

Original Application No.343 of 2016
and A.No.2161 of 2016

RAJIV SHAKDHER, J.

1. Learned counsel for the parties have informed that this Court has already appointed an Arbitrator, in a proceeding carried out under Section 11 of the Arbitration and Conciliation Act, 1996 (in short 'the 1996 Act').

2. I am informed by the learned counsel that Mr.G.Masilamani, Senior Advocate, has been appointed as the Arbitrator.

3. The captioned application, i.e., O.A.No.343 of 2016 has, however, been filed by a Developer seeking the following interim reliefs:

“..... Interim injunction restraining the respondent or anybody on his behalf from in any way, interfering with the possession of 5 flats bearing flats Nos.B-1, B-2, B-3, B-5 and B-6 situated in 'B' Block in S.No.602/2K/and 602/2J. (New S.No.602/14) as per Patta 3621 No.51, bearing Block No.12A “Classic Retreat” Sholinganallur, Chennai-119 morefully described in the schedule hereunder pending disposal of the above Application.”

4. The applicant's grievance appears to be that even though construction is complete, security deposit in the sum of Rs.50 lakhs is not being returned by the respondent/landowner. In support of this

submission, reliance is placed on Clause 2 of the Joint Development Agreement dated 10.04.2013 (in short 'JDA'), obtaining between the parties.

4.1. To be noted, it is the case of the applicant, that, as a matter of fact, the said sum of Rs.50.00 lakhs, which is treated under JOA as interest free refundable security deposit, was paid to an entity by the name of FiveStar Business Credit Limited to redeem the mortgage of the property, over which the super structure was required to be constructed. The applicant has averred that the said sum of Rs.50.00 lakhs was paid directly to FiveStar Business Credit Limited, which resulted in the mortgage being redeemed.

5. On the other hand, the learned counsel for the respondent drawn my attention to Clause 5 of the Supplementary Agreement dated 10.07.2013, based on which, it is contended that the Security Deposit requires adjustment on account of the shortage in the built up area, which has been made available to the respondent / land owner. For the sake of convenience, Clause 5 of the Supplementary Agreement is extracted hereinbelow :-

“ At present the Difference of Built up area between the Land owner is 143 sq ft which is

shortage to the land owner. On completion of the Project if there is any difference more than said build up area 143 sq ft of the Cost will be adjusted in the security deposit which has been paid to the land owner by the builder. The rate sq.ft. Will be fixed by both the land owner and developer mutually..... ”

6. I have heard the learned counsel for the parties.

7. According to me, pending the adjudication of disputes between the parties, qua which, an Arbitrator has been appointed, the interest of the applicant can be secured, if the respondent/landowner, is injuncted from creating any third party interest in one of the five flats, which are presently in his possession.

7.1. I have put this proposition to the counsel for the respondent/landowner.

7.2. The counsel for the respondent/landowner has agreed that pending disposal of the arbitration proceedings, the respondent / landowner will not alienate, transfer or create any third party interest in Flat No.B5, located in S.No.602/2K/and 602/2J. (New S.No.602/14) as per Patta 3621 No.51, bearing Block No.12A, “Classic Retreat”, Sholinganallur, Chennai-600 119 (in short the property).

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7.3. The submission made on behalf of the respondent / landlord, via its counsel, is taken on record.

8. Accordingly, the respondent / landowner is restrained from alienating, transferring and/or creating third party interest in the aforementioned property, till the conclusion of the proceedings before the Arbitrator.

9. Needless to say, if an appropriate application is moved, the Arbitrator will have liberty to vacate, vary or modify or even confirm the order passed by this Court.

10. The application is, disposed of, in terms of the aforementioned directions.

arr/gg/sl

22.09.2016

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