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IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

AP/204/2024
AMIT KUMAR NAHATA
VS
SIMOCO SYSTEMS AND INFRASTRUCTURE SOLUTIONS
LIMITED AND ORS

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date : January 13, 2025

Mr. Chiranjib Sinha, Adv.
Mr. Satyam Mukherjee, Adv.
Ms. Sayani Ahmed, Adv.
Mr. Purnendu Sekhar Ghosh, Adv. ...for petitioner.
Mr. Krishnaraj Thaker, Sr. Adv.
Ms. S. Thaker, Adv.
Ms. R. Sarkar, Adv. ...for respondents.

The Court :- This is an application for appointment of the learned Arbitrator to adjudicate the disputes between the parties.

The petitioner contends that the respondent no.1 as the power of attorney holder of the other companies, was required under the agreement for sale, to hand over possession of the flat to the petitioner within May, 2021, yet possession had not been handed over. Although the respondent no.1 had been promising to deliver possession upon completion of the construction which was stalled on account of the Covid pandemic, no positive action had been taken since such promise. Under such circumstances, the petitioner, who is the proposed buyer, has no other alternative but to approach the court for appointment of a learned Arbitrator with regard to the disputes involved. The notice invoking arbitration has been referred to.

The arbitration clause is provided under Article 12 of the agreement for sale. The clause provides that all disputes and differences should be settled by mutual discussions. However, if the disputes persist and cannot be amicably settled, the same shall be settled by arbitration as per

Arbitration and Conciliation Act, 1996. The venue of arbitration shall be Kolkata and the award shall be in English.

It is contended by Mr. Mukherjee that the owners of the property had executed a registered power of attorney in favour of the respondent no.1 thereby empowering the said respondent to sell the flat/units in the housing project, which was to be built under the name and style of "SANHITA". The respondent no.3 represented the respondent no.1 in the agreement. The respondent nos.2 and 4 are the other directors. The proposed purchase was in respect of one residential flat being flat no.4G on the 4th Floor, Block-3827, under Precinct 16, having standard super built up Area of 916 Sq.Ft., comprising of 3 Bed Rooms, 1 Living-cum-Dining Room, 1 Kitchen, 2 Toilets, 1 Verandah, together with proportionate undivided share of land along with car parking space being no.OP78, Block No.3827 for four wheelers measuring about 102.89 Sq.Ft.

It is the specific contention of the petitioner that the sale price was Rs.22,67,390/-. The petitioner claims to have paid approximately Rs.11,55,000/- in instalments. It is the specific contention of the petitioner that the commitment period along with the additional period expired sometime in September, 2021. By an email dated November 18, 2021, the authorised representative of the respondents informed the wife of the petitioner that the delay was due to unforeseen circumstances and the tentative date of delivery of the flat would be on or before July, 2023. After expiry of July, 2023, the petitioner was not handed over the possession and, accordingly, a notice was issued on August 5, 2024 through the petitioner's learned advocate. Upon receipt of such letter, by a letter dated August 16, 2024, the respondent no.1 through the authorised signatory proposed to hand over possession of the flat once the blocks were constructed. Being dissatisfied with such approach of the respondent, the petitioner has

invoked the arbitration clause and by a notice dated 10.9.2024, the respondent no.1 through the legal executive replied to the said notice on October 7, 2024, praying for some more time to complete the work. The proposal for refund of the earnest money was also made. It is contended that the respondent has been buying time since long, but failed to adhere to the proposals even after the notices were issued by the petitioner.

Mr. Thaker, learned senior counsel for the respondents submits that the names of the respondent nos.2, 3 and 4 should be deleted, as they were not parties to the agreement. Respondent no.3 was the signatory on behalf of the respondent no.1. The agreement was between the petitioner and the five other companies and the respondent no.1 was the company authorised to sell the property.

Under such circumstances, this application proceeds against the respondent no.1 as the other three respondents are only directors of the Company. Their names be deleted from the array of respondents.

The arbitration clause is not in dispute. The invocation of arbitration is not also in dispute. The issue as to whether the respondent No.1 would be entitled to additional time to construct the flat for the time lost during the Covid pandemic or whether the Covid pandemic period should be excluded will computing the period of limitation to invoke arbitration etc. are to be adjudicated by the learned Arbitrator.

All points and the merits of the claim including the issues of limitation are left open to be decided by the learned Arbitrator.

Under such circumstances, the application is disposed of by appointing Ms. Debleena Lahiri, learned Advocate as the sole arbitrator to arbitrate the dispute. The learned Arbitrator shall comply with the provisions of Section 12 of the Arbitration and Conciliation Act, 1996. The learned Arbitrator shall be at liberty to fix his remuneration as per the schedule of

Arbitration and Conciliation Act, 1996. All points available to the respondents against the claim can be raised before the learned Arbitrator, in accordance with law.

pkd/GH

(SHAMPA SARKAR, J.)