

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

O.P.No.381 of 2020

M/s. Siver Oak Apartment Owners
Welfare Association - Selaiyur,
Represented by its Secretary,
Having Office at S.F. No.9,
Velachery Main Road,
Near Camp Road Junction,
Selaiyur, Chennai - 600 073.

... Petitioner

Vs

M/s. Sri Sreenivasa Constructions,
DSR Tranquil, Plot No.901,
#201, Ayappa Society Main Road,
Madhapur, Hyderabad - 500 081.

... Respondent

Prayer : Original Petition filed under Section 11(4) of the Arbitration and Conciliation Act, 1996 to appoint a sole Arbitrator as per Clause 13 of the Construction Agreement between the parties, under Section 11 (4) of the Arbitration and Conciliation Act, 1996.

For Petitioner : M/s. Mahesh Kumar

For Respondent : Mr. Kuberan for
M/s. Rank Associates

ORDER

The above Petition is filed for appointing an Arbitrator to resolve the disputes between the petitioner association and respondent builder.

2. The case of the petitioner is that the property situated at S.F.No. 9, Velachery Main Road, Near Camp Road Junction, Selaiyur, Chennai 600 073 was the subject matter of a Joint Development Agreement between the respondent and the owners. The members of the petitioner Association had purchased apartments in the said property. As per the terms of the contract Agreement entered into between owners of the various apartments and the respondent, it was agreed that the corpus fund collected by the respondent from the owners of the 80 apartments would be handed over to the

Association once it is formed after deducting therefrom any expenses incurred by the respondent. The petitioner would further contend that Clause 13 of the Construction Agreement had also spelt out that in the event of a dispute between the purchaser/owner and the respondent, the parties could jointly appoint a sole Arbitrator. The petitioner-Association would contend that despite the Association having been constituted/formed, the respondent was reluctant to handover the corpus fund to the Association. In the light of this dispute, the petitioner Association had issued a notice naming the Sole Arbitrator as per the provisions of Clause 13 of the Construction Agreement. Despite receiving the said notice, the respondent did not come forward to consent for the appointment of an Arbitrator and therefore the present petition.

3. The respondent, on entering appearance, has filed a counter stating that there is no Arbitration Agreement in existence between the petitioner Association and the respondent. The Construction Agreement has been entered into only with individual flat purchasers and not with the

Association. The respondent has further submitted that there is no dispute between the respondent and the petitioner Association and it is only the respective flat owners who are having disputes with the respondent builder. Therefore the OP deserves to be dismissed.

4. Ms. Rohini Ravi Kumar, learned counsel appearing for the petitioner would submit that the petitioner Association consist of the flat owners and its members and considering the fact that the respondent had undertaken to handover the corpus fund to the Association, which has also been formed, only as per the terms of the Construction Agreement, the petition for appointment of Arbitrator was very much maintainable. She would submit that the Association is itself only a creature of the Construction Agreement entered into between the petitioner and the respective flat owners. She would rely upon the judgment of this Court in OP.No.241 of 2015 wherein in a similar dispute between the flat owners Association and the builder, this Court has proceeded to appoint an Arbitrator to resolve the disputes.

5. Mr, Kuberan, learned counsel appearing for the respondent would submit that there is no Agreement whatsoever between the petitioner Association and the builder. That apart, the Judgment relied upon by the petitioner was a consent order and that cannot be pressed into service in the instant case where there is no consent. In the instant case, there is a dispute between the original owners of the property who continued to retain 42 flats and the other owners of the flats. In fact, the original owners are even questioning the very formation of the petitioner Association. In these circumstances, there can be no consent for appointing an Arbitrator. He would contend that it is only the individual flat owners who could at best raise the claim. He would also rely upon the judgment of the Delhi High Court in "*The Uniworld Garden Apartment Owners Association vs Unitech Realty Private Ltd. reported in [2019 (173) DRJ 345]*" where the learned Judge has observed that the Association, which is an independent legal entity, if it is not a party to the arbitration Agreement, cannot maintain a Petition for appointing an Arbitral Tribunal on the basis of a Construction Agreement entered into with each individual flat owner.

6. Heard the counsels and perused the papers.

7. The document based upon which the petitioner seeks to have the Arbitrator appointed is a Construction Agreement which has been entered into between the respondent and the individual owners, who have entered into the agreement as owners and in pursuance thereof have entered into a sale deed with reference to their undivided share in the suit 'A' schedule property. It is they who have entered into the Construction Agreement with the Builder in respect of their flat which has been described in the 'C' Schedule to the respective Construction Agreement. The petitioner Association is not a signatory to this agreement. It is no doubt true that under the Construction Agreement each purchaser has been directed to become a Member of the society/association of the apartment complex and there is also an undertaking given by the builder namely the respondent herein that they would handover the corpus fund available with them to the association/society so formed. However, the Agreement referring disputes

to Arbitration has been entered into only between the individual apartment owner and the builder. The fact of the instant case is identical to the facts of the matter which had come up for consideration before the Delhi High Court. I also concur with the view taken by the learned Judge of the Delhi High Court. In the result, the OP stands dismissed.

11.01.2021

Index : Yes/No
Speaking order/non-speaking order

To

1. M/s. Siver Oak Apartment Owners Welfare Association - Selaiyur, Represented by its Secretary, Having Office at S.F. No.9, Velachery Main Road, Near Camp Road Junction, Selaiyur, Chennai - 600 073.

2. M/s. Sri Sreenivasa Constructions, DSR Tranquil, Plot No.901, #201, Ayappa Society Main Road, Madhapur, Hyderabad - 500 081.

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P.T.ASHA, J.

mrn



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