

ORDER ON I.A.No.5

The Defendants No.1, 2 and 4 have filed I.A.No.5 u/S.8(1) of the Arbitration and Conciliation Act, 1996, praying to refer the Suit to Arbitration and dismiss the Suit. The Defendants No.1, 2 and 4 state that as per Clause 35 of the Joint Development Agreement dated 7-8-2013, this Suit stands to be determined by Arbitrator and hence, the Suit be dismissed and parties be directed to resolve the dispute by arbitration.

2. The Plaintiff has filed objections that the Arbitration Proceedings in A.C.No.87/2017 was initiated based on the Joint Development Agreement dated 7-8-2013 and Supplementary Agreement dated 27-1-2014 and the Arbitrator has also passed an Award on 30-11-2018, in A.C.No.87/2017. In the said Award, the Learned Arbitrator has observed in Paragraph No.205 that the Tribunal cannot go into the Sale Deeds, but only the Joint Development Agreement and has passed separate Order on 14-3-2018 on the Application u/O.I R.10 of C.P.C. filed by the Respondents, to implead the purchasers. The sole Arbitrator by its Order has rejected the Application that it would be beyond its jurisdiction. Hence as the Civil Court only can determine the subject matter of the suit, and as the subject matter of the Suit does not squarely come within the ambit of the Joint Development Agreement to be resolved by the Arbitrator, the Plaintiffs pray for rejection of the said Application.

3. Heard Counsel of both sides.

4. Perused all documents.

5. The Joint Development Agreement no doubt mentions about resolving of dispute through Arbitrator and in the Supplementary Agreement dated 27-1-2014, in page 5, there is distribution of plots allotted to the Plaintiff, who is owner and Defendants No.1, 2 and 4 who are Developers. The Order of the Learned Arbitrator in A.C.No.87/2017 dated 14-3-2018 has elaborately reasoned as to how the purchasers cannot be impleaded in this A.C.No.87/2017, which is based on the Joint Development Agreement and the purchasers are not the parties to the Joint Development Agreement, and accordingly has rejected the said Application. The Court finds that the subject matter of the Suit to declare the Sale Deed as null and void and granting Permanent Injunction restraining Defendants from alienating and entries to be made by the Sub-Registrar, Shanthinagar, Bengaluru, about the null and void Sale Deed, is totally different from the Joint Development Agreement. The Sale Deed is according to the Plaintiff beyond the scope of Joint Development Agreement or the Supplementary Agreement, as the Developer, Defendants No.1, 2 and 4 had sold the property on the strength of General Power of Attorney, which was not given as mentioned in the Sale Deed. In addition, the Learned Arbitrator has also decided on this aspect.

6. The Learned Advocate for Defendant No.4 has relied upon 3 decisions: (2017) 7 SCC 716 (*Hema Khattar and another vs. Shiv Khera*), (2011) 5 SCC 532 (*Booz Allen and Hamilton Inc. vs. SBI Home Finance Limited and others*), (2018) 15 SCC 678 (*Ameet Lalchand Shah and others vs. Rishab Enterprises and another*). The said decisions are not applicable to the facts and circumstances of this case.

7. The Learned Advocate for Plaintiff has relied upon 1 decision: **(2016) 10 SCC 386** (*A.Ayyasamy vs. A.Paramasivam and others*), which lays that when there is allegation of fraud, the dispute cannot be referred to Arbitration. In this case too there has been a complaint of cheating and fraud against the Defendants, and the copy of Complaint and F.I.R. is also produced, which is Registered at Tilaknagar P.S. Crime No.279/2016 against the Defendants No.1 to 4 and others. This decision is aptly applicable to the facts and circumstances of this case.

8. Hence this Court finds no merits in the Application filed by the Defendants No.1, 2 and 4 u/S.8(1) of Arbitration and Conciliation Act, 1996, accordingly the said Application is rejected.

(Sachin Kaushik.R.N.)
III A.C.C. & S.J., Bengaluru.