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

% *Date of Decision: 22.04.2026*

\+ FAO(OS) (COMM) 58/2026 CM APPL. 16297/2026

SNG DEVELOPERS LIMITED .....Appellant

Through: Mr. Manish Vashisht, Sr. Advocate and Mr. Akshay Makhija Sr. Advocate with Mr. Prateek Gupta, Mr. Pulkit Agarwal, Ms. Vishakha Kaushik, Mr. Vedansh Vashisht, Mr. Deepak Jonia, Mr. Garvil Singh, Ms. Chitrakshi Sharma and Mr. NK Verma, Advocates

versus

LORD VARDHMAN BUILDTECH PRIVATE LIMITED

.....Respondent

Through: Mr. Sanjeev Kumar Dubey, Senior Advocate with Mr. E. Krishna Dass, Mr. Harsh Basoya, Ms. Tanya Verma and Mr. Shahrukh, Advocates

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

MANMEET PRITAM SINGH ARORA, J. *(ORAL)*

1. The present appeal has been filed under Section 37(1)(c) of the Arbitration and Conciliation Act, 1966 ('Act of 1996') read with Section 13 of the Commercial Courts Act, 2015 with the following prayers:

> "a) Set-aside the impugned judgement dated 11.02.2026 passed by the Ld. Single Judge in O.M.P(COMM) 34812024 titled as 'SNG Developers Limited vs. Lord Vardhman Buildtech Private Limited' and also Set-aside the Arbitral Award dated 22.04.2024 passed by the Ld. Sole Arbitrator in the arbitration between the parties.
> b) Cost of the proceedings be awarded in favour of the appellant and against the respondent.
> c) Pass such other order / orders as this Hon'ble Court deems fit and Proper."

2. The relevant facts for deciding the present appeal are as follows:

2.1. The appellant is the owner of land bearing No. S-S001, admeasuring approximately 5 acres, situated at P-8, Greater Noida, District Gautam Budh Nagar, Uttar Pradesh ['subject plot']. The dispute arises out of an Agreement to Sell ['ATS'] dated 04.04.2011, whereby the appellant agreed to sell an area admeasuring 2.929 acres out of the said land i.e., part of the subject plot, to the respondent for a sale consideration of Rs. 7.50 crores.

2.2. It is contended by the appellant that under the said ATS, the responsibility of obtaining the requisite statutory permissions, including bifurcation/approval, was upon the respondent, while the appellant was only to facilitate the same as owner.

2.3. It is stated that in terms of Clause 12 of the ATS, the date fixed for performance was the date of payment which in present case was 20.05.2011 and, even if deferment were assumed, the outer limit for performance could

not extend beyond 19.09.2011.

2.4. It is stated that since the respondent failed to secure the requisite approvals from the Greater Noida Industrial Development Authority ['statutory authority' or 'GNIDA'], the appellant, by email dated 13.05.2013[1], informed the respondent that the agreement had become incapable of performance and had become null and void, and was accordingly called upon the respondent to take refund of the amount. However, for a considerable period, the respondent neither sought specific performance of the agreement nor demanded refund of the amount.

2.5. It is stated that thereafter, the respondent belatedly invoked arbitration only on 30.07.2018 and had *only* sought relief of execution of sale deed. Pursuant thereto, a sole arbitrator was appointed by this Court on 04.04.2019.

2.6. It is stated that in the Statement of Claim dated 21.05.2019[2], the respondent, for the *first* time, sought an alternative relief of refund of Rs. 7.50 crores.

2.7. It is stated that the appellant, in its Statement of Defence dated 08.07.2019[3], specifically raised the plea that the claims pertaining to specific performance of ATS and claim for refund of amount were barred by limitation. It is stated that during the arbitral proceedings, the respondent relied upon the ATS, whereupon the appellant raised objections of

[1] Annexure A-4 filed along with the appeal
[2] Annexure A-7 (colly) filed along with the appeal
[3] Annexure A-8 (colly) filed along with the appeal

admissibility of the ATS, inter alia, on the grounds of non-payment of stamp duty and non-registration of ATS.

2.8. It is stated that the learned Arbitrator *vide* interim award dated 01.11.2021 rejected the objections raised by the appellant pertaining to the ATS being not appropriately stamped under Indian Stamp Act, 1899 and deferred the objection of effect of non-registration of the ATS for consideration at the stage of final hearing. The appellant assailed the said interim award; however, the same was ultimately upheld and attained finality.

2.9. It is stated that at the stage of final arguments, the respondent gave up the relief of specific performance of ATS and restricted its claim to the alternative relief for refund of amount of 7.50 crore.

2.10. It is stated that the learned Sole Arbitrator, by award dated 22.04.2024, has directed the appellant to refund the sum of Rs. 7.50 crores received as sale consideration along with pendente lite and future interest at the rate of 10% per annum till the date of actual payment.

2.11. It is stated that the appellant assailed the said award by filing the OMP (COMM) 348/2024 under Section 34 of the Act of 1996 on the ground that the claim of refund is barred by limitation; however, the learned Single Judge, by judgment dated 11.02.2026, dismissed the objection petition and, and simultaneously in execution petition being OMP (ENF)(COMM) 223/2024 filed by the respondent, directed the appellant to deposit the entire awarded amount along with up-to-date interest with the registry.

3. Mr. Manish Vashisht, learned senior counsel on behalf of the

appellant states that the respondent's claim was ex-facie barred by limitation and that limitation period has been wrongly opined to be extended on the basis of unsigned and undated balance sheets, which finding is contrary to Section 18 of the Limitation Act, 1963.

3.1. He states that the appellant vide email dated 13.05.2013 called upon the respondent to refund the money, so even if the limitation period is to be considered from the date of email, the period of limitation ends on 13.05.2016, however the respondent only invoked the arbitration on 30.07.2018 and raised the claim of refund on 21.05.2019, therefore the claim of refund is barred by the limitation.

3.2. He states that the only signed balance sheet relied upon pertains to FY 2016-17. The said balance sheet was signed on 30.09.2017, i.e. after expiry of the limitation period, and therefore could not revive a time-barred claim. He further states that there was no valid acknowledgment of any subsisting liability towards the respondent during 2013 to 2016.

3.3. He states that no charge was ever created on the subject plot against the appellant to the extent of its interest, for an amount paid by the respondent. He states that the respondent, having committed breach of its obligations under the ATS is not entitled to claim any refund or claim a charge under Section 55(6)(b) of the Transfer of Property Act, 1882.

3.4. He states that the liability of Rs.7.50 crores could not have been proved de-hors the unregistered ATS and therefore, that the impugned award, as upheld by the learned Single Judge, suffers from patent illegality and is contrary to the public policy.

Court's analysis

4. We have heard the counsels for the parties and perused the record.

5. The subject matter of the present appeal is a challenge to the award directing the respondent to refund the sum of Rs. 7.50 crores *admittedly* received by the appellant as sale consideration in pursuance to the ATS dated 04.04.2011 for part transfer of the subject plot.

5.1. The ATS admittedly could not be performed as the statutory authority declined to grant the mandatory permission for partition of the subject plot. The appellant itself acknowledging the futility of the ATS *vide* e-mail dated 13.05.2013 and *fairly* offered to refund the said amount to the respondent. The respondent however, did not act on the offer of refund, in the year 2013.

5.2. The respondent initiated the arbitration proceedings on 30.07.2018 seeking specific performance of the ATS and raised an alternative relief for refund of Rs. 7.50 crores in its Statement of Claim dated 21.05.2019. At the stage of final arguments, the respondent gave up the claim for specific performance of the ATS and limited its claim to the alternate relief for refund of Rs. 7.50 crores along with interest.

5.3. However, the appellant opposed the claim of refund of Rs. 7.50 crores on the ground of limitation by contending that since it had offered to refund the amount on 13.05.2013, the claim for refund in arbitration proceedings ought to have been initiated within three (3) years from the said date and are not maintainable thereafter.

5.4. The appellant also raised an issue with respect to admissibility of the claim of refund on the ground that since, the amount was paid in pursuance

of an ATS, which has to be compulsorily registered as per the amendment to Section 17 (2)(v) of the Registration Act, 1908 ('Act of 1908'), as applicable for the State of Uttar Pradesh, and since the ATS was unregistered, the said ATS cannot be read in evidence as per proviso to Section 49 of the Act of 1908, as amended for the State of Uttar Pradesh, in the arbitral proceedings for establishing the claim of refund.

6. By the impugned award, the learned Arbitrator has directed the appellant to refund the sum of Rs. 7.50 crores to the respondent along with *pendente lite* and future interest at the rate of 10% p.a. till the date of actual payment.

7. The impugned award is premised on the finding that the receipt of sum of Rs. 7.50 crores by the appellant from the respondent is admitted in the appellant's pleadings in the arbitration proceedings and the offer of the appellant to refund the said amount is documented in the appellant's e-mail dated 13.05.2013. Learned Arbitrator held that therefore, the liability of the appellant is evinced from the arbitral record without any reference to the ATS. Learned Arbitrator also accepted the submission of the respondent that the unregistered ATS can be looked into for the collateral purpose of ascertaining the proof of payment and receipt of sum of Rs. 7.50 crores. The appellant's plea that refund of claim of refund of Rs. 7.50 crores is barred by limitation was also rejected in view of the acknowledgments recorded in the balance sheets of the appellant for the financial years 2013-14 to 2016-17. Learned Arbitrator held that the acknowledgements in the balance sheets had the effect of extending the period of limitation and therefore, the claim

of refund made in Statement of Claim dated 21.05.2019 was within limitation.

8. The relevant findings of the learned Arbitrator on the issue of the admitted liability of payment of Rs. 7.50 crores and the findings on limitation are as under:

> "**Discussion & finding regarding refund**
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> 18. The plea of the Respondent is that on merits the Claimant cannot sustain a claim for refund of the amount of Rs. 7.50 crores. The foundation of this argument is that since the Agreement, which was compulsorily registrable, cannot, in view of the U.P. amendment to the proviso to section 49 of the Registration Act, 1908, cannot be received as evidence of a contract of specific performance and because the sale consideration is part and parcel of the Agreement to sell, the Agreement cannot be received as evidence of the sum of Rs. 7.50 crore having been paid by the Claimant to the Respondent and the Respondent having received the same. Hence, according to the Respondent, the Claimant cannot rely upon the Agreement for claiming the alternative relief of refund of the said sum of Rs. 7.50 crores.
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> 19. This plea of the Respondent is untenable. One answer has been provided by the Claimant by stating that it is making the claim de hors the Agreement and solely based on the admissions of the Respondent in the pleadings and the documents filed by the Respondent. These admissions have already been referred to and set out above. For the sake of convenience, the same are reproduced below:
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> In paragraph 3-5 of the SOD (Reply on Merits) it is stated as under:
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> " ... However, the said agreement to sell dated 05.04.2010 was also superseded by the Agreement to sell dated 04.04.2011 (Agreement in question) wherein it was agreed to the sell the 2.929 acres out of the 5 acres of the land to the claimant on the consideration of Rupees 7.50 Crores."

In paragraph E of Preliminary Objections in the SOD it is stated as under:

> " ... The Claimant made the payment of the sale consideration on 20.05.2011. "

In the Respondent's email dated 13.05.2013 (Ex. RW-1/4), the Respondent's liability to refund the said amount is also admitted as under:

> "We are already in touch on this subject towards refund of the amount and as such, we request you to conclude the matter at the earliest possible."

20. In view of these admissions no further proof is required to establish that the Claimant paid a sum of Rs. 7.50 on 20.05.2011 and that the Respondent was to refund the same to the Claimant. As held in **Nagindas Ramdas** (supra), a decision relied upon in **Sangramsinh** (supra), "*admissions if true and clear, are by far the best proof of the facts admitted"* and further, *"admissions in pleadings*" (which is the case here) "*are fully binding on the party that makes them and constitute a waiver of proof"* and more importantly *"they by themselves can be made the foundation of the rights of the parties*." The admission of receipt of the sum of Rs 7.50 crore and the admission of the liability to refund the same in the email dated 13.05.2013 can by themselves be made the foundation of the claim of refund by the Claimant. Hence, the Claimant without attempting to seek refund on the basis of the Agreement as evidence, is entitled to claim refund on the basis of the aforesaid admissions.

21. Apart from this, the Claimant has given up its prayer for specific performance. Hence, the U.P. amendment to the proviso to section 49 of the Registration Act, 1908, does not in any way come in the way of the Claimant seeking refund of the amount of Rs. 7.50 crores. The Proviso as applicable to U.P. still provides that an unregistered document affecting immovable property which is required to be registered by the Registration Act or the Transfer of Property Act, 1882 (4 of 1882), may be received as evidence of any 'collateral transaction' not required to be effected by registered instrument.

22. In other words, as noted in ***Korukonda*** *(supra)*, the prohibition is to prevent a person from establishing, by the use of the document in evidence a "transaction, affecting immovable property". The Claim for refund does not affect immovable property, the claim to specific performance of the Agreement to sell dated 04.04.2011 having been given up. The giving of money and the seeking of its return is not a transaction which the law requires to be registered. It is a transaction, paraphrasing the language used in ***NIT Trust*** *(supra)*, "divisible from the transaction" to effect which the law requires registration". Considered in this light also, the Claimant is entitled to claim refund from the Respondent of the said amount of Rs. 7.50 crore paid by it to the Respondent.

… …

… …

Discussion & Finding on Limitation

27. After considering the arguments made on behalf of the parties, the Tribunal is of the view that the Claim for refund of Rs. 7.50 crores is not bar by limitation. First of all, it is an accepted position that the Respondent by its email dated 13.05.2013 had offered to refund the said amount of Rs. 7.50 crores. So, the starting point of limitation, even as per the Respondent would be 13.05.2013.

28. Secondly, the Claimant has been able to establish that as per the extracts from the balance sheets/ financial statements of the Respondent the amount of Rs 7.50 crores has been admitted as an "ADVANCE AGAINST SALE OF SCHOOL PLOT". This appears in the statements for the financial year 2013-14 right up to the financial year 2016-17. Clearly, the acknowledgments were made prior to the expiration of the original period of limitation that within three years w.e.f. 14.05.2013. These documents filed by the Claimant as Additional List of Documents on 30.07.2019 have been 'denied' by the Respondent in its affidavit of admission/denial of document for the reason - *"As the same has no relevance in the facts and circumstances of the case"*. It is pertinent to point out that in the order dated 09.05.2019 the Tribunal had made clear in paragraph 7.8 thereof that in the Affidavits of Admission/Denial, the parties were to list and describe such of the documents the existence / genuineness of which are in dispute, setting

out the reasons therefor in brief. It was also made clear that in the absence of the same, the document shall be available for being read in evidence, dispensing with the need of formal proof thereof. However, the question of evidentiary value to be attached to the document was to remain open for consideration at the final hearing. It is therefore clear that Respondent has made an evasive denial on the purported reason of relevance. The denial was to be with regard to the existence / genuineness of the documents. There is no such denial. Hence, the existence / genuineness of said extracts from the balance sheets/ financial statements have not been disputed by the Respondent and will be deemed to be in existence and genuine. The Respondent cannot be permitted to detract from this position. For the same reason the Respondent cannot now take the stand the papers alleged and purported to be balance sheets are mere incomplete papers and sheets and not balance sheets. The Respondent has not produced any contrary evidence to establish that its financial statements/ balance sheets were otherwise.

29. The law is well settled, as demonstrated by the Claimant with reference to the decisions in ***Larsen & Tubro*** *(supra)*, ***N.S. Atwal*** *(supra)* and ***Asset Reconstruction*** *(supra)*, that an entry in a balance sheet/financial statement would amount to an acknowledgement of liability under section 18 of the Limitation Act, 1963. The amount of Rs 7.50 crores has been clearly reflected in the said statements as an "ADVANCE AGAINST SALE OF SCHOOL PLOT". This amounts to an acknowledgement of liability under section 18 of the Limitation Act, 1963. This has been done consistently in the Statements of financial years 2013-14 to 2016-17 and not just in the financial statement for the financial year 2016-17 (as was wrongly sought to suggested by the Respondent). Each such acknowledgment was made within the prescribed period of limitation and resulted in a fresh period of limitation computed from the time when the acknowledgment was made. It is not the case of the Respondent that the financial statements were not prepared and signed as per law. It is also not the case of the Respondent that the Respondent did not file the Annual Returns as is the requirement in law. The Respondent has also not produced any evidence to controvert the position that the expression ADVANCE AGAINST SALE OF SCHOOL PLOT was in respect of some other transaction with someone else. The suggestion to the contrary by the

> Respondent is bereft of any evidence. When the Claimant categorically submitted that the sum of Rs 7.50 crores mentioned in the financial statements as "advance against sale of school plot" specifically related to the amount of Rs. 7.50 crores advanced to the Respondent and acknowledged by the Respondent in, inter alia, the email dated 13.05.2013, as a constituent of its jural relationship with the Respondent, the burden was on the Respondent to show that the said reference in the financial statements was with reference to some other transaction with some other entity. The Respondent has not produced any such evidence or even any pleading to this effect.
>
> 30. For all these reasons, the Respondent's plea of the bar of limitation in respect of the Claimant's claim for refund of the amount of Rs. 7.50 crores is not tenable. The claim is within time.
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> 31. Hence, **Issue 1, in respect of the alternative claim of refund of Rs. 7.50 crores is decided against the Respondent by holding that said claim is within time and is not barred by limitation. Issue 7, for the reasons already indicated above, is decided by holding that the Claimant is entitled to the refund of the sum of Rs.7.5 crores from the Respondent which the Respondent shall refund to the Claimant."**

9. The appellant filed Section 34 petition being OMP (COMM) 348/2024 challenging the award on identical pleas, as raised in the arbitration. The learned Single Judge by its impugned judgment dated 11.02.2026, after examining the evidence on record and the findings of the learned Arbitrator, opined that the reliance placed by the learned Arbitrator on the balance sheets for the years 2013-14 to 2016-17 for concluding that appellant had acknowledged its liability of Rs. 7.50 crores and limitation stood validly extended, was logical and a legally sustainable inference. Learned Single Judge also concluded that though the unregistered ATS cannot form basis for the relief of specific performance, however, the same

can be looked into for a collateral purpose and to this extent the learned Arbitrator was correct in relying upon the ATS for determining the underlying transaction between the parties, which form the basis of the payment of Rs. 7.50 crores. Learned Single Judge also held that in view of Section 19 of the Act of 1996, the procedural discretion vested in the Arbitral Tribunal for determining the admissibility, relevance, materiality and weight of the evidence and the same would not be governed by the strict provisions of the Code of Civil Procedure, 1908 or the Evidence Act, 1872. In view of the aforesaid findings, Section 34 petition was dismissed and the present appeal has been filed assailing the judgment dated 11.02.2026.

10. In the present proceedings, before us, during the arguments, the plea of limitation was primarily pressed. Mr. Manish Vashisht, learned senior counsel for the appellant stated that the ATS was dated 04.04.2011, the amount of Rs. 7.50 crores was paid on 20.05.2011, the statutory approvals for partition of the subject plot and the execution of the sale deed had to be completed by 20.09.2011. He states that the statutory approvals were not granted by the statutory authority and thereafter, the appellant by its e-mail dated 13.05.2013 had communicated to the respondent that in view of the non-grant of the statutory approvals the ATS has become null and void and called upon the respondent to accept the return of Rs. 7.50 crores. He states that the period of limitation has thus, to be reckoned from 13.05.2013 and it expired after three (3) years, i.e., on 13.05.2016 and therefore, the Statement of Claim filed on 21.05.2019 seeking refund, for the first time was barred by limitation.

11. We are unable to accept the submission of the appellant. In the facts of this case, it is admitted that the sum of Rs. 7.50 crores was paid by the respondent to the appellant as sale consideration for purchase of the part of the subject plot forming subject matter of the ATS. It is the stand of the appellant that the ATS could not be performed due to the non-grant of approvals by the statutory authority. The appellant asserts that due to the non-grant of the statutory approvals agreement became null and void and it of its own volition offered to refund the sum *vide* e-mail dated 30.05.2013. These undisputed facts show that as per the appellant's own case, due to the non-grant of the statutory approval, the ATS became impossible to perform as contemplated under Section 56 of the Indian Contract Act, 1872.

12. At the hearing dated 17.03.2026 we had put to the appellant, the issue of applicability of Section 55(6)(b) of the Transfer of Property Act, 1882 ('TPA') to the claim of the respondent for refund of the sale consideration as a statutory charge on the subject plot, and sought appellant's response. The appellant had sought an adjournment to examine the said issue and address arguments today on 22.04.2026. During arguments, learned senior counsel for the appellant contended that it is the stand of the appellant that respondent had committed a breach of the ATS by not obtaining the statutory approvals and therefore, Section 55(6)(b) of the TPA would not be attracted, in the facts of this case.

13. We are unable to accept this submission of the appellant as it is contrary to its pleadings in the appeal and the Statement of Defence where it has categorically pleaded that the agreement became null and void due to the

non-grant of the statutory approvals by the statutory authority. It was not the contention of the appellant that the statutory approvals were wrongly denied by the statutory authority and could have been obtained by the respondent with exercise of due diligence. In fact, the appellant accepts that decision of non-grant of permission for partition of the subject plot by the statutory authorities is legal and valid, and has relied upon the same in the arbitral proceedings in its favour.

14. The admissions/pleadings of the appellant in this appeal with respect to the agreement having become null and void due to the non-grant of statutory permission by the statutory body are as under:

> "f. The respondent tried to take approval from the Greater Noida Authority for partition/bifurcation of the land in question, however, the proposal of the respondent was rejected by the Greater Noida Authority. Since, the respondent was unsuccessful in getting the approvals for partition / bifurcation of the land in question; therefore, the intention of the respondent become dishonest, and the respondent started shifting onus to get the approvals on the respondent.
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> g. Therefore, the appellant vide its email dated 13.05.2013 informed the respondent that it was the respondent's obligation to take approvals from the Greater Noida Authority in a time bound manner and eventually, the Greater Noida Authority rejected the proposal of the respondent, therefore, essence of the agreement is finished and the agreement is null and void. Vide the said e-mail communication dated 13.05.2013 the appellant refusing to perform the agreement unequivocally notified the respondent that the agreement cannot be performed as essence of the agreement is extinguished and the same is null and void. It is further notified that since agreement is not being performed, to take the refund. This was notice of refusal by the appellant. A true copy of the email dated 13.05 .2013 issued by the appellant to the respondent is annexed herewith and marked as **Annexure A-4.**

> h. After receipt of email dated 13.05.2013, the respondent did not demand either performance or refund."

Similar pleadings were raised by the appellant in the Statement of Defence[4].

15. The appellant's pleadings and the e-mail dated 13.05.2013 show that due to the non-grant of the statutory commission the appellant was unwilling to execute the sale deed even though it had received the entire sale consideration of Rs. 7.50 crores from the respondent in the year 2011 itself. In the facts of this case, the respondent herein did not decline to perform the ATS and accept the sale deed of the property. Therefore, the submission of the appellant that respondent was in breach of the ATS is contrary to the pleadings and hereby rejected. In these facts, in the considered opinion of this Court, as the ATS had become incapable of performance, the respondent (buyer) had a statutory charge as per Section 55(6)(b) of the TPA to receive the refund of Rs. 7.50 crores, along with interest, paid as sale consideration and to the extent of this amount has a 'charge' over the subject immovable property. Section 55(6)(b) of TPA reads as under:

> "**55. Rights and liabilities of buyer and seller.—**In the absence of a contract to the contrary, the buyer and the seller of immoveable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following, or such of them as are applicable to the property sold:
>
> … …
>
> (6) The buyer is entitled—

[4] Paragraphs W, X, Y, Z at pages 225 of the appeal paper book

> (a) … …
> (b) unless he has improperly declined to accept delivery of the property, to a **charge** on the property, as against the seller and all persons claiming under him to the extent of the seller's interest in the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery and for interest on such amount; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission.
>
> An omission to make such disclosures as are mentioned in this section, paragraph (l), clause (a), and paragraph (5), clause (a), is fraudulent."
>
> (Emphasis supplied)

16. A suit/claim for enforcement of payment of money secured by a 'charge' upon immovable property is governed by Article 62 of the Schedule to the Limitation Act, 1963 which provides that the period of limitation shall be twelve (12) years from the date when the money sued for becomes due. In the facts of this case, since as per the appellant the respondent's right to receive the refund was acknowledged by it on 13.05.2013, the Statement of Claim filed on 21.05.2019 would be within limitation. The submission of the appellant that the limitation period was only three (3) years is incorrect, in the present facts and not sustainable.

Notwithstanding our findings above, we also hold that the findings returned by the learned Arbitrator that the appellant had duly acknowledged its liability to pay Rs. 7.50 crores to the respondent in its balance sheet for the financial year 2016-17 and had also admitted the statements of the financial year 2013-14 to 2015-16 filed on the arbitral record during admission/denial of documents are unexceptionable. The Arbitrator has

rightly observed that the appellant not only made vague denials but also failed to produce contrary evidence by filing its financial statements as filed before the statutory authorities for the financial year 2013-14 and onwards. We concur with the learned Single Judge that the reliance placed and inference drawn against the appellant, by the learned Arbitrator on the basis of the statements of the financial year 2013-14 to 2015-16, as corroborated by the statement of the financial year of the year 2016-17, in view of the deliberately vague admission/denial of the said statements and in absence of any credible rebuttal was correct and fell within the exclusive jurisdiction of the learned Arbitrator who is indeed the master of the evidence.

17. We note that the appellant herein received the entire sale consideration of Rs. 7.50 crores on 20.05.2011, the said amount on appellant's own showing was offered to be refunded on 13.05.2013. The appellant admits that the possession of the subject plot was also returned to it by the respondent. The appellant therefore, on its own showing had no legal right thereafter, to retain the said amount of 7.50 crores. An honest person would have of its own accord refunded the said amount by a bank transfer, however, the appellant for reasons best known did not take the said steps. Even during arbitration, it could have by itself offered to pay the said amount after the respondent withdrew its claim for specific performance and was only pursuing the claim for refund. We find it surprising that the appellant is opposing the refund of the said amount on a plea of limitation, knowing very well that it has otherwise, no legal right to withhold the said amount. In these facts, it is apparent that the appellant is merely holding on

to the said amounts for its illegal enrichment and otherwise has no valid ground for withholding this amount.

18. The other plea of the appellant that the unregistered ATS cannot be referred to for discerning the payment of the sale consideration of Rs. 7.50 crores have been rightly rejected by the learned Arbitrator. The finding of the Arbitrator that the unregistered ATS can be perused by the Arbitral Tribunal for ascertaining the record of the payment of Rs. 7.50 crores, and the proviso to Section 49 of the Act of 1908 as amended in the State of Uttar Pradesh would not be a bar to admissibility of the ATS for this limited purpose is correct and the challenge to the said finding is without any merit. We note that the admission of the appellant with respect to the receipt of the amount of Rs. 7.50 crores as sale consideration is clearly documented in its pleadings, documents and balance sheets, and therefore, discernible from documents other than the unregistered ATS. This plea of the appellant is wholly untenable and a reflection of its dishonest intent to withhold the amounts which are rightfully due and payable to the respondent.

19. Learned counsel for the appellant as a last resort had argued that the rate of interest awarded by the Arbitrator be reduced.

20. We find no merit in this argument. The learned Arbitrator had awarded pendente lite and future interest (simple interest) till actual payment on the refund amount at the rate of 10% per annum for pendente lite period w.e.f. 21.05.2019. In fact, no interest has been granted for the pre-reference period, even though, the appellant itself acknowledged its liability to refund the amount on 13.05.2013. The respondent would have been entitled to

interest for pre-reference period also as per Section 55(6)(b) of the TPA, however, since respondent is not aggrieved by the non-grant of interest for the pre-reference period, the appellant has already gained substantially by the interest free retention of the amount of Rs. 7.50 crores from 20.05.2011 (date of payment) until 21.05.2019. The interest awarded is thus, reasonable and requires no interference.

21. It is a paradox that the appellant, who has actually succeeded in the arbitration proceedings inasmuch as the respondent itself withdrew the claim of specific performance and has also been declined the relief of interest for pre-reference period by the learned Arbitrator, however, continues to needlessly challenge an award, which is actually in accordance with the pleadings of the appellant and the reliefs granted by the learned Arbitrator are as per law.

22. In our considered opinion, the appeal is an abuse of process of Court. The appellant continues to own the subject plot, which is bound to have increased in value exponentially between 2013 to 2026 and therefore, there has been no loss whatsoever to the appellant. The challenge to the relief of refund is nothing but evidence of the appellant's avarice to wrongfully withhold the amounts liable for refund. The award was in accordance with the facts and in law and there was no reasonable ground for the appellant to file the Section 34 petition and the present appeal. No costs of arbitration were awarded in favour of the respondent by the learned Arbitrator and none have been awarded by the learned Single Judge, and this has further emboldened the appellant to file this frivolous appeal.

23. The appeal is accordingly, bereft of any merits and is hereby rejected. The respondent is held entitled to costs for Rs. 1 lakh from the appellant herein to be paid on or before the next date of hearing before the Executing Court. In case the costs are not paid, the same shall be liable to be recovered in the execution proceedings.

24. Pending applications, if any, stand disposed of.

MANMEET PRITAM SINGH ARORA, J

V. KAMESWAR RAO, J

APRIL 22, 2026/AJ/msh