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 09.12.2020

Coram : Mr.Justice B.Rajendran, Chairperson
Mr.N.Balasubramanian, Judicial Member
Ms.Leena Nair, Administrative Member

M.A.No.121/2020

in

Un-numbered Appeal No. of 2020

M/s. Sare Realty Projects Pvt. Ltd.
(Formerly known as SARE Jubilee Kolathur Pvt. Ltd)

... Applicant/Appellant

-Vs-

Mr.P.B.Ajith Kumar ... Respondent/Respondent

This Miscellaneous Application was taken on file on 22.09.2020 and came up for final hearing on 02.12.2020 in the presence of Mr.G.Sriram, Practicing Company Secretary for the Applicant/Appellant and M/s.Mothilal & Goda, Counsel for the respondent. Having heard the arguments of both sides through video conferencing and

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having stood over for consideration of this Tribunal till this date and deliver the following:

ORDER

1) The applicant/appellant came forward with an application u/s 5 of the Limitation Act, to condone the delay of 304 days and in support of his application the applicant filed an affidavit and stated that from 21.11.2019 to 31.03.2020 there was a settlement discussion/mail communication between them to arrive at an amicable settlement of the dispute. After 31.03.2020 there was no improvement in the settlement discussion hence the applicant preferred to file appeal but the filing process could not be pursued effectively on account of continuous lockdown, shut down of offices and courts, e-pass and other travel restrictions, etc., due to corona pandemic situation throughout the country till 31.08.2020. Immediately after the lock down rules were released as on 01.09.2020, they started the filing process and preferred appeal before this Tribunal on 21.09.2020 with delay of 304 days. Hence the applicant sought for the relief to condone the delay since it is neither willful nor wanton but due to bonafide and force majure reasons.

2) The respondent/respondent filed counter and stated that a dialogue ensues between the applicant and the respondent, where in it was agreed that since the applicant company has no funds to comply with the order and towards part settlement of the amounts due to the respondent, the respondent agreed to register the property in his name and categorically mentioned that he shall not waive his rights under order. On 18.11.2019, the respondent received an email with an attachment of a joint memorandum of compromise and amicable

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settlement. Since the terms mentioned in that memo was not acceptable, the respondent has not signed and sent a reply by expressing his intention on 19.11.2019. On 27.11.2019, the applicant by mail informed the respondent with regard to the mortgage to ALTICO India Pvt. Ltd. Hence the respondent was constrained to file EP on 11.02.2020. Further stated that without prejudice to any of the rights of the respondent settlement talks for the registration of sale in respect of principal sum of the sale consideration paid by the respondent was going on. The respondent came to a conclusion that the instant appeal has been preferred with an ulterior and malicious intention of legitimizing the fraud played by the applicants. Hence the respondent sought for the dismissal of the delay condonation application.

3) Point for consideration:

1. Whether the application deserves to be allowed or not?

Point:

4) Heard both sides contentions. On perusal of documents it revealed that the respondent preferred a petition before the Adjudication Officer in CCP No.144/2019 and after contest order was passed in favour of the respondent on 23.09.2019. To execute the said order the respondent preferred EP on 18.11.2019 before the Adjudicating Officer. On 17.02.2020 the respondent sent a legal notice to the applicant for compliance of the order of Adjudicating Officer. After that there were mail communications between the applicant and the respondents on 24.09.2020, 25.09.2020, 28.09.2020, 19.10.2020 and finally on 04.11.2020. The communications between them, even after the filing of EP and legal notice clearly shows that both the applicant and the respondent were

seriously trying to settle the dispute amicably. But unfortunately there is a legal hurdle with regard to title of the property. The applicant expressed his inability due to financial burden to complete the project. The respondent expresses his inability to complete the settlement due to clearance of title as free from encumbrance. Both the parties have taken earnest efforts for amicable settlement. To avoid any future dispute in regard to the encumbrance is concerned as it cannot be settled by compromise and they want to finalize by way of legal battle in the appeal. Therefore both of them preferred to fight legally. Hence to allow them to redress their grievances legally, this Tribunal comes to a conclusion that it is just and fair to allow the petition to condone the delay of 304 days by imposing cost of Rs.10000/- to be paid by the applicant to deposit into the account of Chief Minister's Relief Fund for 'Corona'. The application is allowed on condition of payment of cost. The point is answered accordingly.

5) In the result this application will be allowed on deposit of Rs.10,000/- to the Tamil Nadu Chief Minister's Relief Fund (for Corona) on or before 15.12.2020 failing which this application stands dismissed. Call on 16.12.2020.

This Order is directly dictated to the Stenographer and typed in the computer by her, corrected and pronounced by us in the open court on 09th Day of December 2020.

Sd/- XXXX
CHAIRPERSON

Sd/- XXXX
ADMINISTRATIVE MEMBER

Sd/- XXXX
JUDICIAL MEMBER

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