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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
% ***Date of decision: 7<sup>th</sup> May, 2024***  
+ **ARB.P. 388/2024**

VIJAY MAHESHWARI

..... Petitioner

Through: Mr. Sahil Sethi and Mr. Vikash  
Kumar, Advocates.

versus

SPLENDOR BUILDWELL PRIVATE LIMITED & ANR.

..... Respondents

Through: Mr. Jeevesh Nagrath, Mr. Arjun Gaur,  
Mr. Vinod Kumar and Mr. Rajat  
Gupta, Advocates.

**CORAM:**  
**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

**J U D G M E N T (oral)**

**I.A. 10388/2024 (under Section 151 CPC filed by petitioner for early hearing)**

1. The application under Section 151 of the Code of Civil Procedure, 1908 has been filed on behalf of the petitioner for early hearing.
2. Learned counsel for the respondents submits that he has no objection if the date is preponed and the matter is taken up today.
3. In view of the submissions made, the matter is preponed and the main Petition is hereby taken up today for consideration.
4. The application is allowed and disposed of accordingly.



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5. A Petition under Section 11 of the Arbitration and Conciliation Act, 1996, has been filed on behalf of the petitioner for appointment of the Sole Arbitrator.

6. The facts as stated in the application are that the petitioner is being represented by her son, Mr. Varun Maheshwari, who is also a Power of Attorney Holder. The petitioner seeks appointment of Arbitration Tribunal for adjudication of disputes between the parties.

7. The petitioner has also filed a Petition under Section 9 of the Arbitration and Conciliation Act, bearing OMP (I) COMM. 42/2024 seeking urgent ad-interim order restraining respondent No. 1 from creating third party rights on the units bearing Nos. 410, 411 and 412 (*hereinafter referred to as 'suit properties'*) admeasuring 3114 Sq. Feet of Super Area on Fourth Floor of Tower South under name and style of 'Splendor Spectrum one' at Sector-65, Gurgaon (*hereinafter referred to as 'the Project'*).

8. The respondent No. 1, Splendor Buildwell Private Limited is a Company incorporated under the provisions of the Company Act, 1956, with its Registered Office situated at Splendor Forum, Fifth Floor, Plot No. 3, Jasola District Centre, New Delhi-25. The Company is engaged in real estate activities, encompassing the buying, selling, renting and operation of self-owned or leased real estate.

9. This Court *vide* Order dated 01.02.2024 granted interim Order to the petitioner stating that the respondents shall not create any third party rights. The petitioner paid an amount of Rs.77,85,000/- for allotment of the subject Units in the Project.

10. The respondent No. 2, Ishayu Builders and Developers Private



Limited is a Company incorporated under the provisions of the Companies Act, 1956 having its registered Office at Unit No. 131, Splendor Forum, 5<sup>th</sup> Floor, District Centre, Jasola, New Delhi-25.

11. The respondent No. 2 is the owner of the land 6.775 Acres situated in Sector 58 in the revenue estate of Village Behrampur, Tehsil Sohna and District Gurgaon, Haryana (hereinafter referred to as 'said land'. The Director, Town & Country Planning, Haryana (hereinafter referred to as 'DTCP') had granted license no. 82 of 2010 dated 12.10.2010 (*hereinafter referred to as 'said license'*) to respondent No. 2 for development of an IT/Cyber Park colony on the said land. In pursuance of the above License, the respondent No. 2 had decided to construct and develop the Cyber/IT Park colony on the said land.

12. The respondent No. 1 developed and constructed South Tower B & North Tower D on land measuring 1.7457 Acres out of the net planned area consisting of IT Office Spaces (*hereinafter referred to as 'the Complex'*) under name and style of 'Splendor Spectrum one'.

13. The petitioner paid an amount of Rs.77,85,000/- for allotment of subject property at the said project. Thereafter, the petitioner entered into three identical Tripartite Agreement for sale (hereinafter referred to as the 'agreements') dated 05.03.2020 with the respondents.

14. The respondent No. 1 issued an allotment letter dated 05.03.2020 to the petitioner for the said Units.

15. It is claimed that the respondent No. 1 on one pretext or other has been running away from its contractual objections to execute and register the conveyance deeds in favour of the petitioner.

16. The petitioner is entitled to possession and conveyance of the Units.



Hence, petitioner sent a Notice of Arbitration dated 25.01.2024 to the respondents reiterating the legitimate demands and in the alternate seeking initiation of arbitration. It is further submitted that the Clause 12 of the Agreements dated 05.03.2020 provide appointment of the sole arbitrator to be appointed by the Chairman of the respondent No. 1 Company but such unilateral appointment of an arbitrator is *non est* in law. Therefore, the appointment of sole arbitrator by respondent No. 1 Company would not stand. The Arbitration Clause as provided in the alleged Agreement itself has become ineffective, inoperative and invalid in law in view of the amended provisions of the Act. Reliance has been placed on *City Lifeline Travels Private Limited vs. Delhi Jal Board*, 2021 SCC OnLine Del 3526.

17. The petitioner sent an email dated 25.01.2024. However, the respondents failed to reply the same and hence, the petitioner has filed the Petition seeking appointment of an Arbitrator.

18. Learned counsel on behalf of the respondents has submitted that the various objections have been taken in the reply, which has been filed on behalf of the respondents. It is submitted that without prejudice to all the objections to the present Petition, the Arbitrator may be appointed leaving the liberty with the respondents, to raise these objections before the learned Arbitrator.

19. **Submissions heard.**

20. Considering that there is a valid Arbitration Agreement between the parties and in the light of the facts and discussions, Mr. Anant Palli, Senior Advocate, Mobile No. 9810199102, is hereby appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

21. The parties are at liberty to raise their respective objections before the



Arbitrator.

22. This is subject to the Arbitrator making necessary disclosure as under Section 12(1) of A&C Act, 1996 and not being ineligible under Section 12(5) of the A&C Act, 1996.

23. The appointment of the Arbitrator shall be governed by the rules framed by the DIAC including the fees and the disclosure to be made by the learned Arbitrator in conformity of Section 12 of the Arbitration and Conciliation Act, 1996.

24. Learned counsels for the parties are directed to contact the learned Arbitrator within one week of being communicated a copy of this Order to them by the Registry.

25. A copy of this Order be also forwarded to the learned Arbitrator, for information.

26. The petition along with pending application is accordingly disposed of in the above terms.

27. The petition is allowed.

28. The date fixed i.e. 24.07.2024 stands cancelled.

**NEENA BANSAL KRISHNA, J**

**MAY 7, 2024/RS**