

\$~6

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

+ **ARB.P. 568/2016**

SUNITA

..... Petitioner

Through : Mr Rishi Kapoor and Mr Suparna,
Advocates.

versus

EMAAR MGF LAND LIMITED

..... Respondent

Through : Ms Manmeet Arora, Ms Chand Arora
and Mr Devashish Chauhan, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

%

17.10.2016

VIBHU BAKHRU, J

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying that a retired judge be appointed as a Sole Arbitrator in relation to the disputes that have arisen between the parties in relation to the "Buyer's Agreement" dated 08.05.2012.

2. The petitioner had applied for a residential floor in a project named as "Emerald Hills" being developed by the respondent company (hereafter 'Emaar') in Gurgaon, Haryana. Thereafter, the parties executed a 'Buyer's Agreement' dated 08.05.2012. Clause 36 of the said agreement is relevant and is set out below:-

“36 ARBITRATION

All or any dispute arising out of or touching upon or in relation to the terms of this Buyer's Agreement/provisional allotment letter 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 proceedings shall be governed by the Arbitration & 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 Company, shall hold the arbitration proceedings at the registered office of the Company in New Delhi. The Allottee(s) 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 Company or is otherwise connected with the Company and the Allottee(s) confirms that notwithstanding such relationship/connection, the Allottee(s) shall have no doubts as to the independence or impartiality of the said Arbitrator and shall not challenge the same.”

3. Emaar does not dispute the existence of the Buyer's Agreement or the Arbitration Clause. However, Emaar disputes the receipt of petitioner's notice dated 13.06.2016 invoking the arbitration clause.
4. Ms Manmeet Arora, learned counsel appearing for Emaar submits that in terms of the arbitration clause, Emaar is entitled to appoint an independent arbitrator for adjudication of the disputes that have arisen between the parties. She further submits that the petitioner has not approached this court with clean hands inasmuch as the petitioner had filed a suit on the same cause of action and has failed to disclose that Emaar had filed an application under Section 5 and Section 8 of the Act on 26.07.2016, *inter alia*, praying that the parties be referred to arbitration. The petitioner

had sought time to file a reply to that application, however, in the meantime had filed the present application without disclosing that Emaar had already filed an application for referring the parties to arbitration.

5. Ms Arora further submitted that it is apparent that the alleged notice dated 13.06.2016 is fabricated and had not been sent. She pointed out that the said notice referred to a complaint filed in Patiala House Courts, New Delhi but the said complaint is dated 16.06.2016 and was lodged after the date of the alleged notice. According to her, this clearly indicates that the said notice is fabricated. She has also drew the attention of this Court to the photocopy of the Inward Register maintained by Emaar which indicates that on 14.06.2016 a copy of the complaint filed by the petitioner before the Station House Officer (Barakhamba Road, New Delhi) on 12.06.2016 had been received, but no notice invoking the arbitration clause was received. She submits that the copy of the complaint was forwarded to the concerned officer for action and had Emaar received a notice invoking the arbitration clause, necessary action in that regard would also have been taken.

6. Mr Kapoor, the learned counsel appearing for the petitioner states that a criminal complaint has already been filed by the petitioner which is pending investigation.

7. I have heard the counsel for the parties.

8. Mr Kapoor was pointedly asked as to why the fact that an application under Section 5 and 8 of the Act had been filed by Emaar, had not been disclosed in the present petition to which his response was that he is not prepared with that matter.

9. It is apparent from the record that the petitioner has not approached this Court with clean hands and has attempted to suppress vital facts necessary for consideration of this petition.

10. On 12.07.2016, the petitioner had filed a suit with regard to the disputes that had arisen between the parties before the Courts in Gurgaon (being Civil Suit No. 1486/2016 titled as Mrs. Sunita v. Shravan Gupta & Ors.). Although, the filing of the suit was disclosed, the petitioner did not disclose that on 26.07.2016, Emaar had filed an application under Section 5 & 8 of the Act, *inter alia*, praying that the parties be referred to Arbitration. This would clearly indicate that Emaar had already evinced its intention for referring the disputes to arbitration and in fact had requested the Civil Court at Gurgaon for referring the parties to arbitration. The petitioner had sought time to respond to the said application on 09.08.2016 and thereafter on 07.8.2016 had filed the present petition concealing the proceedings before the Gurgaon Civil Court.

11. Emaar has disputed the receipt of the notice dated 13.06.2016. However even if it is accepted that Emaar had received the notice – which I am not inclined to do – the petitioner had not pursued with the said notice and had filed a suit. Curiously, there is no mention of the notice dated 13.06.2016 in the plaint. In those proceedings, Emaar had evinced its intention to have the disputes resolved through arbitration and therefore, there was no reason for the petitioner to approach this Court.

12. Ms Arora has further stated, on instructions, that Emaar will appoint an independent Arbitrator within a period of two days from today.

13. In view of the above, I find no reason to entertain the present petition. The petition is, accordingly, dismissed.

VIBHU BAKHRU, J

OCTOBER 17, 2016

pkv

