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

Date of decision: 14th December, 2022

\+ **ARB.P. 1096/2022**

EARTHZ URBAN SPACES PVT LTD ..... Petitioner

Through: Ms.Sonali Chopra, Adv.

versus

SHIV RAJ KOCHHAR & ANR. ..... Respondents

Through: Mr.Varun Yadav, Ms.Shikha Goyal & Mr.Dwapaydo Gupta, Advs. for R-1.

Mr.Ajay Uppal, Adv. for R-2.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (*Oral*)

1. This petition has been filed by the petitioner under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act'), seeking appointment of an Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the Collaboration Agreement dated 30.04.2019 executed between the parties.

2. The Arbitration Agreement between the parties is in the following terms: -

> *"Any dispute or difference touching this contract shall be referred to sole Arbitration as per provisions of The Arbitration and conciliation Act,1996 and Rules framed thereunder and award made shall be fully binding. However, work under the contract shall continue to proceed without any hinderance or obstruction from either of the*

> *parties. The venue of arbitration will be Delhi. All notices required shall be deemed sufficiently served at the address given in the agreement."*

3. Disputes having arisen between the parties, the petitioner first filed an application under Section 9 of the Act on 05.03.2021, which is stated to be pending adjudication. The petitioner also invoked the Arbitration Agreement vide notice dated 25.01.2022. In response to the said notice, the respondent no.1, *inter alia*, stated that he has rescinded the Collaboration Agreement by returning an amount of Rs.24,75,000/- to the petitioner on 29.06.2019, thereby repudiating the agreement. The respondent no.1, however, acknowledged that the petitioner had returned back the said amount by making an NEFT transfer on 04.07.2019, which the respondent no.1 claimed was without his knowledge and consent. The petitioner thereafter filed the present petition.

4. The learned counsel for the respondent no.2 does not oppose the present petition.

5. The respondent no.1 has filed his reply, however, the same has been returned under office objection. The learned counsel for the respondent no.1 has handed over a copy of the said reply and has been heard in opposition of the present petition. He submits that the copy of the Collaboration Agreement filed by the petitioner along with the present petition has certain interpolations at internal page 5 thereof.

6. He further submits that the Arbitration Agreement is no longer enforceable as the Collaboration Agreement has been

rescinded by the respondent no.1, by returning the amount received by him under the said Collaboration Agreement to the petitioner.

7. He further submits that the Agreement itself provides that it would be the Courts at Delhi which would have exclusive jurisdiction to entertain any dispute arising out of or in any way touching or concerning the Collaboration Agreement. He submits that, therefore, it is only the Civil Court which would have jurisdiction.

8. On the issue of interpolation in the Collaboration Agreement, the learned counsel for the petitioner explains that the copy filed by the petitioner had some hand written correction made by the petitioner for some internal working, which the petitioner is not insisting upon. She submits that, in fact, the petitioner acknowledges the copy of the Collaboration Agreement that has been filed by the respondent no.1 along with the reply and shall remain bound by the same.

9. The relevant page from the Collaboration Agreement filed by the petitioner along with the present petition is as under: -

Rs. 50,000/- Being the amount of TDS deducted and to be deposited by the VENDEE with the Income Tax Authorities in the account of the VENDOR (representing 1% of the total sale consideration, as required under the relevant provisions of the Income Tax Act, 1961 and rules framed thereunder).

the receipt of which the Owner, hereby admit and acknowledge.

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b) That balance amount of Rs.1,00,00,000/- (Rupees one Crore Only) shall be paid by the Builder to the Owner, on or before ______ after sanction of building plans for the re-construction of a residential building, comprising of Basement, Stilt, Ground Floor, First Floor, Second Floor and Third Floor with Terrace and handing over of the actual vacant physical possession of the said property by the Owners to the Builder and execution and registration of the irrevocable General, Special Power of Attorney deeds and other testamentary documents, inter-alia authorising the Builder to sell and transfer the Builder's Allocation and to develop the said property. That it is further clarified that the payment of the consideration made by the Builder to the Owner is as per their inter-se arrangement. Further the payment made by the Builder in the manner aforesaid shall be treated as valid discharge of the contractual obligations of the Builder towards the first Party or anybody else claiming on their behalf.

That the Owners in accordance with the terms and conditions, herein recorded, shall place at the complete disposal of the Builder, the vacant physical possession of the said property and from the date thereof, the possession of the said property shall, vest in the Builder, with all the powers and authorities of the Owner as may be considered necessary by the Builder for obtaining the requisite permissions, sanctions from the concerned authorities for demolition/ re-construction of the proposed building and for the sale of the Builder's share (fully defined below).

That the Owners, and the Builder shall have proportionate rights in all common entrances, passages, staircases and all other common facilities and amenities provided in the proposed building as earmarked in the plans of construction.

That the Builder shall engage and employ the Architect or Architects of repute at its own costs, expenses and

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10. It is clear that some hand written note was made in the said copy.

11. The original document, which has been relied upon by the respondent no.1 and which is now affirmed to be the correct copy by the counsel for the petitioner, on instructions, is as under:-

Rs. 50,000/- Being the amount of TDS deducted and to be deposited by the VENDEE with the Income Tax Authorities in the account of the VENDOR (representing 1% of the total sale consideration, as required under the relevant provisions of the Income Tax Act, 1961 and rules framed thereunder);

the receipt of which the Owner, hereby admit and acknowledge.

b) That balance amount of Rs.1,00,00,000/- (Rupees one Crore Only) shall be paid by the Builder to the Owner, on or before ___________, after sanction of building plans for the re-construction of a residential building, comprising of Basement, Stilt, Ground Floor, First Floor, Second Floor and Third Floor with Terrace and handing over of the actual vacant physical possession of the said property by the Owners to the Builder and execution and registration of the irrevocable General, Special Power of Attorney deeds and other testamentary documents, inter-alia authorizing the Builder to sell and transfer the Builder's Allocation and to develop the said property. That it is further clarified that the payment of the consideration made by the Builder to the Owner is as per their inter-se arrangement. Further the payment made by the Builder in the manner aforesaid shall be treated as valid discharge of the contractual obligations of the Builder towards the first Party or anybody else claiming on their behalf.

That the Owners in accordance with the terms and conditions, herein recorded, shall place at the complete disposal of the Builder, the vacant physical possession of the said property and from the date thereof, the possession of the said property shall, vest in the Builder, with all the powers and authorities of the Owner as may be considered necessary by the Builder for obtaining the requisite permissions, sanctions from the concerned authorities for demolition/ re-construction of the proposed building and for the sale of the Builder's share (fully defined below).

That the Owners, and the Builder shall have proportionate rights in all common entrances, passages, staircases and all other common facilities and amenities provided in the proposed building as earmarked in the plans of construction.

That the Builder shall engage and employ the Architect or Architects of repute at its own costs, expenses and

12. Once the learned counsel for the petitioner affirms the Agreement, as produced by the respondent no.1, and in any case, both the copies have Arbitration Agreement, I see no reason to further dwell into this issue, but for only observing that, for the record, the petitioner shall always remain bound by the copy of the Collaboration Agreement as produced by the respondent no.1 with its reply.

13. On the plea of the respondent no.1 that the Agreement stood rescinded on the respondent no.1 refunding the amount received by him under the Collaboration Agreement, to the petitioner, I may only note that this is disputed by the petitioner. Though the refund

was made on 27.06.2019, the petitioner almost immediately thereafter, on 04.07.2019, has re-credited the said amount to the bank account of the respondent no.1. Whether the same was done unauthorizedly and/or whether the Collaboration Agreement stood rescinded by the conduct of the parties, is a disputed question of fact, which cannot be determined in exercise of powers under Section 11 of the Act. This issue would necessarily have to be determined by the learned Arbitrator on considering the evidence led by the parties on the same. Reference in this regard need only be made to the judgment of the Supreme Court in ***Vidya Drolia v. Durga Trading Corpn.***, (2019) 20 SCC 406.

14. On the issue as to whether the Arbitration Agreement would not be binding, and any dispute in relation to the Collaboration Agreement can be adjudicated only by the Civil Court, the Clause of the Collaboration Agreement relied upon by the learned counsel for the respondent no.1 is reproduced hereinunder: -

> *"That this transaction has taken place at New Delhi and as such Delhi Courts shall have exclusive jurisdiction to entertain any dispute arising out or in any way touching or concerning this deed."*

15. The above Clause immediately follows the Arbitration Agreement between the parties, which has been reproduced hereinabove. In my view, the said Clause, which is being relied upon by the learned counsel for the respondent no.1, merely reiterates that it is the Courts in Delhi, subject to the Arbitration Agreement between the parties, that have jurisdiction in relation to

the Agreement. The same, in no manner, negates or denudes the effect of the Arbitration Agreement that has been entered into between the parties.

16. In view of the above, I see no impediment in appointing an Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the Collaboration Agreement dated 30.04.2019.

17. Accordingly, I appoint Mr. N.P. Kaushik (Retd. ADJ, Delhi), (Address: C-35, Suraj Mal Vihar, Delhi-110092, Mobile: 9910384663) as a Sole Arbitrator to adjudicate the disputes that have arisen between the parties in relation to the above-mentioned Collaboration Agreement. The learned Arbitrator shall give a disclosure in terms of Section 12 of the Act before proceeding with the reference. The fee of the learned Arbitrator shall be in accordance with Fourth Schedule of the Act.

18. The petition is allowed in the above terms.

NAVIN CHAWLA, J

DECEMBER 14, 2022/*rv*