

Prajakta Vartak

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION**

COMMERCIAL ARBITRATION PETITION NO.709 OF 2021

M/s.Grace Estate Development Ventures ..Petitioner

Vs.

Ashish Building No.21 Co-operative
Housing Society Limited ..Respondent

Mr. Mutahhar Khan i/b. Mr. Mohd. Rehan Sayeed Chhapra for Petitioner.
Mr. Roop Vasudeo with Mr. Yashwant Dhanegave for Respondent.

CORAM : G.S. KULKARNI, J.
DATE : JANUARY 14, 2022.

P.C.:

1. I have heard Mr. Khan, learned counsel for the petitioner and Mr. Vasudeo, learned counsel for the respondent on this petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 (for short, “the Act”).

2. After the hearing on this petition progressed for sometime, Mr. Khan, learned counsel for the petitioner states that there is an arbitration agreement between the parties providing for adjudication of the disputes which may arise between the petitioner and the respondent under the Development Agreement dated 22 November, 2005 read with Supplementary Agreement dated 19 December, 2019. Mr. Khan states that the disputes and differences having arisen between the parties, the same can be referred to arbitration by appointing a sole arbitrator. Mr. Khan further states that if an arbitral tribunal is appointed, this petition

be permitted to be withdrawn by the petitioner, with liberty to file an appropriate application under Section 17 of the Act before the arbitral tribunal. Mr. Vasudeo, learned counsel for the respondent, on instructions, fairly agrees that an arbitral tribunal can be appointed.

3. In view of the above consensus between the parties, adjudication of this petition is not called for. It is accordingly disposed of by the following order:-

ORDER

- (i) Mr. Aseem Naphade, Advocate of this Court, is appointed as a sole Arbitrator to arbitrate the disputes and differences between the parties arising under the Development Agreement dated 22 November, 2005 read with Supplementary Agreement dated 19 December, 2019;
- (ii) The learned sole prospective arbitrator, before entering the arbitration reference, shall forward a statement of disclosure as per the requirement of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996, to the Prothonotary & Senior Master of this Court, to be placed on record of this petition with a copy to be issued to both the parties;
- (iii) The petitioner is permitted to withdraw this section 9 petition with liberty to file an appropriate application under Section 17 of the Act to be adjudicated by the learned prospective sole arbitrator;
- (iv) All contentions of the parties in that regard including on merits of the matter are expressly kept open;
- (v) At the first instance, the parties shall appear before the prospective arbitrator within 10 days from today on a date which may be mutually fixed by the prospective sole arbitrator;
- (vi) The petition is disposed of in the above terms. No costs.

(vii) Office to forward a copy of this order to the learned Arbitrator on the following address:

“31, Shanti Building, 3rd floor, Banaji Street, Fort,
Mumbai – 400 001.
Contact No. 22818377.”

(viii) Needless to observe that the arbitration between the petitioner and the respondent shall not affect any proceedings, if initiated by the members of the respondent-society before the Civil Court. All contentions in that regard are expressly kept open.

[G.S. KULKARNI, J.]