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

+ **O.M.P.(I) (COMM.) 180/2022**

SATYA PRAKASH GUPTA & ANR.

..... Petitioners

Through: Mr. Gyanendra Kumar, Mr. Abhijit
Mittal, Advs.

versus

CZAR BUILDWELL PRIVATE LIMITED & ORS..... Respondents

Through: Mr. Prashant Mehta, Mr. Aaryav
Mehra, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

29.01.2024

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1. This is a petition u/s 9 of the Arbitration and Conciliation Act seeking the following prayers:

“(a) Pass an Order restraining the Respondent No. 1 from alienating, transferring, or creating any third-party rights on the Land owned by the Petitioner No. 2; and

(b) Pass an Order directing the Respondent No. 1 to stop all construction activities on the Land and restrain the Respondent No. 1 from carrying out any further construction activities on the Land; and

(c) Pass an Order directing the Respondent No. 1 to deposit the outstanding consideration of INR 45,00,50,000/- against payment due till March 31, 2022; and

(d) Pass an Order restraining the Respondent No. 1 from using the name of the Petitioners in any document relating to any project; and

(e) Pass ex-parte interim orders in terms of prayer (a), (b), (c) and (d) above;



.....”

2. Admittedly, the Arbitrator has been appointed in the Section 11 petition filed by the petitioner.
3. The interim measures which are sought in the present Section 9 petition can be urged before the learned Sole Arbitrator.
4. The interim order of 02.06.2022 shall continue till Section 17 application filed by the petitioner before the learned Arbitrator is adjudicated upon.
5. The petitioner has drawn my attention to the order of the HARERA, wherein it has been observed that the respondents have siphoned off funds. Para 50 and 51 of the said order reads as under:

“50. On perusal of the report submitted by the forensic auditor, there were observed several instances of questionable transactions. The auditor submitted in its report that in the project 'Mahira Homes 95', several withdrawals are made in breach of the provisions of the RERA Act, 2016 and a few of the transactions are questionable and it appears that home buyers' money has been withdrawn in violation of provisions section 4(2) (1) (D) of the Act. Further 1st & 2nd proviso to section 4(2)(1)(D) of the Act provides that the withdrawal from the separate account shall have to be in proportion to the percentage of completion of the project after it is certified by an engineer, an architect, and a chartered accountant that the withdrawal is in proportion to the percentage of completion of the project.

51. The total funds received of Rs. 66,49,81,000/- in RERA 70% account has been transferred by the developer into 30% FREE Account based on the written request made from time to time. This conduct by the developer is in grave contravention of the RERA Act, 2016.”



6. In this view of the matter, the respondent will maintain a balance sum of Rs. 5 crores in the bank account.
7. The parties are at liberty to seek modification/variation of this order and the order dated 02.06.2022 before the Sole Arbitrator.
8. With these observations, the petition is disposed of.

JASMEET SINGH, J

JANUARY 29, 2024/DM

Click here to check corrigendum, if any