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O.P.No.819 of 20--



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.04.2023

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The Honourable Mr.Justice KRISHNAN RAMASAMY

O.P.No.819 of 2019

M/s.Capital One Housing and infrastructure
Development Pvt. Ltd.,
Represented by its Power Agent,
Vide Special Power of Attorney dated (26.10.2015)
Mr.K.Muhammed Riyaz,
S/o. Mr.P.V.Kumar,
No.4, Krishna Street, T.Nagar,
Chennai – 600 017.

...Petitioner

Versus

M/s.Green Peace Constructions Pvt. Ltd.,
Represented by its Managing Director,
Mr.P.R.Earnast,
Having Office at
No.10, Natesan Salai, Ashok Nagar,
Chennai – 600 083.

...Respondent

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

- (a) To appoint an arbitrator to adjudicate on the disputes between the petitioner and the respondent and
- (b) Award costs of the petition.



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O.P.No.819 of 20--

For Petitioner : Mr.Leelesh Sundaram

For Respondent : No Appearance

ORDER

The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as 'Act') praying to appoint an Arbitrator for adjudicating the dispute between the petitioner and the respondent.

2. The learned counsel for the petitioner submitted that the petitioner is a company engaged in the business of Housing and Infrastructure Development. The petitioner and the respondent had entered into a Sale Agreement dated 01.06.2012, wherein, the respondent had agreed to develop the property to a total extent of about 8,77,576 Sq.ft. of the total Enclave and the parties had fixed a sum of Rs.3,00,00,000/- as total sale consideration to the said agreement. Under the said Sale Agreement, the respondent had agreed to pay the total sale consideration amount to the petitioner, within a period of six months from the date of execution of the said Sale Agreement. However, out of the total sale consideration amount,



the respondent had paid only Rs.2,00,00,000/- to the petitioner. The respondent had raised some queries in weekly basis and the same was properly responded by the petitioner. While so, the respondent mentioned that the plots cannot be sold easily due to the access issue in the layout. Hence, in order to resolve this issue, the petitioner and the respondent had entered into a Supplementary Agreement dated 01.08.2012. The time as specified in the Agreements entered had lapsed but the respondent had neither sold the plots nor provided the entire sale consideration to the petitioner.

2.1. Thereafter, the parties have entered into an Additional Supplementary Agreement dated 01.04.2013, in and by which, 6 months time extension was provided by the petitioner to execute the terms and conditions as mentioned in the Sale Agreement. Even after the extension of time, there was no proper response from the respondent. Hence, the petitioner requested the respondent to hand over the possession of property. In such circumstances, the respondent sought a final opportunity to finalize the project. Therefore, the petitioner had created an Addendum to Memorandum of Understanding dated 22.05.2011, Additional



Supplementary Agreement dated 01.04.2013, Supplementary Agreement dated 01.08.2012 and Sale Agreement dated 01.06.2012 on 01.04.2014, fixing the duration to finish the remaining works as pending. Subsequently, the petitioner company vide Special Power of Attorney dated 26.10.2015, appointed one Mr.K.Muhammed Riyaz as its Attorney. Even after the creation of said Addendum, the respondent sought for extension of time. Hence, the aggrieved petitioner had filed an Original Petition in O.P.No.607 of 2016, seeking to appoint an Arbitrator to adjudicate the dispute between the parties. This Court vide order dated 07.10.2016, allowed the said petition and appointed the Hon'ble Retired Justice of this Court Late.Justice K.Sampath as Sole Arbitrator to adjudicate the dispute between the parties. However, the said Sole Arbitrator has died during the arbitration proceedings. After the demise of said Sole Arbitrator, this Court vide its order in O.A.No.1178 of 2015 appointed the Hon'ble Retired Justice of this Court Mr.Justice P.Devadoss as Sole Arbitrator, for adjudicating the dispute. However, later, the said Sole Arbitrator had been appointed as Lokayukta by the Government.

2.2. As per Clause 23 of the aforesaid Addendum Agreement, if any



dispute arose between the parties in connection with the said project or its performance, the same shall be settled by a Sole Arbitrator as per the provisions of the Act. For better appreciation, Clause 23 of the Addendum Agreement is extracted hereunder:

“23. In the event of any dispute or difference arising between the parties as to their respective rights or obligations in terms hereof or with regard to validity, interpretation, implementation or alleged breach of the terms of this agreement or incidental hereto including any dispute as to the existence or validity hereof, the parties shall attempt in the first instance to resolve such dispute through negotiation. If the dispute is not resolved through negotiation within 30 days after the commencement of such negotiation or such longer period as the parties may agree in writing, then such dispute or differences shall be referred to arbitration by a Sole Arbitrator agreed and appointed by the Developer to the dispute. The venue of the arbitration proceedings shall be Chennai, India and shall be governed by the rules of the Arbitration and Conciliation Act of 1996. The decision of the sole arbitrator shall be final and binding on all parties to this agreement. The language used in the arbitration shall be English.”

Hence, the petitioner vide legal notice dated 16.08.2019, seeking the consent of the respondent for appointment of Sole Arbitrator to adjudicate the dispute between the parties, within 15 days from the receipt of that notice.



However, the respondent has not sent any reply to the said legal notice.

Therefore, left with no other alternative, the petitioner has filed the present petition 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.

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 23 of the Addendum Agreement dated 02.04.2014. Hence, this Court is inclined to pass the following order:

(i) **Hon'ble Retired Justice of this Court Mr.Justice M.Vijayaraghavan, New No.2, Old No.15, T.V.Naidu Road, Flat No.2B, Abirami Foliage, Chetpet, Chennai – 600 031, Mobile No.9003268968** is appointed as the Arbitrator to enter upon reference and adjudicate the dispute *inter se* the parties.



O.P.No.819 of 20--

WEB COPY

(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.

06.04.2023

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Index : Yes/No

Speaking Order (or) Non Speaking Order

Note: Issue order copy on 17.04.2023



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O.P.No.819 of 20--

KRISHNAN RAMASAMY, J.

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O.P.No.819 of 2019

06.04.2023