

\$~37

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **O.M.P. (COMM) 356/2017**

ALKA JINDAL 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

VIBHU BAKHRU, J

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 ₹1,04,29,396/- 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 18.06.2010, the petitioner was allotted Unit No. 3016 admeasuring 1078.07 sq. ft. (100.15 sq. mtr.) on 30th Floor of Tower B (hereafter ‘the property’).

5. The total cost of the property was ₹1,14,88,697/-. The petitioner made an aggregate payment of ₹1,04,29,396.00 – ₹8,26,149/- on 19.06.2010 & ₹96,03,247/- on 28.08.2010 – which amounted to 90.78% 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 ₹1,04,29,396/- 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 respondent resisted the claims made by the petitioner, *inter alia*, on the ground that the Agreement did not provide for payment of any interest. The respondent also claimed that the delay in construction of the project was for reasons beyond the control of the respondent, which fell within the scope of *force majeure*. The Arbitral Tribunal rejected the aforesaid contention and held that the petitioner was entitled to refund of the amount paid along with interest at the rate of 12% per annum from 01.06.2016 till the amount was received by the petitioner. However, the Arbitral Tribunal rejected the petitioner's claim for compensation at the rate of ₹25 per sq. ft. per month.

11. Mr Ankit Jain, learned counsel appearing for the petitioner has assailed the impugned award to the extent that the Arbitral Tribunal had rejected the claims made by the petitioner. He earnestly contended that the compensation of ₹25 per sq. ft. per month as contemplated under the Agreement was in addition to the assured return of 12% per annum under the 'Terms and Conditions of Assured

Return Scheme'. Therefore, the Arbitral Tribunal had erred in declining the said claim on the ground that the petitioner had been compensated in terms of the said scheme. He also referred to the Terms and Conditions of the Assured Return Scheme in support of his contention that the assured return was in addition to the obligations under the Agreement.

12. He further submitted that the Arbitral Tribunal had grossly erred in not awarding costs in favour of the petitioner, as the petitioner had prevailed in its claims and there was no reason to deny the cost of arbitration. He further submitted that the petitioner had also paid the respondent's share of arbitral fee and was therefore entitled to an award, at least, to that extent.

13. Mr Mayank Goel, learned counsel appearing for the respondent countered the aforesaid submissions. He also submitted that the petitioner was not correct in contending that the Arbitral Tribunal had not awarded costs to the extent of the respondent's share of the arbitral fee. He pointed out that the Arbitral Tribunal had held that the parties were to bear their own costs and, therefore, the respondent was obliged to pay its share of the arbitral fee to the petitioner.

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

15. This Court is not persuaded to accept that any interference in the impugned award is warranted under Section 34 of the Act. The petitioner had relied upon Clause 18 of the Agreement, which is set out below:-

“18 If the company fails to allot the Space by 36 month from the date of booking plus (6 months grace period thereafter) subject to force majeure then the company shall pay to the Allottee compensation @ Rs. 25 per Sq.Ft per month for the period of such delay. Save and except where delay is caused by Force Majeure Conditions not within the reasonable control of the Company. The adjustment of holding charges or compensation shall be done at the time of executing the Lease Deed of the Space and not earlier. The holding charges shall be a distinct charge in addition to maintenance charges, and not related to any other charges as provided in the application and this agreement.”

16. It is apparent from the above that the compensation at the rate of ₹25 per sq. ft. per month would be payable to the petitioner if there was any delay in allotment of space beyond the period of 36 months from the date of booking (and, 6 months grace period thereafter).

17. Thus, if the project had been delayed beyond 17.12.2013, the petitioner would be undoubtedly entitled to compensation at the rate of ₹25 per sq. ft. per month. This was, plainly, to compensate the petitioner for being deprived of the use of the space booked by the petitioner. In term of the Assured Return Scheme, the petitioner was entitled to an assured return on her investment till possession of the property was handed over to her. It is thus, apparent, that both the compensation under Clause 18 of the Agreement and the interest at the rate of 12% per annum cannot run concurrently. The assured return was to be provided till possession and the compensation under Clause 18 of the Agreement was payable to compensate the petitioner for the

delay in providing possession. Clearly, the petitioner cannot claim compensation for being deprived of the use of space and compensation for her investment simultaneously.

18. It is also important to note that the petitioner had claimed a refund of the amount paid. This was accepted by the Arbitral Tribunal. Thus, the question for granting any possession to the petitioner did not arise. Undisputedly, the petitioner would be entitled to refund of the amount paid as well as loss suffered by it. The Arbitral Tribunal had, accordingly, directed refund of the amount paid and further awarded interest at the rate of 12% per annum as compensation for the period that the petitioner was deprived of the use of the said money.

19. In view of the above, this Court finds no error in the decision of the Arbitral Tribunal in rejecting the claim of the petitioner for compensation on account of delay in handing over the possession of the property as contemplated under the Agreement.

20. The decision of the Arbitral Tribunal directing the parties to bear their own costs also warrants in no interference by this Court under Section 34 of the Act. However, as conceded by the learned counsel for the respondent, the petitioner would be entitled to recover the respondent's share of the arbitral fee paid by the petitioner.

21. The petition is dismissed. No order as to costs.

VIBHU BAKHRU, J

MAY 23, 2018/RK