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

+ **O.M.P.(I) (COMM.) 248/2024**

M/S DAWN PLANERS PRIVATE LIMITEDPetitioner

Through: Mr. Jayant Mehta, Senior Advocate with Mr. Abhinav Agnihotri, Mr. Sahil Gupta, Mr. Divesh Sawhney & Mr. Gaurav Yadav, Advocates.

versus

M/S HERO REALTY PRIVATE LIMITEDRespondent

Through: Mr. Arvind Nayar, Senior Advocate with Mr. Samir Malik, Mr. Lakshay Mehta, Mr. Akshay Joshi & Mr. Krishan Kumar, Advocates with Mr. Ravi Prakash, AR of Company.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER
% 30.07.2024

1. The petitioner has filed this petition under Section 9 of the Arbitration and Conciliation Act, 1996 ["the Act"], for interim measures of protection in anticipation of arbitration proceedings under an agreement dated 29.12.2022, entitled Joint Development Agreement [the "Agreement"].
2. The Agreement is in respect of development of plots in an immovable property at Villages Shantarshah, and Panchyanpur, Roorkee,



Haridwar, Uttarakhand, on the terms and conditions contained therein.

3. The Agreement contains a provision for resolution of disputes by arbitration [Clause 13.2]. The clause provides for arbitration by three-member arbitral tribunal. New Delhi has been designated as the place of arbitration. Under Clause 13.3, exclusive jurisdiction has been vested in the courts in New Delhi.

4. Disputes have arisen between the parties, in the course of which, the respondent has sought to terminate the Agreement by a letter dated 11.07.2024, which has been contested by the petitioner vide e-mail dated 20.07.2024.

5. The petitioner has filed this petition under Section 9 of the Act for the following reliefs: -

- “a. Pass directions/ injunction against respondent from creating, directly or indirectly, any third party-rights/ entering into any agreement in respect of property or alienating the property that is a subject matter of Joint Development Agreement (JDA) dated 29.12.2022 entered between the parties; and*
- b. restrain the respondent from taking any further steps in pursuance of the notice dated 11.07.2024 styled as an alleged termination notice; and*
- c. Pass direction/injunction restraining the Respondent from creating any impediment, directly or indirectly, in the completion of the project as substantial third party rights of the buyers of the plot has been created in the subject property in pursuance and in accordance with the JDA; and*
- d. Direct the respondent to furnish the requisite permissions/licenses for the area not under the development by the Petitioner; and*
- e. Pass relief "a" to "c" ex-parte ad-interim; and*
- f. Pass any other or further order which this Hon'ble Court may deem fit in the interest of justice.”*

6. In the course of hearing, Mr. Jayant Mehta, learned Senior Counsel for the petitioner, and Mr. Arvind Nayar, learned Senior Counsel for the



respondent have jointly submitted that the disputes between the parties may be referred to arbitration of a sole arbitrator, in these proceedings itself. They request that the present petition be treated as an application under Section 17 of the Act before the learned arbitrator and, until the learned arbitrator is in a position to consider the application, they undertake that their clients shall maintain *status quo* with regard to the nature and character, title and possession of the property described in recital 'D' of the Agreement.

7. The petition is therefore disposed of with the consent of learned counsel for the parties, with the following directions: -

- a. The disputes between the parties under the Joint Development Agreement dated 29.12.2022 are referred to arbitration of Hon'ble Mr. Justice Sanjib Banerjee, former Chief Justice, High Courts of Madras and Meghalaya [Tel: 9836268256].
- b. The learned Arbitrator is requested to furnish a declaration under Section 12 of the Act, prior to entering upon the reference.
- c. The arbitration proceedings will be held under the aegis of Delhi International Arbitration Centre, Delhi High Court, Shershah Road, New Delhi-110503 ["DIAC"], and will be governed by the Rules of DIAC, including as to remuneration of the learned Arbitrator.
- d. The present petition will be treated as an application under Section 17 of the Act before the learned Arbitrator. The respondent may file its reply to the application within 10 days from today or immediately upon the learned Arbitrator entering upon the reference, whichever is later. The petitioner may file a rejoinder within three days thereafter.



- e. The learned Arbitrator is requested to consider the application under Section 17 of the Act at his earliest convenience, at least on the question of *ad interim* orders.
- f. Until the Section 17 application is first listed before the learned Arbitrator, the parties are bound down to the undertaking recorded in paragraph 6 of this order.
- g. It is made clear that this Court has not expressed any view, one way or the other, on the respective cases of the parties, even on a *prima facie* basis. They are at liberty to request the learned Arbitrator to continue, vary, vacate or modify this order as appropriate.

PRATEEK JALAN, J

JULY 30, 2024

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