

ODC-1

AP/307/2021
IA NO: GA/1/2021, GA/2/2021
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE
[COMMERCIAL DIVISION]

RUDRA CHINNAMASTIKA PROJECTS PVT LTD.
VS
LALIT KUMAR GENERIWALA AND ORS

BEFORE:

The Hon'ble JUSTICE RAVI KRISHAN KAPUR

Date : 8th February, 2022.

Appearance:

Mr. K. R. Thakker, Adv.

Mr. Chayan Gupta, Adv.

Mr. Nigam Ashish Chakraborty, Adv.

Mr. A. Banerjee, Adv.

Ms. Nitu Snigh, Adv.

Mr. G.N. Jajodia, Adv.

Mr. Jishnu Chowdhury, Adv.

Mr. T. Sil, Adv.

Mr. Ratul Das, Adv.

Mr. Pradip Pal, Adv.

The Court : Both the applications are taken up for hearing by consent of the parties.

AP 307 of 2021 is an application under Section 9 of the Arbitration and Conciliation Act. The disputes between the parties arise out of a joint venture agreement dated 21 August, 2013 for development and construction of premises no. 66 Pathuriaghata Street, Kolkata-700006 ('the premises'). It is alleged that the respondents are the joint owners of the premises and had been approached by the petitioner to construct, develop and sell the premises. Pursuant to negotiations, by and between the parties, the respective shares of the owners'

allocation and the developer's allocation were also agreed upon. The petitioner alleges breaches of the agreement by the owners. It is alleged that the petitioner has complied with all the obligations under the Agreement dated 21st August, 2013. However, there have been diverse breaches of the agreement committed by the respondents. In particular, the respondent have refused and neglected to make payments to the petitioner. It is also alleged that the parties had entered into negotiations as far as back as November, 2020 and had also executed a Cancellation Agreement for cancellation of the agreement dated 21st August, 2013. In view of the aforesaid, the petitioner has filed this application praying for interim reliefs primarily on the ground that the respondent owners are attempting to create third party rights and wriggle out of the agreement dated 21 August, 2019.

By orders dated July 27, 2021 and 29th March, 2021, a Coordinate Bench had passed an order appointing a Receiver and also granted an order of injunction in respect of the subject premises.

Being aggrieved by the said order, the respondents have filed an application being GA 1 of 2021 in AP 307 of 2021, praying for vacating of the ex-parte orders.

It is submitted on behalf of the respondents that both the interim orders dated 27th July, 2021 and 29th July, 2021 are liable to be vacated in view of the fact that the entire claim of the petitioner is barred by limitation. It is further alleged that the interim orders have been obtained by suppressing the true and correct facts of the case. It is alleged that the petitioner has failed to make timely

payment in terms of the agreement. It is further alleged that the premises was never a heritage premises and this is an excuse on the part of the petitioner to delaying compliance of their obligations. In view of the aforesaid, the respondents pray for vacating the interim orders.

At this stage, the only question arises for consideration is whether the petitioner is entitled to any interim protection in terms of Section 9 of the Act.

I find that the agreement contains reciprocal obligations on both the respondent owners and the petitioner developer. The petitioner complains that the respondent owners are in violation of complying with their obligations. On the other hand, the respondent complains that it is the petitioner who has failed to honour all their obligations under the agreement. It prima facie appears that both the parties are in default of their respective obligations. The question of whether specific performance of such an agreement would ultimately be granted or not is a question to be adjudicated by the Arbitral Tribunal. As an interim measure, I am of the view that it would not be appropriate to fetter the rights of the owners. I am also of the view that to pass any other embargo on the ownership rights of the owners would be unfair and inequitable. I also find that parties had entered into the agreement as far back as on 2013 and are still litigating nearly a decade later.

However, in order to protect the rights of the parties and as an interim measure, I direct that, the respondent shall pay the entire dues of Rs.1,59,40,000/- which they have received under the agreement to the petitioner forthwith. It is clarified that this amount of Rs.1,59,40,000/- takes into

consideration the entire refund made by the respondent to the petitioner for a sum of Rs.64,50,000/-. The petitioner is at liberty to encash the said demand drafts which have been produced in Court. This exercise is without prejudice to their rights and contentions of either of the parties. The charts handed over by the parties be kept with the records. Any other monetary claim which either of the parties may have would be ultimately decided in the arbitration proceedings.

Accordingly, the order dated 27th July, 2021 as modified by the order dated 29th July, 2021 stands vacated. The parties are at liberty to take appropriate steps for appointment of an Arbitrator expeditiously in terms of the arbitration agreement dated 21st August, 2013.

With the aforesaid direction, AP/307/2021 along with GA/1/2021 stand disposed of.

(RAVI KRISHAN KAPUR, J.)

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