

22.02.2023
KC(8)

F.M.A.T. 60 of 2023
Diamond City West Apartment
Owners' Association
-versus-
Ajoy Dey and Ors.
With
CAN 1 of 2023

Mr. Sabyasachi Chowdhury,
Mr. Suddhasatwa Banerjee,
Mr. Ashique Mondal,
Mr. Proteek Debnath.....For the appellant.

This appeal and stay/injunction application is moved *ex parte*.

The justification for this given by Mr. Sabyasachi Chowdhury, learned advocate appearing for the appellant/petitioner is that the interim application before the learned court below was also moved *ex parte* on the apprehension that if notice of this application was received by the respondents they would very hastily carry out the acts against which injunction restraining them from doing so was sought, in that application.

Hence, we entertained the present application *ex parte*.

There is a residential building complex known as Diamond City West. It has an apartment owners' association which is preferring this appeal. This complex has several flats along with parking spaces.

Parking spaces which were flat owners have already been allotted to them.

Mr. Chowdhury submits that over and above these parking spaces there are 86 of them to be used for visitors' car parking. This car parking area constitutes part of the common area of the complex as defined in Section 2(n) of the Real Estate (Regulation and Development) Act, 2016. Under Section 17 thereof the promoter is to transfer its ownership to the association. This has not been done. Instead the respondent nos. 11 and 14 are threatening to sell and/or transfer and/or part with possession thereof or deal with them in favour of third parties. Unless an injunction is granted restraining them from doing so, they are likely to quickly dispose of this common area in the complex.

A substantial prima facie case for an *ex parte* interim order has been made out. However, the interim application is to be considered by the learned court below.

We direct that the respondent nos. 11 and 14 shall not sell, transfer, encumber or part with possession or otherwise deal with the common areas of Diamond City West as described in Annexure-F (at page 238) of the stay/injunction petition till 22nd March, 2023 or until further order by the learned court below whichever is earlier.

The appellant shall make an appropriate application before the learned court below by 28th February, 2023 so that the returnable date of the interim application is preponed and the interim application at the 'Motion' stage be heard by the said court not later than 9th March, 2023. Our observations are prima facie. All points are kept open.

In the above special circumstances of the case the appeal and the application are disposed of dispensing with all formalities and without notice to the respondents as there would be no useful purpose in keeping this appeal pending in this court.

(I.P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)