

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 04.04.2019

CORAM

THE HONOURABLE Mr.JUSTICE R. SURESH KUMAR

O.P. No.151 of 2019

1. R.G.Srinivasan

2. S.Rajalakshmi

.. Petitioners

-VS-

Amar Prakash Developers Pvt., Ltd.,
No.42, Rajendra Prasad Road,
Nehru Nagar, Chrompet,
Chennai - 600 044.

.. Respondent

Prayer: Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, to appoint an independent qualified Sole Arbitrator to hear and decide the claims of the petitioner arising out of the Project Promotion and Construction Agreement, dated 16.08.2013.

For Petitioner : Mr.P.Chandrasekar

For Respondent : No Appearance

ORDER

This Original Petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, seeking for a prayer of appointment of an independent sole Arbitrator, to decide the claims of the petitioner arising out of the Project Promotion and Construction Agreement, dated 16.08.2013.

2. It is the case of the petitioner that, the respondent is a Private

Limited Company and is a property developer. The petitioner had entered into an agreement with the respondent including the owners of the property, which is called as "Agreement on Project Promotion and Construction", dated 16.08.2013.

3. As per the said agreement, the petitioner has to purchase an Apartment in G409, 4th Floor in Block No.G, Phase No.1 of the Residential Project namely "Temple Waves" and the sale price for the said apartment was fixed at Rs.29,63,442/- inclusive of all amenities.

4. Though such an agreement was entered into between the parties, according to the petitioner, the respondent Developer has not adhered to the time schedule for completion of the project and in this regard, the respondent did not keep up the promise as per the agreed terms, in spite of the prompt payment having been made by the petitioner. In this regard, according to the petitioner, the apartment was supposed to be handed over with full completion on or before May 2016. But even after two years, after the deadline, the project was not completed and it was not ready for handing over to the petitioner. The petitioner had issued legal notice through his counsel, dated 27.11.2018 to comply with the conditions stipulated in the said agreement, dated 16.08.2013. However despite receipt of the said legal notice, there was no positive action on the part of the respondent.

5. It is the further case of the petitioner that, as per Clause 70 of the

Agreement, there is a clause for Arbitration, which reads thus :

"70. 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 and 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. 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 shall have the jurisdiction."

6. Invoking the said clause, i.e., Clause 70 of the Agreement, the petitioner issued a notice, through his lawyer on 17.11.2018, whereby the petitioner called upon the respondent to appoint a neutral Arbitrator to resolve the dispute between the parties. There was no response even for the said request made by the petitioner from the respondent.

7. The learned counsel appearing for the petitioner, Mr.P.Chandrasekar

would submit that, the project ought to have been completed and in all respect should have been handed over to the petitioner by 2016 itself. However despite the prompt payment having been made by the petitioner, the project has not been completed and it has not been handed over till 2018, therefore the petitioner was put to heavy loss and injury and therefore, there has been a dispute between the parties arising out of the said agreement, where there is a written arbitration clause available under Clause 70 as referred to above and invoking the said clause, when the petitioner sent a request on 17.11.2018 to the respondent, who on receipt of such request has not responded and has not come forward to make any appointment of Arbitrator.

8. I have considered the said claim made by the petitioner and the submissions made by the learned counsel appearing for the petitioner.

9. In this Original Petition, notice was ordered to the respondent, which was served on the respondent and the proof of such service also has been filed before this Court. The name of the respondent also has been shown in the cause list, however there is no response and no one appears from the respondent side.

10. Since there is an Arbitration Clause in the agreement between the

parties and the said clause was invoked by the petitioner, as the respondent failed to comply with the request made by the petitioner for appointment of Arbitrator, the petitioner has moved this Original Petition under sub-section 6 of Section 11 of the Arbitration and Conciliation Act.

11. The said sub-section (6) makes it clear that, when there is an appointment procedure in the agreement between the parties and if a party fails to act as required under that procedure and the other party who requested to act up on, if approaches, the Court, i.e., Supreme Court or High Court or any person or institution designated by such Court, can appoint an independent Arbitrator to resolve the dispute arises out of the agreement between the parties.

12. Here in the case in hand, though the power of appointment of Arbitrator is vest with the respondent, who is the Developer, since he has failed to appoint such Arbitrator, when it was requested by the other party, i.e., the petitioner, through his notice, dated 17.11.2018, this Court feels that, the petitioner is having every justification to seek for such appointment of independent Arbitrator under Section 11(6) of the Act, therefore the prayer sought for herein can very well be accepted.

R. SURESH KUMAR, J.

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13. In view of the above, Mr.R.Natarajan, learned Advocate, having office at No.190, Law Chambers, High Court Buildings, Chennai - 600 104 (Mobile No. 94450 03848) is appointed as sole Arbitrator to resolve the dispute arising out of the agreement, dated 16.08.2013 called "Agreement of Project Promotion and Construction" between the parties.

(ii) The learned Arbitrator shall enter upon the reference immediately and resolve the issue raised before him at the earliest by passing the final Award.

(iii) The learned Arbitrator is at liberty to fix his remuneration and other incidental expenses, which shall be borne by both the parties equally.

With these order of appointment of Arbitrator, this Original Petition is ordered accordingly.

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04.04.2019

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