

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDI GARH

Arbitration Case No. 201 of 2016 (O&M)
DATE OF DECISION: 10.11.2017

Manjeet Kaur and others

.... Petitioners

versus

The Managing Director, ANSAL Housing & Construction Ltd., etc.

..... Respondent

CORAM: - HON'BLE MR. JUSTICE S. J. VAZIFDAR, CHIEF JUSTICE

Present: Mr. ADS Jattana, Advocate for the petitioners

Mr. Vai bhav Narang, Advocate for the respondent

..

S. J. VAZIFDAR, CHIEF JUSTICE (Oral):

C. M. No. 23738-CII -2017:

The amended memo of parties is permitted to be taken on record subject to all just exceptions.

C. M. stands disposed of.

ARB-201-2016:

This is an application under sections 11(4), (5) and (6) of the Arbitration and Conciliation Act, 1996, for the appointment of an Arbitrator.

2. The parties had entered into an agreement titled "Collaboration Agreement" dated 23.12.2006, Article 8.1 whereof reads as under: -

"ARTICLE 8
GOVERNING LAW AND ARBITRATION

8.1 That any dispute or difference arising out of or in connection with this Agreement which cannot be settled amicably between the Parties shall be finally settled through Arbitration

by any Arbitrator/s mutually acceptable to both the Parties."

3. The petitioners are, admittedly, the owners of the land upon which the construction was to be put up. The petitioners and the respondent are referred to in the agreement as the owners and the developers, respectively. Article 6 of the agreement reads as under: -

"Article 6
Sharing of Profits

- 6.1 That in lieu of the said land of the Owners developed by the Developers under the said Licence/s issued by the D.T.C.P. Government of Haryana, as agreed herein, the Owners shall be entitled to receive from the Developers 1100 square yards (One Thousand One Hundred Square Yards) of developed residential plots per acre of the said land as may be included by the D.T.C.P. in the said Licence (hereinafter referred to as "Owners' allocation").
- 6.2 That External Development Charges in respect of the said developed residential plots of the Owners' allocation shall be paid by the Developers.
- 6.3 That the allocation of the developed residential plots in the residential colony will be made by the Developers on an equitable basis.
- 6.4 That the Developers will allot to the Owners the said developed residential plots of the Owners' allocation within a period of 90 (ninety) days from the date/s of issuance of the Licence/s by the D.T.C.P. Government of Haryana.
- 6.5 That the said developed residential plots of the Owners' allocation, along with proportionate, undivided, indivisible and impartible ownership rights thereto, shall belong to and be owned by the Owners in consideration of the Owners making available and providing the said land to the Developers under this Agreement and that the remaining developed area in the residential colony with proportionate, undivided, indivisible and

impartibly ownership rights shall fall to the share of the Developers in consideration of the obligations undertaken by the Developers under these presents and shall belong to and be owned by the developers.

- 6.6 That the parties have further agreed that the Owners and the Developers shall be entitled to retain or let out or transfer areas/built up spaces out of their respective shares as detailed hereinbefore to such person(s) as they deem fit. The Parties further agree and undertake to keep the other party harmless and indemnified against all claims and demands resulting there from.
- 6.7 That the Builder has offered to buy back the Owners' allocation under this Agreement at a fixed price of Rs.7,000/= per square yard within 24 months of the date of issuance of licence by the DTCP or within such extended period as may be mutually agreed between the Parties."

4. The petitioners contend that the respondent has failed and neglected to give them the benefits under Article 6.1. The respondent does not deny the same. It, however, contends that the agreement stood novated in view of a Memorandum of Understanding (MoU) dated 23.10.2009 entered into between the parties. The MoU contains six clauses, which read as under: -

"Now therefore this MOU witnesseth as under: -

1. That the Owners have agreed to transfer the clear title and peaceful possession of the said 16.187 Acres of land to the Developers and the Developers have agreed to acquire the same for a consideration of Rs.77,00,000/= (Rupees Seventy Seven Lakhs only) per Acre.
2. That the Developers have agreed to execute the Sale Deed on or before December 15, 2009.
3. That computation of the amount payable and the schedule of payments are attached as Annexure A to this MOU.
4. That any dispute or difference arising out of or in connection with this Agreement which cannot be settled amicably between the Parties

shall be finally settled through Arbitration by any Arbitrator/s mutually acceptable to both the Parties in terms of the relevant provisions of the Collaboration.

5. That this MOU is subject to the jurisdiction of Courts at Yamunanagar and the High Court of Punjab and Haryana in Chandigarh.
6. The Parties have signed this agreement after reading and understanding all its contents and admit that transaction is being entered into by them voluntarily and without any outside pressure coercion and and/or undue influence."
(emphasis supplied)

The respondent contends that the petitioners having sold the land to it the question of the petitioners receiving any benefit under clause 6.1 of the Collaboration Agreement does not arise. The respondent contends that the MoU extinguished the Collaboration Agreement and the rights and obligations of the parties thereunder.

5. The terms and conditions of the Collaboration Agreement and the MoU obviate the necessity of the Court in a petition under Section 11 deciding whether the Collaboration Agreement was superseded by the MoU and ceased to exist in view of the MoU. Clause 4 of the MoU establishes that any disputes and differences under the MoU also are to be decided in accordance with the arbitration clause in the Collaboration Agreement. There is, therefore, no doubt that the disputes and differences between the parties are arbitrable whether under Article 8 of the Collaboration Agreement or clause 6 of the MoU. Clause 4 of the MoU does not merely incorporate by reference the arbitration clause of the Collaboration Agreement. The nature of clause 4 of the MoU indicates that even such an objection viz. of novatio would fall within the ambit of Article 8 of the Collaboration Agreement.

6. In the circumstances, the petition is disposed of by appointing Mr. Justice R.M. Lodha, former Chief Justice of India, as the sole Arbitrator.

10.11.2017
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(S. J. VAZIFDAR)
CHIEF JUSTICE

NOTE:

Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO