

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

+ **O.M.P. 521/2015**

% **Date of Decision: 19th October, 2015**

INNOVATIVE REALTORS PVT LTD Petitioner
Through: Mr. Yog Raj Sharma, Adv.
versus

SUSHMA SACHDEVA Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

IA 22311/2015

Allowed subject to just exceptions.

OMP 521/2015

1. The petitioner has challenged the award dated 29th June, 2015 whereby the arbitrator has dismissed the petitioner's claim for specific performance of the Agreement to Sell dated 25th October, 2013.
2. Vide agreement to sell dated 25th October, 2013, the petitioner agreed to purchase plot bearing no.231, Part-III measuring 155.55 sq. yds. situated at Gujrawala Town from the respondent for a total consideration of Rs.6 crores. The petitioner paid Rs.60 lakhs at the time of the agreement and agreed to pay Rs.1,40,00,000/- within 15 days, Rs.1,00,00,000/- within 30 days and balance Rs. 3,00,00,000/- at the time of the execution of the Sale Deed. Admittedly, the petitioner did not pay Rs.1,40,00,000/- payable within 15 days and Rs.1,00,00,000/- within a period of 30 days of the agreement. The petitioner did not even contact the respondent during the above period. The first communication between the parties is dated 10th December, 2013 i.e. after 45 days of the agreement in which the petitioner

raised a frivolous issue of NOC to be obtained by the respondent though the agreement specifically provided that the NOC for execution of the Sale Deed shall be required to be obtained at the time of the execution of the Sale Deed. The respondent in her reply dated 16th December, 2013 categorically denied that any NOC was required as the property was a freehold property and that the entire chain of documents have already been shown to the petitioner which could be again produced at any point of time. The respondent granted further time of seven days to make the payment failing which the earnest money of Rs. 60,00,000/- shall be forfeited. The petitioner did not lead any evidence before the learned arbitrator to prove the availability of the funds with him for completion of the sale.

3. The learned arbitrator held that the petitioner committed default in payment of Rs.1,40,00,000/- within 15 days and Rs.1,00,00,000/- within a period of 30 days of the agreement to sell. The learned arbitrator further held that the petitioner's conduct in not making further payments in terms of the agreement goes to show that the petitioner was not ready and willing to perform his part of the contract. The arbitrator further held that the termination of the agreement due to non-payment of the balance amount was not illegal or fraudulent as the very first clause of the agreement provides for cancellation if the purchaser does not adhere to the schedule of payment. The relevant portion of clause 1 of the agreement has been reproduced as under:

“1.....In case the Second Party fails to pay the balance consideration as per the schedule mentioned above, then this agreement to sell stands cancelled and First Party will forfeit the amount paid by the First Party or if the First Party unable to execute the sale deed as per the condition, then the First Party has to pay double the amount paid by the First Party.”

4. The petitioner has challenged the impugned award on the ground that the time was not of the essence of the contract; the respondent had not taken the requisite permissions for the sale deed and was not in a position to handover the possession; the respondent suffered no loss and therefore could not have forfeited the earnest money and the award is against the public policy.

5. This Court does not find any merit in the contentions raised by the petitioner. The petitioner has committed the breach of the agreement dated 25th October, 2013 by failing to make the payment of Rs.1,40,00,000/- within 15 days and Rs.1,00,00,000/- within 30 days of the agreement. The petitioner did not even communicate with the respondent during the aforesaid period. The plea of NOC to be obtained by the respondent is frivolous inasmuch as the agreement provided for the NOC at the time of the execution of the sale deed. The petitioner also did not lead any evidence to prove the availability of the balance sale consideration from which the arbitrator rightly presume that the petitioner was not ready and willing to perform his part of the contract.

6. There is no infirmity in the award passed by the learned arbitrator. The petition under Section 34 of the Arbitration and Conciliation Act is therefore, dismissed.

7. Copy of this order be sent to the respondent.

J.R. MIDHA, J.

OCTOBER 19, 2015

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