IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO.89 OF 2024

Esha Warrik and Anr. **...Petitioners**

V/s.

Dewan Housing Finance Corporation Ltd. **...Respondent**

Mr. Mahesh Vishwakarma *(through VC) for the Petitioners.*

CORAM: SANDEEP V. MARNE, J.
DATED: 21 NOVEMBER 2025.

P.C.:

1) This is a Petition under Section 34 of the Arbitration and Conciliation Act, 1996 challenging the Award passed by the Sole Arbitrator on 29 December 2017.

2) By the impugned Award, the learned Arbitrator has directed Petitioners to pay to the Respondent sum of Rs.20,65,612/- together with interest @18% per annum from 21 April 2017 till realisation. The Arbitrator has also declared right of lien of the Respondent over the mortgaged property and has permitted Respondent to recover the outstanding amount from the Petitioners by appropriating the monies, securities, assets or deposits of the Petitioners, which are in possession of the Respondents.

3) I have heard Mr. Vishwakarma, the learned counsel appearing for the Petitioners and have considered the submissions canvassed by him. I have gone through the findings recorded by the learned Arbitrator in the impugned order. I have also perused the records of the case.

4) The only point urged by Mr. Vishwakarma, is that Respondent-Financial Institution committed breach of contractual obligation by not timely releasing loan account, on account of which Developer imposed penalty on the Petitioners. It is submitted by him that since the act of Respondent is the cause for imposition of penalty by the Developer on the Petitioners, the Respondent cannot be awarded claim flowing out of the contract. In short, it is the case of the Petitioners that since Respondent-Financial Institution has committed breach of the Agreement, they could not seek to recover any amount from the Petitioners under the very agreement.

5) Though the agreement sought to be canvassed on behalf of the Petitioners appears to be attractive in the first blush, the same is actually misconceived. The Developer is not a party to the agreement executed between the Petitioners and the Respondent. Therefore, contractual obligation between Petitioners and Developers arising out of a separate contract cannot be used for the purpose of contractual obligations between Petitioners and Respondents flowing out of the loan agreement in question. In fact, it was wholly impermissible for the Arbitrator to look into the contractual covenants of the agreement executed between the Petitioners and Developer and nor it is permissible for the Arbitrator to rewrite the terms of the agreement. Arbitrator being creature of the contract, he is expected to act within four corners of

contractual covenants. In that view of the matter, no fault can be traced in the impugned Award, which does not upheld the defence raised by the Petitioners about breach of contractual obligations by the Respondent-Financial Institution leading to the Developer imposing penalty on the Petitioners. No ground is made out for interference in the impugned Award. Arbitration Petition is accordingly **rejected.**

6) It is however clarified that the issue of imposition of penalty by the Developer on the Petitioners is kept open to be agitated in appropriate proceedings.

[SANDEEP V. MARNE, J.]