

OFFICE OF THE COLLECTOR OF STAMPS (HAUZ KHAS)

MB ROAD, SAKET, NEW DELHI NEW DELHI

No.1553/COS/HK/2016/2193

Dated: 2/3/16

ORDER

Whereas an instrument Serial No. 4486 dated 02/06/2015 styled as Collaboration Agreement executed by Smt. Durga Kak in favour of M/s Aarone Developers Pvt. Ltd. (hereinafter referred as Party) was impounded by SR-VA U/s 33 of the Indian Stamp Act 1899 and sent in original U/s 38 of the said Act to the undersigned for recovery of deficient stamp duty.

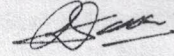
Whereas Mr. N. K. Bhardwaj appeared on 08/07/2015 on the behalf of M/s Aarone Developers Pvt. Ltd. in response to the notice issued in this regard. On 14/08/2015 Sh. N. K. Bhardwaj filed a written reply and resubmitted the same on 05/11/2015. On 16/11/2015 Sh. N. K. Bhardwaj alongwith Sh. Rupesh Tyagi his counsel appeared and made oral submission as well.

I have gone through the contents of the letter dated 9th June, 2015 of the SR-VA and the impounded collaboration agreement made on 15th Jan, 2014 between Smt. Durga Kak and M/s Aarone Developers Pvt. Ltd. notarized on 19.5.2014. I have also examined the detailed reply submitted by M/s Aarone vide letter dated 20.10.2015 in response to the show cause notice dated 3.7.2015 sent by the COS (HK). Having considered the facts of the matter and the reply given by M/s Aarone, the matter is disposed off as follows:

- (1) As also stated by M/s Aarone, and decided by Hon'ble Supreme Court of India in catena of cases, the nature and purpose of a document/ instrument is determined on the basis of its intent and content and not merely on the basis of its title.
- (2) In this case, the Collaboration Agreement between the parties has intent of consideration amounting to Rs. 2,60,00,000/- paid by the builder to the first party as detailed in clause 7 of the Collaboration Agreement. In addition, the builder shall make all expenditure for construction of the building consisting of 4 floors and parking space. Against this consideration, the builder shall retain ground floor, 1st floor, 50% share in stilt parking, two servant quarters with common WC and 45% undivided, indivisible and impartible ownership rights in the plot of land measuring 192 sq. Yards. Therefore, the the Collaboration Agreement has element of part performance and is akin to sale agreement in respect of the part of newly constructed floors etc. being retained by the builder against consideration set in.
- (3) In view of this consideration and part performance, the collaboration document is not just "service agreement" as contended by the builder but is also a part performance which is compulsorily registerable u/s 17(1-A) of the Registration Act and is subject to the payment of stamp duty as applicable to the Agreement to sell under section 53A of the Transfer of Property Act, 1882. The contention that builder will not possess with himself but sell the intended portion to the 3rd party directly from 1st party is only a technical issue which does not change the intent that the instrument under consideration is a part performance and the concerned sub-registrar has performed his duty U/s 33 read with section 38 of the Indian Stamp Act, 1899 in bonafide manner in impounding the said instrument and sending the same to COS (HK) for calculation of applicable stamp duty on the same.
- (4) The circular of 12.11.2014 issued by the Revenue Deptt. prescribes the guidelines for Sub-registrars for registration of various instruments/ documents including the Builder buyer Agreement or Collaboration Agreement. The collaboration Agreement under consideration was executed prior to that in Jan, 2014.
- (5) The stamp duty plus transaction fee on Collaboration Agreement in this case comes to Rs. 14,04,000/- @ 90% of 6% of Rs. 2,60,00,000/-. Stamp duty paid on sale deed for ground floor is Rs. 8,40,000/- and for sale deed of 1st floor is Rs. 13,00,000/-. So total stamp duty paid on final instruments of sale deeds in consideration comes to Rs. 21,40,000/-. There is no loss of stamp duty in this case. The amount of stamp duty realized from the two sale deeds is more than amount of stamp duty incident on the collaboration agreement in this case.



Therefore, in the light of the facts observed in this case, no stamp duty is to be paid on the collaboration agreement and hence no penalty is imposed under section 33 of the Indian Stamp Act, 1899. SR-VA may take further action accordingly. File be consigned to record room.



(RAVINDER KUMAR)
SDM/COS (HAUZ KHAS)

Encl: As above.

To,

Sub Registrar (V-A)
Old Tehsil Building
Mehrauli, New Delhi.

Copy to:- M/S Aarone Developers Pvt. Ltd. 6th floor, office Tower, Select City Walk, A-3
District Centre, Saket, New Delhi.



(RAVINDER KUMAR)
SDM/COS (HAUZ KHAS)

Received
Mehrauli
2/3/16
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