



2026:DHC:8784



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

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CNR No. DLHC010082202024

+ **FAO 60/2024**

M/S RISE PROJECTS PRIVATE LIMITEDAppellant

Through: Mr. Debesh Panta, Mr. Vinay
Kumar Dubey, and
Mr. Aryaman Tomar, Advocates

versus

REENA SHARMARespondent

Through: Mr. Gaurav Kaushik and Ms.
Tammana, Advocates

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal has been preferred under Section 37(1)(a) of the Arbitration and Conciliation Act, 1996 (hereinafter the "Arbitration Act") challenging the order dated 15.12.2023 passed by the learned Additional District Judge-01, *Shahdara* District, *Karkardooma* Courts, in Civil Suit No. 347/2018.

Vide the impugned order, the Trial Court dismissed an application filed by the appellant under Section 8 read with Section 5 of the Arbitration Act seeking reference of the parties to arbitration.

FACTUAL MATRIX

2. The appellant is a private limited company engaged in the



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business of real estate development. The appellant was developing a residential group housing project under the name and style of ‘Rise Skybungalows’ situated at *Plot No. GH-02, Sector-41, Faridabad, Haryana*, which had been allotted to the appellant by the Municipal Corporation of *Faridabad* by way of Allotment Letter dated 12.04.2013.

3. Persuaded by the advertisements published in newspapers for ‘Clarks Residences’ located within the said project, the respondent applied *vide* application dated 17.04.2014 for registration and allotment of a residential studio apartment serviced by the Clarks Inn Group of Hotels.

4. Pursuant to the said application, an Allotment Letter-cum-Agreement dated 28.05.2014 (hereinafter the “Allotment Letter”) came to be executed between the parties. Under this agreement, apartment no. F-606 on the 6th Floor in Tower F, having a super area of 585 sq. ft. (corresponding built-up area of 404 sq. ft.), was allotted to the respondent for a total consideration of Rs.58,79,250/-, exclusive of taxes.

5. The Allotment Letter incorporated an arbitration clause under the heading “Applicable Laws and Jurisdiction”, which reads as follows:

“All or any dispute arising out of or touching upon or in relation to the terms of this Allotment Letter cum Agreement including the interpretation and validity thereof and the respective rights and obligations of the parties shall be settled amicably by mutual discussion failing which the same shall be settled through Arbitration. The Arbitration proceedings shall be governed by the Arbitration and Conciliation Act 1996 or any statutory amendments, modification thereof for the time being in force. The Arbitration proceedings shall be held in New Delhi by a sole Arbitrator to be



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appointed by the RPPL. The Allottee(s) hereby confirms that he/she/they shall have no objection to this appointment even if the person so appointed, as Arbitrator is an employee or advocate of the RPPL or is otherwise connected to the RPPL and the Allottee(s) confirms that notwithstanding such relationship/connection, the Allottee(s) shall have no doubts as to the independence or impartiality of the said Arbitrator. The Courts at New Delhi shall alone have the jurisdiction in all matters arising out of/touching and/or concerning this Agreement regardless of the place of execution of this agreement.”

6. Simultaneously, on the very same day, i.e. 28.05.2014, the parties executed another agreement titled “Agreement of Monthly Investment Return Assurance” (hereinafter the “Assurance Agreement”). Under this agreement, the appellant undertook to pay an assured return of Rs.3,51,040/- per annum on the total sales value received, payable on a monthly basis after deducting tax at source, with effect from the date of receipt of the second instalment until the offer of possession.

7. The Assurance Agreement contained the following three clauses that are relevant to the present matter:

“1. That the terms of this Agreement shall where applicable or in conflict be read to supersede the terms of ALLOTMENT LETTER CUM AGREEMENT Dated 28.05.2014.

xxx xxx xxx

6. *In case any of the Parties hereto infringes any of the terms and conditions of this Agreement, then the other Party shall be entitled to get this transaction enforced through the Court of law by Specific Performance of the Contract, at the cost and expenses of the defaulting Party.*

xxx xxx xxx

16. *This transaction has taken place at New Delhi and as such Courts at New Delhi shall have exclusive jurisdiction to entertain any dispute arising out of or in any way touching or concerning this Agreement.”*

8. Between 2014 and 2016, the respondent made payments



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towards the apartment in instalments in terms of the agreed payment plan. In total, the appellant received a sum of Rs.58,50,006/- towards the sale consideration and Rs.1,88,552/- towards service tax, aggregating to Rs.60,38,558/-.

9. The appellant paid the assured monthly returns to the respondent up to the month of May 2017. Thereafter, the monthly payments were discontinued. On 25.08.2017, the appellant sent a letter to the respondent stating that the Municipal Corporation of *Faridabad* had failed to provide external and internal development works, such as approach roads, water supply, sewage disposal lines, and electrification, which according to the appellant constituted a *force majeure* condition that prevented it from continuing payments.

10. The respondent served a legal notice dated 01.02.2018 upon the appellant calling upon it to clear the outstanding assured returns. On the appellant's failure to do so, on 12.04.2018, the respondent instituted the underlying civil suit against the appellant for recovery of Rs.66,82,058/- along with *pendente lite* and future interest at the rate of 15% per annum.

11. Following the issuance of summons in the suit, in February 2019, prior to filing its written statement on the substance of the dispute, the appellant moved an application under Section 8 read with Section 5 of the Arbitration Act, praying that the suit be dismissed and the dispute be referred to arbitration in terms of the arbitration clause contained in the Allotment Letter dated 28.05.2014.

12. The respondent contested the said application and contended that the application was not maintainable because the arbitration clause



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in the Allotment Letter stood superseded by the subsequent Monthly Investment Return Assurance Agreement executed by the parties. The respondent relied upon Clause 1 of the Assurance Agreement, which provided that its terms would supersede the Allotment Letter in case of conflict. It further relied on Clause 16, which conferred exclusive jurisdiction on the Courts at *New Delhi*, in the case of any dispute without referring to any recourse to arbitration.

13. The Trial Court dismissed the subject application under Section 8 read with Section 5 of the Arbitration Act *vide* the impugned order dated 15.12.2023. The findings rendered by the Trial Court in the impugned order are reproduced below:

“I have considered the submissions made before the court.

Both the agreements i.e. allotment letter cum agreement and agreement of monthly investment return assurance have been issued by the defendant company in favour of the plaintiff and the clause 1 of agreement of monthly investment return assurance clearly stipulates that '1. That the terms of this agreement shall where applicable or in conflict be read to supersede the terms of allotment letter cum agreement dated 28.05.2014'. All the terms and conditions of both the agreements were prepared by the defendant and the defendant itself supersedes the terms and conditions of allotment letter cum agreement dated 28.05.2014 by clause 1 of agreement of monthly investment return assurance and now by way of present application the defendant intends to refer the matter before Arbitrator in view of arbitration clause of allotment letter cum agreement dt. 28.05.2014. The defendant cannot take sweets in its both hands. Once the terms and conditions of the monthly investment return assurance agreement dated 28.05.2014 supersedes the terms and conditions of the allotment letter cum agreement and the clause 16 of the monthly investment return assurance agreement dated 28.05.2014 clearly says that the jurisdiction to entertain the dispute shall be of Delhi's court, therefore, the terms and conditions of allotment letter cum agreement dt. 28.05.2014 qua arbitration clause has no legal sanctity. Therefore, this court is of the opinion that this court has the jurisdiction to adjudicate the present suit. It seems that the defendant has filed the present application just to delay the disposal of this case. Keeping in view this clause of



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agreement of monthly investment return assurance the application of the defendant is liable to be dismissed outrightly with cost. However, I am refraining myself from imposing cost upon the defendant.

Judgments referred by ld. Counsel for defendant have no application to the present case.

Application is disposed off accordingly.”

SUBMISSIONS OF THE PARTIES

14. Learned counsel for the appellant submitted that the Trial Court committed a serious error in undertaking an elaborate inquiry at the Section 8 stage. It was contended that the primary relief claimed in the plaint is the refund of Rs.60,38,558/- paid towards the cost of apartment under the Allotment Letter, which admittedly contains an arbitration clause. Learned counsel placed reliance on the decisions of the Supreme Court in In Re: Interplay between Arbitration Agreements under the Arbitration and Conciliation Act 1996 and the Indian Stamp Act 1899¹ and SBI General Insurance Co. Ltd. Vs. Krish Spinning² to submit that the scope of inquiry at the Section 8 stage by a judicial authority before which an action is brought, is very limited.

15. On the other hand, learned counsel for the respondent supported the impugned order and submitted that both agreements were prepared by the appellant. In other terms, the respondent intends to contend that the aforesaid would attract the *contra proferentem* rule.

It was further argued that Clause 1 of the Assurance Agreement clearly provides that its terms supersede those of the Allotment Letter in case of any conflict, and Clause 16 vests jurisdiction in the Courts at *New Delhi*.

¹ 2023 SCC OnLine SC 1666

² 2024 SCC OnLine SC 1754



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ANALYSIS

16. The statutory mandate under Section 8 of the Arbitration Act obliges a judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement to refer the parties to arbitration, unless it finds that *prima facie* no valid arbitration agreement exists. Section 5 of the Arbitration Act reinforces this principle by limiting judicial intervention in matters governed by Part I of the Arbitration Act to situations specifically provided under the statute. Before proceeding any further, it may be apposite to review a few landmark decisions on the subject.

17. In Vidya Drolia & Ors. Vs. Durga Trading Corporation³, the three-Judge Bench of the Supreme Court held that, where contentions regarding non-arbitrability are arguable, the Court should ordinarily refer the matter and should not undertake a mini-trial or an elaborate review. It was further observed that, following the 2015 amendment, judicial interference at the reference stage has been substantially curtailed. The pro-arbitration approach is further reflected in the Supreme Court's conclusion that "*when in doubt, do refer*". The relevant extracts from the said decision are reproduced hereunder:

"154.3. The general rule and principle, in view of the legislative mandate clear from Act 3 of 2016 and Act 33 of 2019, and the principle of severability and competence-competence, is that the Arbitral Tribunal is the preferred first authority to determine and decide all questions of non-arbitrability. The court has been conferred power of "second look" on aspects of non-arbitrability post the award in terms of sub-clauses (i), (ii) or (iv) of Section 34(2)(a) or sub-clause (i) of Section 34(2)(b) of the Arbitration Act.

154.4. Rarely as a demurrer the court may interfere at Section 8 or 11 stage when it is manifestly and ex facie certain that

³ (2021) 2 SCC 1



the arbitration agreement is non-existent, invalid or the disputes are non-arbitrable, though the nature and facet of non-arbitrability would, to some extent, determine the level and nature of judicial scrutiny. The restricted and limited review is to check and protect parties from being forced to arbitrate when the matter is demonstrably “non-arbitrable” and to cut off the deadwood. The court by default would refer the matter when contentions relating to non-arbitrability are plainly arguable; when consideration in summary proceedings would be insufficient and inconclusive; when facts are contested; when the party opposing arbitration adopts delaying tactics or impairs conduct of arbitration proceedings. This is not the stage for the court to enter into a mini trial or elaborate review so as to usurp the jurisdiction of the Arbitral Tribunal but to affirm and uphold integrity and efficacy of arbitration as an alternative dispute resolution mechanism.

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225.2. Post the 2015 Amendment, judicial interference at the reference stage has been substantially curtailed.

xxx xxx xxx

244.4. The court should refer a matter if the validity of the arbitration agreement cannot be determined on a prima facie basis, as laid down above i.e. “when in doubt, do refer”.

(emphasis supplied)

18. The Seven-Judge Constitution Bench of the Supreme Court in In Re: Interplay (*supra*), while examining the scope of Sections 8 and 11 of the Arbitration Act, reiterated the following observations, which further reflect the preference for greater arbitral autonomy and minimal judicial interference:-

“164. The 2015 Amendment Act has laid down different parameters for judicial review under Section 8 and Section 11. Where Section 8 requires the Referral Court to look into the prima facie existence of a valid arbitration agreement, Section 11 confines the Court's jurisdiction to the examination of the existence of an arbitration agreement. Although the object and purpose behind both Sections 8 and 11 is to compel parties to abide by their contractual understanding, the scope of power of the Referral Courts under the said provisions is intended to be different. The same is also evident from the fact that Section 37 of the Arbitration Act allows an appeal from the order of an Arbitral Tribunal refusing to refer the parties to arbitration under Section 8, but not from Section 11. Thus, the 2015



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Amendment Act has legislatively overruled the dictum of *Patel Engg.¹²⁹ where it was held that Section 8 and Section 11 are complementary in nature. Accordingly, the two provisions cannot be read as laying down a similar standard.

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166. *The burden of proving the existence of arbitration agreement generally lies on the party seeking to rely on such agreement. In jurisdictions such as India, which accept the doctrine of competence-competence, only prima facie proof of the existence of an arbitration agreement must be adduced before the Referral Court. The Referral Court is not the appropriate forum to conduct a mini-trial by allowing the parties to adduce the evidence in regard to the existence or validity of an arbitration agreement. The determination of the existence and validity of an arbitration agreement on the basis of evidence ought to be left to the Arbitral Tribunal. This position of law can also be gauged from the plain language of the statute.”*

(emphasis supplied)

19. In *Krish Spinning (supra)*, the Supreme Court, while examining the scope of judicial inquiry at the stage of reference under Sections 8 and 11 of the Arbitration Act, reiterated the significance of the doctrine of competence-competence embodied in Section 16 of the Arbitration Act, which empowers the arbitral tribunal to determine the extent of its own jurisdiction. In this context, the Supreme Court made the following observations:

“101. What follows from the negative facet of arbitral autonomy when applied in the context of Section 16 is that the national courts are prohibited from interfering in matters pertaining to the jurisdiction of the Arbitral Tribunal, as exclusive jurisdiction on those aspects vests with the Arbitral Tribunal. The legislative mandate of prima facie determination at the stage of Sections 8 and 11, respectively, ensures that the Referral Courts do not end up venturing into what is intended by the legislature to be the exclusive domain of the Arbitral Tribunal.

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104. Section 16 of the 1996 Act recognises the doctrine of competence-competence and empowers the Arbitral Tribunal to rule on its own jurisdiction. The policy consideration for the same is,



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firstly, to recognise the intention of the parties in choosing arbitration as the method for resolving the disputes arising out of the contract and secondly, to prevent the parties from initiating parallel proceedings before courts and delaying the arbitral process.

105. The negative aspect of competence-competence is aimed at restricting the interference of the courts at the referral stage by preventing the courts from examining the issues pertaining to the jurisdiction of the Arbitral Tribunal before the Arbitral Tribunal itself has had the opportunity to entertain them. The courts are allowed to review the decision of the Arbitral Tribunal at a later stage.”

(emphasis supplied)

20. Adverting to the facts of the present case, a perusal of the reliefs claimed in the underlying civil suit reveals that the respondent has, in substance, sought cancellation of the allotment and refund of the amounts paid towards the apartment. The principal relief claimed by the respondent is the refund of Rs.60,38,558/-, comprising the sale consideration and service tax paid towards the allotment of an apartment in the appellant’s housing project. This claim arises directly out of the Allotment Letter dated 28.05.2014, which undisputedly contains an arbitration clause under the heading “Applicable Laws and Jurisdiction”. The remaining claim of Rs.6,43,500/- pertains to the committed monthly investment returns for the period from June 2017 to April 2018 and is more in the nature of consequential damages.

21. The Trial Court, instead of examining the subject application under Section 8 read with Section 5 of the Arbitration Act keeping in view the limited scope of inquiry at the referral stage, entered into an extensive and unnecessary inquiry regarding the contractual interplay and alleged supersession between the two documents concerned and, on that basis, concluded that the arbitration clause contained in the



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Allotment Letter had “no legal sanctity”.

22. Such a conclusive inquiry was not warranted at the stage of considering the subject application under Section 8 read with Section 5 of the Arbitration Act. The Court was only required to determine whether the dispute raised in the suit was *prima facie* covered by an arbitration agreement. The principal dispute raised by the respondent being founded upon the Allotment Letter, which contains an express arbitration clause, the parties were liable to be referred to arbitration.

23. The impugned order, therefore, cannot be sustained.

CONCLUSION & DIRECTIONS.

24. Considering all the aforesaid, the present appeal is allowed and the impugned order is set aside.

25. The subject application filed by the appellant under Section 8 read with Section 5 of the Arbitration Act is allowed and the parties are referred to arbitration. The Arbitrator shall be appointed by the parties in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

26. It is clarified that all substantive contentions on the merits of the disputes are left open to be urged before and determined by the Arbitral Tribunal, which shall decide each issue uninfluenced by the observations contained in the present judgment.

(MANOJ KUMAR OHRI)
JUDGE

OCTOBER 01, 2026

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