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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ O.M.P.(I) (COMM.) 403/2016

R.P.MALHAN & COMPANY PRIVATE LIMITED ..... Petitioner

Through: Mr Sunil Choudhary, Advocate.

versus

M/s AMBIENCE PVT. LTD. & ANR. ..... Respondents

Through:

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **07.10.2016**

IA No.12627/2016

1. Allowed, subject to all just exceptions.

2. The application is disposed of.

O.M.P.(I) (COMM.) 403/2016

3. The petitioner has filed the present petition under Section 9 of the Arbitration and Conciliation Act, 1996, (hereafter the 'Act') *inter alia,* praying as under:-

> "(a) Pass an ex-parte ad-interim order restraining the Respondents from relying/acting/ proceeding and/or doing any act, deed or thing in any manner, whatsoever, on the basis of the said Tripartite Agreement dated 29.03.2013 and /or in respect of all the matters concerning the said Tripartite Agreement dated 29.03.2013.
>
> (b) Pass an ex-parte ad-interim order restraining the Respondents from taking any action in any manner, whatsoever, more particularly coercive action against the

> Petitioner such as auction/sale of the "Residential Apartment" and attachment of the Bank Accounts of the Petitioner etc. in pursuance to the fraudulent, false, forged and fabricated Tripartite Agreement dated 29.3.2013 which is null and void in the eyes of law and is not binding on the parties;"

4. The petitioner states that it was interested in purchasing a residential apartment in a Development known as 'Caitriona Residential Apartment Complex' being developed by respondent No.1 (hereafter referred as 'the Builder'). It is further stated that the Builder also represented to the petitioner that respondent No.2 (hereafter referred to as 'the Bank') will provide a loan to the petitioner for purchase of the apartment subject to the petitioner meeting the eligibility criteria. The petitioner further states that thereafter an agent of the Bank approached the petitioner and assured the petitioner that Bank would sanction a loan once the petitioner had booked the apartment with the Builder. It is the petitioner's case that the loan was to be disbursed directly by the Bank to the Builder on certain conditions being fulfilled which included, (a) the petitioner paying the balance sales consideration (other than the loan amount); (b) confirmation of allotment of the residential apartment; (c) execution of a Flat Buyer's Agreement by the Builder and the petitioner; and (d) and the Flat Buyer's Agreement being deposited with the Bank.

5. The petitioner further paid a sum of ₹3 crores to the Builder for booking the apartment. It is also stated that the petitioner signed various documents including a loan agreement for availing loan from the Bank.

6. The petitioner's grievance is that the Bank has disbursed the loan amount of ₹3,24,71,802/- directly to the Builder without waiting for the petitioner to pay its balance consideration and without execution of the Flat Buyer's Agreement. The

petitioner further alleges that the consideration for the Flat was fixed at ₹12,63,09,701 plus Bulk Electricity and other charges. However, the Builder has demanded excess consideration of ₹1,82,36,885/- by its letter dated 03.06.2013.

7. The learned counsel for the petitioner referred to various documents to indicate that the loan agreement had been ante dated to 28.03.2013. The petitioner further alleges that the Builder and the Bank have conspired together to defraud the petitioner.

8. It is seen from the above that the central dispute between the parties relates to the alleged excess amount demanded by the Builder. In the circumstances, the petitioner filed a suit before learned ACJM Gurgaon (Civil Suit No. 17010/2013). The Builder filed an application under Section 8 of the Act in the said proceedings, which was rejected by the trial court. The Builder had carried the matter in a Civil Revision before the Punjab and Haryana High Court (Civil Revision No. 831/2014) which was allowed and by an order dated 05.05.2013, the disputes between the petitioner and the Builder were referred to the Sole Arbitrator, Justice Kailash Gambhir (Retired), a former Judge of this Court. The said proceedings are pending.

9. The petitioner has also filed a suit against the Bank (being Civil Suit No. 21643/2014) which is also pending. The Bank has also instituted proceedings for recovery of the amount outstanding in relation to the loan disbursed directly to the Builder on behalf of the petitioner, which are pending before the Debt Recovery Tribunal (DRT).

10. In so far as the second prayer is concerned - that is, restraining the respondents from taking any coercive action against the petitioner such as auction/sale of the "Residential Apartment" and attachment of the Bank

Accounts of the Petitioner etc.- the petitioner had filed another petition (OMP (I) COMM. 401/2013) seeking similar relief against the Bank which has been rejected by a separate order passed today, thus, no such relief against the Bank can be granted in this proceeding.

11. Insofar as an order interdicting the Builder from taking any coercive steps is concerned, it is noted that the disputes between the Builder and the petitioner have already been referred to the Sole Arbitrator and it would always be open for the petitioner to approach the Sole Arbitrator for any relief against the Builder in connection with the transaction.

12. The contention that the present petition is in relation to the tripartite agreement and not in relation to the allotment letter and therefore, the relief against the Builder cannot be sought before the arbitrator is not persuasive. The tripartite agreement is admittedly a part of the transaction for purchase of the residential apartment and the petitioner is at liberty to claim interim relief against the Builder in relation to disputes relating to the transaction before the Sole Arbitrator.

13. Insofar as the first prayer (prayer (a) quoted above) is concerned, the same is vague and a blanket order restraining the parties from acting on behalf of the tripartite agreement cannot be granted. Admittedly, the petitioner has executed the tripartite agreement. The petitioner's grievance that the said agreement was fraudulent as null and void is a subject matter of disputes to be adjudicated in appropriate proceedings. It is not disputed that the Bank had disbursed the amount of ₹3,24,71,802/- on behalf of the petitioner. The petitioner was fully aware that such loan had been disbursed

as the equated monthly instalments (EMIs) for repayment of the loan were debited from the bank account of the petitioner from April, 2013 onwards. Further, the disputes between the petitioner and the Bank are already subject matter of proceedings before the DRT as well as the proceedings relating to the suit filed by the petitioner.

14. The petition is, accordingly, dismissed. However, it is clarified that this would not preclude the petitioner from seeking appropriate relief in appropriate proceedings.

VIBHU BAKHRU, J

OCTOBER 07, 2016
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