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

+ **ARB.P. 1920/2024**

SARANSH GUPTA & ANR.

.....Petitioners

Through: Mr. Kunal Tandon Senior Advocate,
Mr. Saurabh Dev Karan Singh, Mr.
Sanjay Shisodia, Mr. AKash Kumar,
Advocates

versus

ATUL CONSTRUCTION PRIVATE LIMITED & ORS.

.....Respondents

Through: Mr. Sanchit Garga, Advocate

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

15.01.2025

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1. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 by the Petitioner seeking appointment of an Arbitrator to adjudicate upon the disputes which have arisen between the parties under the Agreement to Sell dated 10.03.2022.

2. It is stated that the Petitioners and Respondent No.1 has entered into an Agreement for purchase of the entire freehold property bearing MPL No.XVI/10399 constructed on Plot No.1, admeasuring 435.3 sq. yards along with terrace rights as well as the super structure standing thereon. It is stated that Agreement to Sell dated 10.03.2022 has been entered into between the Petitioners and Respondent No.1. On 06.08.2023, Agreement to Sell dated 10.03.2022 was amended whereby an arbitration clause was added. It is



stated that in the memo of parties, the Petitioners have chosen to implead Respondents No.2 and 3. It is stated that the ground of the dispute is that the Respondents have not performed their side of obligations under the said Agreement to Sell and the recovery is being sought. It is stated that the Respondents No.2 and 3 has been impleaded as the guarantors.

3. Clause 17 of the Agreement to Sell dated 10.03.2022 as amended on 06.08.2023 contains an Arbitration Clause, which reads as under:-

“17. Any dispute or difference arising between the Parties as to the effect, validity or interpretation of this Agreement or as to their rights, duties or liabilities thereunder, failing amicable resolution through mutual negotiations within twenty (20) business days after a disputing Party has delivered to the other disputing Party a written request for such negotiations, shall be referred to and finally and conclusively settled by arbitration by sole arbitrator, to be appointed mutually by the Parties. The arbitration proceedings shall be held in accordance with the Arbitration and Conciliation Act, 1996 for the time being in force, which rules are deemed to be incorporated herein by reference. The decision of the arbitrators shall be final and binding upon the Parties. The venue of arbitration proceedings shall be at New Delhi. All arbitration proceedings shall be conducted in English.”

4. Notice in the petition was issued on 03.12.2024. Mr. Sanchit Garga, learned Counsel appears on behalf of Respondents No.1 to 3. He states that he will file his *vakalatnama* during the course of the day. Service is complete.

5. It is stated by learned Counsel for the Respondents that Respondents No.2 and 3 are not parties to the Agreement to Sell dated 10.03.2022.

6. Learned Counsel appearing for the Petitioners contends that



Respondents No.2 and 3 are the guarantors to the Agreement to Sell dated 10.03.2022 and they have also executed the said Agreement to Sell.

7. Heard the learned Counsels for the parties and perused the material on record.

8. This issue can be decided by the Arbitrator and the appropriate application under Order I Rule 10 CPC can be filed before the Arbitrator.

9. In view of the fact that Clause 17 of the Agreement to Sell dated 10.03.2022 as amended on 06.08.2023 contains an Arbitration Clause which states that the disputes arising between the parties shall be referred to the Arbitration and that the proceedings shall be conducted at New Delhi and the seat and venue of the Arbitrator shall be at New Delhi. In any event, the properties are at New Delhi, therefore the Courts at New Delhi shall have the jurisdiction to entertain the instant petition.

10. In view of the fact that disputes have arisen between the Parties and the Agreement to Sell dated 10.03.2022 contains an arbitration clause, this Court is inclined to appoint an Arbitrator to adjudicate upon the disputes between the Parties.

11. Accordingly, Mr. Manish K. Bishnoi, Advocate, (Mobile No.9811548007) is appointed as an Arbitrator to adjudicate upon the disputes between the Parties.

12. 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.

13. The learned Arbitrator is also requested to file the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on reference.



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 contentions of the parties.

16. The present petition stands disposed of in the above terms along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

JANUARY 15, 2025

RJ