

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

ARBITRATION PETITION NO.78 OF 2014

Deepak Shankarrao Patil .Petitioner

v/s.

Sou. Sadhna Hanumant Lonkar .Respondents
& ors.

Mr.R.N.Kachare, Advocate, for the Petitioner
Mr.A.B.Tajane, Advocate, for the Respondent
Nos.1 to 12
Mr.Abhaykumar Apte, Advocate, for the
Respondent Nos.13 & 16

CORAM : A.A.SAYED, J.

DATE : 02.07.2015

P.C.

. This is an application for appointment of Arbitrator under Section 11(6) of the Arbitration And Conciliation Act, 1996.

2. The petitioner, who is a Developer had entered into a Development Agreement with the Late Durga Lonkar and the respondents who are the legal heirs of Late Durga Lonkar (and who are now owners of the subject land after the

death of Durga Lonkar) on profit sharing basis in the ratio 35:65. The said Development Agreement is registered. According to the petitioner, he has paid a sum of Rs.60,00,000/- as refundable interest free deposit to Late Durga Lonkar. A specific Power of Attorney was also executed by appointing the petitioner as Constituted Attorney for performing various acts, deeds and things more particularly stated in the said Power of Attorney. The said Power of Attorney was also registered.

3. Clause 31 of the Development Agreement reads as under :-

"31. In case any dispute is raised on the terms and conditions mentioned in this agreement or any duty and responsibilities kept on the first part and second part then the said dispute shall be submitted before the Arbitrator the same shall be resolved under the Arbitration Act, 1996 and the decision of the said Arbitrator shall be final and

same shall be binding on both disputed parties. For the appointment of Arbitrator both parties hereby confirm and agree that both parties shall appoint his separate arbitrator thereafter both parties appoint additional one Arbitrator then the arbitration process shall be carried out before three Arbitrators and their decision shall be binding on both parties. Both parties have to bear the Arbitration fee for their arbitrator and the common third Arbitrator's fee shall be bear both parties commonly."

It is not in dispute that there exists an Arbitration Agreement which has been signed by the respondents also. The only contention of the respondent Nos.1 to 12 is that the dispute is not a live dispute. I am not inclined to accept the contention inasmuch as on their own showing the respondents and/or their mother Late Durga Lonkar had received an amount of Rs.45,00,000/- by a cheque under the Agreement and the petitioner had commenced construction of the bungalows in pursuance of the

Development Agreement. According to the petitioner, construction of three bungalows out of the 13 bungalows has already been completed and Occupation Certificate for the same has also been granted. The petitioner had obtained necessary permission including NA permission and got the plans sanctioned and is stated to have spent an amount of Rs.4.10 crores. It is pertinent to note that the respondents have never terminated the Development Agreement at any time though according to them, the project was to be completed by 26.04.2014. It appears that when it came to the sale of the said 3 bungalows, the Late Durga Lonkar/respondent Nos.1 to 12 did not co-operate in opening a Bank Account. As per Clause 14 of the Agreement, the sale proceeds of the bungalows are to be deposited and shared in the ratio of 35:65. It appears that the Late Durga Lonkar/respondents were opposed to opening of account in the Bank suggested by the petitioner and they wanted to

open an account in some other Bank which was more conveniently located for them. From the Affidavit-in-reply of the respondents, it does appear that disputes and differences have arisen between the parties which need to be resolved through arbitration. Pertinently, Respondent Nos.13 to 16 are supporting the petitioner so far as the resolution of the dispute through arbitration. Learned counsel for the respondent Nos.13 to 16 fairly states that the respondent Nos.13 to 16 would abide by any choice of Arbitrator/s.

4. Considering the facts and circumstances of the case, it cannot be said that there is no live dispute between the parties and there clearly exists an Arbitration Agreement between the parties in terms of Clause 31 of the Development Agreement. The petitioner has suggested the name of Shri Sudhakar Binwade, Additional District Judge (Retired), having his address

at Plot No.8, 'A' Building, Ajanta Avenue Society, Poud Road, Near Krishna Hospital, Pune — 411 038 as Arbitrator. Since the respondent Nos.1 to 12 have failed to nominate an Arbitrator of their choice, despite granting them an opportunity even at this stage, I appoint Shri J.L.Deshpande, District & Sessions Judge (Retired), having his address at A-302, Shefalika Heights, Balwantpuram, Paud Road, Kothrud, Pune — 411 038 as the 2nd Arbitrator. Both the arbitrators shall expeditiously appoint the 3rd arbitrator in terms of Clause 31 of the Development Agreement. The arbitration proceedings shall proceed in accordance with the Arbitration And Conciliation Act, 1996. Registry to communicate this order along with Memorandum of address of the parties to Shri Sudhakar Binwade, Additional District Judge (Retired) and to Shri J.L.Deshpande, District & Sessions Judge (Retired).

5. The Petition shall stand disposed of
accordingly.

(A.A.SAYED, J.)