

IN THE HIGH COURT OF JUDICATURE AT PATNA
REQUEST CASE No.6 of 2021

-
-
1. Smt. Veena Yadav @ Veena Devi Wife of Dr. Kuleshwar Prasad Yadav Resident of R/F No. 424, Kankarbagh colony, P.S. - Kankarbagh, Town and District- Patna- 800020.
 2. Shri Navin Kumar Son of Shri Kuleshwar Prasad Yadav Resident of R/F No. 424, Kankarbagh colony, P.S. - Kankarbagh, Town and District- Patna- 800020.

... .. Petitioner/s

Versus

1. M/s Imperial Foundation Construction Pvt. Ltd., through its Managing Director, Sri Sanjiv Kumar, Son of Sri Sidheshwar Sharma, Residing at Bali Pakad, Police Station- Paliganj, Post Office- Paliganj, District- Patna- 801110.
2. Sri Sanjiv Kumar Managing Director, M/s Imperial Foundation Construction Pvt. Ltd.), Son of Sri Sidheshwar Sharma, Site Office at Janki Market, Beside of Gokul Hospital, Opposite of Yamaha Showroom, Naya Tola, Kumhrar, Patna- 800026 and also at C/o Sri Rajiv Ranjan, Rental Flat No. 70, Kankarbagh, Patna- 800020.
3. Sri Rajeev Ranjan, Director of M/s Imperial Foundation Construction Pvt. Ltd., Son of Sri Uma Shankar Choudhary, Resident of Rental Flat No. 70, Post Office - Kankarbagh, Police Station- Kankarbagh, District- Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. J.S. Arora, Sr. Advocate Mr. Manoj Kumar, Advocate Mr. Ritesh Kumar, Advocate Mr. Ravi Bhatia, Advocate
For the Respondent/s	:	Mr. Mrigendra Kumar Singh, Advocate Mr. Ranjeet Kumar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL JUDGMENT

(The proceedings of the Court are being conducted by Hon'ble the Chief Justice/Hon'ble Judges through Video Conferencing from their residential offices/residences. Also the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences/offices.)

Date : 08-09-2021

In terms of the present Petition filed under Section
11(6) of the Arbitration and Conciliation Act, 1996, petitioners



seek referral of disputes for adjudication to an arbitrator, in terms of Clause 37, contained in the development agreement dated 26.12.2008.

Arbitration clause 37 reads as under:

“37. यह कि किसी प्रकार का दोनों पक्षों में विवाद का समाधान आरबिट्रेशन कन्सीलेशन एक्ट 1996 के प्रावधान के अनुसार किया जायेगा। जिसका क्षेत्राधिकार सदर पटना होगा।”

Parties to the lis entered into a written agreement dated 26.12.2008 for development of the property owned by the petitioners. An addendum to the said agreement was also entered into by them vide written document dated 20.02.2017.

Disputes having arisen inter se the parties, petitioners got served a legal notice dated 30.11.2020 invoking the arbitration clause, contained in the said agreement dated 26.12.2008. Respondent's Advocate, vide his communication dated 09.12.2020 responded, controverting the allegations made against his clients.

Perusal of these legal notices reveals allegations and counter allegations made *inter se* the parties. Both parties claim the terms of the agreement to have been breached by each other.

To this Court, it is quite apparent that (a) there is a written agreement dated 26.12.2008 entered into inter se the parties;



containing an arbitration clause; disputes having arisen inter se the parties to the agreement; and petitioners having invoked the arbitration clause.

Sri Ranjeet Kumar, learned counsel for the respondents vehemently opposes the petition on the following grounds:-

(a) Vide addendum dated 20.02.2017, all disputes inter se the parties stood amicably resolved and as such there is nothing in existence which requires to be referred for adjudication by the Arbitrator.

(b) Petitioners have failed to pursue the matter with the Real Estate Regulatory Authority, Patna constituted under the Real Estate (Regulation and Development) Act, 2016 (hereinafter to be referred to as RERA).

(c) In view of the pendency of the matter before RERA, the present proceedings are not maintainable.

In opposition, Sri J. S. Arora, learned Senior Counsel for the petitioners invites attention of the legal notice dated 30.11.2020 and response dated 09.12.2020 clarifying that the plea of settlement of disputes, is taken for the first time and that all issues, including all those raised by the respondents of breach of the terms of the agreement by the petitioner, if any, can be examined by the Arbitrator.



Considered the submissions and perused the record.

Addendum to the development agreement executed on 20.02.2017, does not, even remotely indicate the parties having resolved their disputes in terms of the development agreement dated 08.12.2008. In fact, Clauses 3 and 4 thereof, obligate the respondents herein to develop the property and hand over the flats, falling to the petitioners' share on or before 31st August, 2017, failing which, their entitlement for compensation at the rate of Rs.70,000/- per month.

Before this Court, it is not in dispute that the building is yet to be completed. Hence, who committed the breach can be examined by the Arbitrator.

The dispute inter se the parties is civil in nature and are emanating out of the agreement.

Coming to the next issue, this Court vide judgment dated 03.07.2020 in Request Case No.68 of 2019, titled as **Nageshwar Singh Swaraj & Ors. Vs. M/s Rukmani Buildtech Private Limited**, has extensively dealt with similar objection taken, of continuance of present proceedings in view of the pendency of proceedings before RERA. Relevant portion of the opinion is extracted as under:-

“22. What further requires consideration is the factum of petitioner no.1 applying the authority constituted under



the Real Estate (Regulation and Development) Act, 2016. Is it a valid ground or reasons sufficient enough to reject the instant application?

23. The object and purpose of both the statutes are distinct and different, and there is nothing inconsistent or derogation therein. The Arbitration Act was enacted to consolidate and amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards as also to define the law relating to conciliation and for matters connected therewith or incidental thereto. Whereas the RERA Act was enacted to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto.

24. Section 88 thereof provides the provisions of this Act explicitly to be in addition to and not in derogation of the provisions of any other law, with the only limitation contained in Section 89 making it prevail over in any other consistent law. Reading of both the statutes do not make the Arbitration Act to be inconsistent with the provisions of the RERA Act, more so when respondent no.1 himself disputes its applicability for want of the jurisdictional issue.

25. In **Management Committee of Montfort Senior Secondary School Vs. Vijay Kumar and Others (2005) 7 SCC 472**, the Hon'ble Apex Court dealt with the ambit and scope of the Delhi School Education Act, 1973 vis-à-vis the provisions of the Arbitration and Conciliation Act, 1996. The issue arose as to whether the Tribunal for the Arbitration Act can be said to be a judicial authority or not. Clarifying it not to be, the Court reiterated that the plaintiff is *dominus litis* having dominion over his Case.



He is the person who has carriage and control of the action. In Case of conflict of jurisdiction, the choice ought to lie with him to choose the forum best suited unless there be the rule of law excluding access to a forum of his choice; permitting recourse to a forum is opposed to public policy; or would be an abuse of process of law. The Court reiterated its earlier principle laid down in **Bank of India Vr. Lekhi Moni Das & Ors. (2000) 3 SCC 640** that as a general principle where two remedies are available under law, one of them not to be taken as operating in derogation of the other.

26. In M.D. Frozen Foods Exports Private Limited and Others Vrs. Hero Fincorp Limited (2017)16 SCC 741 the Hon'ble Apex Court held that proceedings both under the Arbitration Act and the SARFAESI Act could continue simultaneously.

27. For the aforesaid reason, it cannot be said that petitioners' right is foreclosed in light of RERA Act; they had an equally, alternative and efficacious remedy of adjudication under the said Act; They waived of their right to invoke clause 20 for resolution of disputes through Arbitration; or that they elected not to enforce their statutory rights under the Arbitration Act.”

The validity of the arbitration agreement; the existence of the dispute and there being no possibility of amicable resolution of the disputes, this Court, having given its thoughtful considerations deem it appropriate, just and fair to appoint an arbitrator.

As such, Hon'ble Mr. Justice Shivaji Pandey, retired Judge of the High Court of the Judicature at Patna, is appointed as an Arbitrator to adjudicate the dispute inter se the parties.



All disputes arising out of Agreement dated 26.12.2008 entered between the parties are referred to the learned Arbitrator for arbitration.

All pleas and issues raised, on merits, are left open to be considered and decided by the learned Arbitrator.

Parties also undertake to fully cooperate and agree to request the learned Arbitrator to complete the proceedings at the earliest, which request, this Court, trust would be favourably considered.

Learned Arbitrator shall be entitled to fees as per the Fourth Schedule of the Arbitration Act.

Learned Registrar General shall ensure that a copy of this order is made available to the learned Arbitrator positively through an electronic mode on or before 20th of September, 2021.

Parties shall file their statement of claims before the learned Arbitrator on such date of hearing, which he may fix, as per mutual convenience.

The proceedings, during the time of current Pandemic Covid-19 shall be conducted through digital mode, unless the parties otherwise mutually agree to meet in person i.e. physical mode.



Learned counsel for the parties also undertake to apprise the learned Arbitrator of the passing of the order. This, they shall positively do so within next two working days.

The Request Petition stands disposed of in the above terms.

No order as to costs.

(Sanjay Karol, CJ)

K.C.Jha/-

AFR/NAFR	
CAV DATE	
Uploading Date	16.09.2021
Transmission Date	

