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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 583/2017

MONIKA GHEI

..... Petitioner

Through : Mr.Tarun Sharma and Mrs.Meenu
Sharma Goswami, Advs.

versus

MSX MALL PRIVATE LIMITED & ORS.

..... Respondents

Through : Mr.Manish Verma, Adv. for R-5 & 6

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

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11.01.2018

Learned counsel for the petitioner intends to take benefit of clause 25 of the Allotment Letter dated 4.9.2014 issued in favour of Mr.Sanjay Mehta by respondents no.1 to 4 .

In case of any dispute or any controversy arising out of or in connection with this allotment, the same shall be resolved through arbitration in accordance with the provisions of Arbitration and Conciliation Act, 1996 including any modification and amendment thereto. The Arbitrator shall comprise of a Sole Arbitrator as appointed by the Company. The venue of the Arbitration shall be in Delhi and the decisions of the Arbitrator shall be final and binding on the parties.

On 5.9.2014 Sanjay Mehta sold the aforesaid portion in the subject premises to the petitioner herein vide documents viz.,

agreement to sell, General Power of Attorney etc., all executed on 5th September, 2014. On 12.9.2014 respondents No.1 to 4 also executed a letter in favour of the petitioner wherein it was endorsed the petitioner has a right to receive rentals from Haldiram (respondent No.5 and 6). It is submitted by learned counsel for the petitioner that respondent No.5 and 6 are though making payment of rentals to respondents No.1 to 4 but respondents No.1 to 4 are not handing over the rental money to the petitioner herein, hence the petitioner has filed this petition against respondents No.1 to 4 the original allottees of the premises in dispute and also against respondents No.5 and 6, the tenants.

The petitioner submits per **clause 8.1** of the Rent Agreement, the respondent No.1 to 4 viz. allottees have a right to sell the property to which respondents No.5 and 6 would have no objection. It says:

“8.1 The Lessor covenant that they have clear legal title to the Demised Premises and have right, title, power and absolute authority to grant to the Lessee the lease of the Demised Premises. The Lessor further covenants that they have not created any charge, lien or encumbrances of any third party of whatsoever nature on the Demised Premises nor will they create any tenancy or lease or any or any right in favour of any third party in respect of the Demised Premises during the period when the same is in possession of the Lessee. Further the lessor represents and confirms that they have obtained all necessary pre-sanction, approvals, licences from all the statutory/competent authorities which may be necessary for start up/commencement/operation of the said Mall and occupancy. If the lessor transfers the

title/rights/interest of Demised Premises to any person or entity then lessor shall incorporate the same terms and conditions of this deed in the transfer documents to be executed in favour of prospective purchaser and all the expenses in regard thereto will be borne by the lessor or by the prospective purchaser.”

It is submitted by the learned counsel for the petitioner to resolve the controversy qua rentals it would be appropriate if respondents no.5 and 6 are also made parties to the arbitration proceeding, by implication, despite there been no arbitration agreement between petitioner and respondents no. 4 and 5. The petitioner relies upon clause 18 of the allotment letter dated 04.09.2014 to press his argument:-

“The terms and conditions contained herein shall be binding on the occupier of the Commercial Space. Default of the occupier shall be treated as that of the Allottee, unless context requires otherwise.”

However the learned counsel for the respondents No.5 to 6 object to the appointment of arbitrator qua them since are not necessary parties nor any agreement has been entered into between them.

At this stage, learned counsel for the petitioner submits let an arbitrator be appointed to arbitrate the disputes between the petitioner and respondents No.1 to 4 per terms and conditions of allotment letter as also the rent agreement dated 5th November, 2012. In the circumstances, Justice K.Ramamoorthy (Retd.) is appointed as the

sole arbitrator. The question as to if the respondents No.5 and 6 are necessary parties or not alongwith other claims raised by the petitioner be decided by the learned arbitrator. The fee of the arbitrator shall be decided by him in consultation with the parties. Necessary declaration(s) be given.

In view of the above the petition is disposed of.

Copy of the order be given dasti under the signature of the Court Master.

YOGESH KHANNA, J

JANUARY 11, 2018
VLD