

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

COMMERCIAL ARBITRATION PETITION NO.361 OF 2024

Sanjeev Sikandarlal Khurana & Anr.
V/S

....Petitioners

Siddheshwar Associates & Ors.

....Respondents

Mr. Ziyad Madon i/b Mr. V.S. Jadhav *for the Petitioners.*

Mr. Vineet Jagtap i/b M/s. Niranjana Jagtap & Co. *for Respondents.*

CORAM : SANDEEP V. MARNE, J.

DATE : 2 DECEMBER 2025.

P.C.:

1. This Petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 (**Arbitration Act**) taking exception to the Award of the learned sole Arbitrator dated 20 June 2022. By the impugned Award the learned Arbitrator has directed Respondents to pay to the Petitioner a sum of Rs.19,00,000/- alongwith interest at the rate of 12% per annum from 10 May 2017 till realization. The learned Arbitrator has further directed Respondents to comply with clause 15 as modified by Memorandum of Understanding (**MoU**) dated 18 September 2017 and Agreement for Sale dated 24 January 2018 with further directions to execute and register necessary sale deed in respect of the flat in question in favour of the Petitioner.

2. I have heard Mr. Madon, the learned counsel appearing for the Petitioner and Mr. Jagtap, the learned counsel appearing for the Respondent. I have gone through the findings recorded by the Arbitral Tribunal in the impugned Award. I have also perused the records of the case filed alongwith the present Petition.

3. It appears that under the Deed of Retirement, Respondents had agreed to pay to the Petitioner an amount of Rs.56,00,000/-. However, parties thereafter executed MoU dated 18 September 2017 under which it was agreed that out of the amount of Rs.56,00,000/-, the amount of Rs.37,00,000/- shall be paid in the form of sale of flat No.403, admeasuring 1230 square feet, fourth Floor, A Wing in the Building Siddheshwar Harmony situated at 50 Iddya village of Mangalore. Petitioner accepted the said arrangement.

4. The learned Arbitrator has directed payment of amount of Rs.19,00,000/- to the Petitioner which represents difference of amount between Rs.56,00,000/- agreed under the deed of retirement and the value of flat of Rs.37,00,000/-. The learned Arbitrator has further directed execution of Sale Deed in favour of the Petitioner in respect of Flat No.403. This is how the entire due amount of Rs.56,00,000/- as agreed under the deed of retirement read with MoU is directed to be paid to the Petitioner. Though the claim of the Petitioner is fully satisfied, the Petitioner has unnecessarily filed the present Petition challenging the impugned Award.

5. Mr. Madon would submit that the MoU dated 18 September 2017 did not contain any arbitration clause. He would submit that the Arbitration Agreement between the parties was only in the Deed of Retirement and that therefore, stipulations of MoU dated 18 September 2017 could not have been taken into consideration by the Arbitral Tribunal. I am unable to agree. Parties have consciously altered the terms of Deed of Retirement by executing MoU dated 18 September 2017. The Hon'ble Apex Court has recognized that Arbitral

Tribunal can also take into consideration subsequent correspondence for the purpose of interpreting the terms of contract. In the present case a specific MoU is executed after execution of the Deed of Retirement amending the terms and conditions of transaction between the parties. The learned Arbitrator has rightly taken into consideration amended terms and conditions while passing the impugned Award. No infirmity is traced in the impugned Award. The approach adopted by the Arbitral Tribunal cannot be treated as non-judicious. The findings recorded by the Arbitral Tribunal do not suffer from the vice of perversity. There is no patent illegality in the impugned Award.

6. The Arbitration Petition is accordingly rejected.

SUDARSHAN
RAJALINGAM
KATKAM

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(SANDEEP V. MARNE, J.)