



Gaikwad RD

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
ARBITRATION PETITION NO.183 OF 2022

M/s. Bharat Developers

...Petitioner

Versus

M/s. Lunkad Realty & Ors.

...Respondents

Mr. Pratap Patil for the Petitioner.

None for the Respondent.

CORAM Dr. Neela Gokhale, J.**DATED: 3rd October 2023****PC:-**

1. The Petitioner seeks appointment of Arbitral Tribunal to adjudicate dispute that has arisen under the agreement between the parties dated 24th May 2010.
2. The Respondent has been served and has appeared through Counsel by filing his vakalatnama. However, none appeared for the Respondent today when the matter was called out. There is neither any reply filed by the Respondent till today.
3. There is an agreement executed between the parties on 24th May 2010. The Petitioner claims to be the owner of the land which is the subject matter of the agreement having acquired the same

from erstwhile owner by the registered sale deed. The parties were desirous of developing the land by constructing multi-storied building comprising of flats/units/commercial premises and by sale of such constructed units to potential purchasers. It is the contention of the Petitioner that since the Petitioner was not able to proceed with the development of the land and the Respondent who was also a promoter and a builder had extensive experience in the field of development, they entered into the agreement whereby the Respondent was to undertake the construction work on the land procured by the Petitioner. Terms and conditions were agreed between the parties which formed part of the agreement and the Respondent was to pay 40% gross sale proceed of the flats constructed on the property to the Petitioner. According to the Petitioner, the Respondent was to complete the construction within 39 months from the date of their agreement and also obtain completion certificate from the Pune Municipal Corporation on this October 2018. It is the say of the Petitioner that the Respondent has failed to give true and correct accounts of the gross sale proceeds of the units to the Petitioner and thus a dispute arose between the parties in respect of the accounts and the failure of the Respondent to act in aid of the agreement. There was an exchange of notices and communications between the parties, but the dispute remained unresolved. Ultimately, by notice dated 23rd May 2022, the Petitioner invoked the arbitration clause in the agreement and called upon the Respondent to give consent to the appointment of the arbitrator named in the agreement for adjudication of the dispute.

4. The arbitration clause reads as under:

15.1 All disputes or differences which may arise by and between the parties hereto arising out of the terms hereof or the interpretation of the terms and conditions of these presents or the performance by either of the parties hereto of its / his obligations vis-a-vis the other parties hereto, shall be referred to the Arbitration Committee comprising three Arbitrators viz. (1) Mr. Ashok Mulchand Bora, Advocate and (2) Mr. Vipin Krishnadas Gujarathi, Chartered Accountant and third to be appointed by such Arbitrators. In case of non-availability of any of the aforesaid arbitrators, upon such even the parties hereto shall be entitled to substitute such arbitrator by mutual understanding. The Arbitration proceedings shall be under the provisions of the said Arbitration and Conciliation Act, 1996 and the decision of the said Arbitrators shall be final and binding on the parties hereto. The venue of Arbitration shall be at Pune.

5. Mr. Patil, learned Counsel for the Petitioner states that Mr. Vipin Krishnadas Gujrathi one of the arbitrators named in the agreement has expired and the other arbitrator named Mr. Ashok Mulchand Bora is now a Counsel of the Petitioner firm. It is thus necessary to appoint independent arbitrators to adjudicate the dispute. He thus seeks appointment of the arbitrators as per the agreement.

6. The Respondent has replied to the notice invoking arbitration by notice reply dated 2nd June 2022. The Respondent has shown his readiness and willingness to show the accounts to the Petitioner and has said that there is no requirement to invoke any arbitration. Thus the Respondent has objected to the appointment of arbitrator in its notice reply.

7. There is no affidavit in reply by the Respondent to the present Petition. By order dated 19th October 2022, this Court already issued notice for final disposal. In these circumstances, I pass the following order:

ORDER

1. Smt. Sandhya Gokhale, Advocate and Shri Shivraj P. Kadam Jahagirdar, Advocate are appointed as Arbitrators to enter reference and adjudicate the disputes between the parties out of the Agreement dated 24th May 2010. The seat of the arbitration shall be Pune.
2. The Arbitral Tribunal shall consist of three arbitrators. The two appointed arbitrators shall appoint the third arbitrator as per the procedure under the Arbitration and Conciliation Act, 1996 and within the time stipulated under the Act.
3. The learned Arbitrators shall forward a statement of disclosure as per the requirement of Section 12(1) of Arbitration and Conciliation Act 1996 to the Prothonotary and Senior Master of this Court to be placed on record of this Petition with a copy forwarded to both the parties.
4. At the first instance the parties shall appear before the learned Arbitrator within a period of ten days from the date of uploading of this order or on such date that may be fixed by the Sole Arbitrator.

5. All contentions of the parties on merits of the disputes are expressly left open.
6. The fees payable to the Arbitral Tribunal shall be in accordance with the Bombay High Court (Fee payable to the Arbitrator) Rules, 2018 which shall be borne by the parties in equal proportion.
7. The Petition is disposed of in the above terms. There will be no order as to costs.
8. Office to forward a copy of this order to the learned Arbitrators on the following address:

"Smt. Sandhya Gokhale, Advocate,

Address: 402, Vijaydurg, 115/C,

Prabhat Road, Pune 411004,

Mobile No: 9890997977,

E-mail address: sandhyago@gmail.com

AND

"Shri Shivraj P. Kadam Jahagirdar, Advocate,

SHIVPRASAD, 261/1, Budhwar Chowk,

Chhatrapati Shivaji Maharaj Road,

Near Shrimant Dagdusheth Halwai Ganpati Mandir,

Pune-411 002,

Mobile No.98220 36005, E-mail: shivprasad"

(Dr. Neela Gokhale, J)