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

+ **ARB.P. 1275/2023**

MR. SATISH KUMAR

..... Petitioner

Through: Mr. Avinash Trivedi, Adv.

versus

MR. RAJESH SAHDEV

..... Respondent

Through: Mr. Madan Gopal Vacher, Mr. Harsh
Vardhan Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

29.02.2024

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1. By way of the present petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996, the petitioner seeks the appointment of an Arbitral Tribunal comprising of a Sole Arbitrator to adjudicate *inter se* disputes between the parties.
2. The plea of the petitioner is that the parties entered into an agreement to sell dated 22.03.2022, whereby it was agreed that the respondent shall sell and transfer the built-up third-floor portion (to be built) with its roof rights up to the sky, fitted with electric and water connections having a common entrance, passage and staircase along with 1/4th undivided share in the stilt parking on the ground floor with the common lift, with part of said freehold property bearing No.E-1A, on Sushila Road, making 185 sq. yds, out of total area measuring area



223 sq yds out of Khasra No.262/258/217/4 situated in the area village Bharola, a colony known as Adarsh Nagar, Delhi-110033 with the proportionate right for a sum of Rs.1,75,00,000/-.

3. Learned counsel for the petitioner submits that in fact, the 4 persons who were the owner of the land entered into a collaboration agreement with the respondent and in pursuance of that collaboration agreement, the agreement to sell was executed. Learned counsel submits that though the payments were made, however, the respondent failed to fulfil the terms and conditions.
4. Learned counsel for the petitioner submits that in the agreement to sell it was specifically agreed that if the respondent failed to deliver physical possession of the said property and sell by or before 31.04.2022 to the petitioner then the respondent shall pay Rs.35,000/- per month as a monthly rent. Learned counsel submits that since the respondent did not fulfil the terms and conditions the settlement deed dated 22.03.2022 was entered into wherein the respondent specifically admitted that he has failed to comply with the terms and conditions of the agreement to sell and deliver the physical possession and drafting the ownership documents of the property in favour of the second party till the date of execution of the present settlement. The said settlement deed provided the arbitration clause with the jurisdiction at Delhi.
5. Learned counsel submitted that therefore though the sale deed was executed on 30.06.2022 and possession was delivered however, as per the sale deed, an “unfinished raw conditioned flat” was given. Learned counsel submits that since the petitioner has complied with all the conditions of the agreement to sell and the respondent has



failed to perform his part of the contract, the dispute has arisen, it is required to be referred to the arbitration. Learned counsel submits that the arbitration has duly been invoked vide notice dated 06.10.2023.

6. Learned counsel for the respondent submits that the agreement to sell was followed by a settlement deed and thereafter, the sale deed has duly been executed by the respondent in favour of the petitioner. Learned counsel submits that now since the sale deed has been executed, the agreement to sell and settlement deed stands fulfilled and there is no arbitration clause in existence. Learned counsel for the respondent further submits that the present matter cannot be referred to the arbitration.
7. Learned counsel for the respondent has taken the Court to the settlement deed, wherein it was specifically agreed that the respondent shall pay the entire arrears of the rent. Learned counsel submits that therefore whatever the alleged recovery by the petitioner from the respondent is concerned that is crystallized and there are no arbitrable disputes.
8. Admittedly, this amount has not been paid. The plea of the respondent is totally misconceived. The respondent admittedly has not fulfilled the terms and conditions of the agreement to sell and settlement agreement. The respondent cannot be allowed to wriggle out of the arbitration clause merely by taking the ground that the sale deed has been executed.
9. As per the agreement, the execution of the sale deed was only one of the facets. The other obligations have also to be discharged by the respondent. Hence, I consider that there is an agreement containing



the arbitration clause and an arbitral dispute which is required to be referred to arbitration.

10. Considering the facts, 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. S. K. Luthra, Advocate, Mobile No.9811164604 is appointed as Sole 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 as per Schedule IV of the Arbitration and Conciliation Act, 1996.
- 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.



11.The petition is disposed of in the above terms.

DINESH KUMAR SHARMA, J

FEBRUARY 29, 2024

Pallavi