

(2013) 08 KAR CK 0112

In the Karnataka High Court

Case No : Civil Miscellaneous Petition No. 8 of 2013

Mr. N.B. Subbanna and Others

APPELLANT

Vs

M/s. Saijayini Housing Promoters Limited

RESPONDENT

Date of Decision : 05-08-2013

Acts Referred:

Citation : (2013) 08 KAR CK 0112

Hon'ble Judges : Dilip B. Bhosale, J

Bench : Single Bench

Advocate : Abhinay Y.T, for the Appellant;

Judgement

Dilip B. Bhosale, J.—Heard learned counsel for the petitioners. None appears for the respondent, though served. By this petition, the petitioners seek an appointment of independent arbitrator to hear and decide a disputes between the petitioners and the respondent as per Clause 21 in the Joint Development Agreement dated 28.02.2007. Clause 21 in the agreement reads thus:

21. Any dispute or difference arising between/among all or any of the parties to the agreement in relation to any of the matters specified herein, shall be settled by arbitration by reference to a sole arbitrator to be appointed by the parties to the dispute by mutual consent. The decision of the sole arbitrator shall be final and binding on the parties. The provisions of the Arbitration and Conciliation Act, 1996 as amended and in force from time to time shall apply to such arbitration. The arbitration proceedings shall be held in English Language at Bangalore. The Courts situated in Bangalore and Mysore shall have exclusive jurisdiction in regard to any matter arising under or in relation to this agreement, including the arbitration clause.

2. The petitioners are the owners in possession of the property bearing Nos. 63/4 F 2/4, 63/4 F 2/4A, 63 F 2/A and 63/1 A F2 situated at New Sayyaji Rao Road, Mysore City admeasuring 14,056.5 square feets.

3. The petitioners and the respondent entered into the joint development

agreement dated 28.02.2007. The petitioners also executed power of attorney dated 28.02.2007 in favour of the respondent. The joint development agreement as well as the power of attorney were registered before the Sub-Registrar, Mysore (South), Mysore. The respondent was supposed to complete the entire construction as stipulated in the development agreement within 18 months from the date of sanctioning of plans with a grace period of 3 months. The petitioners, however, found that the respondent had not only committed breach of several conditions in the agreement, including the time limit prescribed for completing construction, but had abandoned the project site, with only a part of foundation wall having been laid. The project site, according to the petitioners, remained abandoned for about 18 months. The petitioners claim that they made several attempts to contact the respondent, but their all efforts were in vain.

4. In the circumstances, they terminated the agreement vide notice dated 12.11.2010 calling upon the respondent to return the original documents along with title deeds relating to the property. Then petitioners-issued notice dated 07.04.2012 invoking the arbitration clause seeking appointment of Justice G. Patri Basavana Goud (Retired) as a sole arbitrator. The notice was not replied by the respondent.

5. I have perused the agreement and so also the notices dated 12.11.2010 and 07.04.2012 (Annexures-C and E respectively). It appears that the petitioners have also given public notice in the newspaper (Annexure-D). In the circumstances, I am inclined to pass the following Order:

(i). The parties are referred to the sole arbitration of Justice G Patri Basavana Goud, who is a resident of Bangalore. The Arbitrator shall enter the reference, cause notice to the parties and then proceed to resolve the dispute in accordance with the Arbitration and Conciliation Act, 1996.

(ii). Petitioners are directed to communicate this order to the respondent within a period of two weeks from the date of receipt of this order.

(iii). Registry to communicate this order to the Arbitrator forthwith. Registry is further directed to return original papers, if any, filed along with the petition to enable the petitioners to produce the same before the learned Arbitrator.