



Arb.O.P.(Comm.Div.)Nos.128 & 129 of 20__

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.06.2023

Coram

The Honourable Mr.Justice KRISHNAN RAMASAMY

Arb.O.P.(Comm.Div.)Nos.128 & 129 of 2023

Anupama V.Rao

...Petitioner in both petitions

Versus

Puravankara Limited
Formerly known as Puravankara Projects Ltd.,
Head Office at No.130/1, Ulsoor Road,
Bengaluru, Karnataka – 560 042
and having branch office at
No.33, 2nd Street,
South Beach Avenue, MRC Nagar,
R.A.Puram, Chennai – 28.

...Respondent in both petitions

Common Prayer:

Original Petitions filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 for the following reliefs:

(i) To appoint an Arbitrator to adjudicate the disputes between the petitioner and the respondent in terms of the arbitration agreement dated 22.06.2007 and

(ii) To direct the respondent to pay the cost of the present petition.

For Petitioner in both O.Ps : Mr.M.S.Seshadri

For Respondent in both O.Ps : No Appearance



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COMMON ORDER

The present petitions have been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint an Arbitrator to adjudicate the disputes between the petitioner and respondent arising out of the Agreement for Sale dated 22.06.2007 and Construction Agreement dated 22.06.2007.

2. The learned counsel for the petitioner submitted that the respondent is a real estate developer who constructs residential apartments for sale. During the year 2007, the petitioner approached the respondent for purchase of a two-bedroom apartment at 'Purva Swanlake' residential project promoted by the respondent at Old Mahabalipuram Road, near Kelambakkam Village, Chengalpattu Taluk, Kanchipuram District. Believing that the respondent would deliver the apartment on time, the petitioner booked the apartment bearing No.804 in 'B' Block 8th Floor having a built-up area of 1077 Sq.ft and common area of 235 Sq.ft along with 1 covered car park and undivided share in the land corresponding to the said apartment, by paying the Booking Amount of Rs.1,00,000/- on 09.06.2007. The total



consideration of the said apartment is Rs.52,74,960/-. Pursuant to the booking of apartment, the petitioner entered into a Sale Agreement dated 22.06.2007 and Construction Agreement dated 22.06.2007 with the respondent, for purchase of undivided share for a value of Rs.26,63,360/- and for construction of the said apartment for Rs.26,11,600/-. Under the said Construction Agreement, the respondent agreed to complete the construction of said apartment and hand over the same to the petitioner on or before 31.05.2010, failing which, the respondent agreed to pay the petitioner a sum of Rs.5,000/- per month from 31.05.2010 to the date of completion of the work.

2.1. To purchase the aforesaid apartment, the petitioner approached the Housing Development Finance Corporation Ltd., (HDFC) for financial assistance. The HDFC vide Letter dated 13.11.2007, sanctioned a sum of Rs.45,00,000/- as Housing Loan to the petitioner, pursuant to which, petitioner, respondent and HDFC were entered into a Tripartite Agreement dated 21.11.2007. As per the said Tripartite Agreement, the loan amount was to be disbursed directly to the respondent.

2.2. On behalf of the petitioner, the respondent regularly received the



installments from HDFC, however, the respondent did not provide any updates to the petitioner regarding the construction of the apartment purchased by her. The respondent had received a sum of Rs.34,41,566/- towards the sale consideration but they did not hand over the apartment to the petitioner on 31.05.2010 as promised earlier. Aggrieved over the act of respondent, the petitioner instructed HDFC not to make any further payments to the respondent. The petitioner continued to repay the interest of Rs.35,000/- per month to the HDFC towards the amounts received by the respondent from HDFC. While so, the respondent vide Letters dated 29.08.2012 & 04.03.2023, demanded the petitioner to pay the balance sale consideration of Rs.19,16,859/-. Thereafter, the respondent vide communication dated 01.07.2013, demanded the petitioner to pay a sum of Rs.19,16,859/- towards installment dues and Rs.12,12,593/- towards interest for delayed payment. Then, the respondent vide e-mail dated 02.06.2014, demanded the petitioner to pay a sum of Rs.16,27,621/- as interest for delayed payment over and above the balance installments for a sum of Rs.19,16,859/-, however, the petitioner refused to pay interest for delayed payment.

2.3. Subsequently, the respondent vide Letter dated 12.06.2014,



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demanding the petitioner to pay a sum of Rs.1,00,000/- towards late payment charges, for which, the petitioner vide e-mail dated 25.04.2017, requested the respondent to cancel the booking of apartment and refund the amount paid by her. Even then, the respondent vide notice dated 19.01.2019, called upon the petitioner to pay a sum of Rs.44,32,659/- together with interest at the rate of 10.55% amounting to a total due of Rs.44,37,045/-, within seven days from the date of receipt of the notice. In the said notice, the respondent has acknowledged that they received a sum of Rs.34,81,816/- from the petitioner.

2.4. The learned counsel further submitted that till date, the petitioner has paid Rs.39,86,252/- towards interest and Rs.14,74,397/- towards repayment of principal amount to HDFC incurring total payment of Rs.52,60,649/-. Though the petitioner was willing to pay the balance consideration to the respondent in the year 2014, the respondent failed to hand over the apartment to the petitioner. Now, the respondent is liable to repay the petitioner a sum of Rs.34,81,816/- along with interest. Hence, the petitioner sent a legal notice dated 20.01.2022 to the office of the respondent. However, the respondent did not send any reply to the said



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2.5. The learned counsel also submitted that as per Clause 26 of the Sale Agreement dated 22.06.2007 and Clause 31 of the Construction Agreement dated 22.06.2007 entered into between the petitioner and respondent, any disputes arising between the parties in relation to the terms of the said agreements shall be settled by a Sole Arbitrator as per the provisions of the Act. For better appreciation, Clause 26 of the Sale Agreement dated 22.06.2007 and Clause 31 of the Construction Agreement dated 22.06.2007 are extracted hereunder:

“Clause 26 of the Agreement for Sale dated 22.06.2007 :-

The parties agree that all or any disputes arising out of or touching upon or in relation to the terms of this agreement including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties shall be settled amicably by mutual discussion failing which the same shall be settled through arbitration. The arbitration shall be governed by Arbitration and Conciliation Act, 1996 or any statutory amendments/modifications thereto for the time being in force. The arbitration proceedings shall be held at an appropriate location in Chennai in English language by a mutually agreeable Sole Arbitrator. The decision of the Arbitrator so appointed shall be binding on the parties and the Courts in Chennai shall alone have



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jurisdiction in this regard.”

“Clause 31 of the Construction Agreement dated 22.06.2007:-

In the event of any dispute or difference arising between the parties hereto in regard to any matter relating to or connected with this Agreement or the construction of the Apartment, the same shall be referred to Arbitration in accordance with Arbitration Act and decision of the Arbitrator shall be final and binding on both the parties. The venue of Arbitration shall be Chennai. Arbitration proceedings shall be carried out in English language. Only the Courts in Chennai shall have jurisdiction in this regard.”

Hence, the petitioner vide Arbitration Notices dated 27.04.2022 & 16.12.2022, called upon the respondent to mutually appoint a sole arbitrator for adjudicating the dispute between the parties. Even after the receipt of said notices, the respondents did not sent any reply to those notices. Therefore, left with no other alternative, the petitioner has filed the present petitions for the aforesaid relief.

3. Despite the service of notice and name of the respondent is being printed in today's cause list, none appeared on behalf of the respondent. This shows that the respondent is not interested in prosecuting the case.



4. Heard the learned counsel for the petitioner and perused materials placed before this Court.

5. Upon perusing the materials and hearing the submissions made by the learned counsel for the petitioner, it is crystal clear that the dispute involved herein is arbitrable as per Clause 26 of the Sale Agreement dated 22.06.2007 and Clause 31 of the Construction Agreement dated 22.06.2007 entered into between the petitioner and respondent. Hence, this Court is inclined to pass the following order:

(i) **Mr.V.Inbavijayan, Advocate, G-2, Plot No.108, Majestic Colony, Valasarawakkam, Chennai – 600 087, Mobile No.9840114287** is appointed as Arbitrator to enter upon reference and adjudicate the dispute *inter se* the parties.

(ii) The learned Arbitrator shall pass award within a period of six months from the date of receipt of a copy of this order, only after issuing notice to the parties and hearing them.

(iii) The parties shall pay fees and other incidental charges to the learned Arbitrator fixed by him, equally.

(iv) In the event of non-appearance of the respondent before the



learned Arbitrator, petitioner shall pay the entire remuneration and other expenses at first instance and thereafter, petitioner can recover the same directly from the respondent.

6. Accordingly, this petition is ordered. The parties shall bear their own costs. Since this Court has appointed the Arbitrator, it is open to the petitioner as well as the respondent to seek other reliefs under the provisions of Arbitration and Conciliation Act 1996, before the Arbitrator.

08.06.2023

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Index : Yes/No

Speaking Order (or) Non-Speaking Order

Note to Registry: Issue order copy on 12.07.2023



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KRISHNAN RAMASAMY, J.

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