

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.09.2017

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

O.P.NO.614 OF 2017

M/s.Kozone Reality Private Ltd.,
represented by its Managing Director
Mr.S.Ashok Kumar,
S/o.P.C. Subramaniam,
SDS Enclave, Flat No.7,
4th Floor, Opp to sathiyamurthy
Hospital Road,
2/5, Perundurai Road,
Erode 638 011

Petitioner

Vs

1. Mrs. Susila,
2. Mr. Suman Babu

Respondents

Petition filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 praying to constitute an arbitral tribunal consisting of a 3 Arbitrators, seated in Coimbatore, to decide all disputes under the Joint Development Agreement dated 10.07.2011 along with Mr.S.A.Sreeramulu, District Judge (Retd) who has been appointed by the petitioner herein.

For Petitioner : Ms. Asha and
Venkatasubban

For Respondents: No Appearance

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ORDER

This petition is filed by Kozone Reality Private Limited praying for constitution of an Arbitral Tribunal at Coimbatore comprising three Arbitrators

to decide all disputes arising from and under Joint Development Agreement dated 10.7.2011.

2. The petitioner and the respondents entered into a Joint Development Agreement dated 10.07.2011, whereunder, the 2nd respondent being the land owner, had contracted with the petitioner firm for development of their property in Vilankurichi Village, Coimbatore by the petitioner herein.

3. Pursuant to the Joint Development Agreement, the petitioner had applied for statutory approvals and completed the construction in February 2015. Supplementary agreement dated 16.4.2014 entered into between the parties earmarked 42% of the constructed area to the respondents, being 29 flats, and 58% share of the constructed area to petitioner, being 39 flats.

4. Pursuant to the completion of the construction, the petitioner has been seeking the remittance of various amounts due and payable to it amounting to a total of Rs.3,57,96,363/-. Further, inspite of repeated requests made by the petitioner to take possession of the apartments subject to the payment of the aforesaid amount, the respondents have not been coming forth to either settle the amounts or take possession of the apartments. A legal notice was issued on 3.3.2017, to which a reply was issued dated 28.3.2017, wherein, the claims made by the petitioner were denied and a counter claim raised.

5. Pursuant thereto, the petitioner issued letter dated 10.4.2017 invoking the arbitration clause and appointing Mr.S.A.Sreeramulu District Judge, Retired, 2A/5th Cross Lal Bahadur Colony, Peelamedu, Coimbatore as its nominee on the Arbitral Tribunal. The letter, though received by the respondent, did not receive any reply. Hence, the present petition.

6. A perusal of the documents would indicate that there are, admittedly, disputes between the parties. In fact, the claims made by the petitioner have been resisted by the respondents who have proceeded to raise counter claims.

6a. The existence of arbitration clause in terms of clause 25 of the Agreement is also clear as extracted below:

'25. In the event of any dispute or difference arising between the PARTIES HERETO relating to or with reference to or in connection with this Agreement, the same will be referred to Arbitration in accordance with the provisions of the Arbitration and Conciliation Act 1996. Such reference will be to a single arbitrator if the parties agree upon one, otherwise to three arbitrators, to one to be appointed by each party and both the arbitrators will appoint the third presiding arbitrator. The venue of the arbitration will be at

coimbatore. The arbitrators will have summary powers and the parties will comply with all direction order and awards of the arbitrator(s).'

7. Notice on this petition was issued to the respondents and duly received by them. An affidavit of service has been filed to this effect on 14.09.2017. The names of the respondents have been printed. Since there was no appearance on their behalf, paper publication was directed to be effected, duly published on 6.9.2017 and an affidavit of service dated 13.09.2017 filed in this regard as well. Even thereafter, there has been no response forthcoming from the respondents.

8. In view of the aforesaid discussion, the prayer of the petitioner is accepted. Mr.H.Joseph David, Retired District Judge residing at 1F, 1st Floor, Suffron Buds, Veda Block, Phase – I, SNV Garden Road, Nanjundapuram Main Road, Coimbatore – 641 036 (Mobile No.94430 20280) is appointed as Arbitrator on behalf of the respondents. The two arbitrators, Mr.S.A.Sreeramulu, Retired District Judge appointed by the petitioner and Mr.Joseph David, Retired District Judge appointed by this Court shall appoint a third presiding arbitrator within 30 days from the date of receipt of a copy of this order by the Arbitrators. The Arbitral Tribunal shall adjudicate upon the disputes inter se the parties and pass an award as expeditiously as possible, and in any event, within a period of six months from the date of first sitting. The

learned Arbitrators are at liberty to fix their remuneration and other incidental expenses which shall be borne by both parties equally.

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

22.09.2017

Speaking Order/non-speaking order

Index:yes/No

msr



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DR. ANITA SUMANTH, J.

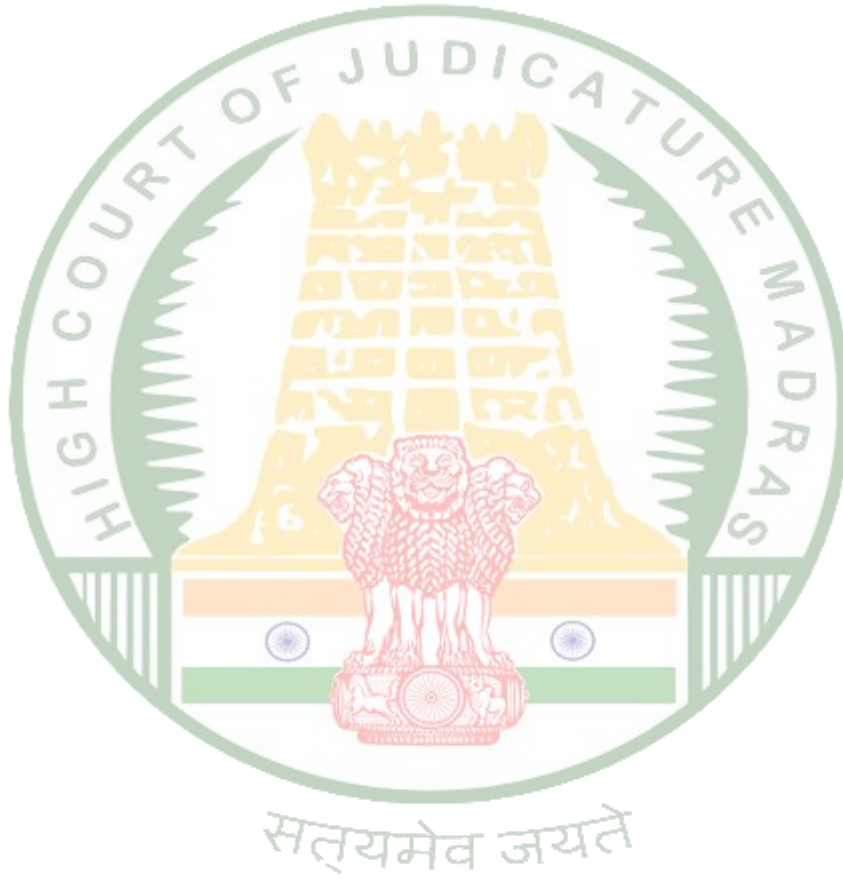
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