



2024: DHC: 4745



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

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*Reserved on: 19th March, 2024
Pronounced on: 10th June, 2024*

+ **O.M.P.(I) (COMM.) 42/2024 & I.As. 2446/2024, 4723/2024**

VIJAY MAHESHWARI

House No. 49-A,
Mall Road Amritsar-1,
Amritsar Punjab, 143001

..... Petitioner

Through: Mr. Sahil Sethi & Mr. Vikash Kumar,
Advocates.

versus

1. **SPLENDOR BUILDWELL PRIVATE LIMITED**

Registered Office at Splendor Forum,
Fifth Floor, Plot No. 3,
Jasola District Centre,
New Delhi-110025

..... Respondent No. 1

2. **ISHAYU BUILDERS AND DEVELOPERS PRIVATE LIMITED**

Registered Office at Unit No. 131,
Splendor Forum, 5th Floor, District Centre,
Jasola District Centre,
New Delhi-110025

..... Respondent No. 2

Through: Mr. Jeevesh Nagrath, Mr. Arjun Gaur,
Mr. Rajat Gupta & Mr. Manish
Prakash, Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.



I.A. 2445/2024 (Exemption)

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

O.M.P.(I) (COMM.) 42/2024

3. The present petition under section 9 of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as the "Act, 1996"*) has been filed on behalf of the petitioner seeking *ad interim* Order thereby restraining respondents from encumbering, selling, offering of sale, alienating, disposing of, transferring in any manner or creating any third-party interest in the office spaces bearing No. 410, 411 and 412 located at "Spectrum One", Sector-58, Golf Course Extension Road (*hereinafter referred to as the "properties in question"*).
4. The respondent no. 2, which is the owner of the land 6.755 acres situated in Sector-58 in the Revenue Estate of Village Behrampur, Tehsil Sohna and District Gurgaon, Haryana (*hereinafter referred to as the "said land"*), was granted licence No. 82/2010 dated 12.10.2010 by the Director Town & Company Planning, Haryana, Chandigarh (*hereinafter referred to as the "DTCP"*) for development of an IT/Cyber Park Colony on the said land.
5. The building plan of the IT Park Colony was approved by DTCP *vide* Memo No. ZP-669/AD(RA)/2013/32000 dated 01.03.2013 and the revised Building Plan has been proved by DTCP *vide* Memo No. ZP-669/SD(BS)/2018/12236 dated 19.04.2018.
6. Pursuant to the terms and conditions of the Licence no. 82/2010 dated 12.10.2010, the respondent no. 2 was to construct and develop IT Park Colony on the land admeasuring 1.7793 acres.



7. The Respondent no. 1 Company, which is engaged in real estate activities, developed and constructed South Tower B and North Tower D on the land admeasuring 1.7457 acres, consisting of IT Office Spaces (*hereinafter referred to as the “Complex”*) under the name and style ‘Splendor Spectrum One’.

8. The respondent Nos. 1 and 2 made an application dated 09.09.2015 to DTCP, Haryana for the change of the name of the Developer in the License in favour of the respondent no. 1 and two other co-Developers as per the Policy dated 18.02.2015. The permission was granted by DTCP, Haryana *vide* Memo No. LC-1492-JE(VA)-2018/16226-29 dated 01.06.2018.

9. The respondent no. 1 had registered this Complex with Haryana Real Estate Regulatory Authority *vide* Registration No. 376/2017 dated 07.12.2017 and received the Occupancy Certificate from DGTCP *vide* Memo No. ZP-669-Vol-II/SD(DK)/2019/215058 dated 06.09.2019.

10. The petitioner has submitted that the respondents and the petitioner entered into *three identical Tripartite Agreements* for sale of three Units in question (*office spaces numbering 410, 411, 412*) admeasuring 3114 sq. feet of super area on fourth floor of Tower South at Sector-65, Gurgaon. On 05.03.2020, the petitioner paid an amount of Rs. 77,85,000/- for allotment of the said units. According to the terms of the Agreements, the sale consideration for each unit was Rs. 46,71,000/-.

11. The petitioner paid Rs. 25,95,000/- towards each of Unit and a total of Rs. 77,85,000/- was accordingly paid in execution of the said three Tripartite Agreements.

12. The petitioner has further asserted that alongside these three Tripartite



Agreements, the respondent no. 1 through e-mail dated 05.03.2020 written to Mr. Varun Maheshwari, son of the petitioner, handed over an unsigned Memorandum of Understanding (in short “MoU”) on Stamp Paper dated 05.03.2020, wherein it agreed to give an assured return on the said three Units. It provided that the said Units shall be leased within six months from the date of execution of said MoU, along with the assured rental on the said units. Rs. 50.63/- per feet per month to the petitioner from 06.09.2020 till the Unit was leased.

13. The respondent no. 1 also issued an Allotment Letter dated 05.03.2020 to the petitioner for the three Units. The Allotment Letter reiterates the details of the Agreements and MoU.

14. The petitioner has submitted that the obligation to pay assured return as mentioned in MoU was *sine quo non*, based on which the petitioner had agreed to make an investment in the project of the respondents. However, the respondent no. 1 has fraudulently not returned the signed copy of the MoU while handing over the signed copy of the Tripartite Agreement to Sell and the Allotment Letter.

15. No intimation has been received by the petitioner for execution of the Conveyance Deed of the said Units in her favour even after the lapse of six months. Varun Maheshwari, her son made all possible efforts to follow-up the transaction through Jones Lang LaSalle Property Consultant (India) Pvt. Ltd. (*hereinafter referred to as “JLL”*), including writing of e-mail dated 05.07.2021 to Ms. Radha Dhir, CEO & Country Head of JLL. Ms. Dhir *vide* e-mail dated 05.07.2021 assured the petitioner that a team is looking into the matter and shall revert shortly. However, the respondent no. 1 has defaulted on multiple occasions and on multiple commitments that were



made on its behalf. Various e-mails were exchanged between the parties.

16. The petitioner on 04.08.2021 noticed an amount of Rs. 20,00,000/- in her account, which on intimation and verification, was found to have been remitted by the respondent no. 1. The petitioner *vide* e-mail dated 21.10.2021 acknowledged the payment of Rs. 20,00,000/- and further drew the attention of respondent no. 1 for the balance Minimum Assured Return as provided in MoU and committed to the petitioner. According to the petitioner, a balance of Rs. 31,53,236/- remained to be paid up to October 2021. An additional sum of Rs. 10,00,000/- was made by the respondent no. 1 to the petitioner on 23.03.2022.

17. Finally, a meeting was arranged between the petitioner's son, Mr. Varun Maheshwari and the representatives of respondent no. 1 on 18.08.2023, wherein without prejudice, an offer was made by Mr. Varun Maheshwari that in case the respondent no. 1 was not in a position to fulfil its obligations, then a sum of Rs. 2.75 crores be refunded to the petitioner for surrendering its rights under the subject Units. Subsequent to this meeting, the respondent no. 1 remitted another sum of Rs. 47,85,000/- claiming it to be towards the full and final settlement.

18. The petitioner has asserted that the respondent no. 1 unfairly refunded a principal amount of Rs. 77,85,000/-, even though the amount was paid after more than three years, during which there has been substantial appreciation in the value of subject Units.

19. The petitioner has claimed that from the above detailed facts, it is evident that the Respondent no. 1 on one pretext or other, is running away from its contractual obligations to execute and register the Conveyance Deed and has unilaterally refunded the principal amount paid by the



petitioner with an intent to sell/transfer the subject units to another person at an escalated price.

20. It is claimed that the petitioner has never consented to refund of the principal amount or the cancellation of the Allotments. Aggrieved by the misconduct of the respondents, the petitioner had issued a *Notice of Arbitration dated 25.01.2024* through her counsel, calling upon the respondent no. 1 to execute the Conveyance Deed and to hand over the possession of the units to the plaintiff along with the payment of unpaid assured returns or else the petitioner would opt for resolution of her disputes through arbitration by appointment of an independent Arbitrator.

21. **No formal Reply to the petition has been** filed on behalf of the respondents but they have filed an *Application No. I.A. 4723/2024 under Order XXXIX Rule 4 read with Section 151 of the Code of Civil Procedure, 1908* seeking vacation of the *ad interim ex parte* injunction order dated 01.02.2024 passed in favour of the petitioner.

22. It is explained in the aforesaid Application that the petitioner has suppressed material facts that the petitioner had been informed *vide* e-mail dated 18.08.2023 that Agreement to Sell dated 12.03.2020 stands terminated and has been cancelled on the request of the petitioner and the amounts have also been returned. The petitioner has not challenged the said cancellation, but she is only seeking a mandatory relief to which she is not entitled.

23. A reference has to be made to the request received from the petitioner through her son, Mr. Varun Maheshwari, reflecting that the petitioner herself was not agreeable to the purchase of the property. The entire sum of Rs. 77,85,000/- received from the petitioner in respect of the three Units, has



been returned. Now, the petitioner has returned a sum of Rs. 47.85 lakhs but the earlier refund of Rs. 30,00,000/- has been retained, as she is making a claim to an alleged amount of Rs. 2.75 crores.

24. It is, therefore, submitted that the petitioner is not entitled to any protection, including the protection granted *vide ex parte* Order dated 01.02.2024.

25. The respondents have placed reliance on Cotton Corporation of India Limited v United Industrial Bank Limited and Others, (1983) 4 SCC 625 to assert that an interim relief can only be granted if the final relief can also be granted because injunction covers both perpetual and temporary injunction.

26. It is further asserted that the petitioner herself was not ready and willing for performance of her part of the Agreement. In this regard reference has been made to the case of J.P. Builders and Another v A. Ramadas Rao and Another, (2011) 1 SCC 429, to assert that the “readiness and willingness” to perform the part of the contract has to be determined/ascertained from the conduct of the parties.

27. Further reliance is placed on Mrs. Gopal Devi (LR of Deceased Dina Nath) v Mrs. Kanta Bhatia, ILR (1995) II Delhi 330, to argue that the petitioner is not only to aver but is also to prove that he has performed and has always been ready and willing to perform the essential terms of the Agreement to Sell.

28. The respondent has also placed reliance on I.S. Sikandar (DEAD) By LRs. v K. Subramani and Others, 2013 15 SCC 27, and N.P. Thirugnanam (Dead) by LRs. v Dr. R. Jagan Mohan Rao and Others, (1995) 5 SCC 115.

29. Further, to assert that the petitioner was not ready and willing to perform, the respondent has placed reliance on the case of Surjit Singh



Bhatia & Anr. v Tej Raj Singh Goel (Goel), (2016) 158 DRJ 157, wherein the Court took cognizance of the letters of plaintiff in which he was claiming refund of the amount and the same was viewed as being inconsistent with the plaintiff's argument that he was always ready and willing to perform his part of the bargain.

30. Submissions heard.

31. This is a petition under section 9 of the Act wherein the scope of enquiry is limited to grant of interim relief. In *KSL & Industries Ltd. v National Textiles Corporation Ltd.*, in OMP. 581/2010 decided on 14.08.2012, the Court explained that the scope of inquiry under section 9 is limited to *prima facie* examination of the issues raised by the parties. The issues of fact or law are not to be determined finally as they fall within the jurisdiction of the arbitral Tribunal. The interpretation of the terms of the Contract/MoU and also the determination of its scope would also be within the domain of the arbitral Tribunal. While dealing with the Application under section 9 of the Act, same principles as applicable to Order XXXIX Rule 1 and 2 CPC shall be applicable.

32. Now coming to the facts of this case, it is not in dispute that the petitioner had entered into an Agreement to Sell dated 05.03.2020 in respect of three separate Units bearing nos. 410, 411 and 412 admeasuring 3114 sq. feet of super area in the Complex and had paid a total sum of Rs. 77,85,000/- as part consideration for the three Units. The Tripartite Agreements To Sell were executed and the Allotment letters were issued. It is further evident that from the contents of the petition itself, that the parties had simultaneously negotiated a MoU dated 05.03.2020 *vide* which assured return as stipulated therein, was to be paid by the respondent no. 1.



33. The relevant clauses of MoU read as under: -

“AND WHEREAS The Allottee is desirous of leasing of the Said Unit either independently or along with other adjoining units/larger area i.e. under group lease as a larger area on the said floor and/or the said Tower in the Said Complex for which purpose the Allottee intend to authorize the Developer, on behalf of the Allottee, to negotiate, finalize, effectuate and enter into Lease Deed and/or other requisite documents, agreements, deeds with any suitable and prospective tenants on the terms and conditions as appearing hereinafter.

1. That the Allottee hereby authorizes the Developer, on behalf of the Allottee, to negotiate, finalize, effectuate and enter into Lease Deed and/or other requisite documents, agreements, deeds with any suitable and prospective tenants to lease out the Said Unit, either independently or along with other adjoining units/larger area i.e. under group lease as a larger area, on the terms and conditions that the Developer would deem fit and to effectuate the same accordingly.

The Balance Amount for Rs. 62,28,000/- (Rupees Sixty-Two Lakhs, Twenty-Eight Thousand Only) (@2000 psft) will be payable at the time of the execution of the Lease Deed with the Intending Lessee.”

34. Though the parties had proposed to enter into this MoU, but as per the petitioner herself, the said MoU never got signed. The petitioner had sought the signed MoU which was never given to her. Admittedly, no MoU got finalised and signed and therefore, even though there was a proposal for an *assured return* on the investment made by the petitioner but there was no concluded contract. It does not need further clarification that there being no signed MoU, no Assured Returns can be said to have been promised by respondent No. 1.

35. Another significant aspect which emerges is the e-mail



correspondence which had taken place between the parties and the same has been relied upon by the petitioner herself.

36. The first e-mail in this chain of exchanges, is dated 05.10.2020 stating that even though seven months have lapsed, and numerous calls have been made to the respondents, they are only making excuses which are highly unethical and unprofessional. It further indicated that *“Sir, mere lip service and sweet talks does not resolve the issues. This deal has put a big question on JLL’s credibility. We had to divert our further investments in DLF Crest and Shapoorji Palloonji and we are further negotiating a deal of 3000 sq. ft. Commercial space in Gurgaon”*. This e-mail was followed by e-mail dated 24.06.2021, wherein it was again written on behalf of the petitioner that despite vigorous follow-up for more than 15 months, the petitioner was still clueless about the investment. It was disheartening to see that despite the clout JLL enjoyed with the respondent No. 1, the petitioner had to beg for her own money.

37. Again, e-mail dated 05.07.2021, Mr. Varun Maheshwari, son of the petitioner, stated that *“till date we have been running from pillar to post, earlier to get our paperwork but then seeing the ill will of the builder, we have been requesting **for the refund of our money along with the return as per agreement for the past one year**”*.

38. It is quite evident from this e-mail that the petitioner was seeking a refund of her invested amount. *Consequently, a sum of Rs. 20,00,000/- got credited on 04.08.2021 to the petitioner which has been retained by her.*

39. It has been sought to be explained that the petitioner found this money in her account on 04.08.2021 and on making queries, she found that the money had been credited to her account by the respondent No. 1. The



petitioner, however, took it to be the Assured Return which was proposed under the MoU.

40. However, this e-mail was again followed-up by another e-mail dated 19.10.2021 written by Mr. Varun Maheshwari who has acknowledged the receipt of Rs. 20,00,000/- on 04.08.2021 in the account of the petitioner, but he has asserted that it is without any intimation or communication and the petitioner is not aware about the details. It was again asserted that it is assumed to be against the Minimum Guarantee of Rs. 31,53,236/- (calculated 3114 sq. ft. x 20 months x 50.63) payable up to October 2021. By paying this unaccounted Rs. 20,00,000/-, the petitioner is worried about the intentions of the respondent No. 1 and sought clearance of the balance outstanding amount immediately without further delay. *Another sum of Rs. 10,00,000/- was refunded to the petitioner vide E-mail dated 23.03.2022.*

41. This e-mail is followed by the e-mail dated 09.02.2022 where the petitioner is clearly seeking *refund of the payment* as per the commitment as a gesture of goodwill. This was responded by the respondent No. 1 *vide E-mail dated 18.08.2023, whereby the balance outstanding sum of Rs. 47,85,000/- was refunded through RTGS.* It was further stated that the allotment of office spaces was thus, cancelled and Rs. 30,00,000/- had been refunded earlier by the Company, the balance amount of Rs. 47,85,000/- had been credited to the petitioner's account and a request was made for return of all the original documents.

42. The facts as narrated above are not disputed and are also evident from the documents filed on behalf of the petitioner. It is established that because the petitioner intended to invest her money in other Projects and she was not getting any concrete responses from the respondents despite regularly



approaching and corresponding with the respondent No. 1, she sought the refund of the money. Faced with a difficult situation of COVID-19 Pandemic, the respondents returned Rs. 20,00,000/- initially followed by another Rs. 10,00,000/- and in total Rs. 30,00,000/- were returned which was retained by the petitioner. In none of the communications was there any reference for execution of the Conveyance Deeds. The only claim that was being made by the Petitioner was for *assured return* in terms of the MoU which as per the petitioner herself, never got materialised. There being no MoU, it cannot be held that there was any Agreement binding the respondent No. 1 for an *assured return*, as has been claimed by the petitioner.

43. The petitioner herself demanded cancellation of the allotments and refund of the money which in fact, got returned eventually; she cannot be making a grievance about the cancellation of allotments or seek execution of the Conveyance Deeds.

44. It is pertinent to mention that there may be disputes about the amounts which are liable to be refunded and whether any interest or damages are liable to be paid, but the fact remains that there is no *prima facie* right, title and interest of the petitioner made out in the allotted units.

45. It is also pertinent to observe that the respondents have already sold the two units *vide* Sale Deed dated 19.12.2023. While they have entered into an Agreement to sell dated 22.05.2023 in respect of the third unit.

46. Therefore, the petitioner has not been able to make a *prima facie* case for restraining the respondents from creating any third-party interest and right in the said Units.

47. The petitioner having already received the principal amount that was



paid to the respondent No. 1, her other claims essentially are monetary in nature and, therefore, no Balance of Convenience lies in favour of the petitioner. For the same reason, since the reliefs are confined primarily to the refund/claims in terms of the money, no irreparable loss or injury would result to the petitioner.

48. Furthermore, Notice of Invocation dated 25.01.2024 has already been given by the petitioner and she has already initiated the process for redressal of her grievances in regard to the refund/payment of amounts by the respondent No. 1, through arbitration.

49. The ratio of the judgements referred to by the Id. counsel for the respondents, are applicable to relief for Specific Performance of a contract. The judgements in I.S. Sikandar (Dead) By LRs. v K. Subramani and Others, 2013 15 SCC 27, Mrs. Gopal Devi (LR of Deceased Dina Nath) v Mrs. Kanta Bhatia, ILR (1995) II Delhi 330, J.P. Builders and Another v A. Ramadas Rao and Another, (2011) 1 SCC 429 and N.P. Thirugnanam (Dead) by LRs. v Dr. R. Jagan Mohan Rao and Others, (1995) 5 SCC 115 hinge on the issue of “readiness and willingness” to perform one end of the transaction. However, the facts of this present case are distinguishable and the judgements are not applicable to the present proceedings under Section 9 of the Act, 1996 which provides for interim measures by court.

50. In the light of the aforesaid discussions, it is held that the petitioner is not entitled to any relief under Section 9 of the Act, 1996. The observations made herein are not a final expression on the merits of the case and Parties are at liberty to raise their rival contentions in the arbitration proceedings.



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Accordingly, the present petition along with pending applications, is hereby dismissed.

(NEENA BANSAL KRISHNA)
JUDGE

JUNE 10, 2024
S.Sharma