



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 01st DAY OF FEBRUARY 2022

THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

O.P. No. 761 of 2019

and

A.Nos.7356 of 2019, 119, 2409 and 2411 to 2413 of 2021

O.P. No. 761 of 2019:-

In the matter of Arbitration and
Conciliation Act 1996.

and

In the matter of N.Hemalatha and 15
others Vs.

Navins Housing & Properties Pvt. Ltd.

M/s Navin Housing & Properties Pvt. Ltd.

A Company incorporated under Companies Act 1956

and having its Registered Office at “Navins Triumph”

No.802 & 804, Anna Salai, Nandanam,

Chennai – 600 035.

Represented by its Managing Director Dr.R.Kumar.

...Petitioner/Applicant

-vs-

1.N.Hemalatha,

W/o Sri K.Nagarajan,

15/57, Second Main Road,

Kumaran Nagar, Chennai 600 092.

2.K.Natarajan,

S/o Sri R.A.Kandasamy,

15/57, Second Main Road,

Kumaran Nagar, Chennai 600 092.



3.N.Tharini,
D/o of Sri K.Natarajan,
15/57, Second Main Road,
Kumaran Nagar, Chennai 600 092.

4.R.Selvaraj,
S/o S.M.Rathinasamy,
14, Dhanalakshmi Nagar,
Second Street, Shakkumaniam,
Porur, Chennai 600 116.

5.S.Saraswathi,
W/o R.Selvaraj,
14, Dhanalakshmi Nagar,
Second Street, Shakkumaniam,
Porur, Chennai 600 116.

6.S.Vijayarathinam,
S/o R.Selvaraj,
14, Dhanalakshmi Nagar,
Second Street, Shakkumaniam,
Porur, Chennai 600 116.

7.Yogeshwaran,
S/o R.Selvaraj, 14, Dhanalakshmi Nagar,
Second Street, Shakkumaniam,
Porur, Chennai 600 116.

8.Uma Maheshwari,
W/o S.Vijayarathinam,
14, Dhanalakshmi Nagar,
Second Street, Shakkumaniam,
Porur, Chennai 600 116.

9.L.Subbiah,
S/o Alagappan,
201, Tagore Street,
Ramakrishna Nagar,
Valasaravakkam,
Chennai 600 087.



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10.S.Nithya,
W/o A.L.Wubbiah,
201, Tagore Street,
Ramakrishna Nagar,
Valasaravakkam,
Chennai 600 087.

11.R.M.Alagappan,
S/o Sri S.P.Ramasamy,
201, Tagore Street,
Ramakrishna Nagar,
Valasaravakkam,
Chennai 600 087.

12.L.Alamelu,
W/o R.M.Alagappan,
201, Tagore Street,
Ramakrishna Nagar,
Valasaravakkam,
Chennai 600 087.

13.N.Mathivanan,
S/o Nathamuni,
18/33, First Street, Kamala Nehru Nagar,
Choolaimedu, Chennai 600 094.

14.M.Tamilselvi,
W/o N.Mathivanan,
18/33, First Street, Kamala Nehru Nagar,
Choolaimedu, Chennai 600 094.

15.P.S.Sekar,
S/o S.P.Srinivasan,
201, Trunk Road,
Poonamallee, Chennai 600 056.

16.S.Vijaya,
W/o P.S.Sekar,
201, Trunk Road,
Poonamallee, Chennai 600 056.



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O.P. No. 761 of 2019:-

Original Petition praying that this Hon'ble Court be pleased to set aside the award dated 04.07.2019 passed by the learned Arbitrator, allow the counter claims filed by the petitioner.

A.No.7356 of 2019:-

Application praying that this Hon'ble Court be pleased to stay the award dated 04.07.2019 passed by the learned Arbitrator, allow the counter claims filed by the Petitioner circumstances of the case.

A.No.119 of 2021:-

In the matter of Arbitration and Conciliation Act 1996.

and

Joint Deed of Agreement between
of N.Hemalatha & others And
M/s Navins Housing & Properties Pvt.
Ltd dated 10.03.2010.

M/s Navin Housing & Properties Pvt. Ltd.

A Company incorporated under Companies Act 1956

and having its Registered Office at "Navins Triumph"

No.802 & 804, Anna Salai, Nandanam,

Chennai – 600 035.

Represented by its Managing Director Dr.R.Kumar.

...Petitioner/Applicant



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W/o N.Mathivanan,
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16.S.Vijaya,
W/o P.S.Sekar,
201, Trunk Road,
Poonamallee, Chennai 600 056.

... Respondents/Respondents

Application praying that this Hon'ble Court be pleased to issue appropriate directions to all the Respondents to forthwith issue Life Certificate to the Petitioner and take possession of the 30 % share after paying the amounts due to the Petitioner as per the Agreement.

A.Nos.2409 of 2021:-

1.N.Hemalatha,
W/o Sri K.Nagarajan,
15/57, Second Main Road,
Kumaran Nagar, Chennai 600 092.

2.K.Natarajan,
S/o Sri R.A.Kandasamy,
15/57, Second Main Road,
Kumaran Nagar, Chennai 600 092.

3.N.Tharini,
D/o Sri K.Natarajan,
15/57, Second Main Road,
Kumaran Nagar, Chennai 600 092.

4.R.Selvaraj,
S/o S.M.Rathinasamy,



14, Dhanalakshmi Nagar,
Second Street, Shakkumaniam,
Porur, Chennai 600 116.

5.S.Saraswathi,
W/o R.Selvaraj,
14, Dhanalakshmi Nagar,
Second Street, Shakkumaniam,
Porur, Chennai 600 116.

6.S.Vijayarathinam,
S/o R.Selvaraj,
14, Dhanalakshmi Nagar,
Second Street, Shakkumaniam,
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7.S.Yogeshwaran,
S/o R.Selvaraj, 14, Dhanalakshmi Nagar,
Second Street, Shakkumaniam,
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S/o Sri S.P.Ramasamy,
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16.S.Vijaya,
W/o P.S.Sekar,
201, Trunk Road,
Poonamallee, Chennai 600 056. ...Applicants/Respondents/Respondents

Vs.

M/s Navin Housing & Properties Pvt. Ltd.
A Company incorporated under Companies Act 1956
and having its Registered Office at “Navins Triumph”
No.802 & 804, Anna Salai, Nandanam,
Chennai – 600 035.

Represented by its
Managing Director Dr.R.Kumar. ...Respondent/Applicant/Petitioner



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A.No.2409 of 2021:-

Application praying that this Hon'ble Court be pleased to Vacate the Interim Stay granted by this Hon'ble Court on 30.09.2019 in Application No.7356 of 2019 in O.P.No.761 of 2019.

A.No.2411 of 2021:-

Application praying that this Hon'ble Court be pleased to direct the Registrar General of this Court to endorse and handover the original Fixed Deposit Receipt bearing A/c No.38837990925 dated 6.11.2020 Rs.2,19,73,383/- (Rupees Two Crores Nineteen Lakhs Seventy Three Thousand Three Hundred and Eighty Three only) in favour of the Registrar General, High Court, Madras drawn on State Bank of India, Usman Road, T.Nagar is available.

A.No.2412 of 2021:-

Application praying that this Hon'ble Court be pleased to direct the Respondent/Developer to deposit and pay the Applicants/Respondents herein an amount of Rupees Ten Crores which is remaining compensation amount for unfinished built up area as per the Hon'ble Arbitration Tribunal Award dated 4.7.2019 for the years 2019, 2020 and 2021 pending disposal



A.No.2413 of 2021:-

Application praying that this Hon'ble Court be pleased to direct the Respondent /Developer to hand over the possession of the 30 % of the Built up Area out of completed 2,70,000 sq.ft., of built up Structure/Apartment situated at “Hill View Avenue”, Thirumudivakkam Village, Sriperumbudur Taluk, Kancheepuram District, situated within the Registration District of South Chennai and Sub-Registration District of Padappai abutting Thiruneermalai, Thirumudivakkam Road pending disposal of the above Petition in O.P.No.761/2019.

This Original Petition along with these applications having been heard on 19.01.2022 in the presence of Mr.Vijay Narayan, Senior Counsel for M/s Shree Law Services, Advocates for the Petitioner in O.P.No.761 of 2019 and for the applicant in A.Nos.119 of 2021 and 7356 of 2019 and for the respondent in A.Nos.2411 to 2413 and 2409 of 2021 and Mr.G.Vijay Anand for M/s G.Vijay Anand Associates, Advocates for the respondents in O.P.No.761 of 2019 and A.Nos.119 of 2021 and 7356 of 2019 and for the applicants in A.Nos.2411 to 2413 and 2409 of 2021 and upon reading the petition filed in O.P.No.761 of 2019 and the Judge's Summons and the



Summons and the Affidavit of R.Selvaraj filed in A.Nos.2411 and 2413 and 2409 of 2021 and the order dated 30.09.2019 made in O.P.No.761 of 2019 and A.No.7356 of 2019, and having stoodover for consideration till this date and coming on this day before this court for orders in the presence of said advocates for the parties hereto and this court having observed that while an Arbitral Award cannot be modified, it certainly can be severed if possible, and the refusal of the Arbitral Tribunal to grant relief to the Petitioner for the failure of the Respondents to provide life certificates as also the direction to hand over 30% of the saleable built up area are clearly capable of being severed from the findings and conclusion on the payment of rental compensation, the portions of the Award which do not warrant interference can stand even if the conclusion on rental compensation are held to be invalid, and at the time of admission, a conditional stay of the Award was granted subject to the Petitioner depositing in fixed deposit 50% of the sum awarded towards rental compensation along with interest up to the date of the petition, and this order was complied with, **it is ordered as follows:-**

That the Arbitral Award dated 04.07.2019, be and is hereby setaside only insofar as it directs the Petitioner to pay a sum of Rs.4,02,16,500/- (Rupees Four Crore Two Lakhs Sixteen Thousand and Five Hundred only)



2. That in all other respects, the award does not call for interference.

3. That there shall be no order as to costs

4. That in view of the Award being up held except as regards rental compensation, this amount shall be retained in fixed deposit until the 30% built up area share of the Respondents is handed over as per the Award and the Agreement, and if necessary, the petitioner herein, shall renew the fixed deposit.

5. That these A.Nos.7356 of 2019 and 119, 2409, 2411 to 2413 of 2021 do stand closed.

6. That both the parties hereto, shall be entitled to institute fresh proceedings if arising out of a distinct cause of action.

WITNESS THE HON'BLE MR.JUSTICE MUNISHWAR NATH BHANDARI, ACTING CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 01st DAY OF FEBRUARY 2022.

Sd/-
ASSISTANT REGISTRAR (O.S.II)

//Certified to be true copy//
Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.



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28.02.2022

01.03.2022

O.P. No. 761 of 2019
and
A.Nos.7356 of 2019, 119, 2409 and 2411 to 2413 of 2021

ORDER

DATED : 01.02.2022

THE HON'BLE MR. JUSTICE

SENTHILKUMAR RAMAMOORTHY

FOR APPROVAL: 01.03.2022

APPROVED ON: 01.03.2022



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

D A T E D : 01.02.2022

C O R A M :

The Hon'ble Mr. Justice **SENTHILKUMAR RAMAMOORTHY**

O.P.No.761 of 2019

and

A.Nos.7356 of 2019, 119, 2409 and 2411 to 2413 of 2021

M/s.Navin Housing & Properties Pvt Ltd.,
A Company incorporated under Companies Act 1956
and having its Registered Office at
"Navina Triumph"

No.802 & 804, Anna Salai, Nandanam,
Chennai - 600 035.

Rep. by its Managing Director Dr.R.Kumar

... Petitioner

Vs

- 1.Hemalatha
- 2.K.Natarajan
- 3.N.Tharini
- 4.R.Selvaraj
- 5.S.Saraswathi
- 6.S.Vijayarathinam
- 7.Yogeshwaran
- 8.Uma Maheswari
- 9.L.Subbiah
- 10.S.Nithya
- 11.R.M.Alagappan
- 12.L.Alamelu
- 13.N.Mathivanan
- 14.M.Tamilselvi
- 15.P.S.Sekar
- 16.S.Vijaya

... Respondents



This Petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 praying to set aside the Award dated 04.07.2019 passed by the learned Arbitrator, allow the counter claims filed by the Petitioner.

For Petitioner : Mr.Vijay Narayan, S.C.
for M/s.Shree Law Services

For Respondent : Mr.G.Vijay Anand
for M/s.G.Vijay Anand Associates

ORDER

The dispute is between a developer, the Petitioner herein, and the original land owners, the Respondents herein. The Petitioner was the respondent before the Arbitral Tribunal. An Arbitral Award dated 04.07.2019(the Award) is challenged under Section 34 of the Arbitration and Conciliation Act 1996(the Arbitration Act).

2. The Petitioner and the Respondents entered into a Deed of Agreement dated 11.03.2010(the Agreement). In terms thereof, the Petitioner agreed to develop the property owned by the Respondents of an extent of about 11.24 acres at Thirumudivakkam village, Sriperumbudur Taluk, Kanchipuram District. In the developed property, the developer was to take a 70% share and the land owners a 30% share. The Agreement provides for the payment of a sum of Rs.3 crore by the developer to the land



owners as an adjustable advance, and the receipt of this sum by the land owners is admitted and acknowledged in clause 4. In order to fulfill the developer's obligations under the Agreement, the land owners were required to execute powers of attorney in favour of the developer. Accordingly, powers of attorney dated 20.04.2011 and 25.04.2011, respectively, were executed by the Respondents. The Respondents were also required to obtain and hand over to the developer the patta for the property. The said patta was handed over on or about 20.05.2011. Under the Agreement, the Petitioner/developer was required to apply for and obtain the approval of the Chennai Metropolitan Development Authority(CMDA) and the local government as regards building approval. The Agreement specified that the development should be completed within a period of five years from the date of obtaining approval from the appropriate authorities. The admitted position is that CMDA issued the planning permit on 27.06.2013. The development was to be undertaken in phases and the first phase was completed some time in the year 2015. The partial completion certificate in respect thereof was obtained on 19.08.2015. As against the total built-up area of 8,11,177 sq.ft., the developed area constitutes about 30%, i.e. 2,40,000 sq.ft.



3. Sometime in the year 2017, the Respondents refused to provide life certificates in respect of the powers of attorney. According to the Petitioner, this constitutes breach of the Agreement. On the other hand, according to the Respondents, the Petitioner committed breach by not proceeding with and completing the development as per the Agreement. In effect, out of 634 flats, which were required to be built in terms of the Agreement, about 266 flats were built. In the above facts and circumstances, a dispute arose between the parties, and such dispute was referred to arbitration. Before the Arbitral Tribunal, the Respondents made four claims: for a sum of Rs.85,22,50,000/- towards the value of 2,43,500 sq.ft. (30% of the total built up area as per the Agreement) or to hand over possession of 2,43,500 sq.ft of built up area in the scheduled mentioned property; a sum of Rs.4,00,00,000/- towards the value of 634 car parks or to hand over possession of 634 car parks immediately; a sum of Rs.6,81,80,000/- towards rent for the last 28 months calculated at Rs.24,35,000/- per month; a sum of Rs.16,06,05,000/- towards mental agony and hardship; for costs of the proceedings.

4. The Petitioner filed a statement of defence and made counter claims. The counter claims of the Petitioner were to declare the Agreement as voidable at its option; for reimbursement of the expenditure of



Rs.144,00,00,000/-; Rs.25,00,00,000/- as compensation for breach by failing to provide life certificates; and 10% of the sum of Rs.144,00,00,000/- as loss of opportunity.

5. Upon consideration of the pleadings, the Arbitral Tribunal framed 12 issues, which are set out at paragraph 58 of the Award. Issue No.4 pertained to whether the Petitioner herein was diligent in complying with its obligations under the Agreement and Issue No.5 related to whether the Respondents herein are entitled to their claims on account of delay in completion of the project by the Petitioner or whether the Respondents would only be entitled to rental value for the delayed period. Issue No.8 related to whether the Respondents are entitled to their share in the three completed blocks. Issue No.10 is whether the Petitioner herein is entitled to the counter claims. The Respondents exhibited 12 documents, which were marked as Ex.C1 (series) to C12. The Petitioner exhibited 19 documents, which were marked as Ex.R1 to R19. Two witnesses were examined on behalf of the Respondents herein as C.W.1 and C.W.2, and one witness was examined on behalf of the Petitioner herein as R.W.1. Eventually, the arbitral proceedings culminated in the Award dated 04.07.2019. On Issue Nos.2 and 3, the Arbitral Tribunal concluded that the Respondents handed

over the pattas to the Petitioner after a considerable delay. It was further



held that the Petitioner herein was not negligent in obtaining approval from the CMDA and local Government. On Issue Nos.4 & 9, it was concluded that the Petitioner herein was not negligent in completing all 11 blocks since no time limit was prescribed for such purpose. As regards Issue No.5, which relates to the claim for compensation for delay by the Respondents, the Arbitral Tribunal concluded that the Petitioner is liable to compensate the Respondents by paying the fair market rent for the share of the Respondents, which had not been built. Although a claim was made for 2,43,500 sq.ft., the Arbitral Tribunal concluded that the saleable built up area in the 3 blocks falling to the share of the Respondents should be excluded from 2,43,500 sq.ft. On such basis, the compensation claim was restricted to 1,65,500 sq.ft. With regard to the 1,65,500 sq.ft., the Arbitral Tribunal adopted the methodology prescribed in Sections 4(2) and 3 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (the Rent Control Act) and arrived at the compensation of Rs.4,02,16,500/-. On Issue No.8, the Arbitral Tribunal concluded that the Respondents are entitled to their share in the completed blocks. Consequently, the Petitioner was directed to hand over the flats to the Respondents as per the allotment made in Ex.C.11. The said Award is challenged herein.



6. Oral submissions were made on behalf of the Petitioner by Mr.Vijay Narayan, learned Senior Counsel, assisted by Mr.T.Ravichandran, learned counsel; on behalf of the Respondents by Mr.Vijay Anand, learned counsel.

7. After providing an overview of the facts and circumstances leading to the dispute, learned Senior Counsel for the Petitioner focused attention on certain aspects of the Award. His first contention was that the Arbitral Tribunal failed to take into consideration the anterior breach by the Respondents in failing to provide life certificates as regards the two powers of attorney from mid-2017. Consequently, it was contended that the powers of attorney could not be used by the Petitioner after mid-2017. The Petitioner contended that the Agreement provided for a period of five years from 27.06.2013 (i.e. the date of obtaining planning permit) to complete the development. However, on account of the failure by the Respondents to provide the life certificates after mid-2017, the project could not be proceeded with. Since the Respondents committed the prior breach, it was contended that the Petitioner is not liable to provide compensation to the Respondents.



8. Without prejudice to the above contention, the next contention advanced by learned senior counsel for the Petitioner was that the Respondents claimed fair market rent at Rs.10/- per sq.ft. If fair market rent is calculated for 12 months at Rs.10/- per sq.ft. for 1,65,500 sq.ft., the total claim would be less than Rs.2 crore, whereas the Arbiral Tribunal committed the patent illegality of awarding compensation of about Rs.4.02 crore towards fair market rent. In this connection, reference was made to the discussion and analysis in the Award. With specific reference to the findings at paragraph 105, it was contended that the Arbitral Tribunal recorded a categorical finding that the Petitioner herein was not negligent in not completing the 11 blocks, since no time limit was stipulated in the Agreement. In spite of such conclusion, the Petitioner pointed out that the Arbitral Tribunal committed a patent error in awarding compensation.

9. Indeed, the Petitioner submitted that the Agreement provided "for rental compensation at the fair market rent prevailing in the area for unfinished portions of the parties of the first part until the same is finished and ready for hand over to the parties of the first part". In view of such contractual stipulation, it was contended that the Arbitral Tribunal should have examined the evidence on fair market rent. By drawing reference to the



and 101, learned senior counsel for the Petitioner contended that the Respondents admitted that they did not know the current rental value for a 2 BHK / 3 BHK flat in Thirumudivakkam area, and that they did know the said value in the year 2016. Once the Respondents' witness admitted that he was unaware of the fair market rent at the relevant point of time, it was contended that compensation should not have been awarded. On this issue, it was also pointed out that the admitted position is that no documentary evidence was adduced by the Respondents with regard to the fair market rent. A reference was made to the judgments of the Hon'ble Supreme Court in *Associate Builders v. Delhi Development Authority*, (2015) 3 SCC 49 (**Associate Builders**) and *Ssyangyong Engineering and Conctruction Company Limited v. NHAI*, (2019) 15 SCC 131 (**Ssangyong**), for the proposition that an arbitral award may be interfered with if it is patently illegal. Since the Arbitral Tribunal disregarded the contractual stipulation, it was submitted that the Award is patently illegal. The judgment of the Hon'ble Supreme Court in *Kailash Nath Associates v. Delhi Development Authority*, (2015) 4 SCC 136, was also relied upon to contend that even a claim for liquidated damages is required to be proved except if it is impossible or difficult to prove.



10. On Issue No.8, the Petitioner contended that the Arbitral Tribunal erred in directing the Petitioner to hand over 30% of the saleable built up area to the Respondents without waiting for the completion of the project. As regards the counter claim, it was contended that the Arbitral Tribunal committed a patent error in relying upon Ex.R8 dated 05.05.2016 so as to conclude that the Petitioner did not raise the issue of non-provision of life certificates. In this regard, the Petitioner pointed out that life certificates were not provided from mid-2017 and, therefore, this issue could not have been raised in a communication of May 2016. For all these reasons, the Petitioner contended that the Award is not sustainable.

11. On the contrary, Mr.Vijay Anand, learned counsel for the Respondents submitted that the Award does not suffer from infirmities. By drawing reference to the proof affidavit of C.W.1 and, in particular, paragraphs 27 to 34; and 39 to 41 thereof, it was pointed out that the life certificates were withheld after mid-2017 since the Petitioner herein did not complete the 11 blocks although 7 years had lapsed. The Respondents also referred to the cross examination of R.W.1 on this issue. With specific reference to the answer to question No.58, it was contended that R.W.1 admitted that it could not start construction of subsequent phases because the market condition is very bad. Based on this answer, the Respondents



12. As regards the grant of compensation for delay, learned counsel for the Respondents referred to the finding at paragraph 105 that clause 6 of the Agreement provides for the grant of rental compensation if the project is not completed within five years from the date of approval. The Respondents contended that the Arbitral Tribunal examined the evidence on record and concluded that the five year period should be computed from 05.06.2013. On such basis, the Arbitral Tribunal entered a finding that the liability to pay rental compensation will arise after 04.06.2018. By drawing reference to paragraphs 116 to 118 of the Award, learned counsel for the Respondents pointed out that the Arbitral Tribunal provided cogent reasons for calculating compensation on 1,65,500 sq.ft. Indeed, the Respondents contended that the methodology prescribed in Section 4(2) and 4(3) of the Rent Control Act was adopted as a reasonable method to arrive at fair market rent. Since the Petitioner herein had admitted through R.W.1 that the cost of construction was approximately Rs.2,700/- per sq.ft., the Respondents contended that the Arbitral Tribunal reasonably and validly adopted such cost of construction and computed the fair market rent at 9%



thereon as per the Rent Control Act. By drawing reference to the judgment of the Hon'ble Supreme Court in *Delhi Airport Metro Express Pvt. Ltd. v. Delhi Metro Rail Corporation Ltd.* 2021 SCC Online SC 695 (***Delhi Airport Metro***), and, in particular, paragraphs 23 to 27 and 43 thereof, the Respondents submitted that an arbitral award is not liable to be interfered with merely on the basis of erroneous application of law. Therefore, the reliance on the Rent Control Act does not vitiate the Award.

13. With regard to the findings on Issue No.8 relating to the direction to hand over 30% of the saleable built up area, learned counsel for the Respondents referred to paragraphs 120 to 131 of the Award. In particular, it was contended that the Arbitral Tribunal interpreted Clauses 6, 7 & 31 of the Agreement and thereby concluded that the obligation to allot 30% of the saleable built up area is triggered after completion of each block, and not only after completion of the entire project. Such conclusion is a reasonable conclusion in the facts and circumstances. Therefore, no interference is warranted with such conclusion.

14. On the issue of life certificates, learned counsel for the Respondents referred to the findings in paragraphs 154 and 157 of the



Award to the effect that the Petitioner failed to establish any loss on account of the failure to provide life certificates after 2017.

15. By way of rejoinder, the Petitioner contended that the adoption of the formula in the Rent Control Act vitiates the Award. In particular, it was contended that the Arbitral Tribunal awarded about Rs 2 crore more than the sum claimed by the Respondents. On the issuance of life certificates, the Petitioner contended that the anterior breach by the Respondents was disregarded by the Arbitral Tribunal.

16. The contentions of the contesting parties were focused on three aspects of the Award. The first aspect is the award of a sum of about Rs.4.02 crore as compensation for delay. The second aspect is the failure to provide life certificates, and the alleged failure of the Arbitral Tribunal to take into account the said default. The third aspect is the direction of the Arbitral Tribunal to the Petitioner to hand over 30 % of the saleable built up area to the Respondents. Accordingly, these three aspects are discussed.

17. Clause 6 of the Agreement deals with the payment of fair market rent as rental compensation for delay. The said clause is as under:

"6. That the 30% of the built up area of parties of

the First Part shall be earmarked mutually by both the Parties herein, after getting approval from CMDA / Local



Body and shall mark their respective area in the approved building plan. The construction shall be of GOOD QUALITY as per the specifications given separately in the Annexure appended herewith and the Party of the Second Part hereby undertakes and that there shall not be any disparity in the construction between the parties of the First Part 30% share in the built up area and the Party of the Second Part 70% share in the built up area. In the event the Party of the Second Part fails to hand over possession of the 30% share in the built up area of the Parties of the First Part within 48 months from date of obtaining approval from the Appropriate Authorities and after a grace period of one year, the Party of the Second Part shall compensate the Parties of the First Part after that, by paying Rental compensation at the fair market rent prevailing in the area for unfinished portions of the Parties of the First Part, until the same is finished and ready for hand over to the Parties of the First Part."

18. On a textual reading, it is evident that Clause 6 of the Agreement enables the Respondents herein to claim rental compensation, as regards unfinished portions, if the Petitioner does not hand over possession of the 30% share in the built up area of the Respondents within a maximum of 48 months plus a grace period of one year. In effect, a claim for compensation may be made if the Respondents' 30% share in the built up area is not



handed over within a maximum period of sixty months from the date of obtaining approval from the appropriate authorities.

19. In paragraph 107 of the Award, the Arbitral Tribunal examined Ex.C3, which is the planning permit, and concluded on such basis that the date of approval for purposes of Clause 6 of the Agreement is 05.06.2013. On such basis, the five year period for completion was computed and fixed as 04.06.2018. The said conclusion is based on a reasonable appraisal of the relevant exhibit and Clause 6 of the Agreement. To that extent, no case is made out for interference. This leads to the question whether fair market rent could have been awarded in the facts and circumstances. Since the Respondents herein were the claimants before the Arbitral Tribunal, there is no doubt that the burden of proof to establish fair market rent prevailing in the area was on the Respondents. As stated earlier, both parties adduced oral and documentary evidence. From the evidence on record, it is clear that no documentary evidence was adduced with regard to the fair market rent prevailing in the area where the development took place. Therefore, the oral evidence in such regard should be examined. In course of cross examination, C.W.1 was called upon to answer the following questions. The said questions and answers are set out below:



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What is the current rental value for 2 BHK / 3 BHK in Thirumudivakkam area?

Answer: I do not know.

Question No.101:

What was the rental value in 2016?

Answer: I do not know.

20. Thus, in the oral evidence of C.W.1, the witness admitted that he did not know the fair market rent in the Thirumudivakkam area either in the year 2016 or at the time of cross-examination in December 2018. The only conclusion that can be drawn from the above is that the Respondents herein failed to adduce either documentary or oral evidence with regard to the fair market rent in the relevant area at the relevant time. Consequently, the claim for compensation on the basis of Clause 6 should have been rejected because there was no evidence supporting the claim. In *Associate Builders*, at paragraph 31, the Supreme Court held that an arbitral award may be interfered with if it is based on no evidence, irrelevant evidence or if vital evidence is disregarded. Even after the entry into force of Act 3 of 2016, this ground was held to be a valid ground to set aside an award in paragraph 41 of *Ssangyong*, albeit as a form of patent illegality, and this was noticed in *Delhi Airport Metro* at paragraph 24 thereof. Instead, the Arbitral Tribunal unilaterally relied upon Sections 4(2) and 4(3) of the Rent Control Act so as to conclude that 9% of the construction cost could be adopted as a



measure of fair market rent. For such purpose, R.W.1's response to a question on the cost of construction was taken into account. In particular, the Arbitral Tribunal relied upon the answer of R.W.1 to question 82 in course of cross examination, wherein the witness stated that Rs.2,700/- per sq.ft. is the cost of construction of the building. In the absence of evidence from the Respondents / Claimants before the Arbitral Tribunal with regard to the fair market rent, the reliance on the cost of construction and the adoption of the 9% yardstick specified in the Rent Control Act is not sustainable. Since the award of compensation was entirely on such basis, it is a patent error which goes to the root of the matter. On this issue, it should also be noticed that a sum of about Rs.4.02 crore was awarded and this far exceeds the amount claimed by the Respondents, if computed for 12 months for the area of 1,65,500 sq.ft. Therefore, interference is warranted with the Award on this issue.

21. The next issue to be considered is the alleged failure of the Respondents to provide life certificates after mid 2017. The Petitioner contended that such failure took place within the five year period for completion of construction as per the Agreement. Therefore, it was argued that this qualifies as an anterior breach which absolves the Petitioner of responsibility or liability for any subsequent breach. An anterior breach



would constitute a justification for failure to fulfill a subsequent obligation if the causal connection between the anterior breach and the subsequent breach can be established. Without doubt, the burden of proof on this issue was on the Petitioner. The Arbitral Tribunal adverted to the oral evidence on this issue. With specific reference to Question Nos.58 to 61 and Question Nos.103 & 104 and the answers thereto of R.W.1, the Arbitral Tribunal recorded a finding that the Petitioner herein had failed to establish that it suffered loss on account of the failure to provide life certificates. From the answers to questions 58 to 61, it appears that the Petitioner herein cited both market conditions and the floods in November 2015 as the reasons for being unable to complete the construction within the five year period. The findings entered by the Arbitral Tribunal on the basis of such oral evidence cannot be construed as perverse findings. Indeed, they are reasonable findings based on appraisal of the evidence on record. Therefore, no interference is warranted with this aspect of the Award.

22. The third aspect to be examined is the direction by the Arbitral Tribunal to the Petitioner to hand over 30 % of the saleable built up area to the Respondents. On this issue, the Petitioner contended that the obligation to hand over the saleable built up area arises only upon completion of the entire project and not upon the completion of a part thereof. On the other



Respondents. Clause 9 enables the Petitioner to sell its 70% built-up area to third parties along with the proportionate share of land. It also stipulates that the Respondents shall not be entitled to anything more than the remaining 30% either in the form of sale proceeds or in the form of built up area. Clause 11 requires that the Respondents should convey the 70% share of land in favour of the Petitioner or his nominees. The Arbitral Tribunal examined Clauses 6, 7 & 31 of the Agreement and entered the following findings in paragraph No.127 of the Award:

“ The respondent on their own have also given the appropriate proportionate share of flats in the three towers constructed already as per Ex.C.11. The respondent could not impeach the document. Further, some of the flats allotted to the share of the claimants have also been sold to the flat purchasers. In fact a reading of para 6 of the agreement in Ex.C.2 will show the obligation of the respondent to compensate the claimants by way of rental compensation is only to the unfinished portion of the project and not for the entire project. Therefore, a correct reading of para 6,7 & 31 of the Agreement will be that after the completion of each tower, the respondent should allot 30% of the saleable built area due to the claimants and they need not wait for the completion of the project, which date is not even known to the respondent.”



The above finding is based on a reasonable construction of the Agreement.

While the Agreement does not expressly state that the 30% share of the Respondents should be allotted or handed over on proportionate basis, the conclusion of the Arbitral Tribunal cannot be faulted in light of the evidence on record to the effect that some flats allotted to the share of the Respondents had been transferred to the purchaser thereof. In addition, the Arbitral Tribunal recorded a finding in paragraph 126 that it would frustrate the very idea of a joint development if the Agreement is construed as providing for the handing over of possession only after the completion of the entire project. These conclusions are eminently reasonable and do not call for interference.

24. While an Arbitral Award cannot be modified, it certainly can be severed if possible. In the case at hand, the refusal of the Arbitral Tribunal to grant relief to the Petitioner for the failure of the Respondents to provide life certificates as also the direction to hand over 30% of the saleable built up area are clearly capable of being severed from the findings and conclusions on the payment of rental compensation. To put it differently, the portions of the Award which do not warrant interference can stand even if the conclusions on rental compensation are held to be invalid.

25. For reasons set out above, the Arbitral Award dated 04.07.2019 is

set aside only insofar as it directs the Petitioner to pay a sum of



Rs.4,02,16,500/- as rental compensation to the Respondents herein. In all other respects, the Award does not call for interference. The Original Petition No.761 of 2019 is disposed of on the above terms without any order as to costs. At the time of admission, a conditional stay of the Award was granted subject to the Petitioner depositing in fixed deposit 50% of the sum awarded towards rental compensation along with interest up to the date of the petition. This order was complied with. In view of the Award being up held except as regards rental compensation, this amount shall be retained in fixed deposit until the 30% built-up area share of the Respondents is handed over as per the Award and the Agreement. If necessary, the Petitioner shall renew the fixed deposit. Consequently, all the pending Applications are disposed of or closed on the above terms. Both parties are entitled to institute fresh proceedings if arising out of a distinct cause of action.

Sd./-S.K.R.J.
01.02.2022

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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