

\$~17, 18 & 19

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

%

Date of decision: 02.08.2021

(i) + **ARB.P. 624/2021**

MRS. NAVITA SUHAG

(ii) + **ARB.P. 625/2021**

INDRA DEO GARG

(iii) + **ARB.P. 626/2021**

MRS RITA DABAS

.....Petitioners

Through: Mr. Sunil Narula, Advocate

Versus

DIVINE INFRACON PVT. LIMITED THROUGH ITS
MANAGING DIRECTOR

.....Respondent

Through: Mr. Vijay Kasana & Ms. Ketki
Chhaya Chaduhary, Advocates

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (oral)

The hearing has been conducted through video conferencing.

1. The above noted three petitions have been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of Arbitrator for adjudication of disputes pending *inter se* parties and for grant of cost of petition in favour of the petitioners and against the respondent.

2. The background of the case is that petitioners have been allured into investing their hard-earned money on the basis of false promises,

misrepresentation by the respondent, who is said to be a Developer constructing commercial complexes, hotels, residential buildings etc. According to petitioners, respondent deceived the petitioners by showing brochure/ prospectus, making false representations and of having false permissions and sanctions from the concerned authorities about the project in question. Respondent assured the petitioners having completed all legal formalities regarding execution of the project and of good monthly return by way of rent of the said premises to be leased on the basis of lock-in period for a period of 18 years or any other period. Thus, the petitioners believing the representations of the respondent, invested their hard-earned money in the properties of respondent.

3. In the first captioned petition [ARB.P. 624/2021], petitioner is the owner of Unit No.23-B on the Ground Floor of MTRB situated at the Soul City Mall at Plot No.4, Sector 13, Dwarka City Centre, Dwarka, New Delhi-110075. The case of petitioner is that as agreed with respondent, upon payment of a sum of Rs.40,00,000/-(forty Lacks) as sale price pertaining to the Unit No. 23 B, admeasuring Built Up area 9.2903 Sq. Meters (100 Sq. Feet) and having super area 18.5806 Sq. Meters (200 Sq. Feet) at ground floor of the plot bearing no. 4 situated at Sector 13 Dwarka New Delhi

known as "Soul City Mall", they entered into a "Hotelier Buyer's" agreement dated 11.01.2014.

4. As per Hotelier Buyer Agreement, a separate lease deed in respect of property in question was to be executed giving the possession, control and management of the said unit to the hotelier to sub lease/ sub license/ assign the said shop/ unit for the management as suitable for the purpose. Subsequently sale deed dated 04.02.2014 was also registered in the office of sub registrar, SR -II, Basai Darapur Delhi. Thereafter, petitioner and respondent also entered into a lease agreement dated 17.04.2014 with the respondent for a period of 18 years at a monthly rent of Rs.40,000 per month commencing from 18.01.2014, which was subject to 15% increase after every three years and interest @9% was to be paid for any delay in payment of monthly rent. According to petitioners, the respondent continued to pay the rent till March, 2016 but thereafter stopped paying the monthly rent.

5. Similar are the grounds put-forth in other two petitions. Petitioner in the above captioned second petition [ARB.P. 625/2021] is the owner of two Units bearing No.23-F and 23-I on the Ground Floor of MTRB situated at the Soul City Mall at Plot No.4, Sector 13, Dwarka City Centre, Dwarka, New Delhi-110075, who had paid a sum of Rs.46,50,000/-(Forty Six Lacs

Fifty Thousand only) as sale price pertaining to the Unit No. 23-1 admeasuring Built Up area 9.2903 Sq. Meters (100 Sq. Feet) and having super area 18.5806 Sq. Meters (200 Sq. Feet) and Rs.93,00,000/- (Ninety Three Lacs only) as sale price pertaining to the Unit No. 23-F admeasuring Built Up area 18.5806 Sq. Meters (200 Sq. Feet) and having super area 37.1612 Sq. Meters (400 Sq. Feet) at ground floor of the "Soul City Mall" . Petitioner herein also had entered into a "Hotelier Buyer's" agreement dated 15.04.2014, sale deed 18.06.2014 and lease deed dated 16.07.2014 with the respondent. According to the lease deed, respondent had to pay rent @Rs.80,000/- and Rs.40,000/- respectively for both the units to the petitioner. However, after March, 2016, respondent stopped paying the month rent.

6. Petitioner in the third captioned petition [ARB.P. 626/2021] is the owner of two Units bearing No.23-A and front Courtyard No. 23-A at aforesaid Soul City Mall, who had also entered into a Hotelier Buyer Agreement dated 17.05.2014 upon payment of sum of Rs.71,50,000/- (Seventy-one Lacs Fifty Thousand only) to the respondent. Subsequently, sale deeds dated 31.05.2014 were executed in respect of two units in question and parties entered into a lease agreement dated 24.05.2014,

according to which respondent has to pay rent @ Rs.69,600/- per month for Unit No.23-A and Rs.32,800/- per month for Front Court Yard No. 23-A for a lock-in period of 18 years. However, after March, 2016, respondent failed to pay the rents.

7. The case of petitioners is that they accommodated respondent on his plea of facing financial crunch. Further, the petitioner came to know that certain disputes between other investors, namely, Mrs.Pramod Yadav, Mrs.Sneha Yadav and respondent with regard to Hotelier Buyer Agreement and non-payment of rent and cancellation of lease deed were under consideration before the National Company Law Tribunal, wherein respondent has taken the plea of arbitration clause under Section 8 of Arbitration and Conciliation Act, 1996.

8. On the aforesaid plea of respondent, the petition filed by those investors before the NCLT was dismissed and respondent preferred arbitration petition i.e. ARB.P. No.6/2018, under Section 11 (5) of the Act before this Court and vide order dated 19.02.2018 this Court appointed Mr. Justice (Retd.) J.D.Kapoor as the Sole Arbitrator to adjudicate the dispute between the parties. The award of the learned Arbitrator was pronounced on 03.09.2019 wherein damages equivalent to 5 years rent were awarded to the

petitioner in lieu of the rent/returns due to early termination of lease deed before expiry of lock-in period.

9. However, petitioners received a legal notice dated 11.05.2020 from the respondent terminating the lease agreements, despite lock-in period of 18 years commencing from the date of lease agreement.

10. Aggrieved by the arbitrary and illegal act of the respondent, petitioners sent a legal notice dated 03.09.2020 to respondent and proposed to invoke arbitration clause and appointment of Mr. Justice (Retd.) J.D.Kapoor as the Arbitrator to adjudicate the dispute, however, respondent did not reply to the same. As per petitioners, even thereafter, efforts to amicably resolve the dispute with respondent were made, however, matter could not be settled. Lastly, petitioner sent a notice dated 03.04.2021 to respondent invoking arbitration and proposing appointment of Mr. Justice (Retd.) J.D.Kapoor as the Arbitrator, but since respondent did not respond to the aforesaid notice, the petitioners are before this Court seeking appointment of Arbitrator.

11. Both sides have been heard and record of these cases have been perused.

12. Petitioners have invoked arbitration vide notice dated 03.04.2021.

According to petitioners, the claim raised in the first captioned petition is of Rs.2,25,00,000/- along with interest @18% per annum. In the second and third captioned petitions, the claim raised is of Rs.3,50,00,000/ each along with interest @18% per annum. The arbitration agreement between the parties and invocation of arbitration are not disputed by either side. Accordingly, these petitions are allowed.

13. Accordingly, **Justice (Retd.) B.A.Khan, former Chief Justice of High Court of Jammu & Kashmir (Mobile No. 9818000150)** is appointed Sole Arbitrator to adjudicate the dispute between the parties.

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

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

16. The date of 18.08.2021 already fixed in ARB. P. 625/2021 AND ARB.P.626/2021 stand cancelled.

17. With aforesaid directions, the present petitions are accordingly disposed of.

(SURESH KUMAR KAIT)
JUDGE

AUGUST 02, 2021/r

ARB.P. 624; 625 & 626 of 2021