

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

+ O.M.P. 1054/2014

% Judgement pronounced on: 02.09.2014

M/S BRISK INFRASTRUCTURE & DEVELOPERS PVT LTD

..... Petitioner

Through: Mr Rikky Gupta, Adv.

versus

NAVEEN NARANG & ANR

..... Respondents

Through: None.

CORAM:

HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT (ORAL)

1. The petitioner/claimant has challenged before this Court the award dated 31.03.2014.
2. It is submitted that the petitioner/claimant had entered into an Agreement to Sell dated 31.12.2012 with the respondent. Vide said agreement, the respondent had agreed to sell a plot of land measuring 375 square yards, bearing Municipal No. 291, situated in Phase-III, Gujranwala Town for a consideration of Rs 26 crores. The earnest money (25% of the sale consideration) amounting to Rs 6 crore 50 lakh was paid to the vendor, i.e., the respondent under the said agreement. The balance sum of Rs 19

crore 50 lakh was to be paid at the time of execution/registration of the sale deed before the Sub-Registrar on completion of all obligations and formalities, as envisaged in the agreement within a period of 45 days from the date of agreement. It is submitted that respondent had promised to obtain sanction of building plan in terms of representation made by them to the petitioner/claimant. It is submitted that in the middle of the February, 2013, the respondent, without fulfilling their part of obligation and the assurances, made a demand of balance sale consideration and mala fide offered to execute the sale deed, without fulfilling their promises. The petitioners/claimants had promptly shown their readiness and willingness to perform their part of agreement. There are various communications between the parties. However, vide communication dated 01.03.2013, the respondents cancelled the Agreement to Sell and forfeited the earnest money. The said act of the respondent was challenged by the petitioner/claimant. The dispute was raised and the matter was referred to the Sole Arbitrator. The learned Arbitrator passed the award dated 31.03.2014. It is submitted that the said award is liable to be set aside.

3. The main contention of the petitioner is that the sanction of the building plan was the pre-requisite condition for execution of the sale deed

and the learned Arbitrator has failed to consider this fact. It is further submitted that the learned Arbitrator has failed to consider the fact that the time was never the essence and that the petitioner/claimant was always ready and willing to perform its part of the agreement. It is submitted that the award is not based on correct appreciation of the fact nor on correct interpretation of law. On these facts, it is submitted that the award be set aside.

I have heard the arguments and perused the record.

4. It is a settled law that under Section 34 of the Arbitration and Conciliation Act, 1996, the award can be challenged on the ground mentioned herein:

“34. Application for setting aside arbitral award.- (1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if-

(a) the party making the application furnishes proof that—

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matter beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.”

5. Learned counsel for the petitioner has not challenged the award on any of the grounds mentioned in Section 34 of the Arbitration & Conciliation Act. There is no contention that the arbitral award is in conflict with the public policy of India. Learned counsel for the petitioner has not mentioned in what way the award violates the public policy of India. It is also not shown that the award is in violation of any settled law or principles of law. It is also a settled law that this Court, while dealing with the petition

under Section 34, is not required to appreciate or re-appreciate the evidences relied upon by the learned Arbitrator.

6. If examined from the point of view of these settled principles of law, it is clear that while passing the award, the learned Arbitrator has duly followed the procedure prescribed under Section 31 of the Act. The award is well-reasoned duly signed and all the contentions raised by the parties have been duly considered. The evidences produced by the parties have also been taken into consideration and all the law points raised by the parties have also been taken into consideration. So the award does not violate any procedural law.

7. It is settled principle of law that an award cannot be set aside if the Arbitrator has discussed every aspect, including the case law with adequately elaborate and convincing reasons in the award. Illegality for purpose of setting aside the award must be capable of going to the root of the matter. Trivial illegality cannot be termed as contrary to public policy (Reliance placed on findings in the case of **Prathyusha Associates Vs. Rashtriya Ispat Nigam Ltd., 2006 (1) ALT 691 (DB).**

8. It is also a settled principle of law that a Court does not sit in appeal over the award of an arbitral tribunal and is required to re-assess and re-

appreciate the evidence. It can be challenged only on the grounds mentioned in section 34 (2) of the Act. (Reliance placed on findings in the case of **P. R. Shah Shares & Stock Broker (P) Ltd. Vs. M/s B. H. H. Securities (P) Ltd. & Ors., 2012 (1) SCC 594.**

9. In the case of **Sudarshan Trading Co. Vs. Govt. of Kerala, (1989) 2 SCC 38,** the Supreme Court has clearly held that the Courts are not required to examine the award in order to find out whether the arbitrator had acted correctly or incorrectly. Also in the case of **Ispat Engg. & Foundry Works v. SAIL, (2001) 6 SCC 347,** the Supreme Court has held that there exists a long catena of cases through which the law seems to be rather well settled that the reappraisal of evidence by the court is not permissible.

10. In the case of **Oil & Natural Gas Corporation Ltd. Vs. Saw Pipes Ltd., 2003 (5) SCC 705,** the Supreme Court has clearly held that the illegality in the award must go to the root of the matter and if the illegality is of trivial nature it cannot be held that award is against the public policy. Award could only be set aside if it is so unfair and unreasonable that it shocks the conscience of the Court. Such award is opposed to public policy and is required to be adjudged void.

11. The contention of the petitioner is that facts are not correctly

appreciated by the Arbitrator. It is contended that findings of Arbitrator that time was essence of contract is wrong.

12. It is a settled law that the learned Arbitrator cannot travel beyond the terms of agreement between the parties. Clause 6 which is reproduced as under:

“6. That the balance payment of Rs 19,50,00,00/- (Rupees Nineteen Crores and Fifty Lac only) shall be paid by the VENDEE to the VENDORS at the time of registration of the SALE DEED in its favour by the VENDORS before the Sub Registrar after completion of all obligations and formalities as envisaged in the present agreement within a period of 45 days from the date of the present Agreement”

The aforesaid clause clearly postulates that the time was the essence of the agreement and the petitioner/claimant was required to complete all the formalities within a period of 45 days from the date of the agreement.

As regards the contention of the learned counsel for the petitioner that under agreement, the respondent was required to obtain a sanctioned site plan before the execution of the sale deed is contrary to the terms of the agreement settled between the parties. Clause 5 of the agreement is reproduced as under:-

“5. That the VENDORS have assured the VENDEE that they shall assist in getting the building plans sanctioned for reconstruction of the property in the name of the VENDEE after execution of the sale deed for the purpose as

aforementioned in order the same can be utilized for the maximum benefit through re-development and further sale of property as micro units.”

The aforesaid clause of the agreement clearly stipulates that the respondent was only required to assist the petitioner in getting the building plan sanctioned for the reconstruction of the property only after the execution of the sale deed. The contention that before the execution of sale deed the respondent was required to get the site plan sanctioned is, therefore, contrary to the terms of the agreement between the parties and the learned Arbitrator has rightly rejected this contention of the petitioner.

13. In view of this, there exists no ground for even issuance of notice to the respondent. The petition has no merit in it. The objections are not sustainable and the same are dismissed.

**DEEPA SHARMA
(JUDGE)**

**SEPTEMBER 02, 2014
BG**