IN THE HIGH COURT OF DELHI AT NEW DELHI

O.M.P. No. 1258 of 2014

ANAND CHATURVEDI & ORS. ………… Petitioners
Through: Mr. Jayant K. Mehta with Mr. Sandeep Phogat and Ms. Madhavi Khare, Advocates.

versus

PRAVESH CHATURVEDI ..... Respondent
Through: Mr. G.S. Chaturvedi, Advocate.

CORAM: JUSTICE S. MURALIDHAR

O R D E R
12.01.2015

1. This is a petition under Section 9 of the Arbitration and Conciliation Act, 1996 ('Act') seeking interim reliefs prior to the commencement of the arbitration proceedings.

2. The Respondent Pravesh Chaturvedi is admittedly the owner of the property at H-39/8, DLF Phase I, Gurgaon, measuring 200 square yards. Petitioners 1 to 4 are the partners of M/s. Apoorv Builders a partnership firm (Petitioner No.5) engaged in the field of building construction and related works, having its registered office in Bhopal.

3. The Petitioners approached the Respondent for development of the aforementioned plot belonging to the Respondent. In terms of the collaboration agreement dated 1st September 2011 executed by the parties, Petitioner No. 5 agreed to redevelop the said plot by constructing the basement, ground floor, first floor and second floor with certain terms and conditions. Significant among the terms and conditions are, clause 5 which states that the construction of the proposed building would be completed

within 12 months from the date of sanction of the proposed plans. It further provides that in case of delay of construction beyond 12 months, the period for completion would stand extended to a period of 15 months from the date of sanction of the plans and handing over of the existing building whichever is later after which an amount of Rs.25,000 per month would be payable by the builder to the owner. Clause 11 states that "upon completion of proposed building, the exclusive possession and ownership of the basement and ground floor would vest with the builder and the exclusive possession and ownership of the first floor, second floor and exclusive roof rights above the second floor would vest in the owner, who would be at liberty to raise any construction above the second floor on its own or through anybody, in respect of which builder will not raise any objection."

4. In terms of Clause 13 the builder had to cover the complete area of the second floor which would be same as that of first floor within the maximum compoundable limits. Under Clause 14 the 'builder', i.e. Petitioner No.5, agreed to pay the 'owner', i.e. the Respondent, a sum of Rs.46 lakhs as total consideration of the collaboration agreement in addition to the owner's share in the building as mentioned in Clause 11. The said clause noted that Rs.5 lakhs had been paid to the Respondent at the time of execution of the agreement. Rs.25 lakhs would be paid at the time of approval of the building plans. The balance Rs.16 lakhs would be paid within 15 months from the date of second payment or execution of the sale deed by the Respondent in respect of the share of the Petitioner No.5 whichever was earlier. In terms of Clause 20, a penalty of Rs.25,000 per month would be payable by Petitioner No.5 to Respondent for any delay beyond the period of 15 months apart from the rent of the accommodation taken by the Respondent. In terms of Clause 21 "in the event, the builder violates any of the terms and conditions of this agreement and commits

any breach by acts or omissions for construction of the proposed building and if the construction is delayed beyond the period of two years, the possession of the property would automatically vest back with the owner. In the event, the owner does not execute the sale deed in respect of the portion of the builder, the same can be got executed by the builder by way of specific performance."

5. The agreement also contained the following arbitration clause:

> "22(i) The parties agree that all or any disputes or differences arising out of or concerning or touching upon this agreement in relation to the interpretation, performance, breach, termination or invalidity shall in the first instance be mutually settled between the parties.
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> (ii) In the event of any unresolved dispute or difference, the parties agree that the same shall be referred to the arbitration as per law. The arbitration proceedings shall be conducted at New Delhi in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any other statutory modification or re-enactment thereof. The decision of the Arbitrators shall be final and binding upon the parties."

6. According to the Petitioners apart from Rs.5 lakhs paid to the Respondent at the time of execution of the agreement, he was paid a sum of Rs.25 lakhs at the time of approval of the building plans and a further sum of Rs.8 lakhs. It is claimed that the building was constructed in September 2013. The Petitioners applied for completion certificate in the name of the Respondent and that was granted by the Haryana Urban

Development Authority by a document dated 25th September 2013. It is stated that after receiving the completion certificate, the Respondent approached the Petitioners to further build an additional area in his portion on the first and second floor. The Petitioners state that it had been agreed between the parties that the Respondent would pay the Petitioners Rs.10,000 per square feet, and also grant extension of time, for the additional area constructed. The Petitioners claim that they constructed an additional area of 461 square feet on the portion of the Respondent. For this the Petitioner by letter dated 5th August 2014 demanded a sum of Rs.46,11,736.

7. The Petitioners state that the Respondent failed to make payment of the aforementioned sum and instead proceeded to file a police complaint with the Economic Offences Wing (‘EOW’) against the Petitioners. It is stated that a closure report was filed by the EOW in the said complaint. It is alleged that the Respondent unilaterally, and behind the back of the Petitioners, illegally took possession of the entire plot which still had the materials purchased by the Petitioners for the construction. The Petitioners' access to their portions i.e. the basement and ground floor was denied. Despite a complaint to the police made by the Petitioners on 25th September 2014, no action was taken.

8. The Petitioners gave a notice of arbitration to the Respondent on 1st October 2014. The Petitioners further alleged that the Respondent parted with possession of the building to three other persons who installed their boards in the plot and denied access to the Petitioners. In these circumstances, the present petition was filed seeking to restrain the Respondent from alienating, transferring or creating third party interests on the basement and ground floor of the building in question, to maintain status quo and to either deposit a sum of Rs.51 lakhs or furnish an

unconditional bank guarantee of a scheduled bank for the said sum.

9. By an order dated 16th October 2014, after hearing counsel for both parties, the Court appointed a Court Commissioner ('CC') to visit the site, prepare a site plan indicating the portions constructed by the Petitioners and the Respondent. It should be noted that while the Respondent acknowledged having received Rs.38 lakhs against a total amount of Rs.46 lakhs, the Respondent contended that he had undertaken expenses in making the portions falling to the share of the Respondent namely the first and second floor habitable. In para 5.1 of the Court's order dated 16th October 2013 it was observed as under:

> "5.1 In case there is any dispute with regard to any particular portion, concerning the issue as to which of the opposing sides has undertaken construction of the same, that aspect will be recorded by the Court Commissioner in his report, so that it could ultimately be adjudicated upon in the arbitration proceedings."

10. The CC has since filed his report along with photocopies. He has, inter alia, noted in his proceedings dated 3rd December 2014 that "the status of the work is incomplete being unfinished." The Petitioners informed the CC that the construction was complete including the additional area constructed on first and second floor after obtaining completion certificate. In his report the CC noted that an Architect was called during the proceedings to measure the works as it existed on 3rd December 2014 on all the floors from the basement to the terrace in the presence of the parties. A site plan was also prepared.

11. The Respondent submitted a letter dated 3rd December 2014 to the CC setting out the details of the expenses incurred by the Respondent. The

relevant bills in support thereof were also enclosed. The total amount as calculated by the Respondent of all the bills worked out to Rs.8,34,351.

12. Mr. G.S. Chaturvedi, learned counsel for the Respondent, at the outset, stated that he would like to file his objections to the report of the CC and, therefore, the case should be adjourned for that purpose. The Court notes that in the order dated 16th October 2014 this Court had clearly noted that if there was any issue in regard to the matters examined by the CC that would ultimately be decided in the arbitral proceedings. It is, therefore, clarified that the objections that the Respondent may have to the report of the CC, can be raised before and be looked into by the learned Arbitrator.

13. Mr. Jayant K. Mehta, learned counsel for the Petitioners, submitted that there was no justification for the Petitioners to be kept out of the portions falling to their share i.e. the basement and ground floor. He pointed out that the Respondent was already occupying the portions that fell to his share i.e., the first and second floor and the terrace. He submitted that the Petitioners should be permitted to complete the remaining works in the basement and ground floor and also be permitted to sell them. To secure the interests of the Respondent, the Petitioners were, without prejudice to their rights and contentions in the arbitration proceedings, prepared to place in a fixed deposit, in the name of the Respondent, a sum of Rs.20 lakhs which would be kept alive during the pendency of the arbitral proceedings.

14. The above submissions were vehemently opposed by Mr. Chaturvedi, learned counsel for the Respondent. He submitted that the question of handing over possession of the basement and ground floor in terms of Clause 11 of the agreement would arise only if the building was complete in all respects and not otherwise. He undertook that the Respondent would

not part with possession or alienate the basement and ground floor during the pendency of the arbitral proceedings.

15. It was submitted by both parties that they were agreeable to the appointment of an Arbitrator by this Court without there being a formal application by the Petitioners for that purpose.

16. The above submissions have been considered. It appears to the Court that pursuant to the agreement between the parties, the building has been constructed and a completion certificate has been issued. Without commenting in any manner on the respective contentions of the parties as to the quality of the construction or the compliance with their respective obligations under the agreement, the Court considers it sufficient at this stage to note that the Respondent has possession of the entire portion falling to his share i.e, the first floor, the second floor and the terrace. In other words, while the Respondent is in possession of the portions which fall to his share, the Petitioners have been admittedly kept out of the portions falling to their shares i.e. the basement and ground floor. Keeping the said portions unutilized and vacant would not enure to the benefit of anyone. Admittedly some finishing work requires to be undertaken in the basement and the ground floor. It would not be fair to expect the Respondent to undertake such expense when in fact the said portions have to come to the share of the Petitioners. On the other hand, the Petitioners are willing to complete the balance works in the basement and ground floor. The Petitioners have, without prejudice to their rights, also undertaking to indemnify the Respondent for any expenses he might have incurred in respect to his portions subject to the outcome of the arbitral proceedings.

17. Accordingly, the Court considers it appropriate, keeping in view the

balance of convenience and the relative hardship that may be caused to the parties, to direct as under:

(i) The Petitioners will place in a fixed deposit with a nationalised bank within a period of one week from today a sum of Rs.20 lakhs in the name of the Respondent. The fixed deposit would be initially for a period of one year and will be kept renewed during the pendency of the arbitration proceedings.

(ii) The fixed deposit receipt (FDR) will not be encashed by the Respondent during the pendency of the arbitral proceedings. A copy of the FDR will be furnished to the Respondent within a period of one week and the original thereof will be submitted by the Petitioners to the learned Arbitrator to be appointed hereafter by the Court at the first sitting. The learned Arbitrator will issue appropriate directions for the FDR to be kept in safe custody.

(iii) The Respondent shall hand over the possession of the basement and ground floor of the building in question to the Petitioners in the presence of Mr. Y.D. Nagar, Advocate ('CC') between 4 and 5 pm on 14th January 2015. The fees of the CC for this purpose is fixed as Rs.20,000 and will be paid to him by that date by the Petitioners without prejudice to their rights to seek reimbursement thereof in the arbitral proceedings. The CC will draw up the proceedings for the handing over of the basement and ground floor to the Petitioners and get it be signed by the representative of the Petitioners and the Respondent. The Petitioners are permitted to affix their locks on the ground floor and basement portions. They will also be given a duplicate key of the lock, if any, placed on the main gate of the building. The Petitioners will not be denied access to the basement and ground floor of the building.

(iv) The Petitioners will be permitted to carry out any further works to complete the construction in the ground floor and basement portions.

(v) The Petitioners are permitted to seek appropriate directions from the learned Arbitrator to facilitate the sale of both or either of the ground floor and the basement portions. They will furnish to the learned Arbitrator the complete details of the consideration received in such sale, with copies to the Respondent.

18. The above directions will continue during the arbitral proceedings subject, of course, to the learned Arbitrator issuing any further directions by way of modification of this order on the applications to be filed by either party under Section 17 of the Act.

19. The Court appoints Mr. Charanjit Jawa, retired District & Sessions Judge residing at 229 Vivekanand Puri, Delhi-110007 (Mob. No. 9811092067) as sole Arbitrator to adjudicate the disputes between the parties, including their claims and counter claims. The arbitration shall take place under the aegis of the Delhi International Arbitration Centre ('DAC'). The fees of the learned Arbitrator will be in terms of the Delhi High Court Arbitration Centre (Arbitrators' Fees) Rules.

20. The petition is disposed of in the above terms.

21. A copy of this order be communicated to the learned Arbitrator as well as Additional Director, DAC forthwith.

22. Order *dasti*.

S. MURALIDHAR, J.

JANUARY 12, 2015
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