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

+ W.P.(C) No.2161/2013 & CM No.4109/2013 (for stay) & CM No.6229/2014 (for directions).

MRS. KABITA SARKAR AND ANR Petitioners

Through: Mr. Rajeev Saxena and Mr. Matloob Alam, Advs.

versus

NATIONAL BUILDINGS CONSTRUCTION CORPORATION LTD

..... Respondent

Through: Mr. Harshit Aggarwal, Mr. Vivek Malik and Mr. Mukul Thakur, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **11.01.2016**

1. The two petitioners, residents of NOIDA, Uttar Pradesh, *inter alia* seek mandamus to the respondent National Buildings Construction Corporation Limited (NBCC) to allot a parking space to the petitioners in the multi-storied residential building known as Vibgyor Towers constructed/developed by the respondent NBCC at Rajarhat, Kolkata.
2. Notice of the petition was issued and pleadings have been completed.
3. It has straightway been enquired from the counsel for the petitioners as to how this writ petition even if maintainable, is maintainable in this High Court. The writ petition appears to be to enforce the terms of a contract entered into between the petitioners as flat buyers and the respondent NBCC as builder/developer and with respect to an immovable property beyond the territorial jurisdiction of this Court.

4. The counsel for the petitioners on the aspect of territorial jurisdiction contends that the Agreement between the petitioners and the respondent was entered into at Delhi and also provides for the territorial jurisdiction of this Court over any disputes arising therefrom.

5. Even if that be so, Supreme Court in ***Harshad Chiman Lal Modi Vs. DLF Universal*** (2008) 7 SCC 791 has held that *lis* with respect to immovable property, notwithstanding the Agreement and notwithstanding no objection in this regard having been taken by the respondents/defendants before the Court, cannot be entertained in a Court within whose territorial jurisdiction the immovable property is not situated. The said judgment has been consistently followed by the Division Benches of this Court in (i) ***Vipul Infrastructure Developers Vs. Rohit Kocchar*** ILR (2008) II Delhi 928; (ii) ***Amish Jain Vs. ICICI Bank*** 192 (2012) DLT 701; and, (iii) ***Pantaloone Retail India Vs. DLF Limited*** 155 (2008) DLT 642.

6. On the aspect of maintainability of writ petition in contractual matters the counsel for the petitioners contends that the petitioners in fact in the present petition are seeking the parking space under the provisions of the West Bengal Apartment Ownership Act, 1972.

7. The aforesaid contention also shows that it is the Courts of West Bengal which are best suited to enforce the provisions thereof.

8. Thus this Court clearly lacks territorial jurisdiction to entertain the writ petition even if maintainable. The petition is liable to be dismissed on this ground alone.

9. The counsel for the petitioners states that since the petitioners would be invoking the jurisdiction of the Court of appropriate territorial

jurisdiction, the question of maintainability of writ petition be not discussed.

10. The petition is thus disposed of observing that this Court does not have territorial jurisdiction to entertain the same and with liberty to the petitioners to invoke the jurisdiction of the Courts of appropriate territorial jurisdiction for the reliefs which were claimed in this petition.

No costs.

RAJIV SAHAI ENDLAW, J

JANUARY 11, 2016

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