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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ O.M.P. (COMM) 524/2018
SH AMARJIT SINGH KAPOOR Petitioner
Through: Mr.Sudhir Sharma, Adv.

versus

ANSAL PROPERTIES & INFRASTRUCTURE LTD.
..... Respondent
Through: Nemo

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER
% **21.12.2018**
IA 17772/2018

This is an application seeking condonation of 1 day's delay in filing the petition.

For the reasons stated in the application, the delay is condoned and the application stands allowed.

IA 17773/2018

This is an application seeking condonation of 7 days delay in re-filing the petition.

For the reasons stated in the application, the delay is condoned and the application stands allowed.

OMP(Comm.) 524/2018

1. This petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner challenging the Arbitral Award dated 27.07.2018 passed by the Sole Arbitrator adjudicating the disputes

that have arisen between the parties in relation to the Allotment Letter dated 15.10.2007 whereby the respondent had allotted a shop bearing No.FF/12 at First Floor in the shopping Mall 'The Boulevard' situated at 105, The Mall Road, Ludhiana, Punjab to one Mr.Umesh Narayan Vajpeyi, the predecessor in interest of the petitioner.

2. The respondent had been proceeded ex parte in the arbitration proceedings.

3. The Arbitrator by the Impugned Award has granted the following reliefs in favour of the petitioner:

“(1) The Respondent shall pay to the claimants Rs.38,41,000/- (Rupees thirty eight lakh forty one thousand only) towards refund of the Principal amount;

(2) The Respondent shall pay to the claimants interest @ 18% p.a. on Rs.38,41,000/- (Rupees thirty eight lakh forty one thousand only) from the date of payment/receipt of the respective amount(s) till payment/realization;

(3) The Respondent shall pay to the claimants Rs.5 lakh (Rupees Five lakh only) towards Other losses;

(4) The Respondent shall pay to the claimant interest on Rs.5 lakh (Rupees Five lakh only), at the at the rate of two percent higher than the current rate of interest (as defined under the Interest Act, 1978), prevalent on the date of the award, from the date of the Award till the date of payment/realization;

(5) The Respondent shall pay to the claimants Rs.5,60,000/- (Rupees five lakh sixty thousand only) as cost.”

4. Counsel for the petitioner submits that there was no dispute raised by the respondent on the plea of the petitioner that the petitioner along with his predecessor in interest had paid a sum of

Rs.73,25,200/- to the respondent towards the allotment of the shop in question. In spite of there being no dispute, the Arbitrator has held that the petitioner had paid only a sum of Rs.38,41,000/- to the respondent. He submits that there being no dispute raised by the respondent on the amount received by it from the petitioner and his predecessor in interest, a presumption had to be drawn against the respondent under Section 114(g) and (h) of the Indian Evidence Act.

5. I am unable to agree with the submission made by the counsel for the petitioner. The Arbitrator in holding that only a sum of Rs.38,41,000/- had been paid by the petitioner to the respondent, has relied upon the statement of account sent by the respondent to the petitioner. The Arbitrator notes that even after receipt of the statement of account showing that only an amount of Rs.38,00,000/- had been paid by the petitioner, the petitioner in its letters dated 01.06.2011, 24.06.2011, 24.08.2011, 16.09.2011 and the subsequent letters did not question the veracity of the statement of account.

6. In any case, the petitioner was claiming that an amount of Rs.33,00,000/- had been paid by the petitioner to the respondent in cash. The Arbitrator found that there was no proof of such payment. This being a matter of appreciation of evidence, this Court in exercise of its powers under Section 34 of the Act cannot set aside the Award by re-appreciating the evidence.

7. Counsel for the petitioner further submits that the Arbitrator has erred in not granting loss of profit in favour of the petitioner.

8. I am unable to agree with the submissions of the counsel for the petitioner. The Arbitrator for rejecting this claim has given cogent

reasons. He has found that there was inaction on part of the petitioner to take timely recourse to justice since 2011. In any case, the Arbitrator has also awarded interest on the amount paid by the petitioner to the respondent at the rate of 18% per annum. The Arbitrator further granted Rs.5 lacs along with interest for 'other losses suffered because of breach of the Agreement' by the respondent. Therefore, the Arbitrator has balanced equities and awarded amounts in favour of the petitioner.

9. Counsel for the petitioner further submits that the Arbitrator has awarded as cost only the fee paid by the petitioner to the Delhi International Arbitration Centre. The other legal expenses incurred by the petitioner have not been awarded as costs. Though, I find some merit in the said contention of the counsel for the petitioner, however, as award of cost is at the discretion of the Arbitrator, I do not deem it appropriate to interfere with the award only on this ground.

The petition is dismissed with no order as to costs.

NAVIN CHAWLA, J

DECEMBER 21, 2018

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