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

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Date of decision: 12.08.2021

+ **ARB.P. 762/2021**

DLF HOME DEVELOPERS LTD.

.....Petitioner

Through: Mr. Pinaki Misra, Senior Advocate
with Mr. Jatin Mongia, Ms. Meghna
Mishra, Mr. Ankit Rajgarhia,
Mr.Arjit Benjamin & Ms.Aishwariya
Chaturvedi, Advocates

Versus

SHIPRA ESTATES LTD & ORS.

....Respondents

Through: Ms. Gauri Rishi, Ms. Srishti Juneja &
Mr. Sanampreet Singh, Advocates for
the respondents No. 1,2 &3
Mr. Rajiv Nayar, Senior Advocate
with Mr. Rishi Agrawala, Mr. Manish
K. Jha, Mr. Karan Luthra, Mr. Ankit
Banati, & Ms. Vishrutyi Sahni,
Advocates for respondent
No.4/Indiabulls Housing Finance
Limited

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.

I.A. 10082/2021 (u/S 149 r/w Sec. 151 CPC)

1. The application is allowed with direction to file requisite notarized affidavit, court fees and process fees within six weeks.

ARB.P. 762/2021 & I.A. 10080-81/2021(exemption)

2. The present petition has been preferred under the provisions of Section 11(6) of the Arbitration and Conciliation Act, 1996 by the petitioner- a company incorporated under the Companies Act, 1956 to resolve the dispute with respondents.

3. Respondent No. 1 is a private company and respondent No.2, again a private company, is wholly owned subsidiary of respondent No.1. Respondent No.3 is the Promoter of respondent No.1. Respondent No.4 is a limited company.

4. The dispute amongst the parties pertains to a piece of land admeasuring 73 acres [2,95,421 square meters] situated in Sector 128, Noida, District Gautam budha Nagar, Uttar Pradesh. According to petitioner, respondent No.2 is the sub-lessee of the land in question, which was mortgaged with respondent No.4 to obtain loan for respondent No.1. Petitioner entered into an Agreement to Sell dated 30.05.2021 with respondent Nos. 1 to 4 with respect to the land in question. However, some

disputes arose between the parties and the execution of aforesaid Agreement to Sell dated 30.05.2021 came under clouds.

5. Petitioner claims that to amicably resolve the dispute between the parties, a legal notice dated 23.06.2021 was sent to respondents No.1 to 4 calling upon them to specifically perform the terms of the said Agreement, including completing the conditions precedent, which are under their control and also that petitioner was willing to complete the entire transaction at the earliest, subject to fulfilment of those precedent conditions. Thereafter, a few more communications were made between the parties but on 27.06.2021, petitioner received a communication from defendant No.4 terminating the Agreement due to delay in completion of the terms.

6. It is further claimed by petitioner, that defendant No.4 has entered into another agreement with third party in respect of sale of land in question, which is highly arbitrary and illegal. In a petition [OMP (I) (COMM) 209/2021] filed by the petitioner, this Court vide order dated 06.07.2021 directed the parties to maintain *status quo* in respect of land in question. In the meanwhile, respondents No.1 to 3 have issued notices dated 08.07.2021 to the petitioner and respondent No.4 invoking arbitration clause and appointing Arbitrators in terms of Clause 11 of the Agreement to Sell dated

30.05.2021. Petitioner claims to have replied to the aforesaid notice proposing names of Arbitrators, however, upon failure of respondents to respond to the said Notice, the present petition has been filed seeking appointment of sole arbitrator to adjudicate the disputes amongst the parties.

7. Notice issued.

8. Ms. Gauri Rishi, Advocate for respondents No.1 to 3 and Mr. Rishi Agrawala, Advocate, for respondent No.2, accept notice. 4.

9. Both sides have been heard and record of this case has been perused. Pertinently, existence of Agreement to Sell dated 30.05.2021; arbitration Clause 11.1. and 11.2 thereof and conflicts *inter se* parties are not disputed. However, the Hon'ble Supreme Court in ***Perkins Eastman Architects DPC & Anr. vs. HSCC (India) Ltd. 2019 SCC Online SC 1517*** has categorically stated that no single party can be permitted to unilaterally appoint the Arbitrator, as it would defeat the purpose of unbiased adjudication of dispute between the parties. The aforesaid decision in ***Perkins (Supra)*** has been followed by a Coordinate Bench of this Court in ***Proddatur Cable TV Digi Services Vs. Citi Cable Network Limited: (2020) 267 DLT 51***. Thus, the Arbitrator either has to be appointed with the consensus of the parties or by this Court.

10. During the course of hearing, learned counsel appearing for the parties pressed that this Court may appoint Arbitrator to adjudicate the disputes pending amongst the parties.

11. Accordingly, **Justice (Retd.) Pankaj Jaiswal (Mobile: 9425155450)** is appointed as the sole Arbitrator to adjudicate the dispute between the parties.

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

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

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

15. Pending applications are disposed of as infructuous.

(SURESH KUMAR KAIT)
JUDGE

AUGUST 12, 2021

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