Fortune Realty Pte Ltd v Lim Sai Kang and Another
[2002] SGHC 59

Case Number : OS 601428/2001
Decision Date : 27 March 2002
Tribunal/Court : High Court
Coram : Judith Prakash J
Counsel Name(s) : Ranvir Kumar Singh (Kumar & Loh) for the plaintiffs; John Ng (Tan Lee & Partners) for the defendants
Parties : Fortune Realty Pte Ltd — Lim Sai Kang; Pan Kang Moi

Judgment

GROUNDS OF DECISION

Introduction

1. The plaintiffs, Fortune Realty Pte Ltd ('the vendors'), are the developers of the residential building project at Sommerville Walk, Singapore known as 'Fortune View' ('the development'). The development consists of 12 townhouse units. The defendants, Mr Lim Sai Kang and his wife, Madam Pan Kang Moi ('the purchasers'), purchased one of these units, namely that known as 33 Sommerville Walk, Fortune View, Singapore ('unit 33'). This originating summons was taken out by the vendors in order to obtain the court's determination on the question of whether there was a shortfall in the area of unit 33.

2. The dispute between the parties centres on the issue of whether the area of unit 33 should be considered to include the area of a car park lot in the basement of the development. Unit 33 is covered by Subsidiary Strata Certificate of Title Vol. 651 Fol. 42 ('the SSCT'). The SSCT refers to two lots. The first is lot no. MK17-U53660L containing an area of 138 square metres. This lot covers the first and second storeys and the attic of unit 33. The second is an accessory lot numbered MK17-A13C having an area of 13 square metres and comprising a car park lot in the basement of the development.

The facts

3. By an agreement dated 7 July 1997, the vendors agreed to sell and the purchasers agreed to purchase unit 33 at the price of $967,300. The sale and purchase agreement was in the standard form approved by the Controller of Housing since the development was still under construction at that time. The relevant provisions of the agreement are as follows:

> '1 The Vendor shall sell and the Purchaser shall purchase free from encumbrances all that estate in fee simple in part of the land comprising the townhouse described in the First Schedule (hereinafter referred to as the building unit) in the housing project now being erected or erected by the Vendor upon the land described in the First Schedule and known as FORTUNE VIEW (hereinafter called the housing project)…
>
> …
>
> 8(1) The Vendor shall forthwith erect in a good and workmanlike manner the building unit and the housing project together with all the common property

thereof in accordance with the specifications described in the Second Schedule and in accordance with the plans approved by the Building Authority and other authorities, which specifications and plans have been accepted and approved by the Purchaser as the Purchaser hereby acknowledges.

…

19 (1) No error or mis-statement as to the description of the area of the building unit shall annul the sale or entitle the Purchaser to be discharged from the purchase.

(2) Any error or mis-statement as to the description of the area of the building unit shall give the Purchaser an entitlement to an adjustment of the purchase price in accordance with this clause.

(3) If on completion of resurvey by the Government it is found that the area of the building unit ascertained by the resurvey is less than the area mentioned in the First Schedule ("the scheduled area"), there shall be an adjustment of the purchase price for the difference (if any) in excess of 3% of the scheduled area calculated at the rate the Purchaser paid for each square metre of the building unit.

…

THE FIRST SCHEDULE ABOVE REFERRED TO

ALL THAT townhouse on the - Storey of the building known as – in the housing project known as **FORTUNE VIEW** now being erected or erected on part of the land in the District of Toa Payoh in the Republic of Singapore estimated to contain a floor area of **150** square metres being part of the Government Resurvey Lot No. 497-68 of Mukim 17 which said townhouse is provisionally known as **No. 33 Sommerville Walk, Fortune View Singapore 358198**

…

DESCRIPTION OF HOUSING PROJECT

(a) General description: 12 units of 2 storey Townhouse with Attic and Basement Car Park.

…

(e) Description of common property:	Barbecue Pits Children's Playground Water Fountain Guard House

(f) Description of parking spaces: Basement Car Park.'

4. Attached to the agreement were four plans relating to the development made up of the first storey plan, the second storey plan, the attic storey plan and a site plan. On each of the storey plans, the boundaries of Unit 33 as it would exist on that storey were hatched in red. Although a plan to the

basement existed, that plan was not attached to the agreement. The accessory lot MK17-A13C therefore was not shown on any of the annexed plans.

5. It should be noted that the plans attached to the agreement were copies of sections of four of the plans making up the full set of building plans that had been submitted by the purchasers to the Chief Planner for approval pursuant to the Building Control Act 1989. The full set comprised nine individual plans each dated January 1996. These were the plans approved by the Chief Planner and therefore the plans which had to be followed in the construction of the development. The nine individual plans bore the following titles: Site and Location Plan, Basement Floor Plan, 1st Storey Plan, 2nd Storey Plan, Attic Floor Plan Section 1-1, Roof Plan, Elevations 1 and 2, Elevations 3 and 4 Section D-D, Section A-A, B-B and C-C. On the right hand side of each of the plans, there was a description of the project. This originally read:

> 'Proposed erection of 12 units of 2-storey townhouses, each with an attic and basement car park on Lot 49768 Mk 17 at No 33 Sommerville Walk.'

The basement plan showed a lot marked as 'Private Car Park' located next to the MEH Room but there was no indication that this lot was intended to become an accessory lot for unit 33. It should also be noted that subsequently the approved plans were amended and thereafter the endorsement at the side of the plans was changed to read:

> 'Proposed erection of 11 units of 2-storey townhouses, each with an attic and basement car park and 1 unit of 2 storey townhouse with an attic on Lot 49768 Mk 17 at No 33 Sommerville Walk.'

6. The development was duly completed and possession of unit 33 was taken by the purchasers. In June 2000, the vendors' solicitors informed the purchasers' solicitors that the duplicate SSCT in respect of Unit 33 had been issued and gave the purchasers 14 days notice to complete the purchase. Forwarded under cover of that letter was a photocopy of the SSCT.

7. Three days later, the purchasers' solicitors wrote back and stated that there was a shortfall of 12 square metres or eight percent in the floor area of Unit 33. Since under clause 19(3) of the agreement, there is to be an adjustment of the purchase price for a difference in area in the building unit in excess of three percent, it was claimed that the vendors were liable for the shortfall in area. The purchaser's solicitors calculated the amount payable for the shortfall by multiplying the rate of $6,448.67 per square metre by 7.5 square metres (5%) and obtained the sum of $48,365.02. Taking into account the final payment due from the purchasers of $19,346, the total amount payable by the vendors for the shortfall in area was $29,019.02.

8. The vendors' response was to say that there was no shortfall in area and that the difference of 12 square metres between the 138 square metre area of the townhouse unit as surveyed and the 150 square metre area mentioned in the first schedule of the agreement was taken up by the area of the car park lot. The purchasers did not accept this reply. Their stand was that it was not provided in the agreement that the estimated floor area of 150 square metres of Unit 33 was to be inclusive of the car park lot. They maintained that there had been a shortfall in the area and that they were entitled to an abatement in the purchase price of Unit 33 as provided for in the agreement. Battle was joined.

Description of the development

9. Before I go on to discuss the arguments, a description of the development might be helpful. The

development contains 12 townhouse units and stands two and a half storeys above the ground, the half storey containing the attics of this unit. It also has a basement which contains 11 family rooms, 12 car park lots, a management office and a mechanical room. Ten of the townhouses are essentially three and a half storey units, two and a half storeys being above ground level and the third storey being a basement storey which contains a family room and a private car park lot. The owners of these units have access to their respective car park lots directly from their units via their family rooms. The owners of these units have each been issued with a subsidiary strata certificate of title which contains only one lot. This is because the lot incorporates the space used for the car park since that space is contained within the same vertical column that comprises the family room, first storey, second storey and attic of each such townhouse.

10. At my request, a copy of the sale and purchase agreement for one of the three and a half storey townhouses was adduced in evidence. This agreement was made in respect of the unit known as No. 53 Sommerville Walk, Fortune View, Singapore. Attached to that agreement were extracts from five of the building plans in respect of the development namely the Site Plan, the Basement Storey Plan, The 1st Storey Plan, The 2nd Storey Plan and the Attic Storey Plan. Although the copy of the agreement that was adduced did not contain any red hatching, it did appear from this copy that in the original, the boundaries of unit 53 were delineated in each of the storey plans including the Basement Storey Plan. As far as this last plan was concerned, the rectangular lot so delineated in the basement was clearly divided into a family room, a staircase and a private car park, all with interconnecting doors.

11. The eleventh unit is also a three and a half storey structure with a family room in the basement. Its car park lot is not, however, immediately adjacent to the family room but slightly outside it. Access to the car park lot can still be had through the family room. The owner of the unit steps through a door from the family room into the basement and then walks a few steps to his car park lot. The subsidiary strata certificate of title held by this owner is similar to the SSCT in that it contains two lots viz the main lot for the living area and an accessory lot representing the car park lot.

12. The twelfth unit, that belonging to the purchasers, does not have a basement family room and there is no car park lot directly under the unit. To get access to their car, the purchasers have to walk down into the basement from outside their townhouse and to the lot which is situated a short distance away from the entry to the basement.

13. It should also be noted that, according to the purchasers, when they first viewed the site of the development and the sale documents with a view to purchasing a unit they specifically chose unit 33. This was because they did not want a unit with a basement and unit 33 was the only unit without a basement. They were, however, concerned that they should nevertheless have some parking space and although they were reassured by the agent that there would be a car park lot for the property, when the option to purchase was issued, Mr Lim made sure that the remark 'One basement parking lot entitled for unit no. 33 Sommerville Walk' was written on to the option before it was signed by the vendors.

The arguments

14. The vendors contended that there was no shortfall in the area of the property. They said that they had been obliged to deliver a unit which 'contain[ed] a floor area of 150 square metres' pursuant to the description of the property in the first schedule of the sale and purchase agreement and that they had more than complied with this requirement in that the area of the two lots contained in the SSCT in fact totalled 151 square metres.

15. In the vendors' view, resolution of the issue before the court depended upon the interpretation of the words 'floor area'. They pointed out that there was no reported case giving a definition of that term but asserted that the 'Guidelines for Filing of Schedule of Strata Units' issued by the Commissioner of Buildings suggested that 'floor area' is equivalent to 'title area'. Clause 1.5 of these Guidelines states:

> 'Floor area in connection with share value allotments shall mean the Title Area excluding void *(sic)*'.

The term 'Title Area' is not defined in the Guidelines but counsel contended that it was obvious that this term meant the total area shown in a subsidiary strata certificate of title which, in the case where that title encompassed both a lot and an accessory lot, would mean the aggregate area of both lots.

16. These Guidelines also deal with accessory lots. Clause 7 states that an accessory lot should not be allotted any share value and that strata lots with accessory lots shall be so indicated in the schedule filed with the Commissioner of Buildings. The vendors produced the schedule of strata units which they had filed with the Commissioner of Buildings in respect of the development and pointed out that it did indicate that in respect of unit 33 there was both a main lot and an accessory lot.

17. The vendors emphasised that the SSCT for unit 33 indicated that the area of the primary lot was 138 square metres and that of the accessory lot was 13 square metres. They pointed out that under the Land Titles (Strata) Act (Cap 158), neither an accessory lot nor any right, share or interest therein can be dealt with independently of the lot to which it is made appurtenant (see s 15(1)). Since the accessory lot cannot be dealt with independently, they argued that the title area of unit 33 must include the area of the car park lot, giving a total floor area of 151 square metres. Unit 33 was constructed in accordance with plans approved by the competent authorities and under clause 8 of the sale agreement the purchasers had accepted and approved such plans and were therefore bound by the same. There would be an unfair result if the purchasers were allowed to claim an abatement of the price because this would mean that, effectively, they would be obtaining the accessory lot for free.

18. The purchasers argued that the relevant time to consider the shortfall was when the contract to purchase unit 33 was made that is in June 1997 when the option to purchase was issued by the vendors and accepted by the purchasers. At that time, there were three important documents: the brochure, the price list and the option to purchase. No show unit was then available for inspection and the purchasers had to rely on these documents to know what they would be buying. From the documents, they formed the view that out of the 12 townhouse units in the project, 11 had private car park lots and the twelfth, unit 33, had no private car park lot. Also, it did not have a basement room as it was perched on top of the driveway into the basement.

19. The purchasers maintained that when they saw the brochure, they knew the design of the units on sale and that only one of these did not have a basement and did not have a private car park lot. When they purchased unit 33, they knew that the other units had basement car park lots. The purchasers chose unit 33 because they did not want a basement and were aware therefore that they would not obtain a family room with an attached car park. The purchasers were assured that there would be a place for them to park their car in. Since they knew, however, that unit 33 did not come with its own private car park lot, they insisted on the statement that they were entitled to a car park being written into the option form.

20. The purchasers argued that they did not get what they had contracted to purchase – they had

contracted to purchase a townhouse with two and a half storeys and having a total area of 150 square metres. They did not get this. Instead, they got a townhouse with an area of 138 square metres and an accessory lot. They referred to clause 19 of the agreement and the phrase 'area of the building unit' found in that clause. Their contention was that that term meant the area described in the first schedule which stated a floor area of 150 square metres. Further, attached to the agreement was a plan with the unit to be purchased demarcated in red. The car park lot was not demarcated in this plan as part and parcel of unit 33 purchased pursuant to the agreement. Since even the plans attached to the sale and purchase agreement did not include the car park lot as being part of unit 33, there was, in June 1997, no single document that came from the vendors that showed that unit 33 would have a parking lot as part of its title area. They purchasers had been short-changed and were entitled to a rebate.

The decision

21. I have two preliminary comments. First, the events of June 1997 are only of marginal relevance to the issue. What the purchasers saw then, what brochures were given to them as part of the sale process and what their intentions were in choosing unit 33, cannot dictate the decision. What I am called upon to do here is to determine whether the purchasers have been given what they contracted to buy under the agreement. If they have any claim against the vendors arising out of misrepresentation or collateral contract or any other basis, that will have to be aired in separate proceedings. My task here must be bounded by the terms of the parties' contract and that means that I have to construe the agreement and the agreement only. This leads to the second preliminary comment ie that the 'Guidelines for Filing of Schedule of Strata Units' cannot be resorted to for an understanding of the agreement. The Guidelines were not referred to in the agreement and there is no reason, legal or factual, to connect the contents of one document to the other.

22. The purchasers rely on clause 19(2) of the agreement which entitles them to an adjustment of the purchase price if there is an error or mis-statement as to 'the description of the area of the building unit'. The question is then what is meant by 'the building unit'. To determine this, we have to look first at clause 1 which sets out what the vendors were selling and what the purchasers were buying.

23. By clause 1, the vendors undertook to sell and the purchasers undertook to purchase that 'part of the land comprising the townhouse described in the First Schedule (hereinafter referred to as the building unit) in the housing project now being erected … upon the land described in the First Schedule and known as FORTUNE VIEW'. At this stage therefore, the term 'building unit' refers to the following: (1) a townhouse that is (2) described in the First Schedule and (3) is part of a housing project called Fortune View being erected upon land described in the First Schedule. Taking these elements in turn, what do they tell us about what is being sold? The first element of the definition, the term 'townhouse' does not, as far as I am aware, bear any specific legal meaning so as to indicate to a purchaser any specific facilities that he would obtain when purchasing any such unit. The only thing the purchaser would be sure of would be that what was being offered for sale was a residence rather than a commercial building. The third element simply identifies the location of the property sold ie that it is within the housing project called Fortune View. It is the second element which directs us to the First Schedule in order to identify more precisely what the building unit comprises.

24. The First Schedule is set out in full in 3 above. It does not use the phrase 'the building unit' but refers to the property as the 'townhouse'. It contains three pieces of information about the townhouse sold, to wit the geographical/surveyed location of Fortune View within Singapore,

secondly, the estimated floor area of the townhouse ie 150 square metres and, thirdly, the provisional address of the unit. The estimated floor area is hardly helpful in ascertaining exactly what has been purchased as it gives an aggregate area only without any elaboration of what rooms or areas within the housing project make up those 150 square metres. The third piece of information, the provisional address, does not give us this information either.

25. One has therefore to look into the other clauses of the agreement to see if they hold any clue as to the design of the building unit and how the area of 150 square metres is arrived at. In this respect, the only clause that gives some indication as to what comprises the building unit is clause 8(1) which imposes an obligation on the vendors to erect the building unit and the housing project and all the common property in accordance with the specifications described in the Second Schedule and in accordance with the plans approved by the Building Authority. The Second Schedule contains some details on the physical structure of the project and the building unit but it does not state how many rooms the building unit has nor what the area of each room is. The only clue one gets is from the general description of the housing project which is '12 units of 2-storey Townhouse with Attic and basement Car Park'. It is not clear from this description, however, whether the term 'basement car park' refers to a basement in the housing project where cars can be parked or whether it refers to an individual car park lot for each unit.

26. The other document to which the reader is referred by clause 8(1) is the set of approved plans for the project and the building unit. As mentioned in 4 above, only four out of the nine plans were attached to the agreement. On three of these, the first storey, the second storey plan and the attic floor plan, the boundaries of unit 33 as it would exist on that storey were hatched in red. The fourth plan, the site plan, contained no hatching and could not have done so as it did not indicate the individual units. The basement floor plan was not attached. If it had been attached, the area of the car park lot intended for unit 33 could have also been hatched. Whilst the plans attached were not specifically referred to in either clause 1 or the First Schedule which purported to be the sections of the agreement describing the property bought and sold, I think it is legitimate to refer to those plans to amplify the description given in those sections since, as I have noted, those descriptions are of little help in determining what is intended to constitute the 150 square metre area of the building unit.

27. If one looks at the copies of the plans annexed to the agreement alone, one would have to conclude that unit 33 comprised a first floor, a second floor and an attic only. There is no indication on those plans that a car park lot was to be part of unit 33. Even the full set of plans submitted to the Chief Planner in 1996 does not expressly indicate that a car park lot was supposed to be part of unit 33. Additionally as noted above, the amended description of the project on that full set distinguishes between the 11 townhouses which each have an attic and a basement car park and the one unit which has only an attic and which is called 'No. 33 Sommerville Walk'. That would appear to be a clear reference to unit 33. So, even if the purchasers had gone to look at the plans in the Chief Planner's office they would not have realised that the private car park lot next to the mechanical room was intended to be part of the property being sold to them.

28. Whilst the documents preceding the sale and purchase agreement are, strictly, irrelevant to the task of construing the agreement, the option does assist me in my understanding of what the purchasers believed they were buying when they exercised it and committed themselves to enter the agreement. The description of the property in the option was simply 'Townhouse (A3 Type) (2 Storey) (with attic) (marked) in the sale brochure as Townhouse No. 33'. This description conformed to the description in the approved plans and did not indicate that there was to be a car park lot as part of the townhouse. The very fact that the purchasers felt it necessary to ask the vendors to write the remark 'One basement parking lot entitled for unit no. 33 Sommerville Walk' into the option shows that they did not know that the car park lot was an integral part of the townhouse that they were buying.

By that remark they wanted the reassurance that there would be a space within the basement for their car.

29. Although the agreement was in the standard form prescribed by the Housing Developers Rules, this standard form does not prescribe how the property being sold is to be described in the First Schedule or what specifications have to be included in the Second Schedule. The manner of description is entirely up to the developers/vendors and their solicitors. In this case, the description of unit 33 could very well have specified that it comprised a 2-storey townhouse with an attic and also embodied a car park lot in the basement. Not only was no such description given but the plans annexed to the agreement gave no indication whatsoever that the car park lot would be part of unit 33. The purchasers were not the drafters of the agreement and had no control over the language used or the description given or the plans annexed to the agreement. In this situation, the *contra profiterendum* rule must apply so that any ambiguity in the description is resolved in favour of the purchasers.

Conclusion

30. For the reasons given above, I have come to the conclusion that when the vendors contracted to sell a townhouse estimated to contain a floor area of 150 square metres to the purchasers, they were contracting to sell a residential unit of an area of 150 square metres derived from the two and a half storeys of living space indicated in the plans attached to the agreement. They were not contracting to sell a residential unit of that area made up by aggregating the living space and the car park lot. I must therefore hold that there was a shortfall in the area of the property known as 33 Sommerville Walk, Fortune View, Singapore. Since I have held against the plaintiffs, they must bear the defendants' costs of this action.

Sgd:

JUDITH PRAKASH
JUDGE

This does not merit reporting.

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