

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF NOVEMBER 2016

BEFORE

THE HON'BLE MR. JUSTICE ASHOK B. HINCHIGERI

C.M.P.NO.197 OF 2016

BETWEEN

1. M/S GOLDEN GATE PROPERTIES LTD.,
#820, 80 FEET ROAD, 8TH BLOCK,
KORAMANGALA, BANGALORE – 560 095
REPRESENTED BY ITS AUTHORIZED OFFICER
SRI N SRINIVAS
2. M/S BEST GOLDEN DEVELOPERS PVT LTD.,
(FORMERLY KNOWN AS BEST
AND GOLDEN VENTURES)
NO.8, TUMKUR ROAD,
YESHWANTHPUR, NH-4
BANGALORE – 22
REPRESENTED BY ITS
AUTHORIZED OFFICER
SRI D.V.N.S. HARSHA ... PETITIONERS

(BY:SRI D.R.RAVISHANKAR, ADVOCATE)

AND:

MR.S.PRADEEP KUMAR
PROPRIETOR, UNITED LAND BANK
S-415 SOUTH WING MANIPAL CENTER
DICKENSON ROAD, BANGALORE – 560042.
ALSO R/AT #174/18 "SURYA"
13TH CROSS, 2ND STAGE GIRINAGAR
BANGALORE – 560 085. ... RESPONDENT

(BY:SRI K.K.VASANTH, ADVOCATE)

THIS CIVIL MISCELLANEOUS PETITION IS FILED UNDER
SECTION 11(6) OF THE ARBITRATION AND CONCILIATION ACT,
1996, PRAYING TO APPOINT A SOLE ARBITRATOR IN TERMS OF

THE MOU DATED 15.03.2014 PRODUCED AS ANNEXURE – A AND PASS SUCH OTHER ORDERS AS MAY BE DEEMED APPROPRIATE UNDER THE CIRCUMSTANCES OF THE CASE.

THIS C.M.P. COMING ON FOR ADMISSION THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This petition is filed seeking the appointment of the Arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996.

2. Sri D.R.Ravishankar, the learned counsel for the petitioner submits that the petitioners and the respondent have entered into the Memorandum of Understanding ('MOU' for short), dated 15.3.2014 (Annexure-A). He submits that the said MOU provides for dispute resolution through arbitration. Clause 10(a) and (b) of the said MOU read out by him are extracted hereinbelow:-

"10. DISPUTE RESOLUTION

- a) *In the event of any dispute/s or differences arising or relating to any of the matters set out in this MOU, the Parties to the dispute shall each appoint one nominee/representative who shall discuss in good faith to resolve the difference by finding an amicable solution.*
- b) *In case the disputes or difference/s are not settled within 1 month by way of mutual*

negotiations as stated supra, the same shall be referred to arbitration or a sole arbitrator appointed by the OWNER, DEVELOPER of the PART ONE and the INVESTMENT BANKER of the OTHER PART and the arbitration proceeding shall be in accordance with the Provisions of the Arbitration and Conciliation Act, 1996 and the decision of the Arbitrator shall be final and binding on all the parties subject to the provisions of the Arbitration and Conciliation Act, 1996. The venue of Arbitration shall be Bangalore only and the Language of Arbitration shall be English only."

3. Sri K.K.Vasanth, the learned counsel appearing for the respondent submits that the petitioners have already collected the cheque for ₹2.50 crores and also the property documents forcibly in the Police Station. The cheque issued in Bengaluru is presented for realization in Hyderabad. He submits that the complaints and counter complaints between the parties are pending. He submits that the respondent had already called upon the petitioners to agree to the appointment of the Arbitrator, but the petitioners did not care to respond to the respondent's request. Thereafter on 1.7.2015 the petitioners issued the notice to the respondent in the matter of the appointment of the Arbitrator. He

complains of the violations of Section 11(3) of the Arbitration and Conciliation Act, 1996.

4. The learned counsel has also relied on the Hon'ble Supreme Court's decision in the case of **VELUGUBANTI HARI BABU v. PARVATHINI NARASIMHA RAO & ANR.** reported in **2016 SAR (Civil) 933**. A portion of Para-24 of the said decision relied upon by him is extracted hereinbelow:-

".....12. Following the decision in SBP & Co. (supra) this Court in National Insurance co. Ltd. (supra) held as follows: (National Insurance Co. Ltd. Case (supra), SCC p.283, paras 22 & 22.1-22.3.

"22. Where the intervention of the court is sought for appointment of an Arbitral Tribunal under Section 11, the duty of the Chief Justice or his designate is defined in SBP & Co. This Court identified and segregated the preliminary issues that may arise for consideration in an application under Section 11 of the Act into three categories, that is, (i) issues which the Chief Justice or his designate is bound to decide; (ii) issues which he can also decide, that is, issues which he may choose to decide; and (iii) issues which should be left to the Arbitral Tribunal to decide.

22.1 The issues (first category) which the Chief Justice/his designate will have to decide are:

(a) Whether the party making the application has approached the appropriate High Court.

(b) Whether there is an arbitration agreement and whether the party who has applied under Section 11 of the Act, is a party to such an agreement.

22.2. The issues (second category) which the Chief Justice/his designate may choose to decide (or leave them to the decision of the Arbitral Tribunal) are:

(a) Whether the claim is a dead (long-barred) claim or a live claim.

(b) Whether the parties have concluded the contract / transaction by recording satisfaction or their mutual rights and obligation or by receiving the final payment without objection.

22.3. The issues (third category) which the Chief Justice/his designate should leave exclusively to the Arbitral Tribunal are:

(i) Whether a claim made falls within the arbitration clause (as for example, a matter which is reserved for final decision of a departmental authority and excepted or excluded from arbitration).

(ii) Merits or any claim involved in the arbitration."

5. The submissions of the learned counsel have received my thoughtful consideration. That there are complaints and counter complaints, that the cheque is forcibly collected for a sum of ₹2.50 crores and that the petitioners

had failed to respond to the respondent's notice for the appointment of the Arbitrator, etc. are no good grounds for resisting the petition for the appointment of the Arbitrator. All the contentions, which the respondent has been urging here are left open to be urged before the Arbitrator. It is not in dispute that the parties have entered into the MOU and that the said MOU provides for the dispute resolution through the mechanism of arbitration. Admittedly the dispute relates to the MOU.

6. Considering all these aspects of the matter, I allow this petition by appointing Hon'ble Sri Justice A.V.Chandrashekara, a retired Judge of this Court as the sole Arbitrator. He is requested to enter upon the arbitration, arbitrate the dispute and conduct the arbitration proceedings at the Arbitration Centre, as per the Arbitration Centre-Karnataka (Domestic and International) Rules, 2012.

7. Registry is directed to send a copy of this order to the Arbitration Centre, Bengaluru, forthwith.

**Sd/-
JUDGE**

VGR