

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.04.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

O.P.No.168 of 2021

1.Selvakumar

2.Zarina Marie

... Petitioners

Vs.

M/s.Amar Prakash Developers Private Limited,
No.42, Rajendra Prasad Road,
Chrompet,
Chennai 600 044 represented by its
Managing Director.

... Respondent

Prayer: The Petition is filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 to appoint an arbitrator for resolving the dispute between the petitioners and the respondent in pursuant to clause 71 of agreement of project promotion and construction dated 08.03.2016.

For Petitioners : Mr.S.M.Muralidharan

For Respondent : No Appearance

ORDER

The Court notice has been served on the respondent on 16.03.2021. However, there was no appearance on behalf of the respondent either in person or through counsel. In fact the matter had come up on 23.03.2021 and to given an opportunity to the respondent to engage the service of the counsel the matter was adjourned to this date. However, when the matter was called none appeared on behalf of the respondent.

2. This petition is filed for appointing an arbitrator to arbitrate the disputes arisen between the petitioners and the respondent in respect of an Agreement of Project Promotion and Construction dated

08.03.2016.

3. It is the case of the petitioners that they had approached the respondent for buying an apartment in the project “Temple Waves” promoted by them. The petitioners after meeting with the representatives of the respondent had booked an apartment bearing No.G - 229 on the II floor of the Phase III of the project temple waves and a sum of Rs.1,00,000/- was paid as initial payment. The sale consideration for the undivided share of the land was fixed at Rs.5,80,800/- and the cost of construction of the flat and all the amenities were fixed at Rs.25,34,322/-.

4. It is the case of the petitioners that the undivided share of the land was executed in favour of the petitioners under a sale deed dated 10.03.2016 registered as Document No.3556/16. The petitioners have paid the entire consideration to the respondent, despite which possession of the flat was not handed over to them. On the contrary,

on 12.03.2019, the petitioners had received a communication from the respondent demanding a further payment of Rs.4,22,126/- towards alleged delay in making payments. The petitioners refused to make the payments since there was no delay on their part. The petitioners have pointed out that the delay was solely on the side of the respondent in not handing over possession of the flat. The respondent thereafter sent an e-mail dated 25.07.2019 calling upon the petitioners to pay consolidated delay payment of Rs.2,17,000/- and to collect no due certificate and keys. The petitioner refused to make the payment since there is no delay on their part.

5. However, the respondent is refusing to handover possession of the flat despite receiving entire sale consideration. Dispute has therefore arisen between the parties. The petitioners would submit that they had moved an application under Section 9 of the Act in A.No.9360 of 2019 for a direction to the respondent to handover possession of the flat. This Court allowed the said application and

had directed the petitioners to initiate arbitration proceedings within a period of 30 days from the date of receipt of a copy of the order.

6. Thereafter, the petitioners have issued a notice dated 28.12.2020 to the respondent informing them that since they had not initiated the arbitral proceedings as directed by the High Court the petitioners were taking steps to appoint an arbitrator. This notice also did not yield any result and therefore the petitioners are before this Court. The only dispute is whether the petitioner is liable to pay interest on delayed payment if any to the respondent.

7. Considering the fact that the agreement between the parties contemplates resolution of the disputes through arbitral proceedings and taking note of the fact that dispute has arisen this Court is passing the following order:

- i) Mr.Niranjan Rajagopalan, Advocate, F-3, 'Whispering Height'
132, St.Mary's Road, Alwarpet, Chennai – 600018, Mob:

9381803616 is appointed as an Arbitrator.

ii) The arbitrator may, after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of entering reference. It is open to the respondents to raise all legal objections as to the validity of contract.

iii) The arbitrator is at liberty to fix the remuneration and other incidental expenses as per law.

iv) The proceedings may be conducted at the Nani Palkhivala Arbitration Centre, New D.No.22, Karpagambal Nagar, Mylapore, Chennai 600004. The Centre has been recognised as an Institution by orders of the Hon'ble Chief Justice dated 19.09.2005.

8. The Original Petition is ordered leaving the parties to bear their own costs. No costs.

01.04.2021

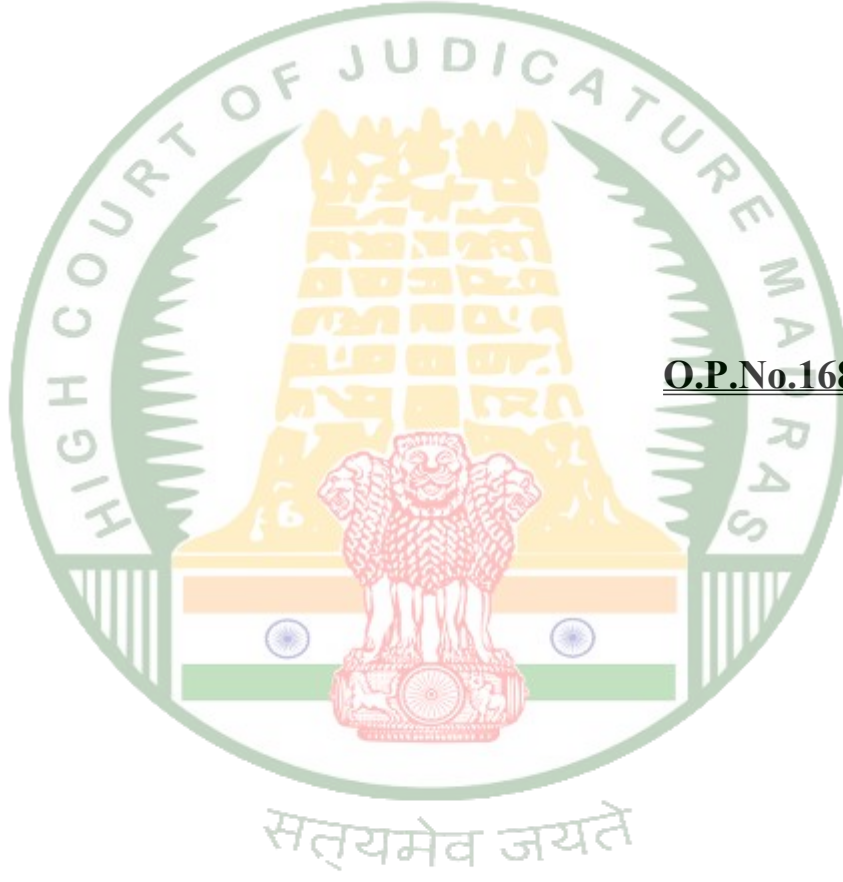
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