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

+ **FAO(OS) 22/2015**

PRAVESH CHATURVEDI

..... Appellant

Represented by: Ms.Bhavna Kohli, Advocate with
Mr.G.S.Chaturvedi and Mr.Shantanu
Chaturvedi, Advocates

versus

ANAND CHATURVEDI & ORS

..... Respondents

Represented by: None

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

% **01.03.2016**

1. None has appeared for the respondents even at the second call.
2. Pravesh (hereinafter referred to as the owner), owned plot bearing Municipal No.H-39/8, DLF Phase-I, Gurgaon ad-measuring 200 square yards. Anand, Sadhana, Suman and Vibha (hereinafter referred to as builders) are carrying on business as partners of M/s.Apoorv Builders. The owner and the builders entered into a collaboration agreement on September 01, 2011 as per which the builders agreed to construct a basement, ground floor, first floor and second floor on the property within the time stipulated. Apart from ₹46,00,000/- (Rupees Forty Six Lacs only) to be paid to the owner within the time specified and in instalments, the builders had to complete the construction. Late construction compensation/penalty was stipulated. The basement and the ground floor would belong to the builders

and the remainder to the owner. The agreement had an arbitration clause.

3. The builders filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996 alleging default by the owner pleading further that at the asking of the owner additional constructions were made in the covered area allocable to the owner. Pleading threat of the builders' rights being jeopardized it was prayed that the owner be restrained from alienating or encumbering the basement and the ground floor and should also deposit ₹51,00,000/- (Rupees Fifty One Lacs only) in the Court.

4. The said petition has been disposed of vide impugned order dated January 12, 2015 with a direction that the builders would deposit ₹20,00,000/- (Rupees Twenty Lacs only) in a nationalized bank in the name of the owner and would keep the deposit alive till the dispute was decided by the Arbitrator. It has been directed that the owner shall hand over possession of the basement and the ground floor to the builders.

5. With consent of parties an Arbitrator was appointed.

6. The grievance of the owner that the builders have not constructed the property as per agreement would require evidence to be led before the Arbitrator. The owner accepts having received ₹38,00,000/- (Rupees Thirty Eight Lacs only) from the builders. Claim of the owner for recompense due to delayed construction would require evidence to be led and quantification of the claim.

7. The rights of the owner and the builders in the property have to be protected. The owner is in possession of the first floor and the second floor and thus is well-protected. The builders need a protection and this can only be if the owner is restrained from encumbering, transferring, selling or alienating the basement and the ground floor, a relief which was prayed for

in the petition filed by the builders, but relief granted much beyond.

8. But the equity worked out by the learned Single Judge by requiring the builders to deposit ₹20,00,000/- (Rupees Twenty Lacs only) in a nationalized bank in the name of the owner and keep the deposit alive till disposal of the arbitration proceedings before the arbitrator also needs to be undone.

9. The appeal is accordingly disposed of modifying the impugned order dated January 12, 2015. The appellant need not hand over the keys of the basement and the ground floor to the respondents, but shall maintain status quo qua possession and title and we note that as of today the appellant has not encumbered the basement and the ground floor. The respondents are relieved from the obligation to deposit ₹20,00,000/- (Rupees Twenty Lacs only) in a nationalized bank and keep the deposit alive.

10. No costs.

CM No.746/2015

Dismissed as infructuous.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

MARCH 01, 2016

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