



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 18.05.2022

+ O.M.P. 3/2020

SHAILENDRA PAUL

..... Petitioner

Versus

MUKESH AGGARWAL

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. P.S. Bindra, Sr. Adv. with Mr. Dhruv Madan, Advocates.
For the Respondent : Mr. Sushant Kumar and Ms. Shikha Singh, Advocates.

CORAM:

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENTVIBHU BAKHRU, J

1. The petitioner has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter '**the A&C Act**') impugning an arbitral award dated 31.12.2019 (hereinafter '**the impugned award**') rendered by an Arbitral Tribunal comprising of a Sole Arbitrator (hereinafter '**the Arbitral Tribunal**').

2. The impugned award was rendered in the context of disputes that have arisen between the parties in relation with the Collaboration Agreement dated 24.10.2010 (hereinafter '**the Collaboration Agreement**').



Factual Context

On 13.01.2006, the petitioner purchased the property bearing number F-20, Geetanjali Enclave, New Delhi – 110017. Thereafter, on 24.10.2010, the petitioner and the respondent entered into the Collaboration Agreement, wherein the parties had agreed to demolish the existing structure and reconstruct the building with a basement, ground floor, first floor, second floor, third floor and terrace (hereafter **‘the Entire Property’**) in terms of the quality standards as detailed out in Annexure A of the Collaboration Agreement. Further, the respondent agreed to pay the petitioner a sum of ₹1,90,00,000 against the rights of the second floor of the Entire Property (hereinafter **‘the Second Floor’**). The relevant Clauses of the Collaboration Agreement are set out below:

“That in addition to the Builder incurring the entire costs and expenses, etc. the Builder has agreed to pay a sum of Rs.1,90,00,000 (Rupees one crore ninety lacs only) to the Owner as the consideration, in the manner detailed in this Agreement, against the rights, in the portion of the property to be transferred in favour of the Builder or its nominee/s on the completion or during the course of construction of the building.

This consideration shall be payable to the Owner at the time the Builder enters into any Agreement to sell the Builder’s Allocation to any person(s). Out of the payments so received at this time, the Owner shall receive a sum equivalent to the percentage this consideration bears to the sale consideration of the Builder’s Allocation. The balance consideration shall also be received and shared between the Owner and Builder in the same manner.

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That the Builder shall handover the vacant and physical possession of the Owners' allocation at first and only thereafter the builder shall deliver the vacant and physical possession of the Portion falling on its share to the prospective buyer(s) of the Builder's portion.

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That the Builder undertake to complete the proposed building to the satisfaction of the Owner by 31st March 2012 extendable by a grace period of one month, subject to FORCE MAJEURE and further if delay is occasioned for any reason of any act or legislation or restriction, prohibition or restrained imposed by any Statutory Body and or Governmental Authority, no liability shall attach to the Builder.

That in case the Builder fails to complete the construction of the proposed building within the above stipulated period and the completed, vacant, physical possession of the Owner's Allocation is not handed over to the Owner, then the Builder shall be liable to pay liquidated damages to the tune of Rs.10,000/- (Rupees ten thousand only) per day to the owner.

That In case the building is not completed by the stipulated date or extended period as stated above, then the Owner shall be free to re-enter the Said Property and complete the then remaining work at the cost and expense of the Builder besides recovering liquidated damages as agreed earlier."

3. Thereafter, on 14.11.2011, the petitioner issued a 'No Objection Certificate' to the respondent. The said certificate was for the purpose of the respondent to enter into an agreement to sell the Second Floor. The petitioner avers that on the same day, the respondent entered into an Agreement to Sell in respect of the Second Floor (hereinafter '**the ATS**'), with one Mr Sharad Bhansali, whereby he agreed to sell the



Second Floor for a sum of ₹5,37,50,000/-. It was acknowledged that out of the aforesaid consideration, a sum of ₹3,00,00,000/- had been received by the respondent and the balance payment would be made by Mr Sharad Bhansali in the following manner: (i) a sum of ₹50,00,000/- before 30.11.2011; (ii) a sum of ₹1,00,00,000 before 28.12.2011; and (iii) a sum of ₹87,50,000/- on execution and registration of the sale deed and when possession of the Second Floor was handed over to him.

4. The respondent has set up another version of the ATS, which is identical to the ATS as referred to by the petitioner except for two pages (page nos. 4 and 5). In terms of this ATS, the consideration for the Second Floor is reflected as ₹2,85,00,000/-. It is acknowledged that a sum of ₹2,10,00,000/- was received and the balance ₹75,00,000 would be paid in two tranches; ₹25,00,000/- on or before 30.11.2011 and ₹50,00,000/- on or before 25.12.2011.

5. The respondent made payments to the petitioner through certain cheques: (i) a sum of ₹80,00,000 by cheque number 381047 dated 14.11.2011; (ii) a sum of ₹10,00,000 by cheque number 784858 dated 07.01.2012. It is averred in the petition that on 16.02.2012, the respondent took a sum of ₹7,00,000/- from the petitioner on some pretext. Thus, effectively, the petitioner accepts that he has received a sum of ₹83,00,000/- from the respondent. However, the respondent claims that he has paid the entire consideration, as payable under the Collaboration Agreement, to the petitioner.



6. The petitioner claims that on 31.03.2012, the respondent requested the petitioner to grant him a grace period of one month as stipulated in the Collaboration Agreement, as the respondent had failed to complete the construction of the Entire Property. However, the respondent failed to complete the said construction even during the extended period.

7. The petitioner states that thereafter, on 25.07.2012, the respondent fraudulently issued a Letter of Possession of the Second Floor to Mr. Sharad Bhansali without granting possession of the remaining portion of the Entire Property to the petitioner.

8. The petitioner further claims that the construction of the building was incomplete. The electricity connection, water supply and lift were installed in the months of September, 2012, November, 2013 and June, 2014 respectively. The petitioner also states that on or before 21.04.2013, the respondent abandoned the building. Consequently, for protection of the building, he had to keep a security guard/caretaker inside the premises. This resulted in the petitioner incurring additional costs. The respondent countered the claim and states that the petitioner was in possession of all floors except the Second Floor, being the basement, first floor, third floor and terrace of the Entire Property (hereinafter '**the Property**')

9. On 01.05.2014, Mr. Sharad Bhansali filed a petition under Section 9 of the A&C Act (being OMP No 490/2014) before this Court arraying the petitioner and respondent as respondents. He prayed for an



interim order, *inter alia*, restraining the parties from disturbing the possession of the Second Floor. This Court, by an order dated 02.05.2014, directed the parties to maintain *status quo* with regard to the title and possession of the Second Floor. Thereafter, on 19.01.2015, this Court referred the parties to mediation. However, the said mediation failed as recorded in the Mediator's report on 29.10.2015.

10. In view of the disputes between the parties, the petitioner, by a letter dated 05.12.2015, invoked the agreement to refer the disputes to arbitration. The petitioner also filed a petition under Section 9 of the A&C Act [being OMP (I) 642/2015] before this Court, *inter alia*, praying that the respondent be directed to deposit the amount of ₹2,78,00,000/-.

11. The petitioner avers that thereafter, he inspected the incomplete building in the month of November, 2015 and alleges that the respondent threatened him. It is further averred that on 03.12.2015, the respondent vandalized the Entire Property including breaking the locks. The same was informed to the petitioner by the security guard/caretaker and the petitioner, thereafter, rushed to the spot and filed a police complaint regarding the same. The said police complaints were made on 30.10.2015, 03.12.2015, 04.12.2015 and 10.12.2015.

12. On 11.12.2015, this Court passed an order directing the respondent to provide a chart of payments made to the petitioner. Thereafter, on 16.12.2015, the respondent filed his reply, *inter alia*,



affirming that the agreed consideration for sale of the ATS was in excess of ₹4.5 crores and that he was in possession of the Property.

13. By an order dated 21.12.2015, this Court directed the petitioner to execute a sale deed with respect to the Second Floor and directed the respondent to hand over the Property to the petitioner in the presence of a Local Commissioner. The Court also appointed a Technical Expert to inspect the Property (premises falling into the share of the petitioner). At the request of the learned counsel for the parties, this Court appointed the learned Sole Arbitrator. Further, the Court directed the respondent to maintain *status quo* with respect to his shares in Vrindavan Infotech Private Limited and deposit a sum of ₹15,00,000/- with the Registrar General of this Court. The said petition was also directed to be treated as an application under Section 17 of the A&C Act.

14. Thereafter, on 15.02.2016, the respondent handed over possession of the Property to the petitioner in presence of the Court appointed Commissioner.

15. On 22.02.2016, the learned Sole Arbitrator entered upon reference.

16. Before the Arbitral Tribunal, the petitioner filed the Statement of Claims on 27.04.2016. The claims made by the petitioner in the Statement of Claims are tabulated below:-

Claim no. 1	Unpaid contractual amount	₹1,07,00,000
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Claim no. 2	Interest on unpaid contractual amount	At the rate of 12% per annum on ₹1,07,00,000 from 01.05.2012 till date and <i>pendente lite</i> and future interest
Claim no. 3	Damages for incomplete work	₹40,00,000
Claim no. 4	Liquidated Damages	₹1,38,60,000
Claim no. 5	Other liabilities as stipulated under the Contract	(A) ₹61,410/- as electricity charges (B) ₹1,16,001/- towards completion and fixation of repairs of lift (C) Costs towards clearing all liabilities such as house tax, water charges, ground rent, and any other liability that may have arisen during the possession and construction of the building as was to be payable by the respondent under the Collaboration Agreement.
Claim no. 6	Costs of litigation	

17. The respondent disputed the aforesaid claims. It also raised certain counter-claims in its Statement of Defence. The same are tabulated below:-



Counter Claim no.1	Recovery of ₹15,22,500/- in respect of carrying out additional work in the Property.
Counter Claim no. 2	Recovery of ₹5,92,900/- in respect of excess payment made in respect of the Agreement along with interest at the rate of 18% per annum from 09.01.2014 till date of recovery.
Counter Claim no. 3	Recovery of ₹1,30,00,000 along with interest at the rate of 24% on the investment made by the respondent in Vrindavan Infratech Pvt Ltd.
Counter Claim no. 4	₹2,00,00,000/- towards the estimated business profit earned on the investment made at the behest of the Claimant in Vrindavan Infratech Pvt Ltd.

18. By an order dated 15.10.2016, the Arbitral Tribunal held that Counter-claim nos. 3 and 4 could not be adjudicated by it as the same were not within the scope of the Collaboration Agreement.

19. Before the Arbitral Tribunal, on 28.07.2016, the respondent also filed an application under Section 17 of the A&C Act praying that directions be issued to release the sum of ₹15,00,000/- deposited with the Registrar General of this Court, in terms of the order dated 21.12.2015 passed by this Court.

20. The summary of the amounts awarded to the petitioner in terms of the impugned award, is set out below:



Description of claims	Amount Claimed	Amount Awarded
Unpaid Contractual Amount	₹1,07,00,000/-	Nil (Dismissed)
Interest on unpaid Contractual amount	12% from 01.05.2012	Nil (Dismissed)
Damages for incomplete Work.	₹40,00,000/-	Nil (Dismissed)
Liquidated Damages	₹1,38,00,000/-	₹6,00,000 (Partly allowed)
Electricity charges	₹61,410/-	₹10,717.40 (Partly allowed)
Repair of lift charges	₹1,16,000/-	₹1,16,000/- (Allowed)
Misc charges	Amount not disclose	Nil (dismissed)
Cost	Actual cost	Nil (dismissed)

21. The Arbitral Tribunal further held that the petitioner would be entitled to simple interest, *pendente lite* and future interest at the rate of 9% per annum, on the amount awarded to it till realisation.

22. The Arbitral Tribunal rejected all the counter claims preferred by the respondent.

23. By an order dated 31.12.2019, the Arbitral Tribunal also decided on the petitioner's application dated 05.12.2015 under Section 9 of the A&C Act and the respondent's application dated 28.07.2016 under



Section 17 of the A&C Act. The Arbitral Tribunal directed that from the amount of ₹15,00,000 deposited by the respondent, an amount of ₹7,50,000 be refunded to the respondent and the remaining amount be retained for the satisfaction of the amount awarded to the petitioner subject to final accounting.

24. Aggrieved by the impugned award, the petitioner filed the present petition.

Submissions

25. Mr. Bindra, learned counsel appearing for the petitioner assailed the impugned award on several grounds. First, he submitted that the view of the Arbitral Tribunal that the alleged fabrication and forgery of the ATS is not by the respondent and Mr Sharad Bhansali but on account of the petitioner, is erroneous. He contended that the consideration in the ATS is between the respondent and a third party and any alteration in the same will benefit these parties and the petitioner would not make any gains by changing the consideration in the ATS. He further contended that the Arbitral Tribunal had ignored that the petitioner had, in the petitions filed by Mr Sharad Bhansali before this Court under Sections 9 and 11 of the A&C Act, disputed and contested the ATS for a consideration of ₹2,85,00,000 since the year 2014.

26. He submitted that the respondent had neither in his reply to the petition filed under Section 9 of the A&C Act nor in his reply to the petitioner's Statement of Claims refuted or disputed that the ATS



disclosing the consideration of ₹5,37,50,000/-, is not the correct agreement.

27. Next, he submitted that that there was also no record of any proceedings, indicating that the petitioner was requested to consent to the impleadment of Mr Sharad Bhansali and the petitioner had opposed the same. He contended that the petitioner had never opposed joining Mr Bhansali as a party to the arbitration and the Arbitral Tribunal had erred in drawing an adverse inference on the said assumption.

28. He submitted that the petitioner had raised his claims within the period of limitation as the sale deed with respect to the Second Floor was never executed and thus, the last cause of action had not arisen in the month of December, 2011. He contended that the limitation period would commence from when the petitioner gained knowledge of fraud regarding the ATS on 01.05.2014; or when the mediation ended in the year 2015; or when the possession of the Property was handed over on 15.02.2016. He relied on the decisions of the Supreme Court in *Oil and Natural Gas Commission v M.C. Clelland Engineers, SA: (1999) 4 SCC 327* and of this Court in *Uppal Engineering Company Pvt. Ltd v. Abhinav Cooperative Group Housing Society Limited And Ors: 2008 (104) DRJ 468*, in support of his contention.

29. He submitted that the finding of the Arbitral Tribunal that the petitioner did not prove that the signatures of the respondent and third party were forged; and, the market value of the property was around ₹5,37,50,000/- is erroneous inasmuch as, the said signatures could not



be proved by the petitioner as the two pages bearing the consideration amounts were replaced and re-signed only by the respondent and third party. He contends that they had interpolated the two pages and re-signed it to de-fraud the petitioner. And therefore, since the signatures were not of the petitioner, the same could never be proved. Further, the market value of the properties in the area was accepted by the respondent to be above ₹4.5 crores, including accepting that the ATS disclosed a consideration of ₹5,37,50,000.

30. Next, he contends that the Arbitral Tribunal had ignored the principle of law that the period spent by the parties in mediation, is to be excluded for the purpose of computing the period of limitation. He referred to the decisions of the Supreme Court in *Geo Miller & Co. v Chairman, Rajasthan Vidyut Utpadan Nigam Ltd.:2019 SCC Online SC 1137* and *Hari Shankar Singhania v Gaur Shankar Singhania: (2006) 4 SCC 658*, in support of his contention.

31. Lastly, he submitted that the Arbitral Tribunal's finding that the petitioner's claims were barred by limitation as the petitioner was in possession of the Property prior to 25.07.2012 is beyond the pleadings. The petitioner had no opportunity to meet this case. He contended that the Arbitral Tribunal had set up a new case beyond the pleadings.

32. Mr Kumar, learned counsel appearing for the respondent, countered the aforesaid submissions. He submitted that the award passed by the Arbitral Tribunal is detailed and well-reasoned and the



same does not warrant any interference from this Court under Section 34 of the A&C Act.

33. He further submitted that present petition is liable to be dismissed in *limine* as the review of an arbitral award on merits is not permitted. He referred to the decisions of the Supreme Court in *Ssangyong Engineering & Construction Co. Ltd. vs. National Highways Authority of India Ltd.*: 2019 SCC OnLine SC 677, *J.G. Engineers Private Limited v. Union of India & Anr.*: (2011) 5 SCC 758 and *Associate Builders v. Delhi Development Authority*: (2015) 3 SCC 49, in support of his contention.

Reasons and Conclusion

34. The principal claims made by the petitioner were rejected by the Arbitral Tribunal, essentially, on the basis of findings that: (i) the petitioner had taken over possession of the Property prior to 01.05.2012 and/or 25.07.2012; and, (ii) that the version of the ATS (Agreement to Sell dated 14.11.2011 between the respondent and Sharad Bhansali) as relied on by the respondent – which recorded the agreement to sell the Second Floor at a total consideration of ₹2,85,00,000/- (Rupees Two crores and eighty five lacs) – was genuine and the petitioner's version of the ATS, which recorded the consideration of the Second Floor as ₹5,37,50,000/-, was not genuine.

35. On the basis of the above, the Arbitral Tribunal rejected the petitioner's claim for balance consideration of ₹1,07,00,000/- payable



under the Collaboration Agreement and interest thereon as barred by limitation.

36. The petitioner's claims regarding damages for incomplete work (Claim no.3) was rejected, *inter alia*, on the basis that the petitioner had taken over possession of the Property way back in 2012. The petitioner's claim for liquidated damages (Claim no.4) was partly allowed. Similarly, the claim for electricity charges (Claim 5A) was partly allowed and the claim for utilities/property tax charges etc. (Claim 5C) was rejected, on the ground that the charges claimed were for the period when the petitioner was in possession of the Property.

Re: Fabrication of ATS

37. The question whether the ATS (Agreement to Sell dated 14.11.2011) as relied upon by the petitioner was genuine or fabricated is relevant, principally, for two reasons. First, because the Collaboration Agreement between the parties contemplated that the payment of consideration of ₹1.9 crores due to the petitioner would be discharged in the same proportion as receipt of consideration for the sale of the Second Floor. If the petitioner's version of the ATS is found to be genuine, it would, to some extent, explain why the petitioner had received a sum of only ₹83 lacs and the balance ₹1.07 crores was deferred.

38. Second, because the said agreement contemplates that Mr Sharad Bhansali would pay the last tranche of the consideration amounting to ₹87,50,000/- on execution and registration of the sale deed. It would



follow that the petitioner would also be entitled to receive a part of the agreed consideration payable under the Collaboration Agreement at the time of execution of the sale deed conveying the Second Floor. Since the sale deed has not been executed as yet, the cause of action for receiving the entire amount has not arisen. If the version of the ATS relied upon by the respondent is accepted – which the Arbitral Tribunal has – then no amount would be payable by Mr Sharad Bhansali at the time of the execution and registration of the sale deed as the last tranche of consideration was payable on or before 28.12.2011.

39. In view of the above, the first and foremost question to be examined is whether the Arbitral Tribunal's finding that the version of the ATS as relied upon by the petitioner was fabricated, is erroneous. The last page of the said ATS was signed by the petitioner as a witness. The ATS spans over eight pages and there is no dispute with regard to the genuineness of all pages except page nos. 4 and 5.

40. Clause 1 of the Agreement at page no.4 of the ATS records the total consideration payable by Mr Sharad Bhansali to the respondent for the Second Floor and page no.5, *inter alia*, records the manner in which the said payments are to be discharged. The version of the ATS, as relied upon by the respondent, records the total consideration for the Second Floor as ₹2,85,00,000/-. The receipt of a sum of ₹2,10,00,000/- is acknowledged. Clause 3 expressly provides that the remaining payment would be made in two tranches - ₹25 lacs on or before 30.11.2011 and ₹50 lacs on or before 28.12.2011. Clause 4 further records that no payment would be made at the time of execution of the sale deed.



Clauses 1, 2, 3 and 4 of the ATS of the two versions – one set up by the petitioner and the other set up by the respondent, are relevant and set out below:

ATS (the petitioner's version):

- “1. That in consideration of a sum of Rs.5,37,50,000/- (Rupees Five Crores Thirty Seven Lakhs and Fifty Thousand only), the First Party do hereby agree to grant, convey, sell, transfer and assign all their rights, title and interests, in the said portion of the said property, fully described above to Second Party, on the terms and conditions herein contained provided that nothing herein stated shall confer or deemed to have conferred upon the Second Party exclusively any right or title to the common driveway, staircase, lift, overhead, sewers. Water meters and other common facilities to the exclusion of the ‘Owner’ or other occupants of the other units of the Said Property.
2. That out of the sale consideration the First Party has received a sum of Rupees 3,00,00,000/- (Rupees Three Crores only) in the following manner:
 - i) A sum of Rs.2,10,00,000/- (Rupees Two Crores and ten Lakhs only) by way of cheque no. 226623 dated 14.11.2011 drawn on HDFC Bank, Geetanjall Enclave, New Delhi - 110017;
 - ii) A sum of Rs.90,00,000/- (Rupees Ninety Lakhs only) in cash. The receipt of which the First Party hereby acknowledges and confirms.
3. That out of the balance consideration the Second Party shall pay a further sum in the following manner:



- i) A sum of Rupees 50,00,000/- (Rupees Fifty Lakhs only) on or before 30th November 2011; and
 - ii) A sum of Rupees 1,00,00,000/- (Rupees One Crores only) on or before 28th December 2011
4. That the remaining sum of Rs.87,50,000/-(Rupees Eighty Seven Lakhs and Fifty Thousand only) shall be paid, when the Sale Deeds are executed and registered and possession of the said portion of the said property is handed over to the Second Party as per the terms and conditions of this Agreement and in accordance with the said Collaboration Agreement. Time being the essence of this Agreement for the payment of the consideration.”

ATS (the respondent's version):

- “1. That in consideration of a sum of Rs.2,85,00,000/- (Rupees Two Crores Eighty Five Lakhs only), the First Party do hereby agree to grant, convey, sell, transfer and assign all their rights, title and interests, in the said portion of the said property, fully described above to the Second Party, on the terms and conditions herein contained provided that nothing herein stated shall confer or deemed to have conferred upon the Second Party exclusively any right or title to the common driveway, staircase, lift, overhead, sewers. Water meters and other common facilities to the exclusion of the ‘Owner’ or other occupants of the other units of the Said Property.
2. That out of the sale consideration the First Party has received a sum of Rupees 2,10,00,000/- (Rupees Two Crores Ten Lakhs only) in the following manner:
 - i) A sum of Rupees 2,10,00,000/- (Rupees Two Crores Ten Lakhs only) by way of cheque no. 226623 dated



14.11.2011 dated drawn on HDFC Bank, Geetanjali Enclave, New Delhi 110017;

The receipt of which the First Party hereby acknowledges and confirms.

3. That out of the balance consideration the Second Party shall pay a further sum in the following manner:
 - i) A sum of Rupees 25,00,000/- (Rupees Twenty Five Lakhs only) on or before 30th November 2011; and
 - ii) A sum of Rupees 50,00,000/- (Rupees Fifty Lakhs only) on or before 28th December 2011.
4. That there will be no balance amount that shall be payable when the Sale Deed is executed and registered and possession of the said portion of the said property is handed over to the Second Party as per the terms and conditions of this Agreement and in accordance with the said Collaboration Agreement. Time being the essence of this Agreement for the payment of the consideration.”

41. Obviously, page nos. 4 and 5 of one of the versions of the ATS have been interpolated. The Arbitral Tribunal had concluded that the fabrication and forgery, if any, was done by the petitioner and not by the respondent. The said conclusion was drawn, essentially, for three reasons. First, that the petitioner had, during the cross-examination of the witness (RW-1), put it to the witness that the cost of construction of the entire property was less than ₹90 lacs, which was denied by the respondent. The Arbitral Tribunal concluded that the said statement was obviously incorrect and therefore, it was not open for the petitioner to rely on certain statements made by the respondent, as well as, more



particularly, the respondent's statement that the total consideration for the Second Floor of the property was more than ₹4,50,00,000/-.

42. Second, that the petitioner had not established the market price of the Second Floor. And third, that the petitioner would benefit from the replacement of two pages.

43. The said reasoning was manifestly erroneous and clearly, not a plausible view. The petitioner had filed a petition under Section 9 of the A&C Act [being ***OMP(I) 642/2015: Shalendra Paul v. Mukesh Aggarwal***]. In its reply dated 16.12.2015, the respondent had admitted that the sale price of the Second Floor was in excess of ₹4.5 crores. Paragraph 2 of the reply filed by the respondent to the petition filed by the petitioner in ***OMP(I) 642/2015: Shalendra Paul v. Mukesh Aggarwal*** is relevant and set out below:

“2. That the Respondent states that the present petition has been filed with the aim and objective of arm twisting the Respondent to forgo his claims against the Petitioner in respect of other investments made jointly by the parties as well as to extract an extra ounce of flesh from the profits made by the Respondent by sale of the Second Floor/ Builder's allocation in the suit property. It is submitted that before entering into collaboration agreement dated 24.10.2010 the parties had pre estimated that the Cost of Construction would be Rs. 2.25 Crores and the Payment to the Owner in respect of the said Building was Rs. 1.40 Crores. However at the instance of the Petitioner to revise the cost of building, the Respondent agreed to increase the



same to Rs.1.90 Crores. Thus the total outlay for the Builder would be Rs. 4.15 Crores which the builder had to recover by selling his allocation in the said Building. The parties had also estimated that upon the Respondent would have a profit margin of approximately Rs. 35 to 45 Lacs on his allocation. Thus the over all selling price of the Builder's Allocation was approximately Rs. 4.50 Crores. However, as the said flat was sold for an amount much beyond the pre estimated amount, the Owner/ Petitioner has been asking for his extra share in the said profit and the Builder/ Respondent having refused to share has led to the present dispute.”

44. The petitioner, in his petition under Section 9 of the A&C Act, had averred, *inter alia*, as under:

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- (vii) The Respondent entered into an Agreement to Sell with respect to the Builders Allocation as under the Collaboration Agreement with the above said Mr. Sharad Bhansali dated 14.11.2011 (hereinafter referred as ‘**Agreement to Sell**’). The Petitioner is a witness to such Agreement to Sell, and was given a photocopy of the same. The document is hereto annexed as **Annexure P-4**.
- (viii) This photocopy of the Agreement to Sell as witnessed by the Petitioner states a sum of Rs. 5,37,50,000/- (Rupees five crore thirty seven lakhs and fifty thousand only) as the total consideration towards the share of the Respondent.



- (ix) Mr. Sharad Bhansali and the Respondent do not dispute that the Respondent has received a sum of Rs. 2,85,00,000/ (Rupees two crores eighty five lakhs only) as claimed in the Arbitration Petition No. 212/2014 and OMP No. 490/2014 as filed by Mr. Sharad Bhansali only with respect to the Second Floor of the building. The receipts as claimed by Mr. Sharad Bhansali and not disputed by the Respondent are annexed hereto as **Annexure P-5 (Colly).**”

45. The petitioner had also produced a photocopy of his version of the ATS. The respondent had, in its reply, expressly admitted that the contents of aforesaid paragraphs were a matter of record and needed no reply. Thus, the respondent had admitted the document in question (that is, the ATS as relied upon by the petitioner).

46. It is apparent from the above that the respondent had clearly admitted that the consideration for the sale of Second Floor was in excess of ₹4.5 – ₹4.6 crores. In this view, the conclusion that the ATS relied upon by the petitioner was fabricated and the other version relied upon by the respondent that reflected the lower consideration was genuine, is clearly not a plausible view.

47. In so far as the petitioner’s suggestion to the respondent regarding cost of construction is concerned; the petitioner had cross-examined the witness (RW-1) and put a suggestion whether the cost of construction was less than ₹90 lacs. This was, obviously, to point out that the consideration of ₹2.85 crores meant that the respondent would have to complete the construction of the Entire Property in ₹90 lacs, considering



that it had agreed to pay a sum of ₹1.9 crores to the petitioner. It is the petitioner's case that the Second Floor was agreed to be sold to Mr Sharad Bhansali for a sum of ₹5,37,50,000/-

48. Given that the respondent had admitted in its reply that the consideration was beyond ₹4.6 crores (₹4.15 crores plus ₹35-45 lacs as profit), there was no ground whatsoever for the Arbitral Tribunal to conclude that the agreed consideration of ₹2.85 crores, as mentioned in the ATS relied upon by the respondent, was genuine.

49. The reasoning that the petitioner would have committed forgery as it would benefit from the same, is also equally difficult to accept. The ATS was between Mr Sharad Bhansali and the respondent and any increase or decrease in the consideration would not benefit the petitioner in any manner. It would, however, to some extent explain why the petitioner had not received the entire consideration payable to him under the Collaboration Agreement.

50. This Court had also pointedly asked the learned counsel for the respondent whether there was any explanation for the statements affirmed in the respondent's reply to the petitioner's application under Section 9 of the A&C Act, as concluded above. He had fairly expressed his inability to offer any explanation.

51. The impugned award indicates that the Arbitral Tribunal had also sought to draw adverse inference on the ground that the petitioner had objected to impleadment of Sharad Bhansali. However, there is nothing



on record to suggest that the petitioner had resisted any application to the said effect.

52. Mr Bindra, learned senior counsel appearing for the petitioner, had stated that there was also no record of any proceedings where the petitioner was requested to consent to the impleadment of Mr Sharad Bhansali and the petitioner had opposed the same. The learned counsel for the respondent was unable to controvert the aforesaid submission.

53. Since there is no doubt that the consideration for the sale of the Second Floor was more than ₹4.6 crores, as admitted by the respondent, the obvious inference is that the ATS as relied upon by the respondent was not the correct one.

Re: Possession of the Property

54. The controversy as to when the possession of the Property was handed over to the petitioner, is a contentious one. The Arbitral Tribunal had rightly noted that both the parties had taken varying stands at different stages and in different proceedings.

55. It was the petitioner's case in its petition under Section 9 of the A&C Act [OMP(I) 642/2015 (*supra*)] that the respondent had abandoned the building and therefore, the petitioner had placed its guard/watchman on the ground floor of the Entire Property with effect from 21.04.2013. The petitioner had averred that although he had the keys of the basement, ground floor, first floor and the third floor along with terrace, however, the respondent had declined to handover the



duplicate keys and was thus, threatening the petitioner's peaceful possession. The petitioner had further averred that in the months of October, 2015 to November, 2015, he had started work to complete the incomplete portion of the building. The petitioner further alleged that on 03.12.2015, the respondent along with several of its associates had tried to forcibly re-enter the building and snatched the keys from the caretaker/*chowkidar*. In the context, the petitioner had sought directions from this Court to restrain the respondent from disturbing its vacant and peaceful possession of the Property (that is, the basement, ground floor, first floor, third floor and terrace).

56. The respondent had also, at the same stage, claimed possession of the Property. The respondent had filed a complaint dated 30.10.2015 with PS Malviya Nagar stating that he had developed the Entire Property and sold his share (that is, the Second Floor) to Mr Sharad Bhansali. However, he had continued to enjoy the possession of the other floors (that is, the Property) because the petitioner had not registered the Second Floor in the name of Mr Sharad Bhansali. The relevant extract of the said complaint is set out below:

“Under the aforesaid Collaboration Agreement, it was agreed between us that upon completion of the said building consisting of ground Floor plus 3 Floors above the same, the builder will get 2nd Floor as his share while the other floors will be handed over to the Owner i.e. Mr Shailender Paul. It was agreed that the Builder shall have complete possession of the building till the formal handing to the Owner. It was also agreed that Builder shall be free to sell his share in the Property i.e. 2nd Floor



to any third party of his choice and the Owner shall get the property registered in the name of the Builder of any Third Party as nominated/ informed by the Builder.

I have sold my share in the Building (2nd Floor) to Mr Sharad Bhansali and he is in possession of the said floor, while I continue to enjoy the possession over other floors as the Owner has yet to get the 2nd Floor registered in the name of Shri Sharad Bhansali.

While I continued to enjoy complete possession on other floors, on around 22nd /23rd of October 2015 Mr Shailnder Paul sent his persons to enter the Third Floor in the garb of carrying out repairs and maintenance work. Upon refusal by the caretaker to allow such entry, the workers/ agents employed by Mr Shailnder Paul forced their entry into the premises. However, somehow by some or the other reasons, excuse they left the place. I anticipate that they may try to enter the premises again and make forcible entry causing loss of life and property.”

57. The petitioner had also filed the complaint on 03.12.2015 with the SHO claiming that the respondent had abandoned the Entire Property and he was maintaining the Property from 21.04.2013.

58. The Arbitral Tribunal had, after considering the material on record, concluded that the petitioner must have been in possession of the Property prior to July 2012. Thus, the conclusion was largely based on the premises that the petitioner, being a lawyer, would not have permitted or tolerated the respondent handing over possession of the Second Floor to a third party without receiving the possession of the remaining property (the Property), which he was entitled to.



59. It is material to note that in the proceedings before this Court relating to the petition filed by the petitioner under Section 9 of the A&C Act [OMP(I) 642/2015 (*supra*)], it was the respondent's case that the petitioner was never in possession and the respondent had continued to be in possession from 31.03.2012 till 16.12.2015.

60. At this stage, it is also relevant to refer to the orders passed by this Court on 11.12.2015 and 21.12.2015 in the petition filed by the petitioner under Section 9 of the A&C Act [being **OMP(I) 642/2015** captioned ***Shalendra Paul v. Mukesh Aggarwal***]. The relevant extract of the said orders is set out below:

Order dated 11.12.2015

“Notice. Mr. Sushant Kumar, Advocate, accepts notice. He seeks and is granted four weeks' time to file a reply. Rejoinder, if any, be filed before the next date of hearing.

As per the Collaboration Agreement dated 24th October, 2010, the respondent/builder was supposed to pay an amount of Rs.1,09,00,000/- as consideration for certain rights being granted in the suit property, i.e., F-20, Geetanjali Enclave, New Delhi. The respondent was supposed to build a new structure of which the second floor was apportioned to him, subject to his having met the other commitments as per the Agreement.

According to Mr. Chetan Sharma, the learned Senior Advocate for the petitioner, only an amount of Rs.83,00,000/- has been paid. Therefore, pending the receipt of the balance amount of Rs.1,07,00,000/-, the petitioner cannot be compelled to execute any Sale Deed



in favour of third parties. Furthermore, the rights of the respondent/builders would not crystallize till the said amount has been paid to the petitioner. The learned counsel for the respondent says that the amount has been paid. However, he seeks some time to submit the details thereof.

The learned Senior Advocate for the petitioner further submits that time was of the essence of the contract and the respondent/builder was supposed to complete the building to the satisfaction of the petitioner/owner by 31st March, 2012 extendable by a grace period of one month, failing which the builder was supposed to pay the petitioner the liquidated damages @ Rs.10,000/- per day. The property has not been delivered to the petitioner till date. Therefore by a simple calculation, the amount due to the petitioner would be far more than Rs.1,07,00,000/- - the balance sale consideration. Furthermore, it is the petitioner's case that he has accepted Rs.40,00,000/-.

The learned counsel for the respondent submits that without prejudice to his rights and contentions, the respondent is ready and willing to abide by the terms of the Collaboration Agreement, *de hors* two police complaints against the petitioner and various transgressions by him apropos the Collaboration Agreement. Indeed, the petitioner himself has given a confirmation letter dated 14th November, 2015 conveying his no objection to Agreement to Sell being entered into between the respondent and one Mr. Sharad Bhansali.

The learned counsel for the respondent submits that he will take instructions as to how the payments have been made and also file a reply especially with respect to the two Agreements (at pages 26 and 57 of the paper-book). He relies upon the following clauses of the Collaboration Agreement:



“It is also agreed that in case the Builder is not able to sell the Builder’s allocation, within the time framework fixed for completion of construction, then in that event, the Owner shall have a right to have the Builder’s Allocation back to himself by paying a sum equivalent to cost of construction plus 15% of the cost and on payment of such sum, the Builder shall have no right, title and interest of any nature whatsoever on the Builder’s Allocation.

That the Owner in accordance with the terms and conditions herein recorded have placed at the complete disposal of the Builder, the vacant and physical possession of the said property and from the date hereof, possession of the said property shall irrevocably vest in the Builder, with all the powers and authorities of the Owner as may be considered necessary by the Builder for the sole purposes of obtaining the requisite permissions, sanctions of the concerned authorities for demolition/reconstruction of the proposed building. However, the Builder shall hand over the possession of the Owners’ allocation to the Owner upon completion of the building.

That the Owner and the Builder shall have proportionate rights in all common entrances, passages, staircases and all other common facilities and amenities provided in the proposed building in their respective driveways.

That the Builder shall engage and employ the Architect or Architects of repute at its own costs, expenses and responsibilities for preparation, submission and obtaining approvals for developing, promoting,



constructing and completing the said building on the said plot of land. The Builder shall for and on behalf of and in the name of the Owner apply to the MCDI DDA or such other authorities, as may be concerned, in the matter of permissions, sanctions, approvals for the construction on the said plot of land.”

The Court is *prima facie* of the view that in this Collaboration Agreement the rights of the owner would subsist in every way, as the owner of the suit property. It is not in dispute that the Builder has sold off the second floor of the property which has been in occupation and use by its purchaser/occupant. The learned counsel for the parties submit that ingress and egress of the purchaser/occupant shall not be disturbed.

The Court is of the view that the rights of the petitioner cannot be subverted by the Builder by not delivering the possession of the portion apportioned to the owner/petitioner. Accordingly, the latter would have right to access such portions of the building as have been apportioned in the Collaboration Agreement.

At this stage, the learned counsel for the parties would submit that an endeavour could well be made to settle the lis amicably, for which the learned counsel for the parties will explore all possible options.

List on 17th December, 2015.”

Order dated 21.12.2015

“With the consent of the leaned counsel for the parties, on instructions from the parties who are present in Court, the following order is passed:-

- i) The petitioner shall execute a Sale Deed apropos the second floor of property No.F-20, Lok Sewak



Cooperative House Building Society Ltd., Geetanjali Enclave, New Delhi in terms of Agreement at page 57 of the documents filed by the petitioner; and this will be without prejudice to the petitioner's contentions regarding the document at page 26 as read in the respondent's reply.

- ii) A Technical Expert shall inspect the premises falling into the share of the petitioner. The fees of the Technical Expert shall be shared equally between the parties. All taxes for the sale of the second floor shall be borne exclusively by the respondent because the monies for the said sale have been appropriated only by the respondent.
- iii) Ms. Smita Makhija, Architect (Mobile No.9868100960) is appointed as the Technical Expert who shall inspect the premises, in particular, all the portions of property No. No.F-20, Lok Sewak Cooperative House Building Society Ltd., Geetanjali Enclave, New Delhi which falls exclusively into the share of the petitioner apropos the nature, quality and extent of construction. Measurements and photographs etc. shall be taken and mentioned in the Report which shall be submitted to the learned Arbitrator (as appointed hereunder). Fees of the Technical Expert is fixed at Rs.85,000/- which shall be shared equally by the parties.

At the request of the learned counsel for the parties, Justice (Retd.) Anil Kumar (Mobile No.9818000140), a former Judge of this Court, is appointed as the Arbitrator. This petition shall be treated as an application under Section 17 of the Arbitration & Conciliation Act. The fees of the learned Arbitrator shall be in terms of Arbitration & Conciliation (Amendment) Ordinance, 2015. The property shall be handed over to the petitioner in the presence of the Local Commissioner.



Mr. Raman Kapur, the learned Senior Advocate for the respondent, submits that the respondent has shares in Vrindavan Infotech Pvt. Ltd., whose Registered Office is at 3, Mehrauli Road, Gurgaon-122001 which, in turn, owns a property ad measuring 777 sq. yds. at 29/4, Mehrauli Gurgaon Road, Near Dev Cinema, Gurgaon and that the respondent shall maintain *status quo* in every respect apropos the said shares. Mr. Kapur further submits that the value of the shares by liquidation would be about Rs.2,00,00,000/- and he shall file before the learned Arbitrator a Valuation Report in this regard, from a valuer as well as from a Chartered Accountant, supported by an affidavit of the respondent.

The respondent shall also deposit an amount of Rs.15,00,000/- within four weeks from today with the Registrar General of this Court and the same shall be kept in an interest bearing FDR.

Regarding the continuity of the deposit in the Court, the learned Arbitrator shall take a view on the Section 17 application in view of the Report filed before him. The Sale Deed shall be executed within one week after deposit of the aforesaid money in the Court.

The petition stands disposed off in the above terms.”

61. In compliance with the aforesaid orders passed by this Court, the respondent had handed over the possession of the Property to the petitioner on 15.02.2016 in the presence of the Local Commissioner appointed by this Court.

62. As is apparent from the above, the parties had taken contradictory stands regarding possession of the Property as per their convenience. Prior to commencement of the arbitral proceedings, none of the parties were willing to state the they did not have possession of the Property.



However, there was ample evidence on record such as dates when the utilities were connected (water and electricity), payment of watch and ward charges etc. The Arbitral Tribunal could have examined the rival contentions and material on record and taken an informed decision.

63. However, the Arbitral Tribunal proceeded to hold that the petitioner was in possession of the Property prior to 25.07.2012. This was neither the case of the respondent nor the petitioner at any point of time. In its Statement of Defence, the respondent had relied upon the petitioner's statement that he was in possession of the property since 21.04.2013. It was not the respondent's case that he had handed over possession of the Property to the petitioner on 25.07.2012 or any date prior to that. The Arbitral Tribunal assumed that since the respondent had claimed that he had handed over possession of the Second Floor to Mr Sharad Bhansali on 25.07.2012, the petitioner also came into possession of the Property around that time. There is no basis for the said assumption, considering that it was not even the respondent's case that he had handed over possession of the Property to the petitioner on 25.07.2012 or prior to that date.

64. The Arbitral Tribunal held that the respondent had forcefully taken over possession of the Property in the month of December, 2015 for about two months and he had thereafter, handed over possession of the Property to the petitioner on 15.02.2016.

65. The Arbitral Tribunal also ignored that Mr Sharad Bhansali had disputed that he was given physical possession of the Second Floor on



25.07.2012. In a separate proceeding instituted by Mr. Sharad Bhansali, he claimed that he had received possession of the Second Floor on 09.03.2013. The petitioner had also pointed out that the water connection was installed on 05.11.2013; the electricity connection was provided in the month of September, 2012 and the bills reflecting the energization date as 07.09.2012 were produced; the lift was installed and licence for the same was granted on 18.02.2014. Further, the Local Commissioner appointed by this Court to evaluate the state of construction of the Entire Property had also indicated that certain works were incomplete.

66. In view of the above, the Arbitral Tribunal's decision that the petitioner was in possession prior to 25.07.2012 is manifestly erroneous and without any evidence or pleadings whatsoever. Since the impugned award rests on the finding that possession was handed to the petitioner on or before 25.07.2012, it is vitiated by patent illegality.

Re: Claim for balance consideration of ₹1,90,00,000/- and interest thereon (Claim nos.1 and 2)

67. The petitioner claimed a sum of ₹1,90,00,000/- as the balance consideration payable in terms of the Collaboration Agreement as well as interest thereon. The respondent disputed the said claim, *inter alia*, on the ground that he had discharged the entire payments and no further payments were due to the petitioner. However, the Arbitral Tribunal did not accept the said contention. The Arbitral Tribunal found that the respondent had not produced any documents or books of accounts to



substantiate his allegations. Further, there was no corroborative material to support the respondent's claim that it had paid the agreed consideration. Notwithstanding the above, the Arbitral Tribunal rejected the petitioner's claim on the ground that the claims were barred by limitation.

68. The Arbitral Tribunal referred to the following clause of the Collaboration Agreement:-

“That in addition to the Builder incurring the entire costs and expenses, etc. the Builder has agreed to pay a sum of Rs.1,90,00,000 (Rupees One Crore ninety lacs only) to be Owner as the consideration, in the manner detailed in this agreement, against the rights, in the portion of the property to be transferred in favor of the Builder or its nominee(s) on the completion or during the course of construction of the building.

This consideration shall be payable to the Owner at the time the Builder entering into any Agreement to sell the Builder's Allocation to any person(s). Out of the payments so received at this time, the Owner shall receive a sum equivalent to the percentage his consideration bears to the sale consideration of the Builder's allocation. The balance consideration shall also be received and shared between the Owner and Builder in the same manner.

That the Builder shall obtain B 2 Form from MCD in respect of the newly constructed building. Furthermore, the Builder shall not hand over any portion of the building to anyone whatsoever prior to handing over the Owner's portions to the Owner.”

69. The Arbitral Tribunal reasoned that in view of the aforesaid clause, the petitioner was entitled to receive the entire consideration in the same proportion as the consideration payable under the ATS dated



14.11.2011. In terms of the ATS, as relied upon by the respondent, Mr Sharad Bhansali (purchaser of the Second Floor) was required to pay the last installment of the consideration by 28.12.2011 and therefore, the petitioner's cause of action to receive the balance consideration of ₹1.90 crores had arisen on 28.12.2012. Even in terms of the petitioner's version of the ATS, the penultimate tranche of the consideration was payable by Mr Sharad Bhansali on 28.12.2012

70. Since, the petitioner had invoked the arbitration by issuing a notice in the month of December, 2015 – that is, after a period of three years from 28.12.2012 – his claim was barred by limitation. The Arbitral Tribunal further reasoned that since possession of the Property was handed over to the petitioner on 01.05.2012 or 25.07.2012 and it had filed an application under Section 9 of the A&C Act on 05.12.2015, its claim was beyond the period of three years and therefore, barred by limitation.

71. This conclusion of the Arbitral Tribunal, is manifestly erroneous. As stated above, the averment that the petitioner was to receive the last tranche of the consideration on 28.12.2012 is premised on the basis that the respondent's version of the ATS, which records that the Second Floor was sold for a consideration of ₹2,85,00,000/- is genuine. As noted above, this is not a plausible view. However, even if the petitioner's version of the ATS is rejected – which this Court finds unreasonable to do – the Arbitral Tribunal failed to consider that the petitioner had not conveyed the title in respect of the Second Floor to Mr. Sharad Bhansali.



72. As noted above, under the terms of the Collaboration Agreement, the petitioner had agreed to convey the Second Floor in consideration of the respondent paying a sum of ₹1,90,00,000/- and constructing the Entire Property. Although, Mr. Sharad Bhansali has instituted proceedings seeking specific performance of the ATS and for execution of a sale deed of the Second Floor in his favour, the petitioner has not executed a sale deed as yet. In terms of the petitioner's version of the ATS, the balance sale consideration was to be paid with execution of the sale deed of the Second Floor and therefore, the said transaction had not closed.

73. It is difficult to accept that a party's claim to receive consideration for sale of a property would be barred by limitation even prior to the party conveying his title to the said property. Since the transaction for sale of the Second Floor in favour of Sharad Bhansali has not closed, the petitioner's right to claim the entire consideration in terms of the Collaboration Agreement – which includes consideration for conveying the built up Second Floor – cannot be stated to be barred by limitation, especially when the other party is supporting the claim for specific performance of the said transaction.

74. It is important to note that it is not the respondent's case that the petitioner is not bound to convey the Second Floor; on the contrary, the respondent is supporting Mr Sharad Bhansali's claim for conveyance of the Second Floor. It is patently erroneous to proceed on the basis that the petitioner can be compelled to transfer his title to the Second Floor but his claim for consideration is barred by limitation.



75. It is material to note that although the respondent had contended that the petitioner's claims were barred by limitation, he had not provided any particulars or reasons for raising the said assertion. The respondent had merely stated that the petitioner's claims were barred by limitation. In the absence of any averments regarding why the petitioner's claims were barred by limitation, the petitioner had no opportunity to effectively deal with the said contention. However, the Arbitral Tribunal has held that it was for the petitioner to establish that its claims were not barred by limitation. In the absence of any averment that the period of limitation would run from 28.12.2012 (the date on which Mr Sharad Bhansali was to pay part of the consideration for the Second Floor), there was no occasion for the petitioner to traverse the same.

76. As noticed above, it was also not the respondent's case that the petitioner was handed over possession on 25.07.2012 or prior to that date, which is one of the reasons mentioned by the Arbitral Tribunal for treating the petitioner's claim as barred by limitation. Thus, there was no occasion for the petitioner to meet the said case. The issue of limitation is a mixed question of fact and law and unless there are effective pleadings on the question of fact, it would be erroneous to premise a finding that the claims are barred by limitation.

Re: Damages for incomplete work (Claim no.3)

77. The petitioner had claimed a sum of ₹40,00,000/- as damages for incomplete work. He had relied upon the report of the Architect



appointed by this Court pursuant to an order dated 21.12.2005, in support of his contention. The said Architect had submitted a report dated 08.04.2017 and pointed out certain defects. The said report indicated dampness in certain areas but did not quantify the same.

78. The Arbitral Tribunal rejected the claim on, essentially, three grounds. First, that it was not explained as to how different quantities for curing the defects were concluded; second, that the possession of the Property was handed over to the petitioner prior to 25.07.2012 and it could not have been inferred that the defects had persisted since that date. And third, the Arbitral Tribunal noted that in terms of the Collaboration Agreement, the respondent had guaranteed that it would replace defective fittings and fixtures and carry out repairs regarding seepage, leakage, etc. for a period of three years from handing over the possession. However, there was no evidence or material on record to indicate that the petitioner had called upon the respondent to cure any defect at the material time.

79. It is apparent from the conclusion of the Arbitral Tribunal that it rests largely on the finding that the petitioner was handed possession of the Property prior to 25.07.2012. As noted above, the said finding is manifestly erroneous and therefore, the decision of the Arbitral Tribunal to reject the claim on that ground, cannot be sustained.

Re: Liquidated Damages (Claim no.4)

80. In terms of the Collaboration Agreement, the petitioner was entitled to an amount of ₹10,000/- per day as damages for the delay in



handing over the possession of the Property. The Arbitral Tribunal accepted that the damages, as quantified in the Collaboration Agreement, were required to be paid by the respondent. The petitioner had also established the prevalent rental for similar premises in the vicinity. Notwithstanding the same, the Arbitral Tribunal rejected the claim on the ground that the possession of the Property was handed over to the petitioner on 25.07.2012 or prior to that date. However, the Arbitral Tribunal also found that the respondent had forcefully taken over possession of the Property in the month of December, 2015 and thereafter, handed over possession to the petitioner on 16.02.2016 pursuant to the orders passed by this Court. Thus, the Arbitral Tribunal allowed the claim of liquidated damages for a period of two months (sixty days) and quantified the same at ₹6,00,000.

81. The conclusion of the Arbitral Tribunal in this regard is patently erroneous as it rests on the assumption that the petitioner was handed possession of the Property prior to 25.07.2012. As observed hereinbefore, this conclusion is patently erroneous as it was neither the petitioner nor the respondent's case that possession of the Property was handed over to the petitioner in the month of July, 2012 or prior to that date.

Re: Claim for the electricity bills and other charges such as house tax, water charges, ground rent etc. (Claim No. 5-A and 5-C)

82. The Arbitral Tribunal had rejected the petitioner's claims for compensation of the amounts paid on account of electricity, water charges, house property tax etc. on the ground that the petitioner was



handed over possession of the Property on 25.07.2012 and the claims raised for house property tax and other charges were prior to that date.

83. Insofar as the electricity charges are concerned, the bills produced by the petitioner were also for the period 21.07.2014 to 25.09.2015 and since the petitioner was held to be in possession of the Property, he was not entitled to any such claims. However, the Arbitral Tribunal awarded a sum of ₹10,717.40/- as electricity charges for the period December, 2015 to February, 2016. This was in view of the Arbitral Tribunal's finding that the respondent had forcibly taken over possession of the Property in the month of December, 2015 and handed it over to the petitioner in the month of February, 2016.

84. The finding that the petitioner was in possession of the Property prior to the month of July, 2012 is required to be set aside. The Arbitral Tribunal's decision regarding the petitioner's claim for electricity (Claim no.5A), is also liable to be set aside.

85. Insofar as the claim for house tax and other liabilities is concerned, the Arbitral Tribunal found that insufficient details were provided and held that a blanket order, as sought by the petitioner, could not be granted. This Court finds no infirmity with the said conclusion.

Re: Cost of Litigation

86. The Arbitral Tribunal has rejected the petitioner's claim for cost of litigation and found that both the parties had taken inconsistent stands and made incorrect statements before the Arbitral Tribunal and



therefore, were not entitled to any costs. This Court finds no infirmity with the said conclusion as well.

Conclusion

87. In view of the above, the impugned award to the extent it rejects the petitioner's claim for balance consideration and interest (Claim Nos. 1 and 2) as well claim for incomplete work (Claim no.3), is set aside. The impugned award in respect of the petitioner's claim for liquidated damages (Claim no.4) and electricity charges (Claim no. 5-A), is set aside in entirety.

88. The impugned award is set aside to the aforesaid extent. The petition is, accordingly, disposed of in the aforesaid terms.

89. The parties are left to bear their own costs.

VIBHU BAKHRU, J

MAY 18, 2022

pkv/RK