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

ARBITRATION APPLICATION NO.5 OF 2019

Vensimal Securities Limited	...	Applicant.
V/s.		
Ashok Builders & ors	...	Respondents

Ms. Aditi S. Naikare, for the applicant..
Mr. Nahar S. Mahala, for respondents

CORAM : G. S. KULKARNI, J.

DATE : 18th June 2019.

P.C. :

- 1] Heard learned counsel for both the parties.
- 2] This application is filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, "ACA"), praying for appointment of an arbitral tribunal.
- 3] At the outset an objection is raised on behalf of respondent that the the agreement in question dated 20th February, 2014, (for short, "the document") which contains an arbitration clause is not sufficiently stamped.
- 4] Learned counsel for the petitioner, however, would contend that the

document is sufficiently stamped at Rs.100/- relying on Article 1 as contained in the schedule under the Maharashtra Stamp Act. On the other hand learned counsel for respondent has referred to the provision of Article 5 (h) (iv) contending that the document is executed on stamp paper of Rs.100/-and it is, thus, not sufficiently stamped.

5] Having perused the document, in clause 2 the parties have agreed as under:-

"The Developers are represented to the Investor that as per the said Joint venture agreement the developers are entitled to 30.60 percent share in the net saleable constructed area in the building to be constructed by the Joint Venture and out of the same the Developers shall provide to the investors, one residential flat admeasuring 1200 sq. feet approx of carpet area comprising of 3 bedrooms, hall and the kitchen as security for due performance of the obligation of the developers in return of the invested amount together with the minimum guaranteed return as aforesaid which flat shall hereinafter be referred to as the said flat". (emphasis added)

6} The relevant Article 5 (h) (iv) of the Maharashtra Stamp Act, reads thus :-

Art.5.Agreement or its Records or Memorandum of an Agreement

Description of Instrument**Proper stamp duty**

(1)

(2)

(h) (A) if relating to,	
(iv) Creation of any obligation, right or interest and having monetary value but not covered under any other article,	
(a) if the amount agreed does not exceed rupees ten lakhs;	[0.1 per cent of] the amount agreed in the contract subject to minimum of rupees 100.
(b) in any other case.	[0.2 per cent of] the amount agreed in the contract

7] Considering the provisions of Article 5(h)(iv), it prima facie appears that the contention as urged on behalf of the respondent would be required to be accepted that document is not sufficiently stamped, inasmuch as the document inter-alia casts an obligation on the respondent to provide to the petitioner (investors), one residential flat admeasuring 1200 sq. feet approx of carpet area comprising of 3 bedrooms, hall and the kitchen as security for due performance of the obligation of the Developers in return of investment amount. Thus, if the document is enforced against the respondent, the applicant would become entitled to the immovable property as described in clause (2) of the agreement.

8] In the above circumstances agreement dated 20th February, 2014 is required to be impounded. The parties shall deposit the agreement in

question to the Prothonotary and Senior Master, of this Court, within three weeks from today. The Prothonotary and Senior Master shall forward the said document to the Registrar of Collector of Stamps, for adjudication of the stamp duty payable on the said document. Needless to observe that the Collector of Stamps , taking into consideration the provisions of Stamps Act, 1958, shall direct the parties for payment of stamp duty on the said document. After the appropriate stamp duty is paid the document be forwarded to the Prothonotary and Senior Master with a prior intimation to the parties.

9] All contentions of the parties are expressly kept open.

10] Application is accordingly disposed of with liberty to the petitioner to revive this application after the document is sufficiently stamped.

11] Needles to observe that it would be open to the applicant to adopt the statutory remedy of an appeal, revision and such other proceedings, if aggrieved by the orders passed by the Stamp Authority.

[G. S. KULKARNI, J]