

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

ARB-29-2016 (O&M)

Date of decision:- 14.07.2017

M/s Real Pro Assets Limited

...Petitioner

Versus

M/s Samar Estates Pvt. Ltd. and another

...Respondents

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE

Present:- Mr. T.S. Khaira, Advocate,
for the petitioner.

Mr. D.K. Singal, Advocate,
for the respondents.

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S.J. VAZIFDAR, C.J. (ORAL)

This is a petition under Section 11 of the Arbitration and Conciliation Act, 1996 for the appointment of an arbitrator.

2. The parties had entered into an agreement clause 18 whereof contains an arbitration agreement.

3. Clause 1 of the agreement reads as under:-

"1. That the total consideration/cost to be paid to the First Party has been fixed at Rs. 1,17,75,00,000/- (Rs One hundred seventeen crores seventy five lacs only) against the above said three lacs super area of tower no E, F, G, H, S, T, J & K of the above said Ess Vee Apartments @ Rs. 3,925/- (Rs Three thousands nine hundred twenty five only) inclusive of PLC, which shall be paid either by the Second Party or prospective buyers arranged by the Second Party in the following manner....

i) Earnest money amounting to Rs. 5,00,00,000/- (Rs Five crores

only) as detailed below at the time of signatures of the First & Second Parties on this MoU, as desired by the First Party, which shall be adjusted proportionately at the time of booking of apartments by the First Party through the Second Party.

Cheque No. 043391 dated 01.01.2011
Rs. 1,00,00,000/- (Rs One crore only)

Cheque No. 043392 dated 07.01.2011
Rs. 1,50,00,000/- (Rs One crore fifty lacs only)

Cheque No. 043394 dated 20.01.2011
Rs. 2,50,00,000/- (Rs Two crores fifty lacs only)

Total Rs. 5,00,00,000/- (Rs Five Crores only)

ii) Balance payment of above said sale consideration after proportionately adjusting earnest money into the booking/part payments against already booked apartments; shall be paid either by the Second Party or prospective buyers arranged by the Second Party as per price list of the First Party.

iii) In case the Second Party is not able to arrange booking of all of the above said apartments due to any reasons whatsoever, the First Party will either adjust the balance earnest money into the booking/part payments against already booked apartments or may refund the balance earnest money at its sole discretion."

(emphasis supplied)

4. The petitioner's case is that a part of the earnest money remains to be paid by the respondents. The respondents on the other hand contend that the entire amount was adjusted against the sales. The dispute is covered by the arbitration clause. That, however, is not the end of the matter.

5. The petitioner admits that the entire three lacs sq. ft. of the super area was sold by it. The last transaction took place in the year 2012. The adjustment of the earnest money according to the respondents was complete in the year 2012. I will assume that a part of it remains to be adjusted. However, in that event, the petitioner's cause of action arose after the sale of the entire three lacs sq. ft. super area which admittedly was in the year 2012. The notice invoking the arbitration agreement was issued only on 08.01.2016 i.e. beyond the period of limitation for an action for recovery of money. Unfortunately, there is nothing on the record that saves this period of limitation rendering the claim stale.

6. It was suggested before me that certain flats were allotted to the petitioner as security for the repayment of the balance amount of the earnest money. This is only a submission across the bar. There is no averment to this effect. In respect of certain flats, agreements were entered into between the respondents and a Director of the petitioner. The agreements are not between the respondents and the petitioner. There is nothing on the record that suggests that this was only a mode of creating security in favour of the petitioner. In other words, it is not pleaded anywhere, nor contended in the correspondence that the agreements were entered into in the name of the petitioner's Director, but were in fact security in respect of the petitioner's dues.

7. In these circumstances, the petition is dismissed on the ground that the claim is stale.

(S.J. VAZIFDAR)
CHIEF JUSTICE

14.07.2017

Amodh

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No