

RESERVED ON 15<sup>TH</sup> JUNE 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE DAY OF 29<sup>TH</sup> JUNE, 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

**COMMERCIAL APPEAL NO.318 OF 2025**

**BETWEEN:**

MR. A.R. ABDUL RAZAK  
S/O S. ABDUL RAHEEM,  
AGED ABOUT 39 YEARS,  
R/AT NO.42, 9<sup>TH</sup> B MAIN,  
LIC COLONY, JEEVAN BHIMANAGAR,  
BENGALURU - 560 075.

...APPELLANT

(BY SRI. SHASHI KIRAN SHETTY, SENIOR ADVOCATE A/W  
SRI S. ISMAIL ZABIULLA, ADVOCATE  
SRI GOVARDHAN REDDY, ADVOCATE,  
MS. RACHEL RAJU ALICE, ADVOCATE &  
SRI CHAND PASHA, ADVOCATE)

**AND:**

1. M/S. ASHRITHA HOUSE BUILDING  
CO-OPERATIVE SOCIETY LTD.,  
A SOCIETY REGISTERED UNDER THE  
KARNATAKA CO-OPERATIVE SOCIETIES ACT, 1959,  
HAVING ITS REGISTERED OFFICE AT  
NOS.10 AND 11, 1<sup>ST</sup> FLOOR,  
KAVERI PATANAM COMPLEX,  
GANDHI SQUARE, MYSURU-570 001.  
REPRESENTED BY ITS PRESIDENT  
SRI. S.B. CHANDRE GOWDA,  
AGED ABOUT 72 YEARS,  
S/O PUTTE GOWDA,



2. SRI. P.D. CHANDRAKANTH  
S/O LATE P. DODDE GOWDA,  
AGED ABOUT 65 YEARS,  
R/AT NO.40/1, 14<sup>TH</sup> CROSS,  
VYALIKAVAl, BEHIND HOTEL RAJESH,  
BENGALURU-560 003.
3. SRI. PUSHPARAJ SHETTY  
S/O JAGANNATH SHETTY,  
AGED ABOUT 70 YEARS,  
R/AT NO.603, 14<sup>TH</sup> CROSS,  
SLR MANSION, 1<sup>ST</sup> BLOCK,  
BASAVESHWARANAGAR,  
BENGALURU-560 078.

...RESPONDENTS

(BY SRI. SREEDHAR N.G., ADVOCATE FOR C/R-1;  
MR. NANDISH C.B., ADVOCATE FOR  
SRI K. CHANDRANATH ARIGA, ADVOCATE FOR R-2 & R-3)

THIS COMAP UNDER SECTION 13(1A) OF THE COMMERCIAL COURTS ACT, PRAYING TO SET ASIDE THE IMPUGNED JUDGMENT DATED 11.03.2025. IN COM.A.P.194/2023 PASSED BY THE LXXXVII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, (CCH 88) (COMMERCIAL COURT) BANGALORE, PRODUCED AT ANNEXURE-A, BY WHICH THE ARBITRATION AWARD DATED 31.08.2023 PASSED BY THE SOLE ARBITRATOR, IN A.C.NO.196/2019 PRODUCED AT ANNEXURE-B WAS CONFIRMED.

THIS COMAP HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT WAS PRONOUNCED AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU ,CHIEF JUSTICE  
and  
HON'BLE MRS. JUSTICE K.S. HEMALEKHA

**C.A.V. JUDGMENT**

(PER: HON'BLE MRS. JUSTICE K.S. HEMALEKHA)

1. The present commercial appeal under Section 37 of the Arbitration and Conciliation Act, 1996 [**A&C Act**] is preferred by the appellant [**petitioner**] impugning the judgment dated 11.03.2025 [**impugned order**], passed in Com.A.P.No.194/2023 on the file of the LXXXVII Additional City Civil and Sessions Judge, Bengaluru [**Commercial Court**]. By the impugned judgment, the Commercial Court dismissed the petition filed by the applicant under Section 34 of the A&C Act, holding that the Arbitral award dated 31.08.2023, passed by the learned sole Arbitrator in A.C.No.196/2019 did not suffer from any infirmity warranting interference under Section 34 of the A&C Act, and consequently upheld the award.

2. Brief facts:

- a. The appellant, A. R. Abdul Razak, along with P. D. Chandrakanth and Pushparaj Shetty were owners of the lands situated at Hanchya Village, Kasaba Hobli, Mysore Taluk. They entered into a development agreement [**Ex.P1**] dated 27.10.2010 with Ashritha House Building Co-operative Society Ltd., [**Society**] [**Claimant**] for formation of a residential layout and sale of sites to the society members.

- b. Under the development agreement, the society undertook to obtain approvals, form the layout and pay consideration for the developed saleable area initially at ₹495 per square feet, which was subsequently revised to ₹620 per square feet. A General Power of Attorney [**GPA**] was also executed in favour of the society for implementation of the project.
- c. Pursuant to the development agreement, Mysore Urban Development Authority [**MUDA**] approved the layout and released sites in three phases, namely 73 sites on 01.09.2012, 23 sites on 28.02.2013 and the remaining 25 sites on 08.11.2017. The society paid substantial consideration amounting to about ₹13.83 crores to the landowners and their sale deeds in respect of 84 sites were executed in favour of its members. However, when the society called upon the landowners to execute sale deeds in respect of the remaining 37 sites, the appellant objected on the ground that he had been paid lesser consideration than the other landowners, that the society had

- delayed performance, and that he was entitled to additional consideration and a larger share of the sites.
- d. The society invoked arbitration clause contained in the development agreement and initiated A.C.No.196/2019 seeking a direction for execution of remaining sale deeds. By award dated 31.08.2023, the learned sole Arbitrator allowed the claim petition, directed execution of the remaining sale deeds at the agreed rate of ₹620 per square feet and rejected the appellant's counterclaim.
- e. The learned Sole Arbitrator held that the society had substantially performed its obligation under the development agreement dated 27.10.2010 [Ex.P1] and further found that the society had developed the layout, secured release of 121 sites in three phases, and paid substantial consideration amounting to ₹13.83 crores to the landowners. The learned sole Arbitrator held that the delay in executing the remaining sale deed was not attributable to the society as the release of the final batch of 25 sites by MUDA occurred only on 08.11.2017 and the execution of the

sale deeds in respect of remaining sites could be effectively sought only thereafter.

- f. The contention of the appellant that the claim was barred by limitation was rejected on the ground that no fixed date had been stipulated for execution of the remaining sale deeds and cause of action arose only upon refusal of the appellant to perform his obligation. With regard to the appellant's grievance regarding unequal payment of consideration, the Arbitral Tribunal held that any dispute regarding apportionment of consideration among the landowners constituted an *inter se* dispute between them and does not affect the contractual rights of the society. Consequently, the claim petition, filed by the society was allowed, the other landowners were directed to execute the sale deeds.
- g. Being aggrieved, the appellant challenged the award under Section 34 of the A&C Act in Com.A.P.No.194/2023. The Commercial Court, while considering the petition under Section 34 of the A&C Act held that the grounds urged by the appellant were essentially re-appreciation of evidence and did not fall

within the limited scope of interference available under Section 34 of the A&C Act and held that the award passed by the learned sole Arbitrator did not suffer from any patent illegality, perversity, violation of public policy or any other ground contemplated under Section 34 of the A&C Act and dismissed the petition and upheld the Arbitral award passed by the learned sole Arbitrator.

3. Before adverting to the rival contention, it is necessary to notice the limited scope of interference available under Sections 34 and 37 of the A&C Act. Section 34 of the A&C Act provides that recourse against an Arbitral award may be made only on the ground specifically enumerated therein. An Arbitral award may be set aside only if the party challenging the award establishes that:

- i. A party was under some incapacity;
- ii. The arbitration agreement was not valid under the law to which the parties had subjected it;
- iii. The party was not given a proper notice of the appointment of the arbitrator or the arbitral proceedings, or was otherwise unable to present its case, thereby resulting in violation of principles of natural justice;

- iv. The award deals with the dispute not contemplated by, or not falling within the terms of submission to arbitration or contains decisions beyond the scope of submission to arbitration; or
- v. The composition of the Arbitral Tribunal or the Tribunal procedure was not in accordance with the agreement of the parties or the provisions of the Act.
- vi. Under Section 34 (2)(b) of the A&C Act, an award may also be set aside if the subject matter of the dispute is not capable of settlement by arbitration or if the award is in conflict with the Public Policy of India.

4. Sub-section 2A to Section 34 of the A&C Act was inserted by the A&C (Amendment) Act, 2015, insofar as domestic awards were concerned and provided additional ground of challenge, namely, patent illegality appearing *prima facie* on the face of the award. The Supreme Court in **Ssangyong Engineering and Construction Company Limited Vs. National Highways Authority of India (NHAI)**<sup>1</sup> has clarified that the patent illegality must go to the root of the matter and cannot be invoked over a mere erroneous application of law or re-appreciation of evidence. Contravention of the statute not linked to a public policy or public

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<sup>1</sup> (2019) 15 SCC 131

interest cannot be introduced through a back door under the guise of patent illegality. Similar principles have been enumerated in the case of **Delhi Airport Metro Express Private Limited Vs. Delhi Metro Rail Corporation Limited**<sup>2</sup>.

5. The Apex Court in **MMTC Limited Vs. Vedanta Limited**<sup>3</sup> has held that while exercising jurisdiction under Section 34, the Court does not sit in appeal over an Arbitral award and may interfere only on limited grounds recognised by the statute. The Court cannot reassess the evidence or substitute its own view merely because of another possible view. Equally, while interpreting the terms of a contract, the conduct of the parties, contemporaneous correspondence and surrounding circumstances are relevant factors, and the arbitrator being ultimate arbiter of facts, is entitled to take such material into account while rendering the award and held at paragraph No.11 as under:

**"11.** As far as Section 34 is concerned, the position is well-settled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India. As per the legal position clarified through decisions of this Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award. Additionally, the concept of

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<sup>2</sup> (2022) 1 SCC 131

<sup>3</sup> (2019) 4 SCC 163

the “fundamental policy of Indian law” would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and *Wednesbury* [*Associated Provincial Picture Houses v. Wednesbury Corpn.*, (1948) 1 KB 223 (CA)] reasonableness. Furthermore, “patent illegality” itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract.”

6. The scope of interference under Section 37 is even narrower as held in **MMTC Limited** (*supra*) and is reiterated in subsequent decisions, an Appellate Court exercising jurisdiction under Section 37 cannot travel beyond the restrictions imposed under Section 34. The Appellate Court does not possess jurisdiction to undertake an independent assessment of the merits of the dispute or re-appreciate the evidence on record. Its enquiry is confined to examining whether the Court exercising jurisdiction under Section 34 acted within the parameters prescribed by the statute. Where an Arbitral award has been upheld by the Court under Section 34, the Appellate Court under Section 37 must be extremely cautious and slow in disturbing such findings.

7. In the present case, the principal contention of the appellant is that the petition filed by the respondent-society was barred by limitation as MUDA had released 73 sites on 01.09.2012 and 23 sites on 28.02.2013, whereas, the society issued first notice demanding execution of the remaining sale deeds only on

25.01.2019. According to the appellant, the prolonged silence on the part of the society demonstrates lack of readiness and willingness and consequently the claim was barred by limitation.

8. The respondent-society contends that the development agreement does not prescribe any fixed date for execution of the sale deeds. It is submitted that the release of sites depends upon compliance with the statutory requirements imposed by the MUDA and the final batch of 25 sites were released only on 08.11.2017. Thereafter, notices were issued calling upon the landlords to execute the remaining sale deeds and it was only the appellant, who refused to perform his obligation by claiming enhanced consideration and disputing the apportionment of payments.

9. We find considerable force in the submissions of the learned counsel appearing for the respondent-society. Admittedly, the development agreement [Ex.P1] does not specify any fixed date for execution of the remaining sale deeds. Consequently, the second limb of Article 54 of the Limitation Act, 1963 becomes applicable namely, limitation commences when the plaintiff has noticed that the performance is refused. The evidence on record indicates that the layout was developed in phases and the MUDA released the sites in three stages, the final release being on 08.11.2017. The learned Sole Arbitrator has recorded a finding that the society had

completed the development work, complied with the statutory requirements and secured release of all sites before calling upon the landowners to execute the remaining sale deeds.

10. The contention of the appellant that certain sites have been registered prior to 2017 does not, by itself, establish that the claim became time barred. The dispute before the learned sole Arbitrator concerned the execution of sale deeds with respect to the remaining sites after completion of the project. The society had already paid substantial consideration of approximately ₹13.83 crores and the sale deeds in respect of 84 sites had been executed. Such conduct is inconsistent with any contention that the society had abandoned its right under the agreement. The notices issued by the society and the replies furnished by the parties further establish that respondent Nos.2 and 3 were willing to execute the sale deeds and it was the appellant alone who refused performance by its reply dated 23.02.2019. Thus, a clear and unequivocal refusal to perform arose only in 2019.

11. The learned sole Arbitrator, upon appreciation of the oral and documentary evidence, has therefore held that the claim was not barred by limitation and the society had continuously demonstrated readiness and willingness to perform its obligations. The Commercial Court while exercising jurisdiction under Section 34

A&C Act has affirmed the said findings. The findings are neither perverse nor based on no evidence. A different interpretation of the same material is impermissible under Sections 34 and 37 of the A&C Act. Once the view taken by the Arbitrator is a plausible view, founded on evidence available on record, this Court cannot substitute its view merely because another view is possible.

12. Accordingly, the claim petition filed by the society was not barred by limitation, and no ground has been made out by the appellant warranting any interference with the findings recorded by the learned sole Arbitrator, as affirmed by the Commercial Court.

13. Accordingly, the commercial appeal is dismissed.

**Sd/-  
(VIBHU BAKHRU)  
CHIEF JUSTICE**

**Sd/-  
(K.S. HEMALEKHA)  
JUDGE**

AT