

IN THE HIGH COURT OF JUDICATURE AT PATNA

Request Case No.17 of 2016

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1. Smt. Chandra Prabha Lal Wife of Soami Saran Lal residing at present L-4/163, Road No. 7 B. H. Area, P.O. Kadma, Jamshedpur, P.S. Kadma, Jharkhand.
 2. Sanjivan Lal, son of Late Soami Saran Lal, residing at present C-23/601, Gold Groom CHS Ltd. Yamuna Nagar, Andheri West, P.S. Andheri, Mumbai - 400053

.... Petitioner/s

Versus

1. M/s. Hem Developers Pvt. Ltd. , a Company incorporated under the Companies Act, 1956 having its registered office at Road No. 12, Rajendra Nagar in the House of Shri Murli Prasad Sinha, Advocate, Patna, P.S. Kadam Kuan, Patna – 800016.
2. Shri Prakash Kumar, son of Shri Murli Prasad Sinha, Advocate, Director, resident of Road No. 12, Rajendra Nagar, Patna, P.S. Kadam Kuan, Town and District Patna – 800016.
3. Shri Bhavesh Kumar, Son of Late Jagdish Pandey, Managing Director of M/S. Hem Developers (P) Ltd., Office situated in Shyam Centre, Exhibition Road, Patna, P.S. Gandhi Maidan, Patna – 800001.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Subodh Kumar Sinha

For the Respondent/s : Mr. Siddhartha Prasad,

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

ORAL JUDGMENT

Date: 09-11-2016

The petitioners have sought appointment of an Arbitrator in respect of the dispute arising out of a collaboration/Development agreement dated 09.05.1993.

2. The respondents are developers who have entered into an agreement with the petitioners and other persons for development of residential-cum-commercial building. The petitioners claim 1/8th share in the total land of 12.44 Kathas equivalent to 16,944 Sq. ft. in terms of the agreement. The petitioners are said to have got an allotment letter dated 10.09.2003 issued by respondent no. 3.

3. The grievance of the petitioners is that respondent no. 3 has allotted shop no. 30 which is 327 Sq. ft. and subsequently, another room no. 109 measuring 300 Sq. ft. and a small flat on the third floor bearing Flat No. 309, thus, they have been given the total area of 1207 Sq. ft. out of total entitled area of 2987 Sq. ft.

4. Learned counsel for the respondents has raised a preliminary objection that the petition for appointment of Arbitrator is barred by limitation inasmuch as a similar case in respect of the same building but by another land owner came to be decided vide Request Case No. 10 of 2014 (Braj Kishore Pandey Vs. M/S. Hem Developers Pvt. Limited and others) on 05.05.2016 wherein it has been held that at this stage the reference cannot be made to an Arbitrator.

5. The claim for the petitioners to seek resolution of dispute through arbitration is barred by limitation as any cause of action arose to the petitioners, when possession of flat and/or shop was handed over to them. Raising of dispute in the year 2016 is clearly barred by limitation in respect of possession of the area in the year 2003. Still further, similar question has been examined by this court in another identical matter in **Braj Kishore Pandey Vs. M/S. Hem Developers Pvt. Limited** being Request Case No. 10 of 2014 decided on 05.05.2016.

6. In view of the above and the reason recorded in Braj

Kishore Pandey’s case (supra), the present application for appointment of an Arbitrator is, dismissed as barred by limitation.

(Hemant Gupta, ACJ)

Amin/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	
Transmission Date	