



2024:DHC:9782



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 17.12.2024

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ARB.P. 719/2024

SATYA J MAKAN & ORS.

.....Petitioners

Through:

Mr. Aditya Sharma, Ms. Vidhushi
Sharma, Mr. Shantanu Sharma, Ms.
Neha Dutta and Ms. Donna Sangma,
Advts. (through v/c)

versus

WTC NOIDA DEVELOPMENT CO. P. LTD.

.....Respondent

Through: None.

CORAM:**HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J. (ORAL)**

1. The present petition filed under section 11(5) of the Arbitration and Conciliation Act, 1996 (hereinafter referred as 'the A&C Act') seeks appointment of a sole arbitrator to adjudicate the disputes between the parties.
2. The disputes between the parties have arisen in the context of an Agreement dated 28.09.2022, in terms of which the respondent was the promoter and the petitioner was an allottee. The petitioner was allotted a unit bearing no. Q-B-03-04 in tower/block/building no. QUAD B in WTC Noida Quad, TZ-13B, Sector T-zone, Greater Noida, District Gautam Nagar, UP (hereinafter referred as "*the allotted unit*") by the respondent.
3. As per the terms of clause 7.1 to the schedule C of the agreement, from the date of realisation of 95% basic sale price (BSP), the respondent agreed to pay the petitioner 12% interest per annum (assured returns) on the said BSP till 30.06.2025 or till the actual possession of the allotted unit. It is



also averred in the petition that the respondent also promised to enter into a buyback agreement, in case, prior to possession of the allotted unit, the petitioner agrees to sell the same.

4. Admittedly, the following arbitration clause is applicable to the contract between the parties:

“36. DISPUTE RESOLUTION:

All or any disputes arising out or touching upon or in relation to the terms and conditions of this Agreement, including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties, shall be settled amicably by mutual discussion, failing which efforts shall be made for settlement through the process of mediation with assistance of any reputed mediation centres (like Mediation Centre established by Delhi Government, Mediation Centre at Delhi High Court, Mediation Centre at Punjab and Haryana High Court, Mediation Centre at Allahabad High Court, Mediation Centre at Gujarat High Court etc.) situated either at New Delhi or at place where project is situated and at no other place. In case dispute remains unresolved even after mediation, same shall be settled through the mechanism of arbitration as provided under the Arbitration and Conciliation Act, 1996. Arbitrator shall be appointed by Promoter. Cost of Arbitration shall be borne by both parties. Seat and Venue of Arbitration shall be at New Delhi. Subject to the aforesaid mechanism of the Arbitration, unresolved dispute shall be settled through adjudicating officer appointed under the Act.”

5. The dispute between the parties have arisen on account of alleged failure of the respondent in paying the assured returns to the petitioner i.e., interest of 12% per annum on the BSP as per the clause 7.1 to schedule C of the agreement.

6. It is averred in the petition that the respondent since the realisation of the 95% BSP on 07.08.2022, despite repeated reminder and communication have wilfully neglected/ failed to discharge their obligation to pay the assured returns. It is the case of petitioner that till date neither have the respondents paid the assured returns to the petitioner nor have they made any buyback offer pertaining to the allotted unit.



2024:DHC:9782



7. Since the dispute between the parties persisted, a legal notice dated 30.01.2023 was issued to the respondent followed by an application for Pre-Litigation Mediation before the Delhi High Court Mediation and Conciliation Centre. However, it is stated that the respondent neither responded to the demand notice nor appeared before the Mediation Centre for adjudication of the dispute between the parties.

8. Thus, the petitioner as per clause 36 of the agreement, issued a notice dated 15.01.2024 for invocation of arbitration. However, again the respondent failed to respond.

9. In the above circumstances, the petitioner has approached this Court, through the present petition, seeking the appointment of a sole arbitrator to adjudicate the dispute.

10. In the present proceedings, notice was issued by the Court on 21.05.2024. The learned counsel on behalf of the respondent entered appearance on 11.07.2024 before this Court, and prayed for some time to file a reply. The Court thereof granted four weeks time for filing of the same. However, neither has any reply been filed on behalf of the respondent on record nor has anyone appeared on behalf of the respondent today.

11. In the circumstances, the present petition is taken up for hearing and disposal, despite no appearance on behalf of the respondent.

12. Since the existence of the arbitration clause is evident from a perusal of the contract, there is no impediment to constituting an arbitral tribunal for adjudicating the disputes between the parties, as mandated in terms of the judgments of the Supreme Court in ***SBI General Insurance Co. Ltd. v. Krish Spinning***, 2024 INSC 532 and ***Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian***



2024:DHC:9782



Stamp Act, 1899, In re, 2023 SCC OnLine SC 1666.

13. Further, in terms of the judgments of the Supreme Court in ***Perkins Eastman Architects DPC v. HSCC (India) Ltd*** (2020) 20 SCC 760, ***TRF Limited v. Energo Engineering Projects Ltd***, (2017) 8 SCC 377 and ***Bharat Broadband Network Limited v. United Telecoms Limited***, 2019 SCC OnLine SC 547, it is incumbent on this Court to appoint an independent sole arbitrator to adjudicate the disputes between the parties.

14. Accordingly, Mr. Naman Anand, Advocate (Mobile - +91 9988190262) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

15. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties requisite disclosures as required under Section 12 of the A&C Act.

16. The learned Sole Arbitrator shall be entitled to fee in accordance with IVth Schedule to the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.

17. The parties shall share the arbitrator's fee and arbitral costs, equally.

18. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

19. Needless to say, nothing in this order shall be construed as an expression of this Court on the merits of the case.

20. The present petition stands disposed of in the above terms.

SACHIN DATTA, J

DECEMBER 17, 2024/sl