

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

ARBITRATION APPLICATION NO.44 OF 2016

O R D E R

The applicant is the company and it is represented by its Director – Mr. Paras Agarwal s/o Subash Chand Agarwal. The case of the applicant is that it entered into an agreement of sale on 30.07.2007 with the respondents for purchase of land and paid amounts, and thereafter, the agreement of sale could not be concluded, as such, parties have entered into registered development agreement dated 16.02.2008 in respect of the subject lands, and since the respondents have not fulfilled their obligation, applicant could not comply with the conditions in the development agreement and develop the land and, hence the applicant issued notice on 03.08.2013 to the respondents for return of the amount or to comply with the conditions. As there was no response, applicant issued notice dated 19.10.2015, invoking the arbitration clause and for appointment of an arbitrator. As there was no response from the respondents, the present application is filed under Section 11 (5) and (6) of the Arbitration and Conciliation Act, 1996 read with the Scheme for Appointment of Arbitrator, 1996, for appointment of sole arbitrator, for resolving disputes between the parties, and for passing an award.

Heard the learned counsel for the applicant.

Learned counsel for the respondents is not present, and though the matter is of the year 2016, no counter affidavit is filed.

Clause 29 of the Development Agreement-cum-General Power of Attorney dated 16.02.2008 provides for arbitration and the same is extracted as under for ready reference:

“The parties hereto agree that in the event of there being any disputes with regard to this agreement or interpretation of any of the terms of the agreement, the same shall be referred to the arbitration in terms hereof;

Arbitration shall be conducted as follows:

- a) All proceedings in any arbitration shall be conducted in English.
- b) The dispute shall be referred to a panel of two arbitrators; owners shall appoint one arbitrator and developers shall appoint one arbitrator and the third being appointed by the two arbitrators nominated by the parties.
- c) The arbitration award shall be final and binding on the parties, and the parties agree to be bound thereby and to act accordingly.
- d) The arbitral tribunal may be unanimous agreement, award to a party that substantially prevails on the merits, its costs and reasonable expenses (including reasonable fee of its counsel).
- e) Seat of such arbitration tribunal shall be at Hyderabad.
- f) The Arbitration Proceedings shall be governed by the Arbitration and Conciliation Act, 1996;"

From the above clause in the development agreement dated 16.02.2008, it is clear that any dispute with regard to the agreement or interpretation of any of the terms of the agreement, shall be referred to the arbitration, and the conduct of arbitration proceedings is also mentioned in the above clause. The case of the claimant is that as disputes arose, they issued notice dated 19.10.2015, invoking the arbitration clause, and as there was no response from the respondents, filed the present arbitration application.

Learned counsel for the respondents is not present, and no counter affidavit is filed denying the assertions of the applicant for appointment of an arbitrator for resolving the above dispute.

In view of the same, and having regard to the facts and circumstances of the case, this application is allowed and Sri Justice S.Ananda Reddy, former Judge of the erstwhile High Court of Andhra Pradesh, is appointed as arbitrator to resolve the dispute between the parties, and to pass an award in accordance with law.

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 shares.

Interlocutory applications pending, if any, shall stand closed. No order as to costs.

A.RAJASHEKER REDDY,J

DATE:31—12—2019

Note:

Mark a copy of this order to:

Sri S. Ananda Reddy,
Former Judge of erstwhile High
Court of Andhra Pradesh,
R/o Flat No. C-402, Fortune Enclave,
SBI Lane, Road No.12,
Banjara Hills, Hyderabad – 34.

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