

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO. 10 OF 2024**

Swati Mrunal Deodesai .. Applicant
Versus
Landmark Realtors .. Respondent

**WITH
ARBITRATION PETITION (L) NO.30018 OF 2023**

Landmark Realtors .. Applicant
Versus
Swati Mrunal Deodesai .. Respondent

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Mr.Surin Usgaonkar for the applicant in ARBAP 10/2024 and for respondent in ARBPL 30018/2023.

Mr. Abhishek Tripathi i/b Anju Mishra for the petitioner in ARBPL 30018/2023 and for the respondent in ARBAP 10/2023.

**CORAM: BHARATI DANGRE, J.
DATED : 26th FEBRUARY, 2024**

P.C:-

1 An application under Section 11 is listed along with Arbitration Petition filed u/s.9 of the Arbitration and Conciliation Act, 1996.

I have heard learned counsel for the petitioner/ applicant and learned counsel for the respondent, who is the

owner of a property at Borivali and which is being developed by M/s.Landmark Realtors. The Memorandum of Understanding (MoU) dated 20/11/2020 clearly contemplate the arrangement between the parties for developing the said piece of land and it comprise of an arbitration clause in form of clause no.10, which provide that any dispute as to the construction and the meaning of these present, or compliance thereof arises between the parties, the same shall be referred to the Sole Arbitrator to be appointed in accordance with the provisions of the Arbitration Act.

2 The Memorandum of Understanding is accompanied with the receipt signed by Mrs.Swati Mrunal Deodesai, the owner of the property who has acknowledged receipt of an amount of Rs.Two lakhs by NEFT and sum of Rs.28 lakhs by cheque, towards signing of the Memorandum of Understanding. Mrs.Deodesai has admitted that she has received a sum of Rs.69,66,988/- along with the sum of Rs. Five lakhs.

3 Since the dispute arose between the parties as the further steps towards execution of the Development Agreement are yet to be completed and it is the specific stand of the Landmark Realtors, who has filed Section 9 petition that he has expended a sum of Rs.5.4 crores till date, but now the landlady is dragging her feet, in moving ahead with the project by signing the Development Agreement and therefore, he seek certain interim measures pending the arbitration proceedings and during its disposal.

On hearing the respective counsel, since it is not in dispute that the arbitration clause in the Memorandum of Understanding contemplate reference of disputes to the Arbitrator, it is appropriate to refer them for arbitration.

As far as interim relief prayed by the Developer is concerned, since the Section 9 petition is filed in the year 2023, I deem it appropriate to permit the petitioner to permit its conversion into an Application u/s.17 before the Arbitrator for securing necessary reliefs, in the arbitration proceedings.

It is also open to the developer to make a request to the Arbitrator to take up the Section 17 Application, expeditiously.

4 In the wake of the above, Advocate Neeta Jain is appointed as Sole Arbitrator to adjudicate the disputes and differences that have arisen between the applicant and the respondent.

The Arbitrator shall, within a period of 15 days before entering the arbitration reference forward a statement of disclosure as contemplated u/s.11(8) r/w Section 12 of the Arbitration and Conciliation Act, 1996, to the Prothonotary and Senior Master of this Court to be placed on record.

The Arbitrator, shall after entering the reference fix the date of first hearing and issue further directions as are necessary.

The Sole Arbitrator shall be entitled for the fees as per Bombay High Court (Fee Payable to Arbitrators) Rules, 2018 and the arbitral costs and fees of the Arbitrator shall be borne by the parties in equal portion and shall be subject to the final Award that may be passed by the Tribunal.

All rights and contentions of the parties are kept open.

(SMT. BHARATI DANGRE, J.)