

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

IN COMMERCIAL DIVISION

ARBITRATION APPLICATION NO.36 OF 2017

Royal Palms Property Pvt. Ltd.	)....Applicant
V/s.	
Summit Apartment (SRA) Cooperative	)
Housing Society Ltd.	)....Respondent

Ms.Rajni Mishra I/by Intralegal for the applicant.
Mr.Anwar Landge I/by Harshad A.Sathe for respondent.

CORAM : K.R.SHRIRAM,J
DATE : 3.9.2018

P.C.:-

1. The application is filed under Section 11 of the Arbitration & Conciliation Act 1996 (the said Act).

2 Briefly stated, the applicant and respondent had entered into Estate Maintenance Agreement dated 7.6.2013. The flats/office/shop owners who were members of respondent society had agreed to pay to developer of the property and/or agency nominated by the developer, proportionate costs, charges and expenses for the maintenance of company's amenities, facilities, security charges and maintenance of landscaping charges and rent for grant of access road etc. In the agreement for sale executed with each purchaser of units, it was agreed to execute agreement with the society of each building for

maintenance of common area to which individual agreement was drawn and signed. Pursuant thereto Estate Management Agreement was signed under which the applicant was to render various services and the respondent was to pay for the same. Clause-13 is the Arbitration clause and the same reads as under :-

“ARBITRATION : Any differences and disputes of whatsoever nature arising out of this Agreement shall be referred to a Sole Arbitrator as appointed by the Property Managers. Such arbitration shall be held in Mumbai and shall be in accordance with the Arbitration and Conciliation Act, 1996 or any other statutory modification or re-enactment thereof for the time being in force in India. The award of the Arbitrator shall be final and will not be disputed in any Court of Law or before any other authority. The parties hereby authorize the arbitrator to make sure other procedural rules as may be necessary to effectuate the intention of the parties to promptly, inexpensively and amicably resolve any disputes that may arise under this agreement.”

3 As according to the applicant there were dues not paid by the respondent, applicant through its Advocate issued two letters, one dated 13.12.2016 demanding Rs.1,08,85,220/- and the other referring dispute to arbitration by invoking the arbitration clause. Respondent replied to both the letters denying its liability. In response to the letter invoking arbitration, a bald statement is made in paragraph-6 that the entire contract with arbitration clause is vitiated by fraud and has not been executed by free will and the same has been result of undue

influence and coercion and therefore, the same cannot be referred to Arbitral Tribunal and the same cannot be decided by Arbitral Tribunal. A bald allegation of fraud does not mean that there is a fraud. Whether the agreement was entered into with free will can also be considered by the learned Arbitrator. Under Section 11 (6A) the court while considering the application under Section 11 has to confine itself to the existence of an arbitration agreement. The agreement dated 7.6.2013 has an arbitration clause and there are no other clauses in the agreement that limits the scope of arbitration clause.

4 No affidavit in reply is filed and therefore, none of the averments have been controverted.

5 Ms. Deepti Panda an advocate practicing in this court, having her office at 123, 3rd floor, 24B, Raja Bahadur Mansion, Ambalal Doshi Marg, Fort, 400 001, Mobile No.9892079219, office no.49721742, email : deeptipanda19@gmail.com, is appointed as a sole Arbitrator to decide all disputes arising out of, in connection with and relating to the agreement dated 7.6.2013. All rights and contentions of the parties are kept open except to challenge the jurisdiction of the Arbitrator. The fees and administrative expenses, typing charges if any, shall be shared equally between the parties and

the same will be cost in the arbitration proceeding.

Jahagirdar
Kiran
Ganesh

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Jahagirdar
Kiran Ganesh
Date:
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(K.R.SHRIRAM,J)