

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ARBITRATION PETITION NO. 608 OF 2021
WITH
INTERIM APPLICATION NO. 2788 OF 2021**

Atul Projects India Pvt. Ltd. ..Petitioner
Vs.
Zeus Housing and Construction Ltd. ..Respondent

**AND
ARBITRATION APPLICATION NO. 92 OF 2020
(Not on Board. Take on Board.)**

Atul Projects India Pvt. Ltd. ..Applicant
Vs.
Zeus Housing and Construction Ltd. ..Respondent

Dr. Veerendra Tulzapurkar, Senior Advocate with Mr. Roop Vasudeo for
Petitioner/Applicant.
Mr. Ramesh Ramamurthy with Mr. Saikumar Ramamurthy for
Respondent.

**CORAM : G.S. KULKARNI, J.
DATE : MARCH 07, 2022.**

P.C.:

1. These are two proceedings. Arbitration Application No.92 of 2020 is filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, "the Act") and Commercial Arbitration Petition No.608 of 2021 is filed under Section 9 of the Act.

2. Disputes and differences have arisen between the parties under the Development Agreement dated 20 July, 2016. There is an arbitration agreement as contained in clause 32 of the said agreement. In the proceedings of the Section 9 petition, the petitioner is before the Court seeking interim measures pending the arbitral proceedings.

3. Dr.Tulzapurkar, learned senior Counsel for the petitioner submits that the petitioner's entitlement under the agreement in question is to a constructed area of 2630 sq. mtrs. in the free sale component. He submits that as on date the contribution of the petitioner under the agreement towards the project in question is an amount of Rs.45.88 Crores, which includes the principal and the interest. It is stated that the initial contribution of the petitioner was of Rs.24 Crores and the balance amount is the interest component.

4. Dr. Tulzapurkar has referred to clause 6(iii) of the agreement which reads thus:-

“6(iii) The Sub-Developer shall hand over the quiet, vacant and peaceful possession of the Co-Developer's Premises to the Co-Developer (or its Purchasers) upon the receipt of the occupation certificates with respect to the Free Sale Building/s within the period as required and till such time the Sub-Developer shall not be entitled to hand over the possession of the Premises to any of its Purchaser until the Co-Developers premises is handed over to the Co-Developer's or their Purchasers.”

5. It is thus the contention of Dr. Tulzapurkar that the petitioner has become entitled to interim measures pending the arbitral proceedings as it is likely that the arbitral interest of the petitioner would be adversely affected by the actions as alleged to be taken by the respondent which may defeat the petitioner's rights under the agreement.

6. On the other hand, Mr. Ramamurthy, learned counsel for the respondent has submitted that the rehabilitation buildings itself are yet to be completed. He states that about 300 persons are yet to be rehabilitated. It is his contention that till the rehabilitation is complete, there is no question of starting the construction activity in regard to free

sell component. He submits that the petitioner would not be correct in its contention, that the respondent would be dealing with the petitioner's entitlement to 2630 sq. meters, in as much as, as on date, the area has not been identified in the plans. He, however, submits that the respondent ought not to have been prevented from going ahead with the sales in respect of the free sale component, which is in the interest of the project. Mr. Ramamurthy would submit that a situation and an eventuality as to what has been agreed between the parties in clause 6(iii) is far to be seen as the construction of the free sale building is yet to commence. It is his submission that there are breaches also on the part of the petitioner. It is hence his submission that no reliefs be granted to the petitioner in the present proceedings.

7. Considering the nature of the disputes and circumstances, it was suggested to learned counsel for the parties, that the disputes in fact eminently need to be referred to arbitration for the interim as also final adjudication by appointing an arbitral tribunal. Both the parties are agreeable that the disputes be referred for adjudication by appointing an arbitral tribunal. This also considering the fact that there is Section 11 application as filed by the petitioner.

8. In the aforesaid circumstances, in my opinion, it would be appropriate that the proceedings are referred for adjudication before an arbitral tribunal. Hence the present Section 9 petition would not warrant any further adjudication and all contentions raised therein can be agitated before the arbitral tribunal. Hence the following order:-

ORDER

(i) Mr. Justice Naresh Patil (Retd.), Former Chief Justice, is appointed as a sole Arbitrator to arbitrate the disputes and differences between the

parties under the Development Agreement dated 20 July, 2016;

(ii) The learned prospective sole arbitrator, before entering the reference, shall forward a statement of disclosure as per the requirement of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996, to the Prothonotary & Senior Master of this Court, to be placed on record of these proceedings with a copy to be forwarded to both the parties;

(iii) The petition under Section 9 of the Act along with pleadings thereon is permitted to be converted into an application under Section 17 of the Act to be adjudicated by the learned prospective sole arbitrator. All contentions in that regard are expressly kept open.

(iv) At the first instance, the parties shall appear before the prospective arbitrator within 10 days from today on a date which may be mutually fixed by the prospective sole arbitrator;

(v) The fees of the arbitral tribunal shall be shared by the parties in equal proportionate.

(vi) The fees payable to the arbitral tribunal shall be as prescribed under the Bombay High Court (Fees Payable to Arbitrators) Rules, 2018.

(vii) Till disposal of the interim application or any other appropriate order which may be passed by the arbitral tribunal on the Section 17 application whichever is earlier, the respondent is directed not to in any manner deal with the petitioner's entitlement of 2630 sq. mtrs.

(viii) All contentions of the parties in that regard are also expressly kept open.

(ix) In granting the above limited protection, the Court has not expressed any opinion on the merits of the disputes between the parties.

The arbitral tribunal shall decide the disputes without being in any manner influenced by such limited protection granted by this Court.

(x) Both the proceedings are disposed of in the above terms. No costs.

(xi) In view of disposal of the petitions, nothing would survive in the interim application. It is accordingly disposed of.

(xii) Disposed of in the above terms. No costs.

(xiii) Office to forward a copy of this order to the learned Arbitrator on the following address:

“ Mr. Justice Naresh Patil (Retd.), Former Chief Justice
Add. Rajgir Chambers, Office No.63, 7th Floor, Opposite Old
Customs House, Fort, Mumbai – 400 001.”
Mobile No. 9422210444
E-mail ID – nareshhpatil7@gmail.com” ”

[G.S. KULKARNI, J.]