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

\# **CNR No. DLHC010421312026**

\+ ARB. A. (COMM.) 64/2026, I.A. 24524/2026, I.A. 24525/2026

PRATAP AND ORS. .....Petitioners
Through: Mr. Pragyan Pradip Sharma, Mr. P. Yadav, Mr. Aman, Advs.

versus

HOMETOWN PROPERTIES PRIVATE LIMITED AND ANR. .....Respondents
Through: Mr. Sameer Jain, Ms. Anu Sura, Ms. Prerna Singh, Ms. Anam Khan, Advs.

CORAM:
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT(ORAL)

% **08.09.2026**

1. This is an appeal under section 37(2)(b) of the Arbitration and Conciliation act 1996[1], read with Section 13 of the Commercial Courts Act, 2015 assailing the order dated 11.08.2026 passed by the learned Sole Arbitrator.

2. The dispute arises from a Collaboration Agreement dated 29.10.2010 concerning development of land at Village Sihi, Gurugram.

3. It is the case of the appellants that they were entitled to a share in the developed project, at 30% of the saleable area, with Clause 8 of subject agreement providing for earmarking of the Appellant's

[1] "the Act" hereinafter

entitlement in one consolidated block.

4. Subsequently, disputes arose regarding allocation of the appellants' share and alleged creation of third-party rights. Thereafter, this court *vide* order dated 17.01.2025, directed maintenance of *status quo* regarding title and possession, which continued before the Arbitral Tribunal as interim protection under Section 17.

5. Before the arbitral tribunal, an independent expert was appointed who submitted its report on the project area and the extent of the Appellants' share.

6. By order dated 11.08.2026, the Sole Arbitrator modified the earlier *status quo* order and restricted the injunction to the areas marked Yellow and Orange in the Respondent's maps and Restaurants 6 and 7 on the third floor of Block 1, while releasing the remainder of the project from restraint.

7. Consequently, the Appellants have challenged this order under Section 37(2)(b), contending that the modified protection does not adequately preserve their alleged contractual right to a consolidated allocation.

8. Mr. Pragyan Pradip Sharma, learned Counsel for the Appellant submits that by protecting only the Yellow, Orange and limited Blue areas identified substantially on the basis of the Respondents' own maps, the Tribunal has effectively allowed the Developer to determine the Appellants' allocation, even though the very authority of the

Developer to make such unilateral allocation is disputed in the arbitration.

9. Mr. Sharma submits that the impugned order dilutes the subject matter of the arbitration because, once the remaining portions of the project are released and third party rights are created, the Appellants' claimed right to obtain a consolidated block may become impossible to enforce even if they ultimately succeed.

10. It is submitted that the impugned order causes irreparable prejudice because commercially valuable portions may now be alienated, which would lead to appellant being allotted with scattered or inferior units instead of the consolidated allocation they claim under clause 8 of the subject agreement.

11. *Per contra,* learned Counsel for the Respondent submits that the allocation dispute is not new. She submits that late Dharam Singh had already agreed to an allocation in 2019 and that the allocation was communicated to him by the letter dated 18.03.2019.

12. According to her, Respondent were also holding a power of attorney enabling them to sell the units, pursuant to which substantial portions of the project were sold and third party rights were created with Dharam Singh's knowledge and consent. She submits that the present legal heirs cannot, after several years, reject the allocation allegedly accepted by their predecessor and demand an entirely fresh allocation.

13. Learned Counsel for the Respondents further rely upon the earlier Section 9 proceedings, she submits that this court itself recorded the contention that substantial portions had already been sold with Dharam Singh's consent. Therefore, according to her it is incorrect to portray case regarding prior alienations as something newly invented before the Tribunal.

14. It is submitted that the Appellants enjoyed a *status quo* order over the entire project for approximately one to two years, even though their alleged entitlement was only 22% or, at the highest, 30%.

15. Learned counsel for the appellant in rejoinder dispute the very foundation of the Respondents' 2019 allocation story and according to him, the letter dated 18.03.2019 relied upon by respondents is forged and is presently the subject matter of an FIR.

16. In a nutshell, the argument raised by the Petitioner is that the letter is merely a unilateral communication issued by the Developer and does not bear Dharam Singh's signature or any independent evidence of his consent.

17. Learned counsel for the appellant also raises the objection as to how a binding allocation could have taken place in 2019 when, according to him, the project had not reached the necessary stage of sanction/occupation and the final developed areas were not yet available for a meaningful allocation.

18. He further points out to the the absence of adequate reasoning in

the impugned award as the Tribunal merely reproduced the percentages emerging from the Grant Thornton report i.e. Yellow, Orange and other earmarked areas, and then concluded that approximately the claimed percentage stood protected.

19. According to him, the Tribunal did not independently reason through the more fundamental issue under Clause 8 as to whether the owners have a contractual right to select their entitlement in one consolidated block and whether the scattered areas proposed by the Respondents satisfy that contractual requirement.

20. Lastly, it is submitted consenting to independent expert does not *ipso facto* amount to consenting to the Respondents' allocation or accepting that whatever areas the expert quantifies may automatically be treated as the owners' contractual entitlement.

21. I have heard both parties at length.

22. It is well settled that this court under Section 37(2)(b) of the Arbitration and Conciliation Act, 1996 can interfere when the section 17 order suffers from perversity, arbitrariness and manifest illegality.

23. Additionally, this court is aware of the limited scope of interference available in Section 37(2)(b) proceedings and keeping in mind the same only, this Court shall proceed further.

24. At the outset, Clause 8 of the subject agreement dated 11.08.2026 governs the subject matter of the dispute, the same reads as follows:

“"8. That the entire amount required for the cost of development of the said Commercial Project including the charges and fees of the Architect preparations of plans as also all other statutory fees and incidental charges including scrutiny fees, license fees, conversion charges, service charges internal/ external charges, Infrastructure Development charges, electricity and water charges, bank guarantee, any type of renewal charges payable now or in future to the govt. and or any other authority for the provision of peripheral services to the said land as may be prescribed by the concerned authority, shall be wholly to the account of the developer. The project to be, developed by the developer shall be standard specification and material employed and facilities provided shall be comparable to see used, employed or provided in any other project in vicinity. ***The owners shall be at liberty to earmark their entitlement of 22% sanctioned FAR in the proposed project in one consolidated block being the owners share from the total area****. The developer shall be at liberty to launch the project and market at any stage leaving the earmarked area of the owner's allocation."”*

25. Having gone through the above clause, it is *prima facie* made out that the Appellants' right is not merely to 22 or 30 % fungible saleable area but to the contractual entitlement to earmark their share in one consolidated block. The same is also not disputed by learned counsel for the respondent.

26. Thus, keeping in mind the narrow scope of interference available, the only issue which arises for consideration before this court, is whether the Arbitral Tribunal, while limiting protection to specified scattered areas, failed to consider the Appellants’ claimed Clause 8 right to a consolidated block.

27. The findings of the learned Sole Arbitrator on this issue is as follows:

“17. Clause 8 of the Collaboration Agreement between Dharam

Singh and Respondent No.1 reads as under: -

> *"8. That the entire amount required for the cost of development of the said Commercial Project including the charges and fees of the Architect preparations of plans as also all other statutory fees and incidental charges including scrutiny fees, license fees, conversion charges, service charges internal/external charges, Infrastructure Development charges, electricity and water charges, bank guarantee, any type of renewal charges payable now or in future to the govt. and or any other authority for the provision of peripheral services to the said land as may be prescribed by the concerned authority, shall be wholly to the account of the developer. The project to be, developed by the developer shall be standard specification and material employed and facilities provided shall be comparable to see used, employed or provided in any other project in vicinity. The owners shall be at liberty to earmark their entitlement of 22% sanctioned FAR in the proposed project in one consolidated block being the owners share from the total area. The developer shall be at liberty to launch the project and market at any stage leaving the earmarked area of the owner's allocation.""*

18. As per the affidavit of Mr. Ashok Gupta dated 07.07.2025 the area marked in "Yellow" in Block '2' noted as Tower 8 in the "Project Ceilo" Report and the other spaces of Block 'I' is 22% of the Saleable area and 8% of the Saleable area in Block 'I' has been marked as 'Orange'. However, as per the Report of Grant Thornton the areas in Block '2' marked in yellow colour comprises of 12.57 % of the saleable area, however alongwith the other areas marked as 'Yellow' in Block '1' being units (4th floor Office Nos. 1,2,3,4,5 and 5th floor office Nos. 16,17,18,19,20,21,22,23,24,25,26,27,28,30 constitute 18.74% of total saleable/carpet area of the project as per the DWG Drawings. Further, areas marked the 'Orange' which denote the units i.e. G-56, G-59, G-72, G-74, G-75, F-140, F-141, F-42, F-149, F-150, F-161 Restaurant-14, Restaurant-20, Restaurant -21, Third Floor, R-2, R-3, R-4, Fourth Floor Offices 6,7, 8, 9, 12, 13 & 15 constitute 8.22% of the saleable area. Thus the 'Yellow' and 'Orange' areas in Block '1' and Block '2' together constitute total of 27.29% of the saleable area.

19. In view of the report received from Grant Thornton, it is evident that the Block No. 2 which though an exclusive block and the claimants also wish to take that block will not constitute the entire 22% of the saleable area. Mr. Ashok Gupta, Director of Respondent No. 1 has already filed affidavit earmarking spaces in Block '1' *besides the entire Block '2' which are colored as "Yellow' and 'Orange' constituting 27.29% of the Saleable area, which the Claimants would be entitled to sell or use in whatever manner they wish. Further pursuant the report being received from Grant Thorton, the area earmarked as 'Yellow' and 'Orange' being less than 30% of the saleable area, another affidavit dated 22.05.2026 was filed by Mr. Abhishek authorised signatory of Respondent No. 1 stating that Respondent proposes to earmark the area marked as 'Green' in the map filed as Annexure 'A' to the affidavit dated 22.05.2026. Vide Annexure 'A' to the affidavit dated 22.05.2026, the Respondent has earmarked the multiplex area on the 3rd floor of Block '1'. Since the area of earmarked as 'Green' vide Annexure 'A' with the affidavit dated 22.05.2026 is prima facie beyond 3% of the saleable area and has been shown in 'Blue' in the maps with the affidavit of Mr. Ashok Kumar Gupta dated 07.07.2025, it would not be appropriate to pass an order qua the said area. Consequently, in additions to area earmarked as 'Yellow' and 'Orange' in the affidavit dated 07.07.2025, this tribunal deems it fit to pass an injunction in favour of the claimants and against the Respondent in respect of area marked as 'Blue' being Restaurants 6 and 7 on the 3rd floor of Block '1'. Since the claim of the claimants prima facie is at best to the extent of 30% of the saleable area and not to the entire project the interim order dated 17.01.2025 granted by the Hon'ble High Court directing the respondents to maintain status qua with regard to the title and possession of property in question namely M/s Oodles Sky Walk is required to be modified.*

20. Further even though the Claimants claim 30% area it may be noted that the increase of area to 30% was subject to the Respondent No.2 having the right to sell the project and therefore get the commission out of it, which the claimants are now denying. Thus, whether the claimants are entitled to 22% or 30% of the Saleable area is an issue to be gone into during arbitration.

21. The version of the claimants that an FIR has been registered against the respondent qua the letter dated 18.03.2019 whereby it is claimed by the Respondents that Dharam Singh was informed of the allocation is a forged and fabricated document, it may be noted that mere registration of FIR does not prove that the document is a forged and fabricated document, particularly when the claimants in earlier proceedings have admitted the said letter. Further, the present FIR is not the first attempt by the claimants levelling allegations of forgery viz.-a-viz. the letter dated 18.3.2019. Since all these facts will be tested during the course of the arbitral proceedings and the final award passed thereon at this stage it cannot be held that in view of the FIR being registered an injunction on the entire project restraining the Respondents from selling or alienating rest of the portions should continue.

22. In view of the facts noted above the interim order dated 17.01.2025 passed by the Hon'ble High Court of Delhi is modified *and the Respondents are directed not to sell, alienate, transfer or create any third party rights in the areas marked as "Yellow" and "Orange' in the maps filed alongwith the affidavit dated 07.07.2025 of Sh. Ashok Gupta and areas marked as 'Blue' on the 3rd floor of Block *1' being Restaurants 6 and 7 during the pendency of present arbitrations proceedings. Application filed by the claimants under Section 17 of the Act and that of the Respondents seeking vacation of the interim order are accordingly disposed of.”*

28. It is clear from the above reproduced paras, that the learned sole arbitrator, although has reproduced Clause 8 of the subject agreement, however, has still not rendered any finding or reasoning pertaining to it.

29. The Arbitral Tribunal has considered the quantum of the Appellants’ possible entitlement i.e. 22% or 30% and has then fashioned protection around approximately that percentage by combining the Yellow, Orange and certain Blue areas. However, unfortunately the arbitral tribunal did not consider either the contractual contention under Clause 8 nor considered the relevant clause.

30. This court is of the view that by releasing the remaining project for alienation without even considering as to whether such alienation would render the asserted contractual right incapable of enforcement at the final stage, the Tribunal, at the outset, failed to preserve the very subject matter of the arbitration.

31. This Court finds that the material consideration i.e. whether the appellants reserve the right to earmark their share in view of clause 8, has not been addressed.

32. No doubt, in the present matter clause 8 of the subject agreement goes to the root of the interim controversy because it defines entitlement and the manner of allocation in one consolidated block.

33. Thus, if the Arbitral Tribunal protected scattered areas solely by matching percentages without even *prima facie* considering Clause 8, that omission travels to the root of the matter and can be said to a error capable of attracting Section 37(2)(b) interference.

34. In view of this court, the Tribunal could therefore reduce excessive protection, but could not adopt scattered units unilaterally selected by the Respondent and simultaneously release the remaining potentially allocable property without *prima facie* satisfying itself that the eventual Clause 8 relief would remain capable of implementation.

35. In these circumstances, the court is of the view that the appropriate course in the present matter would be to interfere with the impugned interim arrangement while leaving the learned Arbitral Tribunal free to determine or consider, in the first instance, the disputed Clause 8 right pending final adjudication.

36. Thus, the present appeal is allowed and the impugned order is set aside.

37. The appellant is at liberty to raise the appropriate issue of their entitlement before the learned sole arbitrator.

38. It is clarified that the observations made herein are only for the

purpose of deciding the present appeal.

39. The learned Sole Arbitrator shall adjudicate the disputes independently and on their own merits, uninfluenced by any observations contained in the present order.

40. Accordingly, the present appeal is disposed of in aforesaid terms.

OM PRAKASH SHUKLA, J

SEPTEMBER 8, 2026/at