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

+ ARB.P. 672/2016

ARUP KUMAR DAS

..... Petitioner

Through Ms.Shivangi Singh & Mr.Deepak
Dhingra, Advocates

versus

UNIVERSAL BUILDWELL PVT. LTD.

..... Respondent

Through None.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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19.04.2017

1. The present petition is filed under Section 11 of the Arbitration & Conciliation Act for appointment of an independent Arbitrator who may be a retired Judge of this High Court or any other High Court.
2. The learned counsel for the petitioner states that the respondent offered commercial space in its complex, namely "Universal Square" situated at Golf Course Road Extension, Sector 59, Gurgaon, Haryana, which was being built by the respondent.
3. On 27.07.2010 the parties entered into a 'Buyer's Agreement' and the petitioner is said to have been allotted a commercial space bearing No.221 admeasuring a Super Area of 750 sq.ft. on the 2nd floor for a sale consideration of Rs.41,94,000/- and a parking space at the rate of Rs.3,00,000/- with possession to be delivered within 3 years from date.

4. There is said to have been delay in delivery of possession despite receipt of various installments by the respondent. The petitioner issued a legal notice on 08.07.2016. Another legal notice was sent on 30.07.2016 invoking the arbitration clause. There is no reply from the respondent. Hence, the present petition has been filed.

5. On 25.01.2017 this court had noted that the respondents are served. On the last date of hearing, the respondents had sought time to file reply (wrongly noted as 'the petitioner' in the order).

6. Today, in the first round the matter was passed over and in the second round again none is present for the respondent. The Buyer's Agreement has an arbitration clause 34, which reads as follows:

"34. 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 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 shall be nominated by the any one of the Directors of the Developer, who shall hold the arbitration proceedings at the registered office of the Developer in at New Delhi or at any other place as may be headed by such Arbitrator. 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 Developer or is otherwise connected with the Developer and the Allottee(s) confirms that notwithstanding such relationship/connection and the holding of hearings at the registered office of the Developer in New Delhi, the Allottee(s) that have no doubts as to the independence or impartiality of the said Arbitrator and shall not challenge the same."

7. Hence, the sole arbitrator is to be nominated by the director of the developer/respondent. However, in the present case the respondent is not taking any steps despite receipt of a legal notice from the petitioner and summons from this court.

8. In view of the above, the matter is referred to the Delhi International Arbitration Centre ('DIAC'). The DIAC shall appoint an Arbitrator in accordance with the provisions of the Act. The fees of the learned Arbitrator shall be in terms of the Delhi International Arbitration Centre Rules.

9. The petition is accordingly disposed of.

JAYANT NATH, J.

APRIL 19, 2017/v