



O.A.Nos.911 and 913 of 2023

Original Application Nos.911 and 913 of 2023

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C.SARAVANAN, J.

Respondent Nos.2 to 8 are the purchaser of the flat developed by the respondent No.1. The respondent No.1 has been served notice but has failed to appear before this Court.

2. *Prima facie*, there is only a dispute between the petitioner and respondent No.1 under a loan agreement dated 21.06.2021. The applicant had advanced a sum of Rs.3 crores for discharging the loans of the previous owners of the property on which the flat has been constructed.

3. The loan that was advanced by the applicant to the first respondent was to be repaid by the first respondent. As per Clause 4 of the loan agreement dated 21.06.2021, the loan amount shall be paid together with interest at 21%. Clause 4 of the loan agreement dated 21.06.2021 reads as under:



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“4.The details of the loan, tenure, interest and other dues are as follows :

4.1.Principal Amount of Loan :

Rs.3,00,00,000/- paid in the following manner :

(a) 10-06-2021 Rs.2500000/- RTGS

INDBR22021061000884323 IndusInd bank

(b) 11-06-2021 Rs.2500000/- RTGS

INDBR22021061100891348 IndusInd bank

(c) 11-06-2021 Rs.2500000/- RTGS

INDBR22021061100892308 IndusInd bank

(d) 11-06-2021 Rs.2500000/- RTGS

INDBR22021061100895777 IndusInd bank

(e) 21-06-2021 Rs.2,00,00,000/- DD

No.547233 drawn on IndusInd bank

4.2 Interest : 21% compounded on a monthly basis;

4.3 Mode of repayment : By sale of the apartments being constructed on the Schedule Property coming to the share of the Builder.

4.4. Tenure of repayment : 20 months from the date of this Agreement or sale of the apartments whichever is earlier.”

4. Respondent No.1 as the builder was also required to register a mortgaged deed in favour of the applicant herein of the land pursuant to which, an equitable mortgage deed of land measuring an extent of 4927.5 sq.ft was executed by the respondent No.1 in favour of the applicant.



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5. At the request of the Respondent No.1, the applicant has also given no objection for transferring the ownership in the undivided share in the land over which the flat that was constructed by the respondent No.1. The respondent Nos.9 and 10 are the financier who have financed respondent Nos.2 to 8 for purchase of UDS in the land and the flats promoted by the respondent No.1 who was defaulted in repayment of the amounts given to the applicant under the aforesaid loan agreement dated 21.06.2021.

6. Although the applicant had secured its interest by ensuring registration of the deposit of title deed of the property, the applicant has consented for registration of deed in favour of the respondent Nos.2 to 8 who are the borrowers who have purchased the undivided share in the land together with build up area in the flat promoted by the respondent No.1. As such in the private dispute between the applicant and respondent No.1 cannot be countenanced, the rights of the respondent Nos.2 to 8 cannot be curtailed.



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7. It is not open for the applicant to restrain the respondent Nos.2 to 8 from dealing with the property which has been purchased by them pursuant to no objection of the petitioner. Therefore, there is no merits in the application to restrain the private respondent Nos.2 to 8 for dealing with the property. Consequently, Arbitration Application No.911 of 2023 is liable to be dismissed.

8. However, liberty is given to the applicant to work out the remedy against the respondent No.1. In so far as O.A.No.913 of 2023 in concerned, interim order passed by this Court on 13.12.2023 shall continue for a period of 90 days from today. It is open for the applicant to invoke the arbitration Clause under the loan agreement dated 21.06.2021 and seeks time for extension of the order passed for a further period during the pendency of the arbitration proceedings.



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9. With the above observations, Arbitration Application No.911 of 2023 is dismissed and Arbitration Application No.913 of 2023 is disposed of.

10.01.2024

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