

Esha

IN THE HIGH COURT OF BOMBAY AT GOA

**APPLICATION FOR APPOINTMENT OF ARBITRATOR
NO. 4 OF 2022**

MARCELINA FERNANDES & 4 ORS. ... APPLICANTS
VS
GREEN VALLEY REALTORS, REP. BY
ITS PARTNERS & 3 ORS. ... RESPONDENTS

Ms. A. Agni, Senior Advocate with Ms. Jay Sawaikar,
Advocate for the Applicants.

Ms. Suzette Pereira, Advocate for Respondent Nos. 1, 2 & 3.

CORAM: SANDEEP K. SHINDE, J.

DATED: 13 JULY 2022

P.C.

- 1.** Heard Ms. Agni, learned Senior Counsel for the applicants and Ms. Pereira, learned Counsel for respondent nos. 1, 2 and 3.
- 2.** This is an Application for appointment of an Arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996 (Act of 1996, for short).
- 3.** There is no dispute that the applicants and the respondents had entered into an agreement on 02.01.2015, by which, the respondents were required to construct and hand over bungalow,

having a super built up area of 165 square metres and two rooms each, having super built up area of 15 square metres, described in Schedule II, within two years, containing a stipulation that, delay in handing over the possession, the respondents shall be liable to pay damages and rents to the applicants.

4. Certain disputes have arose between the parties, whereupon, by notice dated 31.08.2021, respondents were called upon to complete their part of agreement dated 02.01.2015. The notice was unclaimed. However, the respondent no. 4, replied the notice on 13.12.2021, stating that he had retired from the partnership firm–respondent no. 1 with effect from 08.10.2015.

5. Applicants sent another notice dated 26.11.2021, through their lawyer by post as well as by whatsapp message, in November 2021, invoking arbitration clause no. 21 of the said agreement and proposed the name of Retired Justice Avinash P. Lavande, as the sole Arbitrator to arbitrate their disputes.

6. The said notice was returned unclaimed, however, notice sent on whatsapp was seen by the respondents.

7. The agreement dated 02.01.2015 contains arbitration clause and it reads as under:

“In the event of any dispute or question arising in connection with any of the terms of this Agreement, the same shall be referred to the Arbitrator and the decision of the Sole Arbitrator shall be final. Arbitration proceedings shall be held at Margao and Court in Margao only shall have exclusive jurisdiction.”

8. As neither the notice was responded nor the requisitions contained therein were complied with, the applicants have filed this Application for Appointment of Arbitration, under Section 11 of the Act of 1996.

9. So far as the jurisdiction of the Court under Section 11 of the Act of 1996 is concerned, in the case of **Duro Felguera SA vs. Gangavaram Port Ltd., (2017) 9 SCC 729**, the Apex Court has held that after the amendment, all that the Court needs to see is whether the arbitration agreement exists—nothing more, nothing less. Thus in context thereof, observed that legislative policy and purpose is essentially to minimize the Court's intervention at the stage of appointing the Arbitrator and this intention as incorporated in Section 11(6A), ought to be respected.

10. Therefore, while exercising jurisdiction under Section 11 of the Act of 1996, what is relevant is the existence of the arbitration of the Agreement and further, that the disputes arising from the Agreement, are amenable to arbitration. In this case, all necessary elements to exercise the power under Section 11(6) of the Act, of 1996 are adequately satisfied. The application therefore deserves to be allowed.

11. Hence, the following order :

O R D E R

- (i) Mr. C.A. Coutinho, Advocate, of this Court, is appointed as sole Arbitrator to arbitrate the disputes/claim and counter claims, if any, which arise out of the Agreement dated 02.01.2015.

- (ii) The learned Arbitrator is requested to file his disclosure statement under Section 11(8), read with Section 12(1) of the Act of 1996, within three weeks, with the Registry of this Court and provide copies to the parties.
- (iii) Parties to appear before the sole Arbitrator on the date fixed by him at his earliest conveyance.
- (iv) The application is allowed and disposed of in the aforesaid terms.
- (v) It is clarified that this Court has not gone into the merits and demerits of the disputes between the parties and therefore, all contentions of the parties, on merits, are left open for decision of the Arbitrator in accordance with law and on its own merits.

SANDEEP K. SHINDE, J.

VAIGANKAR
ESHA SAINATH

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