

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

ARBITRATION APPLICATION NO.13 OF 2019

M/s. West Park Homes LLP
through its partners
Uday Jailal Kasliwal & another Applicants

Vs.

Tarachand Rupchand Bhati
and others Non Applicants

Mr.S.V.Natu, advocate for the applicants.
Mr.Rahul Joshi, advocate for Non Applicants No.1 to 5.

CORAM : AVINASH G. GHAROTE, J.

DATE : 07th July, 2021.

PC :

1 Heard Mr.Natu, learned Counsel for the applicant and
Mr.Rahul Joshi, advocate for the non applicants no.1 to 4.

2 There is no dispute that the agreement of development
dated 27.05.2013, between the parties hereto, contains an
arbitration clause. For the sake of ready reference, the arbitration
clause is reproduced as under:

“25 If any dispute arises between owners
and developers in respect of construction / BCC /

completion of project or any other thing, the dispute shall be referred to Arbitrator, who shall be appointed by choice of both the parties and his decision shall be binding.”

3 Mr.Natu, learned Counsel for the applicants, submits that since dispute arose, a notice was issued to non applicants no.1 to 5 on 03.01.2019 invoking the arbitration clause and requesting for appointment of an arbitrator. As that was not done, the present Application has been filed.

4 Mr.Rahul Joshi, learned Counsel for the non applicants, by laying stress on the wording of the arbitration clause, submits that an arbitrator only could be appointed if there was dispute in respect of construction or the BCC (Building Construction Certificate) and not otherwise. It is his contention that no construction work has been done and, there is also no BCC permission. He also submits that the agreement has also come to an end.

5 A perusal of the arbitration clause indicates that it covers disputes regarding construction, BCC, completion of project, or any other thing, which is wide enough to cover any dispute

whatsoever. Merely because, there is an allegation, regarding absence of construction work and BCC, that by itself, would not take away the dispute out of the arbitration clause. So also, even if the agreement of development may have come to an end, it is a settled position of law that the arbitration clause survives. The contention of Mr.Joshi, learned Counsel for the non applicants is, therefore, not correct.

6 In the result, the Application is allowed.

7 Both the learned Counsels are agreeable on the name of Advocate Shri Kishor C. Sant. Shri Kishor C. Sant, advocate, is, therefore, appointed as a sole arbitrator to decide the disputes between the parties hereto. The parties shall appear before the arbitrator, on 30th July, 2021.

8 The application is, thus, allowed in above terms.

(AVINASH G. GHAROTE)
JUDGE

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