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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Date of decision: 25.05.2023*

+ **O.M.P.(I) (COMM.) 12/2023**  
**GODREJ PROPERTIES LIMITED**

..... Petitioner

Through: Mr.Saurabh Kirpal, Sr. Adv.  
with Ms.Niyati Kohli &  
Mr.Pratham Vir Agarwal,  
Advs.

versus

**FRONTIER HOME DEVELOPERS PRIVATE LIMITED &  
ORS.**

..... Respondents

Through: Mr.Akhil Sibal, Sr. Adv. with  
Mr.Aditya Wadhwa,  
Mr.Siddharth Sunil, Ms.Sanya  
Kumar & Ms.Bahuli Sharma,  
Advs. for R-1 & R-2.  
Mr.Gagan Gupta, Adv. for R-3  
to R-5.  
Mr.Sanjeev Sindhvani, Sr.  
Adv. with Mr.Shivansh  
Agarwal, Advs. for R-7 to R-  
13, R-15 & R-16.  
Mr.Rajnish Ranjan &  
Mr.Akshat Sharma, Advs for R-  
6, R-14 & R-17.

**CORAM:**  
**HON'BLE MR. JUSTICE NAVIN CHAWLA**  
**NAVIN CHAWLA, J. (ORAL)**

**CRL.M.A. 14611/2023**

1. In view of the parties being referred to arbitration, this application is dismissed without prejudice to the rights and contentions of the parties.

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O.M.P.(I) (COMM.) 12/2023

**O.M.P.(I) (COMM.) 12/2023 & I.A. 7084/2023 & I.A. 10361/2023**

2. This petition has been filed by the petitioner under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act'), praying for the following relief:-

- (i) *Direct the Respondents No. 1 to 5 to protect the Petitioner by way of deposits and / or by way of bank guarantees for amounts equalling INR 67,36,30,000/- (Indian Rupees Sixty-Seven Crores, Thirty-Six Lakhs and Thirty Thousand only) during the pendency of the Arbitral proceedings; and/or*
- (ii) *Restrain the Respondents during the pendency and until conclusion of the Arbitral proceedings, by way of temporary order and injunction, jointly and severally from selling, gifting, alienating, encumbering, creating any third-party interest or transferring in any other manner whatsoever their respective flats/units/ Plot (detailed in Document 18) of the Godrej-Frontier project situated at village Naurangpur, Dist- Gurgaon in Residential Sector- 80 of Gurgaon, Haryana and also plot no. 1392 (admeasuring 220 sq. yard), plot no. 1658 and 1655 (admeasuring 135 sq. yard each), situated at Sector 52, Gurgaon, Haryana and grant status quo in relation thereto; and*
- (iii) *Direct the Respondents to disclose on affidavit the details of their bank accounts and other movable and immovable assets owned by them jointly or individually; and*
- (iv) *Restrain the Respondents during the pendency and until conclusion of the Arbitral proceedings, by way of temporary order and injunction, jointly and severally from selling, gifting, alienating, encumbering, creating any third-party interest or transferring in any other manner whatsoever their respective bank accounts, movable and immovable assets as disclosed in the affidavit as per prayer (iii); and"*

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3. This Court by its *ad interim* order dated 19.01.2023 had *inter alia* passed the following directions:-

*“18. Accordingly, till further orders, the respondent nos.1 to 5 are restrained from creating any third party interest or parting with the possession of the flats/plots that remain in their title or possession in the Group Housing Project developed under the Development Agreement dated 24.06.2010. The said order, however, would presently not affect any allotment of flats that may have taken place in favour of the respondent nos.6 to 17 pursuant to the Flat Buyer Agreements to which the petitioner is also a party. However, the respondent nos.1 to 5, if they receive any further consideration pursuant to the Flat Buyer Agreements, shall deposit the same with this Court giving complete details thereof.*

*19. The respondent nos.1 to 5 shall also file their affidavit(s) disclosing the number of flats that remain un-allotted or which are still in their possession as on today, within a period of three weeks from today.”*

4. The parties, that is, the petitioner and the respondent nos.1 to 5 have been referred to arbitration today by an order passed in ARB.P. 494/2023.

5. The learned counsel for the respondent nos.3 to 5, however, submits that in spite of such reference, as far as the respondent nos.3 to 5 are concerned, the *ad interim* order should be modified. He submits that under the Development Agreement dated 24.06.2010, a total of 10,15,000 square feet of super built-up area was to be constructed in addition to other developments. Out of the same, in terms of Clause 3.5.1(ii), only an area of 55,328.60 square feet of the total super built-up

area was allotted to the respondent nos.3 to 5, translating to roughly 5.28%. The learned counsel for the respondent nos.3 to 5 submits that in actual terms only 26 flats were allotted to the respondent nos.3 to 5. He submits that certain plots were also allotted to the respondent nos.3 to 5 under a separate arrangement between the respondent no. 3 to 5 and the respondent no.1, for which additional amounts were paid by the respondent nos.3 to 5, and are, therefore, not relevant to the present dispute. He submits that the factum of only 26 flats in the developed project being allotted to the respondent nos.3 to 5, was also admitted by the petitioner in an affidavit filed before the Hon'ble Supreme Court in I.A. No. 93822/2019 in M.A. No.1175/2019 in Civil Appeal No. 8788/2015 titled **Rameshwar and Ors. V. State of Haryana and Ors.** He submits that presently the respondent nos.3 to 5 are in possession of 25 of the 26 flats that were allotted to them in the project. He submits that, at best, the liability of the respondent nos.3 to 5, even assuming the case of the petitioner to be correct, would be only Rs.3.55 Crores. Placing reliance on Clause 3.4.4 of the Development Agreement, he submits that in fact the claim of the petitioner towards the charges paid to HSIIDC would not even be maintainable, as any additional cost was to be borne by the petitioner alone.

6. On the other hand, the learned senior counsel for the petitioner submits that the respondent nos.3 to 5, in affidavits filed before the Hon'ble Supreme Court, have disclosed that in terms of the Development Agreement, apart from the 26 flats,

got further benefit of allotment of certain plots, waiver of multiple charges, etc. He submits that, therefore, the claim of the respondent nos.3 to 5 of obtaining only 26 flats under the Development Agreement is false. He submits that, in any case, the allotment of 26 flats was an arrangement between the respondent no.1 and respondent nos.3 to 5. As far as the petitioner is concerned, the allotment was to be made to the respondent no.1 who, in turn, had in the Development Agreement disclosed its commitment to allot certain area in favour of the respondent nos.3 to 5. He submits that merely because of this *inter se* arrangement between the respondent no.1 and respondent nos.3 to 5, the respondent nos.3 to 5 cannot claim any benefit against the petitioner.

7. I have considered the submissions made by the learned counsels for the parties.

8. As noted hereinabove, I have already appointed an Arbitrator for adjudicating the disputes that have arisen between the parties arising out of the judgment dated 21.07.2022 passed by the Supreme Court in Miscellaneous Application No. 50 of 2019 in Civil Appeal No. 8788/2015 titled ***Rameshwar and Ors. v. State of Haryana & Ors.*** and in terms of the Arbitration Agreement between the parties as contained in clause 9 of the Development Agreement dated 24.06.2010. In my view, once the Arbitrator has already been appointed, it would be advisable to leave the parties to their remedies before the learned Arbitrator. However, at the same time, a request needs to be made to the learned Arbitrator to expeditiously consider the

claim of the respondent nos.3 to 5 for vacation/modification of the *interim* order dated 19.01.2023, especially in light of the submissions made by the learned counsels and recorded hereinabove.

9. Accordingly, the present petition is disposed of requesting the learned Arbitrator to consider the present petition as an application under Section 17 of the Act and pass appropriate orders thereon, preferably within a period of four weeks from entering upon the reference. The complete paper book of this petition shall be filed before the learned Arbitrator by the petitioner.

10. It is made clear that as the respondent nos.6 to 17 have not been referred to arbitration, no notice of this application needs to be issued to them. However, this shall not prevent the respondent nos.3 to 5 to seek appropriate directions against them for their impleadment, which shall be considered by the learned Arbitrator in accordance with law.

11. It is made clear that the learned Arbitrator shall adjudicate on the application under Section 17 of the Act remaining uninfluenced by any observation made by this Court in its order dated 19.01.2023, and shall be free to extend/modify/vacate the said order upon hearing the parties.

12. The petition along with the pending applications is disposed of in the above terms.

**NAVIN CHAWLA, J**

**MAY 25, 2023/rv/AN**

*Click here to check corrigendum, if any*

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