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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.792 OF 2015

Joy Homecreation Ltd.	...Petitioner
V/s.	
Shantijeevan Nivas CHS Ltd. & Ors.	...Respondents

Mr.Anuj Narula i/b Jhangiani, Narula & Associates for the Petitioner.
Mr.Victor Fernandes for the Respondent No.1.
Mr.B.L. Mangale for the Respondent No.2.

CORAM : R.D. DHANUKA, J.
DATE : 1ST OCTOBER, 2015.

P.C. :-

1. By this petition filed under section 9 of the Arbitration & Conciliation Act, 1996 (for short "Arbitration Act"), the petitioner seeks appointment of the Court Receiver in respect of the flats bearing Flat Nos.B-6 on the ground floor, B-5 on the second floor and Flat No.B-5 on the ground floor situated in respondent no.1 society.

2. The building known as "Shantijeevan Nivas" was constructed in the year 1976. In the year 1977 the respondent no.1 society was formed. The respondent no.1 society passed a resolution to carry out redevelopment of their property and invited offers for carrying out redevelopment. On 14th February, 2012, the petitioner entered into a Memorandum of Understanding with the respondent

no.1, which was signed by all the members of the respondent no.1 society except five members, including the respondents. On 22nd June, 2013, the respondent no.1 society entered into a development agreement in respect of their building with the petitioner on the terms and conditions recorded therein. Out of 48 members, 43 members of the respondent no.1 society have individually executed the consent letter in favour of the respondent no.1 society. Two other members of the respondent no.1 society had initially not signed individual consent letters in favour of the respondent no.1, have also signed such letters.

3. The petitioners have already obtained IOD on 22nd October, 2014. The Municipal Corporation has granted approval on 25th June, 2014 to utilize the fungible compensatory FSI available on the said property.

4. The petitioner has addressed several letters to the respondent no.1 society for getting their flats vacated from their respective members and to execute individual agreements with the petitioner. Mr.Narula, learned counsel appearing for the petitioner submits that the petitioner has already spent more than Rs.6.00 crores so far on this project. He submits that the remaining members excluding respondent nos. 2 to 5 have agreed to co-operate with the petitioner and have agreed to vacate their respective tenements to enable the petitioner to redevelop the property.

5. Learned counsel invited my attention to the photographs of the building annexed to the additional affidavit dated 1st July, 2015 in support of his submission that the condition of the building is absolutely dilapidated and the same may collapse at any time.

6. The Respondent no.1 has appeared through its advocate, who is supporting the petitioner. He also submits that the condition of the building is absolutely dilapidated and because of non-co-operation of the dissenting members, the other members of the society who are willing to co-operate with the petitioner and the society cannot be made to suffer. He submits that the petitioner however, shall be directed to execute individual agreements with the members of the society and to pay their requisite payments agreed to be paid by the petitioner in accordance with the provisions of the development agreement.

7. The respondent has not filed any affidavit in reply. The respondent nos.3 to 5 are absent, though served. No affidavit in reply has been filed by them also.

8. In my view, the respondent nos.2 to 5 who are in miniscule minority in the respondent no.1 society cannot be allowed to stall the project. It is not in dispute that none of the respondents have challenged the resolution passed by the society. The resolution passed by the society approving the contract awarded to the

petitioner for the purpose of redevelopment and the various other resolutions in respect of this project have not challenged in this petition and are thus binding on them.

9. Mr.Narula, learned counsel for the petitioner states that before the members of the respondent no.1 society shall vacate, the petitioner would pay all such payments required to be paid under the development agreement and submits that the petitioner would enter into individual agreements with all the members of the society and also pay the amount within three weeks from today. The statement is accepted.

10. The statement made by learned counsel appearing for respondent no.1 society that upon the petitioner executing individual agreement with the members of the society and upon receiving of the payments agreed to be paid by the petitioner under the development agreement till the stage of such vacating flats, if any, their members shall vacate by four weeks from today. The statement is accepted.

11. I therefore pass the following order :-

a). The members of the respondent no.1 society including respondent nos.2 to 5 are directed to hand over vacant and peaceful possession of their respective flats to the petitioner for the purpose of redevelopment within four weeks from today. The petitioner is directed to execute individual agreement with all the members of the

respondent no.1 society, including respondent nos.2 to 5 within three weeks from today and shall pay the requisite amount payable under the development agreement to each of the members and to the society as agreed simultaneously.

b). It is made clear that if the members of the respondent no.1 society including respondent nos.2 to 5 do not vacate their respective flats within four weeks from today, the Court Receiver, High Court, Bombay shall stand appointed in respect of all the flats of the respondent no.1 society, including the flats of the respondent nos.2 to 5 with power to take forcible possession and if necessary with the assistance of the police and shall hand over the same to the petitioner.

c). Till the Court Receiver takes possession, the members of the respondent no.1 society including the respondent nos.2 to 5 shall not create any third party rights in respondent of their respective flats.

12. The arbitration petition is disposed of in aforesaid terms.
No order as to costs.

13. The parties to the proceedings as well as the Court Receiver to act on the authenticated copy of this Court.

(R.D. DHANUKA, J.)

“Certified to be true and correct copy of original signed order.”