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 01.03.2021

Coram : Mr.Justice B.Rajendran, Chairperson
Mr.N.Balasubramanian, Judicial Member

Miscellaneous Application No. 2 of 2021

in

Appeal No. 1 of 2021

M/s. Vijay Shanthi Builders Ltd.,
Rep by its Managing Director,
Mr.Chandan Kumar Jain ... Applicant / Appellant

-Vs-

1. Mrs. Urmila Modi (Deceased)
2. Abhishek Modi
3. M/s. Influence Infrastructures
   Rep. by its Partner Mr. Naresh Kumar Jain
4. M/s.Influence Enterprises (India) Pvt. Ltd.
   Rep. by its Managing Director
   Mr. Naresh Kumar Jain ... Respondents/Respondents

This Miscellaneous Application was preferred along with appeal No.1/2021 against the order of Adjudicating Officer in C.C.P.No.168/2019 dated 28.10.2020. This Miscellaneous Application was taken on file on 04.01.2021 and came up for final hearing in the presence of the counsel for the appellant

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Mr.K.Chandrasekaran. Having heard the arguments of the appellant side in respect of the waiver application under Section 43(5) of the Real Estate (Regulation and Development) Act, 2016, through video conferencing and having stood over for consideration of this Tribunal till this date and deliver the following:

ORDER

2. The respondents 1 and 2, who are the complainants in C.C.P.No.168/2019, preferred complaint for the refund of the amount paid by them towards Promoters Agreement. After contest the Adjudicating Officer allowed the claim of the complainants in part and directing the respondents 3 and 4 and the applicant either jointly or severally to pay the amounts to the complainants. Aggrieved upon the same the applicant/appellant preferred this appeal along with this waiver application. The applicant filed an application under Section 43(5) to waive the pre-deposit amount for preferring appeal and in support of his petition the applicant filed an affidavit and stated that "there has neither been a privity of contract between the appellant herein and the 1st respondent herein nor has the appellant received any money much less a sum of Rs.1,83,72,550/- from the respondent, as alleged or at all". In addition to that during the course of argument, through video conferencing, the learned counsel for the applicant/appellant would submit that the applicant company is no way connected with the affairs of the promoters and the respondents 1 and 2 alone being the promoters of the project have dealt with the complainants. The 1st respondent approached the applicant/appellant with a request to market their housing project known as 'Bay Influence' and also to extend financial assistance as and when it is necessary. After mutual discussions, this applicant/appellant undertook to release an advertisement in the media to do demand survey. Since

there was no response the applicant/appellant dropped further steps towards marketing the project. In support of the argument, the learned counsel also relied the following citation:

(2014) 9 SCC 407

Balwant Rai Saluja v. Air India Ltd., (Paragraph No.70 and 74)

"The doctrine of 'piercing the corporate veil' stands as an exception to the principle that a company is a legal entity separate and distinct from its shareholders with its own legal rights and obligations. It seeks to disregard the separate personality of the company and attribute the acts of the company to those who are allegedly in direct control of its operation.

Thus, on relying upon the aforesaid decisions, the doctrine of piercing the veil allows the Court to disregard the separate legal personality of a company and impose liability upon the persons exercising real control over the said company. However, this principle has been and should be applied in a restrictive manner, that is, only in scenarios wherein it is evident that the company was a mere camouflage or sham deliberately created by the persons exercising control over the said company for the purpose of avoiding liability. The intent of piercing the veil must be such that would seek to remedy a wrong done by the persons controlling the company. The application would thus depend upon the peculiar facts and circumstances of each case."

3. As per the above citation of the Apex Court the applicant/appellant is no way connected with the agreement entered into between the respondents 1 to 4 and the applicant/appellant has not received any money from the homebuyers hence, the applicant/appellant is no way responsible for any liability towards the home buyers. Therefore, the applicant/appellant questioned the very maintainability of the orders of the Adjudicating Officer. Before deciding the liability of the appellant towards the home buyers the applicant/appellant cannot be directed to pay the refund of the amount which were not received or parted with by the applicant/appellant. Hence the waiver application has to be allowed in toto.

4. Heard and perused the contentions of the applicant/appellant. On perusal of the citation referred on the side of the appellant itself in paragraph No.74 it is crystal clear that:

> *"However, this principle has been and should be applied in a restrictive manner, that is, only in scenarios wherein it is evident that the company was a mere camouflage or sham deliberately created by the persons exercising control over the said company for the purpose of avoiding liability. The intent of piercing the veil must be such that would seek to remedy a wrong done by the persons controlling the company. The application would thus depend upon the peculiar facts and circumstances of each case."*

5. As per the above Apex court verdict the doctrine of piercing the corporate veil should be applied in a restrictive manner. Further, the application of the above said principle would thus depend upon the peculiar circumstances of each case. In this case the CW1, Abhishek Modi has stated in his evidence that Mr.Naresh Kumar Jain who was the Managing Director of the 2nd respondent and also brother of the Managing Director of the Appellant company approached him for sale of villa and assured that the respondents 3 and 4 are sister concerned companies of the appellant who would provide financial assistance to ensure timely completion of the project and thereafter he entered into an agreement. The above said evidence was not disputed by the 3rd respondent Naresh Kumar Jain is the brother of the Managing Director of the appellant company and he was also the Director of the appellant company for some time. As per the law laid down by the Apex court the application of the principle would thus depend upon the peculiar facts and circumstances of each case. In this case there is no peculiar circumstances to disregard the appellant to exclude from the liability. Hence the above citation is not applicable to the facts of this case.

6. In this case the Learned Adjudicating Officer has directed the appellant and the respondents 3 and 4 to pay the amount to the home buyers either jointly or severally. Further the respondents 3 and 4 have also preferred appeal against the same order of the Adjudicating Officer in C.C.P.No.168/2019 dated 28.10.2020 as A.No.12/2021 and they have also preferred waiver application in which also they have been ordered to deposit the 40% of the total amount as ordered by the court below as a pre-deposit amount. In such circumstances, the claim of the applicant for total waiver is not sustainable. Since this Tribunal has already ordered to deposit the pre-deposit amount by the promoters in their application in A.No.12/2021, it is just and fair to order to direct the applicant/appellant to pay the 40% of the total amount ordered by the court below either jointly or severally.

7. In the result, by allowing this waiver application in part and directing the applicant/appellant under Section 43(5) of the Real Estate Regulation And Development Act, 2016 to deposit the 40% of the total amount ordered by the court below either jointly or severally on or before 23.03.2021 failing which this application stands dismissed automatically. Call on 24.03.2021.

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 01st Day of March 2021.

Sd/-xxxx
CHAIRPERSON

Sd/-xxxx
JUDL. MEMBER

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