

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(ORDINARY ORIGINAL CIVIL JURISDICTION)
TUESDAY, THE 30TH DAY OF OCTOBER 2018
THE HON'BLE MR. JUSTICE C.SARAVANAN
A. No.2788 of 2018

In the matter of Arbitration and
Conciliation Act, 1996;

And

In the matter of arbitration
agreement contained in clause 71
of the Agreement of Project
Promotion and Construction dated
07.06.2016 was entered into
between the Applicants
respondents 1 to 7 represented by
their power of Attorney Agent

1.Mr.Gopalan Kumar Iyer,
S/o.P.N.Gopalan

2.Mrs.Bhavani Kumar,
W/o.Gopalan Kumar Iyer
Both residing of
Plot No.13, 1st Floor,
Rajiv Nagar, 2nd Cross Street
Perungudi, Chennai 600 096

..Applicants

-vs-

1.Mr.A.Sudhir Kumar Surana,
S/o.Late Sri Amar Chand Surana

2.Mr.S.Aadrash Kumar Surana,
S/o.A.Sudhir Kumar Surana

3.Mr.S.Aashish Surana,
S/o.A.Sudhir Kumar Surana

4.Mr.S.Kuldeep Surana,
S/o.A.Sudhir Kumar Surana

all the above are residents of
No.42, Rajendra Prasad Road,
Nehru Nagar, Chrompet,
Chennai 600 044

5.M/s. Rushab Reality,
Having its registered office at
No.7, Rosy Tower, Ground Floor,
Nungambakkam, Chennai 600 034
represented by one of its partners
Mr.Kalpesh B Shah

6.M/s. Prakash Realty,
having its registered office at
No.1, Valliammala Road
Vepery, Chennai 600 007
represented by its Manaing Partner,
Mr.Hemant Dugar

7.M/s.KP Realty,
No.13/, Habibulla Road
T.Nagar, Chennai 600 017
represented by its Managing Partner,
Mr.Hemant Dugar

all respondents 1 to 7 are
represented by their power of attorney agent
M/s. Amar Prakaash Developers Private Limited
No.42, Rajendra Prasad Road,
Chrompet, Chennai 600 044

represented by its Managing Director ...Respondents

Application praying that this Hon'ble Court be pleased to
pass an order directing the respondents to hand over
possession of Flat bearing No.D-701, 7th floor, Block D, Phase
I measuring 926 square feet of super built up area (including
proportinate undivided share in the common constructed area)

and private terrace measuring 496 square feet in the residential project 'Temple Waves' at Kundrathur, as described in Schedule C of the Agreement of Project Promotion and Construction dated 07.06.2016 with features detailed in the annexure thereto within the time stipulated by this Hon'ble Court to applicants pass such further orders as may be necessary in the circumstances of the case.

This application coming on this day before this court for hearing, the court made the following order:-

The dispute between the parties is covered by an arbitration clause, which reads as under:

71. All or any disputes arising out of or relating to or concerning this Agreement including the interpretation and validity of the terms thereof shall be referred by any party to a sole arbitrator who shall be appointed by the DEVELOPER and whose decision shall be final and binding upon the party. The arbitration proceedings shall be governed by the Arbitration & Conciliation Act, 1996 or any statutory amendments/ modifications thereof for the time being in force. The arbitration proceedings shall be held at an appropriate location in Chennai. The ALLOTTEE(S) hereby confirms that he/she/it shall have no objection to this appointment even if the person so appointed, as the sole Arbitrator, is an employee or advocate of the DEVELOPER or is otherwise connected to the DEVELOPER. The parties agree that no other person shall have the power to appoint the

sole arbitrator. The Courts at Chennai alone and the Madras High Court at Chennai.

2. The respondents are the promoter of the building, while the applicant is the purchaser of the flat promoted by the respondents. According to the applicant, the applicant has paid a sum of Rs.49,50,911/- which has been paid in full. According to the respondent, there has been a delay in making the balance amount and therefore, entitled to recover a sum of Rs.7,65,901/- towards delay payment charges.

3. The respondent has not handed over the possession of the Flat. The learned counsel for the respondent has been taking time repeatedly, and now again seeks extension of time for filing counter.

4. I see no reason for extending further time for the respondent to file counter. The respondents are directed to hand over the possession of the property within a period of seven days from the date of receipt of a copy of this order.

The respondents can workout their remedy by way of arbitration
<https://hcservices.ecourts.gov.in/hcservices/>

by invoking arbitration clause and if any amount that are due

according to them are awarded, they can move appropriate applications for enforcing the same. However, unilateral retaining amount and not handing over and delivering the possession of the property is not justified.

5. The respondents are entitled to move appropriate application before the learned Arbitrator to be appointed for protecting their interest under Section 17 of the Arbitration and Conciliation Act, 1996.

6. Accordingly, this application stands allowed.

Sd./-C.S.N.J

30/10/2018

//Certified to be true copy//

Dated at Madras this the day of 2019.

COURT OFFICER(O.S.)

JJ 11/01/2019

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.