



FAO-COM-16-2024 (O&M)

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

FAO-COM-16-2024 (O&M)**Date of decision: 02.04.2026**

ADVANCE INDIA PROJECTS LTD.

....Appellant

Versus

M/S IREO RESIDENCES COMPANY PVT LTD AND ORS

...Respondents

**CORAM: HON'BLE MR. JUSTICE ASHWANI KUMAR MISHRA
HON'BLE MR. JUSTICE ROHIT KAPOOR**

Present: Mr. Anand Chhibbar, Senior Advocate with
Mr. Sandeep Verma, Advocate
Ms. Sonam Sharma, Advocate
Ms. Ateevraj Sandhu, Advocate
for the applicant/appellant.

Mr. Prateek Rathee, Advocate
for respondents No.1 to 11.

Mr. Akshay Bhan, Senior Advocate
Mr. Ashish Chopra, Senior Advocate
Mr. Amitobh Tewari, Advocate
Mr. Yashpal Sharma, Advocate
Mr. Satirk Bansal, Advocate
Mr. Abhilesh Barak, Advocate
Mr. Harsh Gupta, Advocate
Ms. Pranya Goyal, Advocate
Mr. Krishna Balaji Moorthy, Advocate
Ms. Apoorva Kaushik, Advocate
Ms. Bhakti Mehta, Advocate
Mr. Uday Mathur, Advocate
Mr. Omm Mitra, Advocate
for respondent No.12.

ASHWANI KUMAR MISHRA, J. (Oral)

1. This appeal arises out of an order passed by the Commercial Court,
Gurugram dated 16.10.2024, whereby the appellant's application filed in



Commercial suit under Order 39 Rule 1 and 2 along with Section 151 CPC has been rejected.

2. Before proceeding to delve into the merits of the order under challenge, it would be appropriate to refer to some of the essential facts.

3. M/s IREO Residencies Company Private Limited was the owner of the land in question measuring 14.816 acres, situated in district Gurugram. It was facing financial stringency and as per the appellant, an MOU was consequently entered into between the appellant and owners i.e. M/s IREO on 02.03.2021. This MOU is the basis of appellant's claim. The MOU is on record. Clause 5 of the MOU provided for collaboration for development of Phase-I, Phase-II, and Phase-III on the land in question admeasuring 2.26 million sq. ft. (approximately) plus incentive FAR from GRIHA as applicable. Such action was to be taken by a Special Purpose Vehicle (for short 'SPV'). This SPV was not to undertake any other project except the development and execution of the project sought to be developed jointly by the appellant and M/s IREO. For such purposes, the MOU specified different time frames. The documentation was required for creating the SPV after due diligence to be completed by the appellant within a period of 30 days, and a 15-day grace period was provided for this purpose. Similarly, other obligations for conceptualizing collaboration agreement by creation of SPV were envisioned. The respective obligations under the MOU were also specified. The MOU also contained clause 11 providing for events of default and respective termination.

4. It transpires that pursuant to the projects initially conceptualized by M/s IREO, it had created certain third party rights, and insolvency proceedings had been initiated against it. According to the appellant, it entered into



settlements with the third-party home buyers as a result of which the insolvency proceedings were dropped. Certain writs etc. instituted by the home buyers were withdrawn on the basis of settlements made by the appellant with them. It transpires that pursuant to the MOU, neither any SPV could be created, nor any further documents creating right, title or interest in the property came into existence. M/s IREO apparently entered into some settlement with respondent No.12/Oberai Realty Limited. The MOU also came to be terminated by M/s IREO on 21.01.2022. It is at that stage that the appellant filed a suit in April, 2023 before the Delhi High Court relying upon its right in the property on the basis of MOU dated 02.03.2021. An objection was taken to the maintainability of the said suit on the ground of lack of territorial jurisdiction by the defendants, whereafter the appellant withdrew its suit from the Delhi High Court. A suit thereafter was filed before the Civil Court at Gurugram. An injunction in such suit was also granted in favour of the appellant. However, an objection was filed by the defendants on the ground that such suit could only be heard by the Commercial Court. It is thereafter that suit filed before the Civil Court at Gurugram was also withdrawn. The commercial suit in question was thereafter filed on 17.11.2023. It is on this date that an agreement to sell came to be executed by M/s IREO in favour of respondent No.12. The suit before the Commercial Court continued without any injunction granted therein. It transpires that a sale deed pursuant to agreement to sell dated 17.11.2023 came to be executed in favour of respondent No.12 on 7th/8th of May, 2024. This suit is pending. The appellant apparently has got the pleadings in the suit amended, so as to challenge the agreement to sell as well as the sale deed executed in favour of respondent No.12. The essential relief claimed in the suit is for specific



performance of the MOU dated 02.03.2021. It is in this context that an application for injunction was filed by the appellant, which has been rejected by the Commercial Court vide impugned order dated 16.10.2024.

5. Mr. Anand Chhibbar, learned senior counsel appearing for the appellant vehemently argues that once the MOU was duly executed between the parties, and the appellant took steps to ensure withdrawal of insolvency proceedings as well as withdrawal of pending proceedings instituted by third party before the Delhi High Court, it was not open for M/s IREO to have violated the terms of the MOU and proceed to create rights of the land in question in favour of respondent No.12. He further submits that the MOU provided for various title documents to be provided to the appellant for due diligence on its part, which were not furnished as a result of which the appellant could not undertake further steps as was contemplated in the MOU. It is further submitted that the appellant has been diligently pursuing its rights in respect of the land in question by instituting various proceedings, as have been noticed above, as such the rights of the appellant ought to have been protected by the Commercial Court and the contrary view taken is impermissible. Learned senior counsel further argues that the Commercial Court has erred in virtually conducting a mini trial at the stage of consideration of interim injunction application, and various findings have been returned without giving opportunity to the appellant to prove its case, which is likely to adversely affect the case of the appellant at the stage of trial.

6. Mr. Ashish Chopra and Mr. Akshay Bhan, learned senior counsels have appeared for respondent No.12. It is urged on behalf of the respondents that the MOU relied upon by the appellant only gave right for creation of an SPV



which never came into existence on account of the failure on the part of the appellant to comply with its terms, and therefore, the Commercial Court has rightly rejected the prayer for interim injunction. It is also the case of the respondents that the prayer for specific performance or for cancellation of the agreement to sell as well as transfer deed executed in favour of respondent No.12 requires no interference in the present proceedings, inasmuch as the rightful owner of the property has transferred the property in dispute for valuable consideration and merely on the strength of the MOU, such transfer of immovable property ought not be interfered with, nor any restriction or curtailment of right would be warranted on its basis.

7. We have heard learned counsel for the parties, and have perused the material on record.

8. The admitted facts would reveal that an MOU has been executed between the appellant and respondent-M/s IREO on 02.03.2021. We have briefly referred to the provisions of the MOU, which would *prima facie* indicate that this agreement conceptualized a collaboration between the appellant and M/s IREO for development of a project over the land in question. A Special Purpose Vehicle for such purposes was to be created. Undisputedly, no such SPV has been created, and the parties are at issue as to who is responsible for this default. It is at the stage of trial that such aspects can be gone into in detail. However, it is undisputed that as of now, merely on the strength of MOU, no right, title or interest in the immovable property in question can be claimed by the appellant. The records further indicate that though the MOU was signed on 02.03.2021, but the suit for specific performance has been filed only on 17.11.2023. To what extent a prompt approach to legal remedies was resorted to by the appellant, in



the light of previously failed attempts by instituting suit before the Delhi High Court and the Civil Court at Gurugram, would also be an aspect to be adequately considered at the time of trial. It is also not in dispute that except for a brief period when the Civil Court at Gurugram had granted injunction, there was no injunction operative in favour of the appellant. We are further informed that the property in question has been transferred to respondent No.12 upon payment of sale consideration, to the extent of nearly Rs.200 crores. Though the appellant contends that pursuant to the MOU, it had persuaded the third-party home buyers, in whom favour rights were created by M/s IREO, to withdraw such proceedings, but at this stage, it is not shown as to what kind of consideration had actually passed on from the appellant to M/s IREO.

9. Considering the totality of the circumstances placed on record and the nature of right which is claimed by the appellant, we are of the view that no injunction is required to be granted to the appellant in the present appeal at this stage. We, however, make it clear that any observation made by the Commercial Court against the appellant would not be construed as an expression of opinion on merits and would not come in the way of appropriate adjudication of cause in the suit at the time of final hearing. The Commercial Court has also made such observations, and we only intend to reiterate it. We also provide that the parties since have already appeared before the Commercial Court and amendment in the plaint etc. has been carried out in December, 2025, we request the Commercial Court, Gurugram to proceed with the disposal of commercial suit by fixing fortnightly dates without granting unnecessary adjournment to either of the parties. The concerned Commercial Court would make all endeavours to conclude the proceedings at the earliest possible. In light of the observations



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made above, present appeal stands disposed of.

10. Pending applications, if any, shall stand disposed of accordingly.

(ASHWANI KUMAR MISHRA)
JUDGE

April 02, 2026
mohit goyal

(ROHIT KAPOOR)
JUDGE

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