

**IN THE COURT OF THE DISTRICT JUDGE, KHURDA AT
BHUBANESWAR.**

Present :

Dr. D.P. Choudhury,
District Judge, Khurda
at Bhubaneswar.

Dated, Bhubaneswar the 15th Oct. '14.

Arb. (P) No. 190 of 2014.

(U/s. 9 of the Arbitration and Conciliation Act, 1996.)

1. Jaycee Housing Private Ltd., Branch Office At - Jharpara, Cuttack Road, Bhubaneswar - 6, Dist. - Khordha, represented by Director - Narottam Budhraj, aged about 49 years, son of Late Jagdish Chandra Budhraj, having its Registered Office At - 141, S.C. Madangir, Puspa Vihar, New Delhi - 62.
2. Konark Auto Springleaf, represented by its Partner - Purusottam Budhraj, aged about 51 years, son of Late Jagdish Chandra Budhraj, At - Jharpara, Cuttack Road, Bhubaneswar - 6, Dist. - Khordha.
3. Mr. Nihal Chand & Sons, represented by its Partner - Narottam Budhraj, aged about 49 years, son of Late Jagdish Chandra Budhraj, At - Jharpara, Cuttack Road, Bhubaneswar - 6, Dist. - Khordha.
4. Mr. Harish Chandra Budhraj, aged about 72 years, son of Late Nihal Chand Budhraj, residing At - Jharpara, Cuttack Road, Bhubaneswar - 6, Dist. - Khordha.

... **Petitioners.**

-Versus-

1. Neelachal Buildtech & Resorts Pvt. Ltd., a Company incorporated under the Companies Act, 1956,

represented by one of its Directors Rajesh Kumar Moda, aged about 42 years, son of M.L. Moda, having its office at Plot No.542, Sahid Nagar, Bhubaneswar - 751 007, Dist. - Khordha.

2. Rajesh Kumar Moda, aged about 41 years, son of Late M.L. Moda, Director, Neelachal Buildtech & Resorts Pvt. Ltd., Plot No.542, Sahid Nagar, Bhubaneswar - 751 007, Dist. - Khordha.

3. Chetan Kumar Takeriwal, aged about 58 years, son of Not Known, Director, Neelachal Buildtech & Resorts Pvt. Ltd., Plot No.542, Sahid Nagar, Bhubaneswar - 751 007, Dist. - Khordha.

4. District Sub-Registrar, Bhubaneswar, At - District Court Campus, Kalpana Square, Bhubaneswar, Dist. - Khordha.

... **Respondents.**

Counsel :

For Petitioners	--	Shri A. Pal & Associates.
For Res. Nos.1 to 3	--	Shri S. Mishra.
For Res. No.4	--	Shri R.P. Nanda (G.P.).

Date of argument : 16.09.2014.

Date of judgment : 15.10.2014.

J U D G M E N T

This is an application under sections 9 of the Arbitration and Conciliation Act, 1996 (hereinafter called “the Act”) filed by the petitioners for grant of interim measure of protection by issuing temporary injunction against the respondents during the pendency of Arbitration No.02 of 2013 before the sole Arbitrator Shri Ajit Coomar Roy.

2. The factual matrix leading to the case of the petitioners is that the petitioners are the owners in possession of the land in question. On being approached by respondent Nos.1 to 3, the petitioners agreed to engage them for development of the land described in schedule 'A' of the petition. Accordingly, an Agreement was executed on 10.09.2002 between the parties and the petitioners also executed four Power of Attorneys on 04.10.2002 in favour of respondent Nos.1 to 3 to deal with the said property for development and construction of building as per the terms and conditions stated therein. It is alleged, inter alia, that respondent Nos.1 to 3 did not obtain approval from Bhubaneswar Development Authority (BDA) within time as per the terms of the Agreement, for which the petitioners cancelled such Agreement on 10.09.2002 and revoked the Power of Attorney by their Notice dated 28.03.2005. On further amicable settlement, the petitioners agreed to give respondent Nos.1 to 3 the right to develop and make construction over the said schedule 'A' land as per the approved plan of BDA and a fresh Agreement was executed on 14.09.2005 with an endorsement to follow the terms and conditions of the Agreement dated 10.09.2002. It was also agreed between the parties that Power of Attorney dated 04.10.2002 shall be valid

and binding. It was further agreed that the Development Agreement dated 14.09.2005 was on sharing basis of 70:30 ratio. Respondent Nos.1 to 3 were supposed to make four Blocks of building and a Community Centre as per the building approval plan of BDA. While constructing the said four Blocks of building, instead of constructing the Community Centre as per the BDA sanction plan, respondent Nos.1 to 3 illegally and unauthorisedly constructed an Apartment Building. When the petitioners came to know about such fact, they cancelled the five Power of Attorneys granted in favour of respondent No.2, the Director of respondent No.1-Company. Then, respondent No.1 referred the dispute of cancellation of the said General Power of Attorneys to Arbitrator Shri Ajit Coomar Roy. The Arbitrator, without following the substantive provisions of law, disposed of the proceeding, for which another petition has been filed by the petitioners vide Arb.(P) No.189 of 2014 before this Court for termination of the mandate of the Arbitrator and for appointment of a substitute Arbitrator. It is further averred in the petition that while the matter stood thus, on 04.06.2014, the petitioners came to know that respondent Nos.1 to 3 executed the Sale Deeds in favour of Balaji Complex on 13.05.2014 describing them as the Power of Attorney Holders of the petitioners by virtue of the aforesaid Power of

Attorneys, though the same have been cancelled vide Annexure-2 series. The petitioners also informed respondent No.4 that sale of those flats has been made suppressing the material facts. It is apprehended by the petitioners that respondent Nos.1 to 3 are also trying to register more Sale Deeds by alienating flats when the arbitral proceeding is pending. Thus, the petitioners have a prima facie case, balance of convenience lies in their favour and in the event of refusal of injunction, the petitioners would suffer irreparable loss or injury. So, they have filed the present petition to restrain respondent Nos.1 to 3 from executing any Sale Deeds on behalf of the petitioners in favour of flat allottees and to direct respondent No.4 not to entertain any Sale Deeds for registration over schedule 'A' property. Hence the petition.

3. Respondent Nos.1 to 3 have filed objection, refuting the allegations made in the petition. According to these respondents, the petition is not maintainable, it is thoroughly misconceived and not entertainable in law. It is the case of respondent Nos.1 to 3 that the unilateral cancellation of General of Power of Attorneys is not binding on them. On the basis of the Agreement and Power of Attorneys executed by the petitioners, respondent Nos.1 to 3 proceeded with the development of schedule 'A' property and constructed multi-

storied apartment thereon by investing huge amount and after completion of construction, respondent No.1 handed over 65 flats to the petitioners towards their joint share and the petitioners also took possession of the same on 20.01.2013. However, due to such filing of the case, when one Sale Deed was presented to respondent No.4, he declined to register the same, since there was cancellation of General Power of Attorneys unilaterally. It is further stated by respondent Nos.1 to 3 that under section 202 of the Indian Contract Act, 1872, when the interest is created in favour of the Attorney Holder and such interest is more than the existing interest of the principal, that cannot be terminated to the prejudice of such interest of the Attorney Holder. So, the cancellation of General Power of Attorneys unilaterally will affect the execution of the Deed by respondent Nos.1 to 3. It is the further case of respondent Nos.1 to 3 that respondent No.1 has approached the Hon'ble High Court in W.P.(C) No.9100 of 2014 and in that matter, the Hon'ble Court vide order dated 08.05.2014 in Misc. Case No.8177 of 2014 was pleased to stay the operation of the Deed of Cancellation of General Powers of Attorney while granting liberty to respondent No.1 to deal with transfer or sell of his share of the flats in terms of Powers of Attorney subject to result of the Writ Petition. In that matter,

the petitioners have appeared and as per the order of the Hon'ble High Court, respondent No.1 has delivered five flats to the petitioners and kept two flats till disposal of the arbitral proceeding. Since the matter has already been agitated before the Hon'ble High Court and direction has been issued by the Hon'ble Court, the relief in the present proceeding under section 9 of the Act is no more available to be granted in favour of the petitioners. By suppressing the material facts, the petitioners have proceeded with this case for which it is not maintainable. Thus, respondent Nos.1 to 3 have prayed to dismiss the petition.

4. Respondent No.4 has filed objection, stating that the petition is not maintainable and he has acted under the provisions of the Indian Registration Act. According to him, four General Powers of Attorney and cancellation of documents, as alleged in the petition, have already been registered. It is further averred by respondent No.4 that there was no scope on his part to ascertain about suppression of facts with regard to execution of cancellation of documents and four Sale Deeds have been executed and registered after getting interim stay of cancellation of Deed passed by the Hon'ble High Court. The rest of the allegations are to be proved by the petitioners. It is only submitted by respondent

No.4 to dismiss the petition.

5. On going through the averments of both parties, the following points emerge for determination :

(i) Whether the Agreements are violated by respondent Nos.1 to 3 ?

(ii) Whether the petitioners are entitled to the relief under section 9 of the Act ?

Point No.(i) :

6. Perused the petition, objection, documents filed by both parties. It is admitted fact that the petitioners are owners of the land described in schedule 'A' of the petition and there was an agreement between petitioners and respondent Nos.1 to 3 for construction of building on the land in question. The Agreement dated 10.09.2002 shows that petitioners are owners and respondent Nos.1 to 3 are developers. It was agreed between the parties that there will be sharing of flats between developers and owners by giving 70% share of the built up area to the developers / promoters, whereas 30% of the built up area with flats thereon will be given to the owners. It has also been agreed that the entire construction will be made by the developers as per the approved plan of BDA. In case of any dispute, that will be referred to arbitration. Not only this, but also Annexure-1, which is another Agreement dated 14.09.2005, confirming the earlier Agreement has also stated

so with certain modifications. In Annexure-1, it is mentioned that developers / promoters shall undertake the developmental / construction work of the four Blocks of buildings and Community Centre on the schedule land in conformity with the building plan approved and sanctioned by BDA. This Agreement took place due to some disputes between the parties and on being referred to Arbitrator Shri Ajit Coomar Roy; but they ratified the earlier Agreement dated 10.09.2002 by agreeing to its terms and conditions with modifications, as stated above. It has also been embodied in Annexure-1 that respondent Nos.1 to 3 shall construct residential complex according to the plans and permissions accorded by BDA and shall not construct any illegal or unauthorised units and if they do so it would be considered unauthorised and the petitioners shall have the right to cancel the Agreement.

7. It is further found from the documents filed by both parties that there was General Power of Attorney executed on 04.10.2002 by the petitioners in favour of one Rajesh Kumar Moda, Director of respondent No.1-Company, to carry on the work and to develop, construct, make negotiations, execute Sale Deeds and all other activities to the extent of the share of developers. But, all the General Powers of Attorney indicate that whatever development will be made,

it will be as per the approved plan of BDA. To this extent, admitted facts of both parties are there. But, on 27.02.2013, the petitioners cancelled all the Powers of Attorney executed on 04.10.2002. Of course, this is an unilateral act on the part of the petitioners because the terms and conditions were violated by the Powers of Attorney Holders. Respondent Nos.1 to 3 have submitted that such cancellation of General Powers of Attorney will not affect them because of the provisions under section 202 of the Indian Contract Act and by virtue of order of the Hon'ble High Court in their favour. Copy of the order of the Hon'ble High Court was placed before this Court. On going through the order of the Hon'ble Court, it appears that W.P.(C) No.9100 of 2014 was filed by respondent No.1 against the present petitioners and respondent No.4. In Misc. Case No.8177 of 2014, vide order dated 08.05.2014 the Hon'ble High Court have directed for interim stay of operation of the cancellation of deeds and allowed the present respondent Nos.1 to 3 to deal with transfer or sell of flats in terms of Powers of Attorney. It is further found from the order dated 09.07.2014 passed in the same Writ Petition that five flats will be handed over to the petitioners by respondent Nos.1 to 3 and two flats shall not be disposed of without leave of the Hon'ble Court. It appears from the petition that

whatever Sale Deeds have been executed, all have been executed on 13.05.2014. On the other hand, flats have been sold after cancellation of General Powers of Attorney is stayed by the Hon'ble High Court. Moreover, this fact is also available from the counter filed by respondent No.4. Thus, it is found that due to contravention of BDA plan, the General Powers of Attorney were cancelled, which gave rise to filing of the Writ Petition before the Hon'ble High Court and to bring the stay order to such cancellation. On the contrary, violation of the Agreement by respondent Nos.1 to 3 is well made out by the petitioners. Not only this, but also it is revealed from the affidavit dated 20.06.2014 filed by the Director of respondent No.1-Company that respondent Nos.1 to 3 have handed over 65 flats against 72 as per the approved plan of BDA. Apart from this, the Hon'ble High Court have also directed to hand over five flats and not to dispose of two more flats. Thus, it is clearly available from the documents filed by both parties that the Agreement has been violated by respondent Nos.1 to 3, which led to cancellation of General Powers of Attorney. But, due to intervention of the Hon'ble High Court, at least five flats have been ordered to be handed over to the petitioners. Be that as it may, point No.(i) is answered in favour of the petitioners.

Point No.(ii) :

8. In this case, one of the facts has come to the notice of the Court in course of hearing that the original owner Jagdish Chandra Budhraj died as per the affidavit filed by one of the Directors of respondent No.1-Company. Copy of Death Certificate also confirms that on 13.07.2013, he has expired. According to section 201 of the Indian Contract Act, the Power of Attorney executed by such person stands automatically terminated. The power of Agent under section 202 of the Indian Contract Act does not survive unless there is a contract to that effect. So, going further with the sale of flats in view of Powers of Attorney will not empower respondent Nos.1 to 3 to go ahead with the Powers of Attorney executed. Moreover, it has already been held in the foregoing paragraphs that there was violation of the Agreement for which the General Powers of Attorney were cancelled, of course unilaterally. It is admitted fact that two more flats are also lying for disposal, but subject to leave of the Hon'ble High Court. On going through the final order passed by the Hon'ble High Court on 11.09.2014 in W.P.(C) No.9100 of 2014, it is found that two flats have been kept to be dealt as per the original development Agreement. Moreover, the Hon'ble High Court have directed Arbitrator Shri Ajit Coomer Ray to

dispose of Arbitration No.02 of 2013 expeditiously with respect to the claims including the above two flats. Thus, the Writ Petition before the Hon'ble High Court has already been disposed of on 11.09.2014. When the matter is lying pending with the Arbitrator and two flats are also kept to be decided by the Arbitrator with all other claims, in such situation there is prima facie case made out in favour of the petitioners.

9. When the arbitral proceeding is going on and there is clear directive of the Hon'ble High Court that the arbitral proceeding should go expeditiously by deciding all the claims, including the claim over above two flats, and there is claim that the place of Community Centre was to be constructed, but the same has been utilised for construction of buildings by respondent Nos.1 to 3, balance of convenience leans in favour of the petitioners. If there will be further sale of flats by respondent Nos.1 to 3 over the entire area at schedule 'A' including the area where the construction was not required to be made but has been made, not only there will be violation of the order of the Hon'ble High Court but also there will be irreparable loss or injury to the petitioners. Hence, the third ingredient that there will be irreparable loss or injury to the petitioners in the event of refusal of injunction lies in favour of the petitioners.

10. From the foregoing discussion, it is found that all the ingredients to pass interim injunction as interim measure under section 9 of the Act has been fulfilled by the petitioners. So, it must be held that pending arbitral proceeding before the Arbitrator, there will be no sale of flats by respondent Nos.1 to 3. Hence ordered :

O R D E R

The Arb.(P) under section 9 of the Arbitration and Conciliation Act, 1996 is allowed without cost.

Respondent Nos.1 to 3 are restrained from executing any Sale Deeds for and on behalf of the petitioners to flat allottees in respect of the construction made on schedule 'A' property. They are directed to ensure strict observance of the directives of the Hon'ble High Court in W.P.(C) No.9100 of 2014.

Respondent No.4 is directed not to allow registration of any Sale Deeds executed by respondent Nos.1 to 3 accordingly.

**District Judge, Khurda
at Bhubaneswar.**

15.10.2014.

Dictated, corrected by me and pronounced in the open Court this day the 15th October, 2014.

District Judge, Khurda

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at Bhubaneswar.

15.10.2014.

