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

+ **ARB.P. 758/2018**

SIRS & HERS APPARELS PVT LTD Petitioner

Through: Ms.Aditi Tripathi, Adv.

versus

M/S OMAXE LIMITED Respondent

Through: Mr.Harish Kumar Garg & Ms.Payal
Agrawal, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% **19.02.2019**

IA No. 2548/2019

This is an application seeking condonation of delay in filing of the reply.

For the reason stated in the application, the delay is condoned and the reply is taken on record.

ARB.P. 758/2018

1. This petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner seeking appointment of an Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the Letter of Offer dated 27.12.2006 issued by the respondent in favour of the petitioner in relation to allotment of shop no. AF-2 at Atrium Floor in 'Omaxe Connaught Place' at Greater Noida, U.P. The Letter of Offer contains an Arbitration Agreement between the parties in form of Clause 18 thereof.

2. Disputes having arisen between the parties, the petitioner invoked the

Arbitration Agreement vide notice dated 21.07.2018. Having received no response from the respondent, the present petition was filed.

3. The respondent, in its reply to the petition has taken a preliminary objection of the claim of the petitioner being barred by Law of Limitation. The learned counsel for the respondent submits that the petitioner by its letter dated 09.02.2010 requested for refund of the amount invested by it with the respondent. Therefore, the cause of action, if any, arose on that day and the claim of the petitioner is *ex facie* barred by limitation.

4. On the other hand, learned counsel for the petitioner submits that there were assurances given by the respondent for handing over of the possession of the shop to the petitioner. Respondent, however, denies any such assurances being given.

5. As the existence of the Arbitration Agreement and due invocation thereof are not denied by the respondent, I do not see any impediment in appointing an Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the above mentioned Letter of Offer. The issue whether the claims of the petitioner would be barred by limitation can be decided by the Arbitrator, even as a preliminary issue, if so advised.

6. In view of the above, I appoint **Mr.Nasir Husain**, Advocate (R/o B-27, 1st Floor, Nizamuddin (W), New Delhi-110013, Mobile-9582269424) as a Sole Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the above mentioned Letter of Offer. The Arbitrator shall give a disclosure under Section 12 of the Act before proceeding with the reference.

7. All pleas of the respondent shall remain open in such arbitration proceedings, including its right to make Counter Claim, if so advised.

8. The petition is allowed in the above terms, with no order as to cost.

NAVIN CHAWLA, J

FEBRUARY 19, 2019/rv