

In the High Court of Judicature at Madras

Dated : 27.01.2017

Coram :

The Hon'ble Mr.Sanjay Kishan Kaul, Chief Justice

O.P.No.705 of 2016

N.Srikanth

.. Petitioner

-vs-

1.M/s.AURA DEZINER HOMES PRIVATE LIMITED,
rep. by its Managing Director,
No.12, 1st Floor,
5th Street, AJ Block,
Anna Nagar, Chennai-600 040.

Regd. Office:
7H, Ramaniyam Citadel,
No.1, Panchali Amman Koil Street,
Arumbakkam,
Chennai-600 106.

Also at
Plot No.2976-C, Door No.AM15,
14th Main Road, Anna Nagar,
Chennai-600 040.

2.P.K.M.Sethuraman

3.M.Sundharrajan

.. Respondents

Petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996, to appoint an independent sole arbitrator to adjudicate the disputes arising between the petitioner and the respondent pursuant to the Joint Development Agreement dated 05.02.2014.

For Petitioner : Mr.Ahok Pathy
for M/s.PASS Associates

For Respondents : Mr.Mohammed Habb Raja for R2
No Appearance for R1 & R3

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ORDER

The petitioner, as owner of the residential flat measuring 5½ cents (2400 square feet) bearing Plot No.159, Goldern George Nagar, Srinivasan Street, Mogappair, Chennai-600 107, comprised in T.S.No.17 (S.No.396), Block No.75, Ward No.H, Mogappair Village, Ambattur Taluk, Tiruvallur District had entered into a Joint Development Agreement for construction of flats with respondent No.1 on 05.02.2014. In pursuance to the Joint Development Agreement, the petitioner is stated to have conveyed the undivided share to the extent of 864 square feet to respondent No.2 on 09.03.2015, who had entered into a construction agreement with respondent No.1 on the same date. A similar arrangement was made with respondent No.3 to the extent of 637 square feet by sale deed dated 23.03.2015 and the construction agreement dated 27.02.2015.

2. It is the case of the petitioner that the Joint Development Agreement being the parent agreement would govern the agreement entered into, with the rights derived

from the said agreement and that is why an *inter se* arrangement was arrived at between the respondents, to be governed by the principal agreement, which contains the arbitration clause as under:-

"36. Any dispute between the parties shall be adjudicated by a Sole Arbitrator to be mutually nominated by the parties herein. The venue of the proceedings shall be at Chennai. The parties agree to have a disposal of Arbitration proceedings expeditiously, in any case within a period of 6 months from the date of reference. The Arbitrator would be entitled to pass interim awards."

3. It is the case of the petitioner that respondent No.1 has failed to comply with the obligation under the agreement and abruptly stopped the construction and abandoned the site. The petitioner, thus, took control of the property. The original title deeds relating to the property and the planning permission are stated to be in the custody of respondent No.1, which had not been handed over. The endeavour of respondent No.1 to thereafter trespass is stated to have been obstructed.

4. It is however informed that the proceedings under Section 9 of the Arbitration and Conciliation Act, 1996 are pending with no interim orders granted as yet.

5. Respondent Nos.2 and 3 had made a statement before this Court on 18.11.2016 that they have no objection to the disputes being referred to arbitration, subject to any specific objection on merits or on the arbitrability of a particular claim. The first respondent has been served, but has remained unrepresented, despite his name being shown in the cause list. The result of the aforesaid is that it is a case of no return. The arbitration clause is not in dispute. The jurisdiction of this Court is also contained in the arbitration clause and the factum of dispute is also undisputed. Thus, there is no impediment in appointing the Arbitrator.

6. In view of the aforesaid, I appoint Mr.M.S.Krishnan, Senior Advocate, (Mobile No.9444088824), residing at "Thiruvarangan", 24, Sriram Nagar North Street, Alwarpet, Chennai-600 018, who is present in Court, 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.

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

Sd/. (S.K.K., CJ.)
27.01.2017

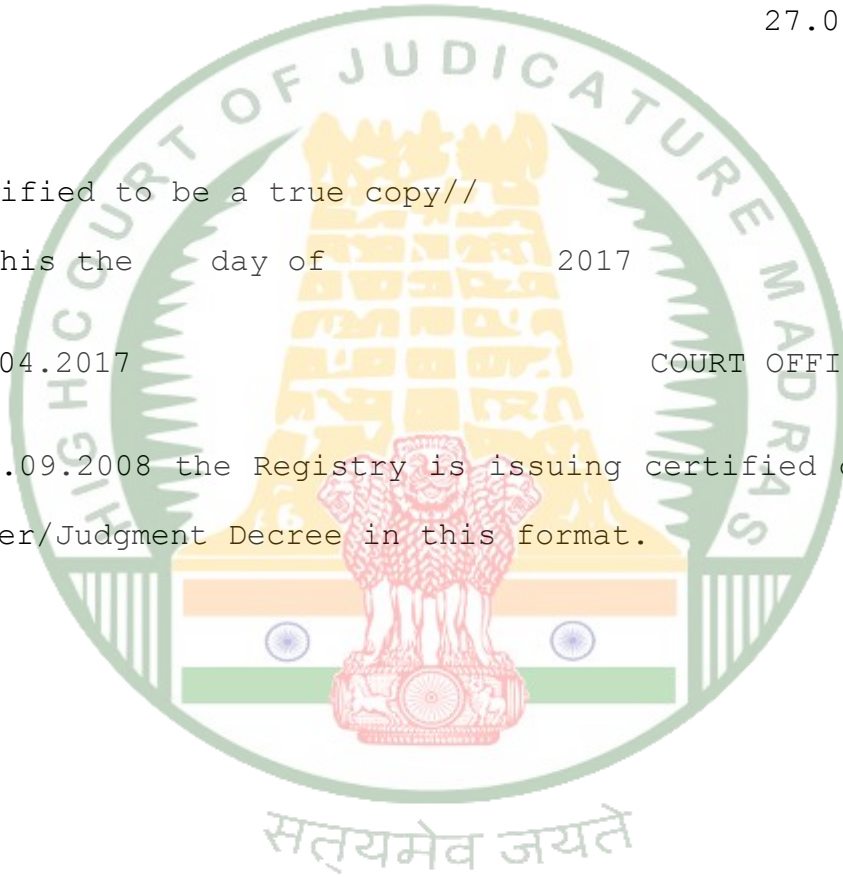
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Dated this the day of 2017

R.s/03.04.2017

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.



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