

OD – 8

ORDER SHEET
AP/158/2024
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

SWARNALI SENGUPTA
VS
VEDIC REALTY PRIVATE LIMITED AND ANR

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 13th November, 2024.

Appearance:
Mr. Shuvasish Sengupta, Adv.
Mr. Balarko Sen, Adv.
Mr. Souvik Ghosh, Adv.
. . . for the petitioner.

Mr. Abir Lal Ghosh, Adv.
. . .for the respondent no.1.

Mr. Arindam Guha, Adv.
Mr. Abhrajit Roy Chowdhury, Adv.
. . .for the respondent no.2.

The Court: The respondent No.1 does not wish to file any affidavit-in-opposition, despite liberty having been granted.

This application has been filed for appointment of an Arbitrator to arbitrate the dispute between the parties, in terms of the dispute resolution clause contained in the agreement for sale.

The dispute resolution clause states that in the event a dispute arises out of or in connection with the agreement, such dispute shall be referred to arbitration in accordance with the provisions of the Arbitration and

Conciliation Act, 1996. The parties had agreed to refer all and/or any dispute to the sole arbitration of a learned Advocate. The proceedings were to be held at Kolkata. The respondent raises vehement objections.

Pursuant to the development agreement, a tripartite agreement was entered into between the petitioner, the builder and the bank. It is pleaded that due to the delay in delivery of possession and alleged breach committed on the part of the developer, the petitioner's husband who was a co-applicant and a co-borrower cancelled the agreement with the developer and prayed for refund of the funds. The builder did not take any steps and the petitioner received a communication from the bank by which the petitioner was informed that due to non-payment of dues, the account had become an NPA. The petitioner wrote to the developer on May 21, 2024 and requested for some information, including the information as to the quantum of money payable by the builder to the petitioner, upon acceptance of the cancellation and/or surrender letter. The letter records that the petitioner visited the developer's office when she was informed by the developer that her husband had surrendered the flat and the developer was liable to pay some money to the petitioner. An e-mail was sent by the respondent on May 28, 2024 as a reply to the said letter, inter alia, informing the petitioner that the developer had made payment of Rs.11,25,000/- and Rs.6,43,115/- directly to the bank. According to the learned advocate for the petitioner, the amount payable to the petitioner was higher than the amount which the builder acknowledged to have remitted directly to the bank. Thus, this information with regard to direct remittance of

the amount is an acknowledgment of the debt. The developer withheld the money remitted by the bank and did not refund the same to the petitioner. The petitioner alleged to have suffered loss on a day to day basis due to declaration of NPA, in view of the inability of the petitioner to pay the bank's due and the intentional delay on the part of the respondent in complying with their part of the contract and in failing to refund the money transmitted by the bank immediately, upon cancellation of the agreement.

Pursuant to the e-mail dated May 28, 2024, the petitioner invoked the arbitration clause contained in the agreement. The petitioner has raised a claim for damages on account of failure on the part of the respondent to handover possession within the stipulated period and continuous silent maintained by the respondent by withholding the amount refundable to the petitioner, that is, the amount which had already been transmitted by the bank to the respondent, pursuant to the sanction of loan along with interest. The petitioner has repeatedly asked for refund.

Learned advocate for the respondent submits that the petitioner has come up with a stale claim. Considering the records, this Court is of the view that the invocation does not appear to be ex facie barred by limitation. The e-mail of the respondent dated May 28, 2024 acknowledges that some amount had been transmitted to the bank upon receipt of the letter of cancellation and also the petitioner's letter. The exact date of transmission of this money from the respondent's side to the bank, is not available. Thus, the acknowledgement of the fact that the developer was liable to refund some

money and the e-mail informing the petitioner that the developer had done so by remitting money to the bank account/loan account pursuant to the letter of the petitioner dated May 21, 2024, makes the question of limitation a mixed question of law and fact. Upon receipt of the e-mail on May 28, 2024, the petitioner invoked the arbitration clause by a notice dated June 17, 2024. The question is whether the period of limitation would start running from the date when the agreement for sale was cancelled by the petitioner's husband or on and from the e-mail dated May 28, 2024 or any other date, in between. The question will be decided by the learned Arbitrator. The respondent claims to have made payment to the bank instead of refunding the money directly to the petitioner. According to the developer, the tripartite agreement did not contain an arbitration clause and the petitioner's claim was not tenable. Such issues have to be raised before the learned arbitrator.

Under such circumstances, the Court appoints Mr. Sudip Deb, learned Advocate, Bar Library Club (Mob. No.9830356572) as the sole Arbitrator, to arbitrate the dispute. This appointment will be subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996. The observations are, prima facie, and the developer can raise the issues which have been urged before this Court, including the point of limitation before the learned Arbitrator.

The learned Arbitrator shall fix his own remuneration as per the provisions of the Arbitration and Conciliation Act.

Learned advocate for the respondent no.2, supports the case of the petitioner.

AP/158/2024 is, accordingly, disposed of.

All parties are to act on the basis of the server copy of this order.

(SHAMPA SARKAR, J.)

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