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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO 352/2019**

LT COL KAPIL YADAV

.....Appellant

Through: **Mr. Amitesh Gaurav and Mr.
Jatinder Pal Singh, Advs.**

versus

M/S ANSAL HI TECH TOWNSHIP LTDRespondent

Through: **None.**

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

% **03.04.2025**

1. The hearing is being conducted through hybrid mode.

CM APPL. 38763/2019 – DELAY OF 36 DAYS IN FILING

2. This application is moved on behalf of the appellant seeking condonation of delay of 36 days in filing the appeal.

3. For the reasons stated in the application, the same is allowed and the delay is condoned.

4. Application stands disposed of.

FAO 352/2019

5. No one has appeared for the respondent/Judgment Debtor when the matter was called.

6. Learned counsel for the appellant has invited the attention of this Court to the order dated 27.03.2024, whereby last opportunity was granted to the respondent to file a reply within four weeks, failing which, it was directed that no further opportunity shall be granted.

7. That being the case, this Court after hearing the learned counsel for the appellant and on a perusal of the record, proceeds to decide the



instant appeal preferred by the appellant/Decree-holder under Section 37 of the Arbitration and Conciliation Act, 1996⁵.

8. Shorn of unnecessary details, the appellant executed an agreement dated 27.10.2010 with the respondent, so as to purchase a plot of land in Hi-Tech City, Greater Noida, Uttar Pradesh, whereby it was agreed that a plot of land measuring 425 sq. yds. (355.35 sq. mtrs.) shall be allotted to him in the Hi-Tech City project of the respondent for a total consideration of Rs.20,00,000/-.Evidently, the said consideration was paid by the appellant through cheque dated 21.10.2010, drawn on State Bank of India and duly encashed.

9. It appears that since no information was received from the respondent till December 2010, and on taking up the matter with the respondent, a letter dated 04.12.2012 was received proposing an altogether new set of terms disregarding the previous terms of agreement dated 27.10.2010. In short, the respondent offered a smaller plot measuring 373.75 sq. yds. (312.50 sq. mtrs.) in Sector 1A/145, Greater Noida instead of the agreed plot of land measuring 425.00 square yards situated in Sector 2B.

10. The appellant evidently invoked arbitration vide Clause (19) as contained in the agreement dated 27.10.2010 and served a notice upon the respondent dated 01.07.2013 to that effect. As the same was not responded to, he was constrained to file a petition under Section 11 of the AC Act, which was admitted for consideration in ARB.P. 348/2013 by this Court on 21.08.2013.

11. Finally, this Court *vide* order dated 07.11.2014, appointed Justice V.S. Aggarwal, Retired Judge of High Court of Delhi as the Arbitrator and the matter was referred to arbitration. The learned

⁵ AC Act



Arbitrator passed an award dated 23.11.2017, whereby the claim of the appellant was allowed, thereby granting an amount of Rs.51,00,000/- in favour of the appellant against the respondent, further entitling the appellant/claimant to interest @ 12% p.a. on the said amount from the date of award till final payment is made.

12. The appellant assailed the impugned award by filing an application under Section 34 of the AC Act, which came to be decided by the learned District and Sessions Judge, South District, Saket, New Delhi *vide* impugned order dated 08.03.2019 and the appeal was partly allowed to the effect that the appellant was made entitled to interest @ 12% p.a. on the amount awarded i.e. Rs.51,00,000/-, from the date of filing of the claim, i.e., 25.03.2015 till its realization.

13. The cross-objections filed by the respondent were, accordingly, dismissed.

14. In the present appeal under Section 37 of the AC Act, a short issue is raised with regard to the award of interest in terms of Section 21 read with Section 31(7)(a) of the AC Act. It would be apposite to refer to both the provisions, which provide as under:

“Section 21- Commencement of arbitral proceedings- Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

Section 31(7)(a)- Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.”

15. A bare perusal of the aforesaid provisions would show that the arbitration commences from the date a request is made by a party for



reference of the dispute to arbitration. If that date is to be reckoned, the notice for invoking arbitration was issued by the appellant on 01.07.2013, which was duly served upon the respondent.

16. Further, in view of Section 31(7)(a) of the AC Act, there is plenary power vested with the Arbitrator to award interest where the agreement does not provide for any interest at such rate as the Arbitrator deems fit and reasonable for whole or any part of the money or for whole of the period between the date on which the cause of action arose and the date on which the award is passed.

17. Evidently, the learned Arbitrator has not assigned any reasons as to why the interest has not been awarded from the date of invocation of the arbitration. Likewise, even the learned District Judge while disposing of the appeal under Section 34 of the AC Act has not given any reasons as to why the interest awarded has been reckoned from the date of filing of the claim i.e. 25.03.2015 till realization.

18. It is also borne out from the record that this Court in the arbitration petition bearing ARB.P. 348/2013, *vide* order dated 07.11.2014 had directed the parties to appear before the Arbitrator on 01.12.2014 at 03:30 PM.

19. In view of the aforesaid discussion, there is no justifiable reason as to why the appellant should not be entitled to interest from the date of invocation of the arbitration.

20. Accordingly, the present appeal is allowed. The impugned award dated 08.03.2019 is hereby modified to the effect that besides the entitlement of Rs.51,00,000/- in *lieu* of the plot that was to be allotted, the appellant shall also be entitled to interest @ 12% p.a. from the date of invocation of the arbitration i.e., 01.07.2013 till realization.



21. The appeal stands disposed of accordingly. Pending applications, if any, also stand disposed of.

DHARMESH SHARMA, J.

APRIL 03, 2025/*gunn/Es*