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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 08.08. 2017

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Pronounced on: 23.08.2017

+ O.M.P. (COMM) 322/2016

AEZ INFRATECH PVT LTD

..... Petitioner

Through

Mr.Alok Kumar, Mr. Neeraj Kumar Gupta, Mr.Harish Kr.Garg, Mr.Amit Kr.Singh and Mr.Abhishek Paruthi, Advocates.

versus

VIBHA GOEL & ANR.

..... Respondents

Through

Mr.Samar Singh Kachwaha and Mr.Raghavendra Mohan Bajaj, Advocates.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. The present petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as 'the Act'*) seeking to impugn the award dated 19.03.2016 passed by the learned arbitrator.
2. Some of the relevant facts as stated by the respondents are that the respondents are the wife and son of Col.Devesh Goel.(Retd.) who was employed with M/s Aerens Builders Pvt. Ltd.(*hereinafter referred to as 'the Aerens Builders'*), a sister concern of the petitioner company. It is stated that the respondents were induced into loaning a sum of Rs.70,00,000/- to the Aerens Builders by Mr. Kailash Gupta, the Promoter-Director of the said

Aerens Builders at agreed rate of interest. Monthly interest was paid by the said Aerens Builders on regular basis for about two years. In 2008-2009, there was a default on the part of the Aerens Builders in payment of interest. In fact, Col.Devesh Goel (Retd.) did not also receive his salary. It is at that stage, that the said promoter Sh.Kailash Gupta moved his operations into the premises of the petitioner company which was promoted by his brother. On negotiations between the parties, an agreement dated 09.09.2009 was entered into between the parties whereby the petitioner company agreed to sell to the respondents a flat being No.D5/702 (having super area measuring about 2244 sq.fts.) at AEZ Aloha Project of the petitioner company in Village Tigra, District Gurgaon. The total sale consideration agreed was Rs.78,00,000/-. The loan amount paid by the respondents to Aerens Builders was adjusted towards the sale consideration payable for the flat. Unpaid interest on the said loan upto 30.06.2009 amounting to Rs.7,84,875/- was also adjusted to the sale consideration. A balance consideration of Rs.15,125/- remained payable by the respondents. It was also agreed between the parties that the petitioner company shall pay interest @ 18% per annum monthly @ Rs.1,41,148/- per month till the date of possession of the said flat. It is stated that in terms of the agreement, the agreed interest was paid upto the month of July, 2011 and thereafter the petitioner has defaulted. The possession of the flat has not been handed over to the petitioner.

3. It is the case of the respondents that in November, 2012 they reliably learnt that the petitioner company is trying to sell the flat in question. A petition under Section 9 of the Act being OMP No.1112/2012 was filed. This court on 03.12.2012 passed an interim order restraining the respondents from transferring, alienating, creating any third party interest or parting with

possession of the said flat. On 18.07.2013, this court passed an order directing the petitioner company to deposit the keys of the flat in issue with the Registry of this court.

4. It is in this background, that the arbitration clause was invoked. The learned arbitrator was appointed on a petition filed under Section 11 of the Act being ARB. P. No.120/2014 by this court on 23.09.2014.

5. The petitioner company has raised various defences in the pleadings before the learned arbitrator. It has been pleaded that the agreement to sell dated 09.09.2009 has been cancelled/novated by a fresh agreement dated 22.11.2011 whereby the respondent agreed to cancel the agreement to sell and a new agreement dated 22.11.2011 was entered into whereby the respondent agreed to buy two shops and received Rs.1,41,148/-. It was further stated that the agreement to sell is only a security agreement and conferred no rights on the respondent. It was also pleaded that the claim of the respondent is barred by limitation.

6. The learned arbitrator framed the following issues on 10.04.2015:

(1) Whether the Agreement to sell dated 09.09.2009 entered into between the Claimants and the Respondent Company in respect of flat No. D-5/702, alongwith four covered car parkings in the Aloha Project, Gurgaon, was cancelled/novated, if so, to what effect, on the claim of the claimants for specific performance of the said contract? OPR

(2) Whether there was a fresh Agreement dated 22.11.2011 between the Respondent Company and the claimants through Col. Devesh Goel for sale of two shops No. AF-17-B and AF-19, to the claimants by the Respondent Company in its A.E.Z. Commercial Project in Vaishali, Ghaziabad, after the alleged cancellation/novation of the earlier Agreement dated 09.09.2009, as is the case of the Respondent? OPR.

(3) If issues No. 1 and 2 are both decided in favour of the Respondent then to what relief the claimants are entitled in these proceedings.

(4) If issues No. 1 and 2 are decided in favour of the claimants, to what relief they are entitled?

(5) Whether the claimants are entitled to an award for payment of interest amounting to Rs.1,10,87,435/- till 31.12.2014 and further interest as per clause-10 of the Agreement dated 09.09.2009? OPC

(6) Whether the Respondent Company has already created a third party interest in respect of the property in dispute, as is being claimed by it, if so, to what effect on the Claimants' claim in the event of their succeeding in these proceedings? OPR

(7) Whether the claimants are entitled to cost of the Arbitration proceedings? O PC

7. On issues No.1 and 2 regarding cancellation/novation of the agreement, the learned arbitrator rejected the contentions of the petitioner that the so called document executed on 22.11.2011 has the effect of cancelling the agreement to sell dated 09.09.2009. The award also rejected the contention of the petitioner that the agreement to sell is a security document. On the issue of limitation, the award rejected the contention of the petitioner that the limitation period commenced from 01.06.2010. It noted that there was no time schedule fixed for completion of the construction in the agreement to sell dated 09.09.2009. The petitioner has been paying monthly interest till July, 2011, hence the award held in the facts and circumstances' noting that the arbitration clause was invoked on 03.07.2013, the claim petition was filed within the limitation period. The learned

arbitrator passed an award in favour of the respondents for specific performance of the agreement to sell dated 09.09.2009 and also directed payment of interest of Rs.1,41,148/- per month from August, 2011 till the possession of the said flat is received by the respondent.

8. I have heard the learned counsel for the parties.

9. The learned counsel for the petitioner has vehemently argued that the award is illegal for the following reasons:

- i) Reliance is placed on the claim petition wherein an averment is made by the respondents that they were not satisfied by the factum of unsecured nature of the loan which was given to the petitioner company. Reliance was also placed on the averment that to secure the interest of the respondents a flat was offered. Hence, based on these averments, it was urged that the agreement was only in the nature of security offered to the respondents to secure the loan. It was admitted that this plea was not taken in the claim petition but an amendment application was filed to introduce this plea which was dismissed by the learned arbitrator on 28.07.2015. Reliance is placed on the judgments of the Supreme Court in the case of ***G.Nagamma v. Siromanamma, (1996) 2 SCC 25***; and in the case of ***Firm Srinivas Ram Kumar v. Mahabir Prasad, AIR 1951 SC 177*** and on the judgment of this court in the case of ***Kedar Nath v. Ram Prakash, 76 (1998) DLT 755*** to contend that the amendment of the reply as sought by the respondent was wrongly declined by the learned Arbitrator.
- ii) It is further urged that the respondents failed to lead any evidence that they were ready and willing to perform the agreement and pay the stamp duty and balance dues. Reliance was placed on the judgment of

the Supreme Court in the case of *Bal Krishna v. Bhagwan Das*, AIR 2008 SC 1786 to contend that the plaintiff must aver and show readiness and willingness to perform the contract according to its true constructions and in the absence of proof of the same, i.e. that the plaintiff has been ready and willing to perform his part of the contract, the suit cannot succeed.

- iii) It is further urged that the learned arbitrator has wrongly come to the conclusion that the agreement to sell between the parties was not modified by the document dated 22.11.2011 executed by Col. Devesh Goel (Retd.). It is urged that Col. Devesh Goel (Retd.) is the husband of the respondent No.1 and father of respondent No.2. It was the duty of the respondents to have produced Col. Devesh Goel (Retd.) as a witness. Having failed to produce the said witness, it was implicit that the document dated 22.11.2011 could not be rejected by the learned arbitrator.
- iv) It was stressed that the claim petition was barred by limitation. It is pointed out that in the claim petition, it is stated by the respondent that the building was expected to be ready in May, 2010. Hence, it is urged that the cause of action arose on the said date and the invocation of the arbitration clause in terms of the Section 21 of the Act was done on 03.07.2013. Hence, it is urged that the claim of the respondent was barred by limitation.
- v) It is urged that relief of specific performance is a matter of sound discretion and is not a matter of right. In the present case, it is urged that the learned arbitrator has treated the relief as a matter of right of the respondent.

vi) It is also urged that grant of interest as per the award by the learned arbitrator would mean a bounty to the petitioner as they not only get the flat but also huge amount of compensation which is much more than the cost of the flat itself.

10. I may now deal with the submissions of learned counsel for the petitioner. The first plea raised is that the agreement dated 9.9.2009 is actually an agreement for the purpose of offering a security to the respondents. It has been urged that this plea was not taken in the reply to the claim petition but an amendment was sought to the reply by filing an appropriate application which the learned Arbitrator had wrongly declined. A perusal of the Award would show that the learned Arbitrator has dealt with the said contention of the petitioner. Hence, even though the application for amendment of the reply was dismissed, the award deals with the said contentions of the petitioner. There is hence no merit in the contention of the petitioner that the amendment sought to the reply was wrongly dismissed by the learned Arbitrator.

11. The learned Arbitrator notes that a reading of the paragraphs 9 and 10 of the claim petition does not show that the parties had meant the agreements in question to be a mere security document and not an agreement to sell. The Award also notes that the respondents nowhere have admitted that the sale of the flat in dispute was to take place only in case of default on the part of Aerens Builders Private Limited. The Award also notes the cross-examination of RW-1 Shri K.K.Aggarwal where he has admitted that with the execution of the agreement dated 9.9.2009 all liabilities of Aerens Builders Private Limited came to an end.

12. In my opinion, the plea of the petitioner about the document being only a security document is absolutely without merits. Heavy reliance was placed on paragraphs 5, 6 and 7 of the claim petition filed by the respondent to support the plea that the said agreement was in fact executed as a security for the loan granted to Aerens Builders Private Limited. Reliance was also placed on paragraphs 9 and 10 where an averment is made that the respondent was recalling the loan in the light of the unsecured nature of the loan. Merely because in the claim petition some stray observations about the loan being an unsecured loan have been made do not in any manner show that the said agreement can be termed as a security for the loan. In fact a perusal of the terms of agreement dated 09.09.2009 would show that it is an agreement to sell whereby respondent admits and acknowledges receipt of Rs.77,84,875/- and agrees to sell the flat in question to the respondents and also promises to hand over vacant physical possession of the flat upon completion of the project. Reliance of the petitioner on stray lines in the claim petition to interpret the agreement dated 09.09.2009 is a mischievous act. The plea is utterly frivolous. Even otherwise, admittedly the loan has not been repaid by Aerens Builders Private Limited. Hence, even assuming it was a security document; the plea is of no defence to the petitioners and has been rightly rejected by the learned Arbitrator.

13. Interpretation of an agreement is within the domain of the arbitrator. Reference may be had to the judgment of the Supreme Court in the case of ***McDermott International Inc. vs. Burn Standard Co. Ltd. and Ors., 2006 (11) SCC 181/(MANU/SC/8177/2006)***, wherein the court held as follows:

“72. It is trite that the terms of the contract can be express or implied. The conduct of the parties would also be a relevant

factor in the matter of construction of a contract. The construction of the contract agreement, is within the jurisdiction of the arbitrators having regard to the wide nature, scope and ambit of the arbitration agreement and they cannot, be said to have misdirected themselves in passing the award by taking into consideration the conduct of the parties. It is also trite that correspondences exchanged by the parties are required to be taken into consideration for the purpose of construction of a contract. Interpretation of a contract is a matter for the arbitrator to determine, even if it gives rise to determination of a question of law. [See *Pure Helium India (P) Ltd. v. Oil & Natural Gas Commission* MANU/SC/0803/2003: AIR2003SC4519 and *D.D. Sharma v. Union of India* MANU/SC/0419/2004: (2004)5SCC325]. Once, thus, it is held that the arbitrator had the jurisdiction, no further question shall be raised and the court will not exercise its jurisdiction unless it is found that there exists any bar on the face of the award.”

There are no reasons to disagree with the interpretation of the learned arbitrator that the agreement dated 09.09.2009 is not a security document.

14. The second plea raised by the petitioner was that there was no evidence led by the respondents nor is there anything to show that they were ready and willing to perform the agreement and pay the stamp duty.

15. As rightly pointed out by the learned counsel for the respondent, the total agreed sale consideration as per the Agreement dated 9.9.2009 was Rs.78,00,000/- of which the petitioner had accepted receipt of payment of Rs.77,84,875/- leaving a balance of Rs.15,125/- only payable by the respondent. The agreement to sell is an admitted document. In the claim petition at paragraph 29 clear and specific averment is made by the respondent that the claimant is ready and willing to pay the balance sale consideration of Rs.15,000/- and any other statutory fee/stamp duty. Specific

averments have been made that the respondents have been waiting for possession of the flat inasmuch as they have paid more than 99% of the sale consideration. In reply to the said paragraph 29 of the claim petition, the petitioner in their reply has not denied the factum of the respondents being ready and willing to pay the balance sale consideration/statutory dues. The petitioner has instead made claims claiming that the flat has already been sold to some third party and the agreement already stands cancelled. It is clear from the said pleadings itself that before the learned Arbitrator there is no denial by the petitioner that the respondent was ready and willing to perform the balance part of the agreement, namely, pay Rs.15,125/- and other statutory dues and stamp duty dues. Hence, no such dispute was raised before the learned Arbitrator. Even otherwise, it is manifest that the petitioner had received 99 per cent of the agreed consideration. There can be no reason for the respondent to backtrack and not perform the balance part the agreement.

16. The Supreme Court in the case of *A. Kanthamani v. Nasreen Ahmed (2017) 4 SCC 654* on the issue of readiness and willingness of the plaintiff seeking specific performance noted as follows:

20. The Specific Relief Act, 1877 which stood repealed by the 1963 Act did not contain provision analogues to Section 16(c). Yet in the absence of any such provision, its requirements used to be considered mandatory in the suits for specific performance by virtue of law laid down by the Privy Council in a celebrated case of *Ardeshir H. Mama v. Flora Sassoon*. It is in this case which went to the Privy Council from Indian courts, their Lordships laid down the following principle: (SCC OnLine PC)

“In a suit for specific performance on the other hand, he treated and was required by the Court to treat the contract as

still subsisting. He had in that suit to allege, and if the fact was traversed, he was required to prove a continuous readiness and willingness, from the date of the contract to the time of the hearing, to perform the contract on his part. Failure to make good that averment brought with it the inevitable dismissal of his suit. Thus it was that the commencement of an action for damages being, on the principle of such cases as *Clough v. London and North Western Railway Co.* and *Law v. Law* a definite election to treat the contract as at an end, no suit for specific performance, whatever happened to the action, could thereafter be maintained by the aggrieved plaintiff. He had by his election precluded himself even from making the averment just referred to proof of which was essential to the success of his suit. The effect upon an action for damages for breach of a previous suit for specific performance will be apparent after the question of the competence of the Court itself to award damages in such a suit has been touched upon.”

21. The 1963 Act then made the aforesaid requirement a statutory one by enacting Section 16(c), which reads as under:

“16. *Personal bars to relief*.—Specific performance of a contract cannot be enforced in favour of a person—

(a)-(b)***

(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.

Explanation.—For the purposes of clause(c)—

(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;

(ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction.”

22. Therefore, the plaint which seeks the relief of specific performance of the agreement/contract must contain all requirements of Section 16(c) read with requirements contained in Forms 47 and 48 of Appendix 'A' CPC.

16. As noted above, there was no dispute raised by the petitioner before the learned Arbitrator that the respondent was not ready and willing to perform their part of the agreement. In fact, 99% of the liability payable by the respondents already stood performed on the day of the agreement. The respondents have averred their readiness and willingness to perform the contract. The petitioner is raising this plea only for the sake of raising a plea. Hence, there's no merit in the plea of the petitioner in this regard.

17. The third contention raised by the petitioner was that the Agreement to Sell between the parties dated 9.9.2009 was modified by document dated 22.11.2011. A perusal of the Award would show that the learned Arbitrator has noted that the petitioner did not examine Col. Devesh Goel, the person who had allegedly executed the voucher dated 22.11.2011. In the absence of the evidence of Col. Devesh Goel, there is nothing to show that Col. Goel had authority to cancel the agreement dated 9.9.2009 and enter into a fresh agreement on behalf of the respondents. In the absence of any proof of the authority of Col. Goel the award holds that the Agreement between the parties dated 09.09.2009 could not be treated to have been cancelled. A finding of fact is recorded that the petitioner failed to discharge the burden of proving the cancellation of the agreement. The Award also notes that the voucher allegedly executed by Col. Goel cannot be considered to be an agreement as no particulars of the shop nor the price at which the shops are being sold are stated.

18. A perusal of the voucher allegedly signed by Col.Goel being Ex.RW1/C1 shows that it bears the signature on receipt of Rs.1,41,148/- below which there is a signature of Col.Goel. In a hand written note an endorsement is made above this receipt stating that the Agreement dated 9.9.2009 is cancelled and settled for two shops at Vaishali to be allotted. It is an absolutely vague document. It appears as if the endorsement that the agreement dated 9.9.2009 is cancelled has been inserted in the receipt said to be issued by Col.Goel. The learned Arbitrator has noted that the petitioners have failed to discharge the burden of proving the legality, validity and authenticity of this so called document. This document was propounded by the petitioner. The onus was on the petitioner to prove valid execution of this document. An issue to that effect was also framed by the learned Arbitrator. In the absence of any plausible evidence, there was no reason or occasion for the Arbitrator to conclude that the agreement dated 9.9.2009 stood altered or rescinded. In fact a question was posed to the learned counsel for the petitioner as to whether the two shops stated in the voucher have been handed over to Col.Goel. No cogent and clear answer was forthcoming. Learned counsel for the respondent has denied receipt of any such property by the respondent or Col.Goel. It is clear that there is no infirmity in the finding of facts recorded by the learned Arbitrator that this voucher cannot amount to a modification/cancellation of the Agreement to Sell dated 09.09.2009 between the parties and that the petitioner failed to discharge the burden to prove the cancellation of the said agreement.

19. The next plea raised by the petitioner was that the learned Arbitrator has given a bonanza to the respondent by granting specific performance of the Agreement to Sell and also granted interest @ 18% per annum on the

loan amount from August 2011, till the date of delivery of possession. Admittedly, the original agreement between the parties whereby the loan was granted to Aerena Builders Private Limited contained a clause about payment of interest @ 18% per annum. This aspect is acknowledged in the Agreement to Sell dated 9.9.2009 which adjusts outstanding interest of Rs.7,84,875 which accrued on the principal up to 30.6.2009. The Agreement to Sell further agrees that the respondent shall pay interest of 18% per annum i.e. Rs.1,41,148/- per month w.e.f. 1.7.2009 till the date possession which is offered of the unit to the respondents or till the entire amount of Rs.94,09,875/- is returned to the respondent. Hence, it has been specifically agreed by the petitioner to pay interest @ 18% per annum till possession of the flat is offered. Reference may be had to Clause 10 of the agreement to sell which reads as follows:

“10. That the Second Party shall have the option to return the said Unit to the First Party only within a period of one year from the date hereof. In such a situation, the First Party shall return the entire amount of Rs.77,84,875/- (Rupees Seventy Seven Lac Eighty Four Thousand Eight Hundred and Seventy Five Only) paid by the Second Party to him along with a compensation amount of Rs.16,25,000/- (Rupees Sixteen Lac Twenty Five Thousand Only) without any further claim by the Second Party.

The First Party shall also pay to the Second Party a simple interest @ 18 % P.A. i.e. Rs.1,41,148/- (Rupees One Lac Forty One Thousand One Hundred and Forty Eight Only) P.M. w.e.f. 01.07.2009 which will be payable monthly in arrears in the following month till the date of offer of possession of the said unit or the date the Second Party opts to return the same to the First Party and the entire amount of Rs.94,09,875/- (Rupees Ninety Four Lac Nine Thousand Eight Hundred Seventy Five Only) as aforesaid is received by him from the First Party,

provided that the Second Party shall not create any Third Party interest in the said unit during the period of one year as stated herein.”

20. The Supreme Court in the case of ***McDermott International Inc. vs. Burn Standard Co. Ltd. and Ors.(supra)*** held as follows:-

“154. The power of the arbitrator to award interest for pre-award period, interest pendent lite and interest post-award period is not in dispute. Section 31(7)(a) provides that the arbitral tribunal may award interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which award is made, i.e., pre-award period. This, however, is subject to the agreement as regard the rate of interest on unpaid sum between the parties. The question as to whether interest would be paid on the whole or part of the amount or whether it should be awarded in the pre- award period would depend upon the facts and circumstances of each case. The arbitral tribunal in this behalf will have to exercise its discretion as regards (i) at what rate interest should be awarded; (ii) whether interest should be awarded on whole or part of the award money; and (iii) whether interest should be awarded for whole or any part of the pre-award period.”

21. In the present case there is a specific agreement between the parties whereby the petitioner had agreed to pay interest @ 18% per annum to the respondent. It is an unsecured commercial loan. Interest @ 18% per annum can be termed to be reasonable rate in the facts of the case. There are no grounds to challenge this award by the learned arbitrator.

22. The next plea raised by the petitioner relates to limitation. A perusal of the Award would show that the learned Arbitrator has noted that there was no period fixed for the purpose of compliance of the agreement. Hence,

under Article 54 of the Schedule to the Limitation Act the period of three years would commence from the date of refusal of the petitioner to perform the agreement. It is noted that the agreed monthly interest in question has been paid by the petitioner till July 2011 which shows that construction was not complete till then.

23. Article 54 of Schedule to the Limitation Act, 1963 reads as follows:-

54	For specific performance of a contract	Three years	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused
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24. In the above context, reference may be had to the judgment of Supreme Court in *A. Kanthamani v. Nasreen Ahmed (supra)* where the court held as follows:

“23. Article 54 of the Limitation Act provides a period of 3 years for filing a suit for specific performance of contract/agreement. A period of 3 years is required to be counted from the date fixed by the parties for the performance, or if no such date is fixed, when the plaintiff has noticed that the performance is refused. The plaint should, therefore, also have necessary pleading satisfying the requirement of Article 54.”

25. Hence, limitation for specific performance starts either from the date on which a period is fixed for the performance of the agreement or it is three years from the date this performance is refused. As rightly held by the learned Arbitrator there is no period prescribed for performance in the agreement. Hence, in the present case, the period for limitation would start

running when the plaintiff had notice that performance is refused. Merely because the respondent in the claim petition has averred that it was expected that the petitioner would complete construction by May 2010 does not *ipso facto* mean that any period was specified in the agreement for performance of the agreement. The petitioner has paid interest in terms of the agreement dated 9.9.2009 upto July 2011. In fact, the petitioner claims that the agreement was cancelled on 22.11.2011. Hence, it is clear that till July, 2011, there was no refusal on the part of the petitioner to perform the agreement. Reference may be had to Clauses 2 & 10 of the agreement to sell dated 09.09.2009 which reads as follows:

“2. That the actual physical, vacant possession of the said Unit shall be delivered by the First Party to the Second Party upon completion of the Project simultaneously upon receipt of the full and final sale consideration as agreed hereinabove.”

“10. That the Second Party shall have the option to return the said Unit to the First Party only within a period of one year from the date hereof. In such a situation, the First Party shall return the entire amount of Rs.77,84,875/- (Rupees Seventy Seven Lac Eighty Four Thousand Eight Hundred and Seventy Five Only) paid by the Second Party to him along with a compensation amount of Rs.16,25,000/- (Rupees Sixteen Lac Twenty Five Thousand Only) without any further claim by the Second Party.

The First Party shall also pay to the Second Party a simple interest @ 18 % P.A. i.e. Rs.1,41,148/- (Rupees One Lac Forty One Thousand One Hundred and Forty Eight Only) P.M. w.e.f. 01.07.2009 which will be payable monthly in arrears in the following month till the date of offer of possession of the said unit or the date the Second Party opts to return the same to the First Party and the entire amount of Rs.94,09,875/- (Rupees Ninety Four Lac Nine Thousand Eight Hundred Seventy Five Only) as aforesaid is received by him from the First Party,

provided that the Second Party shall not create any Third Party interest in the said unit during the period of one year as stated herein.”

Hence, there was no period provided in the agreement by which the petitioner was obliged to hand over the possession of the property. The possession was to be handed over when the project was completed. Till the petitioner made the offer of possession, petitioner was liable to pay simple interest at 18 per cent to the respondent. The interest has been paid upto July, 2011. Hence, even till that date, the petitioner had not offered possession of the unit to the respondent. It is manifest that it is only somewhere thereafter that it can be said that there was a refusal on the part of the petitioner to perform the agreement. The notice of invocation was received by the petitioner in July 2013. It is clear that the Award is within the limitation period.

26. Hence, there is no merit in the contentions of the petitioner. The Award is a plausible award based on the facts placed on record. There are no reasons to interfere in the Award. The petition is accordingly dismissed. All pending applications, if any, also stand disposed of.

JAYANT NATH, J.

AUGUST 23, 2017/v/n