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Arb.O.P (Com.Div.) No.47 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2025

CORAM

THE HON'BLE Mr. JUSTICE ABDUL QUDDHOSE

Arb.O.P (Com.Div.) No.47 of 2025

Vishnu Vijaya Kumar
represented by his Power Agent
Pushpamma Plavelil Thankappan

... Petitioner

Versus

Rajkham Housing,
rep. by its Authorised Signatory
A.Arumugam

... Respondent

Prayer: Arbitration Original Petition (Commercial Division) filed under Section 11(4) & (5) of the Arbitration and Conciliation Act, 1996 to appoint a Sole Arbitrator.

For Petitioner : Mr.E.Prabu

For Respondent : Set exparte

ORDER

This petition has been filed under Section 11 of the Arbitration and Conciliation Act, seeking for the appointment of an Arbitrator by this Court.



2. There seems to be a dispute arising out of an Agreement for Sale

dated 06.06.2023 entered into between the petitioner and the respondent.

Apart from the Agreement for Sale, the parties have also entered into a Construction Agreement dated 06.06.2023. There seems to be dispute arising out of the said agreement as well. Both the aforesaid agreements contain an arbitration clause. The same are extracted respectively hereunder:

'13. Any dispute arising out of this Agreement or in any manner touching upon it, the same shall be resolved through Arbitration by the sole Arbitrator to be appointed under the provisions of Arbitration and Conciliation Act, 1996.'

'55. That in case of any dispute arising between Builder and the Allottee/s/Purchaser or any issued under this agreement, the party have agreed to refer the same to an Arbitrator to be appointed by the Builder at his discretion and whose decision shall be final and binding upon the party. The venue of such arbitration shall be Chennai. The arbitration shall be conducted in terms of the provisions of the Arbitration and Conciliation Act 1996.'

3. The petitioner has also invoked arbitration in accordance with the arbitration clause contained in the aforementioned agreements as per the



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provisions of Section 21 of the Arbitration and Conciliation Act, 1996 by issuing a notice to the respondent on 01.08.2024, but, the petitioner has not received any reply for the same. Since there is no consensus between the parties with regard to the name of the Arbitrator, the petitioner has approached this Court by filing this petition under Section 11 of the Arbitration and Conciliation Act, 1996 seeking for appointment of an Arbitrator by this Court.

4.On 13.02.2025, Mr.Sivarajan Madavan, learned counsel undertook to file vakalat on behalf of the respondent. He sought time to file a counter, but, the respondent has not filed any counter till date in this petition. Today, there is no representation on the side of the respondent. The name of the respondent has also been printed in the cause list today. Since there is no representation on the side of the respondent, the respondent is set exparte by this Court.

5.Since there exists an arbitration clause in both the Contracts, i.e. Agreement for Sale and Construction Agreement dated 06.06.2023, which



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are the subject matters of the dispute between the parties and since the petitioner has invoked arbitration in accordance with the arbitration clause by issuing notice to the respondent on 01.08.2024 in compliance with Section 21 of the Arbitration and Conciliation Act, 1996 and since there is no consensus between the parties with regard to the name of the Arbitrator, this Court has to necessarily appoint an Arbitrator as prayed for in this petition.

6.For the foregoing reasons, this Arbitration Original Petition is allowed by issuing the following directions:

(a)This Court appoints Mr.M.Anbalagan, Advocate, having address at No.18, Chockanathar Street, Karthikeyan Nagar, Maduravoyal, Chennai - 600 095, Mobile No.99107 26305 as the Sole Arbitrator to adjudicate the dispute between the petitioner and the respondent, arising out of the Agreement for Sale and Construction Agreement dated 06.06.2023, on merits and in accordance with law;

(b)The Arbitrator shall be paid his remuneration/fees in accordance with the 4th Schedule of the Arbitration and Conciliation Act, 1996;



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(c)Both the parties shall equally share the Arbitrator's fees;

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(d)The Arbitrator shall conduct the arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and shall complete the arbitration within the specified time as prescribed under the said Act.

No costs.

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ABDUL QUDDHOSE, J.

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