

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: May 19, 2022

FAO-CARB-12 of 2022 (O&M)

AVON PROPERTIES PRIVATE LIMITED

...APPELLANT

Versus

COMMANDER REALTORS PRIVATE LIMITED

...RESPONDENT

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**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Kanwal Goel, Advocate,
for the appellant.

AUGUSTINE GEORGE MASIH, J.

By this order, we propose to dispose of two appeals which have been preferred by Avon Properties Private Limited challenging the order dated 15.02.2022 passed by the Additional District Judge-cum-Presiding Judge, Exclusive Commercial Court at Gurugram.

2. In FAO-CARB-12 of 2022, application under Section 9 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as '1996 Act') preferred by the applicant-appellant for restraining the respondent-M/s

Commander Realtors Private Limited from creating third party rights with regard to the land measuring 2 acres and for restraining its servant, agents, employees in dealing in any manner with the said land and directing the respondent to deposit the amount realized by the respondent from its dealings of the said land, stands dismissed, whereas in FAO-CARB-13 of 2022, application under Section 9 of the Arbitration & Conciliation Act, 1996, which has been preferred by the respondent-M/s Commander Realtors Private Limited, whereby injunction has been sought restraining the appellant, its agent, servants, associates etc. from forcibly ousting the applicant-respondent from the land which is the subject matter of the dispute from entering into any further agreement, transaction or deal in respect thereof; from creating any sort of encumbrances, third party rights or alienating in any manner the said land; from changing the nature and character thereof and from disturbing licenses, approvals and sanctions granted to the applicant in collaboration with the respondent by the concerned authorities in respect of the land in question till enforcement of the arbitral award to be passed between the parties in accordance with the arbitration clause contained in the Collaboration Agreement dated 04.05.2009, stands allowed.

3. Learned counsel for the appellant has submitted that the facts are identical and, therefore, these two cases can be considered together and decided as the issue involved in the cases is the same i.e. the Collaboration Agreement which has been entered into between the parties on dated 04.05.2009 for development of a plotted colony.

It is asserted by the counsel for the appellant that as per the Collaboration Agreement, the land, which was contributed by the appellant

i.e. 16 Kanals for the project, was to be developed by the respondent who was to employ its own costs, expenses and resources after procuring the requisite permissions, sanctions and approvals from the competent authorities. Special Power of Attorneys and General Power of Attorneys in favour of the respondent were executed by the appellant to facilitate the process. Appellant, by virtue of Clause 7 of the Agreement, was to be allotted plots having area of 2400 Sq. Yards.

4. The dispute was primarily because of the delay in allotment of six number plots in favour of the appellant as per its entitlement whereas the stand of the respondent is that firstly, there is no stipulation in any manner of delivery of the plots and in any case, the delay, if any, took place because of the factors beyond its control. The delay has been attributed to the notification issued by the State Government in the year 2009 for the acquisition of the land which is the subject matter of development including the land which was contributed by the appellant. The said land was ultimately released from acquisition. Thereafter, license had been obtained. Despite the same, the plots have not been allotted to the appellant. The terms and conditions of the Collaboration Agreement having not been adhered to, the appellant has suffered an irreparable loss. Till date, the possession of the developed area of the plots has not been handed over to the appellant.

5. It is asserted by the counsel for the appellant that the respondent had given assurance to the appellant that the plots in question will be allotted in a couple of months from the date of agreement but had failed to deliver the same. As the respondents had not stood by the agreement, the application, as preferred by the appellant, should have been

allowed by the trial Court as the plots have not been still handed over. Provisional allotment, which has been made twice firstly, in the year 2016 and thereafter, in the year 2017, has not yielded any result. The respondents are not interested and rather, are not intending to fulfil the obligations in terms of the agreement and, therefore, are liable to make good the losses and damages suffered by the appellant.

6. The appellant, after issuing notice to the respondent for cancellation of the Collaboration Agreement, Special Power of Attorney and the General Power of Attorney as also the undated Special Power of Attorney, has acted accordingly. The appellant has also approached the Director General, Department of Town and Country Planning for cancellation of the license granted to the respondent for development of plotted colony.

7. The appellant has also approached this Court by filing CWP No. 18036 of 2021 titled as Avon Properties Private Limited vs. State of Haryana and others seeking the relief of cancellation of the license for development of the plotted colony, which was disposed of vide order dated 13.09.2021 by issuing directions to the Director General, Department of Town and Country Planning to deal with the notice dated 12.08.2021 sent by the appellant and take final decision thereon within a period of four months from the date of receipt of certified copy of the order.

8. It has been asserted by the counsel for the appellant that to wriggle out of the said situation, the respondent had, as an afterthought and counter-blast, issued a frivolous notice dated 16.10.2021 in terms of Section 21 of the Act nominating Sh. R.S.Baswana (Retd. District and Sessions Judge) to act as Sole Arbitrator, to which the appellant had responded by

refusing to accept the nominations made by the respondent. The application, which has been preferred by the appellant under Section 9 of the 1996 Act, has been dismissed and that of the respondent has been allowed vide the impugned order dated 15.02.2022.

9. The ground for challenge is that the trial Court has failed to consider that there has been an inordinate delay of more than 12 years that the Collaboration Agreement has not been given effect to. The finding with regard to the explanation given by the respondent for the delay, being beyond its control, as has been accepted by the trial Court, is not in consonance with the pleadings. The trial Court has failed to appreciate that the respondent had no intention to perform its obligations as per the Collaboration Agreement especially keeping in view the fact that initially the plots were allotted to the appellant on 06.12.2016 i.e. after lapse of almost seven years, which were unilaterally revised on 17.02.2017 and 16.06.2021 causing wrongful loss to the appellant. Till date, the possession of the plots has not been handed over to the appellant.

10. In the light of the above pleadings, the counsel for the appellant submits that the impugned order cannot sustain and deserves to be set aside and the injunction, as prayed for by the appellant granted in its favour and against the respondent, similar prayer has been made with regard to the rejection of the application under Section 9 of the 1996 Act preferred by the respondent, which has been allowed by the trial Court by an even date order.

11. Having considered the submissions made by the counsel for the appellant and on going through the records of the case including the pleadings and the impugned orders, we are not inclined to accept the

submissions, as have been made.

12. It is apparent that there is a Collaboration Agreement dated 04.05.2009 entered into between the parties for development of a plotted colony. The primary grievance on the part of the appellant is that there has been delay on the part of the respondent in allotment of six number plots in favour of the appellant as per its entitlement.

13. It needs to be mentioned here that there was no time stipulation provided for allotment of the plots in the Collaboration Agreement. However, that does not mean that there can be no limitation for fulfilling its obligation by the respondent. It has to fulfil the same within a reasonable time and in case of there being any delay that needs to be explained and justified to be bona fide.

In the case in hand, the delay has been duly explained by the respondent with reference to the admitted fact that earlier a notification for acquisition had been issued by the State Government in the year 2009. It is subsequent to the release from acquisition of the land that license was issued on 11.06.2012. After the initial chalking out of the colony, allotment of six plots was made provisionally vide letter dated 17.02.2017. The authorities concerned proceeded to grant approvals after passing of the order dated 25.08.2020 by the Hon'ble Supreme Court. This led to the zoning plan of plotted colony, namely, IREO City Plots, Sector 60, Gurugram. Revised provisional allotment offer letter dated 16.06.2021 was issued to the appellant for six plots. It has been asserted by the respondent that there are certain reciprocal requisite formalities and obligations on the part of the appellant as per the Collaboration Agreement dated 04.05.2009 which have not yet been complied with and, therefore, the possession of the

plots could not be handed over to the appellant.

14. In the light of this explanation, we are also of the view that prima-facie it is established that there has been no inordinate and unexplained delay on the part of the respondent, rather these were certain circumstances beyond the control of the respondent. The delay is neither intentional nor deliberate and, therefore, the plea of the appellant, on this score, cannot be accepted.

15. As regards the loss, which has been suffered by the appellant, suffice it to say that nothing has come on record which would indicate as to how the alleged delay in the allotment of the plots had caused loss to the appellant especially when it is the case of the respondent that there are certain formalities and reciprocal obligations which are to be fulfilled by the appellant. Unless the appellant fulfils its obligations, the respondent is prima-facie justified in stating that possession cannot be handed over at this stage.

16. As regards the cancellation of the General Power of Attorney/Special Power of Attorney as also the request for cancellation of a license is concerned, suffice it to say that the Collaboration Agreement does not permit such cancellation/revocation. In any case, as regards the cancellation of the license is concerned, the matter is pending before the Director General, Department of Town and Country Planning, Haryana, in view of the order dated 13.09.2021 passed by this Court.

17. It is also an admitted position that till date, the said license is in force and has not been cancelled. It cannot, thus, be said that there has been a mala-fide intention on the part of the respondent or that it had or has no intention to comply with the terms and conditions of the Collaboration

Agreement. The prayer, therefore, made by the appellant in the application under Section 9 of the 1996 Act has rightly been dismissed by the trial Court vide its impugned order dated 15.02.2022.

18. As regards the challenge to the interim injunction order of even date granted in favour of the respondent by the Court in an application preferred by the respondent under Section 9 of the 1996 Act, suffice it to say that the respondent has been able to show its bona-fides especially when it has allotted six plots as per the entitlement of the appellant. The balance of convenience is in favour of the respondent and it would suffer grave loss and irreparable harm, in case the injunction had not been granted, as had been prayed for.

Prayer for restraining the appellant from disturbing licenses, approvals and sanctions granted to the respondent in collaboration with the appellant by the concerned authorities in respect of the land in question till enforcement of the arbitral award to be passed between the parties in accordance with the arbitration clause contained in the Collaboration Agreement has rightly been declined as it would be a hindrance in the finding of the Director General, Department of Town and Country Planning who is acting in pursuance to the directions issued by this Court.

The relief, which has been granted by the trial Court under Section 9 of the 1996 Act, as has been detailed above, is fully justified in the given facts and circumstances of the case which does not call for any interference. We, therefore, upheld the said order .

19. In view of the above, finding no merit in these appeals, which have been preferred by the appellant-Avon Properties Private Limited, the same stand dismissed.

In view of the dismissal of the main appeals, all the pending applications have been rendered infructuous and the same stand disposed of as such.

**(AUGUSTINE GEORGE MASIH)
JUDGE**

**(SANDEEP MOUDGIL)
JUDGE**

May 19, 2022
pj

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No