

A.No.9360 of 2019

P.T. ASHA, J.

The above application is filed for the following relief:

“To pass an order directing the respondents to hand over Flat bearing No.G 299, II Floor, Block G, Phase III, measuring 968 sq.ft. of super built up area (including proportionate undivided share in the common constructed area) in the residential project “Temple Waves” at Kundrathur as described in Schedule C of the Agreement of Project Promotion and Construction dated 07/06/2016 with features detailed in the annexure thereto within the time stipulated by this Hon'ble Court to the Applicants.”

2.This Court had initially ordered notice to the respondent, returnable by 21.04.2020. Thereafter, fresh notice was ordered on 05.03.2020 and the respondent was also served private notice issued by the applicant. Though notice has been received on 24.09.2020 the respondent had not entered appearance either in person or through pleader. Therefore, the respondent has been set *ex parte*.

3.The facts in brief which are stated in the affidavit filed in support of the application are as follows:

The respondent was a Promoter of the Project “Temple Waves” in which they were putting up constructions in the A schedule property to the Agreement of Project Promotion and Construction. The applicants had agreed to purchase a Flat in the 2nd floor of the Phase - III of the said Construction bearing No.G 299. It is the case of the applicants that except for two payments, all the payments were made even before the application and the applicant had signed the Agreement of Project Promotion and Construction dated 08.03.2016 hereinafter referred to as the Agreement. The total sale consideration for the undivided share of measuring 363 sq.ft. was fixed at Rs.5,80,800/- and the cost of the construction along with all other amenities was fixed at a sum of Rs.25,34,332/-.

4.The applicants would submit that as per the original Agreement, payments were to be made on the completion of the various steps within seven days from the date of the demand. The respondent had assured the applicants that the property would be delivered to them by the end of

September 2015. However, at that point of time, no Agreement was signed by the parties and later, an Agreement dated 18.11.20 was signed. The area of the apartment which was constructed for the applicant was an extent of 968 sq.ft. In the Agreement dated 08.03.2016, the respondent had promised to complete the construction and deliver the possession on or before December 2016 and it was also agreed that the date when the Developer is ready to hand over the possession of the flat would be treated as the date of completion.

5.The applicant would submit that despite the fact that the entire payments were made the respondent did not hand over the possession of the flat. On the contrary, the applicant was surprised to receive a communication dated 12.03.2019 demanding a sum of Rs.4,22,126/- for the alleged delay in making the payments. The respondent in the said letter contended that the applicant had committed a delay in making such payments and therefore, they were liable to pay the interest as well. The applicant would submit that even prior to the signing of the Agreement dated 08.03.2016, the applicant had made 90% of the payment in February 2016 itself and the construction was supposed to be handed over in the

month of December 2016. Though 90% of the payment was made on February 2016 the respondent had claimed the delay charges from 10.08.2015 itself and there is no basis for the said claim. It is also stated that even according to the Agreement, payments were to be made only as and when demanded by the respondent. However, there was no demand for the respondent. Thereafter, by an e-mail dated 25.07.2017 the respondent directed the applicant to pay the consolidated delay payment of Rs.2,17,000/- and to collect No Due Certificate. This was turned down by the applicant and the respondent has not handed over the possession of the flat till date.

6.In fact, though the construction was completed in July 2019 the respondent had not informed the applicant about the same. Since the Agreement contained an arbitration clause and the dispute has been arisen between the parties the applicant has come forward with the present application.

7.The learned counsel for the applicant would state that the respondent is deliberately not appearing before the Court though notice has been served on him.

8.Heard the learned counsel on either side and perused the records.

9.The records would indicate that the Agreement for Construction was entered into between the parties on 08.03.2016. Although the Agreement would state that the details of the payment schedule are given in Annexure – 1, the Deed does not contain in Annexure -1. On the contrary, it consists of Annexure Nos. 2, 3, 4 and 5 alone. Annexure -1 has been removed in the case of the applicant, this appears to be on the account of the fact that even before the execution of the Agreement of Sale the applicant had paid nearly a sum of Rs.33.38 lakhs. What remained to be paid was only a sum of Rs.3,89,611/-. That amount has also been paid on 19.08.2016 and on 29.06.2017. The undivided area has also been registered on 10.03.2016. When the applicant has been demanding possession with all the fittings as provided under the Agreement dated 08.03.2016, the

respondent is not taking any steps to settle the applicant's demand. Under the Agreement dated 08.03.2016, the person who nominates the Arbitrator is the respondent herein and it is the admitted case that the dispute has now arisen between the respondent and the applicant for the delay in payment. Although the applicant has requested the applicant to initiate arbitral proceedings the respondent has failed to do so. Considering the fact that 90% of the payment has been made even before the Agreement had been entered into and also the fact that the Annexure-1 has been removed insofar as the Agreement between the applicant and the respondent which presupposes that the applicant had made all the payments, this Court is of the opinion that the applicant is entitled to be in possession of the premises for which he has entered into the Agreement. However, the respondent shall put the applicant in possession of the property within a period of two weeks from date on which the applicant initiates the arbitration proceedings in keeping with the provision of Clause 71 of the Agreement of the Project Promotion and Construction dated 08.03.2016. The applicant shall positively set the process in motion within a period of thirty days from the date of receipt of a copy of this order. Considering the fact that the respondent has made a claim for the delay payment and the same is the

subject matter of the proposed arbitration proceedings of the parties, interest of justice would be subserved if the applicant is injuncted from alienating, encumbering, creating a charge in respect of the properties described in C schedule in the Agreement.

13.10.2020

mps



WEB COPY

P.T. ASHA, J.

mps



A.No.9360 of 2019

WEB COPY

13.10.2020