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

+ **O.M.P. 365/2015**

**BRISK INFRASTRUCTURE & DEVELOPERS
PRIVATE LIMITED**

..... Petitioner

Through: Mr. Rikky Gupta, Advocate.

versus

RAJESH JINDAL

..... Respondent

Through: Mr. Y.R. Sharma, Advocate.

CORAM: JUSTICE S. MURALIDHAR

ORDER

20.03.2017

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1. Brisk Infrastructure & Developers Private Limited has filed this petition under Section 34 of the Arbitration & Conciliation Act, 1996 ('Act') challenging the Award dated 9th February, 2015 passed by the sole Arbitrator in the disputes between the Petitioner and the Respondent, Mr. Rajesh Jindal, arising out of an Agreement to Sell dated 25th February, 2014.

2. The aforementioned Agreement was entered into in respect of an immovable built up property bearing No. 14, Block - A, Lok Vihar, Pitam Pura, Delhi whereby the Respondent agreed to sell to the Petitioner the said property for a total consideration of Rs. 35 crores. It is not in dispute that at the time of entering into the said Agreement, the Petitioner paid the Respondent Rs.5 crores as earnest money.

3. It is stated that the Respondent was supposed to obtain various permissions and had represented that the property was approved for mixed use i.e., commercial as well as residential. It is stated that the Petitioner itself was involved in developing and sale-purchase of immovable properties as a builder.

4. It is stated that despite repeated requests by the Petitioner, the Respondent did not come forward to provide the requisite documents concerning approval for mixed use of the property. Subsequently, the Petitioner learned that the property was approved only for residential use since the road on which the property was located had not been approved for mixed use.

5. By its letter dated 19th March, 2014, the Petitioner requested the Respondent to provide the necessary approvals / notifications from the concerned department / authorities. On 21st March, 2014, the Respondent called upon the Petitioner to make the balance payment of the sale consideration. Ultimately, the Respondent cancelled the Agreement and forfeited the earnest money.

6. The disputes between the parties were referred to the sole Arbitrator who has passed the impugned Award holding as under:

a. The claimant i.e., the Petitioner herein, was unable to prove that it was ready and willing to perform its part of the Agreement dated 25th February, 2014. The Petitioner was also unable to produce independent evidence to substantiate the plea that the value of the property was much less than the

agreed amount. There is no basis in the plea that there was inordinate delay on the part of the Petitioner receiving compensation for some land from the Haryana Government and therefore could not arrange the funds in time. There is no such clause in the Agreement in question.

b. Time was the essence of the contract and the Respondent followed it in letter and spirit. From 25th February, 2014 onwards, the Petitioner did not come forward to pay the balance sale consideration. Therefore, it could not be said that the cancellation of the Agreement was improper.

7. Learned counsel for the Respondent points out that in another dispute between the Petitioner and an individual regarding purchase of immovable property, an order has been passed by this Court in ***Brisk Infrastructure & Developers Pvt. Ltd. v. Naveen Narang 2014 VIII AD (Del) 701*** whereby the objections of the Petitioner to the Award passed in that case were rejected.

8. Learned counsel for the Petitioner was unable to show in what manner the impugned Award attracts any of the grounds under Section 34 of the Act. In particular, the finding that the Petitioner was not ready and willing to perform its part of the contract has not been shown to be perverse or contrary to the record. The other conclusions in the impugned Award stem from this principal conclusion.

9. In the circumstances, the Court finds that no grounds have been made out for interference with the impugned Award of the sole Arbitrator.

10. The petition is dismissed but in the circumstances with no orders as to costs.

IA No. 13318/2015

11. The application is disposed of.

S. MURALIDHAR, J.

MARCH 20, 2017

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