

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

ARBITRATION APPLICATION No.32 of 2018

ORDER:

By way of this application filed under Section 11(6) of Arbitration and Conciliation Act, 1996 (for short "the Act") the applicants seeks appointment of an Arbitrator for resolution disputes arising under the agreement dated 03-05-2013 entered into by and between them.

2. The case of the applicants is that the respondents approached the applicants in June 2012 stating that they have taken the property bearing No.6-1-280 and 280/E situated at Padmaraonagar, Secunderabad, for development and offered flat No.401 for sale to the applicants for sale consideration of Rs.13,69,088/- and the applicants paid said amount on 29.06.2012. After receipt of the sale consideration, the respondents postponed the execution of the sale deed and after repeated requests, they executed the agreement on 30.05.2013 assuring to execute the registered sale deed and deliver possession of the said plot. Though the applicants were insisting the execution of the registered sale deed and several deliberations took place between the parties and ultimately upon mutual discussion, the respondents issued letter dated 27.10.2014 confirming the cancellation of flat and agreed to refund Rs.13,69,088/- to the applicants within a period of 90 to 120 days from 27.10.2014 and also issued 8 duly signed post dated cheques drawn on Lakshmi Vilas Bank, Sultan Bazar Branch in favour of the applicant No.1 assuring encashment of the cheques on due dates. Thereafter, the respondents paid Rs.45,000/- through RTGS and took back

cheque No.000227 and remaining cheques have been dishonoured for insufficiency of funds, the respondents issued another letter agreeing to pay Rs.3,70,745/- towards interest and failed to pay the same. In view of the same, the applicants issued legal notice to the respondents and for dishonour of cheques proceedings were initiated under Section 138 r/w 142 of the NI Act and after due enquiry, respondent No.2 was convicted and filed an appeal and the same is pending. The applicants also filed OS.No.408 of 2016 on the file of Chief Judge, City Civil Court, Hyderabad, against the respondents for recovery of Rs.17,39,833/- and respondents filed IA.No.7020 of 2016 under Section 8 of the Act praying the Court to refer the said suit to arbitration under clause 27 of the agreement of sale dated 30.05.2013 and the said application was allowed and suit was dismissed vide judgment dated 27.03.2017. As such, the petitioner issued letter dated 05.09.2017 invoking the arbitration clause 27 of the agreement dated 30.05.2013 and nominated Sri V.V. Raghavan, retired District Judge, as sole arbitrator for resolving the disputes between the parties, the respondent refused to receive the same and the same was returned as unclaimed, as such the present application is filed.

3. There is no appearance for the respondents and no counter affidavit is filed.

4. In this case, it is to be seen that clause 27 of the sale agreement dated 30.05.2013, which reads as follows:

“Clause 27: All disputes under this agreement shall be referred to arbitration of one or more persons and the award of Arbitrator shall be final and binding over all parties/all disputed hereunder, shall be subject to the jurisdiction of the Courts of Hyderabad.”

5. When the applicants filed the suit, the respondents filed application under Section 8 of the Act referring the dispute, which is subject matter of the application, to the arbitrator and the suit was dismissed and thereafter applicants have issued notice dated 05.09.2017 invoking the arbitration clause, there is no response either to the notice or to the present application.

6. In view of the facts and circumstances of the case, this Application is to be allowed.

7. Accordingly, the arbitration application is allowed appointing Sri V.V.Raghavan, Retired District Judge, as the sole Arbitrator for resolution of dispute(s) between the applicants and respondents, arising out of agreement dated 30-05-2013, in accordance with the provisions and mandate of the Act of 1996. The learned Arbitrator shall be entitled to fees as per the rates specified in the Fourth Schedule to the Act of 1996, inserted by Act 3 of 2016 with effect from 23-10-2015, which shall be borne by both parties in equal measure. No order as to costs.

A.RAJASHEKER REDDY, J

Date: 12-11-2019

Note:
Mark a copy to Sri V.V.Raghavan,
Retired District Judge,
No.302, Legends Residency,
Street No.2, Shantinagar,
Masab Tank,
Hyderabad-28.

(b/o)
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