$~37

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

% **Date of decision 10.12.2019**

\+ ARB.P. 812/2019 and I.A. 17105/2019

RAJINDER KUMAR ..... Petitioner

Through Mr. Rajeev Sharma, Mr. Nishant Menon and Mr. Deepesh, Advocates.

versus

SUPERTECH LIMITED & ANR. ..... Respondents

Through Mr. Amit Choudhary, Advocate for R-1.
Mr. Sunil Dalal and Mr. Jaskaran Singh, Advocate for R-2.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J. (ORAL)

1. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act,1996 ('Act') seeking appointment of a Sole Arbitrator to adjudicate the disputes between the parties arising out of an allotment letter dated 21.03.2015. Direction is also sought to terminate the mandate of Dr. Sanjeev Kumar, the present Arbitrator. An alternative prayer is sought to appoint an Arbitrator to adjudicate all the disputes between the parties arising out of the

allotment letter dated 21.03.2015 and loan agreement dated 30.07.2015.

2. The petitioner in response to invitation of applications by respondent No. 1 applied and booked a flat in the residential project offered by respondent No. 1 at Residential Plot Colony, Sector 2, Sohna, Haryana. Respondent No. 1 had offered a subvention scheme in association with respondent No. 2 which meant that no pre-EMI were payable by the buyer till the possession. At the time of booking, the petitioner paid a sum of Rs. 5 lakhs in December, 2014.

3. Respondent No. 1 issued an allotment letter dated 21.03.2015, which stipulated the cost of the flat, the payment plan and the date of possession. The total cost of the flat was Rs. 67,30,000/- and the possession was to be handed over by December, 2018 with an extended grace period of six months.

4. An MOU dated 28.04.15 was executed between the petitioner and respondent No. 1 in relation to the subvention scheme, whereby respondent No. 2 was to provide loan to the petitioner and the EMIs were to be paid by respondent No. 1, till possession. The tenure of the scheme was 36 months. The EMIs were to be paid by respondent No. 1 to respondent No. 2, till the tenure of subvention scheme and thereafter till possession to the petitioner.

5. The petitioner paid the balance booking amount to respondent No. 1 against a receipt dated 01.07.2015 and to facilitate the purchase under the subvention scheme. The parties executed a Tripartite Agreement. Pursuant to the Tripartite Agreement, petitioner and respondent No. 2 executed a loan agreement dated 30.07.2015 and loan was sanctioned in the name of the petitioner and his wife. The term of loan repayment was 60 months and date of commencement of EMI was 10.08.2015.

6. Since the terms of the MOU were different from what was initially represented by the respondents, the petitioner vide e-mail dated 02.08.2015 wrote to the respondents confirming that as per the understanding between the parties on 01.08.2015, telephonically, the petitioner will not make any payment to the respondents. Respondent No. 2 will present cheques taken from the petitioner only after respondent No. 1 gives the petitioner postdated cheques or credits its account with the EMI amounts.

7. Respondent no.2 thereafter disbursed a sum of Rs.55,72,440/- directly to respondent no.1 and EMIs were paid by respondent no.1 to respondent no.2. On 31.07.18, the petitioner received an e-mail from respondent no.2 informing him that the EMIs were to be paid by respondent no.1 only during the subvention scheme, which expired in August, 2018 and the future EMIs would be debited from the petitioner's accounts. This according to the petitioner, was in

contravention of the understanding between the parties. When the petitioner visited the official website of respondent no.1 on 03.08.2018, it was found that the delivery of possession had been postponed to June, 2020, without any prior intimation

8. Respondent no.1 demanded and received 90% of the total consideration but failed to offer possession in 36 months.

9. On 07.08.2018, the petitioner informed respondent no.1 that due to the inordinate delay in construction, he was no longer interested in buying the flat and requested for refund. Respondent no2 on the other hand started writing to the petitioner and raising demand for payment of EMIs and also threatened to take coercive action.

10. In these circumstances, the petitioner filed a petition under Section 9 of the Act in the District Court seeking protection against coercive action by respondent nos.1 & 2. On 06.06.2019, an interim order was granted in favour of the petitioner.

11. Respondent no.1 thereafter without issuing notice to the petitioner appointed Dr.Sanjeev Kumar as an Arbitrator under the allotment letter. The petitioner vide letter dated 27.08.2019, contested the said appointment being contrary to Arbitration Clause 48 mentioned in the allotment letter. The petitioner attended a

hearing before the Arbitrator and made oral submissions requesting him to withdraw from the proceedings.

12. It is the contention of the counsel for the petitioner that the disputes had arisen between the parties in relation to the allotment letter dated 21.03.2015 which is the mother agreement as also under the MoU, the Loan Agreement and the Tripartite Agreement. All the three agreements are intrinsically interlinked that they are inseparable and there are several mutual agreements between the parties which have to be performed back to back. It is argued that no doubt Clause 48 of the Allotment Letter between the petitioner and respondent no.1 and Article 11 of the Loan Agreement between petitioner and respondent no.2 provide for separate reference of disputes to arbitration, however, since the allotment of flat and disbursement of loan are part of a composite transactions, all the disputes must be referred to a single Arbitrator, whose name has been suggested by the petitioner.

13. It is argued that the cause for filing the present petition arose when the petitioner received a letter from the Arbitrator on 14.08.2019 that he had been unilaterally appointed and further when the Arbitrator refused to withdraw from the proceedings and also give a disclosure under Section 12 of the Act. Cause of action further arose on 16.09.2019 when the petitioner invoked the Arbitration Agreement and sent a notice to the respondents but the

Arbitrator was not appointed as per the Arbitration Clause between the parties.

14. After the matter was heard at some length, the parties have arrived at a settlement insofar as the appointment of Arbitrator is concerned. Respondent no.2 submits that there is an ongoing arbitration proceedings with respect to the same transactions between petitioner and respondent no.2 wherein the Arbitrator has been appointed by respondent no.2, since his principal objection to the present petition is that there is no arbitration clause in the Tripartite Agreement entered into between the petitioner and the respondent no.1 and respondent no.2 and secondly there is no challenge in the present petition to the Arbitrator appointed by respondent no.2. Petitioner has only sought termination of the mandate of Dr. Sanjeev Kumar in the arbitration proceedings between the petitioner and respondent no.1.

15. Learned counsel for the petitioner and respondent no.1 on instructions submit that they have no objection if the present disputes are referred for adjudication before the Arbitrator who is adjudicating the disputes in the proceedings between the petitioner and respondent no.2.

16. With the consent of the parties, the disputes and differences arising between the parties with respect to the Allotment Letter dated 21.03.2015 and the connected loan agreements as referred to

in the present petition, are referred to arbitration to be conducted by Shri Dilbagh Singh Punia, District & Sessions Judge (Retd.) who is the sole Arbitrator in the arbitration proceedings pending between the petitioner and respondent no.2.

17. Needless to state that the present proceedings will be considered as a separate reference to arbitration though the proceedings can be conducted together. The sole Arbitrator will give a disclosure under Section 12 of the Act and the fee of the Arbitrator would be fixed as per Fourth Schedule of the Act.

18. The petition is disposed of in the above terms.

JYOTI SINGH, J

DECEMBER 10, 2019
yo/aa /