

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMM. ARBITRATION APPLICATION NO.158 OF 2024

Ghanshyam R. Upadhyay & Others .. Applicants.

v/s.

Sakshi S. Dani-Jain .. Respondent.

Mr. Darshit K. Jain with Mr. Udit Raghuwanshi i/b. Divya Jain, for the Applicant.

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CORAM: FIRDOSH P. POONIWALLA,J.
DATE : 9th SEPTEMBER, 2024.

PC:-

This Application has been filed under the provisions of Section 11 of the Arbitration and Conciliation Act, 1996 (“the Act”), seeking appointment of an Arbitrator to arbitrate upon all disputes and differences arising between the parties under the Development Agreement dated 22nd February, 2011 entered into between the parties (the “said Agreement”).

2 The said Agreement was entered into for development of land at Dahisar owned by the Applicants. The said land was to be developed by the Respondent by demolishing a bungalow which stood on the said land. The said Agreement also provides that the Respondent would hand over three floors in the building to be constructed on the said land to the Applicant. Further, it was also provided that car parking would be shared on a 50-50 basis. The said Agreement further provides that additional benefits of FSI would be shared equally between the parties. Under the

said Agreement, the Respondent was to obtain an Occupation Certificate within 24 months. The said Agreement also provided that the Respondent would not give possession of any units to any purchaser unless they handed over the duly constructed premises to the Applicants, as provided under the said Agreement. Clause 37 of the said Agreement contains an Arbitration Agreement between the parties, which reads as under:-

“ It is expressly agreed that if any dispute or differences arises as between the parties hereto with respect to the subject matter of this Agreement or any Supplemental Agreement in furtherance hereto and/or for the interpretation of or enforceability of any terms or clause/ clauses hereof, the parties shall appoint one arbitrator by the consent of both parties or each party shall appoint the respective Arbitrator and the Arbitrator shall appoint an Umpire under the provisions of the Arbitration and Conciliation Act, 1996 and the decisions of the Arbitration shall be final and binding. Notwithstanding the pendency of the Arbitral proceeding before the Forum, the parties shall continue to perform their part of the obligations and complete the construction, obtain Occupation Certificate and hand over possession to the respective flat Purchasers. All parties to the Agreement shall comply with their part of the obligations herein duly and punctually.”

3 It is the case of the Applicants that the Respondent has committed various breaches of the said Agreement, including stopping payment of compensation for alternate temporary accommodation to the Applicants and giving possession of one floor, which was to be handed over to the Applicants, to a third party, unauthorizedly.

4 In these circumstances, as disputes and differences had arisen between the parties, by a letter dated 23rd February, 2024 addressed to the

Respondent, the Applicant set out the breaches committed by the Respondent and invoked Arbitration under Clause 37 of the said Agreement. The said letter has been duly served on the Respondent. However, the Respondent has not responded to the same.

5 In these circumstances, the Applicant has filed the present Arbitration Application.

6 The Respondent has been served a copy of this Application and an Affidavit of Service dated 17th August, 2024 has been filed on behalf of the Applicants, proving service of the Application on the Respondent. Despite the same, the Respondent has chosen to remain absent.

7 From what is narrated herein above, it can be seen that there is a valid and binding Arbitration Agreement between the parties as contained in Clause 37 of the said Agreement. The letter dated 23rd February, 2024 issued by the Applicants clearly shows that disputes and differences have arisen between the parties. By the said letter, the Applicants have invoked Arbitration and called upon the Respondent to consent to the appointment of an Arbitrator but the Respondent has failed and neglected to do so.

8 In these circumstances, an Arbitrator will have to be appointed to arbitrate upon the disputes and differences arising between the parties under the said Agreement.

9 In the light of the aforesaid discussion and for the aforesaid reasons, the following orders are passed:

- (a) Ms. Azmin Irani, an Advocate practising in this Court, is appointed as the Arbitrator to arbitrate upon the disputes and differences arising between the parties under the said Development Agreement dated 22nd February, 2011. The contact details of Ms. Azmin Irani, who is appointed as an Arbitrator, are as under:-

Name	:-	Ms. Azmin Irani, Advocate
Mobile No.	:-	98205 77429
Email	:-	azmin_irani@yahoo.co.in
Address	:-	1B-504, Salsette Parsi Colony, Pump House, Opp: Manish Park, Opp: Jain Temple, Andheri (East) Mumbai 400 093.

- (b) The Advocate for the Applicant shall intimate the Arbitrator about her appointment within a period of one week from the date of uploading of this order;
- (c) In addition, the Office of the Prothonotary and Senior Master of this Court shall also intimate the Arbitrator about her appointment within a period of one week from the date of uploading of this order.
- (d) The Arbitrator so appointed to make the disclosure as required

under the provisions of the Act within a period of one week from the date of intimation of her appointment;

- (e) The Arbitrator shall charge fees as per the Rules framed by this Court in that regard;

10 The Arbitration Application is disposed of in the aforesaid terms. There will be no order as to costs.

(FIRDOSH P. POONIWALLA,J.)