

Proceedings of the Chief Controlling Revenue Authority and Inspector General
of Registration, Chennai-600 028

Present: Thiru.Dinesh Ponraj Oliver, I.A.S.,

D.Dis.No.55426/P1/2018 Dated 23.05.2024

- Sub : Revision Petition – Document No. P.13/2014– Sub Registrar office, Villivakkam – Petition received under section 56(1) of the Indian Stamp Act, 1899 against the order passed by Sub Registrar (District Registrar cadre) Villivakkam – order issued – regarding.
- Ref : 1. Sub Registrar (District Registrar cadre), Villivakkam order No.2/ஈபு/2014 dated 4.2.2014 & 56/2018 dated 12.2.2018
2.Revision Petition dated October 2018 (received on 17.12.2018) from M/s.Edelweiss Housing Finance Ltd.

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ORDER:

The revision petition 2nd cited has been filed under section 56 (1) of the Indian Stamp Act, 1899 before the Chief Controlling Revenue Authority against the order 1st cited passed by the Sub Registrar (District Registrar cadre), Villivakkam wherein it has been ordered to pay deficit stamp duty of Rs.1,50,000/- and penalty of Rs.1000/- in respect of document No.P.13/2014 on the file of Sub Registrar office, Villivakkam.

2) Facts of the Review Petition are humbly submitted as follows:-

Document No.	No.P.13/2014
Office	Sub Registrar office, Villivakkam
Date of Execution	23.1.2014
Title	DEED OF MORTGAGE
Executant	Mrs.Janai.M W/o.Malan
Claimant	Edelwiss Housing Finance Ltd, ,

(P.T.O)

Amount secured	Rs.50,00,000/-
Stamp Borne by the deed	Rs.50,000/-
Nature of document as determined by the District Registrar	Mortgage with possession {Article 40(a)}
Deficit stamp duty & penalty determined by the District Registrar	Rs.1,50,000/- & Rs.1000/-

Considering certain recitals of the document in question as providing for handing over of possession of the mortgaged property, the Sub Registrar (District Registrar cadre) through order 1st cited classified the document as "Mortgage with possession {Article 40(a) of the Indian Stamp Act, 1899}". Aggrieved over the same revision petition 2nd cited has been filed.

3) The Petitioner through their Counsel was heard on 21.12.2023 and 21.2.2024.

Main contentions put-forth by the Petitioner:

- i) The Sub Registrar has misunderstood the clause 8.5. The said clause will empower the mortgagee to sell the property only in the event of default.
- ii) In a similar case, vide IGR order No.37273/P1/2013, dated 18.3.2014, document has been classified as mortgage without possession.
- iii) The said loan has been assigned to Edelweiss Asset Reconstruction company vide document no.5565/2021,Sro Pallavaram.

(P.T.O)

4) Contents of revision petition, connected records received from the Sub Registrar, arguments advanced on behalf of the petitioner have been carefully examined by me.

Relying on the recitals found in page 2 of the document that "*.....the Mortgagor(s) has/have agreed to create a First Legal Mortgage in English form over the Mortgaged property*" the Sub Registrar classified the document as Mortgage deed with possession.

At this juncture it is pertinent to note that in Inspector General of Registration Pro. No. 37273/P1/2013 dated 18.8.2014 it has been held that a deed of mortgage which purports to effect a English Mortgage is classifiable only under Article 40(b) as a Simple Mortgage and not as a mortgage with possession as under Article 40(a).

Further in page 5 of the document in sub-clause 6.4 it has been recited that "*....the Mortgagor (s) shall from time to time and at all times during the continuance of this security, keep the mortgaged properties hereby granted or expressed so to be in a good and substantial state of repairs.....*"

Likewise, in page 8 & 9 in clause 8 **Consequences upon happening of event of default** it has been recited that under sub-clause 8.4 Right to enter EHFL shall enter upon the Mortgaged property or any part thereof and shall quietly possess the same without any lawful interruption or disturbance "

The aforesaid recitals clearly indicate that the possession of the property remains with the Mortgagor and mortgagee is permitted to take possession of the property only in the event of default being committed by the Mortgagor.

Hence in view of the factual and legal position discussed above, the document in question is classifiable under Article 40(b) of the Indian Stamp Act, 1899, as a Simple Mortgage deed. Based on the above decision the order of the District Registrar is set aside and the revision petition is allowed.

Sd/- Dinesh Ponraj oliver /- 23.05.2024
Chief Controlling Revenue Authority &
Inspector General of Registration.

/By Order/

District Registrar (Inspection)

To

- 1) M/s.NIDO Home Finance Limited
(Formerly Edelweiss Housing Finance Ltd.)
No.19, 7th Floor, Kochara Towers,
Venkatnarayana Road, T-Nagar,
Chennai – 600 017.
- 2) M/s.V.Balasubramani & Others (Advocates),
Shree Venkatesh Bhavan,
5th Floor, No.35/71, Armenian Street,
Chennai – 600 001.
- 3) Sub Registrar, Villivakkam (District Registrar Cadre)
(With original file)
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