

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 15TH DAY OF OCTOBER 2015

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

A. No.3771 of 2015

In the matter of
Arbitration and
Conciliation Act,
1996

And

In the matter of
Arbitration of the
dispute between
Mrs.Saraswathi,
Chennai 41 and
Mr.M.K.Haribaabu,
RidhuSree Promoters,
Chennai 88, Vide
Agreement dated
09.11.2011.

Mrs.Saraswathi,
aged about 80 years
residing at Old No.257 & New No.34,
R.K.Mutt Road, Mylapore, Chennai 600004
& now residing at Plot no.320, Door No.13/4,
4th Main Road, Kamaraj Nagar,
Thiruvannamiyur,
Chennai 600 041.

..Applicant

Vs.

Mr.M.K.Haribaabu,
RedhuSree Promoters
"RidhuSree" 2nd Floor,
22-B, Balaji Nagar, 2nd Street,
Adambakkam, Chennai 600 088.

..Respondent

pleased to direct the Respondent to issue a bank guarantee for a sum of Rs.1,50,00,000/- apart from the actual given in the calculation sheet including the expenses involved for the arbitration and litigation expenses against the Respondent and proper handing over of the flats by the Respondent till such time the arbitration proceedings are resolved in the above petition.

This application coming on this day before this court for hearing the court made the following order:

This application is filed under Section 9 of the Arbitration and Conciliation Act, 1996 seeking for a direction to the respondent to issue bank guarantee for a sum of Rs.1,50,00,000/-.

2. The applicant is the owner of the subject matter land and the respondent is the builder. They entered into a joint development agreement dated 09.11.2011. According to the joint development agreement, the applicant is entitled to 45% of the super built up area and the builder is entitled to 55% of the super built up area.

3. As per the said agreement, the applicant had agreed to take Block Nos. A and D along with eight covered car parkings. The grievance of the applicant is that the respondent builder has put up construction with various deviations, apart from constructing two extra flats which were not governed by the original agreement between the parties. Therefore, the applicant wanted to raise an Arbitral dispute for claiming damages and also for recovery of money. Before initiation of such Arbitral proceedings, the present application is filed with the relief as stated supra.

4. Counter Affidavit is filed by the respondent disputing the various contentions raised by the applicant. However, it is stated in the counter Affidavit at para No. 12 that the respondent had completed the construction of Blocks-A and D as early as in April, 2014 itself and since then, sincere efforts have been made by the respondent to handover physical possession along with keys to the applicant, but all his genuine attempts ended in vain.

5. Learned counsel appearing for the respondent builder submitted that even though the claim made by the applicant, is to be agitated before the

Arbitral proceedings, the respondent is ready and willing to handover the Block Nos. A and D along with eight covered car parkings to the applicant and thus, the applicant may be directed to take possession of the same by receiving the keys from the respondent thereby, leaving the parties to agitate the other dispute before the Arbitral proceedings. Learned counsel appearing for the applicant submits that the applicant is willing to take possession of the Block Nos. A and D along with eight covered car parking, without prejudice to her rights to raise all contentions in the Arbitral proceedings.

6. Considering the fact that the dispute that has arisen between the parties has to be raised, contested and finally adjudicated upon only in the Arbitral proceedings, this Court is not expressing any view on the rival contentions of the parties on the merits of the matter. However, as the respondent has now agreed to hand over Block Nos. A and D along with eight covered car parkings and the applicant has agreed to take possession of the same, without prejudice to the contentions of the parties before the Arbitral proceedings, the present application is

a) The respondent shall handover physical possession of the Block Nos. A and D with eight covered car parkings, along with the keys to the applicant within two weeks from the date of receipt of the copy of this order.

b) The applicant shall take possession of the property namely Block Nos. A and D along with eight covered car parkings without prejudice to her right to raise all contentions before the Arbitration proceedings.

c) Both the handing over and taking over of possession of the above said property shall take place on the premises itself on the day fixed and agreed by both the parties.

d) The applicant is directed to take steps to initiate Arbitration proceedings within a period of four weeks.

sd/.K.R.C.B.J

WEB COPY

15.10.2015

//Certified to be a true copy//

Dated this the day of 2015.

R.s/18.11.2015

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.