

8

47, 49 & 51 \$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ARB.P. 291/2011

%

Order delivered on: 24.11.2011

M/S ERA LANDMARKS(INDIA) LTD Petitioner

Through: Mr.Manoj Kumar Singh and Mr.Vijay
K. Singh, Advs.

versus

M/S COUNTRYWIDE PROMOTERS PVT LTD & ORS Respondent

Through: Mr.T.K. Ganju, Sr. Advocate with
Mr.Vijay Kaundal & Ms.U. Sahay, Advs.

+ **O.M.P. 177/2011**

M/S ERA LANDMARKS(INDIA) LTD Petitioner

Through: Mr.Manoj Kumar Singh and Mr.Vijay
K. Singh, Advs.

versus

M/S COUNTRYWIDE PROMOTERS PVT LTD & ORS..... Respondent

Through: Mr.T.K. Ganju, Sr. Advocate with
Mr.Vijay Kaundal & Ms.U. Sahay, Advs.

+ **CS(OS) 2899/2011**

M/S COUNTRYWIDE PROMOTERS PVT LTD & ORS Plaintiff

Through: Mr.T.K. Ganju, Sr. Advocate with
Mr.Vijay Kaundal & Ms.U. Sahay, Advs.

versus

M/S ERA LANDMARKS(INDIA) LTD Defendant

Through: Mr.Manoj Kumar Singh and Mr.Vijay
K. Singh, Advs.

ARB.P. 291/2011, O.M.P. 177/2011 & CS(OS) 2899/2011

Page 1 of 5

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

G.S.SISTANI, J. (ORAL)

I.A. No.18609/2011 (EXEMPTION) in CS(OS)No.2899/2011

1. Allowed, subject to just exceptions.
2. Application stands disposed of.

I.A. No.18608/2011 in CS(OS)No.2899/2011

3. This is an application seeking enlargement of time in filing the Court Fee. Let the Court fee be filed within one week.
4. Application stands disposed of.

I.A. No.15512-13/2011 (EXEMPTION) in ARB.P. 291/2011

5. Allowed, subject to just exceptions.
6. Application stands disposed of.

ARB.P. 291/2011, O.M.P. 177/2011 & CS(OS) 2899/2011

7. M/s.Fra Landmarks (India) Ltd. have filed O.M.P.No.177/2011 under Section 9 of the Arbitration & Conciliation Act and Arbitration Petition No.291/2011 under Section 11(6) of the Arbitration & Conciliation Act, seeking appointment of an arbitrator, in terms of the agreement. During the pendency of these matters, M/s. Countrywide Promoters Pvt. Ltd. (respondent in Arbitration Petition No.291/2011 and in OMP No.177/2011) have instituted a suit bearing CS(OS)No.2899/2011 under the provisions of Order 37 of the Code of Civil Procedure for recovery of Rs.25,89,87,100/- based

on cheques received from M/s.Era Landmarks (India) Ltd.

8. Summons are yet to be issued in the suit. All the three matters were passed over once today, to enable the parties to take instructions as to whether an independent arbitrator can be appointed, to adjudicate upon all disputes and differences, subject matter of the Arbitration Petition No.291/2011 and CS(OS)No.2899/2011.
9. Mr.Ganju, learned senior counsel appearing on behalf of M/s. Countrywide Promoters Pvt. Ltd., expressed his apprehension at the outset for appointment of an arbitrator with respect to the Civil Suit, as according to him the subject matter of the civil suit would not be covered by the arbitration agreement. Counsel, however, on instructions submits that without admitting that the subject matter of the civil suit is covered by an arbitration clause for effective adjudication of all disputes, his client is willing for appointment of a sole arbitrator, preferably a former judge of the Supreme Court of India to adjudicate upon all disputes and difference. Counsel has also prayed that some interim protection be granted, as the subject matter of the suit pertains to a liquidated amounts based on cheques.
10. Mr.Singh, counsel appearing on behalf of M/s.Era Landmarks (India) Ltd. has also taken instructions in the matter and submitted that although he has appointed his arbitrator, but to put a finality to the entire dispute between the parties, he also agrees that the sole arbitrator may be appointed. Counsel also submits that large amounts of money are due to his clients, hence, prays for protection which has admittedly not been granted when the matter was listed on the first date of hearing.

11

11. It is jointly agree that all the three matters [ARB.P. 291/2011, O.M.P. 177/2011 & CS(OS) 2899/2011] may be disposed of with the following agreed directions:

- (i) All three matters be referred to a Sole Arbitrator. This Court appoints Justice Dr. Mukundkam Sharma (Cell No.9818000190; Tel.Nos.26013372, 26013373), former Supreme Court Judge, as the Sole Arbitrator, who will decide all disputes and differences, claims and counter claims between the parties. Objections raised by Mr.Ganju, counsel for M/s. Countrywide Promoters Pvt. Ltd., are kept open and to be adjudicated upon by the learned Arbitrator.
- (ii) Learned Arbitrator will fix his own fee in consultation with both the parties. Parties will share the fee equally.
- (iii) All parties agree that they will not delay the matter, to enable the learned Arbitrator to dispose of the matter as expeditiously as possible.
- (iv) Without prejudice to the rights and contentions, M/s.Era Landmarks (India) Ltd., will not sell, alienate, transfer or part with possession of 30 flats constructed at the project known as ERA Divine Court, at Sector -76, Faridabad, subject to further orders, which may be passed by the arbitrator and subject to variation at the instance of either of the parties. Parties will make a joint request to the learned Arbitrator, to consider the prayer made in O.M.P. No.177/2011 and the I.A.

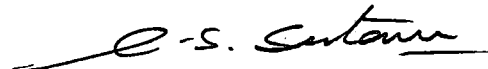
No.18607/2011 or such other relief which may be available to either of the parties.

- (v) However, M/s.Era Landmarks (India) Ltd., would be free to construct their flats on their share of land in accordance with law without any interference from anyone.

12. In view of above agreed directions, all the three matters [ARB.P. 291/2011, O.M.P. 177/2011 & CS(OS) 2899/2011], are disposed of. Since an arbitrator has been appointed in terms of Section 89 of the Code of Civil Procedure, plaintiff, M/s. Countrywide Promoters Pvt. Ltd. in CS(OS)No.2899/2011, will be given benefit of Section 16 of the Court Fee. The court appreciates the efforts put in by the parties and their counsel in arriving at a joint understanding.

I.A. No.18607/2011 in CS(OS)No.2899/2011

13. In view of the order passed in the suit, application stands disposed of.
14. DASTI.


G.S.SISTANI,J

NOVEMBER 24, 2011

SSn