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

+ O.M.P.(I) (COMM.) 192/2025

VIVEK ARORA & ANR.

.....Petitioners

Through: Mr. Harish Malhotra, Senior Advocate with Mr. Dhruv Kapur, Mr. Vijayender Kumar, Mr. Maharshi Kala and Ms. Shruti Goyal, Advocates.

versus

ISHV REALTORS PVT. LTD. & ANR.

.....Respondents

Through: Mr. Abhimanyu Singh, Advocate for R-1.

Mr. Ashim Vachher, Senior Advocate with Mr. Abhimanyu Singh and Mr. Kunal Lakra, Advocates for R-2.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

% **23.05.2025**

I.A. 13118/2025 (Exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

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3. This petition is filed on behalf of the Petitioners under Section 9 of Arbitration and Conciliation Act, 1996 ('1996 Act') seeking the following reliefs: -

"a. Pass an ex-parte ad-interim order, whereby restraining the Respondents from carrying out any construction activities in the project being developed by the Respondent No. I Company M/s Ishv Realtors Pvt. Ltd. and also restraining the Respondents from marketing and selling the units/ spaces in the project, being developed by the Company M/s Ishv Realtors Pvt. Ltd., in the name and style of Platina Street, Sector-I 09, Dwarka Expressway, Gurugram, Haryana at land admeasuring 3.7187 acres, situated in the revenue estate of Pawala Khasrupur, Tehsil and District Gurugram, till the time disputes between the parties are adjudicated by the Sole Arbitrator;



b. Pass an ex-parte ad-interim order, whereby restraining the Respondents from collecting any amount from the buyers/ prospective buyers from selling the units/ spaces in the project, being developed by the Respondent No. 1 Company M/s Ishv Realtors Pvt. Ltd., till the time disputes between the parties are adjudicated by the Sole Arbitrator;

c. Pass an order thereby directing the Respondents to comply with the Addendum dated 06.03.2024 entered into between the Petitioners and the Respondents herein and adhere to its terms and conditions in the full letter and spirit.”

4. As per the case set out by the Petitioners in the petition, Respondent No. 1 and Petitioners entered into a Share Purchase Agreement (SPA) with Respondent No. 2 on 01.06.2022 for sale of 100% equity shares of Respondent No. 1 company on terms and conditions incorporated in the SPA, for total sale consideration of Rs.48,50,00,000/-, which was later increased to Rs.49,50,00,000/- by mutual agreement of the parties. Respondent No. 2 failed to comply with the terms of SPA resulting in breach and at Respondent No. 2's request, an MoU was executed on 13.10.2022, whereby Respondent No. 2 again agreed to make payments as due and as per the agreed timelines.

5. Petitioners aver that Respondent No. 2 again failed to comply with the terms of SPA and defaulted in making payments as per the MoU and Petitioners were constrained to issue termination notice dated 01.08.2023 calling upon Respondent No. 2 to pay the outstanding amounts. On 06.03.2024, Respondent No. 2 once again approached the Petitioners requesting them not to terminate the SPA and further agreed to pay balance amount of Rs.36,50,00,000/- in a time bound manner. Believing Respondent No. 2 and having faith in his representations, Petitioners entered into an Addendum dated 06.03.2024 prescribing the manner and strict timelines for payment of the balance amount.



6. It is further averred that in furtherance of the Addendum, Respondent No. 2 issued a cheque for an amount of Rs.2,12,72,000/-, which on presentation was dishonoured. Post-dated cheque in the sum of Rs.4 crores dated 15.10.2024 was also dishonoured on its presentation and post-dated cheque for sum of Rs.7 crore dated 30.01.2025 also suffered the same fate and constrained by these circumstances, Petitioners issued a notice dated 19.04.2025, calling upon Respondent No. 2 to *inter alia* refrain from raising any further construction in the project being developed by Respondent No. 1, as also for paying the default amount of Rs.11 crores along with interest in terms of Addendum dated 06.03.2024. On the allegation that despite non-payment, Respondents are carrying out construction in the project and marketing and selling the units/spaces as also collecting money from the buyers, Petitioners have approached this Court for protection and preservation of the subject matter of arbitration.

7. Mr. Harish Malhotra, learned Senior Counsel for the Petitioners submits that Respondents have consistently defaulted in making payments, first under the agreed terms of SPA thereafter under the MoU and finally under the Addendum. At each step, Petitioners had indulged the Respondents by extending time for payments and had also recalled the termination notice at their instance. Despite assuring by way of an Addendum that payments will be made, Respondent No. 2 issued cheques/post-dated cheques which were dishonoured and this shows the *mala fide* intent. It is strenuously urged that the act of the Respondents in marketing and selling spaces/units in the project, despite failure to make payments of the balance amount is in contravention of the Addendum dated 06.03.2024, which provides for consequences of default. Clause (D) in



unequivocal terms provides that if the cheque presented by Respondent No. 2 is not encashed on the due date or during the extended period of 30 days, vendee undertakes that it shall forthwith stop the construction which may be on going at the site. Petitioners have fully performed their part of the obligations but have been left without payment on account of breaches by the Respondents.

8. Issue notice.

9. Counsels, as above, accept notice on behalf of the Respondents.

10. Learned Senior Counsel for Respondent No. 2 and counsel for Respondent No. 1 submit that stay of construction of the units in the project will have an adverse impact on the home buyers who have invested money. It is further submitted that Respondent No. 2 has also certain claims against the Petitioners and therefore, it is incorrect for the Petitioners to urge that Respondent No. 2 owes Rs.11 lacs with interest to the Petitioners. However, it is submitted that without prejudice to the rights and contentions of the Respondents, a sum of Rs. 7.5 crores shall be paid to the Petitioners on or before 31.08.2025 and another sum of Rs. 10 crores will be paid on or before 30.09.2025 along with interest @ 12% per annum on the said amounts.

11. The undertaking given by the Respondents is accepted and taken on record. Director of Respondent No. 1 shall file an affidavit of undertaking in this regard on or before 30.05.2025. In the event of non-compliance of the undertaking given to this Court, Respondents shall stop the construction of the project on land ad measuring 3.7187 acres, situated in revenue estate of Pawala Kharsupur, Tehsil and District Gurugram forthwith, in terms of Clauses (D) and (E) of Addendum dated 06.03.2024.



12. At this stage, Mr. Harish Malhotra, learned Senior Counsel submits that Petitioners have sent an invocation notice dated 09.05.2025 to the Respondents in terms of Arbitration Clause 11.9 in the SPA dated 01.06.2022, which provides for settlement of disputes by a Sole Arbitrator to be jointly appointed by the parties and if the Respondents are agreeable, Sole Arbitrator can be appointed by this Court.

13. Learned Senior Counsel for Respondent No. 2 and counsel for Respondent No. 1 consent to the appointment of a Sole Arbitrator by this Court.

14. All parties unequivocally propose the name of Mr. Justice Rajiv Shakdher, former Chief Justice of Himachal Pradesh High Court as a Sole Arbitrator.

15. Accordingly, with the consent of the parties, Mr. Justice Rajiv Shakdher, former Chief Justice of Himachal Pradesh High Court (Mobile No. 9717495004) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties. Fee of the Arbitrator shall be fixed as per Fourth Schedule of 1996 Act, as agreed.

16. Learned Arbitrator shall give disclosure under Section 12 of the 1996 Act before entering upon reference.

17. It is made clear that this Court has not expressed any opinion on the merits of the case and all rights and contentions of the respective parties are left open to be adjudicated by learned Sole Arbitrator.

18. Petition is disposed of in the aforesaid terms.

JYOTI SINGH, J

MAY 23, 2025/s.Sharma/Shivam