

In the High Court of Judicature at Madras

Dated : 24.03.2017

Coram :

The Hon'ble Mr.Huluvadi G.Ramesh, Acting Chief Justice

O.P.No.552 of 2016

P.Venkataraman

.. Petitioner

-vs-

M/s.Green Tree Homes and
Ventures Private Limited,
New No.13, Sriman Srinivasan Road,
Alwarpet, Chennai – 600 018.

.. Respondent

(Respondents 2 to 4 deleted as per order
dated 23.9.2016)

Petition filed under Section 11 of the Arbitration and Conciliation Act, 1996, to appoint a sole Arbitrator to adjudicate the disputes between the parties arising under the Agreement dated 30.09.2013.

For Petitioner : Mr.M.Swaminathan

For Respondent : Notice Served
No Appearance

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ORDER

This petition has been filed by the petitioner seeking to appoint a sole Arbitrator to adjudicate upon the disputes arisen between the petitioner and the respondent.

2. The petitioner and the respondent as power agent of M/s.LVR Farms Private Limited entered into an agreement of sale on 30.9.2013 to for purchase of Plot No.416 measuring to an extent of 1200 square feet comprised in W.No.527/2, in Polivakkam village, Tiruvallur Taluk and after entering into an agreement for sale, on 8.8.2014 regular sale deed was executed in favour of the petitioner. On 30.9.2013 itself, a construction agreement was entered into the between the petitioner and the respondent and the respondent had agreed to construct a residential duplex house for the petitioner in the said Plot No.416 of the complex called "Green Town" at a cost of Rs.22,40,452/-. The petitioner has paid the construction cost to the respondent and all payments were made within the stipulated period of time as mentioned in the construction agreement. The respondent undertook to complete the work within 18 months from the date of the construction agreement with an additional grace period of three months. After completion of first floor roof brick level, the respondent had stopped the construction work since 2015 and the building is lying incomplete in the same stage. Even after follow up efforts by the petitioner, there was no response from the respondent. The petitioner has performed his obligation under the agreement faithfully, but the respondent had committed several breaches, as a result, the petitioner suffered huge loss. On 26.3.2016, the petitioner issued notice to the respondent raising a dispute and initiated

arbitration proceedings. Since no reply from the respondent, the petitioner again issued lawyer notice on 7.7.2016 invoking arbitration clause and has proposed to appoint retired District Judge Mr.Essath Ali, as sole Arbitrator to resolve the disputes.

3. The Arbitration Clause 46 reads as under:-

"Any dispute, controversy, claim or disagreement of any kind whatsoever between or among the parties in connection with or arising out of this agreement or any of the Project Agreements or the breach, termination or invalidity thereof shall be referred to and finally resolved by Arbitration irrespective of the amount involved in the dispute or whether such disputes would otherwise be considered justifiable for resolution by any Court. The Parties expressly agree that they shall attempt to resolve through good faith any such disputes between the parties by mutual discussions. In the event of a deadlock, both Parties shall nominate an Arbitrator of their choice and the nominated Arbitrators shall appoint a presiding Arbitrator who shall decide the dispute so referred in accordance with the Arbitration and Conciliation Act, in 1996.

The seat of the arbitration shall be at Chennai and shall be in English language. The Parties agree that the Arbitration Award so passed by the Presiding Arbitrator shall be final and binding on both the Parties."

4. Respondent has been served through paper publication, but none has put in appearance. The service is held sufficient.

5. A perusal of the pleadings and the documents which are unrebutted shows that the agreement *inter se* the parties contain an arbitration Clause, that the disputes have arisen between the parties and the jurisdiction is of Chennai Courts. Therefore, the matter is liable to be referred to arbitration.

6. The learned counsel for the petitioner states that anyone of retired District Judge may be appointed as a Sole Arbitration in this case and that the arbitration proceedings be held under the aegis of Madras High Court Arbitration Centre.

7. I, thus, by consent of the learned counsel for the petitioner, appoint Mr.K.Palanisamy, a retired District Judge as the Sole Arbitrator, to enter upon the reference and adjudicate the disputes *inter se* the parties. The arbitration proceedings will be conducted under the aegis of the Madras High Court Arbitration Centre and the parties will be governed by the Rules of the Centre. In case of non-availability of the Madras High Court Arbitration Centre, the case may be held at Nani Palkhivala Arbitration Centre at No.22, Karpagambal Nagar, Mylapore, Chennai-600 004. The appearance of parties before the Madras High

Court Arbitration Centre is fixed on 20.04.2017 at 10.30 A.M. The Madras High Court Arbitration Centre is directed to intimate the date of commencement of proceedings to the respondent.

8. The original petition is, accordingly, allowed, leaving the parties to bear their own costs.

(H.G.R., ACJ.)
24.03.2017

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Note: Mark a copy to

- (i) The Addl. Registrar-Vigilance
Madras High Court Arbitration Centre,
Madras High Court Campus, Chennai.
- (ii) The Arbitrator, as referred above.

The Hon'ble Acting Chief Justice

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<http://www.judis.nic.in>