

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

% *Order delivered on: 9th March, 2016*

+ **ARB. P. No.147/2015**

RATEGAIN IT SOLUTIONS PVT. LTD. Petitioner
Through Ms.Payal Juneja, Adv. with Mr.Preet
Pal Singh, Adv.

versus

GETMORE DEVELOPMENTS PVT. LTD. Respondent
Through None

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (ORAL)

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator to adjudicate the disputes between the parties.
2. Brief facts of the case are that the petitioner entered into a Memorandum of Understanding (MOU) dated 16th January, 2013 with the respondent-Company, as an Investor in the Residential Housing Project of the respondent-Company. The said MOU was in the nature of Construction and Development agreement between the parties. In terms of the said MOU, the petitioner-Company as an Investor/Financer invested a sum of Rs.3,00,00,000/- in the project of the respondent-Company which is acknowledged and admitted by the respondent in Clause 2 of the MOU. As per clauses 3 and 4 of the MOU, the respondent-Company was to return back

the said amount within a period of 12 months along with agreed interest thereon.

3. The respondent-Company against the investment/financed amount of Rs.3,00,00,000/- had allotted to the petitioner-Company 10 flats bearing No. 107, 206, 208, 307, 602, 703, 705, 706, 807 and 808 in the said residential Project, "Coconut Grove Residence" bearing No. 121/4 and 121/7 situated at Fatrade of Varca Village, Salcete, Goa, vide Sale Agreement dated 16th January, 2013 and Buyer Agreement. As agreed between the parties, the said flats were given as collateral security to the petitioner-Company.

4. Since the respondent was not able to fulfil its part of the obligations under the MOU, the respondent sought further time and on its request another Memorandum of Understanding dated 16th January, 2014 was executed between the parties, recording the same terms and conditions as stated in the earlier MOU except for changes in clause with respect to payment of interest and mode/manner of repayment. However, the respondent failed to fulfil its part of the obligations and breached the terms of the subsequent MOU dated 16th January, 2014 and failed to handover possession of the said flats, as such, disputes/differences have arisen between the respondent and petitioner. In terms of clause 8 of the MOU dated 16th January, 2014 read with clause 26 of the Flat Buyer Agreements for the said flats, in the event of any dispute/difference between the parties, the same is to be settled by mutually appointed Arbitrator through Arbitration.

5. It is further submitted that the petitioner issued legal notice dated 12th December, 2014 nominating and appointing Mr.Neeraj Kumar Gupta, ADJ (Retd.) as the Sole Arbitrator and calling upon the respondent to give their

consent to the name of the said Arbitrator to act as the sole Arbitrator to decide and adjudicate all disputes arising under the agreement inter-se the parties. The said notice was served upon the Director and the employee of the respondent through email. However, the respondent neither met the terms of the legal notice nor did they reply to the said legal notice. Thus, the present petition has been filed.

6. Notice of the petition was issued to the respondent who was served by way of publication. However, no one appears on behalf of the respondent, either before the Joint Registrar or before Court when the matter was taken up. Learned counsel for the petitioner has also informed the Court that even before the invocation, notice was sent to the respondent at the correct address and the report had come that no such person resides at the given address. Counsel states that this is the same address which is mentioned in the agreement between the parties. She further states that the respondent has now been served by way of publication. There was no other option left with the petitioner but to file the present petition. After the publication, the respondent should have appeared before the Court and contest the matter, if necessary.

7. In view of the above said facts and circumstances of the case, as no one appears on behalf of the respondent, as well as in view of the averments made in the petition, the prayer made therein is allowed. Mr. Neeraj Kumar Gupta, Retired Addl. District Judge, Delhi (Mob. 9910384632) is appointed as sole Arbitrator to adjudicate the disputes arising out between the parties as mentioned in the present petition. The parties are granted liberty to file their respective claims and counter-claims before the learned Arbitrator.

8. The arbitration shall take place under the aegis of Delhi International Arbitration Centre ('DAC'). The Arbitrator shall ensure the compliance of the provisions of Arbitration and Conciliation (Amendment) Act, 2015 before commencing the arbitration. The Arbitrator shall also file an affidavit of "no conflict of interest". The fees of the learned Arbitrator shall be in terms of the Delhi International Arbitration Centre (Administrative Cost Arbitrator's Fees) Rules.

9. The petition is accordingly disposed of.

10. Copy of this order be given *dasti* to the learned counsel for the petitioner and a copy thereof be delivered to the learned Arbitrator as well as Additional Coordinator, DAC forthwith.

(MANMOHAN SINGH)
JUDGE

MARCH 09, 2016