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

+ O.M.P. (COMM) 109/2024 & I.A. 5097/2024

RAJ SUJAN & ANR.

.....Petitioners

Through: Mr. Shubhankar Chodhary, Adv.

versus

M/S GEAR UP BUILDERS PRIVATE LIMITED & ORS.

.....Respondents

Through: Mr. Byrapaneji Suyodhan, Mr. Arun Sharma, Ms. Tatini Basu, Mr. Bharat J. Joshi and Ms. Sneha Mondal, Advs.

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+ O.M.P. (COMM) 112/2024, I.A. 5350/2024

GEAR UP BUILDERS PRIVATE LIMITED & ORS.Petitioners

Through: Mr. Byrapaneji Suyodhan, Mr. Arun Sharma, Ms. Tatini Basu, Mr. Bharat J. Joshi and Ms. Sneha Mondal, Advs.

versus

SHRI RAJ SUJAN & ANR.

.....Respondents

Through: Mr. Shubhankar Chodhary, Adv.

CORAM:

HON'BLE MR. JUSTICE AVNEESH JHINGAN

ORDER

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22.04.2026

1. These two petitions under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') have been filed aggrieved of the award dated 18.11.2023. For reference and convenience the facts are taken from O.M.P. (COMM) 109/2024.

2. The brief facts are that the petitioners were owners of the property detailed in the petition. On 14.05.2012, the parties to the *lis* entered into a Development Agreement CUM GPA (for short 'the agreement'). The terms



of the agreement provided for dispute resolution through arbitration. The dispute between the parties with regard to delay in completion of the project and the unsatisfactory quality of work was referred to arbitration at the instance of the petitioners.

2.1 The claims and counter-claims filed by the parties and the outcomes thereof are tabulated below:

SI	Particulars	Amount	Whether Allowed/Rejected
CLAIMS			
Claim 1	Towards completion of unfinished works in the Flat Nos. 202 and 402	Rs. 33,92,012/-	Rejected
Claim 2	Liability of Respondents to pay all taxes including the property tax in terms of Clause 27 of the Agreement till the handing over of the site to the Claimants	Rs. 1,10,242/-	Rejected
Claim 3	Towards completion of the unfinished works in Flat G-0 1	Rs. 1,30,000/-	Rejected
Claim 4	Compensation for delay in construction in terms of Clause 11 of the Agreement	Rs. 2,31,82,855/-	One crore allowed
COUNTER CLAIMS			
Counter Claim 1	Refund of the interest fee	Rs. 28,00,000/- along with	Interest not allowed



	refundable deposit	interest of 18 per cent per annum	
Counter Claim 2	Towards payment for excess area of 152.50 square feet	Rs. 12,20,000/- along with interest of 18 per cent per annum	Rejected

3. Both the parties aggrieved of the impugned award dated 18.11.2023 are before this Court.

4. Learned counsel for the petitioners contends that there was a formula stipulated in Clause 11 of the agreement to calculate liquidated damages (for short 'LD') for delay in completion of work yet the tribunal awarded compensation of rupees one crore instead of Rs. 2,31,82,855/-.

5. Learned counsel for the respondent argues that the tribunal in the absence of evidence of actual loss or damage suffered has awarded rupees one crore on sheer guesswork.

6. Before proceeding further it would be relevant to reproduce Clauses 10 and 11 of the agreement:

“10. The DEVELOPER undertakes to complete the project within a period of 21 (Twenty one) months from the date of obtaining sanction plan from GHMC with a grace period of 3 (Three) months may be considered hereof. However, the Developer shall obtain the permission within 3 months from the date of this Agreement, subject to no-objection raised in respect of title, any restrictive orders etc. The DEVELOPER shall strictly adhere to time schedule for completion of the Residential Complex. If any delay occurs due to force majeure or any other reasons beyond the control of the DEVELOPER, such period shall be excluded from the time given to the DEVELOPER for the construction of the proposed Residential complex. In such a situation the DEVELOPER will get the completion



time extended to the extent of the delayed period as mutually agreed in writing between both the parties. Market conditions and financial difficulty shall not be included within force majeure or any other reasons beyond the control of the Developer. It is agreed that should any dispute arise as to the delayed period the matter will be referred to the Arbitrator appointed under this agreement and his decision will be final and binding on both the parties.

11. If for any reason the DEVELOPER is unable to construct the proposed complex within the specified period of TWENTY ONE (21 months with grace period and such further extension in writing, the DEVELOPER shall pay to the OWNERS a sum of Rs.25 per square foot of 50% of the buildable area sanctioned per month by way of compensation until the day of handing over of the OWNERS share of the residential complex complete in all respects as stipulated herein, provided the delay is caused due to no fault of the OWNERS and no claims on the title of the land.”

7. The law is well settled that for claiming damages under Section 74 of the Indian Contract Act, 1872 (for short ‘the Contract Act’) the actual loss or damage suffered has to be proved and in cases where it is not possible to prove the damages, a reasonable amount be awarded. The agreed amount between the parties acts as an upper cap for granting damages. Reference in this regard be made to the decision of the Supreme Court in **Kailash Nath Associates Vs. Delhi Development Authority and Another**, (2015) 4 SCC 136.

“43. On a conspectus of the above authorities, the law on compensation for breach of contract under Section 74 can be stated to be as follows:

43.1. Where a sum is named in a contract as a liquidated amount payable by way of damages, the party complaining



of a breach can receive as reasonable compensation such liquidated amount only if it is a genuine pre-estimate of damages fixed by both parties and found to be such by the court. In other cases, where a sum is named in a contract as a liquidated amount payable by way of damages, only reasonable compensation can be awarded not exceeding the amount so stated. Similarly, in cases where the amount fixed is in the nature of penalty, only reasonable compensation can be awarded not exceeding the penalty so stated. In both cases, the liquidated amount or penalty is the upper limit beyond which the court cannot grant reasonable compensation.

43.6. The expression “whether or not actual damage or loss is proved to have been caused thereby” means that where it is possible to prove actual damage or loss, such proof is not dispensed with. It is only in cases where damage or loss is difficult or impossible to prove that the liquidated amount named in the contract, if a genuine pre-estimate of damage or loss, can be awarded.”

(Emphasis Supplied)

8. At this stage, learned counsel for the parties, on instructions contend that since both the parties are dissatisfied with the award and it is not in accordance with Section 74 of the Contract Act and the law laid down by the Supreme Court, the award be set aside with liberty to avail arbitration afresh.

9. In view of the above the impugned award is set aside with liberty as prayed for.

AVNEESH JHINGAN, J

APRIL 22, 2026/Pa