

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2019

CORAM

THE HONOURABLE Mr.JUSTICE SENTHILKUMAR RAMAMOORTHY

O.P.No.299 of 2018

S.Bakthavachalam

..Petitioner

Vs

1.Arvind Srinivasan,
Managing Director,
M/s.Belair Enterprises Pvt. Ltd.,
No.94, Luz Church Road,
Mylapore,
Chennai-600 004.

2.Mr.N.Alagu Narayanan, Advocate,
Sole Arbitrator,
No.97/47, Oriental Building,
III Floor, Armenian Street,
Parrys, Chennai-600 001.

3.M/s.Kokilam Foundations Pvt. Ltd.,
34/28, Tank Bund Road,
Nungambakkam, Chennai-34.

.. Respondents

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 praying to set the Award of the 2nd respondent dated 23.09.2017 and pass such further or other orders as may be deemed fit and proper.

For Petitioner : Mr.J.Srinivasa Mohan
For Respondents : Mr.P.N.Swaminathan for R1

ORDER

The learned counsel for the petitioner and the learned counsel for the first respondent submitted that the dispute was settled before the Mediation Centre by filing a Compromise Agreement dated 05.09.2019. The Mediation Centre has submitted a report dated 18.10.2019 which encloses the said Compromise Agreement dated 05.09.2019. The Compromise Agreement discloses that it has been signed by the petitioner and by the first respondent.

2. In the light of the said submission, the learned counsel for both parties request that the petition be disposed of in terms of compromise agreement. The terms of the said compromise agreement read as follows:

“1. The petitioner agrees to pay a sum of Rs.11.5 Crores (Rupees Eleven Crores and fifty lakhs), along with an additional sum of Rs.1.5 Crores (Rupees One Crore and Fifty Lakhs), totaling Rs.13 Crores (Rupees Thirteen Crores Only) from sale of land, as follows.

2. Parties agree to 6 months time frame for obtaining necessary plan approval, for the purpose of plotting and selling the subject lands, along with other lands. Within this period ending on 28.02.2020 the petitioner shall obtain all necessary clearances and approvals for developing an Approved Layout.

3. During this period of 6 Months starting from 01.09.2019 till 28.02.2020 the Petitioner undertakes to pay a sum of Rs.6 lakhs on or before 15th of the respective month, till the 1st Sale of plot in the Lands belonging to the Petitioner takes place.

4. The Petitioner has paid a sum of Rs.6 Lakhs for the month of July and for August 2019 payment will be made on 06.09.2019.

5. The Petitioner shall also keep the 1st Respondent updated regularly, atleast once in a month, in writing regarding the steps taken for obtaining approval of the layout.

6. In case of non-payment of the agreed amount on 15th of the given month, the Petitioner will be given a grace period of 20 days to set right the same. In any event as a rare occasion that is thrice during the subsistence of this arrangement such case of non-payment will be allowed to be made good before the 15th of the next month along with the payment for the next month.

7. From the 1st sale of plot of the land referred herein and developed as mentioned herein above, belonging to the Petitioner, the Petitioner shall share at least minimum of 25% of sale proceeds of such sale and subsequent sale that is made with the 1st Respondent. The Petitioner shall make such payment within 3 working days of receipt of sale proceeds. सत्यमेव जयते

8. After 1st sale, Petitioner also guarantees and agrees to pay the 1st Respondent a minimum of Rs.15 Lakhs, every month thereafter irrespective of any further sale happening. In case of the 1st Respondent

share of sale proceeds exceeds Rs.15,00,000/- then the minimum guarantee clause regarding minimum payment will not arise. The payment by Petitioner, upon sale of land, will not be restricted to the minimum amount of Rs.15 lakhs per month, it shall be atleast 25% of the Sale proceeds realised in that particular month. In case no sale proceeds is realised in any given calender month then the minimum guarantee amount shall be paid within 15 days of commencement of the succeeding month exclusive of any share accruing in the succeeding month payable as per clause 7 above. This will not apply if the sale proceeds of the earlier month is sufficient to cover the minimum guarantee of the succeeding months to the extent applicable.

9. The payment of Rs.13 crores or the amount outstanding after giving credit to the amounts paid from July 2019, shall be made within a period of 24 months from today.

10. If there are three consecutive defaults in making monthly payment in the 1st

six months, then the 1st Respondent will be free to enforce his right for recovery for the amount agreed to and balance payable as per this agreement, by taking recourse to all or any legal proceedings as may be appropriate and available in law. However, the 1st Respondent may if he so wishes Grant such further time to regularise the payment as stipulated hereinabove.

11. Similarly if there are four consecutive defaults in making a minimum payment of Rs.15 Lakhs, as per clause 8 above, then the 1st Respondent will be free to enforce his right of recovery for the amount agreed to and balance payable as per this agreement, by taking recourse to all or any legal proceedings as may be appropriate and available in law. However the 1st respondent may if he so wishes Grant such further time to regularize the payments as stipulated herein above.

12. If lands are not fully sold by the end of 24 months, as referred to in clause 9 above, then parties are free to mutually agree

on the further course of action regarding extension of time, depending on the extent of sale made at that time.

13. The 1st Respondent, in the absence of any mutual agreement as referred to in clause 12 above, will be free to enforce this agreement for the remaining amount (after deducting all the payments received) as stated in clause 10 and 11 herein above.

14. Every sale amount received shall be deposited in a specified Bank account in the name of the petitioner, to be used exclusively for this purpose. The amount payable to the 1st respondent as stated in Clause 7 above shall be paid from this account. The Petitioner shall also intimate the 1st Respondent the number of plots sold and the amount realised every month, till payment of the entire amount under this Agreement.

15. The Petitioner and 1st Respondent agree to the above terms and conditions and pray that the O.P. May be ordered in terms of this compromise.”

3. Upon examining the said compromise agreement and bearing in mind that the petition has been filed only by the first respondent in the arbitral proceedings so as to challenge the Award dated 11.10.2017, I am of the view that the request of the learned counsel for the two sides can be accepted notwithstanding the fact that the third respondent has not signed the memo of compromise. Accordingly, the Original petition is disposed of in terms of the compromise agreement dated 05.09.2019 which shall form an integral part of the order.

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SENTHILKUMAR RAMAMOORTHY, J

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