OD- 164

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

AP/236/2020

ADITYA BIRLA HOUSING FINANCE LIMITED
VS
IDEAL REAL ESTATE PRIVATE LIMITED AND ORS.

BEFORE:
The Hon'ble JUSTICE RAVI KRISHAN KAPUR
Date : 5th September, 2022.

Appearance:

Mr. Dhruba Ghosh, Sr. Adv.

Mr. Ranjan Bachawat, Sr. Adv.
Mr. Debnath Ghosh, Adv.
Mr. S. Dasgupta, Adv.
Mr. B. Garodia, Adv.

Mr. Rachit Lakhmani, Adv.
Mr. Sumit Biswas, Adv.
Ms. Rajarshee Bhawmick, Adv.

The Court : By an Agreement of Sale dated 14th August, 2014, the respondent no.2 agreed to purchase a triplex flat being 19A, 20A and 21A on the 19th, 20th and 21st floor respectively of Block C-21 at Ideal Exotica, situated at premises no.21, Pramatha Chowdhury Sarani, P.S. New Alipore, Kolkata-700053, together with the servant's quarters and car parking spaces (the premises) for Rs.10,26,22,516/- from the respondent no.1 (the developer). A full description of the premises morefully appears from the Schedule to the agreement dated 14 August, 2014.

Pursuant to the aforesaid, on 25th February, 2017, the respondent no.2 and its directors being the respondent nos.3 to 5 (the borrowers) entered into a Home Loan Agreement with the petitioner to finance the purchase of the premises for an aggregate amount of Rs.9,52,00,000/-. The Home Loan Agreement contemplated repayment of the entire amount in 180 monthly installments alongwith interest at the rate of 8.75% annually on monthly reducing balance. Thereafter, by a Tripartite Agreement dated 21st April, 2017 between the borrowers, the petitioner and the developer, it was agreed that the borrowers shall secure the entire home loan by creating a mortgage in respect of the premises allotted to the borrowers by the developer and the entire consideration would be disbursed directly by the petitioner to the respondent no.1. Significantly, the Tripartite Agreement was in supersession of an earlier agreement entered into by and between the borrowers, H.D.F.C. Bank Limited and other financial institutions. The entire dues of the said H.D.F.C. Bank and the others financial institutions have since been duly paid by the petitioner. Thus, it is contended that the petitioner has disbursed a total sum of Rs.9,20,32,456/-in terms of the Home Loan Agreement. The entire sale consideration (save and except the last installment) has been duly received by the developer.

Admittedly, the borrowers have defaulted in payment of the loan to the petitioner and their account was classified as a non-performing asset on 31st January, 2020. Thereafter, the petitioner came to learn that the borrowers had purported to terminate the Agreement for Sale dated 14th August, 2014 and demanded refund of the entirety of Rs.9,95,93,390/- directly from the developer.

In this background, disputes and differences had arisen between the parties and the petitioner has been compelled to file this application under section 9 of the Arbitration and Conciliation Act, 1996 seeking interim protection.

By two letters dated 4th March, 2020, the petitioner had written to the respondent no.1 and 2 categorically demanding that any refund be paid directly to the petitioner in terms of the Tripartite Agreement. The respondent no.1 has not paid any amount to the petitioner or to the borrowers. The respondent no.1 has also filed an Affidavit in Opposition, inter alia, contending that an outstanding amount of Rs.1,10,86,132/- is still due and payable and neither the petitioner nor the borrowers are inclined to make payment of the balance sale consideration in respect of the premises. In the Affidavit in Opposition filed by the respondent no.2, it has been alleged that the borrowers have paid a sum of Rs.2,52,17,441/- to the petitioner.

I have considered the submissions made on behalf of the parties.

I find that the petitioner has a money claim of approximately Rs.9,95,93,390/- (at the time of filing of the petition) against the borrowers. The respondent no.1 is holding a sum of Rs.9,20,32,456/- as advance in respect of sale of the premises. The borrowers have no intention of making payment of the balance sale consideration in respect of the premises and it is fair to conclude that, they are no longer interested in the premises.The stand taken by the borrowers in the letter dated 23rd July, 2021 is also contradictory to the submissions made in Court that the agreement stood terminated and the borrowers have no interest in the premises.

The indisputable fact which remains is that the petitioner has a money claim in excess of Rs.9,95,93,390/- against the respondents in respect of Tripartite Agreement dated 21st April, 2017. The only security which the petitioner has is the premises.

Hence, it is necessary that the claim of the petitioner be secured till disposal of the arbitration proceedings. I also find that the petitioner has a strong prima facie case on merits, the balance of convenience and irreparable injury is also in favour of orders being passed as prayed for herein. The respondents can have no possible defence to the prayer of the petitioner for securing its claim. There is no other security offered by the respondents.

Accordingly, Mr. Rishav Karnani, a member of the junior Bar Library Club is appointed as a Receiver to take actual physical possession of the premises.Thereafter, the Receiver is directed to take all steps for completion of sale of the premises to the highest bidder after publishing advertisements in any two newspapers. All the expenses with regard to the sale shall be borne by the petitioner.

The respondent no.1 is directed to comply with all the formalities and assist the Receiver with regard to sale of the premises. The Receiver is to keep all the parties notified at every stage in conducting the aforesaid sale.

Thereafter, the Receiver shall distribute the sale proceeds in respect of the premises proportionately between the petitioner and the respondent no.1 in *pro tanto* satisfaction of claims of the petitioner and the respondent no.1. The Receiver shall be paid a remuneration of 3000 gms which shall be shared equally by the petitioner and the respondent no.1. In the meantime, the respondents are restrained from creating any third party rights over the right, title, interest of the premises until the sale is conducted by the Receiver. All remaining claims of the parties, if any, shall be adjudicated in the arbitration proceedings.

The aforesaid exercise is to be completed within a period of three months from date. Significantly, the petitioner and the developer consented to the above modality for sale of the premises.

In view of the aforesaid, AP/236/2020 stands disposed of.

(RAVI KRISHAN KAPUR, J.)

D.Ghosh