

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION (LODGING) NO. 22805 OF 2023
WITH
INTERIM APPLICATION (LODGING) NO. 5597 OF 2023
WITH
INTERIM APPLICATION (LODGING) NO. 13425 OF 2023
IN
COMMERCIAL SUIT NO. 17 OF 2023

Omkar Realtors & Developers
Private Limited & Anr.

....Applicants

IN THE MATTER BETWEEN :

Alta Monte Tower C Co-operative
Housing Society Limited & Ors.

...Plaintiffs

Versus

Omkar Realtors & Developers
Private Limited & Ors.

....Defendants

WITH
INTERIM APPLICATION NO. 162 OF 2023
IN
COMMERCIAL SUIT NO. 17 OF 2023

* * *

- Mr. Shlok Parekh a/w Mr. Vikramjeet Garewal and Ms. Vedanshi Shah i/b Mahalakshmi Ganpathy, for Plaintiffs.
- Mr. Shakeeb Shaikh, Mr. Jamshed Master and Ms. Huda Diamondwala i/b Diamondwala & Co., for Defendant Nos. 1 and 2.
- Ms. Sheetal Metakari i/b Mr. Sunil Sonawane, for Defendant No. 3 - BMC.
- Mr. Abhijit Patil i/b J.G. Aradwad (Reddy), for Defendant No. 4.

* * *

CORAM : MANISH PITALE, J.

DATE : 21st FEBRUARY, 2024.

P. C. :

1. The present suit has been filed by the plaintiffs i.e. a Co-operative Housing Society and two flat purchasers concerned with a single flat seeking specific performance against the defendants and

SHRIKANT
SHRINIVAS
MALANI

Digitally signed by
SHRIKANT
SHRINIVAS
MALANI
Date: 2024.02.22
17:21:11 +0530

also other ancillary reliefs.

2. In this suit, defendant Nos. 1 and 2 i.e. developers moved Interim Application (Lodging) No. 5597 of 2023 and Interim Application (Lodging) No. 22805 of 2023.

3. Since the said defendants have pressed for reliefs as per Interim Application (Lodging) No. 22805 of 2023, permission is sought on their behalf to withdraw Interim Application (Lodging) No. 5597 of 2023. In that light, Interim Application (Lodging) No. 5597 of 2023, is disposed of as withdrawn.

4. In Interim Application (Lodging) No. 22805 of 2023, the said defendants have invoked Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the “Arbitration Act”), relying upon an arbitration clause in the agreement executed between the parties. It is claimed that in the face of such arbitration clause, the parties ought to be sent to arbitration and that the suit can be disposed of in that light.

5. The learned counsel appearing for defendant Nos. 1 and 2, on instructions, makes a statement that although plaintiff No. 1 – Cooperative Housing Society is not a signatory to the agreement containing the arbitration clause, the said defendants agree that plaintiff No. 1 also be treated as party to the agreement and hence,

the arbitration shall proceed on that basis. The three plaintiffs before this Court consequently will be the claimants in the arbitral proceedings. It is also specifically stated on instructions that having made the aforesaid statement before this Court, the said defendants will not move any application under Section 16 of the Arbitration Act, to claim that plaintiff No. 1 – Society cannot be a claimant or that it cannot participate in the arbitration.

6. The learned counsel for the parties have jointly agreed for appointment of Mr. Farhan Dubash, learned counsel practicing in this Court, as a sole Arbitrator, for resolution of disputes between the parties.

7. Accordingly, Mr. Farhan Dubash, Advocate, is appointed as the sole Arbitrator. The details of the learned Arbitrator are as follows :

Mr. Farhan Dubash,
105, Bhagyodaya Bldg. Nagindas Master Road,
Fort, Mumbai – 400 001. Mob. No. 9820506685

8. The learned Arbitrator is requested to communicate his consent and Disclosure Statement under Section 11(8) r/w 12(1) of the aforesaid Act, within four weeks to the Prothonotary and Senior Master of this Court

9. The parties agree to leave it to the learned Arbitrator to

fix his fees.

10. If the plaintiffs as claimants move an application under Section 17 of the Arbitration Act, the learned Arbitrator is requested to take up the same for disposal expeditiously.

11. All questions are kept open to be agitated before the learned Arbitrator.

12. In view of the above, Interim Application (Lodging) No. 22805 of 2023, stands allowed.

13. Consequently, the suit stands disposed of and all other pending interim applications also stand disposed of.

(MANISH PITALE, J.)