



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :10.11.2025

Pronounced on :27.11.2025

CORAM

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

C.M.A.Nos.1212,1213 and 1214 of 2024

and

C.M.P.Nos.10817, 10819 of 2024, 16062 of 2025, 10818 of 2024
16063 of 2025, 10821 of 2024, 10822 of 2024 and 16056 of 2025

C.M.A.No.1212 of 2024

1.Andal Dorairaj
W/o Dorairaj,
Door No.45,
Kamaraj Road, Red Fields,
Coimbatore 641 018.

2.Vidhya Sharathram
W/o Sharathram
Door No.45,
Kamaraj Road, Red Fields,
Coimbatore 641 018.

3.D.Sharathram,
S/oDorairaj
Door No.45,
Kamaraj Road,Red Fields,
Coimbatore 641 018.

..Appellants/Respondents
1 to 3

/versus/



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1.M/s Rithwik Infrastructure (P)Ltd.,
Rep.by its Authorised Signatory
Mrs.Priya Rajashekar
Registered Office at
RR Towers III, TVK Industrial Estate Guindy,
Chennai 600 032. ..1 Respondent/Petitionerst

2.M/s Hanudev Info Park(P) Ltd.,
Rep.by its Authority Signatory R.Neelakantan
Registered Office at
RR Towers III,
TVK Industrial Estate Guindy,
Chennai 600 032.

3.M/s Rithwik Info Park (P)Ltd.,
Registered Office at
RR Towers III,TVK Industrial Estate Guindy,
Chennai 600 032. ..Respondents 2 & 3/
Respondents 4 &5

Civil Miscellaneous Appeal has been filed under Section 37(1) of the Arbitration & Conciliation Act r/w Section 13 of the Commercial Courts Act, 2015, against the order dated 17.04.2024 made in Arbo.O.P.No.5 of 2024 on the file of the Commercial Court (District Judge Cadre), Coimbatore.

For Appellants :Mr.M.S.Krishnan, Senior Counsel for
Mr.K.S.Karthik Raja

For Respondents :Mr.P.H.Arvind Pandian, Senior Counsel
for Mr.Bharathkumar



C.M.A.No.1213 of 2024:

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1.Andal Dorairaj
W/o Dorairaj,
Door No.45,
Kamaraj Road, Red Fields,
Coimbatore 641 018.

2.Vidhya Sharathram
W/o Sharathram
Door No.45,
Kamaraj Road, Red Fields,
Coimbatore 641 018.

3.D.Sharathram,
S/o Dorairaj
Door No.45,
Kamaraj Road,Red Fields,
Coimbatore 641 018.

..Appellants/Respondents
1 to 3

/versus/

1.M/s Hanudev Info Park(P) Ltd.,
Rep.by its Authority Signatory R.Neelakantan
Registered Office at
RR Towers III,
TVK Industrial Estate Guindy,
Chennai 600 032.

..1st Respondent/Petitioner

2.M/s Rithwik Infrastructure (P)Ltd.,
Rep.by its Authorised Signatory
Mrs.Priya Rajashekar
Registered Office at
RR Towers III, TVK Industrial Estate Guindy,
Chennai 600 032.



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3.M/s Rithwik Info Park (P)Ltd.,
Registered Office at
RR Towers III,TVK Industrial Estate Guindy,
Chennai 600 032.

..Respondents 2 & 3/
Respondents 4 &5

Civil Miscellaneous Appeal has been filed under Section 37(1) of the Arbitration & Conciliation Act r/w Section 13 of the Commercial Courts Act, 2015, against the order dated 17.04.2024 made in Arbo.O.P.No.6 of 2024 on the file of the Commercial Court (District Judge Cadre), Coimbatore.

For Appellants :Mr.Sathish Parasaran, Senior Counsel for
Mr.K.S.Karthik Raja

For Respondents :Mr.P.V.Balasubramanian, Senior Counsel for
Mr.R.Bharath Kumar

C.M.A.No.1214 of 2024:

1.Andal Dorairaj
W/o Dorairaj,
Door No.45,
Kamaraj Road, Red Fields,
Coimbatore 641 018.

2.Vidhya Sharathram
W/o Sharathram
Door No.45,
Kamaraj Road, Red Fields,
Coimbatore 641 018.

3.D.Sharathram,
S/o Dorairaj,Door No.45,
Kamaraj Road,Red Fields,
Coimbatore 641 018.

..Appellants/Respondents 1 to 3

/versus/



1.M/s Rithwik Info Park (P) Ltd.,
Rep.by its Authorised Signatory
Priya Rajashekar
Registered Office at
RR Towers III, TVK Industrial Estate Guindy,
Chennai 600 032. ..1st Respondent/Petitioner

2.M/s Hanudev Info Park (P) Ltd.,
Rep.by its Authority Signatory R.Neelakantan
Registered Office at
RR Towers III,
TVK Industrial Estate Guindy,
Chennai 600 032.

3.M/s Rithwik Infrastructure (P)Ltd.,
Rep.by its Authorised Signatory
Mrs.Priya Rajashekar
Registered Office at
RR Towers III,
TVK Industrial Estate Guindy,
Chennai 600 032. ..Respondents 2 & 3/
Respondents 4 &5

Civil Miscellaneous Appeal has been filed under Section 37(1) of the Arbitration & Conciliation Act r/w Section 13 of the Commercial Courts Act, 2015, against the order dated 17.04.2024 made in Arbo.O.P.No.7 of 2024 on the file of the Commercial Court (District Judge Cadre), Coimbatore.



For Appellants :Mr.Aniruth Krishnan for
Mr.K.S.Karthik Raja

For Respondents :Mr.N.Sridhar for
Mr.R.Bharathkumar

COMMON JUDGMENT

Dr.G.JAYACHANDRAN,J.
&
MUMMINENI SUDHEER KUMAR,J.

These three Appeals C.M.A.No.1212 of 2024, C.M.A.No.1213 of 2024 and C.M.A.No.1214 of 2024 filed under Section 37 of the Arbitration and Conciliation Act, 1996. The appeals are directed against the Common Order passed by the Commercial Court at Coimbatore in Arb.O.P.Nos:5, 6 and 7 of 2024 filed under Section 34 of Arbitration and Conciliation Act, 1996.

2. Andal Dorairaj, Vidya Sharathram and Sharathram are Members of one family, holding land in their individual name and in the name of minor children of Sharathram, which they got through partition of their ancestral property. In respect of their respective shares in the property, three Joint Venture Agreements (in short “JVA”) were entered on 24.03.2006 and



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06.07.2006 with the developer M/s Hanudev Info Park (P) Ltd, a construction company. The terms in these 3 JDA's were almost identical, except minimal differences, which are not substantial. Later, on reunion of the family, all the owners jointly executed a Supplementary Memorandum of Agreement to the Developer on 13.09.2007 consolidating their lands for convenient development purpose. The parties agreed to share the build up area at 80% and 20% between the builder and the owners respectively, which comes around 2,11,385 sq.ft. in the super build up area and car parking space, depending upon the FSI. The possession of the property was handed over to the developer and the owners have received Rs.1,60,00,000/- towards refundable security deposit. The supplementary agreement substantially retained the terms and conditions contained in the earlier agreements. The owners executed sale deed on 16.03.2009 in favour of the Developer M/s Hanudev Infopark (P) Ltd and its two nominee M/s Rithwik Infrastructure Pvt. Ltd and M/s Rithwik Infopark Pvt. Ltd in respect of 80% of undivided share out of total land.

3. As per the terms of the contract, the developer has to commence the construction and complete the construction of the building within 24 months, from the date of boomi pooja or such other date on which the construction



actually commences or from the date of receiving the sanctioned plan, whichever is later. If the construction is not completed within the time agreed, to the extent of incomplete portion of share, the developer has to pay Rs.15/- per sq.ft every month as compensation for a period of 6 months. If the construction is still not completed even after the expiry of the extended 6 months period, the JDA shall stand cancelled.

4. That apart, the developer has agreed to identify tenants for the 20% portion of the build up area within 6 months from the date of completion of construction for a period of 8 years, with minimum rent at the rate of Rs.30/- per sq.ft., per month with enhancement of 15% at the end of every 3 years and in case of any shortfall in the rent, the developer will make good the difference.

5. Alleging delay in completing the construction, one of the owners Andal Dorairaj, issued notice dated 01.11.2011 to the Developer and its nominee under Section 21 of Arbitration and Conciliation Act, 1996 (in short “the Act”) to initiate arbitration. Thereafter, she filed O.P.No:808 of 2012 and O.P. No:824 of 2012 before this Court under Section 11(6) of the Act for appointment of an Arbitrator to resolve the dispute. The OPs were allowed by



the High Court vide order dated 19.02.2016 appointed

Mr. V.Sivasubramaniam a retired District Judge as an Arbitrator. On 29.01.2019, his mandate was terminated and another Arbitrator by name Mr.S.A.Sreeramulu was appointed. The mandate for Mr. S.A.Sreeramulu was also terminated in the subsequent order of this Court in O.P.No.694 of 2019 dated 08.09.2019 in which Mr.K.Kannan, a retired High Court Judge was appointed as Arbitrator. The owners as claimants sought the following relief:-

(i) Award for Rs.24,29,30,250/- as compensation for delay in handing over the build-up area as per the Joint Development Agreement dated 24.03.2006 and 06.07.2006.

(ii) Award towards rental arrears promised to be paid to the claimant for Rs.75,67,90,620/- by way of compensation.

(iii) Award for Rs.1,71,81,503/- for the tax mulctsted on the 1st claimant.

(iv) Award for Rs.3,63,28,840/- for the tax amount payable by the 3rd claimant.

(v) Declare the Joint Development Agreement dated 24.03.2006 and 06.07.2006 as cancelled due to non-performance.

(vi) Declare the three Sale Deeds dated 16.03.2009 as null and void.

(vii) Declare the encumbrance created in the property way of equitable



mortgage with LIC and

(viii) Award costs.

6. Before the Learned Arbitrator, preliminary objection raised by the developer was dismissed. Against the dismissal order dated 15.12.2020, the developer preferred C.M.A.No.376 of 2021 and same was dismissed on 29.04.2021. S.L.P.No.8005 of 2021 against the dismissal of C.M.A.No.376 of 2021 was also dismissed by the Hon'ble Supreme Court on 26.07.2021. Thereafter, the Learned Arbitrator completed the arbitral proceedings (Arbitration Case No:9 of 2020) and passed the Award on 27.10.2021.

7. The result of the Arbitration Award:-

(a) The relief of setting aside the sales, cancellation of JDAs is declined and in lieu thereof, the claimants are granted the relief or recovery of possession of 1,95,463.862 sq.ft., of build-up area as corresponding to 2.67 FSI within the undermentioned property. This shall come from Tower-D in full, which is said to be 1,24,000 sq.ft and the balance will come from Tower-C. Along with this shall be the entire car park in Tower-D and the place earmarked for car park for Tower-C that will be proportionate to build-up area made available to the claimants against the total build-up area in Tower-C.



(b)The damages for the period immediately for a period of six months immediately on completion of 24 months from 01.11.2008 is declined.

(c)The relief of damages for loss of rent for claimants 1 to 3 shall be from 01.11.2011 till the end of October 2021, for a sum of Rs.83,96,23,641.93, which is the aggregate amount payable as calculated in paragraph 65 of the Order.

(d)The respondents shall be liable to pay to the claimants for each month, commencing from 01.11.2021 the amount of Rs.89,12,538.70, till the date of delivery of possession of property.

(e)The amount determined as payable to the claimants shall be apportioned amongst themselves in the proportion set out in the Supplement Agreement under Ex.C7.

(f)The amount determined shall constitute a charge over 80% of the property of the Respondents that have been transferred through Ex.C8 to C10, in the schedule below in priority of the mortgage created in favour of LIC Housing Ltd., under Ex.C42 to C44.

(g)The claim for damages for capital gain notice received by claimants 1 & 3 is declined, subject, however, that any amount in excess of the amount assessed by the authorities for delayed payment shall be recoverable by the claimants against the respondents.



(h) The Respondents are restrained from selling their property without performing all obligations under the JDA of completion of all constructions.

(i) The Respondents are liable for the amount determined to pay interest at 15% per annum from the date of the Award till the date of payment.

(j) The Claimants are entitled to cost of Arbitration of Rs.18,50,000/- which are the Arbitrator's fee said to have been paid in earlier part of the arbitral proceedings and evidenced through bank transfers and also the legal fee, which I determined for seniors and juniors at Rs.25 lakhs and there would be Rs.5 lakhs towards stationary and out of pocket expenses.

8. Challenging the Arbitral Award, Arbitration Original Petitions under Section 34 of the Act, were filed by the developers before the District Court Coimbatore. Later, the same were transferred to the Commercial Court at Coimbatore and renumbered as Arb.OP Nos: 5, 6 and 7 of 2024.

9. The Commercial Court has set aside the award and allowed the petitions by its order dated 17.04.2024. The said order is impugned before this Court under Section 37 of the Act.



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10. We before adverting to the merits, for easy reference, the reasons given by the Commercial Court for interfering the Arbitral Award under Section 34 of the Act are summarised as under: -

(a) As per the claimants, the date of Multi Storey Building Plan approval (18.07.2008) is the date of commencement of the construction. The 24 months time to complete the construction ends on or before 17.07.2010. According to the Developers, the date of completion should be reckoned from the date of Building License and Plan approval, (i.e.) 28.10.2011. The 24 months period for completion ends only on 27.10.2013. It is nobody's case that, the commencement of construction starts from the date on which Boomi Pooja done. However, the Arbitral Tribunal has taken the month of Boomi Pooja (October, 2006) as the date of commencement of the construction and held that the building should have been completed on or before September, 2008. This finding according to the Court below is perverse, patently illegal and against the public policy of India.

(b) In the first legal notice dated 15.03.2011, the claimants admit that no building plan approval was sanctioned till date and in the second legal notice dated 01.11.2021 (Ex.D24), they admit that the building plan approval was obtained only by the Developers. The content of these two notices give



no room for any ambiguity that the claimants are well aware of the difference between Ex.C11 and Ex.D23 and no allegation of fraud was raised in Ex.C13 and Ex.D24. Thus, without considering those aspects and valid available evidence, the Arbitral Tribunal wrongly held that the respondents (Developers) obtained sale deeds by showing Ex.C11 as building approval plan. This finding is perverse, patently illegal and against the public policy of India.

(c) In the petition, compensation for delay in handing over the build up area claimed only by the first claimant Mrs.Andal Dorairaj for her share of 80,175 sq.ft. No relief of compensation for delay was claimed by the other claimants 2 and 3. In the claim statement, loss of rental income from 17.01.2011 to 17.04.2019 alone is claimed. Without any prayer, relief of compensation of Rs.39,99,60,000/- was awarded to the first claimant and the third claimant as representative of the joint family. Likewise, without any prayer, the Arbitral Tribunal granted damages for loss of rent for the claimants 1 to 3, from 01.11.2011 to till the end of October 2021. When the building is not completed, the question of claiming rent does not arise as per the terms of the agreement. While so, the Arbitral Tribunal failed to note that the claimants themselves have demanded compensation for the alleged loss of rental income up to 17.04.2019, the Arbitral Tribunal erroneously granted



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compensation up to 31.10.2021. When the developers are liable to pay the rent in respect of the completed building only after 6 months of the completion of the building for 8 years to the second and third claimants and for 8 years 6 months to the first claimant Mrs.Andal Dorairaj, the finding of the Tribunal in granting damages for loss of rent from 01.11.2011, till the date of delivery of possession is not correct. Clause 10 is not obligatory on the part of the developers to fix a tenant prior to the completion of the building. The Arbitral Tribunal contrary to the agreed terms of Ex.C-4 and Ex.C-6, found fault with the developer in finding the tenant in advance, which is not correct. Hence, fixing compensation to loss of rent is perverse, illegal and against the public policy of India.

(d) Without pleadings, proof and prayers, the Arbitral Tribunal had granted charge decree over the 80% share of the developer with priority over the mortgage created in favour of LIC Housing Finance, which is contrary to Section 55(4)(b) of the Transfer of Property Act, 1882. After termination of the JDA's from 01.11.2011, the grant of damages for the past loss of rent and for future till delivery of possession is in violation of Section 55 of the Limitation Act, 1963. It is not known, why the Arbitral Tribunal has taken (Ex.D23) the date of Building Plan approval as date of completion for computing compensation.



11. Contention of the appellants/Claimants:

11(a) In the appeals under consideration, the learned Senior Counsels on behalf of the the appellants/claimants contended that, the scope to interfere an award is limited to the parameters laid in Section 34 and the judicial interpretations on the scope and ambit of Section 34. While so, the reasoning of the Court below for interfering with the well considered Arbitral Award is beyond the scope of Section 34 of the Act. The Court below erred by re-appreciating the evidence and substituted its view. It had wrongly understood the law of limitation. It has failed to apply the judicial precedents, which has held, the power of the arbitrator extends to grant relief not limited to the relief sought but also to grant any other relief, which subsumes the larger relief sought/prayed.

11(b) In the instant case, the owners of the land having handed over the land to the developer in the year 2006, is still waiting for the developer to hand over 20% of the build area. Though the developer admits, they have commenced the construction in the year 2006, and completed construction of two towers by 2009 and promised the owners to fix the tenants and they will be getting rent from 01.04.2009 and got the sale deeds for the 80% share in



the land, by citing the letter to terminate the contract and the suits filed by the minors to ascertain their rights in the property, which noway impaired or impeded the developer from completing the construction and letting it out to third parties, however, till date the developer is not ready to hand over the 20% build up area as per the terms of the contract. He is also not ready to disclose the details of the tenants and the rents, he has collected from them. Due to the erroneous order by the Court below, for nearly two decades, the owners of the land are deprived from the fruits of their property. On the other hand, the developer, who had put up the construction, has been enjoying the proceeds exclusively even without rendering accounts.

11(c) The land owners prayed for cancellation of the agreement relying on Clause 8 (k) which says, if the developers do not complete and hand over 1,32,000 sq.ft to the owners in such period (i.e 24 months (initial) + 6 months (extended) from the date of commencement of construction), then the Joint Development Agreement shall stand cancelled. The Arbitrator had passed the award balancing the interest of the land owners and the developers. He had assigned reasons for granting a lesser relief along with justification for not granting the larger relief, as prayed.



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11(d) It is an admitted fact that on the date of filing the claim petition or even later, though several years have gone, after completion of the construction, the developer has not handed over the 20% of the build up area to the land owners, but enjoying it exclusively. Though this one conduct is suffice for the cancellation of JDA's, the Arbitrator considering the attending circumstances, has given a lesser relief, which is in fact an advantage to the developer, who had parted his investment in developing the property. The relief claimed and the relief granted are not unconnected or beyond the scope of the reference to the dispute, but well within the scope of the reference.

11(e) Unfortunately, the Court below failed to consider the terms of the contract and the communications between the parties. It had swayed by irrelevant factors and had substituted its own view to the facts of the case. It had set aside the well considered award of the Tribunal by terming it as perverse, illegal and against the public policy of India. This borrowed expression employed mechanically without any application of mind by the Court below needs interference.

11(f) The learned Senior Counsel for the appellants/claimants submitted that, the Arbitration Act does not prescribe moulding relief within



the terms and scope of the agreement. For that matter, no law condemns decisions tempered with equity, justice and morality. The Arbitral award had not gone beyond the matter submitted, while so, in ignorance of the proviso to Section 34(2)(iv), the Court below had set aside the award in entirety.

11(g) The Court below erred in faulting the finding of the arbitrator fixing the date of commencement. The expression 'which ever later' in Clause 6 (g) of JDA is not intended to keep the last event to happen. The proper interpretation of Clause 6(g) of JDA could be, granting 24 months for the developer to complete the construction. In this case, it is admitted by the developer as well as the claimants that, the construction commenced much prior to the building plan approval. The developer in its e-mail dated 18.12.2008, wrote to Sharathram one of the claimants that, "we have a client, who needs Rs.1 lakh sq.ft. space, and he will be signing the agreement, if the rent is Rs.20/- per sq.ft. for the first year, Rs.25/- per sq.ft. for the second year and Rs.30/- per sq.ft. for the third year. The rent will start from March 2009. On the same basis, I have spoken to a few other and expect that by Jan-2009, the rest of the space will also be leased out. "Having expressly admitted that the building is ready for occupation and the prospective tenants will occupy by March 2009 and rent will come from March 2009, still if the



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developer claims that he will not hand over the 20% share in the build up area and neither will pay rent for the space, till the end of 24 months from the date of plan approval, will be an interpretation of the Clause leading to absurdity. The Learned Arbitrator had considered the date of planning permission, the date of tax assessments for the building, as well as the communication of the developer about the readiness of the building to fetch rent from March 2009 as per the e-mail dated 18.12.2008 followed by another positive assertion in its e-mail dated 12.01.2009 stating that, he had finally concluded with the client for a rent of Rs.20/- per sq.ft. the agreement is ready and will be forwarded for signature. The owners shall start getting rent from the 1st of April 2019. The Court below ignoring this candid admission by the developer about the completion of the construction, by making selective reference to the terms of the contract and communication, has termed the Arbitral Award as perverse, while the converse being the truth.

11(h) The Arbitrator had concluded that the construction commenced soon after *boomi pooja*, which was held during the month of October 2006 based on the evidence given by the witness for the claimants as well as the witnesses for the developer. They both had admitted that the construction commenced in the month of October 2008. The witness for developer



admitted in the cross examination that after G.O.Ms.No.169 dated 12.09.1996, it was enough, if the entrepreneurs submit application for approval to the proper authorities. They need not wait for approval of these plans before construction.

11(i) In view of this GO, for commencement and completion, approval of building plan is not significant. In one of his mail, the developer had stated that, he had not got the full sanction officially. So, he can even hide behind the Clause, which gives 24 months time for completion from the date of getting complete plan sanction. However, it is not morally correct. The Arbitrator, after recording these unassailable evidence that, the construction started in October 2008, 24 months time for completion ends in October 2010, after the grace period of 6 months is over, the developer is expected to hand over the 20% build up area to the owners. The developer in fact even informed one of the owners that they will start getting rent from April 2009. However, considering the fact that even though the developer had informed that the owners will start getting rent from April 2009, its occupation could be only after the approval of plan (Ex.D-23), which was signed on 28.10.2011. Hence, the Arbitrator awarded compensation for rental loss only from 28.10.2011 and not from October 2010. The Court below had misread the



award and conveniently ignored the admission of the developer. The award, which in full comity with the fundamental policy of Indian Law and in consonance with the basic notions of morality and justice was perversely set aside by the Court below by unreasonably terming it as illegal.

11(j) The reasons stated by the Court below to set aside the award of the Arbitral Tribunal, are all as a result of improper understanding of the law and precedents, had led to grave miscarriage of justice.

11(k) The Court below had substituted its view, after re-appreciating the evidence and gone to the extent of suggesting that, the claimants ought to have moved the Civil Court for specific performance.

11(l) Conveniently ignoring the facts on record that Mrs.Andal Dorairaj sought for arbitration in the year 2011 itself and the application for appointment of arbitrator initiated by Mrs.Andal Dorairaj in the year 2012, had observed that granting damages covering the period from 2011 is barred by limitation.

11(m) Likewise, his conclusion that the award of compensation from October 2019, till the date of handing over the possession, as beyond the



scope of reference, is also erroneous, since the said relief is ancillary to the relief directing the developer to handover the agreed extent of build up area as per the terms of the contract.

11(n) In commercial contracts, awarding interest for the delay in payments is permissible. But, the Court below has termed awarding interest for the money due and payable as illegal, perverse and contrary to the public policy. The arbitral award, giving primacy to the charge over 80% of the property sold by the owners to the developer, is to be viewed from the right of the owner envisaged under the Transfer of Property Act. The financial creditor namely, LIC Housing Finance Co, had advanced loan to the developer subsequently. The sale of property to the developer though completed, is being coupled with the obligations mentioned under the JDA's, the developers cannot contend that the provisions of Transfer of Property Act will not apply. Therefore, the award holding that the charge over the properties transferred to the developer under Ex.C8 to Ex.C10 to be in priority of the mortgage created in favour of LIC Housing Ltd under Ex.C42 to Ex.C44, is legal and within the scope of the reference and prayer (vii). Even if, in view of the Court that there was any transgression from the scope of reference, it, by applying the principle of severability, ought to have



interfered only in respect of those portions and ought to have not set aside the entire award.

12. Submission by the Learned Senior Counsels for the Respondents:-

12.(a) In defence of the impugned order passed by the Court below, the learned Senior Counsels for the respondents/developers and its nominees, providing a comparative table between the relief sought before the Arbitrator and the relief actually granted by the Arbitrator emphasised that, the Court below is right in setting aside the arbitral award which suffers patent illegality and perversity. He also submits that the Arbitrator had travelled beyond the terms of the contract as well as the terms of reference. By granting relief, without prayer, the Arbitrator has re-written the contract. It is a fact that the developer got the plan approved only on 13.09.2011 and as per Clause 8(h) and (i) of the Agreement, the 24 months period for completion of the building commences only from that date. The plain reading of the Clause with no ambiguity will show that the completion date to be reckoned from any of the three points which ever is later.

12(b). Clauses 8 (h) and (i):-

(h)Period of completion of construction-24 months

from the date of “Bhoomi” pooja or such other date on



which the construction actually commences or from the date of receiving the sanctioned plans whichever is later.

(i)The DEVELOPERS agree to complete the construction of the building all respect within 24 months from the date of shall be recorded and attested by the OWNERS and developers whichever is later.

12(c). Without proper reasons, the Arbitrator has awarded damages of Rs.83,96,23,641.93 calculating from 01.11.2011 to October, 2021 a relief not even sought for by the owners/claimants. The owners, after entering into JDAs for themselves and for the minors, set up the minors to challenge the agreement. They interfered in the project in all manners possible. Leasing of the 20% of the owners portion was agreed only on the condition that fixation of rent to be agreed by both the parties mutually. While the communications between the parties show that tenancy could not be fixed due to the delay in arriving at a consensus, regarding the rent totally attributing to the owners conduct. The Arbitrator, ignoring all these facts in lieu of the prayer for cancellation of the sale deeds and JDA's, had awarded compensation for loss of rent not only from 01.11.2009 to October 2021 but also ordered the developers to pay a sum of Rs.89,12,538.70 every month till date of delivery of 1,95,463.862 sq.ft of build up area.



12(d). When the relief in the claim petition is for cancellation of the registered documents, which were acted upon, recovery of possession and damages, from 01.11.2008, being a baseless award, perverse and contrary to public policy, the Court below has rightly interfered and set aside the award.

12(e). The Court below had not re-appreciated the evidence, but had examined the evidence and recorded that the Arbitrator has failed to apply the correct interpretation, while appreciating the evidence. It was pleaded that, the award creating charge over 80% undivided share of the land sold to the developers and its nominees by the owners in priority to the mortgage charge held by LIC Housing Ltd. a secured financial creditor is in gross violation of law. Awarding 15% interest for the amount wrongfully determined is top of all perversity.

12(f). The comparative table furnished by the respondents being comprehensive and precise, the same is extracted below for easy reference:-

Reliefs sought in the claim & Reliefs granted in the award:

<i>Reliefs sought in paragraph 33 of the Joint Claim Statement by claimants</i>	<i>Reliefs granted in paragraph 91 of the Award</i>
a)Award of Rs.24,29,30,250/- to 1 st appellant Andal Dorairaj as compensation	Declined (Award paragraph 91b)



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for delay in handing over the built-up area as per the JDA dated 24.03.2006 and 06.07.2006.	
b) Award of Rs.75,67,90,620/- to 1 st Appellant Andal Dorairaj as compensation for delay in handing over the built-up area as per the JDA dated 24.03.06 & 06.07.2006.	Declined (Award paragraph 91b)
c) Pay Rs.1,71,81,503/- to 1 st appellant Andal Dorairaj towards proceedings initiated by the IT Department for capital gain concerning the Sale deeds dated 16.03.2009.	Both the reliefs declined. Instead recovery from the respondents if any excess amount assessed by the IT Department for delayed payments.
d) Pay Rs.3,63,28,840/- to 3 rd claimant towards proceedings initiated by the IT Department for capital gain concerning the Sale deeds dated 16.03.2009.	(But no prayer) (Award paragraph 91g)
e) Declare that the JDAs dated 24.03.2006 and 06.07.2006 as cancelled due to non-performance, fraudulent representation and misrepresentation on the part of respondent.	Both the reliefs declined In lieu thereof recovery of possession of 1,95,463,862 sq.ft of build up area is granted
f) Declare that the three Sale Deeds dated 16.03.2009 as null and void.	(But no Prayer) (Award Paragraph 91a)
g) Direct the respondents to clear the encumbrance created in the property by creating an equitable mortgage with LIC Housing Finance Limited.	No discussion with regard to this relief.
No prayer	Damages for loss of rent of Rs.83,96,23,641.93 to the claimants 1 to 3 from 1.11.2011 to October 2021. (Award Paragraph 91c)
No prayer	Directing the respondent to pay a sum of Rs.89,12,538.70 for each month till date of delivery of possession. (Award paragraph 91 d)
No prayer	Charge decree is granted over the 80% share of the property of the respondent for the amount determined above i.e., amount



	mentioned in Award paragraph 91c & d (Award paragraph 91 f) in priority of the mortgage created in favour of LIC Housing Limited.
No prayer	Respondents are restrained from selling their property until their obligations for completion of construction under the JDA (Award paragraph 91h)
No prayer	Interest at 15% ordered for the amount determined. (Award paragraph 19i)

13. Court finding:-

The scope and power of the Courts under Sections 34 and 37 of the Act been dealt by the Courts adequately and the Learned Senior Counsels appearing on either side, had relied on multiple decisions on the same proposition of law to enlighten about the position of law and precedents. However, from out of those decisions cited, the recent and relevant judgments necessary for this Court to decide the points for consideration are:

(1)Gayathri Balasamy -vs- ISG Novasoft Tech Ltd.reported in [(2025) 7 SCC 1];

(2)Larsen and Tubro Ltd -vs- Puri Construction Pvt Ltd. Reported in [2025 SCC Online SC 830];

(3)IRCTC -vs- M/s Brandavan Food Products Ltd. reported in [2025 SCC Online SC 2369];



(4) *SSangyong Engineering and Construction Co Ltd -vs- National Highways Authority of India (NHAI)* reported in [(2019) 15 SCC 131];

(5) *Adavya Projects Pvt. Ltd. -vs- Vishal Structural Pvt. Ltd. and others* reported in [AIR 2025 SC 2485].

14. Other judgements referred by the learned Senior Counsels are mostly referred and discussed in the above judgements. Hence, we refrain from listing out all those judgments.

15. The Hon'ble Apex Court had consistently held that, the powers of the Appellant Court under Section 37 of the Act is not broader, than those of the Courts under Section 34 of the Act. The recent judgment dated 21.04.2025, by a Bench consisting of two Hon'ble Judges of the Supreme Court, in ***Larsen and Toubro Limited v. Puri Construction Pvt.Ltd. and others reported in (2025 SCC OnLine SC 830 at paragraph 56)***. With this prelude, we proceed with the recent judgment of the Hon'ble Supreme Court, ***Indian Railways Catering and Tourism Corp.Ltd. v. Brandavan Food Products reported in [2025 SCC Online SC 2369]***, wherein the Hon'ble Supreme Court had discussed the earlier judgments on the powers of Courts under Sections 34 and 37 of the Act and has held as below:-



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62.It is now well settled that Section 34 of the Act of 1996 provides limited grounds on which an arbitral award can be set aside. Section 34(1) makes it clear that recourse to a Court against an award may be made only by an application to set it aside in accordance with sub-sections (2) and (3) thereof. Section 34(2) details the grounds on which an award may be set aside. For the purposes of this adjudication, Section 34(2A) is also relevant. This provision was inserted with retrospective effect from 23.10.2015, vide Amendment Act No. 3 of 2016. It states to the effect that a domestic arbitral award may be set aside if the Court finds that the said award is vitiated by patent illegality appearing on the face of that award. The proviso thereto, however, adds a caveat that an award should not be set aside merely on the ground of an erroneous application of the law or by re appreciation of evidence.

63. Pertinently, Section 34(2)(b)(ii) provides that if the Court finds that an arbitral award is in conflict with the public policy of India, the Court would be justified in setting it aside. Explanation 1, as it presently reads, and Explanation 2 were inserted by the Amendment Act No. 3 of 2016 with retrospective effect from 23.10.2015. Explanation 1 provides that, for the avoidance of doubt, it is clarified that an award is in conflict with the public policy of India only if its making was induced or affected by fraud or corruption or was in violation of Sections 75 or 81 of the Act of 1996 or it is in contravention with the fundamental policy of Indian law or it is in conflict with the most basic notions of morality or justice. Explanation 2 provides that, for the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on



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the merits of the dispute.

64. *In Sangyong Engineering and Construction Company Limited v. National Highway Authority of India (.....), this Court dealt with the expression 'most basic notions of morality or justice' mentioned in Explanation 1. It was opined that the breach must be of some fundamental principle of justice, substantively or procedurally, which shocks the Court's conscience. On facts, this Court found that the award created a new contract by applying a Circular that was not even placed before the arbitral tribunal. It was, therefore, opined that a fundamental principle of justice was breached, viz., that unilateral alteration of a contract cannot be foisted upon an unwilling party nor can a party to an agreement be made liable to perform a bargain not entered into with the other party. This Court held that such course of conduct was contrary to fundamental principles of justice followed in this country and shocked its conscience. It was, however, cautioned that this ground would be available in exceptional circumstances only and under no circumstance can a Court interfere with an award on the ground that justice, in its opinion, was not done.*

65. *Again, in PSA Sical Terminals Private Limited v. Board of Trustees of V.O. Chidambranar Port Trust, Tuticorin⁶, this Court found that the arbitral tribunal had thrust a new term into the agreement between the parties and thereby created a new contract for them. Referring to Ssangyong Engineering (supra), this Court affirmed that rewriting a contract for the parties would be a breach of the fundamental principles of justice, entitling a Court to interfere as it would shock its conscience and would fall*



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within the exceptional category.

66. A little later, in State of Chhattisgarh v. SAL Udyog Private Limited (.....), a 3-Judge Bench of this Court dealt with the issue as to what would constitute 'patent illegality' appearing on the face of the award, in terms of Section 34(2A) of the Act of 1996. Reference was made to the earlier decisions in Associate Builders v. Delhi Development Authority (.....) and Ssangyong Engineering (supra) and it was held that the failure of the arbitral tribunal to decide in accordance with the terms of the contract governing the parties would certainly attract the 'patent illegality' ground as the said oversight amounted to gross contravention of Section 28(3) of the Act of 1996, which enjoined the arbitral tribunal to take into account the terms of the contract while making the award.

16. Again in the judgment dated 30.04.2025 rendered by the Constitutional Bench consisting of 5 Learned Judges in *Gayatri Balasamy -vs- ISG Novasoft Tech Ltd*, reported in [(2025)7 SCC 1], had reiterated while answering the questions referred to the Constitutional Bench. Those answers provides necessary guidelines for this Court to determine the point under consideration.

17. For easy reference the answers to the reference is extracted below:-

"Answers to the reference:

264.In view of the discussion herein above, the reference is



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answered in the following terms:

Question 1

264.1. As set out in the body of the judgment, while exercising power under Section 34 of the A&C Act and consequently the Courts in the appellate hierarchy do not have the power to modify the arbitral award.

Question 2

264.2. Modification and severance are two different concepts while modification is not permitted under Section 34, severance of the award failing foul of Section 34 is permissible in exercise of powers under Section 34. Such a power of severance is also available to the Courts in the appellate hierarchy to the Section 34 Court.

Question 3 & 4

264.3. The power to set aside will not include the power to modify since the power to modify is not a lesser power subsumed in the power to set aside and as held herein above, the power to set aside and power to modify do not emanate from the same genus and are qualitatively different powers in the context of the A&C Act.

Question 5

264.4. The judgment in *Hakeem*, insofar as it holds that a Section 34 Court has no power to modify the award, lays down the correct law. The only exception made in the judgment is with regard to the power to carry out corrections in computational errors, clerical errors or, typographical errors and any other errors of similar nature. This is based on the principle of *actus curiae neminem gravabit* (act of court shall prejudice no one).

265. Appreciation is recorded for the painstaking efforts put in by the learned Solicitor General and all the learned Senior



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Counsel/Counsel who addressed arguments and to the teams assisting them.”

18. Thus, from the judgements, we with no pale of doubt are able to say :-

(a) Section 34 of the Act provides limited grounds on which an arbitral award can be set aside. After the insertion of the proviso by amendment Act 3 of 2006, a domestic arbitral award may be set aside if the Courts, finds that the said award is vitiated by patent illegality appearing on the face of that award. The proviso also adds a caveat, that an award should not be set aside merely on the ground of an erroneous application of the law or by re-appreciation of evidence. (*Paragraph 62 in IRCTC - Brandavan Food Products cited supra*)

(b) The expression, 'most basic notions of morality or justice', used in Clause (iii) to explain the term 'conflict with the public policy of India' under Section 34 (2)(v)(ii) of Arbitration and Conciliation Act, 1996 is to mean any breach in fundamental principle of justice, substantively or procedurally, which shocks the Court conscious. (*Ssangyong Engineering and Constructive Ltd -vs- NHAI cited supra*).

(c) Thrusting a new term into the agreement between the parties and thereby creating a new contract for them, tantamount to rewriting a contract



and that will amount to breach of the fundamental principles of justice. (*PSA Sical Terminal Pvt Ltd -vs- Board of Trustees of V.O.Chidambaranar Port, Tuticorin and Ors. reported in [AIR 2021 SC 4661]*).

(d) Failure of the arbitral Tribunal to decide in accordance with the terms of the contract governing the parties would attract the 'patent illegality' ground and violation of Section 28(3) of the Act. (*Associate Builders -vs- Delhi Development Authority reported in [AIR 2015 SC 620]*).

(e) Modification and severance are two different concepts. While modification is not permitted under Section 34, severance of the award is failing foul of Section 34. Such a power of severance is also available to the Courts in the appellate hierarchy to the Section 34. (*Gayathri Balasamy -vs- ISG Novasoft Technologies Ltd. cited supra*).

19. If, we go back to the relief sought for by the claimants and relief granted by the Arbitrator, which is given in the comparative table at paragraph No.13 of this judgement, for each of the relief, we find reasoning and justification in the award of the Arbitrator. Those reasonings are based on the evidence on record. The parties having given a go-by to the time line agreed. The Arbitrator has taken the admitted facts and facts proved through documents for fixing the date of commencement of the construction and the



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probable date of completion of construction. The expression 'whichever is later' found in Clause 8 speaks about the future action of the parties. It depends on the future conduct of the parties. Same applied on the facts happened after the agreement and how the parties understood the expression and conducted themselves. Turning to the e-mail of the developer dated 24.12.2008 and 12.01.2009, it is obviously clear that the developer has conceded that taking cover under the expression 'whichever is later' is not correct morally and he will see to that rent start coming from April 2009. While so, the Arbitrator on assessing the facts and evidence along with the building plan approval and license to occupy dated 28.10.2011, had fixed the month of completion as October, 2011. This could be the only view in the given facts and circumstance. If for any reason one closes his eyes and claim that the terms of contract says, 24 months period for completion must be reckoned on the later date i.e 28.10.2011 and not the date on which the construction actually completed, that would be the most perverse finding. The power under Section 34 of the A&C Act is not to test the reasonableness of the reason assigned by the Arbitrator, nor to re-appreciate the evidence for the purpose of substituting the alternate view probable, in the view of the Court. The power of the Court is limited to find out any patent illegality or perversity which shock the conscious.



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20. But unfortunately the Court under Section 34 re-appreciated this aspect of the matter and by totally ignoring the admitted stand of the Developer that the construction was complete before April, 2009 and payment of rent would commence from the month of April, 2009, proceeded to hold that the Developer is entitled to complete construction on or before 27.10.2013, contra to the evidence available on record. Thus, the Court below, erroneously interfered with the well considered findings of the learned Arbitrator, which are based on appreciation of oral and documentary evidence before him.

21. In fact, the learned Arbitrator, while considering the prayer and relief sought, had consciously recorded that, “in lieu of the relief to cancel the JDA agreements and sale, I grant the relief mentioned in the award, upholding the sales only because I foresee the possibility of handing over possession in future and that will feed consideration to the sales, only in order that the product of human labour shall not be trashed and brought to debris.”. For arriving at such conclusion, the learned Arbitrator has reduced his decision making process into writing as is evident from paragraph Nos.66 to 70 of the Award.



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22. The learned Arbitrator, thus having arrived at a conclusion that the Developer, having got 80% of the land transferred from the claimants under Ex.C-8, Ex.C-9 and Ex.C-10 registered documents, failed to deliver the 20% of built up area to the claimants, instead of granting the relief of cancellation of JDAs and Sale Deeds, deemed it appropriate to grant a lesser relief, and accordingly granted the relief of damages for loss of rent from 01.11.2011 till the end of October, 2021 duly arriving at a sum of Rs.83,96,23,641.93 in terms of condition of JDAs as is evident from paragraph No.65 of the Award. The learned Arbitrator also having taken note of the fact that Developer has already got right over 80% of the land in terms of the JDAs, thought it fit to ensure that the claimants shall also get the built up area in terms of the JDAs and accordingly ordered for the delivery of 20% of the built up area i.e.1,95,463.862 sq.ft to the claimants from out of the construction made by the Developer.

23. Unmindful of the decision making process undergone by the learned Arbitrator and the reasoning for granting compensation and damages for the delayed execution of the contract, instead of cancelling it and bring down the construction, the Court below had set aside the award as illegal,



perverse and contrary to public policy, in total ignorance of the limitation expressly mentioned in Section 34 of the Act, We are of the considered view that these expressions have to go for the common judgment of the Court below which is impugned in these appeals.

24. When the learned Arbitrator, after having arrived at the conclusions as noted above and while declining the larger relief, granted the lesser relief of granting compensation etc, the Court below considered the same as the reliefs granted without there being any prayer in that regard. If the larger relief of cancellation of JDAs and sale deeds is granted by the learned Arbitrator, the claimants and respondents would go back to their situation in 2006 and the developer also would loose the entire investment made on the construction. Admittedly, the construction that was made by the developer in Tower-C and Tower-D has been yielding rental income, though no account is made available by the respondents to the learned Arbitrator or to the claimants at any point of time. When the Arbitrator has balanced the situation, taking into consideration the overall facts and circumstances, granting the lesser relief than the relief sought for by the claimants, the same cannot be said to be the relief granted without any prayer for the same. Thus, the court below, without looking into these crucial aspects and without any



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proper application of mind, fell in error and held that the reliefs granted by the learned Arbitrator are without any prayer and moulding the relief is not permissible for the Arbitral Tribunal. It is not a case where the learned Arbitrator moulded the relief but here it is a case of granting lesser relief than the relief sought for. As a matter of fact, the claimants have sought for compensation for the delay in handing over the built up area in terms of JDAs and also towards rental arrears promised to be paid in terms of JDAs in the claim statement, no doubt, while seeking to declare the JDAs as cancelled due to non-performance. When there is a specific prayer that compensation for delay and towards rental arrears, the conclusion of the court below that the said reliefs were granted without there being any relief is absurd. So also, when the learned Arbitrator had come to the conclusion that it would not be in the interest of either parties to cancel the JDAs and sale deeds allowed the same to operate. The necessary corollary is to allow the claimants to receive their entitlement of 20% built up area in terms of JDAs in the context of the admitted fact that the developer has already received 80% of the land towards consideration in terms of the JDAs. But, unfortunately, the court below adopted a pedantic, hyper technical and mechanical approach to the facts of the case and erroneously interfered with the findings of the learned Arbitrator by exceeding its jurisdiction under Section 34 of the Act, 1996. At this stage,



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it would be appropriate to observe that what all learned Arbitrator did is only giving effect to the terms and conditions of JDAs and all the major reliefs that were granted by learned Arbitrator are all well within the scope of the JDAs. When the respondents are not seeking for cancellation of JDAs, the respondents cannot be said to be having grievance when the JDAs are ordered to be acted upon by the parties to the same.

25. If the common order passed by the court below is allowed to stand, the resultant situation would be that the developer would retain the entire built up area constructed over the land belonging to the claimants together with the right over 80% of the undivided share of land and continue to enjoy the rental income from the built up area and the claimants would be left with no remedy and no benefit out of the JDAs. If such a situation is allowed to operate, the same is nothing but travesty of justice and mockery of the entire judicial process/system and the confidence in the entire judicial system would be at stake. Thus, in the light of the above, we are of the considered view that the approach of the Court below, while exercising power under Section 34 of the Act, 1996 is liable to be declared as perverse and nothing but exceeding its jurisdiction.



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26. The next contentious point is with regard to adding interest for the compensation and damages. The learned Senior counsel for the appellants in support of the arbitral award granting interest relies on, the two judgments of the Supreme Court one, '*The Secretary, Irrigation Depat, Govt of Oriss and others -vs- G.C.Roy (1992(1) SCC 508)*' which approves imposing interest *pendente lite* and another, '*Morgan Securities and credits Pvt Ltd -vs- Video con Industries Ltd. (2023 (1) SCC 602)*' which has held Section 31(7)(b) of the Act does not fetter or restrict the discretion of the arbitrator to order post-award interest, holding granting post award interest on the part of the sum are valid.

27. In response to the above contention made by the appellants, the Learned Senior Counsel for the respondents states that these judgments will have any relevance only if 'interest' for delay is part of the terms of the agreement and not otherwise. Section 31(7)(a) and (b) of the Act and Section 28(3) of the Act if read together, the illegality in the award of the arbitrator could be seen.

28. We find answer for this issue in paragraph 43 (i) and (ii) of *Secretary Irrigation Department, Government of Orissa and others -vs-*



G.C.Roy reported in [(1992)1 SCC 508], which reads as below:-

“43.The questions till remains whether arbitrator has the power to award interest pendente lite, and if so on what principle. We must reiterate that we are dealing with the situation where the agreement does not provide for grant of such interest nor does it prohibit such grant. In other words, we are dealing with a case where the agreement is silent as to award of interest. On a conspectus of aforementioned decisions the following principles emerge:

(i)A person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation, call it by any name. It may be called interest, compensation or damages. This basic consideration is as valid for the period the dispute is pending before the arbitrator as it is for the period prior to the arbitrator entering upon the reference. This is the principle of Section 34, Civil Procedure Code and there is no reason or principle to hold otherwise in the case of arbitrator.

(ii)As arbitrator is an alternative form (sic forum) for resolution of disputes arising between the parties. If so, he must have the power to decide all the disputes or differences arising between the parties. If the arbitrator has no power to award interest pendente lite, the party claiming it would have to approach the Court for that purpose, even though he may have obtained satisfaction in respect of other claims from the arbitrator. This would lead to multiplicity of proceedings.”

29. On turning to the Constitutional Bench of the Hon'ble Supreme Court in *Gayathri Balasamy v. ISG NOVASOFT Technologies Limited*



reported in [(2025) 7 SCC 1], paragraphs 73 to 80, under the caption *Post -*

Award Interest, we get further clarity on this contentious issue.

IX Post-award Interest

“73. The next question that arises is: *Do courts possess the power to declare or modify interest, especially post-award interest?* In respect of *pendente lite* interest, Section 31(7)(a) (**Annexure A**), states that unless otherwise agreed by the parties, the Arbitral Tribunal may include in its sum for the award, interest, at such rate it deems reasonable on whole or part of the money for whole or part of the period on which the cause of action arose and the date on which the award is made. In respect of post-award interest, Section 31(7)(b) (**Annexure A**) states that unless an award provides for interest on a sum directed to be paid by it, the sum will carry an interest at a 2% higher rate than the current rate of interest prevalent on the date of the award, from the date of the award till the date of payment. The Explanation defines the expression “current rate of interest”.

74. There can be instances of violation of Section 31(7)(a), and the *pendente lite* interest awarded may be contrary to the contractual provision. We are of the opinion that, in such cases, the Court while examining objections under Section 34 of the 1996 Act will have two options. First is to set aside the rate of interest or second, recourse may be had to the powers of remand under Section 34(4).

75. For the post-award interest in terms of Section 31(7)(b), the courts will retain the power to modify the interest where the facts justify such modification. This is why the standard rate stipulated in clause (b) applies when the award itself does not specify the applicable post-award



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interest. There can be a situation where the party to be paid money is at fault and is guilty of delay which may require a modification in the rate of interest. In the absence of grant of post-award interest in the award, the Court also possesses the power to grant post-award interest. Clearly, as per the legislative mandate, it is not the sole prerogative of the arbitrator.

76. Compare Section 31 of the 1996 Act with Section 31 of the Model Law. While both sections are titled similarly —“Form and Contents of Award”—only the 1996 Act addresses interest in Section 31(7). The Model Law does not provide standards governing the determination of interest rates. Thus, Section 31(7) is a unique creation of the Indian legislature. It was not borrowed from the Model Law. Specifically, under Section 31(7)(b), the legislature has established a standard rate of interest to guide the arbitrator's discretion when it comes to determining the post-award interest rate. While the arbitrator retains his flexibility based on facts and circumstances of the case, the standard set by the legislature must weigh in on their consideration. Further, as there is a standard prescribed by the legislature, the post-award interest awarded can be scrutinised by courts against the standards prescribed.

77. Our reasoning is bolstered when considering the practical aspects. The Arbitral Tribunals, when determining post-award interest, cannot foresee future issues that may arise. Post-award interest is inherently future-oriented and depends on facts and circumstances that unfold after the award is issued. Since the future is unpredictable and unknown to the arbitrator at the time of the award, it would be unreasonable to suggest that the arbitrator, as a



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soothsayer, could have anticipated or predicted future events with certainty. Therefore, it is appropriate for the Section 34 Court to have the authority to intervene and modify the post-award interest if the facts and circumstances justify such a change.

78.Inherent in the discussion above, is the Court's power to both increase or decrease the post-award interest rate. It would be incorrect to state that the Court's power to interfere with this interest rate is limited solely to decreasing the interest rate. Situations may arise where the rate should be increased due to delays or obstructions in the execution of the award. Interest rates may also fluctuate over time.

79.However, the Court, while exercising this power, must be cautious and mindful not to overstep its role by altering the interest rate unless there are compelling and well-founded reasons to do so. In exercising this power, the Court is not acting in an appellate capacity, but rather under limited authority. For instance, the 1996 Act stipulates a standard post-award interest rate. When the statute itself benchmarks a standard, unless there are special and specific reasons, the rate of interest stipulated by the statute should be applied.

80.Nevertheless, this limited power is significant, as it can help avoid further rounds of litigation. Without it, the Court may be forced to set aside the entire award or order a fresh round of arbitration because of an erroneous interest rate rather than simply adjusting this rate.”

30. In the light of the principle laid by the Hon'ble Supreme Court, we find no illegality or perversity in granting interest, where the agreement



between the parties does not prohibit grant of interest and the claimants who were deprived of the lawful entitlement in the build up area and the rental income for years together, their legitimate entitlement to be compensated, call it by any name. It may be called interest, compensation or damages. Nomenclature is not the matter but whether the award is within the law. If sufficient cause is shown by the Developer, under Section 34 it is permissible to either to set aside the rate of interest or remand under Section 34 (4) of the Act, In this case, neither of the situation will arise because, the rate of interest is less than the current rate of interest as explained in the award itself. The ordinary law emanated from the common law principle envisages inclusion of interest to the delayed payment of monetary claims.

31. Regarding the issues, (a) whether award of the arbitrator giving primacy to the award decree over the mortgage charge with LIC Housing Finance Ltd, in the absence of any prayer and without hearing LIC and

(b) to the issue of fastening the additional tax on capital gains if arise due to delay in payment of the tax as demanded by the department, the learned Senior Counsel on the side of the appellants contend that, the reliefs mentioned in para 91 (f) and 91 (g) are permissible in law and not illegal. The relief is part of the prayer in the claim petition and within the scope of the



arbitral reference. That apart, for any reason the Court exercising power under Section 34 of the Act had opined that these relief are beyond the scope of reference, it should have applied the 'principle of severability'. It ought not have held the award in entirety illegal.

32. In this aspect, it is profitable to refer the judgment in ***J.G.Engineers Private Limited v. Union of India and another reported in [(2011) 5 SCC 758]***, wherein the Hon'ble Supreme Court has held as below:

“25. It is now well settled that if an award deals with and decides several claims separately and distinctly, even if the Court finds that the award in regard to some items is bad, the Court will segregate the award on items which did not suffer from any infirmity and uphold the award to that extent. As the award on items 2,4,6,7,8 and 9 was upheld by the Civil Court and as the High Court in appeal did not find any infirmity in regard to the award on those claims, the judgment of the High Court setting aside the award in regard to Clause 2,4,6,7,8 and 9 of the appellant, cannot be sustained. The judgment to that extent is liable to be set aside and the award has to be upheld in regard to Claims 2,4,6,7,8 and 9.”

33. The claim petition in this case contain several claims which are distinct and severable. The two reliefs granted 91(f) and 91 (g) are as below:-

91(f) The amounts determined shall constitute a charge over 80% of the property of the Respondents that have been transferred through Ex.C8 to Ex.C10, in the schedule below in priority of the



mortgage created in favour of LIC Housing Ltd., under Ex.C42 to C44.

91(g) The claim for damages for capital gain notice received by claimants 1 & 3 is declined, subject, however, that any amount in excess of the amount assessed by the authorities for delayed payments shall be recoverable by the claimants against the respondents.

34. The corresponding prayers are:

(iii) Award for Rs.1,71,81,503/- for the tax mulched on the first claimant (Andal Dorarirraj) and

(vii) Declare the encumbrance created in the property way of equitable mortgage with LIC.

35. The claimants under Ex.C8 to Ex.C10, dated 16.03.2009 have transferred to the Developer and his two nominees 80% of their right in the subject property totally measuring 8.03 acres. After the sale of 80% share in the properties to the Developers and his nominees, the claimants received notice for payment of capital gains from the Income Tax Department demanding Tax on Capital Gains to the tune of Rs.3,63,28,840/-



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36. The Arbitrator, who framed 19 main Issues and two additional Issues, had answered each one of the issues. Insofar as the capital gains tax, issue 'whether the respondents 1 to 3 are liable to pay the third claimant Rs.3,63,28,840/- towards the alleged damages suffered by the third claimant as capital gain tax to the Income Tax Department by virtue of sale deed dated 16.03.2009?' was framed.

37. The Arbitrator under the caption "Liability to Capital Gains" discussed this issue and finally held against the claimants. He has held that the liability to pay the capital gains referred to the demand notice is on the owners. He further added, only if any excess amount demanded for delayed payment, the same is recoverable from the respondents/ developers.

38. In this regard, we find the owners of the property sought for refund of the demand made by the Income Tax Department for capital gains. The Arbitrator while declining the prayer of the owners regarding payment of capital gains, ordered the developer to pay any excess amount, if imposed by the Income Tax Department for the delayed payment in future. This situation may arise only if Income Tax Department issued additional demand. To grant



a relief in case of any future contingency without any cause of action for the present, falls outside the scope of reference and invalid. Even otherwise this relief has become infructuous as the mortgage with LIC been discharged by the Developer prior to the date of award.

39. The Doctrine of Severability is not an unknown principle in the domain of arbitration. In *R.S.Jiwani (M/s), Mumbai v. Ircon International Ltd., Mumbai* reported in [2010(1) Mh.L.J 547], the Full Bench of Bombay High Court held that “severability is an established concept. It is largely applicable to various branches of civil jurisprudence. Where it is possible to sever the bad part from the good part, the good part of the contract can always be enforced and partial relief can be granted. Doctrine of severability has been applied to law of Contract, since time immemorial.”

40. In our view, the reliefs granted in para 91(f) has become infructuous and 91 (g) falls outside the scope of the reference. However, from out of multiple claims, these two reliefs are severable. If it is excluded as unenforceable and invalid, the remaining part of award will sustain and it is not suffered from any infirmity.



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41. Payment of capital gains is the responsibility of the vendor. Since there was an apparent delay in payment of consideration, the Arbitrator though declined prayer to return the capital gains demanded by the IT Department has ordered payment of interest, if any claimed for delayed payment. Such relief is not within the scope of reference, however, it is severable. Applying the dictum laid in *R.S.Jiwani's case (cited supra)* and *J.G.Engineers Private Limited v. Union of India and another reported in [(2011) 5 SCC 758]*, the relief regarding liberty to claim the additional capital gain, if demanded for delayed payment sounds preposterous and being a relief severable, the same is held as invalid.

42. Contrary to the settled legal position, the Lower Court had set aside the entire award. Though deviation could be find only in these two reliefs in which the relief granted in para 91(f) has become infructuous even on the date of award. The relief granted in para 91(g) II part without any cause of action, is invalid.

43. If in a pot of milk, a drop of poison is mixed, the entire milk need to be discarded, but if in a heap of grains, a few chaff pieces are found, it is prudent to remove the chaff and retain the grains. Likewise, in this case, the



award of the Arbitrator has to be retained, removing the relief, which has become infructuous and another, which is invalid, both being severable. It will be a total absurdity to set aside the entire award and suggest the parties to re-litigate after spending nearly 20 years.

44. As a result, the Common Order of the Lower Court setting aside the well considered Arbitrator award is hereby set aside. As a consequence, the Arbitration award is restored except the two reliefs mentioned in para 91 (f) and (g), which reads as below: .

(f)The amounts determined shall constitute a charge over 80% of the property of the respondents that have been transferred through Ex.C8 to Ex.C10 in the schedule below in priority of the mortgage created in favour of LIC Housing Ltd., under Ex.C42 to Ex.C44.

(g)The claim for damages for capital gain notice received by claimants 1 and 3 is declined (confirmed); subject, however, that any amount in excess of the amount assessed by the authorities for delayed payments shall be recoverable by the claimants against the respondents(invalid). The rest of the award upheld.



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45. In fine, *C.M.A.Nos.1212, 1213 and 1214 of 2024 are partly allowed with costs.* Connected Miscellaneous Petitions are closed.

(Dr.G.J.J.) & (M.S.K.J.)
.11.2025

Index:yes/no
Internet:yes
Speaking order/non speaking order
Neutral citation:yes/no
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To
The Commercial Court (District Judge Cadre), Coimbatore.



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Dr.G.JAYACHANDRAN, J.
and
MUMMINENI SUDHEER KUMAR,J.

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Common Judgment made in
C.M.A.Nos.1212,1213 and 1214 of 2024
and
C.M.P.Nos.10817, 10819 of 2024,
16062 of 2025, 10818 of 2024
16063 of 2025, 10821 of 2024,
10822 of 2024 and 16056 of 2025

27.11.2025