



44-6  
13-5-25  
T. Arora  
Arora & Associates  
Advocate

दिल्ली विकास प्राधिकरण  
**DELHI DEVELOPMENT AUTHORITY**  
ई.एम. सचिवालय  
**E. M's SECRETARIAT**

No. EM2(3)2025/Dwk/220/DDA/294

Dated: 9-5-25

**MINUTES OF THE 907<sup>th</sup> MEETING OF ASB HELD ON 07.05.2025**

907<sup>th</sup> Meeting of Arbitration Scrutiny Board (ASB) under the chairmanship of FM/DDA was held on **07.05.2025** at **11:30 A.M.** in the chamber of FM/DDA to deliberate the arbitration award in the matter of **M/s Varindera Construction Ltd Vs DDA** for the following work:

**N.O. W : C/o 352 multistoried two-bedroom apartments, including internal electrification adjoining pocket-3, Sector-19B, Dwarka.**  
**Agency : M/s Varindera Construction Ltd.**  
**Agmt .No. : 03/EE/WD-10/DDA/2015-16.**

The instant case has been submitted by CE(Dwarka) vide e-file computer no. 90416 on dt. 16.04.2025.

The meeting was attended by the following ASB members:

1. Shri Vijay Kumar Singh	FM, DDA	Chairman
2. Col. Deepak Suyal	CE(Dwk)	Executive Member
3. Shri Sanjay Kumar Khare	CE(HQ)/DDA	Member
4. Shri Manohar Lal	Addl. CLA/DDA	Member
5. Shri Amit Singh	Dir. (Works)	Member, Secretary

The case was presented by Col. Deepak Suyal, CE (Dwarka).

**BRIEF HISTORY OF THE CASE IS AS UNDER: -**

1. The above cited work was awarded to M/s Varindera Constructions Ltd. vide award letter No. F.54(27)/EE/WD-10/DDA/2014-15/481 dated 17.04.2015.
2. In the arbitration matter, the Worthy Engineer Member DDA appointed Sh. Arvind Kumar Arora, DG, MES (Retd.), as Sole Arbitrator vide order No. EM2(7)/2023/Arbn./Vol.VIII/Pt.209/ DDA/356 on 27.07.2023. The Sole Arbitrator published the award on 01.02.2025, which was received on 04.02.2025. However, corrections / interpretations of the award u/s 33(2) of the arbitration and conciliation act 1996 was issued on 12.03.2025.

3. Out of 32 claims made by the claimant, the Sole Arbitrator awarded 21 claims in favor of the Claimant.
4. The Total Amount awarded in favour of the claimant is INR 47,02,25,598.00/- (Rupees Forty-Seven Crore Two Lacs Twenty-Five Thousand Five Hundred Ninety-Eight only). However, the DDA's Counterclaim of Rs 44.68 crores was dismissed, with NIL awarded to the DDA.

**LEGAL OPINION OF THE PANEL LAYWER (SH. SANJAY VASHISHTHA): -**

*"Please find below my parawise assessment of the captioned award, on these grounds we should challenge the award under section-34.*

Para-Wise Analysis of Erroneous Findings in the Arbitral Award and Justification for DDA's Counterclaims: -

**I. ERRONEOUS FINDINGS IN CLAIMS ALLOWED BY THE TRIBUNAL**

**1. Pending Final Bill (₹3,85,03,793 + Interest)**

1.1 The tribunal awarded the full final bill amount without accounting for the substandard, incomplete and defective work carried out by VCL.

1.2 The amount was lawfully withheld by DDA due to serious safety concerns in the construction, including water leakage, improper CP fittings, and falling les, which were clearly documented in the Completion Certificate.

1.3 The tribunal ignored multiple complaints from allottees regarding these defects and did not consider DDA's right to withhold payment under the contract until these issues were rectified.

1.4 DDA's Justification: The withholding was lawful under the contract, as VCL failed to provide defect-free work. Granting the claim without rectifications violates fundamental principles of contract law, making the award challengeable.

**2. Balance Escalation under Clause 10CC (₹16,08,71,654.00)**

2.1 The tribunal erroneously awarded escalation costs despite the fact that VCL was solely responsible for project delays.

2.2 Clause 10CC applies only for price escalation within the stipulated contract period (36 months), but VCL delayed the project by more than 15 months due to its own inefficiencies. There are several documents which are not considered by the Arbitrator such as commencement date etc.

2.3 DDA granted extensions without compensation as a goodwill gesture, but this was misconstrued as an admission of liability, which is incorrect.

2.4 DDA's Justification: VCL cannot claim price escalation for a delay it caused. The tribunal misapplied Clause 10CC, warranting reversal of this award.

### **3. Overweight of Steel Reinforcement Bars (₹1,96,00,897.00)**

3.1 The tribunal granted the claim without verifying whether the excess steel was due to design changes by DDA or unauthorized usage by VCL.

3.2 VCL did not produce prior approval for additional steel usage, which is a contractual requirement.

3.3 DDA's Justification: The award is perverse, as it allows VCL to recover costs without proving that the excess steel was approved.

### **4. Withheld Amount (₹31,15,136.00)**

4.1 The tribunal ignored why DDA withheld this amount, which was due to VCL's failure to complete pending works and rectify safety concerns.

4.2 The Completion Certificate records multiple unresolved defects, justifying the withholding.

4.3 DDA's Justification: Payment was lawfully withheld under contractual provisions, and the tribunal wrongly ignored material evidence, making this part of the award unsustainable.

### **5. Interest for Amount Withheld but Later Released (₹6,17,545.00)**

5.1 The tribunal wrongly awarded interest on delayed payments, even though DDA was justified in withholding funds due to defective work.

5.2 DDA's Justification: Since the withholding was lawful and based on pending rectifications, VCL cannot claim interest. The award rewards contractual non-performance, making it contrary to public policy.

### **6. GST Reimbursement (₹16,43,03,827.00)**

6.1 The tribunal granted full GST reimbursement despite the contract stating that VCL was responsible for a portion of the tax liability.

6.2 DDA's Justification: The award contradicts contractual tax obligations, making it legally unsustainable.

## **II. WRONGFUL REJECTION OF DDA'S COUNTERCLAIMS**

### **A. Compensation for Delay in Completion (₹11,20,33,612.00)**

A.1 The tribunal erred in rejecting this claim despite substantial proof that VCL delayed the project due to mismanagement.

A.2 Delays were caused by VCL's failure to mobilize labor, improper planning, and inefficiencies, not due to DDA's actions.

A.3 DDA's Justification: The counterclaim was bona fide, as DDA incurred financial and reputational losses due to VCL's delays.

## **B. Liquidated Damages for Project Delay (₹3,44,99,402.00)**

B.1 The tribunal ignored DDA's contractual right to impose liquidated damages for VCL's failure to complete milestones on me.

B.2 DDA's Justification: Since milestone dates were breached, liquidated damages were rightfully due under the contract, making the rejection arbitrary.

## **C. Loss of Goodwill & Reputation (₹22,40,67,224.00)**

C.1 The tribunal failed to consider that DDA suffered reputational damage due to VCL's defective work, which resulted in widespread complaints from allottees.

C.2 DDA's Justification: This counterclaim was legitimate, as safety issues, structural defects, and unfinished work damaged DDA's credibility. The rejection was unreasonable.

## **D. Fraud & Misrepresentation by VCL (₹4,93,61,236.00)**

D.1 The tribunal disregarded evidence that VCL made false representations about its quality of work.

D.2 DDA's Justification: Multiple allottee complaints and quality assessment reports proved that VCL's work did not meet contractual standards. The tribunal erred in dismissing this claim.

## **III. JUSTIFICATION FOR SECTION 34 CHALLENGE**

### **1. Violation of Public Policy:**

- The award rewards a contractor for its own mismanagement, delays, and defective work, which is contrary to public interest.

### **2. Perverse Findings:**

- The tribunal ignored documentary evidence, including DDA's rights under the contract, and wrongly dismissed counterclaims without proper reasoning.

### **3. Breach of Contractual Terms:**

- The award overrides explicit contract clauses, leading to unjust enrichment of VCL.

### **4. Violation of Natural Justice:**

- The tribunal failed to consider key evidence and misinterpreted contractual provisions, rendering the award legally unsustainable.

The aforesaid points are merely prima facie points subject to detailed analysis at the time of filing of objection petition under sect 34 of the Act.

**LEGAL OPINION OF SLO (ENGINEERING): -**

*"This case forwarded to legal department for perusal and vetting in view of challenging the arbitration award. After gone through the recommendation of concerned department to challenge the award and opinion of Panel Lawyer. And I am in agreement with views of P/L and Department. As stated by Panel lawyer that the Tribunal ignored the multiple complaints from allottees regarding the defects and did not consider DDA's right to withhold payment under the contract. The tribunal erroneously awarded escalation costs despite the fact that claimant was responsible for delay. The tribunal has rejected the claim despite substantial proof that claimant delayed the project. The tribunal ignored documentary evidence, and wrongly dismissed counter claims without proper reasoning. The tribunal failed to consider evidence and misinterpreted contractual provisions. Therefore, in my view award should be challenged. May please see for final views".*

**Recommendation of EE/PD-04/DDA-**

<b>Claim No.</b>	<b>List of Claims/Disputes referred by EM to the AT</b>	<b>Claimed Amount (Rs.) without interest</b>	<b>Awarded Amount (Rs.) with interest</b>	<b>Reasons / Recommendations of EE for challenging the award</b>
<b>1.</b>	The Claimant claims a sum of <b>Rs. 2,20,65,211/-</b> on account of <b>final bill</b> for civil components already submitted by claimant for undisputed items and further interest @ 15% per annum from the date of its due i.e., 10/02/2020 till realization.	<b>2,20,65,211/-</b>	3,09,95,167/-	The claimant was requested multiple times for joint verification of measurements for final bill and to fix all the CP Brass fittings and fixtures & to rectify the defects as pointed out in the completion certificate but claimant prefer not turned up. Hence, the award of this claim is to be challenged.
<b>2.</b>	The Claimant claims a sum of <b>Rs. 3,77,78,170/-</b> on account of <b>escalation under clause 10CC</b> of the agreement and further interest @ 15% per annum from the date of its due i.e., 10/02/2020 till realization.	<b>3,77,78,170/-</b>	11,05,39,367/-	Escalation upto 39th R/A bill under clause 10CC of the agreement has already been paid. The remaining payment in r/o 40 <sup>th</sup> & final bill will be made as per conditions envisaged in the agreement. Hence, the award of this claim is to be challenged.
<b>3.</b>	The Claimant claims a sum of <b>Rs.</b>	<b>44,54,943/-</b>	NIL	<b>Accepted</b>

	44,54,943/- on account of extra payment for <b>overweight of steel reinforcement</b> bars but within permissible variation limits and further interest @ 15% per annum from the date of its due i.e., 10/02/2020 till realization.			
4.	The Claimant claims a sum of <b>Rs. 16,17,334/-</b> on account of <b>amount illegally and arbitrarily withheld by the Department</b> in our various running bills and also further interest @ 15% per annum from the respective dates of withholding and till realization.	16,17,334/-	11,34,080/-	<p>This amount is withheld on A/c of following reasons:</p> <ul style="list-style-type: none"> <li>• Cleaning of the expansion joint.</li> <li>• On A/c of QAC observations.</li> <li>• Security Deposit for water proofing.</li> <li>• Recovery on account of using other-site mix design.</li> <li>• Withheld on A/c of non-compliance of instructions.</li> </ul> <p><b>Hence, the award of this claim is to be challenged.</b></p>
5.	The Claimant claims a sum of <b>Rs. 3,97,886/-</b> on account of interest @15% per annum against the amount <b>illegally and arbitrarily withheld by the Department</b> in our various <b>running bills</b> but subsequently released and also further interest @ 15% per annum from date of its due	3,97,886/-	NIL	<b>Accepted</b>



	i.e., 10/02/2020 till realization.			
6.	The Claimant claims a sum of <b>Rs. 14,90,083/-</b> on account of interest @15% per annum against <b>unjustified and unreasonable delay in release of payment against our various intermediate bills</b> and also further interest @15% per annum from the date of its due i.e., 10/02/2020 till realization.	<b>14,90,083/-</b>	22,22,707/-	As per Clause 7 of the agreement (Page 60/153), the contractor is not entitled to interim payments if the Gross work value is less than Rs. 300 lac. Despite this, the contractor submitted 40 bills, including the final bill and 9 of these (R/A) bills, exceeded Rs. 300 lac. The remaining 31 bills were for amounts less than qualified amount i.e Rs. 300 lac. In the interest of project progress, DDA paid these 31 R/A bills, although they were below the stipulated amount. Notably, all 9 eligible bills were paid within 45 days of submission and there were no delays that would warrant additional interest payments to the claimant. Hence, the award for this claim should be challenged.
7.	The Claimant claims a sum of <b>Rs. 3,36,49,660/-</b> on account of <b>wrong computation of 10CA</b> and also further interest @ 15% per annum from the date of its due till realization.	<b>3,36,49,660/-</b>	4,32,48,974/-	All upto date payments, as submitted by the claimant, have already been made by the Respondent to the Claimant. However, for processing of the further bills of 10CA, the claimant did not submit the voucher details along with the book of accounts for verification, despite of the written request by DDA vide letter No 189 dated 06.03.2023. <b>Hence, the award of this claim is to be challenged.</b>
8.	The Claimant claims a sum of <b>Rs. 7,76,12,880/-</b> on account of <b>work executed but not paid</b> and also further interest @15% per annum from the respective dates of its due i.e 10/02/2020 i.e the	<b>7,76,12,880/-</b>	7,86,09,486/-	The claimant had been requested vide office letter No.F.54 (27)/EE/WD-10/DDA/216 dated 14.03.2023 & 253 dated 24.03.2023 to attend the office and submit the details of works executed and to verify the quantity which is not measured in the bill, however, till date no

	date of said bill and till realization.			compliance was made by the claimant. <b>Hence, the award of this claim is to be challenged.</b>
9.	The Claimant claims a sum of <b>Rs. 3,11,900/-</b> on account of <b>interest against TDS wrongly deducted on mobilization advance</b> and also further interest@ 15% per annum from the date of its due i.e. 21/06/2017 i.e., the date of said bill and till realization.	<b>3,11,900/-</b>	<b>NIL</b>	<b>Accepted</b>
9A	<b>Additional Claim Not referred by EM/DDA</b> Extra interest deducted on mobilization advance +15% PA interest from 10.02.2020 to 31.12.2024.	<b>-----</b>	<b>NIL</b>	<b>Accepted</b>
10.	The Claimant claims a sum of <b>Rs. 15,838/-</b> on account of <b>reimbursement of balance amount of service tax</b> and also further interest@ 15% per annum from the respective dates of its due till realization.	<b>15,838/-</b>	<b>NIL</b>	<b>Accepted</b>
11.	The Claimant claims a sum of <b>Rs. 1,54,55,261/-</b> on account of balance amount	<b>1,54,55,261/-</b>	<b>NIL</b>	<b>Accepted</b>



	remained unpaid in 7th & 39 <sup>th</sup> A running bill and also further interest @ 18% from the date of it due i.e. 10/02/2020 i.e. the date of said bill and till realization.			
12.	The Claimant claims a sum of <b>Rs. 9,61,11,292/-</b> on account of <b>reimbursement of GST</b> also further interest @ 15% per annum from the respective dates of its due till realization.	<b>9,61,11,292/-</b>	4,81,65,585/-	The Respondent requested the claimant vide letter No. F.54(27)/EE/WD10/DDA/533 dated 15.09.2022, 150 dated 23.02.2023 and 189 dated 06.03.2023 to submit GST working details, along with book of records in the latest format issued by CPWD after elimination of vat @ 3% component but the same is yet to be received from the claimant. However, the Respondent has already made payment to claimant for interim GST reimbursement as per standing instructions. <b>Hence, the award of this claim is to be challenged.</b>
13.	The Claimant claims a sum of <b>Rs. 15,03,016/-</b> on account of <b>extra cement used in design mix</b> concrete and also further interest @ 15% per annum from the date its due i.e., 10/02/2020 i.e. the due date of final bill and till realization.	<b>15,03,016/-</b>	24,11,708/-	The claimant has claimed the extra quantity then his previous assessment of 775.30 qtl, which will be paid along with final bill after assessing the actual qty of the final measurements. It is also submitted that as per point no 26 of page 291 of the agreement, nothing extra is to be paid for the minimum content of cement used for piles work as per CPWD specification Vol-II 2009 and IS: 2911. <b>Hence, the award of this claim is to be challenged.</b>
14.	The Claimant claims a sum of <b>Rs. 9,38,920/-</b> on account of interest @ 15% per annum towards non-	<b>9,38,920/-</b>	8,53,151/-	<b>As per Clause-1A, P/50 of the agreement, the security deposit, as deducted above can be released against bank guarantee issued by a scheduled bank, on its</b>

	release of <b>earnest money deposit</b> after submission of performance guarantee by the Claimant and also further interest from the date its due i.e., 10/02/2020 i.e. the due date of final and till realization.			<p>accumulations to a minimum of Rs. 5 lac subject to the condition that amount of such bank guarantee, except last one, shall not be less than Rs. 5 lac. Provided further that the validity of bank guarantee including the one given against the earnest money shall be in conformity with provisions contained in clause 17 which shall be extended from time to time depending upon extension of contract granted under provisions of clause 2 and clause 5.</p> <p>And further because the Claimant itself is responsible for the delay in the completion of the project.</p> <p>Hence, the award of this claim is to be challenged.</p>
15.	The Claimant claims a sum of <b>Rs. 69,13,710/-</b> on account of unanticipated <b>unwarranted bank charges</b> incurred by the Claimant towards <b>extension of bank guarantee</b> on various dates due to breach of contract committed by the Department and also further interest from the date of its due i.e 10/02/2020 i.e due date of final bill and till realization.	69,13,710/-	8,84,468/-	<p>As per Clause-1A, P/50 of the agreement, the security deposit, as deducted above can be released against bank guarantee issued by a scheduled bank, on its accumulations to a minimum of Rs. 5 lac subject to the condition that amount of such bank guarantee, except last one, shall not be less than Rs. 5 lac. Provided further that the validity of bank guarantee including the one given against the earnest money shall be in conformity with provisions contained in clause 17 which shall be extended from time to time depending upon extension of contract granted under provisions of clause 2 and clause 5. And further because the Claimant itself is responsible for the</p>

				<b>delay in the completion of the project. Hence, the award of this claim is to be challenged.</b>
<b>16.</b>	The Claimant claims a sum of <b>Rs. 17,33,466/-</b> on account of <b>reimbursement against EPF</b> and also further interest @ 15% per annum from the respective dates of its due till realization.	<b>17,33,466/-</b>	<b>NIL</b>	<b>Accepted</b>
<b>17.</b>	The Claimant claims a sum of <b>Rs. 60,74,211/-</b> on account of <b>wrong sanction of rates for various extra items</b> and also further interest from the date of its due i.e 10/02/2020 i.e., the due date of final bill and till realization.	<b>60,74,211/-</b>	<b>57,63,395/-</b>	<p>As per clause-12.2 A of the agreement "In the case of extra item(s) (items that are completely new, and are in addition to the items contained in the contract), the contractor may within fifteen days of receipt of order or occurrence of the item(s) claim rates, supported by proper analysis, for the work and the engineer-in-charge shall within prescribed time limit of the receipt of the claims supported by analysis, after giving consideration to the analysis of the rates submitted by the contractor, determine the rates on the basis of the market rates and the contractor shall be paid in accordance with the rates so determined".</p> <p>Accordingly, the claimant submitted their offer for rates of extra items and DDA accepted the offer of the claimant and sanctioned the extra items accordingly.</p>

				<p>Therefore, the claim of the claimant is after thought and unjustified. Hence this claim is denied.</p> <p>Importantly Moreover the claimant accepted the rates of extra items as sanctioned by DDA till pre-final bill and also claimed the same rates in final Bill. Therefore, the claim of the claimant is after thought and against the business ethics.</p> <p><b>Hence, the award of this claim is to be challenged.</b></p>
18.	<p>The Claimant claims a sum of Rs. <b>1,53,90,480/-</b> on account of <b>wrong sanction of rates for various substituted items</b> and also further interest from the date of its due i.e., 10/02/2020 i.e., the due date of final bill and till realization.</p>	<b>1,53,90,480/-</b>	2,88,80,178/-	<p>As per clause-12.2 A of the agreement <b><u>for Substituted Items, Pricing.</u></b> In the case of substituted items (items that are taken up with partial substitution or in lieu of items of work in the contract), the rate for the agreement item (to be substituted) and substituted item shall also be determined in the manner as mentioned in the following para.</p> <p>a. If the market rate for the substituted item so determined is more than the market rate of the agreement item (to be substituted), the rate payable to the contractor for the substituted item shall be the rate for the agreement item (to be substituted) so <b>increased</b> to the extent of the difference between the market rates of substituted item and the agreement item (to be substituted).</p> <p>b. If the market rate for the substituted item so determined is less than the market rate of the agreement item (to be.</p>

				<p>substituted), the rate payable to the contractor for the substituted item shall be the rate for the agreement item (to be substituted) so <b>decreased</b> to the extent of the difference between the market rates of substituted item and the agreement item (to be substituted).</p> <p>Importantly Moreover the claimant accepted the rates of substituted items as sanctioned by DDA till pre-final bill and also claimed the same rates in final Bill. Therefore, the claim of the claimant is after thought and against the business ethics. <b>Hence, the award of this claim is to be challenged.</b></p>
19.	<p>The Claimant claims a sum of <b>Rs. 5,33,49,846/-</b> on account of <b>wrong sanction of rates for various agreement items deviated</b> beyond permissible deviation limits and also further interest from the date of its due i.e. 10/02/2020 i.e., the due date of final bill and till realization.</p>	<b>5,33,49,846/-</b>	2,15,08,508	<p><b>Deviation Statement No-1</b> is sanctioned by competent authority and</p> <p><b>Deviation Statement No-2</b> is under process. The office of EE/DPD-4, DDA has called the claimant multiple times for the verification of measurement but no one has turned up from the side of the claimant for the verification of joint measurement. Since the claim is immature hence denied.</p> <p><b>Hence, the award of this claim is to be challenged.</b></p>
20.	<p>The Claimant claims a sum of <b>Rs. 1,32,56,964/-</b> on account of <b>work executed, duly admitted by the Department and also sanctioned</b></p>	<b>1,32,56,964/-</b>	NIL	<b>Accepted</b>

	<b>under extra items but not paid</b> and also further interest from the date of its due i.e., 10/02/2020 i.e., the due date of final bill and till realization.			
21.	The Claimant claims a sum of <b>Rs. 2,09,798/-</b> on account of interest @ 15% per annum due to <b>delay in reimbursement of the service tax</b> from the respective dates of its due till realization and also further interest @ 15% per annum from the respective dates of its due till realization.	<b>2,09,798/-</b>	NIL	<b>Accepted</b>
22.	The Claimant claims a sum of <b>Rs. 1,83,82,531/-</b> on account of <b>escalation under clause 10 CC</b> against Claim no. 4, 9 and 14 i.e., on Rs. 8,35,70,839/- and also further interest @ 15% per annum from the date its due i.e., 10/02/2020 i.e., the due date of final bill and till realization.	<b>1,83,82,531/-</b>	NIL	<b>Accepted</b>
23.	The Claimant claims a sum of <b>Rs. 81,70,996/-</b> on account of <b>loss of profit/profitability</b> due to some agreement items executed lesser	<b>81,70,996/-</b>	1,21,66,049/-	The claim of the claimant is hypothetical and asking payment for the work not done by him as per <b>Agreement Clause 12/P-75</b> . As per this clause the contractor shall be bound to carry out the work as per the drawings issued and in



	then the permissible deviation limit and also further interest @ 15% per annum from the date of its due i.e., 10/02/2020 i.e., the due date of final bill and till realization.			accordance with any instruction given to him by engineer in-charge and alteration, omissions, addition or subtraction shall form part of the contract. It is pertinent to mentioned that the claimant at one side i.e., in claim no. 19 asking payment on market rate which is higher than the agreement rate on the quantity executed beyond deviation limit and on other hand asking for the loss of profit/profit ability for not executing the item. The claimant is even liable for the compensation of the difference of rate between market and agreement rate for the quantity which is not executed. In view of above, the claim is denied and counter claim is enclosed herewith. <b>Hence the claim is denied and the award of this claim is to be challenged.</b>
24.	Claimant claims a sum of Rs 35,42,015/- on release of security deposit and also further interest @ percent per annum from the date of its due till realization.	35,42,015/-	52,91,785/-	As per clause 17 of the agreement mentioned is page no 83 stated that <b><i>"the security deposit of the contractor shall not be refunded before the expiry of twelve months (six months in the case of work costing Rs. Ten lacs and below except road work) after the issue of the certificate final or otherwise, of completion of work, or till the final bill has been prepared and passed whichever is later. Provided that in the case of road work, if in the opinion of the Engineer-in-Charge, half of the security deposit is sufficient, to meet all liabilities of the contractor under this contract, half of the security deposit will be refundable after six months and the remaining half after</i></b>

				<p><i>twelve months of the issue of the said certificate of completion or till the final bill has been prepared and passed whichever is later". In addition, it is to mention here that the multiple letters have been issued to the agency for the rectifications of the various defects which has not been rectified yet. It is also pertinent to mentioned that the Claimant has not submitted clearance certificate for the labor officer which is mandatory requirement for the release of security deposit as per the Clause 45 of the agreement which has not been complied by claimant hence the claim of the claimant is denied. Hence, the award of this claim is to be challenged.</i></p>
25.	<p>The Claimant claims a sum of <b>Rs 3,49,84,830/- on account of damages</b> towards additional overheads <b>due to prolongation of contract</b> due to breach of contract committed by the Department and also further interest from the date of its due i.e., 10/02/2020 i.e., the due date of final bill and till realization.</p>	<b>3,49,84,830/-</b>	2,27,36,382/-	<p>The claim submitted by the claimant is baseless. The work has been delayed due to various hindrances occurred during the execution of work which is beyond the control of department as well as contractor and accordingly EOT has been granted to the claimant without levy of any penalty on the basis of merit. In addition, the claimant has also submitted their EOT case and certify that claimant has not suffered any damages due to this. So claim at this stage is completely an afterthought. <b>Hence the claim is denied, and the award of this claim is to be challenged.</b></p>
26.	<p>The Claimant claims a sum of <b>Rs. 2,84,13,000/-</b> on account of damages towards idling and/or <b>underutilization of machinery</b> due</p>	<b>2,84,13,000/-</b>	NTL	<b>Accepted</b>

	to provision of contract due to breach of contract committed by the Department and also further interest from the date of its due i.e., 10/02/2020 i.e., the due date of final bill and till realization.			
27.	The Claimant claims a sum of <b>Rs. 1,55,38,909/-</b> on account of <b>loss of profit/profitability due to prolongation of contract</b> due to breach of contract committed by the Department and also further interest from the date of its due i.e., 10/02/2020 i.e., the due date of final bill and till realization.	<b>1,55,38,909/-</b>	1,02,40,715/-	The claim submitted by the claimant is baseless. The work has been delayed due to various hindrances occurred during the execution of work which is beyond the control of department as well as contractor and accordingly EOT has been granted to the claimant without levy of any penalty on the basis of merit. In addition the claimant has also submitted their EOT case and certify that claimant has not suffered any damages due to this. So claim at this stage is completely an afterthought. <b>Hence the claim is denied, and the award of this claim is to be challenged.</b>
28.	The Claimant claims a sum of <b>Rs. 7,88,24,452/-</b> on account of <b>watch and ward charges from the actual date of completion</b> till 17/06/2023 on the principle of equity and good conscience plus further interest @15% per annum from the respective dates of its due till realization and thereafter a	<b>7,88,24,452/-</b>	3,89,04,412/-	The work has been completed on dt. 10.07.2019. As per the clause 17, the defect liability period of the contractor is 12 months. Hence the claimant deployed security guard during the defect liability period, as the work of rectification of defect was in process. It is pertinent to mention here that during the said period, the occurrence of first wave of covid results into delay in rectification of defect as a result the labour was deployed by the claimant for rectification of defects beyond July 2020

	<p>declaration in writing that the same will continue @ Rs. 4,461/- per month per flat plus escalation till the date of handing over to the allottees or till the flats are physically taken over by the Department whichever is earlier.</p>			<p>and kept the security guard in the complex upto <b>31 December 2020</b> with the intent to ensure the security of labour and material which was available at site to rectify the defects. The claimant vide its letter No. 333 dated 02.09.2022 intimated DDA that they have removed all the watch and ward from the site, since January 2021.</p> <p>Hence it is clear that the no security guard was deployed by the claimant after Dec. 2020 and same was agreed by him and even before that security guard was deployed for the safety and security of its own material and not for the interest of the department. (Letter of EE vide even No 688 dated 01.12.2022 is also to be referred for removal of security guard).</p> <p><b>Hence claim of the claimant is totally denied.</b></p>
29.	<p>Claimant claims pre-suit and pendente-lite interest @ 18% per annum on the above demands from the respective dates of due till the date of award and also and <b>future interest@ 20%</b> per annum from the date of award to the date of realization.</p>	Not quantified	Simple rate of interest of 11%p.a.	<p>Since all the claim of the claimant are baseless and absurd and without any substantial ground hence the question of the pre-suit and pendente-lite interest does not arise. Hence the claim of the claimant for the pendente-lite interest is hereby denied, and <b>the award of this claim is to be challenged.</b></p>
30.	<p>The Claimant claims a sum of <b>Rs. 50,00,000/-</b> on account of <b>cost of</b></p>	<b>50,00,000/-</b>	56,69,481.00	<p>All the above claims of the Claimant are baseless and denied. Hence the cost of</p>

	Arbitration proceedings.			Arbitration proceedings has to be borne by the Claimant. Hence, the award of this claim is to be challenged.
31.	The Claimant claims GST at applicable rates as on the date of payment of award on all of the above claims or a declaration that the Department would be liable to pay the same to the respective government department by itself to discharge the claimant from the liability of the same, in future, whatever it may be Respondent for GST against the amount to be awarded under the present disputes.	Only declaration	Declaration as per Para 339 of the Award	Since all the claim of the claimant are baseless and absurd and without any substantial ground, hence the question of GST on all of the above claims does not arises. Hence the liability to pay the GST (as applicable) to the respective government department stands with the Claimant, in future.  Hence, the award of this claim is to be challenged.
	<b>Total Amount Rs. =</b>	<b>58,31,87,602/-</b>	<b>47,02,25,598/-</b>	

**RECOMMENDATIONS OF EE/DPD- 4 FOR COUNTERCLAIMS**

Counter claim No.	Description of Claims	Claimed Amount (Rs.)	Awarded Amount (Rs.)	Reasons / Recommendations of EE for challenging the award
A	Compensation for delay in Completion of the Project	11,20,33,612.03	NIL	DDA was not responsible for the delayed completion of the project.  Hence, the award of this claim is to be challenged.
B	Liquidated damages for	3,44,99,402.00	NIL	The tribunal ignored DDA's contractual right to impose liquidated damages for

	delay in completion of the project			VCL's failure to complete the Project on time.  Hence, the award of this claim is to be challenged.
<b>C</b>	Liquidated damages (LD) for short fall in performance parameters	2,46,80,618.00	NIL	Since milestones were breached, liquidated damages were rightfully due under the contract.  Hence, the award of this claim is to be challenged.
<b>D</b>	Recovery of penalty for not timely submitting the detailed programme PERT chart as per the agreement.	2 1,90,000.00	NIL	The arbitrator overlooked the claimant's obligation to submit the PERT chart as stipulated in the agreement. According to Clause 5.1 of the agreement, any delay beyond the stipulated date would attract a penalty of Rs. 5,000/- per day.  Hence, the award of this claim is to be challenged.
<b>E</b>	Loss of Goodwill and Reputation	22,40,67,224.00	NIL	The tribunal failed to consider that DDA suffered reputational damage due to claimant's unsatisfactory work, which resulted in widespread complaints from allottees.  Hence, the award of this claim is to be challenged.
<b>F</b>	Damages for Fraud and Misrepresentation by the Claimant	4,93,61,236.00	NIL	The tribunal disregarded evidence that VCL made false representations about its quality of work.  Hence, the award of this claim is to be challenged.
<b>G</b>	Indemnification	Not Quantified	NIL	The arbitrator did not consider that DDA to be awarded for indemnification.  Hence, the award of this claim is to be challenged.



H	Interest	Grant interest @18% upon the counter claims	NIL	The arbitrator awarded the simple interest of 11% to the Claimant but nil awarded to DDA.  Hence, the award of this claim is to be challenged
I	Cost of Litigation	-	NIL	The arbitrator awarded the cost of arbitration to the Claimant but not awarded the Cost of Litigation to DDA.  Hence, the award of this claim is to be challenged.
	<b>Total Rs.</b>	<b>44,68,32,092.03</b>	<b>NIL</b>	

**LEGAL OPINION OF THE CLA (CHIEF LEGAL ADVISOR): -**

I am in agreement with the recommendation of SLO (Engg)/DDA.

**Recommendations by SE/DCC-2**

I agree with the recommendations by EE/PD-4, DDA.

**Recommendations by CE(Dwk)/DDA**

I agree with the recommendation of EE/DPD-4/DDA and SE/DCC-2/DDA.

**RECOMMENDATION OF ASB:**

After due discussion and deliberation, the ASB has recommended the following: -

- i. ASB has observed that the award given by Ld. Arbitrator is completely biased and frivolous. Ld. Arbitrator has even awarded fee paid by the claimant to the Ld. Arbitral Tribunal (which is to be shared equally between the parties) as cost of litigation in favour of claimant. Hence, ASB recommended to de-panel the arbitrator from the list of arbitrators empanelled with DDA.
- ii. ASB has recommended to **accept** the award against the claim no. 3, sub claim no. 4.4, 4.5, 4.6, 4.7, 4.8, Claim no. 5, sub claim no. 8.10, 8.11, 8.15, 8.17, 8.23, 8.24, 8.25, 8.28, 8.30 Claim no. 9, 9A, 10, 11, 16, 20, 21, 22, 26 being **NIL** awards and to **challenge** the award against claim no. 1, 2, sub claim no. 4.1, 4.2, 4.3, claim no. 6, 7, sub claim no. 8.1 to 8.9, 8.12, 8.13, 8.14, 8.16, 8.18 to 8.22, 8.26, 8.27, 8.29, 8.31, claim no. 12, 13, 14, 15, 17, 18, 19, 23, 24, 25, 27, 28, 29, 30 & 31. However, CE(Dwarka) shall have liberty to pay any admissible payments after completing all codal formalities.
- iii. ASB also recommended to **challenge** the award against **counter-claims** no. A, B, C, D, E, F, G, H, I.

As per revised delegation of power issued vide no. EM1(10)2018/Del. Of Power/DDA/260 dated 29.01.2019 by CE (HQ) DDA, Hon'ble Chairman, DDA/Hon'ble LG, Delhi is the Competent Authority to accept / challenge the claims in r/o award amount more than Rs. 500 Lakhs in consultation with FM/DDA, with due scrutiny by Arbitration Scrutiny Board headed by FM, DDA.


-Sd-  
Amit Singh  
Dir(Works)  
Member Secretary

-Sd-  
Manohar  
Addl. CLA  
Member

-Sd-  
Sanjay Kumar Khare  
CE(HQ)  
Member


-Sd-  
Col. Deepak Suyal  
CE(Dwarka)  
Executive Member

-Sd-  
Vijay Kumar Singh  
FM, DDA  
Chairman

  
Director(Works)/DDA

**Copy to: -**

1. EM/DDA for kind information.
2. All concerned.
- ✓ 3. Director (System) for uploading on DDA website.
4. EE/DPD-4, Central Nursery, Sector-5, Dwarka, New Delhi-110075.

  
Director(Works)/DDA