



\$~J

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

*Judgment reserved on: 04.09.2025**Judgment pronounced on: 10.10.2025*

+

O.M.P.(I)(COMM.) 438/2024 & CCP(O) 10/2025, CCP(O) 34/2025, CCP(O) 55/2025, CCP(O) 85/2025, I.A. 2958/2025, I.A. 8913/2025, I.A. 9179/2025, I.A. 20494/2025

M/S AMD ESTATES AND DEVELOPERS PVT LTD.

.....Petitioner

Through: Mr. Sandeep Sethi, Mr. Rajshekhar Rao, Mr. Anurag Ahluwalia, Sr. Advs. with Mr. Ravi Kapoor, Ms. Vishakha Gupta, Mr. Akshit Mago, Ms. Shreya Kunwar, Ms. Riya Kumar, Advs.

versus

M/S VSR INFRATECH PVT LTD.

.....Respondent

Through: Mr. Amit Sibal, Sr. Adv. with Ms. Karuna Sharma, Mr. Ankit Tripathi, Mr. Sandeep Phogat, Ms. Mehak, Mr. Gaurav Jain, Mr. Atul Malhotra, Advs.

+

O.M.P.(I) (COMM.) 231/2025

VSR INFRATECH PVT LTD

.....Petitioner

Through: Mr. Amit Sibal, Sr. Adv. with Ms. Karuna Sharma, Mr. Ankit Tripathi, Mr. Sandeep Phogat, Ms. Mehak, Mr. Gaurav Jain, Mr. Atul Malhotra,



Advs.

versus

AMD ESTATES AND DEVELOPERS PVT LTD.Respondent

Through: Mr. Sandeep Sethi, Mr. Rajshekhar Rao, Mr. Anurag Ahluwalia, Sr. Advs. with Mr. Ravi Kapoor, Ms. Vishakha Gupta, Mr. Akshit Mago, Ms. Shreya Kunwar, Ms. Riya Kumar, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

1. At the outset, the parties were offered that the petitions can be transferred to Arbitral Tribunal as the same stood constituted on 02.09.2025. However, both the parties state that substantial arguments have been heard, hence, this Court may decide the present petitions. In this view, learned senior counsels appearing for the parties have been heard at length and thereafter, the judgment had been reserved on 04.09.2025.
2. Since the parties herein are common in both the petitions, the same are decided by this common judgment.
3. The present petitions have been filed under section 9 of the Arbitration and Conciliation Act, 1996¹ seeking interim reliefs against each other.

¹Hereinafter referred to as "1996 Act".

**O.M.P.(I) (COMM.) 438/2024****FACTUAL ASPECT**

4. AMD Estates & Developers Pvt. Ltd.² is a company registered under the Companies Act, 1956, having its registered office at 18, Pusa Road, Karol Bagh, New Delhi 110005. M/s. VSR Infratech Pvt. Ltd.³ is a company registered under the Companies Act, 1956, having its registered office at A-22, Hill View Apartments, Vasant Vihar, New Delhi and is *inter alia*, involved in the real estate business and construction of flats and commercial units.
5. The Owner and the Developer entered into a Collaboration Agreement dated 26.04.2011 for development of land situated in the revenue estate of Bajhghera, Sector 114, Tehsil and District, Gurgaon, Haryana owned by the Owner into a commercial project known as “114 Avenue”⁴ by the Developer. The possession of the Project land was handed over by the Owner to the Developer. On the same date, the Owner executed a General Power of Attorney⁵ in favour of the Developer.
6. As per Clause 2.6 of the Collaboration Agreement, the Project was to be completed within 40 months from the commencement of the development of the 60-meter-wide road. As per the information gathered in the Project area, the development of the said road commenced in and around Oct, 2013 and, accordingly, the Project was to commence in and around the same date and was to be completed by

²Hereinafter referred to as “Owner”.

³Hereinafter referred to as “Developer”.

⁴Hereinafter referred to as “Project”.

⁵Hereinafter referred to as “GPA”.



February 2017. However, as there was delay in completion of the Project, the Owner and Developer executed a Supplemental Collaboration Agreement on 15.03.2016⁶ wherein the timeline for Project completion was extended to 30 months from the date of the said Agreement i.e. upto September, 2018. It was also agreed that in case of another delay, the Developer would pay compensation of Rs. 40 per sq. ft. per month for the Owner's unsold share. As there was further delay in completion of the Project, another Supplemental Agreement-II on 18.02.2021 was executed.

7. Again the timelines were not met and the Project was still not completed, Memorandum of Understanding on 31.05.2022⁷ was executed which established an escrow mechanism to ensure proper utilization of funds and accountability in the completion of the Project. The conditions stipulated in the MOU-Escrow concerning the escrow account, necessitated the execution of Supplemental Agreement-III dated 16.06.2022 between the Owner and Developer.
8. With regard to the allocation of shares, as the final revised building plan of the Project was approved on 02.12.2019, the parties entered into a Final Allocation Document dated 15.07.2020, allocating respective units to the Owner and Developer.
9. On 11.04.2012, an agreement titled "Heads of Terms-Sales Agreement for Part of AMD Share in 114 Avenue"⁸ was executed between the Owner and the Developer. It provided for the proposed sale of small portion / part of Owner's allocated share to the

⁶Hereinafter referred to as "Supplemental Agreement-I"

⁷Hereinafter referred to as "MOU-Escrow"

⁸Hereinafter referred to as "Sales Agreement"



Developer for further sale. This comprised of 27 units involving 16,258.66 sq. ft., out of which 20 units were still pending conclusion (***“Balance Booked Units”***). As per the Owner, the Developer has paid an amount of Rs. 5.56 Crores, while an outstanding balance of Rs. 9.89 Crores remains unpaid.

10. On 21.05.2022, the Owner and the Developer entered into an Addendum to the allocation understanding, pursuant to which the allocation was revised to the Owner's share being 31.89% and the Developer's share being 68.11% which was further revised pursuant to a Rectification Deed dated 03.07.2024 with which the Owner's share became 31.78% with an area of 98537.82 sq. ft and the Developer's share became 68.22%.
11. As the Developer issued Cancellation Notice dated 23.08.2024, and subsequent notices dated 29.10.2024 purporting to “cancel” the units allotted to the Owner to the tune of around 52,000 sq. ft. of area which was later clarified that it was not cancelled rather it was “reallocated”, led to the filing of the present petition by the Owner against the developer seeking the following substantial reliefs:-

“A. Grant an ad-interim ex-parte injunction restraining the Respondent, its agents, assignees, affiliates, successors-in-interest, or any person acting on its behalf, from in any manner alienating, transferring, encumbering, or creating third-party rights over the Owner's share and Owner's units, as described in DOCUMENT P-20, in the Subject Project, thereby protecting the Petitioner's existing ownership and possession rights in subject project and land



during the pendency of the proceedings.

B. Issue an ad-interim ex-parte injunction restraining the Respondent, its agents, assignees, affiliates, successors-in-interest, or any person acting on its behalf, from interfering with or obstructing the Petitioner's possession, ownership, or quiet enjoyment of or otherwise right of the Petitioner to deal with its share and allotted units, as described in DOCUMENT P-20, in the Subject Project in any manner whatsoever.

C. Issue an ad-interim ex-parte injunction restraining the Respondent, its agents, assignees, affiliates, successors-in-interest, or any person acting on its behalf from alienating or encumbering the balance booked units (as described in DOCUMENT P-17) in the Subject Project in any manner whatsoever.

D. Pass an order attaching the Respondent's share and all unsold units of the Respondent in the Subject Project and restrain the Respondent, its agents, assignees, affiliates, successors-in-interest, or any person acting on its behalf, from alienating, transferring, encumbering, or dealing with the same in any manner until the final adjudication of the dispute.

E. Direct the appointment of a Court Receiver to take possession of all units belonging to the Respondent in the Subject Project, manage and safeguard these units, and account for any sale proceeds received from prospective



purchasers by depositing such proceeds in a separate account under the supervision of this Hon'ble Court until the final resolution of the dispute.”

12. *Vide* Order dated 23.12.2024, learned senior counsel appearing for the Developer gave an undertaking that Developer shall not alienate/transfer/create third party rights in respect of the Owner's share and Owner's unit/s as described in Document P-20 annexed with the petition. Further, the Developer will not interfere with the Owner's possession/ownership/enjoyment of the said unit/s till the next date of hearing. The said undertaking on behalf of the Developer was further reiterated in the order dated 28.02.2025.
13. Pursuant to the undertaking, an application bearing No. I.A. 9179/2025 has been filed by the Developer seeking modification/clarification of the order dated 23.12.2024 to the extent that the Developer shall not, alienate/transfer/create third party rights in respect of the Owner's share and Owner's unit/s as described in Document P-20 read with Annexure 3, except **i)** for the 27 units already reallocated to the Developer as per Document P-17 and **ii)** Unit No. 70-04 and Unit No. G-105 which were sold prior to the date of passing of the Interim Order and in lieu of which Developer has offered to the Owner, Unit No. 60-06 and Unit No. G-99/ G-101.
14. At this juncture, it is relevant to mention that the petition under section 11 of the 1996 Act being ARB.P. 1275/2025 filed by the Owner has been allowed and the Arbitral Tribunal has been constituted *vide* Order dated 02.09.2025.

SUBMISSIONS



On behalf of the Owner

15. Mr. Sandeep Sethi, learned senior counsel vociferously submits that the Collaboration Agreement casts clear and unequivocal obligations upon the Developer to complete the Project in a strict timeframe and at its sole cost. The Project would be deemed to be completed only when full construction, completion of the facade, installation and functioning of services such as lifts and generators, and application for Occupancy Certificate⁹ has been made to the competent authority.
16. He submits that the Developer's claim that the Project stood completed in 2021 while placing relying on the partial OC dated 17.02.2021, is absolutely false and frivolous. The execution of various Agreements clearly show that the Project was far from complete and the Developer was facing acute financial crunch and it was the Owner who was continuously assisting the Developer financially also and extended the time for completion of the Project from time to time. Had the Project been completed on time, there was no need or requirement for the execution of the Supplemental Agreement-II dated 18.02.2021, Supplemental Agreement-III dated 16.06.2022, and the MOU-Escrow dated 31.05.2022. Hence, the OC dated 17.02.2021 is meaningless.
17. In addition, even the partial OC was cancelled on 10.02.2022 by Directorate of Town and Country Planning¹⁰ due to the Developer's default. On 28.08.2023, DTCP granted another OC. This second OC itself, after a gap of one and half year shows that the Project was far

⁹Hereinafter referred to as "OC".

¹⁰Hereinafter referred to as "DTCP".



from completion. It is a matter of fact that the Project is still not fully complete as contemplated to be completed as per the Collaboration Agreement.

18. He also submits that the Owner continued indulgence to the Developer and even permitted the Developer to raise Rs. 15 crores through an equitable mortgage, a right which was never available under any Agreement. Consequently, the parties entered into the MOU-Escrow dated 31.05.2022 to put the money in the escrow account. Till date, neither the escrow account has not been opened by the Developer nor any amount has been deposited.
19. He further states that despite repeated directions of this Court, the Developer, acting through its maintenance agencies, continues to obstruct access, withhold essential services, and harass the Owner. The so-called “Cancellation Notice” dated 23.08.2024, purporting to cancel the Owner’s allocations, is wholly devoid of contractual or legal authority. Under the Collaboration Agreement and the GPA, the Developer’s powers are confined strictly to its own share; it has no right to alienate, reallocate, or cancel the Owner’s Units in any form. Accordingly, the Developer must be restrained from further interference with the Owner’s Units and Booked Units, and from creating any third-party rights, whether directly or through its appointed maintenance agencies.
20. It is further contended that the Developer’s defaults extend well beyond delay. The safeguards specifically designed to address its financial indiscipline have been disregarded. The escrow mechanism envisaged under the MOU-Escrow and reaffirmed in Supplemental



Agreement-III was never operationalized. Instead, the Developer has continued to misuse its control over project revenues by diverting funds and raising untenable demands upon the Owner.

21. The Developer's monetary claims, particularly in relation to External Development Charges/Infrastructure Development Charges¹¹, are *ex facie* unsustainable. The figures relied upon are arbitrary and inflated; interest has been wrongfully clubbed under EDC/IDC though it forms no part of such charges. Other demands such as power backup, electrification, bulk power supply, and air-conditioning are contrary to the Collaboration Agreement. As per the Collaboration Agreement, these charges are to be paid by the Developer. Even if some amounts of EDC/IDC are to be paid, the same are minimal as compared to the amounts owed by the Developer to the Owner. Hence, the prayers for attachment of the Developer's unit is necessary as the owner has a *prima facie* case. Admittedly the Developer is in financial crunch and in case, the prayers are not granted, the Award may become a paper decree.
22. In light of the above, the balance of convenience lies in favour of the Owner. Without attachment, the Project and its stakeholders including the Owner and *bonafide* purchasers stand to suffer irreparable harm. The statutory requirements for interim reliefs as sought are clearly met: **(i)** the Owner has established a strong *prima facie* case, **(ii)** there is a real and imminent risk of alienation, and **(iii)** the refusal of relief would result in grave and irreversible prejudice.

On behalf of the Developer

¹¹Hereinafter referred to as "EDC/IDC".



23. Refuting the above submissions, Mr. Amit Sibal, learned senior counsel appearing for the Developer contends that after taking possession and conducting a joint demarcation of the Project land, the Developer discovered an encroachment by Mukesh Kumar and his family, which was promptly reported to the Owner. Under the Collaboration Agreement, it was the Owner's responsibility to provide the Developer with encumbrance-free land, an obligation that remains unfulfilled till date. The Owner has filed a suit for possession against Mukesh Kumar which is still pending before the District Court, Gurugram. The encroachment continues to exist and has caused delay in the Project and increased the cost of the Developer. It was this encroachment which resulted in delay in the issuance of OC.
24. Learned senior counsel further submits that the Project has already been completed, and the Developer has obtained two OCs dated 17.02.2021 (subsequently withdrawn on 10.02.2022 and restored on 17.05.2023) and 28.08.2023. Based on these OCs, possession of several units/shops has been handed over to the allottees, many of whom are now in occupation. However, the Developer is unable to apply for a Completion Certificate due to the continuing encroachment and the pending suit for possession over the Project land. As per Point No. 22 of the Completion Certificate Checklist, a declaration confirming that the land is free from encumbrances and disputes is mandatory, which is not possible until the encroachment is resolved.
25. He further refers to the order passed by the Civil Judge (Senior Division), Gurugram dated 07.12.2012 in CS No. 34751C filed by



Mukesh Kumar, whereby the Owner was restrained from demolishing the construction on the encroached portion except in accordance with law. The Owner later filed a Suit No. CS 1579/2020 seeking possession against Mukesh Kumar, which is still pending. As a result of this encroachment, construction activities that had commenced between 2012 and 2014 were forced to halt in 2014, despite the Developer having already completed construction of Full Basements - 2 and -1, Lower Ground (excluding the encroached area), Ground Floor and up to the 4th Floor, at an expense of about Rs. 40 crores. Subsequently, in 2019, the building plans had to be revised, converting the encroached service area into open parking, which caused additional delay.

26. Learned senior counsel contends that the Developer's cash inflows and sales declined on account of the land dispute and the interim restraint on the encroached portion. This prolonged dispute significantly escalated Project costs due to increased statutory charges before authorities such as Real Estate Regulatory Authority, National and State Consumer Disputes Redressal Commissions. The resulting financial crunch compelled the parties to execute Supplemental Agreements and forced the Developer to obtain external loans in order to continue the Project. Hence, reliance on the Supplemental Agreements to justify the delay is misplaced, as the delay stems solely from the Owner's failure to provide encumbrance-free land. In terms of Clause 2.7 of the Collaboration Agreement, the Owner cannot take advantage of its own default, and the period of litigation over the encroached portion must be excluded while assessing delays.



27. With respect to the escrow mechanism, Mr. Sibal submits that due to the encroachment, the escrow mechanism could not be implemented in its intended form. To ensure continued progress of the Project, the Developer was compelled to raise substantial external financing from Aditya Birla Finance Limited and other institutions such as Small Industries and Development Bank of India, in addition to amounts collected from allottees. These funds were deployed towards construction and Project development.
28. Accordingly, the Owner cannot claim that the Developer failed to comply with the escrow arrangement, especially when the parties mutually agreed on an alternative mechanism under the MOU dated 07.07.2022. Under this revised revenue-sharing arrangement, Aditya Birla Finance Limited disbursed Rs. 17 crores into the Developer's account, with the Owner expressly joining as a confirming party. These funds were utilised for completion of pending works, settlement of creditors, and payment of statutory liabilities, including EDC, which largely comprised the Owner's liability. Additionally, Rs. 7 crores were transferred directly into the Owner's account for payments to vendors and contractors engaged in the Project.
29. Despite deriving direct financial benefits from the MOU-Escrow, the Owner has deliberately failed to disclose this fact before this Hon'ble Court, thereby suppressing material facts and presenting an incomplete picture, solely to continue taking advantage of the interim order dated 23.12.2024.
30. The interim order dated 23.12.2024 passed by this Court on the basis of an alleged undertaking attributed to the Developer, is founded on an



incorrect factual premise given by the Owner. In its petition, the Owner has sought to mislead the Court in relation to 155 units. In this context, the Developer has sought modification of order dated 23.12.2024 and has prayed that this Court: **(i)** exclude the 27 units admittedly earmarked for the Developer, in which third-party rights have already crystallised with the knowledge and without objection of the Owner; and **(ii)** pass directions enabling the Owner to peacefully enjoy and possess only those units already in its possession.

31. As on the date of the interim order, the Owner was in possession of only 19 units (of which possession of three units have since been delivered). The Owner had no possession of any other units, as it had failed to discharge its obligation of paying the requisite possession charges. Further, out of the 155 units, 27 units had admittedly been earmarked in favour of the Developer. Of these, 19 units admeasuring 12,732.41 sq. ft. were earmarked under the Sales Agreement, while 8 units were otherwise allocated to the Developer, who was entitled to sell them in terms of Clause 8 of the Sales Agreement.
32. The Developer duly created third-party rights in respect of these 27 units and kept the Owner informed of such sales/transactions by way of emails dated 31.03.2023 and 01.04.2023. The email dated 01.04.2023 specifically apprised the Owner of such sales, and this fact has never been disputed. In fact, seven conveyance deeds have already been executed for some of these units, which is an admitted position. Despite this, the Owner deliberately suppressed in its petition the fact of existing third-party rights created by the Developer with the Owner's full knowledge, long before the filing of the present petition



or the emergence of any dispute between the parties.

33. Mr. Sibal submits that the relief presently sought by the Owner claiming possession of units under the guise of an interim measure, amounts in substance to the grant of final relief and is impermissible in law.

ANALYSIS AND FINDINGS

34. I have heard the rival contentions advanced by the learned senior counsel for the parties and perused the material available on record.
35. The law with regard to the scope and jurisdiction under section 9 of 1996 Act is already settled. In ***Essar House (P) Ltd. v. Arcellor Mittal Nippon Steel (India) Ltd., (2022) 20 SCC 178***, the Hon'ble Supreme Court observed as under:-

“88. Applications for interim relief are inherently applications which are required to be disposed of urgently. Interim relief is granted in aid of final relief. The object is to ensure protection of the property being the subject-matter of arbitration and/or otherwise ensure that the arbitration proceedings do not become infructuous and the arbitral award does not become an award on paper, of no real value.

89. The principles for grant of interim relief are (i) good prima facie case, (ii) balance of convenience in favour of grant of interim relief and (iii) irreparable injury or loss to the applicant for interim relief. Unless applications for interim measures are decided expeditiously, irreparable injury or prejudice may be caused to the party seeking



interim relief.

90. It could, therefore, never have been the legislative intent that even after an application under Section 9 is finally heard, relief would have to be declined and the parties be remitted to their remedy under Section 17.

91. When an application has already been taken up for consideration and is in the process of consideration or has already been considered, the question of examining whether remedy under Section 17 is efficacious or not would not arise. The requirement to conduct the exercise arises only when the application is being entertained and/or taken up for consideration. As observed above, there could be numerous reasons which render the remedy under Section 17 inefficacious. To cite an example, the different arbitrators constituting an Arbitral Tribunal could be located at far away places and not in a position to assemble immediately. In such a case, an application for urgent interim relief may have to be entertained by the Court under Section 9(1).”

- 36.** On perusal, the interim relief is to be granted based on three principles: a good *prima facie* case, balance of convenience, and risk of irreparable harm and loss. It is also clear that this Court, while exercising jurisdiction under section 9 of 1996 Act, is to only preserve/protect the subject matter of arbitral dispute and ensure that the Arbitral Award does not become ineffective. The triple test must be satisfied to grant the relief under section 9 of the 1996 Act.



37. Additionally, the 1996 Act does not envisage two trials/adjudication i.e. summary adjudication by the Court under section 9 of 1996 Act and the final adjudication by the Arbitral Tribunal. The said principle has been recognised by a Division Bench of this Court in ***National Highways Authority of India v. Bhubaneswar Expressway Private Limited, 2021 SCC OnLine Del 2421***. Hence, the intention of the legislature is clear that the merits of the claims need not be decided by this Court under section 9 of the 1996 Act. If the triple test is satisfied under section 9 of the 1996 Act then the Court must “preserve” the subject matter of the dispute and leave it for the Arbitral Tribunal to decide the entire gamut of dispute. Overall, this Court cannot conduct a mini-trial of the dispute or deliver findings on contentious issues which tread upon the domain of the Arbitral Tribunal.
38. It is an admitted case that as per the Collaboration Agreement, Owner is the titleholder of the land and has entered into the said Agreement with the Developer who was obligated to develop the Project on the land. It is relevant to note that the said Agreement was entered in the year 2011 and presently in 2025, i.e. after fourteen years, the Project is still not fully completed as per the Collaboration Agreement. Both the Owner and the Developer have given detailed reasons for not completing the Project on time, blaming each other for being entirely responsible for the delays.
39. The case set up by the Owner is that the Developer has continuously delayed the completion of the Project and despite repeated extensions and also giving no objection certificate to mortgage of Developer’s share, the Project is still not completed. Further, the Developer failed



to operationalize the escrow account and has diverted funds as the developer did not have the financial wherewithal for completion of the Project. In addition, the Developer illegally tried to cancel Owner's share, hence, the prayers extracted above. In contrast, the Developer has stated that the delay has only been caused by Owner's failure to provide encumbrance-free land (encroachment of Mukesh Kumar and his family) and the Project has been substantially completed. Also, the Owner has suppressed material facts and the reliefs sought are in the nature of final relief. Additionally, the Owner is required to pay maintenance charges and in the absence of the same, the Owner cannot claim to deal with its allotted units.

40. It is to be noted that the Arbitral Tribunal has already been constituted *vide* order dated 02.09.2025. Therefore, the merits of the rival claims, including whether the delay in completion of the Project is attributable to encroachment on the land or is due to the Developer's financial constraints and whether the 27 units form part of the Owner's 155 units or were validly reallocated to the Developer, lie exclusively within the domain of the Arbitral Tribunal to decide.
41. Having said so, certain admitted facts weigh in favour of the Owner for grant of interim protection. It is undisputed that the Owner is the titleholder of the land on which the Project is being developed. The Collaboration Agreement does not divest the ownership/possession of the Owner for its enjoyment. Further, the Owner gave no objection for availing loan by mortgaging the Developer's portion in view of financial difficulties faced by the Developer to complete the Project which shows the financial constraints of the Developer. Yet, the



Project remains incomplete more than fourteen years after the Collaboration Agreement of 2011 despite various Agreements including three Supplemental Agreements executed extending the timelines. As noted above, whether such delay was occurred by the Owner or by the Developer is purely a question which the Arbitral Tribunal shall decide but the undeniable fact is that the Project stands incomplete even today.

42. Another factor which weighs is that the Developer failed to operationalize the escrow account as contemplated in the MOU-Escrow and Supplemental Agreement-III. The escrow arrangement was specifically designed as a safeguard against financial mismanagement. Admittedly, neither the escrow account has been opened nor Rs. 50 lakhs have been infused into the said account by the Developer. Relevant clauses of MoU-Escrow are extracted below:-

“2. VSR absolutely agreed that for carrying out the left out work in the project defined in Annexure-I is to be controlled, inspected & supervised by the Owner which is to be executed by the VSR and to complete the left out work an escrow account by the parties will be opened with the designated Bank.

3. VSR for execution of left out work and prior to procuring required Material, Man Power, etc will obtain the approval thereof in writing from the AMD relating to its specification, quality, quantity, finalization of quotation etc. The payment of invoice (s) relating to deployment of man power, consumption/delivery of material at site, will be released



from the Escrow Account under the sole signature of AMD's Representative by recording its full satisfaction, upon receiving request in writing from VSR. AMD will immediately release the payment within 05 working days of submission of invoices, if the invoices are in accordance with the budget annexed. In case, there is any upward deviation from the budget, then both the parties will sit and resolve the same.

4. The left Out Work will be completed as soon as/earliest possible by deploying full force and all endeavors shall be completed without break in execution occurs at any time.

5. VSR undertakes to complete the Left Work within a period of 06 (six) months.

6. VSR & AMD both will approach to Bank for opening of Escrow Account, its sole signatory for operation, will be Owner/AMD's representative. The VSR at the time of opening of the account will infuse an amount of Rs. 50 Lakhs (Rupees Fifty Lakhs only) and 50 Lakhs within a period of 30 days and henceforth all sales/Revenue of VSR to be received/collected from the prospective Buyer shall be deposited in the Escrow Account.”

(Emphasis added)

43. From the above narration of facts, the Owner contributed land admeasuring 2.968 acres to the Project. The Developer, as part of the contractual obligation, expended money. Further, as agreed by the parties, the share of the Owner in the Project is 31.78% and the



Developer is 68.22%. As the Developer did not have the financial resources, the Owner gave considerable latitude by executing 3 Supplemental Agreements. This fact, coupled with the repeated extensions and indulgences granted by the Owner, creates a strong *prima facie* case that an interim protection is warranted to secure the Owner's share from further jeopardy.

44. A Co-ordinate bench of this Court in ***Sham Lal v. Rajinder Kumar, 1994 SCC OnLine Del 476*** explaining the term “possession”, observed as under:-

“13. Possession is flexible term and is not necessarily restricted to mere actual possession of the property. The legal conception of possession may be in various forms. The two elements of possession are the corpus and the animus. A person though in physical possession may not be in possession in the eye of law, if the animus be lacking. On the contrary, to be in possession, it is not necessary that one must be in actual physical contact. To gain the complete idea of possession, one must consider

- (i) the person possessing,*
- (ii) the things possessed and,*
- (iii) the persons excluded from possession.*

A man may hold an object without claiming any interest therein for himself. A servant though holding an object, holds it for his master. He has, therefore, merely custody of the thing and not the possession which would always be with the master though the master may not be in actual



contact of the thing. It is in this light in which the concept of possession has to be understood in the context of a servant and a master.”

(Emphasis added)

45. On perusal, it is clear that there are two types of possession, namely **i)** Actual Possession, and **ii)** Legal Possession. In the present case, the Owner may not be in actual possession of the Project land but the legal possession remains with the Owner. The Owner is still the titleholder and legal possessor of the Project land and its allocated share of units while the Developer only had possession as a licensee/agent for the purpose of construction and development, not ownership. Hence, the Owner’s legal possession continues, and the Developer cannot assert rights over the Owner’s share beyond the scope of the Collaboration Agreement.
46. Despite being the title holder of the land and parting with land over so many years, the Owner has not been able to enjoy its fruits. Hence, the balance of convenience lies in favour of the Owner to restrain the Developer from transferring or alienating any of the Owner’s share. Additionally, no fetters can be put on the Owner to use or enjoy of its allotted units.
47. The Owner will suffer irreparable harm and loss if the Developer is permitted to create any third party rights or interfere in the Owner’s ownership/possession. The Developer on its own gave undertaking that the Developer shall not, in any manner, alienate/transfer/create third party rights in respect of the Owner’s share/unit as described in Document P-20 and the Developer shall also not interfere with the



Owner's possession/ownership/enjoyment of the said unit, as recorded in the order dated 23.12.2024. The same was reiterated by the Developer recorded in the order dated 28.02.2025. Continuation of such protection is necessary to safeguard the Owner's interest in the Project.

48. For the said reasons, at this stage, I am satisfied that the petition needs to be allowed as the Owner has established a *prima facie* case, the balance of convenience lies in favour of the Owner, and refusal of relief would cause irreparable harm and loss.
49. Even though the Developer has sought to withdraw the undertaking dated 23.12.2024 and 28.02.2025 and has moved an application bearing No. 9179/2025 for the same, it is directed that till the Arbitral Tribunal adjudicates the disputes on merits, the Developer is restrained from alienating, transferring, creating third party rights in respect of the Owner's share/unit as described in Document P-20 and also, shall not interfere or obstruct in the enjoyment of the rights of the Owner to deal with its share/ units as described in Document P-20.
50. Needless to add, if and when any application under section 17 of 1996 Act is filed by any of the parties before the Arbitral Tribunal for any other relief not adjudicated by or prayed before this Court, the Arbitral Tribunal shall decide the same in accordance with law.
51. The petition is disposed of along with pending applications, if any.
CCP(O) 10/2025, CCP(O) 34/2025, CCP(O) 55/2025&CCP(O) 85/2025 in O.M.P.(I) (COMM.) 438/2024
52. These are petitions seeking contempt proceedings against the Developer for wilful disobedience of the orders dated 23.12.2024,



28.02.2025, 13.05.2025.

53. Since these petitions raise disputed questions of facts, the petitions are disposed of with liberty to revive the same after the disputed question of facts are adjudicated and decided by the Arbitral Tribunal.

O.M.P.(I) (COMM.) 231/2025

54. The present petition has been filed by the Developer seeking the following substantial reliefs against the Owner:-

“a) Grant an ad interim ex-parte injunction from alienating, selling, transferring, creating third party rights or otherwise dispose of the units listed in Part B of the Document P-21 earmarked to the Respondent in the event it proposes or attempts to sell them at a rate less than the rate stipulated by the Petitioner for sale of the Project in terms of Clause 3 .12 of the Collaboration Agreement;

b) Grant an ad interim ex-parte injunction restraining the Respondent, its officers, agents, assignees, successors- in interest or any other person acting on their behalf from forcibly, assuming possession of the Units sold in violation of Clause 3 .12 of the Collaboration Agreement, duly listed in Part B of the Document P-21 until the matter is adjudicated through arbitration;

c) Grant an ad interim ex-parte injunction restraining the Respondent, its officers, agents, assignees, successors- in interest or any other person acting on their behalf from, alienating, selling, transferring, creating third party rights, dispose of or assuming the possession of the Units listed in



Part B of the Document P-21 until the matter is adjudicated through arbitration;

d) Pass an ad interim order against the Respondent to provide and submit to this Hon'ble Court copies of the Builder Buyer Agreement/ Agreement for Sale and Conveyance Deeds, where ever executed in respect of sale of units earmarked to Respondents;”

55. The said reliefs have been sought on the ground that the Owners are acting contrary and more particularly to clause 3.12 of the Collaboration Agreement wherein the Developer has a Right of First Refusal¹² for the purchase of Units of Owner's allocation in the event it proposes or attempts to sell at a rate less than the rate fixed by Developer. It is alleged that the Owner has, without any information and without giving 15 days' notice to the Developer, sold certain units below the threshold price fixed by the Developer to third parties without offering ROFR to the Developer.
56. It is further alleged that the Owners are forcefully and illegally seeking possession of the units (which are currently under the lawful possession of the Developer) without payment of Government and other charges violating *inter alia* Clause 4.5, 4.6, 6.1 of the Collaboration Agreement, causing extreme prejudice to the Developer.

Submissions

On behalf of the Developer

57. Mr. Sibal, learned Senior Counsel for the Developer, submits that

¹²Hereinafter referred to as “ROFR”



under Clause 3.12 of the Collaboration Agreement, the Developer is vested with an unequivocal contractual ROFR in respect of the units earmarked for the Owner. The Developer has consistently fixed the selling price of the Project and duly informed the Owner, most recently *vide* its email dated 17.05.2022. However, in blatant violation of Clause 3.12, the Owner has executed conveyance deeds for multiple units at prices lower than those specified and communicated by the Developer, without first offering them to the Developer. The ROFR under Clause 3.12 constitutes a special right relating to immovable property, enforceable through specific performance. It is neither a mere monetary claim nor a reciprocal obligation. The Developer has suffered significant financial losses as a result of the Owner's frequent violations of the Developer's ROFR.

58. Learned senior counsel further argues that the primary objective of interim protection is to preserve the subject matter of arbitral dispute and to ensure that the arbitral proceedings are not rendered ineffective. Unless this Court grants urgent protective reliefs to preserve the Developer's rights, the remedy of interim measures under section 17 of the Arbitration and Conciliation Act, 1996 would be rendered meaningless.
59. Further, ROFR is right which if violated cannot be compensated in terms of money and if the Owner is not restrained from the execution of the conveyance deeds selling their share in the Project then the Developer having being permitted to exercise its valuable right under clause 3.12 of the Collaboration Agreement would be rendered otiose.
60. Mr. Sibal also argues that if the Owner is not restrained from



alienating or creating third-party rights in breach of Clause 3.12, several issues will arise and then third-party allottees, though not signatories to the Collaboration Agreement, will have to be impleaded in the arbitral proceedings and may face cancellation of their conveyance deeds pursuant to claims for specific performance. Considering their non-signatory status, even if an Award is passed in favour of the Developer under Clause 3.12, the same may become ineffective and incapable of enforcement. Hence, the very purpose of arbitration would be defeated if execution of conveyance deeds are continued in violation of the Developer's ROFR extinguishing the subject matter in dispute which will further trigger a multiplicity of litigations with third-party allottees, including applications seeking cancellation of conveyance deeds executed in their favour.

On behalf of the Owner

61. Mr. Sethi, learned Senior Counsel appearing for the Owner submits that the Developer's assertion of a ROFR under Clause 3.12 of the Collaboration Agreement is nothing more than a belated afterthought. For years, while the Owner executed numerous sale transactions with the Developer's full knowledge, no such claim was ever raised. Its sudden invocation in the midst of litigation, after prolonged defaults and contentious correspondence, is an attempt intended to obstruct the Owner's rights and deflect attention from the Developer's own breaches.
62. With respect to Clause 3.12, learned senior counsel submits that the same is narrowly worded and subject to two requirements: *(i) the Developer must first set a price for the Project units to be sold, and*



(ii) the Owner must then offer to sell at a price below the “rate fixed”.

Under such conditions, a duty of notice may arise. The clause does not grant an absolute or unfettered ROFR. Furthermore, Clause 3.12 is ambiguous as the Collaboration Agreement offers no system for determining or recording such rates. The Developer has never set a rate in the way that was intended, and its claim of “mutual agreement” on rates is untrue and unbacked up by any correspondence, email, or contemporaneous record.

63. The Developer’s reliance on its e-mail dated 17.05.2022, is misconceived as the said e-mail is an isolated message that makes no mention of Clause 3.12. It lacks any subject, context, or explanation, does not identify itself as a notice, and does not state that the amounts attached with the e-mail are the “fixed rates”. The attachment to the email itself is ambiguous as it does not specify if the numbers reflect basic sale prices or offer a breakdown of fees. Clause 3.12 of the contract requires a formal rate determination, which such inadequate communication cannot in any way meet.
64. In addition, the Developer’s own contemporaneous conveyance deeds demonstrate that the Developer sold similar units for significantly less than the purported “benchmark” rates. The Developer cannot selectively depend on the so-called rates to limit the Owner because it has ignored them in its own transactions. Hence, the petition is misconceived and *malafide*.

ANALYSIS AND FINDINGS

65. Heard learned senior counsel for the parties.
66. The entire controversy evolves upon the enforceability of Clause 3.12



of the Collaboration Agreement. The Developer has argued that this provision grants a binding ROFR over the Owner's allocation of units/share, thereby the Developer is to be offered the first opportunity to purchase such units before the Owner can sell them to third parties at a rate lower than that fixed by the Developer. Hence, non-adherence to the said clause will affect the subject matter of the arbitral dispute which this Court, in section 9 petition, is bound to preserve. In contrast, the Owner contends that the said clause is vague, conditional, and incapable of enforcement in the manner projected by the Developer as the email dated 17.05.2022 does not refer to the said Clause.

67. It is relevant to extract the Clause 3.12 of the Collaboration Agreement:-

“3.12 The Developer shall have a right of first refusal for the sale of Units of Owner's allocation in the event the Owner proposes or attempts to sell at a rate less than the rate fixed by Developer for sale of the Proposed Project. The Owner shall serve a 15 days written notice for sale/ conveyance/ transfer of Units in case it proposed to sell at a rate less than the rate fixed by Developer as mentioned above on Developer to enable Developer to exercise its right of first refusal.”

68. On perusal, Clause 3.12 is not a standalone covenant as there are two distinct pre-requisites: **(i)** the fixing of a base sale price by the Developer, and **(ii)** the Owner, if seeking to sell below the rate fixed by the Developer, must give 15 days' notice so as to enable the



Developer to exercise ROFR. Unless both these conditions are satisfied in a clear and unambiguous manner, no enforceable ROFR can be said to arise.

69. The document relied upon by the Developer and more particularly the e-mail dated 17.05.2022 requires scrutiny/consideration. The same is extracted below:-

Mehak

From: Vivek Seth
Sent: 20 January 2025 07:31
To: Vishal Swara; Vishal Swara
Cc: Mehak
Subject: Fw: Price List-
Attachments: 114 avenue.xlsx

fyip

[Get Outlook for iQS](#)

From: Vivek Seth <vivek.seth@vsrinfratech.in>
Sent: Tuesday, May 17, 2022 4:08 PM
To: 'Prabir Mukhopadhyay' <prabir@amdindustries.com>
Cc: 'Ashok Gupta' <agupta@amdindustries.com>; Vishal Swara <vishal@vsrinfratech.in>
Subject: Price List-

Thanks & Regards

Vivek Seth



VSR Infratech Pvt. Ltd.

Plot No.14, Ground Floor, Sector-44, Institutional Area,
Near HUDA City Centre Metro Station, Gurgaon - 122003, Haryana
Phone: +91 124 6753700 -07, 4085578, Extn: 1504,
Mobile: +91 9810266449,
E-Mail : vivek.seth@vsrinfratech.in ; Website: www.vsrinfratech.in

J Trees are the Best Antiques. Think Before You Print...
Courtesy cannot be achieved by doing big things. If you really want to be great, do small things in a great way.

DISCLAIMER: The information contained in this electronic message and any attachments to this message are intended for the exclusive use of the addressee(s) and may contain proprietary, confidential or privileged information. If you are not the intended recipient, you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately and destroy all copies of this message and any attachments.

WARNING: Computer viruses can be transmitted via email. The recipient should check this email and any attachments for the presence of viruses. The company accepts no liability for any damage caused by any virus transmitted by this email.



VSR UNITS PRICE LIST - 114 AVENUE				
FLOOR	SALE PRICE(In Rs. Per Sq.ft)	AR/RENTAL (AMT)	AR/RENTAL (PERIOD)	BROKERAGE
LGF	10700	6.5% LR		6%
Ground Floor (Retail)	25000	No Lease	No	10%
First Floor (Retail)	18000	No Lease	1 Yr- 8% or First Lease whichever is earlier	10%
Second Floor (Food Court)	-		-	-
Office	9000	No Lease		10%

70. The said e-mail, while showing indicative pricing, does not expressly refer to Clause 3.12, nor does it contain wordings like “rate fixation”. Further, it is devoid of contemporaneous correspondence that could establish mutual acceptance of the said figures as binding rates. Hence, the Developer has not discharged its burden of establishing that a binding rate was duly fixed under the Agreement. The said email is only an indication of the rates but not a definitive exercise of contractual rate fixation. In order to fall within clause 3.12, the Developer needs to be clear and unambiguous and put the Owner to the notice that the rate fix by the Developer is the base sale price and the Developer is ready and willing to buy at the said rate. All of the above is missing from the said email. Therefore, the said e-mail does not meet the first pre-requisite condition.
71. Further, Clause 3.12, though couched as a protective covenant, cannot be stretched beyond its plain language. The absence of an unequivocal and contemporaneous fixation of rates by the Developer means that



the pre-condition for invocation of ROFR stands unfulfilled.

72. The Developer's own contemporaneous transactions belie its stand. The Developer itself executed conveyance deeds (filed on record by the Owner as Document R-15) showing prices lower than those alleged to be the "fixed" rates. Such conduct significantly erodes the credibility of the Developer's plea, a party cannot approbate and reprobate, insisting on strict adherence to the rates by the Owner while itself transacting in derogation of those very benchmarks.
73. Another factor i.e. "irreparable injury" also does not weigh in favour of the Developer. Even assuming arguendo that there is a breach of Clause 3.12 of the Collaboration Agreement, the harm complained of (that continued alienation by the Owner may complicate arbitral proceedings by introducing third-party transferees who are not signatories to the Collaboration Agreement, thereby leading to multiplicity of proceedings) is compensable in damages. Conveyance deeds executed by the Owner would always be available, and the Developer, if successful before the Arbitral Tribunal, can be adequately compensated by monetary reliefs.
74. In addition, the relief sought by the Developer restraining the Owner from dealing with its own allocation would impose serious fetters, effectively amounting to a partial transfer of ownership control at an interlocutory stage. Such a relief can be granted only upon a *prima facie* case, which is absent here.
75. In view of the above, I am of the view that the Developer has failed to establish a *prima facie* case of enforceable ROFR under Clause 3.12 with the clarity and consistency necessary to warrant the interim



reliefs as sought at this stage.

76. Accordingly, the present petition is dismissed.
77. Needless to add, if and when any application under section 17 of 1996 Act is filed by any of the parties before the Arbitral Tribunal for any other relief not adjudicated by or prayed before this Court, the Arbitral Tribunal shall decide the same in accordance with law.
78. Pending applications, if any, stand disposed of.

JASMEET SINGH, J

OCTOBER 10th, 2025/(MSQ)