

Arbitration Case No. 77 of 2018

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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Arbitration Case No. 77 of 2018

Date of decision: 29th May, 2023

Parminder Singh

Petitioner

v.

M/s Collage Estates Private Limited & other

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Bhupinder Kumar Gupta, Advocate for the petitioner.
Mr. Mayur Kanwar, Advocate for respondent No. 1.
Ms. Rupa Pathania, Advocate for respondent No. 2.

AVNEESH JHINGAN, J (Oral):

1. This petition is filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act') seeking direction for appointment of an arbitrator.
2. The brief facts are that a Memorandum of Understanding (for short, 'MOU') was entered between respondent No.1 and respondents No. 2 & 3 (hereinafter referred to as 'the respondents'). Respondent No. 1 agreed to allot a super built up area measuring 880 square feet bearing unit No. SF-6, Second Floor in Viva Collage (a shopping mall), at village Paragpur, District Jalandhar, for a total consideration of Rs.23,00,000/-. Clause 14 of the MOU provided for dispute resolution through arbitration. The clause is reproduced:

“Any dispute or differences arising out of or relating to this MOU shall be at the first instance settled expeditiously and

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fairly by way of negotiations between the parties. In the event the negotiations between the parties fail, the matter shall be referred for arbitration. It is agreed that each party shall appoint one arbitrator and the two nominated and appointed arbitrators shall appoint the third arbitrator who shall act as the presiding arbitrator. The arbitration shall be in accordance with the provisions of Arbitration and Conciliation Act, 1986 or any amendments thereto. The venue of arbitration shall be at Jalandhar/Delhi and its verdict shall be final and binding on the parties hereto. The language of arbitration shall be English.”

3. The site allotted by respondent No. 1 was sold to the respondents vide sale deed dated 12.9.2011. Clause 15 of the sale deed stipulated that the terms and conditions mentioned in the sale deed shall supersede all previous agreements/understandings (written or oral) between the vendor and the vendee.

4. The petitioner entered into an agreement to sell dated 23.3.2012 with the respondents. In pursuance to the agreement to sell, the petitioner was accepted as nominee of the respondents with effect from 12.4.2012 vis-a-vis the property in dispute. The petitioner was endorsed as transferee in sale deed. The petitioner relying upon the terms of MOU issued notice dated 27.2.2017 claiming lease money. Notice under Section 21 of the Act was issued on 27.4.2017. As needful was not done, the present petition is filed.

5. Learned counsel for the petitioner submits that arbitrator be appointed in view of Clause 14 of the MOU.

6. Learned counsel for the respondent No. 1 vehemently opposes

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the prayer for appointment of arbitrator and submits that the petitioner has not approached this court with clean hands and the sale deed between respondent No. 1 and the respondents was withheld. It is further argued that the sale deed superseded MOU.

7. The petitioner was not party to the MOU, the claim for lease money was based upon clauses of MOU. As per Clause 15 of the sale deed, the earlier agreements and understandings were superseded. It is an admitted case of the parties that there is no clause for dispute resolution through arbitration in the sale deed.

8. The petitioner was appointed as a nominee of the respondents subject to the terms and conditions of the sale deed dated 12.9.2011 and petitioner is to abide by all the covenants, duties and obligations as per the sale deed. The petitioner was endorsed as transferee in sale deed and not in MOU.

9. Only the parties to MOU agreed for that dispute relating to MOU shall be resolved through arbitration. The petitioner was neither party to the MOU nor was endorsed in place of respondents as party to MOU. In other words, there was no agreement between respondent No.1 and petitioner for resolving the dispute through arbitration.

10. The other aspect is that sale deed dated 12.9.2011 superseded earlier agreements and understanding. There was no clause for arbitration in the sale deed. The petitioner was nominated as transferee in the sale deed only.

11. In the absence of arbitration clause in the sale deed, no case is

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made out for issuance of directions for appointment of an arbitrator.

12. The petition is dismissed.

[AVNEESH JHINGAN]
JUDGE

29th May, 2023
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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |