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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 22nd November, 2016

Pronounced on: 21st December, 2016

+ **CS(OS) 3281/2014 and IA No.7709/2015 (under Section 8 of the Arbitration and Conciliation Act) and OA No.210/2015**

KRISHAN RADHU

..... Plaintiff

Through: Mr. Alok Kumar, Mr. Neeraj Kumar Gupta, Mr. Abhishek Paruthi and Mr. Amit Kumar Singh, Advocates

Versus

THE EMMAR MGF CONSTRUCTION

PVT.LTD.

.... Defendant

Through: Ms. Manmeet Arora and Ms. Chand Chopra, Advocates

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

1. This suit was instituted by the plaintiff against the defendant company seeking a decree in the sum of Rs.1,07,65,250/- (Rupees One Crore Seven Lakhs Sixty Five Thousand two hundred and fifty only) as damages alongwith *pendent lite* and future interest at the rate of 10% from the date of filing of the suit till realization alongwith costs, pleading cause of action to have arisen mainly on the averment that the defendant had caused losses to the plaintiff by having failed to deliver timely possession of the two apartments (T-2-02-02 and T-2-03-02) at Common Wealth Games Village constructed / developed by

the said company on lands admeasuring 11 hectares at junction of roads adjacent to National Highway 24 and Akshardham Temple in terms of apartment buyers agreements executed by the parties on 16.03.2009.

2. According to the plaintiff's case, the possession of the said two apartments were to be handed over, as per the said two identically worded agreements, before the end of June 2011 and since there was a default in this regard till September 2012, the plaintiff had earlier instituted consumer complaint before the National Consumer Disputes Redressal Commission (NCDRC) under the provisions of Consumer Protection Act, 1986, after the filing of which the possession was delivered thereby satisfying the claim for relief of possession on 27.09.2012. The plaintiff pleads that upon it being pointed out that he was not "consumer" within the meaning of the expression used in the Consumer Protection Act, 1986 and resultantly NCDRC had no jurisdiction to adjudicate upon the consumer complaint preferred before it, the said matter having been withdrawn, the present suit was instituted seeking damages for the loss suffered consequent to the delay, the defendants having failed to give the necessary relief inspite of the demand by legal notice dated 24.10.2011.

3. Upon the summons of the suit and notice on the application filed therewith being served on 28.11.2014, in terms of the order dated 03.11.2014 of the Joint Registrar (Judicial), the defendant, instead of filing written statement, moved the application (IA 7709/2015) under Section 8 of the Arbitration and Conciliation Act, 1996, *inter alia*, stating that the two apartment buyers' agreements on the basis of

which the case had been brought contained arbitration clauses, in which view the suit deserved to be dismissed and the parties referred to arbitration. This application came up before the Joint Registrar (Judicial) on 21.04.2015 when it was submitted by the counsel for the defendant that the written statement had not been filed for the reason it would prejudice the application under Section 8 of the Arbitration and Conciliation Act, 1996. This plea was rejected by the Joint Registrar (Judicial) by order dated 21.04.2015 whereby the right of the defendant to file the written statement was closed for the reason the period of 90 days permitted for the purpose under the Code of Civil Procedure, 1908 (CPC) had lapsed. This decision of the Joint Registrar is under challenge by the defendant by chamber appeal (OA 210/2015).

4. Both the application under Section 8 of the Arbitration and Conciliation Act, 1996 (IA 7709/2015) and original appeal (OA 210/2015) have been resisted by the plaintiff. It may be noted that, inspite of opportunity, no reply has been filed by the plaintiff.

5. The two apartment buyers' agreements dated 16.03.2009 on the basis of which cause of action is pleaded in this suit have been filed, in original, by the plaintiff alongwith the plaint, in terms of the list of documents dated 06.10.2014. Both the agreements are in standard formats, describe the defendant as "the Developer" and the plaintiff as "the allottee" and concededly contain identically worded arbitration clauses in para 43.0 which read as under :-

"43.0 Arbitration

All or any dispute arising out of or touching upon or in relation to the terms of this Agreement or its termination, including the interpretation and validity thereof and the respective rights and obligations of the parties shall be settled amicably by mutual discussion, failing which the same shall be settled through arbitration. The arbitration proceeding shall be governed by the Arbitration and Conciliation Act, 1996, or any statutory amendments, modifications or re-enactment thereof for the time being in force. A sole arbitrator, who shall be nominated by the any one of the Directors of the Developer, shall hold the arbitration proceedings at the registered office of the Developer at New Delhi or at any other place as may be decided by such arbitrator. The allottee hereby confirms that he shall have no objection to such appointment even if the person so appointed, as the Arbitrator, is an employee or advocate of the Developer or is otherwise connected with the Developer and the allottee confirms that notwithstanding such relationship / connection and the holding of hearings at the registered office of the Developer in New Delhi, the allottee shall have no doubts as to the independence or impartiality of the said arbitrator and shall not challenge the same.”

6. It is not disputed by the plaintiff at the hearing that the dispute raised by the civil suit at hand is a dispute which arises out of the apartment buyers’ agreements which contain the above noted clauses and consequently the parties were obliged, in the event of they failing to settle the disputes amicably by mutual discussion, to have resort to the arbitration, such proceedings to be governed by the provisions of the Arbitration and Conciliation Act, 1996, the sole Arbitrator for such purposes to be nominated by any one of the directors of the developer (the defendant). It may be added here that, in the course of hearing, the learned counsel for the defendant informed and learned

counsel for the plaintiff fairly conceded that by way of a communication dated 19.06.2015, defendant company informed the plaintiff that Mr. Rajiv Bansal, advocate had been appointed to act as the sole arbitrator for adjudicating upon the disputes which are subject matter of this litigation in terms of the afore-quoted arbitration clauses in the two apartment buyers' agreements. It was also fairly conceded at the hearing by the learned counsel for the plaintiff that the plaintiff has appeared before the sole arbitrator but no effective proceedings have taken place till date, presumably on account of pendency of the civil suit at hand.

7. The defendant argues that in the face of the arbitration clause, the jurisdiction of this court to sit in judgment over the dispute brought through the civil suit at hand is ousted and that the court should not entertain this litigation and rather refer the parties to the arbitrator who has since been appointed and has entered upon arbitral proceedings. It is also submitted by the defendant that since it (the defendant) was entitled under the law and accordingly had been advised to come with the prayer under Section 8 of the Arbitration and Conciliation Act, 1996, it was not obliged to file a written statement and, therefore, the order closing the said right without adjudication on the prayer made in the said application is unjust and improper.

8. *Per contra*, the plaintiff's argument is that the defendant cannot invoke the arbitration clause in as much as no such prayer under Section 8 of the Arbitration and Conciliation Act, 1996 was made during the legal proceedings before NCDRC and further that the application moved in the course of proceedings arising out of the civil

suit being meritless, it also having been filed beyond the maximum period of 90 days which is permissible for filing of the written statement, the prayer of the defendant for reference of the dispute to arbitration must be rejected. The plaintiff submits that the Joint Registrar (Judicial) took an appropriate view by order dated 21.04.2015 since the maximum period of 90 days for filing of the written statement had lapsed and there was no prayer formally brought for extension of time for any legitimate reasons.

9. Both sides have been heard at length and record perused.

10. The provision contained in Section 5 of the Arbitration and Conciliation Act, 1996 delineates the “*extent of judicial intervention*” by declaring that “*notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part*”. The power to refer the parties to arbitration - where there is arbitration agreement - is provided for in Section 8, which being at the core of the controversy at hand, must be taken note of as under:-

“8. Power to refer parties to arbitration where there is an arbitration agreement.—

(1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.

(2) *The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.*

Provided that where the original arbitration agreement or a certified copy thereof is not available with the party applying for reference to arbitration under sub-section (1), and the said agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the Court to call upon the other party to produce the original arbitration agreement or its duly certified copy before that Court.

(3) *Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.”*

(emphasis supplied)

11. It is pertinent to mention here that the provision contained in Section 8 (1) of the Arbitration and Conciliation Act, 1996 was amended with retrospective effect from 23.10.2015 by Act No.3 of 2016. Prior to its amendment, the said sub-Section read as under:-

“(1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.”

12. It is trite that where a dispute is referable to arbitration, the parties cannot be compelled to take recourse to the remedy in civil court [*Ravi Prakash Goel vs. Chandra Prakash Goel*, AIR 2007 SC

1517]. It is further settled that the language in Section 8 is peremptory in nature and, therefore, in cases where there is an arbitration clause in the agreement, it is obligatory for the court to refer the parties to arbitration in terms of their arbitration agreement and nothing remains to be decided by the Court in the original action after such an application is made except to refer the dispute to an arbitrator. [*P. Anand Gajapathi Raju vs. P.V.G. Raju (dead)*, 2000 (4) SCC 539].

13. It is, at the same time, equally true that mere existence of arbitration clause in agreement would not automatically bar the jurisdiction of the civil court. For such purposes, the forum, where a prayer is made for such reference to arbitration in terms of the arbitration clause in the agreement from which the cause of action arises, would be obliged to examine and choose the appropriate course of action in light of the afore-quoted provision of Section 8.

14. There is no dispute as to the meaning of the words “*first statement on the substance of the dispute*” used in Section 8 (1) of the Act, either before or after amendment. In the context of civil suit, such expression obviously would mean the “written statement” required to be filed in terms of the provision contained in Order 8 Rule 1 of the Code of Civil Procedure, 1908 (CPC). But, for the purposes of proceedings before other judicial authorities or forums where the Code of Civil Procedure may not strictly apply, it would mean and include the response (or reply) filed by the party against whom action is brought to explain his defences. In *Rashtriya Ispat Nigam Ltd. vs. Verma Transport Company*, AIR 2006 SC 2800, the Supreme Court observed that this expression must be contra-distinguished with the

expression ‘written statement’. It implies submission of the party to the jurisdiction of the judicial authority and, therefore, what is needed is a finding on the part of judicial authority that the party has waived his right to invoke the arbitration clause. If an application is filed before filing the first statement on the substance of the dispute, the party cannot be said to have waived his right or acquiesced himself to the jurisdiction of the court.

15. Noticeably, as a result of the amendment there are three major changes in sub-Section (1) of Section 8. It is now permissible for a person claiming through or under the defendants to claim the benefit of the arbitration clause. The amendment intends to negate the effect of any judgment or order or decree to the contrary. The third effect of the amendment pertains to cut off date by which the application under Section 8 (1) of the Arbitration and Conciliation Act, 1996 must be presented. Before the amendment, such cut off date was indicated by the words “*not later than when submitting* (his first statement on the substance of the dispute)”. Under the amended law the words used are “*not later than the date of submitting* (his first statement on the substance of the dispute)”.

16. Having regard to the plain meaning of the words employed in the pre-amendment on account of arbitration agreement clause contained in Section 8 (1), it appears that the party resisting on account of arbitration agreement the jurisdiction of the forum where the action is brought was permitted to apply for a reference to arbitration even while submitting his reply or written statement. Plainly read, the words “*when submitting*” would ordinarily imply that

such a move under Section 8 (1) could come simultaneous to the filing of the written statement. It arguably could follow that if the written statement were filed and yet simultaneously the defendant was seeking the parties to be referred to arbitration (under the arbitration agreement), the submission of the written statement could not be construed as a waiver of the right to do so, not the least submission, or surrender, or acquiescence to the jurisdiction of the court where the *lis* was brought.

17. Thus, the third amendment to Section 8 (1) whereby the existing words “*not later than when submitting*” have been substituted by “*not later than the date of submitting*” are of some import. Under the amended law the defendant is now required to invoke the arbitration clause and apply to the court for a reference thereunder by moving an application but not required to file his written statement or any answer to set out his statement on the substance of the dispute. Rather, the submission of the written statement or reply indicating his (first) statement on the substance of the dispute may be construed as waiver of the right to seek reference to arbitration, or even as submission to or acquiescence of the jurisdiction of the court where the action has been brought by the claimant (the plaintiff). The amended provision of Section 8 (1), however, sets out a limit to the period within which such application invoking the arbitration agreement must be presented. It is this limitation period which is indicated by the words “*not later than the date of submitting*”.

18. The provisions of Code of Civil Procedure, 1908 (CPC) regulate the proceedings before the civil court. Order VIII Rule 1 of CPC reads as under:-

“Written statement.- *The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:*

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.”

19. It is clear from the above provision of law that a defendant when called upon to respond to the claim brought by a civil suit and upon being served with the summons is required, by the law, to submit his reply or response in the form of “*written statement*” within the period of thirty (30) days. So read for purposes of the arbitration law, it is this period which is the period within which “*first statement on the substance of the dispute*” under the amended law is expected to be submitted. Of course, the period of thirty days is extendable, for just and sufficient reasons to be recorded in writing, naturally upon the prayer to that effect made by the defendant. But the extension of the period cannot be beyond the maximum period of ninety (90) days in ordinary civil suits. It may be added that by virtue of the amendment incorporated by the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015, the maximum period for cases involving “*commercial dispute*” would be

one hundred and twenty (120) days of the date of service of the summons.

20. Order VIII Rule 10 CPC provides as under:-

“10. Procedure when party fails to present written statement called for by Court.- Where any party from whom a written statement is required under rule 1 or rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up.”

21. The above noted provision makes it further clear that in the event of the defendant making a default in filing written statement within the time prescribed by law (thirty days), or within the extended period (ninety days) if so permitted by the court, the right to do so would stand exhausted and consequences envisaged in law may follow which may be in the form of the order of the court decreeing the suit or such other order as the court may consider it appropriate (which could be in the shape of calling upon the plaintiff to prove his case with the defence of the defendant having been struck off).

22. It is pertinent to note here that the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 has also inserted the following proviso to Rule 10 of Order 8 CPC as under:-

“ Provided further that no Court shall make an order to extend the time provided under rule 1 of this Order for filing of the written statement.”

23. Having regard to the above provision of law referable to the procedure prescribed for commercial courts, it is clear that while dealing with commercial cases, the time limit of one hundred and twenty days prescribed for written statement to be filed by the defendant is the outside limit which the commercial court not having been vested with any discretion to extend it further. [see : *order dated 29.11.2016 passed in IA 8751/2016 and IA 9131/2016 in CS (Comm) 56/2016, titled System Air India Pvt. Ltd. Vs. ETA Engineering Pvt. Ltd.*]. This, however, cannot hold true for purposes of ordinary civil suits – that is to say the suits other than the “commercial disputes” brought before commercial courts. The civil court, while dealing with an ordinary civil suit (other than the commercial dispute) continues to be vested with the jurisdiction and discretion to grant extension of time to the defendant beyond the maximum period of ninety days prescribed in proviso to Rule 1 of Order 8 CPC though such discretion must necessarily be exercised for just and sufficient reasons only.

24. The argument of the learned counsel for the plaintiff is that the words “*not later than the date of submitting*” as occurring in amended Section 8 (1) CPC cannot be so construed as to extend the outside limit of the period within which an application under Section 8 (1) of the Arbitration and Conciliation Act, 1996 invoking the arbitration agreement beyond the period within which a written statement can be permitted to be submitted by the defendant. To put it simply, the submission is that after the amendment of Section 8 (1), an application seeking the dispute to be referred to arbitration in terms of the arbitration agreement must come within the same period as is

prescribed for submission of the written statement which would ordinarily be the period of thirty days from the date of service of the summons (under Rule 1 of Order VIII), extendable to maximum period of ninety days (under proviso to Rule 1 of Order VIII), or even beyond within the judicial discretion of the civil court on just and sufficient cause being shown for such further extension – in causes involving “*commercial dispute*” brought before the commercial courts, the maximum extendable period being one hundred and twenty days with no discretion vested in the commercial courts to enlarge it further.

25. In the pre-amended provision contained in Section 8 (1) of Arbitration and Conciliation Act, however, the words “*not later than the date of submitting*” were not used. As noticed earlier, the presentation of application by the defendant invoking arbitration clause in terms of Section 8 (1) could coincide with the filing of the written statement.

26. It was the argument of the learned counsel for the plaintiff that the provision of law contained in the amended Section 8 (1) would have to be applied to the case at hand since it is a matter of procedure. *Per contra*, it was submitted by the learned counsel for the defendant that it is the pre-amended clause in Section 8 (1) which would apply for the reason the Amendment Act itself made it clear that the amendment would have retrospective effect from 23.10.2015. The counsel pointed out that the date (13.04.2015) of the filing of the application under Section 8 herein is prior to the effect of amendment of law.

27. In the opinion of this court, the date of effect of the amendment of Section 8 (1) of Arbitration and Conciliation Act, 1996 is of consequence. The Amendment Act No.3 of 2016 did not envisage its effect to be applied prior to 23.10.2015. The application at hand had been moved on 13.04.2015. The defendant had applied for reference to arbitration before submitting his written statement and, thus, there is nothing on which it can be argued that the defendant had submitted, or acquiesced, to the jurisdiction of the civil court. The submission of the plaintiff that the time for filing the written statement in the case at hand having lapsed, the application under Section 8, read in the form it existed prior to the amendment, is time barred and so does not pass the muster is rejected.

28. Noticeably, Section 8 of the Arbitration and Conciliation Act, 1996 does not restrict its application to the judicial process in a civil court. Instead, it uses the expression “judicial authority” which concededly is wider in its scope and would include not only a civil court but possibly also other adjudicatory authorities, like Tribunals.

29. Since the grounds on which the prayer in the application under Section 8 of the Arbitration and Conciliation Act, 1996 in the matter at hand is resisted are also based on the proceedings arising out of the consumer complaint that had been earlier preferred by the plaintiff before the NCDRC, a feeble contention was urged that NCDRC cannot be construed as a “judicial authority” within the meaning of the expression used in the Arbitration and Conciliation Act, 1996. This contention only deserves to be noted and rejected by reference to the view taken by the Supreme Court in *Fair Air Engineers Pvt. Ltd. &*

Anr. vs. N.K. Modi, (1996) 6 SCC 385, holding, *inter alia*, that the proceedings before the forums created by the Consumer Protection Act, 1986, including the National Commission (NCDRC), are “legal proceedings” and that such forums are “judicial authorities” within the meaning of the expression used in Section 34 of the Arbitration Act, 1940 (since replaced by the Arbitration and Conciliation Act, 1996).

30. In the present case the plaintiff resists the prayer under Section 8 of the Arbitration and Conciliation Act, 1996 also arguing that since the arbitration clause was not invoked before NCDRC either before, or in the course of reply filed in answer to the consumer complaint, the right to take recourse to arbitral proceedings had been forfeited or waived even before filing of this civil suit.

31. For purposes of the proceeding arising out of the consumer complaint that had been taken out by the plaintiff either before NCDRC, the “*statement on the substance of the dispute*” would be the reply that would have been submitted by the defendant herein. It is conceded by the defendant that in the said reply, before NCDRC, there was no reference made to the arbitration clause nor any prayer made to the said forum for the parties to be referred to arbitration under Section 8 (1) of the Arbitration and Conciliation Act, 1996. This, in the submission of the learned counsel for the defendant, is of no consequence.

32. The NCDRC is a forum created by the Consumer Protection Act, 1986 with the object “*to secure social purpose and to promote the facilities in a comprehending manner for settlement of issues involved in the consumer complaints and to assess the damages*”

wherein the protection of the interest of the consumers is given predominance and departure made from the settled legal forums that are provided under the Code of Civil Procedure. Reliance is placed by the defendant, and rightly so, on the decision of the Supreme Court in *Lucknow Development Authority vs. M.K. Gupta*, 5 (1994) 1 SCC 243 and *Fair Air Engineers Pvt. Ltd. vs. N.K. Modi*, (1996) 6 SCC 385. It is settled that NCDRC is not obliged under the law to refer the parties to arbitration in as much as Section 3 of the Consumer Protection Act, 1986 makes it clear its provisions are “*in addition to*” and “*not in derogation of*” any other law in force, the remedies provided by such consumer forum being “*in addition to the consentient arbitration which could be enforced under the Arbitration Act or the civil action in a suit under the provisions of the Code of Civil Procedure*” Consequently, there cannot be an automatic right of reference to arbitration by the NCDRC nor an automatic embargo created on exercise of its jurisdiction, it being “*a matter of discretion*”. [See: *Fair Air Engineers Pvt. Ltd. (supra)*].

33. In *National Seeds Corporation Limited vs. M. Madhusudhan Reddy & Anr.*, (2012) 2 SCC 506, against the backdrop of dispute involving application of Seeds Act, 1966, the Supreme Court ruled thus:-

“66. The remedy of arbitration is not the only remedy available to a grower. Rather, it is an optional remedy. He can either seek reference to an arbitrator or file a complaint under the Consumer Protection Act. If the grower opts for the remedy of arbitration, then it may be possible to say that he cannot, subsequently, file complaint under the Consumer Protection Act. However,

it he chooses to file a complaint in the first instance before the competent Consumer Forum, then he cannot be denied relief by invoking Section 8 of the Arbitration and Conciliation Act, 1996. Moreover, the plain language of Section 3 of the Consumer Protection Act makes it clear that the remedy available in that Act is in addition to and not in derogation of the provisions of any other law for the time being in force.”

34. In the opinion of this court, the above is complete answer to the argument raised by the plaintiff. Thus, even if the defendant herein had informed NCDRC that a dispute was covered by an arbitration agreement, there was no corresponding duty of the said forum to refer the parties to arbitration proceedings under Section 8(1), of the Arbitration and Conciliation Act, 1996. The omission to refer to the arbitration agreement, or apply thereunder in terms of Section 8 (1), in the proceedings arising out the consumer complaint brought before NCDRC, thus, is of no consequence. Rather, it cannot be lost sight of that the proceedings before NCDRC were brought to an end upon the plaintiff herein admitting that such proceedings were incorrectly initiated for the reason that he (plaintiff) is not covered by the expression “*consumer*” under the special law by which the earlier case was governed.

35. The defendant having invoked the arbitration clause and applied for a reference thereunder in terms of Section 8 (1) of the Arbitration and Conciliation Act, 1996, the proper approach for this court would be “*not to see whether the court has jurisdiction*” but instead “*to see whether its jurisdiction has been ousted*”. [See: *Sundaram Finance Limited & Anr. vs. T. Thankam*, (2015) 14 SCC 444]. As held by the

Supreme Court, the general law should yield to the special law. It is trite that the language of section 8 being peremptory, once there is an agreement between the parties to refer the disputes or differences to arbitration and one of the parties to the dispute having approached the civil court with the prayer for such reference to be made before filing of the written statement, it is “*obligatory*” for the civil court to refer the parties to arbitration in terms of such agreement. [*P. Anand Gajapathi Raju & Ors.* (supra) and *Sundaram Finance Limited & Anr. vs. T. Thankam*, (2015) 14 SCC 444].

36. In view of the above, it is held that the order of the Joint Registrar striking off the defence of the defendant by closing its right to file written statement was uncalled for. The application under Section 8 (1) of the Arbitration and Conciliation Act, 1996 having been filed, the existence of the arbitration agreement having been admitted - rather filed in original by the plaintiff himself – the cause of action pleaded in the civil suit at hand concededly covered by it, all the requisites for an order by this court referring the parties to arbitration in terms of Section 8 of the Arbitration and Conciliation Act, 1996 are in place. As noted above, the defendant, by communication dated 19.06.2015, has admittedly nominated the sole arbitrator under the arbitration agreement and the parties, including the plaintiff, have even appeared before the said sole arbitrator.

37. Thus, both the original appeal (OA No.210/2015) and application under Section 8 of the Arbitration and Conciliation Act, 1996 (IA No.7709/2015) are allowed.

38. The directions of the Joint Registrar (judicial) in the order impugned in the appeal adverse to the right to the defendant to contest are set aside. The parties herein stand referred to arbitration in terms of the arbitration agreements forming part of the two compartment buyers' agreement executed on 16.03.2009. Since the sole arbitrator has already been appointed under the said arbitration agreements, the arbitral proceedings before the said sole arbitrator may continue in terms of Section 8 (3) of the Act.

39. With the above directions, the proceedings in the civil suit are drawn to a close. The case stands disposed of in above terms, leaving the parties to bear their respective costs.

(R.K. GAUBA)
JUDGE

DECEMBER 21, 2016
yg/vk