

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

FAO No.4552 of 2019 (O&M)

Date of Decision: December 04, 2019

M/s Vatika Limited

...Appellant

Versus

Hemant Gandhi and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Adarsh Jain, Advocate
for the appellant.

Mr. Jai Vir Yadav, Advocate
for the respondents.

JAISHREE THAKUR, J. (Oral)

1. The instant appeal has been preferred under Section 37 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') seeking to challenge the order dated 22.05.2019 passed by the Addl. District Judge, Gurugram whereby, the petition under Section 9 of the Act as filed by the respondents has been partly allowed and the appellant herein has been directed to remove clauses No.5, 15 and 18 from the draft conveyance deed and to execute a conveyance deed in favour of the respondents herein with regard to Unit No.TWN-003/4/P-3.3/84P/300/Sector 84 Vatika India and to hand over the physical possession of the same within one month.

2. Briefly, the facts are that the appellant-builder M/s Vatika Limited had entered into a Builder-Buyer Agreement with the respondents

and was to deliver the possession of the plot within 03 years i.e. by 25.08.2014, failing which the appellant herein was to pay the compensation @ ₹ 15/- per square yard per month for late delivery of possession of the plot in question. The builder received total consideration of ₹ 1.33 crores along with additional demands as raised from time to time. On 22.09.2016, the appellant offered possession vide its letter. Symbolic possession was delivered on 20.03.2017, after a delay of about 03 years. The appellant was required to execute a sale deed, since the entire sale consideration had been received. The respondents-buyers approached the appellant with a request for execution of the sale deed, which was not accepted. Apart from asking for the conveyance deed to be executed, certain other issues were also raised by the respondents-buyers with the appellant. As the demand of the respondents-buyers was not acceded to, an application under Section 9 of the Act was preferred. The appellant prepared a draft conveyance deed incorporating clauses 5, 15 and 18, which clauses were objected to by the respondents-buyers claiming that by the insertion of these clauses, their right to claim compensation @ ₹ 15/- per square yard was being taken away. It was stated that the clauses as sought to be incorporated in the draft conveyance deed were not in consonance with the Builder-Buyer Agreement dated 26.08.2011 entered into between the parties. The Addl. District Judge, Gurugram by the impugned order dated 22.05.2019, directed the appellant herein to execute the conveyance deed, after removal of clauses 5, 15 and 18 and to hand over the physical possession of the plot in question. Aggrieved against the directions to remove the disputes clauses from the draft conveyance deed as well as to hand over the physical

possession, since the possession has already been handed over as would be evident by Annexure A/4 dated 06.03.2017 and Annexure A/5 as available with the paper book, the instant appeal has been filed.

3. Counsel for the respondents-buyers contends that the clauses as incorporated in the draft conveyance deed are not in conformity with the Builder-Buyer agreement and by introducing the said clauses, the respondents would not be able to claim compensation on account of delayed possession amongst other reliefs sought.

4. I have heard counsel for the parties and with their assistance, have also gone through the case file.

5. Section 9(1) of the Act, as invoked by the respondents herein, permits a party to apply to a court for seeking any relief even before the arbitration proceedings have been invoked. However, Section 9(2) of the Act clearly lays down that in case, the court passes an order of interim measures for protection, as allowed under Section 9(1), the arbitral proceedings shall commence within 90 days from the date of such order.

6. Admittedly, the respondents-buyers have not invoked the arbitration, despite the fact that they got an order in their favour from the Addl. District Judge, Gurugram on 22.05.2019, which they required to do.

7. Counsel appearing on behalf of the respondents submits that the arbitration would be invoked within one month.

8. In such a situation, this court is of the considered opinion that till such time the dispute is not seized of by the Arbitrator, let the conveyance deed be drawn up along with the clauses, as mentioned, however, the said clauses would not be given effect till the final decision by

the Arbitrator. Needless to say, the respondents-buyers would be at liberty to agitate the exclusion of these clauses before the Arbitrator, who would take the final decision thereon whether or not they are in consonance with the Builder-Buyer Agreement in question, along with all other claims as well as objections. In case, the Arbitrator is of the opinion that that these clauses are de hors the agreement, they shall be struck off. The arbitration proceedings be invoked within four weeks positively.

- 9. The appeal stands disposed of with the aforesaid directions.
- 10. The misc. applications pending as on date also stand disposed of.

December 04, 2019
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No