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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: March 02, 2022

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EFA(OS) 4/2022 & CM APPLN. 10678-79/2022**UNIWORLD GARDEN APARTMENT OWNERS ASSOCIATION**

..... Appellant

Through: Mr. R.K. Mehta, Mr. Sumeet Kaul,
Mr. Shankar Mishra & Ms. Aaro
Mikkhani, Advocates

Versus

SANDEEP KWATRA & ANR.

..... Respondents

Through: Mr. Vidur Bhatia & Mr. Daniyal
Khan, Advocates for respondent No.1

CORAM:**HON'BLE MR. JUSTICE SURESH KUMAR KAIT****HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI****J U D G M E N T** (Oral)

1. The appellant has impugned order dated 22.02.2022 passed by the Executing Court whereby the appellant's application filed *inter alia* under the provisions of Order I Rule 10 of the Code of Civil Procedure, 1908 seeking impleadment as a proper and necessary party in the execution proceedings, has been rejected.
2. The present appeal has been filed on the ground that the Executing Court has failed to take note of the fact that a Declaration under section 11(2) read with section 13 of the Haryana Apartment Ownership Act, 1983 was signed and executed between the parties,



where-under the appellant is owner of Shop No.1, Uniworld Garden, Sector-47, Gurugram, ('subject property') which forms part of the common areas of the apartments complex.

3. Learned counsel appearing on behalf of the appellant submits that impugned order dated 22.02.2022 contradicts order dated 18.11.2021, wherein the learned single Judge had recorded that the original title documents are not with respondent/ judgment debtor No.2 herein. It is claimed that for the last fourteen (14) years, the appellant has been paying for the maintenance of the subject property as per the Haryana Apartment Ownership Act, 1983; and therefore, the property belongs to the appellant/Association.
4. Learned counsel for the appellant further submits that after the land was developed, and apartments and shops were sold to the concerned buyers, an Association of Apartment Owners was constituted and the maintenance of the Group Housing Society was handed-over to the said Association. Thereby, the Association of Apartment Owners has become the owner of the common spaces/areas including the shops and other conveyances; and therefore, auction of the subject property deserves to be stayed.



5. Pertinently, the appellant had *inter alia* filed an application seeking impleadment in the execution proceedings, wherein *inter alia* the subject property was directed to be auctioned for enforcement of the arbitral award in favour of the decree holder *i.e.* respondent No.1 herein. It is not disputed that the land belongs to the builder who had developed the apartments, shops and common areas and allotted them to their respective buyers. It is also not disputed that these apartments and the shops were sold to different persons on taking full consideration; and that the decree holder/respondent No.1 herein had initiated execution proceedings against judgment debtor/respondent No.2. It is also not disputed that the title document of the subject property is not in the possession of the Association but is with the builder.
6. The Executing Court in the order dated 22.02.2022 had noted that the applicant/appellant does not have physical possession of the subject property and possession thereof has been with the judgment debtor/respondent No.2 for more than a decade. It was also noted therein that the subject property was attached by this court *vidé* order dated 17.12.2018; and at that point of time, no objection was raised by the applicant/appellant.



7. During the course of arguments, learned counsel appearing on behalf of respondent No.1 has informed this court that the auction of the subject property has already taken place on 28.02.2022 in the condominium premises itself and the appellant did not raise any objection or approach the appropriate forum even at that point of time. In fact it is submitted that the Vice President of the Association himself also participated in the auction.
8. This court has gone through the copy of the sample Conveyance Deed dated 24.07.2007 executed in favour of a member of the Association by the builder/developer, clause 18 whereof reads as under:
- “18. That the VENDEE(S) shall have no right, title or interest of any kind of land earmarked for community facilities/amenities in the Complex. Further, the VENDEE(S) shall not have any claim or right in any commercial premises or commercial building or interfere in the booking of apartments and finalization of sale Flats/ Dwelling Units reserved for EWS or in the operation and management of shops, commercial premises, School, Club etc.”*
9. A copy of Declaration dated 12.09.2008 made by the builder/developer under section 11(2) of the Haryana Apartment Ownership Act, 1983 in respect of ‘Uniworld Garden Complex’, in which the builder/developer lists-out the common areas (variously called general areas, limited common areas, restricted common areas etc.), open areas and general facilities, also does not include shops in the complex as part of such areas.



10. In light of the sample Conveyance Deed dated 24.07.2007 and Declaration dated 12.09.2008, we do not agree with the appellant's claim that the subject property is part of any common or open area or that any right in the subject property is vested in the appellant/Association. To be sure, the case before this court is not that the appellant is a group housing society who purchased and developed the land. Here, the land belonged to the builder/developer; was developed by the builder/developer and the apartments and shops were sold to various allottees. The status of the shop owners *vis-à-vis* their respective shops is the same as that of the appellant's members *vis-à-vis* their respective apartments.
11. In view of the above, we do not find any illegality or error in the impugned order passed by the learned single Judge. Finding no merit in the appeal, the same is accordingly dismissed.
12. Pending applications, if any, also stand disposed of.

(SURESH KUMAR KAIT)
JUDGE

(ANUP JAIRAM BHAMBHANI)
JUDGE

MARCH 02, 2022/r