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

+ **ARB.P. 207/2021**

SURINDER KAUR KOHLI & ANR. Petitioners
Through **Mr. Raj Rohlania and Mr. Fahad Imtiaz, Advocates**

versus

M/S IMPERIA STRUCTURES LTD Respondent
Through **None**

CORAM:
HON'BLE MR. JUSTICE C .HARI SHANKAR

O R D E R (ORAL)

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30.07.2021
(Video-Conferencing)

C .HARI SHANKAR, J.

ARB.P. 207/2021

1. This is a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 ("1996 Act", in short), for reference of the disputes between the petitioners and the respondent to arbitration. Service of notice has been effected on the respondent by the Registry as well as by the petitioners and affidavit of service as well as report of the Registry, vouchsafing the fact that the respondent stands served, are available on record.

2. The respondent has, however, remained absent on the last two

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dates of hearing and is absent today as well.

3. As such, the Court has heard learned counsel for the petitioners and proceeds to dispose of the matter.

4. The substratum of the disputes between the parties stand set out in paras 5 to 17 of the petition, which are reproduced, for ready reference, thus:

“5. That, the present dispute pertains to two units ('Virtual Office Space' and 'Food Court' booked by same Petitioners in same project named and styled as 'Imperia Mind Space' being developed by Respondent in Village Maidawas, Sector - 62, Tehsil and District Gurugram, Haryana.

6. That, details of transactions are as tabulated below:-

PROJECT - IMPERIA MINDSPACE BY IMPERIA STURCTURES LTD,			
Village - Midawas, Sector - 62, Tehsil & Distt- Gurugram, Haryana			
Ser. No.	Head	VIRTUAL OFFICE SPACE	FOOD COURT
		Details	Details
1	Date of Agreement	08-Jun-18	08-Jun-18
2	Customer ID	IMP-MS-0139	IMP-MS-0140
3	Customer Name	1. Surinder Kaur Kohli 2. Satinder Pal Singh Kohli	1. Surinder Kaur Kohli 2. Satinder Pal Singh Kohli
4	Tower No.	A	A
5	Unit No.	59	FC -123

6	Floor	10 th	Ground
7	Super Area	300 Square Feet	350.45 Square Feet
8	Total amount paid by Petitioners to Respondent	Rs.22,01,000/-	Rs.62,24,525/-
9	Date of Start of payment of 'Assured Return'	22/07/2018	22/07/2018
10	Date of Last Payment of 'Assured Returns'	25/11/2019	25/11/2019
11	Current amount payable as 'Assured Returns' by Respondent	Rs.18,562/-Per Month	Rs.53,303/-Per Month
12	Possession Offered	Yes, without 'Occupation Certificate', hence Illegal	Yes, without 'Occupation Certificate', hence Illegal
13	Date of Offer of possession	23 Aug 2019, claimed to be 'reminder'	30-Oct-19
14	Pending amount to be paid as part of sales Consideration	Rs.2,25,646/- ONLY after issue of legal offer of possession.	Rs.6,92,939/- ONLY after issue of legal offer of possession
15	Rate of interest Chargeable to customer for delayed payment, if any	18% as per agreement from various due dates till the date of payment, on reciprocal terms	18% as per agreement from various due dates till the date of payment, on reciprocal terms

7. That, as per Annexure A-1 to UBA, Respondent committed to provide 'Assured Returns' for both units till such time Respondent provides lawful offer of possession of usable units to Petitioner.

8. That, to discharge obligations under UBA, Petitioners

paid all amounts as per agreed schedule and total amounts paid against each unit is given in row 8 of above table. Respondent also started discharging his obligations started paying 'Assured Returns' amount with effect from 22/07/2018.

9. That, it is settled position in law that builder can issue 'Offer Of Possession' only on receipt of due 'Occupation Certificate' from relevant government offices. Same position is also admitted in Para 11 of UBA (Refer **Documents - P - 1 and P - 1A**), paragraph titled 'PROCEDURE FOR TAKING POSSESSION'. Relevant portion of cited paragraph is extracted below:-

"11. The Company upon obtaining Occupation Certificate from the Government Authority shall offer in writing ("Offer of Possession") of the unit to the Allottee in terms of Agreement to be taken within 30 (thirty) days from the date of issue of such notice and the Company shall give possession of the unit to the Allottee provided that the Allottee is not in default of any of the terms and conditions of this Agreement and has complied with all provisions, formalities, documentation, etc., as may be prescribed by the Company in this regard. The Allottee shall be liable to pay the Maintenance Charges from the date referred in the Offer of Possession of the Unit" (emphasis supplied).

10. That, despite above clause. Respondent issued unlawful 'Offer of Possession' for booked units on dates as given in row No. 13 of above table. The illegality is admitted by Respondent as in opening paragraphs only it is clearly stated by Respondent that, *"the company has already applied for the necessary approvals and sanctions"* implying that 'Occupation Certificate' from Government Authorities had not been received by Respondent till the date of issue of these 'Offer Of Possession'

11. That, the Respondent continued to pay specified amount as 'Assured Return' for both units till 25/11/2019, thereafter stopped making payments to Petitioners for the reasons best known to Respondent.

12. That, on query from Petitioners with regards to the reasons for stopping this payment, Respondent replied that since 'Offer of Possession' has been provided to Petitioners, hence, no such payments under this head of 'Assured Return' is payable to Petitioners.

13. That, on 22/03/2020 Respondent issued a cheque No. 011948 for an amount of Rs 15,660/- (Refer **Document - P - 4**) another cheque No. 011948 on 22/04/2020 for same amount (Refer **Document - P - 5**) towards discharge of his liability of 'Assured Return' in Unit No.59, (Virtual Office Space) on 10th Floor of the project. However, both these cheques got dishonored by payee bank and intimation to this effect was received from Petitioners banker on 30/04/2020 (Refer **Documents - P - 6 and P - 7** respectively).

14. That, Petitioners contacted Respondents on various occasions pleading to discharge their part of obligations and pay out agreed amounts under the head, 'Assured Returns'. However, Respondent failed to discharge his promise.

15. That finding no suitable response to tele calls. Petitioners sought mutual discussions on grievances of Petitioners at date, time and place of Respondent's choosing. Petitioners were invited for mutual discussions with Respondent on 18/09/2020 at their registered address at A-25, Mohan Cooperative Industrial Estate, New Delhi.

16. That, on scheduled date and time, mutual discussions were held with Mr. Vipin, General Manager, Customer care and Petitioners. During this meeting, it was pressed with Mr. Vipin that offer of possession provided to Petitioners was illegal and perverse in light of para 11 of UBA (already extracted in para 9 above) and also well settled proposition of law. Petitioners further stated that Respondent need to continue paying 'Assured Return' for both units till such time a lawful 'Offer of Possession' is made by Respondent. Mr. Vipin asked for the copy of the judgment on which Petitioners were relying to enable Respondent to comply with law, despite the fact that para 11 of UBA itself stipulates condition of offering possession on receipt of 'Occupation Certificate' from government authorities. Yet, copy of the judgment was provided to Respondent. However, despite this.

Respondent failed to restore payments under 'Assured Return'.

17. That, on noticing that Respondent is not honoring his own commitments given during the mutual discussions, Petitioners sent separate notices to Respondents dated 26/10/2020 asking Respondent to clear past dues. Notices are attached as **Documents - P - 8 and 9**. These notices were duly received by Respondent on 28/10/2020 vide **Document annexed as P - 10.**”

5. Needless to say, the aforesaid recitals are without prejudice to the right of the respondent to contest the allegations of the petitioners, on facts as well as in law.

6. Notice of arbitration was issued by the petitioners to the respondent on 10th December, 2020. There has been no response thereto.

7. The task of appointing an arbitrator, therefore, devolves on this Court under Section 11(6) of the 1996 Act.

8. Mr. Rohlania, learned counsel for the petitioners, is agreeable to the disputes being referred to the Delhi International Arbitration Centre (DIAC), which would appoint a suitable arbitrator to arbitrate on the disputes between the parties.

9. Accordingly, the present petition is disposed of by referring the disputes between the parties to the DIAC, which would appoint a suitable arbitrator to arbitrate thereon. The arbitration shall take place under the aegis of the DIAC and as per its rules and regulations. The

arbitrator would also be entitled to fees in accordance with the schedule of fees maintained by the DIAC.

C. HARI SHANKAR, J.

JULY 30, 2021

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