



2025:DHC:9290



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of decision: 15th October, 2025*

+ O.M.P. 1/2025 & I.A. 4139/2025

GAURAV AGGARWALPetitioner

Through: Mr. Avnish Pandey, Advocate

versus

RICHA GUPTARespondent

Through: Mr. Viraj R. Datar, Senior Advocate
with Mr. Chetan Lokur and
Mr. Srikant Singh, Advocates**CORAM:****HON'BLE MR. JUSTICE AMIT BANSAL****AMIT BANSAL, J. (Oral)**

1. The present petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter '*Act*') challenging the Arbitral Award dated 10th January, 2025 (hereinafter '*impugned award*') passed by the Sole Arbitrator.

2. *Vide* the impugned award, the application filed by the respondent under Section 32(2)(c) of the Act seeking termination of the arbitral proceedings was allowed and the arbitral proceedings were terminated.

3. Brief facts, as stated in the present petition, which are necessary for deciding the present petition are set out below:

- a. Sub-lease dated 11th July, 2021 was executed by Jaypee Infratech Limited (hereinafter '*JIL*') in favour of the respondent in respect of flat bearing unit no. KLP0152004 in Kalypso Court-15 at Jaypee Greens, Noida, Uttar Pradesh along with one car parking space



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(hereinafter '*subject property*') and the respondent became the owner of the sub-leasehold rights in the subject property.

- b. The respondent approached the petitioner to transfer her sub-leasehold interest in the subject property.
- c. The petitioner entered into an Agreement to Sell (hereinafter '*ATS*') with the respondent on 5th January, 2024 for transfer of the respondent's sub-leasehold interest in the subject property for an agreed consideration of Rs. 5 crores. Out of the said consideration, the petitioner paid a sum of Rs. 50,000/- as token money to the respondent.
- d. The respondent, as per clause 5.1 of the ATS, was required to obtain prior permission for transfer of sub-leasehold rights in the subject property from JIL and Yamuna Expressway Industrial Development Authority (hereinafter '*YEIDA*'). The respondent issued letter dated 15th January, 2024 to the petitioner informing about the requirement of filing a joint application before JIL and YEIDA for the aforesaid purpose.
- e. The ATS was thereafter terminated by the respondent on 7th February, 2024, which was disputed by the petitioner *vide* his reply dated 8th March, 2024.
- f. *Vide* notice dated 15th April, 2024, the petitioner invoked the arbitration clause, *i.e.*, Clause 14 of the ATS in terms of Section 21 of the Act, to which the respondent replied that there was no arbitrable dispute between the parties as the ATS is not a valid contract.
- g. Subsequently, the arbitration proceedings commenced before the Sole Arbitrator named in the ATS.



- h. The statement of claim was filed on behalf of the petitioner.
 - i. The respondent, in her statement of defence, took the ground that the ATS is unenforceable as the same is not registered and stamped, which is a mandatory requirement in the State of Uttar Pradesh.
 - j. After completion of pleadings before the Arbitrator, the respondent filed an application under Section 32(2)(c) of the Act seeking termination of the arbitration proceedings on the ground that the ATS, being an unregistered and unstamped document, cannot be specifically performed.
 - k. The petitioner filed his reply contesting the said application.
4. The Arbitrator, *vide* the impugned award, allowed the aforesaid application filed by the respondent and terminated the arbitral proceedings holding that the ATS executed between the parties requires mandatory registration and stamping in the State of Uttar Pradesh.
5. The petitioner has filed the present proceedings challenging the impugned award.
6. It is argued on behalf of counsel for the petitioner that the ATS does not transfer the ownership in the subject property in favour of the petitioner. It merely deals with transfer of the respondent's sub-leasehold rights in the subject property. Thus, the ATS cannot be regarded as a 'contract for sale' requiring registration under Section 54 of the Transfer of Property Act, 1882 and Section 17(1)(f) of the Registration Act, 1908.
7. He submits that the ATS also does not create, extinguish or declare any right in favour of the petitioner and therefore the ATS falls within the exception under Section 17(2) of the Registration Act, 1908, which does not require any registration.



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8. It is also submitted that since the respondent was required to obtain permission for transfer of sub-leasehold rights in the subject property from JIL and YEIDA, this agreement could not even be categorised as an agreement to sell as it merely envisages another agreement being entered into between the parties after the aforesaid permission were received. Reliance in this regard is placed on clauses 5, 9 and 10 of the ATS.

9. Mr. Viraj R. Datar, senior counsel appearing on behalf of the respondent, opposes the aforesaid contentions and submits that in terms of the amendment carried out in the Registration Act, 1908 in the State of Uttar Pradesh in the year 1976, an agreement to sell in respect of immovable properties can only be executed through a registered instrument.

10. He further submits since the ATS is in respect of the subject property located in Noida, Uttar Pradesh, it would be covered within the ambit of the aforesaid amendment and would require mandatory registration. He places reliance on the judgment of the High Court of Allahabad in *Vijay Kumar Sharma v. Devesh Behari Saxena*, AIR 2008 All 66.

11. I have heard counsel for the parties.

12. Submissions in respect of the respondent's application under Section 32(2)(c) of the Act were raised by the parties before the Arbitral Tribunal. After considering the submissions along with the judgments on which reliance was placed by the parties, the Arbitral Tribunal came to the conclusion that the ATS is clearly a contract for sale under Section 54 of the Transfer of Property Act, 1882 which requires mandatory registration under Section 17(1)(f) of the Registration Act, 1908 as applicable to the State of Uttar Pradesh. The relevant findings of the Arbitrator are set out below:

"48. The Tribunal is of the opinion that the ATS is clearly a contract



for sale as per Section 54 of TPA which required mandatory registration under section 17(1)(f) of the Registration Act. Having failed to register the same, the Claimant cannot seek enforcement of the said ATS in view of the bar provided under Section 49 of the Registration Act (as amended and applicable in the State of Uttar Pradesh). In the absence of registration, the said ATS is nothing but an unenforceable document which cannot be looked into for any relationship or affecting the Suit Property which is an immovable property.

49. Though, the Claimant has vehemently opposed the plea of the Respondent and vociferously asserted that the ATS does not require any registration and in support of the said contention, the Ld. Counsel for the Claimant emphasized that the nomenclature of a document or agreement is immaterial and it is the intention of the parties which is to be seen by the Tribunal for deciding the nature of transaction. I am not inclined to agree with the said proposition advanced by the Ld. Counsel for the Claimant as **there is nothing in the ATS which even remotely suggests that the intention of the parties was not to purchase the Suit Property but was only to get the lease or sub-lease.** The word 'Ownership' in Section 54 of TPA refers to the ownership of tangible or intangible immovable property. **Ownership means bundle of rights allowing one to use, manage, and enjoy property, including the right to convey it to the other.** A bare reading of Section 54 of TPA would show that whenever a person is transferring all his right and interest in any tangible or intangible immovable property to another person then it will amount to 'Sale' within the meaning of Section 54 of TPA. The immovable property is defined under TPA as 'immovable property does not include standing timber, growing crops or grass' as well as under Registration Act as "Immovable Property includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth, or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops nor grass" and General Clauses Act, 1897 as "immovable property shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth". A bare perusal of these definitions shows that any interest or benefit arising out of land is an immovable property. **In view of law laid down in Md. Mobarak Hussain (Supra), Kanhaiya Lal (supra), Phoola Bhanna (Supra) and Kandkuri Anthya (Supra) even the leasehold rights possessed by the Respondent is an immovable property. Transfer/Sale of leasehold or sub-leasehold rights without reserving any right by the Respondent would amount to 'Sale' within the meaning of section 54 of TPA and any contract for transfer/sale of such leasehold or sub-leasehold rights will be a contract for sale within**



the meaning of Section 54 of TPA which in State of Uttar Pradesh as per the amendment can only be done by a registered instrument, without which a contract will not come into existence. The argument of the Claimant that the ATS is not an Agreement to Sell but merely an agreement for transfer of leasehold /sub-leasehold right in the suit property and does not require registration is entirely misplaced and sans merit.

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53.The Tribunal is of the considered opinion that the ATS has an effect of creating, declaring and extinguishing rights in an immovable property which comes within the definition of Contract for Sale and is, therefore, liable to be charged with 50% of the stamp duty payable on conveyance as per Article 5(b-1) of Schedule I-B of the Stamp Act (as applicable in State of UP) and even as per the contention of the Claimant that it is an agreement to lease or sub-lease, the same is required to be stamped as an Agreement. As a legal consequence, in absence of requisite stamp duty being paid on the ATS, the said document cannot be looked into for any purpose as per Section 35 of the Stamp Act. The Tribunal, also, agrees with the submission of the Ld. Counsel for the Respondent that the issue of stamping can only be decided at this stage and the objection as to enforceability of ATS on the ground of non-stamping can only be taken before the said document is led into evidence in view of *Javer Chand (Supra)*. The Tribunal agrees with the law laid down by the Hon'ble Supreme Court in *Omprakash vs Laxminarayan & Ors. [92014) 1 Scc 618]* that for the purpose of stamping, only the instrument, as it is written, is required to be seen and the rival contentions and underlying transaction are of no consequences.

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55.The ATS is clear and unambiguous document and the Respondent has raised a pure legal issue which does not require any evidence. This Tribunal does not require any, further, aid by virtue of any evidence to construe the ATS executed by the parties. The ATS cannot be substituted in terms of the rival contentions of the parties and it has to be read in no other manner but the manner in which it is written. The purpose of the Arbitration Act is to provide expeditious and effective remedy to the parties and to weed out the dead wood. In view of the discussion and finding, this Tribunal has no hesitation in concluding that the ATS in question is a contract for sale of immovable property which mandatorily require registration and stamping in terms of TPA, Registration Act and Stamp Act, as amended and applicable in the State of Uttar Pradesh. The present ATS is neither registered nor stamped, therefore, the ATS cannot be specifically enforced in view of bar of Section 49 of the Registration Act read with Section 54 of TPA. The unregistered ATS is not a legal and valid contract in view of the provisions of Section 54 of TPA. Thus, in view of the bar laid down in



law, the above mentioned two issues are decided in favour of the Respondent and against the Claimant. This Tribunal cannot grant any relief of specific performance of the present ATS to the Claimant.”

[emphasis supplied]

13. In my considered view, the Arbitrator has correctly appreciated the legal position with regard to the amendment carried out in the Registration Act, 1908 in the State of Uttar Pradesh requiring mandatory registration of a contract for sale of an immovable property.

14. It was rightly observed that even transfer/ sale of leasehold or sub-leasehold rights by a party without reserving any right would amount to ‘sale’ and any contract for transfer/ sale of such leasehold or sub-leasehold rights will be a ‘contract for sale’ within the meaning of Section 54 of the Transfer of Property Act, 1882. On the basis of the aforesaid observation, the Arbitrator correctly concluded that the ATS which is the subject matter of the present dispute would amount to a ‘contract for sale’ under Section 54 of the Transfer of Property Act, 1882 and the same being unregistered is unenforceable under Section 49 of the Registration Act, 1908 as amended in the State of Uttar Pradesh.

15. Counsel for the petitioner places reliance on clauses 5, 9 and 10 of the ATS, which are set out below:

“CONDITIONS TO BE FULFILLED BEFORE SALE DEED:

“5. It is agreed between the parties that the Purchaser shall not be under any obligation to consummate the sale and make payment of balance Sale Consideration for the Sale Property until performance of the following condition by the Seller:

5.1 It is agreed between the parties that before executing the Sale Deed, the Seller shall obtain permission for the sale of the Sale Property to the Purchaser from JIL and YEIDA. It is also agreed between the parties that the Purchaser shall extend his complete cooperation to the Seller in getting the said approval by signing, executing and submitting all necessary documents/application required for such approval.



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5.2 It is agreed between the parties that though it is the responsibility of the Seller to apply and obtain the sale permission however, all the expenses for fulfilment of such condition shall be paid by the Purchaser exclusively.

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9. The Seller undertakes to pay all the liabilities, charges, taxes and fee on the Sale Property till the execution of the Sale Deed in favour of the Purchaser. However, the Seller shall not be liable to pay any amount in relation to the Sale Property after the execution of the Sale Deed.

10. The Seller agree and undertakes that until execution of Sale Deed, she will not sell or transfer or create third party right in the Sale Property in any manner whatsoever.”

16. I am unable to appreciate the submissions made on behalf of the petitioner that the ATS would not amount to an agreement to sell on account of clauses 5, 9 and 10 of the ATS. In fact, a holistic reading of the ATS would show that the intent of the parties was to carry out a sale transaction in respect of the subject property.

17. Mr. Datar has also correctly placed reliance on the judgment of **Vijay Kumar Sharma** (supra) wherein, under similar facts and circumstances, the High Court of Allahabad has held that an agreement to sell would require mandatory registration, failing which the said agreement to sell would not be admissible in evidence.

18. In view of the discussion above, I do not find any infirmity or perversity in the impugned award which would require interference of this Court under Section 34 of the Act.

19. Accordingly, the present petition is dismissed.

20. All pending applications stands disposed of.

AMIT BANSAL, J

OCTOBER 15, 2025/ds

Signature Not Verified

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