



\$~41

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

+ O.M.P.(I) (COMM.) 93/2024, I.A. 6584/2024, I.A. 6585/2024

M/S SECANT INFRASTRUCTURE PVT LTD Petitioner

Through: Mr.Avinash Trivedi and Mr.Rhythem
Nagpal, Advts

versus

M/S REIN REAL ESTATE LLP Respondent

Through: Mr.Vijay Nair and Mr.Manoranjan
Sharma, advs.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

20.03.2024

%

1. The present petition has been filed under Section 9 of the Arbitration and Conciliation Act with the following prayer:

“(a) Pass an ex-parte order thereby restraining the respondent from creating any third party interest by selling or parting with possession w.r.t. the Plots bearing No. 172, 173, 40, 50, 55, 103, 104, 569, 570, 573, 576 and 577 situated in a plotted township known as Parsavnath Greens situated at Mubarikpur Road, Derabassi, District Mohali, Punjab till the time disputes are adjudicated by the Ld. Arbitrator; And/Or;

(b) Pass an ex-parte order thereby directing the respondent to execute the sale deed/conveyance deed of the Plots bearing No. 172, 173, 40, 50, 55, 103, 104, 569, 570, 573, 576 and 577 situated in a plotted township known as Parsavnath Greens situated at Mubarikpur Road, Derabassi, District Mohali, Punjab in favour of the petitioner on payment of the balance consideration in terms



of the ATS dated 03.10.2019; And/Or;

(c) Award cost of this proceeding in favour of the petitioner and against the Respondent And/Or;

(d) Pass such other order(s) as your Lordship may deem fit and proper.”

2. Issue notice.
3. Learned counsel appearing for the respondent has accepted the notice.
4. Both the learned counsel submits that present petition may be converted into a petition under Section 11 of the Arbitration and Conciliation Act, 1996 and thereby the matter may be referred to arbitration. In view of consent of the parties the present petition is converted into petition under Section 11 of the Arbitration and Conciliation Act, 1996.
5. Learned counsel for the petitioner submits that though he has paid a sum of Rupees One Crore Thirty Lakhs only. However, out of the 16 plots mention in prayer clause-a, the respondent has only transferred four plots and rest of the 12 plots have not been transferred. Learned counsel for the petitioner submits that there is an apprehension that the respondent may create a third party interest in the remaining 12 plots. Thus, it has been submitted that some order may be passed till the matter is placed before the learned Arbitrator.
6. Learned counsel for the respondent submits that there is no dispute as to the agreement executed between the parties and the arbitration clause with the jurisdiction at New Delhi. However, learned counsel submits that out of the agreed amount of Rupees Four Crore Sixty-Nine Lakhs Four Thousand Five Hundred, the petitioner has only paid only Rupees



One Crore Thirty Lakhs Two Thousand.

7. Learned counsel submits that in case of the delay payment, the petitioner is also required to pay the interest. Learned counsel for the respondent submits that besides the principle amount there is a huge interest amount also in terms of clause 4 of the agreement which has been denied by the learned counsel for the petitioner.
8. Learned counsel submits that since the payment has not been made and there is an outstanding amount of Rupees Three Crore Thirty Nine Lakhs Thirty Six Thousand Five Hundred; the respondent cannot be restrained from creating any third party interest.
9. Learned counsel for the respondent submits that under Clause-5 of the agreement, the petitioner can get the said plot transferred and registered in his / her name only after making full payment of the said plot.
10. Learned counsel for the petitioner submits that he is ready to deposit the entire remaining amount of Rupees Four Crore Sixty Nine Lakhs Four Thousand Five Hundred after deducting the paid amount which is around Rupees One Crore Thirty Lakhs with the learned Registrar of the Court.
11. Considering that both the parties have consented to the reference to the arbitral tribunal, the present petition is disposed of with the following directions:
 - i) The disputes between the parties under the said agreement are referred to the arbitral tribunal.
 - ii) Mr. Anil Kaushik, Senior Advocate, Mobile No.9810414419 is appointed as an Arbitrator to adjudicate the disputes between the parties.



- iii) The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi hereinafter, referred to as the 'DIAC'). The remuneration of the learned Arbitrator shall be in terms of fee rules of the DIAC Schedule or as the parties may agree.
 - iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
 - v) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims on merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.
 - vi) The parties shall approach the learned arbitrator within two weeks from today.
12. The present petition is treated as an application under Section 17 of requested directed to adjudicate the application within four weeks. However, in the meantime if the petitioner deposits the entire remaining amount i.e., Rupees Four Crore Sixty Nine Lakhs Four Thousand Five Hundred after deducting the amount already paid within two weeks, the respondent shall not create any third party interest in respect of the remaining plots. The Registry shall invest the deposited amount in interest accruing FDR.
13. In case the sale deeds are executed in respect of the remaining plot by the respondent in favour of the petitioner, the respondent may move an appropriate application in accordance with law for release of the amount.



14. However, if the petitioner fails to deposit the amount there will be no restrain order against the respondent. The learned Arbitrator may adjudicate the matter without being influenced by the order of this court and may modify / vary the same on the basis of the affidavit filed by the parties.
15. Copy of this order be given *dasti*.

DINESH KUMAR SHARMA, J

MARCH 20, 2024/AR..