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

Date of decision: 20th January, 2023

+ O.M.P. (COMM) 21/2023
AMBIENCE PROJECTS AND INFRASTRUCTURE PRIVATE
LIMITED Petitioner

Through: Mr.V.Anush Raajan,
Mr.Pradyumn Yadav, Advs.

versus

NEERAJ BINDAL Respondent

Through: Mr.Rohit Gandhi, Mr.Adhish
Srivastava, Mr.Hargun Singh
Kalra, Mr.Pradeep Dubey, Advs

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

CAV.48/2023

1. As the learned counsel for the respondent has appeared on advance notice and has been heard, the Caveat stands discharged.

I.A.1153/2023 (exemption)

2. Allowed, subject to all just exceptions.

O.M.P. (COMM) 21/2023 & I.A.1152/2023

3. This petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') challenging the Arbitral Award dated 27.09.2022 passed by the learned Sole Arbitrator adjudicating the disputes that had arisen between the parties in relation to the Memorandum of Understanding for 'Option to

Surrender' dated 11.08.2016 (in short, 'the MOU') executed between the parties.

4. By way of the Impugned Award, the learned Sole Arbitrator has held the respondent herein to be entitled to Rs.80,45,044/- with interest at the rate of 12% per annum from the date of the filing of the Statement of Claim till the realization thereof from the petitioner herein. The petitioner has further been directed to foreclose the loan amount/account with the HDFC Bank within a period of six weeks of passing of the Award.

5. The learned counsel for the petitioner submits that the Impugned Award is liable to be set aside inasmuch as it ignores and is, in fact, contrary to the express terms of the MOU between the parties. He submits that the learned Sole Arbitrator has found that the respondent had exercised his option to surrender the allotment vide email dated 11.04.2019. In terms of Clause 6 read with Clause 3 of the MOU, such option could be exercised by the respondent only before the expiry of 34 months from the 'Effective Date'. Clause 3 of the MOU stipulates the 'Effective Date' as 10.03.2016. He submits that, therefore, the option to surrender could have been exercised by the respondent only till 10.01.2019 and not thereafter. As the email dated 11.04.2019 is admittedly after the said period, the same was not enforceable.

6. He further submits that the parties had also entered into discussions resulting in the Minutes of Meeting dated 07.01.2020 between the parties. In the said discussions it was agreed that the petitioner shall bear and pay the Equated Monthly Installments (in short, 'EMI') of loan taken by the respondent on the apartment till the possession is offered to the respondent; if the respondent requested for exit till possession of the

apartment is offered to him, the petitioner was to find a suitable buyer for the unit. He submits the petitioner has paid the EMI to the HDFC bank in terms of the settlement arrived at between the parties and as recorded in the Minutes of Meeting dated 07.01.2020. The petitioner continues to pay such EMIs even today. He further submits that it is based on such Minutes of Meeting that the learned Sole Arbitrator vide his order dated 06.09.2021, passed under Section 17 of the Act, directed the petitioner to deposit the balance EMIs with the HDFC bank and also continue to pay the EMIs thereafter. He submits that therefore, the offer of surrender stood modified in terms of the Minutes of Meeting and could not have been relied upon by the Arbitrator in the impugned Award.

7. On the other hand, the learned counsel for the respondent submits that as far as the plea of exercise of the right of surrender not being within the time stipulated in the MOU, this was not even the case of the petitioner pleaded before the learned Sole Arbitrator. He has drawn my attention to the Affidavit of Evidence of Mr. G.S. Sachdeva, authorized representative of the petitioner, before the learned Sole Arbitrator, wherein the witness stated that the offer of surrender was to be exercised within a month from 09.05.2019.

8. On the plea of the Minutes of Meeting, he submits that the Minutes of Meeting which were circulated by the petitioner were not accepted by the respondent and the respondent added paragraph 5 to the same. The said addition, however, was not acceptable to the petitioner, as is also mentioned in the paragraph 32 of the present petition. Therefore, the parties could not arrive at a consensus on the proposal of settlement. The same never became effective. He submits that the order of the learned

Sole Arbitrator dated 06.09.2021 does not state that the parties are bound by the Minutes of Meeting.

9. I have considered the submissions made by the learned counsels for the parties.

10. As far as the first aspect of the exercise of option to surrender not been made within the time stipulated in the MOU, I find that no such plea been taken before the learned Sole Arbitrator. In fact, in the Affidavit of Evidence of Mr. G.S. Sachdeva filed by the petitioner before the learned Sole Arbitrator, the following assertions were made:

“The MoU incorporated a right of surrender by the respondent, within a month from 09.05.2019 which upon acceptance by the respondent would entail refund of Rs.59,27,595/- only (all inclusive). An addenda dated 05.02.2018 was duly signed between the parties. No representation or assurance was ever given to him.”

11. In view of the above stated cases of the petitioner itself, the petitioner cannot now be allowed to raise this new ground to challenge the Arbitral Award at the stage of Section 34 of the Act.

12. As far as the Minutes of Meeting are concerned, it is the own case of the petitioner that the parties could not reach at consensus on what was decided in the said meeting. In this regard, I quote from the paragraph 32 of the present petition, as under:

“The respondent accepting the modified terms and affirming his accord and satisfaction of the same signed and delivered a copy of the Minutes of Meeting dated 07.01.2020 along with a letter to the Petitioner dated 20.01.2020. It may be noted that the Petitioner added another clause to the Minutes of Meeting whereby the Petitioner sought to retain as an option his right to Surrender the

allotment. However, the said inclusion was not acceptable given that the Petitioner has agreed to incur the additional obligation of paying the EMIs on behalf of the Respondent to the HDFC Bank till the possession is offered. A copy of the executed Minutes of Meeting dated 07.01.2020 by the Respondent along with the covering letter are herein collectively annexed at **Document - 14 (Colly).**

(Emphasis supplied)

13. The payment of the EMIs was also not voluntarily made by the petitioner but was a result of the directions/orders of injunction passed by this Court in petitions filed by the respondent herein under Section 9 and 17 of the Act.

14. In view of the above, I find no merit in the present petition. The same is dismissed. There shall be no order as to cost.

JANUARY 20, 2023/Arya

NAVIN CHAWLA, J

Signature Not Verified

Digitally Signed By: SUNIL

Signing Date: 24.01.2023

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