

Arb.P. 4/2015

BEFORE

THE HON'BLE MR JUSTICE HRISHIKESH ROY

Heard Mr. R. Dubey, the learned Counsel appearing for the petitioner. The respondent is represented by Mr. N. Alam, the learned Advocate.

2. The respondent is a landowner and when he decided to construct flats on his property, the petitioner approached him to purchase a flat. The agreement between the purchaser and the builder executed on 29.2.2012 (Annexure-1) shows that a 2nd floor flat was proposed to be sold to the petitioner for Rs.32,50,000/-.

3. The purchaser paid Rs.6,50,000/- to the builder but eventually through his letter dated 11.4.2012 (Annexure-2), the purchaser requested for cancellation of the deal and to refund the paid advance, after deduction of the cancellation charge of Rs.15,000/- (at 15% of the paid amount of Rs.6,50,000/-) as was stipulated in Clause 19 (Page-17) of the agreement. But the builder in his response letter of 21.4.2012 (Annexure-3) contended that the cancellation charge will be Rs.4,87,500/- and therefore only Rs.1,62,500/- is refundable to the purchaser upon cancellation.

4. Because of the resultant dispute on the deductible amount, the petitioner invoked the arbitration clause and accordingly each party nominated their respective arbitrator. But even before the Presiding Arbitrator could be nominated as is envisaged under Sub-Section (3) of Section 11 of the Arbitration and Conciliation Act, 1996, the Arbitrator nominated by the purchaser, resigned from his responsibility through his letter dated 10.11.2013 (Annexure-9). Thus no progress could be made with the arbitration although in the meantime, the parties have exchanged their pleadings and evidence on affidavit has also been filed by the petitioner.

5. Faced with the above situation, Mr. R. Dubey, the learned Counsel submits that since the presiding arbitrator was still to be nominated and one of the appointed Arbitrator has resigned, it would be more reasonable if the dispute is adjudicated by a single arbitrator.

6. In the aforesaid backdrop, the learned Counsel for the respondent Mr. N. Alam is agreeable for nomination of an Arbitrator by this Court.

7. In view of above, I am of the considered opinion that effective resolution of the dispute can be made by a neutral Arbitrator to be nominated by the Court. Consequently, Col. (Retd.) Manoranjan Goswami, an empanelled Arbitrator of this Court is nominated to arbitrate the dispute between the petitioner and the respondent. The parties will appear before him on 14.11.2015 and the arbitrator will fix the terms of arbitration in presence of the parties. With this direction, the case is disposed of.

8. The Registry will immediately communicate this order to Col. (Retd.) Manoranjan Goswami.