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Arb.O.P.(Com.Div.) Nos.690,691&692 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2026

CORAM

THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH

Arb.O.P.(Com.Div.) Nos.690, 691 and 692 of 2025

Arb.O.P.(Com.Div.) Nos.690 of 2025

Eternity Developers Private Ltd
Rep. by its Managing Director Mr.Avinash Prabhu
Having office at :
No.11, Hayes Road
Bangalore – 560 025
Also Residing at :
No.206 & 207, 2nd Floor, Sophias Choice
7/28, St.Marks Road, Bangalore – 560 001

.. Petitioner

Vs.

Akshay Sarin (HUF)

.. Respondent

Petition filed under Section 11(5) of the Arbitration and Conciliation Act, 1996, seeking to constitute an Arbitral Tribunal consisting of a Sole Arbitrator, seated at Chennai, to adjudicate all disputes arising under the three Joint Development Agreement dated 02.06.2008.

Arb.O.P.(Com.Div.) No.691 of 2025

Skyline Constructions & Housing Pvt Ltd.
Rep. by its Managing Director Mr.Avinash Prabhu
Having office at :
No.11, Hayes Road
Bangalore – 560 025
Also Residing at :
No.206 & 207, II Floor, Sophias Choice
7/28, St.Marks Road, Bangalore – 560 001

.. Petitioner



Arb.O.P.(Com.Div.) Nos.690,691&692 of 2025

Vs.

M/s.Dhanna Bakkiam Enterprises

Rep. by its Partner Mrs.Aashna Sarin and Mr.Akshay Sarin

A Partnership Firm incorporated under the Indian Partnership Act

Having office at : No.5E, Mookambika Complex

4, Lady Desika Road, (C.P.Ramasamy Road)

Mylapore, Chennai - 600 004

.. Respondent

Petition filed under Section 11(5) of the Arbitration and Conciliation Act, 1996, seeking to constitute an Arbitral Tribunal consisting of a Sole Arbitrator, seated at Chennai, to adjudicate all disputes arising under the Joint Development Agreement dated 05.02.2007.

Arb.O.P.(Com.Div.) No.692 of 2025

Eternity Developers Private Ltd

Rep. by its Managing Director Mr.Avinash Prabhu

Having office at :

No.11, Hayes Road

Bangalore – 560 025

Also Residing at :

No.206 & 207, II Floor, Sophias Choice

7/28, St.Marks Road, Bangalore – 560 001

.. Petitioner

Vs.

M/s.Dhanna Bakkiam Enterprises

Rep. by its Partner Mrs.Aashna Sarin and Mr.Akshay Sarin

A Partnership Firm

Incorporated under the The Indian Partnership Act

Having office at : No.5E, Mookambika Complex

4, Lady Desika Road, (C.P.Ramasamy Road)

Mylapore, Chennai – 600 004

.. Respondent

Petition filed under Section 11(5) of the Arbitration and Conciliation Act, 1996, seeking to constitute an Arbitral Tribunal consisting of a Sole



Arbitrator, seated at Chennai, to adjudicate all disputes arising under the Joint Development Agreement dated 18.06.2008.

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For Petitioner : Mr.C.Deepak Kumar
in all Petitions

For Respondent : Mr.P.Mohan Kumar
in all Petitions

COMMON ORDER

The parties have entered into three separate Joint Development Agreements dated 02.06.2008, 05.02.2007 and 18.06.2008, respectively and hence, three separate petitions have been filed for appointment of an Arbitrator.

2. When the petition viz., Arb.O.P.(Com.Div.) No.690 of 2025 came up for hearing on 13.11.2025, this Court passed the following order :

“This petition has been filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 [hereinafter referred to as 'the Act'] to constitute an Arbitral Tribunal consisting of sole arbitrator to resolve the dispute arising out of the Joint Development Agreement dated 02.06.2008.

2. The agreement provides for referring the dispute for Arbitration under Clause 30 and the same is extracted hereunder:-

“30. Dispute Resolution :

30.1 *In case of any disputes as to the design and specifications of the plans and quality of material the decision of the architect appointed by the DEVELOPER at his cost and two Project Management consultants one of which will be appointed by the DEVELOPER at his cost and the other appointed by the owner of his cost shall be final.*

30.2 *In the event of any dispute arising between the parties hereto with regard to this Agreement or the interpretation of the terms hereof the same shall be resolved amicably by the parties hereto and in case the same is not resolved then the dispute shall be referred to Arbitration in terms of*



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Arb.O.P.(Com.Div.) Nos.690,691&692 of 2025

Arbitration and Conciliation Act of 1996 to be conducted in English and to be held at Chennai

30.3 *Neither party shall sue the other party without prior notice thereof to the other party and pending list the agreement or obligations undertaken herein by the OWNER shall be in force and not be suspended and the rights of the DEVELOPER shall be in force unless restrained by a Court.*

30.4 *The Courts in Chennai shall alone have the jurisdiction.”*

3. The trigger notice under Section 21 of the Act was issued on 20.09.2023 and the same has also been received by the respondent. Since there was no response, the present petition has been filed before this Court.

4. Notice to the respondent returnable by 15.12.2025. Private notice is also permitted.

Post this petition for hearing on 15.12.2025.”

3. When the petition viz., Arb.O.P.(Com.Div.) No.691 of 2025 came up for hearing on 13.11.2025, this Court passed the following order :

“This petition has been filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 [hereinafter referred to as 'the Act'] to constitute an Arbitral Tribunal consisting of sole arbitrator to resolve the dispute arising out of the Joint Development Agreement dated 02.06.2008.

2. The agreement provides for referring the dispute for Arbitration under Clause 30 and the same is extracted hereunder:-

“30. Dispute Resolution :

30.1 *In case of any disputes as to the design and specifications of the plans and quality of material the decision of the architect appointed by the DEVELOPER at his cost and two Project Management consultants one of which will be appointed by the DEVELOPER at his cost and the other appointed by the owner of his cost shall be final.*

30.2 *In the event of any dispute arising between the parties hereto with regard to this Agreement or the interpretation of the terms hereof the same shall be resolved amicably by the parties hereto and in case the same is not resolved then the dispute shall be referred to Arbitration in terms of Arbitration and Conciliation Act of 1996 to be conducted in English and to be held at Chennai*

30.3 *Neither party shall sue the other party without prior notice thereof to the other party and pending list the agreement or obligations undertaken herein by the OWNER shall be in force and not be suspended and the rights of the DEVELOPER shall be in force unless restrained by a Court.*



30.4 The Courts in Chennai shall alone have the jurisdiction. ”

3. The trigger notice under Section 21 of the Act was issued on 20.09.2023 and the same has also been received by the respondent. Since there was no response, the present petition has been filed before this Court.

4. Notice to the respondent returnable by 15.12.2025. Private notice is also permitted.

Post this petition for hearing on 15.12.2025.”

4. When the petition viz., Arb.O.P.(Com.Div.) No.692 of 2025 came up for hearing on 13.11.2025, this Court passed the following order :

“This petition has been filed under Section 11 (5) of the Arbitration and Conciliation Act, 1996 [hereinafter referred to as 'the Act'] to constitute an Arbitral Tribunal consisting of sole arbitrator to resolve the dispute arising out of the Joint Development Agreement dated 18.06.2008.

2. The agreement provides for referring the dispute for Arbitration under Clause 30 and the same is extracted hereunder:-

“30. Dispute Resolution :

30.1 *In case of any disputes as to the design and specifications of the plans and quality of material the decision of the architect appointed by the DEVELOPER at his cost and two Project Management consultants one of which will be appointed by the DEVELOPER at his cost and the other appointed by the OWNER at his cost shall be final.*

30.2 *In the event of any dispute arising between the parties hereto with regard to this Agreement or the interpretation of the terms hereof the same shall be resolved amicably by the parties hereto and in case the same is not resolved then the dispute shall be referred to Arbitration in terms of Arbitration and Conciliation Act of 1996 to be conducted in English and to be held at Chennai*

30.3 *Neither party shall sue the other party without prior notice thereof to the other party and pending list the agreement or obligations undertaken herein by the OWNER shall be in force and not be suspended and the rights of the DEVELOPER shall be in force unless restrained by a Court.*

30.4 The Courts in Chennai shall alone have the jurisdiction. ”



3. The trigger notice under Section 21 of the Act was issued on 20.09.2023 and the same has also been received by the respondent. Since there was no response, the present petition has been filed before this Court.

4. Notice to the respondent returnable by 15.12.2025. Private notice is also permitted.

Post this petition for hearing on 15.12.2025.”

5.After service of notice, the respondent is represented through counsel and the respondent has also filed counter.

6.Heard both sides and carefully perused the materials available on record.

7.It is seen from the records that the parties have entered into three Joint Development Agreements. Disputes arose between the parties and legal notice came to be issued by the petitioner on 20.09.2023. On receipt of the notice, the respondent gave a reply on 22.09.2023, denying all the claims.

8.Earlier, the petitioner approached this Court and filed O.A.Nos.1024, 1025 and 1026 of 2025 and all these applications came to be dismissed by this Court on 31.10.2025, in the following manner:

“4.In the considered view of this Court, there has been a complete lull for the period from 22.09.2023 till date. The dispute had



arose as early as in September 2023 and till date, the applicants have not taken any steps to refer the dispute for arbitration. Even though, in the legal notice dated 20.09.2023, there is a passing reference that the matter will be referred to arbitration, till date no steps have been taken in that regard. In view of the same, this Court finds that there is no manifest intention to arbitrate the case. Hence, this Court is not inclined to entertain these applications. Useful reference can be made to the judgement of the Apex Court in *Firm Ashok Traders and Another vs. Gurumukh Das Saluja and Others* reported in 2004 3 SCC 155.

5.In view of the above, it is left open to the applicants to move Section 11 petition seeking for the appointment of an Arbitrator and workout their remedy in the manner known to law.”

9.Pursuant to the above order, the present petitions have been filed before this Court seeking for appointment of an Arbitrator to resolve the disputes between the parties.

10.Learned counsel for the respondent primarily raised two objections and they are :

- (a) That the claim made by the petitioner is *ex facie* barred by limitation; and
- (b) The legal notice dated 20.09.2023 does not satisfy the requirement under Section 21 of the Act and therefore, the same cannot form the basis for the appointment of an Arbitrator.



11.Insofar as the first objection that was raised on the side of the respondent, the answer is available in my earlier order in ***M/s.Shriram Finance Limited Vs Ms.S.Poornima and Others*** reported in ***(2025)4 Law Weekly 716***. It was held that the objections on the ground of limitation and accord and satisfaction must necessarily await the adjudication before the Arbitral Tribunal and that the Court while dealing with an application under Section 11 of the Act, can only examine the existence of an arbitration agreement with the arbitration clause, nothing more and nothing less. In view of the same, the objection raised on the ground of limitation, cannot be gone into in this petition. Insofar as the 2nd objection is concerned, learned counsel for the petitioner submitted that the petitioner had expressed their intention to refer the dispute to arbitration in the legal notice dated 20.09.2023.

12.*Per contra*, the learned counsel for the respondent, by relying upon the judgment of the Apex Court in ***Adavya Projects Pvt. Ltd. Vs M/s.Vishal Structural Pvt. Ltd. & Ors. (Civil Appeal No.5297 of 2025 decided on 17.04.2025)***, submitted that the notice dated 20.09.2023 does not satisfy the requirement under Section 21 of the Act.

13.For the above submission, the learned counsel for the petitioner relied upon the judgment of the Calcutta High Court in ***Universal***



Consortium of Engineers Pvt. Ltd. Vs. Kanak Mitra and Another reported in ***AIR 2021 Cal 127***, where it was held that even the service of notice under Section 11 of the Act can be construed as a notice under Section 21 of the Act.

14.In the considered view of this Court, the language used by the petitioner in the legal notice dated 20.09.2023, is not happily worded. If the petitioner wanted to refer the matter to arbitration in the light of the dispute between the parties, it could have been specifically mentioned in the notice and that too, when the notice was issued by an Advocate representing the petitioner. However, on an overall reading of the notice, it is seen that there is a reference to the dispute and the intention of the petitioner to approach the Court of law for invoking the arbitration. That sufficiently satisfies the requirement under Section 21 of the Act. Ultimately, notice under Section 21 of the Act is only a trigger point to refer the matter to arbitration to resolve the dispute. Therefore, hypertechnical grounds cannot be put against the petitioner. Accordingly, the second objection raised on the side of the respondent, is not sustainable.

15.In the considered view of this Court, if the claim made by the petitioner is *ex facie* barred by limitation, the same can be raised as a



preliminary objection before the Arbitral Tribunal under Section 16 of the Act. This liberty sufficiently takes care of the grievance expressed on the side of the respondent.

16.In the light of the above discussion, this Court finds that there is a valid agreement between the parties in line with Section 7 of the Act and it also contains an arbitration clause. The trigger notice also satisfies the requirements under Section 21 of the Act.

17.In the light of the above, this Court is inclined to appoint an arbitrator and accordingly, ***Mr.T.Murugamanickam, Senior Advocate, residing at N Block, 319, 25th Street, Anna Nagar East, Chennai-600 102 (Mobile No.98409 66260),*** is appointed as sole Arbitrator and the sole Arbitrator is requested to adjudicate the arbitral disputes that had arisen between the parties and render an arbitral award by holding sittings in the Madras High Court Arbitration Centre under the aegis of this Court as per Madras High Court Arbitration Proceedings Rules, 2017 and fee of the sole Arbitrator shall be in accordance with the Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules, 2017.

Accordingly, these petitions are disposed of.

12.01.2026

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N.ANAND VENKATESH, J.

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