

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 3522 of 2013 (O/M)
Date of decision : 7.5.2015

Mordwaj Singh and others

..... Appellants

Versus

New India City Developers Private Limited

..... Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Akshay Bhan, Senior Advocate, with,
Mr. Alok Mittal, Advocate, for the appellants.

Mr. Aashish Chopra, Advocate, for respondent.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH, J.

Appellants have filed this appeal against order dated 17.4.2013, passed by the learned Additional District Judge, Gurgaon, whereby the application filed by the appellants under Section 9 of the Arbitration and Conciliation Act, 1996 (in short 'the Act') for restraining the respondent from disposing of the flats and property constructed by it on the land of its own share upto worth Rs. 100 crores or in alternative attaching the said property till the terms and conditions of the development agreement and consent award are complied with, was dismissed.

The short facts, which need to be noticed for the purpose

of disposal of the present appeal, are that the appellants were owner-in-possession of land measuring 35.2062 acres, situated within the revenue estate of village Behrampur. Appellants entered into a development agreement dated 3.3.2007 with the respondent. As per the terms of the agreement, 45% share of the sanctioned FAR was to be given to the appellants and the remaining 55% was to be retained by the respondent. Under the said agreement, respondent was to obtain the licence for developing the land from the competent authority within a period of 12 months from the date of execution of development agreement and thereafter, was bound to complete the work within 24 months from the date of grant of licence. In case of default, respondent was liable to pay compensation @ 2.5 lacs per month per acre for the undeveloped area to the applicants. In terms of Clauses 4.5 and 4.6 of the said agreement, the respondent was also liable to prepare the lay out plans of the scheduled property for the residential colony/commercial development/Group Housing Project/IT Park/Cyber Park as permissible by the DTCP or any other competent authority. The security fee, licence fee, CLU charges and EDC etc. were also to be paid by the respondent.

It is stated that respondent committed the default of the said agreement, as a result of which, the appellants have suffered the losses and damages to the tune of Rs. 100 crores. On account of dispute between the parties, Mrs. Justice Usha Mehra (Retd.),

Former Judge of the Delhi High Court was appointed as a Sole Arbitrator, who passed the consent award dated 5.7.2009. Respondent is neither adhering to the conditions of the development nor complying with the consent award and wants to create third party interest.

Respondent in his reply admitted the development agreement dated 3.3.2007 and stated that the Arbitrator is already seized of the matter. The present relief can be sought by moving application under Section 17 of the Arbitration Act before the Arbitrator. They (appellants) could also seek relief from the High Court, where an application for change of arbitrator can be filed.

After hearing both the parties, vide the impugned order, the application filed by the applicants (appellants herein) was dismissed by the learned Additional District Judge, Gurgaon.

I have heard learned counsel for the parties and have also carefully gone through the file.

It comes out that admittedly there was a development agreement between the parties. It is also not a denying fact that Mrs. Justice Usha Mehra (Retd.), Former Judge of the Delhi High Court was appointed as Arbitrator by the Chief Justice of this Court and that now thereafter Mr. Justice R.C. Lahoti (Retd.), Former Judge of the Hon'ble Supreme Court, was appointed as a sole arbitrator. The parties have further informed this Court that Mr. Justice R.C. Lahoti (Retd.) has recused from the proceedings on

22.4.2015 and new arbitrator is yet to be appointed. In any case, the parties are to move to the appropriate authority for appointment of a fresh arbitrator. It is also not a denying fact that in terms of the said agreement, Rs. 3,52,05,000/- were paid to the applicants (appellants herein) and another sum of Rs. 5,28,09,000/- were paid to the applicants (appellants herein) as non-refundable amount. It is also not a denying fact that some delay has occurred in complying with the terms of the agreement. In terms of the said agreement, compensation @ 2.5 lacs per month per acre was to be paid to the applicants (appellants herein). According to the respondent, the delay has occurred on account of conduct of the applicants (appellants herein), who opposed the issuance of LOI and other proceedings. The respondent has been sending various letters to the Commissioner, Principal Secretary and other authorities of Government of Haryana. In any case, the delay and penalty is to be decided by the arbitrator.

Learned senior counsel for the appellants has argued that the appellants had suffered the losses and damages to the tune of Rs. 100 crores and that their interest should be secured and respondent should be restrained from alienating the flats to the tune of Rs. 100 crores.

On the other hand, the learned counsel for respondent has argued that a sum of little less than 9 crores was already paid to the appellants and that the appellants have been raising one or the

other objections before the Arbitrator.

I am of the view that there are some contentious issues regarding payment of penalty, which are to be decided by the arbitrator. The arbitrator is to decide whether there was default on the part of the respondent or on the part of appellants, which resulted in the delay. It is yet to be determined whether the appellants are entitled to penalty and if so, how much and only then, the injunction order can be passed. The mere fact that the present arbitrator recused does not mean that new arbitrator will not be appointed. The appellants could seek similar relief before the arbitrator. Therefore, in these circumstances, I find that the learned Additional District Judge, Gurgaon, was justified in refusing the injunction, vide the impugned order dated 17.4.2013.

In view of the forgoing discussion, I do not find any merit in the appeal and the same is accordingly dismissed.

(KULDIP SINGH)
JUDGE

7.5.2015
sjks