

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ARBITRATION APPLICATION NO.37 OF 2020**

M/s. Gurumauli Developers Applicant

V/s.

Shree Omkar Chs. Ltd. and Ors. Respondents

Mr. Mahesh Joshi for applicant.

Ms. Supriya Gurav i/b. Mr. Sachin Bandkar for respondent nos.1 to 4.

CORAM : K.R.SHRIRAM, J.

DATED : 19th JULY 2021

P.C. :

1 Ms. Gurav instructed by Mr. Sachin Bandkar seeks two weeks time to file a reply. Request rejected.

2 This application under Section 11 admittedly was served on respondents sometime in January 2020. Therefore, respondents had almost 1 and ½ years to file a reply.

3 The parties had entered into a Development Agreement dated 24th June 2010. Clause 26 of the said agreement reads as under :

“26. If any dispute arises during the progress of the construction the same shall be referred to an Arbitrator appointed by both the parties and the decision given by the Arbitrator shall be binding on both the parties hereto.”

4 By its notice dated 31st October 2019 (Exhibit “G”), applicant invoked arbitration. In its reply dated 25th November 2019, respondents have not denied the existence of the arbitration agreement but according to

them, they have terminated the agreement. It is settled law that the arbitration agreement is an agreement within agreement and therefore, there cannot be any bar in directing parties to refer their disputes to arbitration.

5 Therefore, keeping open the rights and contentions of the parties, the Court appoints Ms. Sonal, an Advocate practicing in this Court (Address : 4A, Rustom Building, 3rd Floor, 29, V.N. Road, Above Skechers Showroom, Near Akbarallys Men, Fountain, Fort, Mumbai – 400 001, Mobile No.: 9820769305, Email ID : sonal.advocate@gmail.com) as sole Arbitrator to arbitrate on all disputes arising out of and/or in connection with and/or relating to the Development Agreement dated 24th June 2010 and counter claim, if any.

6 The fees to be fixed by the Arbitrator, administrative expenses, typing charges and venue charges to be shared equally between the parties, i.e., 50% by applicant and 50% by respondents and the same shall be subject to cost in the arbitral proceedings.

7 The Arbitrator to communicate in writing to the advocate for applicant with copy to respondent the disclosures as required under Section 11 (8) read with Section 12 (1) of the Arbitration and Conciliation Act, 1996 within two weeks of receiving a copy of this order from any of the party.

8 Application accordingly stands disposed.

(K.R. SHRIRAM, J.)