IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 3759 of 2015 (O/M)
Date of decision : 1.7.2015

M/s Raheja Developers Limited ..... Appellant

Versus

Sohan Arora and others ...... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Akshay Bhan, Senior Advocate, with,
Mr. H.P.S. Sandhu and Ms. Priyanka Dalal, Advocates,
for the appellant.

Mr. Puneet Bali, Senior Advocate, with,
Ms. Monika Thakur, Advocate,
for caveators/respondents No. 5 to 7.

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. (ORAL)

Appellant/applicant has filed this appeal against order dated 18.4.2015, passed by the learned District Judge, Rewari, wherein under Section 9 of the Arbitration and Conciliation Act, 1996 (in short 'the Arbitration Act'), an order has been passed against respondents No. 5 to 7 to furnish bank guarantee to the tune of Rs. 4 crores to the satisfaction of the Court within thirty days. Till the bank guarantee is furnished, respondents No. 5 to 7 were restrained from alienating, creating third party interest or change the nature of the land. The appellant/applicant is not satisfied with the order passed in his favour.

At preliminary hearing, respondents No. 5 to 7, against whom the order was passed and who had filed caveat, appeared of their own.

Preliminary arguments have been heard. There is no need to issue notice to respondents No. 1 to 4, at this stage.

The short facts, which need to be noticed for the purpose of disposal of the present appeal, are that the appellant/applicant entered into collaboration agreement with respondents No. 1 to 6 on 12.4.2008 for developing a project on the land measuring 14.75 acres, owned by respondents No. 1 to 6, in the revenue estate of Bawal. Irrevocable power of attorney was accordingly executed in favour of the appellant/applicant. On 14.5.2008, respondents No. 1 to 4 entered into an agreement of sell of their share of land to respondent No. 7 with the concurrence of the appellant/applicant. A supplementary collaboration agreement was also executed between the appellant/applicant and respondents No. 5 to 7 on 30.7.2009. Additional interest free refundable security of Rs. 20,00,000/- was paid by the appellant/applicant to respondent No. 7. Respondent No. 5 and 6 were also paid interest free refundable security of Rs. 13,68,890/- each and further sum of Rs. 55,12,200/- to respondent No. 7. The parties were to remain bound by the terms and conditions of the collaboration agreement dated 12.4.2008. As per the agreement, the land was to be developed by the appellant/applicant at its own costs and expenses. Respondents No. 5 to 7 were to get 25% of the entire covered and uncovered area of the project, while 75% was to go to the appellant/applicant on completion. After such allocation, respondents No. 5 to 7 were made liable to refund the entire interest free security deposits. On the part of the appellant/applicant, it had to obtain Letter of Intent (in short 'LOI')from the Director, Town and Country Planning, Haryana, (in short 'DTCP') within six months from the date of agreement or notification of the area in the master plan or beginning of issue of licence in the area, whichever was later. The appellant/applicant was to complete the formalities of obtaining licence within thirty days of the issuance of LOI and was to get zoning plan and building plans, to be approved within six months from the date of receipt of licence and get the certificate within a period of three years from the date of receipt of all approvals and sanction. The appellant/applicant paid Rs. 80 lacs to DTCP, Haryana, and sought amendments and requested for grant of commercial licence over land measuring 2.45 acres out of the total land and low cost affordable group housing of 7 acres. The licence was not granted for one or the other reasons. Now, the dispute has arisen between the parties and the appellant/applicant has filed the present application under Section 9 of the Arbitration Act. Suffice to say that the said application was opposed by the respondents.

The learned District Judge, Rewari, observed that the Letters of Intent were cancelled on 6.5.2013 and 7.5.2013 (wrongly mentioned as 27.5.2013 in lower Court order). The dispute appears to have arisen between the parties immediately before the revocation of LOIs or shortly thereafter. It was further observed that the collaboration agreement cannot be construed as agreement for sale. It was also observed that the appellant/applicant has concealed the supplementary agreement dated 27.12.2010, whereby the land measuring 3.90 acres was taken out of the purview of the collaboration agreement and the remaining land available for project to be developed is 10.85 acres. However, the injunction was sought regarding the entire land measuring 14.75 acres. It was also observed that the balance of convenience is not in favour of the appellant/applicant and that the appellant/applicant cannot be allowed to have control over the land on the payment of meager amount, which too was by way of refundable security. Even then it was observed that the applicant had paid Rs. 1,08,00,500/- to the respondents and Rs. 80,00,000/- to the DTCP, Haryana. The applicant was given liberty to withdraw the amount from DTCP, Haryana and to secure his interest. Respondents No. 5 to 7 were directed to furnish bank guarantee of Rs. 4 crores to the satisfaction of the Court within thirty days and till then, they were not to alienate the land in question.

The learned senior counsel for the appellant/applicant has contended that the land should be preserved and that the calling for the bank guarantee is not sufficient.

On the other hand, learned senior counsel for the caveators/respondents No. 5 to 7 has reiterated the observations made by the lower Court and has argued that infact caveators/respondents No. 5 to 7 are aggrieved by the order. However, unluckily they have not filed any appeal. For a sum little more than Rs. 1 crore, they have been forced to furnish a bank guarantee of Rs. 4 crores.

I am of the view that in this case, the collaboration agreement is of 2008. The appellant/applicant was to obtain LOI. Thereafter, the licence to develop the land was to be obtained and the land was to be developed within the 3 years' period as mentioned above and completion certificate was to be obtained. Now, about seven years have elapsed. The LOIs issued to the appellant/applicant have been cancelled on 6.5.2013 and 7.5.2013 respectively by the competent authority. Appellant/applicant has not filed any appeal against the said orders. Thereafter, the appellant/applicant filed an application under Section 9 of the Act on 29.3.2014 and issued a notice for appointment of Arbitrator only on 15.1.2015. Needless to say that no licence for development of land has been obtained so far. In this way, the appellant/applicant is sitting over the land of the respondents for more than seven years without taking concrete steps for development of the land. I am of the view that despite recording the adverse findings, the learned District Judge, Rewari, granted the relief to the appellant/applicant by directing respondents No. 5 to 7 to furnish bank guarantee to the extent of Rs. 4 crores.

I am of the view that in these circumstances, no fault can be found with the order of the learned District Judge, Rewari. The appellant/applicant has already filed an application before Hon'ble the Chief Justice for appointment of an Arbitrator and all the disputes can be decided by the Arbitrator. However, the appellant/applicant cannot be allowed to hold the land of the respondents for indefinite period on the pretext of collaboration agreement, for the execution of which, virtually nothing has been done so far, except obtaining of LOIs, which have already been cancelled.

Consequently, I do not find any merit in the present appeal. The same is accordingly dismissed.

(KULDIP SINGH)
JUDGE

1.7.2015
sjks