
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ARBITRATION PETITION NO. 148 OF 2025

Rajesh Bothra

...Petitioner

Versus

Sky Forest Projects Pvt Ltd & Ors

...Respondents

Mr. Vyom Shah, Ashu Thakur, Heta Desai i/b Ashu Thakur & Associates for the Petitioner.

Mr. Shyam Dewani a/w Advocate Chirag Chanani a/w Advocate Mihika Joshi I/B Dewani Associates for Respondents.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : APRIL 8, 2025

PC :

1. This Petition has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 (***“the Act”***), seeking interlocutory protective reliefs in connection with disputes and differences relating to an Application Form dated 22nd April 2013. The arbitration agreement is contained in Clause 45 (found at Page 67 of the Petition). In the interest of brevity, the arbitration agreement is not being extracted here. Suffice it to say that this matter falls within the jurisdiction of this Court.

2. On March 18, 2025 a protective arrangement was made whereby the balance amounts due in respect of the flat in question were directed to be deposited with the Registry of this Court by the Petitioner.

3. Today, when the matter is called out, a receipt dated April 5, 2025 has been tendered demonstrating deposit of Rs.~5.67 crores with the Registry. Since the money is secured by depositing with this Court, after the matter was argued for some time, it is clear that the matter should now proceed to an arbitration. The flat must be secured with no third-party interest being created, since significant part of the money is secured.

4. Learned Counsel for the Respondent submits that the amount deposited in Court would still be short by close to Rs.1 Crore. On the other hand, a statement of account tendered by the Petitioner would suggest that the Petitioner is claiming compensation in the sum of Rs.4.5 Crores citing delay in delivery of the flat.

5. In these circumstances, leaving it open to the arbitrator to take over the Section 9 Petition from this stage treating it as proceedings under Section 17 of the Act, it would be appropriate for the Learned Arbitrator appointed hereby to issue instructions on the next date to further balance equities between the parties.

6. Needless to say, the subject flat should be retained and secured since the substantial component of the money payable has been secured by depositing in Court, pending consideration of the matter by the Arbitral Tribunal.

7. The deposit made in this Court shall abide by the outcome of the arbitral proceedings, the arbitrator would fix the deadline for execution of the conveyance and security for the balance amounts claimed by each side from the other and to adjudicate as to what would be the most appropriate order in these circumstances when dealing with proceedings under Section 17 of the Act.

8. In these circumstances, this Petition is *finally disposed of*, also by appointing the arbitrator in the following terms:

a) Mr. Amrut Joshi, an advocate of this Court, is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of and in connection with the Agreement referred to above;

Office Address:-

12, Darya Building,

2nd floor, Above Aarti Book Stores,

Opp. Hutatma Chowk, Fort,

Mumbai - 400 001.

Email id. - amorjos@gmail.com

- b) A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Petitioner within a period of one week from the date on which this order is uploaded on the website of this Court. The Petitioner shall provide the contact and communication particulars of the parties to the Arbitral Tribunal along with a copy of this Order;
- c) The Learned Sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Act to the parties within a period of two weeks from receipt of a copy of this Order;
- d) The parties shall appear before the Learned Sole Arbitrator on such date and at such place as indicated, to obtain appropriate directions with regard to conduct of the arbitration including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings etc. At such meeting, the parties shall provide a valid and functional email address along with mobile and landline numbers of the respective Advocates of the parties to the Arbitral Tribunal. Communications to such email addresses shall constitute valid service of correspondence in

connection with the arbitration;

- e) All arbitral costs and fees of the Arbitral Tribunal shall be borne by the parties equally in the first instance, and shall be subject to any final Award that may be passed by the Tribunal in relation to costs.

9. Needless to say, nothing contained in this order is an expression of an opinion on merits of the matter or the relative strength of the parties. All issues on merits are expressly kept open to be agitated before the arbitral tribunal appointed hereby.

10. 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.]