

ODC 7

ORDER SHEET
AP/205/2022
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

M/S. IMMENSE HOUSING PVT. LTD.
VS
CHAYA DASS AND ANR.

BEFORE:

The Hon'ble JUSTICE SHEKHAR B. SARAF

Date : 22nd April, 2022.

Appearance:

Mr. Molay Ghosh Sr. Adv.

Mr. Koushik Chaudhury, Adv.

Mr. Bratin Kr. Dey, Adv.

Ms. Anjana Banerjee, Adv.

Mr. Tarique Quasimuddin, Adv.

Ms. Sanchita Chaudhuri, Adv.

The Court: Heard counsel appearing on behalf of both the parties.

The petitioner herein in this Section 9 application is the developer of a property who were entered into agreements in the year 2012 and subsequently in 2016 for development of a property jointly owned by the two respondents. Documents in the Section 9 petition indicates that steps have been taken by the petitioner with regard to obtaining of sanction plan. However, counsel on behalf of the respondent submits that the sanction plan has not been properly taken and since the last agreement six years have passed and no fruitful result has taken place. He accordingly, submits that the respondents are no longer interested in continuing with the development agreement and the same has expired due to the efflux of time.

In my view, this matter is required to be resolved by a sole Arbitrator. It appears that there is a named arbitrator in the agreement. However, the same is opposed by Counsel appearing on behalf of the respondents. Furthermore, keeping in view the judgment passed by the Hon'ble Supreme Court in *TRF Limited v. Energo Engineering Projects Ltd.* reported in (2017) 8 SCC 377 and in *Perkins Eastman Architects v. HSCC (India) Limited* reported in (2019) 9 SCC Online SC 1517, it is clear that interested parties cannot be appointed as arbitrator and it is upon the Court to appoint an independent arbitrator. This Court is of the view that an independent Arbitrator should be appointed. The parties have left the decision of the Arbitrator on this Court and, accordingly, I appoint Mr. Samit Talukdar, Senior Advocate (Mobile No. 9830170269) as sole arbitrator to resolve the dispute between the parties.

The appointment is subject to submission of declaration by the Arbitrator in terms of Section 12(1) in the form prescribed in the Sixth Schedule of the Act before the Registrar, Original Side of this Court within four weeks from today.

Keeping in view the fact that the developer has expended considerable amount of time and money for the project, I direct orders in terms of prayer (b) of the petition. I make it clear that the injunction would only be in reference to the portion of the premises no.6, Ho chi minh Sarani, that is, the subject matter in the development agreement. The injunction passed here shall continue for a period of ten weeks from date or until further orders passed by the learned Arbitrator, which ever is earlier.

Parties shall be at liberty to move Section 17 application before the learned Arbitrator and the Court would request the learned Arbitrator to decide the matter as expeditiously as possible.

I make it clear that this order would not entitle the petitioner to anyway disturb the possession of the respondents or give the petitioner any right to enter into the subject premises.

AP No.205 of 2022 is disposed of.

Let this order be conveyed to the Arbitrator by the Registrar, Original side forthwith.

(SHEKHAR B. SARAF, J.)

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