

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
ARBITRATION PETITION NO.126 OF 2021

Gulab Namdev Mhatre @ Gulab .. Petitioners
Jaywant Mali & Ors.

Versus

M/s Built Charms, Partnership Firm .. Respondents
& Ors.

...

Mr.Rahul S. Kadam for the Petitioners.

Mr.B.M.Kazi for the Respondent Nos.1 to 3.

...

CORAM: BHARATI DANGRE, J.
DATED : 09th JANUARY, 2024

P.C:-

1. The learned counsel for the Respondent has invited my attention to an order passed in Civil Misc. Application No.105 of 2022, which has recorded certain developments subsequent to the execution of the Development Agreement.

Paragraph 9 clearly record that on the date of passing of the order, in the wake of the release deed, the name of the Applicants have been deleted from the revenue record by mutation entry No.1414 dated 10/11/2020 and in fact it is alleged that the Applicants have intentionally not disclosed this aspect. It is also specifically recorded that the Applicants have suppressed the material facts from the Court while filing

Petition under Section 9 of the Arbitration and Conciliation Act and a concluding remark is to the following effect :-

“The existence of these documents, prima facie, show that the Applicants are no more beneficiaries under the Development Agreement executed in favour of the Non-Applicant Nos.1 to 3. So long as the power of attorney and release deed are not declared null and void, as being executed by playing fraud upon the Applicants, it cannot be ignored. If the Applicants could have disclosed the existence of these documents, probably they would face difficulty in claiming the relief under Section 9. Therefore, suppression of these documents from the Court shows malafides of the Applicants. Therefore, it clearly appears to me that no cause of action to file an application under Section 9 of the Act.”

This is what precisely the learned counsel for the Respondents has to submit.

2. Conceding to the said position that the order passed on 17/01/2023 by the District Judge-2, Kalyan is not subjected to further challenge, the learned counsel for the Petitioners does not press the present Petition, seeking appointment of the sole Arbitrator, but he reserve his liberty to initiate appropriate proceedings, assailing the said order though not at this stage restricted to seeking appointment of an Arbitrator.

Accepting the aforesaid statement, Arbitration Petition No.126 of 2022 stands disposed off, with liberty as prayed for.

(SMT. BHARATI DANGRE, J.)