

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

COMMERCIAL ARBITRATION PETITION NO. 118 OF 2016

Samir Narain Bhojwani
Vs.

.. Petitioner

Bombay Slum Redevelopment Corporation Ltd.

.. Respondent

Mr.Aspi Chinoy, senior advocate a/w. Mr.Parimal K. Shroff,
Mr.D.V.Deokar, Mr.Sachin Pandey and Mr.Dhruvesh Parikh i/b M/s.
Parimal K. Shroff for petitioner.

Mr.V.K. Ramabhadran, senior advocate a/w. Mr.Mahendra Ghelani and
Mr.Atman Mehra i/b Law Charter for respondent.

CORAM : K.R.SHRIRAM, J.
RESERVED ON : 15TH NOVEMBER, 2016
PRONOUNCED ON : 21ST NOVEMBER, 2016

P.C.

1 The petitioner has approached this Court impugning an order dated 12th October 2016 passed by Learned Sole Arbitrator on an application that was made under Section 17 of the Arbitration and Conciliation Act, 1996 (hereinafter referred as 'The said Act') by the respondent.

2 The petitioner has filed before the Learned Arbitrator a claim for specific performance of an Agreement dated 10th March 2003 and certain declarations and a money decree for Rs.158 crores in addition to the relief of specific performance.

3 The respondent has filed a counterclaim seeking to declare that from and after 14th August 2012, the petitioner is not entitled to withhold from the respondent keys to the outer doors of the flats which is the subject matter of the counterclaim and car parking space or to prevent the respondent from entering upon or occupying the respective flats and having access thereto and other reliefs.

4 The Agreement, dated 10th March 2003 entered into between the parties of which the petitioner has sought specific performance, provides for construction of 120 flats in three Wings by the petitioner out of which 55% flats will go to the petitioner and 45% flats will go to the respondent. Out of this Project, 88 flats have already been constructed in 'A' Wing and 'B' Wing. The Project has, however, been stalled for the last four years as the petitioner has been able to construct only upto 5th floor in 'C' Wing building, even though, in October 2010, the building plans were sanctioned for 22 storied 'C' Wing building. The major grievance of the petitioner is that the respondent (a) has not obtained Commencement Certificate from the Slum Rehabilitation Authority (SRA) for 6th to 22nd floors in 'C' Wing, after the last Commencement Certificate dated 16th December 2011 for construction upto 5th floor in 'C' Wing building was granted by SRA; and (b) the respondent has committed default in not constructing 107 PAP tenements as

part of its obligation under the LOI issued by the SRA and hence the respondent was impeding the further progress in implementation of the Project.

5 On the other hand, the respondent's contention is that non-completion of 'C' Wing or non-completion of construction of 107 PAP tenements by the respondent has not taken away its right to own and sell 45% flats in Wings 'A' and 'B'.

6 The respondent was the applicant in the application made under Section 17 of the said Act in which the impugned order was passed. In the said application, the respondent has prayed for the following reliefs :

(i) For an order of injunction restraining (the Claimant) from obstructing and/or interfering with and/or preventing the Applicant and persons authorized by the Applicant “from entering upon and/or remaining in and/or using and occupying the subject flats and from completing the remaining incomplete work therein and from ingress to and egress therefrom”;

(ii) For an order directing (the Claimant) “to forthwith hand over to the Applicant keys to the outer doors to the subject flats, failing which the Applicant may be permitted to break open the locks to the outer doors of the subject flats without any obstruction or interference thereto by the Claimant and if required, with the assistance of the police authorities”.

7 At the hearing of the application under Section 17, it was submitted by the petitioner that the respondent was not entitled to the relief sought

because : (a) the petitioner was not just a contractor and but a developer with right to construct all the three Free-Sale buildings in the Project and to get ownership over 55% of the built-up area; (b) the Development Agreement, dated 10th March 2003 provides for reciprocal obligations of the parties and therefore, the applicant was not entitled to get any relief unless the applicant shows that it has discharged all its obligations under the Development Agreement for the entire Project of construction of 'A', 'B' and 'C' Wings which was a composite Project; and (c) because of the respondent's breach, 48 flats which formed part of the 55% that the petitioner was entitled to had to be sold at value below market value of the flats and the plaintiff was entitled to damages.

8 The respondent-applicant, per contra, had submitted that (a) the respondent had all the legal rights over 45% of the built-up area in the Project and the petitioner was a mere contractor and hence does not have any right to retain or right to possess all the flats in Wings A and B constituting 45% of the entitlement of the respondent; (b) the respondent is in legal possession of the flats and hence it is not necessary for the petitioner to seek mandatory relief for being put into possession of the flats; (c) as per the Development Agreement, dated 10th March 2003, 45% of the constructed free-sale area belongs to the respondent and the remaining 55%

was to be taken by the petitioner, with each party having right to sell the property on ownership basis; (d) the construction of 88 flats in 'A' and 'B' Wings are already completed and out of the 88 flats, 45% flats, i.e., 39.6 % flats, belong to the respondent, out of which 8 flats are to be kept aside to abide by the outcome of Suit No.62 of 2003 filed by the Aurora Properties in this Court as per the order dated 3rd/7th December 2012 and hence, the respondent owns and is entitled to be in full and effective possession of the remaining 31.6 flats in Wings 'A' and 'B'; (b) the petitioner, however, has not allowed the respondent to have access to a single flat, while the petitioner himself has not only taken possession of his 55% entitlement, i.e. 48 flats, but has even sold them and has already made substantial profits; (f) the petitioner offered 31.6 flats to the respondent as far back on 14th August 2012 and the petitioner is now trying to wriggle out of his obligations on the specious ground that the Commencement Certificate is not obtained by the respondent for the floors above the 5th floor in 'C' Wing; and (g) building's 'A' and 'B' Wings are separate buildings, for which the SRA granted Occupation Certificate as far back on 9th January 2012 whereas 'C' Wing is yet to be constructed. Therefore, all the three buildings cannot be clubbed together for defeating the respondent's ownership rights over 45% flats in 'A' and 'B' Wings.

9 The Learned Arbitrator, after hearing both the parties, came to a conclusion that the respondent's contention that the petitioner was a mere contractor or who was assigned the work of constructing flats on the land in dispute is not well founded. The Learned Arbitrator also concluded that on examining the contents of the Development Agreement, 10th March 2003 between the parties, it is clear that the petitioner was not mere a contractor or a builder but is a developer and the petitioner has some interest in the immovable property and was entitled to file a claim for specific performance of the said Development Agreement, dated 10th March 2003.

The Learned Arbitrator has also held, upholding the submissions of the petitioner that construction of each Wing was not a standalone Project, at this stage, it is not possible to accept the respondent's contention that the disputes between the parties should be examined on the basis that construction of 'C' Wing was a standalone Project and that non-completion of 'C' Wing has nothing to do with the rival claims under the Development Agreement, dated 10th March 2003.

The Learned Arbitrator has also concluded that the respondent has failed to fulfill its obligations under the Development Agreement.

10 Notwithstanding these *prima-facie* findings, the Learned Arbitrator has still granted part of the relief as sought by the respondent. As against the

claim for 31.6 flats in 'A' and 'B' Wings, the Learned Arbitrator has directed the petitioner to hand over keys and possession of 16 flats in 'B' Wing subject to the respondent refunding the deposit of Rs.3,90,00,000/- to the petitioner. The Learned Arbitrator has exercised his discretion and granted the relief on the basis of equity and has given detailed reasons for the same. It is against this order that the petitioner has approached this Court.

11 In addition to the submissions made before the Learned Arbitrator as recorded above, Shri Chinoy, appearing for the petitioner also submitted that (a) the respondent, unless he seeks a relief for specific performance, because possession has to be given only under the Development Agreement, cannot seek an order only for possession of the flats; and (b) under Section 17 of the said Act, the provisions of which are *pari-materia* to provisions of Section 9, the Learned Arbitrator can only grant a protective relief like directing a party from not creating third party rights but the Learned Arbitrator in effect awarded part of the counterclaim by directing the petitioner to hand over keys and possession of 16 flats, which goes beyond the protective relief that the Learned Arbitrator had jurisdiction to grant.

12 I have considered the rival submissions. In my view, the Learned Arbitrator cannot be faulted.

13 Clause 7(c) and 7(e) of the Development Agreement read as under :

7(c) *BSRCL is as stated above entitled to retain 45% (Forty Five Percent) of the total area available for construction of the Free Sale Buildings.*

(i) *BSRCL shall be entitled to independently sell, transfer, give on lease or grant on leave and license basis or otherwise deal with 40% (Forty percent) of the total area available to BSRCL and enter into Agreements for sale thereof to persons of his choice on "Ownership basis" and to recover, realise and appropriate to himself the entire sale proceeds or consideration monies arising therefrom for its absolute use and benefit, without accounting for the same to SNB. It is agreed that the rights available to BSRCL Herein are irrevocable and SNB shall not encumber or create any third party rights of any nature on the said 40% (Forty percent) constructed premises coming to the share of BSRCL.*

(ii) *It is agreed that BSRCL shall not deal with, dispose off, alienate or encumber in any manner whatsoever 5% of the total area available to BSRCL in the Free Sale Buildings (hereinafter referred to as the "said 5% area") till BSRCL refunds the amount of refundable deposit paid by SNB to BSRCL in the manner as provided under clauses (15) to (18) under this Agreement.*

(d)

(e) *SNB shall not be entitled to give possession to anyone else or allow anyone else to occupy or use any premises on any basis whatsoever, unless and until he has prior thereto obtained the Occupation Certificate (O.C.) in respect of the Free Sale Buildings. After SNB obtains the full Occupation Certificate (O.C.) or part O.C., as the case may be, he shall hand over/offer to hand over to BSRCL the possession of BSRCL's are to the extent of which the O.C. has been obtained and thereafter SNB would be entitled to handover/offer to hand over possession of the premises in respect of SNB's area in the proportion of 55:45 between SNB and BSRCL.*

14 Under clause 7(c), it is stated that the respondent shall be entitled to

independently sell, transfer, give on lease or grant on leave and license basis or otherwise deal with 40% of the total area available to the respondent and enter into Agreements for sale thereof to persons of his choice on “Ownership basis” and to recover, realise and appropriate to himself the entire sale proceeds or consideration monies arising therefrom for its absolute use and benefit, without accounting for the same to the petitioner. It is also agreed between the parties that the rights available to the respondent herein are irrevocable and the petitioner shall not encumber or create any third party rights of any nature on the said 40% constructed premises coming to the share of the respondent. It also provides that the parties agreed that the respondent shall not in any manner deal with 5% of the total area available to respondent in the Free Sale Buildings till the respondent refunds the amount of refundable deposit (Rs.3,90,00,000/-).

15 Under clause 7(e), it is stated that the petitioner shall not be entitled to give possession to anyone else or allow anyone else to occupy or use any premises on any basis whatsoever unless and until he has prior thereto obtained the Occupation Certificate in respect of the Free Sale buildings and after obtaining that, the petitioner hands over to the respondent the possession of the premises in respect of the respondent's area to the extent of which Occupation Certificate has been obtained and only thereafter the

petitioner will be entitled to possession of the petitioner's area in the proportion of 55 : 45. Admittedly, the petitioner has taken possession of its 55% and has also sold and created third party rights.

Though as per clause 7(e), the petitioner was entitled to get possession of the premises in respect of the petitioner's area – 55%, only after he handed over 45% to the respondent, the petitioner has appropriated to himself 55% entitlement while denying the respondent any advantage of the 45% the respondent is entitled to.

16 Moreover, as regards the respondent's 45% is concerned, the petitioner even though the building plans for 'C' Wing were sanctioned only upto the 5th floor in October 2010, by its letter dated 14th August 2012, has offered to the respondent possession of the flats in 'A' Wing and 'B' Wing that the respondent was entitled to. In the letter dated 14th August 2012, of course, the petitioner has listed the outstanding obligations to be completed by the respondent but it is required to be noted that by its letter, the petitioner has agreed in August 2012 to hand over the flats in 'A' and 'B' Wings that the respondent was entitled to.

17 The basic question, in my view, is whether the respondent can be denied all the flats coming under its 45% entitlement, when the petitioner,

admittedly, has taken away all his 55% entitlement in 'A' and 'B' Wings, i.e., 48 flats out of the constructed 88 flats.

18 I have adopted the chart as given in the impugned order. The number of flats already constructed and the total flats for which IOA was issued by SRA in October, 2010 are as under :

Constructed Flats

Building Wing	No. of Flats	Claimant's 55%	Applicant's 45%		
			45%	HC Order for Aurora out of Applicant's share	Presently available for Applicant
(1)	(2)	(3)	(4)(I)	(4)(II)	(4)(III)
A	44	24	20	-5	=15
B	44	24.4	19.6	-3	=16.6
A + B	88	48.4	39.6	-8	=31.6

Constructed Flats

Building Wing	No. of Flats	Claimant's 55%	Applicant's 45%		
			45%	HC Order for Aurora out of Applicant's share	Presently available for Applicant
(1)	(2)	(3)	(4)(I)	(4)(II)	(4)(III)
A + B Constructed	88	48.4	39.6	-8	=31.6
C Not yet Constructed	32	17.6	14.4	-4	=10.4
A + B + C	120	66.0	54.0	-12	=42

19 Even after arriving at the *prima-facie* finding that (i) the Development Agreement dated 10th March, 2003 between the parties is for a composite project for construction of 120 flats in Wings 'A', 'B' and 'C' taken together; and (ii) the delay in completion of the 'C' Wing of the project is attributable to the respondent rather than to the petitioner, the Learned Arbitrator has passed the order impugned on the basis that for area of 21,386.255 sq. mtrs., the respondent has allowed the petitioner to construct 88 flats with built-up area of 15,393.18 sq. mtrs., which works out to 72% of the total construction in the project and it would be equitable for the purposes of Section 17 Application, to consider granting the respondent benefits of 72% of 45% which works out to 32.4%. The Learned Arbitrator has come to a conclusion that taking 32.4% of 88 flats, in equity, the respondent can expect to get 28.5 flats at this stage of the Project and at this stage of the Arbitral Proceedings. The Learned Arbitrator has then kept aside the 12 flats to be given to Aurora Properties and observed that it would leave 16.5 flats for the respondent at this stage of Arbitral Proceedings.

20 The Learned Arbitrator has then proceeded to exercise his discretion for granting the respondent interim relief to the extent of directing the petitioner, by an interim order, from obstructing or interfering or preventing the respondent or respondent's authorized persons from

entering/enjoying/occupying etc. 16.6 flats in Wing 'B', subject to the condition that the respondent would pay Rs.3,90,00,000/- to the petitioner.

21 The Learned Arbitrator has also considered other facts before exercising his discretion like the fact that the respondent is required to construct and provide 107 PAP tenements to SRA and therefore, allowing the respondent get possession of 16.6 flats would also permit the respondent to realize substantial amount from sale of the said flats, and a part of the sale proceeds can be utilized by the respondent for completing construction of 107 PAP tenements, which will also enable the parties to have further Commencement Certificate for 6th to 22nd floors in Wing 'C', which is what the petitioner also wants. The Learned Arbitrator has taken into consideration the interests of Project Affected Persons, the respondent as well as the petitioner and has held that it would be just and convenient to direct the petitioner to provide keys of 16.6 flats in Wing 'B' to the respondent subject to the condition that within two months from today, the respondent shall refund the amount of Rs.3,90,00,000/- to the petitioner.

22 The Learned Arbitrator has also observed that even on succeeding finally in the Arbitral Proceedings, if the petitioner gets a decree for a specific performance plus some compensation amount, the petitioner would

be able to realize the same from the flats in 'A' Wing which are otherwise earmarked for the respondent to which keys are not being directed to be handed over at this stage. The flats in 'A' Wing earmarked for the respondent has been directed to remain as they are, so that the petitioner can turn to those flats for making recovery of his dues in case the petitioner succeeds in the Arbitral Proceedings and it is held that the petitioner is entitled to some compensation in addition to the relief of specific performance of the Development Agreement dated 10th March, 2003.

23 The petitioner has also, it appears, executed a Power of Attorney dated 7th July 2005 in favour of the respondent and which is duly registered giving effect to the agreement dated 10th March 2003 and identified the flats in Wings 'A', 'B' and 'C' in respect of which the respondent alone was entitled to execute Agreement for Sale on ownership basis, Leave and Licence basis, Lease basis etc. including lodging for registration of agreement for sale of flats, to execute mortgage or charge etc. Some of the clauses in the said POA executed by the petitioner in favour of the respondent are reproduced hereinbelow :-

'3 To lodge for registration the Agreements for Sale of flats, car parking spaces and other areas with appropriate Sub-Registrar of Assurances and complete the registration formalities.

.....

7(a) *The said Attorney is also entitled to create a mortgage or charge on BSRCL's areas as more particularly described described in the Second Schedule hereunder written for the purpose of raising loans for that purpose and in connection therewith to sign, execute, register, deliver and renew all assurances, deeds, mortgages, instruments as may be required by the bank/banks and financial institutions which the said Attorney may deem necessary. However, stamp duty and all costs charges, expenses will be borne and paid by the said Attorney alone.*

7(b) *To give the necessary consents and give the requisite undertakings to Banks and other, financing bodies in respect of the flats in the said building in respect of which the said Attorney shall have executed the Agreements for Sale as aforesaid and to whom the purchasers of such flats shall have approached for the purpose of obtaining the finances on the security of such flats.*

.....

11 *To handover the vacant possession of BSRCL's areas in the said building being constituted on the said larger property to the purchasers of the said flats, car parking spaces and other areas after I have handed over/offered to hand over to BSRCL the possession of the BSRCL's area to the extent of which the Occupation Certificate (O.C.) has been obtained by me out of the 45% constructed area retained by BSRCL as per clause 7(c) of the said Agreement for Development.*

The SRA, by its letter dated 9th January 2012, issued Occupation Certificate in respect of Wings 'A' and 'B' of the Building “Bay View” which is the subject matter of the Arbitration. Therefore, it does appear that from the date of the issue of Occupation Certificate, i.e., 9th January 2012, respondent, as a matter of right was entitled to deal with all their entitlement flats along with car parking spaces and other areas. It was also submitted that the respondent had already mortgaged the flats and created third party rights and the petitioner was fully aware of the same. This was not disputed.

24 In these circumstances, the Learned Arbitrator has recorded a finding that 88 flats constructed 'A' and 'B' Wings which have been constructed works out to 15, 393.18 sq.mtrs. which works out to 72% of the respondent's share in that 72% would work out to 32.4% and that 32.3 of the 88 flats would works out to 28.5 flats in 'A' and 'B' Wings. This Hon'ble Court in the suit filed by Aurora Properties had restrained both the petitioner and the respondent from disposing of, creating third party rights in respect of 12 flats in 'A', 'B' and 'C' Wings and although in 'A' and 'B' Wings only 8 flats were earmarked for Aurora Properties under the said order, the Learned Arbitrator has taken into consideration, the entire 12 flats in terms of order dated 3rd December 2012 read with order dated 17th December 2012 and accordingly has directed the petitioner to handover keys for 16 flats.

In my view, the said order is fair, just and equitable. At the cost of repetition, it has to be noted that the petitioner has already disposed of his entire share of 55% of the flats.

25 The petitioner's claim is for specific performance of the Development Agreement and in the alternative, if the relief for specific performance is not granted, then for damages and further compensation. The damages are unliquidated and unless the same are determined, cannot be granted. If the petitioner is granted relief for specific performance, the petitioner will go

ahead and get 'C' Wing completed. As far as damages or further compensation is concerned, the petitioner will be able to proceed against the flats to which the respondent is entitled to in 'A' Wing. This point also has been considered by the Learned Arbitrator. If the petitioner gets a decree of specific performance plus some compensation amount or damages, the petitioner would still be able to realise the same from the flats in 'A' Wing, which are otherwise earmarked for the respondent.

26 In fact, without even applying for or proving or even making out a *prima facie* case for damages and quantum, the petitioner has in effect been granted by the Learned Arbitrator an attachment before judgment of the flats in 'A' Wing which are otherwise earmarked for the respondent

27 As regards submission of Shri Chinoy that the respondent is not entitled to a decree for possession without asking for specific performance, I am afraid, I cannot accept it. This is because, the petitioner, by its letter, dated 14th August 2012, has written to the respondent asking the respondent to take possession of the flats in 'A' and 'B' Wings by offering to hand over the same. In fact, in an affidavit dated 30th November 2012 filed by the petitioner in notice of motion (lodg.) No.3259 of 2012 in Suit (Lodg.) No.2701 of 2012, the petitioner in paragraph 7(viii) has stated as under :

“(viii) By letter dated 14th August 2012 and addressed by me to the Defendant No.1 offered possession of the said 45% area and Car Parking Spaces to the Defendant No.1 as per the said letter, dated 16th June 2012 and Defendant No.1 has not taken possession of the said areas till today. I have dealt with my 55% area and Car Parking Spaces to the knowledge of the Plaintiffs and Defendant No.1 and third parties are entitled to the same.”

28 Therefore, the petitioner confirms that the respondent is entitled to take possession of the flats in 'A' and 'B' Wings, the respondent is entitled to the same and that the petitioner has dealt with his 55% his area and car parking spaces. Therefore, the respondent, in my view, is also in legal possession of the flats and it is not necessary to claim a relief for specific performance. In my view, not seeking a relief of specific performance cannot come in the way of the respondent seeking relief as prayed for in Section 17 application.

29 The submission of Shri Chinoy that the Court can only give protective relief and not mandatory interim injunction, the Learned Arbitrator has dealt with the same in paragraphs 14, 15 and 16 of the impugned order which for ease of reference is reproduced below :

14 In *Adhunik Steels Ltd. V. Orissa Manganese and Minerals Pvt. Ltd.* AIR 2007 SC 2563 = (2007) 7 SCC 125, the Supreme Court, while examining the scope of Section 9 of the Act has held that grant of interim injunction has to be based on the principles governing its grant emanating from out of the relevant provisions of the Code of Civil Procedure, 1908 and the Specific Relief Act, 1963. The Court further held that the power under Section 9 of the Act is not totally independent of the well-known principles governing grant of an interim injunction

that generally governs the Court in this connection. The Supreme Court also considered the question whether mandatory interim injunction could be granted under Section 9 of the Act and Court held that the grant of an interim prohibitory injunction or an interim mandatory injunction are governed by well-known rules and it is difficult to imagine that the legislature while enacting Section 9 of the Act intended to make a provision, which was de-hors the accepted principles that govern the grant of an interim injunction. The Supreme Court negated the contention that Section does not permit the grant of a mandatory interim injunction and preferred to rely upon the following observations of House of Lords in *Channel Tunnel Group Ltd. and Anr.V. Balfour Beatty Construction Ltd. & Ors.* 1993 Appeal Cases 334 (at page 367) = (1993) 1 All ER 664 (at page 690)

“It is true that mandatory interlocutory relief may be granted even where it substantially overlaps the final relief claimed in the action; and I also accept that it is possible for the court at the pre-trial stage of a dispute arising under a construction contract to order the defendant to order the defendant to continue with a performance of the works. But the court should approach the making of such an order with the utmost caution, and should be prepared to act only when the balance of advantage plainly favours the grant of relief.....”

15 Having regard to the fact that the powers of the Arbitral Tribunal under Section 17 of the Act are in para material with the powers of the Court under Section 9 of the Act and also having regard to the language of Section 17, which confers upon the Arbitral Tribunal the same power for making interim orders, as the Court has for the purpose of, and in relation to, any proceedings before it, including the power to grant such interim measure of protection which appears to the Arbitral Tribunal to be just and convenient, the Tribunal would be justified in proceeding on the basis that the power of mandatory interim injunction is also conferred upon the Arbitral Tribunal, if a case is made out for grant of such relief.

16 In *Deccan Chronicle Holdings Limited V. L & T Finance Limited* Appeal (L) No. 130 of 2013 in Arbitration Petition No.1095 of 2012, a Division Bench of the Bombay High Court has held in the judgment dated 8th August 2013, inter-alia, as under :-

10. The principle is that when the Court decides a petition under Section 9, the principles which have been laid down in the Code of Civil Procedure, 1908 for the grant of interlocutory reliefs furnish a guide to the Court. Similarly in an application for attachment, the underlying basis of Order XXXVIII Rule 5 would have to be borne in mind. At

the same time it needs to be noted that the rigors of every procedural provision of the CPC cannot be put into place to defeat the grant of relief which would subserve the paramount interests of the justice. The object of preserving the efficacy of arbitration as an effective form of dispute resolution must be duly fulfilled. This would necessarily mean that in deciding an application under Section 9, the Court would while bearing in mind the fundamental principles underlying the provisions of the CPC, at the same time, have the discretion to mould the relief in appropriate cases to secure the ends of justice and to preserve the sanctity of the arbitral process.

I am in agreement with the conclusions of the Learned Arbitrator.

30 The order impugned is passed on settled and accepted principles of balance of convenience and equity in the light of facts of the case. The order being discretionary, cannot be interfered with. In my view, the stand of the petitioner is unjust because the petitioner has appropriated to himself all the benefits but at the same time denying any of the benefits to the respondent. From the impugned order, it is apparent that the Learned Arbitrator has only passed a very limited, that too, conditional order by balancing the equities and keeping in view the *prima-facie* cases of each party. As against the entitlement of the respondent against 31.6 flats, the Learned Arbitrator has allowed the reliefs only to the extent of 16 flats. The Learned Arbitrator has also imposed a pre-condition of the respondent having to refund a sum of Rs.3,90,00,000/- which, as per the contract, was to be refunded only after completion of the 'C' Wing and only after giving keys to all the flats to

which the respondent is entitled to from 'A' and 'B' Wing and will become entitled to on completion of 'C' Wing and flats are handed over in fact and physically. The Learned Arbitrator has in judicial exercise of his discretion moulded his reliefs.

31 In the circumstances, no case has been made out by the petitioner in support of the petition. I am not inclined to interfere in the order passed by the Learned Arbitrator.

32 The petition stands dismissed with costs of Rs.2,00,000/- to be paid within four weeks to the respondent by way of cheque drawn in favour of the Advocate on record for the respondent.

(K.R. SHRIRAM, J.)