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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 15th February, 2021

+ O.M.P.(I) (COMM.) 58/2021 & I.A. 2292/2021

SAMYAK PROJECT PVT LTD & ANR. Petitioners

Through: Mr. Vivek Kohli, Sr. Adv. With
Mr. Nalin Talwar, Ms. Neetika
Bajaj, Ms. Malvika Jain & Mr.
Ayushman Kacker, Advs.

versus

ANSAL HOUSING LIMITED Respondent

Through: Mr. Sachin Datta, Sr. Adv with
Mr. Vikas Tiwari, Mr. Aamir
Jamal & Mr.Kumar Deepraj,
Advs.

+ O.M.P.(I) (COMM.) 59/2021 & I.A. 2302/2021

SAMYAK PROJECTS PRIVATE LIMITED..... Petitioner

Through: Mr. Vivek Kohli, Sr. Adv. With
Mr. Nalin Talwar, Ms. Neetika
Bajaj, Ms. Malvika Jain & Mr.
Ayushman Kacker, Advs.

versus

ANSAL HOUSING LIMITED Respondent

Through: Mr. Sachin Datta, Sr. Adv with
Mr. Vikas Tiwari, Mr. Aamir
Jamal & Mr.Kumar Deepraj,
Advs.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER (ORAL)

(Video-Conferencing)

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O.M.P.(I) (COMM.) 58/2021 & O.M.P.(I) (COMM.) 59/2021

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1. Detailed arguments were advanced by Mr. Vivek Kohli, learned senior counsel on behalf of the petitioner and by Mr. Sachin Datta, learned senior counsel on behalf of the respondent, in both these matters.

2. It appears that four projects form the subject matter of agreements between the petitioner and the respondent, of which each of these petitions is concerned with one project. OMP (I) (COMM) 58/2021 is concerned with the Ansal Hub project and OMP (I) (COMM) 59/2021 is concerned with the Ansal Height Project at Sectors 83 and 92, Gurugram, respectively.

3. Disputes have cropped up, between the petitioner and the respondent, in all these four projects. In respect of one of the projects, namely the Ansal Boulevard project, the matter already stands referred to arbitration by Hon'ble Mr. Justice A. K. Sikri, an eminent former judge of the Supreme Court, pursuant to a petition, under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the 1996 Act"), filed by the respondent in the present petitions.

4. By consent, learned counsel for the parties agree to a reference of the disputes between them, forming subject matter of these petitions, to Hon'ble Mr. Justice Sikri, and for these petitions to be decided by the learned arbitrator treating them as applications under Section 17 of the 1996 Act.

5. There is, however, one difference between these two petitions.
6. Both the petitions deal with Joint Development Agreements (JDAs), the JDA in OMP (I) (COMM) 58/2021 having been executed on 24th June, 2013 and the JDA in OMP (I) (COMM) 59/2021 having been executed on 18th April, 2011.
7. The grievance of the petitioner, in both the petitions, is, primarily, that the receivables from the projects have not been distributed by the respondent in accordance with the shares specified in the JDAs.
8. Additionally, in OMP (I) (COMM) 58/2021, the petitioner points out that the JDA dated 24th June, 2013, in that case, specifically required opening of an escrow account by the respondent, into which the receivables from the project were to be deposited and from which they were to be distributed between the petitioner and the respondent in a pre-determined ratio specified in the JDA dated 24th June, 2013.
9. Learned counsels are *ad idem* that there is no such requirement of an escrow account in the JDA executed on 18th April, 2011, forming subject matter of OMP (I) (COMM) 59/2021, though Mr. Vivek Kohli, learned senior counsel for the petitioner emphasizes that, in the Memorandum of Understanding dated 15th December, 2010, which preceded the JDA in that case, there was a specific stipulation for opening of an escrow account, which was not diluted

either in the JDA or in the supplementary agreement that came to be executed between the parties thereafter. He, therefore, contends that the requirement of opening of escrow account, as contained in the MoU, ought to be treated as a part of the JDA and the supplementary agreement between the parties.

10. In my view, the question of whether an escrow account was required to be opened in OMP (I) (COMM) 59/2021, would require greater deliberation which, in the fitness of things, ought to be undertaken by the learned arbitrator rather than this court expressing any opinion even *prima facie* in that regard.

11. However, so far as OMP (I) (COMM) 58/2021 is concerned, there is no dispute that the JDA required opening of an escrow account and dissemination, between the petitioner and the respondent, of the receivables from the project, after they were deposited therein, in the ratio specified in the JDA dated 24th June, 2013. Mr. Sachin Datta, learned senior counsel for the respondent, fairly agrees that no escrow account was opened though, according to him, there was a joint letter executed between the parties on 7th July, 2014, which obviated the requirement of opening of an escrow account. He also submits that the respondent had agreed, against an inter cooperate deposit of ₹ 25 crores extended by the petitioner, to secure the deposit by pledging all the receivables from the project.

12. There is, however, no written document produced before me, by the respondent, which novates the requirement of opening of an

escrow account as contained in the JDA dated 24th June, 2013.

13. In view thereof, I am of the opinion that, subject to the decision of the learned arbitrator in OMP (I) (COMM) 58/2021 (treating it as an application under Section 17 of the 1996 Act), the respondent should open an escrow account, as required by Clause 12.15 of the JDA dated 24th June, 2013, and to deposit all receivables, relating to the Ansal Hub project in the said account, wherefrom dispensations to the petitioner and the respondent would be made as directed by the learned arbitrator. This arrangement shall be implemented and shall continue to remain in force, pending, however, and subject to the outcome of, the deliberations by the learned arbitrator in OMP (I) (COMM) 58/2021.

14. In view of the above, this court disposes of both these petitions with the following directions;

(i) Hon'ble Mr. Justice A.K. Sikri, J. (retired) is appointed as the arbitrator, to arbitrate on the disputes between the petitioner and the respondent, in connection with which the petitioner has filed OMP (I) (COMM) 58/2021 and OMP (I) (COMM) 59/2021 under Section 9 of the 1996 Act.

(ii) The petitioner is permitted to file, before the learned arbitrator, OMP (I) (COMM) 58/2021 and OMP (I) (COMM) 59/2021. The learned arbitrator would treat these OMPs as applications under Section 17 of the 1996 Act and proceed to

decide the applications in accordance with law after hearing the parties.

(iii) Pending, and subject to the outcome of, the decision of the learned arbitrator in OMP (I) (COMM) 58/2021, the respondent is directed to open an escrow account forthwith within a week from today and to deposit all receivables from the Ansal Hub project therein, in accordance with Clause 12.15 of the JDA dated 24th June, 2013, wherefrom the amounts would be dispensed between the petitioner and respondent as directed by the learned arbitrator.

15. I am informed, by Mr. Datta, that the arbitration *qua* the Ansal Boulevard project, is listed before the learned arbitrator on 18th February, 2021.

16. Accordingly, the parties may get in touch with the learned arbitrator within 24 hours of the receipt of a copy of this order by e-mail by the Registry of this court. The Registry would e-mail the order to learned counsel for the parties as soon as it is available.

17. The fees of the learned arbitrator would be the same as have been fixed in the context of the Ansal Boulevard project.

18. The learned arbitrator would also file the requisite disclosure under Section 12(2) of the 1996 Act, within a week of entering on the reference.

19. With the aforesaid directions, both these petitions are disposed of.

C.HARI SHANKAR, J

FEBRUARY 15, 2021/ss

