2026:DHC:3738-DB

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

% Judgment reserved on: 20.12.2025
Judgment pronounced on: 04.05.2026
Judgment uploaded on: As per digital signature~

\+ **FAO (OS) (COMM) 50/2024 & CM APPL. 15862/2024**

PARVEEN KAPOOR & OTHERS ..... Appellants

versus

OMAXE LIMITED ..... Respondent

Advocates who appeared in this case

For the Appellants : Ms. Kaadambari Singh, Sr. Advocate with Ms. Shraddha Sharma and Mr.Praveen Kapoor Advocates

For the Respondent : Mr. Ramesh Singh, Sr. Advocate with Mr. Mukti Bodh, Mr. Subhasish Panda, Ms. Mala Dwivedi, Ms. Nanya Hage, Mr. Pawan Agarwal, Advocates

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE VINOD KUMAR

JUDGMENT

V. KAMESWAR RAO , J.

1. This appeal under Section 37 of the Arbitration and Conciliation Act, 1996 ('the Act', hereinafter) has been filed with the following prayers:

> *"(a) Set aside the Impugned Judgment dated 12.12.2023 passed by the Hon'ble Court of Delhi in the case titled Omaxe Ltd. v. Praveen Kapoor &Ors. O.M.P. (Comm.) 296/2021.*

(b)Reinstate the Arbitral Award dated 19.9.2019.
(c) To pass any other orders or directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. By arbitral award dated 19.09.2019, the learned arbitrator rejected the counterclaims of the respondent-Omaxe and passed the award in favour of the claimants, who are the appellants before us. Aggrieved by the award, the respondent filed objections under Section 34 of the Act before this Court, adjudicated by the learned Single Judge who partly set aside the arbitral award in O.M.P. (COMM) 296/2021 vide impugned judgment dated 12.12.2023.

FACTUAL BACKGROUND

3. The respondent, is a real estate development company incorporated under the provisions of the Companies Act, 1956 and is engaged in the business of construction and development of commercial, residential and integrated real estate projects across India.

4. The respondent undertook construction and development of a commercial project, namely "Omaxe Novelty Mall", situated at Lawrence Road, Amritsar, Punjab in collaboration with the landowners M/s Novelty Associates Pvt. Ltd. on a parcel of land ad-measuring approximately 4,450 square yards.

5. The appellants with an intention to invest surplus funds and earn returns approached the respondent, pursuant to which they were offered an opportunity to purchase a commercial unit in the aforesaid project. An allotment letter dated 23.08.2007 was issued in favour of the appellants,

whereby Shop No. 16A on the Atrium Floor, ad-measuring approximately 107.246 square meters (super area), i.e. 1154.54 square feet was allotted.

6. An Addendum was also executed on the same date which stipulated that upon receipt of 95% of the Basic Sale Price, the respondent would pay an Assured Monthly Return (*hereinafter referred to as 'AMR'*) of Rs. 1,05,788.80/- to the appellants until the date of offer of possession. The total sale consideration for the said unit was Rs. 87,83,967.82/- out of which the appellants paid a sum of Rs. 80,40,596/-, that being 95% of the Basic Sale Price.

7. The respondent had received the certificate of sanction for the building plan on 05.05.2006 from the Municipal Corporation of Amritsar and the construction started in 2006. During the course of construction, the Archaeological Survey of India (*hereinafter referred to as 'ASI'*), vide letter dated 27.04.2007, raised objections on the ground that the project site abutted a protected monument namely Rambagh, notified under the Punjab Ancient and Historical Monuments and Archaeological Sites and Remains Act, 1964. These objections were raised after the building plans had already been sanctioned and construction had commenced. The ASI granted conditional permission to continue construction up to a height of 15 meters vide No Objection Certificate (*hereinafter referred to as 'NOC'*) dated 28.07.2007. As already stated the allotment letter was issued to the appellants on 23.08.2007. Subsequently, the ASI renewed its objections and revoked the earlier NOC vide letter dated 23.07.2008, resulting in the stoppage of construction activities.

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8. Later, after completion of the requisite formalities and compliances, the ASI granted permission for construction up to a height of 24 meters with an additional allowance of 2 meters vide letter dated 22.02.2012, pursuant to which construction resumed and revised building plans were thereafter approved by the Municipal Corporation of Amritsar. Upon completion of the construction project, a Completion Certificate dated 08.07.2015 was issued and possession of the allotted unit was subsequently offered to the appellants vide letter dated 16.07.2015.

DISPUTE AND APPOINTMENT OF ARBITRATOR

9. As stipulated by the Addendum, the respondent was liable to pay Rs. 1,05,788.80/- monthly to the appellants. The AMR was duly paid to the appellants till January 2010. A letter dated 17.02.2010 informed the appellants that the Addendum was being cancelled and to provide respite, the 5% of Basic Sale Price was waived off, which was due at the time of offer of possession of the unit. The appellants sent a legal notice to the respondent on 11.03.2010 regarding the rescission of the Addendum. While no reply was given to the notice, respondent resumed the AMR payments. This was also short lived as payments were again discontinued after May 2010. The appellants issued another legal notice to the respondent on 16.01.2012 invoking arbitration under Clause 44(b) of the allotment letter.

10. Finally, by way of letter dated 16.07.2015, the respondent offered possession of the unit to the appellants. The letter required that the appellants should settle their accounts towards the amount due. The

appellants contested the dues demanded by the respondent in a letter of 06.08.2015 and reminded the respondent that they had failed to make AMR from 01.06.2010 to 31.07.2015. Attention was also drawn to a letter dated 17.02.2010, whereby the respondent had waived off the remaining 5% Basic Sale Price payable at possession. In the same letter, the appellants asked the respondent to settle the dues towards maintenance and electricity security deposit payable by them against the accumulated AMR, now amounting to Rs 65,88,906.84/- with interest accrued thereon.

11. Thereafter, several reminder letters were sent by the respondent on 29.10.2015, 08.01.2016 and 18.02.2017 offering possession. In addition, these letters also contained a breakdown of the total amount due/payable, which included the 5% Basic Sale Price, additional charges, including maintenance and electricity security deposit, amounting to a total of Rs.10,05,294.06/-.

12. Through a legal notice dated 18.09.2017, the appellants invoked arbitration under Clause 44(b) of the allotment letter. Since both parties could not arrive at an agreement to appoint an arbitrator, the appellants filed a petition titled "***Parveen Kapoor v. Omaxe Limited ARB.P. 825/2017***" before this Court. The Single Judge appointed a retired District Judge as the Sole Arbitrator for adjudicating the dispute.

STATEMENT OF CLAIMS

13. The original Statement of Claims was filed on 30.05.2018 by appellants. A tabular representation of Claim Nos. 1 to 5 are reproduced as under:-

CLAIM NO.1 TO PAY THE AMOUNT DUE TOWARDS THE MONTHLY ASSURED RETURNS IN TERMS OF THE ADDENDUM TO ALLOTMENT FROM JUNE 2010 TILL JULY 2015 TO THE TUNE OF RS.1,05,788.80 PER MONTH ALONGWITH 18 PERCENT OF INTEREST PER ANNUM. (THE RATE OF INTEREST AS 18% PER ANNUM IS BEING CLAIMED BY THE PETITIONER AS THE SAME RATE HAS BEEN STIPULATED BY THE RESPONDENT IN ITS BUYERS AGREEMENT FOR DELAYED PAYMENTS BY THE PETITIONER IN CLAUSE 21 OF THE SAID AGREEMENT).	RS.65,58,905.60 (SIXTY FIVE EIGHT LAKH FIFTY THOUSAND NINE HUNDRED AND FIVE) PLUS 18% INTEREST PER ANNUM ON THE AFORESAID AMOUNT TILL DATE OF ITS REALIZATION.
CLAIM NO.2 HANDING OVER THE POSSESSION OF THE SAID PROPERTY ALONG WITH THE PENALTY FOR THE DELAY IN PROVIDING THE POSSESSION IN TERMS OF CLAUSE 26 OF THE AGREEMENT @ RS.10/- PER SQ. FT. ALONG WITH 18% OF INTEREST PER ANNUM TILL THE DATE OF ITS REALIZATION	RS.7,15,480/- ALONG WITH INTEREST 18% PER ANNUM TILL THE DATE OF ITS REALIZATION.

OR ALTERNATIVELY, IF THE ABOVE CAN NOT BE GRANTED 18% INTEREST PER ANNUM CALCULATED FROM 23.08.2010 TILL THE DATE OF REALIZATION ON THE 95% SALE CONSIDERATION I.E.80,40,596.72/- PAID BY THE CLAIMANT TO THE RESPONDENT.	
<u>CLAIM NO.3</u> COMPENSATION FOR THE HARASSMENT AND MENTAL AGONY CAUSED TO THE PETITIONER BY THE VARIOUS ACTS OF THE RESPONDENT OF NOT COMPLETING THE PROJECT IN TIME. GIVING FALSE ASSURANCES AND MISAPPROPRIATING THE HARD EARNED MONEY OF THE PETITIONER FOR OBJECTIVE OTHER THAN FOR WHICH THE AMOUNT WAS TAKEN.	RS.25,00,000/- (RUPEES TWENTY FIVE LAKHS ONLY)
<u>CLAIM NO.4</u> COST OF PRESENT ARBITRATION	
<u>CLAIM NO.5</u> LITIGATION FEES AND EXPENSES	RS.5 00,000/- (FIVE LAKH ONLY)

14. During the proceedings, an application was filed on 30.05.2018 by the appellants (after filing first Statement of Defence by the respondent) for deciding the preliminary issue of whether the claims arising out of the Addendum to the allotment letter were arbitrable. The respondent filed a reply to it on 17.07.2018. On 05.09.2018, the application was dismissed as not pressed by the appellants.

15. Notably, another application was filed on 25.08.2018 through which the appellants prayed for withdrawal of Claim no. 1 in respect of AMR in the Statement of Claims. The Arbitrator allowed the application and permitted the appellants to withdraw Claim No. 1 pertaining to the recovery of AMR and liberty was granted to proceed before any other appropriate judicial forum.

16. After withdrawing Claim No.1, appellants approached National Company Law Tribunal (NCLT), Chandigarh in C.P. No. (IB)-116/Chd/Hry/2019 and registered the petition on 11.02.2019, for claims of AMR.

17. An amended Statement of Claims was raised on 14.09.2018. The amended Claims are reproduced as under:

CLAIM NO. 1 SINCE THE POSSESSION IS BEING OFFERED BY THE RESPONDENT SUBJECT TO PAYMENT OF CERTAIN AMOUNTS (WHICH ARE NOT PAYABLE), THE RESPONDENT MAY BE	RS. 6,92,640/- + INTEREST @18% PER

DIRECTED TO REGISTER THE SALE DEED OF THE SAID UNIT IN FAVOUR OF THE CLAIMANT WITHOUT INSISTING ON ANY FURTHER PAYMENTS, WHICH STOOD WAIVED OFF BY THE RESPONDENT VIDE LETTER DATED 17.02.10 BY THE RESPONDENT HEREIN DUE TO NON PAYMENT OF MONTHLY ASSURED RETURNS <u>CLAIM NO. 2</u> PAYMENT OF PENALTY FOR THE DELAY IN OFFERING THE POSSESSION (THE DELAYED OFFER OF POSSESSION HAS TO BE MADE ALONG WITH THE PAYMENT OF THE COMPENSATION PROVIDED UNDER THE ALLOTMENT AGREEMENT DATED 23.08.2007) IN TERMS OF CLAUSE 26 OF THE AGREEMENT @ RS. 10/- PER SQ. FT. ALONG WITH 18% OF THE INTERST PER ANNUM TILL THE DATE OF ITS REALISATION WHICH HAS NOT BEEN PAID TILL DATE.	ANNUM TILL THE DATE OF ITS REALISZATION (BESIDES THIS INTEREST PENDENTE LITE @ 18% P.A. MAY ALSO BE AWARDED)
<u>CLAIM NO. 3</u> COMPENSATION FOR THE HARASSMENT AND MENTAL AGONY CAUSED	RS. 5,00,000/- (RUPEES FIVE LAKHS ONLY)

TO THE PETITIONER BY THE VARIOUS ACTS OF THE RESPONDENT OF NOT COMPLETING THE PROJECT IN TIME, GIVING FALSE ASSURANCES AND MISAPPROPRIATING THE HARD EARNED MONEY OF THE PETITIONER FOR OBJECTIVES OTHER THAN FOR WHICH THE AMOUNT WAS TAKEN.	
CLAIM NO. 4 COST OF PRESENT ARBITRATION	(AS PER THE AMOUNTS ACTUALLY PAID BY THE CLAIMANT)
CLAIM NO. 5 LITIGATION FEES AND EXPENSE	RS. 3,00,000/- (THREE LAKH ONLY)

18. On 27.02.2019, the appellants further amended their Statement of Claims, which was allowed by the arbitrator and accordingly, the final list of Claims raised by the claimants are reproduced as under :-

CLAIM NO.1 DIRECT THE RESPONDENT TO HAND OVER THE POSSESSION OF THE SAID UNIT AND REGISTER A SALE DEED OF THE SAID UNIT IN FAVOUR OF THE CLAIMANTS WITHOUT INSISTING ON ANY ADDITIONAL PAYMENTS INVIEW OF THE	VALUATION OF THIS CLAIM IS TO BE CONSIDERED @ RS.87,83,967.82/- I.E., THE TOTAL SALE CONSIDERATION OF

RESPONDENT'S LIABILITY TO PAY TO THE CLAIMANTS VARIOUS AMOUNTS AS STATED UNDER OTHER CLAIMS AS SET OUT HEREUNDER PART OF WHICH AMOUNTS AS PAYABLE BY THE RESPONDENTS ARE LIABLE TO BE SET OFF AGAINST THE DUES, IF ANY, PAYABLE BY THE CLAIMANTS TO THE RESPONDENT UNDER THE FINAL DEMAND LETTER, AND TO PAY THE BALANCE AMOUNTS TO THE CLAIMANTS. OR THAT ONLY IN CASE OF FAILURE OF THE RESPONDENT TO HANDOVER THE POSSESSION OF THE SAID UNIT, TO PROVIDE AN ALTERNATIVE RELIEF OF REFUND OF THE WHOLE AMOUNT PAID BY THE CLAIMANTS IE., RS.80,40,596.72/- ALONG WITH THE INTEREST AS SEPARATELY CLAIMED UNDER CLAIM NO.2	THE SUBJECT PROPERTY RS.80,40,596.72/-
<u>CLAIM NO.2</u> PAY INTEREST@ 18% P.A. FROM THE DATE OF	RS.1,66,44,035/- (CALCULATED TILL

PAYMENT OF RS.80,40,596.72/- BY THE CLAIMANTS TO THE RESPONDENT I.E., FROM 23.08.2007 TILL THE DATE OF REALIZATION, TAKEN MALAFIDELY FROM THE CLAIMANTS UNDER THE FALSE ASSURANCE OF HANDING OVER POSSESSION OF THE UNIT BY 2010 AND ASSURING THEM OF FIXED ASSURED RETURNS, INSPITE OF KNOWING ABOUT THE ASI RESTRICTION STARTING FROM APRIL, 2007, WHICH WAS PRIOR TO THE ALLOTMENT OF THE UNIT AND TAKING OF THE MONIES, TILL THE POSSESSION WAS HANDED OVER I.E., 23.08.2010	25.02.2019)
<u>CLAIM NO.3</u> ON ACCOUNT OF THE COMPENSATION PAYABLE TO THE CLAIMANTS DUE TO THE DELAY IN HANDING OVER THE POSSESSION BY AWARDING INTEREST @L8% ON THE AMOUNT OF CONSIDERATION PAID OF RS.80,40,596.72/- INSTEAD OF RS.10/- PER SQ. FT. PER MONTH FROM 23.08.2010,	TOTALING TO RS.1,23,02,113/- (CALCULATED TILL 25.02.2019)

I.E. THE DATE OF PROMISED POSSESSION TILL THE DATE OF REALIZATION OR ON ACCOUNT OF LOSS OF OPPORTUNITY COST/MESNE PROFITS FOR THE DELAY CAUSED IN HANDING OVER THE SAID UNIT IN QUESTION I.E., RENTAL OF RS.1,04,743/- PER MONTH @ 18% INTEREST PER ANNUM FROM 23.08.2010 TILL THE DATE OF REALIZATION WHICHEVER IS HIGHER AND ADMISSIBLE.	I.E. RS.1,91,63,027/- (CALCULATED TILL 25.02.2019)
CLAIM NO.4 COMPENSATION FOR THE HARASSMENT AND MENTAL AGONY CAUSED TO THE PETITIONER BY THE VARIOUS ACTS OF THE RESPONDENT OF NOT COMPLETING THE PROJECT IN TIME, GIVING FALSE ASSURANCES AND MISAPPROPRIATING THE HARD EARNED MONEY OF THE PETITIONER FOR OBJECTIVES OTHER THAN FOR WHICH THE AMOUNT WAS TAKEN AND	RS. 5,00,000/- (RUPEES FIVE LAKHS ONLY)

INDULGING IN UNFAIR TRADE PRACTICES	
CLAIM NO.6 LITIGATION FEES AND EXPENSES	RS.3,00,000/- (RUPEES THREE LAKH ONLY)
CLAIM NO.7 COST OF PRESENT ARBITRATION	AS PER THE ACTUAL ARBITRAL FEE PAYABLE BY THE CLAIMANTS

STATEMENT OF DEFENCE TO FINAL STATEMENT OF CLAIMS

19. The counter claimant-respondent asserted that the project was delayed due to *force majeure* caused by repeated objections, stoppages and revocation of construction permissions by the ASI. Despite having been granted the NOC by the Municipal Corporation of Amritsar, the ASI objected. Consequentially, ASI initially granted conditional permission for construction, which was subsequently revoked, and it was only later that it restored permission for construction up to a height of 24 meters. The respondent claimed that at the time of issuance of the allotment letter, all requisite sanctions and approvals from the Municipal Corporation were in place. Subsequent intervention by the ASI could not be attributed to any negligence or default on its part and was thus covered under *force majeure* conditions under Clause 26 of the allotment letter.

20. The respondent further averred that construction was resumed on grant of permission by the ASI in 2012 and that the project was duly completed, after which a valid offer of possession was made to the appellants on 16.07.2015. It is alleged that the appellants themselves were in

breach of the allotment letter as they failed to pay the balance sale consideration, including 5% of the Basic Sale Price and allied charges. The possession could not be handed over without these charges. The respondent further denied liability for claims raised including payment of AMR beyond the contractual framework and disputed the claims for interest at 18% per annum, compensation for delay, mental agony and harassment, contending that the transaction was purely commercial in nature. It also raised preliminary objections of absence of cause of action, non-joinder of necessary parties, and misuse of arbitration proceedings by the appellants to avoid their contractual payment obligations.

COUNTER CLAIM

21. The respondent also filed its counter claims with its Statement of Defence seeking payment of the outstanding 5% of the Basic Sale Price and other charges amounting to Rs.7,43,386.74/- with interest at 24% per annum from 16.08.2015 i.e., offer of possession. It also claimed CAM charges from 16.07.2015 to June 2018 amounting to Rs.8,70,828/-, with interest at 24% per annum, and damages of Rs.30,00,000/- for the appellants' alleged failure to take possession. The respondent further sought a direction for compelling the appellants to take possession of the unit upon payment of the aforesaid amounts as per the allotment letter. The counterclaims were tabulated as under:

Counter Claims	**Particulars**	**Amount (In Rs.)**

Claim 1	Appellants to make a balance payment i.e. 5% of the Basic Sale Price including additional charges	7,43,386.74/-
Claim 2	Interest @ 24% on the aforesaid balance amount from 16.08.2015 till filing of the counter claim	4,80,982/-
Claim 3	CAM charges from 16.07.2015 till June 2018 interest @ 24% per annum	8,70,8 28/-
Claim 4	Damages suffered due to non-taking of the possession by the claimants	30,00,000/-
Claim 5	Claimants to take over the possession of the Unit upon payment of charges.	---

ISSUES FRAMED BY THE ARBITRATOR

22. The issues framed for determination by the Arbitrator, vide its order dated 27.10.2018, are reproduced as under:-

> *1. Whether the statement of claim is bad for non-joinder of M/s. Novelty Associates Pvt. Ltd. and others as alleged in preliminary objection No.1 of the amended reply to the statement of claim. OPR*
> *2. Whether there is no valid and subsisting arbitration agreement between the parties and whether there is no arbitrable dispute. OPR*
> *3. Whether the statement of claim is premature and has been filed without following the due process of law. OPR*
> *4. Whether the claimant is entitled to claim No.1 as shown in amended statement of claim. OPC*
> *5. Whether the claimant is entitled to claim No.2 as shown in amended statement of claim. OPC*
> *6. Whether the claimant is entitled to claim No.3 as shown in*

amended statement of claim. OPC
7. Whether the claimant is entitled to claim No.4 as shown in amended statement of claim. OPC
8. Whether the claimant is entitled to claim No.5 as shown in amended statement of claim. OPC
9. Whether the respondent/counter claimant is entitled to payment of Rs. 7,43,386.74/- as alleged. OPR
10. Whether the counter claimant is entitled to a sum of Rs.4,80,982/- on account of interest @ 24% on the balance amount of Rs.7,43,386/-. OPR
11. Whether the counter claimant is entitled to a sum of Rs.8,70,828/- on account of CAM charges alongwith interest @ 24% per annum as alleged. OPR
12. Whether the counterclaimant is entitled to damages to the tune of Rs. 30,00,000/-. OPR
13. Whether the respondent/counter claimant is guilty of concealment and unfair trade practice as alleged in paras 4 to 6 of the reply to the counter claim. If so to what effect? OPC
14. Whether the construction of the project in question commenced without permissions and sanctions from the government authorities including ASL. If so what effect? OPC/OPR."

23. After the second amendment of claims filed by the Claimant, vide order dated 05.04.2019, the Arbitrator framed two additional issues as under:-

'1. Whether the claimant is entitled to claim No.6 as shown in the amended statement of claim. OPC
2. Whether the claimant is entitled to the cost of arbitration, if so what amount. OPC"

FINDINGS OF THE ARBITRATOR

24. Parties led their respective evidences. After hearing them, the Arbitrator passed the award in question.

25. The Arbitrator held that the landowners were not parties to the allotment letter and, being strangers to the contract, were not necessary parties to the arbitral proceedings. The Arbitrator further held that the

disputes arose out of and was squarely governed by the allotment letter dated 23.08.2007, which was a valid and subsisting contract between the parties. Clause 44(b) of the allotment letter expressly provided for resolution of all such disputes through arbitration. Prior to invoking arbitration, the claimants had duly issued notices for settlement, which failed due to disagreement over settlement of dues. Thus, issue Nos. 1, 2 and 3 were decided against the respondent and in favour of the appellants.

26. The Arbitrator further held that the respondent could not unilaterally rescind the Addendum dated 23.08.2007 by its letter dated 17.02.2010, as a contract involving mutual obligations cannot be withdrawn unilaterally. Subsequent resumption of payment of AMR by the respondent pursuant to the legal notice dated 11.03.2010 would amount to withdrawal of the cancellation letter.

27. On the question of delay in handing over possession, the arbitrator rejected the respondent's defence of *force majeure* under Clause 26(b) and held that the delay was attributable to Omaxe's own acts and omissions, including failure to obtain and comply with requisite ASI permissions and suppression of material facts from the appellants. The objections raised by the ASI did not constitute unforeseeable *force majeure* events, more so due to the respondent's lack of due diligence and violations of license conditions. The arbitrator was of the view that a builder cannot shift the burden of delayed approvals onto the allottees. Any dues payable by the appellants, including 5% of the Basic Sale Price were held liable to be adjusted against the outstanding AMR. The respondent's refusal to effect such adjustment made the offer of possession dated 16.07.2015 invalid.

28. Holding so, the award was passed in favour of the appellants directing the respondent to hand over possession of the shop within 15 days and execute the sale/conveyance deed within 30 days thereafter. The respondent was further directed to adjust the AMR payable from June 2010 till delivery of possession against any dues, including 5% of the Basic Sale Price, and pay the balance amount forthwith, with maintenance charges payable by the appellants only from the date of actual possession. Thus, issue Nos. 4, 13 and 14 were decided in favour of the appellants and issue Nos. 9 to 12 against the respondent.

29. The Arbitrator considered claims seeking compensation and damages for delay in delivery of possession, including interest at 18% per annum on the amount invested from 2007 till delivery, compensation from the promised date of possession i.e. 23.08.2010, as well as amounts towards mental agony and costs. It was held that the transaction was purely commercial in nature and that the parties had already incorporated AMR as an inbuilt compensatory mechanism under the contract. While the claim for interest at 18% per annum was declined, holding that once AMR were agreed and payable till delivery of possession, a separate or higher rate of interest by way of damages was not necessary.

30. The Arbitrator further held that since the respondent had illegally stopped payment of AMR from June 2010, to meet the ends of justice, interest be awarded at 10% per annum on the unpaid AMR from the date they became due till actual delivery of possession. The claimants were further awarded Rs.5,00,000/- for litigation costs and further interest at

10% per annum on the awarded amount. Accordingly, issue nos. 5, 6, 7, 8 and additional issue Nos. 1 and 2 were decided in these terms.

31. The award placed the liability of annual maintenance charges from date of actual possession, to be payable by the appellants. Further, future interest at 10% per annum was granted on the awarded amount.

32. The respondent filed a petition under Section 34 of the Act challenging the arbitral award praying that the same be set aside and all its counter claims be allowed. The learned Single Judge heard the submissions of the parties and partly set aside the impugned award.

FINDINGS OF THE SINGLE JUDGE

33. While upholding the award on claim no. 1 to the extent of issuing direction for handing over the possession of the unit to the allottees (appellants herein), the learned Single Judge found the award partly illegal to the extent of a claim in respect of AMR because of the reason that it was withdrawn by the appellants. The learned Single Judge was of the opinion that the Arbitrator cannot adjudicate on claims which had been withdrawn. Once the claim relating to AMR had been withdrawn and was no longer part of the reference, the Arbitrator lost the jurisdiction to adjudicate upon the same or to grant any relief, directly or indirectly, flowing therefrom.

34. Consequently, the learned Single Judge also set aside the award of 10% interest per annum on AMR which was granted as compensation for delay under Claim Nos.2, 3 and 4. Moreover, since the contract did not provide for any additional interest, the award of 10% interest was beyond

the contract and therefore unsustainable.

35. On the issue of award of Rs.5 lakhs to the appellants, the award was upheld. The learned Single Judge observed that in the final Statement of Claims, Claim no.6 was for litigation fees and expenses and Claim no.7 was for the cost of the arbitral proceedings. Since no amount was mentioned under Claim no. 7, the award of Rs.5 lakhs was a consolidated award for both the claims, thus held to be valid and not beyond the powers of the Arbitrator.

36. A perusal of the records shows that an application for adjournment of the proceedings was sought by the appellants before the learned Single Judge praying for a direction to the Arbitrator to resume the arbitration and rehear the claims for compensation, in the event the Court was not inclined to uphold the award relating to AMR. Though the application was filed under Section 151 CPC, it was found to be, in substance, an application under Section 34(4) of the Act. The learned Single Judge clarified that the scope of Section 34(4) is limited to the curable defects in an arbitral award and does not permit the Court to direct a rehearing on merits, review of findings or leading of fresh evidence. It was observed that permitting the Arbitrator to reconsider the compensation claims under Section 34(4) would amount to a merit review and granting the appellants an impermissible second opportunity to prove their case, which is beyond the scope of the provision. The learned Single Judge further found that the findings on compensation were linked to the findings relating to AMR and were not severable. Consequently, no part of the award could be remitted to the Arbitral Tribunal without disturbing or altering the other.

37. The learned Single Judge set aside the award except the direction of the arbitrator to hand over the possession of the property and execute the sale deed/conveyance deed within 30 days of handing over the possession, thus partly allowing Claim No.1.

38. The learned Single Judge, vide an order dated 04.10.2021, had stayed the execution of the arbitral award, subject to deposit of Rs. 66 lakh and execution of the sale deed. The respondent deposited the amount, however, the appellants did not come forward for execution of the sale deed or for taking possession. The respondent's conditional offer of possession was declined. Therefore, the learned Single Judge issued a direction for release of the amount with accrued interest in favour of the respondent.

SUBMISSIONS OF PARTIES IN APPEAL UNDER SECTION 37 OF THE ACT

39. Aggrieved by the impugned judgment, the appellants filed the present appeal. The learned counsel for the appellants submitted that the learned Single Judge erred in law in partially setting aside the arbitral award by severing the relief granted under Claim No.1.

40. It was further submitted that the impugned judgment is based on a misreading of the second amended Statement of Claims dated 27.02.2019, inasmuch as the claim relating to AMR and compensation was neither withdrawn nor abandoned, but was reintroduced, argued, and eventually adjudicated by the Arbitrator.

41. The appellants have placed reliance on settled judicial precedents on scope of Sections 34 and 37 of the Act. Reliance is placed on ***Punjab***

State Civil Supplies Corporation Ltd. & Anr. v. M/s Sanman Rice Mills & Ors. 2024 INSC 742, to submit that courts cannot reappreciate evidence or substitute their own view when the arbitral view is plausible. The appellants further relies on ***A.G. Enviro Infra Projects Pvt. Ltd. v. J.S. Enviro Services Pvt. Ltd 2023 DHC 4159*** to submit that interference under Section 34 is confined only to grounds expressly provided under the Act. On the issue of interest, reliance is placed on the interpretation of Section 31(7) of the Act by the Supreme Court, recognising the arbitrator's power to award pre and post-award interest unless expressly barred by contract. The appellants have also relied on ***Sepco Electric Power Construction Corpn. v. GMR Kamalanga Energy Ltd***. 2025 SCC OnLine SC 2088 to contend that a judgment founded in disregard of settled law and jurisdictional limits is liable to be set aside. The impugned judgment, it is contended, violates the principle of minimal judicial interference and warrants interference under Section 37 of the Act.

42. The learned counsel for the respondent submits that the present appeal under Section 37 of the Act should be dismissed, as the Single Judge acted strictly within the limited jurisdiction under Section 34 and did not undertake any impermissible reappreciation of evidence or review on merits.

43. It is further contended that once the claim for AMR was consciously withdrawn by the appellants, the Arbitrator had no power to award the same. The claim for compensation for delay was initially rejected by the Arbitral Tribunal and was granted solely by invoking the "ends of justice". It is submitted that in view of contractual framework, it

is impermissible. The learned counsel for the respondent further relied on ***Ghaziabad Development Authority v. Balbir Singh, (2004) 5 SCC 65***, to submit that in the absence of evidence proving actual loss or damage, compensation for delay could not have been granted. On these grounds, it is submitted that the learned Single Judge rightly set aside the award partly.

ANALYSIS

44. Admittedly, the allotment letter which was signed by the parties on 23.08.2007, contains the arbitration clause. On that very day, another letter, the 'Addendum', was issued by the respondents. The relevant paragraphs of that 'Addendum' are reproduced as under:

> *"Ref.: Allotment of Unit No.16A on Atrium Floor in the proposed ommercial complex known as "OMAXE NOVEL TY MALL" situated at Lawrence Road, Amritsar, Punjab.*
>
> *Dear Sir,*
> *….*
> *It is further agreed between us that, upon receipt of a sum of Rs.80,40,596.72 (Rupees Eighty Lac Forty Thousand Five Hundred Ninety Six And Paisa Seventy Two Only) as 95% of the basic sale consideration of the said Unit in lumpsum from you, we shall pay a sum ofRs.1,05,788.80 (Rupees One Lac Five Thousand Seven Hundred Eighty Eight And Poise Eighty Only) (minus TDS) per month (hereinafter referred to as said "Monthly Return")*
> *1. That the said monthly return shall be paid to you till the offer of possession of the said Unit or till the offer for fit out on the basis and terms and conditions of the said Lease Document whichever is earlier."*

This Addendum did not contain any arbitration clause.

45. The appellants in first Statement of Claims dated 30.05.2018 filed before the Arbitrator, raised a claim relating to AMR, which is reproduced as under:

Claim No.1 To pay the amount due towards the monthly assured returns in terms of the Addendum to Allotment from June 2010 till July 2015 to the tune of Rs.1,05,788.80 per month alongwith 18 percent of interest per annum. (The rate of interest as 18% per annum is being claimed by the petitioner as the same rate has been stipulated by the respondent in its Buyers Agreement for delayed payments by the petitioner in Clause 21 of the said Agreement).	Rs.65,58,905.60 (Sixty five eight lakh fifty thousand nine hundred and five) plus 18% interest per annum on the aforesaid amount till date of its realization.

46. On 02.07.2018, the respondent raised an objection in its Statement of Defence and questioned the maintainability of the claim relating to AMR on the ground that the claim was not part of the agreement dated 23.08.2007. Rather, it is the part of the Addendum to allotment agreement dated 23.08.2007, which does not contain any arbitration clause. In view of this objection raised by the Respondent, the appellants filed an application dated 25.08.2018 before the Arbitrator seeking withdrawal of claim relating to AMR. The prayer in the application seeking withdrawal

of the claim relating to AMR is reproduced as under:

> *"In the light of aforesaid facts and circumstances it is therefore prayed to this Hon'ble Tribunal to:-*
> *a. Allow the claimant to withdraw the claims No.1 pertaining to recovery of the monthly assured returns as per the terms of the Addendum dated 23.08.2007 from June 2010 till July 2015 amounting to Rs.65,58,905.60/- along with 18 percent interest for the above said period, with liberty to proceed with the same in other judicial forum.*
> *b. Any other relief as this Hon'ble Tribunal may deem fit may also be granted."*

47. This application was allowed by the Arbitrator. The learned Single Judge held that once a claim has been withdrawn, the Arbitrator could not have awarded the same and therefore the award suffered from patent illegality to that extent. The learned counsel for the appellants has argued that the learned Single Judge has ignored the fact that the claim for AMR was reintroduced in the final statement of claim and the respondent did not object to its reintroduction. Moreover, the evidence was led by parties on this point and therefore, the Arbitrator was within his jurisdiction in awarding the amount of AMRs and interest thereon. On the other hand, the learned counsel for respondent argued that the appellants not only withdrew the said claim of AMR before the Arbitrator but also he took further step to formally raise it before the NCLT, Chandigarh in C.P. No. (IB)-116/Chd/Hry/2019 on 11.02.2019. It is pointed out that the learned Single Judge perused the final Statement of Claims and after reproducing it, held that the claim for AMR was not reintroduced. Therefore, it is argued that the claim no.1 in first statement of claims would not revive. Accordingly, it is submitted that the learned Single Judge has rightly set

aside the claim for AMR in the impugned judgment.

48. We have considered the rival submissions. We have already reproduced the relevant portion of the 'Addendum' which contains recitals of AMR. Both the parties are *ad idem* on the issue that the terms and conditions of the 'Addendum' are not subject to the arbitral proceedings. On this basis, the claim for AMR was withdrawn. The learned Single Judge held that once the claim is withdrawn, the Arbitrator is no authority to adjudicate on it.

49. The learned Single Judge was also of the opinion that the Arbitrator on one hand declined the compensation as claimed in claims no. 3 and 4 holding that the AMR were adequate compensation, and on the other hand additionally granted the interest at the rate of 10 percent per annum on the amount of AMR as compensation to meet the ends of justice. Therefore, the learned Single Judge was of the view that award of 10% interest by the Arbitrator was contrary to his own finding that no extra compensation can be given except the AMR. Accordingly, the learned Single Judge set aside the award of 10 percent interest on the ground that it is contrary to Arbitrator's own view that AMR were the sufficient compensation.

50. The second reason for setting aside the award of 10% interest was that, since the claim for AMR were withdrawn by the allottees (appellants herein), award of 10 percent interest became *nonest*.

51. Now let us see the contents of paragraph 42 of the award, which is reproduced as under:

> *"The claimants in their amended statement of claim have set up various claims on account of compensation/ damages for the delay in delivering the possession of the shop. They have*

claimed interest @18% per annum on the amount invested in the year 2007 till the date of delivery. They have sought compensation w.e.f. 23.08.2010 i.e. the date of the promised delivery and have sought payment of interest @18% per annum on the amount invested by them. They have also setup a claim on account of harassment/ mental agony suffered by them and for cost of litigation/ arbitration. I have considered all these claims raised by the claimants on account of compensation etc. This was a purely commercial transaction and the claimants were interested in investing their savings in order to earn through the lease of the commercial space allotted to them. Indeed there was an inbuilt mechanism in the contract signed between the parties which provided for adequate compensation to the claimants in the form of an assured monthly return from the date of investment till the date of possession. A sum of Rs.105788.80 per month was agreed to be an adequate compensation for the amount invested by the claimants. The claimants have also conceded this fact while setting up their claims. I have already held above that the claimants are entitled to payment of the assured monthly return @Rs.1,05, 788.80 till the possession is actually delivered to them. However, since the payment of assured monthly return was illegally stopped w.e.f. June, 2010, I feel that the ends of justice would be met by asking the respondent to pay interest @10% per annum on the amount of the assured monthly return from the date it had become due till the delivery of the possession of the shop in question. In my opinion this would take care of the compensation part of the statement of claim as mentioned in claim Nos.2,3 & 4 (there being no claim No.5 in the amended statement of claim). The claimants are further held entitled to the cost of the present proceedings which are assessed at Rs.5,00,000/-."

52. The above quoted paragraph would show that practically the Arbitrator has given compensation to the appellants by taking the standard of AMR combined with 10 percent interest on the same till delivery of possession. A perusal of the entire award would reveal that the Arbitrator has not discussed the issue of withdrawal of claim of AMR. However, the learned Single Judge duly analysed the effect of withdrawal of the claim

and held that once the claim is withdrawn, it becomes beyond power and jurisdiction of Arbitrator.

53. The crux of the entire issue is that once withdrawn, the claim goes out of the hands of the Arbitrator. It cannot be reintroduced in any way in the arbitral proceedings. The appellant not only withdrew the claim of AMR from the arbitration, but also he took further step by filing a petition claiming such amount before the NCLT, thus finally putting a bar on any type of claim of AMR before the Arbitrator. It is true that the NCLT is not a recovery court and as per law, a financial creditor can only initiate corporate insolvency process against a company. However, the fact is that rightly or wrongly the appellants took a step claiming AMR before the NCLT. Therefore, his argument that the Arbitrator had granted the compensation and not the AMR cannot be accepted. We have already reproduced the final amended claims in which the appellants have claimed compensation in terms of Clause 26 of the agreement @ Rs.10/- per square feet along with 18 percent interest per annum till date of realisation. The Arbitrator however, held that it was purely a commercial transaction and there was an inbuilt mechanism in the contract which provides for adequate compensation to the claimant in the form of AMR from the date of investment till date of possession. The Arbitrator ignored the fact that this mechanism is mentioned in 'addendum' which both the parties had agreed to be beyond the scope of arbitration clause. These were the circumstances, in which the appellants withdrew this claim with the approval of Arbitrator. Therefore, the Arbitrator erred in awarding the AMR as compensation as it was beyond his jurisdiction. The judgments

relied upon by the Senior Counsel for the appellants are concerned, the same have no applicability to the facts and in view of our findings above. Moreover, the scope of judicial review under Section 37 of the Act of 1996 is very limited, the impugned order cannot be interfered with.

CONCLUSION

54. Accordingly, we find no infirmity in the impugned judgment and therefore, the same is upheld. Consequently, the appeal is dismissed. The pending application has become infructuous and is dismissed.

V. KAMESWAR RAO, J

VINOD KUMAR, J

MAY 04, 2026
VB/rt