

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2019

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

O.P.No.550 of 2019

1. R.Vignesh  
2. G.Aishwarya

.. Petitioners

Vs.

M/s.Prem Estates,  
Proprietorship Firm  
rep. by its Sole Proprietor,  
Mr.Vinay,  
Managappan Street,  
Sowcarpet, Chennai-600 079.

.. Respondent

\* \* \*

Prayer : Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint a Sole Arbitrator to decide the dispute between the parties in accordance with clause 34 of the Construction Agreement dated 30.03.2017 entered into between the petitioners and the respondent.

\* \* \*

For Petitioners : Mr.Vinod Paul Tyagaraj David

For Respondent : Ms.P.R.Vandana  
for M/s.Surana & Surana

**ORDER**

The petitioners have filed this petition seeking for appointment of a Sole Arbitrator to decide the dispute between the parties in

accordance with clause 34 of the Construction Agreement dated 30.03.2017 entered into between the parties.

2. The petitioners, who are husband and wife, entered into a construction agreement with the respondent dated 30.03.2017 for the purchase of a flat, the cost of which was pegged at Rs.57,99,900/-, of which, Rs.12,44,400/- was for Undivided Share of the land (UDS) and Rs.45,55,500/- towards construction cost. Before entering into such an agreement, they paid more than Rs.7,00,000/- to the respondent by means of cash, cheque and by NEFT Transfer. They availed a sum of Rs.46,00,000/- as loan from HDFC Bank, of which Rs.37,00,000/- was released on various dates and the respondent adjusted a sum of Rs.12,44,400/- out of the said amount for the cost of the UDS conveyed via sale deed dated 21.04.2017 under Doc No.2754 of 2017 and the remaining amount was appropriated towards the construction cost. The petitioners were willing to pay the balance amount. However, the respondent failed to fulfill its promise and did not proceed with the construction in accordance with the construction agreement and handed over possession in such a fashion. The petitioners, thus, sent a legal notice dated 02.01.2018 seeking to complete the construction and to carry out the repair works, besides claiming Rs.19,75,000/- for the mental agony suffered by them.

Without giving proper reply, the respondent only demanded the balance amount of Rs.9,23,900/- from them. Since the respondent caused disturbance to the peaceful possession of the petitioners, a police complaint was given and also a case before the State Consumer Redressal Forum and the same are pending.

3. According to the petitioners, though they attempted to resolve the dispute amicably, the respondent did not co-operate for the same. Hence, invoking Clause 34 of the construction agreement, the petitioners sent a legal notice dated 09.02.2019 by appointing an arbitrator, besides claiming certain amounts. The said proposal was negated by the respondent on 14.03.2019 and they had given a list of Arbitrators to be appointed in the matter. The petitioners had given a rejoinder notice, but in spite of the same, there is no consensus between the parties. Hence, the petitioners are before this Court with this petition.

4. Heard the learned counsels on either side and they are agreeable for the appointment of an Advocate as the Sole Arbitrator to resolved the disputes between the parties.

5. Considering the submissions of either side, this Court appoints Mr.S.R.Sundar, Advocate, having office at 235 (112), 5<sup>th</sup> Floor, Angappa Naicker Street, Chennai-600 001, (Phone No.044-25224477), 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 his remuneration and other incidental expenses. The proceedings shall be conducted preferably in the Madras High Court Arbitration Centre and in accordance with the Madras High Court Arbitration Rules. The appointment of the Arbitrator will be subject to the disclosure and declaration made, as per the Sixth Schedule to the Arbitration and Conciliation Act, 1996 coupled with the amendments made therein.

6. The Original Petition is ordered accordingly. The parties shall bear their own costs.

18.11.2019

Index : Yes / No  
Internet : Yes  
Speaking Order/Non-Speaking Order  
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**PUSHPA SATHYANARAYANA, J.**

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