

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

MISC. CIVIL APPLICATION NO.1094 OF 2016

(M/S. SANSKRUTI DEVELOPERS...VS..RISHI PRAMOD BUDHRAJA & ORS.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri D.V.Siras, Advocate for Petitioner.
Shri R.M.Bhangde, advocate for respondent No.1.

CORAM : Z.A.HAQ, J.

DATED : JANUARY 17, 2018.

Heard.

2. The applicant has approached this Court under Section 11(6) of the Arbitration and Conciliation Act, 1996 with a prayer that Arbitrator be appointed to resolve the dispute between the applicant and the non-applicants.

3. According to the applicant, as per the agreement dated 30th April, 2014, the non-applicants agreed to purchase the property in question from the applicant for a total consideration of Rs.6,01,66,500/- and an amount of Rs.2,12,59,500/- was paid at the time of execution of the agreement of sale dated 30th April, 2014, the non-applicants agreed to deposit Rs.67,40,500/- on issuance of demand letter by the Nagpur Improvement Trust in the name of the vendor (applicant) and to pay balance amount of Rs.3,21,66,500/- in 12 months after amicable settlement of dispute with all the seven members of the society or after dismissal of the proceedings, if filed, by those seven members or any other party. According to the applicant, the balance amount of Rs.3,21,66,500/- was payable within four months,

after awaiting for a period of eight months to see whether any proceedings are filed by anyone. According to the applicant, the balance amount of Rs.3,21,66,500/- was to be paid by the non-applicants to the applicant within 12 months from the date of execution of the agreement dated 30th April, 2014.

According to the applicant, though the sale-deed is executed on 30th October, 2014 and then the non-applicants got actual physical possession of the property in question from the persons who were in occupation of that property, the non-applicants have not paid the balance amount of Rs.3,21,66,500/- and though the demand notice is served on the non-applicants and request for appointment of arbitrator is made, the non-applicants have not complied with the requirement of the notice and therefore, this application is filed.

4. The advocate for the applicant has pointed out copy of the notice, alleged to have been issued by the advocate for the applicant to the non-applicants on 12th April, 2016 (copy of this notice is not placed on record) and it is submitted that there are some recordings of conversation on cellphone between the applicant and the non-applicant No.1 which show that the non-applicant No.1 had agreed to pay the balance amount. It goes unexplained why the copy of this notice dated 12th April, 2016 is not placed on record along with the affidavit though the non-applicants have filed the reply on 24th November, 2017 and have specifically pleaded that the claim of the applicant is not acceptable to them and for it, the non-applicants have relied on the fact that the amount is paid by the applicant to the non-applicants after the execution of the sale-deed.

5. According to the non-applicants, the sale-deed is executed on 30th October, 2014 and there is a specific mention in the sale-deed that the vendor (applicant) and the consensor had received the entire sale consideration and nothing was payable by the purchaser towards transaction of sale (see page No.71 of the paper book). The advocate for the non-applicants has pointed out that the sale-deed contained a specific clause that the vendor (applicant) and the consensor had delivered actual physical possession of the entire property to the purchaser (non-applicant No.1). It is submitted on behalf of the non-applicants that the agreement dated 9th March, 2016 on which the applicant is relying to claim that the balance amount of Rs.3,21,66,500/- is not paid by the non-applicants to the applicant has nothing to do with the present transaction and the applicant is not party to that agreement.

The advocate for the non-applicants has further pointed out from the reply filed by them before this Court the fact that after the sale-deed was executed on 30th October, 2014, the Nagpur Improvement Trust had refunded some amount to the applicant who returned it to the non-applicant in two installments, amount of Rs.2,12,595/- was refunded by cheque on 31st October, 2014 and Rs.3,65,000/- was refunded by cheque on 20th December, 2014. Relying on these facts, it is submitted that if any amount was receivable by the applicant from the non-applicants there was no occasion for the applicant to pay this amount to the non-applicants. Relying on the judgment given in the case of *Union of India Vs. Hari Singh*, reported in **(2010) 15 SCC 201**, it is submitted that once the agreement is acted upon

and the agreement shows that the contract has been discharged fully, then the parties cannot seek reference for arbitration.

6. Considering the facts of the case and the proposition laid down in the judgment given in the case of *Hari Singh* (supra), I do not find that any dispute exists between the parties arising out of the agreement dated 30th April, 2014 which necessitates appointment of an Arbitrator to resolve it.

The application is **dismissed**. In the circumstances, the parties to bear their own costs.

JUDGE

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