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

+ **ARB.P. 1331/2024 & I.A. 37642/2024**

SUSHIL KUMAR NIMESH & ANR.

.....Petitioners

Through: Mr. Malaya Kumar Chand, Ms.
Ruchika Gupta, Advs.

versus

SHOMIT FINANCE LTD & ANR.

.....Respondents

Through: Mr. Bhriugu Dhami, Ms. Bhavna
Dhami, Advocates

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

25.02.2025

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1. The Petitioner has approached this Court under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator to adjudicate the disputes between the parties.

2. It is stated that the as per the demand of the Respondents, the Petitioner had paid a sum of Rs.25,000/- towards the booking amount of the flat. It is stated that the Petitioner has further paid an amount of Rs.2,18,725/- for allotment of the said flat on 28.03.2010. It is stated that on 18.06.2011, a tripartite agreement was entered into between the Petitioner, Respondents and the Bank and a loan amounting Rs.19,55,000/- was sanctioned by the HDFC Bank for home loan. It is stated that the disputes have arisen between the parties regarding the further amount that has been sought by the Respondents.



3. Material on record indicates that the Petitioner had also filed an Arbitration Petition being ARB. P.228/2019 for appointment of an Arbitrator in terms of the Arbitration Clause in the Agreement entered into between the parties. However, *vide* Order dated 23.07.2019 the same was withdrawn with liberty to file a fresh petition because the Petitioner had not invoked the arbitration by issuing a notice under Section 21 of the Arbitration and Conciliation Act, 1996. It is stated that the notice was issued on 13.08.2019. Therefore, the Petitioner has approached this Court by filing the instant petition for appointment of an Arbitrator.

4. Learned Counsel appearing on behalf of the Respondents raises a preliminary objection that the instant petition is barred by limitation as the same has been filed beyond the period of three years as contemplated under Section 137 of the Limitation Act, 1963. He states that taking 13.08.2019 as the *terminus quo* for calculating the limitation and even including the time granted by the Apex Court in Cognizance for Extension of Limitation in RE, (2022) 3 SCC 117, the Petition has been filed beyond a period of three years as provided under Section 137 of the Limitation Act, 1963.

5. This Court is not going into the issue as to whether the claims are barred by limitation or not. Accepting the case of the Respondents that 13.08.2019 shall be treated as *terminus quo* for calculating the limitation, the petition ought to have been filed on or before September, 2024 and the Petitioner has filed the instant petition on 23.08.2024. *Prima facie*, the petition is within time.

6. In view of the fact that the disputes have arisen between the parties, this Court is inclined to appoint an Arbitrator to adjudicate upon the disputes which have arisen between the parties.



7. Accordingly, Ms. Risha Mittal (Adv.) (Mob. No.9910734884) is appointed as a Sole Arbitrator to adjudicate upon the disputes between the parties.
8. The arbitration would take place under the aegis of the Delhi International Arbitration Centre (DIAC) and would abide by its rules and regulations. The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.
9. The learned Arbitrator is also requested to file the requisite disclosure under Section 12(2) of the Arbitration & Conciliation Act within a week of entering on reference.
10. 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.
11. Needless to say, nothing in this order shall be construed as an expression of this Court on the merits of the contentions of the parties.
12. The present petition stands disposed of in the above terms along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

FEBRUARY 25, 2025
RJ