IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

ARBITRATION APPEAL NO. 96 OF 2024
IN
CIVIL MISCELLANEOUS APPLICATION NO. 582 OF 2024

Wellbuild Merchants Private Limited,	]	
Having Registered Office	]	
No. 401/402, Fourth Floor,	]	
Plot No.15 B, Wellesley Business	]	
Court, Near Lal Deval, Camp,	]	
Pune 411001	]	
Through its Director Yuvraj Sitaram	]	
Dhamale	]	…Appellant

VERSUS

1.	**M/s. Atria Construction**,	]	
	A partnership firm registered	]	
	under The Indian Partnership	]	
	Act, 1932	]	
2.	**Dhananjay Nivrutti Thite**	]	
	Partner, M/s Atria Constructions	]	
	Age: about 57 years;	]	
	Occupation: Business	]	
3.	**Anil Ramalinga Thite**	]	
	Partner, M/s Atria Constructions	]	
	Age: about 56 years,	]	
	Occupation: Business	]	
	All 1 to 3 abovenamed having	]	
	address at 440/441, Nana Peth,	]	
	PGI Building Pune 411002	]	…Respondents

WITH

INTERIM APPLICATION NO. 13293 OF 2024
IN
ARBITRATION APPEAL NO. 96 OF 2024
IN
CIVIL MISCELLANEOUS APPLICATION NO. 582 OF 2024

Wellbuild Merchants Private Limited] ...Applicant

VERSUS

M/s. Atria Construction and Ors.] ...Respondents

WITH
ARBITRATION APPEAL NO. 97 OF 2024
IN
CIVIL MISCELLANEOUS APPLICATION NO. 544 OF 2024

Wellbuild Merchants Private Limited,]
Having Registered Office]
No. 401/402, Fourth Floor,]
Plot No.15 B, Wellesley Business]
Court, Near Lal Deval, Camp,]
Pune 411001]
Through its Director Yuvraj Sitaram]
Dhamale] ...Appellant

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Age: about 57 years;]
Occupation: Business]

3. **Anil Ramalinga Thite**]
Partner, M/s Atria Constructions]

Age: about 56 years;]
Occupation: Business]

4. **Manjusha Dhananjay Thithe**]
Partner, M/s Atria Constrtutions]
Age: about 54 years;]
Occupation: Business]

5. **Sambhaji Raghunath Tupe**]
Partner, M/s Atria Constructions]
Age: about 50 years;]
Occupation: Business]

6. **Vaishali Sanjayrao Holkar**]
Partner, M/s Atria Constructions]
Age: about 50 years;]
Occupation: Business]

7. **Jitendra Dilip Shinde**]
Partner, M/s Atria Constructions]
Age: about 55 years;]
Occupation: Business]

All 1 to 7 abovenamed having]
address at 440/441, Nana Peth,]
PGI Building Pune 411002] …Respondents

WITH
INTERIM APPLICATION NO. 13292 OF 2024
IN
ARBITRATION APPEAL NO. 97 OF 2024
IN
CIVIL MISCELLANEOUS APPLICATION NO. 544 OF 2024

Wellbuild Merchants Private Limited] …Applicant

VERSUS

M/s. Atria Construction and Ors.] …Respondents

APPEARANCES-

Mr Ashish Kamat, **Senior Advocate**, a/w Mr Nilesh Tribhuvann, Mr Prattek Pai, Mrs Kanan Chawda, Ms Nidhi Ram, Mr Vishal Tiwari i/b White and Briefs Advocates and Solicitors, for the Appellant/Applicant.

Ms Girish Godbole, Senior Advocate, a/w Mr Vijay Upadhyay, Mr Siresh Sharma, Ms Asha Kanzariya, for the Respondents.

CORAM	**:**	**M.S.Sonak & Jitendra Jain, JJ.**
RESERVED ON	**:**	**14 November 2024**
PRONOUNCED ON	**:**	**22 November 2024**

JUDGMENT (*Per MS Sonak J*):-

1. Heard learned counsel for the parties.

2. Admit. With the consent and at the request of the learned counsel for the parties, appeals were taken up for final disposal. The learned counsel for the parties agree that both these appeals can be disposed of by a common judgment and order as they arise from same dispute between the parties.

3. Arbitration Appeal No.96 of 2024 is directed against judgment and order dated 20 September 2024 in Civil Miscellaneous Application No.582 of 2024 filed by M/s. Atria Construction ("M/s. AC") (Respondent No.1) and Arbitration Appeal No.97 of 2024 is directed against judgment and order dated 20 September 2024 in Civil Miscellaneous Application No.544 of 2024 filed by Well build Merchants Private Limited ("WMPL") (Appellant).

4. The subject matter of these appeals is the construction of a housing complex known as "Rajgruhi Residency" comprising a building with four Towers (Wings "A", "B", "C" and "D") on the subject land described in paragraph 2 of the impugned judgments and orders.

5. WMPL owns the subject plot. Initially, M/s AC was engaged as a contractor for the construction of Towers "A" and "B." M/s AC completed the construction of Towers "A" and "B" by spending Rs. 46 crores.

6. WMPL entered into Articles of Agreement dated 19 August 2021 ("principal agreement") with M/s. AC. Two separate agreements were entered into concerning the construction of 7th to 20th floors in Tower "C" and the construction of Tower "D". The principal agreement contains a clause that in the event of any conflict between the terms of the principal agreement and the other two agreements, the principal agreement and the terms therein shall prevail. WMPL executed a power of attorney dated 26 August 2021 favouring M/s. AC to undertake the construction and sell apartments.

7. The construction of Towers "A" and "B" was completed by the time the Articles of Agreement dated 19 August 2021 were entered into. Therefore, the Articles of Agreement and the two other agreements provided for constructing the 7th to 20th floors of Towers "C" and "D."

8. Disputes arose between the parties, as a result of which WMPL, by notice dated 16 April 2024, terminated the Articles of Agreement and the other two agreements, alleging several breaches, including clause 11, which provided that M/s. AC shall ensure the average sales price of flats in the 7th to 20th floors of Tower "C" (except the five flats allottable to WMPL) shall not be less than Rs.8000/- per sq. ft. saleable area thereof.

9. M/s. WMPL filed Civil Miscellaneous Application No.544 of 2024 and M/s. AC filed Civil Miscellaneous Application No.582 of 2024 under Section 9 of the Arbitration and Conciliation Act, 1996, seeking interim relief. By judgment and order dated 20 September 2024, the learned District Judge dismissed WMPL's Civil Miscellaneous Application No.544 of 2024 but partly allowed M/s. AC's Civil Miscellaneous Application No.582 of 2024. Hence, these two appeals by M/s. WMPL.

10. Mr Kamat, learned senior advocate for the appellant, submitted that WMPL is admittedly the owner of the subject property. He submitted that M/s AC is only a contractor or developer having no right, title or interest in the subject property. M/s AC, at the highest, is an investor and has only raised a monetary claim quantified at approximately Rs.100 crores. Thus, there was no legal infirmity in terminating the Articles of Agreement and other agreements by WMPL. Under no circumstances could M/s AC claim any specific performance of such a contract. Even assuming the termination was improper, M/s AC could still claim damages and compensation but not specific performance. Accordingly, the District Court erred seriously in declining interim reliefs to WMPL or granting interim reliefs to M/s AC.

11. Mr Kamat, relying upon **Sushil Kumar Agarwal vs. Meenakshi Sadhu and Others**[1]**,** submitted that the learned District Judge's approach was perverse, and the impugned orders warrant interference. He submitted that the learned District Judge failed to investigate or decide whether the termination was prima facie valid. In that sense, the learned District Judge failed to decide on the prima facie case. He submitted that this was a serious error warranting interference with the impugned orders.

12. Mr Kamat submitted that the Learned District Judge failed to appreciate that the claims of M/s AC were entirely frivolous and that, in any event, such claims would only be monetary. Therefore, no interim relief could have been granted favouring M/s AC, and in any event, the denial of interim reliefs to WMPL, who is admittedly the owner of the subject property and the constructions, is vitiated by illegality and perversity.

13. Mr Kamat submitted that there was ample evidence on record about breaches by M/s AC. Some documents established that apartments were sold at a rate below Rs.8000/- per sq.ft. He submitted that there were documents showing cash transactions, and M/s AC did not even controvert such documents. He submitted that all these materials had been ignored by the learned District Judge, warranting interference with the impugned order.

14. Mr Kamat referred to the affidavit of Mr Deepesh Dave on the aspect of cash transactions and submitted that the learned District Judge did not even consider such

[1] 2019 2 SCC 241

unchallenged material. Similarly, he referred to email correspondence from M/s AC admitting that the project is at a loss even if the apartments are sold at Rs.8000/- per sq.ft. He submitted that the restraint imposed upon WMPL from issuing public notice is entirely erroneous.

15. Mr Kamat submitted that the interim relief granted favouring M/s AC is vague and affected by overbreadth. He submitted that M/s AC only had the monetary claim, and therefore, no injunction could have been granted favouring M/s AC when recovery of the financial claims was the adequate remedy. He submitted that M/s AC breached the status quo order granted by the learned District Judge and also breached the statement made on its behalf before this Court. In breach of the status quo order and the statement about maintaining the status quo, M/s AC attempted to sell apartments and was never candid to the Court. He submitted that the conduct of M/s AC is relevant and based upon the same, no interim relief should have been granted favouring M/s AC.

16. Mr Kamat submitted that the 17 apartments for which M/s AC has allegedly received bookings are at a rate which is below Rs.8000/- per sq.ft. He submitted that this is a direct breach of clause 11. He submitted that this circumstance, coupled with evidence of cash transactions, establishes beyond doubt that M/s AC is out to defraud WMPL. He submitted that there is no proper evidence about any agreements for 17 flats. No documents have been produced, and, in any event, the documents produced inspire no confidence.

17. For all the above reasons, Mr Kamat submitted that the impugned orders be set aside and interim reliefs as prayed for by WMPL be granted.

18. Mr Godbole learned senior advocate for M/s AC, defended the impugned orders based on the reasons reflected therein.

19. Mr Godbole submitted that M/s AC had already completed Towers "A" and "B" construction by expending Rs.46 crores. This amount and an additional amount put in by M/s AC for the project were not repaid by WMPL. Agreements were entered into not just for repayment of the amount but also to create an interest in the immovable property. He submitted that this is evident from the proper construction of the agreements. Mr Godbole submitted that the agreements entitled M/s AC to consume not only the existing FSI but also additional FSI, which shall become available for construction on the subject property. He submitted that M/s AC had been empowered to sell constructed tenements in Towers "C" and "D" and receive appropriate sale proceeds.

20. Mr Godbole submitted that WMPL breached the terms and conditions of the agreements and began illegally obstructing the construction of Towers "C" and "D." He submitted that the construction constituted RERA projects, and grave and irreparable prejudice would occur not only to M/s AC but also to purchasers of the apartments if any injunction is granted or if WMPL is permitted to obstruct construction activity.

21. Mr Godbole submitted that the learned District Judge rightly granted the injunction favouring M/s AC because otherwise, M/s AC would be declared a defaulter under the RERA Act. Such a declaration would affect the present project and other projects of M/s AC. Further, such a declaration would seriously affect the rights of the purchasers of the apartments. He, therefore, submitted that the balance of the convenience was against the grant of any interim relief to WMPL and the same was in favour of the grant of interim relief to M/s AC.

22. Mr Godbole submitted particulars about the status of construction and sale agreements for the apartments in Towers "C" and "D". He submitted that such details would establish WMPL has failed to make out any prima facie case and in any event, the balance of convenience is against the grant of any interim relief to WMPL. He submitted that irreparable loss and prejudice will be caused to M/s AC if any restraint is imposed on the construction.

23. Mr Godbole, while denying breach of any of the terms and conditions of the agreement by M/s AC submitted that to ally the apprehensions of WMPL, M/s AC is filing an affidavit cum undertaking that no apartments would be agreed to be sold for the rate below Rs.9500/-. He submitted that in terms of the agreement, the rate was only Rs.8000/- per sq.ft. However, such an undertaking is offered since it was WMPL's case that the rate in the area was Rs.9500/- per sq.ft..

24. Mr Godbole submitted that the allegations of cash transactions are misconceived, and Deepesh Dave's affidavit inspires no confidence. He submitted that the learned District Judge did not correctly rely on the same.

25. Mr. Godbole relied on certain decisions, including the decision in **Wander Ltd. and another vs. Antox India Pvt. Ltd.**[2], to submit that these appeals be dismissed.

26. The rival contentions now fall for our determination.

27. Admittedly, serious disputes have arisen between WMPL and M/s. AC in the context of the agreements. The agreements admittedly contain an arbitration clause for resolution of the disputes between the parties.

28. Both parties have filed applications under Section 11 of the Arbitration and Conciliation Act 1996 because they could not agree on the composition of the Arbitral Tribunal. However, in this matter, both parties have placed on record an Arbitration Agreement dated 18 November 2024, signed by the parties/their authorised representatives. Under this written agreement, the parties have mutually agreed on the appointment of Mr Justice D. G. Karnik (Retired), a former judge of this Court, as a Sole Arbitrator. They have also agreed that the seat and venue of the arbitration shall be in Pune.

29. This Arbitration Agreement is taken on record. A statement of disclosure under Section 12(1) of the Arbitration and Conciliation Act, 1996 is also received from Mr. Justice D. G. Karnik, indicating that there are no circumstances likely to give rise to any justifiable doubt or affect the ability of the learned Arbitrator to enter upon reference in this matter.

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[2] 1990(Supp) SCC 727

30. Accordingly, with the consent of the parties as communicated by their learned counsel and based on the written Arbitration Agreement dated 18 November 2024 placed by the learned counsel on record, Mr Justice D. G. Karnik, a retired judge of this Court, is appointed as an arbitrator to resolve the disputes between the parties.

31. M/s. WMPL, along with the brief notes/submissions submitted by their advocates, have enclosed an affidavit/undertaking on behalf of the WMPL. The offer now made in the affidavit/undertaking filed along with the brief notes/submissions on behalf of the appellants was never made during the arguments. No leave was sought to file such affidavit/ undertaking. In fact, the affidavit/undertaking is not even filed but only attempted to be pushed on record along with the brief notes/submissions. The liberty to file a short synopsis of arguments cannot be abused by including such additional material and, after that, complaining that such material was not considered.

32. In contrast, from the beginning, Mr. Godbole, the learned senior advocate for M/s. AC had offered to file M/s. AC's undertaking to ally the apprehension expressed by the WMPL. Accordingly, leave was granted to M/s. AC to file such an affidavit/undertaking. Anil Reddy, on behalf of M/s. AC has filed an affidavit/undertaking.

33. The scope of interference with discretionary orders of injunction by the appeal Court is quite limited. The appeal Court will not interfere with the exercise of discretion of the Court of first instance and substitute its own discretion except where the discretion is shown to have been exercised arbitrarily, capriciously or perversely or where the Court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against the exercise of discretion is an appeal on principle. The appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the Court below solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial Court reasonably and in judicial manner, the fact that the appellate Court would have taken a different view may not justify interference with the trial Court's exercise of discretion (See *Wander Limited & Anr Vs Antox India Private Limited*).

34. It is trite that an applicant seeking a temporary injunction must show a prima facie case, balance of convenience, and that they would sustain irreparable loss or injury if the injunctions were refused. However, all these parameters must necessarily coexist. The relief of temporary injunction cannot be insisted upon as a matter of right or merely because it may be lawful to do so. Such a relief is equitable and discretionary by its very nature. The discretion must be guided by law, and the Court is bound to consider all aspects of the matter. No hard and fast rules exist to guide such discretion, but it must be exercised with great circumspection.

35. The rival contentions will have to be evaluated by applying the above principles.

36. The contention that the learned District Judge has not at all adverted to the aspects of prima facie case, balance of convenience and irreparable loss and prejudice is incorrect. A finding has been given on all three aspects against WMPL. However, the prima facie case element could have been more adequately considered, given the contentions about the agreements not being specifically enforceable. But, it is not as if this aspect is entirely ignored or that the trial court was unaware of the same as alleged by Mr Kamat.

37. WMPL contends that the agreement between the parties create no right, title or interest in the subject property or even the constructions. Therefore, there was no question refusing WMPL any injunction or granting M/s. AC any injunction. The argument was that in absence of any right or interest in immovable property, specific performance at the behest of M/s AC was out of question. If no specific performance was possible, no injunction could have been granted favouring M/s AC and no injunction could have been refused to WMPL, admittedly, the owner of the subject property and the constructions.

38. Mr. Godbole submitted that the agreements contain clauses referring to the consumption of FAR and even additional FAR that may become available in the future. M/s AC is authorised to sell apartments and appropriate the proceeds. He submitted that the nomenclature of the agreements is irrelevant. Therefore, specific performance was competent.

39. The position regarding the prima facie case is arguable. These aspects of interest in immovable property or specific performance need to be examined threadbare in the arbitration proceedings. Even if WMPL's contention about the prima facie case is accepted, still aspects of the balance of convenience and irreparable loss cannot be ignored. The impugned order considers these aspects, and there is no perversity in the approach or the reasoning.

40. Now, even if we were to hold that the Articles of Agreement are prima facie development or construction agreements based upon which M/s. AC was allowed to sell the apartments to recover the costs of constructing by Towers “A”, “B”, “C” and “D”; still, we see no reasonable grounds to interfere with the impugned orders on the aspect of irreparable loss and prejudice and balance of convenience.

41. The decision in *Sushil Kumar Agarwal* (supra) mainly turns on its own facts. For the principles laid down therein to apply, at least a case that this matter involves similar facts will have to be made out. In any event, no interim reliefs can be granted merely on making out a prima facie case. The other two aspects of the balance of convenience and irreparable prejudice must also be made out.

42. *Sushil Kumar Agarwal* (supra) holds that no specific performance can be granted of a development agreement or a pure construction agreement. This legal principle is very well settled. However, this legal position was in the context of the agreements, which the Trial Court elaborately analysed, the First Appellate Court and finally, the Hon’ble Supreme Court. In this matter, as noted earlier, agreements between the parties will have to be elaborately evaluated before the principal development agreement or pure construction agreement can never be specifically enforced. The learned counsel for the parties do not and perhaps cannot dispute the legal proposition. However, the dispute is about the terms and scope of the agreements between the parties.

43. In any event, the decision in *Sushil Kumar Agarwal* (supra) is relevant in the context of prima facie case. However, even if we proceed on the premise that the petitioner has prima facie established that the agreements in question are not specifically enforceable, still, because the construction of Towers "A", "B" and "D" is almost fully complete and even the construction of Tower "C" is complete upto the 6th floor, the issues of balance of convenience and irreparable loss and prejudice will have to be answered in favour of M/s AC. Besides, as noted earlier, the interest of purchasers and the fact that this is a RERA project requiring strict adherence to a time schedule also cannot be ignored. Unless the requirements of prima facie case, balance of inconvenience and irreparable loss and prejudice coexist, there is no question of grant of any interlocutory relief.

44. Admittedly, M/s. AC has completed constructing Towers "A" and "B" at its own cost and effort. Similarly, construction up to the 6th floor of Tower "C" and a substantial portion of Tower "D" is also complete. The construction now in progress concerns the 7th to 20th floors of Tower "C".

45. Tower "C," construction is complete up to the 6th floor, which has about 30 apartments. Construction is also underway from the 7th floor to the 20th floor, comprising about 65 apartments. Of this, M/s AC will allot five apartments to WMPL to complete the pending works of Towers "A" and "B."

46. Tower “D” will comprise 20 floors and 80 apartments. Registered agreements have been entered into for 58 apartments, And allotments have been made for 17 apartments, though registered agreements have yet to be executed. About 5 apartments remain Unsold. Construction of Tower “D” is complete, and NOCs from the context of Fire Safety, Lift, Water STP, Garden, etc., have already been received.

47. The record shows that agreements have been entered into with purchasers. This project is a RERA-registered project, and there are strict rules and regulations regarding its completion within the time schedule. There are also restrictions about spending the percentage of amounts received from purchasers on actual construction.

48. At this stage, therefore, if the construction on the 7th to 20th floors of Tower “C” or the finishing works or the balance works on Tower “D” is halted, severe prejudice will be occasioned not only to M/s. AC but also the prospective purchasers. M/s. AC’s entire investment towards constructing Towers “A” and “B” would also be put in grave jeopardy. More than anything else, the interest of the purchasers would suffer. M/s. AC would also face penalties and other disqualifications, given that this is a RERA project. Such disqualifications may even affect M/s. AC’s business as a builder qua other projects.

49. The interest of the purchasers who have already paid amounts and booked the apartments in this housing project cannot be ignored entirely just because they are not parties to the dispute between WMPL and M/s AC. Mr Kamat’s contention that WMPL can always take over the project and complete the balance of construction works is not backed by any material to show that WMPL has the money and competence. The affidavit or undertaking slipped almost surreptitiously with the written submissions and does not inspire any confidence.

50. Stalling the construction at this crucial stage does not appear to be in the interest of the purchasers, who are likely to be left in a lurch, given the disputes between WMPL and M/s. AC. These are relevant considerations on the issue of balance of convenience and irreparable loss. M/s AC is actually carrying out the construction. Their men and machinery are at the site. They have established their financial worth by completing the constructions of Tower A and B and a substantial portion of Tower D. Because WMPL could not pay for the construction of Tower A and B, agreements were entered from which now disputes have arisen.

51. The affidavit-cum-undertaking which was sought to be included alongwith the notes/submissions without even seeking any leave from the Court inspires no confidence whatsoever. Not even a statement was made about such undertaking. Therefore, based on such undertaking which is not backed by any material to suggest that WMPL has the necessary wherewithal and finance, we do not think that it would be appropriate to leave the purchasers in lurch or to stop the construction in the fond hope that WMPL will take it over and complete the same.

52. Mr. Kamat referred to M/s. AC and partners breaching the District Court's status quo order dated 20 April 2024. He submitted that despite this status quo, M/s. AC attempted to sell apartments and even accepted a cheque dated 16 May 2024 from a prospective purchaser. Mr. Kamat submitted that since M/s. AC was prone to disobey Court orders, any undertakings on behalf of M/s. AC could never be trusted.

53. Mr. Kamat submitted that even in this Court, a statement was made on behalf of M/s. AC about the alienation of apartments. However, taking advantage of the fact that such a statement was not recorded, alienation was attempted. Mr. Kamat submitted that this breach was admitted, and this Court then made an order not restraining further alienation and maintaining the status quo.

54. Regarding the breach of the recorded statement made before this Court, it is true that an attempt was made. Mr. Godbole did not defend such attempt but explained that this was due to miscommunication. Immediate amends were offerd and made.

55. Mr. Godbole, however, submitted that M/s. AC did not breach the status quo order granted by the District Court on 20 April 2024. He pointed out that this status quo order was vacated, and, in any event, the cheque was never encashed but returned. He submitted that such arguments, outside the records and made to create prejudice, should not be accepted.

56. Though something could be said about the attempt to breach the unrecorded statement in this Court, no case of any breach of the District Court's status quo order is prima facie made out. WMPL did not file any application before the District Court alleging breach. At least none was pointed out to us. Therefore, based on this circumstance no interim relief to stall the construction can be granted to WMPL.

57. M/s. AC forwarded the approximate Income and Expenses Statement to WMPL. Based on the statement, Mr. Kamat contended that M/s. AC has indicated a loss by selling apartments at the rate of Rs.7500/- per sq. ft. He submitted that these statements contained admission about sale at the rate of Rs.7500/- per sq.ft., which is below the minimum threshold limit of Rs.8000/- per sq.ft. He further submitted that if by selling the apartments at the rate of Rs.7500/- per sq.ft, M/s. AC was incurring loss of crores of rupees, it is inconceivable any builder would sell the apartments at such a loss. Mr. Kamat submitted that a clear inference about cash transactions was required to be drawn in this matter.

58. Mr Kamat also referred to the affidavit of Mr Dave and the material produced on record to show how cash amounts were demanded from Deepesh Dave for the sale of apartments by defying a status quo order. He pointed out that M/s AC did not even dispute Deepesh Dave's affidavit and the material produced along with it.

59. The material on record suggests that M/s AC was involved in cash transactions. To that extent, Mr Kamat's submission is merited. However, based on this prima facie finding, no case is made to grant an injunction restraining the construction or completion of the project. Some terms need to be imposed on M/s AC in this regard.

60. WMPL had alleged that the market rate in the area is Rs.9500/—per sq. ft. Therefore, we inquired whether M/s. AC would be willing to give an undertaking not to sell the apartments at a rate below Rs.9500/—per sq. ft. Mr Godbole, initially pointed to the agreement clauses that refer to the rate of Rs 8000 per square feet. But, later, on instructions, he stated that M/s. AC would not sell any apartments at a rate below Rs.9500/—per sq. ft. He further stated that M/s AC would, without prejudice file an undertaking to this effect. Leave was accordingly granted to file such undertaking.

61. M/s. AC has furnished an undertaking to this Court which reads as follows :-

> "AFFIDAVIT/UDERTAKING ON BEHALF OF THE RESPONDENTS ABOVENAMED:
>
> I Shri. Anil Reddy age: 56 years, Occ: Business, having office at 440/441, Nanapeth, PGI Building, Pune 411002, the partner of the the Respondent No.1 abovenamed, hereby undertake as follows:
>
> a. M/s. Atria Constructions undertakes not to sell balance 5 flats in Tower D and balance 63 flats in Tower C in the scheme "Rajgruhi Residency" further at less than Rs.9,500/- (Rupees Nine Thousand Five Hundred Only) per Sq.ft on saleable area on rera carpet basis viz rera carpet area + 35% as defined in Articles of Agreement dated 19/08/2021.
>
> b. The Respondent No.1 undertakes to continue to sale the units not be below the rate of Rs. 9500/- (Rupees Nine Thousand Five Hundred Only) per Sq.ft on saleable area on rera carpet basis viz rera carpet area + 35% as defined in Articles of Agreement dated 19/08/2021 and inform the Appellant about the rate of selling of units and give him 30 days' notice to make any further offer and is obligated to conclude the transaction at such higher rate and in favour of the purchaser nominated by the Respondent or bring any fresh Purchaser for more than the rate provided by the Respondent No.1. The parties hereby agree that such offer and/or counteroffer shall not be below the rate of Rs. 9500/- per sq. ft. (Rupees Nine Thousand Five Hundred Only) on saleable area on rera carpet basis viz rera carpet

> area + 35% as defined in Articles of Agreement dated 19/08/2021.
>
> c. Both the Appellant and the Respondent No. I agree and undertake that they shall not in any manner communicate with and/or approach the prospective purchaser nominated by the other side. All communication in relation to the proposed transaction(s) shall be only between the Appellant and Respondent No. 1."

62. Despite the undertaking, even if we accept Mr Kamat's contention that M/s. AC will accept cash amounts; it is always open to WMPL to lead cogent evidence and recover damages or proper market value. However, at this stage, it will not be appropriate to stop the construction or restrain the sale of apartments for a rate not below Rs.9500/- per sq. ft. even though the agreement between the parties refers to average minimum rate of Rs.8000/- per sq. ft. WMPL, had pleaded that the rate in the area would be Rs.9500/- per sq. ft. Mr. Kamat clarified that this would be the minimum rate.

63. M/s. AC, consistent with the undertaking quoted above, shall not agree to sell any apartments at a rate of less than Rs.9500/- per sq. ft. The undertaking given on behalf of M/s AC is now accepted as an undertaking to this Court.

64. However, no case is made to restrain the execution of agreements regarding 17 apartments. These were transactions entered into much earlier, but no formal agreements were executed. Such execution had to be deferred on account of status quo orders and statements. Therefore, at this stage, there is no point in imposing any restrictions regarding these 17 allotments or agreements. The position of the remaining purchasers is not much different from that of these 17 allottees.

65. M/s AC will, however, not claim any equities regarding sale of apartments. This position must be made clear to the 17 allottees by informing them about the pendency of disputes and legal/arbitration proceedings.

66. Regarding the challenges to the order by which the learned District Judge has granted interim relief to M/s. AC, at least prima facie, the reliefs are broad-based to some extent. While WMPL cannot be allowed to take the law into its hands and physically obstruct the construction of the project, no blanket injunction can be granted restraining WMPL from filing complaints to statutory and Environmental protection authorities about the alleged deficiencies. This cannot be called some unlawful obstruction. With such modification and clarification, the order granted favouring M/s AC is sustained.

67. The learned counsel for the parties proposed that the interim arrangement could operate until the arbitrator enters on reference and decides the issue of interim relief. Mr. Kamat submitted that the arrangement that this Court's orders could be treated as ad-interim relief and the applications under Section 9 could then be treated as applications under Section 17 before the Arbitral Tribunal. The Arbitral Tribunal could then dispose of these applications and decide on the interim relief that could operate pending the disposal of the arbitration proceedings.

68. Mr. Godbole submitted that there could be no objection to this Court's order operating as an ad-interim arrangement. He, however, submitted that there are subsequent developments and therefore, the parties could be given liberty to file applications under Section 17 before the Arbitral Tribunal. The Arbitral Tribunal could then decide such applications without being influenced by the ad-interim arrangement that could be made by this Court.

69. Any direction to treat the applications under Section 9 as Section 17 applications would involve complications, though it might save paper. Subsequent developments might be difficult to record. Therefore, it would be appropriate to grant the parties leave to file applications under Section 17, which could then be decided without being influenced by this interim arrangement.

70. The above arrangement will operate as an ad-interim arrangement. The parties may file their applications under Section 17 within four weeks from today. The above ad-interim arrangement shall operate until the Arbitral Tribunal disposes of Section 17 applications, if filed or until the Arbitral Tribunal may direct. The Arbitral Tribunal must decide the applications under Section 17 without being influenced by any observations in the impugned judgments and orders dated 20 September 2024 or this judgment and order.

71. These observations are only in the context of determining the ad-interim arrangement to operate until parties can file and secure orders on applications under section 17 of the said Act.

72. The undertaking given on behalf of M/s. AC is accepted as an undertaking to this Court.

73. The ad-interim orders granted in these Appeals are vacated since now the parties would have to abide by the ad-interim arrangement now indicated.

74. Both Appeals are disposed of in the above terms without any orders for costs. The interim applications do not survive, and the same are disposed of.

75. All concerned to act on the authenticated copy of this order.

76. At this stage, Mr. Kamat seeks for continuance of interim relief.

77. The continuance of interim relief is bound to affect the project and we do not think that any case is made out for continuance of the interim relief. As it is, we have imposed restrictions by this order on M/s Atria Construction i.e. the respondents.

78. Accordingly, the request for continuance of interim relief is not acceptable.

(Jitendra Jain, J) **(M. S. Sonak, J)**