
(2022) 07 KL CK 0180

In the High Court Of Kerala

Case No : Arbitration Request No. 109 Of 2021

Gie Majestic Apartment Owners Association (Reg. No. Tvm/
Tc/454/2017)

APPELLANT

Vs

Great India Estates Private Limited

RESPONDENT

Date of Decision : 20-07-2022

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11(8), 12(1)

Citation : (2022) 07 KL CK 0180

Hon'ble Judges : Sathish Ninan, J

Bench : Single Bench

Advocate : V.Suresh, G.Sudheer, R.Harikrishnan, M.Sreekumar, A.Abdul Kharim

Judgement

Sathish Ninan, J

1. The first petitioner is an Apartment Owners Association. The petitioners 2 and 3 are the President and Secretary of the Association. The dispute is with the builder who is the 1st respondent in the Arbitration Request; respondents 2 and 3 are its managing director and chairman.

2. Annexure-1 is the agreement entered into between the builder and one of the purchasers of the apartments. Admittedly, similar agreements have been entered into with all the purchasers. There has arisen disputes between the owners and the builder. The issue is taken up by the Apartment Owners Association. Though the agreement, Annexure-1, provides for resolution of disputes by arbitration, the parties were not able to arrived at consensus regarding appointing of the Arbitrator. Accordingly, the Arbitration Request is filed. The respondents have filed counter affidavit opposing the claim of the petitioners.

3. Heard the learned counsel on either side.

4. That similar agreements in the nature of Annexure-1 has been executed with the builder by all the apartment owners, is not in dispute. The first petitioner is association of such owners. Annexure-1 agreement contains an Arbitration

Clause, which reads thus:

"k. ARBITRATION

That in the event of any dispute arising between the parties to the Agreement, the ALLOTTEE and the BUILDER agree to refer such disputes to an Arbitrator mutually agreed upon, whose decision shall be final and binding on them."

5. The contention of the respondent is that, they also have various claims against the association. It is for the petitioners and respondents to urge their claims before the Arbitrator.

6. In the light of the above, the Arbitration Request is ordered as hereunder:

(a) Retd. Justice Kumari A. Lekshmikutty, Kayikkara House, Ambalathara, Poonthura P.O., Thiruvananthapuram-695026, is nominated provisionally as the Sole Arbitrator to adjudicate upon the disputes between the parties.

(b) A copy of this order shall be communicated to the learned Sole Arbitrator by the Advocate of the applicant within a period of one week from today. A copy of the order shall also be forwarded to the learned Sole Arbitrator by the Registry.

(c) The Arbitrator is requested to forward the statement of disclosure under Section 11(8) r/w Section 12(1) of the Arbitration and Conciliation Act, 1996.

(d) The Registry shall place the disclosure statement before this Court, for confirmation of the appointment of the Arbitrator.

(e) The Arbitrator's fees shall be payable as per IVth Schedule to the Arbitration and Conciliation Act, 1996.