Analysis of Judgment in Lavasa Corporation - RERA

Judgement in Lavasa Corporation Limited:

SBS AND COMPANY LLP
CHARTERED ACCOUNTANTS

Particulars	Relevant Statements
Court	Bombay High Court
Matter in	Lavas Corporation vs Girish Vasaan Panjawani & Others
Nature	Appeal against Maharashtra Real Estate Appellate Tribunal – Section 43(5)
Short Question	Whether the provisions of RERA would apply in case of an 'Agreement to Lease'?
Facts	• Respondents in pursuance of negotiations has entered an 'agreement to lease'. As per the said agreement, the respondents have booked the apartments on the basis of lease for period of 999 years in the proposed township developed by Lavasa Corporation. • The respondents have paid 80% of the sale price and also paid substantial amount towards the stamp duty and registration charges. • As per the agreement the project was to be completed and the possession of the apartments was to be handed over to the respondents with a period of 24 months. After waiting for a period of 6-7 years, the project was not handed over to the respondents. • Immediately after the appellant registered with RERA, the respondents have approached the AA under Section 18 for grant of interest for every month of delay.

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Stand of Appellant before AA	• Appellant stated before AA that the agreements entered with respondents are in agreement to lease and not agreement to sale. Accordingly, such agreement would be out of ambit of RERA because neither the definition of 'allottee' or 'promoter' covers the lease transaction. • Further, the definition of 'allottee' as per Section 2(d) specifically excludes person who has taken any plot, building or apartment on rent. Since the agreement is for rent, the respondent does not fit under the definition of 'allottee' and accordingly cannot claim benefit of Section 18.
Decision of AA	• The AA after perusing the agreement and stand taken by Appellant has concluded that the respondent is not covered under the definition of 'allottee' and the appellant is not covered under the definition of 'promoter' and accordingly the benefit of Section 18 cannot be granted to respondent.
Challenge before Appellate Tribunal	• The respondents have appealed before Tribunal against the order of AA. The AT after going through the entire agreements has stated that the agreements are in the nature of absolute sale despite of the fact that they are termed as 'Agreement to Lease'. Accordingly, considering the object of RERA, they have stated that the project falls under ambit of RERA and remanded matter to AA for fresh consideration. • They have also stated that the promoter on registering the project under RERA cannot now escape in light of principle of estoppel as laid down in Section 115 of Evidence Act.

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Stand of Appellant before HC	• Appellant stated that the agreements were agreement to lease for 999 years and the agreement no where uses the phrase ‘sale’, ‘sale consideration’ or ‘purchase price’. The agreement uses the phrase ‘lease’ and ‘rent’. Further, they have stated Clause 5.1 states that the annual lease rent is at Rs 1/-. • Appellant stated that even the respondents know that the subject agreement is lease and not sale. Appellant stressed on the definition of ‘allottee’ and ‘promoter’ and stated that the current project does not fit under RERA laws and accordingly the question of applicability of Section 18 does not arise as the remedy under said section is available against ‘promoter’ by an ‘allottee’. • Appellant stated that the AT misconstrued the provisions of RERA and they have gone beyond the provisions of RERA laws by making the law applicable to agreement to lease transactions. Further, the appellant stated that registration under RERA cannot be a sole test to decide the applicability of RERA and stated there is no violation of Section 115 of Evidence Act. • Appellant thus requested the HC to put aside the matter by holding that the provisions of RERA will not be applicable to agreement to lease.

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Stand of Respondents before HC	• Respondent stated that even though the agreement is titled as 'agreement to lease', the objective is to sell the property, which is evident from the perusal of the agreement to lease. • The duration of lease which is 999 years, majority of the amount almost to the tune of 80% paid as advance, the payment of stamp duty and registration charges being paid at the inception – all these clubbed together they appear as agreement to sale despite titled as agreement to lease. • Respondents stated that the definition of 'allottee' uses the phrase 'otherwise transferred'. Further the definition also includes sale of leasehold properties and hence the respondents are covered under the definition of 'allottee' and accordingly eligible for Section 18. • Further they have rebutted the stand taken by appellant that registration under RERA was taken only for part of project by submitting the registration application wherein it was revealed that the entire project has been applied for registration.

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Verdict by HC	• The HC has considered the preamble, statement of objects and reasons of the RERA legislation and found that RERA was introduced to standardize and regulate the real estate industry and stated that the objective for which RERA was brought into the statute book has to be kept in mind. • HC has examined the definition of ‘rent’ in the agreement where in it was stated to mean ‘the yearly rent amount payable by the customer to Lavasa, once the lease is granted in respect of an apartment’. The term ‘annual rent’ is defined to be Rs 1/- and the period of lease to be 999 years. • HC has also examined the clause which stipulates the payment of 32 to 40 lakhs which is more than 80% of the total consideration. HC further scrutinised the Clause 6 which shows that the payment was to be made as per the progress in construction and except for a nominal amount, entire consideration was to be paid before possession was to be delivered. • Thus, on perusal of entire agreement, the HC held that it becomes apparent on the face, that it cannot be termed as agreement to lease but in real purport it is an agreement to sale. The very fact that more than 80% of entire consideration amount is already paid and lease premium is Rs 1/- per annum for a period of 999 years are self speaking to prove that in reality, the transaction is agreement to sale and not agreement to lease. **The law is well settled that the nomenclature of the document cannot be true test of its real intent and the document has to be read as a whole to ascertain the intention of parties.**

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Verdict by HC	• HC has relied on the judgment of Madras HC in case of Commissioner of Income Tax, Tamil Nadu vs Rane Brake Lining Ltd, wherein reliance was placed on apex court decision of R K Palshikar (HUF) vs CIT, MP Nagpur holding that lease of plot for 99 years, it is clear that the assessee has parted with an asset of an enduring nature and accordingly the transaction amounts to transfer of capital assets. • HC then proceeded with the analysis of definition of ‘allottee’. HC states that even though the definition excludes persons who have taken on rent, it must be remembered that, the definition of allottee in the present context includes even when the plot sold is a freehold or leasehold. HC stated that when the apartment is given on rent in its pure sense, it will be excluded from the definition of allottee’ and not the current situation. • Finally, considering the objective of the RERA, Heydon’s Rule of Suppression of Mischief’ and the current agreement, it was held that the said agreement is ‘agreement to sale’ and not ‘agreement to lease’ and accordingly the respondents were eligible for Section 18 benefit.