



2024:DHC:9787



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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. 906/2024**INDIABULLS HOUSING FINANCE LTD.****.....Petitioner****Through: Mr. Raghav Khanna, Advocate.****versus****MANISH KUMAR AND ANR.****.....Respondents****Through: None.****CORAM:****HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J. (ORAL)**

1. The present petition filed under section 11(6) and 11(8) 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 context of a Principal Loan Agreement dated 10.03.2018 and a Subsequent Loan Agreement dated 12.03.2018 executed between the petitioner and the respondents under which a total amount of Rs.16,89,423/- was given for purchase of the property bearing Flat No – 1104, 11th Floor, Tower -2, Global Hill View Sector 11- Sohna, Gurugram – 122001 from M/s Breez Builder Developers Pvt. Ltd (hereinafter referred as “the builder”).
3. Admittedly, the principal loan agreement between the parties contains an arbitration clause as under:

**“ARTICLE 14 : ARBITRATION**

The Loan Documents is/shall be governed by Indian laws and the courts at New Delhi shall have exclusive jurisdiction relating to, any matter/issue under or pursuant to the Loan Documents. Notwithstanding anything to the contrary, if any dispute/disagreement/differences (“Dispute”) arise between the Parties (including any Borrower(s)) during the subsistence of the Loan Documents and/or thereafter, in connection with, inter alia, the validity, interpretation, implementation and/or alleged breach of any provision of the Loan Documents, jurisdiction or existence/appointment of the arbitrator or of any nature whatsoever, then, the Dispute shall be referred to a sole arbitrator who shall be appointed by IHFL only. In any circumstance, the appointment of the sole arbitrator by IHFL shall be and shall always deemed to be the sole means for securing the appointment/nomination of the sole arbitrator, without recourse to any other alternative mode of appointment of the sole arbitrator. The place of the arbitration shall be New Delhi or such other place as may be notified by IHFL and the arbitration proceedings shall be governed by the Arbitration & Conciliation Act, 1996 (or any statutory re-enactment thereof, for the time being in force) and shall be in the English language. The award shall be binding on the Parties subject to the applicable laws in force and the award shall be enforceable in any competent court of law.”

4. Pursuant to the execution of loan agreements, it is stated that a tripartite deed of guarantee dated 19.03.2019 was executed between the petitioner, respondents and the builder, in terms of which the builder became the guarantor. It is also stated that in event of default under the loan agreement and upon an intimation by the petitioner, the builder will remain bound to cancel the allotment of the property and also be liable to refund the outstanding amount under the Loan Facility to the petitioner. Further, upon request of the respondents, the loan amount was disbursed by the petitioner in favour of the builder.

5. It is submitted that the respondents started defaulting the EMI and consequently, the petitioner issued a notice dated 11.11.2021 under Section 13(2) of the SARFAESI Act, 2002 for repayment of the outstanding amount followed by a notice dated 17.10.2022 to the respondents and the guarantor



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for cancellation of the allotment property and refund of the total amounts due to the petitioner.

6. Further, it is submitted that the builder cancelled the allotment and made a payment of Rs. 17,26,000/- to the petitioner towards refund of the loan amount and that after adjusting the amount refunded by the builder a sum of Rs.6,34,219/- is pending and payable as on 13.07.2023 on account of 'loss of sale'.

7. Since the disputes between the parties persisted, the petitioner issued a demand notice dated 22.11.2023. Pursuant thereto, *vide* letter dated 23.12.2023, the petitioner as per Article 14 of the agreement appointed a Sole Arbitrator for adjudication of the disputes between the parties. However, since the appointment was unilateral, the learned Sole Arbitrator *vide* order dated 25.01.2024 terminated its mandate.

8. Thereafter, upon the termination of mandate, the petitioner issued a fresh demand notice cum notice for arbitration on 30.01.2024. However, the respondents 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 04.07.2024. However, since none appeared on behalf of the respondents, the Court *vide* order dated 12.09.2024 granted petitioner with a liberty to file an application for substituted service of the respondents. *Vide* order dated 26.09.2024, an application under Order V Rule 20 of the CPC, 1908, filed by the petitioner, for substituted service, was allowed by the learned Joint Registrar (Judicial). An affidavit of service dated 10.12.2024 has been filed



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by the petitioner in which it is stated that the publication was duly published on 03.12.2024 in “*The Times of India*”, “*Punjab Keshri (Amritsar edition)*” and “*Navbharat Times (Gurugram edition)*”.

11. Section 3 of the A&C Act contemplates that a written communication is deemed to have been received if it is sent to the addressee’s last known place of business or mailing address by any means which provides a record of the attempt to deliver it. In the present case, the petitioner has made numerous attempts to effect service on the respondent and has thereby discharged its onus to effect service on the respondent.

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

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

14. 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.

15. Accordingly, Dr. Chandra Shekhar, Advocate (Mobile - +91 9810472702) is appointed as the Sole Arbitrator to adjudicate the disputes



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between the parties.

16. 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.

17. 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.

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

19. 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.

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

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

SACHIN DATTA, J

DECEMBER 17, 2024/sl