

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 05.12.2017

Delivered on: -01-2018

CORAM

THE HONOURABLE THIRU JUSTICE **V. PARTHIBAN**

O.P.No.605 of 2017 and
O.A.Nos.1030 and 1031 of 2016

M/s.Idea Housing Corporation,
a registered Partnership Firm,
having its registered office at
First Floor, 6/16, Bagavandas Street,
West Tambaram,
Chennai-600 045,
represented by its Partner Mr.Shankar Babu .. Petitioner

versus

1. Mrs.Tara Gulecha
2. Mr.Jinesh Kochar
3. Mrs.Rooprekha
4. Mr.Deepak Kochar
5. Mr.Jayesh Kochar
6. M/s.Anmol Housing Corporation,
a registered Partnership Firm
having its registered Office at
No.102, L.B.Road, Adyar,
Chennai-600 020.

.. Respondents

Prayer: This Original Petition is filed under Section 11(6)(a) of
the Arbitration and Conciliation Act, 1996, praying to decide the

disputes and claims between the petitioner and the respondents arising out of the Memorandum of Understanding dated 06.02.2016.

For Petitioner : Mr.S.D.Venkateswaran

For Respondents: Mr.S.Natarajan for R1 to R5

Mr.Mukundan for R6

ORDER

This Original Petition has been filed under Section 11 (6)(a) of the Arbitration and Conciliation Act, praying to decide the disputes and claims between the petitioner and the respondents arising out of the Memorandum of Understanding dated 06.02.2016.

2. The brief facts which give rise to filing of the above Original Petition, are stated hereunder:

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2.1 The petitioner is a partnership firm involved in the business of housing construction. The petitioner had entered into a Memorandum of Understanding (in short, MoU) on 6.2.2016 with the respondents undertaking to develop the property

mentioned in the Judges summons subject to the terms and conditions contained in the MoU. The MoU was executed by the Power Agent of respondents 1 to 5 by the 6th respondent later the same was ratified by one Mr.S.Jai Kumar who was another Power Agent by way of ratification deed dated 16.2.2016 in favour of the petitioner.

2.2. According to the MoU, the petitioner had undertaken to obtain sanction of building plan from various State agencies like, CMDA, Corporation, etc., on or before 30.9.2016. The petitioner had also undertaken to make all payments before the said authorities for the purpose of obtaining planning permission, building plan, etc. A clause is provided under the MoU that in case of the petitioner was unable to fulfill its obligation of getting necessary formalities cleared on or before 30.9.2016, an option of extending time limit was made available in the MoU on the basis of mutual agreed terms and conditions.

2.3. According to the petitioner, on the part of the respondents, they had committed to furnish and sign all papers

including applications, letters, forms, affidavits, deeds, indemnity bond and guarantee deeds etc., as required to be submitted to various departments like CMDA, Corporation, IT, CMWSSB, for the purpose of clearance and developing the property mentioned in the Judges summons. As per Clause 6 of the MoU, the petitioner shall complete the development within 48 months from the date of approval of multi storied building (MSB) plan by the authorities concerned. Likewise, several conditions and obligations were mentioned under the said MoU as between the petitioner and the respondents.

2.4. As per Clause 9 of the MoU, on payment of Rs.1,85,00,000/- (Rupees One crore and eighty five lakhs only) by the petitioner, the respondent shall handover the possession of the schedule B mentioned property to the petitioner/developer. According to the petitioner, the amount has been paid as per the agreement and possession had also been handed over to them. The payment of Rs.1,85,00,000/- has been acknowledged by tendering a receipt dated 10.02.2016 by the 6th respondent who acted as Power of Agent on behalf of the respondents 1 to 5.

According to the petitioner, further payment was also made on the same day, i.e. on 10.2.2016 to the tune of Rs.4,45,00,000/- (Rupees Four crores and forty five lakhs only) and proper receipts had also been issued signed by the 6th respondent.

2.5. In the above circumstances, the petitioner had initiated all efforts to obtain necessary clearance for putting up the multi storied building from various State authorities. In spite of the best efforts taken by the petitioner in discharging their obligation towards the MoU, the respondents had not extended their active cooperation to the petitioner for discharging of their obligation under the MoU. According to the petitioner, the attitude of the respondents was inimical to the execution of the project for no valid reasons, despite the fact that a huge amount has been received by the respondents as part payment from the petitioner.

2.6. While matters stood thus, the 6th respondent who acted as a Power Agent of respondents 1 to 5 and also on his behalf, suddenly by his letter dated 27.10.2016 unilaterally

terminated the MoU dated 6.2.2016. According to the letter of termination dated 27.10.2016, the petitioner did not obtain multi-storied building plan approval for development of the property before 30.9.2016 and further the petitioner was negligent and indifferent towards Phase-I customers who have given consent for the development of Phase II project which was executed by the petitioner. Since there was unilateral termination of MoU by the 6th respondent, there arose dispute as to the validity and correctness of the MoU between the parties. The petitioner herein invoked Clause 31 contained in the MoU providing for arbitration. The said Clause 31 reads as follows:

"31. Arbitration:

In case of any dispute or difference arising between the parties hereto during the subsistence of this agreement, in relation to any matter/issue arising out of or touching upon or involving this agreement, it shall be referred for arbitration for adjudication of matters herein, as per the provisions of the Indian Arbitration and Conciliation Act, 1996."

2.7. However, in the meanwhile, according to the petitioner, the respondents were attempting to alienate the subject property. Therefore, the petitioner had approached this Court by way of filing applications in O.A.Nos.1030 and 1031 of 2016, seeking for interim injunction restraining the respondents, their men, agents, etc. in any manner disturbing or interfering with peaceful possession of the subject property and also restraining the respondents from alienating or otherwise encumbering the subject property pending completion of the arbitration as contained in Clause 31 of the MoU.

3. This Court, after consideration of the rival submissions, has granted the interim orders as prayed for in the above said Original Applications and the said orders are still in force.

4. While matters stood thus, the petitioner by invoking arbitration clause, has appointed an Arbitrator on 24.12.2016. In response to the same, the 6th respondent had replied in his letter dated 7.1.2017 stating that the appointment of the Arbitrator is invalid and not maintainable in law. It was stated so in the letter

that the MoU executed on 6.2.2016 is invalid, illegal and not binding and therefore, any agreement for arbitration cannot be held to be valid. In the above circumstances, the petitioner is before this Court for appointment of Arbitrator to arbitrate the dispute between the petitioner and the respondents.

5. Mr.S.D.Venkateswaran, learned counsel appearing for the petitioner would submit that the 6th respondent had originally developed Phase I project with 80 flats in 39049 sq.ft. area out of the total property consisting of 70212 sq.ft. (approximately 29.3. grounds). The petitioner was entrusted with the task of developing the remaining 31163 sq.ft. out of total extent as Phase-II project. According to him, the respondents 1 to 5 are relatives of 6th respondent who were Managing Partners of 6th respondent firm. The respondents 1 to 5 have given a General Power of Attorney to the 6th respondent represented by its partners, one S.Jaikumar and Sumeet Gulecha vide a registered Power of Attorney dated 19.6.2014. The learned counsel would draw the attention of this Court to various Clauses contained in

the General Power of Attorney and would contend that the power Agent had been given the power to deal with the property including negotiation for sale, execution of sale agreement, etc.

6. According to the learned counsel, all the clearances had to be obtained by 30.9.2016 and the petitioner had initiated all effective steps towards achieving the target with the State Authorities like CMDA, Corporation of Chennai, TNEB, etc. While their efforts were underway, at the instance of the 6th respondent, 80 residents of Phase-I project had started giving trouble by withdrawing their consent before the State Authority before the expiry of the time granted to the petitioner i.e. 30.09.2016. In fact, the consent was withdrawn on 8.9.2016.

7. The learned counsel for the petitioner would submit that as per Clause 9 of the MoU, a caution deposit had to be paid to the land owners to the tune of Rs.1,85,00,000/- (Rupees One crore and eighty five lakhs) which shall be refunded on completion of the project. As per Clause 9 of the MoU, on

payment of Rs.1,85,00,000/- (Rupees One crore and eighty five lakhs), the land owners shall handover the possession of the schedule mentioned property to the petitioner/developer. He would submit that the caution deposit has been paid which was also acknowledged by the 6th respondent himself by issuing a proper receipt on 10.2.2016 and further, an amount of Rs.4,45,00,000/- was also paid for which again a receipt dated 10.2.2016 was issued by the 6th respondent. According to him, in all, the petitioner had paid Rs.6,45,00,000/- which amount represented by two receipts issued by the 6th respondent. Having received a huge consideration towards the initial payment and having been a witness to the effective steps undertaken by the petitioner in obtaining clearance from the various State authorities, the 6th respondent in collusion with the other respondents, unilaterally cancelled the MoU on certain flimsy grounds, which according to the learned counsel, cannot stand the test of judicial scrutiny. According to the learned counsel, there is a provision contained in the MoU for extension of time and therefore, no strict sanctity to be attached to the deadline

dated 30.9.2016. Even otherwise, before the expiry of the deadline, the consent of the Phase I owners was withdrawn and the respondents unnecessarily with oblique motive had started putting spokes on the legitimate efforts taken by the petitioner for getting clearance and completing the project.

8. According to the learned counsel, the unilateral cancellation by the 6th respondent amounts to committing fraud and deceit on the petitioner particularly after the respondents had received huge amount from the petitioner towards initial payment. He would there submit that the cancellation of the MoU by the 6th respondent dated 27.10.2016 has given rise to the dispute between the parties and such dispute has to be resolved in terms of the MoU particularly as provided under Clause 31 therein which is extracted above. Therefore, the petitioner has rightly invoked the arbitration clause and appointed the Arbitrator vide their letter dated 24.12.2016.

9. The appointment of the Arbitrator was also informed to

the respondents 1 to 5 vide petitioner's letter dated 24.12.2016. In response to the same, for the first time, the respondents 1 to 5 have replied on the issue of appointment of the Arbitrator vide their letter dated 7.1.2017 stating that they were not agreeable to the same since they denied the execution of any MoU on 6.2.2016 and that there was no valid arbitration agreement between them and the petitioner and therefore, the appointment of the Arbitrator is illegal and not binding on them.

10. The 6th respondent has also taken the same position by a separate communication dated 7.1.2017, refusing to accept the invocation of arbitration clause.

11. Per contra Mr.S.Natarajan, learned counsel appearing for the respondents 1 to 5 would resist the Original Petition on the following grounds.

12. According to the learned counsel, nowhere in the Power of Attorney dated 19.6.2014, the 6th respondent was authorized to enter into any mutual agreement with the reciprocal obligation

like the present MoU dated 6.2.2016. According to the learned counsel, the power only mentions the right to sell the subject property and not anything more. He would further submit that MoU dated 6.2.2016 does not anywhere state that it is represented by Power of Agent. He would submit that the 6th respondent did not sign the MoU on behalf of Respondents 1 to 5 and none of such thing is disclosed in the MoU and therefore, the MoU was incomplete and never came into force and never acted upon. According to the learned counsel, the MoU was not signed at the bottom of every page stating that it is on behalf of the members. According to the learned counsel, even otherwise, the MoU was not a valid document since it did not contain the signature of the witnesses and the MoU being an unregistered document, cannot be relied upon by the petitioner for the purpose of invoking arbitration clause. He would also contend that invoking the arbitration clause directly, is contrary to the various provisions of the Arbitration and Conciliation Act, 1996. He would particularly draw the attention of this Court to Section 11(4) and 11(6) of the Act. According to him, no prior notice was

issued before appointing the Arbitrator and therefore, Section 11(4) has not been complied with and Section 11(6) of the Act cannot be invoked.

13. According to the learned counsel, the Arbitrator cannot decide the validity of the arbitration agreement under Section 11(6)(a) of the Act. He would lastly contend that even on merits, the petitioner failed to discharge his obligation under the MoU for having not obtained all necessary clearances by 30.09.2016. He would therefore submit that the present O.P. filed by the petitioner, is not maintainable and therefore, the same has to be rejected along with other applications filed therein.

14. The learned counsel appearing for the 6th respondent would submit that the 6th respondent did not sign the MoU on behalf of respondents 1 to 5 and therefore, the same cannot be considered as a valid document. He would submit that as regards the ratification by the other Power Agent (Jaikumar), the same was done at the instance of the petitioner and therefore, he

would submit that the MoU was never acted upon. He would further submit that the MoU itself being an invalid document, the same cannot give rise to any arbitration and therefore, the O.P is to be rejected as devoid of merits.

15. In reply, Mr.S.D.Venkateswaran, learned counsel appearing for the petitioner would submit that the ratification which was subsequently done by the other Power of Agent, namely, S. Jaikumar was only a unilateral document and therefore, there was nothing wrong the document being ratified by the Power of Agent. According to him, it is all matter of facts, the so called dispute raised on behalf of the respondents and therefore, the matter has to be referred to arbitration. According to him, the so called objections raised on behalf of respondents 1 to 6 are intended to non-suit the petitioner and they have no factual or legal basis. The learned counsel would draw the attention of this Court to Clause 13(a) and 13(b) which reads as follows:

"13(a) General Power of Attorney

The LANDOWNERS have executed a General Power of Attorney in favour of the nominee of the DEVELOPER and Alok Kumar Gulechha jointly, for the area mentioned in Schedule B property.

b) joint G.P.A. with powers of undivided share of land:

i) The LANDOWNERS have executed a joint General Power of Attorney in favour of the nominee of the DEVELOPER to Mr.Jaikumar and Mr.Alok Kumar Gulechha with powers to sell or otherwise convey an undivided share of the Schedule B property to the perspective purchasers with a specific clause stipulating collection of all payments.

ii) The landowners and the developer agrees that for purposes of execution of any sale agreement or sale deed in favour of prospective buyers of the flats, the Power Agents appointed by the DEVELOPER shall join the LANDOWNERS."

He would also draw the attention of this Court where the 6th respondent had signed on behalf of 6th respondent firm as well as well as the other owners, namely the Respondents 1 to 5. He

would further draw the attention of this Court to Clause of 9 of the MoU, which provides for deemed handing over possession and receipt of caution deposit. He would emphasize the fact that the MoU does not require any registration as contended by the learned counsel for respondents 1 to 5 herein since it was only an understanding between the parties and no registration is required under any statute. In support of his contentions, the learned counsel would rely on the following decisions:

(i) "2010 (3) MWN (C) 556 (***S.Kaladevi versus V.R.Somasundaram and others***)". The learned counsel would submit that according to the decision of the Hon'ble Supreme Court of India, even an unregistered document can also be admitted in evidence as evidence of any collateral transaction and not required to be effected by registered document. He would submit that the MoU being an unregistered document, can be relied upon in evidence.

(ii) "2014 (6) 773 (***R.Munusamy versus G.Krishtappillai and others***)" a Division Bench of this Court has held that

unregistered document can be marked for any collateral transaction. In the said case, unregistered sale deed was marked for the purpose of establishing the factum of possession.

(iii) "2000(1) LLW 494 (***Sengappann versus Arumbatha Veda Vinayagar Temple, rep. by its hereditary Trustee, Arumbatha Vinayagam (died), Pondicherry and others***)".

This is another decision of the Division Bench of this Court confirming the legal position that the document though unregistered, is admissible in evidence.

(iv) "2005(2) CTC 606 (***Quantum Real Estate and Property, Development India Private Limited versus Bay Orient Realty Pvt.Ltd.***). In the said decision, this Hon'ble Court has held as follows:-

"The words used are 'shall enter into an Arbitration proceedings' mandating the Arbitration proceedings to be entered into and not mandating a further Agreement to be entered into. In that sense, the proceedings, in its wider compass, would

mean the commencement of the proceedings under the said Act."

The learned counsel would submit that there was a subsisting arbitration agreement and therefore, the respondents cannot be allowed to wriggle out from the proceeding and deny the petitioner an opportunity towards resolving the dispute between the petitioner and the respondents.

v) "2016 (10) SCC 386 (**A.Ayyasamy versus A.Paramasivam and others**)". The learned counsel relied upon the above decision for the purpose of establishing the legal and factual position when the arbitration proceedings can be refused. The learned counsel would therefore lay emphasize that whatever may be the nature of the objections being technical or otherwise, the same can be gone into in the arbitration proceedings and it is all matters of evidence to be let in before the arbitration proceedings and therefore, the respondents cannot be allowed to avoid the arbitration proceedings, whether the MoU was validly signed or it was validly cancelled and such other disputed

questions can be resolved in the arbitration proceedings. Therefore, he would pray for appointment of a retired High Court Judge to arbitrate between the parties.

16. In response to the legal submissions of the learned counsel for the petitioner, the learned counsel for the respondents 1 to 5 would distinguish the decisions cited by the learned counsel for the petitioner reported in "2014 (6) CTC 773 (***R.Munusamy versus G.Krishtappillai and others***)". He would draw the attention of this Court to a portion of paragraphs 10 and 15 of the decision which are reproduced below.

"10. At this juncture, the decision of the Honourable Supreme Court reported in 2004 (1) LW 706 (SC) (Bondar Singh and others Vs. Nihal Singh and others) can be safely relied upon. A perusal of the facts and circumstances of the case before the Honourable Supreme Court in that case would show that the plaintiffs therein filed the suit for declaration by adverse possession and for injunction to restrain the defendants from interfering with their

possession of the suit lands. The plaintiffs therein marked an unregistered sale deed, dated 9.5.1931 in proof of their possession. The defendants therein contended that the said document was unstamped and unregistered, and therefore, it cannot convey title. The Honourable Supreme Court, while considering the said issue, has observed in paragraph 5 as follows:

"5. The main question as we have already noted is the question of continuous possession of the plaintiffs over the suit lands. The sale deed dated 9.5.1931 by Fakir Chand, father of the defendants in favour of Tola Singh, the predecessor interest of the plaintiff, is an admitted document in the sense its execution is not in dispute. The only defence set up against said document is that it is unstamped and unregistered and therefore it cannot convey title to the land in favour of the plaintiffs. Under the law a sale deed is required to be properly stamped and registered before it can convey title to the vendee. However, legal position is clear law that a document like the sale deed in the present case, even though not admissible in evidence, can be looked into for collateral purposes. In the present case the collateral purpose to be seen is the

nature of possession of the plaintiffs over the suit land. The sale deed in question at least shows that initial possession of the plaintiffs over the suit land was not illegal or unauthorised. . . ."

(emphasis supplied)

"11. to 14.

"15. No doubt, learned counsel for the respondents relied on two decisions of this Court in support of his submissions. A careful perusal of the decision relied on by him, reported in 2006 (2) LW 437 (Pyarijan Vs. Puttappa and another) would show that the said suit was filed for recovery of money based on an agreement, dated 8.1.1992. The contention of the defendants therein was that the said document was possessory mortgage and should be registered. Therefore, they contended that the suit cannot be filed based on such unregistered document. The learned Judge found that the purpose of marking the said document was to prove the advancement of loan and creating an interest in the immovable property, and therefore, the document being unregistered was

inadmissible in evidence of the transaction affecting the immovable property. In this case, the facts are totally different. Admittedly, the present suit is not for seeking declaration of title based on the unregistered document. On the other hand, it is for bare injunction and to prove such possession, the said document is sought to be marked for collateral purpose of proving possession. It is needless to say that a collateral purpose is a purpose other than creating, declaring, assigning, limiting or extinguishing a right of immovable property. Therefore, in my considered view, the said decision is factually distinguishable. Moreover, it appears that the decision of the Honourable Supreme Court made in Bondar Singh's case (cited supra) was not cited before the learned Judge."

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He would submit that it is not for a collateral transaction purpose the document being relied upon, but it is for the main purpose itself.

17. The learned counsel would further draw the attention of this Court to the decision which was cited by the learned counsel for the petitioner, reported in "2003 MWN 556 (***S.Kaladevi versus V.R.Somasundaram and others***)" wherein it is held by the Hon'ble Supreme Court in para 12 as follows:-

"12. Recently in the case of ***K.B. Saha and Sons Private Limited v. Development Consultant Limited***", this Court noticed the following statement of Mulla in his Indian Registration Act, 7th Edition, at page 189:-

".....The High Courts of Calcutta, Bombay, Allahabad, Madras, Patna, Lahore, Assam, Nagpur, Pepsu, Rajasthan, Orissa, Rangoon and Jammu & Kashmir; the former Chief Court of Oudh; the Judicial Commissioner's Court at Peshawar, Ajmer and Himachal Pradesh and the Supreme Court have held that a document which requires registration under **Section 17** and which is not admissible for want of registration to prove a gift or mortgage or sale or lease is nevertheless admissible to prove the character of the possession of the person who holds under it....."

This Court then culled out the following principles:-

"1. A document required to be registered, if unregistered is not admissible into evidence under [Section 49](#) of the Registration Act.

2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the proviso to [Section 49](#) of the Registration Act.

3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.

4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in immovable property of the value of one hundred rupees and upwards.

5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose."

To the aforesaid principles, one more principle may be added, namely, that a document required to be registered, if

unregistered, can be admitted in evidence as evidence of a contract in a suit for specific performance."

He would further submit that the collateral transaction must be independent and has to stand on its own and in this case, such is not the position in the instant case and therefore, the decisions relied upon by the learned counsel for the petitioner would not be of any help to advance his case.

18. The learned counsel for the respondents 1 to 5 would place reliance on a decision rendered in "2017(12) SCALE Page 433 (***Duro Felguera S.A versus Gangavaram Port Limited***)", particularly, the observation of the Hon'ble Supreme Court of India holding that the power of the Court has now been restricted only to the examination of the existence of an arbitration agreement under Sub Clause 6A of Section 11 of the Arbitration Act.

19. This statement made on behalf of the learned counsel for the respondents 1 to 5 in order to impress upon this Court

that whether there exists an arbitration agreement or not, cannot be examined by the Arbitrator any more after introduction of Sub Clause 6(A) of Section 11 of the Act. Therefore, the learned counsel would submit that the Original Petition filed by the petitioner is not maintainable in law and the same has to be rejected.

20. From the facts and legal submissions presented by the respective learned counsels on behalf their parties, this Court is called upon to decide whether the dispute is referable to the arbitration proceedings in terms of Clause 31 of the MoU dated 6.2.2016?

21. Firstly, it has to be seen that the MoU, dated 6.2.2016 is signed by 6th respondent not only on his behalf but also on behalf of other respondents 1 to 5 as per Clause 31(a) and (b) of the MoU. According to the said Clause, the power has been vested with the 6th respondent and one Shri Jaikumar and the 6th respondent, the Power Agent has signed the MoU on his behalf

and also on behalf of other owners. The said MoU had been ratified by said Jaikumar vide ratification deed dated 29.2.2016. Secondly, under the MoU, the payments had been made to the tune of Rs.6,45,00,000/- (Rupees Six crores and forty five lakhs only) towards caution deposit and other initial amounts pending completion of the project. Therefore, it cannot be gainsaid that the MoU was never acted upon them. Thirdly, the possession was also handed over by way of deemed handing over under Clause 9 of the MoU on payment of caution deposit of Rs.1,85,00,000/-. The amount paid to the respondents had been acknowledged by issuing two receipts on 10.2.2016. Though a feeble attempt has been made to deny the receipt of payment, in the face of the receipt issued by the 6th respondent, such attempt failed to carry any conviction with this Court. Moreover, as rightly argued by the learned counsel for the petitioner that it is all matters of evidence to prove or disprove factual dispute and therefore, it all the more reason that the matter has to be referred for arbitration. Fourthly, it has to be seen that the MoU by itself is a complete document providing for various rights and obligations of the

parties and the 6th respondent and other Power Agent Shri Jaikumar having signed the document for and on behalf of the respondents 1 to 5, cannot disown the document for the purpose of avoiding arbitration proceedings. Fifthly, the power of attorney dated 19.6.2001 is a General Power of Attorney giving all the powers to the Power Agent to deal with the subject property in whichever manner he likes. Although yet another feeble attempt was made by the learned counsel for the respondents 1 to 5 that the Power of Attorney dealt with the sale of the property and not reciprocal arrangement, also cannot carry much conviction as the said submission is extremely hyper technical, which cannot be countenanced validly in law. Sixthly, it is to be noted that the parties have initially acted upon in pursuance of the terms of the MoU and the petitioner had taken steps after obtaining necessary signatures from the respondents for the purpose of getting various clearances from the State authorities like, CMDA, TNEB, Corporation of Chennai, CMWSSB, etc. That being the case, this Court does not see as to what is the justification on the part of the respondents 1 to 6 to deny the validity of the MoU only for

the purpose of avoiding any arbitration proceedings.

22. This Court has to further see that after entering into the MoU dated 06.02.2016, the petitioner has invested huge amount as claimed by them and for whatever reasons if there is any dispute in regard to the discharge of the obligations on behalf of the petitioner as perceived by the respondents, the same has to be referred to the arbitration for resolving the dispute. One of the objections raised on behalf of the respondents is that the petitioner did not stick to time schedule as provided for under the MoU i.e. 30.9.2016. Again this is a disputed question as the petitioner submitted that even before expiry of the date, 80 flat owners of the Phase I had withdrawn their consent before the State Authority concerned i.e. on 8.9.2016 and also the conduct of the respondents in hampering the efforts taken by the petitioner. Even otherwise, according to the petitioner, the MoU itself has provided for extension of time on the basis of mutual agreement to that effect. It is specifically mentioned in Sub Clause (d) of Clause (2) of the MoU which is extracted below:

2(d). In case the Developer is unable to obtain sanctioned Plan for MSB complex on or before 30.9.2016 then at the option of extending the time limit will be decided by both the parties on mutually agreed terms and conditions."

23. Therefore, the objections raised on behalf of the respondents in regard to non-sticking to time schedule by the petitioner is to be scrutinized on the basis of the conduct of the parties. Further, the argument advanced on behalf of the respondents 1 to 5, the MoU does not state that the power of attorney represented the respondents 1 to 5 cannot again be a valid argument and the same does not stand the test of proper judicial scrutiny. As contended by the learned counsel for the petitioner that the MoU was signed by the 5th respondent on his behalf and other owners and on the basis of which, further action was initiated and undertaken by both parties. Therefore, any arguments to the effect that the MoU never came into force and never acted upon, cannot be appreciated as a valid defence, since such defence is deliberately raised only to avoid arbitration proceedings under the MoU dated 6.2.2016. Although the learned

counsel appearing for the respondents has raised certain technical objections, as aforesaid, in order to avoid arbitration proceedings, such illegitimate objections do not merit any serious consideration for accepting their defence. It appears that these technical objections have been raised with an oblique motive to non-suit the petitioner from invoking the arbitration proceedings under Clause 31 of the MoU dated 6.2.2016.

24. The entire attempt made on behalf of the respondents is to avoid arbitration proceedings in order to frustrate the attempt of the petitioner for resolution of the dispute between the parties. In view of the above conclusion and in consideration of the factual and legal submissions, this Court is of the firm view that the petitioner has made out a case for referring the issue raised in the O.P. for arbitration under Clause 31 of the MoU dated 6.2.2016. The arguments advanced on behalf of the respondents 1 to 6 against the appointment of the Arbitrator are hereby rejected as devoid of merit and substance.

25. This Court, therefore, appoints Shri Justice K.P.Sivasubramaniam, Retired Judge of this Court, residing at No.47, Pulla Avenue, Shenoy Ngr, Chennai-600 030 (Mobile No.9444701312) as a sole Arbitrator to enter upon reference and adjudicate the disputes inter se the parties. The learned Arbitrator shall cause notice to all the parties and commence arbitration proceedings and arbitrate the matter in terms of the MoU dated 6.2.2016 and pass award. The learned Arbitrator is at liberty to fix his remuneration and other incidental expenses. It is open to the parties to raise all the contentions as they may be advised, before the learned Arbitrator.

26. Accordingly, the Original Petition is allowed. No costs. The interim orders passed by this Court in O.A.Nos.1031 and 1032 of 2016 dated 27.3.2017 shall remain in force till the final award passed by the Arbitrator.

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V.PARTHIBAN, J.

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Predelivery order in
O.P.No.605 of 2017

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