

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM No. 206-FCARB-2019 in/and
FAO-CARB No. 14 of 2019 (O&M)
DATE OF DECISION: 29.11.2019

Brahma Centre DevelopmentApplicant-appellant.

versus

Bestech India Pvt. Ltd.Respondent

CORAM:- HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SHARMA, JUDGE.

Present: Mr. Puneet Bali, Sr. Advocate with
Mr. Sanyat Lodha, Advocate, and
Mr. Prakhar Deep, Advocate,
for the applicant-appellant.

Mr. Ashish Chopra, Advocate with
Ms. Swati Dayalan, Advocate, for the respondent.

RAVI SHANKER JHA, CHIEF JUSTICE: (Oral)

It is conjointly submitted by learned counsel for the parties that they have settled the dispute amongst and between them in terms of the settlement agreement which is in the following terms:-

“SETTLEMENT AGREEMENT

This settlement agreement is executed at New Delhi on this 7th day of November, 2019.

BY AND BETWEEN

M/s Brahma Centre Development Pvt. Ltd. , a company incorporated under the Companies Act, 1956, having its office at B-8, Ansal Tower, hereinafter called the **“Owner”** through its Director Mr. Gulbir Madan (which expression, unless repugnant or opposed to the context thereof includes its successor, representatives, nominees and assigns) of the **FIRST PART;**

AND

M/s Bestech India Pvt. Ltd., a company incorporated under the Companies Act, 1956, having its office at Bestech House, 51, Sector 44, Urban Estate, Gurgaon, hereinafter called the **“Developer”**, through its Directors, Mr. Dharamendra Bhandari and Mr. Sunil Satija (which expression, unless repugnant or opposed to the context thereof, includes its successors, representatives and permitted assigns) of the

SECOND PART.

Both the OWNER and the DEVELOPER are collectively referred to as the **“Parties”** and individually referred to as the **“Party”**.

RECITALS

A. WHEREAS the Owner and the Developer had entered into a Collaboration Agreement dated 16th of April, 2011 (**“Collaboration Agreement”**) pertaining to the **“Commercial Project”** (i.e. the Commercial Tower and Retail Complex, as defined below) bearing Vasika No. 3693 at site/Plot No.2, Sector 16, Gurgaon, admeasuring 12.206 (Twelve point Two Zero Six) acres. The plot referred to above has hereinafter been referred to as the **“Said Plot”**.

B. **WHEREAS** in furtherance of the aforesaid Collaboration Agreement the Parties have executed a First Addendum dated 29.07.2012 to the Collaboration Agreement (**“First Addendum”**) and Second Adeendum dated 25.02.2016 to the Collaboration Agreement (**“Second Addendum”**).

C. **WHEREAS** after execution of the Second Addendum, the Developer has obtained pre-certification for Green Rating for Integrated Habitat Assessment (hereinafter referred to as GRIHA) for the Athena project. The Owner has stated that the said rating has been obtained without any written consent of the Owner. The Developer has further informed the Owner that the additional FAR of 15% of net plot area which is approx. 69000 sq. ft. of additional FAR is also sanctioned by HSIIDC vide Memo dated 11th June, 2018 (**“2018 Plans”**). The Developer has completed the construction of approx. 40000 sq. ft. out of the said additional FAR made available under GRIHA and the Developer has claimed that the balance additional area available under GRIHA is also under construction. The Developer also demanded the additional share of cost of construction towards additional area from the Owner in the ratio of 65;35 as per the Collaboration Agreement which was not accepted by the Owner.

D. WHEREAS in the meanwhile several disputes arose between the parties regarding adoption and sharing of costs towards GRIHA and of temporary roof covering of the Project Athena. Differences and disputes between the Parties culminated in initiation of several litigations including but not limited to Arbitration Proceedings before the Sole Arbitrator, Hon’ble Mr. Justice (Retd.) V.N.Khare and appeals pending before the Hon’ble High Court of Punjab and Haryana.

E. WHEREAS the Parties are now desirous of amicably settling all inter se disputes including adoption of GRIHA, cost of additional construction and temporary roof covering for the Project Athena as mandated by GRIHA specification/manual.

NOW, THEREFORE, THESE PRESENTS WITNESS and it is hereby agreed between the parties to settle all their disputes as per the following terms and conditions:-

1. The Developer has obtained pre-certification for Green Rating for Integrated Habitat Assessment (hereinafter referred to as GRIHA) for the Athena project and has

got sanction of additional FAR of 15% of net plot area which is approx. 69000 sq. ft. from HSIIDC vide its Memo dated 11th June, 2018.

2. The Developer has completed the construction of approx. 40000 sq. ft out of the said additional FAR made available under GRIHA and the Developer has claimed that the balance additional area available under GRIHA is also under construction. The Developer had also demanded the additional share of cost of construction towards additional area from the Owner in the ratio of 65;35 as per the Collaboration Agreement which was not accepted by Owner. The Parties have now agreed to attain GRIHA ratings for the Project Athena which would result in construction of additional FAR for the Project. Both parties have also amicably agreed that construction of temporary roof covering for the Project should be undertaken.

3, The Parties shall jointly within 15 days hereof appoint a Project Management Consultant ("**PMC**") who shall monitor the progress of the Project, the specifications being implemented in the Project and shall prepare monthly reports with respect to the quality and progress of the Project. The PMC shall submit the said monthly report to the Parties on or before the 7th day of each month. The parties shall bear the cost/fees of the PMC in area sharing ratio of 65;35. The PMC shall meet at the project site on monthly basis and representatives of both parties shall also be present at the time of such meetings at the project site.

4. The parties have calculated the expenses to be incurred towards Roof Covering and towards construction of additional area as per 2018 plans and the same has been fixed at Rs.70 Crores (Rupees Seventy Crores only). The parties agree and undertake to share the said expenses towards roof covering and towards construction of additional area as per 2018 plans in the area sharing ratio i.e. 65 (Owner): 35 (Developer) i.e. Rs.45 Crore (Rupees Forty Five Crores only) to be payable by the Owner and balance Rs. 25 crores (Rupees Twenty Five Crores only) to be payable by the Developer.

5. The parties further agree that out of Rs. 45 Crores (Rupees forty five crores only) payable by the owner, the owner shall pay Rs.40 crores (Rupees Forty crores only) towards cost of construction of roof covering and its allied services at instructions of the Developers through the PMC, whenever the demand is raised by the vendor towards such roof covering and allied services. The said amount shall be paid by the Owner directly to the vendor as instructed by the Developer through the PMC. The allied services shall include structure related to the roof covering, air conditioning, power back up etc. The designs related to the roof covering shall be shared by the Developer with the Owner through PMC. The balance amount of Rs. 5 crores (Rupees Five crores only) payable by the Owner out of the total amount of Rs.45 crores (Rupees Forty Five Crores only) shall be paid by the Owner to the Developer within 15 days of issuance of Occupation Certificate by the concerned statutory authority.

6. The parties further agree to demarcate the additional areas so constructed in the same manner as elaborated in the Collaboration Agreement, First Addendum and the Second Addendum in the area sharing ratio of 65 (Owner); 35 (Developer) within 30 days hereof.
7. The Developer has informed the Owner that it has commenced the mobilization and construction work at Project site. The parties agree that the Developer shall completely mobilize the project site with 2 months hereof. It is further agreed that the Developer shall complete the construction of the Project and offer possession of the areas in the project to prospective allottees/occupants/tenants for carrying out fir outs/interiors of their respective allocated areas within 18 months from the expiry of two months period (with additional period of 3 months as grace period). The Developer shall apply for grant of Occupation Certificate within the period of the said 18 months i.e. on or before July, 2021. The PMC shall prepare the detailed milestone based construction schedule for the aforesaid construction within a period of 15 days of its appointment which construction schedule shall form part and parcel of this Settlement Agreement.
8. The Developer shall provide AutoCAD drawings pertaining to 2018 plans to the Owner on or before 8th November, 2019.
9. The Owner shall have right of access to the Project Site through its authorized representatives etc. The authorization by the Owner in the favour of any individual permitting them access to the Project Site shall be sufficient for the said purpose.
10. The Owner has sought extension of license from HSIIDC vide its Application dated 10th June, 2019 for completion of construction of the Project and the Owner shall be liable to pay all charges/fees towards the same to HSIIDC. The Developer shall extend complete cooperation towards extension of license.
11. In the pending litigations and proceedings between the parties or to which the claimant and respondent are party, the same shall be resolved and proceeded with as under:-
 - a) In the proceedings pending before the Hon'ble High Court of Punjab and Haryana in Chandigarh being FAO CARB No. 14 of 2019 and FAO CARB No. 15 of 2019, the Parties shall make a joint request to the Hon'ble High Court to allow the appeals in terms of this Settlement Agreement. It is agreed between the parties that the judgment dated 13.02.2019 shall have no binding effect between the parties.
 - b) In the proceedings pending before the learned Haryana Real Estate Appellate Tribunal being Appeal No. 1391/2019, in view of this Settlement Agreement between the parties, a joint request shall be made to the learned Appellate Tribunal to allow the said appeal to the extent that the order dated 22.10.2019 of the learned HARERA, Gurugram, makes any observations regarding *inter se* dispute between the Parties, which is being resolved by way

of this Settlement Agreement. Further, the parties herein agree that the Developer shall make a statement/prefer an application before the learned Real Estate Appellate Tribunal that any liability or obligations towards its allottee i.e. Mr. Vijay Kumar shall be that of Developer and the Owner shall not be liable towards the same in any manner whatsoever.

- c) In the proceedings pending before the learned Commercial Court, Gurugram, in the suit titled Cinopolis India Pvt. Ltd. v. Brahma Centre Development Pvt. Ltd. and Ors. being CS No. 87/2018 wherein the Owner and Developer herein are the Defendants No.1 and 2 respectively, the Parties shall jointly oppose the said suit and seek dismissal of the same by exerting best efforts.
- d) The Parties agree to place this Settlement Agreement before the learned Arbitral Tribunal of the Sole Arbitrator, Hon'ble Mr. Justice (Retd.) V.N.Khare, for the Ld. Arbitral Tribunal to pass a consent award in terms of this Settlement Agreement.

12. The parties agree to indemnify each other against any third party claims or liabilities on account of any transaction of any nature whatsoever entered into by the Parties with any third party/ies with respect to their respective allocation. The Party that has entered into any such transactions shall be solely liable towards any claims or liabilities towards any third party/ies, including satisfying any claim adjudicated by any authority, court or forum.

13. In the interest of the project and for expeditious completion of the same, the parties agree and undertake that for efficient and effective mediation/facilitation between the parties, and to ensure expeditious resolution of any issues/disputes that may arise in the course of completion of construction, Mr. Ravinder Lohiya s/o late Shri Jagat Singh, r/o Farm No. 30, Row No.1, Silver Oak Farms, Ghitori, New Delhi-110030, shall act as mediator/facilitator between the parties. The parties agree and undertake that in case of any dispute arising between the parties, the parties shall approach the mediator/facilitator for resolution of such dispute.

14. The parties agree and undertake not to create any hindrance/obstruction/impediment/obstacle in any manner to the execution and completion of the work of development, construction and implementation of the Project which has commenced and is going on in full swing.

15. The Parties admit and acknowledge that this Agreement is supplementary to the Collaboration Agreement, First Addendum and the Second Addendum and this Settlement Agreement shall override any term or condition in the Collaboration Agreement, First Addendum and Second Addendum, which is contradictory or inconsistent to any term or condition stipulated herein. All other terms and conditions contained in the Collaboration Agreement, First Addendum and the Second Addendum which are neither contradictory nor inconsistent with the provisions of this

agreement, shall continue to subsist and shall remain binding on the parties with full force and effect.

16. The parties agree that no changes shall be made in this Settlement Agreement without the written consent of the parties.

17. This Settlement Agreement is being executed by the parties with their free consent, will and accord. This Settlement Agreement is binding on the parties and enforceable.

18. The Parties are executing two (2) original copies of this Settlement Agreement and each party shall retain one original copy.

IN WITNESS WHEREOF the parties hereto have executed this Settlement Agreement on the day, month and year first mentioned above.

(Signing pages follows)

SIGNED AND DELIVERED FOR AND ON BEHALF OF BRAHMA CENTRE DEVELOPMENT PRIVATE LIMITED. Sd/- GULBIR MADAN, DIRECTOR.	SIGNED AND DELIVERED FOR AND ON BEHALF OF BESTECH INDIA PRIVATE LIMITED. Sd/- DHARAMENDRA BHANDARI Sd/- SUNIL SATIJA DIRECTORS.
WITNESS NO.1 Sd/- Rohit Mishra BLDG No.5 GGN.	WITNESS NO.2 Sd/- Shivetaraina, 51, Sector 44, GGN.
Brahma Centre Development Private Limited. Sd/- GULBIR MADAN, DIRECTOR.	Bestech India Private Limited. Sd/- DHARAMENDRA BHANDARI Sd/- SUNIL SATIJA DIRECTORS.

It is submitted that in view of the aforesaid settlement agreement, the present proceedings be disposed of in terms thereof as both the parties have agreed to the same. It is requested that the settlement terms be made part of the order passed by this Court.

In view of the conjoint prayer made by learned counsel for the parties, the present proceedings stand disposed of in terms of the settlement quoted above.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(RAJIV SHARMA)
JUDGE

29.11.2019
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