

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.10.2021

Coram:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Arb.O.P.No.25 of 2021

Mr.S.R.Varadachari

.. Petitioner

Vs.

M/s.Green Tree Homes and Ventures Private Ltd.,
Rep. by its Director Mr.Sathyamoorthy,
No.13, Sreeman Srinivasan Road,
Alwarpet, Chennai-600 018.

... Respondent

PRAYER : Arbitration Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint a sole Arbitrator to resolve the disputes among the parties arising out of the Development Agreement, dated 15.09.2011 and Agreement for allotment of flat, dated 01.12.2012.

For petitioner : Mr.V.Chandra Prabhu

For respondent : Notice by way of newspaper publication - effected.

No appearance

ORDER

This Arbitration Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, to appoint a sole Arbitrator to resolve the disputes among the parties arising out of the Development Agreement, dated 15.09.2011 and Agreement for allotment of flat, dated 01.12.2012.

2. The petitioner is one of the owners of the flat in Korattur. The petitioner along with other 65 owners, have jointly entered into a development agreement, dated 15.09.2011, wherein the respondent has agreed to carry out the project work of demolishing the existing the whole superstructure belonging to 66 owners situated at East Avenue Periyar Nagar, Block No.M28, M29, 30, M31, M32, M33, 34, M35, 36, 37, 38, Survey No.1216/1b (part), Survey No.1216/1a (Part), Survey No.1227/1 (part), Survey No.1231 (part), Survey No.123 (Part), Survey No.1233/1b (Part), Survey No.1233/1, Survey No.1232 (Part), Survey No.1233 (part), Survey No.1233/2 (part) at Korattur Village, morefully described in Schedule-A of the Development Agreement, dated 15.09.2011.

3. Under the said agreement, dated 15.09.2011, the respondent agreed to construct four storied building in the above said premises making entire capital investment in the said construction and meeting all expenses in demolishing the existing superstructure. It has been mutually agreed between the parties that the respondent had to develop entire property into a residential building as per the specifications stated in Schedule-D of the Development Agreement, dated 15.09.2011. It was also further agreed that the respondent would allot 66 flats totally measuring 89,100 Sq.Ft. of super built-up area to the owners (at the rate of one flat to each owner measuring 1,350 Sq.Ft. of super built-up area along with 66 car parks). Further, 44% of the undivided share out of the total of the extent of property will be given to the owners and the balance 56% of the undivided share shall fall to the share of the developer. As per the agreement, the respondent agreed to pay Rs.12 lakhs as non-refundable security deposit to the owners. Out of Rs.12 lakhs, Rs.2 lakhs has to be paid at the time of execution of agreement, dated 15.09.2011 and the balance Rs.10 lakhs will be paid at the time of handing over of the possession by the respective owners in favour of the builder.

Accordingly, the payment has also been made by the respondent. The respondent agreed to pay Rs.12,000/- as rental compensation which would be paid for the period from the date of handing over of possession of the old flat and until the owners are given the possession of the new flat. Pursuant to the development agreement, dated 15.09.2011, the parties have entered into an agreement for allotment of apartment/flat, dated 01.12.2012, wherein, Flat No.1026 in Block-E, on the first floor, measuring an extent of 1,382 Sq.Ft. had been allotted to the petitioner in the proposed new construction to be carried out by the respondent in the above said premises.

4. It is the further averment of the petitioner in the petition that the entire construction has to be completed within 24 months from the date of receipt of approval from the CMDA. Further, there is a provision in the agreement that the respondent is liable to pay the rental compensation till final completion of the construction of the building. After signing of the allotment agreement, the respondent paid rental compensation for the period of 24 months from January 2013 and thereafter, no payment was made. The commencement of the construction was not started. In spite of letters and e-

mails sent, there was no reply for non-commencement of construction. Though meeting was also conducted by the Directors of the Company during 2018 and 2019, the dispute was not settled.

5. The petitioner had given his original title deed, and when contacted the concerned Bank, it was known to the petitioner that the respondent had taken away the original title deeds deposited in the locker without seeking consent from the owner's representatives.

6. The dispute between the parties was referred to Arbitration as per Clause 12(2) of the Development Agreement and Clause 14 of the Allotment of flat agreement, based upon which, Mr.T.Mohan, Advocate was appointed as Arbitrator on the side of the petitioner to resolve the dispute. Accordingly, letter dated 13.03.2021 was sent to the respondent for their consent, which returned as endorsement "left".

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7. The petitioner came to know that the other owners of the flats have initiated similar arbitration proceedings against the respondent-Company

and they have also obtained Arbitral Award against the respondent-Company. It is also the averment of the petitioner in the petition that there is a dispute between the Directors of the respondent-Company and one of them filed a Civil Suit in O.S.No.6862 of 2015 against the other Directors seeking damages. In the said suit, the plaintiff-Director deposited 66 title deeds belonging to 66 owners in the said suit in order to absolve his liability. Based upon the direction given in the Arbitral Award to return the original title deed to the owners, some of the owners sought return of their original title deeds in the said suit and they have also taken back their original title deeds. Since the petitioner needs to take back his original title deeds, the present arbitration proceedings are initiated.

8. Since the respondent had not provided the consent for appointment of arbitrator, the petitioner has filed this petition for appointment of Arbitrator.

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9. Heard the learned counsel for the petitioner and perused the materials available on record. Though newspaper publication was effected,

none appears for the respondent, inspite of the name also having been printed in the cause list.

10. In view of the fact that there exists an arbitration clause in the agreement, and since the disputes have arisen inter-se the parties and the jurisdiction of this Court having not been disputed, there had arisen a necessity to appoint an Arbitrator. There is also exchange of notice between the parties under Section 21 of the Arbitration and Conciliation Act, 1996.

11. Be that as it may. This Court is in agreement with the submissions made on behalf of the petitioner and the dispute between the parties could be resolved only on appointment of an "Arbitrator". Accordingly:

(a) This Original Petition is allowed.

(b) Hon'ble Mr.Justice A.Ramamurthi (Retired) (with Mobile Number 94440 66306) (Landline No.044-26533838) (Plot No.9 (IHG) TNHB, Phase-II, Nolambur, Mugappair West, Chennai-600 037), is hereby appointed as Arbitrator to enter upon the reference and adjudicate upon the dispute inter-se parties.

(c) The above said learned Arbitrator, shall, after issuing notice to the parties and upon hearing them, pass an order as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this order.

(d) The learned Arbitrator is at liberty to fix his remuneration and other incidental expenses, as per the provisions of the Arbitration and Conciliation Act, 1996.

(e) The expenses incurred for arbitration shall be borne by the respective parties.

(f) The arbitral proceedings shall be conducted under the aegis of the Arbitration Centre of the Madras High Court, High Court Buildings, Chennai and in accordance with the Madras High Court Arbitration Rules.

(g) There shall be no order as to costs in the present O.P.

सत्यमेव जयते

22.10.2021

Speaking Order: Yes
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