



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

Date of decision: 05th AUGUST, 2026

IN THE MATTER OF:

CNR No.DLHC010401022021

+ **O.M.P. (COMM) 379/2021 & I.A. 19661/2023, I.A. 3262/2024**

DLF HOME DEVELOPERS LIMITED

.....Petitioner

Through: Ms. Kanika Agnihotri, Ms. Ambika,
Ms. Unnimaya Advocates

versus

KLASSIK LAMITEX PVT. LTD.

.....Respondent

Through: Mr. Manik Dogra, Mr. Anurag
Ahluwalia, Senior Advocates with Mr
Abhigyan Siddhant, Mr. Dhruv
Pande, Mr. Imon Bhattacharya,
Advocate

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The present Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 [**“Arbitration Act”**], challenges the Arbitral Award dated 17.07.2021 passed by the learned Sole Arbitrator [**“Impugned Award”**], on the ground that it is in conflict with the public policy of India.
2. A brief factual background leading to the filing of the present Petition is stated as under:

- (i) The Petitioner, erstwhile known as DLF Universal Limited, who was the Claimant before the learned Sole Arbitrator, is engaged in the business of real estate development, and has been involved in



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- the promotion and building of several residential, retail, IT and commercial projects throughout the country.
- (ii) The Respondent, who was the Claimant before the learned Sole Arbitrator, deals in lamination of various goods.
 - (iii) In March 2008, the Petitioner launched a high-end commercial project spreading over 23,323 square yards, namely, DLF Towers (Okhla Project), which was to comprise of three multi-storey buildings, each of which would consist of six floors [**“the Project”**].
 - (iv) On 21.03.2008, the Respondent applied for a provisional allotment of a commercial office space, approximately measuring 830 sq. ft., along with one parking space. For this purpose, the Respondent deposited a sum of INR 10 lakhs as the booking amount.
 - (v) The Application Form filled by the Respondent for provisional allotment contained several terms and conditions, which were to remain in force till such time the Respondent executed the Commercial Office Space Buyer’s Agreement [**“Buyers’ Agreement”**], containing a more detailed and comprehensive terms and conditions. It was also *inter alia* provided under Clause 7(a) of the application form that the present use of land on which the Project was to come up was ‘industrial’, which was permissible to be converted to ‘commercial’ as per the Delhi Master Plan, 2021, and since the concerned authority was yet to communicate on such conversion, the work would only commence once such permission was granted. Clause 7(a) reads as under:



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“7.(a) The company has made it clear to the Intending Allottee that the 'said land' on which the complex is being erected, constructed and other peripheral area within the boundary of the land is owned by Land Owning Company, which has through a Development Agreement granted the development rights to the company to develop, construct and market the said complex and the Intending Allottee understands that the present land use is industrial, which is permissible to be changed to commercial as per Delhi Master Plan, 2021. Since the concerned authority has yet to communicate for converting the industrial land to commercial land, the work will commence only after the change in land use is permitted.”

(Emphasis Supplied)

- (vi) It is stated that the investors were also informed that in case they withdrew their application or failed to return the Buyers' Agreement within thirty days from the date of dispatch by the Petitioner, then the Petitioner on its sole discretion could treat such application as cancelled, forfeiting the earnest money paid by such an applicant. *Per contra*, if the Petitioner for any reason, including non-sanction of the building plans, was unable to finally allot the spaces applied for within one year from the date of the application, the investors would become entitled to refund of the amount deposited by them with simple interest @9% p.a., calculated for the period for which such monies were lying with the Petitioner.
- (vii) The Petitioner further informed the investors that the Petitioner would endeavor to complete the construction of the spaces within a period of three years from the date of execution of the Buyers'



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Agreement, subject to the timely payment by the intending allottees of sale price, stamp duty and other charges according to the applicable payment plan.

- (viii) *Vide* a letter dated 19.04.2008, the Petitioner informed the Respondent that the latter had been allotted the property no. DOA 514 in DLF Towers Okhla Phase-1. This letter was accompanied by a payment schedule wherein the area allotted was stated to be 77.11 sq. meters and the total price as INR 1,51,25,000/-. The payment was to be made in twelve instalments.
- (ix) In furtherance of the Letter dated 19.04.2008, the Respondent, by 26.09.2008, made a payment of INR 66,19,500/-, which accounted for 44% of the total sale consideration. In the interregnum, on 10.09.2008, the Petitioner sent a letter to its investors, *inter alia* stating that the demolition work at the Project Site had commenced and was near completion, all requisite approvals had been applied for, a number of them received, while the balance were expected by the end of October 2008. This Letter dated 10.09.2008 further stated that the Petitioner expected the works to start by mid-November 2008 and had two and half years to complete the Project.
- (x) Subsequently, *vide* a Letter dated 17.11.2008, the Respondent invited its investors for a 'Bhoomi Pujan Ceremony' at the Project Site. While the Respondent did not attend the Ceremony, it is stated that the Director of the Respondent visited the Project Site a week thereafter where, according to him, no there was no trace of construction.



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- (xi) Later, on 26.11.2008, the Respondent was in receipt of a letter from the Petitioner, accompanied by the Buyers' Agreement, on which the Petitioner demanded the Respondent's signatures. However, the Respondent refused to sign the Buyers' Agreement on the ground that some of the clauses incorporated therein were inconsistent with the Application Form filled by the Respondent while applying for the allotment. The Respondent, instead, voiced its concerns regarding certain clauses in the Buyers' Agreement as well as the total inactivity on the Project Site, but did not receive a suitable response from the Petitioner.
- (xii) Ultimately, the Respondent sent a Legal Notice dated 23.04.2009, wherein *inter alia* the Respondent highlighted the inequitable and unilateral clauses in the Buyers' Agreement and demanded the Petitioner to refund the entire amount deposited by it towards the provisional allotment of the office space, along with an interest of 18%, barring a sum of INR 1,00,000/-.
- (xiii) In response to the Respondent's Legal Notice, the Petitioner referred the matter to arbitration before one K.V.N. Sharma, Senior Vice President (Legal) of the Petitioner. The Respondent objected to this arbitration, upon which the arbitrator terminated the proceedings on 28.05.2009.
- (xiv) On 20.11.2009, the Petitioner received a letter from the Municipal Corporation of Delhi ["MCD"], regarding the payment of conversion charges for commercial usage of industrial plots. Thereafter, the one-time conversion charges were finally paid by the Petitioner to the MCD on 10.05.2010.



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- (xv) The Respondent, being unsatisfied by the progress of the Project on the Petitioner's part as also aggrieved by the Petitioner's refusal to refund the amount deposited by the Respondent between March to September, 2008, the Respondent approached this Court on 09.05.2013 in a petition under Section 9 of the Arbitration Act seeking *inter alia* interim relief for staying the illegal and arbitrary demand raised by the Petitioner and from taking any coercive measures to recover the same. The Respondent also sought a restraint order refraining the Petitioner from constructing the 7th and 8th floor in its Project, namely DLF Prime Towers, Okhla.
- (xvi) On assurance of the counsel for the Petitioner that no coercive measures would be taken against the Respondent, disposed of the petition under Section 9 of the Arbitration Act and referred the matter to arbitration leaving it to the arbitrator to pass further directions as deemed fit.
- (xvii) Before the learned Sole Arbitrator, the Respondent claimed the following reliefs:

“a) pass an award directing the respondent to perform their obligations as agreed in the application for provisional allotment dated 21.03.2008, and to the handover to the claimant vacant peaceful possession and to execute a Sale Deed in favor of the claimant for office/shop no. DPT 532 in DLF Prime Towers (Earlier known as DLF towers), F-79/80, Okhla Industrial Area, Phase 1, New Delhi-110020.

OR

in the alternative and without prejudice to the above pass an award directing the respondent to refund to the claimant the sum of Rs.66,19,500/- (Rs. Sixty-six lacs nineteen thousand five hundred only) along with simple



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interest at 18% per annum calculable from the date of the booking of office/shop no. DPT 532 in DLF Prime Towers (earlier known as DLF towers), F-79/80, Okhla Industrial Area, Phase 1, New Delhi-110020 i.e., 21.03.2008.

b) pass an award directing the respondent to pay Rs.24,21,348/- towards damage caused to the claimant due to breach of the terms and conditions as stated in the application for provisional allotment dated 21.03.2008.

c) pass such further orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.”

(xviii) As noted in the Impugned Award, after constitution of the arbitral tribunal, several other investors came forward to file their claims against the Petitioner however, in the course of the arbitral proceedings all, except the Respondent, settled their disputes with the Petitioner. However, before the settlement, the following common issues were framed for adjudication:

“1. Whether the respondent has breached the contract as contained in the application from dated 21.03.2008 or any modification thereof? OPC

2. Whether the time was the essence of the contract? OPC

3. Whether the respondent is responsible for delay in construction of the project under question? OPC

4. whether the respondent has made any misrepresentation to the claimants pertaining to the contract under question and if so, its effect? OPC



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5. *whether the respondent is entitled to change the layout/building plan unilaterally.*

6. *whether the respondent has concealed any material fact from the claimant? OPC*

7. *Whether the claimants have suffered any loss? OPC*

8. *Whether all the objections raised by the claimants have been rendered academic/virtually infructuous, in view of the receipt of Occupancy Certification by the respondent on 19.09.2014? OPR*

9. *Whether the reliefs sought by the claimants are beyond the terms of the application form? OPR*

10. *Whether claimants have committed any breach of their obligations under the binding inter-se agreement/application forms? OPR*

11. *Whether the claimants are entitled to the reliefs claimed? OPR*

12. *Reliefs.”*

(xix) Soon after the disputes with the other investors were settled, the Petitioner filed raised its own counter-claims against the Respondent. As per the Petitioner, it had received Occupation Certificate of the Project on 19.09.2004 and consequent thereto, the Respondent was liable to pay INR 93,89,531/-, as per the following break-up given at Paragraph No. 4 of the Petitioner's Counter-Claims:

<i>Particulars</i>	<i>Amount in INR</i>
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<i>Basic Sale Price (balance)</i>	<i>70,10,524/-</i>
<i>Car Parking charges</i>	<i>3,30,000/-</i>
<i>Pro-rata Electricity Charges</i>	<i>21,276/-</i>
<i>Cost of increase in Area</i>	<i>1,98,900/-</i>
<i>Conversion Charges</i>	<i>7,50,480/-</i>
<i>House Tax</i>	<i>5,694/-</i>
<i>Service Tax</i>	<i>3,71,271/-</i>
<i>Other Govt. Charges</i>	<i>2,77,386/-</i>
<i>Interest Bearing Maintenance Security</i>	<i>4,24,000/-</i>
<i>Total Outstanding</i>	<i>93,89,531/-</i>

(xx) During the course of the arbitral proceedings, it is stated that Issue No. 1 concerning the alleged breach of the contract contained in the application from dated 21.03.2008 by the Petitioner was dropped, the following additional issues arising out of the Petitioner's counter-claims were framed:

“1. Whether the counter claim is not within time? OPC

2. Whether the counter claimant is entitled to balance sale consideration as prayed for? OPR

3. Whether the counter claimant is entitled to interest on the balance sale consideration? If yes, at what rate? OPR

4. Whether the claimant is liable to pay common maintenance charges to the respondent/maintenance agency w.e.f. 1.1.2016? OPR

5. Whether the counter claimant is entitled to pendente lite and future interest? If yes, at what rate? OPR

6. Whether the counter claimant is entitled to costs? OPR



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7. Whether the respondent has reduced the undivided interest in the land under-lying the project? OPC

8. Relief.”

3. Ultimately, the learned Sole Arbitrator by way of the Impugned Award held that the Petitioner breached the contract in failing to get the relevant proposals/sanctions in a timely manner. He further observed that the Petitioner was responsible for the delay in execution of the Project, as no application for conversion was made till 2009 and there was no evidence to show that the Petitioner was seeking grant of approvals/sanctions from the concerned authority. With these broad conclusions, the learned Sole Arbitrator first rejected the main prayer of the Respondent, which was for directing the Petitioner to perform their obligations as per the provisional allotment application form dated 21.03.2008, as the Respondent conveyed its willingness to exit the Project altogether. He then allowed the alternative prayer of the Respondent, and directed the Petitioner to refund the sum of INR 66,19,500/- to the Respondent along with an interest at the rate of 9% per annum w.e.f. 21.03.2008 till the filing of the claim petition, and *pendente lite* interest at the rate of 12% p.a. thereafter.

4. The last prayer of the Respondent came to be rejected by the learned Sole Arbitrator, on account of it being unsupported by evidence.

5. As a natural corollary, the learned Sole Arbitrator rejected the counter-claims of the Petitioner.

6. Now, by way of the instant Petition, the Petitioner challenges the findings of the learned Sole Arbitrator, on the ground that the Impugned



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Award is in violation of the public policy of India. The following arguments have been raised, praying for the setting aside of the Impugned Award:

- (i) It is stated that the learned Sole Arbitrator failed to provide reasons for not granting the principal relief of specific performance, despite the Petitioner having received the Occupation Certificate in the year 2014 and offered possession to all the allottees of the Project.
- (ii) The learned Sole Arbitrator overlooked the fact that at the instance of the Respondent, the office space was kept vacant and was being maintained by the Petitioner at its own expense in view of the Order dated 23.07.2013 passed by this Court in the Section 9 Petition.
- (iii) By placing reliance on a judgment passed by a Division bench of this Court in V4 Infrastructure Pvt. Ltd. vs Jindal Biochem Pvt. Ltd.(FAO) (OS)(COMM) 107/2018, learned Counsel for the Petitioner states that grant of refund instead of specific performance is contrary to public policy.
- (iv) It is stated that the Petitioner offered possession to the Respondent in 2014 and as a goodwill gesture, also offered refund in 2015. Despite noting this and the fact that it was the Respondent who refused to accept either the possession or refund, as well as noting that about forty-seven other similar placed allottees accepted the refund and withdrew their claims against the Petitioner, the learned Sole Arbitrator nonetheless refused to grant specific performance.



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- (v) The learned Sole Arbitrator erroneously held that time was of the essence for the Project, as Clause 16 of the application form only indicated that the Petitioner would endeavor to complete construction of the Project within three years from the date of execution of the Buyers' Agreement, which was never done between the parties. In any event, time could never have been of the essence, as the construction was subject to conversion of the land from 'industrial' to 'commercial' by the concerned authorities, which fact was always known to the Respondent.
- (vi) The learned Sole Arbitrator misinterpreted Clause 7(a) of the Application Form. Instead, the correct interpretation of the said clause would suggest that the Petitioner was awaiting communication from the concerned authority, who was "yet to communicate," on the guidelines for conversion of land use.
- (vii) The learned Sole Arbitrator wrongly held changes/alterations to be unilateral, despite of the Respondent being timely informed of the changes in the Project's layout as per Clause 13 of the Application Form, *vide* Letters dated 11.02.2013 and 27.02.2013, which also stated the change in office numbers of the Respondent. As the Respondent never objected to such changes, it was a deemed consent as per Clause 13 of the Application Form.
- (viii) The learned Sole Arbitrator incorrectly held that the terms of the Buyers' Agreement were unilateral and the Respondent was not bound to sign the same, as there is virtually no difference between the terms of the Application Form and the Buyer's Agreement.



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7. *Per contra*, the learned Senior Counsel for the Respondent has argued as under:

- (i) The property which was subject of the Application Form dated 21.03.2008 was supposed to have six floors, construction whereof would be completed within three years. However, the building was constructed after a lapse of six years, that too, with a completely different layout, consisting of not six but eight floors. As such, the property with whose respect specific performance was sought, could not have been granted.
- (ii) Since the Petitioner made substantial changes to the layout plan of the building, its offer of possession in the year 2014 had no meaning, more so when there were no sanction plans from the concerned authorities at the relevant time for constructing the same.
- (iii) On account of the various false representations made by the Petitioner, the Application Form dated 21.03.2008, being the only agreement between the parties, stood breached on part of the Petitioner. One of the most significant misrepresentations was in Clause 7(a) of the Application Form dated 21.03.2008, which led the Respondent to believe that the Petitioner had already applied for conversion of the land from 'industrial' to 'commercial', when such application was only done in 2009.
- (iv) The learned Sole Arbitrator correctly observes that the letter dated 19.04.2008 allegedly allotting the property no. DOA 514 to the Respondent was meaningless, as on the said date not only was the



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- building pending construction but even permission therefor was not granted by the concerned authorities.
- (v) The learned Sole Arbitrator's observation that the Respondent was under no obligation to sign the Buyers' Agreement does not warrant any interference, as the Petitioner made unilateral changes to the building layout.
- (vi) The Petitioner's contention that the changes to the layout plan were within the 20% limit permitted under the Application Form dated 21.03.2008 was unsupported by any evidence whatsoever, and therefore, the learned Sole Arbitrator correctly observes that the Petitioner could not have unilaterally declared as such and assume the Respondent's silence as acceptance.
- (vii) Rejection of the Petitioner's counter-claims by the learned Sole Arbitrator is justified, as it is a reasonable conclusion after having observed that the Petitioner was in breach of the terms of the Application Form, guilty of delaying the Project, making alterations without notice to the Respondent and disallowing the Respondent from exiting the Project.
8. Heard the learned Counsels for the parties and perused the material on record.
9. Before dealing with the merits of the case, this Court deems it fit to recall the contours within which an application under Section 34 of the Arbitration Act can be adjudicated upon, with specific emphasis on the parameter of challenge based on violation of 'public policy'.
10. It is trite law that a challenge to the arbitral award can only be on the grounds provided under Section 34 of the Arbitration Act. The award should



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not be interfered with until the conclusion arrived at is perverse. Proceedings under Section 34 of the Arbitration Act cannot be equated with appellate jurisdiction and the court cannot reappreciate evidence. Accordingly, interference by the court is limited to the grounds specified under the Arbitration Act, including violation of public policy, fundamental principles of Indian law or patent illegality going to the root of the matter. Mere errors of law or reassessment of evidence do not justify setting aside an arbitral award. Reference is made of the Judgment of the Apex Court in MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163, wherein the following observations were made:

“11. As far as Section 34 is concerned, the position is well-settled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India. As per the legal position clarified through decisions of this Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award. Additionally, the concept of the “fundamental policy of Indian law” would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 (CA)] reasonableness. Furthermore, “patent illegality” itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract.



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12. It is only if one of these conditions is met that the Court may interfere with an arbitral award in terms of Section 34(2)(b)(ii), but such interference does not entail a review of the merits of the dispute, and is limited to situations where the findings of the arbitrator are arbitrary, capricious or perverse, or when the conscience of the Court is shocked, or when the illegality is not trivial but goes to the root of the matter. An arbitral award may not be interfered with if the view taken by the arbitrator is a possible view based on facts. (See Associate Builders v. DDA [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] . Also see ONGC Ltd. v. Saw Pipes Ltd. [ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705] ; Hindustan Zinc Ltd. v. Friends Coal Carbonisation [Hindustan Zinc Ltd. v. Friends Coal Carbonisation, (2006) 4 SCC 445] ; and McDermott International Inc. v. Burn Standard Co. Ltd. [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181])

13. It is relevant to note that after the 2015 Amendment to Section 34, the above position stands somewhat modified. Pursuant to the insertion of Explanation 1 to Section 34(2), the scope of contravention of Indian public policy has been modified to the extent that it now means fraud or corruption in the making of the award, violation of Section 75 or Section 81 of the Act, contravention of the fundamental policy of Indian law, and conflict with the most basic notions of justice or morality. Additionally, sub-section (2-A) has been inserted in Section 34, which provides that in case of domestic arbitrations, violation of Indian public policy also includes patent illegality appearing on the face of the award. The proviso to the same states that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.



14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the court under Section 34 and by the court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings.”

11. Reference is also made to a judgment rendered by a three-Judge Bench of the Apex Court in OPG Power Generation (P) Ltd. v. Enxio Power Cooling Solutions (India) (P) Ltd., (2025) 2 SCC 417, wherein the following discussion regarding how the term ‘public policy’ is to be construed is pertinent:

“Relevant legal principles governing a challenge to an arbitral award

30. Before we delve into the issue/sub-issues culled out above, it would be useful to have a look at the relevant legal principles governing a challenge to an arbitral award. Recourse to a court against an arbitral award may be made through an application for setting aside such award in accordance with sub-sections (2), (2-A) and (3) of Section 34 of the 1996 Act. Sub-section (2) of Section 34 has two clauses, (a) and (b). Clause (a) has five sub-clauses which are not relevant to the issues raised before us. Insofar as clause (b) is concerned, it has two sub-clauses, namely, (i) and (ii). Sub-clause (i) of clause (b) is not relevant to the controversy in hand. Sub-clause (ii) of clause (b) provides that if the Court finds that the arbitral award



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is in conflict with the public policy of India, it may set aside the award.

Public policy

31. *“Public policy” is a concept not statutorily defined, though it has been used in statutes, rules, notification, etc. since long, and is also a part of common law. Section 23 of the Contract Act, 1872 uses the expression by stating that the consideration or object of an agreement is lawful, unless, inter alia, opposed to public policy. That is, a contract which is opposed to public policy is void.*

35. *In Renusagar Power Co. Ltd. v. General Electric Co., 1994Supp (1) SCC 644, a three-Judge Bench of this Court observed that the doctrine of public policy is somewhat open—textured and flexible. By citing earlier decisions, it was observed that there are two conflicting positions which are referred to as the “narrow view” and the “broad view”. According to the narrow view, courts cannot create new heads of public policy whereas the broad view countenances judicial law making in these areas. In the field of private international law, it was pointed out, courts refuse to apply a rule of foreign law or recognise a foreign judgment or a foreign arbitral award if it is found that the same is contrary to the public policy of the country in which it is sought to be invoked or enforced. However, it was clarified, a distinction is to be drawn while applying the rule of public policy between a matter governed by domestic law and a matter involving conflict of laws. It was observed that the application of the doctrine of public policy in the field of conflict of laws is more limited than that in the domestic law and the courts are slower to invoke public policy in cases involving a foreign element than when a purely municipal legal issue is involved. It was held that contravention of law alone will not attract the*



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bar of public policy, and something more than contravention of law is required.

37. What is clear from above is that for an award to be against public policy of India a mere infraction of the municipal laws of India is not enough. There must be, inter alia, infraction of fundamental policy of Indian law including a law meant to serve public interest or public good.”

12. Now, this Court shall deal with the rival contentions advanced on behalf of the parties.

13. The fulcrum of the disputes between the parties, as noted by the learned Sole Arbitrator is stated as under:

- (a) Whether the Petitioner misrepresented facts to the Respondent, which induced the latter to book an office space in the Project;
- (b) Whether the Respondent was under an obligation to execute the Buyers' Agreement as received, and return the same within thirty days from the date of its dispatch failing which, whether the Petitioner at its sole discretion could treat the application as cancelled and forfeit earnest money deposited by the Respondent;
- (c) Whether, if the Petitioner for any reason including non-sanction of the building plans was not in a position to finally allot an office space within a period of one year from the date of the booking application, the Respondent was entitled to refund of the amount deposited with simple interest at the rate of 9%; and
- (d) Whether the Petitioner was under an obligation to complete the Project within a period of three years from the date of execution of the Buyers' Agreement and if so, in the event of the Petitioner



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failing to hand over possession within the stipulated time, the Respondent was within its right to exit the Project and claim refund of the amount which was lying in deposit with the Petitioner along with interest.

14. To determine Point (a) noted above, the learned Sole Arbitrator rightly emphasized on the wordings of Clause 7(a) under the Application Form, which is again being extracted below for ease of reference:

“7.(a) The company has made it clear to the Intending Allottee that the 'said land' on which the complex is being erected, constructed and other peripheral area within the boundary of the land is owned by Land Owning Company, which has through a Development Agreement granted the development rights to the company to develop, construct and market the said complex and the Intending Allottee understands that the present land use is industrial, which is permissible to be changed to commercial as per Delhi Master Plan, 2021. Since the concerned authority has yet to communicate for converting the industrial land to commercial land, the work will commence only after the change in land use is permitted.”

15. The learned Sole Arbitrator observed that the wordings of the above clause affirmatively indicated that at the time of booking of the office space by the Respondent, the Petitioner had already applied for conversion, and was only awaiting response from the concerned authority. He further took note of the cross-examination of one of the Petitioner's witness, being the Assistant Vice President of the Petitioner's Company before the learned Sole Arbitrator. The witness unwaveringly admitted that the Petitioner commenced construction of the industrial plot, without applying for or being



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granted conversion to ‘commercial’ land, at the relevant time in 2009. Considering this, the learned Sole Arbitrator refused the stance of the Petitioner that it was pursuing the concerned authority all along regarding the conversion, as no document to reflect the same was placed on record by the Petitioner.

16. The above conclusion is discernible from the material on record as well. The very first communication from the Petitioner to the concerned authority, being the South Delhi Municipal Corporation [“SDMC”] was sent somewhere in November, 2009, which is reflected from a Letter dated 20.11.2009 sent by the MCD to the Petitioner, regarding the latter’s land-use change application. Thereafter, the actual and final grant of sanction for the Petitioner’s plan for construction of the Project for commercial activities is dated 29.01.2013, which position was also confirmed by the Petitioner’s then-Assistant Vice President, who was arraigned as RW-2 before the learned Sole Arbitrator. Before 29.01.2013, it is borne out from the record and confirmed by RW-2 that two sanctions were also granted in June 2009 and September 2009, however, these sanctions were limited for construction up to two floors only, while the office space allotted to the Respondent was on the fifth floor. Interestingly however, prior to that, the Petitioner appears to have sent out a letter to its investors, including the Respondent herein on 10.09.2008 claiming that they had applied for and received a number of approvals from the concerned authority, while some others were awaited, and their prospective receipt would be by the end of October, 2008. Clearly, this Letter dated 10.09.2008 sent by the Petitioner did not show the true picture. For which reason, the conclusion in the Impugned Award that the Petitioner’s *ipse dixit* of actively pursuing the matter of obtaining approvals



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from the concerned authority cannot be believed and thus, the representation made under Clause 7(a) of the Application Form is a misleading one, cannot be interfered with by this Court. As a consequence, the argument advanced by the learned Counsel for the Petitioner that the learned Sole Arbitrator misinterpreted Clause 7(a), is rejected.

17. To answer Point (c) enlisted above, the learned Sole Arbitrator turned its attention to the following recital contained in the Application Form, which essentially put the Petitioner under an obligation to either finally allot an office space to the Respondent within a period of one year from the date of signing of the Application Form, or return the entire amount by the Respondent along with interest at the rate of 9%:

“I/We have instructed the company that if for any reason including non-sanction of the building plans, the company is not in a position to finally allot a shop/office space/ parking space/other commercial space(s) applied for within a period of one year from the date hereof, I/We would like to have refund of the amount deposited with simple interest at the rate of 9% per annum calculated for the period for which such monies have been lying with the company.”

18. This Court has already noted the Letter dated 19.04.2008, wherein the is Petitioner stated to have allotted an office space to the Respondent. However, the above discussion on Point (a) clearly revealed that the actual and final grant of sanction by the SDMC was only on 29.01.2013, while the prior two sanctions in June and September 2009 were only two construction of two floors. As such, the learned Sole Arbitrator returned a finding that the purported allotment of an office space on the fifth floor in April 2008, was actually non-existent, as even till September 2009, the Petitioner could



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manage to receive sanctions for construction of only two floors. For this reason, this Court has no hesitation in agreeing with the conclusion of the learned Sole Arbitrator that the Respondent, in terms of the Recital extracted above, was well within its right to claim refund from the Petitioner along with interest.

19. Next point to adjudicate upon was Point (b), which was to decide as to whether the Respondent was under an obligation to execute the Buyers' Agreement within 30 days from its dispatch or not, and upon a failure to do so, the Petitioner could cancel and forfeit the amounts paid by the Respondent. The rival stances on this point were on one hand, that since the Respondent refused to sign the Buyers' Agreement within the stipulated time, the Petitioner was empowered to cancel and forfeit the amounts paid by the Respondent and refuse the refund on ground that the Respondent breached Clause 11 of the Application Form.

20. On the other hand, the Respondent refused to sign the Buyers' Agreement sent by the Petitioner on 26.11.2008, since the same contained one-sided clauses but more importantly, the Respondent discovered that the Petitioner collected huge amounts from various investors without any update on grant of sanctions by the concerned authority. On this ground, the Respondent requested refund of amounts deposited by it *vide* its Letter dated 23.04.2009.

21. Again, the Petitioner sought to rely on a Clause 29 in the Application Form, to state that its inability to get the necessary approvals was not attributable to it, but a *force majeure* condition, out of the Petitioner's control. Clause 29 of the Application Form is extracted below:



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“The intending allottee agrees that the sale of the shop/ office space/ parking space/ other commercial space(s) in the said complex is subjected to force majeure clause which inter alia include delay on account of non-availability of steel and/or cement or other building materials or water supply or electric power or slow down strike or due to a dispute with the construction agency employed by the company, civil commotion or by reason of war or enemy action or terrorist action or earthquake or any act of God or if non delivery of possession as a result of any notice order, rule or notification of the Government and/or any other public or competent authority or for any other reason beyond the control of the company and in any of the aforesaid events the company shall be entitled to a reasonable extension of time for delivery of possession of the shop/office space/ parking space/ other commercial space(s) in the said building.

The company as a result of such a contingency arising reserves the right to alter or vary the terms and conditions of allotment or if the circumstances beyond the control of the company so warrant the company may suspend the scheme for such period as it may consider expedient and non-compensation of any nature whatsoever can be claimed by the Intending Allottee for the period of suspension of scheme.

In consequence of the company abandoning the scheme, the company's liability shall be limited to the refund of the amount paid by the Intending Allottee(s) without any interest or compensation whatsoever.”

22. On the Respondent's refusal to sign the Buyers' Agreement, the learned Sole Arbitrator observed that the Respondent's wish to discuss clauses contained in a contract, which was to end up being a bilateral agreement, was not unnecessary and as such, it was under no obligation to



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sign the Buyers' Agreement without any questions. In fact, this brings to light a judgment of the Apex Court in Central Inland Water Transport Corpn. v. Brojo Nath Ganguly, (1986) 3 SCC 156, which was referred to in Pioneer Urban Land & Infrastructure Ltd. v. Govindan Raghavan, (2019) 5 SCC 725, whereby the Apex Court had observed as under:

“89. ... Our Judges are bound by their oath to “uphold the Constitution and the laws”. The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and the equal protection of the laws. ... This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualise the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties



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is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction. ... These cases can neither be enumerated nor fully illustrated. The court must Judge each case on its own facts and circumstances.”

23. Noting the above, the Apex Court in Pioneer Urban Land & Infrastructure Ltd. v. Govindan Raghavan (Supra), observed as under:

“6.8. A term of a contract will not be final and binding if it is shown that the flat purchasers had no option but to sign on the dotted line, on a contract framed by the builder. The contractual terms of the agreement dated 8-5-2012 are ex facie one-sided, unfair and unreasonable. The incorporation of such one-sided clauses in an agreement constitutes an unfair trade practice as per Section 2(1)(r) of the Consumer Protection Act, 1986 since it adopts unfair methods or practices for the purpose of selling the flats by the builder.”

24. Another conclusion drawn by the learned Sole Arbitrator is that Clause 29 of the Application Form cannot come to the Petitioner’s rescue, as the delay in taking the first steps to apply for conversion of land and approval of building layout plans was completely attributable to it. On this observation, the learned Sole Arbitrator relied upon a judgment of the Apex Court in Energy Watchdog v. CERC, (2017) 14 SCC 80, which held that the scope of *force majeure* cannot take in its fold mere onerous performance of a contract by one or the other party. As such, the learned Sole Arbitrator held that the Petitioner, being a old-hand in the field of real estate and construction, and knowing well enough how much time it takes for conversion of land and sanction of lay out plans, cannot term the delay in getting approvals as a *force majeure* condition.



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25. Upon perusing the material on record, this Court finds itself in agreement with both the conclusions of the learned Sole Arbitrator, that the Respondent was not obligated to sign the Buyers' Agreement if it was of the opinion that the same contained one-sided clauses. This Court also agrees with the observation in the Impugned Award that since it was the Respondent itself who was responsible for the delays in getting approvals and sanctions, it could not take aid of Clause 29 of the Application Form and as such, could not forfeit the amounts paid by the Respondent.

26. Lastly, perusal of the Impugned Award also shows that the learned Sole Arbitrator, having already seen that the delays were entirely attributable to the Petitioner, also rejected the Petitioner's contention that time was not of the essence of the contract between the parties. This Court has already agreed with the interpretation of the learned Sole Arbitrator of the various clauses in the Application Form that contained within them an aspect of limitation, for instance, Clause 7(a) and Clause 16. As such, this Court most certainly also concurs on this point, to state that it is too unjust a position if the Petitioner is allowed to demand monies from the investors as per the initial time communicated by it, but at the same time, expect the same investors to wait *ad nauseum* till the Petitioner struggles to receive the bare minimum of approvals and sanctions from the concerned authorities. On this aspect, this Court is also cognizant of the judgment of the Apex Court in Saradamani Kandappan v. S. Rajalakshmi, (2011) 12 SCC 18, wherein an important discussion on time being of the essence in contracts such as the one in the present case took place. Relevant parts of the said judgment is extracted below:



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“36. The principle that time is not of the essence of contracts relating to immovable properties took shape in an era when market values of immovable properties were stable and did not undergo any marked change even over a few years (followed mechanically, even when value ceased to be stable). As a consequence, time for performance, stipulated in the agreement was assumed to be not material, or at all events considered as merely indicating the reasonable period within which contract should be performed. The assumption was that grant of specific performance would not prejudice the vendor defendant financially as there would not be much difference in the market value of the property even if the contract was performed after a few months. This principle made sense during the first half of the twentieth century, when there was comparatively very little inflation, in India. The third quarter of the twentieth century saw a very slow but steady increase in prices. But a drastic change occurred from the beginning of the last quarter of the twentieth century. There has been a galloping inflation and prices of immovable properties have increased steeply, by leaps and bounds. Market values of properties are no longer stable or steady. We can take judicial notice of the comparative purchase power of a rupee in the year 1975 and now, as also the steep increase in the value of the immovable properties between then and now. It is no exaggeration to say that properties in cities, worth a lakh or so in or about 1975 to 1980, may cost a crore or more now.

37. The reality arising from this economic change cannot continue to be ignored in deciding cases relating to specific performance. The steep increase in prices is a circumstance which makes it inequitable to grant the relief of specific performance where the purchaser does not take steps to complete the sale within the agreed period, and the vendor has not been



responsible for any delay or non-performance. A purchaser can no longer take shelter under the principle that time is not of essence in performance of contracts relating to immovable property, to cover his delays, laches, breaches and “non-readiness”. The precedents from an era, when high inflation was unknown, holding that time is not of the essence of the contract in regard to immovable properties, may no longer apply, not because the principle laid down therein is unsound or erroneous, but the circumstances that existed when the said principle was evolved, no longer exist. In these days of galloping increases in prices of immovable properties, to hold that a vendor who took an earnest money of say about 10% of the sale price and agreed for three months or four months as the period for performance, did not intend that time should be the essence, will be a cruel joke on him, and will result in injustice. Adding to the misery is the delay in disposal of cases relating to specific performance, as suits and appeals therefrom routinely take two to three decades to attain finality. As a result, an owner agreeing to sell a property for rupees one lakh and received rupees ten thousand as advance may be required to execute a sale deed a quarter century later by receiving the remaining rupees ninety thousand, when the property value has risen to a crore of rupees.

42. *Therefore there is an urgent need to revisit the principle that time is not of the essence in contracts relating to immovable properties and also explain the current position of law with regard to contracts relating to immovable property made after 1975, in view of the changed circumstances arising from inflation and steep increase in prices. We do not propose to undertake that exercise in this case, nor referring the matter to a larger Bench as we have held on facts in this case that time is the essence of the contract, even with reference to the principles in Chand*



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Rani [(1993) 1 SCC 519] and other cases. Be that as it may.

43. *Till the issue is considered in an appropriate case, we can only reiterate what has been suggested in K.S. Vidyanadam [(1997) 3 SCC 1] :*

(i) The courts, while exercising discretion in suits for specific performance, should bear in mind that when the parties prescribe a time/period, for taking certain steps or for completion of the transaction, that must have some significance and therefore time/period prescribed cannot be ignored.

(ii) The courts will apply greater scrutiny and strictness when considering whether the purchaser was “ready and willing” to perform his part of the contract.

(iii) Every suit for specific performance need not be decreed merely because it is filed within the period of limitation by ignoring the time-limits stipulated in the agreement. The courts will also “frown” upon suits which are not filed immediately after the breach/refusal. The fact that limitation is three years does not mean that a purchaser can wait for 1 or 2 years to file a suit and obtain specific performance. The three-year period is intended to assist the purchasers in special cases, as for example, where the major part of the consideration has been paid to the vendor and possession has been delivered in part-performance, where equity shifts in favour of the purchaser.”

27. A careful and comprehensive perusal of the Impugned Award demonstrates that the learned Sole Arbitrator has examined the pleadings, documentary material, correspondence exchanged between the parties, and the evidence led in support of their respective claims and assertions. The



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Impugned Award reflects due consideration of the relevant facts and surrounding circumstances germane to the disputes.

28. The Impugned Award reflects a plausible and reasoned interpretation of the contract and an evaluation of evidence within the jurisdiction of the learned Sole Arbitrator. It is well settled that a court exercising limited supervisory jurisdiction under Section 34 of the Arbitration Act cannot re-appreciate evidence or substitute its own interpretation of contractual clauses where the view taken by the learned Sole Arbitrator is a possible and reasonable one.

29. Viewed in its entirety, the Impugned Award reflects a reasoned and structured adjudication of the disputes by the learned Sole Arbitrator within the confines of the contractual terms agreed upon by the parties, the material placed on record, and the jurisdiction vested in the learned Sole Arbitrator. The Impugned Award demonstrates due application of mind to the pleadings, evidence, and relevant contractual provisions.

30. In view of the foregoing discussion, this Court is of the considered opinion that the Petitioners have failed to establish any ground under Section 34(2) or Section 34(2A) of the Arbitration Act warranting interference with the Impugned Award.

31. Accordingly, the present Petition, along with pending Application(s), if any, stands dismissed.

SUBRAMONIUM PRASAD, J

AUGUST 05, 2026

Prateek/AP