



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE E.S.INDIRESH

CIVIL MISC. PETITION NO.725 OF 2025

BETWEEN:

1. MS.PAYAL KHATTRI
AGED ABOUT 47 YEARS
D/O MR. KANTI KUMAR JAIN
HAVING PERMANENT RESIDENCE AT
PURVA SEASONS H-1103,
NAGWARA PALYA, CV RAMAN NAGAR,
BENGALURU 560 093.

NOW PRESENTLY RESIDING AT
16234 TRAVIS SQUARE,
WEST WINDSOR, NEW JERSEY 08550
UNITED STATES OF AMERICA.
E-MAIL KHATTRI.PAYAL@GMAIL.COM
MOBILE (201) 707-8984

Digitally signed by
CHAYA S A
Location: HIGH
COURT OF
KARNATAKA

REPRESENTED BY HER
POWER OF ATTORNEY AGENT
MR. VIKAS JAIN
SON OF MR. KANTI KUMAR JAIN
AGED ABOUT 53 YEARS
RESIDING AT NO. 1/1,
UPEN BANERJEE ROAD,
FLAT 3G, BLOCK 5,
PARNASREE GREENS,KOLKATA - 700060.

...PETITIONER

(BY SRI. M.B. ANIRUDH, ADVOCATE)



AND:

1. TOTAL ENVIRONMENT HABITAT PRIVATE LIMITED
A COMPANY UNDER THE COMPANIES ACT, 2013
HAVING ITS REGISTERED OFFICE
AT IMAGINE, NO. 78,
ITPL MAIN ROAD EPIP ZONE,
WHITEFIELD,
BENGALURU 560066
REPRESENTED BY ITS
CUSTOMER RELATIONSHIP
MANAGER
MR. RAMKUMAR.
MOBILE 91 99000 97753.

2. MR. VAIBHAV KHATTRI
SON OF MR. GOPALJEE KHATTRI,
AGED ABOUT 44 YEARS,
HAVING PERMANENT
RESIDENCE AT NO.A-29,
KAMLA NAGAR,
AGRA 282004
PRESENTLY RESIDING AT
C/O ARNOLD KLINGENFUSS MATTHES,
TENGSTR 33,
MUNICH - 80796,
GERMANY
E-MAIL KHATTRI.VAIBHAV@GMAIL.COM
MOBILE 49 175 9201331.

...RESPONDENTS

(BY SRI. SRIDHAR G., ADVOCATE FOR R1;
V/O DATED 26.02.2026 NOTICE TO R2 IS HELD SUFFICIENT)



THIS CMP IS FILED UNDER SECTION 11(6) OF ARBITRATION AND CONCILIATION ACT, 1996, PRAYING TO PASS AN ORDER FOR THE APPOINTMENT OF AN IMPARTIAL AND INDEPENDENT ARBITRATOR FOR ADJUDICATION OF THE DISPUTES BETWEEN THE PARTIES, ARISING FOR ADJUDICATION OF THE DISPUTES BETWEEN THE PARTIES, ARISING OUT OF THE CLAUSE 6.10 OF THE AGREEMENT FOR SALE DATED 20.12.2015 (ANNEXURE A) AND CLAUSE 13.08 OF THE CONSTRUCTION AGREEMENT DATED 20.12.2015 (ANNEXURE B).

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

CORAM: HON'BLE MR. JUSTICE E.S.INDIRESH

ORAL ORDER

Heard Sri. M.B. Anirudh, learned counsel appearing for the petitioner and Sri. Sridhar G., learned counsel for the respondent No.1.

2. In this petition, the petitioner has sought the appointment of an Arbitrator to adjudicate the disputes that have arisen between the parties in relation to the Agreement of Sale dated 20.12.2015



(Annexure-A), in accordance with the provisions of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "Act").

3. It is contended by Sri. M. B. Anirudh, learned counsel appearing for the petitioner, by inviting the attention of the Court to Clause 6.10 of the Agreement of Sale (Annexure-A) as well as the notice dated 15.09.2025 (Annexure-C), that the petitioner has stated in paragraph 5 of the notice dated 15.09.2025 that he intended to avail the remedy before CREDAI, Bengaluru. However, there was no response from the respondents. Therefore, the appointment of an Arbitrator has become necessary for the resolution of the dispute.

4. In this regard, Sri. Sirdhar G., learned counsel appearing for respondent No.1 submitted that the remedy available to the petitioner is under the



Real Estate (Regulation and Development) Act, 2016. While inviting the attention of this Court to Section 11(5) of the said Act, it is submitted that it is open for the petitioner to approach the said authority.

5. In this regard, the learned counsel appearing for the respondents places reliance on the judgment of the Bombay High Court, in the case of ***Rashmi Realty Builders Pvt., Ltd., vs. Rahul Rajendrakumar Pagariya and others*** reported in ***2024 SCC OnLine Bom 3871***, and also on the judgment of the Hon'ble Supreme Court the case of ***Arif Azim Company Ltd v. Aptech Ltd*** reported in ***(2024) 5 SCC 313***. It is submitted that the objections relating to the competence of the Arbitrator to adjudicate the dispute arising under the Agreement of Sale fall within the domain of the authorities under the RERA Act, and therefore, any order that may be



passed by the Arbitrator in the event of appointment would be binding only between the parties to the arbitration and may result in inconsistency with the claims of other allottees of respondent No.1.

6. In reply, Sri. M. B. Anirudh, learned counsel appearing for the petitioner, with reference to the competence between various statutory provisions, particularly the Consumer Protection Act, the RERA Act, and the Arbitration and Conciliation Act, submitted that the parties have chosen arbitration as the mode for resolution of disputes. Apart from that, it is open to the parties to elect the particular forum for approaching the competent jurisdiction. Therefore, the appointment of an Arbitrator is called for in the present petition.

7. Having taken note of the submissions made by the learned counsel appearing for the parties, it is



not in dispute that Clause 6.10 of the Agreement of Sale dated 20.12.2015 provides for resolution of disputes through arbitration. The question that arises for consideration, in light of the arguments advanced by the learned counsel for the parties, is whether the appointment of an Arbitrator is feasible despite the petitioner having a remedy under the provisions of the RERA Act.

8. By referring to the judgment of the Hon'ble Supreme Court in the case of ***Emaar MGF Land Limited v. Aftab Singh*** reported in ***(2019) 12 SCC 751***, particularly paragraph 23, it is held as under:

"23. Another judgment which is relevant for the present issue is National Seeds Corpn. Ltd. v. M. Madhusudhan Reddy [National Seeds Corpn. Ltd. v. M. Madhusudhan Reddy, (2012) 2 SCC 506 : (2012) 1 SCC (Civ) 908] . In the above case, the respondent filed a complaint in the District Consumer Redressal Forum that they had suffered loss due to failure of the crops/less yield because the seeds



sold/supplied by the appellant were defective. The compensation was awarded against which appeal was dismissed. The appellant challenged the order of the Commission and main contention was that the District Forum has no jurisdiction to entertain the complaint, in view of the provisions of the Seeds Act, 1966 it was contended that there was arbitration clause contained in the agreement and the only remedy available to the respondent is an appropriate arbitration and the District Forum has no jurisdiction to entertain the complaint. This Court repelled the submission and dismissed the appeal. In para 64 this Court had noticed the contention of the appellant which is to the following effect: (SCC p. 534)

"64. According to the learned counsel for the appellant, if the growers had applied for arbitration then in terms of Section 8 of the Arbitration and Conciliation Act the dispute arising out of the arbitration clause had to be referred to an appropriate arbitrator and the District Consumer Forums were not entitled to entertain their complaint. This contention represents an extension of the main objection of the appellant that the only remedy available to the farmers and growers who claim to have suffered loss on account of use of defective seeds sold/supplied by the appellant was to file complaints with the Seed Inspectors concerned



for taking action under Sections 19 and/or 21 of the Seeds Act."

9. It is also to be noted from the judgment of the Hon'ble Supreme Court in the case of ***Emaar MGF Land Limited***, (supra) wherein the jurisdictional aspects have been considered. The Hon'ble Supreme Court has categorized the nature of disputes that may be adjudicated by an Arbitrator. Taking into consideration the judgment of the Hon'ble Supreme Court in the said case, particularly by referring to paragraphs 65 to 68, the question as to the dispute is arbitrable or non-arbitrable is also required to be considered in the arbitration proceedings.

10. Therefore, taking into consideration the fact that the petitioner has elected arbitration as the mode for resolution of the dispute, I am of the view that, by following the judgment of the Hon'ble Supreme Court in the case of ***IREO Grace Realtech Pvt. Ltd. vs.***



Abhishek Khanna, reported in ***(2021) 3 SCC 241***, it is within the domain of the petitioner to choose the particular remedy for resolution of the dispute as per Annexure-A.

11. It is also to be noted that, pursuant to the execution of the Agreement of Sale dated 20.12.2015, the parties have also entered into a Construction Agreement dated 20.12.2015 (Annexure-B), which is in furtherance of the Agreement of Sale. The same is also required to be considered in relation to the resolution of disputes.

12. In that view of the matter, and upon a considered opinion, an Arbitrator is required to be appointed to adjudicate the dispute between the parties.

13. Accordingly, this petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 is



allowed. Sri. K. Sreedhar Rao, Former Acting Chief Justice of the Gauhati High Court, is appointed to enter upon the reference of arbitration and act as the Sole Arbitrator in the present case at the Arbitration and Conciliation Centre (Domestic & International), Bengaluru, in accordance with the Rules governing the said Arbitration Centre.

14. All claims and contentions of the parties are kept open to be decided by the Arbitral Tribunal, including the question of jurisdiction.

15. A copy of this order shall be sent forthwith to the Arbitration and Conciliation Centre (Domestic & International), Khanija Bhavan, Bengaluru, for further proceedings in the matter.

16. The Registry is directed to return all original documents produced by any of the parties after obtaining photostat copies of the same.



17. Since the parties are represented through their learned counsel, in order to avoid further delay in the matter, the parties are directed to appear before the Arbitration and Conciliation Centre on 06.04.2026 at 11.00 a.m., without waiting for further notice in this regard.

**SD/-
(E.S.INDIRESH)
JUDGE**

SB
List No.: 1 Sl No.: 42