

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.419 OF 2025
WITH
INTERIM APPLICATION (L) NO.34292 OF 2023
IN
ARBITRATION PETITION NO.419 OF 2025
WITH
CHAMBER ORDER (L) NO.377 OF 2025
IN
ARBITRATION PETITION NO.419 OF 2025

Ess Infraproject Pvt. Ltd. & Ors.

....Petitioners

Versus

M/s Shreeji Construction & Ors.

....Respondents

Mr. Mehul Shah a/w. *Mr. Karan Desai, Advocates for Respondent Nos.1, 3 and 4.*

Mr. Mayur Khandeparkar a/w. *Mr. Abhishek Nikhage, Advocates for Respondent No.2.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : SEPTEMBER 20, 2025

ORDER :

1. This is a Petition under Section 9 of the Arbitration and Conciliation Act, 1996 (*"the Act"*) *inter alia* seeking interim reliefs in pursuance of an arbitration agreement contained in Clause 45 of a Development Agreement dated October 28, 2022 (*"Agreement"*) between the Petitioners and the Respondents.

2. Learned Counsel for the parties jointly submit that the possession of Petitioner No.1 (in respect of Shop Nos.1, 8 & 9), Petitioner No.2 (in respect of Shop No.3) and Petitioner No.6 (in respect of Flat No.13) (***“Subject Units”***) would be handed over to Respondent No.1 since occupation certificate has been received. The remaining controversy between the parties is that the draft of the indemnity-cum-undertaking requested to be executed by Shreeji Construction in which the grievance is about the word ***“unconditionally”*** used in Paragraph 5. The contention of the parties is that any intent to litigate, if a cause of action is validly available in law, cannot be blocked with any fetter on the same.

3. In these circumstances, the parties agree that since the Arbitration Petition (L) No.15772 of 2023 and Arbitration Application (L) No.18378 of 2023 are indeed being withdrawn, the word ***“unconditionally”*** of Paragraph 5 of the said affidavit shall be deleted. No other changes are being effected. The parties are left to their own devices to deal with their rights as may be available in law.

4. Both the proceedings are ***disposed of*** recording the fact that the possession of the aforesaid three units would be handed over as indicated in the opening paragraph of this order.

5. As regards the unit for Petitioner No.6, Learned Counsel for the Developer fairly states that while an OC has been received, which is

being characterized as “Bareshell OC”, Petitioner No.6 will need to hold up possession since materials have been moved through that unit and therefore, he commits to continue to pay transit rent until possession is actually handed over, and that it would be handed over at the earliest. Consequently, these proceedings are hereby *finally disposed of*.

6. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court’s website.

[SOMASEKHAR SUNDARESAN, J.]