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

Date of decision: 26.07.2021

+ ARB.P. 558/2021

RAJ SUJAN & ANR.

..... Petitioners

Through Mr. D. Abhinav Rao, Adv.

versus

MS GEAR UP BUILDERS PVT LTD & ORS.

..... Respondents

Through Mr. Navneet Dugar, Adv.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

The hearing has been conducted through video conferencing.

1. The present petition is preferred by the petitioners under Section 11 (5) and 11 (6) of the Arbitration & Conciliation Act, 1996 seeking appointment of an Arbitrator for adjudicating the disputes between the parties in terms of the Development Agreement-cum-GPA dated 14.05.2012.
2. The petitioners herein are the absolute owners of Plot No. 21 admeasuring 1076.40 sq. yards equivalent to 900 sq. mtrs. situated at Huda Enclave, Jubilee Hills, Hyderabad.

3. The respondent No. 1- M/s. Gear Up Builders (P) Limited is a company registered under the Companies Act and respondent No. 2 - Mr. B.V. Rajesh is the Managing Director of the respondent No. 1/ company.

4. Petitioners entered into a registered Development Agreement-cum-GPA dated 14.05.2012 with the respondent No. 1 for development on the aforesaid property of petitioners and respondent No.2 had signed the same on behalf of respondent No. 1. According to terms of aforesaid Agreement, respondents were required to complete the construction within 21 months or in any case within a grace period of 3 months, i.e. by 23.10.2014. However, respondents were unable to complete the project on time and sought for further extension of time and the same was extended by 5 months, and in this way, the construction was to be completed by 31.03.2015. But even after extension of time, the construction was not completed.

5. According to petitioners, various communications were made to respondents through email and respondents kept on assuring petitioners that the construction will be completed at the earliest. But after causing substantial delay, the respondents abandoned the work on site and refused to engage with the petitioners and in such circumstances, petitioners were constrained to send legal notice dated 15.03.2021 through their counsel to

respondent No. 1 seeking appointment of Sole Arbitrator. However, respondent No. 1, through its counsel, sent a reply dated 27.03.2021 declining appointment of the proposed Arbitrator mentioned in the aforesaid notice dated 15.03.2021.

6. At the hearing, learned counsel for petitioners submitted that respondents have abandoned the work of petitioners and various disputes have arisen between them and these disputes can be resolved in terms of Clause-38 of Development Agreement-cum-GPA dated 14.05.2012. Further submitted that petitioners have claim of Rs.2,32,09,336/- (Rupees Two Crores Thirty-Two Lakhs Nine Thousand Three Hundred and Thirty-Six Only) against the respondents.

7. The aforesaid submission of petitioners' counsel is disputed by counsel for respondents, however, existence of Development Agreement-cum-GPA dated 14.05.2012 is not disputed.

8. I have heard learned counsel for the parties and have gone through the material placed on record.

9. The relevant Clause - 38 of Development Agreement-cum-GPA dated 14.05.2012 reads as under:-

“In the event of any dispute arising between the parties herein touching these presents, such dispute shall be

referred to a Sole Arbitrator duly appointed by both the parties and his/her award shall be final and binding on both the parties. The venue of arbitration shall be New Delhi and the provisions of the Arbitration and Conciliation Act, 1996 shall apply.”

10. In the aforesaid view of the matter, the present petition is allowed.

Accordingly, **Justice H.R.Malhotra (Retd.) (Mobile: 9311510400)** is appointed Sole Arbitrator to adjudicate the dispute between the parties.

11. The fee of the learned Arbitrator shall be governed by the Fourth Schedule of the Arbitration and Conciliation Act, 1996.

12. The learned Arbitrator shall ensure compliance of Section 12 of Arbitration and Conciliation Act, 1996 before commencing the arbitration.

13. Needless to say, all issues are left open for agitation by the parties and consideration by the learned Arbitrator.

14. A copy of this order be sent to learned Arbitrator for information.

15. With aforesaid directions, the present petition is accordingly disposed of.

(SURESH KUMAR KAIT)
JUDGE

JULY 26, 2021

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