GAHC010059972019

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Arb.P./11/2019

NEVA PRASAD YADAV
S/O LT. NAGINA RAY,R/O H.N. 8C,2ND FLOOR PREMADA BHAWAN,
A.K.AZAD ROAD, REHABARI
GUWAHATI-781008,
DIST.-KAMRUP(M),
ASSAM

VERSUS

PRATIK INFRACON PVT. LTD. AND ANR.
A PRIVATE LIMITED COMPANY HAVING ITS HEAD OFFICE AT 2ND FLOOR,
RAJDEEP COMPLEX, F.A. ROAD,
KUMARPARA,
GUWAHATI-781001,
REP. BY ITS MANAGING DIRECTOR SMTI. SARITA AGARWAL

2:SARITA AGARWA

Advocate for the Petitioner : MR. R DUBEY

Advocate for the Respondent : MR G N SAHEWALLA

BEFORE
HON'BLE THE CHIEF JUSTICE (ACTING) MR. N. KOTISWAR SINGH
:: O R D E R ::

01.12.2020

Heard Mr. R. Dubey, learned counsel for the petitioner. Also heard Mr. D. Senapati, learned counsel for the respondents.

2. The matter pertains to appointment of an arbitrator in terms of Deed of Memorandum of Agreement entered between the parties on 11.01.2012.

3. Article XIV of Memorandaum of Agreement provides for resolution of disputes by arbitration in accordance with provisions of Arbitration and Conciliation Act, 1996 if there be any dispute between the parties or either of the parties fail to act in accordance with the provisions of the agreement.

4. It is the case of the petitioner that in terms of Clause 9.3 of the Deed of Memorandum of the Agreement as soon as the building is completed, the Developer shall give a written notice to the Owner i.e. the petitioner to take possession of his allocation in the building.

5. It has been provided under Clause 9.4 that in the event of the Developer fails to complete the building as enshrined in the Clauses and articles of the Memorandum of Agreement, the Developer shall be liable to pay a compensation to the Owner that amount mentioned thereof.

6. It is the case of the petitioner that the building has not been completed in the true legal sense as provided under Clause1.14 of the Memorandum of Agreement though the building may be physically completed. It is submitted that unless such completion is certified by the Guwahati Municipal Corporation (G.M.C.) or Guwahati Metropolitan Development Authority (GMDA) or any such authority, the said completion cannot be said to have been completed which has not been done by any of the above authorities in the present case. The petitioner, accordingly submits that he cannot take possession of any portion of the land or

building even if offered by the Developer.

7. Thus, it clearly appears that there is certain dispute between the parties which needs to be resolved, for which arbitration provision has been made in the Memorandum of Agreement.

8. Learned counsel for the respondents submits that Shri P.C. Borpujari, retired District and Sessions Judge may be appointed as Arbitrator.

Learned counsel for the petitioner has no objection to the said submission.

9. Accordingly, in view of the specific provision of Article XIV of the Memorandum of Agreement dated 11.01.2012 the matter is referred to Mr. P.C. Borpujari, retired District and Sessions Judge, who will act as the Arbitrator and will consider all the issues raised as permitted under the law.

10. Registry to inform the learned Arbitrator.

11. Parties to appear before the learned Arbitrator within 30 (thirty) days from today whereafter learned Arbitrator will commence the arbitral proceedings.

12. Learned counsel for the respondents submits that he may be permitted to raise the issue of limitation before the Arbitrator. It goes without saying such any of the parties will have a right to raise all such issues directly and incidentally related to the dispute before the Arbitrator.

13. With the above direction, the present Arbitration Petition is disposed of.

CHIEF JUSTICE (ACTING)

Comparing Assistant