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AP/497/2021
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE
[Commercial Division]

IDEAL UNIQUE REALTORS PRIVATE LIMITED
VS
JUHI FINALEASE PRIVATE LIMITED AND ANR

BEFORE:

The Hon'ble JUSTICE RAVI KRISHAN KAPUR

Date : 27th March, 2023.

Appearance:
Mr. Suman Dutt, Adv.

Mr. Apurba Kumar Ghosh, Adv.
Mr. R. Ghosh, Adv.
...for the respondents

The Court:- This is an application for appointment of an Arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996 (the Act).

In or about June 2008, the respondent approached the petitioner for having the following premises developed:

- a. Land with structures ad measuring about 62,056.57 square meters equivalent to about 15.33 acres or 46.5 bighas or 927.76 cottahs, situated and lying at Mouza Dasnagar, P.S. Jagacha, Sub Registration District Domjur within the jurisdiction of the Howerah Municipal Corporation, District Howrah;
- b. Land with structures ad measuring 25,574.72 square meters equivalent to about 6.37 acres or 19.11 bighas or 382.2 cottahs situated and lying at Mouza Dasnagar, P.S. Jagacha, Sub Registration District Domjur within the jurisdiction of the Howrah Municipal Corporation, District Howrah.

Subsequently, by a Development Agreement dated July 1, 2008, the petitioner and the respondents entered into an agreement to inter alia develop the abovementioned premises.

Clause 33 of the agreement provides as follows ;

“33.1 Disputes and pre-referral Efforts : The Parties shall attempt to settle any dispute or differences in relation to or arising out of or touching this Agreement or the validity, interpretation, construction, performance, breach or enforceability of this Agreement (collectively Disputes), by way of negotiation. To this end, each of the Parties shall use its reasonable endeavors to consult or negotiate with the other Party in good faith and in recognizing the Parties’ mutual interests and attempt to reach a just and equitable settlement satisfactory to both Parties.

33.2 Referral to Arbitration: If the Parties have not settled the Disputes by negotiation within 30 (thirty) days from the date on which negotiations are initiated, the Disputes shall be referred to and finally resolved by arbitration by an Arbitration Tribunal formed in the manner given below, in terms of the Arbitration and Conciliation Act, 1996.

33.3 Arbitration Tribunal : The Parties irrevocably agree that the Arbitration Tribunal shall consist of the following three Arbitrators [each of whom shall be an Advocate holding a current practicing certificate]:

33.3.1 Appointment by Owners: 1 (one) Arbitrator to be appointed jointly by the Owners.

33.3.2 Appointment by Developer : 1(one) Arbitrator to be appointed by the Developer.

33.3.3 Chairman : The Chairman of the Arbitration Tribunal to be jointly appointed by the above 2 (two) Arbitrators.

33.4 Conduct of Arbitration Proceeding: The Parties irrevocably agree that:

33.4.1 Place : The place of arbitration shall be Kolkata only.

33.4.2 Language : The language of the arbitration shall be English.

33.4.3 Interim Directions: The Arbitration Tribunal shall be entitled to give interim awards/directions regarding the Disputes.

33.4.4 Procedure : The Arbitration Tribunal shall be entitled to avoid all rules relating to procedure and evidence as are expressly avoidable under the law. The arbitration shall otherwise be carried out in terms of and in accordance with the Arbitration and Conciliation Act, 1996 with modifications made from time to time and the provisions of the said Act shall apply to the arbitration proceedings.

33.4.5 Binding Nature : The directions and interim/final award of the Arbitration Tribunal shall be binding on the Parties.”

The agreement contemplates reciprocal obligations of both the parties. It is alleged by both the parties that there have been breach of obligations under the Development Agreement.

By four separate notices all dated 24 July 2019, the respondents demanded compensation from the petitioner alleging breach of the agreement and Rs.50 Crores. The petitioner duly replied to the aforesaid notice.

Disputes and differences having arisen between the parties, by a letter dated 2 August, 2021, the petitioner served a notice under Section 21 of the Act, appointing a nominee Arbitrator and requesting the respondents to nominate an Arbitrator in terms of the agreement. The respondents duly replied to the said notice.

In view of the mandate under section 11 of the Act and the fact that the prescribed time limit to appoint a Nominee Arbitrator under the agreement having expired, I appoint The Hon'ble Justice Bhaskar Bhattacharya (Retd.), former Chief Justice of Gujarat High Court, as Arbitrator on behalf of the owners in terms of the development agreement dated 1 July 2008.

Both the Arbitrators are requested to act in terms of the arbitration clause under the agreement dated 1 July 2008 and appoint a Chairman as expeditiously as possible.

With the aforesaid directions, AP/497/2021 stands allowed.

(RAVI KRISHAN KAPUR, J.)

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