



2025:DHC:5057-DB



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

Reserved on: 17.04.2025

Pronounced on: 01.07.2025

+ **FAO(OS) 128/2024 & CM APPLs. 53423-24/2024**

RAHEJA DEVELOPERS LTD.Appellant
Through: Mr.Yogendra Misra, Mr.
Gurtejpal Singh & Mr. Jai
Dogra, Advs.

versus

DEEPA CHAWLARespondent
Through: Mr.Arun Vohra, Adv.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE RENU BHATNAGAR

J U D G M E N T

NAVIN CHAWLA, J.

1. This appeal has been filed by the appellant, challenging the Order dated 01.07.2024 (hereinafter referred to as the 'Impugned Order') passed by the learned Single Judge of this Court in I.A. 24812/2013 in CS(OS) 416/2023, titled *Deepa Chawla v. Raheja Developers Ltd.*, whereby, the learned Single Judge was pleased to dismiss the said application filed by the appellant under Section 8 of the Arbitration and Conciliation Act, 1996 (in short, 'A&C Act').



Brief Facts

2. The respondent herein filed the abovesaid Suit for recovery, praying for the following reliefs:

“(a) pass a decree for Rs.4,55,45,1824 (Rs.1,72,00,000/being the balance Principal amount plus Rs.1,59,81,304 on account of Interest @24% p.a. w.e.f. 20.07.2019 plus Rs.64,00,000/ towards the assured return for which the cheques were dishonoured plus Rs.59,63,8784 on account of Interest @24% p.a. we.f. June 2019) interest calculated upto 31.05.2023. in favour of the Plaintiff and against the Defendant;
(b) award pendentii lite and future interest @24% p.a in favour of the plaintiff and against the Defendant.
(c) grant cost of the suit in favour of the plaintiff.
(d) pass such other further orders in favour of the plaintiff and against the Defendant as deemed fit and proper in the facts and circumstances of the case.”

3. In the plaint, the respondent has asserted that the appellant company is engaged in the business of promotion of real estate construction and development in Delhi and NCR. The appellant company proposed to develop a Residential Group Housing Colony on a land admeasuring approximately 14.812 acres situated in Village Pawala Khusrupur, District Gurgaon, which falls in Sector 109, Gurgaon, Haryana under the name and style of ‘ATHARVA’ (hereinafter referred to as ‘the Project’).

4. It is the case of the respondent that the respondent agreed to purchase a Flat bearing No. H-122, admeasuring 4804.20 sq.ft. super



area, on 12th floor, and a court/terrace area admeasuring 970 sq.ft, in H-Tower/Block of the Project (hereinafter referred to as ‘the Flat’) for a sum of Rs.2,00,00,000/- *vide* a Flat Buyer’s Agreement dated 03.12.2015 (hereinafter referred to as ‘the Flat Buyer’s Agreement’).

5. The respondent, along with the Flat Buyer’s Agreement, also entered into Agreement dated 03.12.2015 (hereinafter referred to as ‘the Second Agreement’) with the appellant company, wherein the appellant company agreed to complete the refabrication and finishing of the flat in question, and handover vacant, peaceful and physical possession of the Flat, and get the Sale/Conveyance Deed registered in favour of the respondent on or before 02.12.2016. The Second Agreement also stipulated that if the appellant company failed to do the needful and complete the transaction on or before the said date, the appellant company shall refund the entire amount of Rs.2,00,00,000/- without any delay.

6. The respondent herein paid the entire agreed consideration amount at the time of the execution and signing of the Agreements. The appellant company, *vide* communication dated 03.12.2015, also handed over a postdated payment cheque, bearing no.075108 dated 02.12.2016 for an amount of Rs.2,00,00,000/-, as a security for the refund in case the said Flat was not delivered to the respondent on or before the stipulated date.

7. It is the case of the respondent that even after multiple extensions granted to the appellant company, the appellant company failed to perform its obligations and sought another extension until June 2019 with the commitment to pay assured return @24% per



annum on total sale consideration amount, which was accepted by the respondent, and another post-dated cheque bearing no.932282 dated 30.06.2019 for the amount of Rs.2,00,00,000/- was issued by the appellant company in favour of the respondent.

8. It is the case of the respondent that the appellant issued and re-issued various cheques towards assured return from time to time, however, requested the respondent not to present these cheques for encashment. The details of the 16 cheques issued in continuation with extension of time are as under:-

<i>S. No.</i>	<i>Cheque No.</i>	<i>Date</i>	<i>Amount (Rs.)</i>
1	932289	30.06.2019	3,60,000/=
2	932290	30.06.2019	3,60,000/=
3	932291	30.06.2019	3,60,000/=
4	932292	30.06.2019	3,60,000/=
5	932293	30.06.2019	3,60,000/=
6	932294	30.06.2019	3,60,000/=
7	932471	22.07.2019	3,60,000/=
8	932472	22.07.2019	3,60,000/=
9	932473	22.07.2019	3,60,000/=
10	932474	22.07.2019	3,60,000/=
11	932475	22.07.2019	3,60,000/=
12	932476	22.07.2019	3,60,000/=
13	932477	22.07.2019	3,60,000/=
14	932478	22.07.2019	3,60,000/=
15	932479	22.07.2019	3,60,000/=
16	932480	22.07.2019	3,60,000/=

9. It is averred that the above detailed cheques were deposited by the respondent with her bankers and the same were returned unpaid on



account of “Payment Stopped by Drawer.” The respondent claims to be pursuing complaint cases against the appellant under Section 138 of the Negotiable Instruments Act, 1881, before the Saket Courts in this regard.

10. It is the case of the respondent that in March, 2019, the husband of the respondent was approached by the authorised representative of the appellant for selling the Flat in question by mode of e-bidding and assured that in the said process, the respondent would certainly be able to get a price over and above the purchase price of Rs.2,00,00,000/-, as the said amount would be the minimum bid reserve price. The same was agreed to by the respondent.

11. It is asserted that in furtherance thereof, the respondent was telephonically informed by the appellant company that her Flat has been sold for the net reserve price of Rs.2,00,00,000/- in April 2019, however no written communication was provided to the respondent in this regard. Thereafter, the appellant transferred an amount of Rs.28,00,000/- into the account of the respondent, in two tranches dated 20.07.2019 and 08.08.2019, by NEFT/RTGS, however, the appellant failed to remit the balance consideration of Rs. 1,72,00,000/- received as the sale proceeds of the Flat.

12. The appellant company, on 27.05.2021, informed the respondent that the Flat in question was sold to the third party for an amount of Rs.1.5 crores, and it is the subsequent buyer who has denied to make balance payment.

13. Thereafter, the respondent filed the suit of recovery of an amount of Rs.4,55,45,182/-, stating that the respondent never agreed



to the selling of her Flat for an amount of Rs.1.5 crores. Even otherwise, the flat in question was sold in 2019 and till date the respondent has not received any details of the balance sale consideration of Rs.1,72,00,000/- alongwith interest @24% per annum from July 2019 till date. The respondent also sought recovery of Rs.57,60,000/- on account of assured return agreed to be paid by the appellant company and interest thereupon.

14. The summons in the said suit were issued on 14.07.2023. Thereafter, the appellant company entered appearance and on or around 25.11.2023, filed I.A. 24812/2013 under Section 8 of the A&C Act, contending therein that Clause 14.2 of the Flat Buyer's Agreement stipulates that any/all disputes arising out of the said Agreement shall be referred to arbitration, to be seated in New Delhi. Further, the territorial jurisdiction of the Courts having jurisdiction over such arbitration proceedings shall be of Gurgaon Courts.

15. The respondent filed its reply to the said application, contending therein that the relief claimed in the Suit by the respondent is not premised on the Flat Buyer's Agreement but rather on the Second Agreement, which has no arbitration Clause. The respondent, in the said reply, also contended that as per the Clause 9 of the Second Agreement, the said Agreement shall be read together with the Flat Buyer's Agreement, and, to the extent that if any provision or term of the Second Agreement is in conflict with the provisions of the Buyer's Agreement, the provisions of the Second Agreement shall prevail and supersede the Buyer's Agreement.

16. In the *interregnum*, the appellant company also filed its Written



Statement to the Plaintiff by *inter alia* contending that the dispute in the Suit is covered under the Flat Buyer's Agreement and hence shall be subject to arbitration only.

17. The learned Single Judge, *vide* the Impugned Order, dismissed the said application filed by the appellant company by holding as under:

“19. The Flat Buyer's Agreement in clause 4.2 only states that the defendant/applicant will hand over the possession of the flat within 24 months from the date of Agreement to Sell, extendable by another period of 6 months. It is the Second Agreement which fixes a date of 02.12.2016 for handing over of vacant and peaceful possession of the flat in question.

20. Even though the Second Agreement contemplates that both the agreements are to be read together, I am of the view that it is the Second Agreement which contemplates the plaintiff to be entitled to refund of the amount of Rs. 2 crores, in case the flat is not ready to be delivered to the plaintiff on or before 02.12.2016. To my mind, the two agreements operate in their own distinct and separate fields and the Flat Buyer's Agreement cannot be interpreted to include the claims made by the plaintiff in the present suit.

21. In addition, Clause 9 of the Second Agreement clearly contemplates the Second Agreement to have overall overriding effect over the Flat Buyer's Agreement.

22. The judgment of the Hon'ble Supreme Court in NBCC (supra) and more particularly paragraph 10 makes it clear that the arbitration clause contained in the Flat Buyer's Agreement can be read into the Second Agreement only by a specific reference to the arbitration clause. In the present case, the recovery of the amounts due and payable to the plaintiff on account of failure to handover vacant and peaceful possession is



only stipulated in the Second Agreement and is therefore beyond the purview of clause 14.2 of the Flat Buyer's Agreement.

23. Further, the judgment of NBCC (supra) in para 12 clearly stipulates that under sub-section (5) of section 7 of the Arbitration and Conciliation Act, 1996 a conscious acceptance by way of a specific reference of the arbitration clause is required. In the present case, clause 9 of the Second Agreement categorically contains that this agreement shall have an overall overriding effect over the Flat Buyer's Agreement, including the settlement of any dispute, meaning thereby that there is a specific exclusion of the arbitration clause for settlement of any dispute. Both the parties have agreed to the said clause and therefore cannot at this stage seek a remedy that they have waived of by way of this express condition in the Second Agreement.

26. For the said reasons, the application is devoid of merits and therefore dismissed."

18. Aggrieved thereof, the appellant company has preferred the present appeal.

Submissions of the learned counsel for the appellant

19. The learned counsel for the appellant submits that the Flat Buyer's Agreement admittedly has an arbitration agreement Clause 14.2, which envisages arbitration in the event of any and all disputes "arising out of or touching upon or relating to" the Flat Buyer's Agreement. He submits that the present suit was filed by the respondent *qua* the recovery of monies paid in furtherance of the said Agreement, hence, in view of the same, the learned Single Judge ought to have referred the parties to arbitration.



20. He further submits that merely to circumvent the mandated arbitration, the respondent has contended that she has brought the suit only with regard to the Second Agreement, which does not have an arbitration clause. He submits that, however, the respondent has neither sued for specific performance of the Second Agreement nor for possession or any other subject matter excluded under Clause 9 of the Second Agreement. In fact, the respondent has sued for recovery of money with interest paid under the Flat Buyer's Agreement, which admittedly has an arbitration agreement.

21. He submits that both the Agreements were executed on the same day and at the same time. Moreover, the Second Agreement is executed *qua* the same property, envisaging handing over possession of the flat in 12 months instead of the original time stipulated in the Flat Buyer's Agreement, as well as refund of the entire sale consideration paid by the respondent if the Flat is not handover in the stipulated time. He submits that the intention of the parties behind executing two agreements on the same day and at the same time could only be a consensus that the relevant portions of the Flat Buyer's Agreement shall also be read in the Second Agreement, except for things specifically excluded. He submits that if this was not so intended, then only the Second Agreement would have been executed, or in the alternative, the Flat Buyer's Agreement would have specifically held to have been null and void.

22. The learned counsel for the appellant submits that Clause 9 of the Second Agreement sets out that both Agreements are to be read together, and to the extent, if any term of the Second Agreement



conflicts with the Buyer's Agreement, the provisions of the Second Agreement shall supersede the Buyer's Agreement. The Clause 9 of the Second Agreement proceeds to specify that the matters pertaining to possession, registration, transfer in a 12-month period, as those which are to be superseded. He submits that the last line of Clause 9 of the Second Agreement, providing for overriding effect of the Second Agreement on the Flat Buyer's Agreement, including the settlement of dispute, cannot be read in isolation, for it attains its meaning and colour from the preceding lines of the Clause, thus clarifying that only those matters specifically excluded shall stand overridden and shall not be amenable to arbitration.

23. He submits that the arbitration clause constitutes a separate agreement and remains alive even after the conclusion of the principal agreement or contract. Therefore, not having been specifically nullified by the parties, the arbitration agreement will continue to remain enforceable.

24. The learned counsel for the appellant submits that the Judgment in *NBCC (India) Ltd. v. Zillion Infraprojects (P) Ltd.*, (2024) 7 SCC 174, relied upon by the learned Single Judge, is not applicable to the facts of the present case as in the said case, there were two separate contracts executed on different dates, unlike the present case wherein two Agreements are executed simultaneously and thus, even a general reference to a standard form would be enough for the incorporation of the arbitration clause.

Submissions of the learned counsel for the respondent

25. The learned counsel for the respondent, by placing reliance on



the Judgment of the **NBCC (India) Ltd.** (supra), submits that the learned Single Judge has rightly dismissed the application filed by the appellant company.

26. He submits that Clause 9 of the Second Agreement has an overriding effect over the Flat Buyer's Agreement, including the clause relating to the settlement of dispute and territorial jurisdiction of courts. He submits that Clause 9 of the Second Agreement shall be read together with the Flat Buyer's Agreement, and to that extent, if any provision or term of the Second Agreement is in conflict with the provisions of the Flat Buyer's Agreement, the provisions of the Second Agreement shall prevail and supersede the Flat Buyer's Agreement.

Analysis and findings

27. We have considered the submissions made by the learned counsels for the parties.

28. Section 8 of the A&C is reproduced herein below:

“8. Power to refer parties to arbitration where there is an arbitration agreement-

(1) A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.

(2) The application referred to in sub-section (1) shall not be entertained unless it is



accompanied by the original arbitration agreement or a duly certified copy thereof:

Provided that where the original arbitration agreement or a certified copy thereof is not available with the party applying for reference to arbitration under sub-section (1), and the said agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the Court to call upon the other party to produce the original arbitration agreement or its duly certified copy before that Court.

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.”

29. In ***Vidya Drolia & Ors. v. Durga Trading Corporation***, (2021) 2 SCC 1, the Supreme Court, while explaining the ambit and scope of scrutiny required under Section 8 and Section 11 of the A&C Act, emphasised that arbitration being a matter of contract, the parties are entitled to fix boundaries as to confer and limit the jurisdiction and legal authority of the arbitrator. An arbitration agreement can be comprehensive and broad to include any dispute or could be confined to specific disputes. For invoking Section 8 of the A&C Act, the party must show that the suit is in respect of a matter which the parties have agreed to refer to arbitration and which comes within the ambit of the arbitration agreement.

30. A seven Judge Constitutional Bench of the Supreme Court in ***Interplay Between Arbitration Agreements under Arbitration, 1996 & Stamp Act, 1899, In re***, (2024) 6 SCC 1, while analysing the scope



and mandate of the Section 8 of the A&C Act, has held as under:

*“147. In the Indian context, Section 8 provides that when an action is brought before a judicial authority in a matter which is the subject of an arbitration agreement, such judicial authority shall refer the parties to arbitration on an application made by a party to the arbitration agreement or any person claiming through or under him not later than the date of submitting their first statement on the substance of the dispute. **Section 8 mandates the judicial authority to refer the parties to arbitration “unless it finds that prima facie no valid arbitration agreement exists”.** Section 8 is based on Article 8 of the Model Law which provides that a “court” before which an action is brought in a matter which is the subject of an arbitration agreement shall refer the parties to arbitration “unless it finds that the agreement is null and void, inoperative or incapable of being performed”. It is evident that Section 8 has made a departure from Article 8 by using the expansive term “judicial authority” rather than “court”. The intention of the legislature to provide an expansive application can also be gauged from the fact that the expression “unless it finds that the agreement is null and void, inoperative or incapable of being performed” does not find place in Section 8. [A. Ayyasamy v. A. Paramasivam, (2016) 10 SCC 386 : (2017) 1 SCC (Civ) 79]*

***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 Amendment Act has legislatively overruled the dictum of Patel Engg. [SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618] 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.”

(Emphasis supplied)

31. From a reading of the above, it can be established that the Court in an application under Section 8 of the A&C Act has to examine the *prima facie* existence of an arbitration agreement between the parties.

32. Section 7 of the A&C Act defines the term arbitration agreement and reads as under:

“7. Arbitration agreement-

(1) In this Part, "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing.

(4) An arbitration agreement is in writing if it is contained in

(a) a document signed by the parties;

(b) an exchange of letters, telex, telegrams or other means of telecommunication including communication through electronic means which provide a record of the agreement; or

(c) an exchange of statements of claim and



defence in which the existence of the agreement is alleged by one party and not denied by the other.

(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.”

(Emphasis supplied)

33. The parties may, therefore, agree to refer to arbitration “all or certain disputes” to arbitration. Section 7(5) of the A&C Act stipulates that a reference in a contract to a document containing an arbitration clause, constitutes an arbitration agreement if the contract is in writing, and the reference is such as to make that arbitration clause part of the contract. The Supreme Court, while examining the said provision, in ***M.R. Engineers & Contractors (P) Ltd. v. Som Datt Builders Ltd.***, (2009) 7 SCC 696, has held that:

*“14. The wording of Section 7(5) of the Act makes it clear that a mere reference to a document would not have the effect of making an arbitration clause from that document, a part of the contract. The reference to the document in the contract should be such that shows the intention to incorporate the arbitration clause contained in the document, into the contract. **If the legislative intent was to import an arbitration clause from another document, merely on reference to such document in the contract, sub-section (5) would not contain the significant later part which reads: “and the reference is such as to make that arbitration clause part of the contract”**, but would have stopped with the first part which reads:*

“7. (5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing....”



15. Section 7(5) therefore requires a conscious acceptance of the arbitration clause from another document, by the parties, as a part of their contract, before such arbitration clause could be read as a part of the contract between the parties. But the Act does not contain any indication or guidelines as to the conditions to be fulfilled before a reference to a document in a contract can be construed as a reference incorporating an arbitration clause contained in such document into the contract. In the absence of such statutory guidelines, the normal rules of construction of contracts will have to be followed.

16. There is a difference between reference to another document in a contract and incorporation of another document in a contract, by reference. In the first case, the parties intend to adopt only specific portions or part of the referred document for the purposes of the contract. In the second case, the parties intend to incorporate the referred document in entirety, into the contract. Therefore when there is a reference to a document in a contract, the court has to consider whether the reference to the document is with the intention of incorporating the contents of that document in entirety into the contract, or with the intention of adopting or borrowing specific portions of the said document for application to the contract.

17. We will give a few instances of incorporation and mere reference to explain the position (illustrative and not exhaustive). If a contract refers to a document and provides that the said document shall form part and parcel of the contract, or that all terms and conditions of the said document shall be read or treated as a part of the contract, or that the contract will be governed by the provisions of the said document, or that the terms and conditions of the said document shall be incorporated into the contract, the terms and



conditions of the document in entirety will get bodily lifted and incorporated into the contract. When there is such incorporation of the terms and conditions of a document, every term of such document (except to the extent it is inconsistent with any specific provision in the contract) will apply to the contract. If the document so incorporated contains a provision for settlement of disputes by arbitration, the said arbitration clause also will apply to the contract.

18. On the other hand, where there is only a reference to a document in a contract in a particular context, the document will not get incorporated in entirety into the contract. *For example, if a contract provides that the specifications of the supplies will be as provided in an earlier contract or another purchase order, then it will be necessary to look to that document only for the limited purpose of ascertainment of specifications of the goods to be supplied. The referred document cannot be looked into for any other purpose, say price or payment of price. Similarly, if a contract between X and Y provides that the terms of payment to Y will be as in the contract between X and Z, then only the terms of payment from the contract between X and Z, will be read as part of the contract between X and Y. The other terms, say relating to quantity or delivery cannot be looked into.*

19. Sub-section (5) of Section 7 merely reiterates these well-settled principles of construction of contracts. It makes it clear that where there is a reference to a document in a contract, and the reference shows that the document was not intended to be incorporated in entirety, then the reference will not make the arbitration clause in the document, a part of the contract, unless there is a special reference to the arbitration clause so as to make it applicable.

22. A general reference to another contract



will not be sufficient to incorporate the arbitration clause from the referred contract into the contract under consideration. There should be a special reference indicating a mutual intention to incorporate the arbitration clause from another document into the contract. The exception to the requirement of special reference is where the referred document is not another contract, but a standard form of terms and conditions of trade associations or regulatory institutions which publish or circulate such standard terms and conditions for the benefit of the members or others who want to adopt the same.

23. The standard forms of terms and conditions of trade associations and regulatory institutions are crafted and chiselled by experience gained from trade practices and conventions, frequent areas of conflicts and differences, and dispute resolutions in the particular trade. They are also well known in trade circles and parties using such formats are usually well versed with the contents thereof including the arbitration clause therein. Therefore, even a general reference to such standard terms, without special reference to the arbitration clause therein, is sufficient to incorporate the arbitration clause into the contract.

24. The scope and intent of Section 7(5) of the Act may therefore be summarised thus:

(i) An arbitration clause in another document, would get incorporated into a contract by reference, if the following conditions are fulfilled:

(1) the contract should contain a clear reference to the documents containing arbitration clause,

(2) the reference to the other document should clearly indicate an intention to incorporate the arbitration clause into the contract,

(3) the arbitration clause should be appropriate, that is capable of application in respect of disputes under the contract and



should not be repugnant to any term of the contract.

(ii) When the parties enter into a contract, making a general reference to another contract, such general reference would not have the effect of incorporating the arbitration clause from the referred document into the contract between the parties. The arbitration clause from another contract can be incorporated into the contract (where such reference is made), only by a specific reference to arbitration clause.

(iii) Where a contract between the parties provides that the execution or performance of that contract shall be in terms of another contract (which contains the terms and conditions relating to performance and a provision for settlement of disputes by arbitration), then, the terms of the referred contract in regard to execution/performance alone will apply, and not the arbitration agreement in the referred contract, unless there is special reference to the arbitration clause also.

(iv) Where the contract provides that the standard form of terms and conditions of an independent trade or professional institution (as for example the standard terms and conditions of a trade association or architects association) will bind them or apply to the contract, such standard form of terms and conditions including any provision for arbitration in such standard terms and conditions, shall be deemed to be incorporated by reference. Sometimes the contract may also say that the parties are familiar with those terms and conditions or that the parties have read and understood the said terms and conditions.

(v) Where the contract between the parties stipulates that the conditions of contract of one of the parties to the contract shall form a part of their contract (as for example the general conditions of contract of the Government where the Government is a party), the



arbitration clause forming part of such general conditions of contract will apply to the contract between the parties.”

(Emphasis Supplied)

34. From the above, it can be established that for importing an arbitration clause into an agreement from another document containing such a clause, there has to be an explicit reference to such arbitration clause contained in such other document. However, if the parties make a general reference to another document, such a general reference would not have the effect of incorporating the arbitration clause from the referred document into the contract between the parties. Therefore, while analysing such an agreement, the Court must also interpret the reference made in the agreement to the other document containing arbitration clause, and conclude whether the reference made to the other agreement is with an intent to incorporate the arbitration clause from the same. The said view was reiterated by the Supreme Court in **NBCC (India) Ltd.** (supra), as under:

“17. It could thus be seen that this Court has held that when the parties enter into a contract, making a general reference to another contract, such general reference would not have the effect of incorporating the arbitration clause from the referred document into the contract between the parties. It has been held that the arbitration clause from another contract can be incorporated into the contract (where such reference is made), only by a specific reference to arbitration clause. It has further been held that where a contract between the parties provides that the execution or performance of that contract shall be in terms of another contract (which contains the terms and conditions relating to performance and a provision for settlement of disputes by



arbitration), then, the terms of the referred contract in regard to execution/performance alone will apply, and not the arbitration agreement in the referred contract, unless there is special reference to the arbitration clause also.

18. This Court further held that where the contract provides that the standard form of terms and conditions of an independent trade or professional institution will bind them or apply to the contract, such standard form of terms and conditions including any provision for arbitration in such standard terms and conditions, shall be deemed to be incorporated by reference. It has been held that sometimes the contract may also say that the parties are familiar with those terms and conditions or that the parties have read and understood the said terms and conditions. It has also been held that where the contract between the parties stipulates that the conditions of contract of one of the parties to the contract shall form a part of their contract, the arbitration clause forming part of such general conditions of contract will apply to the contract between the parties.

19. A perusal of sub-section (5) of Section 7 of the Arbitration Act itself would reveal that it provides for a conscious acceptance of the arbitration clause from another document, by the parties, as a part of their contract, before such arbitration clause could be read as a part of the contract between the parties.

20. It is thus clear that a reference to the document in the contract should be such that shows the intention to incorporate the arbitration clause contained in the document into the contract.”

35. Keeping in view the above position of law, we may now proceed to analyse the Flat Buyer’s Agreement and the Second Agreement. We may quote the relevant clauses of these agreements as



under:

Flat Buyer's Agreement:

"14.2 Arbitration

All or any disputes arising out of touching upon or relating to the terms of this Agreement to Sell/Application Conveyance Deed including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties, which cannot be amicably settled, shall be settled through arbitration. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory amendments/modifications thereof for the time being in force. The arbitration proceedings shall be held at the Office of the Seller in New Delhi by a sole arbitrator who shall be appointed by the Managing Director of the Seller. The Purchaser hereby confirms that he/she shall have no objection in this appointment. In case of any proceeding, reference etc. touching upon the arbitration subject including any award, the territorial jurisdiction of the courts shall be Gurgaon as well as Punjab and Haryana High Court at Chandigarh."

Second Agreement

"2. It has been agreed that THE DEVELOPER shall transfer in favour of the Buyer all its rights to the Said Property by virtue of separate Flat Buyer Agreements detailed in the Schedule-B forming part of this Agreement and also being subject to this Agreement. The parties have accordingly executed the said Flat Buyer's Agreement (herein referred to as the said "Flat Buyer's Agreement").

3. In terms inter alia of the said Flat Buyer's Agreements, the said Sales Consideration of Rs.2,00,00,000/- (Rupees Two Crore only) has been apportioned towards the full and final purchase price of the Said Property, with the effect that notwithstanding the terms of the said Flat Buyer's Agreement the entire Sales



Consideration payable for the Said Property shall as between the Developer and the Buyer, stand fully paid by the Buyer to THE DEVELOPER and no further cost, whether by way of purchase price, interest, EOC, IDC, parking etc., whatsoever shall be payable by the Buyer. However, it is made clear if and when the possession of the Said Property is handed over/delivered to the Buyer (within the due date), the Buyer will be liable to pay maintenance charges, if any provided in the said Flat Buyer's Agreement, as may be payable to the Maintenance Agency.

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6. In furtherance of its undertaking, THE DEVELOPER has given post dated cheque no. 075108, dated 02.12.2016 drawn on Punjab National Bank of Rs.2,00,00,000/- (Rupees Two Crore only) towards refund of entire Sales Consideration which the Buyer is entitled to encash without any notice to THE DEVELOPER. Upon encashment of all the aforesaid post dated cheques, this Agreement and the Flat Buyer's Agreements shall stand terminated, cancelled, revoked and ineffective with no binding obligation on either party and the Said Property shall revert to THE DEVELOPER along with all original documents.

xxxxxxx

9. This Agreement shall be read together with the said Flat Buyer's Agreement, and, to the extent any provision or term of this Agreement is in conflict with the provisions of the Flat Buyer's Agreement, the provisions of this Agreement shall prevail and supersede the Flat Buyer's Agreement. As an instance (without elaborating), especially the possession of the Scheduled Property, registration thereto and/ or transfer of Scheduled Property is to be made by THE DEVELOPER in 12 months as mentioned herein before. The Buyer shall not be liable for any taxes; charges, cess, or for that matter any amount of whatsoever nature before the due



*date of handing over the possession/ transferring the property to the buyer and/or buyer having taken possession of the Said Scheduled Property. Declarations from the side of the Buyer as made in the said Flat Buyer's Agreement shall have no relevance in presence of the fact that the Buyer in the present case has solely relied upon the declaration commitments of THE DEVELOPER with respect to their title/ownership and other rights over the property and permissions/ clearances/ licenses etc, having been properly obtained by them and they have power to enter into this Agreement. **This Agreement shall have an overall overriding effect over the Flat Buyer's Agreement including the settlement of any dispute.***

xxxxxx

*12. It is acknowledged by both Parties that the aforesaid principals sum of Rs. 2,00,00,000/- (Rupees Two Crore only) has been paid by the Buyer to the DEVELOPER in New Delhi and received by THE DEVELOPER's representative in New Delhi and the Amount is returnable by to Buyer at New Delhi **therefore Courts at New Delhi shall have exclusive jurisdiction to entertain any claim or dispute between the Buyer and THE DEVELOPER arising out Agreement.***

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*17. **The court of Delhi New Delhi shall have jurisdiction on subject matter of agreement.***

36. A bare reading of the clauses of the two Agreements would reveal that both the respective Agreements were executed with a different pretext and objective. While the Flat Buyer's Agreement was to incorporate the terms and conditions of the sale of the Flat in question, the Second Agreement was *qua* the obligations of the



appellant company to re-fabricate, furnish the flat in question, and handover vacant and peaceful possession of the Flat to the respondent on or before 02.12.2016, and to prescribe consequence of failure thereof in form of return of the consideration already received by the appellant.

37. Clause 9 of the Second Agreement states that both the Agreements shall be read together, unless there is a repugnancy in the clauses of the two Agreements. In case the clauses of the Agreement are repugnant, the clause of the Second Agreement shall prevail over the Buyer's Agreement.

38. Clause 12 read with Clause 17 of the Second Agreement, mandates that any dispute arising from the claim under the said Agreement shall be subject to the jurisdiction of the Courts in New Delhi, unlike the Clause 14.2 of the Flat Buyer's Agreement, which mandates referring such disputes to arbitration and vests jurisdiction with Courts at Gurugram. Therefore, there exists a clear repugnancy in the said aspect in the two Agreements, and in view of Clause 9 of the Second Agreement, Clause 12 read with Clause 17 of the Second Agreement shall prevail.

39. More specifically, in fact, Clause 9 of the Second Agreement specifically states that the said agreement shall override the dispute settlement clause of the Flat Buyer's Agreement, which would be the Arbitration Clause in the Flat Buyer's Agreement. The intent behind Clause 9 of the Second Agreement, far from being an explicit reference to the Arbitration Clause in the Flat Buyer's Agreement for its incorporation in the Second Agreement, is to give an overriding bar



on the operation of the Arbitration Agreement contained in the Flat Buyer's Agreement. Therefore, the reference to the Flat Buyer's Agreement in the Second Agreement would not constitute as an Arbitration Agreement by reference in the Second Agreement, which is the subject matter of the Suit.

40. As regards the submission of the learned counsel for the appellant that the respondent has brought the Suit only with regard to the Second Agreement merely to circumvent the Arbitration Clause of the Flat Buyer's Agreement, we find no force in the said submission. Whether the claim of the respondent can sustain merely on the Second Agreement, is a matter of trial and this Court would not express any opinion on the same at this stage. For the present, once it is found that the Suit is based on the Second Agreement, which does not contain an arbitration agreement between the parties, the application filed by the appellant under Section 8 of the A&C Act, has rightly been dismissed by the learned Single Judge.

41. In view of the aforesaid, we find no merit in the present appeal. The same, along with pending application, is dismissed.

NAVIN CHAWLA, J.

RENU BHATNAGAR, J.

JULY 01, 2025/VS

Click here to check corrigendum, if any