

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

FAO-CARB No.7 of 2019

Reserved on : July 12, 2019

Date of decision: August 27, 2019

Antram and others

...Appellants

Versus

Graviss Hotels and Resorts Ltd. and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr.Sandeep Sharma, Advocate
for the appellants.

Mr.Ankit Midha, Advocate
for the respondent – Caveator.

HARINDER SINGH SIDHU, J.

1. In this appeal the appellants have challenged an order dated 13.10.2018 passed by Additional District Judge-cum-Presiding Judge, Special Commercial Court at Gurugram dismissing the application filed by them under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') for setting aside the arbitral award dated 04.03.2016 passed by the Sole Arbitrator.

2. A dispute between the appellants and the respondent arising

out of agreement to sell dated 18.03.2008 was referred to the Sole Arbitrator who made an award dated 04.03.2016.

3. Respondent No.1-Gravis Hotels and Resorts Limited (hereinafter referred to as 'the claimant') filed the claim before the Arbitrator stating that it was a Company engaged in the business of setting up hotels. It intended to set up a hotel in Gurgaon. It approached various persons/entities for outright purchase of parcels of land as per its requirement. Its representatives Raman Mehra (CEO), Vikram Seth, late Kishore Bakshi had met Satyawarat Sangwan Real Estate agent. He introduced them to Devi Singh Rawat Real Estate agent. The latter claimed that he was aware of three separate parcels of land available for sale which would meet the requirement of the claimant.

4. Mahesh Dhamia husband of Anita Devi, D.B.Jain and Antram Jharia along with Rajesh, Devi Singh Rawat and Satyawarat Sangwan met the representatives of the claimant on 27.02.2008 with a proposal to sell the land belonging to them. It was represented by them that the appellants, Anita Devi and D.B.Jain owned three different pieces of land which were adjacent and contiguous to each other. While negotiating the purchase of the land with the three owners the claimant wanted to conduct a joint survey of the land to ascertain its boundaries. However, Devi Singh Rawat acting on behalf of the land owners insisted that the survey should be conducted after the agreement to sell was entered into. It was projected that a survey would send a message that the land had already attracted a potential buyer. This would deter other interested purchasers from

approaching the sellers and if the claimant did not eventually purchase the land it would result in loss of opportunity to sell the land to other parties.

5. The appellants were owners of 08 Kanals 01 Marlas of land situated within the revenue estate of village Nagli Umarpur, Tehsil and District Gurgaon. They agreed to sell the aforesaid land to the claimant for a sum of Rs.14 crores. The claimant paid them a sum of Rs.6 lacs vide three different cheques of Rs.2 lacs each even before the execution of the formal agreement to sell. Devi Singh Rawat was paid a brokerage of Rs.28 lacs. The agreement to sell was executed on 18.03.2008. The relevant clauses thereof are as under:-

“Clause 2

That the buyer has this day paid a total amount of Rs.1,34,00,001/- (Rupees one crore thirty four lakhs one only) paid vide three DDs bearing no.12546, 12547 and 12548 all dated 15.03.2008 and all drawn on AXIS Bank, New Delhi, Service Branch for an equal amount of Rs.44,66,667/- (Rupees forty four lakhs sixty six thousand six hundred sixty seven only) towards part consideration, the receipt of which the sellers hereby admit and acknowledge. The sellers also hereby acknowledge the receipt of an aggregate of Rs.6,00,000/- (Rupees six lakhs only) vide three cheques bearing nos.6246, 6247 and 6248 dated 26.02.2008 of Rs.2,00,000/- (Rupees two lakhs) each.

Clause 6

That the sellers shall allow the buyer to conduct an official survey [jointly by the patwari and the architect of the buyer] of the said land to ascertain the exact boundaries thereof, and its clear demarcation and furnish survey plans to the

buyer/advocates of the buyer.

Clause 13

The sellers are aware that the buyer is negotiating with (i) Anita Devi the owner of the adjoining consolidated piece and parcel of land bearing khewat no.34/32, Khatauni No.41, Mustteel No.29, Killa No.22/2 (3-8) Mustteel No.36, Killa No.3(1-16), Kita 2 admeasuring 0.65 acres situate at village Tigra, District Gurgaon and (ii) Mr.D.B.Jain the owner of the adjoining land bearing khewat no.68, Khatoni No.101, Mustteel No.1, Rect.No.1 Kila No.17/1(2-16), Mustteel No.1, Kila No.18/1 (1-15) (1-0) total admeasuring in aggregate 4 kanal 14 marla situated at village Nagli Umarpur, Gurgaon, District Gurgaon for the purchase of the same. The sellers agree that in the event the proposed purchase of such adjoining pieces of land fails to consummate, then in that event, this agreement shall stand terminated and the sellers shall refund all the amounts received from the buyer till then.”

6. The 1st Schedule to the agreement describes the land agreed to be sold by the appellants and its boundaries:

“First Schedule

All that piece of land bearing khewat No.67/67, Khatauni No.100, Mustil No.1, Killa No.17/2 (4-0), Mustil No.1, Killa No.18/2 (4-1), Kitta 2 total admeasuring approximately 8 kanals 1 marla (1 acre) situated at village Nangli Umarpur, District Gurgaon, bounded as follows:-

North: Plot of Mr.D.B.Jain
East: Kacha Rasta of 33 feet
South: Land owned by splendour Builders
West: Agricultural land”

7. A sum of Rs.1,40,00,001/- was paid to the appellants by the claimant as part consideration as per the recital in the agreement.

8. Similar agreements to sell dated 18.03.2008 were entered into by the claimant with the other two land owners namely Anita Devi and D.B. Jain.

9. The claimant got a joint survey of the properties conducted on 2.4.2008. This survey revealed that a plot of land measuring approximately 12,000 ft. belonging to HUDA fell between the properties belonging to D.B.Jain and Anita Devi. Thus the survey revealed that plots of Anita Devi and D.B.Jain were not adjacent and contiguous to each other. As the claimant was interested in a single piece of land for setting up of a hotel it served a notice terminating the agreement alleging that there was misrepresentation on the part of the appellants.

10. Through the claim petition it sought recovery of the amount of Rs.1,40,00,001/- paid to the appellants along with interest.

11. The case of the appellants was that there was no misrepresentation on their part. As per the agreement dated 18.03.2008 the sale-deed was to be executed within 34 days i.e. upto 21.04.2008. The claimant having failed to do so the agreement automatically stood terminated and earnest money forfeited. It was their case that the agreement could not be executed due to the negligence, carelessness and non-performance by the claimant. The appellants had never agreed to sell their land along with the adjoining land owners namely Anita Devi and

D.B.Jain. They were only concerned about their property. As clearly recorded in the agreement to sell they had handed over the copies of the title documents to the claimant so there was no question of the claimant being misled. They also filed a counterclaim seeking damages and litigation expenses from the claimant.

12. The learned Arbitrator framed the following questions as arising for consideration:

- “i) Who has committed breach of the agreement;*
- ii) Whether there is any misrepresentation by the respondent, if so, its effect;*
- iii) Whether the claimant is entitled to the amount claimed;*
- iv) Whether earnest money has rightly been forfeited;*
- v) Relief.”*

13. The learned Arbitrator noted that while describing the boundaries of the land in the agreement sell it was mentioned that in the north of the land of the appellants was the land of D.B.Jain, which was described as contiguous. But the survey revealed that between the lands of Anita Devi and D.B.Jain there was a piece of land belonging to Haryana Urban Development Authority. Thus, the lands were not contiguous. He thereby concluded that the appellants had given incorrect description of the boundaries in the agreement to sell. Further, though there was no specific mention in the agreement to sell that the land was required for setting up a hotel, the witness of the claimant Vikram Seth in his statement had clearly indicated that the land was required for setting up of a hotel and three contiguous plots were intended to be purchased. There was no suggestion

to him on behalf of the appellants that the claimant did not want to set up a hotel.

14. The learned Arbitrator concluded that the claimant wanted to purchase contiguous pieces of land for setting up a hotel. It was represented to it that the land of the appellants, D.B.Jain and Anita Devi were contiguous. The claimant had wanted to get a joint survey of the land done before entering into the agreement to sell. The agent of the land owners insisted that such survey be done only after entering into an agreement. Immediately after the agreement the survey was conducted which revealed that the lands were not contiguous. The claimant realised that there had been misrepresentation about the contiguous nature of the land. He immediately terminated the contract. Accordingly, it was concluded that the appellants had committed breach of the agreement as there was misrepresentation on their part and the claimant was within its right to terminate the agreement.

15. Award was passed against the appellants for a sum of Rs.1,40,00,000/-. The claimant was also held to be entitled to interest @ 7.5% per annum from the date of appointment of the Arbitral Tribunal till final payment. The counter claim of the appellants was dismissed.

16. In the petition under Section 34 of the Act filed by the appellants against the arbitral award it was contended by them that the award was contrary to the provisions of law and in conflict with public policy and being patently illegal was liable to be set aside.

17. The learned Court rejected their contentions and dismissed the

petition.

18. The Court held that the agreement dated 18.03.2008 had to be performed within 34 days. The appellants (seller) had permitted the claimant (buyer) to conduct a survey of the land to ascertain the exact boundaries. All the records pertaining to the title, location plan and copy of the master plan had already been given to the lawyer as per the stipulation in the agreement itself. It was an admitted fact that the agreement had been got drafted by the claimant. Before the Tribunal the witness of the appellants had admitted that the appellants were aware that the claimant was negotiating with two other land owners. There were prior negotiations between the parties before the execution of the agreement which was clear from the fact that advance payments had been made to the appellants before the execution of the agreement. The survey conducted after the execution of the agreement revealed that the boundaries as described in the agreement were not correct. Thereafter the claimant terminated the contract by sending a notice. From this it could in no way be concluded that the Arbitrator had decided the dispute contrary to the terms and conditions of the agreement or that the award was against public policy or vitiated on any ground.

19. Before us also the appellants have not been able to establish as to how the award is vitiated on any ground.

20. It is clear that the appellants were aware of the requirement of the claimant of one compact piece of land. The misrepresentation by the appellants about their land being contiguous is evident on record. Apart

from the other evidence taken note by the Arbitral Tribunal, Clause 13 of the agreement reproduced above clearly indicates that the appellants were aware of the claimant negotiating with two other buyers having adjoining consolidated piece of land. The appellants agreed that in the event the purchase of the adjoining pieces of land fails, their agreement would stand terminated and they would refund all the amounts received.

21. Thus there is no infirmity in the award. This appeal is dismissed.

(RAJIV SHARMA) (HARINDER SINGH SIDHU)
JUDGE JUDGE

August 27, 2019
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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No