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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15-12-2025

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THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

Arb O.P.(COM.DIV.) No. 707 of 2025

and

ARB Appln Nos.661, 662 & 663 of 2024

Arb O.P(COM.DIV.) No. 707 of 2025

1. N.Kalpana Devi @ Kalpana
Narayanaswamy
Agreement Address at M.I.G. Flat
E 25-C, Vatika Apartments, Mayapuri,
New Delhi - 110 064.

Present Address at Tower -5, 602,
Lake Dugar, Kallikuppam, Ambattur,
Chennai - 600 053.

2. Mrs.R.Jansi Rani
269, East Balaji Nagar Kallikuppam,
Ambattur, Chennai 600 053

..Petitioners

Vs

M/s.Dugar Housing Limited rep. by its
Managing Director, Mr.Padam Dugar,
S/o.Mr.N.Tarachand Dugar,
123, Marshalls Road, Egmore,
Chennai - 600 008.

Respondent(s)

Prayer:

Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, to appoint an Arbitrator in accordance with Clause 41 of the Joint Development Agreement dated 13.10.2010 entered into between the petitioners and the respondent.



For Petitioners : Mr.K.V.Babu

For Respondent : Mr.K.V.Bhashyam Chari
for M/s.Shah & Shah

Arb Appln Nos. 66, 662 & 663 of 2024

1. N Kalpana Devi alias
Kalpana Narayanasamy
Tower 5, No.602, Lake Dugar,
Kallikuppam, Ambattur,
Chennai 600 053.

2.R Jansi Rani
NO.269, East Balaji Nagar,
Kallikuppam, Ambattur,
Chennai 600 053.

..Appellant(s)

Vs

M/s.Dugar Housing Limited
Rep.by its Managing Director
Mr.Padam Dugar
S/o.Mr.N.Tarachand Dugar,
No.123, Marshalls Road, Egmore,
Chennai 600 008.

... Respondent(s)

Common Prayer:

Applications filed under Order XIV Rule 8 of O.S. Rules r/w Section 9(1)
(ii)(e) of the Arbitration and Conciliation Act, 1996;

To pass an interim direction directing the respondent to take steps in
obtaining an electricity connection and providing operational lifts in the
commercial complex.



To grant an interim direction directing the respondent to release the title deeds held in the Locker No.39 associated with Account No.911020035500967 and Customer ID: 839831632 maintained by Axis Bank Egmore Branch?

To pass an Interim direction directing the respondent to allow the Applicants to complete the uninhabitable residential apartments with the right to claiming appropriate compensation from the respondent for such costs incurred by the applicants.

ORDER

Arb.OP.(Com.Div).No.707 of 2025, has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 [hereinafter referred to as 'the Act'] seeking for appointment of an Arbitrator to resolve the dispute between the parties. Arb.Appln Nos.661, 662 and 663 of 2024 have been filed under Section 9 of the Act, seeking for interim protection.

2.Initially, when these applications came up for hearing on 16.12.2024, considering the nature of dispute between the parties, this Court thought it fit to refer the parties to the Mediation Centre in order to resolve the dispute amicably amongst themselves.

3.Despite best attempts made by both sides, they were not able to reach any settlement and hence the matter was referred back to this Court. This Court by an order dated 19.11.2025, directed these applications to be posted for final



hearing. In the meantime, the Arbitration Original Petition was filed for the appointment of an Arbitrator and the said petition was also tagged along with these applications.

4. Heard the learned counsel for the applicants/petitioners and the learned counsel for the respondent.

5. The learned counsel for the applicants/petitioners submitted that the agreement between the parties started with a Joint Development Agreement (JDA) dated 13.10.2010. Thereafter, the First Supplemental Agreement (FSA) was entered into on 28.12.2010 which pertains to the premium FSI. The Second Supplemental Agreement (SSA) dated 01.08.2012 was entered into between the parties which pertains to the revision of rates subsequent to the premium FSI. The learned counsel for the petitioners also brought to the notice of this Court the earlier trigger notice that was issued on 14.01.2019 and the appointment of a Sole Arbitrator to resolve the dispute, which came to a stalemate. Thereafter, the parties once again made an attempt to resolve the dispute amongst themselves and hence, a memorandum of understanding (MOU) was entered into by the 1st petitioner with the respondent on 29.09.2020 and by the 2nd petitioner with the respondent on 05.12.2020 for the allotment of flats. Thereafter, a settlement deed was entered into by the 1st petitioner on 30.09.2020 and by the 2nd petitioner on 7.12.2020 with the respondent which



was followed by a supplementary deed to the settlement deed entered between the parties on 15.10.2020 and 11.12.2020 respectively. The learned counsel submitted that the parties were not able to fulfil the obligations and hence, the trigger notice was issued on 10.09.2024 by invoking the Arbitration Clause.

6.The learned counsel for the respondent, by placing reliance upon the counter filed by the respondent submitted that immediately after the settlement deed was entered into between the parties on 30.09.2020 and 07.12.2020, the earlier JDA and the supplementary agreements ceased to exist and there was a novation of contract. The learned counsel submitted that there may be certain disputes between the parties but however the subsequent agreements do not contemplate the dispute to be referred to the Arbitral Tribunal and if at all there is a subsisting dispute, it can only be agitated before a competent Civil Court. The learned counsel further submitted that after the parties entered into settlement deed, there was nothing to be fulfilled under the earlier JDA and the supplemental agreements and therefore, the Arbitration Clause that was provided therein cannot be incorporated or acted upon for the subsequent agreement entered into between the parties. In short, it was contended that the obligations in the earlier JDA and the supplemental agreements came to an end and the subsequent agreements pertained to different obligations and therefore, those obligations which arose out of the JDA and the supplemental agreements cannot now be attempted to be resurrected by the applicants/petitioners. It was



contended that there was accord and satisfaction insofar as the obligations covered in the earlier agreements and therefore the present Arbitration Original Petition filed for the appointment of an Arbitrator is unsustainable. The learned counsel in order to substantiate his submission relied upon the judgment of the Delhi High Court in **Larsen and Toubro Limited .vs. Ireo Victory Valley Private Limited** made in **CS(Comm).No. 534 of 2023, dated 24.04.2024**.

7.This Court has carefully considered the submissions made on either side and the materials available on record.

8.The issue that can be gone into in a petition filed under Section 11 of the Act, was dealt with in detail in **S.Krishnamoorthy .vs. Engineering Projects India Ltd.**, reported in **2025 4 LW 716**. This Court after considering all the earlier judgments, came to a conclusion that the objections on the ground of limitation and accord and satisfaction must necessarily await the adjudication before the Arbitral Tribunal. The Court can only examine the existence of an arbitration agreement with an Arbitration Clause, nothing more and nothing less.

9.The learned counsel for the petitioners in order to strengthen the above view taken by this Court also relied upon the judgment of the Apex Court in **Arabian Exports Private Limited .vs. National Insurance Company Ltd.**,



reported in **MANU/SC/0640/2025**.

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10. In the case in hand, the parties had earlier entered into a JDA dated 13.10.2010, an FSA dated 28.12.2010 and an SSA dated 01.08.2012. Thereafter, there was an agreement for the allotment of flats on 22.4.2016. These sets of agreements paved the way for the earlier trigger notice that was issued on 14.01.2019 and thereafter the matter was referred to the Sole Arbitrator. However, the proceedings came to a stalemate due to various reasons.

11. The second set of agreements commenced from the MOU for the revised allotment entered into between the parties on 29.09.2020 and 05.12.2020 respectively. This resulted in a series of agreements viz., settlement deed and supplementary deeds entered into by both the 1st and 2nd petitioners along with the respondent. Even though the learned counsel for the respondent submitted that the Arbitration Clause that was available in the JDA and other supplemental agreements cannot be read into in any of the subsequent agreements, the learned counsel for the petitioners pointed out to the MOU pertaining to the revised allotment dated 29.09.2020 and 05.12.2020 and placed reliance upon Clause 10 of the agreement which provided that “both the parties agreed, acknowledged that all other terms and conditions of the JDA and other supplemental agreements will remain unchanged and will continue to remain in



force, unless and in order”. By relying upon this Clause, the learned counsel submitted that there was a specific agreement between the parties to incorporate the obligation/rights of the parties from the earlier JDA and the other supplemental agreements.

12. In the considered view of this Court, the Court must only look into a valid agreement between the parties in line with Section 7 of the Act and must also scrutinise if an Arbitration Clause is available. The specific reliance is placed on the relevant Clause of the MOU for revised allotment entered into between the parties. How far these agreements are going to be dealt with, the disputes between the parties and what type of claims can be made by the petitioners against the respondent is something that has to be dealt with only by the Arbitral Tribunal. In other words, if the respondent raises any jurisdictional issue, the Arbitral Tribunal itself has the power to deal with that issue under Section 16 of the Act. Therefore, those jurisdictional issues that were raised by the learned counsel for the respondent can always be raised before the Arbitral Tribunal, which will consider them on its own merits and in accordance with law. This clarity will sufficiently take care of the objections raised by the learned counsel for the respondent. It also goes without saying that if any such jurisdictional issues are raised, it will always be left open to the petitioners to justify the invocation of the Arbitration Clause and also the claims made by the petitioners.



13. Insofar as the applications filed under Section 9 of the Act are concerned, this Court is of the view that those applications can be placed before the Arbitral Tribunal and the same shall be dealt with under Section 17 of the Act, after affording opportunity to both sides.

14. In the light of the above discussion, this Court is inclined to appoint a Sole Arbitrator. Accordingly, **Mr. M.S. Krishnan, Senior Advocate, with address for service at (C) 39, Law Chambers, High Court Buildings, Chennai -600 104 [Mobile:9444088824]** is appointed as the Sole Arbitrator. The Sole Arbitrator is requested to enter upon reference, adjudicate upon the arbitrable disputes that have arisen between the parties. Fees of the Sole Arbitrator shall be in accordance with the Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules, 2017.

15. The Arbitration Original Petition is disposed of in the above terms. Consequently, all the applications are also disposed of. There shall be no order as to costs.

15-12-2025

Index: Yes/No
Speaking/Non-speaking order
Internet: Yes
Neutral Citation: Yes/No
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N.ANAND VENKATESH J.



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