

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2019

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

O.P.No.141 of 2019

1. Gopalan Kumar Iyer
2. Bhavani Kumar .. Petitioners

Vs.

1. A.Sudhir Kumar Surana
2. S.Aadarsh Kumar Surana
3. S.Aashish Surana
4. S.Kuldeep Surana

5. M/s.Rushab Reality,
No.7, Rosy Tower, Ground Floor,
Nungambakkam, Chennai-600 034
rep. by one of its partners
Mr.Kalpesh B.Shah

6. M/s.Prakash Realty
No.1, Valliammala Road,
Vepery, Chennai-600 007,
rep. by its Managing Partner
Mr.Hemant Dugar.

7. M/s.KP Realty
No.13/1, Habibulla Road,
T.Nagar, Chennai-600 017
rep. by its Managing Partner,
Mr.Hemant Dugar

8. M/s.Amar Prakaash Developers Private Limited,
No.42, Rajendra Prasad Road,
Chrompet,
Chennai-600 044
rep. by its Managing Director

.. Respondents

* * *

Prayer : Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint an Arbitrator for resolving the dispute between the petitioners and the respondents in pursuant to clause 71 of Agreement of Project Promotion and Construction dated 07.06.2016.

* * *

For Petitioners : Mr.S.M.Murali Dharan

For Respondents : Served – No Appearance

ORDER

This Original Petition is filed seeking appointment of an Arbitrator for resolving the dispute between the petitioners and the respondents in pursuant to clause 71 of Agreement of Project Promotion and Construction dated 07.06.2016.

2. The petitioners intended to purchase a flat bearing Door No.E-706 in the project of the respondent named "Temple Waves" and paid a sum of Rs.1,00,000/- as booking advance on 23.07.2015 and another sum of Rs.3,80,000/- by way of cheque. The total consideration was fixed at Rs.49,50,911/-, which was agreed to be paid in phases, and the delivery of the flat was fixed at the end of September 2015. The petitioners moved in one another flat promoted by the respondents for rent to see progress of the construction. Since there was no progress and there were some issues with respect to

construction, the petitioners agreed to purchase D-701 of the said project. It is only at that stage an Agreement of Project Promotion and Construction dated 07.06.2016 registered as Document No.12344/2016 on 12.08.2016 was entered into with the respondents 1 to 7 represented by respondent 8 as power agent. On the same date, the sale deed for the UDS was executed, which was registered as Document No.12345 of 2016. Now the time schedule was fixed at September 2016. Though there was a handing over function during October 2016, till date the flat is not ready, besides other facilities, such as, club house, swimming pool, etc. yet to be build up.

3. The petitioners claimed that the eighth respondent demanded a sum of Rs.7,65,901/- towards delay payment charges. Since they disputed the liability, the respondents invoked arbitration clause 71 vide letters dated 08.01.2018 and 03.02.2018, which were received by the petitioners only on 13.02.2018. According to the petitioners, the initiation of the arbitration proceedings is only to protract the liability of handing over the flat. The petitioners sent a reply on 22.02.2018 calling upon the respondents to handover the possession of the flat without any delay. In such circumstances, the petitioners are before this Court with this petition.

4. Heard the learned counsel for the petitioners. Despite service of notice, the respondents have chosen not to appear before this Court in person or through their counsel.

5. Having regard to the submissions of the learned counsel for the petitioners, Mrs.M.Rajalakshmi, a retired District Judge, residing at No.3B, Ramaniyam Jaganath, Sivasami Avenue, MGR Road, Palavakkam, Chennai-600 041, (Phone No.87549 20985), is appointed as the Sole Arbitrator to enter upon reference and adjudicate the disputes inter se the parties. The learned Arbitrator may, after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the order. The learned Arbitrator is at liberty to fix her remuneration and other incidental expenses. The proceedings may be conducted under the aegis of the Madras High Court Arbitration Centre and in accordance with the Madras High Court Arbitration Rules.

6. The Original Petition is ordered accordingly, leaving the parties to bear their own costs.

27.06.2019

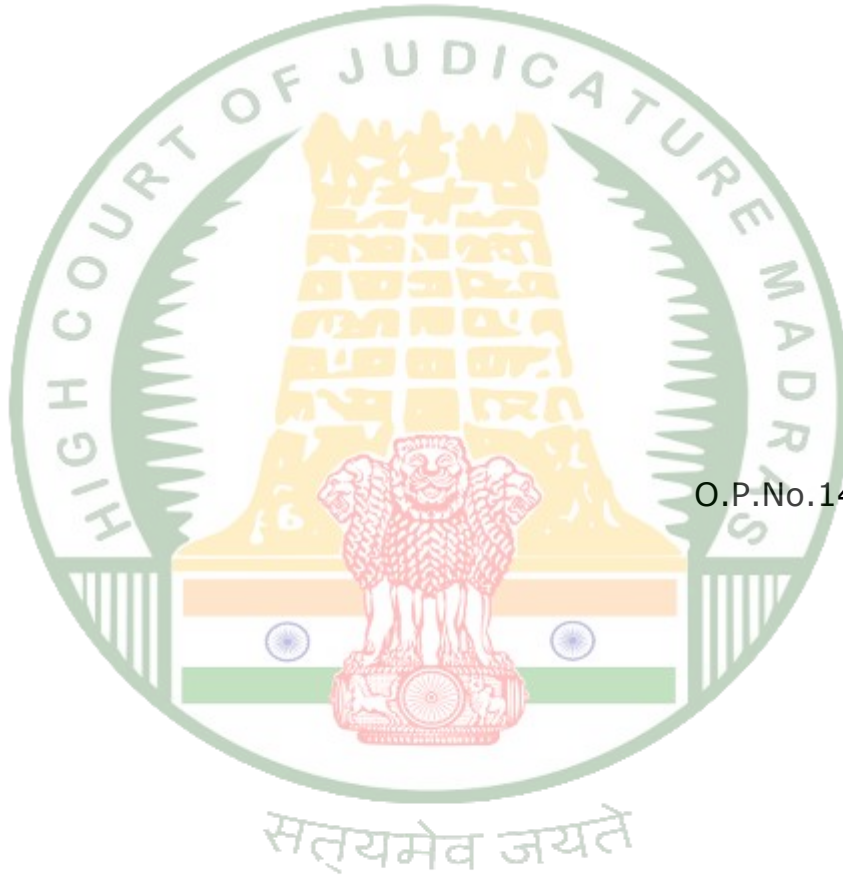
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PUSHPA SATHYANARAYANA, J.

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