JSN

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION (L) NO. 51 OF 2017

M/s SIA Developers LLP ...Petitioner
Versus
Mrs Manju Pravin Jain & Ors ...Respondents

Mr Zal Andhyarujina, *with Ms. Nivit Srivastava, i/b Maniar Srivastava & Associates for the Petitioner.*
Ms Dipti Panda, *i/b AKS Legal for Respondent No.1/Landlord.*
Mr Niranjan Pathak, *for Respondent No.4.*
Mr Bhavin Bhatia, *for Respondent No.11.*
Mr Sunil Patel, *i/b M/s Sunil and Company for Respondents Nos. 2, 5 to 10 & 12 to 15.*

CORAM: G.S. PATEL, J
DATED: 19th January 2017

PC:-

1. The Petitioner in this Petition under Section 9 of the Arbitration Act is a developer. Defendants Nos. 2 to 17 are all occupants / tenants of the structure known as Krishna Kunj owned by Defendant No.1. There is a redevelopment agreement dated 25th February 2014. Clause 28 has the arbitration agreement.

2. The principal complaint by the Petitioner is that in contravention of the terms of the development agreement some of the occupants / tenants have not delivered vacant possession of their respective apartments and the development had been entirely stalled. As it turns out, there is no real dispute between the Petitioner and the owner (the 1st Defendant) on the one hand and most of the tenants / occupants, except Respondents Nos. 3 and 4. It seems that because of certain private or side negotiations Respondents Nos. 3 and 4 were able to prevail on the Petitioner to offer them special terms both in regard to the rent for temporary alternative accommodation / transit accommodation as also an additional area in the reconstructed building. In fact, to my very great surprise, I find that even as between Respondents Nos. 3 and 4 *inter se*, there is a difference in the amount and in the area in this enhanced offer.

3. Mr Andhyarujina points out that Respondent No.3's brother who represented her and also held a Power of Attorney from Respondent No.4, who lives overseas, and yet some how managed to negotiate differential rates for the two of them.

4. To put this in concrete terms, it was agreed that all occupants / tenants would receive compensation @ Rs.70/- per sq ft per month towards temporary alternative accommodation. Respondent No 3 managed to negotiate a rate of Rs.95/- per sq ft per month. Respondent No.4 was marginally less successful and was able to get only a slightly improved rate of Rs.80/- per sq ft per month. This carried over also to the additional area to be offered in the reconstructed building. Uniformly, all tenants / occupants were offered 20% over and above their existing areas, but Respondent No.3 managed to secure for herself an offer of an additional 35 and Respondent No.4 an additional area of 30%. Both Respondents Nos.

3 and 4 thus got terms better than those offered to the other occupants / tenants.

5. This clearly an unviable situation. Neither the landlord nor developer will be able to proceed with this development. Some of the other occupants / tenants represented by Mr Sunil Patel are also understandably aggrieved that these two Respondents have got preferential or more favourable terms. It is not possible to have a development agreement which creates this kind of imbalance or lack of parity between others who are equally situated. Individual tenants / occupants cannot, even as a matter of law, and this is now well-settled, obtain additional benefits that are denied to their fellow tenants and future fellow members of the co-operative society that will be formed once the construction is complete and possession delivered. I believe it is axiomatic that all tenants and occupants should be treated with parity. Each individual tenant or occupant cannot negotiate a one-sided deal for himself or herself. Of course the developer stands to lose, but more importantly, the majority of the tenants are forced either to accept poorer terms than those afforded to a select handful, or no tenant/occupant gets any improved accommodation at all. The inequity in this situation is self-evident.

6. In the morning session Mr Pathak appeared for Respondent No. 4. Respondent No. 3 has been informed of these proceedings but Mr Andhyarujina fairly states that on a telephone call she said she was away from Mumbai and had not seen the papers. Having regard to the facts of the case, this makes no difference at all. As I have noted, Respondent No 3 cannot possibly have stand-alone rights that are better than those made available to her neighbours. In the following order, the claims of Respondents Nos. 3 and 4 are adequately protected.

7. I have made it clear that I will secure to Respondents Nos. 3 and 4 a monetized value of their claims both for temporary alternative accommodation and the additional area and will leave for a later date the question of whether these additional benefits should be shared equally between all the tenants / occupants or in some other manner. But I will not on any account allow Respondents Nos. 3 and 4 to extract out of the same development agreement that covers others similarly placed some additional benefit, temporary or final, that is unavailable to their neighbours. I cannot think of anything more inequitable than what Respondents Nos. 3 and 4 have sought and done.

8. The actual figures are these. The rent payable to each occupant for temporary accommodation at the rate of Rs.70/- per sq ft for 18 months. This is the amount that will be paid to all the occupants / tenants including Respondents Nos. 3 and 4. The additional amount that was offered to Respondent No. 3 is Rs. 1,15,200/-. The additional amount offered to Respondent No.4 was Rs.1,61,280/-. These additional amounts will not be paid to either Respondents Nos. 3 or 4 but will be deposited by the Petitioner with the Prothonotary and Senior Master on or before 20th February 2017 and these amounts will be invested in the usual fashion. As to the additional area offered to Respondents Nos. 3 and 4, this has also been computed. Respondent No.3 negotiated an additional 38 sq. ft. Respondent No.4 negotiated an additional 25 sq.ft. The total of these is 63 sq ft. The ready reckoner value of 63 sq ft is Rs.8,97,223/-. This amount also will be deposited by the Petitioner with this Court on or before 20th February 2017 and then invested.

9. After construction is completed, and the occupants / tenants are put into possession of their respective apartments in the reconstructed building, the Petitioner will, as is its obligation in law, make the necessary applications within the prescribed time for the formation of a co-operative society. At that stage, the co-operative society that is proposed or registered may make an application to this Court in this matter for withdrawal of the amounts deposited. The co-operative society will then in a properly convened Annual General Meeting take a decision as to the distribution of these amounts, i.e., whether they should be distributed equally between all members; *pro rata* i.e., in proportion to the areas occupied by them, or given entirely to Respondents Nos. 3 and 4 in the amounts indicated above. That is a decision that must necessarily be left to the democratic view of the society once it is formed. That, in my view, is the only equitable and fair approach. It is not possible either for the Petitioner or the owner to take upon itself or himself the responsibility of making this decision, nor I am prepared to enter in to this controversy.

10. The tenants have not yet handed over possession though, under the agreement, they were required to do so within 45 days of IOD. That IOD is dated 30th March 2016. Intimation was sent on 1st April 2016. Far too much time has passed since. The submission now is that many of these occupants have school-going children and that time should be given of several months to make this move. That is not an appeal to law, logic, justice, equity or even conscience. It merely seeks to trade on puerile emotion. What it overlooks is that there is a solemnity and a gravitas to these proceedings, one rooted in fidelity to law, justice and equity. There may be school-going children; what of it? This country, and this city in particular, knows better than anyone the conditions of hundreds of thousand far more ill-placed who go to school daily in far more arduous conditions. Shifting home, especially temporarily, and especially with the assurance of a return to an improved dwelling, is not the kind of heavy-handed brutality this submission makes it out to be. It is, I note, nobody's case that any of these school-going children (and, of course, I am not told how many there are, in what years or of what ages) have any examinations that are imminent. These tenants and occupants have known since 2014 that they had school children and that there was this development agreement that required them to vacate — for their own betterment. They knew then as well that they would have to vacate within 45 days of the intimation of the IOD. The development is clearly for their benefit. The tenants cannot create one impasse after the other. There will always be school-going children. By April or May, their examinations will be on them. When those examinations are over, they will have school holidays. Then will come the monsoon, another annual, known event. Then they will be back in school. Then there will be yet another set of examinations. Conceivably, this will go on until all these presently school-going children are 25 years old (I account for college) and soon after which they will have their own children.

11. The absurdity of this situation is at once obvious. The Petitioner is committed to paying 18 months' compensation for alternative accommodation and no more. There will be no increase in the amount per sq ft agreed. I dare say that if the tenants go on like this, when they finally make their move to transit accommodation, this amount will not get them a hovel; and they will then demand more. In the meantime, leaving aside the financial cost to the Petitioner, Krishna Kunj and the tenants' flats in it will steadily deteriorate.

12. I will give the tenants time till 28th February 2017 to vacate their respective apartments. It is made clear that if possession is not handed over on that date, on 1st March 2017, the Receiver will stand appointed of the entire structure and all apartments in it. He will then take the necessary steps within 10 days to secure vacant possession with the assistance of local police authorities and to deliver the possession to the Petitioner. In addition, in default of delivery of possession, the Petitioner will withdraw the entire amount ordered to be deposited by 20th February 2017 and will not be liable to make these deposits thereafter.

13. The Petition is disposed of in these terms. No costs.

(G. S. PATEL, J.)