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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of Decision:- 14th February, 2024.***

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ARB. A. (COMM.) 36/2023**SHRI ANIL SETH & ANR.**

..... Petitioners

Through: Mr. Amit George, Mr. Pulkit Aggarwal, Mr. Adhishwar, Advs. (M. 9999801409)

versus

M/S MEGA CONSTRUCTION COMPANY & ORS..... Respondents

Through: Mr. Ramchandra Madan, Ms. Vinny Shangloo along with Mr. Sunny Luthra, R-2 in person through VC. (M-9767358607)

CORAM:**JUSTICE PRATHIBA M. SINGH****Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. The present appeal has been filed by the Appellants-Shri Anil Seth and Shri Sunil Seth under Section 37 of the Arbitration and Conciliation Act, 1996 (*hereinafter, 'the 1996 Act'*) challenging order dated 3rd June, 2023 passed by the Id. Sole Arbitrator.
3. The submission on behalf of the Appellants is that the Appellants' prayer for interim relief has been rejected by the Id. Arbitrator. The transaction in respect of which arbitration has been invoked is one of a collaboration agreement dated 29th May, 2019 in respect of property bearing no. 3310/B, Ranjeet Nagar, New Delhi-110008 (*hereinafter, 'subject property'*). As per Id. Counsel for the Appellants, two floors i.e., the ground and the first floor were to fall in the share of the developer/Respondent and the remaining floors



were to fall in the share of the Appellants.

4. As per Id. Counsel for the Appellants, there was an obligation to complete the entire building before any sale could be made, which condition was violated by the Respondents by selling the ground and first floors without completing the building. In response to a query from the Court, Mr. Sunny Luthra – Defendant no.2, was asked whether the building is fully complete, to which he replied that it is almost complete, although the lift is still being installed.

5. On the last date of hearing i.e. on 15th January, 2024, the Respondent No.2, partner of Respondent No.1 Mr. Sunny Luthra had appeared and submitted that he would like to engage a fresh counsel. On the said date, the Court had directed as under:

“6. In the opinion of this Court, this clearly shows that there is some work which may be still pending to be executed. Under such circumstances, it is evident that the owner of the property has in fact been deprived of the floors of the property which belong to the owner.

7. At this stage, the Respondent No. 2 once again requests for an adjournment in order to engage Counsel. Id. Counsel for the Petitioner submits that the Counsel for the said Respondent is appearing before the Arbitration.

8. Accordingly, adjournment is granted subject to payment of Rs.25,000/- as costs to the Petitioner within a week. If no reply is filed, the matter would proceed further. It is made clear that no further adjournments shall be granted to the Respondents in this matter on the ground of non-engagement of Counsel.”

6. Today, Mr. Ram Chander Madan, the Id. Counsel for the Respondents, appeared in the matter. He informed the Court that he filed the reply yesterday, which has not yet come on record. He provided a physical copy of



the said reply to the Court and made a reference to the proceedings before the Id. Arbitrator on 8th January 2024. According to the Id. Counsel, most of the issues between the parties were resolved on that date. He further submitted that, in terms of the order dated 8th January 2024, the Respondents are willing to hand over possession to the Appellants, provided that the Appellants complete all necessary documents and cooperate in obtaining the completion/occupancy certificates.

7. Mr. George, Id. Counsel appearing for the Appellants, submits that as owners of the subject property, the Appellants have been deprived of enjoyment of the property. The floors of the subject property, which fell to the share of the developer i.e. the ground and the first floor of the subject property, could only have been sold after the building was complete and possession was given to the Appellants. He, however, submits that the proceedings before the Arbitral Tribunal dated 8th January, 2024, record certain agreements in relation to the subject property between the parties.

8. The Court has perused the proceedings dated 8th January, 2024 before the Id. Arbitrator, where the parties agreed as under:

“During the course of hearing. Mr Pulkit Aggarwal, the learned counsel for the claimants, on instructions from Mr Anil Seth and Mr Bhatia, learned counsel for the Respondents, on instructions from Mr Sunny Luthra have agreed as under:

1- The claimants will execute and sign all such documents, as are required by MCD for issuing the requisite Completion Certificate/ Occupancy Certificate after compounding the compoundable deviations.

2- The Completion Certificate/ Occupancy Certificate will be obtained by the respondents after inspection by MCD.

3- Subject to the final order of the Arbitral Tribunal, the



- entire amount including the compounding fee payable to MCD will be transferred by the respondents to the bank account of claimant 1 Mr Anil Seth, who in turn, will transfer that amount to MCD.*
- 4. If any demolition is required for getting the compoundable deviations compounded and for obtaining the Completion Certificate Occupancy Certificate, that will be carried out by the respondents, at their cost and responsibility, without causing any damage to the building and under the supervision of an Engineer to be nominated by the Co-ordinator of DIAC, from the panel of DIAC. In that case the respondents will apply to DIAC, under intimation to the claimants, for making the nomination.*
- 5. The cost incurred in carrying out demolition if any, and the fee of the Engineer nominated by DIAC will be borne initially by the respondents, but will be subject to the final order of the Arbitral Tribunal.*
- 6- In case any demolition is carried out by the respondents, they will repair /rebuild the affected portion under the supervision and to the complete satisfaction of the Engineer nominated by the Co-ordinator of DIAC so as to bring the building strictly in compliance of the agreement (s) between the parties.*
- 7. All the decisions and instructions of the Engineer nominated by the Co-ordinator of DIAC will be binding on the parties and they agree not to challenge or dispute the same on any ground whatsoever.*
- 8. If the presence of the claimants is required in any office of MCD, they will promptly attend the concerned office.”*
9. According to the terms recorded above, the Appellants are required to execute and sign all necessary documents to be filed with the MCD, to enable issuance of the necessary completion certificate/occupancy certificate. Additionally, payments to the MCD are also be made to the MCD, through the Appellants in the manner specified in paragraph 3 of the said terms. The



terms recorded above, being agreed upon before the Arbitrator, shall be binding upon the parties.

10. In addition, it is directed that the Respondents, as submitted today, shall hand over possession of the basement, second and third floors of the subject property as also terrace to the Appellants, for their use and occupation within one week. If, in accordance with the terms recorded above, any changes or alterations are to be made in the said floors, the Appellants shall cooperate in the same.

11. Upon the completion/occupancy certificate being obtained by the Respondents for the entire subject property, the Appellants are also willing to execute the conveyance deed in respect of the first floor of the subject property in favour of the Respondents or any of their nominees within four weeks after completion/occupancy certificates are communicated to the Appellants. It is submitted that insofar the ground floor of the subject property is concerned, the conveyance deed has already been executed.

12. It would be the Respondents' obligation to complete the remaining work is left out in the building.

13. In this view of the matter, as also the order dated 8th January, 2024, since the terms have already been agreed, no further orders are required to be passed in this appeal.

14. The terms recorded above shall take the form of undertakings by the parties who joined the proceedings today. The arbitration proceedings regarding the claims and counterclaims shall continue. However, in light of what transpired in Court, the Id. Arbitrator may also attempt to determine if an amicable resolution of the disputes is feasible.

15. Ld. Counsel for the Appellants also pray for appointment of a Local



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Commissioner. Accordingly, **Ms. Tinu Bajwa, Advocate, (M: 9811053853)** is appointed as the Local Commissioner to visit the property on 24th February, 2024 at 1:00 pm (as requested by Counsels), in whose presence, the possession shall be handed over.

16. Appeal is, thus, disposed of in the above terms. All pending applications are also disposed of.

PRATHIBA M. SINGH
JUDGE

FEBRUARY 14, 2024/dk/dn