

IN THE HIGH COURT OF JUDICATURE AT PATNA
REQUEST CASE No.11 of 2021

1. Marchhi Devi wife of Late Dev Prasad Singh resident of Jalalpur, P.O. - Maranchi, P.S. - Punpun, District- Patna, Pincode- 804453, Bihar INDIA.
2. Manish kumar son of Late Dev Prasad Singh resident of Jalalpur, P.O. - Maranchi, P.S. - Punpun, District- Patna, Pincode- 804453, Bihar INDIA.

... .. Petitioner/s

Versus

Rahul Kumar, (Male), aged about 35 years, managing director Ghar Lakshmi Buildcon Pvt. Ltd. a compnay registered under companies act, 1956 having its registered office at Plot No. - 05, L.F.1 Colony, S.K. Puri, Near Childrens Park, Patna - 80013, P.O. - Shree Krishna Puri, P.S. - S.K. Puri. Bihar, INDIA.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Saurabh Bishwambhar, Advocate
For the Respondent/s	:	Mr. Surendra Kumar Singh, Advocate
		Ms. Tulika Singh, Advocate
		Ms. Sudha Chandra, Advocate
		Ms. Smriti Prasad, 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 : 15-09-2021

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 (N), contained in the development agreement dated 25.04.2014.

Arbitration clause (N) reads as under:

“(N) That in case of any dispute or difference



between the parties arising out of relating to this development agreement, the same shall be settled by reference of the dispute or difference to the arbitrator appointed by mutual consent of both the parties and such arbitration shall be conducted under the provisions of the arbitration and conciliation Act, 1996 as amended from time to time at Patna.”

Parties to the *lis* entered into a written agreement dated 25.04.2014 for development of the property owned by the petitioners.

Disputes having arisen inter se the parties, petitioners got served a legal notice dated 26.11.2019 invoking the arbitration clause, contained in the said agreement dated 25.04.2014. Respondent's Advocate, vide his communication dated 09.12.2019 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 25.04.2014 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.

Learned counsel for the respondents vehemently opposes the petition on the following grounds:-

(a) 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).

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

In opposition, learned counsel for the petitioners invites attention of the legal notice dated 26.11.2019 and response dated 09.12.2019 clarifying that the plea of alternate remedy, 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 petitioners, if any, can be examined by the Arbitrator.

Considered the submissions and perused the record.

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 is



emanating out of a written agreement.

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 Dinesh Kumar Singh, 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 25.04.2014 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, trusts 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 25th 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	22.09.2021
Transmission Date	

