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Arb.O.P.No.42 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2023

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Arb.O.P.No.42 of 2022

M/s.Color Avenue Residents Owners Welfare Association
Perumbakkam
Represented by its Secretary,
Nookampalayam Main Road,
Perumbakam,
Chennai 600 100

... Petitioner

VS.

M/s.Color Homes Developers Pvt. Ltd.
Represented by its Managing Director
No.37, 6th Street, 'A' Block,
Anna Nagar (East),
Chennai 600 102.

... Respondent

PRAYER: Arbitration Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, pleaded to appoint a Sole Arbitrator to decide the disputes that have arisen between the Petitioner and the Respondent under the Construction Agreement dated 20.11.2015 and thus render justice.



Arb.O.P.No.42 of 2022

For Petitioner : Mrs.Dakshayani Reddy, Senior Counsel
for Ms.Shoba Srikanth

For Respondent : Mr.AR.L.Sundaresan, Senior Counsel
for M/s.L.Palanimuthu

ORDER

The petition has been presented by M/s.Color Avenue Residents Owners Welfare Association on behalf of individual apartment owners. The petitioner seeks the constitution of an arbitral tribunal to adjudicate the disputes arising out of the construction agreement between the individual apartment owners and the respondent.

2. The admitted position is that a construction agreement was executed by and between each individual apartment owner and the respondent and all the construction agreements are in identical terms. The agreements contain an arbitration clause, which is as under:

“13. ARBITRATION:

13.1 All disputes, controversies or differences which may arise between the parties herein out of or in relation to or in connection with this agreement, the interpretation thereof, or its breach that have not been



resolved between the parties by mutual discussions shall be referred to arbitration. The venue of the arbitration shall be CHENNAI and the proceedings shall be English language and in accordance with and subject to the provisions of the Arbitration & Conciliation Act, 1966, or any modification or re-enactment thereof for the time being in force.”

3. The respondent initially opposed this petition on the ground that there is no arbitration agreement between the petitioner and the respondent. In response to the said contention, the petitioner relied upon Section 17 of the Tamil Nadu Apartments Ownership Act 1994 and the decision of this Court in *Bollineni Hillside Residential Township Owner's Association v. BSCPL Infrastructure Limited* 2016 SCC OnLine Mad 28001. This contention was countered by the respondent by pointing out that Section 17 does not empower the petitioner to institute or prosecute arbitral proceedings on behalf of apartment owners.

4. In course of one of the earlier hearings, in response to a query as to whether the apartment owners would be ready and willing to execute



Arb.O.P.No.42 of 2022

powers of attorney authorising the petitioner to institute and prosecute the proceedings as agent of the relevant apartment owners, learned counsel for the petitioner took time to obtain instructions.

5. Upon obtaining instructions, learned senior counsel for the petitioner states that 51 apartment owners have executed powers of attorney authorising the Association to institute and prosecute the proceedings. In addition, 31 apartment owners have issued e-mails confirming that the association may institute and prosecute such proceedings. It is further stated that most, if not all, of the remaining apartment owners would also be providing powers of attorney along the same lines.

6. On instructions, learned counsel for the respondent submits that the respondent is ready and willing to proceed with the arbitration provided the petitioner is authorised as an agent by all the apartment owners to institute and prosecute such proceedings and subject to the condition that the individual apartment owners, who execute such powers of attorney, should not have independent recourse.



7. Once the petitioner is constituted as the agent of the individual apartment owners, there is no impediment to the institution and prosecution of proceedings by the petitioner as agent of the individual apartment owners. Only one other impediment remains: ordinarily, the proceedings between each individual apartment owner and the respondent would be a separate reference. On instructions, both parties agree that the arbitral tribunal may consolidate the proceedings.

8. For reasons set out above, this petition is allowed by appointing Mr.M.K.Kabir, Senior Advocate, mobile no.9840044258 as the sole arbitrator to adjudicate the disputes between the owners of the apartments in the apartment complex styled as “COLOR AVENUE RESIDENTS OWNERS WELARE ASSOCIATION PERUMBAKKAM” and the respondent. Based on the agreement between the parties, the arbitral tribunal may consolidate the proceedings.

9. As a pre-condition, the apartment owners shall execute powers of attorney authorising the petitioner to institute and prosecute the proceedings



Arb.O.P.No.42 of 2022

on their behalf. Such powers of attorney shall expressly state that the individual apartment owner has no individual recourse in respect of the dispute raised before the tribunal. The fees and expenses of the arbitral tribunal shall be fixed in consultation with the parties.

03.03.2023

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Index : Yes / No

Internet : Yes / No



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Arb.O.P.No.42 of 2022

SENTHILKUMAR RAMAMOORTHY,J

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Arb.O.P.No.42 of 2022

03.03.2023