

Tauseef

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

ARBITRATION PETITION (L) NO.22805 OF 2019

Mr. Madhukar Raghunath Kodre & Ors.	...Petitioners
V/S.	
M/s. Smart Builders & Ors.	...Respondents

Ms. Urvi Vaidya I/b. Auris Legal for Petitioners.
Mr. Prathmesh Seth I/b. Joseph Fernandes for Respondents.

CORAM : G.S. KULKARNI, J.
Date : 09th OCTOBER 2019.

P.C. :

1. Heard the learned counsel for the petitioners and the learned Counsel for the respondents.
2. This is a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short “the Act”) whereby the petitioners has prayed for appointment of an Arbitral Tribunal to adjudicate the disputes and differences which have arisen between the parties under the Development Agreement dated 04 September 2013. The Arbitration Agreement is contained in clause No.16 (page no.34 of the plaint).
3. There is no dispute in regard to the existence of an arbitration agreement between the parties. The Petitioners by their Advocates letter

dated 22 April 2019 addressed to the respondents has set out the nature of the disputes as also invoked the arbitration Agreement by nominating an Arbitrator to be appointed to adjudicate the disputes between the parties.

4. It can be seen that Respondents by their advocates letter dated 13 May 2019, responded to the petitioners said that however did not dispute the existence of the arbitration agreement. As there was no consensus on appointment of the arbitral tribunal, the present petition is filed by the petitioners.

5. Reply affidavit is filed on behalf of the Respondents inter-alia contending that the development agreement itself stands concluded as the construction was completed and also the tenements are handed over to the petitioners. However learned counsel for the Respondents would fairly submit that these are all arguments on merits of disputes and this cannot be any opposition to the Section 11 Petition.

6. Having heard the learned counsel for the parties and the averments as made in the petition and the reply affidavit, in my opinion as there exists arbitration agreement and also there is an appropriate invocation of the arbitration agreement, an arbitral tribunal would be required to be appointed to adjudicate the disputes and differences between the parties. Hence, the following order:

ORDER

- (i). Shri V.P. Utpat, retired District Judge is appointed as the Sole Arbitrator to arbitrate the disputes and differences between the parties under the Contract Agreement dated 04 September 2013;
- (ii). The learned prospective Sole Arbitrator, fifteen days before entering the reference, shall forward a statement of disclosure as per the requirement of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996, to the Prothonotary & Senior Master of this Court, to be placed on record of this petition with a copy to be forwarded to both the parties;
- (iii). The fees payable to the arbitral tribunal shall be governed in accordance with the fees prescribed under the Bombay High Court (Fees Payable to Arbitrators) Rules, 2018;
- (iv). At the first instance, the parties shall appear before the prospective arbitrator within 10 days from today on a date which may be mutually fixed by the prospective sole arbitrator;
- (v). All contentions of the parties are expressly kept open;
- (vi). The petition is disposed of in the above terms. No costs.
- (vii). Office to forward a copy of this order to the learned Arbitrator on the following address:

C-70, Mahaveer Park,
Behind Nexa Showroom,
Pune – Satara Road, Pune – 411037.
Mobile: 9194230444/78

(G.S. KULKARNI, J.)