

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

ARB No. 289 of 2021

Date of Decision: April 21, 2022

VIJAYALAKSHMI SRINIVASAN

.... Applicant(s)

Versus

IREO RESIDENCES COMPANY PVT. LTD.

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Tanmoy Gupta, Advocate
for the applicant.

LISA GILL, J.

This petition under Section 11 of the Arbitration and Conciliation Act, 1996 (for short – ‘the Act’), has been filed for appointment of the sole Arbitrator for deciding the disputes arising out of Agreement dated 17.09.2015 (Annexure A-1), executed between the parties.

Brief facts necessary for adjudication of the matter are that the applicant booked an apartment on 2nd July, 2015 through a booking application, submitted before the respondent. Resultantly a Residence Purchase agreement dated 17.09.2015 for the residential unit in question was executed between the parties (here-in-after referred to as the agreement). The applicant deposited a sum of Rs.4,89,59,094/- as consideration for the residential unit. Details of the cheques is given in the application. It is stated that despite the applicant having performed her obligations in terms of the agreement, possession of the residential unit was not handed over within the stipulated period of 48 months

or within the grace period of 180 days, in case of unforeseen delays beyond the reasonable control of the respondent. The applicant it is submitted was entitled to refund of the amount alongwith interest @ 8% as per Clause 23 of the agreement, which pertains to the right of cancellation. Accordingly, legal notice dated 05.08.2019 (Annexure A-3), was issued by the applicant. Pursuant to issuance of the said legal notice dated 05.08.2019, the respondent it is stated in order to placate the applicant offered to migrate the applicant's booking to a different project with adjustment of the amount.

A tripartite migration agreement dated 24.01.2020 was entered into between the applicant, respondent and one IREO Grace Real Tech Private Limited (for short IGRPL). As per the said tripartite agreement, applicant's booking was shifted from 'Grand Hyatt Gurgaon Residences Project' to a project titled 'The Corridors Apartments' being developed by IREO Real Tech Private Limited, which was admittedly a sister concern of the respondent. This migration was subject to IGRPL obtaining a No Objection Certificate (NOC) from three banks within 90 days and transfer of the adjustment amount in its favour. Clause 9 of the tripartite migration agreement reads as under:-

“9. The Party of the Third Part shall apply for the NOC of The Corridor Apartments individually and obtain the same within 90 (Ninety) Days. If the Party of Third Part fails to obtain the above mentioned NOC within 90 (Ninety) days, the Parties may mutually agree to extend the date for the Party of the Third Part to furnish the NOC or may wholly terminate the Agreement. However, if no NOC is forthcoming from the Party of the Third Part, the Party of the Second Part has the right to unilaterally terminate this Agreement and this Agreement shall stand null and void. Thereafter, the Party of the Second Part shall retain all her rights, title and interest in the said Apartment in Grand Hyatt Gurgaon Residences Project as it was originally before the Agreement.”

Due to failure of the respondent and IGRPL to obtain the necessary NOCs, a termination agreement dated 04.01.2021 is stated to have been executed between the three parties with the addendum on 05.02.2021 (in respect to miss-spelling of the applicant's name), which are attached as Annexure A-6. As neither possession of the residence was handed over nor the amount refunded, the applicant in terms of Clause 36 of the residence purchase agreement dated 17.09.2015, issued notice dated 05.03.2021, seeking appointment of the sole Arbitrator and also proposed the name of an arbitrator. Clause 36 of the agreement reads as under:-

36. DISPUTES RESOLUTION BY ARBITRATION

“All or any disputes arising out of or touching upon or in relation to the terms of this Agreement or its termination including the interpretation and validity of the terms hereof and the respective rights and obligations of the Parties shall be settled amicably by mutual discussions failing which the same shall be settled through reference to a sole Arbitrator to be appointed by a resolution of the Board of Directors of the Company, whose decision shall be final and binding upon the Parties. The Allottee hereby confirms that it shall have no objection to the appointment of such sole Arbitrator even if the person so appointed, is an employee or advocate of the Company or is otherwise connected to the Company and the Allottee hereby accepts and agrees that this alone shall not constitute a ground for challenge to the independence or impartiality of the said sole Arbitrator to conduct the arbitration. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory amendments/modifications thereto and shall be held at the Company's offices or at a location designated by the said sole Arbitrator in Gurgaon. The language of the arbitration

proceedings and the Award shall be in English. The Company and the Allottee will share the fees of the Arbitrator in equal proportion.”

It is submitted that despite notice being issued, there is no response from the respondent. Accordingly, the present petition has been filed for appointment of a sole Arbitrator.

Learned counsel for the applicant submits that in view of the judgment of the Hon'ble Supreme Court in ***Perkins Eastman Architects DPC and another Vs. HSCC (India) Ltd., 2019 SCC Online SC 1517***, sole arbitrator cannot be appointed unilaterally and moreover, respondent what to talk of any reply to the applicant's legal notice has chosen not even to appear before this Court. It is, thus prayed that this petition be allowed and the sole Arbitrator be appointed for resolution of the dispute between the parties arising out of agreement dated 17.09.2015.

Heard learned counsel for the applicant.

It is to be noted that none appeared on behalf of the respondent despite service, which was complete as is evident from order dated 20.09.2021 passed in this petition. Respondent was proceeded exparte on 03.02.2022. The facts as narrated above have gone unrebutted, which clearly show and reflect the existence of an arbitral dispute between the parties besides the existence of the clause for arbitration. In terms of the judgment of the Hon'ble Supreme Court in ***Perkins Eastman Architects DPC and another Vs. HSCC (India) Ltd., 2019 SCC Online SC 1517***, there indeed cannot be a unilateral appointment of an Arbitrator by the respondent. Moreover, respondent did not even respond to the legal notice dated 05.08.2019 invoking arbitration duly

issued by the applicant with its delivery being confirmed as per the tracking report attached along with the petition. In my considered opinion, there is no impediment to the appointment of a sole Arbitrator to resolve the dispute arising between the parties out of agreement dated 17.09.2015.

Keeping in view the facts and circumstances as above, this petition is allowed and Mr. Justice (Retd.) Arun Kumar Tyagi, former Judge, Punjab and Haryana High Court, resident of House No. 3405, Sector 24, Chandigarh, Mobile No.9780004892, is appointed as the Sole Arbitrator to resolve the dispute/differences between the parties. Appointment is subject to declaration to be made by the Arbitrator under Section 12 of the Act with regard to his independence and impartiality to settle the disputes between the parties. The Arbitrator to complete the proceedings within the time limit specified under Section 29-A of the Act. The Arbitrator shall be paid fee in accordance with the Fourth Schedule of the Act, as amended from time to time to be borne equally by the parties.

A copy of this order be dispatched to Mr. Justice (Retd.) Arun Kumar Tyagi, former Judge, Punjab and Haryana High Court, at the following address:-

House No. 3405, Sector 24, Chandigarh, Mobile No.9780004892

April 21, 2022		(Lisa Gill)
Sunil	Whether speaking/reasoned:	Judge
	Whether reportable:	Yes/No
		Yes/No