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IN THE HIGH COURT OF DELHI AT NEW DELHI

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O.M.P. 511/2015

AVR INDIA PRIVATE LIMITED

..... Petitioner

Through: Mr. Sachin Chandra, Advocate.

versus

ADHIR SACHDEVA & ANR.

..... Respondents

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

CORAM: JUSTICE S.MURALIDHAR

ORDER

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24.03.2017

1. The challenge in this petition under Section 34 of the Arbitration and Conciliation Act, 1996 ('Act') by AVR India Private Limited is to an Award dated 29th June 2015 passed by the sole Arbitrator in the disputes between the Petitioner and the Respondents arising out of an agreement to sell dated 25th October 2013.

2. The parties entered into the aforementioned agreement to sell in respect of a commercial property bearing Plot No. 409, Block-D, Part-III, New Sabzi Mandi, Azadpur, New Delhi admeasuring 636 sq. ft. for a total sum of Rs.2 crores. At the time of entering into the agreement to sell a sum of Rs.40 lakhs was paid by the Petitioner to the Respondents as earnest money. The balance consideration was to be paid as follows:

(i) Rs.1 crore on 9th November 2013 and

(ii) Rs.60 lakhs on 9th December 2013.

3. In the event of non-fulfilment of above stipulation, the Respondents were entitled to forfeit the earnest money. Admittedly, the Petitioner defaulted in making the payment of the remaining amounts. The explanation offered is that despite repeated demands, the original title deeds were not shown; on making enquiry it transpired that the property was not 636 sq.ft. but only 525 sq.ft.; a no objection certificate from the concerned authority for sale of the property was not produced.

4. The disputes between the parties were referred to a sole Arbitrator. By the impugned Award the learned Arbitrator held that the cancellation of the agreement to sell and forfeiture of the earnest money by the Respondents was just and proper. Time was the essence of the agreement and the Petitioner failed to fulfil its obligation of making the payment of the balance amount within the time stipulated. The categorical finding was that the Petitioner was not ready and willing to perform its part of the agreement.

5. Having heard learned counsel for the parties, the Court is unable to find any legal infirmity in the above factual finding of the learned Arbitrator. The Court is not sitting in appeal over the impugned Award. It is not expected to re-appreciate the evidence and interfere with the impugned Award only because a different view is possible to be taken on the same evidence. In any event, the Petitioner has failed to demonstrate how any of the grounds under Section 34 of the Act are attracted in the present case.

6. The Court notes that in similar circumstances in ***Brisk Infrastructure & Developers Pvt. Ltd. v. Naveen Narang 2014 VIII AD (Del) 70***, the Court declined to interfere with the impugned Award. Here too nothing has been

shown to persuade the Court to hold that the impugned Award is opposed to the fundamental policy of the Indian law or is otherwise perverse or shocking to the judicial conscience.

7. No grounds have been made out for interference. The petition is accordingly dismissed with no order as to costs.

S. MURALIDHAR, J

MARCH 24, 2017

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