

Before Shri R.S. Virk, District Judge (RETD.)

**appointed to hear objections/representations in the matter of PACL Ltd.
as so referred to in the order dated 15/11/2017, of the Hon'ble Supreme Court
passed in civil appeal no. 13301/2015 titled Subrata Bhattacharya vs SEBI and
duly notified in SEBI Press release no. 66 dated 08/12/2017.**

File no. 364/6

MR NO. 5177-15, 5179-15

Objector : Avinash Sahay and Ms. Poonam Sahay

Present : Ms. Akanksha Nehra, Advocate (Enrolment No. KAR/1710/2012)

Order :

1. It may be noticed at the outset that vide order dated 02/02/2016, passed in civil appeal no. 13301/2015 bearing the title Subarata Bhattacharaya Versus Securities & Exchange Board Of India, the Hon'ble supreme court had directed constitution of a committee by SEBI to be headed by Hon'ble Mr. Justice R.M. Lodha. former Chief Justice of India as its Chairman for disposing of the land purchased by PACL so that the sale proceeds recovered there from can be paid to the investors who have invested their funds in the company for purchase of the land. The said committee was asked to collect relevant record including title sale deeds from the CBI (Central Bureau of Investigation) if it is in possession of any documents. The committee on its part has put up various properties including the property forming the subject matter of the present objection petition for auction sale on its website www.auctionpacl.com.
2. This objection petition relates to Flat Nos. 1607, 1608 and 1609 situated on the 16th Floor, building no. 23, Samartha Angan-III, Link Road, Oshiwara, Andheri (W), Mumbai which stand attached under orders of the committee for auction/sale. The objectors contained that the above described property was earlier purchased by M/S PGF Limited through registered sale deed dated 25/08/2009 from M/S Samartha Development Corporation and from whom the objectors above named

Q. No. 15/3/18

Samartha Development Corporation and from whom the objectors above named have purchased the above properties vide registered agreements of sale dated 03/02/2012 for amounts as detailed here under:-

Agreement Dated	Flat No.	Consideration
03-02-2012	1607	Rs. 37,70,000/-
03-02-2012	1608	Rs. 73,32,000/-
03-02-2012	1609	Rs. 90,48,000/-

3. The certified copy dated 24/01/2018 of the loan amount of Rs. 1,38,48,210/- (one crore, thirty eight lakhs, two hundred and ten) obtained jointly by Avinash Sahay and Poonam Sahay in respect of flats nos. 1607, 1608, and 1609 (building no. 23A) obtained from HDFC Bank vide account no. 603004328 reveals that the said amount of loan was disbursed on 24/02/2012 and instalment thereof as paid up to 15/01/2018 are duly reflected therein. Certified copy of the statement of the Bank Account bearing numbers 24310179451 & 24310179451 of Standard Chartered Bank for the period 01/10/2011 to 31/12/2012 and 01/01/2012 to 31/03/2012 respectively held by the Objectioneer with the said Bank which show payment by the objectors Avinash Sahay and Poonam Sahay to PGF Ltd amount of Rs. 5,00,000/- out of account no. 24310179451 and Rs. 8,37,500/- , Rs. 26,02,000/- and Rs. 32,10,500/- out of same account no. on 14/10/2011 and 09/02/2012 respectively, thus totalling Rs. 71,50,000/-
4. The objectors thus contend that the agreements of sale as uploaded on the web portal www.auctionpacl.com pertaining to the property in favour of PACL are in consequential vis-a-vis the registered sale deeds executed by PGF in favour of objectors who are consequently in possession of the same and have been paying society maintenance charges, electricity bills etc., in respect thereof ever since.
5. The learned counsel for the objectors has argued that although the transaction in question dated 03/02/2012 has been described as "Agreement of Sale" but it is in fact a sale because clause 2 thereof confirms that part of the consideration had already been paid as per receipts mentioned therein whereas the remaining consideration was paid by the objectors after taking a home loan to the tune of Rs.1,38,48,210/- (one crore, thirty eight lakhs, forty eight thousand, two hundred and ten) from HDFC Bank which was directly disbursed by the bank to PGF Ltd. as the vendor of the said flats. I find merit in this argument because the total sale consideration fixed by agreement between the vendor and the vendee stand duly paid and accepted by them respectively and nothing else remains to be done

R/W
15/3/18

except for getting the transaction registered with the concerned authority on payment of requisite stamp duty.

6. It is argued inter-alia that the agreement dated 03/02/2012 was executed upon receipt of no objection certificate from the society for proposed transfer of the said property by PGF Limited to the objectors. It is also pointed out that PGF Limited on its part had executed transfer forms and possession letters where upon the objectors were inducted as members of the above named co-operative society and the shares of PGF qua the said flats were transferred in favour of the objectors. It is claimed that all the original title deeds pertaining to the said flats are in the possession of the objectors herein. It may be pointed out at this stage that photostat copies of the above referred documents duly exist on the file. Reference may at this stage be made to observations of the Hon'ble Supreme Court in the case bearing the title Hill Properties Ltd. Versus Union Bank of India and others reported in (2014) 1 Supreme Court Cases 635 wherein it was held that multi-storeyed flats are being purchased by people either by becoming members of cooperative housing society or shareholders of housing company and that the right of flat-owner over said flat is exclusively that of his which is transferable and heritable, though he is bound by bye-laws of society or articles of association of the company being a member of either. It was further held therein that the flat-owner can sell, donate, leave by will or let out or hypothecate his right and that such right can be taken away only by a statute.
7. It is next contended that in view of the entire sale consideration having been duly paid and objectors having been put in possession of the above described property by the vendor namely M/S PGF Limited which was previously the recorded owner thereof, the objectors herein are entitled to protect their possession on the above described flats more so when the purported agreement of sale statedly executed between PGF Ltd. and PACL is an unregistered document which did not create any better right or interest qua the property in question in favour of PACL and is thus inconsequential vis-a-vis the registered agreement of sale executed in favour of the objectors upon receipt of full sale consideration from the objectors by M/S PGF Ltd. The said argument finds support from the provisions contained in Section 53A, and 54 of the Transfer of Property Act, 1882 read with Section 17 of the Registration Act, 1908 and the observations of the Hon'ble Supreme Court in this context in the case bearing the title Suraj Lamp and Industries (Pvt.) Ltd. Versus State of Haryana reported in (2012) 1 SCC 656.

RAM
15/3/18

8. In view of the foregoing discussion, the objection petition in hand is liable to be and is hereby accepted.

Date : 15/03/2018


R. S. Virk
Distt. Judge (Retd.)

Note:

Two copies of this order are being signed simultaneously, one of which shall be retained on this file whereas the other one, also duly signed, shall be delivered to the objector as and when requested /applied for.

Date : 15/03/2018


R. S. Virk
Distt. Judge (Retd.)