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Arb..O.P(Com.Div). No.123 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P(Com.Div).No.123 of 2023

V.Sivamadhavi

... Petitioner

Vs.

1.Ashok Mahendru

2.T.C.Anantharaman

3.Saranpreet Pasricha

4.Angad Pasricha

5.M/s.Arihant Foundations and Housing Limited,
Represented by its Director,
New No.3, Old No.25, Ganapathy Colony,
3rd Street, Cenotaph Road,
Teynampet, Chennai – 600 018.

... Respondents

Prayer: Original Petition is filed under Section 11(4) of the Arbitration and Conciliation Act, 1996, praying to appoint an Arbitrator in terms of Section 11(4) of the Arbitration and Conciliation Act, 1996 on behalf of the Respondents and to resolve the disputes that have arisen between the Petitioner



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and the Respondents.

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For Petitioner : Mr.M.L.Ganesh

For Respondents : Mr.S.S.Rajesh for R1 to R4

: Ms.Aishwarya for R5
representing M/s.R & P Partners

ORDER

This petition has been filed under Section 11(4) of the Arbitration and Conciliation Act, 1996. The petitioner and the respondent Nos.1 to 4 have signed a sale agreement dated 10.12.2021. The dispute between the petitioner and the respondent Nos.1 to 4 is to be governed by Clause 40 is to be resolved through Arbitration in terms of Clause 40 of the sale agreement dated 10.12.2021. Clause 40 of the sale agreement dated 10.12.2021 reads as under:

“Clause 40. In case of any dispute arising between the Developer and the Purchaser or any issue under this Agreement, the Parties have agreed to refer the same to an Arbitrator to be appointed mutually.”

2. It appears that several communications have been exchanged in this regard between the parties. The applicant wants to resolve the dispute through



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arbitration. It is noticed that respondent No.5 is not a party to the arbitration agreement dated 10.12.2021.

3. The case of the petitioner appears to be that the fifth respondent has been authorized by the respondent Nos.1 to 4 and it is the fifth respondent who is primarily responsible for the dispute between the parties hereto. Although dispute between the petitioner and the respondent Nos.1 to 4 is arbitrable in terms of Clause 40 of sale agreement dated 10.12.2021, question of appointing an arbitrator to resolve the *inter se* dispute between all the parties cannot be allowed under Section 11 of the Arbitration and Conciliation Act, 1996, since the fifth respondent is not a party to the Agreement. Unless the fifth respondent also consents for arbitration, there is no scope for appointing an arbitrator. Therefore, this petition is liable to be dismissed.

4. Accordingly, this Arbitration Original Petition stands dismissed. No costs.

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C.SARAVANAN, J.

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