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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 6th November, 2025

I.A. 24859/2025

IN

+ CS(COMM) 258/2025

MS SWATI PANT & ANR.

.....Plaintiffs

Through: Mr. Vishal Kumar, Mr. Sujit Kr. Sinha
and Mr. Aniket Bose, Advocates.

versus

ANANT RAJ LTD & ANR.

.....Defendants

Through: Mr. Rakesh Lakra and Mr. Bhavya
Sharma, Advocates for D-1.**CORAM:****HON'BLE MR. JUSTICE AMIT BANSAL****AMIT BANSAL, J. (ORAL)****I.A. 24859/2025 (u/S-8 of Arbitration and Conciliation Act, 1996)**

1. The present application has been filed under Section 8 of the Arbitration and Conciliation Act, 1996 seeking a direction that the parties be referred for arbitration in terms of the arbitration clause contained in the Plot Buyer Agreement dated 18th June, 2015 (hereinafter the 'Agreement') entered into between the parties.

2. Brief facts relevant for deciding the present application are set out below:

2.1. Plaintiff no.1 is the wife of the plaintiff no.2. Both the plaintiffs are currently residing in Singapore and have executed a Special Power of



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Attorney ('SPA') in favour of the plaintiff no.1's parents to file the present suit.

2.2. The defendant no.1 i.e. Anant Raj Ltd. is a real estate company carrying on construction and infrastructure development works, especially in Delhi and NCR. Defendant no. 2 i.e. Investors Clinic is an authorized broker/ agent firm of the defendant no.1 for the purpose of selling plots developed by the defendant no. 1 in Delhi and NCR.

2.3. Through an employee of the defendant no.2 company, the plaintiffs applied for allotment of Plot No. 227, Pocket-B, having an area of 267.49 square yards, situated in "Anant Raj Estate", Sector 63-A Gurgaon (hereinafter the 'suit property') for a total sale consideration of Rs. 2,08,65,557/-.

2.4. It is the case of the plaintiffs that a total amount of Rs.1,25,93,040/- has been duly paid by the plaintiffs to the defendant no.1 as part payment. All the transactions between the plaintiffs and the defendant no.1 were facilitated by the defendant no. 2, who was acting as an intermediary.

2.5. The defendant no.1 issued a final allotment letter dated 1st October, 2014 to the plaintiffs wherein it was mentioned that the plaintiffs have paid Rs. 81,93,039.95/- towards total sale consideration.

2.6. The plaintiffs and the defendant no.1 entered into a Plot Buyer Agreement dated 18th June, 2015.

2.7. The plaintiffs sent several communications to the defendants stating that the plaintiffs have paid a total sum of Rs.1,25,93,040/- as part payment whereas the allotment letter mentions that only Rs. 81,93,039.95/- is paid.

2.8. Instead of rectifying the final allotment letter, the defendant no.1 issued a Cancellation Letter *vide* Ref. No- E-10010 / P 177, dated 16th February,



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2022 to the plaintiffs, by virtue of which the provisional allotment of the suit property was cancelled.

2.9. Thereafter, a legal notice dated 26th February, 2022 was sent by the plaintiffs to the defendants. The defendant no.1 sent a reply dated 27th June, 2022 acknowledging a payment of only Rs. 81,93,040/- made by the plaintiffs in favour of the defendant no.1.

2.10. Aggrieved by the same, the plaintiff no.1 filed an application for pre-institution mediation. However, the dispute could not be resolved and a 'Non-Starter Report' dated 19th March, 2023 was issued by New Delhi District Legal Services Authority.

3. Hence, the present suit for recovery of Rs. 3,02,25,852/- was filed by the plaintiffs.

3.1. Summons in the suit were issued on 13th August, 2025.

4. Thereafter, the defendants filed the present application under Section 8 of the Act for reference of the dispute to arbitration. Notice was issued on the present application on 8th October, 2025.

4.1. The plaintiffs have filed a reply to the present application.

4.2. Though the reply is not on record, a copy of the same has been handed over in Court and the same is taken on record.

5. I have heard the counsel for the parties.

6. It is an undisputed position that clause 20 of the Agreement contains a dispute resolution clause which provides for arbitration. For the ease of reference, clause 20 of the Agreement is set out below:

"20. DISPUTE RESOLUTION

20.1 All or any disputes that may arise with respect to the terms and conditions of the Plot Buyer Agreement, including the interpretation and validity of the provisions hereof and the respective rights and obligations of the parties shall be first settled through mutual discussion and amicable



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settlement, failing which the same shall be settled through arbitration. The arbitration proceedings shall be under the Arbitration and Conciliation Act 1996 and any statutory amendments/modification thereto by a Sole Arbitrator who shall be appointed by the Developer. The Buyer confirms that he shall have no objection to such appointment and shall not raise any doubt as to the Independence or Impartiality of the said Sole Arbitrator. The decision of the Arbitrator shall be final and binding on the parties.

20.2 The venue of Arbitration shall be at Delhi and only the courts of Delhi shall have the jurisdiction in all matters arising out of the Plot Buyer Agreement.”

7. Essentially, the objection raised on behalf of the plaintiffs is that the defendants participated in the pre-institution mediation proceedings initiated by the plaintiffs under Section 12 A of the Commercial Courts Act, 2015. Hence, the defendants are now estopped from contending that the present dispute should be referred to arbitration.

8. It is further submitted on behalf of the plaintiffs that in the reply filed by the defendants to the legal notice issued by the plaintiffs, the defendants have not asserted the arbitration clause.

9. In this regard, counsel for the defendants has correctly relied upon the judgment of the Division Bench of this Court in ***ANR Internation Private Limited v. Mahanvir Singhal and Ors.***, MANU/DE/7403/2023.

10. In the said case also, respondents/plaintiffs had taken a similar defence that the appellant/defendant did not point out the existence of the arbitration clause during the course of the pre-institution mediation under Section 12A of the Commercial Courts Act.

11. The Division Bench rejected the said contention raised on behalf of the respondents/plaintiffs and referred the dispute between the parties to arbitration. The relevant observations of the Division Bench are set out below:

“20. Though the plea of Mr. Maniktala looks appealing on a first blush,



on a deeper consideration, we are of the view that merely because the appellant had denied the existence of the arbitration clause in its reply and also denied the claim on merit, it would not per se mean that the arbitration clause ceases to exist. It was required for the respondent / plaintiff to convince the Trial Court that no arbitration clause exists in the invoices and arbitration has been wrongly invoked for determining the inter se disputes between the parties.

24. **From the above judicial pronouncements, it is clear that Section 8 of the Act of 1996 has a mandatory effect and once the conditions prescribed therein are seen to have been fulfilled, it is incumbent upon the Court to allow the application filed by the appellant and refer the parties to arbitration. It is conceded by the learned counsel for the respondents that there is an arbitration clause governing the parties and disputes have arisen between the parties and that they have invoked the arbitration clause in the invoice vide notice dated January 02, 2021 issued under Section 21 of the Act of 1996. If that be so, then there was no option left to the learned District Judge but to refer the parties to arbitration.**

26. **In view of the position of law which we have referred to above, it must be held here that though the doctrine of approbate-reprobate invoked by the learned counsel for the respondents is a facet of the law of estoppel, it is also a law well settled that there cannot be an estoppel against a law. The law with regard to Section 8 of the Act of 1996 mandates reference of the parties to arbitration with minimal judicial interference. Mr. Maniktala has also relied upon the judgment in the case of Raman Kwatra (supra) to contend that a person is not permitted to approbate and reprobate and if he does so, he is not entitled to any equitable relief. This judgment also has no applicability for the reasons already stated above.**

[Emphasis supplied]

12. Therefore, even if the defendant no.1 has participated in the pre-litigation mediation or has not raised the issue of arbitration in its reply to the legal notice issued by the plaintiffs, the fact of the matter remains that there is an arbitration clause. Once, the Court comes to the conclusion that there is a valid arbitration agreement between the parties, the parties have to be referred to arbitration as mandated by Section 8 of the Act.

13. Next, it is the contention of the plaintiffs that the plaintiffs had given a sum of Rs.44 lakhs in cash to the defendant no.2 which was in turn paid by



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the defendant no.2 to the defendant no.1. Hence, it is stated that the presence of defendant no.2 would be necessary to decide the disputes between the parties and since defendant no.2 is not a signatory to the arbitration agreement, the parties may not be referred for arbitration. In this regard, the plaintiffs have placed reliance on the judgment passed by the Supreme Court in ***Sukanya Holdings v. Jayesh H. Pandya***, (2003) 5 SCC 531, the relevant paragraphs of which are set out below:

“16. The next question which requires consideration is — even if there is no provision for partly referring the dispute to arbitration, whether such a course is possible under Section 8 of the Act. In our view, it would be difficult to give an interpretation to Section 8 under which bifurcation of the cause of action, that is to say, the subject-matter of the suit or in some cases bifurcation of the suit between parties who are parties to the arbitration agreement and others is possible. This would be laying down a totally new procedure not contemplated under the Act. If bifurcation of the subject-matter of a suit was contemplated, the legislature would have used appropriate language to permit such a course. Since there is no such indication in the language, it follows that bifurcation of the subject-matter of an action brought before a judicial authority is not allowed.

17. Secondly, such bifurcation of suit in two parts, one to be decided by the Arbitral Tribunal and the other to be decided by the civil court would inevitably delay the proceedings. The whole purpose of speedy disposal of dispute and decreasing the cost of litigation would be frustrated by such procedure. It would also increase the cost of litigation and harassment to the parties and on occasions there is possibility of conflicting judgments and orders by two different forums.”

14. In the present case, the aforesaid observations would not be applicable as the subject matter of the present dispute pertains to the agreement between the plaintiffs and the defendant no.1. The defendant no.2 was not a party to the agreement. At best, the defendant no.2 was an agent of the defendant no.1.



The claim of the plaintiffs would lie against defendant no.1 and not defendant no.2.

15. In so far as the contention of the plaintiffs with regard to payment made by the plaintiffs to defendant no.2 in cash and in turn defendant no.2 having paid the said consideration to the defendant no.1 is concerned, it is open for the plaintiffs to prove the same during the course of the arbitration proceedings.

15.1. For the said purpose, defendant no.2 need not be a party in the arbitration proceedings.

16. Accordingly, the dispute between the parties under the Agreement is referred to the Arbitral Tribunal comprising a Sole Arbitrator. The following directions are issued in this regard:

- a. Mr. Brij Bhushan Gupta, Senior Advocate (Mobile No.: +91-9811348989) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
- b. The arbitral proceedings shall be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (hereinafter '**DIAC**').
- c. The remuneration of the Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018.
- d. The Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference. In the event there is any impediment to the Arbitrator's appointment on that count, the parties are given liberty to file an appropriate application before this Court.
- e. The parties shall approach the Arbitrator within two (2) weeks from



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today.

17. It is made clear that all the rights and contentions of the parties, including the arbitrability of any of the claims and/ or counter claims, any other preliminary objections as well as claims on merits of the dispute of either of the parties, are left open for adjudication by the Arbitrator.

18. The petition stands disposed of in the aforesaid terms.

19. All pending applications stand disposed of.

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

21. The date already fixed before the Joint Registrar on 23rd January, 2026 stands cancelled.

AMIT BANSAL, J

NOVEMBER 6, 2025

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CORRECTED AND UPLOADED ON 13.11.2025