

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

% *Judgment delivered on: February 12, 2013*

+ **OMP No.100/2013**

RAJIV KAPOOR Petitioner
Through Mr.Rajiv Nayar, Sr.Adv. with
Mr.Arunabh Chowdhury, Mr.Ashish
Jha, Mr.Gainilung Panmei &
Mr.Vaibhav Tomar, Advs.

versus

M/S NOVELL CONSTRUCTIONS Respondent
Through Mr.Sudhir Nandrajog, Sr.Adv. with
Mr.Mrinal Bharti, Adv.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (ORAL)

1. The petitioner is the owner of the property bearing No.A-292, New Friends Colony, New Delhi-110065. He had handed over the said property to the respondent, i.e. M/s Novell Constructions under the Memorandum of Understanding dated 4th April, 2011 followed by a Collaboration Agreement dated 20th April, 2011 to demolish the existing structure on the said plot of land and develop, construct and/or built a building consisting of basement, stilt parking, ground floor, first floor, second floor and third floor with terrace at the cost and expense of the respondent, after getting the building plan sanctioned from the competent authority and to hand over the property after construction and development within 15 months thereof. The respondent/builder was to be given its demarcated share of the property comprising of the entire first floor along with 1/4th of the entire parking

areas and the proportionate undivided, indivisible and impartible share of ownership rights in the land and the remaining portion of the property being the exclusive ownership of the petitioner.

2. In the abovementioned petition, it is stated that the respondent has completed the construction of the property and it has to hand over the possession of the property to the petitioner as per the agreement and would only have a right under the agreement to the first floor of the building with the demarcated $\frac{1}{4}$ share of the total parking areas. Otherwise, the respondent has no right to the other portion of the building and cannot delay in handing over the possession of the suit property in question as per agreement after completion of construction. The petitioner says that as the respondent has not handed over suit property to the petitioner, thus he has no option but to file the present petition. There is an arbitration clause in the agreement. Thus, the present petition has been filed by the petitioner under Section 9 of the Arbitration and Conciliation Act, 1996, seeking, *inter alia*, the following prayers:-

“a. Direct the respondent, its partners, officers, servants and agents to forthwith handover the physical and vacant possession of the entire Basement, Stilt, entire Ground Floor, entire Second Floor, entire Third Floor and entire Terrace along with the $\frac{3}{4}$ th share of the parking space, common areas etc., of the property bearing No.A-292, New Friends Colony, New Delhi as per the Memorandum of Understanding dated 04.04.2011 and the Collaboration Agreement dated 20.04.2011 to the petitioner herein and restrain the respondent, its partners, officers, servants and agents from interfering with the peaceful possession and enjoyment of the property bearing No.A-292, New Friends Colony, New Delhi-110065 and further restrain the respondents, its partners, officers, servants and agents from hindering/obstructing the ingress and egress of the petitioner and his family to

and from the property bearing No.A-292, New Friends Colony, New Delhi-110065; and

b. direct the respondent to pay the admitted amount of Rs.2,00,000/- w.e.f. 05.10.2012 to the petitioner herein;

c. restrain the respondent, its officers, servants, agents or any person acting through or under them from selling, dealing, alienating, parting with possession or creating any third party rights qua the First Floor of the property bearing No.A-292, New Friends Colony, New Delhi-110065 till the handing over of possession of the entire Basement, Stilt, entire Ground Floor, entire Second Floor, entire Third Floor and entire Terrace along with the 3/4th share of the parking space, common areas etc., of the property bearing No.A-292, New Friends Colony, New Delhi as per the Memorandum of Understanding dated 04.04.2011 and the Collaboration Agreement dated 20.04.2011 to the petitioner herein and the payment of the liquidated damages of Rs.2,00,000/- (Rupees Two Lakhs only) per month w.e.f. 05.10.2012 till the delivery of physical and vacant possession of the property to the petitioner;”

3. Earlier to the abovementioned petition, the respondent had also filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996, being OMP No.72/2013 against the petitioner, seeking an injunction restraining the petitioner from demanding penalty amount of Rs.2,00,000/- per month from the petitioner until the award is given by the proposed Arbitrator. Further interim order is sought for restraining the petitioner from obstructing the completion of the work by the petitioner in fulfillment/discharge of its obligations under the agreement.

4. Notice of both the petitions was issued. The petitioner and Mr.Praveen Aggarwal, a partner of the respondent-firm are present in Court. After some arguments, both parties agreed to settle their dispute. It is

admitted by the respondent that the construction work in the building has been completed except certain minor works are to be done. According to the petitioner, the following are the some works which are to be completed by the respondent:-

“Specs seek – All windows must have Wire Mesh

- I. Doors was subsequently discussed and accepted by PA.
- II. Family Room in all 3 Floors – No Wire Mesh
- III. Front/Guest Bedroom in all 3 Floors – No Wire Mesh
- IV. Door of Living Room in all 3 Floors – No Wire Mesh
- V. Kitchen in 2nd and 3rd Floors – No Wire Mesh
- VI. Kitchen in Ground Floor – Window sealed – hence no Wire Mesh
- VII. Kitchen Door – on GF – No Wire Mesh
- VIII. One Bedroom in GF – No Wire Mesh on Door or Window
- IX. All Bathrooms – No Wire Mesh....windows sealed

All bathrooms to have Fans

- I. No powder bathroom has fans
- II. GF – one bathroom has no fan
- III. On 2nd and 3rd floor – 2 bathrooms do not have fans

Bathroom Bath

- 1. Cubicles not complete on 2nd and 3rd floor bathrooms.
- 2. No fittings in terms of towel racks/soap dishes.

GF should have 7 AC's = provided only 6

To verify fitment of Cockroach Traps in all bathrooms and Kitchens.”

- 5. Respondent submits that as far as the list of work provided by the petitioner is concerned, he will discuss the same with the petitioner and respondent shall complete the same as per agreement.

6. With the consent of the parties, the petition is disposed of with the following terms and conditions:

- a) The petitioner undertakes that he shall withdraw letter issued to the Sub Registrar with regard to objections of execution sale deed/agreement to sell and shall make no hindrance in executing sale deed/agreement to sell with the third party to be created by the respondent. The petitioner shall also withdraw police complaint. The petitioner shall also not claim for defect or delay with regard to construction and handing over property from the respondent. With regard to maintenance of the AC/Dish TV/Water Tank by the respondent, the petitioner undertakes that he shall have no objection to the access of the respondent. The petitioner undertakes not to demand any penalty amount of Rs.2,00,000/- per month from the respondent as claimed in the petition.
- b) The respondent has informed the Court that he has applied for lift fitness certificate. The same has not been received by the respondent from the concerned authority. The electricity and water testing of the building have also not been got done by the respondent. He shall provide full cooperation in this regard and do the needful with the concerned authorities within a period of three months. The respondent undertakes not to claim payment of additional work if done at basement (cabin and storage) or towards the construction work of shaft.
- c) The respondent also undertakes to get the final coat of paint and polish in the portions of the petitioner. It is informed by the respondent that bathroom fittings and fixtures are partially installed and the balance required to be installed within the period

of 15 days from today.

- d) The respondent undertakes to handover the vacant and peaceful possession of the entire Basement, Stilt, entire Ground Floor, entire Second Floor, entire Third Floor and entire Terrace along with the 3/4th share of the parking space, common areas etc., of the property bearing No.A-292, New Friends Colony, New Delhi, to the petitioner today by 6.00 p.m. except the portion for which the respondent is entitled as per agreement between the parties.
7. The parties shall be bound by the above said terms and conditions.
8. The petition is accordingly disposed of. No costs.
9. *Dasti*, under the signatures of the Court Master.

(MANMOHAN SINGH)
JUDGE

FEBRUARY 12, 2013/ka