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

+ **ARB.P. 1449/2025**

VINOD KUMAR

.....Petitioner

Through: Mr. Vikas Tomar Advocate

versus

MEENAL HOUSING PVT. LTD.

.....Respondent

Through: Mr. Sushil Aggarwal and Mr. Divyam Aggarwal, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

13.11.2025

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1. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (***“the Act”***) seeking appointment of an Arbitrator.
2. The brief facts of the case are that the petitioner booked one studio apartment bearing no. SA-1001, 10th Floor, in Tower A, Semeion, Sector – 41, Faridabad (***“flat”***) and the parties entered into a Studio Apartment Purchase Agreement dated 30.03.2016.
3. The petitioner paid the entire sale consideration, but the respondent failed to deliver possession within the agreed 36 months. Despite repeated requests, the respondent only offered possession for fit out purposes in July 2023 and has not executed the conveyance deed while allegedly renting the flat to third parties.
4. The Studio Apartment Purchase Agreement contains an Arbitration



Clause, being Clause 14, which reads as under:

“14. Arbitration and Disputes

i) That in case of any dispute(s) between the company and the Allottee(s) on any of the matter(s) or issue(s) pertaining to the subject matter of this Agreement or interpretation of any term of this Agreement the same shall be referred for adjudication in accordance with the Arbitration and Conciliation Act, 1996 to the sole arbitrator to be appointed by the Company. The award given by the arbitrator thereupon shall be final and binding on both the parties.

ii) That the Courts in Delhi alone shall have the exclusive jurisdiction.”

5. Due to the disputes between the parties, the petitioner invoked Arbitration on 04.04.2025 and thereafter filed the present petition.
6. Mr. Aggarwal, learned counsel for the respondent, states that the present petition is misconceived as the power of attorney in favour of Mr. Bantoo Sharma is not apostilled. Additionally, he states that no notice under Section 21 of the Act has been received by the respondent, as the same was sent to the earlier address of the respondent.
7. He further states that the respondent has disputes with both the Faridabad Municipal Corporation and the builder, and that, upon payment of the dues, the respondent is ready and willing to execute the conveyance deed.
8. As far as the first objection is concerned, the document has been notarized by the Notary Public in Auckland, New Zealand. In **Kamla**



Rani v. Texmaco Ltd., 2007 SCC OnLine Del 128 the Court held as under:

“33. Authentication by a notary public is a solemn act performed by the notary public whose duty is to ensure that the executant is the person before him and is identified to his satisfaction. Once a document is authenticated by a notary public, it will be presumed that the document was duly executed and was in order. The use of the expression ‘shall presume’ shows that the section is mandatory and the Court has to presume that all necessary requirements for the proper execution of the power of attorney were duly fulfilled before the notary public. As observed in AIR 1984 (363) (sic) E. C. and E.Co. Ltd. v. J. E. Works, if two conditions are satisfied, firstly the power of attorney being executed before a notary public and secondly it being authenticated by a notary public, a presumption would arise under Section 85 about the executant of the power of attorney.”

9. Similarly, in ***National and Grindlays Bank Ltd. v. World Science News, 1976 SCC OnLine Del 8*** it was held as under:

“10. The document in the present case is a power of attorney and again on the face of it shows to have been executed before, and authenticated by, a notary public. In view of Section 85 of the Evidence Act, the Court has to presume that it was so executed and authenticated. Once the original document is produced purporting to be a power



of attorney so executed and attested, as stated in S. 85 of the Evidence Act, the Court has to presume that it was so executed and authenticated. The provision is mandatory, and it is open to the Court to presume that all the necessary requirements for the proper execution of the power of attorney have been duly fulfilled. There is no doubt that the section is not exhaustive and there are different legal modes of executing a power of attorney, but, once the power of attorney on its face shows to have been executed before, and authenticated by, a notary public, the Court has to so presume that it was so executed and authenticated. The authentication by a Notary Public of a document, purporting to be a power of attorney and to have been executed before him is to be treated as the equivalent of an affidavit of identity. The object of the section is to avoid the necessity of such affidavit of identity. Under Section 57 sub-section (6) of the Evidence Act, the Courts have to taken judicial notice of the seals of Notaries Public and when the seal is there, of which judicial notice is taken, there is no reason why judicial notice should not be taken of the signatures as well. What is argued by Shri Rameshwar Dial, learned counsel for defendants 1 to 3, is that the Notary Public in Section 85 or Section 57 of the Evidence Act merely means notaries appointed under the Notaries Act 1952. The argument is that where a document purports to be a power of attorney, before the Court can presume it



to be so executed and authenticated as is contemplated by S. 85, it should have been authenticated by Indian Consul or Vice-Consul or the representative of the Central Government and not by a notary public of a foreign country. For one thing Notaries Act 1952 was not there when Evidence Act which was the first Act of 1872 was enacted. Secondly, the purpose of Sections 57 and 85 is to cut down recording of evidence. For such matters, like the due execution of a power of attorney in the present day of international commerce, there is no reason to limit the word “Notary Public” in S. 85 or Section 57 to Notaries appointed in India. The fact that notaries public of foreign countries have been recognised as proper authorities for due execution and authentication for purpose of section 85 of the Evidence Act is illustrated by the Supreme Court in case Jugraj Singh v. Jaswant Singh, (1971) 1 SCR 38 (1). In this case the Supreme Court held that a power of attorney executed and authenticated before a notary public of California satisfied the test of S. 85 of the Evidence Act and S. 33 of the Indian Registration Act. If the interpretation of notary public is limited to notaries public appointed in this country only, it will become impossible to carry on commerce with foreign countries. Surely, S. 57 of the Indian Evidence Act which enjoins upon the Courts to take judicial notice of seals of Notary Public, such judicial notice cannot be limited to Notaries appointed in India



only. It seems clear if the entire sub-section is read. Once, this conclusion is reached, there is no reason to limit the meaning of the expression “Notaries Public” in S. 85 of the Indian Evidence Act to Notaries appointed in India only.

11. In this view of the matter, it must be presumed that the power of attorney in favour of John Herbert Keeble was duly executed and authenticated. This presumption, like other presumptions is rebuttable, but, once, the original power of attorney bearing the signature and seal of the notary public is produced, which expressly confers the power on the attorney to institute suits, the burden immediately shifts to the defendants, who dispute the execution of such a power of attorney...”

(emphasis supplied)

10. In light of the above, in the present case the document is a valid special power of Attorney and the respondent has not placed any material before to rebut the presumption.
11. As regards the second objection of no notice under Section 21 of the Act is concerned, the petitioner has sent the legal notice at the address as available as per the Studio Apartment Purchase Agreement. It is stated that the petitioner came to know about the new address of the respondent later.
12. I am satisfied that the notice was sent to the address available of the respondent as per the Studio Apartment Purchase Agreement.
13. In ***Indiabulls Housing Finance Ltd. v. Jagdish Singh Negi, 2025 SCC OnLine Del 3668***, the Court has observed as under:



“8. Disputes having arisen, Petitioner invoked the Arbitration Clause and sent a notice dated 22.03.2024 to the Respondents proposing a list of independent Arbitrators through registered posts on the same day at the addresses provided by the Respondents in the Loan Agreement as also on the last known e-mail IDs. The notices were not served as candidly admitted by the Petitioner. In my view, learned counsel is right in his submission that in view of Section 3 of 1996 Act, once the notices were sent through various modes on the Respondents' last known addresses mentioned in the Loan Agreement through Speed Post as also through electronic mode on the last known e-mail IDs, which provide a record of an attempt to deliver, the notice is deemed to have been received. In this context, I may refer to passages from the judgment of this Court in G4S Secure Solutions (supra) as follows:—

“21. It is clear from the express language of Section 3 of the A&C Act that any written communication is deemed to have been received if it is delivered to the addressee personally or at his place of business, habitual residence address or mailing address. However, if none of the said places is found after making a reasonable inquiry, written communication is deemed to have been received if it is sent to the addressee's last known place of business, habitual residence or mailing address by a registered letter or by any means, which provide a record of an attempt to deliver.

22. In the present case, it is established that an attempt to deliver the notice dated 24-9-2018 was made at the petitioner's



address at 803, Ansal Bhawan, 16 KG Marg, New Delhi 110 001.

23. Even if it is accepted that the notice was not received by the petitioner at its registered office, it is established that an attempt to deliver was made at the address on which the notices were agreed to be delivered by the parties, in terms of the contract.

24. In *Shabnam Gulati v. Religare Finvest (P) Ltd.* [*Shabnam Gulati v. Religare Finvest (P) Ltd.* 2017 SCC OnLine Del 11656], this Court had explained the effect of Section 3 of the Act as under:

“18. Section 3(1) of the Arbitration and Conciliation Act, specifically states that a written communication is deemed to have been received if it is sent to the addressee's last known place of business, habitual address or mailing address by registered letter or by any other means which provides a record of ‘attempt to deliver it’. Therefore, unlike sub-rule (5) of Rule 9 of Order 5CPC requiring proof of acknowledgment or any other receipt of due delivery of the summons, or drawing of a presumption of due service only where the summons were properly addressed but the acknowledgement was lost or misled or for any other reason was not received by the court, under the Arbitration and Conciliation Act sending of notice by registered letter or by other means at last known place of business, habitual residence or mailing address which provides the record of ‘attempt to deliver it’.”



25. In view of the above, the contention that the present petition is not maintainable for want of notice under Section 21 of the A&C Act, cannot be accepted.”

14. Thus a perusal of the above judgment clearly shows that as per section 3(1) of the Act a written communication is deemed to have been received if it is sent to the addressee's last known place of business, habitual address or mailing address by registered letter or by any other means which provides a record of ‘attempt to deliver it’. The same was done by the petitioner in the present case.
15. The respondent has expressed its readiness and willingness to execute the conveyance deed upon the petitioner making the requisite payments, subject to the resolution of the disputes between the parties.
16. However, it appears that the petitioner may also have additional claims, including those relating to damages and compensation, which can be adjudicated only by an Arbitrator.
17. For the said reasons, the petition is allowed and disposed of with the following directions:
 - i) Mr. Prithish Sabharwal, Advocate (Mob. No. 9871878690, 7678296077) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
 - ii) The Arbitration will be held under the aegis and rules of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (hereinafter, referred to as the ‘DIAC’).
 - iii) The remuneration of the learned Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators’ Fees) Rules, 2018.
 - 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/counter-claims and 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 three weeks from today.

JASMEET SINGH, J

NOVEMBER 13, 2025/DM

(Corrected and released on 19.11.2025)