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

% *Date of Decision: 6th October, 2025*

\+ ARB. A. (COMM.) 30/2025 & I.As. 14757/2025, 22993/2025

DAULAT RAM DHARAM BIR AUTO PVT LTD AND ORS

.....Appellants

Through: Mr. Ramesh Singh, Senior Advocate with Mr. Gaurav Gupta, Mr. Nikhil Kohli, Mr. Kushank Garg, Ms. Saumya Tiwari, Mr. Thakur Ankit and Ms. Nanya, Advocates.

versus

PIVOTAL INFRASTRUCTURE PVT LTD AND ORS.

.....Respondents

Through: Mr. Sudhir Nandrajog and Mr. Nikhil Goel, Senior Advocates with Mr. Aniruddha Deshmukh, Advocate.

\+ ARB. A. (COMM.) 31/2025& I.As. 14760/2025, 23007/2025

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CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J.

1. ARB. A. (COMM.) 30/2025 is filed by the Appellants laying a challenge to order dated 13.12.2023 and ARB. A. (COMM.) 31/2025 is filed to assail order dated 13.05.2025, both passed by the learned Arbitrator under Section 17 of Arbitration and Conciliation Act, 1996 ('1996 Act') in the ongoing arbitral proceedings. The appeals were heard together and are being decided by this common judgment, due to commonality of facts and issues raised by the respective parties.

2. To the extent necessary, facts as pleaded are that Appellants and Forgings Private Limited ('Forgings'), being the owners of land admeasuring 12.012 acres at Village Mujheri, Tehsil Ballabgarh, Faridabad ('subject land'), by way of four separate Collaboration Agreements, all dated 04.06.2007, transferred development rights over the subject land in favour of DD Global Capital Pvt. Ltd. ('DD Global'), while retaining ownership and title to the property. As per the Collaboration Agreements, DD Global was responsible for undertaking construction of residential units over the subject land and obtaining requisite licences, at its own cost. Upon completion of construction, DD Global was entitled to 90% of the built-up area, whereas 10% was to be proportionately allocated to the Appellants and Forgings. Subsequently, DD Global vide Deed of Assignment dated 27.02.2008 assigned its development rights and obligations under the Collaboration Agreements in favour of Pivotal Infrastructure Pvt. Ltd. ('Pivotal') for a consideration of Rs. 6,47,89,944/-, with the obligation to hand over 10% of built-up area to the Appellants, remaining intact.

3. Appellants state that DD Global decided to set up a Group Housing Project on the subject land and in good faith, Appellants handed over the original title documents to Pivotal and appointed Pivotal as their General Attorney. On the strength of the GPA, Pivotal fraudulently executed Sale Deeds of the entire land in its favour on 11.10.2010, without actually paying any sale consideration *albeit* it was recorded in the Sale Deeds that consideration was paid. Appellants and DD Global invoked the arbitration agreement in the Deed of Assignment, owing to non-payment of consideration of Rs. 6,47,89,944/- as also seeking enforcement their rights in the 10% built-up area on the subject land. Arbitral Tribunal was constituted and an award was passed on 11.08.2019, whereby the claims raised by the Appellants were rejected and petitions filed under Section 34 of 1996 Act in this Court being O.M.P.(COMM.) Nos. 522/2019 and 529/2019, are pending consideration. Appellants had also sought declaration of the said Sale Deeds as null and void, however, this relief was withdrawn and subsequently, civil suits were filed but they were dismissed on 21.02.2019 and on 07.09.2022 the appeals were also dismissed *albeit* the Courts recognized the rights of the Appellants to the extent of 10% share in the built-up area on the subject land.

4. It is stated that later Appellants learnt that Pivotal was alienating the built-up units, without reserving and demarcating 10% share of the Appellants and Forgings as also that the flats were being sold at discounted prices to frustrate the claims of the Appellants and in this backdrop, notice dated 21.12.2019 was sent by the Appellants demanding inspection of the built-up units with respect to which Occupancy Certificates had been issued. In its reply dated 18.01.2020, Pivotal denied its liability to allocate 10%

share, which according to the Appellants measured 1,07,186.27 sq. feet and the market value of which was about Rs. 53,06,25,078/-. Disputes having arisen between the parties, petition was filed under Section 11(6) of 1996 Act and Sole Arbitrator was appointed by this Court vide order dated 27.04.2023 in ARB.P. No. 1230/2021. O.M.P.(I)(COMM.) No. 29/2020 was also disposed of directing that the petition under Section 9 will be treated as application under Section 17 of 1996 Act by the Arbitrator. Statement of Claim ('SoC') was filed by the Appellants on 13.06.2023 seeking: specific performance of Collaboration Agreements and Deed of Assignment by directing Pivotal to identify the units/flats and hand over 10% of built-up area to the Appellants; permanent injunction restraining Pivotal from interfering in Appellants' possession of the 10% area; and in the alternative, recovery of value of 10% built-up area assessed at Rs. 53,06,25,078/- with interest.

5. As the chronology of events goes in the application filed separately under Section 17 of 1996 Act, Appellants sought interim measures *inter alia*: (a) restraining Pivotal from creating third party rights or parting with possession of 10% built-up area in the form of saleable flats; and (b) securing the Appellants by directing Pivotal to deposit Rs. 53,06,25,078/- before the Arbitral Tribunal. Pivotal defended the case raising multiple objections including but not limited to: (a) claims were barred by limitation since the allotment process had started in 2010 and flats were allotted between 2011 to 2013, facts well known to the Appellants; (b) there was no provision for transfer of 10% share in the built-up area in favour of the Appellants in the Deed of Assignment, to which Appellants were also parties; (c) recourse to arbitration was highly belated since Sale Deeds were

executed on 11.10.2010 and Appellants learnt of the execution on 11.10.2013, going by their own stand; (d) claims were non-arbitrable; (e) under the Deed of Assignment and Sale Deeds, Appellants had assigned all their rights, title and interest *qua* the subject land in favour of Pivotal, which was now the absolute owner of the land and Collaboration Agreements were no longer in existence; (f) application filed by the Appellants under Section 17 of 1996 Act in the earlier arbitration for restraint against Pivotal from alienating or creating third party rights in the subject land were dismissed on 02.07.2014 and the application filed under Order 39 Rules 1 and 2 CPC in the civil suit was also dismissed on 02.08.2017, holding that Appellants had assigned their rights in favour of Pivotal, against which appeal was dismissed by Additional District Judge, Faridabad on 18.01.2018 and revision petition was dismissed by High Court of Punjab and Haryana on 19.02.2018, followed by dismissal of the suits on 21.02.2019 and appeals on 07.09.2022; (g) award dated 11.08.2019 passed in the earlier arbitration captures orders of dismissal of applications filed repeatedly under Section 17; and (h) as per the Deed of Assignment, only a sum of Rs. 6,47,89,944/- was to be paid to Forgings, which stands paid as recorded in the earlier award and the plea that Sale Deeds were executed fraudulently was also negatived in the award passed in the first arbitration.

6. Application under Section 17 dated 13.06.2023 was heard at length and was dismissed vide order dated 13.12.2023 by the Sole Arbitrator holding that no *prima facie* case was made out by the Appellants and balance of convenience also weighed in favour of Pivotal. It was also held that the case of the Appellants did not pass the test of irreparable loss and injury. Arbitrator was of the view that the relief claimed by the Appellants

for recovery of damages as an alternative to the relief of specific performance by allocating 10% built-up area, dented their plea of 'irreparable loss and injury', necessary for grant of interim injunctory relief. It was observed in the order that once it was found that a party would not suffer irreparable injury if the interim relief was declined and could be compensated with money, ordinarily interim relief in the nature of injunction restraining dealing with property of which a party is in control and possession and for which Sale Deed is executed, is not to be granted *albeit* it was clarified that in a given case, interim injunction may be granted depending on facts and circumstances. Arbitrator noted that in the SoC, Appellants had not only quantified the monetary value of their share in the built-up area, claiming the same as damages in lieu of specific performance, but even in the application under Section 17, they had sought an alternate direction to Pivotal to deposit damages claimed and in this backdrop, held that at the highest, the claim being in the nature of monetary compensation, an order of injunction was not called for.

7. Learned Arbitrator noted that under the Agreements, Appellants were under an obligation to first offer their share of the built-up area to Pivotal and thus they were only entitled to price thereof and basis this concluded that it was not as if Appellants had an absolute right to deal with their share of the built-up area. On a holistic view of all these facts, it was held that no irreparable injury will be caused if interim relief was not granted restraining Pivotal from encumbering 10% of the built-up area in question. With respect to the relief of deposit of damages at the interim stage, Arbitrator was of the view that Appellants were unable to make out a case that the award will be rendered a mere paper award, if passed in their favour by acts or omissions

of Pivotal or that Pivotal was not financially solvent. It was also observed that on several dates, counsel for Appellants had taken time to file additional affidavit to make out a case to seek relief in the nature of attachment before judgement under Order 38 Rule 5 CPC, but no affidavit was filed. This order was challenged by the Appellants in ARB. A. (COMM.) 30/2025.

8. On 05.01.2024, issues were settled by the Arbitrator and the evidence commenced. On 27.01.2025, amended SoC filed by the Appellants was taken on record, to which amended Statement of Defence ('SoD') was filed by Pivotal on 22.02.2025. In the meantime, on 14.02.2025, Appellants filed another application under Section 17 of 1996 Act seeking a direction restraining Pivotal from creating third party interest or alienating and parting with possession of 43 units/flats, each admeasuring 2525 sq. feet in Towers 1 and 2 of the subject property or such other number of units as may be necessary for securing Appellants' entitlement to the extent of 1,07,186.267 sq. feet of the built-up area and in the alternative to secure the Appellants by deposit of value of their share in the 10% built-up area @ Rs. 8,514.85/- per sq. feet amounting to Rs. 91,26,75,011/-. Save and except, the factum of issuance of fresh Occupation Certificate dated 01.05.2024 with respect to Tower Nos. 1 and 2, the application was premised on the grounds taken in the earlier application. Pivotal opposed the grant of interim reliefs alleging that the application was misconceived, mischievous and vexatious and was filed after conclusion of Appellants' evidence only to delay the proceedings, besides being the 9th attempt to seek reliefs declined earlier and with a view to indirectly introduce fresh claims, which were not part of the SoC. It was pointed out by Pivotal that *albeit* 40 flats were currently vacant in Tower No. 1, but they were under a stay order dated 15.05.2023, passed by

HRERA, basis some non-compliances relating to extensions required from RERA and there was no scope of their alienation in the near future. Pivotal also claimed that these units fell to its share and Appellants had no right over them.

9. This application was dismissed vide order dated 13.05.2025, which is the subject matter of challenge in ARB. A. (COMM.) 31/2025. Arbitrator held that Appellants were not entitled to the interim reliefs sought once the application seeking these very reliefs was dismissed on 13.12.2023 on the ground that Appellants were not able to make out a *prima facie* case; no irreparable loss was likely to be caused and balance of convenience was in favour of Pivotal and that no new circumstance was set up to take a different view. It was observed that the arbitral proceedings were at the stage of evidence of Pivotal and it would not be in the interest of an adjudicatory process to pass diametrically opposite orders at successive stages of the proceedings. It was reiterated and emphasized that Appellants were unable to make out a case for an order in the nature of attachment before judgement on principles akin to Order 38 Rule 5 CPC and mere sale of some units cannot be construed as disposal of property with an intent to obstruct execution of a decree.

10. Before this Court, learned Senior Counsel for the Appellants argued that: (a) Appellants are likely to succeed in the arbitration and unless interim reliefs sought are granted, award will be rendered a paper decree; (b) if Pivotal creates third party rights in the built-up area falling to the share of the Appellants, it will lead to further complications where Appellants will be compelled to litigate with multiple purchasers of the units which are currently lying vacant; (c) by executing the Deed of Assignment, Pivotal

only stepped into the shoes of DD Global as a developer but all other terms and conditions of the Collaboration Agreements, including right of the Appellants to 10% built-up area, remained unchanged; (d) right of the Appellants to claim 10% of the built-up area has received judicial imprimatur by virtue of order of this Court passed under Section 11 of 1996 Act on 27.04.2023; orders of Civil Judge, Faridabad dated 02.08.2017 and 07.09.2022 and order of Arbitral Tribunal dated 31.08.2023; (e) Pivotal consistently made false and contradictory statements with respect to the number of vacant units to obstruct restraint order on alienation and till date has not filed documents directed vide order dated 18.08.2023; (f) false statement was made before this Court on 27.04.2023 that 100% of built-up area had been sold, knowing fully well that advertisements were being published for sale of units on its official Instagram pages; (g) HRERA had prohibited further sales but the stay order has been vacated and there is no clarity on the exact number of units vacant; and (h) admittedly, completion of the project is nowhere in sight and this is driven by financial constraints of Pivotal as also drop of 51.97% in profits coupled with the fact that it has not undertaken any new project since 2012, which gives rise to a serious apprehension that if the award is passed in favour of the Appellants, they may not be able to execute the same. It was thus urged that Pivotal be restrained from selling the 40 units which are currently vacant as per the latest affidavit filed in this Court so that the subject matter of the ongoing arbitration can be preserved.

11. Learned Senior Counsel for Pivotal opposed the appeals and argued that: (a) Appellants are not interested in expeditious disposal of the arbitral proceedings and their only objective is to restrain sale of vacant units which

do not even fall to their share; (b) over 4 months were taken between 03.07.2024 to 13.11.2024 to record the evidence of CW-1; (c) despite dismissal of Section 17 application on 13.12.2023 and two similar applications during the first arbitration and dismissal of suits seeking cancellation of Sale Deeds, second application was filed under Section 17 for similar reliefs and no infirmity can be found in the order of the Arbitrator in dismissing the application on 13.05.2025; (d) Pivotal has categorically stated in the affidavit dated 21.08.2025 that 40 flats in Tower No. 1 are vacant in the entire Group Housing Project and there is no contradiction or non-disclosure and in any event, Tower No. 1 does not stand on the land claimed by the Appellants; (e) the 40 flats currently vacant in Tower No. 1 are attached/prohibited from sale by HRERA due to purported non-compliances and factum of pendency of the arbitral proceedings is within the knowledge of HRERA/RERA; (g) relief sought by the Appellants for restraint on sale of the units or deposit of money of equivalent value during the pendency of the arbitral proceedings is in the nature of attachment before judgement which requires a very high threshold of demonstrating that Pivotal is dissipating or removing assets to defeat the execution of the award that may be passed in favour of the Appellants and as rightly observed by the Arbitrator, they have been unable to meet the threshold and despite several opportunities did not even file an affidavit setting out a case under Order 38 Rule 5 CPC; (h) Appellants were unable to show any change in the circumstances or law from the time the first application under Section 17 was dismissed by the Arbitrator categorically holding that Appellants failed to make out a *prima facie* case and their alternative relief of damages was itself indicative of the fact that no irreparable injury will be caused if the

interim reliefs were not granted; and (i) Deed of Assignment, GPA, Sale Deeds etc., form one unbroken chain of documents and prove that Appellants have no right to claim share in the built-up area, more particularly, when their challenge to the Sale Deeds remained unsuccessful.

12. It was also contended by learned Senior Counsel for Pivotal that the scope of interference under Section 37(2)(b) of 1996 Act is limited and Appellants have not made out a case warranting interference in the well-reasoned interim orders of the Arbitrator. Reliance was placed on the judgement in ***Shiningkart Ecommerce Pvt. Ltd. v. Jiayun Data Limited, 2019 SCC OnLine Del 11464***, where the Court held that the order in appeal must suffer from 'perversity' to call for interference and so long as the view taken by the Arbitrator is plausible, Appellate Court must not interfere. In ***Dinesh Gupta v. State of Uttar Pradesh and Another, (2024) 11 SCC 758***, the Supreme Court held that a party, which habitually abuses the process of law, should be reprimanded. Responding to the argument of the Appellants that Balance Sheets of Pivotal reflect its financial instability, it was urged that the net worth of Pivotal was misread as Rs. 75.82 crores i.e., being less than the claimed amount. This interpretation by the Appellants overlooks the fact that total assets are worth Rs. 173.92 crores and the major liability of Rs. 57.84 crores is the 'current liability'. This arises owing to the fact that certain buyers of the units have not yet executed registered Conveyance Deeds despite having paid the sale considerations. The amounts which are sale proceeds are thus shown as current liability and this does not impact the inventories, because this is the money against the units which Pivotal considers sold and out of its hands. The amount, though accounted as a 'liability' is in fact an asset and if the amount of Rs. 57.84 crores is

removed, net worth of Pivotal is approximately Rs. 130 crores. It was vehemently urged that Appellants have remained unsuccessful in establishing a *prima case* to restrain the sale of units/flats over the last several years, as rightly observed by the Arbitrator and these appeals assailing the impugned orders declining interim reliefs, deserve to be dismissed on this ground alone. In any event, if Appellants ultimately succeed in making out a case of allocation of share in the subject land, they can be compensated in terms of money, which is the alternative relief they have themselves sought.

13. Heard learned Senior Counsels for the parties and examined their rival contentions.

14. By these appeals, Appellants assail two orders passed by the Arbitrator under Section 17 of the 1996 Act. It is trite that scope of judicial interference under Section 37(2)(b) of 1996 Act is circumscribed and Courts will ordinarily not interfere with the exercise of discretion by the Arbitrator and substitute its views, except where the exercise of discretion suffers from arbitrariness or where the Arbitrator has ignored well settled principles of law regulating grant or refusal of interim reliefs. Courts cannot re-assess material on which the Arbitrator arrives at the decision so long as relevant considerations have gone into the decision-making process and the view is a plausible view. There cannot be a microscopic examination of the order passed by the Arbitrator under Section 17 and the Appellate Court ought not to vivisect the order of the Arbitrator to find flaws if there is application of mind and all relevant material has been considered and irrelevant factors have been eschewed. The 1996 Act is preambularly a fall out of UNCITRAL Model and it needs no gainsaying that while exercising

jurisdiction over arbitral orders, more particularly, those dealing with interlocutory reliefs, Courts must maintain a circumspect approach as arbitration is an alternative dispute resolution avenue meant to minimize the disputes as also judicial interference.

15. The two orders of the learned Arbitrator called in question in the present appeals, emanate from applications filed under Section 17 of 1996 Act. Broadly understood, the case of the Appellants is that pursuant to Collaboration Agreements dated 04.06.2007, entered into between the Appellants and DD Global, the subject lands were to be developed and flats/units were to be constructed by DD Global with 90% of the built-up area going to its share and remaining 10% coming to the share of the Appellants. By Deed of Assignment dated 27.02.2008, DD Global assigned all its rights and obligations to Pivotal, who therefore stepped into the shoes of DD Global but the terms of allocating 10% share to the Appellants as also payment of monetary consideration remained unchanged. Essentially, Appellants seek a direction restraining Pivotal from encumbering the 43 (now stated to be 40) vacant flats/units in the housing project and in the alternative, depositing value of their share amounting to Rs. 91,26,75,011/- before the Arbitrator. Pivotal contested the applications before the Arbitrator and opposed the present appeals strenuously *inter alia* on the grounds that these applications are yet again an attempt to stall the sale of flats/units and seek reliefs which have been denied several times in the past. On merits, it was denied that Appellants have any share in the built-up area and on the aspect of preservation of the subject matter of arbitration as interim measure, it was urged that Pivotal is a financially solvent concern and the apprehension of the Appellants that the award, if passed in their favour, will

be a paper award, is baseless.

16. First on a factual note, in the earlier round of arbitration, Appellants preferred an application under Section 17 of 1996 Act seeking interim injunction restraining Pivotal from alienating and encumbering the subject land in earlier arbitration. This application dated 28.04.2014 was dismissed by the Arbitrator vide order dated 02.07.2014 *inter alia* on the ground that this Court had not restrained the Respondents in O.M.P. No. 1057/2013 from creating third party rights on the subject land and interest of the Appellants was protected by observing that any steps taken pursuant to the Assignment Deed will be subject to outcome of the proceedings. Arbitrator was also of the view that Appellants had not made out a case for grant of injunction. Second application was filed on 14.08.2017 again seeking order of *status quo* with regard to sale/transfer and/or parting with possession of the units in the project developed by Pivotal. This application was dismissed on 21.09.2017 by the Arbitrator holding that: earlier application seeking the same relief was dismissed on 02.07.2014; Forgings had filed a suit for declaration and injunction with an application under Order 39 Rules 1 and 2 CPC seeking interim injunction against alienation/creating third party rights in the suit property, which was dismissed by the Civil Judge on 02.08.2017 along with similar applications in three other suits; and in the garb of invoking jurisdiction under Section 17 of 1996 Act, Appellants were directly or indirectly seeking the same relief which was declined by this Court and by the Arbitrator as also by the Civil Judge, Faridabad vide order dated 02.08.2017. Arbitrator also observed that on the date of filing the application on 14.08.2017, Appellants were aware of the fate of the application before the Civil Judge as also of the order of this Court dated 12.02.2015 and

despite having full knowledge that prayer for injunction was rejected, Appellants omitted to make a mention of these orders in the application to somehow persuade the Arbitrator to entertain their prayer for restraint from alienating 10% of the developed property, by misleading. This application was dismissed with cost of Rs. 25,000/-.

17. Thereafter, Appellants filed a Section 11 petition in this Court along with a Section 9 petition. Court appointed a Sole Arbitrator and directed the Section 9 petition to be treated as an application under Section 17. However, Appellants preferred to file a fresh application under Section 17 in view of certain developments and once again sought a restraint order against Pivotal from creating third party rights in the 10% built-up area, which was dismissed on 13.12.2023 with the following observations:-

> *"6. The claimants claim, (i) that the three claimants and the respondent no.2 are part of the same group; the respondent no.2 being in liquidation, has been sued through its liquidator; (ii) respondent no.3 is also a part of the same group as the claimants and the respondent no.2, and has been impleaded as a proper and necessary party; no relief has been claimed against the respondent no.3; (iii) that the claimants and the respondent no.2 were owners of land admeasuring 12.012 acres at village Mujheri, Tehsil Ballabgarh, Faridabad; (iv) that the claimants and the respondent no.2 had transferred the development rights over the said land to the respondent no.3, by collaboration agreements dated 04.06.2007 entered into by each of the three claimants and the respondent no.2 with the respondent no.3; (v) under the said collaboration agreements dated 04.06.2007, the respondent no.3 was to have 90% share over the built-up area of the developed property and the remaining 10% share of the built-up area was to be handed over by the respondent no.3 to the claimants and the respondent no.2; (vi) the respondent no.3 applied for setting up of a group housing project on the aforesaid land and for grant of license therefor; (vii) the respondent no.3, vide deed of assignment dated 27.02.2008 assigned its development rights to the respondent no.1 for a consideration, of Rs.6,47,89,944/- and of handing over 10% of built-up area to the claimants and the respondent no.2; (viii) thus, the respondent no.1 stepped into the shoes of the respondent no.3; (ix) under the collaboration agreements dated 04.06.2007, the respondent no.2 though was entitled to assign its rights and duties under the collaboration*

agreements dated 04.06.2007 in favour of 3rd party, but subject to the condition that the claimants and the respondent no.2 would always be entitled to their share of 10% in the built-up area; (x) thus, the respondent no.1 as assignee of development rights, was obliged to pay Rs.6,47,89,944/- to the respondent no.3 and to handover 10% of the built-up area to the claimants and the respondent no.2; (xi) the said 10% of the built-up area was to be handed over to the claimants and the respondent no.2, upon completion of project and issuance of necessary occupancy certificates from the statutory bodies; (xii) three batches of occupancy certificates have been issued, on 30.11.1970, 25.06.1980 and 17.08.2020, of the development carried out by the respondent no.1 on the aforesaid land; (xiii) the claimants and the respondent no.2, in good faith handed over all the original documents of the land to the respondent no.1 and also executed general power of attorney in favour of the respondent no.1 to enable the respondent no.1 to commence and conclude the proposed project; (xiv) the respondent no.1 did not pay the consideration of Rs.6,47,89,944/- to the respondent no.3 as promised; (xv) the claimants also learnt that the respondent no.1, by misusing the general power of attorney granted by the claimants in favour of the respondent no.1, had executed illegal and fraudulent sale deeds of the land in favour of the respondent no.1 on 11.10.2020, wrongly recording that the full consideration had been paid therefor; (xvi) in fact, the sale of the land was without consideration; (xvii) the claimants and the respondents no.2&3 thus, on 24.10.2013 invoked the arbitration clause in the deed of assignment, qua the non-payment of the consideration of Rs.6,47,89,944/-; (xviii) the right of the claimants and the respondent no.2 to 10% of the built-up area had not accrued till then as the construction then was at a preliminary stage and 10% area of the claimants and the respondent no.2 had not become ascertainable; (xix) the arbitral tribunal constituted pursuant to the notice dated 24.10.2013 invoking arbitration dismissed the claims of the claimants and respondents no. 2 & 3 vide award dated 11.08.2019; (xx) the petitions under section 34 of the Act, being O.M.P.COMM. No. 522 of 2019 and O.M.P. COMM. No. 529 of 2019, preferred by the claimants and the respondent no.2 with respect to the said award, are pending consideration; (xxi) that the 10% built-up area to which the claimants and the respondent no.2 have entitlement, became ascertainable only upon issuance of occupancy certificates; (xxii) the claimants and the respondent no.2 had withdrawn their prayers in the earlier arbitration qua declaration as null and void of the sale deeds dated 05.11.2009 got executed by the respondent no.1 of the land in its favour, because the said relief could not be granted by the arbitrator and had filed 4 separate suits claiming the said relief but the said suits were also dismissed on 21.02.2019 and the appeals preferred thereagainst were also dismissed on 07.09.2022; (xxiii) the claimants have come to know that the respondent no.1 has been alienating most of the built-up units over the

land, without reserving and demarcating 10% share of the claimants and respondent no.2; (xxiv) the suits filed by the claimants and respondent no.2 also have been dismissed holding that the claimants are entitled only to 10% share in the built-up areas over the subject land; (xxv) the respondent no.1 failed to call upon the claimants to choose the units which they were entitled to as per clauses 5,6,16, 19 & 25 of the collaboration agreements dated 04.06.2007, clauses (i), (j) and 21 of the deed of assignment dated 27.02.2008 and clauses 9,11,12,14 and 19 of the General Power of Attorney dated 05.11.2009, all of which specifically mention the terms "allocated share" and "area allocated to Pivotal"; (xxvi) that the earlier arbitral award was confined to non-payment of part consideration of Rs.6,47,89,944/- to the respondent no.3; (xxvii) that the respondent no.1 is selling the flats of the claimants share at a discounted price, to frustrate the claims of the claimants; (xxviii) construction of remaining towers is at final stages; (xxix) the claimants sent notice dated 21.12.2019 under section 21 of the Act demanding inspection of the built-up units in the towers with respect to which occupancy certificates had been issued and to work out the modalities for working up out 10% share in the built-up units and on non-compliance thereof, invoking arbitration; (xxx) the respondent no.1 in its reply dated 18.01.2020 denied any liability to allocate 10% share to the claimants; (xxxi) that the built-up area on the project site admeasuring 20.31 acres is 1,79,597.91 sq.mtrs., equal to 19,29,946.6411 sq.fts.; (xxxii) that on the basis of proportionate land holding of the claimants of 11.281 acres, the claimants are entitled to a built-up area of 1,07,186.27 sq.fts. and the market rate whereof is about Rs.53,06,25,078/-; and, (xxxiii) that the aforesaid units were not ready before 2017-18 and relief with respect thereto could not have been claimed by the claimants prior hereto.

xxx xxx xxx

8. The claimants, in the application under section 17 of the Act, seek interim measures of (i) restraining the respondent no.1 from creating any 3rd party interest or parting with possession of 10% of the built-up area in the form of saleable flats, in the project in question; and, (ii) of securing the claimants by directing the respondent no.1 to deposit before this tribunal the value of the 10% built-up share of Rs. 53,06,25,078/-. Interim measures are also claimed, (i) of inspection of the development/flats; and (ii) of details of booking/agreements of the flats in the project.

9. The respondent no.1 has defended the aforesaid claims pleading, (i) the claims are deadwood and barred by limitation; (ii) licenses to develop the project including the lands of the claimants was obtained by the respondent no.1 in 2010 and simultaneously allotment process and execution of builder buyer agreement also started in 2010 and majority of the flats were allotted in the years 2011, 2012 and 2013; (iii) bookings being taken by the respondent no.1 and the allotment of flats by the

respondent no.1 was known to the claimants and the public at large; (iv) thus, the cause of action in respect of alleged 10% share in the built-up area arose in the year 2010; (v) the respondent no.1, by the year 2013-14 had sold more than 95% of the flats of the group housing complex and this was in the knowledge of the claimants; (vi) the claimants slept over their alleged right of 10% share in the built-up area; (vii) that in the deed of assignment dated 27.02.2008, to which the claimants also are parties, there is no provision relating to transfer of 10% shares in the built-up area in favour of the claimants; (viii) the claimants specifically mentioned about their 10% share in the built-up area in the pleadings in the earlier arbitration as well as in the suit earlier filed by the claimants and the respondent no.1 disputed the same; (ix) the sale deeds of the land of the claimants in favour of the respondent no.1 were executed on 11.10.2010 and the claimants should have invoked arbitration in respect of their claim for 10% share, latest by 11.10.2013; (x) the claimants claim to have learnt of the sale deeds on 30.09.2013 and therefrom also the limitation for invoking arbitration for claim of 10% share in the built-up area expired on 30.09.2016; (xi) the order dated 09.03.2016 in one of the suits filed by the claimants also records that more than 95% of the units of the group housing complex had already been sold by the respondent no.1; (xii) the claimants however sent notice only in December 2019; (xiii) the claims of the claimants already stand adjudicated in the earlier arbitration between the parties and the claimants cannot be allowed to raise disputes again in respect of the same subject matter; (xiv) currently there exists no subsisting arbitration agreement between the parties; the claimants have already availed their remedy for adjudication of disputes by arbitration; (xv) the claims do not pertain to the arbitration clause in the deed of assignment; in the said deed of assignment, there was no obligation on the respondent no.1 to transfer any 10% of the built-up area to the claimants; a clause to the said effect is contained in the collaboration agreements dated 04.06.2007 but to which the respondent no.1 is not a party; (xvi) under the deed of assignment dated 27.02.2008 and the sale deeds, the claimants assigned all their rights, title and interest qua the land in favour of respondent no.1; (xvii) the respondent no.1, under the deed of assignment dated 27.02.2008 and the sale deeds, became the absolute owner of the land; (xviii) the collaboration agreements dated 04.06.2007, on which the claimants have based their claim, does not exist anymore; (xix) the claimants are guilty of forum shopping; (xx) the claimants, in the earlier arbitration proceedings as well as in the suits, besides claiming ownership of the entire land, also claimed that they be declared as the owner of atleast 10% of the built-up area on the land; however, the suits and the claims were dismissed; (xxi) after the sale deeds, the claimants have no rights, title or interest in the lands or built-up area thereon;(xxii) the claimants, along with SOC in the earlier arbitration, also filed an application under section 17 of the Act, to restrain the respondent no.1

from alienating or creating any 3rd party rights in the lands; the said application was dismissed on 02.07.2014; (xxiii) the claimants, along with the suits also filed application under Order XXXIX Rules 1 & 2 CPC but which was also dismissed vide order dated 02.08.2017, holding that the claimants had already assigned all their rights in the land in favour of the respondent no.1; (xxiv) the claimants thereafter filed yet another application in the earlier arbitration proceedings, under section 17 of the Act, specifically making pleading in respect of entitlement to 10% of the developed area and to restrain the respondent no.1 from alienating 10% of the developed area; the said application was also dismissed on 21.09.2017; (xxv) immediately thereafter the claimants made a 3rd application under section 17 of the Act (in the earlier arbitration proceedings) seeking status quo to be maintained with respect to the project being developed on the land; the said application was also dismissed on 23.12.2017 and review preferred thereagainst was also dismissed on 31.12.2017; (xxvi) the claimants also preferred an appeal against the order of dismissal of their application under Order XXXIX Rules 1 & 2 of the CPC in the suits filed by them but the said appeal was also dismissed by the Court of Addl. District Judge, Faridabad on 18.01.2018; (xxvii) the claimants thereafter preferred Revision Petition no.1115/2018 before the High Court of Punjab & Haryana and which Revision Petition was also dismissed on 19.02.2018; (xxviii) the suits preferred by the claimants themselves were dismissed on 21.02.2018 and the appeals preferred thereagainst on 07.09.2022; (xxix) the award dated 11.08.2019 in the earlier arbitration also reiterates the orders of dismissal of applications under section 17 of the Act; (xxx) no notice of O.M.P. (COMM.) No. 522 of 2019 preferred by the claimants under section 34 of the Act with respect to the said award has been issued till now; (xxxi) that altogether 14 towers have been developed by the respondent no.1 in the subject project and of which, towers no. 4 to 16 and half of tower no.18 are situated on the disputed land admeasuring 13.48125 acres; (xxxii) all the flats/units situated in the towers constructed over the said 13.48125 acres of land have been sold; (xxxiii) booking and allotment of the said units/flats started in the year 2010 and by now sale deeds of majority of flats have already been executed; (xxxiv) initially, the project was launched in the name and style of Taksila Gardens; thereafter in the year 2012 the name of the project was changed to Royal Heritage; (xxxv) the claimants have no right to any built-up area or to 10% of the built-up area on the land; (xxxvi) the respondent no.3 even failed to make payment of entire sale consideration for the land claimed of its share and the respondent no.1 had to make payment of the same; (xxxvii) under the deed of assignment dated 27.02.2008, the right, title and interest in the land were assigned in favour of respondent no.1 and subsequently sale deeds dated 11.10.2020 were executed in favour of respondent no.1; (xxxviii) that as per the deed of assignment, only a sum of Rs.6,47,89,944/- was to

be paid by the respondent no.1 to the respondent no.3 and there was no obligation on the part of the respondent no.1 to handover any 10% built-up area to the claimants and the respondent no.2; (xxxix) the said sum of Rs.6,47,89,944/- stands paid by the respondent no.1, as held in the earlier arbitration award dated 11.08.2019; (xl) the plea of the claimants, of the sale deeds having been got executed fraudulently, has been negatived in the earlier arbitration proceedings as well as in the judgment in the suits; (xli) there is no finding in the judgment in the suits, that the claimants are entitled to 10% share in the built-up area; (xlii) the total built-up area is not as claimed by the claimants; (xliii) the market rate is not as claimed by the claimants and the market rate of 10% share in the built-up area claimed by the claimants is not Rs.53,06,25,078/; and, (xliv) the average sale price at which the flats/units have been sold, is of Rs.2,200/- per sq.ft.

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12. The counsel for the claimants, in his arguments on the section 17 application, besides what is evident from the narration above, contended (i) that the earlier arbitral proceedings were only with respect to the amount of Rs.6,47,89,944/- to be paid by the respondent no.1 to respondent no.3 under the deed of assignment; (ii) that the suits earlier filed by the claimants were only with respect to validity of the sale deeds; (iii) neither the earlier arbitral proceedings nor the earlier suits were concerned with the claim of the claimants to 10% built-up area and the cause of action wherefor was to accrue to the claimants only on issuance of occupancy certificates; (iv) that the respondent no.1 has not complied with the directions of this tribunal in para 14 of the proceedings of 18.07.2023, in para 19 of the proceedings of 18.08.2023, in para 32 of the proceedings of 31.08.2023 and in the email dated 06.10.2023 and thus adverse inference for the purposes of section 17 has to be drawn against the respondent no.1; (v) that there are discrepancies in whatever documents have been filed by the respondent no.1 in pursuance to the aforesaid directions; (vi) though the sale deeds of the land of the claimants executed by the respondent no.1 in favour of itself on the basis of power of attorney executed by the claimants in favour of respondent no.1 have no specific clause with respect to 10% built-up area but refer to collaboration agreements dated 04.06.2007 and the deed of assignment dated 27.02.2008 and under which the claimants have a right to 10% of the built-up area and hence the consideration of delivery of 10% of the built-up area to the claimants stands incorporated in the sale deeds; and, (vii) that the claimants, as owner of the land on which construction has been made, have not received any consideration whatsoever.

13. The senior counsel for the respondent no.1, opposing the application under section 17 of the Act, in addition to what is already evident from the narration above contended, (i) that the collaboration agreements dated 04.06.2007 stood novated by the deed of assignment dated 27.02.2008 to

which the claimants as well as the respondent no.2 were also a party; (ii) that under the deed of assignment dated 27.02.2008, all the rights of the claimants and the respondent no.2 in the land including to 10% of built-up area in terms of the collaboration agreements dated 04.06.2007 stood transferred to the respondent no.1; (iii) that the claimants, having by way of interim arrangement also sought the relief of deposit of monitory value of 10% of the built-up area, are in any case not entitled to the interim arrangement of restraining the respondent no.1 from alienating, encumbering or parting with possession of 10% of the built-up area or of furnishing of accounts of all sales; (iv) that the claimants, inspite of being cautioned by this tribunal that pleadings for the relief in the nature of Order XXXVIII Rule 5 of CPC do not exist and inspite of having stated that they will file an additional affidavit, have not filed any such additional affidavit and are not entitled, either to the relief of deposit of value of 10% of the built-up area or of restraining the respondent no.1 in any manner whatsoever; (v) that the claimants, by seeking all the particulars, are conducting a fishing enquiry; (vi) that the inspection sought by the claimants is detrimental to the commercial interest of the respondent no.1; (vii) that the claimants are already causing prejudice to the respondent no.1 in as much as owing to the complaints filed by the claimants, the registrar of documents is not permitting transfer of flats (by those to whom the respondent no.1 has sold the same) to others; (viii) attention was drawn to the MOU dated 06.02.2008 (as set out in the award in the earlier arbitral proceedings) to show that there were other financial transactions between the parties; (ix) that in terms of the collaboration agreements dated 04.06.2007, the right to 10% built-up area was attached to the title to the land, with whosoever became entitled to the title of the land becoming entitled to the said 10% built-up area also; that under deed of assignment dated 27.02.2008, the title to the land stood transferred by the claimants and respondent no.2 in favour of the respondent no.1 and the claimants and the respondent no.2 ceased to be entitled to 10% of the built-up area; (x) the MOU records the claimants to be having title to 10.25 acres and the respondent no.2 to be having title to 0.731 acres; they are now inflating their land holding; (xi) that the consideration paid by the Beekman Helix India Consulting Private Limited (Beekman) to claimants and respondent no.2 for acquiring title to the land finds mention in the MOU and does not find mention in the deed of assignment dated 27.02.2008 or in the sale deeds; the said consideration was by transfer of loans, taken by the claimants and the respondent no.2 from the respondent no.1, to Beekman; (xii) attention was invited to the "Settlement Agreement and Release" dated 11.01.2010 between the respondent no.3 and the respondent no.1 and to another version of the MOU dated 06.02.2008 supra; (xiii) that the 4 sale deeds being registered, the claimants, on the date of registration i.e. 11.10.2010 are deemed to have notice thereof and of the entire title in the land having stood vested in the respondent no.1;

(xiv) the claimants though say acquired knowledge of the sale deeds on 30.09.2013, still did not take any steps; (xv) the claimants, though claimed even then that the respondent no.1 has been selling built-up area of the project, but did not raise any objection because were left with no stakes in the development over the land; (xvi) if the claimants had any stake in the development, the claimants would have been involved in such sales but admittedly were not involved; (xvii) the argument of the claimants that they have not received any sale consideration under the sale deeds, has already been decided against the claimants; (xviii) the sale deeds were executed two years after the deed of assignment dated 27.02.2008 and 11 months after the execution of power of attorney----if the sale deeds were to have been got executed fraudulently and surreptitiously, the same would have been executed immediately after obtaining the power of attorney; (xix) the sale deeds, in law cannot be declared to be void for inadequacy of consideration; (xx) the claimants earlier also filed OMP No. 1057/2013 raising the same contentions as in the instant section 17 application and were not granted any interim relief----attention in this regard is drawn to orders dated 28.10.2013, 22.01.2014 and 25.02.2014 therein; (xxi) that the invocation of arbitration clause, leading to the earlier round of arbitration, was not by the respondent no.3 alone, but also by the claimants; while the respondent no.3 was concerned with the sale consideration of Rs.6,47,89,944/- payable to it, the claimants, if rights to 10% share in built-up area under the collaboration agreements had continued in favour of the claimants even after the deed of assignment, would have been interested in making a claim thereto; however the said rights were not agitated because no longer vested in the claimants and are being claimed now as an afterthought; (xxii) the SOC in the earlier round of arbitration also was filed not only by respondent no.3 but also the claimants and the respondent no. 2 but no such claims as now made were made in the SOC; (xxiii) the respondent no.1 in the SOD in the earlier round of arbitration specifically stated that it was the owner of the entire land without any obligation to share 10% of the built-up area with the claimants and the respondent no.2; (xxiv) attention was drawn to the orders in the three section 17 applications filed by the claimants in the earlier round of arbitration as well as to the order in the application under Order XXXIX Rules 1 & 2 of CPC filed in the suits filed by the claimants; (xxv) the averments of the claimants in the plaint in the suits earlier filed also show that the 10% built-up area to which they are claiming right in this arbitration was under threat then also; however, no relief with respect thereto was sought; (xxvi) after the judgment in the suits earlier filed challenging the sale deeds and in the appeal preferred thereagainst has attained finality, the claimants cannot be permitted to now claim 10% built-up area claiming title to the land; (xxvii) once vide the sale deeds aforesaid the land stood transferred from the claimants to the respondent no.1 without reserving right to 10% built-up area thereon

in favour of the claimants, the claimants cannot claim right to the said 10% built-up area; (xxviii) the claimants, under the collaboration agreements dated 04.06.2007 were entitled to 10% of the built-up area in lieu of their contribution of land to the project; however, once the land stood sold by the claimants to the respondent no.1, the claimants cannot be entitled to 10% of the built-up area in as much as are not contributing land to the project; (xxix) the claims are barred by res judicata; and, (xxx) alternatively, the claims are barred by constructive res judicata in as much as though could have been agitated earlier, were not agitated.

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15. The senior counsel for the respondent no.1 in his sur-rejoinder arguments, (i) drew attention to the judgment of the civil court and to the SOC in the earlier arbitration, to show that the same arguments as agitated therein are being raised now also; (ii) that the financial calculations were never assailed in the process; (iii) at the time of execution of the collaboration agreements dated 04.06.2007 between claimants and the respondent no.2 on the one hand and the respondent no.3 on the other hand as well as at the time of the deed of assignment dated 27.02.2008 between the respondent no. 3 on the one hand and the respondent no.1 on the other hand, with the claimants and the respondent no.2 as confirming parties, all the companies were part of the same group and they were arranging their affairs including financial affairs for mutual benefit; (iv) the books of the respondent no.3 were not handed over to Beekman; and, (v) copies of the ledger account of the respondent no.3 with the respondent no.1 for the period from 01.04.2006 to 31.05.2011 were handed over and it was contended that at that time valuable consideration was paid for acquiring the title to the entire land.

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17. I have considered the pleadings, contentions and the documents to which attention was drawn during the hearing. I am unable to find the claimants entitled to any interim measure as sought. My reasons therefor, including with respect to the material contentions of the counsels noted above, follow:

A. At the outset, the claimants, in the SOC itself, in alternative to the relief of specific performance (by allocation of 10% built-up area of the project to the claimants), having put a value to the damages to which the claimants would be entitled in the event of specific performance being not granted for any reason, have dented the ingredient of 'irreparable loss and injury' necessary for grant of interim relief. Once it is found that the claimants, if declined the interim relief sought would not suffer any irreparable injury and if found to have a case can still be compensated with money, ordinarily interim relief in the nature of injunction restraining dealing with property of which a party is in control and possession and of

which sale deed is also in favour of that party, is not to be granted. I may however clarify that merely by quantifying the damages and by claiming the same in the alternative, the right to interim injunction claimed is not defeated. However, in the present case, clause 26 of the collaboration agreement provides that the claimants, before selling their share of the built-up area, shall offer the same to the respondent no.3 and only upon the refusal of the respondent no.3 to purchase the share of the claimants will the claimants have the right to sell their share of built-up area to prospective buyers thereof. Upon execution of the deed of assignment, dehors the clauses therein with respect to transfer of land, the claimants were obliged to offer their 10% share of the built-up area to the respondent no.1 and only upon refusal in writing of respondent no.1, can sell the same in the open market. It is thus not as if the claimants, even in the event of succeeding, have a absolute right to deal with their share of the built-up area for it to be said that such rights of the claimants should not be allowed to be defeated and interim measure protecting such rights is necessary. The claimants, as per their own claim also are only entitled to the price of the built-up area of their share from the respondent no.1 unless the respondent no.1 refuses to pay such price. The counsel for the claimants also, in his arguments repeatedly contended that the respondent no.1 has the right of first refusal in sale by the claimants of 10% built-up area of their share. It is not the case of the claimants that they desire to keep 10% built-up area or any part thereof for their own use. The claim of the claimants is thus a monitory one and the question of the claimants, in the event of interim injunction claimed being not granted suffering any irreparable loss or injury does not arise. Once it is so, no case for grant of interim injunction restraining the respondent no.1 from alienating, encumbering or parting with possession of 10% of the built-up area arises.

B. The claimants, in the SOC have not only quantified the monitory value of their share of the built-up area, claiming the same as damages in lieu of specific performance but have in their application under section 17 also, in alternate to the relief of interim injunction, sought the relief of direction to the respondent no.1 to deposit such damages. However the question of directing such deposit of damages, at this interim stage, arises only when the claimants show that unless such direction for deposit is made or other security taken, the award for damages to which they may ultimately be found entitle to, will remain a paper award and the claimants, inspite of expending time and money in the arbitration and succeeding therein would not be able to recover the same. Else, once the claimants, at the time of final adjudication succeed in their claim and/or are found entitled to damages, such damages can always be recovered in execution of the award.

C. The claimants however, in the section 17 application, have not pleaded a case of the claimants, after succeeding in this arbitration, being not able

to recover the same. It is not the case of the claimants that the respondent no.1 has been conducting its affairs in a manner to defeat the award if finally against the respondent no.1. Though this fact was brought to the knowledge of the counsel for the claimants during the hearing spanning over several days and the counsel for the claimants stated that he would file an additional affidavit taking the said pleas but no additional affidavit has been filed. The only inference is, that the claimants are unable to plead the ingredients of Order XXXVIII Rule 5 of the CPC. Thus, the question of this tribunal granting the interim relief of deposit of the damages claimed or of any amount does not arise.

D. Not only does the interim measure claimed not satisfies the ingredient of irreparable loss and injury, qua the ingredient of prima-facie case also, weaknesses are found in the case of the claimants.

E. A perusal of the orders in the successive section 17 applications filed by the claimants in the earlier arbitration and in the application for interim relief filed by the claimants in the suits earlier filed shows that neither in the earlier arbitration nor in the earlier civil proceedings, in both of which the claimants were agitating their rights on the basis of the same documents as for consideration now, the claimants were found entitled to be having any prima-facie case. The claimants in the said applications for interim injunction before both the fora were also seeking to restrain the respondent no.1 from dealing with the land. However the courts, on the basis of same documents as for consideration now, did not find a case for so restraining the respondent no.1 in any manner whatsoever. Irrespective of whether the cause of action for 10% share in built-up area had accrued to the claimants till then or not and irrespective of whether the same was a part of the claim in the earlier proceedings or not, in the absence of any restrain on the respondent no.1 from dealing with the lands and/or from raising development thereon and / or from dealing with the said development, the right of the claimants now agitated to 10% share in the built-up area was also in jeopardy then. I am not impressed with the argument of the counsel for the claimants, of the respondent no.1 being not entitled to sell the built-up area being developed on the land till issuance of occupancy certificates. Notice can be taken of the practice prevalent of entering into agreements for sale of flats conceived on the land and/or of entering into agreements for sale of flats under construction and collecting sale considerations therefor. In fact, the claimants are found to have been themselves agitating so throughout the earlier proceedings and for which reason only were claiming interim injunctions. Once neither the arbitral tribunal earlier constituted at the instance of the claimants nor the civil court earlier approached by the claimants find the claimants to be having any primafacie case, if I, after the award as well as the ultimate judgment in the earlier round are against the claimants, now on the basis of the same documents find a

prima-facie case in favour of the claimants, I would be throwing the important principle of precedence to the wind and shake the confidence in decision making and lend to the belief, of justice being in chancellor's foot.

F. It is however not as if I have not independently examined the entitlement of the claimant. The language and tenor of the deed of assignment dated 27.02.2008 is not of mere assignment by the respondent no.3, of its rights under the collaboration agreements dated 04.06.2007 to develop the land, in favour of the respondent no.1 and the claimants as owners of the land merely conveying their consent to such assignment, but of assignment/conveyance to the respondent no.1 not only of the development rights but "together with all right, title, interest and obligations" in respect of the land. I may also notice that while the collaboration agreements dated 04.06.2007 were not registered, the deed of assignment dated 27.02.2008 was registered and which is also indicative of the same having been done for the reason of conveying rights in immovable property. The other terms and conditions of the deed of assignment dated 27.02.2008 viz., of the land being free from encumbrances etc., are also of sale and not of mere assignment of development rights. The said deed, while entitling the respondent no.1 to sell and otherwise transfer the flats in the built-up area developed on the land, does not limit the same in any manner whatsoever.

G. Similarly, the power of attorney executed by the claimants in favour of respondent no.1 also empowered the respondent no.1 to sell not only the land but also the built-up area thereon without reserving any share or 10% share for the claimants as land owners. It is significant that the claimants in the earlier proceedings nowhere pleaded, as is argued now in rejoinder argument, that the sale deeds were necessitated to enable the respondent no.1 to obtain licenses for development. Moreover, even if that be so, nothing prevented the claimants from while so empowering the respondent no.1, reserve 10% of the built-up area for themselves and/or limit the power of respondent no.1 to deal therewith.

H. The sale deeds also, challenge where to has since been conclusively defeated, convey the land absolutely to the respondent no.1 without reserving any rights in the claimants to the development thereon or in any part of the said development. The challenge to the said sale deeds has already been conclusively decided against the claimants. I am at this stage unable to accept the argument of the counsel for the claimants that the said challenge has been defeated finding the claimant to be entitled to 10% of the built-up area.

I. I need say no more at this stage, on the aspect of prima-facie case. Suffice it is to state, that the claimants, atleast at this stage do not satisfy the ingredients of prima-facie case.

> *J. The 3rd ingredient of balance of convenience, is also found to weigh in favour of the respondent no.1 and against the claimants. While the claimants, as aforesaid, only have monitory claims, if the respondent no.1 is restrained, the same is bound to adversely affect the property/project commercially and which, besides on the land of the claimants spreads over other lands also and in 90% of built-up area whereon admittedly the respondent no.1 has rights. Any interim measure as sought is bound to label the property/project as a litigated one, adversely affecting the prices thereof. While, as aforesaid, the claims of the claimants are monitory, in the event of claimants ultimately failing, there will be no way to compensate the respondent no.1 for the loss suffered by grant of interim measure sought by the claimants. Thus, the claimants do not pass the anvil of this ingredient either*."

18. It is evident from plain reading of the order that the relief was declined by the Arbitrator on the ground that in alternative to relief of specific performance of the Agreements by allocation of 10% built-up area, Appellants had sought damages and thus they understood that no irreparable loss and injury will be caused if the interim relief was not granted. Arbitrator also declined to grant the relief of deposit of damages since Appellants were unable to make out a case that if the award was passed in favour of the Appellants, it would be a paper award, which the Appellants will not be able to execute. Arbitrator also noted that despite several hearings, Appellants did not file additional affidavit pleading and demonstrating how ingredients of Order 38 Rule 5 CPC, which have a high threshold, were made out. In a nutshell, Arbitrator found that Appellants were unsuccessful in making out *prima facie* case as also a case that irreparable injury will be caused. On the balance of convenience, Arbitrator rendered a finding that at the highest, the claims of the Appellants were monetary in nature and money could be recovered at any stage but if Pivotal was restrained, the order will adversely affect the property/project commercially, particularly, when Pivotal had rights in 90% of built-up area.

19. After dismissal of this application, second application was filed by the Appellants on 14.02.2025 seeking the following reliefs:-

> *"In light of the facts and circumstances mentioned above, it is, therefore, most respectfully prayed that this Hon'ble Tribunal may be pleased to:*
>
> *A. Identify and temporarily restrain Respondent No. 1 including its agents, assignees, nominees, et al. from creating any third-party interest, or from alienating or parting with the possession of 43 units/flats, each admeasuring 2525 sq. ft., in Tower No. 1 and Tower No. 2 of the subject projects, or such other number of units in the said Towers as may be necessary for securing Claimant Nos. 1-3's entitlement to the extent of 1,07,186.267/- sq. ft of the built-up area in the subject project, until the conclusion of the present arbitration proceedings;*
>
> ***Without prejudice to the above and in the alternative***
>
> *Securing the Claimant Nos.1-3 by way of deposit of the value of their share in the 10% built-up area i.e., 1,07,186.267/- sq. ft. @Rs. 8,514.85/- per sq. ft. amounting to Rs. 91,26,75,011/-* ***(Rupees Ninety-One Crore Twenty-Six Lakhs Seventy-Five Thousand and Eleven Only)*** *before this Hon'ble Tribunal; and/or*
>
> *B. Pass any other and further order as this Hon'ble Tribunal may deem, fit, just and proper in the facts and circumstances of the case."*

20. This application was dismissed on 13.05.2025 with the following observations:-

> *"6. The claimants have filed the instant application seeking inter-alia the same interim measures as earlier denied to the claimants, pleading (i) that it was being filed in view of the fresh occupation certificate dated 01.05.2024 issued with respect to Towers 1 & 2 in the subject project; (ii) that the claimants 1 to 3 are likely to succeed in the present arbitration and unless the interim measures sought is granted, the arbitral award even if in favour of the claimants would be a paper decree; (iii) that vide the Deed of Assignment dated 27.02.2010, respondent no.1 merely replaced respondent no.2 as the developer; all other terms and conditions ofthe Collaboration Agreement remained the same; (iv) the right of the claimants to 10% of the built-up area is maintained in the Power of Attorney as well as in the orders of the Faridabad Court in the suits filed by the claimants; (v) the said right of the claimants is also evident from the order in the section 11 application constituting this tribunal; (vi) this tribunal also in its order dated 31.08.2023 has acknowledged the entitlement of the claimants to 10% of the built-up area; (vii) in the order dated 13.12.2023 dismissing the earlier application of the claimants under*

section 17 of the Act also this tribunal had noted that prima-facie no consideration had been received by the claimants in exchange for the subject land; it has been the consistent case of the claimants that 10% of the built-up area in the subject land was intended to serve as the consideration; (viii) if the respondent no.1 creates 3rd party rights in the built-up area falling to the share of the claimants, it will lead to further obstacles compelling the claimants to litigate with multiple purchasers thereof; (ix) alienation or transfer of built-up area of the share of the claimants would not only compromise the claimants' right but also create further challenges in recovery thereof; (x) the recent actions of the respondent no.1 of conducting flash sales of built-up area clearly indicate an intent to dissipate the assets and circumvent the rights of the claimants; (xi) the respondent no.1 has repeatedly tendered false statements regarding the availability of number of unsold units in the project; (xii) the respondent no.1 has not produced the documents which it was directed to produce vide order dated 18.08.2023; (xiii) the claimants, before the High Court of Delhi on 27.04.2023 stated that 100% of the built-up area in the subject project had been sold; however contrary to the said assertion, the respondent no.1 has been consistently advertising the availability for sale of built-up area in the project, on its official lnstagram pages namely faridabadeye and faridabad_eye; (xiv) Haryana Real Estate Regulatory Authority (HRERA) has prohibited the claimants from conducting any sales; however the claimants are not submitting returns as required to be submitted before HRERA; (xv) the respondent no.1 has been illegally making sales including to their associate entities; (xvi) this conduct of the respondent no.1 exemplified disregard for judicial orders; (xvii) the respondent no.1 has failed to complete the project and obtain a completion certificate; (xviii) this failure is driven by the dire financial straits in which the respondent no.1 is; the financial instability of the respondent no.1 is evident from its inability to complete the project within the prescribed timelines, leading to multiple penalties imposed by HRERA; (xix) to safe-guard the rights of the claimants, this application is filed, for direction to the respondent no.1 to deposit with this tribunal a sum of Rs. 91,26,75,011/-, being the value of 10% of the built-up area i.e. 1,07,186.267 sq.ft; and, (xx) the necessary ingredients of Order XXXVIII 38 Rule 5 were also satisfied.

7. The respondent no.1 in its reply to the application has inter-alia pleaded, (i) mere pendency of the present proceedings which are mischievous and vexatious, is causing huge loss and prejudice to the respondent no.1; (ii) this tribunal vide order dated 09.7.2024 has also warned the claimants; (iii) the claimants have delayed the recording of evidence of CW-1 and took long time from 03.07.2024 to 13.11.2024 therefor; (iv) the claimants withdrew the affidavit by way of evidence of CW-3 as it was discovered that there had been tampering with the

evidence of CW-3; (v) the claimants have repeatedly disrupted the schedule of this arbitration, on some ground or the other; (vi) this application has been filed after the entire evidence of the claimants stood closed; the real intention is to bring on record the very documents based on which the amendment of SOC was sought for; (vii) the claimants, under the guise of section 17 application, have filed an entirely fresh SOC, incorporating averments, neither raised nor made earlier; (viii) the present application is the 9th attempt of the claimants to seek interim measure; (ix) the present application is directed against 43 flats in Towers 1 & 2, which are purportedly available for sale; (x) no flats are vacant in Tower No. 2; (xi) the Tower 1 does not stand upon the land of the claimants, as stated on 31.08.2023 also; (xii) be that as it may, "most of the inventory in the project stand sold"; (xiii) claimants are bound by the principles of res judicata and constructive res judicata; (xiv) there are no vacant flats in Tower - 2; (xv) there are 40 flats that are currently vacant in Tower-1; however they are currently attached/prohibited from being sold vide order dated 15.05.2023 of HRERA, on account of purported non-compliance of certain extensions required to be sought from RERA; these 40 flats fall exclusively to the share of respondent no. 1 ; (xvi) the prayers in the instant application tantamount to attachment before judgment or deposit before judgment, akin to an application under Order XXXVIII of the CPC; however the application is silent as to the parameters of Order XXXVIII; (xvii) the RERA orders do not paint the picture of financial instability of the respondent no.1; RERA has imposed a minor fine of Rs. 1,00,000/- only on the respondent no.1 ; (xviii) the factum of the present arbitration is already within the knowledge of RERA; (xix) the project is financially stable; (xx) the claimants are not entitled to any portion of the built-up area much less an area of 1,07,186.267 sq.ft.; (xxi) if the claims of the claimants are allowed, the built-up area falling to the share of the claimants will have to be calculated on super built-up area basis i.e. inclusive of setbacks, common areas, etc.; (xxii) the claimants are not entitled to maintain a second application under section 17 of the Act; (xxiii) no fraud or suppression has tainted adjudication of the earlier section 17 application; (xxiv) the OC issued on 01.05.2024 did not provide the claimants with a fresh cause of action; (xxv) moreover, the said OC was placed on record by the claimants themselves in August 2024 but no application under section 17 was made at that time; (xxvi) the claimants have been seeking the same relief throughout and have never been granted the same; (xxvii) the claimants do not have a prima-facie case and the balance of convenience is not in favour of the claimants; (xxviii) the Deed of Assignment, the Power of Attorney, the Sale Deeds with the MOU and the Settlement Agreement form one unbroken chain of documents; (xxix) the claimants have no right to any portion of the built-up area; (xxx) the SOC in the present case does not challenge the Sale Deeds upon the ground of consideration; the same was specifically raised in the earlier

arbitration; (xxxi) the respondent no.1 has not conducted any flash sales; and, (xxxii) the respondent no.1 is not advertising any units for sale; the accounts on instagram are not of the respondent no.1; the project name is used by various brokers/dealers/customers, to effect second sales with which the respondent no.1 has no concern; the mobile numbers are not of the respondent no.1.

xxx *xxx* *xxx*

12. I have considered the rival contentions and am unable to still find the claimants entitled to either of the interim measures sought. Neither do I find the claimants entitled to interim measure of restraining the respondent no.1 from alienating or parting with possession of 43 units/flats, each admeasuring 2525 sq.ft., in Tower no. 1 and Tower no. 2, to which the claimants claim to be entitled to by way of specific performance nor do I find the claimants entitled to the interim measure of a direction to the respondent no.1 to secure the amount of Rs. 91,26,75,011/to which the claimants claim to be entitled to, in alternate to the claim for specific performance.

13. It is not in dispute that the claimants, earlier also had sought the same interim measures as are being sought now. Having minutely gone through the order dated 13.12.2023 dealing with the earlier application of the claimants under section 17 of the Act, I find that the said interim measures to have been denied to the claimants, for the reasons of the claimants not satisfying either of the ingredients of prima-facie case, irreparable loss and injury and balance of convenience, necessarily required to be met for obtaining an interim measure. It is not as if the claimants, in the order dated 13.12.2023 were denied interim measures then as well as now sought, for the reason of the respondentno.1 having stated that the entire built-up area already stood sold off. Only if the interim measure earlier had been declined to the claimants on the said premise alone, could the claimants, on showing that the respondent no.1 represented so falsely, have sought the grant of same interim measures now on merits. On the contrary a reading of the order dated 13.12.2023 shows, the same interim measures as claimed now having been declined, not finding a prima-facie case in favour of the claimants, finding that the claimants would not suffer any irreparable loss or injury if declined the said interim measure, finding the balance of convenience to be not in favour of grant of the said interim measure and grant of interim measure to be not in public interest.

14. I am unable to fathom any reason, in the pleadings or in the arguments on the instant application, for taking a different view, even if the same was permissible in law. The reasons given earlier remain good today also. One cannot be unmindful of the fact that the principles of res judicata apply to successive stages of the same proceeding also. Though undoubtedly in the case of interim measure, law permits change, but only upon a case

therefor being made out i.e. of change of circumstances or of discovery of new material or of a change in an interpretation of law. Neither of the said ingredients is found here. Moreover, every change in facts and circumstances would not entitle the court/tribunal to change its view. It is only those change in circumstances which have a direct bearing on the reasons which prevailed for granting or for refusing interim relief, which can form the basis of change in view qua interim measures. None of the reasons given in the order dated 13.12.2023, for declining the interim relief, in my view justify me to take a different opinion.

15. After 13.12.2023, though the claimants have concluded their evidence, the recording of the deposition of the witnesses of the respondent no.1 is still underway and this tribunal cannot, on the basis of evidence of one party, take a different prima-facie view than taken earlier. If the courts/tribunals so keep on changing their views and passing orders diametrically opposite to the orders passed earlier in the same proceeding, the same will shake the faith in adjudicating process.

16. As far as the averments in the instant application, for the interim measure of directing the respondent no.1 to secure the alternate claim for recovery of Rs.91,26,75,011/- is concerned, I may recall that at the time of hearing of the earlier application under section 17, inspite of the claimants being informed that the requisite ingredients for relief in the nature of attachment before judgment were missing, had not made any amends. The claimants have been unable to show any change since the last about one and half years when the said interim measure was declined. It cannot also be lost sight of that the respondent no.1 is in the business of development, construction and sale of property. A sale property in the course of business of selling properties can by no stretch of imagination be construed as disposal of property with intent to obstruct or delay execution of decree within the meaning of Order XX.XVIII Rule 5 of CPC.

17. Rather, it is the case of the claimants themselves that 43 flats are lying unsold and there is a restraint on sale thereof. These proceedings are at the final stage of evidence and if the parties want, can be concluded quickly. However instead of the same, repeated adjournments and long dates are being taken. Thus, no case for granting interim measure in the nature of attachment before judgment, even now is made out.

18. As far as the averments with respect to the claimants being compelled to litigate with flat buyers in the event of interim measure being not granted are concerned, I am unable to decipher how. As prima-facie held in the order dated 13.12.2023, the claimants even under the Collaboration Agreement were required to first offer their 10% share in the built-up area to the respondent no.1 and were only entitled to price thereof. Upon the claimants succeeding, the claimants are prima-facie likely to be entitled to the alternate relief of recovery of Rs.91,26,75,011/- only and for which the

claimants would not be entitled to litigate with the flat buyers."

21. From a conjoint reading of the aforesaid orders passed from time to time, it is clear that the common thread that runs in these orders is that the Courts/Arbitral Tribunals were of a consistent view that Appellants failed to make out a *prima facie* case for grant of interim relief of restraining Pivotal from transferring, alienating or encumbering the units/flats in the subject property. Challenge to the execution of the Sale Deeds by Pivotal was also unsuccessful when suits were dismissed followed by dismissal of the appeals *albeit* with an observation that Appellants were entitled to 10% share in the built-up area on the subject property. In the impugned order dated 13.12.2023, Arbitrator rightly held that Appellants sought deposit of value of their share by way of damages as an alternative to relief of specific performance and could be compensated by payment of money equal to the value of the share claimed in the built-up area on the subject land, if they succeeded and thus no irreparable harm or injury will be caused if Pivotal was not restrained from sale of the vacant units. Arbitrator reiterated the finding in order dated 13.12.2013 that balance of convenience will not lie in granting the interim relief and grant of the same will be against public interest. It is trite that if in a given case a party seeking specific performance of an agreement can be compensated by payment of compensation/damages, Court may not grant injunction restraining sale of the property in question and this applies with greater vigour in this case since Appellants have themselves sought damages as alternate relief to specific performance of the Agreements.

22. Learned Arbitrator also rightly declined the relief of deposit of the

value of share claimed in the built-up area as the Appellants were unable to demonstrate that ingredients of Order 38 Rule 5 CPC were satisfied and Appellants will not be able to execute the award, if they finally succeed in arbitration. After detailed analysis of facts and reliefs sought from time to time by the Appellants, Arbitrator was of the view that no reason was forthcoming from the pleadings or the arguments to take a view different from the one taken earlier. Arbitrator has also taken note of a crucial fact there is already a restraint on the sale of vacant flats and Appellants were unable to traverse this finding even before this Court. It was painfully observed that the arbitral proceedings are at the final stage of evidence and if parties want, can be concluded quickly, however, instead repeated adjournments and long dates are being taken. As for the argument that Appellants will be compelled to litigate with flat buyers if interim relief was not granted, Arbitrator has looked into the terms of Collaboration Agreements and observed that Appellants were required to first offer their 10% share in the built up area to Pivotal (by virtue of Deed of Assignment) and were only entitled to price thereof, meaning thereby that if they succeeded, they will be entitled to recovery of Rs. 91,26,75,011/- and there will be no cause for litigating with the flat buyers. Learned Senior Counsel for Pivotal successfully demonstrated that the Balance Sheet of Pivotal on which heavy reliance was placed by the Appellants was being misconstrued and as per accounting procedures, Pivotal is solvent and its net worth is far more than the damages/value of the share in the built-up area, sought.

23. In this backdrop and chequered history of interim applications and successive orders passed thereon, the question that begs an answer is whether the view of the Arbitrator in the impugned orders is so perverse or

arbitrary or against the settled law that it calls for interference and to my mind, the answer is 'No'. Arbitrator has carefully balanced the case of the respective parties and looking at the merits as also the alternative relief of damages, has come to a conclusion that Appellants have not made out a *prima facie* case and balance of convenience does not lie in favour of the Appellants. Taking into consideration the alternative relief for damages, it has been held that no irreparable injury will be caused if Pivotal is not injuncted from alienating the flats in question. The view of the Arbitrator in both the impugned orders is plausible and well-reasoned applying the trinity principle of *prima facie* case, balance of convenience and irreparable injury. Pivotal has taken a categorical stand that it has the financial capacity to satisfy the monetary claims of the Appellants, if they succeed.

24. For all the aforesaid reasons, no interference is warranted in the impugned orders and the appeals are accordingly dismissed along with pending applications. It is made clear that observations in this judgement are only for deciding the present appeals and will have no bearing on further and/or final adjudication of the case of the parties in the ongoing arbitration proceedings.

JYOTI SINGH, J

OCTOBER 06, 2025/*S.Sharma*