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

+ **ARB.P. 672/2017**

ASHA SAINI

..... Petitioner

Through: Mr. Praveen Mahajan, Adv.

versus

OMAXE LTD.

..... Respondent

Through: Mr. Anupam Srivastava, Mr. Arjun
Saxena & Mr. Dhairya Gupta, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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12.12.2017

This petition under Section 11 of the Arbitration and Conciliation Act, 1996 has been filed by the petitioner seeking appointment of a Sole Arbitrator for adjudication of the disputes that have arisen between the parties in relation to the agreement dated 2nd February, 2012. The said agreement contains an arbitration agreement in form of Clause 49, which is reproduced herein below:

“All or any disputes arising out of or touching upon or in relation to the terms of this Agreement including the interpretation and validity of the terms 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 and Conciliation Act, 1996 and/or any statutory amendments/modifications thereof for the time being in force. The arbitration proceedings shall be held at an appropriate location in Delhi / New Delhi”.

The petitioner had earlier filed a civil suit before this Court, which was later transferred to the District Court at Saket and was numbered as suit no. 569/2014. An application under Section 8 of Act being filed by the respondent, the said suit was dismissed on 25.01.2017. The challenge to the said order was also dismissed by this Court on 25.01.2017. The petitioner, thereafter, invoked the arbitration agreement between the parties, by way of notice dated 22.08.2017. Having received no reply to the same the present petition was filed.

Notice on the application was issued to the respondent on 25.10.2017. Reply is stated to be have been filed by the respondent only yesterday and the same is not on record. A copy of the same has been handed over in the Court.

The respondent in its reply does not deny the existence of the arbitration agreement or the invocation thereof, however, it is submitted that there was a settlement arrived at between the parties pursuant to which the petitioner withdrew a police complaint made by her and had even addressed a letter dated 07.12.2013 to the respondent recording the factum of the settlement; possession of the flat in question was also handed over to the petitioner on 08.01.2017. It is further contended by the respondent that there is no dispute between the parties that can be referred for adjudication before the arbitrator. It is further submitted that in terms of the agreement, it had been agreed between the parties that no claim by way of damages / compensation shall i.e. against the respondent in case of delay in handing over the possession on account of non-completion of the

construction of the subject flat.

I am unable to agree to the submissions of the respondent. In terms of Section 11 (6A) of the Act, this Court is to confine its examination only to the existence of the arbitration agreement. Existence of the Arbitration Agreement is not denied by the respondent. Equally the invocation thereof is not denied by the respondent. On the other hand, the respondent had raised an objection on the maintainability of the suit filed by the petitioner relying upon the same arbitration agreement between the parties. The plea taken by the respondent is a plea of defence against the statement of claim that would be filed against it before the arbitrator. These are issues to be considered by the arbitrator, who may also consider whether these are to be considered in form of preliminary issues.

In view of the above, I find no impediment on the appointment of an arbitrator for adjudication of disputes that have arisen between the parties in relation to the above agreement. Mr.Kuldeep Singh, Retd. Additional District Judge, Delhi is appointed as the Sole Arbitrator for adjudication of the disputes that have arisen between the parties in relation to the above referred agreement. The Sole Arbitrator shall before entering reference, submit his disclosure in terms of Section 12 of the Act. The arbitration and the fee shall be under the DIAC rules.

The petition is allowed in the above terms with no order as to costs.

NAVIN CHAWLA, J

DECEMBER 12, 2017/rv