



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF MARCH, 2025

BEFORE

THE HON'BLE MR JUSTICE ASHOK S.KINAGI

CIVIL MISC. PETITION NO. 230 OF 2023

BETWEEN:

KAVANA M. JAGADISH
D/O LATE C R MAHADEV,
AGED ABOUT 46 YEARS,
R/AT NO.301,
LANDMARK APARTMENT,
CUNNINGHAM CRESCENT ROAD,
BENGALURU-560052.

...PETITIONER

(BY SRI. VIJAY B K., ADVOCATE)

AND:

Digitally
signed by
SUNITHA K S
Location:
HIGH COURT
OF
KARNATAKA

1. M/S IMPERIUM CONSTRUCTIONS PVT. LTD.
A COMPANY INCORPORATED UNDER THE
COMPANIES ACT, 1956,
REGISTERED OFFICE AT NO.18,
CUNNINGHAM ROAD,
BENGALURU-560052,
REP. BY ITS DIRECTOR,,
SYED NAJMUL HASSAN SALEH.
2. GHOUSE SAHEB
S/O LATE IMAM SAHEB,
MAJOR,
R/AT 'IMAM MANZIL',
9TH CROSS, SHANKAR MUTT ROAD,
KR PURAM, HASSAN.



3. MOHMED FAYAZ AHMED
S/O LATE ABDUL GAFFER,
MAJOR,
R/AT NO.101, TALUK OFFICE ROAD,
DEVANAHALLI TOWN,
BENGALURU RURAL DISTRICT.

...RESPONDENTS

(BY SRI. C. SHANKAR REDDY, ADVOCATE FOR R2 & R3
R1-SERVICE H/S V/O DATED 28.02.2025)

THIS CIVIL MISC. PETITION UNDER SEC.11(6) OF THE ARBITRATION AND CONCILIATION ACT 1996, PRAYING THAT THIS HON'BLE COURT BE PLEASED TO A) APPOINT AN ARBITRATOR AS PER CLAUSE 21 OF THE CONSTRUCTION AGREEMENT DATED 12/03/2015 AS PER THE ANNEXURE-B FOR ADJUDICATION OF THE DISPUTE RAISED BY THE PETITIONER. B) PASS SUCH OTHER RELIEFS AS THIS HON'BLE COURT DEEMS FIT IN THE ENDS OF JUSTICE.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE ASHOK S.KINAGI

ORAL ORDER

This Civil Miscellaneous Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, for the appointment of an Arbitrator to resolve the dispute between the petitioner and respondents in terms of clause 21 of the Construction Agreement dated 12.03.2015 as per the provisions of the Arbitration and Conciliation Act, 1996.



2. Brief facts, leading rise to filing of this petition, are as follows :

The petitioner, initially approached respondent No.1, who was in the process of building a multistoried apartment complex by the name of 'Imperium Tranquility' on schedule 'A' property, along with its owners, respondents No.2 and 3. An agreement of sale dated 12.3.2015 was executed between the petitioner and the respondents. On the very same day, a Construction Agreement was also executed between respondent No.1 and the petitioner, whereby respondent No.1 undertook to construct 'Imperium Tranquility' within 10 months from the date of the execution. As per the Agreement of Sale and the Construction Agreement, a total consideration price of Rs.1,14,93,000/- was quoted for the entire schedule property, which included the apartment, out of which, the petitioner has made payment amounting to Rs.80,00,000/-. By the end of the stipulated period of 10 months, the petitioner reached out to respondent No.1 seeking the status of completion of the apartment project, to which, respondent No.1 was completely unresponsive. Respondents No.2 and 3 were also clueless concerning the completion of construction of Imperium



Tranquility, which concerned the petitioner as her investment was stuck, in what seemed like a dead-end project. Upon respondents No.2 and 3's realization that, respondent No.1 would not be able to finish the construction, the respondents choose to remove respondent No.1 from the entire project, executing a deed of assignment dated 26.05.2016. The Assignment deed facilitated the completion of the Apartment under the name " Benson Tranquility". Respondents No.2 and 3, furthermore, went on to sign a memorandum of association with the 'Benson Tranquility Owners Association' with the assent of 17 of the 18 owners, with the petitioner being the sole dissenter. Despite not having a consensus of all the owners, respondent Nos.2 and 3 choose to go forth with the construction by themselves, completely eliminating the petitioner. The petitioner did not even want the apartment by now as, she no longer trusted the respondents and only wanted to recover her investment of Rs.80.00 lakhs, which was held hostage by the respondents. The petitioner issued a notice dated 07.05.2016 calling upon the respondents to refund Rs. 80 lakhs. The respondents replied to the legal notice vide reply dated 14.07.2016, stating that, the petitioner can seek the



refund of an advance amount through the builder to whom she has paid the amount. Respondents No. 2 and 3 choose to go forth with the construction eliminating the petitioner. Thereafter, the petitioner issued an Arbitration notice dated 12.06.2023 invoking clause 21 of the Agreement. The respondents did not reply to the said notice. Hence, this petition.

3. The respondents appeared through a counsel, but did not file a statement of objections. Hence, the statement of objections is taken as, not filed.

4. Heard the arguments of the learned counsel for the petitioner, and the learned counsel for respondents No.2 and 3.

5. Learned counsel for the petitioner submits that the petitioner and respondents have entered into a construction agreement dated 12.3.2015 vide Annexure-B. The respondents were not able to finish the construction. The petitioner, dissatisfied with the respondent's attitude, in not completing the construction, issued a legal notice on 07.05.2016 to the



respondents calling upon them to refund the amount paid by her. The respondents replied to the legal notice, but did not refund the amount. The petitioner issued an arbitration notice invoking clause 21 of the construction agreement dated 12.3.2015 for the appointment of an Arbitrator to resolve the dispute between the parties. The respondents did not reply to the arbitration notice. Since, the construction agreement has an Arbitration clause, prays to appoint an arbitrator.

6. Perused the records and considered the submissions of learned counsel for the petitioner.

7. The point, that arises for consideration is,

"Whether the petitioner has made out a ground to refer the matter to the Arbitrator in terms of Clause 21 of the Construction Agreement dated 12.3.2015 as per the provisions of the Arbitration and Conciliation Act, 1996?"

8. It is disputed that the petitioner and the respondents executed a sale agreement and construction agreement on 12.3.2015. The petitioner sought information from the



respondents regarding the status of construction. The respondents did not reply to the letter dated 16.3.2016. The petitioner issued a legal notice to the respondents on 7.5.2016 demanding recovery of investment of Rs.80.00 lakhs. Respondent no.1 could not finish the construction of 'Imperium Tranquility' within a stipulated period. A deed of assignment was executed among respondents no.2 and 3 on 26.05.2016. Respondents No.2 and 3, signed a memorandum of association with 'Benson Tranquility Owners Association' with the assent of 17 of the 18 owners, the petitioner being the sole dissenter. Despite not having a consensus of all the owners, respondent Nos.2 and 3 choose to go forth with the construction by themselves, eliminating the petitioner. The petitioner is not interested in the apartment as, she no longer trusts the respondents and wants to recover her investment of Rs.80.00 lakhs. Admittedly, there is an arbitration clause in the construction agreement dated 12.03.2015. The petitioner invoked the arbitration clause by issuing a notice under Section 21 of the Arbitration and Conciliation Act, 1996 for the appointment of an Arbitrator to resolve the dispute between the parties. The respondents did not reply to the notice.



9. Perused the construction agreement dated 12.3.2015, wherein clause 21 of the said agreement reads thus :

"21. Disputes arising under this agreement including questions of breach, validity, enforcement and/or termination shall be decided by a sole arbitrator mutually appointed by the parties as under the Arbitration and Conciliation Act, 1996 at Bangalore. Arbitration will be conducted in terms of the Arbitration Centre-Karnataka (Domestic and International) Rules, 2012 framed by the Arbitration Centre-Karnataka, set up under the aegis of the Hon'ble High Court of Karnataka."

Clause 21 provides that, a dispute arising under the agreement shall be adjudicated by a sole Arbitrator, mutually appointed by the parties as under the Arbitration and Conciliation Act, 1996. The petitioner, issued a notice to the respondents calling upon the respondents to refund Rs.80 lakhs with interest at the prevailing bank rate of interest from time to time and further, stating that, failing which, the petitioner, left with no other alternative, but to initiate appropriate action for institution of proceedings before the Court of law for appointing a sole Arbitrator under the provisions of the Arbitration and Conciliation Act, 1996. The respondents replied to the legal



notice on 14.07.2016 stating that, the petitioner can seek a refund of the advance amount from the builder to whom the petitioner has paid amount ,and the respondents are in no way responsible for the amount paid by the petitioner to the builder or any others, and consequences arising out of the same.

10. The petitioner got issued an Arbitration notice under Section 21 of the aforesaid Act on 12.6.2023 to the respondents invoking arbitration clause. It is stated that the petitioner has filed an application under Section 9 of the Arbitration and Conciliation Act, 1996 ,seeking attachment of 'A' schedule property until the disposal of the proceedings, pending on the file of LXXXIII Addl. City Civil and sessions Judge, Bengaluru, in Com.AA No.587/2022. The respondents did not reply to the notice dated 12.6.2023. As there is an arbitration clause, the parties have decided to resolve the dispute through an Arbitrator. Despite granting sufficient opportunity, the respondents did not choose to file a statement of objections.

11. In view of the above discussion, the petitioner has made out a ground to refer the dispute to the Arbitrator for



resolving the dispute arisen between the petitioner and the respondent. Accordingly, I answer the point for consideration in the affirmative.

12. Hence, I proceed to pass the following :

ORDER

- i) The Civil Miscellaneous Petition is allowed;
- ii) Hon'ble Justice Shri N Kumar, Former Judge, High Court of Karnataka, Bengaluru, is appointed as an Arbitrator to resolve the dispute between the parties as per the provisions of the Arbitration and Conciliation Act, 1996 and the Rules.
- iii) The Office is directed to communicate this order to the learned Arbitrator and the Arbitration and Conciliation Centre, Bengaluru.

**Sd/-
(ASHOK S.KINAGI)
JUDGE**

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