

jsn

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO.223 OF 2023

Rahul Bhagchand Dagaliya and Ors. ...Petitioners

Versus

Shivtara Properties Private Ltd. & Ors. ...Defendants

Mr. Aman Dutta with Vinayk Pandit i/b. Ajinkya Udane for the
Petitioners.

CORAM : R.I. CHAGLA J

DATE : 22ND DECEMBER, 2023

ORDER :

1. By this Arbitration Petition, the Petitioner is seeking appointment of Arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996 and in terms of Clause 25 of the First and Second Agreements dated 3rd February, 2017 to resolve the disputes that have arisen between the parties, under the said Agreements, and / or in connection therewith or incidental thereto.

2. The learned Counsel for the Petitioner has referred to the

Digitally
signed by
JITENDRA
SHANKAR
NIJASURE
Date:
2023.12.27
16:59:19
+0530

First and Second Agreement which were executed on 3rd February, 2017 and 24th August, 2020. He has submitted that the purpose of executing the Second agreement which is in relation to the same project and identical to the First was in order to have it duly stamped and registered. There is an arbitration clause in the First and Second Agreements by which the parties have agreed to refer their disputes to a Sole Arbitrator appointed by the Purchasers and the decision of such Arbitrator shall be binding on both the parties.

3. The learned Counsel for the Petitioner has thereafter referred to the notice invoking arbitration dated 22nd August, 2023 wherein the disputes have been mentioned and the Respondents has been called upon to consent to the appointment of the named arbitrator for adjudication of the disputes. The Respondents have responded on 1st September, 2023 to the notice invoking arbitration. The Respondents have not denied the validity of the arbitration agreement but have merely responded on the merits of the disputes.

4. The learned Counsel for the Petitioners states that Respondents have been served with the Arbitration Petition and notice of today's date, when the matter has been circulated. In spite of

service, they have remained absent.

5. Having considered that there is an arbitration clause i.e. Clause 25 of the First and Second Agreements dated 3rd February, 2017 and 24th August, 2020 respectively as well as the fact that the Petitioners have issued notice invoking the arbitration on 27th August, 2023 and which has been replied to by the Advocates for the Respondents on 1st September, 2023, there appears to be a dispute that has arisen under the First and Second Agreements. Further, in the Reply to the notice invoking arbitration dated 1st September, 2023, only the merits of the disputes have been gone into but there is no denial of the arbitration agreement. Further, it appears that there was a Special Civil Suit No.1531 of 2021 filed by the Petitioners against the Respondents which was referred to the Lokadalat. By order dated 11th February, 2023, the Head of the Panel of the Lokadalat had disposed of the same as withdrawn in view of the compromise memo and permission granted to the Plaintiff to file the Petition before appropriate forum within the time prescribed. Accordingly, the present Petition is filed.

6. In view thereof, the relief sought for in the Arbitration

Petition is required to be granted by appointing an Arbitrator as sought for in prayer Clause (a) of the Arbitration Petition. The Respondents have been served and inspite of service the Respondents have chosen not to remain present.

7. Accordingly, the following order is passed:-

(i) (Dr.) Smt. Shalini Phansalkar-Joshi (Retired High Court Judge) is appointed as a Sole Arbitrator to decide the disputes in terms of Clause 25 of the First and Second Agreements dated 3rd February, 2017 and 24th August, 2020 and for resolving the disputes that have arisen between the parties, under the said Agreements, and / or in connection therewith or incidental thereto.

(ii) The venue of arbitration shall be in Pune.

(iii) Office to inform the Sole Arbitrator regarding her appointment.

(iv) The Sole Arbitrator is requested to file her Disclosure

Affidavit of Arbitration under Section 11(8)(i) of the Arbitration and Conciliation Act, 1996 within a period of three weeks from the date of receipt of the notice issued by the Registrar Judicial-I and provide copies to the parties.

(v) Parties to appear before the Sole Arbitrator on the date fixed.

(vi) Fee applicable to the Sole Arbitrator will be in accordance with the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018.

(vii) Arbitration Petition is disposed of in the above terms.

viii) No costs.

[R.I. CHAGLA J.]