

In the High Court of Judicature at Madras

Dated : 10.02.2017

Coram :

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

O.P.No.926 of 2016

M/s.Navin Housing and Properties
Pvt. Ltd., Rep. by its Executive
Director, Smt.P.Bhavani.

.. Petitioner

-VS-

M/s.Watermarke Residency Limited,
Rep. by its Authorized Signatory.

.. Respondent

Petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996, to appoint an Arbitrator for the purpose of adjudicating upon the disputes which had arisen between the Petitioner and the Respondent.

For Petitioner : Mr.T.Ravichandran

For Respondents : Mr.R.Venkataraman
for Mr.Santhosh Ukkur

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O R D E R

A Memorandum of Understanding (MoU) dated 04.03.2011 was executed between the parties with the petitioner as Developer and respondent as Owner for development of land situated at Survey Nos.365/1B, 354/1B2 and other survey numbers as set out in the MoU situated at Vengaivasal Village, Tambaram Taluk, Kancheepuram District. The total land comprises of 17.4 acres, but the MoU was only in respect of 9.85 acres of land. This memorandum was further reduced into a Joint Development Agreement dated 18.08.2011 for development of 9.85 acres of land. In so far as the balance land is concerned, the only mention in the agreement is in Clause 18, which reads as under:

Clause 18

Development of Remaining Lands

At any point of time either Party may propose the development of the Balance Schedule Property by issuing a notice in writing to the other Party ("Further Development Notice"). This Further Development Notice, shall include the broad terms and conditions for the development of the Balance Schedule Property. The Parties shall then use their best endeavours to agree upon the terms and conditions for the development of the Balance Schedule Property within a period of 30 (thirty) days from the date of receipt of the Further Development Notice or as mutually extended in writing by the Parties. In the event

the Developer and Owner are unable to agree upon the terms and conditions for the development of the Balance Schedule Property, then the Owner will be entitled to develop the Balance Schedule Property on such terms and conditions as it may deem fit, including entering into suitable agreements with such persons as the Owner may deem fit.;'

2.The respondent issued a notice dated 18.10.2013 in respect of this balance land and there were ensuing communications. Suffice to say that neither the terms nor the price could be agreed upon.

3.The petitioner claims that they came across an advertisement on 12.09.2016 and 14.09.2016 in The Hindu reflecting the intention of the respondent to sell the balance land and this gave rise to the notice under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the said Act'), in view of Clause 20 read with 21, which read as under:

Clause 20

Dispute Resolution

In the event of dispute(s) arising under or in respect of the provisions of this Agreement, the Parties shall endeavour in good faith to resolve them by mutual discussions amicably. In

the event the Parties are unable to reach an acceptable solution to the dispute(s) within 30 (thirty) days the same shall be referred to binding arbitration in accordance with the procedure specified in Arbitration and Conciliation Act, 1996 (Act 26 of 1996) as amended from time to time. The arbitral panel shall comprise of a sole arbitrator, to be appointed mutually by the Parties. In the event the Parties are unable to agree upon a sole arbitrator then the arbitrator shall be appointed in accordance with the Arbitration and Conciliation Act, 1996. All proceedings shall be conducted in English. The venue of the arbitration shall be at Chennai. The decision of the arbitrator shall be final and binding on the Parties.

Clause 21

Jurisdiction

Subject to arbitration as specified in Clause 20 above being the only mode of dispute resolution, the Courts at Chennai shall have exclusive jurisdiction to adjudicate upon any matter arising out of or touching or concerning this Agreement.

4.A reply has been filed by the respondent in Court, which is taken on record.

5.Heard the learned counsel for parties.

6.It is, no doubt, true that the jurisdiction of this Court is very limited in its character under Section 11 (6) of the said Act. All

that is to be seen is that there should be an agreement, the agreement should have an arbitration clause, disputes should have arisen and the jurisdiction of this Court exists. Keeping the aforesaid parameters in mind, learned counsel for the respondent was asked to explain as to why the matter should not be referred to arbitration.

7.Learned counsel for the respondent solely relies on Clause 18, extracted aforesaid, to contend that there is no agreement inter se the parties, i.e. there is absence of contract qua the balance land. On the other hand, learned counsel for the petitioner seeks to contend that there is on-going correspondence which would show that this matter is being negotiated and that if the balance land is not available, the project for the land for which contract is already executed would be jeopardised.

8.On hearing learned counsel for parties, I am of the view that the petition is not maintainable. The reason for the same is the absence of any contract inter se the parties, which is a pre-requisite. The contract is not for development of 17.40 acres of land, but only for development of 9.85 acres of land. This contract, containing the arbitration clause, only provides that if the parties are able to negotiate a mutual acceptable contract on terms and conditions of

development, a contract would be executed inter se the parties. In the absence of a contract, the petitioner cannot claim that merely because there is an arbitration clause for development of part of the land, the balance land for which there is no contract also forms part of this contract and the dispute be referred to arbitration.

9. In view of the aforesaid, I find no merit in the petition. Original petition is, accordingly, dismissed, leaving the parties to bear their own costs.

(S.K.K., CJ.)
10.02.2017

sra

The Hon'ble Chief Justice

(sra)

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