

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

**FAO No. 97 of 2010 (O&M)
Date of Decision: 16.08.2017**

BSF Cooperative House Building Society Ltd.
Valley View Estate Gwal Pahari Tehsil Sohna
District Gurgaon

..... Appellant

Versus

M/s. Ansal Properties and Infrastructure Ltd.,
New Delhi

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Surya Kant Gautam, Advocate
for the appellant.

Mr. Adarsh Jain, Advocate
for the respondent.

JASWANT SINGH, J.

The Group Housing Building Society has filed the present appeal, assailing the order dated 05.09.2009 passed by learned Additional District Judge, Fast Track Court, Gurgaon on the application under Section 9 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') instituted by the respondent-Builder.

In brief, the members of the Border Security Force (BSF) formed a Cooperative Housing Building Society (for short 'the Society') and purchased 22 acres of land in village Gwal Pahari, Tehsil Sohna, District Gurgaon for setting up a residential colony for the members of the Society. Since the Society did not have the expertise or technical experience and also the knowhow, the Society entered into a Collaboration Agreement dated

22.10.1992 with M/s. Ansal Properties and Infrastructure Ltd. (for short 'the Builder') for developing the entire area and construction of residential flats/colony alongwith certain areas/buildings for common use.

It is not in dispute that pursuant to the collaboration agreement, the Society had also executed irrevocable power of attorneys dated 26.12.1995 and 22.09.1997 in favour of the Builder, so as to facilitate the developing of the area as per the lay out plans after getting approval from the Department of Town and Country Planning, Haryana. It is also not disputed that the 237 dwelling units/flats were constructed and allotted to the members of the Society.

The dispute arose when the members of the Society alleged that the Builder was trying to introduce third party's rights in the common areas to be reserved for the use of the members of the Society. The stand of the Builder was that excluding the residential areas, the remaining portion was to be owned and to be developed for the benefit of the Builder, since as per the terms of the collaboration agreement, the entire cost of construction and development of the dwelling units was borne by the builder. Apprehending the revocation of the power of attorneys executed in favour of the Builder, the Builder was constrained to move an application under Section 9 of the Act to secure its interests pending the invocation of the arbitration agreement. Concededly, the parties entered into adjudication by an Arbitrator. The operative para-12 of the impugned order dated 05.09.2009 restraining the appellants reads as under:-

“ As a sequel to above discussion the application under Section 9 is accepted with costs and interim measure restraining the respondent its agents, associates and persons claiming through or under it from executing or giving effect to

any cancellation deed from suspending, revoking, canceling the irrevocable power of attorneys dated 26.12.1995 and 22.9.1997 given to the applicant and also restraining respondent from curtailing any of the powers granted therein to the applicant/its nominee(s) by virtue of the said irrevocable power of attorneys and also restraining the respondent from interfering in the acts of the applicant or its nominee in obtaining all requisite sanctions, permissions, completion certificates complying with rules and regulations for setting up a group housing colony in terms of the collaboration agreement dated 22.10.1992 read with supplementary agreements dated 22.10.1997 and 31.7.2002 in respect of the said colony developed by the applicant on the land detailed in Annexure I attached with the application situated in the revenue estate of Gwal Pahari, Tehsil Sohna District Gurgaon till complete development and completion of the project as per rules, regulations, bye-laws or till the adjudication of the matter in dispute by the arbitrator whichever is earlier is granted in favour of the applicant and against the respondent. It is made clear that this order will not have any effect in any manner on powers of competent authority under Environment and Protection Act to take against the applicant according to law. Observation made in this order will not have any bearing on the merits of the case to be decided by the arbitrators in case the parties agree to refer the matter in dispute to the arbitrator. Memo of costs be prepared.”

Learned counsel for the appellant has argued that the area reserved for school site, community centres and other common areas were no doubt to be developed by the Builder, however, the ownership of the same could not be transferred to any third party. Therefore, the revocation of the power of attorneys executed by the Society was just and fair.

On the other hand, learned counsel for the respondent-Builder

adjudication based on the interpretation of the terms and conditions of the collaboration agreement by the Arbitrator. He further submits that to secure the timely completion of the various projects, the trial Court has rightly passed the injunction order in favour of the respondent-Builder.

After hearing learned counsel for the parties, this Court finds no merit in the present appeal.

It is not in dispute that pursuant to the collaboration agreement, the aforesaid power of attorneys were executed by the Society in favour of the nominee of the Builder to appear and represent the Society and also correspond on behalf of the Society with the Director, Town and Country Planning, Haryana, HUDA, PWD and other Government Authorities for approval and sanctions of buildings. It is also conceded that pursuant to execution of the power of attorneys, the lay-out plans were got sanctioned and the entire construction of the dwelling units was completed and allotted to the members of the Society. It is also not in dispute that the Arbitrator is already seized of the dispute on the aforesaid lines for final adjudication on the issues. The issue of delay of execution of the remaining work is also to be decided by the Arbitrator. It is also not in dispute that the power of attorneys, as per the collaboration agreement, are to operate till the final completion certificate of the entire colony is obtained from the Department of Town and Country Planning, Haryana. It is also admitted that due to *inter se* dispute raised, the completion certificate has not yet been granted by the Department of Town and Country Planning.

In the aforesaid situation, the grant of aforesaid/reproduced injunction by the Court below cannot be held to be arbitrary or unjust. The Arbitrator is seized of the matter and dispute purely relates to interpretation

of the terms and conditions which falls within the domain of adjudication by the Arbitrator. No prejudice is going to be caused to the appellant if the interim order is allowed to continue, however, on the other hand, the respondent may not be able to be compensated if the injunction is vacated.

Hence, in view of the above, no ground for interference is made out, accordingly, the present appeal stands dismissed.

August 16, 2017

'dk kamra'

**(JASWANT SINGH)
JUDGE**

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No