

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 512 OF 2016

Greenville Realty & Industries Ltd.,	)	
Grentex Wools Private Limited,	)	
A company incorporated under the	)	
provisions of the Companies Act, 1956)	)	
and having its registered office at	)	
G.R.Woolen Mill Compound, L.B.S.	)	
Marg, Ghatkopar West, Mumbai	)	
400 086	)	 Petitioner

VERSUS

Godrej Properties & Investments	)	
Limited	)	
A company incorporated under the	)	
provisions of the Companies Act, 1956)	)	
and having its Phirojshanagar,	)	
Eastern Express Highway, Vikhroli,	)	
Mumbai – 400 079	)	 Respondent

ALONGWITH
ARBITRATION PETITION NO. 344 OF 2016

Godrej Properties Limited,	)	
(formerly known as	)	
Godrej Properties & Investments	)	
Limited	)	
A company incorporated under the	)	
provisions of the Companies Act, 1996)	)	
and having its registered office at	)	
Godrej Properties Ltd.,	)	
Godrej One, 5th Floor, Phirojshanagar,	)	
Eastern Express Highway, Vikhroli (E)	)	
Mumbai – 400 079	)	 Petitioner

VERSUS

Greenville Realty & Industries Ltd.,	)
formerly known as	)
Grentex Wools Private Limited,	)
A company incorporated under the	)

**provisions of the Companies Act, 1956)
and having its registered office at)
Ghatkopar Rattanchand Woolen)
Mills Compound, Lal Bahadur Shastri)
Marg, Ghatkopar Mumbai 400 086) Respondent**

Mr.Rafique Dada, Senior Advocate, a/w. Ms.Chandana Salgaocar for the Petitioner in ARBP/344/2016 and for the Respondent in ARBP/512/2016.

Mr.J.P.Sen, Senior Advocate, a/w. Mr.Kunal Vaishnav, Mr.Manish Varma, Ms.Surbhi Soni, i/b. Mr.Rahul Karnik for the Petitioner in ARBP/512/2016 and for the Respondent in ARBP/314/2016.

CORAM : R.D. DHANUKA, J.

RESERVED ON : 16th OCTOBER, 2019

PRONOUNCED ON : 6th FEBRUARY, 2020

JUDGMENT :

By Arbitration Petition No. 512 of 2016, the petitioner i.e. Greenville Realty and Investments Ltd. has impugned the arbitral award dated 30th April,2015 passed by the learned arbitrator to the extent the same allows claim nos. 1, 7, 8 and 9 made by the respondent and rejects the counter claims nos. (a), (d) to (i) and (k) to (n) made by the petitioner.

2. Arbitration Petition No.344 of 2016 is filed by Godrej Properties Limited *inter alia* praying for setting aside the final award dated 30th April,2015 to the extent it allows the counter claim of Rs.78,22,500/- made by Greenville Realty and Investments Ltd. and to the extent it directs the petitioner to handover flat no.B-21 to the respondent.

3. By consent of parties, both these petitions filed under section 34

of the Arbitration and Conciliation Act, 1996 (for short the Arbitration Act) were heard together and are being disposed of by a common order. Some of the relevant facts for the purpose of deciding these petitions are as under :-

4. Godrej Properties and Investments Limited, now known as the Godrej Properties Ltd. was the original claimant whereas Greenville Realty and Industries Ltd. (formerly known as Grentex Wools Private Limited) was the original respondent in the arbitral proceedings. The respondent had also filed a counter claim against the Godrej Properties and Investments Limited before the learned arbitrator. For the sake of convenience, the parties are herein referred to as per their original status in the arbitral proceedings.

5. By a contract (termed as Development Agreement) dated 30th December, 1997, the claimant was appointed as a Project Manager to provide services, finance and expertise for development of the said land admeasuring about 5859 sq.mtrs. situated at Village Kirol, Lal Bahadur Shastri Marg, Ghatkopar, Mumbai – 400 086 (hereinafter referred to as the said sale property) on the terms and conditions recorded in the said Development Agreement dated 30th December, 1997.

6. It is the case of the claimant that under the said Development Agreement, the claimant was to construct a commercial building exclusively for the respondent consisting of a basement, ground floor and the first floor upon an area of approximately 1,000 sq.mtrs. with a built up area of approximately 10,000 sq.ft. and denoted as 'A' Wing. In addition to this building, the claimant was also required to construct

for the residential purpose three separate Wings, i.e. 'B', 'C' and 'D' having a saleable area of approximately 50,000 sq.ft.

7. Under the said Development Agreement, the respondent had agreed to pay to the claimant construction cost and expenses calculated at the rate of Rs.1,265 per sq.ft. constructed/built up area i.e. saleable area with respect to the commercial building intended exclusively for the respondent. The payment of the said construction cost was agreed to be adjusted as per progress of the construction of the said commercial building from the account of the sale proceeds due and payable to the respondent arising from the exploitation of Wings 'B', 'C' and 'D'.

8. It is the case of the claimant that the construction of 'A' Wing was commenced in or about March 1999 whereas the construction of Wings 'B', 'C' and 'D' was commenced in February 1998. The claimant constructed 56 flats in the said three residential wings. It is the case of the claimant that in accordance with clause (4) of the said Development Agreement, the claimant sold 25% of the area of the flats i.e. 13 flats out of total 56 flats in the residential wings and paid to the respondent its share of the sale proceeds.

9. As far as remaining 43 flats are concerned, it was the case of the claimant that those flats could not be sold even at the minimum prices stipulated in the said agreement. Accordingly the claimant opted for the alternate method of allocation stipulated in clause 5 of the said agreement. The claimant proposed division of the unsold flats in specie as spelt out in the letter dated 16th June, 1999 addressed by the petitioner. The claimant allocated 21 flats to each of the party and

agreed to sell one remaining flat. The respondent disputed any such agreement for allocation of flats and took a stand that the claimant was illegally disposing of the flats without its consent.

10. It is the case of the claimant that pursuant to clause (1) of the said Development Agreement, the claimant paid a sum of Rs. 1 crore to the respondent as and by way of security, out of which Rs.50 lacs was to be repaid by the respondent to the claimant without interest from the sale proceeds of the residential wing in four equal installments on the completion of each wing. The balance sum of Rs.50 lacs was to be repaid to the claimant with interest by adjustment from the account of the respondent from out of the sale proceeds received. It is the case of the claimant that the respondent did not pay any installment of Rs.50 lacs each to the petitioner.

11. On 5th September,2001, the claimant addressed a letter to the respondent stating that it proposed to retain 8 flats, admeasuring 7400 sq.ft. in all as security with a right to appropriate the said security deposit and outstanding payment towards the construction cost of the 'A' Wing.

12. Dispute arose between the parties. The claimant invoked the arbitration clause and appointed its nominee arbitrator. On 12th October,2001, the respondent appointed its nominee arbitrator. The learned arbitrator appointed by the parties appointed the presiding arbitrator. On 9th April, 2002, the claimant filed statement of claim. The respondent filed a reply and counter claim before the Arbitral Tribunal. On 15th February,2004, the arbitrator nominated by the claimant expired. On 19th January,2005, the claimant nominated

another arbitrator. On 7th February, 2007, all the three arbitrators resigned. On 11th April, 2007, the parties appointed a former judge of the Supreme Court as a sole arbitrator.

13. Sometime in the year 2007, the claimant filed an application for change of architect Mr.V.V.Joshi and suggested that any other architect as may be suggested by Mr.Hafeez Contractor could be appointed as the Project Architect. On 25th September, 2007, the respondent submitted an application to the learned arbitrator seeking an interim award to direct the claimant to handover to the respondent possession of 22 flats that had not been sold along with their parking spaces and also sought direction against the claimant to complete the construction of building Wing 'A'.

14. On 21st June, 2007, the respondent made a statement before the learned arbitrator giving its no objection to change the architect Mr.V.V.Joshi. On 29th June, 2007, the respondent signed a letter informing Mr.Hafeez Contractor that it had no objection in replacing Mr.V.V.Joshi as the Project Architect with any other architect suggested by Mr.Hafeez Contractor. On 13th July, 2007, the learned arbitrator made an interim award by consent of both the sides. The learned arbitrator directed the claimant to handover flats C-52, C-61 in 'C' Wing, D-11, 12, 13, 23, 24, 43, 44, 61, 62, 63, 64, 71 and 72 in 'D' Wing to the respondent without prejudice to the rights and contentions of both the parties and subject to the final decision of the learned arbitrator. Insofar as flat no.B-21 in 'B' Wing is concerned, the learned arbitrator noted that there was some continuing dispute in respect of the said flat. No order was thus made regarding that flat in the said interim award on the ground that the said dispute was required to be

resolved by the learned arbitrator.

15. The learned arbitrator directed that the keys and documents concerning possession of the 15 flats shall be handed over to the respondent by the claimant on or before 23rd August, 2007. The learned arbitrator directed both the parties to request Mr.Hafeez Contractor to have the work done in 'A'Wing in terms of total cost as well as in terms of the percentage of the agreed work carried out. In the arbitration meeting held on 14th January, 2008, the learned arbitrator appointed Mr.Sunil G. Ambre of M/s.Bhatnagar Ambre Kothari as the architect in place of Mr.V.V.Joshi.

16. On 14th January, 2008, the learned arbitrator passed an order by consent of parties that the division of the parking spaces shall be done in the manner prescribed in the said order. The claimant was directed to handover possession of the parking spaces nos. 1, 2, 3 and 6 in Wing 'C' and 1, 2, 3, 4 and 6 in Wing 'D' to the respondent on or before 18th January,2008. It was also directed that both the parties were at liberty to sell parking spaces in accordance with the allotment made in the said order except that parking spaces 1, 2 and 7 in 'B' Wing shall not be sold but shall be kept in the possession of the claimant until the final award. Both the parties led oral as well as documentary evidence before the learned arbitrator.

17. On 30th April,2015, the learned arbitrator made a final award. By the said final award, the learned arbitrator rejected most of the claims made by the claimant however allowed claim (1) (a) in the sum of Rs.50 lacs which was kept as interest bearing deposit by the claimant with the respondent with interest at the rate of 15% per annum w.e.f.

28th March,2007 till 30th April,2015 totalling to Rs.1,10,69,863/-. The learned arbitrator allowed some of the counter claim made by the respondent i.e. counter claim nos. (c), (d), (g) and (h) in the sum of Rs.1,00,76,165/-. The learned arbitrator accordingly directed the respondent to pay the differential amount in the sum for Rs.9,93,698/- with interest at the rate of 15% per annum from the date of award until payment or realization to the claimant. The learned arbitrator directed the claimant to handover the possession of flat no.B-21 to the respondent within two weeks from the date of the said award. The respondent has paid the said sum of Rs.9,93,698/- to the claimant on 2nd June, 2015.

18. In the meanwhile, on 8th May, 2015, the respondent made an application before the learned arbitrator under section 33(4) of the Arbitration Act *inter alia* praying for an additional award directing the claimant to handover to the respondent physical possession of six flats viz., B-12, C-12, C-21, C-32, C-41 and C-76 and three stilt car parking spaces nos. 1, 2 and 7 in 'B' Wing. The said application was opposed by the claimant by filing a reply disputing the maintainability of the said application under section 33(4) of the Arbitration Act.

19. On 3rd September,2015, the learned arbitrator made an additional award and directed the claimant to handover to the respondent physical possession of the six flats i.e. B-12, C-12, C-21, C-32, C-41 and C-76 within two weeks from the date of the said additional award dated 3rd September,2015 and also to handover the possession of the stilt car parking spaces nos. 1, 2 and 7 in 'B' Wing to the respondent within two weeks from the date of the said additional award. The learned arbitrator directed the respondent to sell flat no. B-21 in 'B' Wing

within a period of sixty days from the date of the said additional award and pay 50% of the realized sale price to the claimant. The respondent was directed to maintain full accounts of the said transaction showing actual amount realized from the sale of the said flat B-21 in 'B' Wing. The learned arbitrator made it clear that if the respondent fails to pay the amount of 50% of the realized sale price of flat no.B-21 in 'B' Wing to the claimant within the time directed, the respondent shall be liable to pay simple interest at the rate of 15% per annum on the realizable sale price of the said flat from the expiry of sixty days from the date of the additional award until realization or payment.

20. Being aggrieved by the said final award dated 30th April, 2015, the respondent filed Arbitration Petition No.512 of 2016 impugning part of the award allowing few claims made by the claimant and impugning rejection of some of the counter claims made by the respondent. The claimant also challenged part of the award and the additional award dated 3rd September, 2015.

21. Mr.Sen, learned senior counsel for the original respondent invited my attention to some of the portion of the pleadings filed by both the parties, documents annexed to various compilation filed by both the parties, various findings rendered by the learned arbitrator in the impugned award and in the additional award passed under section 33(4) of the Arbitration Act. It is submitted that the claimant was the owner of the suit property which was provided to the respondent for the development under the agreement entered into between the parties. The respondent was to provide co-operation, services, finance and expertise to the claimant. The respondent had agreed to construct commercial building having built up area of approximately 10,000

sq.ft. exclusively for the claimant in Wing “A”. The respondent had agreed to construct the residential building having built up area of approximately 50,000 sq.ft. flats for sale in Wings “B”, “C” and “D”.

22. It is submitted that the respondent had deposited a sum of Rs. 50 lacs under clause 2(a) of the said agreement which was to be repaid by adjustments from sale proceeds of the residential Wings on completion of each wing of the proposed building of the project. The respondent had also agreed to deposit Rs.50 lacs as contemplated under clause 2(b) of the agreement which was to bear interest @ 18% per annum or borrowing rate whichever is lower and to be adjusted from the account of the claimant out of the sale proceeds received on the basis of 25% of the amount received during the period of every two months after a moratorium of one year. It was mentioned under the said agreement that if the respondent is not paid the sum of Rs.50 lacs along with interest by adjustments, the respondent in that event would be entitled to sell the shares of the claimant in the residential wings as may be necessary and appropriate the sale proceeds towards the amount due.

23. Under clause (4) of the said agreement, the respondent was responsible for obtaining sanctions, consents, permissions and/or re-validation for development/construction and payment towards security, fees, levies, cess, deposits etc. Under clause 13 of the said agreement, the respondent was responsible for completing the project within a period of 24 months from the date of the said agreement with a further grace of six months. It is submitted that the respondent was liable to pay liquidated damages at the rate of 2% per month calculated on 50% of gross sales proceeds notionally fixed on the balance stage of completion for this clause at Rs.3,000/- per sq.ft. The respondent was

also responsible for payment of all outgoings and taxes under clause 13 of the said agreement.

24. It is submitted by the learned senior counsel that under clause 26, the respondent was responsible for completing the construction in all respect and obtain the occupation certificate including part occupation certificate and building completion certificate. The agreement entered into between the parties was required to be continued unless and until the said project was completed by the respondent in all respects and all the flats/premises/units in the buildings constructed have been sold and full amount in respect thereof has been received and/or realised. Learned senior counsel invited my attention to clause 32 of the agreement which recorded an arbitration agreement between the parties which provides for appointment of three arbitrators.

25. Insofar as claim no.1 of Rs.50 lacs made by the claimant for refund of security deposit under the development agreement together with interest made by the claimant and awarded by the learned arbitrator is concerned, learned senior counsel invited my attention to various correspondence between the parties in respect of the part occupation certificate. He submits that the obligation to obtain occupation certificate was on the claimant which the claimant failed to obtain. The claimant however had requested to refund of security deposit on the ground that the refund of security deposit was not linked with obtaining completion certificate by the claimant. He submits that the respondent had informed the claimant that the refund of security deposit was payable only on completion of the construction of all wings and as per clause 26, the claimant was liable to obtain

completion certificate.

26. Learned senior counsel submits that clause 2(a) of the Development Agreement has to be read with clause 26. Since the claimant had not obtained the building completion certificate and occupation certificate, the question of any refund of security deposit by the respondent to the claimant did not arise. The claimant had not complied with clause 26 of the development agreement. Even the expenses for obtaining the occupation certificate were to be borne exclusively by the claimant. Learned senior counsel invited my attention to paragraph (42) of the award and would submit that the findings of the learned arbitrator that atleast from the date of the service of the arbitration notice, it was clear that the project could not be said to be continued, deposit of Rs.50 lacs was required to be refunded by the respondent to the claimant atleast w.e.f. the commencement of the arbitration is totally perverse and contrary to clause 26 read with clause 2(a) of the development agreement. The claimant had not even completed the construction of four wings.

27. Learned senior counsel invited my attention to the findings rendered by the learned arbitrator in paragraph (24) of the award and would submit that though the learned arbitrator had rendered a finding that the delay was not due to any act on the part of the respondent and the claimant alone was responsible for the delay, the learned arbitrator contrary to such findings rendered by him, allowed the said claim for refund of security deposit made by the claimant. The claim made by the respondent was premature in view of the respondent not having completed the construction as contemplated under the said development agreement.

28. Learned senior counsel invited my attention to the findings rendered by the learned arbitrator insofar as counter claim no.7 made by the respondent herein is concerned and would submit that the findings rendered by the learned arbitrator while rejecting the said counter claim is totally perverse. The possession of various flats handed over by the claimant to the respondent without obtaining occupation certificate and building completion certificate was not a legal possession.

29. Insofar as claim no.(a) made by the respondent i.e. for specific performance of the agreement dated 30th December, 1997 sought by the respondent is concerned, it is submitted by the learned counsel that the respondent had not pressed specific performance for "A" Wing. Insofar as other wings are concerned, the learned arbitrator rejected the claim for specific performance on the ground that it would not be possible for the learned arbitrator to oversee the innumerable steps that might have to be taken for moving the Municipal Corporation and satisfying it in view of the changed circumstances about non applicability of the Urban Land Ceiling Act. He submits that the findings of the learned arbitrator that it was always possible for the respondent to dismiss the architect of the claimant and to move the Municipal Corporation authority for the necessary completion certificate in the light of the changed circumstances under the Urban Land Ceiling Act and thereafter to claim compensation from the claimant is totally perverse.

30. It is submitted that under the said Development Agreement, the obligation to obtain the building completion certificate and occupation

certificate was solely on the claimant and not the respondent. Learned senior counsel placed reliance on the judgment of Supreme Court in case of ***Faqir Chand Gulati vs. Uppal Agencies Private Limited and another, (2008) 10 SCC 345*** and in particular paragraph (36) in support of the submission that the obligation to obtain permission and occupation certificate was on the builder. He submits that the learned arbitrator thus could not have refused to direct the claimant to obtain the occupation certificate. The award rendered by the learned arbitrator is contrary to the Development Agreement. He submits that the claimant could not have given possession to the respondent in respect of various flats without occupation certificate. The findings rendered by the learned arbitrator that the respondent could obtain occupation certificate through its architect is contrary to the provisions of the Development Agreement.

31. It is submitted by the learned senior counsel that the claimant had not even obtained the certificate from Hydraulic Engineer of the Municipal Corporation regarding sufficiency of water supply, NOC from Tree Authority and N.A. permission. Only 44% of the total work was accomplished in “A” Wing. The claimant had not complied with conditions and specifications stipulated under the approved plans and I.O.D. and C.C. conditions issued by the B.M.C. The claimant had though not complied with its reciprocal obligation of completing the project, however the learned arbitrator has allowed the claim for refund of security deposit. The impugned award is opposed to be the public policy of India.

32. It is submitted by the learned senior counsel that though the learned arbitrator himself had rejected the claim no.3 for refund of

Rs.57.64 lacs for having completed only 44% of the construction of the “A” Wing, contrary to said findings and the conclusion in respect of the said claim, the learned arbitrator has rendered a diametrically contrary finding that Rs.50 lacs was required to be adjusted only on completion of each of the wing of the proposed building of the project which included the obtaining of occupation certificate. He submits that this part of the impugned award is non-speaking award and contrary to the provisions of the Arbitration and Conciliation Act, 1996. The learned arbitrator has failed to render any finding as to why the contention of the claimant with respect to adjustment of interest bearing deposit was accepted. The learned arbitrator failed to render any reason with respect to the contention raised by the respondent that the question of adjustment would not arise as the claimant had failed to comply with its obligation under the Development Agreement.)

33. Learned senior counsel submits that approved plans were amended by the Corporation at the behest of the claimant in respect of “B”, “C” and “D” Wings from 42 flats to 56 flats by reduction of servant toilet. The learned arbitrator was thus bound and liable to direct the claimant to complete Wings “B”, “C”, and “D” in all respect including occupation certificate and building completion certificate. The impugned award is totally contrary to law. He submits that the claimant had without obtaining any occupation certificate had also handed over possession to various flat purchasers contrary to law. The learned arbitrator however has upheld the sale undertaken by the claimant including legal possession contrary to law. Handing over possession of the flats to the flat purchasers without obtaining completion certificate by the claimant and occupation certificate was contrary to the provisions of the Municipal Corporation Act and

Maharashtra Ownership Flats Act and more particularly section 353(A) (2)(A) of the Mumbai Municipal Corporation Act and 3(2)(I) of MOFA.

34. It is submitted by the learned senior counsel that if according to the learned arbitrator, it was not possible to supervise the construction and on that ground, no claim for specific performance made by the respondent could be granted, the learned arbitrator could not have granted monetary claim of the claimant which was inextricably linked to the performance of the contract and proceeded on the basis that the performance was completed. The finding of the learned arbitrator that the respondent could not have obtained the occupation certificate by appointing its own architect and thereafter to claim compensation from the claim is contrary to the clause 18 of the Development Agreement. The findings rendered by the learned arbitrator is self contradictory, contrary to law and in violation of principles of natural justice.

35. Insofar as counter claim no.(e) for recovery of sum of Rs.441.46 lacs and interest thereon made by the respondent and rejected by the learned arbitrator is concerned, learned senior counsel invited my attention to the findings rendered by the learned arbitrator in paragraph (71) at page 187 of the arbitration petition and would submit that the findings rendered by the learned arbitrator that the delay in not completing the project within a period of 24 plus 6 months was not attributable to the inability of the claimant or that the evidence on record shows that there were frequent changes made by the respondent with regard to the plans, designs and the construction particulars is inconsistent with the findings rendered in the other part of the award and shows perversity. The respondent had not led any evidence before

the learned arbitrator.

36. Learned senior counsel placed reliance on clauses 13 and 26 of the Development Agreement and would submit that the award rendered by the learned arbitrator is contrary to those provisions of the Development Agreement. The findings rendered by the learned arbitrator in paragraph (44) while deciding claim nos.7, 8 and 9 are totally inconsistent and shows perversity. The evidence of the witness examined by the respondent and more particularly to question nos. 74 to 78 has been totally overlooked by the learned arbitrator. The actual damages suffered by the respondent was much higher than the amount due as per the liquidated damages caused. The learned arbitrator thus ought to have allowed the said claim for liquidated damages made by the respondent. The learned arbitrator has re-written the contract between the parties and has wrongly shifted the burden upon the respondent which was cast on the claimant.

37. Insofar as counter claim no.(f) made by the respondent i.e. for recovery of sum of Rs.303.42 lacs plus interest towards liquidated damages by the respondent is concerned, it is submitted by the learned senior counsel that the findings rendered by the learned arbitrator are perverse. The claimant was solely responsible for the delay and thus the said claim made by the respondent ought to have been allowed by the learned arbitrator. He invited my attention to the letter dated 26th February, 2002 from the Municipal Corporation to Mr.V.V.Joshi, architect informing him that the part occupation to Wings “B” and “C” was not granted due to non-compliance of the I.O.D. conditions and not due to non-demolition of the existing structures bearing C.T.S. nos. 594 and 595, Village Ghatkopar, Kirol. The findings rendered by

the learned arbitrator is contrary to the said letter dated 26th February, 2002.

38. The findings rendered by the learned arbitrator in paragraph (44) of the award is totally inconsistent. The construction of the “A” Wing was not to be commenced in the month of April 1998. The revised plan was filed in January 1998 showing amendment for Wings “B”, “C” and “D”. The respondent had co-operated with the claimant for having only those amendments done at that stage as the claimant was in a hurry to start Wings “B”, “C” and “D”.

39. Learned senior counsel invited my attention to clauses 23 and 22 of the Development Agreement. He submits that under clause 23 of the Development Agreement, it was clearly provided that whilst work was being carried out, the project Manager was required to ensure that the occupants of the adjoining land were not inconvenienced/disturbed. He relied upon the letters dated 10th July, 1998 and 21st February, 2000 and would submit that the learned arbitrator has not taken into consideration those two letters. The claimant had committed breach of the terms of clause 23 and thus the said claim made by the respondent by way of counter claim was within the jurisdiction of the learned arbitrator. He submits that the letter dated 21st February, 2000 was addressed by his client to the claimant in view of high-handed attitude of the workers and causing nuisance for the occupants of the bungalow in the adjoining land. The claimant however did not take any steps to remove 100 kolis though made an assurance to the respondent. He invited my attention to paragraph 79 of the arbitral award and would submit that the findings rendered by the learned arbitrator in the said paragraph are perverse.

40. In so far as the claim no.(k) made by the respondent by way of counter claim is concerned, the said claim was for principal value of the respondent allegedly being deprived and not being allowed to use its property in Wings 'B', 'C' and 'D' and car parking spaces. The said claim for Rs.1060.79 lakhs was rejected by the learned arbitrator. Learned senior counsel for the respondent invited my attention to the clause 4, 4(d) and 5 of the Development Agreement and would submit that the claimant had allegedly claimed that the construction of the residential Wings i.e. 'B', 'C' and 'D' was completed since 2000 and that no work was being already carried on there at the site. The claimant however did not handover the keys of the flats and even did not permit the respondent to enter upon the area for Wing 'A'. He invited my attention to the findings rendered by the learned arbitrator in paragraphs 86 of the impugned award and would submit that the arbitral award in respect of the said counter claim was contrary to the interim award dated 13th July, 2007.

41. By the said interim award, it was clear that the claimant had failed to handover the possession of the flats to the respondent. The learned arbitrator had found that the action on the part of the claimant to withhold the flats was excessive. The respondent was keen enough to take handover of all the flats and it had offered security in lieu of the flats being withheld. The claimant was to handover the keys with the documents concerning possession, which could not happened without the occupation certificate.

42. It is submitted by the learned senior counsel for the respondent that as regards the flats of Wing 'B', 'C' and 'D', the claimant was

never willing to handover the keys and possession of the flats belonging to the respondent. The claimant vide its letter dated 28th December, 2000 and letter dated 5th September, 2001 had imposed the condition on the respondent for handing over the keys and possession of the flats belonging to the respondent under the purported division of flats that it would retain 8 flats from the 22 flats purportedly allotted to the respondent with a right to appropriate Rs.1 crore and the balance payment towards 'A' Wing from the sale proceeds thereof towards its illegal and unjustifiable claims and the that the respondent was free to sell the balance flats.

43. It is submitted that though the claimant had imposed various conditions contrary to the provisions of the Development Agreement against the respondent while offering keys and possession of the flats, the learned arbitrator rendered a finding that if the respondent would have taken a reasonable attitude, the flats falling to its share could have been handed over to it by the claimant way back in 2000.

44. Learned senior counsel for the respondent placed reliance on the letter dated 4th September, 2001 and would submit that the respondent had specifically asked the claimant for keys of the 22 flats to be handed over to the respondent with certain safeguards being provided for meeting the obligations of the respondent which had not yet arisen. The claimant however had denied the said request of the respondent on one or the other pretext. The respondent vide its letter dated 16th October, 2001 had repeated the said request to the claimant, however the same was not complied with. The claimant was not willing to allow the respondent to sell the flats earmarked for the respondent and refused to provide an office space on the project site despite repetitive requests

from the respondent though the claimant had already established an office on the project site.

45. Learned senior counsel submits that without finalizing the division of the balance flats between the claimant and the respondent, the claimant wrongfully and illegally started selling the flats which according to it had come to its share on the basis of purported plan of division and sold all such flats by September 2001. The claimant collected the final payments from all the flat purchasers and thereafter invoked Arbitral Agreement with ulterior motives.

46. Learned senior counsel invited my attention to the letter dated 12th September, 2001 addressed by the respondent to the claimant and would submit that the respondent had shown its willingness to accept the keys of the flats without prejudice to the rights of the respondent to claim liquidated damages under clause 13 of the Development Agreement and also demanded an unconditional guarantee for completion of the work including obtaining of the occupation certificate and building completion certificate. He submits that under the Development Agreement, it was the obligation of the claimant to obtain the building completion certificate and occupation certificate. The condition imposed by the respondent against the claimant to obtain occupation certificate and building completion certificate and to furnish an unconditional guarantee for completion of the work was within the parameters of the provisions of the Development Agreement and in any event was not unreasonable. The claimant however did not comply with any of those conditions.

47. It is submitted by the learned senior counsel that since the

claimant had not obtained occupation certificate and building completion certificate, handing over keys of the flats to the respondent would not amount to compliance of the obligation of the claimant to handover possession of those flats without such occupation certificate and building completion certificate. The respondent even otherwise could not have taken possession of those flats. The respondent was thus deprived of possession of those flats in terms of the Development Agreement. The finding of the learned arbitrator in this regard is totally perverse. In support of the submission that it was the obligation of the claimant to obtain occupation and building completion certificates and without such certificates, the possession of flats could not have been handed over to the respondent lawfully, learned senior counsel placed reliance on the judgment of Supreme Court in case of ***Faqir Chand Gulati v/s. Uppal Agencies Private Limited and Another, (2008) 10 SCC 345*** and in particular paragraph 36. It is submitted by the learned senior counsel that the claimant even did not comply with the interim award rendered by the learned arbitrator and only handed over the keys of those flats without obtaining occupation certificate and building completion certificate.

48. Learned senior counsel placed reliance on the letters dated 21st September 1998, 22nd May 1999, 16th June 1999, 14th July 1999, 16th August 1999, 19th August 1999, 12th October 1999, 9th February 2000, 11th February 2000, 25th April 2000, 10th November 2000, 20th December 2000, 22nd December 2000, 28th December 2000, 2nd January 2001, 7th February 2001, 3rd July 2001, 11th July 2001, 4th September 2001, 5th September 2001 and 12th September 2001 in support of the submission that though these correspondence were produced before the learned arbitrator, he did not consider these correspondence and

rejected most of the claims made by the respondent.

49. In so far as the Counter Claim No.(l) is concerned, it is submitted by the learned senior counsel that by the said claim, the respondent had prayed for an order and direction against the claimant to pay the sum of Rs.217.39 lacs plus interest on account of lower sale value owing to the alleged inferior and shoddy work carried out by the claimant. Learned senior counsel invited my attention to the letter dated 21st July 2000 addressed by the respondent to the claimant complaining about the alleged inferior and shoddy work in Wings A to D. He submits that the claimant had admitted the leakages in the flats by its letter dated 26th July 2000 and had informed the respondent that they were taking necessary steps wherever necessary.

50. Learned senior counsel also invited my attention to the letter dated 12th August 2000 addressed by the respondent to the claimant reiterating its alleged complaint about incomplete work at A Wing and workmanship in B, C & D Wings. Learned senior counsel submits that the Project Architect, M/s.Hafeez Contractor had submitted a report opining that the workmanship was sub-standard and shoddy. He submits that the learned arbitrator totally ignored the report of the said Project Architect and dismissed this claim made by the respondent on the ground that there was no evidence to show the lower sale value owing to the alleged inferior and shoddy work.

51. In so far as the Counter Claim No.(m) is concerned, it is submitted by the learned senior counsel that the respondent had claimed Rs.235.18 lacs against the claimant which claim was arising out of the estimated value of the work not completed by the claimant.

He relied upon the structural audit report prepared by M/s.M.P. Pandit and submitted by Hafeez Contractor regarding 'A' Wing on 11th July 2008. He submits that the respondent had examined Mr. Madhav Mantry, Consulting Structural Engineer and Ms.Rachana Amin, qualified architect to prove that the estimated value of the works were not completed. Learned arbitrator however, ignored the said evidence led by the witnesses of the respondent and rejected the said claim on the ground that he could not conclude that there was loss to the respondent on account of inferior quality and shoddy work of structure or structure of A Wing needs to be demolished and rebuilt.

52. It is submitted by the learned senior counsel that the learned arbitrator could not have substituted its own opinion with that of an expert in the impugned award. Commercial A Wing was completed less than 44% which fact was admitted by the claimant. He submits that the learned arbitrator himself while deciding claim no.3 had rendered a finding that the claimant was unable to show that even 44% of the Wing A building was completed. He submits that whatever work was completed by the claimant as far back as in the year 2000, over passage of time, the said structure constructed by the claimant was no longer stable and was required to be demolished. The conclusion drawn by the learned arbitrator is contrary to the findings rendered by the learned arbitrator.

53. It is submitted by the learned arbitrator that in the last 15 years since the construction of Commercial A Wing has stopped, various changes were thus required to be considered in the said incomplete work considering structural Codes relating to Earth Quake Resistant Design, Ductile Designing, Reinforced Concrete Design. Learned

arbitrator rejected the entire evidence of Mr.Madhav Mantry on the ground that the said evidence could not be accepted as Aryan Engineers had not stepped into the witness box. He submits that the said Mr.Madhav Mantry had stated on oath that he had aware and had conducted the non-destructive test. The impugned award is based on such irrelevant and extraneous grounds and thus deserves to be set aside. It is submitted by the learned senior counsel that the learned arbitrator refused to accept the conclusion of expert witness of Ms.Rachana Amin that A Wing structure needed to be demolished completely. Learned arbitrator could not have rejected the evidence of the expert witness and more so, when the claimant had not produced any witness expert to rebut the evidence of witness examined by the respondent.

54. In so far as the additional award rendered by the learned arbitrator is concerned, it is submitted by the learned senior counsel that the said additional award is contradictory and shows complete non application of mind on the part of the learned arbitrator. He invited my attention to paragraph 63 of the award dated 30th April 2015 and would submit that the learned arbitrator had specifically held that there was no question of the claimant retaining possession of Flat No.B-21 as security for its claim as all its claims will be decided by the said award. Flat B-21 shall be handed over by the claimant to the respondent within four weeks from the date of the said award. However in the additional award dated 3rd September 2015, learned arbitrator has held contrary to what was held in the award dated 30th April 2015 that the parties should share the proceeds of Flat No.B-21 in B Wing in equal measures as that would be the best resolution of the dispute.

55. It is submitted that by the said additional award, learned arbitrator further directed that since by an award dated 30th April 2015, Flat No.B-21 in B Wing had been directed to be handed over to the respondent, it shall be the responsibility of the respondent to sell the said flat at the going market rate and pay 50% of the realised amount to the claimant. He submits that the finding of the learned arbitrator in the additional award is without recording any reason as to why such flat should be sold and the claimant be handed over half of the sale proceeds.

56. Learned senior counsel also invited my attention to the letter dated 26th September 2000 addressed by the claimant to the respondent admitting the ratio of 66.66% : 33.33% between the respondent and the claimant respectively. Learned senior counsel submits that the learned arbitrator in the additional award did not record any finding as to why the ratio of 67 : 33 was modified to 50 : 50.

57. Mr. Dada, learned senior counsel for the claimant, on the other hand, invited my attention to some of the paragraphs of the pleadings filed by both the parties, documents annexed to the compilation and the findings rendered by the learned arbitrator and some of the grounds raised by both the parties in their respective arbitration petitions. It is submitted that his client Godrej Properties and Investments Limited who was the claimant before the learned arbitrator had made 19 claims before the learned arbitrator in the sum of Rs.4,31,26,046.82. Learned arbitrator has however, allowed the Claim No.1(a) for refund of security deposit and rejected the Claim Nos.2 to 19. He submits that his client has impugned the final award dated 30th April 2015 to the extent it allowed the counter claim of the respondent in the sum of

Rs.78,22,500/- and to the extent of directing the claimant to hand over Flat No.B-21 to the respondent. He submits that his client also prayed for setting aside the award dated 3rd September 2015 rendered by the learned arbitrator.

58. Learned senior counsel invited my attention to the additional award dated 3rd September 2015 made by the learned arbitrator and would submit that by an order dated 13th July 2007, learned arbitrator had disposed of the application for interim award made by the respondent. He submits that by the said interim award, learned arbitrator had recorded that the amount recoverable by the claimant from the respondent came to Rs.1,41,76,019/- as claimed by the claimant. The number of flats of which possession was retained by the claimant appeared to be far excessive to secure the said amount. Learned arbitrator has held that reduction of 6 flats to 7 flats would be sufficient for that purpose. Parties had agreed before the learned arbitrator that 15 flats i.e. C-52, C-61, D-11, D-12, D-13, D-23, D-24, D-43, D-44, D-61, D-62, D-63, D-64, D-71 and D-72 should be handed over by the claimant to the respondent subject to final decision of the learned arbitrator and without prejudice to the rights and contentions of both the parties.

59. In so far as Flat No.B-21 is concerned, learned arbitrator had recorded that there was some continuing dispute in regard thereto and no order therefore, was made in respect thereof on the ground that the keys and documents concerning possession of the said 15 flats would be handed over by the claimant to the respondent on or before 23rd August 2007. No order was made in respect of remaining those flats out of those 24 flats which were held by the claimant. Learned senior

counsel submits that in the final award dated 30th April 2015, learned arbitrator noted that 15 flats had been handed over by the claimant to the respondent in pursuance of the interim award dated 13th July 2007. After making reference to the claimant's claim for the costs of up keep of the flat that had been retained, learned arbitrator had dismissed the said prayer.

60. In so far as the Flat No.B-21 is concerned, it is submitted that the learned arbitrator held that as all the claims of the claimant would be decided by the said award dated 30th April 2015, there was no question of claimant retaining possession of the said flat as security for its claim. Learned arbitrator ordered that the said flat should be handed over by the claimant to the respondent within four weeks from the date of the said award. He submits that since the learned arbitrator had already made a monetary award, he ought to have made no difference to fate of said flat No.B-21 and ought to have given the said flat for its sale and sharing of its sale proceeds. The claimant had already handed over possession of the said Flat No.B-21 to the respondent on 13th May 2015 pursuant to the said final award.

61. It is submitted by the learned senior counsel for the claimant that the construction of Wings 'B', 'C' and 'D' were to be constructed at the cost of the claimant. 21 flats were to be given to the respondent by the claimant. All the plans were already sanctioned prior to the date of the agreement between the parties. The respondent did not press the prayer for specific performance in respect of 'A' Wing. He placed reliance on section 12 of the Specific Relief Act, 1963 and would submit that no specific performance for part of the contract could be granted. The learned arbitrator could not have considered such relief

even otherwise under section 12(1) of the Specific Relief Act. No part of section 12(2) applies to the facts of this case. The respondent was never ready and willing to comply with its part of obligation.

62. Learned senior counsel invited my attention to the additional award rendered by the learned arbitrator and would submit that since the learned arbitrator had not granted any relief in respect of flat no.B-21, application filed by the respondent under section 33(4) of the Arbitration Act was not even maintainable. The learned arbitrator had consciously decided not to make further orders on the said claim to handover flat no.21 to the respondent. Similarly, the learned arbitrator could not have been made any additional award and would not have directed the claimant to handover six flats to the respondent. The learned arbitrator had already become functus officio after declaring the final award and thus had no jurisdiction to correct or modify his award save and except in the limited circumstances set out in section 33 of the Arbitration Act. He submits that none of the conditions set out in section 33 of the Arbitration Act were satisfied by the respondent in the said application seeking an additional award.

63. Insofar as award of Rs.78,22,500/- made in favour of the respondent by the learned arbitrator is concerned, it is submitted by the learned senior counsel for the claimant that the premium/deposits if paid by the respondent could be recovered by the respondent back from the relevant authority on conclusion of project. He relied upon clause 14 of the agreement and would submit that the said clause has to be read as a whole.

64. Insofar as claim for refund of security deposit of Rs.50 lacs

awarded by the learned arbitrator in favour of the claimant is concerned, learned senior counsel for the claimant submits that under clause (1) of the Development Agreement, the claimant was required to give to the respondent a security deposit of Rs.1 crore, out of which Rs.50 lacs were to be repaid by the respondent to the claimant without interest from the sale proceeds of the residential wing in four equal installments on completion of each wing. The balance sum of Rs.50 lacs were to be repaid to the claimant with interest by adjustment from the account of the respondent from out of the sale proceeds received. The claimant had accordingly paid a sum of Rs.1 crore to the respondent. The respondent however did not repay either of the installment of Rs.50 lacs to the claimant. It is submitted that no case is made out by the respondent for setting aside the award in respect of the claim no.1 for refund of security deposit awarded by the learned arbitrator.

65. Insofar as issue as to whether it was responsibility of the claimant to obtain occupation certificate or completion certificate or not is concerned, learned senior counsel invited my attention to the correspondence exchanged between the parties and more particularly letter dated 29th January,1998, minutes of the meeting dated 29th January,2000, letters dated 23rd March 2000, 6th April 2000, 17th April 2000, 8th August 2000, 19th August 2000, 6th February 2002 and 26th February 2002 exchanged between the parties *inter se* and with the Municipal Corporation and additional Collector.

66. Learned senior counsel also invited my attention to the cross-examination of the respondent's witness and more particularly the reply to question nos. 25, 29, 30 and 31 and would submit that since

the respondent had failed to comply with the conditions of IOD and ULC conditions, the claimant could not obtain occupation certificate. He relied upon paragraph (10) of the examination-in-chief of the evidence of Mr.Sachin Sinnarkar and would submit that the application made by the claimant for ULC clearance was rejected by the authorities on the ground that the power of attorney granted by the respondent in favour of the claimant did not empower the claimant to deal with ULC authorities in relation to larger plot of land. The claimant was not able to pursue the matter with the ULC authorities since the matter related to the larger portion of the property whereas the claimant was given power of attorney to deal with only 4000 sq.mtrs. of the project area.

67. Learned senior counsel invited my attention to answer to the question nos. 17, 18, 19 and 64 to 71 of the witness Mr.Ravikant Kapur and also evidence of Mr.V.Joshi, Architect and more particularly to question nos. 4, 5, 8, 9 and 10 and would submit that the authority had insisted for formal ULC order. The claimant is not aware whether any such NOC from ULC authority has been obtained by the respondent even till today. Learned senior counsel invited my attention to the findings rendered by the learned arbitrator in paragraphs 43 and 44 of the impugned award and would submit that the findings rendered by the learned arbitrator that the delay was not due to any act on the part of the respondent and that the claimant alone was responsible for the delay in obtaining the occupation certificate is perverse and contrary to the evidence on record.

68. Learned senior counsel invited my attention to clauses 15, 26 and 28 of the Development Agreement and would submit that the

findings of the learned arbitrator in respect of the power of attorney issued by the respondent in favour of the claimant are also contrary to those provisions of the Development Agreement and are perverse. He invited my attention to some of the clauses of the said power of attorney executed by the respondent in favour of the claimant. It is submitted by the learned senior counsel that the learned arbitrator has rightly not considered the prayer of the respondent for a direction to the claimant to obtain occupation certificate.

69. It is submitted by the learned senior counsel that for the purpose of selling the flats in the wings constructed by the claimant, there was no requirement or precondition of obtaining occupation certificate. He submits that since there was no sale of 21 flats, the money could not have been recovered and thus there was no question of any adjustment of the said amount against the sale proceeds. The learned arbitrator relied upon the report submitted by Vipul Modi & Associates, Chartered Accountants. The learned arbitrator has not directed either party to obtain occupation certificate.

70. Insofar as the counter claims (g) and (h) made by the respondent is concerned, it is submitted by the learned senior counsel for the claimant that those payments were made by the claimant prior to the date of the agreement and hence not payable by the respondent. Insofar as other claims made by the respondent by way of counter claim and rejected by the learned arbitrator in the impugned award are concerned, it is submitted by the learned senior counsel that the learned arbitrator after considering the pleadings, documents and evidence on record and after interpreting various terms and conditions of the Development Agreement has rightly rejected those claims. None of the findings

rendered by the learned arbitrator being perverse, no interference with such findings of fact is permissible under section 34 of the Arbitration Act.

71. Mr.J.P.Sen, learned senior counsel for the respondent in rejoinder submits that the additional grounds which are now raised across the bar by the claimant cannot be allowed to be raised. Insofar as challenge to the additional award by the claimant is concerned, it is submitted by the learned senior counsel for the respondent that in the final award, the learned arbitrator had inadvertently omitted six flats though the same were the subject matter of the counter claim filed by the respondent. The application thus filed by the respondent for additional award under section 33(4) of the Arbitration Act was maintainable and was rightly entertained by the learned arbitrator. He submits that there was no dispute in respect of the flats except flat no.B-21.

72. Insofar as the claim in respect of the taxes and outgoings is concerned, the learned arbitrator has erroneously drawn a distinction in respect thereof. The development cost was to be borne by the claimant. Insofar as the obligation to obtain occupation certificate by the claimant is concerned, it is submitted by the learned senior counsel for the respondent that the claimant had disowned their responsibility under the Development Agreement. Under clause 18 of the Development Agreement, it was the responsibility of the claimant to obtain occupation certificate and not the respondent. He submits that it was not urged by the claimant that Mr.V.V.Joshi was appointed by the respondent and thus the claimant was not responsible to obtain any occupation certificate. The said Mr.V.V.Joshi was substituted by an order passed by the learned arbitrator at the instance of the claimant.

The learned arbitrator rightly rejected the submission of the claimant that it was not the obligation of the claimant to obtain occupation certificate. The finding on delay rendered by the learned arbitrator against the claimant has not been challenged by the claimant in the arbitration petition filed by it.

73. Insofar as issue whether the claimant could have handed over possession of the flats to the flat buyers without obtaining any occupation certificate is concerned, learned senior counsel placed reliance on section 3(2)(i) of the Maharashtra Ownership Act and section 353 A(2)(A) of the Mumbai Municipal Corporation Act and would submit that in view of those provisions, the claimant could not have handed over possession of the flats to the flat buyers without obtaining occupation certificate. He submits that the part occupation certificate applied by the claimant was already rejected by the Municipal Corporation on 25th February, 2000. The possession of the flats handed over by the claimant to those flat buyers was totally illegal.

74. Insofar as the prayers for refund of security deposit made by the claimant and granted by the learned arbitrator is concerned, learned senior counsel submits that the construction of Wings 'B', 'C' and 'D' was already completed. The completion of construction of 'A' Wing was not required to be done. The completion of work in all respect would be completed only when the occupation certificate would have been obtained by the claimant. He submits that the claimant could not have even applied for partial occupation certificate to the Mumbai Municipal Corporation. Since the claimant failed to comply with its part of the obligation to obtain occupation certificate, the learned

arbitrator could not have allowed the claim for refund of security deposit made by the claimant with the respondent. He submits that it was not the case of the claimant that the respondent had prevented the claimant to construct 'A' Wing. He relied upon section 12(4) of the Specific Relief Act, 1963 and would submit that specific performance of the part of the contract is permissible under the said provision.

75. Insofar as claim for liquidated damages made by the respondent is concerned, learned senior counsel for the respondent submits that though under section 34 of the Arbitration Act, adequacy of the evidence cannot be considered by the court while hearing the application under section 34 of the Arbitration Act, since this was the case of a total misdirection by the learned arbitrator, this award deserves to be set aside on that ground itself. In absence of occupation certificate, there was no lawful delivery of physical possession of the flats. The loss caused to the respondent continued even till today. The learned arbitrator has failed to consider various provisions of the Development Agreement providing for obligation and responsibility of the claimant under the Development Agreement while carrying out the development. Except initial payment made to the respondent by the claimant, no other payments were made to the respondent by the claimant under the said Development Agreement.

REASONS AND CONCLUSIONS

76. The challenge in the Arbitration Petition No.344 of 2016 filed by the claimant is restricted to the counter claims (g) and (h) made by the respondent and allowed by the learned arbitrator in the sum of Rs.78,22,500/- and to the extent of directing the claimant to handover

flat no.B-21 to the respondent and also for setting aside the additional award dated 3rd September,2015. Insofar as Arbitration Petition No.512 of 2016 filed by the original respondent in the arbitral proceedings is concerned, the respondent has impugned the award allowing the claim nos. 1, 7, 8 and 9 made by the claimant and rejection of counter claim nos. (a), (d), (e), (f), (g), (h), (i), (k), (l), (m) and (n).

77. I shall first deal with Arbitration Petition No.344 of 2016 filed by Godrej Properties Limited (original claimant). Insofar as counter claim nos. (g) and (h) are concerned, it was the case of the respondent that as per clause (14) of the Development Agreement, the claimants were to finance at their own cost, all development charges, premium and/or deposits payable in respect of the said project. The claimant had rightly not reimbursed the amount towards deposits in the sum of Rs.7.72 lacs and premium of Rs.23.57 lacs along with interest to the respondent.

78. The learned arbitrator has interpreted clause 14 of the Development Agreement on 30th December,1997 and has held that the claimant was required to pay for the development charges and premium/deposits payable in respect of the said project which was made recoverable according to the particular method prescribed in the agreement. The respondent had paid a sum of Rs.7.72 lacs towards IOD deposits, basement to the Municipal Corporation of Greater Mumbai which amount was not reimbursed by the claimant. It was the case of the claimant that the said deposit made by the respondent could have been re-claimed by the respondent from the concerned authorities and thus the claimant was not liable to reimburse the said amount to

the respondent. The claimant did not deny before the learned arbitrator that all taxes and outgoings payable in respect of the property effective from the date of the agreement would be borne by the claimant. The claimant also did not deny that the said amount of Rs.23.57 lacs was deposited by the respondent with the Municipal Corporation of Greater Mumbai and Rs.7.22 lacs also with the Municipal Corporation of Greater Mumbai.

79. In my view, the learned arbitrator has rightly interpreted clause (14) of the Development Agreement and has rightly held that it was the obligation of the claimant to reimburse the said amount deposited by the respondent with the Municipal Corporation of Greater Mumbai towards IOD, basement deposit. It was also not denied by the claimant in the reply to the counter claim filed by the respondent that all the taxes and outgoings payable in respect of the property effective from the date of the agreement were to be borne by the claimant. The interpretation of Clause (14) by the learned arbitrator in the impugned award is a correct interpretation. Even if such interpretation is considered possible interpretation, this court cannot substitute possible interpretation by another possible interpretation. No interference is thus warranted in respect of the counter claim nos. (g) and (h) awarded by the learned arbitrator.

80. Insofar as the part of the arbitral award directing the claim to handover flat no. B-21 to the respondent impugned in the Arbitration Petition No.344 of 2016 by interim award dated 13th July, 2007 filed by the respondent is concerned, the claimant had handed over 15 flats to the respondent and retained 7 flats for itself. Out of the said 7 flats, 6 flats formed part of the claimant's share of the built up property and

sale proceeds of the 7th flat allowed to be shared between the claimant and the respondent.

81. The said interim award dated 13th July, 2007 was passed by the learned arbitrator as agreed by the parties. The said flats mentioned in the said award were accordingly agreed to be handed over by the claimant to the respondent on or before 23rd August, 2007. In the impugned award dated 30th April, 2015, the learned arbitrator directed the claimant to handover possession of the flat no. B-21 to the respondent within two weeks from the date of the said order. It is not in dispute that the respondent thereafter filed an application dated 8th May, 2015 under section 33(4) of the Arbitration Act inter alia praying for an additional award directing the claimant to handover physical possession of 6 flats bearing nos. B-12, C-12, C-21, C-32, C-41 and C-76 and also for handing over possession of the three stilt car parking spaces nos. 1, 2 and 7 in 'B' Wing. The said application was made by the respondent on 8th May, 2015.

82. The learned arbitrator in the additional award held that when the interim award was made on 13th July, 2007, the learned arbitrator had directed the claimant to handover physical possession of 15 flats to the respondent. In the said interim award, it was stated that no orders were being made regarding flat no. B-21 as the dispute between the parties was continuing with regard to the said flat. By an order dated 14th January, 2008, the learned arbitrator by a mutual agreement between the parties passed an order for division of the parking spaces in different wings between the claimant and the respondent. The claimant was directed to handover possession of the parking spaces nos. 1, 2, 3 and 6 in Wing 'C' and 1, 2, 3, 4 and 6 in Wing 'D' to the respondent on or

before 18th January,2008. The learned arbitrator further directed that parking spaces nos. 1, 2 and 7 in 'B' Wing were directed not to be sold but to be kept in possession of the claimant until the final award as a security in case the claimant succeeded in its own.

83. In the award dated 30th April, 2015, the learned arbitrator had inadvertently awarded the claim of the claimant in the sum of Rs.1,10,69,863/- and allowed the counter claim made by the respondent in the sum of Rs.1,00,76,165/-. Accordingly, the learned arbitrator directed the claimant to handover possession of flat no. B-21 to the respondent within two weeks from the date of the said award dated 30th April,2015. It is clear that the learned arbitrator had not made any award in respect of six flats bearing nos. B-12, C-12, C-21, C-32, C-41 and C-76 and three stilt car parking spaces nos. 1, 2 and 7 in 'B' Wing in the possession of the claimant.

84. Insofar as claim of Rs.9,93,698/- together with interest payable to the claimant by the respondent is concerned, the said amount with interest calculated upto 17th June, 2015 was handed over to the respondent by the claimant on 17th June, 2015 and was accepted by the claimant without prejudice to its rights to challenge the arbitral award dated 30th April,2015.

85. In my view, the learned arbitrator after considering paragraph (51) of the award dated 30th April,2015 rightly rejected the contention of the learned counsel for the claimant that the learned arbitrator had already adjudicated upon the impugned award dated 30th April,2015 and had found that the respondent was not entitled to anything more than one flat. The learned arbitrator rightly held that the contents of

paragraph (65) of the said award cannot be read in isolation and have to be read in totality in the circumstances based on the record before the learned arbitrator. It is clear that those six flats which were kept as a security in case the claimant would have succeeded in its claim and the three car parking spaces, the learned arbitrator having rejected the claim made by the claimant substantially, rightly made an additional award that flats bearing nos. B-12, C-12, C-21, C-32, C-41 and C-76 which had been retained by the claimant that no right whatsoever those flats and which rightfully belonged to the respondent were required to be returned to the respondent by handing over the physical possession thereof.

86. I do not find any infirmity in the additional award made by the learned arbitrator in the arbitral award dated 30th April, 2015. There was no final direction issued by the learned arbitrator in respect of those six flats in the original award. The application thus filed by the respondent for additional award clearly fell within the parameters of section 33(4) of the Arbitration Act and was rightly made by the learned arbitrator. I am not inclined to accept the submission of Mr. Dada, learned senior counsel for the claimant that the claim in respect of those six flats was already rejected in the award dated 30th April, 2015 and thus no additional award in respect of those six flats could be made by the learned arbitrator.

87. Insofar as the additional award in respect of three car parking spaces i.e. bearing nos. 1, 2 and 7 in 'B' Wing are concerned, learned arbitrator in the order dated 14th January, 2008 had held that since there was a dispute between the parties as to the allotment of the parking spaces, car parking spaces nos. 1, 2 and 7 in 'B' Wing were directed

not to be sold but to be kept in possession of the claimant until the final award presumably as security in case the claimant succeeds in its claim. It is thus clear that there was no final award in respect of those three car parking spaces though a claim was made by the respondent in respect of the division of the flats and the car parking spaces before the learned arbitrator. The learned arbitrator in the order dated 14th January, 2008 based on the mutual agreement had already directed that car parking spaces shown as 1, 2 and 7 in 'B' Wing shall stand allotted to the respondent while car parking spaces demarcated as nos. 3, 6 and 8 from the same plan shall stand allotted to the claimant.

88. In the additional award dated 3rd September, 2015, learned arbitrator held that upon adjudication of the claim and the counter claim, it was found that there was no subsisting claim of the claimant for which security was necessary and consequently the respondent shall be entitled to the parking spaces shown as nos. 1, 2 and 7 in 'B' Wing as already demarcated in the plan at page 213 of Volume 1 of the compilation of the documents. In my view, the application made by the respondent under section 33(4) for the additional award also in respect of those three car parking spaces nos. 1, 2 and 7 in 'B' Wing was thus maintainable in respect of which no final direction was given by the learned arbitrator in the award dated 30th April, 2015. I do not find any infirmity in this part of the additional award dated 3rd September, 2015.

89. Insofar as the direction given by the learned arbitrator in respect of flat no. B-21 to sale the said flat and to distribute the sale proceeds thereof in equal ratio is concerned, it is not in dispute that in the interim award dated 13th July, 2007, it was recorded by the learned

arbitrator that it was stated by the counsel of both sides that apart from the flats mentioned in the letter dated 5th September, 2001, there was one more flat no. B-21 in 'B' Wing about which there was some continuing dispute. No orders were made regarding that flat at that point of time as the same dispute needed to be resolved by the learned arbitrator.

90. When the application for additional award was argued before the learned arbitrator, he put to the parties that they should agree to work out with regard to flat no. B-21. The parties however could not arrive at any settlement in respect of the said flat no. B-21. The learned arbitrator accordingly directed the respondent to sell the said flat at the going market rate and pay 50% of the realized amount to the claimant. The learned arbitrator also made it clear that if the respondent fails to pay the amount of 50% of the realized sale price of the flat no. B-21 to the claimant within the time as directed, the respondent shall be liable to pay the simple interest at the rate of 15% per annum on the realizable sale price of the said flat from the expiry of 60 days from the date of the additional award until realization or payment. The respondent has impugned the direction issued by the learned arbitrator in paragraph 14(c) and (d) to the effect that the claimant is held entitled to receipt 50% of the realized sale price of flat no. B-21.

91. A perusal of paragraph(63) of the award dated 30th April,2015 indicates that the learned arbitrator in the said paragraph has already held that there was no question of the claimant retaining possession of flat no. B-21 as security for its claim as all its claims will be decided by the award. The learned arbitrator accordingly held that flat no. B-21 shall be handed over by the claimant to the respondent within four

weeks from the date of the said award. In paragraph (98) (a) in the operative part of the said final award dated 30th April, 2015 also the learned arbitrator directed the claimant to handover possession of flat no. B-21 to the respondent within two weeks from the date of the award dated 30th April, 2015 .

92. In my view, Mr.J.P.Sen, learned senior counsel for the respondent is thus right in his submission that in the additional award, the learned arbitrator could not have directed the respondent to sell the said flat and to pay 50% of the realized amount to the claimant contrary to the directions already issued in paragraph (63) and 98(a) of the award dated 30th April, 2015. The directions issued by the learned arbitrator in paragraphs 14(c) and (d) thus deserves to be set aside.

93. Insofar as the challenge to the arbitral award allowing claim no.1 for refund of Rs.50 lacs made which was deposited by the claimant with the respondent as and by way of security deposit which is impugned in the Arbitration Petition No.512 of 2016 filed by the respondent is concerned, under clause 2(a) of the Development Agreement, the claimant had deposited Rs.50 lacs with interest bearing security deposit to be repaid by adjustment from the sale proceeds of the residential wing receivable by the respondent in four equal installments of Rs.12.50 lacs each only on completion of each of the wings of the proposed building project.

94. Under clause 26 of the Development Agreement, the claimant was required to complete the work of construction in all respects and cause the architect to obtain the occupation certificate including part occupation certificate from the concerned authorities and shall also

obtain building completion certificate from the concerned authorities as soon as the buildings were completed and ready for occupation. In paragraph (42) of the arbitral award dated 30th April,2015, the learned arbitrator has held that the responsibility for completing the project and obtaining the building completion certificate and the occupation certificate was squarely put on the claimant as project manager.

95. In paragraph (43) of the impugned award, the learned arbitrator has held that in the evidence of Mr.Sachin Sinnarkar, Architect who was examined by the claimant and more particularly in his cross-examination, he deposed that they were not able to pursue the matter since the matter was related to the larger portion of the property whereas they were given a power of attorney to deal with only 4000 sq.mtrs. of the project area.

96. In paragraph (44), learned arbitrator rendered a finding that the delay was not due to any act on the part of the respondent and the claimant alone was responsible for that delay. The learned arbitrator also considered the cross-examination of the said witness Mr.Sachin Sinnarkar who admitted that some of the work pertaining to 'B', 'C' and 'D' Wings was not completed on the date on which an application was made on 25th January,2000 for obtaining occupation certificate. He had also admitted that the minutes of the meeting dated 29th January,2000 showed that the work in paragraph 4(ii) had remained to be done and until that was completed, no application for occupation certificate could be made. The learned arbitrator also rendered a finding that admission in paragraphs 24 to 28 of the cross-examination also belied his stand that all work was completed so that occupation certificate could be applied for.

97. The learned arbitrator thereafter proceeded to interpret section 2(a) of the Development Agreement which provided that the security deposit of Rs.50 lacs was to be repaid, by adjustment from sale proceeds of the residential wing by the respondent in four equal installments of Rs.12,50,000/- each on completion of each of the Wings of the proposed building of the said project. The said agreement further provided that if any completed wing of the residential wing was not sold or any portion or portions of any such completed wing remain unsold at stipulated rates as agreed then the project manager shall be entitled to sell after giving 45 days advance written notice to the respondent to that effect, such portion of the respondent's share in such completed wing as may be necessary and appropriate the sale proceeds towards the amount of installment due.

98. It is not in dispute that pursuant to the interim award dated 13th July, 2007, the learned arbitrator distributed various flats. Learned arbitrator thereafter appointed M/s.Vipul Modi & Associates, Chartered Accountants to ascertain the accounts between the parties. The said chartered accountant submitted a report dated 18th February,2008 giving a detailed calculation of the amount realized as a result of the sale of the constructed flats, the manner in which the said two security deposits were said to have been adjusted and the differential claims by both the sides. After scrutinizing the account rendered by Vipul Modi & Associates, the learned arbitrator was inclined to accept the contention of the claim with regard to the manner in which the interest bearing security deposit has been fully adjusted.

99. The learned arbitrator in paragraph (29) after considering the

defence of the respondent rejected the contention of the respondent that the said claim no.1 made by the claimant was premature since the project had not been completed. Various findings of fact rendered by the learned arbitrator while allowing this claim and upon interpreting clause 2(a) of the Development Agreement, being not perverse, cannot be interfered with by this petition filed under section 34 of the Arbitration Act. In my view, no case is made out by the respondent for impugning the award allowing claim no.1 made by the claimant in the facts and circumstances of this case. After considering the said report submitted by M/s.Vipul Modi & Associates, the learned arbitrator rejected the claim no.2 made by the claimant by recording the finding that deposit of Rs.50 lacs had been rightly adjusted from the claimant's share of the sale proceeds of the constructed flats. The claimant has not impugned that part of the award rejecting claim no.2 by the learned arbitrator.

100. Insofar as claim no.1 made by the respondent is concerned, the respondent had prayed for specific performance of the agreement dated 30th December, 1997. The learned arbitrator rejected the said claim by recording reasons in paragraph (63) of the arbitral award. Insofar as 'A' Wing is concerned, the respondent did not press the prayer for specific performance in respect of the said Wing on the ground that the work done by the claimant was poor quality and not satisfactory. Learned arbitrator held that this case was not a case for grant of specific performance as it would not be possible for the tribunal to oversee the innumerable steps that might have to be taken for moving the Municipal Corporation of Greater Mumbai and satisfying it in view of the changed circumstances about non-applicability of the ULC Act. Learned arbitrator also considered the fact that it was always possible

to the respondent to dismiss the Architect of the claimant and move the Municipal Authority for the necessary completion certificate in the light of the changed circumstances under the ULC Act and thereafter claim compensation from the claimant. The respondent however did not make any such attempt.

101. Insofar as submission of Mr.Sen, learned senior counsel for the respondent that while rejecting the counter claim no.1, the learned arbitrator atleast ought to have directed the claimant to complete Wings 'B', 'C' and 'D' in all respect including obtaining occupation certificate and building completion certificate is concerned, it is not in dispute that various occupants had already occupied those wings 'B', 'C' and 'D'. Learned arbitrator has rendered a finding that it was always possible to the respondent to dismiss the Architect of the claimant and to move the Municipal Corporation of Greater Mumbai authority for the necessary completion certificate in the light of the changed circumstances under ULC Act and thereafter claim compensation from the claimant. No interference with such finding of fact is warranted in this petition.

102. In my view, since the learned arbitrator has rejected the counter claim (a) for specific performance of the Development Agreement, the learned arbitrator has rightly did not grant the prayer for order and direction against the claimant to obtain occupation certificate and to building completion certificate. The respondent did not raise any issue of there being no occupation certificate or building completion certificate when possession of 15 flats was handed over to the respondent by the claimant under the interim award rendered by consent of both parties. In my view, there is no substance in the

submission of Mr.Sen, learned senior counsel for the respondent that there was any inconsistency in the award or that the impugned award is contrary to law. It is not the case of the respondent that those flats which were handed over to the respondent under the interim award have not been occupied by the respondent for want of occupation certificate or building occupation certificate.

103. Be that as it may, since the said prayer has not been considered by the learned arbitrator, this court cannot allow the said prayer under section 34 of the Arbitration Act. There is no merit in the submission of the learned senior counsel that the award is in breach of the principles of natural justice. Learned arbitrator has already made clear in paragraph (63) of the impugned award that the respondent could move the Municipal Authorities for the necessary completion certificate and thereafter claim compensation from the claimant. Till this matter was heard by this court, no such steps were taken by the respondent to obtain occupation certificate or building completion certificate or to make additional claims alleged to have been incurred, if any, for applying for occupation certificate or building completion certificate. In my view, considering the facts of this case, the learned arbitrator rightly rejected the claim for specific performance by applying section 14 of the Specific Relief Act, 1963. I do not find any infirmity with the impugned award rejecting the counter claim made by the respondent.

104. Insofar as counter claim (e) made by the respondent is concerned, learned arbitrator has rejected the said counter claim for liquidated damages in paragraph (73) of the impugned award. It is held by the learned arbitrator that the delay in completion was not

solely attributable to the claimant and in large measure attributable to the inability of the respondent to make up its mind and due to suggestion of complete re-designing plans from time to time. Learned arbitrator placed reliance on clause (13) of the Development Agreement which provided that the project would be completed in all respects within a period of 24 months from the date of the said agreement with a further grace period of six months subject however to force majeure conditions. If there is any delay beyond the period of 30 months by the project manager for reasons other than force majeure by the claimant, the respondent was entitled to liquidated damages as provided under the said clause.

105. The learned arbitrator has rendered a finding that delay in project being not completed within a period of 24 + 6 months is not attributable entirely to the claimant. There were frequent changes made by the respondent with regard to the plans, designs and the construction particulars. The respondent also did not make amended plans for construction available in time bound fashion to the claimant due to which also there was delay in completion of the work. The learned arbitrator also considered oral evidence of the witness examined by the claimant who deposed that there was considerable delay on account of the frequent changes in plan of the construction on the part of the respondent. The witness examined by the respondent admitted that the respondent had suggested the complete re-designing in the balance and not merely some changes in the minor items.

106. In my view, the findings rendered by the learned arbitrator after considering the oral and documentary evidence being not perverse and that the part of the award does not show any patent illegality, no

interference with that part of the award is warranted.

107. Insofar as submission of the learned senior counsel for the respondent that there are inconsistent findings recorded by the learned arbitrator on the issue of delay is concerned, court has to consider the entire award and not any observations of the learned arbitrator in isolation. There is no merit in this submission of the learned senior counsel for the respondent that the award in respect of the counter claim (e) is contrary to the interim award. Mr.Sen, learned senior counsel for the respondent could not demonstrate as to how this part of the award is contrary to law in any manner whatsoever. There is no infirmity in this part of the award and thus no interference is warranted.

108. Insofar as counter claim (f) is concerned, the respondent had made the said counter claim also for liquidated damages for not completing the project in respect of 'A' Wing. The respondent had already not pressed the claim for specific performance in respect of 'A' Wing. The learned arbitrator rightly rejected counter claim (f) also for the similar reasons recorded while rejecting counter claim (e). There is no merit in the submission of the learned senior counsel for the respondent that this part of the impugned award is non-speaking award or that any inconsistent findings were recorded by the learned arbitrator. The learned arbitrator has adopted the reasons recorded while rejecting the counter claim (e) which was similar to counter claim (f). There is no infirmity in this part of the award rendered by the learned arbitrator.

109. Insofar as counter claim (i) is concerned, the respondent has made the said claim for compensation on the ground that the claimant

had allegedly misused the adjoining the property and utilized land of adjoining property for building roads for their workers. The learned arbitrator has rejected this claim in paragraph (79) of the impugned award on the ground that the said claim was based on the ground that the present dispute was concerned with the project pertaining only to 4000 sq.mtrs. and not the adjoining land. The learned arbitrator rightly rejected the said claim on the ground that the claim with respect to misuse of a land was not the subject matter of the dispute and was not within the jurisdiction of the learned arbitrator. I do not find any infirmity in that part of the award. The said claim in respect of the adjoining property was beyond the jurisdiction of the learned arbitrator. The learned arbitrator while rejecting the said claim has made it clear that the respondent is free to agitate its right elsewhere and not before the learned arbitrator. No interference is thus warranted with that part of the award.

110. Insofar as claim (k) is concerned, the said counter claim was relating to the claim for principal value of the respondent allegedly being deprived and not being allowed to use its property in Wings 'A', 'B', 'C' and 'D' and car parking spaces. The learned arbitrator has rejected this claim in paragraph (86) of the counter claim. The respondent had already received various flats under an interim award rendered by the learned arbitrator. The respondent had not raised any issue at that time that there was no occupation certificate or building completion certificate while obtaining possession of those flats from the claimant.

111. Insofar as submission of learned senior counsel for the respondent that the impugned award is contrary to the interim award

dated 13th July, 2007 on this issue is concerned, there is no merit in this submission of the learned senior counsel for the respondent. The claimant had already handed over possession of various flats to the respondent along with keys belonging to the respondent under the said interim award. In the facts and circumstances of this case, the learned arbitrator rightly rendered a finding that if the respondent had taken a reasonable attitude, the flats falling to its share could have been handed over way back in the year 2000. The findings rendered by the learned arbitrator being not perverse, cannot be interfered with by this court under section 34 of the Arbitration Act. No interference is thus warranted with that part of the counter claim (k).

112. Insofar as counter claim (l) is concerned, the respondent had made this claim for recovering of lower sale value owing to alleged inferior and shoddy work. The learned arbitrator has rejected the said claim in paragraph (88) of the impugned award. The respondent did not produce any evidence to suggest that the lower sale value was on account of alleged unfair and shoddy work carried out by the claimant. The learned arbitrator accordingly rendered a finding that there was no evidence that the lower sale value fetched by the sale of flats was on account of alleged unfair and shoddy work. The findings of fact rendered by the learned arbitrator being not perverse and does not show any patent illegality, no interference is warranted on that part of the award. There is no merit in the submission of Mr.Sen, learned senior counsel that the learned arbitrator has ignored the evidence produced by the respondent. No evidence was produced by the respondent to prove that the respondent had recovered lower amount of sale of those flats due to any alleged leakage in the flats or owing to alleged inferior and shoddy work.

113. Insofar as counter claim (m) is concerned, the respondent had made the said claim for estimated value of work not completed by the claimant. This counter claim of the respondent is rejected by the learned arbitrator in paragraphs 90 to 94 of the impugned award. The learned arbitrator while rejecting this claim considered the evidence of Mr.Madhav Pandit, Consulting Structural Engineer and Ms.Rachana Amin, Qualified Architect and Senior Associate working with M/s.Hafeez Contractor. The learned arbitrator rejected the evidence of Mr.Madhav Pandit because he had merely relied on the final report on Non Destructive Tests carried out by Aaryan Engineers submitted to him which he had finally submitted to Architect Mr.Hafeez Contractor. The said witness admitted in his cross-examination that the findings of the structural audit report were based on various tests described in Table II at page 2 of its report.

114. The learned arbitrator also rightly considered that the final test report of Non Destructive Test carried out by Aaryan Engineers had not been verified by anybody from Aaryan Engineers. Mr.Madhav Pandit who was examined as one of the witness by the respondent was thus not competent to give any evidence with regard to the test actually carried out by Aaryan Engineers.

115. Insofar as evidence of Ms.Rachana Amin examined by the respondent is concerned, her conclusions on the report was based on the report of M/s.M.P.Pandit & Associates. The conclusions drawn by M/s.M.P.Pandit & Associates was based on the strength of certain Non Destructive Tests carried out by Aaryan Engineers. There is no dispute that the said Aaryan Engineers had not been examined to prove the

correctness of the test and the conclusions arrived at. The learned arbitrator thus rightly rejected the evidence of Ms.Rachana Amin.

116. Insofar as quantification of the estimated expenditure required for making 'A' Wing is concerned, the learned arbitrator also dealt with the evidence of Ms.Rachana Amin and rightly held that her evidence on this issue could not be considered as she had actually inspected two flats in 'B' Wing, 7 flats in 'C' Wing and 5 flats in 'D' Wing on her own admission. She inspected only the flats which were open and accessible to her either because the residents permitted the access or the keys were available. After considering the oral and documentary evidence, the learned arbitrator rightly rendered a finding that there was no loss caused to the respondent on account of the alleged inferior and shoddy work by the claimant. The findings of fact rendered by the learned arbitrator being not perverse and do not show any patent illegality, no interference is warranted with this part of the award.

117. In my view, there is no substance in the submission of Mr.Sen, learned senior counsel for the respondent that the evidence of Mr.Madhav Pandit and Ms.Rachana Amin could not have been rejected by the learned arbitrator. The learned arbitrator has recorded the detailed reasons after evaluating the evidence of both the witnesses examined by the respondent.

118. Insofar as additional award rendered by the learned arbitrator is concerned, in my view, Mr.Sen, learned senior counsel for the respondent is right in his submission that the learned arbitrator could not have directed the division of the flat no. B-21 between the claimant and the respondent and that also in the ratio of 33.33% : 66.66%. In

my view, these findings and conclusions drawn by the learned arbitrator is contrary to the findings rendered in respect of this flat in the paragraph (63) of the impugned award wherein it was already held that flat no. B-21 shall be handed over by the claimant to the respondent within four weeks from the date of the said award. In paragraph (13) of the additional award directing the apportionment of the sale proceeds between the claimant and the respondent shows patent illegality and thus deserves to be set aside.

119. I therefore pass the following order :-

- (a) The directions issued in paragraphs (c) and (d) of the additional award dated 3rd September, 2015 are set aside.
- (b) Rest of the award dated 30th April, 2015 and the additional award dated 3rd September, 2015 is upheld.
- (c) Arbitration Petition No.344 of 2016 is dismissed.
- (d) Arbitration Petition No.512 of 2016 is partly allowed in the aforesaid terms.
- (e) There shall be no order as to costs.

(R.D. DHANUKA, J.)