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Arb.O.P.(Comm.Div.) No.573 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2022

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Arb.O.P.(Comm.Div.) No.573 of 2022

- 1.Mr.Balakrishnan Anantharaman
Son of Mr.A.Balakrishnan,
Represented by Power Agent,
Mr.Hariharan Parasuram,
Villa No.5, Serene Indus Valley,
Off Siruvani Main Road,
PerurPachapalayam,
Coimbatore - 641 010.
- 2.Mr.Krishnan Hariharan
Son of G.S.Krishna Iyer,
Represented by Power Agent,
Mr.Hariharan Parasuram,
Villa No.7, Serene Indus Valley,
Off Siruvani Main Road,
PerurPachapalayam,
Coimbatore - 641 010.
- 3.Mr.Subramanian Ramachandran,
Son of Mr.Ramachandran Subramanian,
Represented by Power Agent,
Mr.Hariharan Parasuram,
Villa No.9, Serene Indus Valley,
Off Siruvani Main Road,



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- 4.Mrs.Supriya Rajmohan
Wife of Mr.Kalpathi Krishnan Rajmohan,
Represented by Power Agent,
Mr.Hariharan Parasuram,
Villa No.2, Serene Indus Valley,
Off Siruvani Main Road,
PerurPachapalayam,
Coimbatore - 641 010.
- 5.Mr.Chandra S Shekhar
Son of Mr.S.N.Sundaresan,
Represented by Power Agent,
Mr.Hariharan Parasuram,
Villa No.20, Serene Indus Valley,
Off Siruvani Main Road,
PerurPachapalayam,
Coimbatore - 641 010.
- 6.Mr.Narayanaiyer Venkiteswaran,
Son of Venkateshwararaiyar Narayananaaiyar,
Represented by Power Agent,
Mr.Hariharan Parasuram,
Villa No.38, Serene Indus Valley,
Off Siruvani Main Road,
PerurPachapalayam,
Coimbatore - 641 010.
- 7.Mrs.S.Kanammal Devi
Wife of K.R.S.Sadhashivan,
Represented by Power Agent,
Mr.Hariharan Parasuram,
Villa No.39, Serene Indus Valley,
Off Siruvani Main Road,



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8.Mrs.Vijaya Neelakandan
Wife of K.S.Neelakandan,
Represented by Power Agent,
Mr.Hariharan Parasuram,
Villa No.42 & 43, Serene Indus Valley,
Off Siruvani Main Road,
PerurPachapalayam,
Coimbatore - 641 010.

9.Mr.Sekhar Venkatachalam
Son of Mr.K.Venkatachalam,
Represented by Power Agent,
Mr.Hariharan Parasuram,
Villa No.66, Serene Indus Valley,
Off Siruvani Main Road,
PerurPachapalayam,
Coimbatore - 641 010.

10.Mr.Srinivasulu Narayanaswamy
Son of Srinivasalu Naidu,
Represented by Power Agent,
Mr.Hariharan Parasuram,
Villa No.105, Serene Indus Valley,
Off Siruvani Main Road,
PerurPachapalayam,
Coimbatore - 641 010.

11.Mr.T.S.Ramji
Son of T.M.Subramaniam,
Represented by Power Agent,
Mr.Hariharan Parasuram,
Villa No.106, Serene Indus Valley,
Off Siruvani Main Road,



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12.Mrs.Kamini Narasimhan
Wife of Lt.General S.L.Narasimhan,
Represented by Power Agent,
Mr.Hariharan Parasuram,
Villa No.108, Serene Indus Valley,
Off Siruvani Main Road,
PerurPachapalayam,
Coimbatore - 641 010.

13.Deepa Murali
Wife of K.A.Murali,
Represented by Power Agent,
Mr.Hariharan Parasuram,
Villa No.1, Serene Indus Valley,
Off Siruvani Main Road,
PerurPachapalayam,
Coimbatore - 641 010.

14.Padmavathy Rajagopal
Wife of Rajagopal Kittu,
Represented by Power Agent,
Mr.Hariharan Parasuram,
Villa No.6, Serene Indus Valley,
Off Siruvani Main Road,
PerurPachapalayam,
Coimbatore - 641 010.

... Petitioners

VS.

M/s.Columbia Pacific Communities (P) Ltd.,
Formerly known as M/s.Serene Senior Care (P) Ltd.,
Represented by its Chief Executive Officer,



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Corporate Office:
2999, 12th A Main Road,
HAL, 2nd Stage, Indira Nagar,
Bengaluru - 560 008.

Registered Office:
Care of Serene Adinath,
283/1, Ramakrishnan Street,
Chettiar Thottam,
Vandalur, Chennai - 600 048.

... Respondent

PRAYER: Arbitration Original Petition filed under Section 11(6)(a) & (c) of the Arbitration and Conciliation Act, 1996 Rule 2 of the Appointment of Arbitrators of the Madras High Court Scheme, 1996, pleased to appoint an arbitrator for adjudication of disputes arising from and out of the Service Agreements 26.10.2015, 28.09.2016, 14.11.2014, 06.03.2015, 02.03.2015, 23.10.2017, 20.08.2014, 12.06.2014, 02.02.2017, 18.02.2015, 16.10.2014, 02.01.2015 and 05.01.2022, 02.01.2015.

For Petitioners : Mr.Avinash Wadhwani

For Respondent : M/s.Sivakami Shanmugam Pillai



ORDER

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About 14 Villa owners in a senior citizens' retirement home project are the petitioners herein. Each Villa owner entered into identical service agreements with the respondent and Kovai Senior Care Constructions (P) Limited. The petitioners rely on the jurisdiction and dispute resolution clause in each agreement, which is in identical terms. The said clause is set out below:

*"JURISDICTION AND DISPUTE
RESOLUTION:*

i. The agreement is subject to the laws of India and is subject to the jurisdiction of Coimbatore Courts.

ii. In the event of dispute among the parties or differences arising out of, or in connection with this Agreement or with regard to performance of any obligation hereunder by any Party, the parties hereto shall use their best efforts to settle such disputes or difference of opinion by mutual negotiation. Should an Agreement not be reached, any dispute shall be



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referred to the Arbitration of a single Arbitrator to be appointed only by the First Party provided such sole Arbitrator shall not be a person below the rank of a Retired District Judge and who is not employed or a resident in any of the retirement community of the First Party and such Arbitration shall be held in accordance with the provisions of Indian Arbitration and Conciliation Act, 1996. All such Proceedings shall be subject to the exclusive jurisdiction of Courts having territorial jurisdiction over and to the extent and as conferred under the Indian Arbitration and Conciliation Act, 1996 and will be in the Courts at Coimbatore."

2. The petitioners state that a dispute arose between the petitioners and the respondent herein with regard to the fixation of service charges. Therefore, an e-mail of 01.02.2021 was addressed to the respondent. Since the said e-mail did not elicit an appropriate response, a subsequent e-mail of 25.03.2021 was issued. By such e-mail, which was jointly issued on behalf of the 14 petitioners, the arbitration clause was invoked and the name of a



retired Judge of this Court was proposed as arbitrator. By reply dated 06.04.2021, the respondent objected to the proposed arbitral proceedings and contended that it is a non-existent dispute. Hence, this petition.

3. Learned counsel for the petitioner submits that the service agreements are standard form contracts containing identical dispute resolution clauses. He also points out that one Villa owner initiated arbitral proceedings pursuant to an earlier order of this Court and that such arbitral proceedings are underway. Since the respondent herein took the position that any orders passed therein would be binding only on parties thereto, he states that the present petition has been instituted. He points out that the communication dated 01.02.2021 did not result in a conciliated resolution of the dispute and therefore this petition is sustainable.

4. These contentions are refuted by learned counsel for the respondent. Learned counsel submits that the complex consists of 82 fully constructed Villas. Out of the 82 Villa owners, about 67 are not parties to the pending arbitral proceedings or to this petition. As a service provider,



learned counsel submits that service charges should be fixed uniformly for all 82 Villas. Such fixation is not possible unless all 82 Villa owners are joined as parties to proceedings. In this connection, learned counsel relies upon the judgment of the Supreme Court in *Vidya Drolia and others -vs- Durga Trading Corporation (2021)2 SCC 1* and contends that disputes having effect on third parties, i.e. *erga omnes* effect, are not arbitrable. Therefore, she submits that the dispute should be resolved through the residents welfare association or by joining all Villa owners as parties.

5. The undisputed position is that arbitral proceedings are only binding as between the parties thereto. Consequently, any orders passed by the arbitral tribunal will not be binding on Villa owners who are not parties to the arbitral proceedings. As a corollary, it will be open to such non party Villa owners to raise grievances in respect of service charges fixed by the respondent, whether such service charges are fixed pursuant to orders of the arbitral tribunal or otherwise. Since the service agreements with such Villa owners also contain identical arbitration clauses, it will be open to such non party Villa owners to raise disputes and seek resolution through arbitration.



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The above situation, however does not mean that the orders of the arbitral tribunal have *erga omnes* effect.

6. On perusal of the service agreements, it is clear that all the agreements are in identical terms. The dispute resolution clause in the said agreements is also identical. All the petitioners have a common grievance with respect to the fixation of service charges by the respondent. In these circumstances, there is no legal impediment to the constitution of a common arbitral tribunal for the resolution of the dispute arising out of the separate service agreements. Without doubt, it is also appropriate to consolidate such proceedings. The arbitral tribunal was previously constituted under orders of this Court to adjudicate the dispute raised by one Villa owner. It would be appropriate that the learned arbitrator in the said matter is appointed to adjudicate the dispute raised by the petitioners herein also.

7. Subject to the observations contained in the preceding paragraphs, this petition is allowed by appointing Mr.Karthik Rajan, Advocate, Haji



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S.Madhar Sha & Sons Building, 2nd Floor, No.148, Moore Street, Chennai

600 001, Mobile No.9444073830, as the sole arbitrator. The sole arbitrator is called upon to enter upon reference and adjudicate the dispute. If appropriate, this dispute may be consolidated with the dispute which is already pending before learned arbitrator. In such event, learned arbitrator may issue appropriate directions with regard to pleadings and the continuation of proceedings.

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