

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2019

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THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

O.P.No.181 of 2019

1. Devulapalli Dwarakanatha Reddy
2. K.Rajyalakshmi .. Petitioners

Vs.

1. M/s.Sritha Constructions (P) Limited
rep. by its Director,
K.Sreenivasulu Reddy,
No.R6, Green Acres, Kamarajar Nagar,
Perungudi, Chennai-600 096.
2. K.Sreenivasulu Reddy
3. Aparna Reddy
4. D.Deepa Reddy
5. D.Sunil Reddy
6. Vishal Reddy
7. Geetha .. Respondents

Prayer : Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint an Arbitrator to decide the disputes between the parties arising out and in connection with the Comprehensive Joint Development Agreement dated 15.05.2015.

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For Petitioners : Ms.R.Ramya

For Respondents : Mr.S.Ramesh for RR 1, 2 & 7
Mr.A.V.Arun for RR 3 to 5
NA for R6

ORDER

This Original Petition is filed seeking appointment of an Arbitrator to resolve the disputes between the parties arising out and in connection with the Comprehensive Joint Development Agreement dated 15.05.2015.

2. The petitioners claimed that the second and seventh respondents are the Managing Director and the Director of the first respondent company. They approached the petitioners for joint development of the property owned by them along with neighbouring land owners/respondents 3 to 6. Believing their words, the petitioners executed two registered General Power of Attorneys dated 06.07.2012 in the first instance, and four more General Power of Attorneys dated 19.04.2013 in another instance. Subsequently, the petitioners entered into a Comprehensive Joint Development Agreement dated 15.05.2015 (in short, "CJDA") with the first respondent, in which, seven flats were allotted to the petitioners, as recorded in Schedule C therein. The CJDA mandates the first respondent to complete the construction within 30 months from the date it was entered into, i.e., 15.11.2017 was the cut off date to hand over the flats in all respects. Consequently, the petitioners handed over the original documents of

their properties to the first respondent, which was also duly acknowledged. The petitioners stated that till the date of filing of this petition, no construction activities were commenced by the first respondent, despite the reminders of the petitioners. Hence, the petitioners were forced to send legal notices dated 06.10.2018 and 06.12.2018, to which, the first, second and seventh respondents did not bother to reply.

3. The petitioners stated that Clause 43 of the CJDA provides for settlement of disputes through mutual mediation followed by arbitration, if in the former, the same could not be settled. Hence, the petitioners sought for the aforesaid relief.

4. Resisting the prayer of the petitioners, the first, second and seventh respondents filed a counter-affidavit dated 14.07.2019, wherein, *inter alia*, it is stated that the first respondent spent huge sums of money to fill the low lying lands owned by the petitioners and other parties in bits and pieces so as to make a single unit of land feasible for development of the project. It is their case that the lands owned by the petitioners do not have access at all and but for the project, it would not have fetched the amount it fetched now. The said respondents further stated that they have spent about Rs.63 lakhs for

buying back of the OSR lands from the CMDA, after obtaining planning permission on 26.05.2014 and so far expenses to the tune of Rs.5,24,00,000/- have been incurred towards the development of the project and they have entered into agreements with the prospective buyers for sale of some of the flats. It is their defence that the 2015 floods caused drastic damage to the project and hence, the market is not as it was and hence, they have been attempting for settlement. Thus, they sought for dismissal of this petition.

5. Supporting the claim of the petitioners, the third respondent filed a counter-affidavit dated 02.07.2019 on her behalf and on behalf of fourth and fifth respondents. She reiterated the stand of the petitioners and sought for appointment of a Sole Arbitrator to resolve the disputes, since the first respondent breached the time schedule contained in the CJDA, which is the essence of the said agreement.

6. Despite service of notice, the sixth respondent neither present in person nor through any counsel.

7. Heard the learned counsel appearing on behalf of the petitioners ; respondents 1, 2 and 7 and respondents 3 to 5 and perused the material records placed before this Court.

8. Admittedly, the facts are not in dispute. The only defence of the first respondent is that the 2015 floods caused damage to the project and hence, they could not market the project. The respondents 1, 2 and 7 themselves admitted in the counter that when the settlement talks were on, the petitioners rushed to this Court. In fact, vide order dated 24.07.2019 this Court referred the parties to mediation and in the mediation report dated 09.08.2019, it was recorded that in the mediation held on 30.07.2017 and 09.08.2017, no agreement was reached. Hence, it cannot be stated that there is no mutual mediation and therefore, the petitioners are estopped from invoking the second limb of Clause 43 of the CJDA, i.e., arbitration. There can be no two views that even before the Arbitrator, the parties can seek for referring the matter for mediation or they can settle the disputes among themselves and place it before the Arbitrator to pass an award based on such settlement.

9. Having considered the submissions of both sides, this Court appoints Hon'ble Mr.Justice P.Shanmugam, a retired Judge of this Court, residing at No.204, T.T.K.Road, Parthasarathy Garden, Teynampet, Chennai-600 018, (Phone No.044-24993452) as the Sole Arbitrator to enter upon reference and adjudicate the disputes inter se

PUSHPA SATHYANARAYANA, J.

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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 his 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. The disclosure and declaration may be made by the learned Arbitrator in the form specified in the Sixth Schedule to the Arbitration and Conciliation Act, 1996.

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

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