

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 11TH DAY OF SEPTEMBER 2018

THE HON'BLE MR. JUSTICE C.SARAVANAN

O.P. No.363 of 2018
and
A. No.2200 of 2018

In the matter of Arbitration and
Conciliation Act, 1996

and

In the matter of disputes under
Joint Development Agreement
dated 13.05.2010, Memorandum of
Deposit of Title Deeds dated
13.05.2010 and Power of Attorney
dated 13.05.2010 between Sobha
Limited (formerly Sobha
Developers Limited), on the one
hand and Mr.C.Ravishankar &
another on the other

M/s.Sobha Limited,
(Formerly known as Sobha Developers Limited),
a company incorporated under Companies Act, 1956,
having its registered office at
Sarjapur-Marthahalli Outer Ring Road,
Devarabisanahalli (Opp. Intel),
Bellandur Post, Bangalore-560 102
and its regional office at
'Polyhose Towers', 5th Floor,
SPIC Annex Buildings, 86 & 88,
Annasalai, Guindy, Chennai-600 032
rep. by its Regional Director,
Mr.T.P.Sanjaya Sarathy

... Petitioner/Applicant

-Versus-

1. Mr.C.Ravishankar,
aged about 47 years,
S/o.Late Mr.Chinnappa Chettiar,
2. Mrs.R.Suganya Devi,
aged about 37 years,
W/o.Mr.C.Ravishankar,
both earlier resided at
No.5, Chinnappanagar,
Poonamallee, Chennai-600 056
and both respondents now residing at
Plot No.1953-C, Door No.14, 1st Block,
Anna Nagar, Chennai-600 040. ... Respondents/Respondents

O.P. No.363 of 2018:-

Original petition praying that this Hon'ble Court be pleased to appoint the second member to the arbitral tribunal already comprising of the petitioner's nominee, viz., Hon'ble Mr.Justice B.Rajendran, Judge (Retd.) Hon'ble High Court, Madras as per Clause 19 of the JDA so as to enable the speedy reconstitution of the Arbitral Tribunal and the early conclusion of the long-pending dispute between the parties herein.

A. No.2200 of 2018:-

Application praying that this Hon'ble Court be pleased to pass an order permitting the applicant to dispose of the 11.24% of SBA (i.e. 25,363.68 square feet) along with proportionate undivided share out of 27,254.64 square feet of Super Built-up area as detailed below:

S.L.	Unit/Flats	SBA in Square Feet
1	212	1335.54
2	213	1335.54
3	311	1414.91
4	313	1739.94
5	412	1389.35
6	514	1499.63

S.L.	Unit/Flats	SBA in Square Feet
7	223	1315.57
8	224	1586.86
9	321	1398.27
10	324	1465.82
11	422	1372.70
12	423	1491.38
13	521	1491.38
14	524	1465.82
15	622	1465.82
16	623	1491.38
17	542	1732.68
18	442	1389.35
19	432	1372.70
	Total	27254.64

and submit the statement of accounts on quarterly basis before the arbitral tribunal or this Hon'ble Court, as the case may be, pending disposal of the arbitration proceedings.

This Original Petition along with application coming on this day before this court for hearing the court made the following order:-

The parties herein have entered into Memorandum of Understanding dated 25.2.2010, which contemplates an arbitration clause which reads as under:-

"Any dispute etween the parties shall be referred to a sole arbitrator to be appointed by the parties by mutual consent. The proceedings shall be conducted

in English language and the venue of arbitration shall be Chennai. The parties agree to the fast tract arbitraion and shall be disposed of within 90 days from the date of reference. The arbitrator shall be entitled to pass interim award. The award of the arbitrator shall be final and binding on the parties.

2. Under the Memorandum of Understanding, the respondent was to procure the land to an extent of 1 acre 1 cent as per the item 4 of the Schedule.

3. The parties herein have also singed an agreement dated 13.05.2018 for developing the properties referred in Memorandum of Understanding. The said agreement has also an arbitration clause, which reads as under:-

19) ARBITRTION:

19.1) In the event of any disputes between the parites hereto relating to the matter mentioned above, the same shall be resolved through Arbitration as per the provisions of the Arbitration and Conciliation Act, 1995 and the statutory modifications thereof. One Arbitrator by the OWNERS (jointly) and ony by the DEVELOPERS and an Umpire if necessary. The Arbitration proceeding shall be conducted at Chennai on the date, time and place as decided by the Arbitrator/s so appointed for this

purpose.

20) JURISDICTION:

The Courts in Chennai alone shall have the jurisdiction;

4. Certain disputes have arisen on account of above Memorandum of Understanding and agreements referred *supra*

5. As per the Memorandum of Understanding, the disputes have to be resolved within 90 days.

6. The parties have also signed supplementary agreement dated 13.05.2010, which have also an arbitration clause similar.

7. The petitioner has also filed O.A.No.220 of 2016 for a permission to dispose 11.24% of Schedule B and A i.e., (25,363.68 sq ft) along with proportionate UDS out of 27,254 sq ft of super built up area as detailed in the typed set of papers.

8. The learned Senior Counsel appearing for the petitioner has indicated that the applicant may be permitted to withdraw the application in O.A.No.2200 of 2016 as the said proceedings

is delaying the arbitration proceedings as also O.P.No.363 of 2018 with liberty to approach the Court at appropriate time.

9. Recording the same, the said application is closed with the liberty to the applicant to initiate appropriate proceedings either before this Court or under Section 7 of the Act, as and when it is required as per law.

10. Under the Memorandum of Understanding dated 25.2.2010 land measuring 1 acre and 1 cent which included land owned by Mr Govinda Chettair and his family member (Schedule A) were sought to be developed along with the lands owned by the respondent in Schedule B and other parcel of land in Schedule C & D.

11. It was the responsibility of the respondents to procure the land in Schedule A at their cost within 30 days of the said Memorandum of Understanding so as to enable development of the land.

12. As the respondents were unable to procure the land in Schedule A from the owners, the petitioner negotiated and purchased the same.

13. In this connection several supplementary agreements have been entered. Originally at the time of signing of the MOU's, the respondent were entitled to 30% of the shares of the super built up area. However, in view of the changed circumstances the proportionate super built up area agreed to be allotted to respondent was reduced from 30% to 18.76%.

14. Under these circumstances dispute have arisen between the parties which resulted in multiple petitions and applications which forms the background to the present application filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996.

15. By an order dated 06.09.2013 in O.PNo.518 of 2005 Honourable Mr.Justice K.Sivasubramaniam was appointed as the sole arbitrator. However, the sole arbitrator withdrew from the arbitration pursuant to a memo dated 31.08.2015 filed by the 2nd respondent with the Registry of this Court.

16. This gave rise to order dated 15.07.2016 in O.P No.355 of 2016 pursuant to which two retired Judge of this Court was appointed as arbitrators by this Court. One of the arbitrator appointed by the court recused and thereafter

another arbitrator was also appointed on 25.10.2016 pursuant to which a presiding arbitrator was appointed. These later developments took place during July and October 2016.

17. On 19 .12 .2016, the arbitrator's fixed the fees per sitting of three hours to be shared equally between the parties. The parties were also asked to pay for the formal sitting.

18. It is submitted that the respondent made certain unsavoury remarks against the Presiding Arbitrator of the Arbitral Tribunal on 15.02.2017 as a result of which the Hon'ble Presiding Arbitrator withdrew from the arbitration followed by the Arbitrator's nominated/appointed for each of the parties herein.

19. The petitioner has thus approached the Court vide O.P. No.363 of 2016 under section 11 (6) of the Act for appointment of arbitrators to complete arbitration to resolve the dispute between the parties.

20. The petitioner has filed O.A.No.220 of 2016 for a permission to dispose 11.24% of Schedule B and A i.e.,

(25,363.68 sq ft) along with proportionate UDS out of 27,254 sq ft of super built area as detailed in the type set of papers.

21. The respondent has contested the petition mainly on the ground that the petitioner has breached the order dated 25.02.2013 passed by this court in OA No.420-22 of 2012 as modified by order dated 16.9.2013 in Application Nos. 3766 to 3768 of 2013 in OA Nos.420 to 422 of 2012.

22. By the earlier order the petitioner was restrained from alienating or parting with the possession of 44 units identified in the order.

23. By the latter order, the respondents were given liberty to alienate only those flats whose total area would be would constitute 18.76%. The order further clarified that flats whose total constructed area would constitute 11.24% would not be alienated by the respondent, but shall await the outcome of the arbitration proceedings.

24. Thus keys for 25 (24+1) flats of the 44 flats were handed over to the respondent during the course of the

proceeding before the arbitrator on 11.01.2017.

25. The respondents have resisted the above Original Petition and have stated that they are individuals and cannot afford the cost of arbitration proceedings and that nothing survives in arbitration in view of the order in O.A.No.420 to 422 of 2012, dated 16.09.2013.

26. The respondents have resisted the petition by stating that the proceedings in the meeting arbitration meeting dated 27.12.2016 has resulted in unfair treatment and it was in gross violation of the orders of the court referred to in the previous paragraphs.

27. It is stated that the petitioner has not allowed the respondents to sell even 18.76% of the share resulting in loss and mental agony while the petitioner has been given liberty to sell 70% of the units.

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28. Several other defences have been raised which touch on the merits of the proceedings that are subject matter of the arbitration proceeding.

29. It is further submitted that the respondents are individuals and have averred that they have lost faith in the arbitration proceedings.

30. At one stage it was also stated that they are unable to engage counsel to defend them in the present proceeding before this court. In fact, the 1st respondent had earlier appeared as party-in-person and filed counter affidavit.

31. In the counter, the respondent have prayed for the following:-

- (i) passed an order to allow the respondents to sell their 18.76% of share peacefully and to direct the petitioner to cooperate;
- (ii) to pass an order for possession with the keys of 12.24% of the share in the resolution of disputes
- (iii) to terminate the mandate of the arbitration proceeding and for the court to proceed with the trial.

32. After this case was listed again, the respondents engaged a new set of counsel and filed a fresh counter and wherein, it has been alleged that the petitioner has not complied with the orders of this Court in as much as the petitioner has not handed over keys of all the 44 units as per

the order but has given possession of only 27 flats on 11.1.2017 in gross violation of the orders of this court and that the petitioner should be prosecuted for contempt of the court. The respondent in the fresh counter have denied the avernments affidavit filed in support of the above petition.

33. Heard Mr.Satish Parasaran, the senior counsel for the petitioner/applicant and Mr. R.K. Ramaiah for the respondents.

34. It is evident that the arbitration proceedings were in advanced stage and on account of certain unsavory remarks made against the presiding arbitrator, the arbitrators have withdrawn from arbitration.

35.In the petition the petitioner has requested for appointment of a retired judge of this court as their arbitrator. However, on the date of consideration of the above petition Honourable Mr.Justice B Rajendran cannot be appointed in view of his appointment as the Chairman of the Real Estate Regulatory Authority (RERA).

36. The respondent was asked to give the name of their nominee. However, the counsel informed that the arbitration

proceedings are expensive and the parties cannot be saddled with unfair arbitration proceeding and were not interested in the continuance of the arbitration proceeding any longer and wanted the parties to work out their remedies in a Court of law.

37. The proceedings came to be initiated before the amendment of Arbitration and Conciliation (Amendment) Act, 2015. As per Section 26 of the said Act, unless the parties to the arbitral proceedings agree to be bound by the amendment, they shall be governed by the amended law. Section 26 of the Act reads as under:

"26. Act not to apply to pending arbitral proceedings- Nothing contained in this Act shall apply to the arbitral proceedings commenced, in accordance with the provisions of Section 21 of the principal Act, before the commencement of this Act unless the parties otherwise agree but this Act shall apply in relation to arbitral proceedings commenced on or after the date of commencement of this Act."

38. Therefore, the proceedings has to be completed under the Arbitration and Conciliation Act, 1996 as it stood before amendment in terms of Section 26 of the Arbitration and Conciliation (Amendment) Act, 2015.

39. The arbitration is a creature of agreement between the parties and they are governed by it. It cannot be frustrated by one of the party by making unnecessary remarks against the arbitrators. The parties have also initiated and participated in the arbitration proceedings and considerable time has been spent recording evidence.

40. Under Section 14 of the Arbitration and Conciliation Act, 1996, the mandate of the arbitrator terminates if he withdraws from the office or the parties agreed to terminate his or her.

41. It is evident the proceedings have not proceeded further in absence of consensus between the parties to appoint new arbitrators.

42. From the arguments advanced to counsels, it is evident that the respondents have resisted the arbitration proceedings and have scuttled the arbitration proceedings by forcing the arbitrators to withdraw from arbitration

43. Though under the Arbitration and Conciliation Act, 1996, the parties are free to determine the procedure for

appointment of arbitrator and the number of arbitrators there in no consensus now between them. There is also no point once again appointing two more arbitrators for them to appoint one more arbitrator as a presiding arbitrator especially when the respondents have expressed their difficulty in meeting the expenses in connection the arbitration.

44. Since the Memorandum of Understanding contemplates arbitration by a sole arbitrator and in view of the submission on behalf of the respondents that they have difficulty in bearing the arbitration expenses, a sole arbitrator is being appointed to complete the proceedings.

45. Hence, Hon'ble Mr. Justice R.S. Ramanathan (Retired) High Court, Madras, residing at Old No.4B2, New No.15, Rajagopalan Street, Valmikli Nagar, Thiruvannamiyur, Chennai-41, is appointed as the sole arbitrator.

46. Petitioner is directed to obtain a formal consent from Hon'ble Mr. Justice R.S. Ramanathan (Retired) High Court, Madras, under Section 11(8) of the Arbitration and Conciliation Act, 1996. Such consent shall form part of the record of this case.

47. The arbitrator may take over the proceedings and complete the same within a period of 12 months from the date of receipt of a copy of this order and pass final award.

Sd/-C.S.N.J

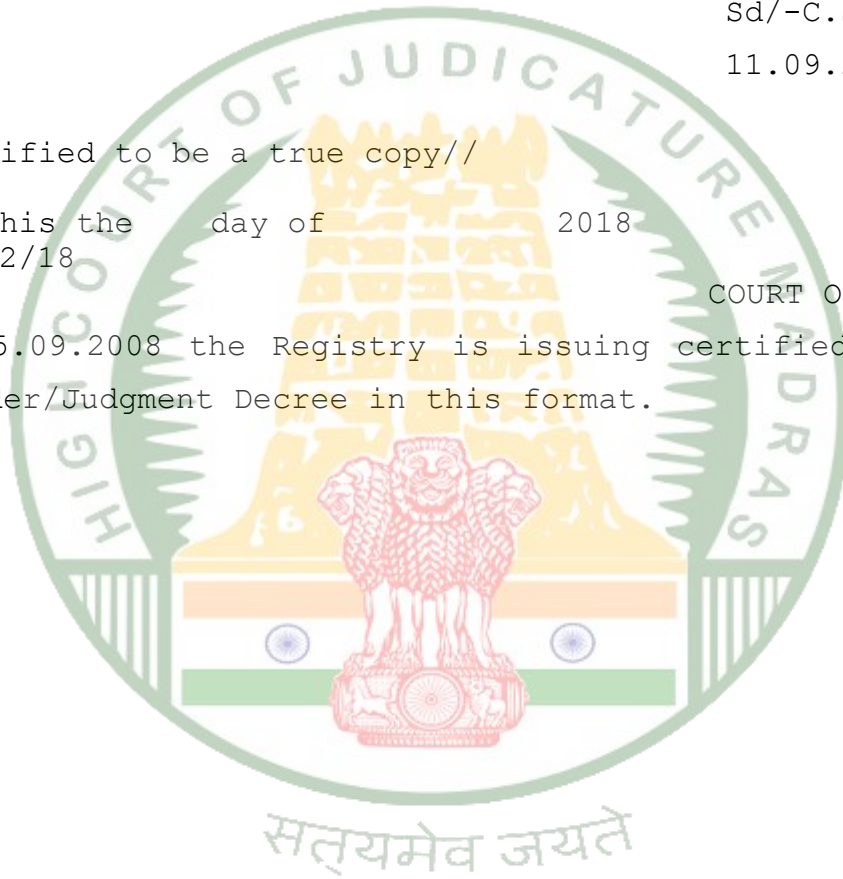
11.09.2018

//Certified to be a true copy//

Dated this the day of 2018
JJ 13/12/18

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.



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