

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE:01.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

O.P.No.151 of 2015

VGP Housing Pvt Ltd.,
Represented by Director
Mr.VGP Ravidas
VGP Square No.6,
Dharmarajan Koil Street,
Saidapet, Chennai - 600 015. ... Petitioner

Vs.

1.Aerens Gold Souk International Ltd.,
'Gold Souk', 'C' Block,
Sushant Lok, Phase - I
Gurgaon - 122 002,
Haryana

2.Metroline Promotors Private Limited
Plot No.1, Local Shopping Centre,
Sharda Niketan, Pitampura,
New Delhi - 110 034.

Also at

Goldsouk Mall, C Block,
Sushant Lok Phase-1
Sector-43

Gurgaon - 122 022.

... Respondents
(2nd Respondent impleaded as per
order dated 18.12.2015 in A.No.8094/2015)

Prayer: Petition filed under Section 11(4) of the
Arbitration and Conciliation Act, 1996, to appoint
an Arbitrator on behalf of the Respondent and to
resolve the disputes that have arisen between the
petitioner and the respondent.

For Petitioner: M/s.Shivakumar

Asst. by Ms.Samyuktha

For R 1 : Mr.S.Mahesh Kumar

For R 2 : Mr.C.Vigneswaran

ORDER

Heard Mr.Suresh, learned counsel assisted by M/s.Samyuktha, learned counsel appearing for the petitioner; Mr.S.Mahesh Kumar, learned counsel for the 1st respondent and Mr.C.Vigneshwaran, learned counsel for the 2nd respondent and with their consent, the matter is taken up for disposal.

2.The petitioner has filed this petition under Section 11(4) of the Arbitration and Conciliation Act, 1996 with the prayer to appoint an Arbitrator in terms of Section 11(4) of the Arbitration and Conciliation Act, 1996 on behalf of the respondent and to resolve the dispute that has arisen between the petitioner and the respondent.

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3.Initially, in this petition, there was a sole respondent and subsequently the petitioner filed an application to implead the 2nd respondent herein on the ground that the 1st respondent had already assigned its rights accrued pursuant to the Joint

Development Agreement dated 10.11.2004 in favour of the 2nd respondent vide Deed of Assignment dated 28.11.2007. Accordingly, the petition was allowed and by order dated 18.12.2015, the 2nd respondent was made as a party to the proceedings.

4.The facts which are necessary for the disposal of the matter are:

(i) The petitioner entered into a Joint Venture Development Agreement dated 10.11.2004. The agreement pertains to the properties which were situated in Kelambakkam Village, Chengalpattu Taluk. The petitioner represented that they are the absolute owner of the properties in possession and enjoyment and offered the same for joint development. The 1st respondent was engaged in the business of setting up and running of gold souks and jewellery complexes, has evinced an interest in the setting up of one such project in Chennai with the collaboration of the petitioner. Accordingly, the parties entered into the agreement and the same were reduced into writing. It may not be necessary to go into the various conditions and covenants as

contained in the Joint Venture Development Agreement as this Court is only considering a petition to appoint an Arbitrator in accordance with the Section 11(4) of the Act. Therefore, what is required to be seen is whether there is a binding arbitration agreement and what manner the parties have agreed to resolve the dispute that may arise under the Agreement. Clause 37 of the Agreement deals with 'Arbitration' which reads as follows:

"37. Any dispute or difference between the parties with regard to this Agreement and all connected and related matters whatsoever shall be discussed and settled amicably. In the event of any failure to resolve the disputes or differences amicably, all such disputes or differences whatsoever under this agreement, shall be referred to Arbitrators, one to be nominated by the First Party / Land Owner and one to be nominated by the Second Party / Developer and the third arbitrator to be nominated by such arbitrators. The Arbitration proceedings shall be conducted in English and in accordance with the

provisions of Indian Arbitration and Conciliation Act, 1996 or any statutory modifications or enactment thereof. The Venue of Arbitration shall be Chennai. The language of Arbitration shall be English. The Arbitration shall be a documents only, evidence through affidavits, "fast track" arbitration. This shall be without prejudice to the right of the parties here to approach the civil court for statutory remedies provided under law."

(ii) In terms of the above Clause, in the event of any failure to resolve the disputes or differences amicably, all the disputes or differences whatsoever under the Agreement, shall be referred to Arbitrators, one to be nominated by the petitioner/Land owner and one to be nominated by the 1st respondent/Developer and the third Arbitrator to be nominated by such Arbitrators chosen by the petitioner and the 1st respondent. The proceedings were agreed to be conducted in English in accordance with the provisions of the Act and the venue of Arbitration was agreed to be at

Chennai. The 1st respondent by letter dated 09.11.2005 addressed the petitioner stating that there is some delay in getting approval and clearances from the CMDA and requested them to give approval for extension of time only with regard to certain applicable Clauses in the Joint Development Agreement. The petitioner, by reply dated 09.11.2005, informed the 1st respondent that they agreed to extend the initial period mentioned in Clause 6 of the Agreement till 30.06.2006 and in other respects, the Joint Venture Development Agreement shall remain the same. Thereafter, there has been subsequent exchange of communication between the parties which show that certain differences and disputes between them had cropped up. The differences became wider and the parties started addressing each other through their counsel. The petitioner through their counsels letter dated 21.03.2014 called upon the 1st respondent to pay the balance compensation of Rs.1,10,00,000/- together with interest at the rate of 18% for the belated payment of compensation within seven days from the date of receipt of the

notice failing which the petitioner shall be constrained to invoke the Arbitration Clause contained in Clause 37 of the Joint Development Agreement to resolve the dispute including to realise the amount at the risk and costs of the 1st respondent. Subsequently, by another notice dated 03.04.2014, the petitioner informed the 1st respondent that they have appointed Justice N.V.Balasubramanian, Retired Judge of this Court as their Arbitrator and they may appoint their Arbitrator. The 1st respondent, through their counsel, while replying to the allegations made in the petitioner's legal notice dated 21.03.2014 and 03.04.2014 did not concede to the appointment of Thiru. Justice N.V.Balasubramanian as an Arbitrator. This was followed by a reply notice from the petitioner through their counsel stating among other things that if the 1st respondent fails to nominate an Arbitrator, they will be constrained to move this Court for appointment of an Arbitrator. On receipt of the said rejoinder notice dated 23.04.2014 from the petitioner, the 1st respondent sent a reply on 22.05.2014 appointing

Mr.Khowaja Siddique, Advocate as their Arbitrator. Subsequently, the petitioner's counsel informed the counsel for the 1st respondent that since Thiru. Justice N.V.Balasubramanian had expressed his inability to function as an Arbitrator, they had nominated Mr.N.C.Ramesh, Senior Counsel as their Arbitrator. The senior counsel, nominated by the petitioner as their arbitrator, sent a letter to the Arbitrator nominated by the 1st respondent dated 19.08.2014, proposing three names of the Retired Hon'ble Judges of this Court and one of them to be chosen as the Presiding Arbitrator. In the mean time, the Arbitrator nominated by the 1st respondent had withdrawn his mandate by letter dated 11.09.2014. At this stage, the matter is before this Court.

8.Considering the facts and circumstances of this case, it is evidently clear that there is no challenge to the condition agreed to by the parties to resolve the disputes by Arbitration.

9.In the counter affidavit filed by the 1st

respondent as well as in the counter affidavit filed by the 2nd respondent, the ground raised by them is that the petitioner suppressed the fact regarding the Assignment Deed entered into by the 1st respondent and the 2nd respondent and that the Arbitration Clause can only be invoked against the 2nd respondent. In my view, this issue also is an arbitrable dispute since the assignment is said to have taken place pursuant to a Deed of Assignment dated 28.11.2007 much after the original agreement dated 10.11.2004, the effect of the assignment and as to whether the 1st respondent has nothing to do with the dispute raised by the petitioner is also an arbitrable issue that could be raised by the parties before the Arbitrator. Thus, this Court proposes to leave open all issues to be canvassed before the Hon'ble Arbitrator and considering the fact that the matter has been prolonging for several years and the parties have now reconciled to go for arbitration to sort out the differences and disputes among them, this Court deems it appropriate to appoint a Sole Arbitrator.

10. In the light of the above I appoint Thiru.P.Ganesan, District Judge (Retired), No.778, Judge Colony, 4th Street, Kahithapuram, S.Kolathur (Near 200ft Road), Chennai 600 117 [Mobile No: 96000 45571] as the Sole Arbitrator to enter upon reference and after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the order. The learned Arbitrator is at liberty to fix the remuneration and other incidental expenses, which shall be borne by the parties equally. In the event of respondent not entering appearance, the same may be borne by the petitioner at the initial stage to form part of the main cause.

11. The Original Petition is, accordingly, allowed, leaving the parties to bear their own costs.

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Sd/T.S.S.J

01.07.2016 //Certified to be a true copy//

Dated this the day of 2016

S.s/03.08.2016

COURT OFFICER

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