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

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Date of decision: 11.02.2022+ **ARB.P. 875/2021****SURINDER PAL SINGH**

..... Petitioner

Through **Mr. Kuldeep Mansukhani and Ms.
Babita Chaudhary, Advs.**

versus

PRIME PROPERTY REALTY & ORS.

.... Respondents

Through **Ms.Rashmi Kaushik and Mr. Hemraj
Murmu, Advs. for R- 4 to 6****CORAM:****HON'BLE MR. JUSTICE SURESH KUMAR KAIT****J U D G M E N T (oral)**

1. The present petition has been filed by petitioner seeking appointment of an Arbitrator under the provisions of Section 11 of the Arbitration and Conciliation Act, 1996.
2. According to petitioner, on 10.05.2019, respondents No.1 to 3 entered into a collaboration agreement with the respondents No.4 to 7 for construction and development of the property belonging to respondents No.4 to 7 bearing No.97, Block C, Chander Nagar, Janak Puri, New Delhi-110058 ad-measuring 195 sq. yds.
3. Accordingly, respondents No.1 to 3 were supposed to commence the



construction within 15 days of handing over possession of the aforesaid property and the same was to be completed before expiry of 20 months in accordance with plan sanctioned by Municipal Corporation of Delhi.

4. Subsequently, with respect to the above-mentioned Collaboration Agreement, the respondents No.1 to 3 approached the petitioner on 27.06.2019 to sell the entire first and second floor of the said property for a total consideration amount of Rs.3.15 Crores and an agreement to sell and purchase was executed with the respondents No.1 to 3 on 27.06.2019.

5. It was agreed that the petitioner shall pay a sum of Rs.3.15 Crore progressively on proportionate completion basis and a total sum of Rs.75 Lakhs was paid to the respondents in terms of the agreement. Despite receiving Rs.75 Lakhs, the respondents did not start the construction. Accordingly, a legal notice was sent by the petitioner to the respondents on 05.12.2019. However, no reply to the said legal notice was received from the respondents.

6. Subsequently, on 15.06.2021, petitioner invoked arbitration in accordance to which an Arbitrator was to be mutually appointed by the parties but respondent did not consent with the name of the Arbitrator suggested by petitioner. Therefore, petitioner has moved the present petition.



7. After issuance of notice in the present petition, respondents No.1 & 2 had appeared through counsel on 12.10.2021, however, none is present on their behalf today.

8. Pursuant to order dated 08.12.2021, Amended Memo of Parties arraying legal heirs of deceased respondent No.7 i.e. Smt. Chander Mohini Seth, as respondent Nos.8, 9 and 10, has also been filed. The amended memo of parties is taken on record.

9. As per office noting 22.11.2021, respondent No.3 has been served. However, none has appeared on behalf of said respondent.

10. At the hearing, learned counsel for petitioner has submitted that as per Clause 13 of the agreement of sale and purchase, all disputes which cannot be resolved shall be resolved subject to Arbitration & Conciliation Act, 1996 and since the parties have failed to appoint an Arbitrator pursuant to notice dated 15.06.2021, wherein names of three arbitrators were proposed, therefore, the present petition be allowed and an Arbitrator be appointed by this Court for adjudication of disputes between the parties.

11. During the course of hearing, learned counsel appearing on behalf of other respondents No. 4 to 6 has submitted that there is no objection if the



present petition is allowed and the sole Arbitrator is appointed by this Court to adjudicate the dispute between the parties, subject to all issues remain open before the learned Arbitrator so appointed.

12. Pertinently, execution of Agreement, existence of arbitration Clause-13 therein as well as invocation of arbitration by legal notice dated 15.06.2021 is not disputed. However, despite having knowledge of the present petition, respondents No.1 to 3, who had apparently approached the petitioner for the work contract in question, have deliberately chosen not to appear before this Court. It seems they have nothing to oppose in the present petition.

13. Accordingly, the present petition is allowed and **Mr. Justice (Retd.) V.K. Jain (Mobile: 9650116555)** is appointed the sole Arbitrator to adjudicate the dispute between the parties.

14. The arbitration shall be conducted under the Delhi International Arbitration Centre (DIAC). The fee of the Arbitrator shall be in accordance with Delhi International Arbitration Centre (Administrative Cost and Arbitrators' Fees) Rules, 2018.

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



NEUTRAL CITATION NO: 2022/DHC/000533

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

(SURESH KUMAR KAIT)
JUDGE

FEBRUARY 11, 2022/rk

