

Nitin Garg and Others Vs. M/S Designarch Infrastructure Pvt Ltd

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Court : Delhi

Decided On : Apr-02-2013

Judge : Manmohan Singh

Appellant : Nitin Garg and Others

Respondent : M/S Designarch Infrastructure Pvt Ltd

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Judgment Pronounced on: April 02, 2013 + OMP No.50/2013 NITIN GARG AND OTHERSPetitioners Through: Ms. Sundeepa Kumar Pal, Adv. versus M/S DESIGNARCH INFRASTRUCTURE PVT LTDRespondent Through None. CORAM: HON'BLE MR. JUSTICE MANMOHAN SINGH MANMOHAN SINGH, J.

1. The petitioners have filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act) challenging the order dated 2nd November, 2012 of sole Arbitrator Justice K.S. Gupta (Retd.), who disposed of an application under Section 16 of the Act filed by the petitioners upholding the jurisdiction of the Tribunal on the ground that the flat buyers agreement shall not come to an end and arbitration clause 42 will not be wiped out even after the execution of the sale deeds.

2. Brief facts of the petition are that the respondent company developed a group housing complex known as Designarch Gardenia Homes Group Housing Complex, Plot No. GH-6, Vaishali, Ghaziabad, UP which considered of two

complex with 124 number of dwelling units and some commercial units.

3. The petitioners entered into a flat buyer agreement dated 12th February, 2008 with the respondent for purchase of a dwelling unit bearing flat No. L-502, 5th Floor, Type Elegant, Labernum Tower in the said complex with super area of 2480 sq. feet @Rs. 2580.64/- per sq. feet excluding the cost of parking. The respondent agreed to give special discount of Rs. 80,320/- to the petitioners on the actual sale consideration subject to certain assurances made by the petitioners.

4. The petitioners also entered into a maintenance agreement dated 3rd July, 2009 with the respondent. The petitioners state that upon execution of the sale agreement the petitioners asked the respondent to provide some rich specifications in the said flat such as OBD on walls, polish on ceiling, door shutter, UPVC door & window etc. The petitioners submit that these rich specifications were in addition to the agreed specifications as mentioned in the agreement dated 12th February, 2008. Total amount of `1,17,861/- have been incurred additionally on such rich specifications.

5. The petitioners submit that on their request the respondent spent a sum of `55,976/- on additional common area facilities which were in addition to the commitment of claim made under the agreement. The petitioners further state that they asked the respondent to deliver possession of the allotted flat before the due date of possession. The respondent was asked to generate `7,97,500/- in furnishing the flat on priority basis. Contractors worked on day-night basis and extra amount was paid to them.

6. The petitioners also state that the respondent paid work contract tax to the contractors which as per the flat buyer agreement is payable by the petitioners in addition to the price paid. The petitioners state that in the sale deed dated 3rd July, 2009 the terms & conditions of aforesaid agreement dated 12th February, 2008 were incorporated as part and parcel of the sale deed. Thereafter, the petitioners state that they filed complaints before the District Redressal Forum, Ghaziabad in October, 2011 reporting unfair trade practice and deficiency of services seeking compensation and direction to the respondent.

7. The petitioners preferred an application under Section 16 of the Act raising questions on the very maintainability of the present arbitration proceeding and jurisdiction of the valid arbitration agreement concerning the said purported dispute raised by the respondent or at all. The Sole Tribunal heard the arguments and dismissed the application under Section 16 Act filed by the petitioners.

8. The contention of the petitioners is that the works claimed by the respondent were never executed and the claims made by the respondent were beyond the scope of the allotment agreement. The arbitration clause invoked by the respondent is a counter blast as the petitioners were seeking compensation by issuing complaints against the respondent. The respondent issued the notices in order to pressurize the petitioners to withdraw the complaints. Since the petitioners continued with the complaints, the respondent claimed monetary claims for work by invoking arbitration clause.

9. As already stated that the petitioners in their application under Section 16 of the Act raised questions, inter alia, on the maintainability of the arbitration proceedings and jurisdiction of the learned Arbitrator on the ground that there is no existence of a valid arbitration agreement concerning the dispute raised by the applicant. It is the admitted position that statement of claim in the matter has already been filed by the respondent. The sole Arbitrator has dealt with each and every objection raised by the petitioners in their application under Section 16 of the Act and held that the Arbitrator has got the jurisdiction to adjudicate the dispute between the parties. The details given by the learned Sole Arbitrator read as under: Though the allotment letter and allotment agreement were executed at different stage, are part and parcel of the same transaction and flat buyer agreement regulates the rights and liabilities qua the allotted flat. Both these documents form part of the sale deed. The flat buyer agreement which regulate the rights and liabilities in regard to allotment and transfer of flats, would not come to an end and arbitration clause 42 will not be wiped out on execution of sale deed. The Arbitration Clause is wide enough to cover the claims made. Claim seems to have been made within three years of the execution of the sale deed and serving the legal notice. To be only noted that the said recital about there being no amount due from the buyers in the sale deeds may make the right to get further amount weakened but the claim

subsist and entitlement to further payment is arbitrable. Clause 2(9) of the flat buyers agreement speaks of the liability of the flat buyer to compensate for the works contract tax which is one of the item.

10. After hearing the learned counsel for the petitioners as well as reasons given by the Sole Arbitrator, I find that there is no force in the petition as the petition under Section 34 Act is not maintainable against the disposal of application under Section 16 of the Act filed by the petitioners. OMP No.50/2013 present petition or in the application filed by them before the learned Sole Arbitrator, the petitioners are at liberty to raise the same after rendering of the award by the sole Arbitrator if such a situation arises. As far as present petition is concerned, the same is not maintainable and is dismissed. No order as to costs. (MANMOHAN SINGH)
JUDGE APRIL 02 2013

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