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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Date of Decision: 29.10.2024**+ **ARB.P. 1282/2024**

KEERTI GUPTA & ANR.

.....Petitioners

Through: Mr. Rohin Singh Pande, Mr. Sameer Nandwani and Mr. Nikhil Garg, Advs. Along with Petitioner No.2 in person.

versus

GRANITE HILL PROPERTIES PVT LTD.

.....Respondent

Through: None.

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

1. The present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter 'the A&C Act') seeks appointment of a Sole Arbitrator to adjudicate the disputes between the parties. The disputes between the parties have arisen in the context of an allotment agreement pertaining to allotment of retail space or corporate suites.

2. A perusal of the agreement shows that it contains a dispute resolution clause as under:-

"91. In the event of any questions, dispute or difference arising under these presents or in connection therewith including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties shall be settled amicably by mutual discussions (except to any matters the decision of which is specifically provided by these presents) failing which the same shall be referred to the Arbitrator whose decision shall be final and binding on both the parties. In this connection it is made specifically clear that the sole arbitrator shall be appointed by the Developer/Builder Company and any such appointed person may be



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someone who is likely to be interested in the Developer/Builder Company. Despite all these facts having been explained, the Allottee(s) has of his/her/their own "FREE WILL AND CONSENT" has agreed to the appointment of the Sole Arbitrator by the Developer/Builder Company. The arbitration proceedings shall be governed by the Arbitration & Conciliation Act, 1996 and/or statutory amendments/modifications thereof for the time being in force. The arbitration proceedings shall be held at an appropriate location in Delhi/New Delhi. The language of arbitration proceedings shall be English and the award shall also be passed in English language. The cost of Arbitration proceeding shall be fixed at the discretion of the Arbitrator and shall be borne equally by the parties however, the Arbitrator may direct the award as to who will in due course bear such costs. It would be open to both the make such reference to Arbitration and the same shall not be questioned or challenged by the opposite party.

92. Subject to arbitration clause above, the courts at Delhi and the High Court of Delhi shall have the sole and exclusive jurisdiction to adjudicate upon any dispute between the Developer and the Allottee(s)."

3. A demand notice dated 02.01.2024 was issued by the respondent, raising a demand for Rs. 34,48,406 towards the outstanding dues in lieu of the flat unit booked by the petitioner at the subject property. The petitioner responded to the aforesaid demand notice by an email dated 09.01.2024 and refused to pay the demand raised therein on the basis that the demand was illegal and arbitrary and called upon the respondent to withdraw the demand raised by it. However, neither did the respondent issue any reply to the aforesaid email communication dated 09.01.2024, nor did it recall the demand notice dated 02.01.2024.

4. Subsequently, a notice dated 19.01.2024 invoking arbitration under clause 91 and 92 of the allotment agreement was sent by the petitioner. *Vide* the said notice, the petitioner also objected to the appointment procedure set out in clause 91 of the allotment agreement, inasmuch as the same envisages that the respondent/developer would unilaterally appoint the sole arbitrator.



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5. The petitioner sent another notice dated 14.02.2024 invoking arbitration under Clause 91 and 92 of the allotment agreement. The petitioner in the said notice also suggested the names of three persons who could be appointed as the Sole Arbitrator for resolving the disputes arising between the parties in view of the arbitration clause existing in the allotment agreement allowing unilateral appointment of arbitrator by the respondent. However, this invocation notice also remained unreplied and an arbitrator could not be appointed by mutual consent of the parties. Hence, the present petition.

6. Learned counsel for the petitioner submits that since the seat of arbitration is Delhi, this Court has jurisdiction to entertain the present petition, and that any proceedings in any other Court under Part I of the A&C Act would be non-maintainable and not preclude the present petition.

7. None appears for the respondent despite notice having been issued in the present petition on 20.08.2024. An affidavit of service dated 21.10.2024 brings out that the petitioner has served the respondent with a copy of the present petition by hand on 27.09.2024 and by courier on 30.09.2024 at the address mentioned in the allotment agreement.

8. In the aforesaid circumstances, the matter has been taken up for hearing and disposal despite non-appearance of the respondent.

9. Since the existence of arbitration clause is evident from a perusal of the allotment agreement, there is no impediment to appointing an independent Sole Arbitrator for adjudicating the disputes between the parties, as prayed for, and as mandated in terms of the judgements of the Supreme Court in *Perkins Eastman Architects DPC v. HSCC (INDIA) Limited*, (2020) 20 SCC 760, *TRF Limited v. Energo Engineering Projects*



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Limited, (2017) 8 SCC 377 and *Bharat Broadband Network Limited v. United Telecoms Limited*, (2019) 5 SCC 755. *Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899, In re*, 2023 SCC OnLine SC 1666 and *SBI General Insurance Co. Ltd. v. Krish Spinning* 2024 INSC 532.

10. Accordingly, Ms. Ekta Kapil, Advocate (Mob. No. +91 9958097425) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

11. 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.

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

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

14. 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.

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

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

OCTOBER 29, 2024/dn

SACHIN DATTA, J