IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 1386 OF 2015

Tata Capital Financial Services Limited ..... Petitioner

Versus

Blue Valley Builders Pvt. Ltd. & Ors. ... Respondents

Mr. Mayur Khandeparkar a/w. Ms. Nazneen Kotwal i/b. MDP & Partners for the Petitioner.
None for the Respondents.

CORAM : S.J.KATHAWALLA, J.

DATE: 23rd June, 2016

P.C.

1. This Petition is filed by the Petitioner under Section 9 of the Arbitration and Conciliation Act, 1996 seeking reliefs against the Respondents.

2. By an order dated 21st April, 2016, this Court had permitted the Petitioner to serve the above Petition on the Respondents by publication in newspapers. Pursuant to the said order, the Petitioner has served the above Petition on the Respondents by publication and an affidavit of service dated 7th June, 2016 is on record. The Petition is today taken up for final hearing. However, none appear for the Respondents.

3. The Respondents have obtained a loan from the Petitioner Tata Capital Financial Services Limited. According to the Petitioner, in the month of July, 2012 the Respondent No. 1 being the Applicant and the Respondent No. 2, 3 and 4 being the Co-applicants had approached the Petitioner with a request for a home loan. A loan of Rs. 4,60,00,000/- (Rupees Four Crores Sixty Lakhs only) ("the said loan") was sanctioned by the Petitioner to the Respondents vide its Sanction letter dated 25th October, 2012 on terms and conditions mentioned therein. The said Sanction Letter has been signed by the Respondents in acceptance thereof. A loan agreement dated 30th October, 2012 ("the said agreement") was thereafter executed by and between the Petitioner and Respondents where under the Respondents inter alia agreed and undertook that in case of delay in payment of the loan installments or interest or any other monies on the respective due dates as stipulated therein, the Respondents shall pay overdue interest at the rate of 2% per month over and above the prevailing interest rate on the aforesaid overdue amount for the defaulted period till payment/realization and other expenses, costs, fees, charges, etc. Clause 11.2 pertains to events of default. Clause 11.3 pertains to consequences in the event of default and Clause 12.18 pertains to arbitration.

4. In consideration of the loan granted by the Petitioner, the Respondents executed a Deed of Mortgage dated 12th November, 2012, in favour of the Petitioner, which is duly registered under Deed No. I – 04364 of 2012 with the Office of the Additional Registrar of Assurance- III at Kolkata, creating mortgage on the property belonging to Respondent No. 1 in favour of the

Petitioner, being 16 residential flats in Blue Valley Project, ITI Road, Plot No. 198,199, Sheet No. 08, Bhaktinagar, Siliguri which is described in Second Schedule to the Deed of Mortgage dated 12th November, 2012 as more particularly set out in paragraph 4 (d) of the Petition.

5. According to the Petitioner, the Respondents have availed and utilized the Loan disbursed by the Petitioner for Rs.4,60,00,000/- (Rupees Four Crores Sixty Lakhs Only), repayable along with interest @ 13.75% p.a. (variable) in 48 monthly installments of Rs. 12,51,257/- (Rupees Twelve Lakhs Fifty One Thousand Two Hundred and Fifty Seven Only) commencing from 30th October, 2012 and ending on 9th August, 2016. As on 1st July, 2015, the Respondents failed and neglected to pay the monthly installments on time and hence are in default in respect thereof to the tune of 5 monthly installments, aggregating to a sum of Rs. 61, 97,641/- (Rupees Sixty One Lakhs Ninety Seven Thousand Six Hundred and Forty One only) in respect of the said monthly installments being due and payable by the Respondents.

6. The Respondents failed and neglected to repay the outstanding monthly installments. The said failure on the part of the Respondents to pay the outstanding monthly installments constitutes an event of default in terms of Clause 11.2 (b) of the said agreement. Despite repeated requests and reminders, the Respondents have failed to cure the defaults and make payments of the amounts due and payable under the agreement. The Petitioner therefore instructed its erstwhile Advocates to issue a legal notice for recall of the entire loan and for invocation of arbitration. Accordingly, on 3rd June, 2015, a Notice was sent to the Respondents by the Petitioner's erstwhile Advocates calling upon them to repay to the Petitioner a sum of Rs. 2,59,92,814/- (Rupees Two Crores Fifty Nine Lakhs Ninety Two Thousand Eight Hundred and Fourteen Only) along with interest thereon on the aforesaid amount till payment/ realization within a period of 7 (seven) days from the date of the said Notice, failing which, the said Notice be treated as Notice invoking arbitration against the Respondents and for enforcement of securities created in favour of the Petitioner and exercise all or any of the rights available to the Petitioner. The Petitioner states that on the failure on the part of the Respondents to respond to the Petitioner's requests and reminders, and repay the amounts due and payable to the Petitioner within 7 (seven) days from the date of the said Notice, it is evident that the Respondents do not have any intention to pay the amounts due and payable to the Petitioner and thus the disputes, differences, claims etc., have arisen between the Respondents on one part and the Petitioner on the other part and in that event, the Notice to be treated as Notice under Clause 12.18 of the said agreement invoking arbitration.

7. The Petitioner has also submitted a further affidavit dated 10th June, 2016 stating that after filing of the Petition, the Respondents have paid a sum of Rs. 1,48,39,425/- (Rupees One Crore Forty Eight Lakhs Thirty Nine Thousand Four Hundred and Twenty Five Only) and as on 10th June, 2016 an amount of Rs. 1,49,54,539/- (Rupees One Crore Forty Nine Lakhs Fifty Four Thousand Five Hundred and Thirty Nine Only) is due and outstanding. It is further stated that pursuant to the payment of Rs. 1,48,39,425/- (Rupees One Crore Forty Eight Lakhs Thirty Nine Thousand Four Hundred and Twenty Five Only), the Petitioner has issued a No Objection Certificate in March, 2016 in respect of flat A at floor 4 measuring 1908 sq ft more particularly described in Annexure – A to the further affidavit. It has been further stated that the balance 15 residential flats in Blue Valley Project, ITI Road, Plot No. 198,199, Sheet No. 08, Bhaktinagar, Siliguri are validly mortgaged by the Respondents in favour of the Petitioner more particularly described in Exhibit – F to the Petition and also described in Annexure –A to the further affidavit.

8. The Petitioner has therefore sought appointment of the Court Receiver, High Court, Bombay, as a Receiver in respect of the mortgaged property described in the Schedule at Exhibit "F" to the Petition and also described in Annexure –A to the further affidavit excluding the flat being flat A at floor 4 measuring 1908 sq ft.

9. The Respondents have not filed their affidavits in reply and are also not present before the Court. In absence of any defense or contest by the Respondents, the averments contained in the Petition have remained uncontroverted. I see no reason why the statements/ submissions made by the Petitioner in the Petition should not be accepted. Section 9 of the Act, empowers the Court to pass an interim measure of protection. As the Respondents have defaulted in the repayment of the outstanding dues, it is just and necessary to safeguard the interest of the Petitioner by appointing Court

Receiver as Receiver in respect of the mortgaged property described in the Schedule at Exhibit "F" to the Petition and also described in Annexure –A to the further affidavit excluding the flat being flat A at floor 4 measuring 1908 sq ft.

10. The appointment of Court Receiver is necessary in order to ensure that the said mortgaged property is not wasted or alienated, thereby defeating the rights of the Petitioner. Further interim injunction also needs to be granted to protect the rights of the Petitioner. The claim of the Petitioner as on 10th June, 2016 is Rs. 1,49,54,539/- (Rupees One Crore Forty-nine Lakhs Fifty –four Thousand Five Hundred and Thirty- nine only) and unless adequately protected, the Petitioner may suffer irreparable harm and injury. The balance of convenience also warrants the grant of relief. Hence the following order is passed:

(i) Pending the hearing and final disposal of the arbitration proceedings, the Court Receiver, High Court, Bombay is appointed as Receiver in respect of the mortgaged property, more particularly described in Exhibit "F" to the Petition and also described in Annexure - A to the further affidavit excluding the flat being flat A at floor 4 measuring 1908 sq ft , with direction to take symbolic possession of the said mortgaged property;

(ii) The Court Receiver shall within a period of two weeks after taking possession, give an option to the Respondents, in writing to act as agents of the Receiver in respect of the said mortgaged property. The Respondents shall be given two weeks time by the Court Receiver from the date of receipt of the Court Receiver' s communication/letter to exercise such an option. In the event of the Respondent/s being desirous of acting as agents of the Receiver, they shall be appointed as agents of the Receiver, subject to deposit of security and payment of royalty. The Receiver shall determine the quantum of security and royalty having regard to the terms and conditions contained in the Loan Agreement (Exhibit "D" to the Petition) ;

(iii) In the event that the Respondents do not communicate their willingness to the Receiver to act as agents within a period of two weeks from the date of receipt of the communication from the Court Receiver, it would be open to the Petitioner to apply to the Court for further orders;

(iv) There shall also be an interim injunction restraining the Respondents from disposing of, alienating, encumbering, parting with possession or creating any third party rights in respect of the mortgaged property described in Exhibit "F" to the Petition and also described in Annexure - A to the further affidavit excluding the flat being flat A at floor 4 measuring 1908 sq ft, with direction to take symbolic possession of the said mortgaged property.

11. A copy of this order shall be forthwith served on the Respondents by hand delivery and also by Speed Post A.D.

12. All concerned to act on an ordinary copy of this order, duly authenticated by the learned Associate of this Court.

13. The Arbitration Petition is accordingly disposed of.

{S.J. KATHAWALLA, J}