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

COMMERCIAL ARBITRATION PETITION NO. 247 OF 2024
WITH
INTERIM APPLICATION (LODG.) NO. 22131 OF 2024

Swastik Construction & Anr. *…..Petitioners*

: Versus :

Mukesh alias Mohanlal Mulji
Dhanesha & Ors. *….Respondents*

Mr. Arif Bookwala, Senior Advocate with Mr. S.D. Mishra, Mr. A.R. Shaikh and Mr. D.J. Naik i/b ASD Associates, *for the Petitioner.*

Ms. Pooja Khandeparkar with Ms. Amita Jasani, Mr. Parth Jasani and Ms. Praharshi Saxena i/b. Purnanand & Co. for the Respondent.

CORAM : SANDEEP V. MARNE, J.

DATED: 19 NOVEMBER 2025

JUDGMENT :

1) This Petition is filed under Section 34 of Arbitration and Conciliation Act, 1996 **(Arbitration Act)** challenging the Award of the learned sole Arbitrator dated 28 February 2024. By the impugned Award, the Arbitral Tribunal has allowed the claims of the

Respondent in terms of prayer clauses (a), (b), (e), (f), (h) and (s) of the Statement Of Claim. The learned Arbitrator has rejected the claims raised in prayer clause (c) and (d) of the Statement Of Claim. The learned Arbitrator has awarded interest at the rate of 15% p.a. on the sums awarded. The learned Arbitrator has also directed payment of legal costs of Rs.49,43,826/- in favour of the Respondent.

2) Respondents are the owners of property bearing Survey No.89 corresponding CTS No.306 and 306/1 to 6. admeasuring 1557 sq. yards equivalent to 1129.20. sq.mtrs. together with structures standing thereon situated at Poisar, Village, Kandivali (West), Mumbai **(subject property)**. On 16 September 2005, Respondents entered into an Development Agreement with the Petitioners for development of the subject property with Petitioner No. 2. The consideration agreed was Rs.1,15,51,111/- and two flats admeasuring 1050 sq.ft each on the top floor of the building to be constructed in the subject property. On 4 May 2007, MCGM granted Intimation of Disapproval. Petitioner No.1 was the owner of adjoining property bearing CTS No.304(A) admeasuring 436.10 sq.mtrs **(Sita Sadan Plot)**. Petitioner No.2 approached Petitioner No.1 with an offer of amalgamation of Sita Sadan Plot with the subject property. Accordingly, Development Agreement dated 8 April 2008 was executed between Petitioner Nos.1 and 2 to jointly develop the suit property and Sita Sadan Plot. Petitioners planned construction of 2 wings 'A' and 'B' on the amalgamated plots. Wing B was constructed and 22 tenants of the subject property were accommodated in 'B' wing, for which occupancy certificate was issued.

3) Petitioners obtained various permissions for construction of 'A' wing. Since 'A' wing building was not constructed and Respondents did not secure possession of flats, they issued termination notice dated 15 April 2011 to the Petitioners. On 27 August 2013, Addendum Agreement was executed between the Petitioners and Respondents thereby modifying the terms of the original Agreement dated 16 September 2005. An amount of Rs.96,00,000/- was paid to the Respondents and it was agreed to provide 2 flats on 14th and 15th floors totally aggregating 2900 sq.ft in the 'A' wing building. Clause-8 of the Addendum Agreement provided for handing over possession after obtaining Occupancy Certificate within 21 months. For delay in handing over possession, Petitioners agreed for payment of 1% interest per month on the market value of the four flats after expiry of period of 21 months. By December 2018, Petitioner No.1 completed construction of 'A' wing upto 15th floor. Possession of the four flats was not handed over to the Respondents. Respondents terminated Agreement of 2005 and Addendum Agreement of 2013 on 28 January 2016. On 24 March 2021, the disputes were referred to Arbitrator by constitution of Arbitral Tribunal at the instance of the Respondents, who had filed Section 11 Petition in this Court. On 11 November 2021, the learned Arbitrator passed interim Award which was challenged by the Petitioners by filing Arbitration Petition(L)-29416 of 2021. With the consent of parties, the interim Award was modified by order dated 16 November 2022. The learned Arbitrator has passed final Award dated 28 February 2024 directing Petitioners to pay to the Respondents an amount of Rs.5,74,54,800/- being the amount of interest for the period from 1 June 2015 to 31 December 2022

with further direction to pay further 1% interest on market value determined after 1 January 2023 until the date of possession of flat. The learned Arbitrator has also awarded costs of Rs.49,43,826/- in favour of the Respondents. Aggrieved by the Award dated 28 February 2024, the Petitioners have filed the present Petition.

4) It appears that after passing of the impugned Award, possession of the four flats is apparently handed over to the Respondents on 3 October 2024 after securing Occupancy Certificate for 'A' Wing Building.

5) Mr. Bookwala, the learned Senior Advocate appearing for the Petitioners would submit that the learned Arbitrator has erred in awarding hefty interest of 1% on market value of the four flats for unreasonably long period from 1 June 2015 onwards. That the learned Arbitrator has failed to take into consideration the fact that construction activities were halted during COVID-19 pandemic and that therefore no interest is payable in respect of the period from March 2020 to December 2021. He would submit that the learned Arbitrator has erred in blindly accepting the valuation report of the Respondents, which was riddled with numerous errors. That Petitioners had examined government valuer as their witness, who had pointed out several errors in the valuation report relied upon by the Respondents. That even if Clause-8 of the Addendum Agreement is to be given effect to, 1% interest was payable on market value of the property as on the date of expiry of period of 21 months. That therefore the principal amount for the purpose of clubbing the interest ought to have been frozen as on 1 June 2015. That the Learned Arbitrator has erroneously considered increased value of the flats for the purpose of awarding 1% interest. That the direction for computing interest on market value beyond 1 January 2023 is clearly erroneous. That award of double bonanza of the form of increase in the cost of the flat and awarding of 1% interest on such increased value has resulted in unjust enrichment for the Petitioners. That the impugned Award is in conflict with the fundamental policy of India and basic notions of justice. That the Award also suffers from patent illegality where the learned Arbitrator has ignored vital evidence on record while holding Petitioner responsible for delay in construction of flats. That the learned Arbitrator has failed to appreciate that delay in construction is not attributed to the Petitioners. Lastly, Mr. Bookwala would submit that the learned Arbitrator has awarded unreasonable quantum of costs of about Rs.50 lakhs in favour of the Respondents. He would accordingly pray for setting aside the impugned Award.

6) Ms. Pooja Khandeparkar, the learned counsel appearing for the Respondents would oppose the Petition submitting that the learned Arbitrator has rightly arrived at the conclusion of breach of contract by the Petitioners by not adhering to obligation to deliver possession of flats within the agreed time of 21 months. That the Project was left incomplete by the Petitioners for almost 19 long years thereby making Respondents suffer. She would submit that the findings of learned Arbitrator of Petitioners being responsible for delay are well supported by the evidence on record. That the findings of the learned Arbitrator cannot be treated as perverse. She would

submit that the learned Arbitrator has rightly relied upon valuation report proved by the Respondents. That the learned Arbitrator has rightly taken into consideration the increased cost of the flat. That Petitioners cannot delay delivery of flat for 19 years and then claim that interest would be payable only on cost of the flat at the time of execution of Addendum Agreement. That Clause 8 of the Addendum Agreement provides for 1% interest on the market value of the flats. It does not provide for determination of market value on the date of expiry of period of 21 months. She would submit that the learned Arbitrator has taken a plausible view while interpreting the terms of the contract. That in any case, interpretation of the contract is in the domain of the learned Arbitrator. She would therefore submit that no case is made out for interference in the impugned Award. She would pray for dismissal of the Arbitration Petition.

7) Rival contentions of the parties now fall for my consideration.

8) The dispute between the parties relate to performance of the Development Agreement executed between land owners (Respondents) and the developers (Petitioners). As observed above, the Arbitral Tribunal has allowed the claims of the Respondent in terms of prayer clauses (a), (b), (e), (f), (h) and (s) of the Statement Of Claim. The learned Arbitrator has rejected the claims raised in prayer clause (c) and (d) of the Statement Of Claim. For better understanding of the exact relief granted by the Tribunal in favour of the Respondents, it would be apposite to reproduce the substantive prayers in the Statement of Claim:

a. The Arbitral Tribunal be pleased to order and decree that the Claimants are entitled to a monthly payment of 1 % of the market value of the Suit Property from 1st June 2015 till the Claimants are put in possession of their respective premises upon obtaining the Occupation Certificate;

b. The Arbitral Tribunal be pleased to order and decree against the Respondent that a sum of Rs. 6,00,000/- or such other amount as the Tribunal may deem fit and proper month be payable to the Claimants from onwards, until the Claimants are put in possession of Claimant's Entitlement after obtaining Occupation Certificate with further interest @21 % p.a. until realization;

c. The Arbitral Tribunal be pleased to order and decree against the Respondents that a sum of Rs. 2,00,00,000/-be payable to the Claimants towards the mental agony and harassment suffered by the Claimants;

d. The Arbitral Tribunal be pleased to order and decree against the Respondents that a sum of 1,58,438/- being interest on consideration payable to the Claimants due to delay

e. That the Arbitral Tribunal be pleased to pass an Order. and/or injunction restraining the Respondents from carrying out construction beyond 16th floor without obtaining written consent from the Claimants;

f. That the Arbitral Tribunal be pleased to order and decree that the Claimants are solely entitled to any further/additional PSI available in the form of fungible FSI/TDR potential that has arisen due to any change in law or under DCPR 2034 and the Respondents are not entitled to any FSI benefit/incentive FSI under DCPR 2034;

g. That the Arbitral Tribunal be pleased to pass an order and/or mandatory injunction directing the Respondents to remove flat/unit purchasers put in actual possession by the Respondents without obtaining Occupation Certificate, and to further pass an Order and/or mandatory injunction directing the Respondents to disconnect water and electricity III respect of such illegally occupied flats/units;

h. That the Arbitral Tribunal be pleased to pass an Order and/or mandatory injunction against the Respondents directing them to forthwith apply for Occupation Certificate on the basis of the last sanctioned plan uptil the 16th floor and hand over the vacant and peaceful possession of the Claimant's Entitlement to the Claimants

9) Petitioners are developers, who undertook redevelopment of the property owned by the Respondents. Initially, the Development Agreement was executed on 16 September 2005 on payment of consideration of Rs. 1.15 crores. At that time, the Respondents were promised two flats admeasuring 1050 sq.ft in the newly constructed building over and above monitory consideration. The dream of owning two flats in lieu of giving away rights in the land remained suspended for 8 years and did not result in reality. All that Respondents got 8 years later was execution of Addendum Agreement dated 27 August 2013. After 8 years, they were paid additional consideration of Rs.96 lakhs and were promised four flats totally aggregating to 2900 sq.ft on 14 and 15 floor of the new building. This time, Petitioners promised to deliver possession of the said four flats to the Respondents within a period of 21 months. Clause 8 of the Addendum Agreement dated 27 August 2013 reads thus:

> Sub-developers will carry out and complete construction of the entire building and obtain Occupation Certificate along with the water and electricity connection and hand over possession of the said Premises as provided here in above to the Owners within a period of 21 months including 1 month grace period from the date of the execution of these presents. It is further agreed that in the event of the possession of the said premises is delayed beyond 21 months then in such an event the Sub-Developers shall be liable to pay interest at the rate of 1 % per month on the

market value of the said premises after the expiry of the said period of 21 months.

10) It is undisputed position that possession of the four flats was not handed over by the Petitioners to the Respondents within the agreed period of 21 months. The possession is ultimately handed over on 3 October 2024. Thus, after execution of the Addendum Agreement, Respondents were made to wait for 11 long years for getting possession of the flats. This is how Respondents have been made to wait for total period of 19 long years after execution of initial Development Agreement to secure possession of the four flats.

11) The factum of occurrence of delay in handing over possession of four flats is not disputed. There is no dispute that Petitioners have overshot the agreed period of 21 months as provided for in Clause 8 of the Addendum Agreement. Petitioners however attempted to prove before the learned Arbitrator that they are not responsible for delay. Parties have led evidence in support of their respective claims on the issue of delay. The learned Arbitrator has considered the evidence on record and after making in-depth analysis, has arrived at the conclusion that Petitioners are solely responsible for delay in construction of the building and in delivery of the four flats. These are findings of facts recorded by the learned Arbitrator after appreciating evidence on record. This Court cannot sit as an appellate authority over the said finding of fact by entering into the realm of re-appreciation of evidence. It cannot be contended that there is absolutely no evidence, on the basis of which finding of delay on the part of Petitioners could be recorded. The learned

Arbitrator has not eschewed any relevant evidence appearing on record. In that view of the matter, finding of the learned Arbitrator holding Petitioners responsible for delay do not suffer from the vice of perversity.

12) Clause-8 of the Addendum Agreement provided for contractual obligation for payment of 1% interest per month on the market value of the property after expiry of period of 21 months from the date of execution of the Agreement. The learned Arbitrator has given effect to the said contractual agreement by directing payment of 1% interest on market value of the four flats. The direction for payment of 1% interest on market value of the four flats is thus in consonance with the contractual clause. No real dispute is created before me about the percentage of interest awarded by the Arbitral Tribunal. The contentions raised by the Petitioners before me relate to (i) valuation of flats (ii) exclusion of COVID-19 period for computation of interest and (iii) consideration of increased market value of the flats for awarding the contractual interest.

13) Petitioners objected before the Arbitral Tribunal to the market value determined by Respondents' valuer, which they believed to be excessive. Before me also, Petitioners have sought to create dispute about determination of the valuation of the flats by Respondents' valuer and acceptance thereof by the Arbitral Tribunal. Respondents relied on valuer's report and examined him as CW-3. Petitioners also examined a government valuer who merely attempted to poke holes in the valuation report of CW-3, examined at the behest of the Respondents. He himself did not present any specific value of the four flats. Even otherwise, value of the flat with carpet area of 1450 sq.ft and built-up area of 1740 sq.ft determined at Rs.2.26 crores in 2015, which has risen upto Rs. 3.48 crores by the year 2022, does not appear to my mind as unreasonable considering the prevailing market rates in Kandivali (West) area. The valuation is backed by documentary evidence in the form of Index-II extracts of comparable instances.

14) So far as the defence of COVID-19 pandemic sought to be adopted by the Petitioners is concerned, in my view, no exemption deserves to be granted to the Petitioners in respect of that period considering the fact that the actual delivery of possession has taken place 2 and ½ years after the lockdown restrictions were lifted. Thus, even after lifting of the lockdown restrictions, the Petitioner took more than 21 months (initial agreed period) for handing over possession of the four flats. This would indicate that Covid-19 outbreak was not the factor responsible for delay in construction of building and handing over of possession of the flats. In fact, while passing the interim award, the learned Arbitrator had noticed that some persons were inducted in the flats even though the building did not have the occupancy certificate. Thus, construction of the building was complete and many flat purchasers were put in possession of the flats. Therefore it cannot be said that construction of the building was delayed due to any lockdown restrictions as such.

15) Coming to the main dispute, which is sought to be argued before me, it appears that the learned Arbitrator has taken into consideration the increased market value every year for awarding 1% interest under Clause 8 of the Addendum Agreement. The manner in which the amount of interest of Rs. 5,74,54,800/- is determined by the learned Arbitrator is as under:

Year	Floor	Carpet Area (sq. ft.)	BUA (sq. ft.)	Market Value (in Rs.)	1% of market value per month and per year (Rs.)
2015	14th FLOOR	1450	1740	2,26,20,000	4,52,400 (monthly) or 31,66,800 (1st June 2015- 31st December 2015)
	15th FLOOR	1450	1740	2,26,20,000	
2016	14th FLOOR	1450	1740	2,61,00,000	5,22,000 (monthly) or 62,64,000 (yearly)
	15th FLOOR	1450	1740	2,61,00,000	
2017	14th FLOOR	1450	1740	2,95,80,000	5,91,600 (monthly) or 70,99,200 (yearly)
	15th FLOOR	1450	1740	2,95,80,000	
2018	14th FLOOR	1450	1740	3,30,60,000	6,61,200 (monthly) or 79,34,400 (yearly)
	15th FLOOR	1450	1740	3,30,60,000	
2019	14th FLOOR	1450	1740	3,48,00,000	6,96,000 (monthly) or 83,52,000 (yearly)
	15th FLOOR	1450	1740	3,48,00,000	
2020	14th FLOOR	1450	1740	3,65,40,000	7,30,800 (monthly) or 87,69,600 (yearly)
	15th FLOOR	1450	1740	3,65,40,000	
2021	14th FLOOR	1450	1740	3,13,20,000	6,26,400 (monthly) or 75,16,800 (yearly)
	15th FLOOR	1450	1740	3,13,20,000	
2022	14th FLOOR	1450	1740	3,48,00,000	6,96,000 (monthly) or 83,52,000 (yearly)
	15th FLOOR	1450	1740	3,48,00,000	
Total (from 1 June 2015- 31 December 2022)					**5,74,54,800**

16) Thus, the market value of each flat was taken as Rs.2,26,20,000/- in 2015 which has gradually increased and gone upto Rs.3,48,00,000/- by 2022. Since the learned Arbitrator did not have the valuation post December 2022, he has directed payment of 1% interest per month on the market value post 1 January 2023.

17) It is the contention of the Petitioner that the market value ought to have been kept static at Rs.2,26,20,000/- for computing the liability to pay interest. However, this was apparently not the pleaded or argued case of the Petitioners before the learned Arbitrator. Even in the present Petition, no specific ground is raised about impermissibility to increase market value of the flats for computing interest obligation of 1%. In that view of the matter, the real objection, which is sought to be raised for the first time directly before this Court, does not even deserve any adjudication. However, leaving aside the technicalities and taking into consideration the fact that Section 34(2)(b) and Section 34(2-A) use the expression '*the courts finds that*' I proceed to examine if the Award suffers from any patent illegality or is in conflict with public policy of India by reason of the Arbitrator awarding the contractual rate of interest by increasing the market value of the flats each year.

18) Clause 8 of the Arbitration Agreement provides for '*interest at the rate of 1% per month on the market value of the said premises after expiry of said period of 21 months*'. If the intention of the parties was to freeze the value of the flats at any particular point of time, the word 'market value' would not have been used in Clause-8 of the Agreement. The very fact that the parties used the word 'market' for determination of value of the flat, such value will have to be necessarily determined based on prevailing market conditions during the entire period of delay. Since this issue was never raised before the learned Arbitrator, there was no occasion for him to decide the controversy about freezing of market value of the flats. This shows that even the Petitioners had correctly understood the obligation to pay interest on increasing market value of the flats.

19) In any case, the computations accepted by the learned Arbitrator based on increased market value of the flats will have to be necessarily treated as construction/interpretation of the contractual terms by the learned Arbitrator, which exclusively lies in his domain. It is well settled principle that Section 34 Court cannot interfere in the interpretation of the terms of the contract made by the learned Arbitrator. Merely because a different interpretation of contractual term is also possible, the same cannot be a ground for invalidating the Award.

20) Even otherwise, considering the delay of nine long years in handing over possession of the four flats, it would otherwise be unjust to freeze the market value of the flats of 2015. Such interpretation would lead to unreasonable advantage for the developer who might find payment of interest on frozen value of the flat more convenient and delay in handing over of possession of flat forever. The contractual stipulation of payment of interest @ 1% per month on market value was to serve as a deter for the Petitioners and the real intention of Respondents was not to earn interest but to ensure that possession of flats was handed over in a timely manner. When an immovable property/flat is given on rent/license, the rent/license fees represent some return on market value of the property/flat. The very concept of annual increment in the amount of rent/license fees is premised on presumption that market value of the property goes up every year. In the present case, the percentage of interest/compensation is kept static at 1% per month or 12% per annum. What changes is the market value of the flat, delivery of which is delayed by the Petitioners. Petitioners had already delayed construction of the building and delivery of possession of four flats for 8 long years which led to execution of the Addendum in the year 2013. With a view to ensure that the Petitioners do not cause further delay in handing over of flats, a stringent condition was put on them that they would pay interest at the rate of 1% per month on market value of the flats, if delivery is not made within period of 21 months. Having specifically agreed to pay interest of 1% per month on 'market value' of the flats, it cannot now lie in the mouth of the Petitioners that the market value must be frozen in 2015. Since the Addendum Agreement is silent about freezing of the value of the flats for computation of interest and on the contrary uses the term 'market' rather than using the term 'current value', the learned Arbitrator has proceeded to award interest on increasing market value of the flats. This is a plausible view taken by the learned Arbitrator and cannot be termed as a view which no fair-minded person would ever take. I am therefore not inclined to interfere in the computation of interest amount accepted by the learned Arbitrartor.

21) The last objection argued before me is about award of Costs. The arbitral Tribunal has awarded costs of Rs.49,43,826/- in favour of Respondents. While Petitioners are complaining about the quantum of costs, it cannot be ignored that they themselves had sought costs of Rs.81,18,011/-. Having claimed spending of amount of Rs.81,18,011/- as costs of arbitration, Petitioners cannot complain if the costs incurred by the Respondents is awarded at Rs.49,43,826/-. I am therefore not inclined to interfere in the direction issued by the learned Arbitrator for payment of costs. However considering the quantum of costs awarded by the Arbitral Tribunal, I am not inclined to award any further costs to the Respondents in the present Petition.

22) Considering the overall conspectus of the case, I am of the view that no valid ground of challenge is made out by the Petitioners to the impugned Award. Considering the contours of jurisdiction of this Court in interfering with the arbitral award as discussed in various Apex Court judgments, this Court is unable to trace any element of perversity or a patent illegality nor is able to hold that the award is in conflict with the public policy of India. The Award actually is in tune with the public policy doctrine as it makes liable an errant developer to pay interest for delayed delivery of possession of flats. Respondents are land owners who were kept waiting for over 19 long years for development of their own land.

23) The Petition must fail. It is accordingly **dismissed** without imposing any further costs on the Petitioners.

24) With dismissal of the Petition, the Interim Application does not survive. The same also stands disposed of.

[SANDEEP V. MARNE, J.]

Note : *The judgment is corrected pursuant to speaking to minutes order dated 28 November 2025.*

NEETA SHAILESH SAWANT Digitally signed by NEETA SHAILESH SAWANT Date: 2025.11.29 14:15:27 +0530