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

+ O.M.P.(I) 13/2017

RAVI CHAWLA Petitioner

Through: Mr. H.L. Raina, Advocate.

versus

ULTRA HOUSE CONSTRUCTIONS PVT. LTD.
& ANR.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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25.04.2018

This petition under Section 9 of the Arbitration and Conciliation Act, 1996 has been filed by the petitioner contending that the petitioner had entered into an Agreement dated 18th August, 2010 with the respondents agreeing to purchase Flat Nos.C-P03 and A-P04 in the Group Housing Project known as “Amrapali Zodiac” at GH-03, Sector-120, Noida, U.P. Clause 10 of the said Agreement provides that the project shall be completed and the possession of the flats will be handed over to the petitioner within 24 months of the said Agreement. Clause 11 of the Agreement provided that in case of failure to handover the possession of the flats, the respondent no.1 shall pay a penalty of Rs.10/- per square feet per month to the petitioner.

It is the case of the petitioner that in terms of the above Agreement, the petitioner has paid a sum of Rs.1 crore to the respondents. The petitioner further relies upon clause 7 of the Agreement which creates a right in favour of the respondent to repurchase the flats as on 18th September,

2015 upon payment of a pre-determined amount of Rs.1,18,00,000/-.

The petitioner claims that in spite of lapse of considerable period, the building is still not complete and the respondents have in fact stopped all construction activity on the project. He has also placed on record certain photographs in support of this assertion.

Notice on this petition was issued to the respondent on 28th July, 2017. However, repeated attempts of serving the notice on the respondents failed as the premises were found locked and finally vide order dated 22nd March, 2018, the respondents were directed to be served through publication.

The respondents have now been served through publication. In spite of such service, none appears for the respondents.

In view of the above, the petitioner has been able to make out a *prima facie* case in its favour relying upon various clauses of the Agreement as also the fact that the respondents have stopped the construction activity on the project.

The Agreement between the parties contains an arbitration clause in form of clause 16 of the same. The petitioner has also invoked the Arbitration Agreement by its notice dated 20th January, 2017. The counsel for the petitioner submits that the petitioner has not received any reply to this notice and the petitioner is in the process of filing an application under Section 11 of the Act seeking appointment of an Arbitrator.

In view of the above, the respondents are restrained, by way of an *ad interim* order, from in any manner creating any third party interest or parting with possession of the abovementioned flats to any third party. This order shall continue for the period prescribed in Section 9(2) of the Act and in

case the petitioner files an application under Section 11 of the Act before the expiry of the said period, this order shall continue till the constitution of the Arbitral Tribunal and consideration of the prayer for interim relief by such Tribunal so constituted.

The petition is disposed of with the above directions, with no order as to cost.

Dasti.

NAVIN CHAWLA, J.

APRIL 25, 2018

Rekha