* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on*: 20.02.2026*
Judgment delivered on*: 18.06.2026*
Judgment uploaded on*: As per Digital Signature~*

\+ **FAO(OS) (COMM) 100/2019 & CM APPLN. 2389/2020**

CHANDER MOHAN LALL .....Appellant

versus

DLF HOME DEVELOPERS LIMITED .....Respondent

Advocates who appeared in this case

For the Appellant : Appellant in person with Ms. Nancy Roy, Ms. Ananya Chug, and Ms Annanya Mehan Advocates.

For the Respondent : Mr. B B Gupta, Sr. Advocate with Mr Vishnu Kant and Mr. Karan Jain, Advocates.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE VINOD KUMAR

JUDGMENT

V. KAMESWAR RAO, J.

1. This appeal has been filed under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter, 'the Act') read with Section 13 of the Commercial Courts Act, 2015 challenging the order dated 28.03.2019 passed by the learned Single Judge in O.M.P. (COMM) 271/2018, with the following prayers:-

"ii) to set aside the impugned order dated 28.03.2019 only to the extent of the amount of damages to the Appellant @ Rs. 25/- per sq.ft;
iii) Award damages to the Appellant at the rate of Rs. 200/- per sq.ft. from 10.06.2009 till actual handing over of possession of the properties in issue to the Appellant in November 2014 or such other rate as this Hon'ble Court deems fit;
iv) Pass an order directing the Registry to place on record the entire file of the proceedings before the Learned Single Judge in O.M.P. (COMM) 271/2018 before this Hon'ble Court;"

2. As noted from the impugned order, the disputes between the parties arise from the Retail/Commercial Office Space Buyer's Agreements ('the Agreement') dated 31.05.2006 regarding the delay in handing over of the possession of the office spaces to the appellant by the respondent.

3. The case of the appellant was that the last installment was payable only on the receipt of notice from the respondent that it has received the Occupancy Certificate from the Delhi Development Authority and such an intimation was received only in the year 2011. According to the appellant, he was ready and willing to pay the last installment, whereas, the respondent refused to hand over the possession of the office space until and unless the appellant pays other charges.

4. The case of the respondent was that the possession of the office space could not be handed over to the appellant as the appellant had defaulted in his last installment (12th installment), in accordance with Annexure-III (Schedule of Payments) of the Agreement and other charges like maintenance and holding charges.

5. Hence, disputes arose between the parties, which were referred to

arbitration. The possession of the office space was handed over by the respondent to the appellant in November 2014 pursuant to orders passed by this Court in Arbitration Appeal No.8/2013 under Section 37 of the Act filed by the appellant against the order of the Arbitrator dated 20.02.2013.

6. In the Arbitral Award dated 31.03.2018, the Arbitrator held that the respondent was under an obligation to send an intimation of receipt of Occupancy Certificate to the appellant. As the respondent failed to furnish proof of such intimation having been delivered to the appellant, the appellant was not liable to pay the final instalment till 12.01.2011, when for the first time the respondent sent an e-mail to the appellant giving details of payment due from the appellant including the paper work and other formalities to be completed. The learned Arbitrator awarded damages to the appellant for delay in grant of possession till 12.01.2011 at the rate of Rs.25/- Per Square Feet Per Month (PSFPM). For the period beyond 12.01.2011, the learned Arbitrator held that, as both the parties contributed to the delay in handing over of the possession of the office space, the appellant is not entitled to any damages for the period beyond 12.01.2011 and the respondent is not entitled to claim interest on the last installment for the said period. There are other directions passed by the Arbitrator with respect to each specific claim and counter claim of the parties.

7. Aggrieved by the Award, the appellant herein challenged the same before a Single Judge of this Court under Section 34 of the Act.

8. In the impugned order, the learned Single Judge noted that the primary challenge of the appellant is to the finding of the Arbitrator that the appellant is not entitled to claim damages beyond 12.01.2011. The appellant further challenged the finding of the Arbitrator that damages would be

confined to Rs. 25/- PSFPM provided in Clause 11.4 of the Agreement. The learned Single Judge has concluded his findings in the following manner :-

> *"34. A reading of the above Clause would show that where the respondent is unable to give possession of the office space to the allottee within 36 months from the date of the execution of the Agreement or such other extended period, it may terminate the Agreement and refund the amounts paid by the allottee along with interest at the rate of 9% per annum but would not be liable to pay any other compensation. However, in case the respondent decides not to terminate the Agreement, it shall pay to the allottee a compensation at the rate of Rs. 25/- per sq. ft. per month for the period of delay beyond 36 months or such extended period as permitted under this Agreement. The Arbitrator has interpreted this Clause and has held as under;-*
>
> > *"113.As regards the quantum of compensation to the Claimant, the same would be what the parties contemplated at the time of the Agreement, and which is what is provided in clause (11.4). As per this clause (11.4) if the seller abandons the scheme or becomes unable to give possession within 36 months or within extended period, it shall be ' entitled to terminate the AGREEMENT, but at its sole option, and discretion. If it does not decide to terminate the AGREEMENT in that event it shall pay to the allottee compensation @ Rs.25/- psf of super area per month for the period of delay. The contention of the Claimant that this clause does not get triggered and this limit of compensation cannot be applied in his case, is not tenable. Though Occupancy Certificate had been received by the Respondent in June 2009, it became unable to deliver possession to him because of non-communication in that respect and in a way it was inability on the part of the Respondent to deliver possession within prescribed time. The said clause, in my view, shall become applicable, being within*

the contemplation of the parties, and would entitle the Claimant the compensation at the rate mentioned therein i.e. Rs.25 psf per month from 10th June 2009 till 12/01/2011. "

35. The above being a matter of interpretation of the Agreement, which I do not find to be unreasonable or perverse, does not warrant any interference by this Court in exercise of its limited jurisdiction under Section 34 of the Act.

36. In Associate Builders v. DDA, (2015) 3 SCC 49, the Supreme Court cautioned the Court exercising its power under Section 34 of the Act in the following words:-

"42.3. (c) Equally, the third subhead of patent illegality is really a contravention of Section 28(3) of the Arbitration Act, which reads as under:

"28. Rules applicable to substance of dispute. (1)-(2)

(3) In all cases, the Arbitral Tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction. "

This last contravention must be understood with a caveat. An Arbitral Tribunal must decide in accordance with the terms of the contract, but if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground. Construction of the terms of a contract is primarily for an arbitrator to decide unless the arbitrator construes the contract in such a way that it could be said to be something that no fair-minded or reasonable person could do."

37. In National Highways Authority of India v. ITD Cementation India Ltd. (2015) 14 SCC 21, the Supreme Court reiterated the above principle in the following words:-

"25. It is thus well settled that construction of the terms of a contract is primarily for an arbitrator to decide. He is entitled to take the view which he holds

> *to be the correct one after considering the material before him and after interpreting the provisions of the contract. The Court while considering challenge to an arbitral award does not sit in appeal over the findings and decisions unless the arbitrator construes the contract in such a way that no fair-minded or reasonable person could do. "*

38. I may only note that the Arbitrator has also held that the petitioner has failed to lead any evidence in support of its claim for damages inasmuch as the copies of the two Lease Deeds and the printouts from MagicBricks.com have not been proved in accordance with law. I again do not find the said finding of the learned Arbitrator to be warranting any interference by this Court in exercise of its limited jurisdiction under Section 34 of the Act.

39. The learned counsel for the petitioner has further challenged the direction of the Arbitrator to the petitioner to pay interest on the ground rent with effect from 12.02.2011, that is 30 days from 12.01.2011 till the date of payment. The learned counsel .for the petitioner submits that the petitioner was always ready to pay the said ground rent, however, it was the respondent who refused to accept the same.

40. The Arbitrator on this claim has observed as under:-

> *"ii. Interest on Ground Rent and House Tax:*
>
> *Terms of clause (2) of the AGREEMENT are to the effect that the allottee shall be liable to pay from the date of his application ground rent, house/property tax etc. or any other cess or fee as and when levied by local body or DDA or Municipal Corporation or such other concerned authorities. And that as long as the said premises of the allottee is not separately assessed to such taxes etc. the same shall be paid by him in proportion to super area as determined by the seller. In view of this clause, there is force in the contention raised on behalf of the respondent that payment of such charges has nothing to do within Occupancy Certificate and offer or delivery of possession and as such there was no justification for the Claimant to have delayed the payment thereof*

Under clause (35) of the AGREEMENT, there is entitlement of the Respondent to charge interest @15% p.a. for the first 90 days of delay and thereafter@ of 18% p.a. It has been disclosed that the Claimant, in pursuance to the order of Hon'ble High Court, made payment of principal amount of ground rent and house tax in October 2014, but without interest and it is also contended on behalf of the Respondent that if this Tribunal comes to the conclusion that the offer, of possession/demand was communicated only on 12/01/2011 then interest on the same would be payable after 30 days at the agreed rates. It has been pointed out by the Learned Counsel for the Claimant, and rightly so, that the Respondent has not stated or quantified the amount as regards interest on the House Tax. That being so, the Respondent in my view, would be entitled to interest on the Ground Rent paid, as noted above, but not on the House Tax. In view of the conclusion that the receipt of Occupancy Certificate and offer of possession was not communicated to the Claimant before 12th January 2011, it is hereby held that interest on ground rent shall be payable by the Claimant at such agreed rate(s) as per clause. (35)from 12/02/2011 (i.e after 30 days of 12/01/2011) till the date of payment made by the Claimant."

41. I have noted the correspondences exchanged between the parties as also the orders of the Arbitrator and of this Court hereinabove and do not find any justification for the Arbitrator to direct the petitioner to pay interest on the amount of ground rent from 12.02.2011 till date of payment. The Arbitrator seems to have given this direction only on the basis that from 12.01.2011 the petitioner had refused to make the demanded payment to the respondent. This does not appear to be correct and therefore, the said direction cannot be sustained-.

42. In view of the above, the Award insofar as it restricts the damages awarded in favour of the petitioner till 12.01.2011 and

directs the petitioner to pay interest on the ground rent with effect from 12.02.2011 is set aside.
43. The respondent shall pay damages to the petitioner at the rate of Rs. 25/- per sq. ft. per month till the actual possession was handed over to the petitioner.
44. The petition is disposed of in the above terms, with no order as to cost."

9. According to the appellant, the principal issue in the present appeal is whether Clause 11.4 of the Agreement could be taken as a plausible way of calculating damages.

10. The case of the appellant before the learned Single Judge was that the calculation of damages based on an inapplicable clause of the agreement as well as the records proving that the damages claimed by the appellant were much higher than Rs. 25 PSFPM.

SUBMISSIONS ON BEHALF OF THE APPELLANT

11. According to the appellant, the learned Single Judge failed to consider that Clause 11.4 of the Agreement is not applicable for calculation of damages on account of negligence on part of the respondent in handing over the possession of the properties as Clause 11.4 has to be read in conjunction with Clause 11.3 of the Agreement which provides the conditions of failure by the respondent to deliver possession. It is the case of the appellant that, Clause 11.4 of the Agreement had no application to the facts of the case inasmuch as the said Clause is applicable only where the respondent either abandoned the scheme or was unable to give possession within 36 months from the date of the execution of the Agreement or such extended period as permitted under the Agreement.

12. In the present case, the respondent had neither abandoned the scheme nor was it unable to give possession to the appellant on account of reasons mentioned in Clause 11 of the Agreement but owing to sheer negligence on part of the respondent. The interpretation given to Clause 11.4 of the Agreement by the learned Arbitrator is contrary to public policy as such an interpretation would give a free hand to the builders to not handover possession of properties to the buyers and retain and use it for their own benefit at much higher profit margins and give a meager compensation of Rs. 25 PSFPM to the buyers.

13. The appellant stated that the learned Single Judge has failed to consider that the learned Arbitrator while interpreting Clause 11.4 has held that the said clause is not triggered at all, but held that the respondent became unable to deliver possession to the appellant because of non-communication in that respect and in a way it was inability on the part of the respondent to deliver possession within the prescribed time.

14. The appellant contented that, it is the deliberate and unexplained act of the respondent in not sending the last letter to the appellant, as contemplated by the Agreement, which can be treated as a disability within the terms of the contract. Such an interpretation would really mean that the respondent is free to sit on a property worth Rs. 200/- PSFPM while paying compensation to the person who has paid over 90% of the sale consideration of the property only to the tune of Rs. 25/- PSFPM. The respondent has misused its position of advantage over the appellant and held the appellant to ransom, by raising unjustified demands of money and refusing to hand over title and possession to the appellant.

15. The appellant stated that the learned Single Judge and the learned

Arbitrator completely overlooked the fact that the evidence led by the appellant in support of higher rent during the relevant time was proved in accordance with law, in as much as the appellant had filed internet printouts in support thereof which were proved in accordance with Section 65A and B of the Indian Evidence Act, 1872.

16. According to the appellant, the present case does not fall within the ambit of Clause 11.4 and therefore the learned Arbitrator erred in interpreting and construing the said clause. The relevant Clause 11.4 is reproduced as under:-

> ***11.4 Failure to deliver Possession: Remedy to the Intending Seller***
> *The Intending Allottee agrees that in consequence of the Intending Seller abandoning the Scheme or becoming unable to give possession within thirty six months from the date of execution of this Agreement or such extended periods as permitted under this Agreement, the Intending Seller shall be entitled to terminate this Agreement whereupon the Intending Seller's liability shall be limited to the refund of the amounts paid by the Intending Allottee with simple interest @9% per annum for the period such amounts were lying with the Intending Seller and to pay no other compensation whatsoever/*
> *However, the Intending Seller may, a! its sole option and discretion, decide not to terminate this Agreement in which event the intending Seller agrees to pay only to the intending Allottee first named in this Agreement and not to any one else and only in eases other than-those provided in Clauses (11.1) (11.2) (11.3) and Clause(39) and subject to the Intending Allottee not being in default under any term of this Agreement, compensation @-Rs.25/. per sq. ft of the super area of the said Premises per month for the period of such*

delay beyond thirty six months or such extended periods as permitted under this Agreement. The adjustment, of such compensation shall be done only at the time of conveyancing the said Premises to the Intending Allottee first named in this Agreement and not earlier.

17. Ms. Nancy Roy, learned counsel for the appellant submitted that the question is whether a fair-minded or reasonable person could construe Clause 11.4 to be triggered in the facts of the present case.

18. According to her the appellant diligently paid all the instalments before time, whereas the respondent failed to send the letter for the last installment as mandated under the agreement and then refused to hand over timely possession resulting in a delay of 2 years. The respondent also refused to hand over possession and execute a sale deed even after the appellant approached the respondent and pointed out their error in not sending the intimation letter. The respondent deliberately made excessive and unreasonable demands for money resulting in another delay of 2 years. Finally, a sale deed was executed pursuant to the orders of this Court in November 2014.

19. Consequently, the appellant could not enjoy his property for 4 years during which period the rent of the property ranged between Rs. 150/- to Rs.200/- PSFPM. The compensation of Rs. 25/- PSFPM cannot therefore be a just compensation. If Clause 11.4 is indeed the relevant clause, the builder would have no incentive to hand over timely possession to the buyer. Instead, it could use the property to give it on rent and enjoy the differential.

20. Ms. Roy submitted that the learned Arbitrator completely rejected the evidence filed by the appellant. In view of the Section 73 of the Indian

Contract Act, 1872, compensation for failure to discharge the obligation resembling those created by the contract gets attracted in the facts of this case. The only differences in the facts of the present case are that the appellant did not inform the respondent of any prospective lease arrangement. However, the builder was well aware that the commercial property was for self use or for rental purposes. Therefore, the delay in delivery of possession caused losses to the appellant which was very much in contemplation at the time of the contract. It is also her submission that the agreement had strict time bound schedules for the respondent to handover possession under Clause 10.2- 'Possession'.

21. She submitted that Clause 11.3 gave the buyer an option to opt out of the agreement in case of delay or to continue with the arrangement. The appellant decided to continue with the agreement, whereas Clause 11.4 would only get triggered if the respondent is unable to give the possession. In the present case, the respondent gave the possession, but delayed.

22. According to Ms. Roy, as per the Agreement, the renting out of the premises was anticipated. The loss of potential rent was raised in exchange of correspondence between the parties prior to the arbitral proceedings. Subsequently, loss of rent formed part of the Statement of Claim calculated at Rs.120/- PSFPM from 01.06.2009. In the statement of claim, the appellant / claimant claimed that the average prevailing market rent was Rs.100/- PSFPM, therefore, the respondent is liable for payment of Rs.2,77,38,900/- to the appellant.

23. Ms. Roy submitted that the rental loss also formed part of several interim orders passed by the learned Arbitrator wherein it held that the appellant has a remedy, under Clause 11.3 of the Agreement whereby he

was entitled to give notice within 90 days on the expiry of 36 months from the date of the Agreement, which expired on 28.09.2009. Not having availed the remedy, the respondent is under no obligation to compensate the claimant for any delay in possession or the rental loss. During the course of the arbitral proceedings, the appellant sought amendments for enhancing the rental loss to the tune of Rs.200/- PSFPM.

24. She submitted that, during the course of arbitral proceedings, the appellant submitted print outs from the website *www.magicbricks.com* to show that the prevailing rent from June 2009 to June 2012 in the area of Jasola Vihar, for commercial spaces has been Rs.100/-PSFPM. It was also stated before the learned Arbitrator that, as per lease deed dated 29.10.2007 for the premises in the surrounding area of the properties purchased by the appellant the rent was approximately Rs.231/-PSFPM. The appellant also produced another lease deed for a property in the same building as of the appellant with a rent of approximately Rs.220/-PSFPM. The appellant received emails from *www.magicbricks.com*, to the effect that the prevailing rental of the commercial property in the Jasola Vihar area is Rs.109/-PSFPM.

25. In support of her submissions, she has relied upon the judgment of the Supreme Court in ***Wing Commander Arifur Rahman Khan And Aleya Sultana and others v. DLF Southern Homes Private Limited And Others, (2020) 16 SCC 512.***

26. She seeks the prayers as made in the appeal.

CASE OF THE RESPONDENT

27. Mr. B B Gupta, learned Senior Advocate appearing for the respondent submitted that the learned Single Judge while exercising the jurisdiction

under Section 34 of the Act noted that the interpretation given to Clause 11.4 of the Agreement in the facts and circumstances of the case is an alternate/ plausible interpretation within the domain of the learned Arbitrator. The issue regarding damages/quantum of compensation and applicability of Clause 11.4 of the Agreement has been dealt by the learned Arbitrator in paragraphs 111 to 116 of the Award, which is set out hereunder:

> *"111. Taking up the claim for compensation/damages/mesne profits raised by the Claimant, there can be no doubt, in view of the case law referred above, that mesne profits are applicable if the other party is in wrongful possession of the property. And that title or interest therein would pass only when conveyance deed is executed. However, in this case, the Respondent cannot be said to have been in wrongful possession till the execution of deed in favour of the Claimant and as such no case for mesne profits is made out.*
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> *112. In cross examination, the Claimant admitted that when he entered into the transaction in November 2006, he intended to use the space for his personal office and not for letting out the same. He also testified in the cross examination that in 2005-06 he had an office in residential rented premises M-19-A, South Extension, Part-III, New Delhi and presently he is operating from D-17, South Extension Part-II which is owned by him and failed to recollect when he purchased the same. He added that office area is what is permissible in residential plots for advocates. It is further statement that tough he does not remember the period, he was compelled to purchase the present office space at the time the Hon'ble Supreme Court passed orders clamping down on use of residential spaces for offices by professionals including lawyers. According to the Claimant, as per his cross examination, it has always been his desire to run his office from a commercial premises and not from a residential premises and it is with this desire that this fairly, large space was purchased by him at artificially escalated prices and having paid well over 90% of the dues he would*

only be too happy to pay the remaining amounts and take possession and thereafter it is up to him whether he wishes to use the same as an office or gives it on rent to third parties. Thus, it is indicated from this statement that the Claimant initially intended to use the premises in question himself for his office though remotely he may have thought of letting out the same, wholly or in part. It is nowhere the case of the Claimant that he ever intimated the Respondent about his intending to acquire the premises for rental to bring his case within the ambit of special circumstances. Be that as it may, the Claimant after having paid mar than 90% of the sale price could not enjoy fruit of this huge investment from June 2009 to January 2011 which was because of default on the part of the Respondent (as discussed under Issue No.1&2). In the circumstances the contention of Ld. Counsel for the Respondent that no loss was suffered by the Claimant has no merit. This is irrespective that the evidence produced by Claimant in the shape of copies of two lease deeds and printouts from magicbricks.com cannot be attached much value, having not been proved as per law and otherwise being inconsistent inter-se as also against the pleading of the Claimant:

113. As regards the quantum of compensation to the Claimant, the same would be what the parties contemplated at the time of the Agreement, and which is what is provided in clause (11.4). As per this clause (11.4) if the seller abandons the scheme or becomes unable to give possession within 36 months or within extended period, it shall be entitled to terminate the AGREEMENT but at its sale option and discretion. If it does not decide to terminate the AGREEMENT in that event it shall pay to the allottee compensation @Rs 25/- psf of super area per month for the period of delay. The contention that this clause does not get triggered, and this limit of compensation cannot be applied in his case, is not tenable. Though Occupancy Certificate had been received by the Respondent in June 2009, it became unable to deliver possession to him because of non-communication in that respect and in a way, it was inability on the part of the Respondent to deliver possession within prescribed time. The said clause, in my view, shall become

applicable, being within the contemplation of the parties, and would entitle the Claimant the compensation at the rate mentioned therein i.e., Rs. 25 psf per month from 10th June 2009 till 12/01/2011.

114. In view of the above discussion that both the parties contributed to delay with reference to second time period and are equally to blame, the Claimant shall not be entitled to any compensation for that period, nor the Respondent shall be entitled to levy holding/maintenance or related charges bases on the plea that delay was due to the conduct of the Claimant.

115. As a result of the above discussion, following shall be the findings with respect to the claims and counter claims set up by the parties:

CLAIM FOR COMPENSATIONIDAMAGES RAISED BY THE CLAIMANT:

116. The Claimant shall be entitled to compensation from the Respondent @ Rs. 25 psf per month for super area for the period from 10th June 2009 till 12.01.2011. The Claimant shall be entitled to interest on this amount @I5% p.a. from 10.06.2009 up till12.01.2011, which shall be payable 'within 30 days of this Award and thereafter @ I8% p.a. till realization."

28. He submitted that the findings on damages/quantum of compensation and applicability of Clause 11.4 of the Agreement were specifically upheld by the learned Single Judge. From the findings in the award and the judgment of the learned Single Judge, it is clear that there is a concurrent finding that the appellant / claimant had failed to prove his losses. He also submitted that legally the consequence of the claimant's failure to prove his losses, would result in him being denied any compensation at all as held by the Supreme Court in ***Kailash Nath v. DDA 2015 (4) SCC 136***. Therefore, the normal consequence of the appellant's failure to prove his losses should have led to a total rejection of his claim for damages.

29. According to Mr. Gupta, it is only on account of Clause 11.4 of the Agreement, and its interpretation by the learned Arbitrator, the appellant was awarded compensation. This interpretation has been upheld in the impugned order. Thus, the concurrent findings in relation to the interpretation /applicability of Clause 11.4 cannot be interfered, within the limited jurisdiction under Section 37 of the Act. He also submitted that, under Clause 11.4, the appellant would not have been entitled to any compensation at all. Clause 11.4, therefore, has enured to the benefit of the appellant.

30. He submitted that the impugned order was separately challenged by the respondent herein on the issue of extension of the period for payment of compensation in an appeal being FAO (OS) (COMM) 149/2019 under Section 37 of the Act, which was disposed of by a Division Bench of this Court vide order dated 05.07.2019. The Division Bench, while upholding the order of the learned Single Judge, held that scope of interference under Section 34 of the Act is limited and the learned Single Judge has rightly declined to interfere with the interpretation of Clause 11.4 of the Agreement by the learned Arbitrator. The Division Bench has also upheld the compensation at Rs.25 PSFPM as stipulated in Clause 11.4 of the Agreement. Relevant part of the judgment dated 05.07.2019, reads as under:-

> *"25. In the impugned order, the learned Single Judge was conscious of the settled legal position as regards the scope of the powers of judicial review of the Court under Section 34 of the Act. The learned Single Judge accordingly declined to interfere with the interpretation placed by the learned Arbitrator of Clause 11.4 of the contract. The finding of the learned Arbitrator was that the Appellant had not been able to*

give possession to the Respondent till 12th January 2011. This was not interfered with. The learned Single Judge interfered with the impugned Award only with regard to the liability of the Appellant to pay damages to the Respondent for the period beyond 12th January 2011. The correspondence analysed by the learned Single Judge showed that the conclusion of the Arbitrator that the Respondent had refused to make the demanded payment to the Appellant from 12th January 2011 onwards was not factually correct.

26. Having again examined the correspondence exchanged between the parties, the Court is of the view that the finding of the learned Single Judge does not call for interference. Indeed, it appears that the Arbitrator's conclusion in this regard was not based on a correct appreciation of the evidence and therefore required interference by the learned Single Judge FAO (OS) (COMM) 149/2019 Page 13 of13 under Section 34 of the Act. The view taken by the learned Single Judge cannot be set to be perverse or unreasonable. It is in fact consistent with the evidence on record and, therefore, does not call for any interference. The setting aside of the Award to the extent of requiring the Respondent to pay the Appellant the ground rent from 12th February 2011 and the further direction to the Appellant to pay damages to the Respondent at Rs.25 per sq. feet per month till the date the actual possession of the properties were handed over were as a corollary to the above conclusions. They also do not call for interference. " ”

31. He submitted that, as far as the interpretation and applicability of Clause 11.4 is concerned, the learned Single Judge and the Division Bench of this Court have already upheld the view of the learned Arbitrator. As such, there are now three concurrent findings on the applicability of Clause 11.4 to the facts of the present case. Therefore, there is no reason for this Court to take a different view regarding applicability of Clause 11.4 of the Agreement. He also submitted that, without prejudice, Clause 11.4 is fully applicable to the facts of the present case.

32. According to him, Clause 11.4 is in two parts; first part of clause provides that, if the seller - (i) abandons the scheme or (ii) is unable to give possession within 36 months from the date of the execution of the Agreement, then the seller has the right to terminate the Agreement and refund the money received along with simple interest @ 9 % per annum. Therefore, the first part of Clause 11.4 covers a case where for the reasons stated, the seller decides to terminate the Agreement. In the present case, admittedly, the seller never terminated the Agreement; this first part of Clause 11.4 is not applicable to the present case.

33. In so far as the second part of Clause 11.4 is concerned, it covers the situation where there is delay in delivery of possession by the seller, but the seller does not exercise its option under the first part to terminate the Agreement. A perusal of the second part of the Clause 11.4 clearly stipulates that, in cases *"other than those provided in Clauses (11.1) (11.2) (11.3) and Clause (39)* ", compensation @ Rs.25 PSFPM would be payable for the period of delay beyond 36 months. He submitted that, Clauses 11.1, 11.2 and 39 deal with situations of delay on account of *force majeure* and situations akin to *force majeure,* over which the respondent as the seller has no control and is not responsible. Clause 11.3 is the right given to the buyers to exit the project and take refund of their amount if there is a delay beyond 36 months. Therefore, except for a situation where if the delay is occasioned on account of *force majeure* or prescribed situations akin to *force majeure,* or where the buyer has exercised his right to exit, in all other situations, irrespective of the reasons, Clause 11.4 becomes applicable. Therefore, the expression in Clause 11.4 of the Agreement is that, "*.....unable to give possession within* 36 *months from the date of execution of this Agreement, or*

such extended periods, as permitted under this Agreement.. ", simply implies payment for delay compensation beyond the period of 36 months, in all situations other than the exclusion of *force majeure* conditions and election of option of exit by the buyer.

34. He submitted that the respondent has already paid an amount of Rs.1.32 crore to the appellant / claimant in terms of the Arbitral Award, as modified by the learned Single Judge. Further, the appellant has also sold all the four units at a substantial profit. Therefore, at this stage, any further modification or setting aside of the Arbitral Award and the impugned order, by overturning concurrent findings in the two orders, would cause grave prejudice to the respondent without justification. Any situation wherein the appellant is permitted to lead evidence on his losses after having failed to lead evidence in the arbitral proceedings would cause grave prejudice to the respondent.

35. He submitted that, it is settled law that the scope of Section 34 of the Act is very narrow, especially as far as the interpretation of the terms of the agreement and appreciation of the evidence is concerned. There is a catena of judgments of the Supreme Court as well as this Court, wherein it has been held that the Court should not normally interfere with the view taken by an arbitrator. The scope of Section 37 is even narrower than the scope of Section 34 of the Act.

36. In support of his submission, learned counsel for the respondent has relied upon the following judgments:-

i. ***Jhang Co-operative Group Housing Society Ltd. v. Pt. Munshi Ram and Associates Pvt. Ltd., ILR (2013) II Delhi 1632***

ii. ***Haryana Tourism Ltd. v. Mis Kandhani Beverages Ltd. (Supreme Court; Civil Appeal No. 266 of 2022;***

iii. ***V2 Retail Ltd. v. S.S. Enterprises, FAO(OS) (COMM) 290/2018;***

iv. ***M/s L.G. Electronics India (P) Ltd. v. Dinesh Kalra, FAO (OS)(COMM.) No. 86 of 2016;***.

v. ***Municipal Corporation of Delhi v. Mr. Narinder Kumar, FAO(COMM.) No. 20/2023****;*

vi. ***DLF Home Developers Limited v. Chander Mohan Lall, FAO(OS) (COMM) 149/2019;***

vii. ***ONGC Petro Additions Limited v. Tecnimont S.P.A & Anr., O.M.P. (COMM) 424/2020;***

viii. ***DLF Home Developers Ltd. v. Capital Greens Flat Buyers' Association & Ors., (2021) 5 SCC 537;***

ix. ***Batliboi Enviromental Engineers Ltd. v. Hindustan Petroleum Corporation Ltd. & Anr., 2023 SCC OnLine SC 1208;***

x. ***S.V. Samudram v. State of Karnataka & Anr, Civil Appeal No. 8067 of 2019;***

xi. ***Fortune Infrastructure v. Trevor D'Lima, (2018) 5 SCC 442; and***

xii. ***NHAI v. M/s. Hindustan Construction Company Ltd., C.A No. 4702/2023.***

37. He has sought dismissal of the appeal.

ANALYSIS AND CONCLUSION

38. Having heard the learned counsel for the parties and perused the records, the only question which arises for consideration is whether the learned Single Judge has rightly upheld the compensation as was granted to

the appellant herein @ Rs.25/- PSFPM for the super area. It may be stated here that the learned Arbitrator has granted the compensation to the appellant at the rate Rs.25/- PSFPM for the super area for a period from 10.06.2009 to 12.01.2011. The learned Arbitrator had also directed the appellant herein to pay interest on the ground rent from 12.02.2011.

39. It may be stated that the learned Single Judge while considering the petition under Section 34 of the Act, has upheld the quantum of compensation @ Rs.25/- PSFPM and granted the same till actual possession was handed over to the appellant. But has set aside the direction to the appellant to pay interest on the ground rent w.e.f., 12.02.2011.

40. The submission of the appellant and Ms. Roy primarily is on the rate of compensation that has been awarded by the learned Arbitrator which was upheld by the learned Single Judge, @ Rs.25 PSFPM.

41. According to the appellant, Clause 11.4 of the agreement has no applicability for calculating the damages on account of negligence on the part of the respondent in handing over the possession of the properties. In other words, Clause 11.4 of the agreement is applicable only where the respondent either abandons the scheme or is unable to give possession within 36 months from the date execution of the Agreement, which is not the case here. It is also their submission that, if the interpretations given by the learned Arbitrator as upheld by the learned Single Judge are not set aside then it would really mean that the respondent is free to sit on a property worth Rs.200/- PSFPM while paying compensation to the person who has paid over 90 % of the sale consideration on the properties only to the tune of Rs.25/- PSFPM, which is inequitable. The appellant also stated that he is entitled to compensation, in terms of the lease deeds and other documents,

which have been discarded/overlooked only on the ground that they have not been proved.

42. Insofar as the first submission is concerned, the interpretation given by the learned Arbitrator to Clause 11.4 in paragraph 113 of the award, has been accepted by the learned Single Judge in paragraph no.35 of the impugned order. We do not find the interpretation given by the learned Arbitrator to be unreasonable or perverse for us to interfere in this appeal under Section 37 of the Act, more so, when the learned Single Judge has lent support to his decision by relying upon the judgments of the Supreme Court in ***Associate Builders v. DDA, (2015) 3 SCC 49*** and ***National Highways Authority of India v. ITD Cementation India Ltd. (2015) 14 SCC 21***. We agree with the conclusions of the learned Arbitrator and the learned Single Judge on this issue.

43. Insofar as the quantum of compensation granted by the learned Arbitrator @ Rs.25/- PSFPM, is concerned, suffice it to state that the learned Single Judge has agreed with the conclusion of the learned Arbitrator to hold that, he does not find the interpretation given to Clause 11.4 of the agreement to be unreasonable or perverse warranting interference under Section 34 of the Act. That apart, it is important to note that, paragraph no.34 of the impugned order, which we have already reproduced above, would reveal that the learned Arbitrator has held that the appellant has failed to lead any evidence in support of his claim for a higher quantum of damages, inasmuch as, the copies of the two lease deeds and printouts which have been relied upon by the appellant, have not been proved in accordance with law.

44. Even before us, the submission of appellant and Ms. Roy is that the

learned Single Judge has overlooked the fact that the evidence led by the appellant in support of higher compensation was in accordance with law, as the appellant had filed the documents in support of his claim for higher damages/PSFPM.

45. The finding of the learned Single Judge is that the appellant has failed to prove claim for higher damages and as such the claim was denied by the learned Arbitrator by holding that the appellant was unable to prove the documents in questions. The findings of the learned Arbitrator in paragraph 113 of the award, which we have already reproduced above, has been dealt with by the learned Single Judge in paragraph no.38 of the impugned order, in the following manner:-

> *"38. I may only note that the Arbitrator has also held that the petitioner has failed to lead any evidence in support of its claim for damages inasmuch as the copies of the two Lease Deeds and the printouts from MagicBricks.com have not been proved in accordance with law. I again do not find the said finding of the learned Arbitrator to be warranting any interference by this Court in exercise of its limited jurisdiction under Section 34 of the Act."*

46. The conclusions drawn by the learned Arbitrator is a finding of fact which was confirmed by the learned Single Judge. It cannot be varied more particularly in appeal under Section 37 of the Act.

47. Insofar as, the judgment in the case of ***Wing Commander Arifur Rahman Khan and Aleya Sultana and others (supra)*** relied upon by the appellant is concerned, the only issue which fell for determination was whether the flat buyers, in the facts of the case are constrained by the stipulation contained in Clause 14 of Apartment Buyers Agreement providing compensation for delay at Rs.5 PSFPM. The National Consumer

Disputes Redressal Commission held that the flat purchasers had agreed to the stipulation in the agreement that the compensation shall be at Rs.5 PSFPM and as such are not entitled to seek any additional amount. The case of the appellants therein was that the agreement does not stipulate that the developer would pay the interest on the amount it had already received. The issue in appeal before the Supreme Court was that the condition as prescribed in Clause 14 would continue to bind the flat purchasers indefinitely irrespective of length of delay. The Supreme Court held that where there was delay of the nature that has taken place in the case, the jurisdiction of the consumer forum to award reasonable compensation cannot be foreclosed by the terms of the agreement. The Supreme Court also directed the respondents therein to pay an amount calculated at 6 % simple interest per annum to each of the appellants (computed on the total amounts paid towards the purchase of the respective flats), in addition to the amounts paid over or credited by the developer at Rs.5 PSFPM.

48. Insofar as, the present appeal is concerned, the learned Arbitrator awarded compensation at Rs.25 PSFPM along with an interest at 15 % p.a to be paid within 30 days from the date of award and thereafter at 18 % p.a till realization. It is pertinent to note that the Supreme Court in ***Wing Commander Arifur Rahman Khan and Aleya Sultana and others (supra)*** has granted 6 % interest on the amount as stipulated in the agreement whereas in the case in hand, the learned Arbitrator has given much higher interest of 15 % p.a and 18 % p.a on the amount granted at Rs.25 PSFPM. The said judgment does not help the case of the appellant, as it is distinguishable on facts.

49. In view of our above discussion, the impugned order of the learned

Single Judge does not call for any interference. The appeal is dismissed.

CM APPLN. 2389/2020

50. This application was considered by this Court *vide* order dated 22.01.2020, whereby the Registry was directed to release the amount deposited with the Registry in favour of the appellant, along with the accrued interest thereon.

51. We note that the amount has already been released in favour of the appellant, therefore, nothing survives in this application. The application stands disposed of as infructuous.

V. KAMESWAR RAO, J

VINOD KUMAR, J

JUNE 18, 2026
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