
(2013) 04 DEL CK 0166
In the Delhi High Court
Case No : Arb.P. No. 245 of 2012

Sanjay Kumar Singh and Another	Vs	APPELLANT
Cosmos Infra Engineering (India) Ltd.		RESPONDENT

Date of Decision : 26-04-2013

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11(5)

Citation : (2013) 04 DEL CK 0166

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Puran Chand, for the Appellant; Vikas Tomar, for the Respondent

Final Decision : Disposed Off

Judgement

Manmohan Singh, J.—Two petitioners, namely, Sanjay Kumar Singh and Rita Singh have filed the present petition u/s 11(5) of the Arbitration and Conciliation Act, 1996 against the respondent, M/s. Cosmos Infra Engineering (India) Ltd. for appointment of an Arbitrator in view of the Agreement of Sub Lease dated 28th March, 2011 signed by the parties for allotment of residential unit. As per Article 3 of the agreement, the basic sale price of the unit payable was fixed as Rs. 18,97,500/- @ Rs. 1650/- per sq.ft. The petitioners have made the payment of Rs. 2 lacs for the purchase of a residential unit No. 02/S.F./Jasmine Floors, 2nd Floor, Two Bedrooms, comprising of 1150 sq.ft. area allotted to the petitioners. An installment notice dated 7th June, 2011 was issued to the petitioners delivered on 15th June, 2011 directing them to pay an amount of Rs. 13,72,582/-. The petitioners approached the Bank for sanctioning of the amount for making payment towards the allotted residential unit. Since the sanctioned amount was less, the petitioners requested the Bank to sanction more amount and in the said process, the Bank took some time in getting an amount of Rs. 20 lac sanctioned vide sanction letter dated 13th December, 2011. In the meanwhile, another installment notice dated 6th December, 2011 was received by the petitioners whereby demand was made by the respondent to the tune of

Rs. 15,27,875/-. Later on, it came to the notice of the petitioners that the residential unit allotted to them was cancelled and allotted to one Mr. Kuldeep Singh Yadav in May, 2011 itself, though simultaneously demand notices were served upon the petitioners on 7th June, 2011 and 6th December, 2011. Allotting the residential unit of the petitioners to the third party without their knowledge is violative of the terms and conditions of the agreement of sub lease. The petitioners left with no option but to issue a notice dated 31st January, 2012 upon the respondent who in its reply dated 10th February, 2012 denied the claim of the petitioners and instead claimed a sum of Rs. 84,500/- against the petitioners giving rise to further disputes. The petitioners served another legal notice dated 2nd March, 2012 invoking the clause of arbitration. However, no agreement could be arrived at in this regard. Hence, the present petition.

2. Learned counsel for the respondent has informed the Court that the respondent is prepared to return back Rs. 2 lacs to the petitioners as deposited by them, but the learned counsel for the petitioners is not agreeable to accept the said amount offered by the respondent. The petitioners are insisting for the prayer made in the present petition.

3. Learned counsel for the respondent has only argued that the agreement between the parties has been terminated by the respondent due to non-payment of money by the petitioners. Thus, as on date, there is no arbitration agreement existing between the parties. There is also no live dispute between the parties. Therefore, the petition is liable to be dismissed.

4. It is not denied by the learned counsel for the respondent that the residential unit allotted to the petitioners was cancelled and further allotted to one Mr. Kuldeep Singh Yadav in May, 2011 and even thereafter, the payment notices were issued by the respondent having been served upon the petitioners on 7th June, 2011 and 6th December, 2011. There is also no explanation given by the respondent for the residential unit allotted to the third party without giving any prior notice to the petitioners. Therefore, it is clear that the disputes exist between the parties. It is an undisputed fact that the agreement of sub-lease dated 28th March, 2011 contains the arbitration clause and before filing the present petition, the respondent was called upon to allot the residential unit, otherwise as per the agreement, the disputes and differences are to be referable to the sole Arbitrator.

5. Under these circumstances, the prayer of this petition is allowed. Ms. Tara V. Ganju, Advocate (Mob. No. 9810076224) is appointed as a sole Arbitrator to adjudicate all the disputes and differences between the parties arising out of the Agreement of Sub Lease dated 28th March, 2011 as mentioned in this petition, including their claims and counter-claims. The Arbitrator shall conduct the proceedings under the provisions of the Arbitration and Conciliation Act, 1996 and shall give prior notice before commencing the proceedings. Total fee of the learned Arbitrator shall be payable to the tune of Rs. 50,000/- which shall be borne by both the parties in equal proportion.

6. The petition is accordingly disposed of. A copy of this order be communicated to the learned Arbitrator. Copies of the same be also given dasti to the learned counsels for the parties.