



**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**
(109)

ARB-278-2019 (O&M)
Date of decision:- 17.05.2024

M/s Imperial Holiday Homes Ltd.

... Petitioner

Versus

**Haryana State Industrial and Infrastructure Development Corporation
Ltd. and another**

... Respondents

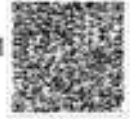
CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. V.M.Gupta, Advocate and
Mr. Nakashvir Singh Aulakh, Advocate for the petitioner

Mr. Vishal Garg, Advocate for the respondents.

SUVIR SEHGAL, J. (ORAL)

1. By way of instant petition filed under Section 11 (5) & (6) of the Arbitration and Conciliation Act, 1996 (for short "the Act"), petitioner has approached this Court for appointment of an Arbitrator.
2. Counsel for the petitioner submits that an allotment letter dated 17.08.2007, Annexure P-1, was issued, whereby petitioner was allotted a site for developing double storeyed shop in Convenience Shopping Complex in Sector 4, IMT Manesar. He submits that Clause 18 of the allotment letter provides for the resolution of dispute through the medium of arbitration. He submits that petitioner paid 25% of the price, but as the possession was not handed over, petitioner applied for refund and after making some deductions, the amount was refunded. He submits that as a dispute arose between the parties, petitioner served a notice dated 14.12.2009, Annexure P-5, invoking the Arbitration Clause and Sh.



R.P.Gupta, Company Secretary, who was working with the respondents, was appointed as an Arbitrator. Counsel submits that the petitioner filed a statement of claim before the Arbitrator. However, vide letter dated 01.01.2014, Annexure P-7, the respondents appointed the Director of Industries & Commerce, Haryana as an Arbitrator and requested Mr. Gupta to transfer the proceedings with him. He submits that the Director recused from the proceedings and by letter dated 05.03.2015, Annexure P-8, Mr. Ashwani Kumar Gupta, Additional Director, Industries & Commerce, Haryana was appointed as an Arbitrator. Counsel submits that the petitioner objected to his appointment, moved application under Section 16 of the Act and by order dated 05.08.2019, Annexure P-9, the learned Arbitrator came to the conclusion that his appointment was not in conformity with Clause 18 of the allotment letter. Counsel submits that thereafter a legal notice dated 13.08.2019, Annexure P-10, was issued for appointment of an Arbitrator to which there is no response.

3. Upon notice by this Court, respondents have filed a reply. Opposing the petition, it has been submitted that they have challenged the order dated 05.08.2019, Annexure P-9, passed by the Arbitrator by filing an appeal before the District Court at Chandigarh, which is pending.

4. I have heard counsel for the parties and considered their respective submissions.

5. Mere pendency of the appeal filed by the respondents cannot be a bar to the appointment of an Arbitrator by this Court. The objective of the Act is expectations resolution of disputes through arbitration or conciliation and to make the process as efficient as possible. Awaiting the decision of



the appeal would further delay the arbitration proceedings, which commenced in December, 2009, with service of notice, Annexure P-5, whereby arbitration clause was invoked. This Court is, therefore, of the view that the prayer made in the petition deserves to be acceded to.

6. Resultantly, petition is allowed. Ms. Justice (Retd.) Jaishree Thakur, a former Judge of this Court, resident of Kothi No.36, Sector 8, Chandigarh, Mobile No.8558809950 is requested to act as an Arbitrator to adjudicate the dispute between the parties, subject to compliance of statutory provisions. Ld. Arbitrator would take over from the stage arrived at by the previous Arbitrator.

7. Parties are directed to appear before the learned Arbitrator on date, time and place to be fixed by her at her convenience.

8. Liberty is granted to the parties to raise all claims, counter claims, defences, pleas etc. before the Arbitrator.

9. Needless to mention that all the questions arising between the parties in this matter shall remain open for determination in the arbitral proceedings and any observation made hereinabove will not be binding on the learned Arbitrator.

10. A request letter alongwith a copy of the order be sent to Ms. Justice (Retd.) Jaishree Thakur.

11. Pending application, if any, stands disposed of.

17.05.2024

Kamal

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No