



2 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-CARB-4-2026(O&M)

Date of decision: 23.03.2026

M/s Lotus Realtech Private Limited

...Appellant

Vs.

Ashok Kumar Jain and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ASHWANI KUMAR MISHRA
HON'BLE MR. JUSTICE ROHIT KAPOOR

Present: Mr. Gaurav Singh, Advocate
Mr. Himanshu Chhabra, Advocate
for the appellant.

ASHWANI KUMAR MISHRA, J. (Oral)

1. This appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') seeks to challenge an order passed by the Commercial Court, Gurugram dated 15.10.2025, whereby the application filed by the appellant under Section 9 of the Act has been rejected.

2. The primary ground for rejection of the application is that an Arbitrator already stands appointed pursuant to the arbitration agreement entered into between the parties and that the appropriate cause for the appellant would be to approach the Arbitrator under Section 17 of the Act. The order of the Commercial Court is assailed on the ground that the nature of bringing the matter before the Commercial Court under Section 9 of the Act has distinct attributes and such issues could not have been gone into in proceedings under Section 17 of the Act.

3. The records would indicate that an agreement has been entered into between the appellant with respondents conferring right on the



respondents to undertake real estate development on a portion of land measuring 40 kanals 15 marlas situated in village Chauma, Tehsil & District Gurugram. This agreement was executed into between the parties on 14.08.2013. It is undisputed that possession of such land has been given to the appellant and 830 residential units have been constructed on such land. The buyers of these flats have been transferred the property by way of registered deeds and most of them are in possession over their units. There is no challenge to the transfers made in favour of the purchasers of these houses.

4. It transpires that there are three civil suits instituted in respect of the property in question against the respondents. All the suits are instituted by the family members i.e. sons and daughter-in-law of the respondents. These suits are pending since the year 2014. The appellant is a party in these civil proceedings and not only the transfer but most of the constructions have been made pursuant to the Collaboration Agreement during the pendency of the suit. It is a matter of record that while these constructions were being raised or transferred or the houses constructed were being transferred, no issue was raised by the appellant to the Collaboration Agreement on the ground of pendency of civil dispute.

5. It transpires that subsequent in point of time differences have arisen between the appellant and the respondents with regard to their *inter se* liability arising out of the Collaboration Agreement. The dispute is with regard to apportionment of revenue generated out of the Real Estate project undertaken on the land of the respondents by the appellant.

6. After the dispute has arisen between the parties, the matter has been referred to the Arbitrator. It has come on record by way of reply filed by



the respondents to Section 9 of the application that the arbitration proceedings are almost at the final stage. After the completion of cross-examination of claimant-respondent, the cross-examination of the appellant's authorized person is midway. However, the appellant's authorized representative is stated to have not appeared before the Arbitrator on the date fixed, as a result of which, the matter is pending before the Arbitrator.

7. It further transpires on record that the appellant has filed an application under Section 12(3) of the Act seeking termination of the arbitration proceedings under Section 14 of the Act, which has been dismissed by the Arbitrator vide order passed on 20.08.2025. The relevant portion of this order has been extracted in para 9 of the reply filed to the application under Section 9 of the Act, which is reproduced hereinafter:-

"9. That on this aspect of title, the Arbitral Tribunal has already given its finding in its order dated 20.08.2025 while dismissing the application filed by the applicant under section 12(3) seeking termination of the arbitration proceeding under section 14 as under:-

"Next ground is that the claimant could not have transferred the land in question. This issue has never come up before me, nor is there any pleading to this effect hence no comment called for. Moreover there is no pleading to this effect on behalf of the respondent now.

Now comes the legal matter raised on behalf of the respondent in its application. It is that in respect of the land several cases(cited) are pending hence the matter cannot be decided by the arbitrator and the arbitration proceedings needs be terminated.

At the first place it is proper to mention that the



respondent was aware of these cases right since 2014 and 2015, as it was also a party to the matter, but this issue was never raised within the limitation provided for three years and thus barred by limitation. Not only that the respondent did not raise the issue till now but while arguing the application under Section 11(6) of the Act, before the Hon'ble High Court, it was mentioned on behalf of the respondent that there was no dispute between the parties. This averment of the respondent has been mentioned in the order of the Hon'ble High Court in its order dated 24.09.2024 whereby the arbitrator(myself) was appointed.

Apart from it in the collaboration agreement and the MOU both there is a categorical mention that they have jointly checked, verified and have also done due diligence of the title of the said lands and have satisfied themselves that the title of the said lands is clear and there is no dispute in the said lands and the same are free from encumbrances, mortgages, charges, liens, hypothecation, attachments, liabilities, tenancy, unauthorized occupation, claims and litigations etc.

There is yet another reason to turn down the application of the respondent. The matter in the civil litigation (Cited) is about the ownership and possession of the land whereas the matter in the present case is accountancy between the parties, whereby the claimant is levelling allegations against the respondent that it has not given the due amount of money to them. On the contrary, the case of the 6 respondent is that the claimant is responsible in delaying the completion on of the construction and



thus liable to compensate the same. In view of the same, the matter in civil suits and the present arbitration are different and does not clash with each other. Thus, it is evident that the matter in the civil cases and the present arbitration is clearly different and it was never raised by the respondent in its pleading. To my opinion the pendency of civil cases cited have a different arena and the same has no clash with the present arbitration hence there is no scope at all to terminate the proceedings under the provisions of Section 14 of the Act."

8. The order passed by the Arbitrator rejecting such proceedings have not been challenged.

9. It has also been brought on record that an earlier application under Section 9 of the Act was filed by the appellant, wherein a direction was issued to deposit certain amount in fixed deposit. An issue was then raised with regard to release of such amount. This order is also sought to be assailed in the present proceedings. It also appears that the Arbitral Tribunal has issued directions to furnish Bank account statements pertaining to the respective accounts for the purposes of ascertaining correct facts and for examining the claim of the respondents that there is a misappropriation of escrow funds.

10. It is in this context that while arbitration proceedings are pending, the appellant has moved an application under Section 9 of the Act, wherein the prayer made is as under:-

PRAYER

It is therefore most respectfully prayed that this Hon'ble Court may be pleased:



(i) to allow the present application under Section 9 of the Arbitration and Conciliation Act, thereby directing Shri Ashok Kumar Jain and Smt Jaishree Jain to deposit the sum of rupees four hundred crore in the form of FDR till the issue of title becomes clear.

(ii) to keep in abeyance or set aside the order dated 18.07.25 passed by the Ld. Arbitral Tribunal being beyond its powers as it tantamount to issuing directions to this Hon'ble Court release the deposited FDR to the respondent claimant which is not permissible under the law.

(iii) to set aside the order dated 18.07.2025 on respondent's application under Section 27 of the Arbitration and Conciliation Act, being beyond jurisdiction of the Arbitral Tribunal when the same are not relevant in view of quantified claim in respect of which this Hon'ble court had directed the deposit of FDR.

(iv) to issue directions to confine its proceedings conforming to law and the principles of natural justice and to act in an unprejudiced manner, impartially and in all fairness to maintain dignity of law.

(v) any other relief this Hon'ble court may deem just and fair in the peculiar facts and circumstances of the case, in the interest of justice.

11. Then the prayer made is to direct the respondents to deposit a sum of Rs. 400 crore in the form of FDR till the issue of title becomes clear. Prayer is also made to set aside the order dated 17.07.2025 passed by the Arbitral Tribunal for releasing the FDR in favour of the claimant-respondent. A declaration is also sought that the order dated 17.07.2025 is without jurisdiction.



12. So far as the challenge to the order dated 17.07.2025 passed by the Arbitral Tribunal is concerned, we are at our wits' end to appreciate and understand as to how such order could be challenged in proceedings under Section 9 of the Act. An order passed by the Arbitral Tribunal can only be challenged in proceedings under Section 34 of the Act as the order of the Arbitral Tribunal, in law, would tantamount to an interim award.

13. So far as the title dispute with regard to land in question is concerned, those issues are already pending in Civil Suits where the appellant is a party. There is no injunction or any other restraint order passed against the appellant in such proceedings. The Collaboration Agreement was also given effect to during pendency of the suit and the appellant was always aware of such proceedings. It is in this context that we are required to examine as to whether an application at this belated stage could have been filed by the appellant before the Commercial Court when the remedy before the Arbitrator was available.

14. The Commercial Court relying upon the judgment of the Hon'ble Supreme Court in '*Arcelor Mittal Nippon Steel India Ltd. Vs. Essar Bulk Terminal Ltd.*', (2022) 1 SCC 712, has observed that the remedy available to the appellant would be before the Arbitrator by filing an application under Section 17 of the Act.

15. We are in agreement with the view expressed by the Commercial Court for not entertaining the application under Section 9 of the Act.

16. The distinguishing facts which are sought to be highlighted on behalf of the appellant so as to emphasize upon the distinction in the scope of jurisdiction under Sections 9 and 17 of the Act, are apparently misconceived in



the peculiar facts of the present case.

17. We are of the view that the facts of the case, as noticed above, do not make out a case for entertainment of application under Section 9 of the Act when the arbitration proceedings, otherwise, are at such advance stage. We are also conscious of the fact that any civil dispute in respect of property in question would be a distinct and different aspect to be gone into in appropriate proceedings. The appellant cannot take shelter of such proceedings so as to make out a case of extreme urgency or distinct facts so as to bypass the normal remedy available to one of the parties to arbitration proceedings under Section 17 of the Act.

18. The appeal consequently lacks merit and is **dismissed**.

19. Before we conclude, we may indicate that the insistence on the part of the appellant to pursue the remedy under Section 9 of the Act, notwithstanding the availability of filing petition before the Arbitrator under Section 17 of the Act, appears to be with an intent to indulge in forum shopping. We deprecate this fact.

20. Pending application(s), if any, stand(s) disposed of.

(ASHWANI KUMAR MISHRA)
JUDGE

(ROHIT KAPOOR)
JUDGE

23.03.2026

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Whether speaking/reasoned :
Whether Reportable :

Yes	No
Yes	No