

\$~4 to 6

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

% ***Date of decision: 20.09.2021***

(i) + **ARB.P. 841/2021**
PARMINDER JIT KAUR

(ii) + **ARB.P. 842/2021**
PARMINDER JIT KAUR & ANR.

(iii) + **ARB.P. 843/2021**
PARMINDER JIT KAUR Petitioner(s)
Through: Mr. Siddharth Asthana and Mr.
Siddhant Nath, Advocates

Versus

SPLENDOR BUILDWELL PVT.LTD. & ANR. Respondents
Through: Mr. Poorva Pant, Advocate

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

JUDGMENT (oral)

The hearing has been conducted through video conferencing.

1. Petitioner (s) in the first and third captioned is Ms. Paraminder Jit Kaur and in the second captioned petition besides her, is Mr. Manmohanjit Singh is, who have preferred these petitions under the provisions of Section

11(6) of the Arbitration and Conciliation Act, 1996 for appointment of Arbitrator to adjudicate the dispute with respondents.

2. Since parties to the present petitions are similar and even the subject matter of these petitions is more or less similar, therefore, with the consent of counsel representing both the sides, these petitions have been heard together and are being disposed of by this common judgment.

3. According to petitioner(s), respondent No.1 & 2 are companies registered under the Companies Act, 1956 and pursuant to understanding between two of them, respondent No.1-company agreed to undertake to develop and construct IT Building/Tower(s) consisting of IT Office Spaces on the land admeasuring 6.775 acres situated in Sector-58 in the revenue estate of Village Behrampur, Tehsil Sohna and District Gurgaon, Haryana owned by respondent No.2. For this purpose, respondents No.1 and 2, who are said to be sister concerns, entered into a Space Buyers Agreement and Memorandum of Understanding dated 28.07.2021 in [ARB.P.841/2021]; Space Buyers Agreement 24.10.2016 and Memorandum of Understanding dated 25.10.2016 in [ARB.P.842/2021] and Space Buyers Agreement and Memorandum of Understanding dated 06.05.2015 in [ARB.P.841/2021] whereunder respondent No.1 undertook ARB.P.841/2021; 842/2021 & 843/2021

to register conveyance deed in the name of petitioner within six months of receipt of Occupancy Certificate. The petitioner(s) claims to have paid entire amount of Rs.25,70,400/ towards sales consideration with respect to unit No.404, super area of 765 Sq.ft on the Second Floor of Tower-D (in ARB.P.841/2021) and Rs.40,94,310/- towards sales consideration with respect to unit No.412, super area of 1306 Sq.ft on the Second Floor of Tower-D 9 (in ARB.P.842/2021) and Rs.41,48,3201/ - towards sales consideration with respect to unit No.205, super area of 975 Sq.ft on the Second Floor of Tower-B (ARB.P.843/2021).

4. At the hearing, learned counsel for the petitioner submits that the terms of aforesaid Space Buyers Agreements and Memorandum of Understandings have been violated, whereunder in Clause-31 & 34 it was agreed between the parties that disputes, if any, first shall be tried to be resolved through mutual discussion, failing which the same shall be settled through arbitration.

5. Learned counsel further submits that despite payment of entire sale consideration and meeting the demands for payment so raised by the respondents, the conveyance deed in favour of petitioners has not been executed with respect to the said unit, therefore, a legal notices dated ARB.P.841/2021; 842/2021 & 843/2021

12.11.2020 in each petition were sent to the respondents demanding the payment of pending assured returns and execution of the sale deed. The aforesaid legal notices were replied to by the respondents vide its communication dated 29.12.2020 raising frivolous pleas and fictitious claims under the Banning of Unregulated Deposit Schemes Act, 2019 and stated that under the provisions of the said Act, the Memorandum of Understandings in question stood terminated.

6. In such circumstances, petitioner filed petitions before District Courts [OMP (I) (Comm.) 175/2021; 176/2021 & 177/2021], wherein respondents have undertaken that no third-party interests shall be created with regard to properties in question with liberty to petitioners to invoke the arbitration clause.

7. It is pleaded on behalf of the petitioners that petitioners vide Notice dated 14.07.2021 invoked the arbitration clause and appointed Shri. Udit Gupta as the Sole Arbitrator and invited respondent to give confirmation to the same. In reply thereof, respondents vide its communication dated 13.08.2021 nominated its own sole Arbitrator, which is contrary to the law. Hence, these petitions.

8. The contents of these petitions are disputed by learned counsel ARB.P.841/2021; 842/2021 & 843/2021

appearing on behalf of respondents, however, is not disputed that the disputes *inter se* parties can be resolved through arbitration.

9. With regard to appointment of Arbitrators, the Hon'ble Supreme Court in ***Perkins Eastman Architects DPC & Anr. Vs. HSCC (India) Ltd.*** **2019 SCC Online SC 1517** has categorically stated that “*in cases where one party has a right to appoint a sole arbitrator, its choice will always have an element of exclusivity in determining or charting the course for dispute resolution. Naturally, the person who has an interest in the outcome or decision of the dispute must not have the power to appoint a sole arbitrator.*”

10. Applying the aforesaid dictum of Hon'ble Supreme Court to the case in hand, the present petition is allowed.

11. Accordingly, **Ms. Anita Sahni, Advocate (Mobile: 9810113256)** is appointed sole Arbitrator in these petitions 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 above captioned three petitions are accordingly disposed of.

(SURESH KUMAR KAIT)
JUDGE

SEPTEMBER 20, 2021

r

