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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 12th January, 2022

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ARB.P.371/2019**GURINA KAUR****..... Petitioner**

Through: Mr Vaibhav Mahajan, Ms Tanya
Harnal and Mr Nikhil Aswani,
Advocates.

versus

**M/S. NARANG INFRASTRUCTURE
PVT. LTD. & ANR.**

..... Respondents

Through: Mr Rajiv K. Garg, Advocate for R-1

CORAM:**HON'BLE MR. JUSTICE VIBHU BAKHRU****VIBHU BAKHRU, J. (ORAL)****[Hearing Held Through Videoconferencing]**

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the A&C Act') praying that an arbitrator be appointed to adjudicate the disputes that have arisen between the parties in connection with the Memorandum of Understanding dated 16.05.2016 (hereafter '**the MoU**').

2. The petitioner (Ms Gurina Kaur), respondent no.2 (Mr Dinesh Dheman) and respondent no.1 company (hereafter '**the Developer**') had entered into the MoU dated 16.05.2016 for developing a property admeasuring 250 sq. yards bearing No. E-381, situated at Greater Kailash, Part II, New Delhi (hereafter '**the property**'). The property (then a vacant plot of land) was purchased by one Mr Narain Singh



from DLF Housing Construction Pvt. Ltd. He constructed a residential building on the property from his own funds and resources. Thereafter, he sold the property to one Mr Kartar Singh by a sale deed dated 08.12.1969.

3. Mr Kartar Singh expired on 27.10.1995 and the property devolved on his four children including respondent no.2 (Mr Dheman). The said owners entered into an agreement and transferred the entire ground floor and first floor of the property to the Developer (respondent no.1) along with 55% of the undivided rights in the plot of land underneath the built up property. The said legal heirs also sold the entire terrace rights over and above the second floor to Ms Gurina Kaur (the petitioner) along with 22.5% of the undivided rights in the land underneath the property. The siblings of Mr Dheman (other heirs of Kartar Singh) relinquished their remaining rights and interest in the property to Mr Dheman.

4. Thus, the property came to be owned by the Developer to the extent of 55%; Ms Gurina Kaur to the extent of 22.5%; and Mr Dheman to the extent of 22.5%. The said parties entered into the MoU for development of the property. In terms of the said MoU, the Developer agreed to demolish the existing building on the property and redevelop the same by constructing a basement, stilt, ground floor, first floor, second floor and a third floor, at its own cost and resources, within a period of fifteen months, after obtaining the necessary sanction from the Delhi Municipal Corporation.



5. In terms of the MoU, the petitioner would be entitled to the entire third floor of the developed property along with the terrace rights over and above the newly constructed residential property; space for two car parking on the stilt floor; and space for utility with the common WC on the stilt floor. The petitioner would continue to hold 22.5% of the undivided interest rights in the land underneath.

6. The Developer did not take the necessary steps for developing the property and according to the petitioner (Ms Gurina Kaur) the Developer had breached the terms of the MoU.

7. In the circumstances, the petitioner filed a suit against the Developer. However, it appears that the parties decided to resolve their disputes amicably. The Developer was no longer interested in developing the property. However, a third party, one Mr Prithvi Pal Singh (hereafter '**the New Developer**'), who is not a party to the present petition, agreed to develop the property. In the circumstances, the petitioner and the Developer entered into another Memorandum of Understanding dated 11.03.2019 with the New Developer (hereafter '**MoU-II**'). The recitals of the said MoU-II, *inter alia*, record as under:

“**AND WHEREAS** thereafter there were certain disputes and differences which came between the aforesaid parties and thus the SECOND PARTY also initiated a Suit bearing No. _____ against the FIRST PARTY in the Hon'ble Court and since now all the parties have agreed to amicably settle all their disputes and differences and thus as abundant precaution and to avoid any future disputes and differences between



themselves they are being put into black and white and thus this Memorandum of Understanding is being drafted;”

8. In terms of MoU-II, the petitioner agreed to withdraw the suit filed against the Developer. The New Developer handed over the possession of the entire third floor along with terrace of the property (which was Ms Gurina Kaur’s entitlement under the MoU) along with a copy of the completion certificate to the petitioner. The petitioner agreed to pay certain charges for the same. In consideration of the New Developer developing the property, the Developer agreed to execute and register a sale deed in respect of the first floor of the property along with 22.5% undivided ownership rights of the land underneath, in his favour.

9. Admittedly, the possession of the built up third floor flat in terms of the MoU-II was handed over by the New Developer to the petitioner. However, the petitioner now seeks to claim damages from the Developer on account of delay in developing the property in terms of the MoU.

10. Mr Rajiv K. Garg, learned counsel appearing for the Developer submitted that the MoU stands discharged in view of the parties entering into the MoU-II.

11. The said contention is merited. ***In Seema Bhatia v. Yamaha Motor India P Ltd: 2007 (144) DLT 772*** the parties had settled their disputes relating to the principal agreement by entering into a



Memorandum of Understanding, which did not contain an arbitration clause. This court held that the parties had given a go-by to the arbitration agreement by entering into the Memorandum of Understanding and thereafter the said Memorandum of Understanding was required to be performed and not the original agreement.

12. The MoU does not survive in view of the subsequent agreement (MoU-II). It is not the petitioner's case that the MoU-II is invalid. The recitals of MoU-II dated 11.03.2019 make it amply clear that the parties had settled all their disputes in terms of MoU-II. Thus, the MoU does not survive and the arbitration clause as contained in MOU also stands discharged.

13. In view of the above, this Court is unable to accept that an arbitration agreement now exists between the parties for adjudication of the disputes as sought to be raised by the petitioner.

14. The petition is, accordingly, dismissed.

VIBHU BAKHRU, J

JANUARY 12, 2022

RK/v

[Click here to check corrigendum, if any](#)