, the appellant will suffer an irreparable loss. The appellant has a prima facie case in its favour, balance of convenience also lies in favour of the appellant.

3. Hence, the application.

4. We have heard learned counsel for the parties on the matter of ad-interim injunction.

5. Learned counsel for the appellant has contended that the impugned order suffers from patent illegality and is arbitrary which has been passed in total violation of the procedure prescribed under the law. He contended that the respondent is an entity of MGF Developments Private Limited. He contended that the respondent is not a genuine customer/allottee. The allocation of the shop in question to the respondent was inter-party transaction as at

the time of said allocation, the MGF Developments Limited was the partner of the joint venture of the appellant. He further contended that the entire dispute between the parties was settled in terms of the Memorandum of Understanding (for short 'MoU') dated 21.08.2017. The respondent has not fulfilled the conditions mentioned therein. The learned Authority has not taken into consideration the MoU dated 21.08.2017 at all, which has material bearings on the merits of the case. So, the basic document has been ignored by the learned Authority. He further contended that due to non-compliance of the provisions of MoU, the respondent is not entitled for delivery of possession of the shop and the impugned order is liable to be stayed.

6. On the other hand, learned counsel for the respondent has contended that the appellant and subsidiary companies are separate, having separate legal entity. In support of his contentions, he relied upon case ***VODAFONE INTERNATIONAL HOLDINGS BV Versus UNION OF INDIA AND ANOTHER, (2012) 6 Supreme Court Cases 613***.

7. He contended that even if it is presumed that the respondent is subsidiary of MGF Developments Limited, still the respondent is a separate legal entity and is entitled for holding the separate assets. Thus, he contended that the allotment in favour of the respondent cannot be considered to be inter-party transaction. He further contended that the appellant cannot dispute the allotment of the shop in its favour as there exist a valid buyer's agreement. The instalments have been paid by the respondent towards the sale consideration.

8. He further contended that the MoU dated 21.08.2017 was duly considered by the learned Authority. Moreover, the

respondent is not party to the said MoU and the same is not binding on its rights. He further contended that even as per Clause (B)(viii) and (B)(ix) of the MoU, the shop allotted to the respondent was not covered under the MoU. Thus, he contended that the appellant has no prima facie case in its favour. The respondent is entitled to get execute the impugned order and for physical delivery of the possession of the shop.

9. We have duly considered the aforesaid contentions.

10. It is settled principle of law that in order to secure the relief of ad-interim injunction, the appellant is required to show prima facie case in its favour; that it will suffer an irreparable loss in case the injunction is not granted and the balance of convenience also lies in its favour.

11. As per the case of the appellant, the impugned order has been passed without considering the facts and circumstances under which the allotment of the shop was made to the predecessor-in-interest of the respondent and then endorsed to the respondent. It has been further pleaded that this has been done during the period when MGF Developments Private Limited Group was in control of the management of state of affairs of the appellant. The learned Authority has not tried to lift the corporate veil. It is further the case of the appellant that the previous buyer was none else but a Group entity of MGF Developers. There has been various communications by MGF Developers with respect to various units and plots/shops that is forming subject matter of the MoU. It is further the case of the appellant that necessary steps were taken by the appellant at the instructions of MGF Developers. It is further alleged by the appellant that the current directors of the respondent company also hold the position of Director in several other MGF Developments controlled

entities. Thus, it has been alleged by the appellant that the predecessor-in-interest of the respondent and the respondent was not a genuine buyer/allottee.

12. Prima facie, it cannot be denied that there existed Builder Buyer's Agreement between the parties and even some instalments have been paid by the respondent company. But, the payment of instalments is only prior to the MoU dated 21.08.2017. The MoU dated 21.08.2017 has been executed by and between the appellant, its associates and entities on one hand, MGF Developments Limited, its associates and entities on the other hand. There is no denial to the fact that the name of the respondent company is not specifically mentioned in the MoU, but, this MoU covers the property in question which is alleged to be allotted to the predecessor-in-interest of the respondent company, reference can be made to Annexure 'D' of the MoU.

13. The appellant has brought on record the 'Independent Auditor's Report' (for short the 'audit report') which was released to the members of MGF Developments Ltd. It is mentioned in this report that MGF Developments Limited is able to exercise significant influence in the affairs of the predecessor-in-interest of the respondent. Even if the pleas raised by learned counsel for the respondent that a subsidiary company is the separate entity and can have separate assets is accepted, but in view of the 'Independent Auditor's Report' having reference of subsidiary companies and the fact that MGF Developments Limited was exercising significant influence in the affairs of those companies and then the reference of the properties allotted to the subsidiary companies in the MoU dated 21.08.2017 prima facie indicates that the MGF Developments Limited was in a commanding position even with respect to the

affairs of the predecessor-in-interest of the respondent. The allotment of the disputed property is alleged to be prior to the execution of the MoU dated 21.08.2017. Thus, the subsequent MoU executed between the appellant and the MGF Developments Ltd. and its subsidiaries/entities is an important document to go into the depth of the matter and to properly adjudicate upon the rights of the parties. In the impugned order the learned Authority has not dealt with this MoU dated 21.08.2017. Thus, a material document having bearing on the merits of the case has not been taken into consideration by the learned Authority. The plea raised by learned counsel for the respondent that the MoU dated 21.08.2017 is not binding on the rights of the respondent company and will also not cover the shop in dispute, is a question to be dealt with in details at the appropriate stage. Prima facie, it cannot be disputed that the property in question was also referred in the MoU dated 21.08.2017 and the effect of the said MoU has to be seen with respect to the rights of the respondent qua the shop in question. Various clauses of the MoU are very material to adjudicate upon the rights of the parties which have to be dealt with at the appropriate stage. At this stage, it is suffice to mention that as the material document i.e. MoU dated 21.08.2017 has not been considered by the learned Authority in the proper perspective, so the appellant has a prima facie case in its favour.

14. If the possession of the disputed shop is delivered to the respondent company in the execution of the impugned order, in that eventuality the appellant will suffer an irreparable loss as the delivery of possession may create third party rights and other complications and even the present appeal filed by the appellant will be rendered infructuous.

15. The balance of convenience also lies in favour of the appellant as the interest of the respondent is well safeguarded with respect to payment of the delayed possession charges with the compliance of Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 (for short 'the Act'). Hence, in order to balance the equities between the parties, it will be just and appropriate to order the parties to maintain status quo with respect to the possession of the property in dispute.

16. Consequently, in view of our aforesaid discussion, the present application is hereby disposed of with the directions to the parties to maintain status quo with respect to the possession of the shop in question till the decision of the present appeal. As far as the recovery of the amount of interest for delayed possession is concerned, the appellant has already complied with the provisions of Section 43(5) of the Act and there cannot be the double jeopardy, so the learned Authority will take the judicial notice thereof. However, anything expressed in this order shall not be considered to be an opinion of this Tribunal on the merits of this case.

17. Now the case to come up on 30.08.2022 for arguments.

Justice Darshan Singh (Retd.)
Chairman,
Haryana Real Estate Appellate Tribunal,
Chandigarh

Inderjeet Mehta
Member (Judicial)

May 25, 2022
CL