RESERVED ON 22ND APRIL 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF JULY, 2026

®

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE C.M. POONACHA

COMMERCIAL APPEAL NO. 137 OF 2024

C/W

COMMERCIAL APPEAL NO. 190 OF 2024

IN COMAP No.137/2024

BETWEEN:

1. M/S FORTUNA CONSTRUCTIONS (INDIA) PVT LTD
HAVING OFFICE AT
NO.184, FORTUNA HOUSE
OUTER RING ROAD, OPP. NCERT BSK
3RD STAGE, BANASHANKARI
BANGALORE - 560 085
REPRESENTED BY ITS MANAGING DIRECTOR
MR. PADMAIAH VUPPU

…APPELLANT

(BY SRI DHYAN CHINNAPPA, SENIOR ADVOCATE FOR
SRI AJIT P.B., ADVOCATE &
SRI THONTADHARYA R.K, ADVOCATE)

AND:

1. SMT. SHAMALAMMA
W/O LATE A.N. KRISHNA MURTHY
AGED ABOUT 78 YEARS

2. SRI K. NATARAJ
S/O LATE A.N. KRISHNA MURTHY
AGED BOUT 54 YEARS

3. MASTER N AKHILESH
S/O K NATARAJ
AGED ABOUT 18 YEARS,

4. MASTER N ANIL
S/O K NATARAJ
AGED ABOUT 15 YEARS
MINOR
REPRESENTED BY HIS
FATHER AND NATURAL GUARDIAN
MR K. NATARAJ

5. SRI K GOPALA GOWDA
S/O LATE A N KRISHNA MURTHY
AGED ABOUT 44 YEARS
SINCE DECEASED BY LRS

5(a) SMT KAVITHA G
W/O LATE K GOPALA GOWDA
AGED ABOUT 38 YEARS

5(b). MASTER ARAYAN A.G.
S/O LATE K GOPALA GOWDA
AGED ABOUT 3 YEARS

6. MASTER ASHWIN G.A
S/O K. GOPALA GOWDA
AGED ABOUT 13 YEARS

BOTH 5(b) & 6
MINOR REPRESENTED BY

THEIR MOTHER AND
NATURAL GUARDIAN
SMT. KAVITHA K.
RESPONDENT No.5(a)

7. SMT. JAYALAKSHMAMMA
D/O LATE A.N. KRISHNAMURTHY
AGED ABOUT 59 YEARS

8. SMT. AMMAJAMMA
D/O LATE A.N. KRISHNA MURTHY
AGED ABOUT 57 YEARS

9. SMT. HEMALATHA
D/O LATE A.N. KRISHNAMURTHY
AGED ABOUT 49 YEARS

ALL ARE RESIDING AT
AVALAHALLI VILLAGE
SINGANAYAKANAHALLI POST
YELAHANKA HOBLI
BANGALORE NORTH TALUK
BANGALORE DISTRICT - 560 064

…RESPONDENTS

(BY SRI VIVEK REDDY, SENIOR ADVOCATE ALONG WITH
SRI T.M. VENKATA REDDY, ADVOCATE
FOR C/RESPONDENT)

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13(1-A) OF COMMERCIAL COURTS ACT, READ WITH ORDER 37 (1) (C) OF ARBITRATION & CONCILIATION ACT PRAYING TO CALL FOR RECORDS OF THE PROCEEDINGS IN COM. A.P.NO.98/2023 ON THE FILE OF THE LEARNED LXXXIX ADDITIONAL CITY CIVIL & SESSIONS JUDGE, BENGALURU, (COMMERCIAL COURT) (CCH 90) AND SET ASIDE THE

JUDGMENT DATED 30/01/2024, PASSED IN COM.A.P.NO.98/2023 ON THE FILE OF THE LEARNED LXXXIX ADDITIONAL CITY CIVIL & SESSIONS JUDGE, BENGALURU, (COMMERCIAL COURT) (CCH 90) (ANNEXURE A) & ETC.

IN COMAP NO. 190/2024

BETWEEN:

1. SMT. SHAMALAMMA
W/O LATE A.N. KRISHNA MURTHY
AGED ABOUT 79 YEARS

2. SRI K. NATARAJ
S/O LATE A.N. KRISHNA MURTHY
AGED ABOUT 56 YEARS

3. MASTER N. AKHILESH
S/O K. NATARAJ
AGED ABOUT 23 YEARS

4. MASTER N ANIL
S/O K. NATARAJ
AGED ABOUT 17 YEARS
MINOR REP. BY HIS FATHER AND
NATURAL GUARDIAN
MR K. NATARAJ

5. SMT. KAVITHA G
W/O LATE K GOPALA GOWDA
AGED ABOUT 37 YEARS

6. MASTER ARYAN A.G.
S/O LATE K. GOPALA GOWDA
AGED ABOUT 3 YEARS

7. MASTER ASHWIN G.A.
   S/O K GOPALA GOWDA
   AGED ABOUT 15 YEARS
   MINOR REPRESENTED BY HIS MOTHER
   AND NATURAL GUARDIAN
   SMT. KAVITHA G

8. SMT. JAYALAKSHMAMMA
   D/O LATE A.N. KRISHNA MURTHY
   AGED ABOUT 58 YEARS

9. SMT AMMAJAMMA
   D/O. LATE A.N. KRISHNA MURTHY
   AGED ABOUT 58 YEARS

10. SMT. HEMALATHA
    D/O LATE A.N. KRISHNA MURTHY
    AGED ABOUT 50 YEARS

    ALL ARE RESIDING AT
    AVALAHALLI VILLAGE
    SINGANAYAKANAHALLI POST
    YELAHANKA HOBLI AND TALUK
    BANGALORE DISTRICT - 560 064

...APPELLANTS

(BY SRI VIVEK REDDY, SENIOR ADVOCATE A/W
SRI T.M. VENKATA REDDY, ADVOCATE)

AND:

1. M/S FORTUNA CONSTRUCTIONS (INDIA) PVT. LTD.
   HAVING ITS OFFICE AT NO.184
   FORTUNA HOUSE, OUTER RING ROAD
   OPP. NCERT, BSK 3RD STAGE
   BANASHANKARI

BANGALORE - 560 085
REP. BY ITS MANAGING DIRECTOR
MR. PADMAIAH VUPPU

2. MR. PADMAIAH VUPPU
S/O ANKAIAH VUPPU
AGED ABOUT 52 YEARS
NO.184, FORTUNA HOUSE
OUTER RING ROAD
OPP: NCERT BSK 3RD STAGE
BANASHANKARI
BANGALORE - 560 085

...RESPONDENTS

(BY SRI DHYAN CHINNAPPA, SENIOR ADVOCATE FOR
SRI AJIT P.B., ADVOCATE &
SRI THONTADHARYA R.K, ADVOCATE)

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13 OF COMMERCIAL COURTS ACT, READ WITH ORDER 37 (1) (C) OF ARBITRATION & CONCILIATION ACT PRAYING TO SET-ASIDE THE JUDGMENT DATED: 30/01/2024 IN COM. A.P. NO.128/2023 (CCH:90) PASSED BY THE LXXXIX ADDL. CITY CIVIL & SESSIONS JUDGE AT BENGALURU, AT ANNEXURE-A & ETC.

THESE COMMERCIAL APPEALS 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 MR. JUSTICE C.M. POONACHA

C.A.V. JUDGMENT

(PER: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE)

1. These appeals have been preferred under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 [**the A&C Act**] read with Section 13(1A) of the Commercial Courts Act, 2015, assailing a common judgment dated 30.01.2024 [**'the Impugned Judgment'**] passed by the learned LXXXIX Additional City Civil and Sessions Judge, Bengaluru [**'the Commercial Court'**], in two connected petitions under Section 34 of the Act, being COM.A.P No.98/2023 and COM.A.P No.128/2023. M/s Fortuna Constructions (India) Pvt. Ltd. [**'FCIPL'**] had filed the petition, COM.A.P No.98/2023, under Section 34 of the A&C Act, seeking setting aside of an arbitral award dated 12.06.2023 [**the Impugned Award**] passed by an arbitral tribunal comprising of a sole arbitrator [**Arbitral Tribunal**] in arbitration conducted under the aegis of the Arbitration and Conciliation Centre (Domestic and International), Bengaluru.

2. Smt. Shamalamma and her family members, including their predecessors in interest [**'the Landowners'**], Respondents in COMAP No. 137 of 2024 and the Appellants in COMAP No. 190 of 2024, had filed COM.A.P No.128/2023 before the learned Commercial Court, assailing the impugned award to the extent of

the monetary award of ₹65,00,000/- (Rupees sixty five lakhs only) in favour of FCIPL. The learned Commercial Court found no grounds to interfere with the impugned award and, accordingly, dismissed the appeals by the impugned order.

PREFATORY FACTS

3. FCIPL, appellant in COMAP No. 137/2024 and Respondent No.1 in COMAP No. 190/2024, is engaged in the business of developing real estate. The Landowners (or their predecessors in interest) claim to be the absolute owners of the property bearing Sy. No. 118, new Sy. No. 118/1, measuring 1 Acre, situated at Avalahalli Village, Singanayakanahalli post, Yelahanka Hobli, Bangalore North Taluka, Bangalore District [**the Subject Property**].

4. On 04.03.2013, the Respondent Nos.2 and 5 in COMAP No.137/2024, along with their late father, Mr A.N. Krishnamurthy, executed a Memorandum of Understanding [**'the MOU'**] with FCIPL, agreeing to the development of the subject on a joint-venture basis. Acting upon the MOU, FCIPL paid goodwill of ₹50,00,027/- (Rupees fifty lakh and twenty seven only) out of an agreed sum of ₹60,00,036/- (Rupees sixty lakh and thirty six only). FCIPL also claims that it paid the balance of ₹10,00,009/- (Rupees ten lakh and nine only) in cash on 26.05.2014; however, the same has not been

accepted by the Arbitral Tribunal. The parties agreed that the landowners' share in the constructed area and the undivided interest in the land would be 34% and FCIPL's share would be 66%.

5. The Schedule Property was converted from agricultural use to non-agricultural residential use under the Conversion Order No. ALN(NAY)SR:233/2013 dated 27.03.2014.

6. In furtherance of the MOU, FCIPL and the Landowners entered into a registered Joint Development Agreement dated 26.05.2014 [**the JDA**] for the development of the Schedule Property into a residential apartment complex. FCIPL paid a refundable deposit of ₹2,00,000/- (Rupees two lakh only) to the Landowners and also agreed to complete the construction within 45 months from the date of the Sanction Plan. Simultaneously, on the same day, the Landowners executed a General Power of Attorney in favour of FCIPL [**the GPA**], constituting FCIPL as their true and lawful attorney for the purposes of the project.

7. FCIPL claims that it commenced the work and obtained the Katha of the Subject Property in the name of the 2nd Respondent in COMAP No.137/2024. It also applied to the Bangalore Development Authority [**the BDA**] for sanction of the building plan on 17.12.2014.

8. The National Green Tribunal [**the NGT**], by an order dated 07.05.2015, directed that a setback of 15 meters be maintained from the edge of Raja Kaluves/ Nalas. FCIPL had sought approval for building plans, leaving a 10-meter buffer zone from the centre of the *nala* that runs alongside the Schedule Property. By a letter dated 18.07.2016, BDA informed FCIPL to furnish revised plans providing for the buffer zone as directed by the learned NGT.

9. The Landowners state that despite the BDA's letter dated 18.07.2016, FCIPL took no steps either to obtain a modified plan or to apprise the Landowners of the requirement.

10. The Landowners issued a legal notice dated 26.03.2018 alleging delay in execution of the development and terminated the JDA. FCIPL responded by a letter dated 03.04.2018 and attributed the delay to dispute regarding the buffer zone. The NGT's order in question was assailed before the Supreme Court. Thus, FCIPL called upon the Landowners either to await resolution of the said proceedings or to accord their consent to a modification of the sanctioned plan.

11. The challenge to the NGT's order was adjudicated by the Supreme Court in its judgment dated 05.03.2019. Thereafter, on

14.05.2019, FCIPL addressed a letter to the BDA seeking reconsideration of the plan for approval, while the Landowners sent a representation requesting the BDA not to accord plan sanction. The landowners lodged a complaint against FCIPL for failing to rectify the objections. The Landowners also issued legal notices dated 23.07.2020 and 07.08.2020, which were not served due to the disruption occasioned by the COVID-19 pandemic and FCIPL's shifting of its office.

12. The Landowners filed an application under Section 11 of the A&C Act, C.M.P.No.134/2020 before this Court, which was allowed by an order dated 15.01.2021 and a Sole Arbitrator was appointed to adjudicate the disputes between the parties.

13. The Landowners, as Claimants, filed their Statement of Claim seeking a declaration that the JDA was invalid and cancelled. They also sought an award permitting them to develop the Schedule Property, returning the original title documents for the Schedule Property, and restraining FCIPL from interfering with, alienating, encumbering, or creating any charge over the Schedule Property.

14. FCIPL, as the Respondent in the arbitral proceedings, filed its Statement of Objection along with a Counter-Claim stating that it

was willing to perform the obligations of the JDA and that the project was held up awaiting the outcome of the matter before the Supreme Court arising from the order of the NGT.

15. FCIPL contended that the Claim Petition is not maintainable and that the claims are liable to be dismissed because the landowners suppressed several vital and material facts. FCIPL also contended that the claim petition was barred by limitation.

16. During the pendency of the arbitral proceedings, FCIPL filed an application dated 09.02.2023 under Order XXVI Rule 9 of the Code of Civil Procedure, 1908, seeking appointment of a Court Commissioner to conduct a local inspection and submit a report, along with a sketch, as to whether a Raja Kaluve existed on either side of the Schedule Property, and the category thereof. By the order dated 12.03.2023, the learned Sole Arbitrator dismissed the said application, holding that it would amount to the collection of evidence.

17. The arbitral proceedings culminated in the impugned award. The dispositive part of the Impugned Award is set out below:

> "a) The Claim of the Claimants is partly allowed
>
> b) The Counter-Claim of the Respondent is partly - allowed

> A. Ex. P1 Joint Development Agreement and Ex.R.5 General Power of Attorney stand cancelled as prayed for subject to payment of Rs.65,00,000/- awarded as counter-claim by the Claimants to the Respondent
>
> B. The Respondent or their agents or anybody claiming under or through the Respondent, are permanently restrained from interfering with the possession and enjoyment of the Schedule Property by the Claimants.
>
> C. The Claimants shall pay Rs.65,00,000/- to the Respondent within a period of three months from the date of award - failing which, the Respondent is at liberty to recover the same in accordance with law.
>
> c) The stamp duty is payable as per Karnataka Stamp Act.
>
> d) The award is signed and issued in 3 originals, one for record of Arbitration Centre and rest of the two to each of the parties"

18. Following the Impugned Award, an application under Section 33 of the Act was moved before the learned Sole Arbitrator seeking a direction that the Award be transmitted to the sub-registrar for registration of the cancellation of the JDA and the GPA, and for return of the original documents produced by the parties before the Arbitral Tribunal. The said application was allowed by the order dated 05.08.2023. Pursuant to the letter dated 10.08.2023 addressed by the Director, Arbitration Centre, to the Sub-Registrar, Gandhinagar, Bengaluru, the JDA and the GPA came to be

cancelled by the cancellation deed dated 25.08.2023 and a Nil Encumbrance Certificate for the period from 01.04.2023 to 26.08.2023 was also obtained in respect of the Schedule Property.

19. Aggrieved by the Impugned Award, FCIPL filed a petition under Section 34 of the A&C Act, before the Commercial Court, seeking to set aside the Impugned Award. FCIPL's challenge proceeded principally on the grounds that the Impugned Award was patently illegal and opposed to the fundamental policy of Indian law and public policy as:

(a) The learned Sole Arbitrator erred in granting the relief of cancelling the JDA and GPA dated 26/05/204 as the same is violative of the Contract Act and the specific terms of the JDA and GPA. Further, the cancellation of the GPA is patently illegal as the same was not prayed for, hence the same is liable to be set aside.

(b) The learned Sole Arbitrator ignored vital evidences in concluding that the FCIPL is also liable for the breach of the JDA.

(c) The learned Sole Arbitrator erred in refusing to direct the Landowners to pay the entire amount spent by the

FCIPL and only allowing a sum of Rs.65,00,000/ that too without awarding any interest.

20. The Landowners also filed a petition under Section 34 of the Act assailing the Impugned Award only insofar as it allowed FCIPL's Counter-Claim and directed payment of ₹65,00,000/- (Rupees sixty five lakh only) by the Landowners to FCIPL as:

(a) The learned Sole Arbitrator erred in allowing for payment of ₹65,00,000/- (Rupees sixty five lakh only) to FCIPL by the Landowners as it is bad in law, patently illegal and against the law on the basis of MOU, JDA, the terms of contract and the award itself as it contradicts the conditions stipulated therein.

(b) Once the Arbitrator cancelled the JDA and GPA, the question of allowing the counter claim did not arise.

21. The Commercial Court framed two points for determination, namely: (i) whether the parties in their respective petitions had made out grounds for interference; and (ii) what order ought to follow.

22. Applying the well-settled limits and principles on the exercise of jurisdiction under Section 34 of the A&C Act, the Commercial Court held that neither the prayer of the Landowners to partially set aside the Award qua the Counter-Claim, nor the prayer of FCIPL for a remand for fresh adjudication of the Counter-Claim was available in law.

23. The Commercial Court held that the learned Sole Arbitrator had rightly rejected the Landowners' contention that the BDA was not the competent authority to sanction the plan, and had correctly appreciated the Supreme Court's order dated 05.03.2019 modifying the manner of measuring the buffer zone. Further, no interference was required with the Arbitral Tribunal's findings regarding the mutual breach by the parties; the failure of the Landowners to extend cooperation to FCIPL's efforts to obtain a modified plan; causing hindrances, including by lodging police complaints; and failure on the part of FCIPL to prove the delay was wholly beyond its control.

24. The Commercial Court observed that the Arbitral Tribunal had rightly concluded that the continuation of the JDA was not warranted and that the cancellation of the GPA naturally followed the cancellation of the JDA, as it was executed to facilitate the JDA. The

Commercial Court further endorsed the direction restoring the parties to their pre-contract position by payment of ₹65,00,000/- (Rupees sixty five lakh only) to FCIPL, without interest.

25. On the Counter-Claim, the Commercial Court held that the determination of the Landowners' liability at ₹65,00,000/- (Rupees sixty five lakh only), as against the larger sum of ₹1,98,82,036/- (Rupees one crore ninety eight lakh eighty two thousand thirty six only) originally claimed by FCIPL, was a finding of fact arrived at after a meticulous consideration of the exhibits and oral evidence, which could not be interfered with. Regarding the question of limitation and misjoinder of parties, the Commercial Court held that the learned Arbitral Tribunal had correctly analysed the material on record and rightly answered both objections.

26. The Commercial Court held that the learned Sole Arbitrator had assigned proper and convincing reasons in partly accepting the claim of the Landowners and partly allowing the Counter-Claim of FCIPL, and that neither party had made out grounds to set aside the impugned award in its entirety, or to modify it, or to remand the matter for fresh adjudication. Accordingly, the Commercial Court dismissed both Com. A.P.No.98/2023 and Com. A.P.No.128/2023.

27. Aggrieved by the Impugned Judgment, the parties have filed the present appeals.

RIVAL CONTENTIONS

28. Sri. Dhyan Chinnappa, learned senior counsel appearing for FCIPL, assailed the impugned award on the solitary ground that the conclusion was inconsistent with the findings. He contended that although the findings of the Arbitral Tribunal were in favour of FCIPL, the Arbitral Tribunal had rendered the impugned award in effect acceding to the prayers made by the landowners. He submitted that the Arbitral Tribunal had considered that the same was in the interest of justice and equity. However, the arbitration agreement (arbitration clause in the JDA) did not empower the Arbitral Tribunal to act as *ex aequo et bono*. He referred to paragraph no. 77 of the impugned award and pointed out that the Arbitral Tribunal had expressly decided the issue regarding cancellation of the JDA, "in the interest of justice and equity". He contended that the impugned Arbitral award had acted beyond its jurisdiction; therefore the impugned award was liable to be set aside.

29. Mr. Reddy countered the aforesaid submissions. He referred to Paragraph No.58 of the impugned award and submitted that the Arbitral Tribunal had also found that FCIPL had defaulted in its obligations and thus rightly declined to allow FCIPL's prayer for specific performance. He readily conceded that in view of the factual findings, the land owners' challenge to the award for return of the funds to FCIPL would not be sustainable.

REASONS AND CONCLUSIONS

30. At the outset, it is relevant to bear in mind that the landowners were the claimants before the Arbitral Tribunal. They had filed the statement of claim, *inter alia*, praying as under:

> a) "Declare that the Joint Development Agreement dated 26/05/2014 in No. GNR-1-00597/2014-15, stored in Book No. 1, CD No.GNRD91, registered in the Office of Senior Sub-Registrar, Ganganagar (Gandhi Nagara), Bangalore is invalid and cancelled and to pass award, and consequently permit the Claimants to develop the Schedule Property at their will and nil encumbrances.
>
> b) Grant injunction against the respondents, restraining the Respondents from interfering, alienating or encumbering or creating any charge on the Schedule Property in favour of any third party either in part or in the form of flats.
>
> c) Direct the Respondents to return the original title documents of the Claimants Schedule Property including original JDA dated 26.05.2014.

> d) Grant such other relief's as this Hon'ble court may deem fit in the facts and circumstances of the case along with by awarding the costs of the litigation in the interest of justice and equity."

31. As is apparent from the above, the landowners sought a declaration that the JDA is invalid and cancelled. They sought an award permitting development of the subject property at their will without any encumbrance. Additionally, they sought a direction restraining the FCIPL from interfering with the subject property and directing the return of the original documents in its possession.

32. It would be relevant to refer to the averments made in the statement of claim setting out the grounds on which the aforesaid reliefs were claimed. The landowners stated that, under the JDA, FCIPL had given an undertaking to obtain approved plans to build apartments as required within 3 months; thereafter, start construction within 3 months; and complete the same within 33 months, with a grace period of 6 months. The landowners contended that, as per the JDA, construction was required to be completed within a maximum of 45 months, a deadline that expired in February, 2017. They claimed that although time was of the essence of the contract, FCIPL had not taken steps to obtain the approved plan and had failed to start construction. Additionally, they

claimed that FCIPL had not paid the goodwill amount and the agreed advance, but had paid a meagre ₹2,00,000/- (Rupees two lakh only) towards a refundable advance.

33. The landowners claimed that they issued a legal notice dated 26.03.2018 to FCIPL to comply with the conditions of the JDA and to cancel the same. However, FCIPL did not respond to the said notice. They claimed that FCIPL also failed to comply with the demands made in the legal notice dated 26.03.2018. Thereafter, the landowners issued another notice dated 23.06.2020 under clause 26 of the JDA, and called upon the FCIPL to consent to the cancellation of the JDA, pay damages, and return the original documents. However, the said notice was returned unserved because FCIPL had shifted its office. The subsequent notice dated 07.08.2020 was also returned for the same reason.

34. The landowners alleged that FCIPL had collected crores of rupees from third parties by showing the subject property. But, it did not take any steps to raise the construction as it had no intention of completing the construction of the residential apartments.

35. It is also relevant to refer to paragraph 10 of the statement of claims, which is set out below:

> "10. Though the Petitioners are ready and willing to perform their part of obligation as per the terms and conditions of the Joint Development Agreement dated: 26/05/2014, and Respondents are not able to do any of the work. That inspite of granting sufficient time, the Respondents are not performing their part of obligation Respondents have not taken any initiative action in the matter and thereby caused heavy loss to Petitioners for the last 7 years."

36. It is the Landowners' case that they were ready and willing to perform their obligations under the JDA, but FCIPL was unable to complete the works. FCIPL disputed the said claim. Thus, the principal dispute before the Arbitral Tribunal was (a) whether FCIPL had breached the terms of the agreement by not commencing the construction within the time stipulated; and b) whether FCIPL's failure to do so was despite the Landowners being ready and willing to perform their obligations. The Arbitral Tribunal was also required to consider the allegation that FCIPL had failed to pay the amounts as contemplated under the JDA.

37. FCIPL filed the statement of defence, inter alia, praying as under :

> "34. The Respondents pray that to dismiss the Claim Petition and direct the Claimants to co-operate for the developmental of Schedule Property as agreed in JOINT DEVELOPMENT

> AGREEMENT and if at all if this Hon'ble Arbitrator comes to the conclusion that the Claimants are entitle for the relief of cancellation of JOINT DEVELOPMENT AGREEMENT and return of Original documents and in that event, Claimants may be directed to return/ refund the amount received by them, with the expenses incurred on the project as shown above i.e. in all Rs. 1,98,82,036/- (Rupees One Crore ninety eight Lakhs eighty two thousand thirty six only) together with interest at the rate of 18% p.a. from the date of JOINT DEVELOPMENT AGREEMENT, till its realization. It is submitted that, due to the change of usage of lands i.e. conversion of lands, the land value is also appreciated considerably and apart from conversion also the land value has been considerably increased from year 2014 and the Claimants are also liable to compensate for the same to the Respondents. Hence these Respondents are entitle to continue with the development work and for any reasons if this Hon'ble Arbitrator comes to the conclusion that the JOINT DEVELOPMENT AGREEMENT needs to be cancelled and in that event order for payment of Rs. 1,98,82,036/- (Rupees One Crore ninety eight Lakhs eighty two thousand thirty six only) to the Respondents."

38. On the basis of the rival pleadings, the learned Sole Arbitrator framed ten issues for determination, namely:

> "1. Whether the Claimant proves that the Respondent has violated the terms and conditions of Joint Development agreement dated 26.05.2014?
>
> 2. Whether the Claimant proves that they are entitled for cancellation of Joint Development agreement dated 26.05.2014?

> 3. Whether the Claimant proves that they are entitled for a declaration that the Joint Development agreement dated 26.05.2014 is invalid and entitled to develop the Schedule Property?
>
> 4. Whether the Claimant proves that they are entitled for injunction, as prayed for?
>
> 5, Whether Respondent proves that it was not able to complete the project due to circumstances beyond its control?
>
> 6. Whether the respondent proves that the Claimant has committed breach of the terms and conditions of Joint Development agreement dated 26.05.2014?
>
> 7. Whether the respondent proves that they are entitled for an amount of Rs.1,98,82,036/- claimed in counter-claim?
>
> 8. Whether the Respondents prove that the claim of the Claimants is barred by time?
>
> 9. Whether the Respondents prove that the claim of the Claimants is bad for mis-joinder of parties?
>
> 10. What award/ order?”

39. The Arbitral Tribunal considered issues Nos.1, 5 and 6 together, that is, whether the landowners proved that FCIPL had violated the terms of the JDA; whether FCIPL proved that it was unable to complete the project due to circumstances beyond its control; and whether the landowners had committed breach of the terms and conditions of the JDA.

40. As noted above, the landowners’ case is that FCPIL had breached the terms and conditions is premised on the ground that

FCPIL had failed to complete construction within the outer limit of 45 months from the date of the JDA. The MoU dated 04.03.2013 expressly recorded the landowners' acknowledgement that they had received a sum of ₹50,00,027/- (Rupees fifty lakh and twenty seven only) from FCIPL, and that the balance amount of □10,00,009/- (Rupees ten lakh and nine only) would be payable at the time of registration of the JDA. The JDA was executed and registered on 26.05.2014.

41. Article 8 of the JDA, which, according to the land owners, had been breached by FCIPL is set out below:

> **"8. COMMENCEMENT OF CONSTRUCTION WORK:**
>
> 8.1 The SECOND PARTY/DEVELOPER shall commence the construction work on the Schedule Property within **Three months** from the date of obtaining sanction of the building plan. The quality of construction shall be in accordance with the specifications contained hereunder or equivalent thereto. The quality of material used shall confirm to ISI codes or equivalent thereto.
>
> 8.2 The FIRST PARTY/OWNER shall extend full co-operation to the SECOND PARTY/DEVELOPER in executing the project on the Schedule Property and completing construction work of the Apartment Complex. The FIRST PARTY/OWNER shall not create any impediment or obstruction in the way of the SECOND PARTY/DEVELOPER in developing or constructing the Apartment complex. The authorised

> agents/representatives of the FIRST PARTY/OWNER shall be at liberty to visit the construction site.
>
> 8.3 The SECOND PARTY/DEVELOPER may, agreed to execute additional items of work as may be required by the FIRST PARTY/OWNER on separately and mutually agreed terms/and/or rates or that the FIRST PARTY/OWNER shall be at liberty to get any additional items of work done by their own agency only after possession is handed over to them by the SECOND PARTY/DEVELOPER.
>
> 8.4 The SECOND PARTY/DEVELOPER shall have absolute right over the method, manner and design of construction the residential complex."

42. The Arbitral Tribunal found that FCIPL was required to commence construction within 3 months of obtaining sanction for the building plans and to complete construction within 39 months (including a 6-month grace period). The JDA did not specify the time frame within which FCIPL was to apply for and obtain sanction for the building plans. In light of this, the Arbitral Tribunal held that FCIPL was required to apply for sanction for the building plans within a reasonable period. The relevant extract of the impugned award is set out below:

> "52… I may also mention here that unfortunately, either in Ex.R.1 Memorandum of Understanding or Ex.P.1 Joint Development Agreement, no time limit is prescribed for obtaining sanctioned plan. When no time limit

> is fixed for doing certain things, the same cannot be postponed indefinitely and such an obligation has to be performed within a 'reasonable time'.

43. It is relevant to note that one of the principal assertions on which the landowners had premised their claim is that FCIPL had not applied for approval of the building plans. The Arbitral Tribunal rejected the said contention as the Arbitral Tribunal found sufficient evidence on record to establish that FCIPL had applied for the sanction of a building plan on 17.12.2014.

44. The next question that fell for consideration of the Arbitral Tribunal was whether there were any further defaults by FCIPL in proceeding with the sanction plan. The Arbitral Tribunal found that FCIPL's request for sanction was not processed and the Bangalore Development Authority (BDA) had sent a letter dated 18.07.2016 (Ex.R.17) directing the FCIPL to leave a buffer zone in terms of the order passed by the National Green Tribunal [NGT] and resubmit the plans for sanctions.

45. FCIPL stated that there was a Raja Kaluve/Nala at the edge of the subject land; therefore, FCIPL had applied for the building plans, leaving a buffer area of 10 meters from the centre of the

Nala. However, under the NGT's decision, it was now required to maintain a buffer of 15 meters from the edge of the Nala. FCIPL claims that this would have substantially reduced the area available for construction, and thus it did not proceed with construction as the NGT's order was under challenge before the Supreme Court.

46. The pleadings and the impugned award indicate that the learned NGT's order was challenged before the Supreme Court in Civil Appeal No. 5016/2016, which was disposed of by an order dated 05.03.2019.

47. In the meantime, the landowners sent a legal notice dated 26.03.2018 (Ex.P2) terminating the JDA and further demanding a sum of ₹60,00,000/- (Rupees sixty thousand only) as well as the original title deeds of the said property on account of alleged losses suffered by them.

48. The Arbitral Tribunal was thus required to examine the merits of the FCIPL's defence that it had not resubmitted the plans, pending the decision of the order passed by the NGT.

49. In this regard, the Arbitral Tribunal found that there was *Raja Kaluve/ Halla / Kharab Kaluve* on the subject land. And, if the orders

of the NGT and the Hon'ble Supreme Court are taken into consideration, the parties were at a disadvantage under the order of the NGT. Thus, in effect, the Arbitral Tribunal accepted FCIPL's contention that if the construction was raised while the NGT's order was subsisting, the same would be disadvantageous to the interest of the parties.

50. The Arbitral Tribunal also found that FCIPL had sent a letter dated 04.05.2019 to the BDA, informing the BDA of the order dated 05.03.2019 passed by the Supreme Court setting aside the NGT's order. FCIPL stated that thus the buffer zone as contemplated earlier would be applicable and it had prepared a new building plan and had also filed an undertaking affidavit. FCIPL requested BDA to approve the building plans. However, BDA did not process the plans as some of the landowners had given a representation dated 12.06.2019 not to proceed with the plans.

51. In his cross-examination, PW1 affirmed that it had given a letter to BDA not to sanction building plans as the time period stipulated for completion of the project under the JDA had expired in the year 2017-2018.

52. The landowners had also filed a police complaint with Ulsoor Police Station. In the aforesaid backdrop, the Arbitral Tribunal concluded that the landowners had obstructed the grant of the building plans and had created hindrances in FCIPL proceeding with the development of the subject land.

53. It is relevant to note that the Arbitral Tribunal also took into account FCIPL's letter dated 03.04.2018 (Ex.R14), sent in response to the landowners' legal notice dated 26.03.2018 (Ex.P2). FCIPL had denied the allegations in the legal notice dated 26.03.2018, but also expressed its willingness to modify the building plans to increase the buffer area and thus reduce the buildable area in conformity with NGT's order. The relevant extract of the said letter, is reproduced below:

> "Our client states that if your clients are ready to take proportionate share in the project as per ratio 33% of SBA in the new building plan in view of NGT new order, then my client is ready and willing to modify the drawings of the building Plan as per the NGT order by leaving buffer zone as per the NGT order. Then your clients will get lesser SBA area and proportionately our client is also getting lesser area.
>
> Therefore, our client states that your clients can't forfeit the amount as mentioned in the notice and also they are not liable to terminate the JDA as he is performing his obligations as agreed up on without delay, hence, he is not at

> all liable to pay any amount towards losses to your clients.
>
> Therefore, kindly advise your clients to co-operate with our client to resolve buffer zone issue and to get building license, approval of building Plan, NOC, required approvals from concerned departments to fulfil the obligations as agreed up on in the JDA Dtd.26.05.2014."

54. However, the impugned award does not render any specific finding on the aforesaid defence. The Arbitral Tribunal's findings are summarised as under:

> 54.1 That there was no time limit to apply for the sanction plan, and therefore FCIPL was to apply for the same within a reasonable period.
>
> 54.2 FCIPL had, in fact, applied for the sanction plan on 17.12.2014, therefore, there was no default on the part of FCIPL in this regard.
>
> 54.3 There was a *Raja Kaluve / Nala / Kharab Kaluve* beside the subject property which required FCIPL to provide for a setback from the edge of the said *Raja Kaluve / Nala / Kharab Kaluve*.

54.4 NGT had passed an order increasing the buffer zone by directing the same to extend to 15 meters from the edge of the Rakja Kulawe/Nala, instead of 10 meters from its centre.

54.5 The said order was disadvantageous to the parties as it would reduce the area that could be constructed and the floor area that could be built.

54.6 The NGT's order was the subject matter of challenge before the Supreme Court in Civil Appeal No.5016/2016 (**Mantri Tech Zone Private Limited v. Forward Foundation and others**[1]) and the Supreme Court had passed an order dated 05.03.2019 setting aside the learned NGT's order. Consequently, the extent of the buffer zone was restored to as it was prior to the NGT's order.

54.6 FCIPL had approached the BDA seeking approval of the new building plan immediately after the Supreme Court's order.

[1] (2019) 18 SCC 494

> 54.7 Some of the land owners had sent a letter objecting to the same and had also filed a police complaint to the Ulsoor Police Station and had thus created hindrances for FCIPL to perform its obligations.

55. In addition to the above finding, the Arbitral Tribunal faulted the landowners' conduct. The Arbitral Tribunal observed that the landowners were not truthful or straightforward and their conduct was not above board. Further, the Arbitral Tribunal observed that under the JDA it was the duty of the landowners to co-operate with FCIPL in getting the approval of the sanction plan and other related matters.

56. Although the principal findings are adverse to the landowners, the Arbitral Tribunal also found that FCIPL was also responsible for non-completion of the apartment complex and held that FCIPL had also defaulted in performing its obligations. Paragraph 58 of the impugned award which records the Arbitral Tribunal's conclusion in regard to issues 1 to 3 is as under:

> "58. At the same time, I may also mention here that after receiving Letter, seeking the clarification, from the Bangalore Development Authority as mentioned above, the

> Respondent has also not taken effective steps in the matter. If the overall evidence on records is taken into consideration, in my opinion, both the Claimants and the Respondent are responsible for non-completion of the construction of Apartment Complex and also in performing the duty and obligation against each other. Hence, I hold that both the Claimants and the Respondents are able to prove against each other that they have committed violation of terms and conditions of Ex.R.1 Memorandum of Understanding and Ex.P.1 Joint Development Agreement. Hence, I hold that the Respondent has failed to prove that it was not able to complete the project due to the circumstances beyond its control."

57. The Arbitral Tribunal considered the landowner's prayer in light of the aforesaid findings. As noted above, the landowners had prayed for a declaration that the JDA is invalid and cancelled. The landowners had terminated the JDA by a letter dated 26.03.2018 (Ex P2) sent through their advocate. Paragraph 8 of the said letter read as under:

> "8. Our Client instructs to state that in view of above, our client is constrained to terminate the JDA dated 26.05.2014 and deal with the said property by themselves and/or through their nominees/agents/ Legal Heirs. Furthermore, the Advance amounts paid under the said JDA dated 26.05.2014 is forfeited for the losses suffered by our clients and breaches committed by yourself, further you are liable to pay a sum of Rs.60,00,000/- (Rupees Sixty Lakhs Only) as the losses suffered by our clients for the loss of opportunity and the undue delay caused by

> you and other incidental losses suffered by our clients, which you ought to pay within 15 days from the date of receipt of this notice, failing which, our clients have instructed us to initiate suitable legal proceedings against you for the recovery of the same at your expense."

58. The Arbitral Tribunal found that although the landowners had created hindrances, FCIPL had not taken effective steps for performance of its obligations. Indisputably, the said view is a plausible one and we are unable to accept that the said conclusion vitiates the impugned award by patent illegality. Although there is specific finding in regard to FCIPL's defence to the effect that it had refrained from filing revised plans as the challenge to the NGT's order was pending, it is apparent that the Arbitral Tribunal did not accept that defence.

59. Given the aforesaid conclusion, the Arbitral Tribunal's decision to accept that the JDA is terminated, would warrant no interference. The refusal to accept the cancellation of the JDA, in effect amounts to holding that the JDA subsists and the parties are not absolved from performing their obligations under the JDA. In effect, the same would amount to allowing the counterclaim for the specific performance of the JDA, as sought for by FCIPL. However, in view of the finding that FCIPL was in breach of its obligations

under the JDA, the impugned award cannot be held to be patently illegal for not granting the said relief.

60. In the aforesaid context, the Arbitral Tribunal held as under:

> "77. The Claimants have prayed for declaration to declare that Ex.P.1 Joint Development Agreement is invalid, they have also prayed for cancellation of Ex.P.1 Joint Development Agreement and consequential relief of injunction.
>
> Ex.R.1 Memorandum of Understanding is dated 4.3.2013. Ex.P.1 Joint Development Agreement is dated 26.5.2014. I have already held that both the parties are at fault and as a result, the project could not be completed. The contracts in question are now more than 10 years old. Though there is nothing to indicate that Ex.P.1 Joint Development Agreement is invalid, looking to the relationship between the Claimants and the Respondent, the conduct of each of them and the time that has lapsed after execution of the contract, it is in the interest of justice and equity that Ex.P.1 Joint Development Agreement is cancelled. ..."

61. There is merit in the contention that the Arbitral Tribunal is required to decide in accordance with law unless the parties expressly agree otherwise. Section 28(2) of the A&C Act expressly provides that:

> "28. Rules applicable to substance of dispute.
>
> ** ** **
>
> (2) The arbitral tribunal shall decide *ex aequo et bono or* as *amiable compositeur* only if the parties have expressly authorised it to do so."

62. However, a plain reading of the impugned award shows that the Arbitral Tribunal accepted that the cancellation of the JDA for the reason that both the parties had defaulted in their obligations.

63. The construction of the apartment complex was inordinately delayed, and indisputably, there have been long periods of inactivity on the part of FCIPL. Thus, the Arbitral Tribunal faulted FCIPL for the delay and non-performance of the JDA. It is apparent that this is the principal reason for the Arbitral Tribunal not acceding to FCIPL's prayer for directing specific performance of the JDA. A party that has defaulted in performing the contract may not be entitled to the specific performance of the contract, notwithstanding that the other party had also breached its obligations.

64. The observation of the Arbitral Tribunal that it was in the interest of justice and equity to cancel the JDA, in effect denying its

specific performance, must be read in conjunction with the finding that both parties were in default of their obligations.

65. Whilst the Arbitral Tribunal declined to direct specific performance of the JDA, it accepted that FCIPL is entitled to the amounts expended on the project. The Arbitral Tribunal had examined the evidence and found that FCIPL had failed to establish that it had expended a sum of ₹1,98,82,036/- (Rupees one crore ninety eight lakh eighty two thousand and thirty six only) for the project as claimed. However, the Arbitral Tribunal found that FCIPL had established that it had paid/expended an aggregate amount of ₹64,12,405/- (Rupees sixty four lakh twelve thousand four hundred and five only). Accordingly, the Arbitral Tribunal rounded off the said amount and awarded an amount of ₹65,00,000/- (Rupees sixty five lakh only).

66. We also consider it apposite to refer to the following extract from the decision of the Supreme Court in **Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd**[2]:

> " 34. The mandate under Section 31(3) of the Arbitration Act is to have reasoning which is intelligible and adequate and, which can in appropriate cases be even implied by the

[2] (2019) 20 SCC 1

courts from a fair reading of the award and documents referred to thereunder, if the need be. The aforesaid provision does not require an elaborate judgment to be passed by the arbitrators having regard to the speedy resolution of dispute.

35. When we consider the requirement of a reasoned order, three characteristics of a reasoned order can be fathomed. They are: proper, intelligible and adequate. If the reasonings in the order are improper, they reveal a flaw in the decision-making process. If the challenge to an award is based on impropriety or perversity in the reasoning, then it can be challenged strictly on the grounds provided under Section 34 of the Arbitration Act. If the challenge to an award is based on the ground that the same is unintelligible, the same would be equivalent of providing no reasons at all. Coming to the last aspect concerning the challenge on adequacy of reasons, the Court while exercising jurisdiction under Section 34 has to adjudicate the validity of such an award based on the degree of particularity of reasoning required having regard to the nature of issues falling for consideration. The degree of particularity cannot be stated in a precise manner as the same would depend on the complexity of the issue. Even if the Court comes to a conclusion that there were gaps in the reasoning for the conclusions reached by the Tribunal, the Court needs to have regard to the documents submitted by the parties and the contentions raised before the Tribunal so that awards with inadequate reasons are not set aside in casual and cavalier manner. On the other hand, ordinarily unintelligible awards are to be set aside, subject to party autonomy to do away with the reasoned award. Therefore, the courts are required to be careful while distinguishing between inadequacy of reasons in an award and unintelligible awards.

67. In the present case, whilst the impugned award records elaborate reasons for finding the landowners in default of their obligations and for creating hindrances, the reason for finding FCIPL in default is very brief; FCIPL had not taken effective steps after receiving a letter from BDA to submit fresh plans. There is no discussion in the impugned award regarding FCIPL's contention that it was awaiting decision on the challenge to the NGT's order, as the buildable space had been considerably reduced. It is apparent that the Arbitral Tribunal has not accepted the said explanation. The reasons on which the impugned award is founded are not unintelligible. Since the Arbitral Tribunal also found the landowners to be in default, it has awarded the amounts deposited and expended by FCIPL, in its favour.

68. The scope of examination under Section 34 of the A&C Act does not permit the court to re-evaluate the evidence, re-adjudicate the disputes and supplant its opinion in place of that of the Arbitral Tribunal. It is well settled that so long as the Arbitral Tribunal's view is a plausible one, no interference would be warranted.

69. In the given circumstances, we are unable to accept that the impugned award is vitiated by patent illegality or is in conflict with the public policy of India.

70. The appeals are accordingly dismissed.

Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE

Sd/-
(C.M. POONACHA)
JUDGE

SD/AHB