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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMM ARBITRATION PETITION NO. 970 OF 2019**

Crystal Lobo & Anr	...Petitioners
<i>Versus</i>	
Macrotech Developers Pvt Ltd	...Respondent

Mr Farhan Dubash, *with Ms Sheetal Shah, i/b M/s Mehta and Girdharlal, for the Petitioners.*
Mr Rohan Cama, *with i/b Mr Akshay Pare and M Singh, for the Respondent.*

CORAM: G.S. PATEL, J.
DATED: 5th February 2020

PC:-

1. This order will dispose of the Section 9 Petition. It is to be noted that the parties are already in arbitration before Mr Kamal Khata, learned Advocate of this Court. He has only just entered upon reference to his arbitration. A preliminary meeting was held last week.

2. I am mindful of the provision in Section 9(3) of the Arbitration and Conciliation Act 1996. The circumstances referred to it in that Section are that by the time a Section 17 Application is

filed and decided, there may will be an alteration in the status quo and the much time will have been lost. I must however clarify that while I am making an order, it is only a pro tem transitional provision until the Section 17 Application by the Petitioner is fully heard and decided. In other words the present order is to continue pending the disposal of the Section 17 Application. That the order on the Section 17 Application by the learned Sole Arbitrator may either continue the present order or may vacate the present order. That liberty is reserved to the learned Sole Arbitrator and he has the fullest discretion to decide the matter without being bound by any observations or findings in the present order passed today.

3. The Petitioners say that they were interested in purchasing a flat in the Respondent's project at Worli, Mumbai. They filled out an application form for booking Flat No. A 7204 on the 72nd floor. The aggregate consideration was Rs. 4,99,99,419/-. The booking amount was Rs. 9 Lakhs. That application form has the Agreement that had an Arbitration Clause.

4. Cutting a long story short, it appears that over time the Petitioners paid an amount of Rs. 42,21,298/-. The Petition says that the demands from the Respondents were not in accordance with the schedule and the stipulated instalment schedule, and they therefore refused to pay the balance demanded. This is in fact the heart of the dispute because Mr Cama states on instructions that that failure to pay the instalments due and when demanded had inevitable contractual consequences. One consequence was the cancellation of the Agreement itself and the second was a forfeiture

of the amount deposited. That the flat allotment has been cancelled is not in dispute. Paragraphs 1 and 2 of the Affidavit in Reply say so in terms.

5. But this has resulted in what I can only describe as a presently lop-sided situation where the Respondents have both the flat that was originally booked (and which has been since agreed to be sold or already sold to a third party) as also the entire amount paid so far by the Petitioner.

6. It is for this reason that until the rival contentions are addressed on a Section 17 Application that I am making the following provision, viz., that within two weeks from today the Respondents will deposit with the Prothonotary and Senior Master an amount of Rs.42 lakhs, an approximation of the amount allegedly forfeited by the Respondents.

7. It is clarified that this deposit is entirely without prejudice to the rival rights and contentions, all of which are expressly kept open. It is also clarified that the present Section 9 Application for the existing reliefs as also for a continuation of the present order will be treated by the learned Sole Arbitrator as an Application under Section 17. I note that there is an Affidavit in Reply. An Affidavit in Rejoinder, if any, is to be filed before the learned Sole Arbitrator within one week from today. No further Affidavits are to be filed without leave of the arbitrator.

8. There is no requirement to amend the prayers in regard to the claim for continuation of this order of deposit. Both parties will proceed on the footing that there is such a claim and will address themselves to it before the learned Sole Arbitrator. The learned Sole Arbitrator will, consequently, not only consider the three prayers in the Petition but also whether this order of deposit should continue pending the arbitration.

9. The learned Sole Arbitrator will endeavour to dispose of the Arbitration Application on or before 26th February 2020.

(G. S. PATEL, J)