

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

C.R. No.6900 of 2015

Date of Decision.01.06.2018

M/s IREO Grace Realtech Private Limited

.....Petitioner

Vs

Mrs. Neeru Babbar

.....Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sanjeev Sharma, Senior Advocate with
Mr. Shekhar Verma, Advocate
for the petitioner.

Mr. Kunal Dawar, Advocate for
Mr. Jagjot Singh, Advocate
for LR's of respondent.

-. -

AMIT RAWAL J.

The present revision petition is directed against the order dated 22.09.2015 whereby the application submitted by the petitioner-defendant under Section 8 of the Arbitration and Conciliation Act, 1996 for resolution of the dispute, in view of the arbitration clause, has been dismissed.

Mr. Sanjeev Sharma, learned Senior Counsel assisted by Mr. Shekhar Verma appearing for the petitioner submitted that the respondent-plaintiff instituted the suit (Annexure P-13) for declaration with consequential relief of permanent injunction on the premise that the plaintiff had taken an apartment measuring 1919.6 sq. ft. including three bed rooms plus a servant room and had paid an amount of ₹19 lacs to the petitioner-defendant and in this regard, had also signed an application. Subsequently, an apartment bearing No.CD-B6-08-803 in the project named "The Corridors" in Sector 67-A, Gurgaon at the rate

of ₹8750/- per sq. ft was booked.

After payment of ₹19 lacs, the respondent-plaintiff again paid a sum of ₹18,20,440/- upfront to the defendant and requested for issuance of the allotment letter. The defendant was delaying the matter on one pretext or the other and started asking the plaintiff to pay the amount @₹9400/- per sq. ft. The plaintiff wrote a letter dated 19.8.2013 to the defendant that the amount charged was exorbitant, for, the apartment was booked @₹8750/- per sq. ft. However, the defendant vide letter dated 9.5.2014 cancelled the agreement. It is in this background the suit aforementioned was filed.

The petitioner-defendant on appearance contested the aforementioned suit, by moving application (Annexure P-14) under Section 8 of the 1996 Act on the premise that terms and conditions for allotment of apartment contained under clause No.54 whereby all disputes and differences in case arise are to be adjudicated through arbitration.

The aforementioned application was contested vide reply (Annexure P-15) but the trial Court noticing the fact that no agreement was entered into between the parties dismissed the application on the ground that Schedule I i.e. purported terms and conditions of the agreement cannot be construed to be an agreement.

The impugned order is not sustainable in the eyes of law and to fortify the same, reliance was laid to the judgment rendered by the Hon'ble Supreme Court in **Ashapura Mine-Chem Ltd. Vs. Gujarat Mineral Development Corporation (2015) 8 SCC 193; 2015 (3) RCR (Civil) 614** to contend that even if one of the clause is having

an independent arbitration agreement and one of the party does not cancel MoU, the arbitration agreement would continue to remain, in essence, the stand alone agreement signed by the respondent-plaintiff would be construed to be an intention for referring dispute to the arbitration, irrespective of the question or as to the fact whether the aforementioned stand alone agreement had fructified into full-fledged agreement or not. By elaborating the argument aforementioned, reference was made to the provisions of Section 7 of the Act and also to the provisions of clause 5 of the application form submitted by the respondent-plaintiff whereby the respondent had understood and read the key indicative terms and conditions listed out in Schedule I containing Clause 54 of Arbitration, which form be read as an integral part of the application.

Per contra, Mr. Kunal Dawar, for Mr. Jagjot Singh, learned counsel appearing on behalf of LR's of respondent-plaintiff submitted that the aforementioned order under challenge is perfectly legal and justified as it was based upon the decision rendered by Delhi High Court in **Ravi Gupta and another Vs. M/s Unitech Ltd. and others 2014(12) RCR (Civil) 1307** as in identical case similar application for allotment of a commercial unit at particular rate and when the defendant refused to make the allotment or hand over the possession, the plaintiff requested for refund of the amount, thus, the cause accrued for the plaintiff to file the suit and a similar application filed under Section 8 of the 1996 Act on behalf of the builder was dismissed.

Reliance had also been laid to clause 9 of the

application, which clearly indicated that the respondent-plaintiff had undertaken to execute all documents/agreements as per company's format and agreed to accept and abide by all the terms and conditions contained therein, therefore, in the absence of execution of any contract/agreement, unilateral submission of the application signed by the respondent-plaintiff cannot be construed to be an agreement giving cause to the petitioner-defendant to move an application under Section 8 of the 1996 Act, thus, urged this Court for dismissal of the revision petition.

I have heard learned counsel for the parties and appraised the paper book. It would be apt to reproduce Clauses 5, 9 of the application, clause 54 of Schedule I and as well as provisions of Section 7 of the 1996 Act:-

“05. I/we have also gone through and read the key indicative terms and conditions listed out in Schedule-I (which shall form and be read as an integral part of this application), as condensed from the proposed Apartment Buyer's Agreement. I/we understand that there are merely indicative and conveyed herein in a condensed form for the purpose of broadly acquainting me/us with the principles underlying some of the essential terms and conditions for the proposed transfer of the Apartment. I/We further understand and agree that the actual terms and conditions contained in the Apartment Buyer's Agreement would be more comprehensive and elaborate. I/We further agree that the company may at its sole

discretion elaborate, add to, amend, modify or delete from these terms and conditions in the Apartment Buyer's Agreement.

09. In case my/our application for booking of the said Apartment is accepted and the Company makes an allotment, then I/we undertake to execute all documents/agreements as per the Company's format and agree to accept and abide by all the terms and conditions therein and pay all charges are applicable therein and/or as demanded by the Company in due course.

SCHEDULE-I

KEY INDICATORS FROM THE TERMS AND CONDITIONS OF APARTMENT BUYER'S AGREEMENT

54. All or any disputes arising out of or touching upon or in relation to the terms of the Agreement or its termination including the the interpretation and validity of the terms hereof and the respective rights and obligations of the parties shall be settled amicably by mutual discussions failing which the same shall be settled through reference to a sole Arbitrator to be appointed by a resolution of the Board of Directors of the Company, whose decision shall be final and binding upon the parties. The Applicant hereby confirms that it shall have no objection to the appointment of such sole Arbitrator even if the person so appointed, is an employee or advocate of the Company or is otherwise connected to the Company and the Applicant hereby accepts and agrees that this shall not constitute a ground for challenge to the independence or impartiality of the

said sole Arbitrator to conduct the arbitration. The arbitration shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory amendments/modifications thereto and shall be held at the Company's offices or at a location designated by the said sole Arbitrator in Gurgaon. The language of the arbitration proceedings and the Award shall be English. The Company and the applicant will share the fees of the Arbitrator in equal proportion.

7 Arbitration agreement. —

(1) In this Part, “arbitration agreement” means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing.

(4) An arbitration agreement is in writing if it is contained in—

(a) a document signed by the parties;

(b) an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement; or

(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract”

On plain and simple reading of the provisions of Section 7 of 1996 Act, it is crystal clear that the agreement shall contain the following:-

- (i) a document signed by the parties;
- (ii) an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement;
- (iii) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

In the instant case, the respondent-plaintiff submitted an application form (Annexure P-2) addressed to the petitioner-defendant containing various blanks and clauses 5 and 9 *ibid*. There is also reference to Schedule 1. Schedule I i.e. Key Indicators of the terms and conditions of Apartment Buyer's Agreement containing arbitration clause was also signed by the respondent-plaintiff, thus, it was a communication of acknowledging the purported terms and conditions to be entered between the parties. Such an act would definitely fall in the provisions of Section 7 of the 1996 Act. There is no dispute to the judgment rendered in **Ravi Gupta's** case (*supra*) wherein, according to Mr. Kunal Dawar, identical situation had arisen as the application filed under Section 8 of the 1996 Act was dismissed. I am afraid that the aforementioned judgment would not come to the rescue of the respondent, for, it was a case where the allottee had been requesting for refund of the money and had also made a complaint to the police station and in lieu thereof, the builder cancelled the

allotment of commercial unit. In **Ashapura Mine-Chem Ltd.'s case** (supra), the occasion arose where the proposed Memorandum of Understanding to constitute a joint venture and an agreement, particularly, when the other party had expressed disinclination regarding terms and conditions of the agreement and after considering the rival contentions of the parties, the Hon'ble Supreme Court in paras 17, 26 and 30 observed as under:-

“17. Having heard the submissions of the respective counsel, we find that the sum and substance of the submission of Mr. Dushyant Dave was that the arbitration Clause contained in Clause 27 of the MoU was an independent arbitration agreement and, therefore, even if respondent chose to terminate the MoU dated 17.8.2007, the Arbitration agreement would continue to remain and consequently the parties are entitled to invoke the said Clause 27 and exercise their option for appointment of an Arbitrator and seek for concurrence of the other party. The learned senior counsel contended that since the respondent expressed its decision to terminate the MoU, the appellant after exhausting its attempt for an amicable settlement at bilateral level as between the appellant and the respondent by invoking Clause 26 had no other option but to invoke Clause 27 and opt for the appointment of a retired Judge Hon'ble Mr. Justice B.N. Mehta as an Arbitrator and sought for the concurrence of the

respondent. The learned senior counsel submitted that when the respondent refused to concur with the appointment of the said learned Judge as an Arbitrator, the appellant was well justified in approaching the High Court under [Section 11](#) for the appointment of an Arbitrator. The learned senior counsel, therefore, contended that the rejection of the said application filed under [Section 11](#) of the Act by the impugned order is liable to be set aside and an Arbitrator has to be appointed.

26. We are not inclined to entertain the said submission, as we find that we are not concerned with the said issue as to whether what was held in paragraph 13 of Today Homes and Infrastructure Pvt. Ltd. (supra) judgment was correct or not when it makes reference to the Seven Judge Bench decision in Patel Engineering Ltd.(supra). We are only concerned with the question whether an Arbitration Clause contained in the MoU is a stand alone agreement or not. For that purpose, what has been stated in Today Homes and Infrastructure Pvt. Ltd. (supra) in paragraph 14 is only relevant and we find the legal position stated therein in tune with the ratio decidendi laid down consistently by this Court in very many decisions.

30. Having thus ascertained the legal position regarding the stand alone agreement relating to

arbitration with particular reference to arbitration agreement in a legal transaction between the parties, when we refer to Clause 27 of the MoU, we wish to find out whether the said Clause satisfies the principles set down and applicable to a stand alone Arbitration Agreement. When we refer to Clause 27, we find that in the event of failure of an amicable settlement at the bilateral level relating to a dispute or difference arising between the appellant and the respondent to be reached as contained in Clause 26 of the MoU, then such unresolved dispute or difference concerning or arising from the MoU, its implementation breach or termination whatsoever including any difference or dispute as to the interpretation of any of the terms of the MoU is referable to the sole Arbitrator appointed by the appellant and the respondent. Therefore, irrespective of the question or as to the fact whether the MoU fructified into a full-fledged agreement, having regard to the non-fulfilment of any of the conditions or failure of compliance of any requirement by either of the parties stipulated in the other Clauses of MoU, specific agreement has been entered into by the appellant and the respondent under Clause 27 to refer such controversies as between the parties to the sole arbitrator by consensus. Therefore, when consensus was not reached as between the parties for making the

reference, eventually it will be open for either of the parties to invoke [Section 11](#) of the Act and seek for reference of the dispute for arbitration.”

From the aforementioned observations, it is clear that irrespective of whether MoU fructified into full-fledged agreement or not, the stand alone agreement, an application submitted by the respondent-plaintiff containing terms and conditions accompanied by Schedule I, would be construed to be an expression of an inclination to resolve the dispute, if any, through arbitration. In such circumstances, the suit was not maintainable.

As an upshot of my finding, the impugned order is not sustainable in the eyes of law and is hereby set aside. The application moved under Section 8 of the Arbitration and Conciliation Act, 1996 is allowed. The parties are at liberty to seek appointment of the Arbitrator in accordance with law. The revision petition stands allowed.

(AMIT RAWAL)
JUDGE

June 01, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No