

229

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

**ARB No.163 of 2019 (O&M)
Date of Decision: 27.10.2022**

**SUDESH KUMAR SHARMA AND ANOTHER
.....Petitioners**

Vs

**POINEER URBAN LAND AND INFRASTRUCUTRE LIMITED
.....Respondent**

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Vaibhav Narang, Advocate
for the petitioners.

Mr. Rajat Khanna, Advocate and
Mr. Ashutosh, Advocate
for the respondent.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioners have preferred this petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter to be referred as 'the Act') for appointment of an Arbitrator to adjudicate the dispute between the parties.

[2]. Petitioners had applied for a commercial property in the project known as "Universal Square" in Sector 62, Gurgaon belonging to the respondent. One Sh. Abhinandan Gill had applied for a commercial property on 05.02.2010. Allotment letter was issued by the respondent in his favour. Buyers

agreement was executed on 02.08.2010 between the said Abhinandan Gill and the respondent for purchase of property for a total sale consideration of Rs.83,16,000/-. Thereafter agreement to sell was executed between the petitioners and said Abhinandan Gill on 20.07.2010 for the sale of aforesaid property thereby making the petitioners to be the allottee of the property. The said Abhinandan Gill had received a sum of Rs.8,31,600/- from the petitioners and the balance consideration of Rs.74,84,400/- was to be paid by the petitioners to the respondent directly in terms of payment plan as agreed between the parties.

[3]. Admittedly, the aforesaid amount had already been paid to the respondent. Evidently possession of the property in question was delivered to the petitioners only on 08.01.2019 i.e. after execution of sale deed. Thereafter petitioners issued notice of invocation on 23.02.2019 in respect of accrual of cause of action on account of delayed possession and execution of sale deed.

[4]. Learned counsel for the respondent has raised threefold objections. Firstly, there was no arbitral agreement between the parties and according to Section 7(4) of the Act, the arbitration agreement has to be in writing and the same has to be signed by the parties. Secondly, the agreement to sell

executed between the petitioners and Sh. Abhinandan Gill was an unregistered document. The property having more than value of Rs.100/- requires compulsory registration. The said agreement to sell cannot be looked into even, for any other collateral purposes. Thirdly, the cause of action is *ex facie* time barred. The cause of action arose to the petitioner on 06.08.2015, when final payment notice was issued by the respondent and the present petition came to be filed on 24.05.2019/30.05.2019 i.e. after a period of four years.

[5]. Having considered the objections raised by learned counsel for the respondent, I am of the view that objections as regards non-execution of arbitral agreement between the parties is of no consequence as the unregistered agreement between the petitioners and Sh. Abhinandan Gill has already been implemented by the respondent by executing the sale deed in favour of the petitioners on 08.01.2019 and possession has also been delivered to the petitioners on receiving an amount of Rs.74,84,400/- and an amount of Rs.8,31,600/- had already been received by the respondent from the vendor of the petitioners.

[6]. In view of aforesaid, learned counsel for the respondent has not pressed the second objection. As regards plea of limitation, the sale deed was executed on 08.01.2019 and

possession was also delivered to the petitioners on that day. Thereafter petitioners issued notice of invocation on 23.02.2019. No reply has been filed by the respondent to the aforesaid notice of invocation and filing of present petition on 24.05.2019/30.05.2019 in any circumstance cannot be held to be *ex facie* time barred.

[7]. Even otherwise in view of **Bharat Sanchar Nigam Ltd. and another vs. M/s Nortel Networks India Private Limited, 2021(2) RCR (Civil) 337**, in case of even slightest doubt, the matter has to be referred to the Arbitrator. The *prima facie* review at the reference is to cut the deadwood where dismissal is bare faced and pellucid and when on the facts and law the litigation must stop at the first stage. Only when the Court is certain that no valid arbitration clause exists or that the subject matter is not arbitrable and then reference may be refused. It is only in the very limited category of cases where there is not even an instinct of doubt that the claim is *ex facie* time barred the Court may decline to make the reference. However, if there is a slightest doubt, then the normal rule is to refer the dispute to arbitration otherwise it would encroach upon what is essentially a matter to be determined by the Arbitrator/arbitral Tribunal.

[8]. The petitioners have tentatively set up a claim to the

tune of Rs.78,07,577.77 along with interest, subject to the adjudication by the Arbitrator. However, the respondent would be at liberty to set up a counter-claim (if any) in accordance with law.

[9]. For the reasons recorded hereinabove, I hereby appoint Sh. Man Mohan Sharma, District & Sessions Judge (Retd.) # 87, Sector 3, Kurukshetra, Mobile No.91-7719583132 as the sole Arbitrator, to resolve the dispute/difference between the parties. The appointment of the Arbitrator shall be subject to the declaration to be made by him as required under Section 12 of Arbitration and Conciliation Act, 1996 in respect of his independence and impartiality to settle the dispute between the parties.

[10]. The Arbitrator would complete the proceedings within the specified time in terms of Section 29-A of the said Act. The Arbitrator shall be paid fee in accordance with the IVth Schedule of the Act as amended from time to time. The fee shall be borne by both the parties equally.

[11]. Venue of the Arbitration shall be the place to be disclosed by the Arbitrator according to his convenience.

[12]. A copy of this order be dispatched to the Arbitrator at the following address:-

Sh. Man Mohan Sharma, District & Sessions Judge

(Retd.) # 87, Sector 3, Kurukshetra,

Mobile No.91-7719583132

[13]. Petition stands disposed of accordingly.

**(RAJ MOHAN SINGH)
JUDGE**

October 27, 2022

Atik

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No