

## IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 17.07.2019

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THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

**O.P.No.782 of 2018**

1. M/s.Alliance Projects  
A Registered Partnership Firm,

2. M/s.Alliance Orchid Tech Parks (P) Ltd.,  
Both are having office at  
Plot No.A.No.36/1,  
Gandhi Mandapam Road,  
Kotturpuram, Chennai - 600 085.

..Petitioners

Vs

C.Mani

.. Respondent

**Prayer:-** Original petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the award dated 20.06.2018 in A.F.No.7/2015 passed by the arbitrator.

For Petitioners : Mr.R.Pradheep  
for M/s.S.Sethuraman

For Respondent : Mr.M.Chidambaram

**ORDER**

This original petition has been filed challenging the award passed by the learned Sole Arbitrator.

2. The brief facts leading to file this petition is as follows:

The learned Arbitrator awarded a sum of Rs.9,00,000/- towards delay in delivery of possession of the flat and a sum of Rs.1,68,585/-, the amount illegally

collected towards interest in paying installments, totaling to a sum of Rs.10,68,585/-.

3. The claimant/respondent and the respondents/petitioners have entered into a sale and construction agreement on 30.08.2011. As per the said agreement, the constructed flat to be handed over to the claimant within a period of three years from 30.07.2011. However, the petitioners had not handed over the flat within three years, whereas, they handed over the flat on 29.08.2006 in an unfinished condition. Hence, the claimant has raised the claim. He has claimed the amount for collection of parking fees, club membership amount and installing expenses amount with interest of delayed payments as damages. The petitioner have handed over the flat to the claimant in April, 2006, whereas, the claim has been filed on 26.11.2007.

4. The learned Arbitrator has awarded the amount for Rs.9,00,000/- for delay in delivery of possession of flat and a sum of Rs.1,68,585/- , the amount illegally collected towards interest in paying installments.

5. It is the contention of the learned counsel for the petitioners that the learned Arbitrator has passed an award beyond the terms of contract, in fact, the contract stipulates, in the event of delay in delivery of possession, the contractor is liable to pay damages of Rs.3 per sq.ft. The parties have agreed to receive

the estimated damages. The Arbitrator fixing the damages on the basis of inference cannot be sustained in the eye of law. It is his further contention that even the contract also provides imposing the interest at the rate of 24% in the event of delay in the payment of installment. Hence, the award passed by the Arbitrator is beyond the scope of the contract.

6. The learned counsel for the petitioners has relied on the following judgments:

***Haryana Urban Development Authority vs. Diwan Singh*** reported in (2010) 14 SCC 770; ***Haryana Urban Development Authority vs. Darsh Kumar and others*** reported in (2005) 9 SCC 449 and ***Bangalore Development Authority vs. Syndicate Bank*** reported in (2007) 6 SCC 711.

7. Whereas, it is the contention of the respondent that the contractor not only delayed the delivery of possession but also handed over unfinished flat. There was a delay of more than 3 years which caused huge loss and mental agony.

8. On a perusal of the records, I am of the view that the learned Arbitrator has taken note of entire facts and found that the claimant is entitled to damages. According to me, such finding does not need any interference, but questions

remains is whether the damages awarded by learned Arbitrator is within the high parameters or beyond the terms of contract.

9. I have perused the entire award. It is well settled that the scope of interference under Section 34 is very limited except the award is illegal or contrary to law. Admittedly, under Section 34, when the award is beyond the scope of the contract, the award can be interfered normally.

10. The learned Arbitrator has awarded damages on the basis of the monthly rent of a sum of Rs.25,000/- per month and calculated the same for a period of three years and awarded damages. Absolutely, there is no evidence on record for the same. The learned Arbitrator himself presumed and awarded the damages on the basis of inference of loss.

11. In my view, without any evidence and fact, merely on surmises and inference, such finding is certainly fall within the meaning of patent illegal. The Arbitrator awarding such damages cannot be sustained for the simple reason, that the contract itself provides for the delay in delivery of possession, the contractor is liable to pay Rs.3 per Sq.ft. as damages, particularly, in the construction agreement entered between the parties, the relevant clause is extracted below:

*"The Developer hereby agree that they are liable to pay to the Purchaser Rs.3/- per sq.ft of the built up area per month under this Agreement for any delay in delivery of possession of the SCHEDULE "C" PROPERTY even after the above mentioned grace period of Six months and other than for the reasons sated above, provided the Purchaser has paid the amounts payable for each of the milestones completed in this without any delay in time."*

12. The parties themselves had agreed to receive the estimated damages in the event of delay in delivery on the part of contract. The learned Arbitrator has passed the award on presumption and assumption which is certainly beyond the terms of the contract. Further, the parties have, in fact, foreseen such a delay and had consciously entered into an agreement to receive the estimated damages at the rate of Rs.3 per sq.ft., particularly, in the event of the delay in handing over the possession. Such being the position, fixing compensation beyond the terms of the contract also goes to the root of the matter and is in violation of Section 28 of the Arbitration and Conciliation Act.

13. Therefore, I am of the view that the finding of the Arbitrator fixing the damages at the rate of Rs.9,00,000/- merely on assumption and awarding interest is certainly liable to be set aside. The claimant is entitled to damages at the rate of Rs.3 per sq.ft. If the above amount is calculated, the damages

**N.SATHISH KUMAR, J.**

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payable per month will be a sum of Rs.4,000/- to an extent of 1336 Sq.ft. Admittedly, there was a delay of 2 years and 2 months and it was found by the Arbitrator that there was a three years delay, which is also without any basis. In fact, the possession is handed over after 2 years and 2 months after expiry of the contract. Such being the position, the claimant is entitled to a sum of Rs.1,04,208/- towards the damages as per the agreed terms in the contract. As far as, interest is concerned, since there was a delay in construction, claiming interest at the rate of 24% is certainly unreasonable and cannot be countenanced. Therefore, the award of the Arbitrator directing the petitioners to refund the interest collected is maintained. However, the interest is restricted upto 12% from 18% awarded by the learned Arbitrator.

14. With the above observation, this petition is disposed of. No costs.

**17.07.2019**

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Index:Yes/No  
Internet:Yes/No  
Speaking order: Non-speaking order

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