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

\+ O.M.P.(I) (COMM.) 389/2024 I.A. 44802/2024

ANAK LAL & ANR. .....Petitioners

Through: Mr. Manu Aggarwal, Ms. Ruchira Gupta, Ms. Pooja Tripathi and Ms. Ishita Pandey, Advocates

versus

THE ALMOND INFRABUILD PVT LTD .....Respondent

Through: Mr. Krish Kalra, Adv. (thru VC)

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

<u>O R D E R</u>

% 18.02.2025

1. This petition has been filed under Section 9 (ii) (b) of the Arbitration and Conciliation Act, 1996 ("**A&C Act**") seeking the following reliefs:

> *(i) direct the Respondent to deposit Rs. 1,85,54,001/- along with interest on Rs. 1,61,96,453/- @ 18% p.a. from the date of award till the date of payment in this Hon'ble Court to secure the claims of the Petitioner; &*
> *(ii) direct the Respondent to deposit Petitioners' loan closure amount*
> *of Rs. 1,14,44,608/- along with any further accrued sum and foreclosure charges in this Hon'ble Court to secure the amount of Loan Account No. LGBUR00002081163 in ICICI Bank.*

2. The background facts are that petitioner and respondent entered into a Buyer's Agreement dated 1st March 2014, and the MOU dated 22nd March 2014, with respect to *Apartment No. 4241 ATS, Tourmaline having built up area of 1466 Sq. ft.* and *super built-up area of 1750 Sq. ft.*, proportionate

undivided interest in the common areas and facilities and limited common areas and facilities (if any). along with the exclusive right to use and occupy two car parking spaces ('the flat').

3. The petitioners, respondent and *ICICI Bank Ltd* executed a Tripartite Agreement dated 01st March 2014, availing loan of *Rs.1,14,19,259/-* with respect to the flat for which loan amount was disbursed to the respondent.

4. It had been agreed between the parties, respondent will pay the pre-EMI interest amount during the subvention period. Thereafter, the claimant exercised the '*Buy* Back' option under *clause 8* of the MOU, *vide* letter and e-mail dated 14th February 2017.

5. However, the respondent did not honour its commitment of *Buy Back*; dispute resolution mechanism was invoked by the Claimant.

6. Arbitration commenced and Arbitral Award dated 04th April 2024 was rendered. Relevant extract from the relief awarded under the Award is as under:

"58.4 In light of the foregoing discussion, the claimants shall be entitled to the following relief from the Respondent:

A. The Respondent shall refund Rs.21,86,678/- to the claimants which was admittedly paid as booking amount of the apartment by the claimants;
B. The Respondent shall pay to the claimants the agreed amount of premium @Rs. 1,800/- per sq. ft. i.e. Rs. 31,50,000/-;
C. The respondent shall pay to the claimants the amount of EMIs of Rs. 32,31,483/- paid by the claimants to ICICI Bank Ltd. after invocation of the buy-back clause 8 of the MOU till the filing of the SOC;
D. The respondent shall pay to the Claimants interest @18% p.a. on the said booking amount of Rs.21,86,678/- plus premium amount Rs.31,50,000/-, total of Rs.53,36,678/- from the date of expiry of one month of subvention period of 36 months from the date of booking i.e. 01.03.2017 till the date of award which comes to Rs.68,04,264/-;
E. The respondent shall pay to the Claimants interest @18% p.a. on the amount of EMIs of Rs.32,31,483/- from the date of filing the SOC i.e. 02.11.2022 till the date of award which comes to Rs.8,24,028/-;
F. The respondent shall pay the claimants' loan closure amount of Rs. 1,14,44,608/- qua the said Apartment to ICICI Bank Ltd. directly in terms of clause 5 and 8 of the MOU along with any further accrued sum and foreclosure charges within 30 days;
G. The respondent shall also pay to the claimants all the amount of the EMIs which were paid by the claimants to ICICI Bank Ltd. after filing of the SOC till the date of award;
H. The Respondent shall also pay to the claimants the cost of arbitral proceedings amounting to Rs. 9,03,445/-;
I. The Respondent shall make the payment to the claimants of the aforesaid amounts within 30 days.

58.5 Upon receipt of the aforementioned sums and closure of the loan account on payment of the loan closure amount by the respondent to ICICI Bank Ltd., the claimants shall immediately execute the necessary documents to surrender the allotted Apartment in favour of the respondent.

58.6 In view of the judgment in UHL Power's case, the respondent shall pay future interest @18% p.a. on the aforesaid amounts i.e. Rs. 21,86,678/- + Rs.31,50,000/- + Rs.32,31,483/- + Rs.68,04,264/- + Rs.8,24,028/-, which comes to Rs.1,61,96,453/- from the date of award till payment of the awarded amount."

7. Respondent has not challenged the Arbitral Award under ***OMP (COMM) 489/2024***.

8. Plaintiff has not filed any enforcement petition, considering that there was a direction passed under Section 17 of the A&C Act, by the Arbitral Tribunal for disclosure of assets by respondent and deposit of amount under

the Award. Enforcement was filed by petitioner which subsequently, has become infructuous since the arbitral award was delivered.

9. Concern of petitioner is that respondent has not declared its assets and the award will result in nullity.

10. To this counsel for respondent, states on instructions that the flat of which buy back is in dispute, is still allotted in the name of petitioner. He further states that respondent undertakes not to create any third-party rights in respect of said flat. The said flat, as per respondent, is currently having a value of *Rs.5 crores* which according to them shall duly cover the arbitral award along with interest thereon (which as per petitioner is around *Rs.3.26 crores*).

11. Accordingly, directions are passed that no third-party rights shall be created with respect to the flat, nor the possession of the flat be handed over to any party.

12. Respondent shall file its undertaking on record along with an affidavit of a senior officer, within 2 weeks from today with copy to the opposing counsel.

13. With these observations and directions, this petition stands disposed of along with pending applications.

14. Order be uploaded on the website of this Court.

ANISH DAYAL, J

FEBRUARY 18, 2025/sm/bp/tk