**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(PROCEEDINGS THROUGH V.C.)

RA-CR No.9 of 2021 in FAO-CARB No.21 of 2020

Advance India Projects Limited
Vs.
M/s Landmark Apartments Pvt. Ltd.

RA-CR No.10 of 2021 in FAO-CARB No.20 of 2020

M/s Landmark Apartments Pvt. Ltd.
Vs.
Advance India Projects Limited

RA-CR No.5 of 2021 in FAO-CARB No.20 of 2020

M/s Landmark Apartments Pvt. Ltd.
Vs.
Advance India Projects Limited

Present: Mr. Puneet Bali, Senior Advocate
with Mr. Vibhav Jain, Advocate
for the applicant
(in RA-CR No.9 of 2021 in FAO-CARB No.21 of 2020 and
RA-CR No.10 of 2021 in FAO-CARB No.20 of 2020).

Mr. Narender Hooda, Senior Advocate
with Mr. Sajjan Singh, Advocate
for the applicant
(in RA-CR No.5 of 2021 in FAO-CARB No.20 of 2020) and
for the non-applicant
(in RA-CR No.9 of 2021 in FAO-CARB No.21 of 2020).

By this order, we intend to dispose of three Review Applications i.e. RA-CR No.9 of 2021 in FAO-CARB No.21 of 2020, RA-CR No.10 of 2021 in FAO-CARB No.20 of 2020 and RA-CR No.5 of 2021 in FAO-CARB No.20 of 2020.

This Court vide order judgment 23.12.2020 decided two appeals preferred by the parties challenging the order dated 04.11.2020 passed by learned Additional District Judge-cum-Presiding Judge, Exclusive Commercial Court at Gurugram, in which these Review Applications have been preferred. In *RA-CR No.9 of 2021 in FAO-CARB No.21 of 2020* titled as *Advance India Projects Limited Versus M/s. Landmark Apartments Private Limited* and *RA-CR No.10 of 2021 in FAO-CARB No.20 of 2020* titled as *M/s. Landmark Apartments Private Limited Vs. Advance India Projects Limited*, the applicant-appellant, who is the developer, has asserted that once this Court vide its order dated 23.12.2020 had come to a conclusion that Article 4.3 of the Development Agreement dated 31.12.2015 was not applicable to the case, applying the penalty envisaged under the said Article 4.3 by taking the MSP of ground floor at the rate of ₹16,500/- per square feet would not be sustainable as the said rate would be applicable only in case of invoking of Article 4.3. It is asserted that the Court had proceeded to rely upon loan agreement dated 16.01.2020 (Annexure A-19) and even if the said documents is accepted, Clause 21 of Schedule II (Key Terms) of the loan agreement dated 16.01.2020 provided for the minimum selling price (exclusive of GST and other pass-through charges) per square feet for the type of unit in the project. According to the said agreement, the minimum sale price should have been taken as ₹8,500/- per square feet for 12^{th}, 13^{th} and 15^{th} floor being the rate for the service apartment/bridge street residence and ₹7,500/- per square feet for the 14^{th} floor being an auditorium area. Fixing of the uniform amount of ₹16,500/- per square feet being the rate of the retail shops on the ground floor is not sustainable.

Another ground, which has been taken by the review petitioner is that the applicant had extended a loan of ₹13,13,26,900/- to

M/s Landmark Apartments Private Limited (the landowner) and an amount of ₹10,30,88,361/- is due towards the landowner for interior works executed for the units of office and services apartments. Had the said amounts been taken into consideration, no security amount could have been ordered to be deposited at the hands of the applicant. The applicant has also sought to assert that as per the findings as recorded in paras 78 and 79 of the order dated 04.11.2020 passed by the Commercial Court, wherein a conclusion was drawn that the applicant had sold 46,006.64 square feet area situated from 12th to 15th floor and further that the applicant-appellant had sold 13,414.21 square feet area situated from ground to 11th floor falling in the share of the non-applicant/landowner, and on that basis, the Court below had proceeded to apply Clause 4.3 of the agreement dated 31.12.2015 and notionally given 100% share of the proceeds of the said area to the respondent, which cannot be now given as this Court had concluded that Clause 4.3 is not applicable. It is asserted that the sale area measuring 46,006.64 square feet for 12th to 15th floor has to be now divided in terms of the project sharing ratio of i.e. 63.5 to the developer and 36.5 to the landowner respectively. Applying the said ratio, area falling to the share of the non-applicant comes to 16,792.42 square feet. By adding the excess area sold by the applicant from ground floor to 11th floor as determined by the Court below i.e. 13,414.21 square feet, the total area comes to 30,206.63 square feet. The security amount, therefore, ought to have been calculated on the said area of 30,206.63 square feet instead of 31,664.44 square feet.

On the other hand, RA-CR No.5 of 2021 has been preferred by M/s. Landmark Apartments Private Limited (the landowner), wherein it has been asserted that the admitted case of the parties had although been that the Advance India Projects Limited (the developers) has sold approximately 18,168 square feet super area directly to the clients and bought itself 1,07,708.69 square feet super area, the applicant was thus left with 57,858 square feet super area. out of this 29,193.56 square feet was demarcated area up to 11th floor and the remaining area i.e. 31,664.44 square feet was still undemarcated area from 12th floor to 15th floor which finding has been upheld by this Court in its order, review of which has been sought. However, it has escaped the notice of the Court that the petitioner's interest with respect to 29,193.56 square feet demarcated area up to 11th floor has not been taken into consideration while securing the petitioner's interest only in respect of 31,664.44 square feet undemarcated area from 12th to 15 floor. When the same is taken into consideration, the security which is required to be furnished by the non-applicant/respondent would come to ₹69,16,93,740/-.

We have considered the submissions made by the senior counsel for the parties with regard to the Review Applications.

As regards the contention of learned senior counsel Mr. Puneet Bali for the applicant-Advance India Projects Limited (the developer), the assertion that Article 4.3 is not applicable as found by this Court in its order dated 23.12.2020, is correct and, thus the 100% share of the proceeds of the area sold by the applicant/developer situated in 12th to 15th floor has to be divided in terms of the project sharing ratio of 63.5% (developer) and 36.5% (landowner). But the conclusions reached with regard to the area would not make any difference. The trial Court has rightly taken into consideration the total enhanced FAR and proceeded to return the finding that the remaining area of the petitioner comes to 31,664.44 square feet.

These findings which have been recorded by the trial Court are based upon proper appreciation of the facts and calculations made in this behalf. The applicant/developer is proceeding on the assumption as if the applicant had sold the total excess area, which became available in FAR which is on a wrong assumption. The remaining area, therefore, which remains with the non-applicant/landowner is 31664.44 square feet. Therefore, the plea with regard to the area having been wrongly calculated qua which the non-applicant/landowner would be entitled to is not acceptable.

As regards the assertion of the applicant/developer that a loan of ₹13,13,32,690/- was extended to the non-applicant/landowner and an amount of ₹10,30,88,361/- was due towards the non-applicant for interior works executed for units of office and service apartments, the said aspect would not detain the Court as the aspect with regard to the loan extended would be a different transaction not relatable to the arbitration invoked and with regard to the amount due towards the interior works, there is a dispute on this aspect, which needs to be adjudicated upon by the Tribunal. The said plea, therefore, cannot be accepted.

As regards the assertion of the applicant that the minimum sale price, which has been taken from the loan agreement dated 16.01.2020 taking it as a ground floor rate of ₹16,500/- per square feet, the same may have some substance when taken in the context of penal clause as provided in Article 4.3 of the agreement dated 31.12.2015. It is an admitted position that the applicant has sold 13414.21 square feet in excess of its share for the area situated from ground floor to 11th floor, for which the liability stands of the applicant. Keeping that into consideration since the details with regard to proportionate share in each floor and the type of unit, which has been sold by the applicant has not come on record, it would be just and equitable that the average of ₹16,500/- at one end and ₹8,500/- at the other end be taken as the applicant has itself acknowledged that the MSP for 12th, 13th and 15th floor would be ₹8,500/- per square feet and for the 14th floor, ₹7,500/- per square feet. The same would, therefore, come to ₹12,500/- per square feet. So the amount which the applicant-Advance India Projects Limited will have to furnish as security comes to Rs.15,20,55,500/- for the area of 12,164.44 square feet. This figure of the remaining area falling to the share of the landowner would be by reducing 19,500 square feet from the enhanced area of 31,664.44 square feet.

Another plea which has been taken by the senior counsel for the applicant-Advance India Projects Limited, is that the counsel had inadvertently given a statement that it will not sale 19500 square feet as recorded in the judgment dated 23.12.2020, whereas the statement ought to have been that it will not sell 19,005.09 square feet.

This contention of the counsel for the petitioner cannot be accepted as this Court is of the considered view that there was a specific statement made by the counsel that the applicant will not sell 19,500 square feet and keep it as it is during the pendency of the arbitration proceedings and accordingly the security was and is being assessed.

As regards the contention of the learned senior counsel for review applicant in RA-CR No.5 of 2021 M/s. Landmark Apartments Private Limited is concerned, we do not find any justification or reason to accept the contentions as have been raised, especially in the light of the fact that the findings recorded with regard to the share of the area of the respective parties as returned by the trial Court has been accepted by this Court and no interference has been made on this score.

In view of the above, RA-CR No.9 of 2021 in FAO-CARB No.21 of 2020 titled as Advance India Projects Limited Vs. M/s Landmark Apartments Pvt. Ltd. and RA-CR No.10 of 2021 in FAO-CARB No.20 of 2020 titled as M/s Landmark Apartments Pvt. Ltd. Vs. Advance India Projects Limited are hereby partly accepted and Advance India Projects Limited, the developer, is directed to furnish security to the tune of ₹15,20,55,500/- in the shape of invokeable bank guarantee within a period of 15 days from today. Other terms and conditions shall remain the same as per the order dated 23.12.2020.

RA-CR No.5 of 2021 in FAO-CARB No.20 of 2020 titled as M/s Landmark Apartments Pvt. Ltd. Vs. Advance India Projects Limited is hereby dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

May 25th, 2021 **(ASHOK KUMAR VERMA)**
JUDGE

PUNEET SACHDEVA *Puneet*
2021.05.25 17:47
I attest to the authenticity and accuracy of this document