



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

% Reserved on : 24.02.2025
Pronounced on : 16.05.2025

+ **O.M.P. (COMM) 548/2024, I.A. 48962/2024**

EMAAR INDIA LTD

.....Petitioner

Through: Mr. Dhruv Rohatgi with Ms.
Chandrika Sachdeva and Mr. Dhruv
Kumar, Advocates.

versus

CITRON HOLDING LLP

.....Respondent

Through: Mr. Ankur Mahindro with Mr. Rohan
Taneja, Mr. Mohit Dagar, Mr. Aditya
Kapur, Mr. Soumil C. Gonsalves, Mr.
Ankush Satija, Mr. Raghav Kalra and
Mr. Rohit Bishnoi, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present proceedings are instituted under Section 34 of the Arbitration & Conciliation Act, 1996 (hereinafter, referred to as the 'A&C Act') thereby seeking setting aside of the arbitral award dated 30.08.2024 (hereinafter, '*impugned award*') delivered by the Arbitral Tribunal comprising of a Sole Arbitrator (hereinafter, '*AT*').

2. The Petitioner/builder and Respondent/buyer had entered into two Builder Buyer Agreements, both dated 30.12.2008 and *pari materia* to one another (hereinafter, '*BBA*'), whereby two commercial properties being i) *PSQ C-1-F04-009, Unit no. 409, 4th Floor (commercial section),*



commercial project “The Palm Square”, Sector 66, Gurugram, Haryana and ii) PSQ C-1-F04-010, Unit No. 410, 4th Floor (Commercial Section), “The Palm Square”, Sector 66, Gurugram, Haryana (hereinafter, ‘subject premises’) were agreed to be sold to the Respondent by the Petitioner.

3. Briefly stated, as per Clause 16(a)(i) of the BBA, the Builder was supposed to deliver possession of the Units to the Claimant/Respondent within 36 months from the execution of the BBA, i.e., by 31.12.2011. There was an additional grace period of 120 days available to the Builder for delivery of possession, which expired on 30.04.2012. The project is stated to have been issued Occupancy Certificate from the authorities on 22.12.2014, following which, possession of the Units was offered on 26.12.2014 by way of a Letter of Intimation of Possession.

4. As per Clause 18(a) of the BBA, the buyer was entitled to be paid interest on the sums paid by it to the Builder, @ 9% p.a, for the period of delay, in case the Builder failed to deliver possession by the BBA stipulated time. It is the Respondent’s case that 90% of the contract price already stands paid to the Petitioner vide two instalments of INR 1,24,34,721/- and INR 1,32,13,968/- in 2007 and 2009, respectively.

5. It is alleged that, the Builder committed a breach of the BBA by failing to deliver possession in time, on account of which the Respondent terminated the BBA vide notice dated 19.03.2015 and sought refund of the entire sum paid by it, along with interest @ 15% p.a.

6. Thus, a dispute arose between the parties and the Builder invoked arbitration under Clause 35 of the BBA. Late Sh, Rajiv Bansal, Senior Advocate, was appointed as the Sole Arbitrator on 08.04.2015. However, after the invocation of arbitration, the parties explored the possibility of an



amicable settlement, pending which, the arbitral proceedings remained in abeyance with no outcome.

7. Subsequently, after a considerable lapse of time, Respondent issued another legal notice dated 17.12.2020, reiterating its demand for refund of sums paid by it along with the interest that it demanded @ 24% p.a. Respondent replied to the demand vide its letter dated 28.12.2020 stating that it was willing to offer possession subject to the Petitioner paying the outstanding dues.

8. Respondent felt dissatisfied, and vide its letter dated 27.03.2021, it issued a notice under Section 21 of the A&C Act invoking arbitration. Unfortunately, thereafter, the Sole Arbitrator previously appointed passed away on 17.05.2021, which led to the Respondent filing a petition under Section 11 A&C Act (ARB.P 589/2021) before this Court. Vide order dated 30.11.2021, a new Arbitrator, Dr. Amit George, was appointed as the Sole Arbitrator, to adjudicate the disputes. The arbitral proceedings proceeded thereon and could not be concluded within the one-year mandatory period. Consequently, vide order dated 25.08.2023, this Court extended the mandate of the AT till 30.08.2024, in a petition filed under Section 29A of the A&C Act.

9. Eventually, the arbitral proceedings came to be terminated with the passing of the final arbitral award dated 30.08.2024.

10. The Respondent/Claimant filed its Statement of Claim (hereinafter, 'SOC') before the AT on 10.02.2022, following which, the Petitioner filed its Statement of Defence (hereinafter, 'SOD') alongwith its counterclaims on 26.03.2022.



11. The Respondent/Claimant filed 4 claims before the AT. In terms of Claim 1A, the Respondent/Claimant had initially sought possession of the subject premises. However, the Respondent thereafter filed an application for amendment of its SOC, which was allowed by the AT vide order dated 14.03.2023. Vide the amended SOC, the Respondent/Claimant, under Claim 1A, claimed refund of amounts paid by the responded to the petitioner totaling to Rs. 2,56,48,721/- (along with interest). Further, under Claim 1B, the Respondent claimed pre-suit and pendente lite interest at the rate of 12% per annum from the date of termination of the BBA, i.e., 19.03.2015 till the date of the Arbitral Award, i.e., 30.08.2024, which was later revised to 9% during final hearings. Claim 1C was regarding future interest at the rate of 12% p.a. from 31.08.2024 till the date of payment, also revised to 9% thereafter during final hearings. Lastly, Claim 1D was for cost of arbitration proceedings. The Petitioner resisted the claims and filed 6 counterclaims of its own. Petitioner also raised the objection that the claims were time barred.

12. Vide the impugned award, the AT allowed the claims of the Respondent and rejected the counter claims filed by the Petitioner, which the Petitioner has taken exception to the following grounds.

13. The Petitioner has contended that the claim raised in 2021 was time barred, since the cause to sue arose on 30.04.2012, when the time period of 36 months plus 120 days grace period for delivery of possession stipulated in Clause 16 (a) of the BBA expired. At the worst, the cause to sue later arose on 19.03.2015, when the BBA was allegedly terminated by the Respondent.

14. Petitioner has argued that the previous round of arbitration initiated on the basis of legal notice dated 08.04.2015, came to an end with no



conclusion before the erstwhile arbitrator passed away on 17.05.2021. It is further argued that vide notice of termination dated 19.03.2015, the Respondent had prayed for refund of the sums paid by it under the BBA alleging breach of the BBA by the Petitioner. However, later, in the notice dated 17.12.2020 and thereafter, vide notice dated 27.03.2021, which was a fresh notice for invocation/commencement of arbitration under Section 21, the Respondent made fresh claim of possession of the properties in question, rather than refund of money. Even otherwise, according to the Petitioner, in the year 2021, the claim for refund had already become time barred if cause to sue is reckoned from 30.04.2012 or 19.03.2015, as discussed above.

15. On merits too, the Petitioner has objected to the claim, contending that the Respondent defaulted in paying the outstanding dues in time, which disentitled it to claim possession/refund from the Petitioner. Reference is made to the communications/letters dated 26.02.2011, 15.06.2011, and 04.07.2011, and subsequently, 26.12.2014, 23.01.2015 and 18.02.2015 to argue that repeated demands were made before termination of the BBA which the Respondent failed to comply with.

16. It is contended that the Respondent had no right to terminate the BBA on the ground of delay in delivery of possession. It is argued that under Clause 18, the Respondent was only entitled to claim interest on the payments made by it @ 9% p.a. for the period of delay and since the Respondent itself defaulted in making the payments due under the BBA, even this compensatory interest was not payable to it.

17. It is further contended that in the absence of a provision in the BBA for permitting refund of the sums paid by the Respondent, the AT by



ordering refund, has re-written the agreement, which is against the settled legal principle, thereby vitiating the award on account of patent illegality.

18. Petitioner has also contended that the AT ignored the fact that the Respondent had waived off its claim of refund in the legal notice dated 17.12.2020, when it requested for possession of the subject premises. This clearly demonstrated the waiving off of the original claim of refund made by it since 2015. AT committed an error by enforcing a claim that had been abandoned, thus, AT permitted the Respondent to approbate and reprobate, which is not permissible in law.

19. Learned counsel for the Respondent/Claimant, on the other hand, defends the impugned award and submits that, as regards the Petitioner's argument of the claims being time-barred, the period of limitation begins from invoking of arbitration, which in the present matter was done vide letter dated 08.04.2015, whereby the erstwhile Arbitrator was appointed. The same is within the period of three years from when the cause of action arose, i.e., 30.04.2012, when the Petitioner failed to deliver possession of the subject premises as per the timeline stipulated in the BBA, including the grace period. Thereafter, it is stated that the erstwhile Arbitrator passed away on 17.05.2021 and the present Arbitrator came to be appointed on 30.11.2021 by this Court. It is also stated that in the meantime, while the parties were exploring the possibility of a settlement, the arbitral proceedings remained in suspension, thus, limitation period cannot be said to run through this time period. Moreover, it is pointed out that the petitioner itself filed its counterclaim in 2022 only and cannot thus claim the bar of limitation. In support of his contentions, reliance is placed on Oriental



Insurance Company Limited v. April Usa Assistance Inc.¹ and Thomas Cook (India) Limited v. Red Apple Chandrarat Travel.²

20. It is the Respondent's case that the Petitioner breached the BBA insofar as Clauses 16 and 18 are concerned. Attention of this Court is drawn to the Petitioner's own admission as to the delay in handing over possession as also the liability of the Petitioner to pay compensation for the same, in its communication dated 18.06.2012. Since possession was offered as late as 26.12.2014 without any accompanying compensatory interest, the Respondent was constrained to terminate the BBA vide notice dated 19.03.2015. It is submitted that contrary to the Petitioner's contentions, the Respondent was entitled to terminate the BBA on the ground of material breach of contract, which is inherently provided for by law, even if no specific provision stipulates the same. Learned counsel places reliance on decisions of this Court in M/s. Classic Motors Ltd. v. Maruti Udyog Ltd.,³ and Rajasthan Breweries Limited v. The Stroh Brewery Company.⁴

21. Moreover, it is contended that on account of the inordinate delay in offering possession by the Petitioner, the Respondent is entitled to its claim of refund alongwith interest. It is further submitted that the Claimant's application seeking amendment of SOC came to be allowed on 14.03.2023 against payment of cost of Rs.50,000/-, which was duly paid by the Respondent and also received by the Petitioner. It is also contended that the said order rightly noted that the claim of refund did not surface for the first time at that stage but had been continuously sought since 2015, more specifically, vide communications dated 19.03.2015 and 17.12.2020, thus,

¹ 2021 SCC OnLine Del 4843.

² Commercial Arb. P. No. 332/2021 dated 13.01.2023.

³ 1996 SCC OnLine Del 872.

⁴ 2000 SCC OnLine Del 481



2024:DHC:10242



the said claim could not have said to be abandoned or waived off. It is pointed out that even in the notice dated 27.03.2021 issued under Section 21 A&C Act, the Claimant sought the relief of refund alternatively to possession. As regards the order dated 14.03.2023 allowing amendment of SOC, the claimant makes a two-fold submission, that *firstly*, the only objection raised at the time was that the claim of refund was belated, however, not time barred, to which the AT had noted that in light of the attempted settlement proceedings going on between the parties, the delay itself would not be fatal to the amendment. Further, the factum of the said claim being sought on previous occasions was also not denied. *Secondly*, it is submitted that the appropriate remedy against the said order, which was in the nature of an interim award, was to challenge it under Section 34 of the A&C Act, which was never undertaken at the relevant stage.

22. Lastly, it is submitted that the interest is to be granted from date of termination only and not from date of payment or the date when the amendment of the SOC came to be allowed. In rejoinder, learned counsel for the Petitioner submits that once the relief of possession was sought as the primary relief and thereafter, as the sole relief at the stage of filing of the original SOC, the preceding termination notice stands withdrawn as a consequence and thus, the award of interest from the date of termination is bad in law.

23. AT dismissed the objection on limitation and held the claim to be within time. The AT held that the commencement of arbitration occurred with the erstwhile arbitrator being appointed vide legal notice dated 08.04.2015, which was issued within three years of the cause to sue, which arose, upon the failure of the Builder to hand over possession by 30.04.2012,



the contractually promised date of possession. AT held that with the commencement being within the limitation period, subsequent delay in conclusion of arbitration would not render the initial commencement time barred. According to the AT, the clock of limitation stopped with the initial commencement of arbitration being within limitation period.

24. AT has further held that the second reference made under Section 21, on 27.03.2021, when arbitration was again invoked, was of no consequence for limitation, in view of the time spent by the parties to explore settlement options, and the fact that the incumbent arbitrator had passed away, which lead to appointment of new arbitrator.

25. In the opinion of this court, the AT's decision on limitation is legally reasonable. In order to decide if the claims were time barred, the only consideration relevant was the commencement notice issued on 08.04.2015. The limitation period stops running once the claim is filed within the limitation period from the time when the right to sue accrued. Subsequent events causing delay in the conclusion of arbitral proceedings do not render the initial filing time barred. It cannot be said that the second notice dated 27.03.2021 issued under Section 21 was fresh commencement of arbitration, even though the notice was styled as one issued under Section 21 and was followed up with a petition under Section 11, seeking appointment of an arbitrator. It is noteworthy, that even the Petitioner unconditionally conceded to the prayer for appointment of arbitrator, which is evident from the order dated 30.11.2021, wherein the fresh appointment was directed. Be that as it may, even though appointment was consensual, rightly so, the question of limitation was still dealt with and decided by the AT.



26. AT has observed that the Petitioner itself had, vide its email dated 28.12.2020, replied to the Respondent's legal notice dated 18.12.2020, stating that the disputes were already *sub judice* before the erstwhile AT. This piece of evidence also weighed with the AT in concluding that the subsequent appointment of the sole arbitrator was in continuation of the already initiated arbitral proceedings.

27. This Court does not have the benefit of the petition filed under Section 11 by the Petitioner to find out if the substantive ground pleaded for appointment of a fresh arbitrator, was the termination of mandate of the previous AT on the grounds mentioned under Sections 14 and 15 of the A&C Act, due to untimely demise of the arbitrator. Be that as it may, even if order for appointment of arbitrator was made in a petition filed under Section 11, and not in a petition filed under Section 14/15, the fact of the matter is that the same was on account of demise of the previous incumbent arbitrator, which could be a ground for termination of mandate under Section 14. No doubt, the subsequent appointment was in continuation of the earlier initiated arbitration which remained inconclusive and never came to be terminated in any of the eventualities listed under Section 32 of the A&C Act.

28. In view thereof, the AT rightly concluded that the claims were not time barred.

29. On merits, the AT examined the evidence produced by the parties and interpreted the BBA, in favour of the Respondent. The AT rightly upheld the termination of BBA effected by the Respondent in view of the breach committed by Petitioner by failing to deliver possession in the promised time stipulated in Clause 16 of the BBA.



30. In terms of Clause 16 (a) of the BBA, the Builder was liable to deliver possession of the Units within 36 months of the allotment, which time expired on 30.12.2011. Even the additional grace period stipulated in the BBA, i.e., of 120 days, expired on 30.04.2012. The Petitioner is unable to meet this serious allegation of breach of the BBA and has not offered any good reason to explain the delay or if the same was excusable under the BBA. The Petitioner's only refrain is the breach of the BBA payment terms by the Respondent, which disentitles it to seek possession.

31. Petitioner has not referenced the payment plan and its own corresponding obligation to complete the stages of construction. There is a bald assertion that the delay in payment caused delay in delivery of possession. AT has referred to two emails dated 27.06.2011 and 28.06.2011, issued by the Respondent offering to pay the dues subject to the Petitioner disclosing the construction and possession status. These emails counter the Petitioner's allegation that the Respondent's default prevented the Petitioner from delivering possession in time. AT has rightly observed that the Petitioner offered possession after a considerable delay, on 26.12.2014, following the issuance of OC to the project on 24.12.2014. AT has returned a factual finding that the Petitioner has been unable to offer any credible and excusable reason for delaying the possession.

32. Under the circumstances, the AT has held that termination of BBA was an inherent right that the Respondent enjoyed in view of the Petitioner's failure to offer possession.

A gainful reference may be made to the decision of the Division Bench of this Court in Rajasthan Breweries (*Supra*), wherein the Court categorically held that even in the absence of a specific clause providing for



either party to terminate the agreement, when the circumstances so warrant, the contract being a private commercial transaction in nature may be rightly terminated by the party suffering a breach after serving a reasonable notice.

33. Petitioner contended that the Respondent had waived off the termination of BBA effected vide legal notice dated 19.03.2015, by issuing a subsequent notice dated 17.12.2020, demanding possession. According to the Petitioner, the subsequent issuance of notice amounted to fresh commencement of arbitration, which by then, had become time barred from the termination notice dated 19.03.2015. The AT has referred to the aforesaid legal notice dated 17.12.2020 and held that the Respondent had made an alternate request for possession, besides the demand for refund. AT in this manner has dealt with the Petitioner's plea of waiver, which is a reasonable and judicious.

34. The AT has also rightly rejected the Petitioner's challenge to the amendment of the SOC permitted by the AT whereby the Respondent was allowed to confine its prayer to refund in place of possession prayed for in the original SOC. The AT has observed that the prayer for refund did not amount to setting up of a new case since the refund had been earlier requested for as an alternate demand to the demand of possession in all the communications since 2015. It is pertinent to note that the order permitting amendment was in the nature of an interim award which should have been challenged under Section 34. It is held in a catena of decisions of the Supreme Court as well as this Court that an interim award liable for challenge under Section 34 of the A&C Act is such which conclusively determines claims/issues between the parties and has characteristics of finality. Once an amendment to SOC is allowed as to substantial claims, and



not mere corrections of technicalities, it attains the nature of an interim award and can only be challenged under Section 34 of the A&C Act. [Ref: Shah Babulal Khimji v. Jayaben D. Kania,⁵ India Farmers Fertilizer Cooperative Limited v. Bhadra Products,⁶ Punit A. Bhardwaj v. Rashmi Juneja⁷ and Cinevistaas Ltd. v. Prasar Bharti⁸] Pertinently, instead of challenging the order dated 14.03.2023 under Section 34 of the A&C Act, the same was complied with insomuch as cost of Rs.50,000/- imposed while allowing amendment to the SOC was accepted and received by the petitioner, and the order resultantly attained finality. Therefore, the petitioner's objection to the claim of refund being allowed in the amended SOC stands misplaced.

By failing to challenge the amendment order dated 14.03.2023, the Petitioner is precluded from challenging the impugned award by challenging the amendment of SOC, at this stage. For the said reason, neither is there a legal infirmity or perversity in such a finding of the AT allowing amendment.

35. Once the legal objections raised by the Petitioner came to be decided by the AT, the claims made by the Respondent became the natural consequence of such rejection.

36. After holding that the Petitioner could not explain the delay in obtaining OC and offering possession, and also rejected the Petitioner's contention that the Respondent was in breach of its own payment obligations, Respondent's right to seek refund, was a natural consequence of

⁵ (1981) 4 SCC 8.

⁶ (2018) 2 SCC 534.

⁷ 2022 SCC OnLine Del 2691.

⁸ 2019 SCC OnLine Del 7071.



the Petitioner's breach of BBA. There is no legal infirmity in the AT directing refund of monies as a measure of damages.

37. The AT has awarded interest @ 9% p.a. on the sums awarded to the Respondent towards refund from the date of payment and not from the date of amendment of the SOC. Award of interest and the rate at which the same is payable is clearly within the ambit of the powers conferred under Section 31(7) of the A&C Act. In the opinion of this Court, the AT has carefully awarded interest @ 9% drawing parity with the Petitioner's right to claim interest @ 9% on the payment defaults by the buyers. There is no legal infirmity in awarding interest from the date of payments made by the Respondent rather than from the date of amendment of the SOC on 14.03.2023, wherein the prayer for refund was opted for in place of possession. AT has recorded that the demand for refund was consistently made by the Respondent since 2015. In any case, once the BBA was terminated for a good reason, as has been held by AT, the Petitioner could not legally retain the money paid by the Respondent, and deny the Respondent its use. For this reason, the Court does not find any infirmity in the award of interest.

38. In light of the aforementioned facts and legal position, this Court is of the considered view that the present petition is unmerited and is, accordingly, dismissed, alongwith pending application.

MANOJ KUMAR OHRI
(JUDGE)

MAY 16, 2025/ik