

ORDER SHEET

IA NO: GA/1/2023
APOT/416/2023
with
AP/692/2023
IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

BENGAL SHRIRAM HITECH CITY PVT. LTD.
-Versus-
ASHIANA HOUSING LTD.
(Commercial Division)

BEFORE
The Hon'ble Justice I.P. MUKERJI
-And-
The Hon'ble Justice BISWAROOP CHOWDHURY
Date: 10th January, 2024

Mr. S.N. Mookerjee &
Mr. Ratnanko Banerji, Sr. Advs.
With Mr. Reetobroto Mitra,
Mr. Sankarsan Sarkar,
Mr. Aditya Kanodia,
Mr. Y. Singhi &
Ms. Suparna Sardar, Advs.
...for the appellant.

Mr. Jishnu Saha, Sr. Adv. with
Mr. Mrigank Kejriwal, Advs.
...for respondent.

Learned counsel for the parties have handed up to this court a suggested order which is taken on record and is as follows :

“The appellant shall be at liberty to proceed with the sale of the land which forms a part of the development agreement dated 9th July, 2015. Prior to the execution or registration of the agreement for sale or conveyance of the said land or any part or portion thereof, the appellant shall inform the respondent of the sale. Out of the sale proceeds received from the first sale/sales of the said land or any part or portion thereof, the appellant shall first deposit an amount of Rs.12.80 crores along with interest thereon @ 8% p.a. calculated from 9th May, 2017 till 31st August, 2023 in a separate bank account and shall furnish details of all such deposits made by it to the respondent. Any amount over and above the sum mentioned above may be received/deposited by the appellant in any other bank account and utilized by the appellant without any fetter. This is without prejudice to the respondent's

contention that it is entitled to sums in excess of the amount agreed to be deposited by the appellant and shall be at liberty to claim the same in the arbitration process. This is also without prejudice to the appellant's contention that the appellant is not liable to pay any sum and is entitled to recover damages from the respondent.

The aforesaid sum shall upon being deposited, be retained in such separate bank account, and shall not be withdrawn by the appellant till the conclusion of the arbitration proceedings. The deposited amount shall be subject to the result of the arbitration proceedings and will be paid to the respondent or be utilised by the appellant as may be directed by the arbitral award.

In view of the order made herein, the judgement and order dated 18th October, 2023 is set aside and none of the observations made therein shall have any bearing on the arbitration. All issues raised by the parties, including the question of limitation are left open for the Arbitrator to decide.

The parties have agreed on Mr. Jayanta Kumar Mitra, learned Senior Advocate and Barrister-at-law, to act as the sole Arbitrator for adjudicating the disputes between the parties.”

This court accepts the same and passes an order in terms thereof disposing of the appeal (APOT/416/2023) and the connected application (GA/1/2023) togetherwith the application under Section 9 of the Arbitration and Conciliation Act, 1996 (AP/692/2023).

The impugned judgement and order dated 18th October, 2023 is set aside.

(I.P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)