

\$~39

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

+ **O.M.P. (COMM) 358/2017**

SURINDER SINGHAL Petitioner

Through: Mr Ankit Jain, Advocate.

versus

AIMS SANYA DEVELOPERS PVT. LTD. Respondent

Through: Mr Mayank Goel, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

%

23.05.2018

1. The petitioner has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, impugning the arbitral award dated 23.05.2017 (hereafter 'the impugned award') delivered by the Arbitral Tribunal constituted of the Sole Arbitrator, namely, Sh Alakh Kumar (hereafter 'the Arbitral Tribunal'). The impugned award was rendered in the context of disputes that had arisen between the parties in relation to the Space Buyer Agreement dated 23.09.2010 (hereafter 'the Agreement').
2. By the impugned award, the Arbitral Tribunal has awarded a sum of ₹1,00,58,143/- along with interest at the rate of 12% per annum from 01.06.2016 till the date of payment to the petitioner.
3. In May/June 2010, the respondent had advertised that it was developing a residential project in the name and style of "Landmark Towers" located in Sector-15, NOIDA.
4. The petitioner applied for booking a residential unit in the said project

and pursuant thereto, on 19.06.2010, the petitioner was allotted Unit No. 1024 admeasuring 980.41 sq. ft. (91.08 sq. mtr.) on 10th Floor of Tower B (hereafter 'the property').

5. The total cost of the property was ₹1,10,58,143/-. The petitioner made an aggregate payment of ₹1,00,58,143 – ₹8,18,748/- on 22.06.2010 & ₹92,39,395/- on 28.08.2010 – which amounted to 91.26% of the total amount.

6. Thereafter, on 23.09.2010, the parties entered into a Space Buyer Agreement ('the Agreement').

7. The petitioner claims that the aforesaid amount was paid as per the 'Terms and Conditions of Assured Returns Scheme'. In terms of the said scheme the respondent had assured a return of 12% per annum on the investment made by the petitioner. The respondent also made payments against its obligation to provide the assured returns till 31.05.2016. The petitioner claims that the cheques issued by the respondent for payments due after 31.05.2016 were dishonoured. The respondent also failed to construct and deliver the possession of the property allotted to the petitioner.

8. In the aforesaid context, the petitioner invoked the arbitration clause and, thereafter, approached this Court for appointment of an arbitrator. The arbitrator was appointed by an order passed by this Court on 03.06.2016 and arbitration was directed to be conducted under the aegis of Delhi International Arbitration Centre (DIAC).

9. Before the Arbitral Tribunal, the petitioner claimed (i) a sum of ₹1,00,58,143/- being the refund of the amount paid to the respondent; (ii) interest at the rate of 18% per annum on the aforesaid amount; (iii)

compensation at the rate of ₹25 per sq. ft. per month with effect from 17.12.2013 in terms of Clause 18 of the Agreement; and, (iv) cost for the arbitration.

10. The Arbitral Tribunal allowed the claim of the petitioner with respect to the refund of the amount paid by the petitioner and awarded a sum of ₹1,00,58,143/- alongwith interest at the rate of 12% per annum in favour of the petitioner. However, the Arbitral Tribunal rejected the petitioner's claim for compensation at the rate of ₹25 per sq. ft. per month as the petitioner had been sufficiently compensated by way of interest.

11. The petitioner claims that he would also be entitled to compensation as the terms and conditions of the Assured Return Scheme was not in derogation of the compensation provided under the Agreement.

12. This Court finds no infirmity in the conclusion of the Arbitral Tribunal as the assured return under the Assured Return Scheme was only to provide return to the petitioner till the date of possession and the compensation under Clause 18 of the Agreement is plainly intended to compensate the petitioner for delay in possession. Both the Clauses cannot run concurrently. The controversy involved in the present petition is covered by the decision of this Court in *Alka Jindal v. Aims Sanya Developers Pvt. Ltd.: O.M.P. (COMM) 356/2017, decided on 23.05.2018*.

13. In view of the above, the petition is dismissed. No order as to costs.

VIBHU BAKHRU, J

MAY 23, 2018
RK