# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
## ORDINARY ORIGINAL CIVIL JURISDICTION
## COMMERCIAL ARBITRATION PETITION NO. 384 OF 2024

**1. Arun Bhoomi Corporation**
A registered partnership firm having
its office at Flat No, C/2504. Oberoi
Garden, Thakur Village, Kandivali (E),
Mumbai 401 101

**2. Vijay Kanhaiyalal Joshi**
Aged about 35 years, Occ. Business,
Residing at Flat No. C/2504 Oberoi Garden,
Thakur Village, Kandivali (East) Mumbai 401 101 ...Petitioners

**Vs.**

**1. M/s. Jagruti Developers,**
A partnership firm, having its address
at office at 2, Shinde Chawl, M.D.
Road, Kandivali (East), Mumbai -
400 101

**2. Shri. Ramashish Gopal Gupta**
**3. Dhulabhai Baldaniya**
**4. Kishor Shah**
**5. Madan Gupta**
Partners of M/s. Jagruti Developers,
having its address at office at 2, Shinde Chawl,
M.D. Road, Kandivali (East), Mumbai -
400 101

**6. Shri. Kanhaiyalal Nathulal Joshi**
**(Deleted Since Deceased)**

**6(a). Mrs. Nirmala Kanhaiyalal Joshi,**
Wd/o Late Shri Kanhaiyalal Joshi

**6(b) Mr. Karan Kanhaiyalal Joshi,**
S/o Late Shri Kanhaiyalal Joshi

**6(c) Ms. Pinky Kanhaiyalal Joshi,**
D/o Late Shri Kanhaiyalal Joshi

**6(d) Ms. Damini Kanhaiyalal Joshi,**
D/o Late Shri Kanhaiyalal Joshi
All having their residence at Flat
No. C/2504, Oberoi Garden, Thakur
Village, Kandivali (East), Mumbai – 400101 ...Respondents

**WITH**
**INTERIM APPLICATION (L) NO. 21432 OF 2024**
**IN**
**COMMERCIAL ARBITRATION PETITION NO. 384 OF 2024**

**1. Arun Bhoomi Corporation**
A registered partnership firm having
its office at Flat No, C/2504. Oberoi
Garden, Thakur Village, Kandivali (E),
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**2. Vijay Kanhaiyalal Joshi**
Aged about 35 years, Occ. Business,
Residing at Flat No. C/2504 Oberoi Garden,
Thakur Village, Kandivali (East)
Mumbai 401 101 **...Applicants/Petitioners**

**IN THE MATTER BETWEEN**

**1. Arun Bhoomi Corporation**
A registered partnership firm having
its office at Flat No, C/2504. Oberoi
Garden, Thakur Village, Kandivali (E),
Mumbai 401 101

**2. Vijay Kanhaiyalal Joshi**
Aged about 35 years, Occ. Business,
Residing at Flat No. C/2504 Oberoi Garden,
Thakur Village, Kandivali (East)
Mumbai 401 101 **...Petitioners**

**Vs.**

**1. M/s. Jagruti Developers,**
A partnership firm, having its address
at office at 2, Shinde Chawl, M.D.
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All having their residence at Flat
No. C/2504, Oberoi Garden, Thakur
Village, Kandivali (East), Mumbai – 400101 **...Respondents**

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Mr. Navroz H. Seervai, Senior Advocate a/w Lizum Wangdi, Subit Chakrabarti, Khushnumah Banerjee and Harish Ballani i/by Vidhii Partners for the Petitioners/Applicants.

Mr. Shailesh Shah, Senior Advocate a/w D. Banerjee, Anchit Ojha, R. P. Ojha, Rakesh Kumar Dubey, Ankit Ojha and Kirti Ojha for Respondent No.5.

Mr. Gautam Ankhad, Senior Advocate a/w Nishta Mohanty Garg, Hiral Thakkar, Smridhi Lodha an Meenakshi Pahuja i/by ANB Legal for Respondent Nos.6(a) to 6(d).

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**CORAM : ARIF S. DOCTOR, J.**
**RESERVED ON : 22nd OCTOBER, 2024**
**PRONOUNCED ON : 17th DECEMBER, 2024**

**JUDGMENT:-**

1. The captioned Arbitration Petition is filed under the provisions of Section 37 of the Arbitration and Conciliation Act, 1996 (Arbitration Act) and impugns an order dated 21st June 2024 passed by the Arbitral Tribunal in an Application filed by Respondent Nos. 1 to 5 under Section 17 of the Arbitration Act ("*the said Application*"). Respondent Nos. 1 to 5 ("*Jagruti*") are the Claimants in the Arbitration and the Petitioners and Respondent Nos. 6(a) to 6(d) are the Respondents in the Arbitration.

2. Before adverting to the rival contentions, it is necessary for context, to set out the following facts, viz.

i. The Petitioner is admittedly the owner of a piece of land situated at Survey No.10, Hissa No.1 Village Mira, Taluka and District Thane 401 107 (*"the said land")*. The Petitioner had vide

Agreements dated 21st October 2009[1], 4th August 2011[2] and 4th August 2011[3] ("*the said Agreements*") sub licensed the development of the said land ("*the said Project*") to Jagruti. It is the Petitioners' case that thereafter on account of material breaches on the part of Jagruti, the Petitioner was constrained to issue a show cause cum termination notice dated 28th September 2015 to Jagruti. By the said notice Jagruti was called upon to rectify, what were stated to be breaches on the part of Jagruti, of the said Agreements, within 30 days, failing which the said Agreements would automatically stand terminated.

ii. Since Jagruti did not respond to the termination notice within 30 days, nor did they, according to the Petitioner, rectify the said breaches, it is the Petitioners' case that the said Agreements automatically stood terminated. The Petitioner thus, on 15th November 2015 issued a public notice informing the public at large about the termination of the said Agreements.

iii. Jagruti, thereafter, vide a letter dated 2nd December, 2015 responded to the termination notice and also subsequently on 24th April, 2016 issued a public notice *inter alia* disputing the

1 Sub- Development Agreement
2 Deed of Confirmation
3 Supplementary Sub-Development Agreement

termination. It is the Jagruti's case that the termination notice was thereafter waived, and the Petitioner and Jagruti continued to share office space till May, 2017, after which according to Jagruti they were ousted from the said project by the partners of Petitioner No. 1.

iv. Jagruti thereafter vide a notice dated 13th July, 2019 invoked arbitration and filed a Petition under Section 9 ("*Section 9 Petition*") of the Arbitration Act, *inter alia* seeking an injunction against the Petitioners from (a) carrying out any further construction and (b) creating third party interests in the flats/shops which were under construction. This Court, however, vide an order dated 20th February 2020, disposed of the Section 9 Petition by passing the following Order, viz.

> *"**PC:-***
>
> *1. After some arguments and having taken instructions from Mr. Ramashish Gopal Gupta (Pan Card No. AABPG9497N) who is the 2nd Petitioner and partner of the 1st Petitioner (also the 2nd applicant), Mr. Damle, learned Senior Advocate for the Petitioners, seeks leave to unconditionally withdraw the Section 9 Petition. The Arbitration Petition is dismissed as withdrawn. It is made clear that these reliefs are not open for being pursued or pressed in any arbitration that may hereafter ensue."*

v. Thereafter, vide an order dated 25th April, 2022, this Court referred the disputes and differences between the Parties to arbitration. Jagruti then filed its Statement of Claim on 21st September, 2022. The Petitioners filed their Statement of Defence 28th December 2022 and subsequently on 23rd August, 2023, filed the amended Statement of Defence. The said Application came to be filed in February, 2024 in which Jagruti sought various interim reliefs including (i) an order of disclosure of the consideration received and expenses made in respect of construction conducted by the Petitioners and Respondent Nos. 6(a) to 6(d), all agreements for a sale and allotment letters executed by the Petitioners and Respondent Nos. 6(a) to 6(d) and steps taken by the Petitioners and Respondent Nos. 6(a) to 6(d) to obtain additional FSI and available additional FSI; (ii) an order of deposit of 30% of proceeds received by the Petitioners and Respondent Nos. 6(a) to 6(d); (iii) to order the Petitioners and Respondent Nos. 6(a) to 6(d) to withdraw 30% of the future sale proceeds from RERA bank account and deposit the same in escrow account and (d) In the alternative Petitioner No. 2 and Respondent Nos. 6(a) to 6(d) be directed to deposit 58% of sale proceeds received by the Petitioners within stipulated time and Petitioner No.2 and Respondent Nos. 6(a) to 6(d) to disclose all their assets on oath failing which the Petitioners and Respondent

No. 6(a) to 6(d) shall be restrained from creating third party rights on their assets disclosed.

vi. The Tribunal then vide the Impugned Order substantially allowed the said Application by ordering and directing as follows, viz.

> *77. In view of the above discussion, the following order is passed:*
> *the Application of the Claimants is allowed only to the following extent:*
>
> *I. The following disclosures shall be made by the Respondents on affidavit, within one month from today, in respect of construction of Wings A to E of the Building Krishna Prestige situated at Mira Village, Thane (**the Project**, for convenience) for the period till today:*
>
> *(a) all agreements for sale and/or allotment letters executed and/or entered into by the Respondents till today in respect of flats/ shops/units, constructed and/or proposed to be constructed in the Project;*
>
> *(b) all amounts received by the Respondents till today for allotment/agreement for sale of any shop/flat/unit in the Project with particulars of dates, amounts, persons making the payments, and wing, shop no./flat no./unit no. in the Project; and*
>
> *(c) all expenses incurred by the Respondents for the Project till today, other than the expenses incurred by the*

*Claimant for the Project.*

*II. Respondents shall disclose on affidavit by 31.08.2024, the following particulars in respect of the Project for the period commencing from 22.06.2024 till 31.07.2024 (and thereafter on monthly basis from August 2024 onwards, by the end of the next month):*

*(a) all agreements for sale and/or allotment letters which may be executed and/or entered into by the Respondents in respect of flats/shops/units, constructed and/or proposed to be constructed in the Project;*

*(b) all amounts which may be received by the Respondents for allotment / agreement for sale of any shop/flat/unit in the Project, with particulars of dates, amounts, persons making the payments, and wing, shop no./flat no./unit no. in the Project; and*

*(c) all expenses which may be incurred by the Respondents for the Project.*

*III. Claimants shall, within one month from today, submit on affidavit, the following particulars in respect of the Project:*

*(a) all amounts spent by the Claimants towards project costs, including cost of construction, and amounts paid for purchase of TDR; and*

*(b) all amounts received by the Claimants for allotment and/or for execution of registered agreements for sale of flats/shops/units in the Project from the date of*

*commencement of the Project till today, with particulars of dates, amounts, persons making the payments, and wing, shop no./flat no./unit no. in the Project.*

*IV. A separate escrow account shall be opened by the parties with a nationalized bank at Fort, Mumbai within three weeks from today and the escrow account shall be in the name of Mr. R. P. Ojha and M/s. Vidhii Partners, who are Advocates for Claimants and Respondents respectively. Subject to the orders of the Tribunal, the escrow account shalt be jointly operated by Mr. R. P. Ojha and an authorized signatory to be nominated by M/s. Vidhii Partners.*

*V. Respondents are directed to deposit in the above escrow account, within one month from today, a part of the amounts received till today as sale consideration mentioned in the registered agreements between Resp. no.1 and purchasers of shops/flats/units in the Project or in the allotment letters (if registered agreements are not yet executed), as under;*

*(i) 25%o of the sale consideration received by the Respondents from allottees/purchasers of shops/flats/units in the Project as under:*

| *wing* | *Floors* |
|---|---|
| *A* | *Upto 6th floor* |
| *B* | *Upto 6th floor* |
| *C* | *Upto 6th floor* |
| *D* | *Upto 8th floor* |
| *E* | *Upto 8th floor* |

*(ii) 10% of the sale consideration received by the Respondents from allottees/purchasers of flats/shops/units in the Project, on floors other than the floors mentioned in (i) above.*

*VI. Respondents are directed to deposit by 3l .08.2024 in the aforementioned escrow account a part of the sale consideration mentioned in the allotment letters/registered agreements between Resp. no.1 and purchasers of shops/flats/units in the Project for the period commencing from 22.06.2024 till 31.07.2024.*

*Thereafter for subsequent periods such deposits shall be made on monthly basis from August 2024 onwards, by the end of the next month.*

*VII. The amounts to be deposited by the Respondents in the above escrow account shall not be withdrawn by any party or any person operating the account till the final Award is made by the Tribunal.*

*78. This interim order is made without prejudice to the rights and contentions of the parties in the present arbitral proceedings.*

*79. It is clarified that the observations made in this order are for the limited purpose of deciding Claimants' application dated l4.02.2024 under Section 17 of the Act. Tribunal may not be treated to have expressed opinion on merits of the controversies between the parties.*

The Petitioners, aggrieved by the Impugned Order have filed the present Petition.

**Submissions of Mr. Seervai on behalf of the Petitioners**

3. Mr. Seervai, Learned Senior Counsel appearing on behalf of the Petitioners, at the outset submitted that the Impugned Order ran contrary to the order dated 20th February 2020 by which this Court had dismissed the Section 9 Petition by expressly recording that it would not be open to Jagruti to press for the reliefs in arbitration. He thus submitted that the order dated 20th February 2020 made clear that Jagruti could not in any manner impeded the construction that was being carried out by the Petitioners qua the said project. He submitted that the order dated 20th February 2020, confirmed and protected the Petitioners' absolute and unfettered right to (i) continue with the construction and (ii) create third party rights in the said project by way of effecting sales of the units therein. Mr. Seervai submitted that the Impugned Order would clearly affect the Petitioners' unfettered right to carry on the construction and would infact imperil the entire project.

4. Mr. Seervai, then to highlight how the Impugned Order was (i) contrary to the Order dated 20th February, 2020, and (ii) that the Tribunal had completely erred in failing to appreciate the injustice and prejudice that would be caused to the Petitioners by the Impugned Order pointed out

that the Tribunal had, directed that the Petitioners and Respondent Nos. 6(a) to 6(d) to deposit part considerations received from sale proceeds from the beginning of the construction of said project, without first ascertaining and/or considering whether infact these amounts had been retained by the Petitioners or whether the same had been utilized by the Petitioners towards the cost of construction and/or on other construction related activities/costs. He pointed out that the Tribunal had completely overlooked the financial hardship that would be caused to the Petitioners if the Petitioners were now suddenly required to deposit all these amounts. He then submitted that if the Petitioners were required to generate such amounts in compliance of the Impugned Order, the same would certainly affect the ongoing construction, if not completely derail the same. He submitted that this would in turn not only affect the reputation of the project but also gravely prejudice the rights of all those unit purchasers who had invested in the said project. He then submitted that the Tribunal had also completely failed to take into consideration the fact that Petitioner No. 1 was registered with the Real Estate Regulatory Authority (RERA) as the sole Promoter of the said project since the year 2017 and was in that capacity required to discharge the various statutory obligations required of a Promoter under RERA. He pointed out that as per Section 4(2)(l)(D)[4] of RERA a Promoter was bound to deposit 70% of the amounts received from

4 *"(D) that seventy per cent. of the amounts realised for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose:"*

allottees in separate bank account and keep the same reserved to cover the cost of construction and land. He submitted that the failure to comply with these statutory obligations would entail grave and serious consequences upon Petitioner No. 1 including making Petitioner No. 1 liable for a refund of the monies paid by unit purchasers along with interest. He also pointed out that any real estate project has associated with it unprecedented/contingency costs which would require the Petitioners to have access to the monies from the sale of the flats/units which an order of deposit would render virtually impossible, since the same would gravely affect the Petitioners cash flow. It was thus he submitted that not only would the Impugned Order therefore affect the Petitioners unfettered right to carry on the construction and sell the units but also that the Tribunal had completely overlooked the grave prejudice that the same would cause to the Petitioners.

5. He then submitted that the Tribunal had also gravely erred and misdirected itself in passing the order of deposit, since Jagruti had not made out a case on the basis of which an order of deposit had been sought for. He then pointed out that the fact Jagruti had failed to make out a case for deposit was implicit on a plain reading of the Impugned Order, which itself directed Jagruti that to disclose the amounts spent and received in the said project. He thus submitted that the Tribunal had, merely on the basis of bald and unsubstantiated claims granted an order of deposit. He

thus submitted that the Tribunal had in doing so, not only gravely erred in law, but had acted perversely.

6. Mr. Seervai then submitted that the said Application ought to have been dismissed on the ground of delay and laches alone. He submitted that the Tribunal had gravely erred in failing to appreciate that not only did the said Application suffer from delay and laches but infact suffered from gross delay and laches. He submitted that the Tribunal had despite the fact that it was the Petitioners' specific case that the said Application suffered from gross delay and laches and that Jagruti had completely failed and neglected in giving any cogent explanation justifying and/or explaining the delay, the Tribunal had failed to consider the same. He then took great pains to point out that the termination notice was issued in the year 2015 and that the said Application was filed only in the year 2024 i.e. nine years after the termination notice. He submitted that even accepting Jagruti's case that the disputes between the Parties arose in May, 2017 even then, the said Application was filed after a period of over seven years from the date when the cause of action, even according to Jagruti, occurred. He submitted that on the ground of such gross, and completely unexplained delay itself, the said Application ought to have been dismissed.

7. Mr. Seervai then submitted that the Tribunal had, in justifying the delay, more particularly, the time between 2017 and 2022 had gravely erred in holding that Jagruti was entitled to the exclusion of time under Section 14 of the Limitation Act, 1963 ("*Limitation Act*"). He submitted that this finding apart from being a legally untenable one in the facts of the present case, was infact perverse, since Jagruti had neither argued nor pleaded the same. He then submitted that Jagruti could never have been entitled to the exclusion of time under Section 14 of the Limitation Act, 1963 ("*Limitation Act*"), since the proceedings adopted by Jagruti against the Petitioners which the Tribunal had adverted to i.e. the Section 9 Petition filed by Jagruti in the Thane Court and the proceedings filed by Jagruti before RERA, could in no manner be construed as *bona fide* so as to invoke the exclusion of time under Section 14 of the Limitation Act. He first pointed out that Jagruti had filed a Section 9 Petition before the Thane Court despite the fact that under the said Agreements the Courts in Mumbai had exclusive jurisdiction. He then submitted that Jagruti had filed proceedings against Petitioner No. 1 before RERA seeking cancellation of the registration of Petitioner No. 1 as the sole promoter of the said Project. Basis this he submitted that the said proceedings could never entitle Jagruti for exclusion of time under Section 14 since *ex facie* the said proceedings were not for the *'same reliefs'*. He thus submitted that aside from the fact that Jagruti had not sought and/or pleaded an exclusion of

time under Section 14, in law these proceedings would not have entitled Jagruti for seeking an exclusion of time.

8. Mr. Seervai then submitted that the Tribunal (majority) had also erred in justifying Jagruti's delay in filing of the said Application after over two years from the date of the filing of the SOC. He submitted that the reasoning adopted by the Tribunal (majority) to justify the delay i.e. (i) that there was a chequered history of litigation between the parties from 2017 onwards and (ii) that it was thus not unusual for Jagruti to have waited for Petitioner No.1 to have filed its Statement of Defence to enable Jagruti to then have prepared and filed the said application, was absolutely untenable and legally unsustainable. He submitted that the Tribunal had also gravely erred in holding that Jagruti could not have pursued the said Interim Application in the absence of bringing Respondent Nos.6(a) to 6(d) on record. He pointed out that the Tribunal had on the one hand relied upon the Petitioner's contention that the mandate of the Tribunal had expired under the provisions of Section 29A of the Arbitration Act as a factor which would justify the delay in filing of the said application however, on the other cited the time period after the filing of the said application as a reason to justify in aid of Jagruti's delay in filing the said application. He thus submitted that the said reasons given by the Tribunal (majority) were *ex facie* untenable both in fact and law. He then invited my attention to the view of the minority and pointed out that the same had correctly held that

the delay from September 2022 i.e. the date of the filing of the statement of Claim upto 14th February, 2024 i.e. the date on which the said application was filed remained entirely unexplained.

9. Mr. Seervai then submitted that the finding of the Tribunal (majority) that the delay in the filing the said Application would not cause any injustice to the Petitioners was plainly erroneous. He submitted that the Tribunal (majority) had entirely overlooked the prejudice that would be caused to the Petitioners by the Impugned Order. He submitted that the Tribunal (majority) had in concluding that the delay would not cause any injustice to the Petitioners, completely failed to deal with and had overlooked the contention of the Petitioners that the delay in filing of the said application remained unexplained. He thus submitted that the reasoning of the Tribunal (majority) was therefore far from the truth and factually incorrect and completely glossed over the grave prejudice that the same would cause the Petitioners.

10. Mr. Seervai then submitted that the Tribunal had also erroneously accepted the judgments on which reliance had been placed by Jagruti in support of justification of the delay. He pointed out that the judgment of this Court in the case of ***Astra Ideal Limited vs. TTK Pharma Limited***[5] upon which reliance was placed was entirely inapplicable to the

5 AIR 1992 Bom 35

facts of the present. He pointed out from the said judgment that *firstly* in the facts of the said case, the delay was not inordinate, since the Applicant therein had approached the Court within 4 months from the date of the accrual of the cause of action unlike in the present case, where the said Application was filed after a period of nine years from the date on which the cause of action arose. He then also pointed out that the said judgment dealt with the aspect of delay in the context of a Suit for infringement of a trademark. He submitted that in cases of infringement of trademark and copyright, different considerations applied and mere delay in bringing an action would not by itself be sufficient to refuse the grant of an injunction. In support of his contention, he placed reliance upon the judgment of the Hon'ble Supreme Court in the case of ***Midas Hygiene Industries vs. Sudhir Bhatia***[6]. He thus submitted that the Tribunal had erred in law by placing reliance upon the judgment in the case of ***Astra Ideal Limited*** to overlook the delay.

11. Mr. Seervai then submitted that the aspect of delay and laches was a necessary and crucial consideration in determining whether Jagruti was infact entitled to the grant of interim reliefs. He submitted that failure to consider the same would vitiate the Impugned Order. He then pointed out that Petitioner No.1 had infact relied upon the judgment of the Hon'ble Supreme Court in the case of ***Union of India Vs. N Murugesan***[7] to contend

6 (2004) 3 SCC 90

7 (2022) 2 SCC 25

that Jagruti was not, on account of delay alone, entitled to any reliefs. However, the same was not considered by the Tribunal.

12. Mr. Seervai then submitted that the Impugned Order was also liable to be set aside on the ground of violation of the principles of natural justice. In support of his contention, he submitted that the Tribunal (majority) had on its own initiative placed reliance upon the judgment of the Court of Chancery Division in the case of ***Cropper Vs. Smith***[8] to justify the fact that mere delay in filing of the said Application would not disentitle Jagruti to interim reliefs. Mr. Seervai took pains to point out that the said judgment was never infact relied upon by Jagruti at the hearing and therefore the Applicant never had the opportunity to deal with the same. He submitted that the reasoning which the Tribunal (majority) had relied upon to justify the delay was infact the minority view in the said judgment. He pointed out that the majority however did not allow the application which infact was for amendment *inter alia on* the basis that appellant therein failed to raise objection at relevant time. He then took pains to point out that the said observations were infact rendered in the context of an application for amendment of pleadings and thus would have absolutely no bearing to the issue of delay which the Tribunal had to consider. He therefore submitted that the Tribunal had passed the Impugned Order going beyond what was infact argued and/or pleaded by Jagruti. Mr.

8 (1884) 26 Ch. D 700

Seervai then placed reliance upon the judgment of the Hon'ble Supreme Court in the case of ***Kalyan Singh Chouhan Vs. CP Joshi***[9] and from the same pointed out that the Tribunal could not have considered any fact which was beyond the pleading of the parties. He submitted that the Tribunal having done so had clearly passed an order that was not only in violations of the principles of natural justice but was also perverse and illegal and was thus liable to be set aside.

13. Mr. Seervai then submitted that the Tribunal had also gravely erred in, at the interim stage conducting a mini trial on the issue of whether the termination was *prima facie* bad in law and whether the said Agreements were subsisting. He pointed out that even aside from the fact that the Tribunal had at the interim stage conducted a mini trial which was impermissible, what was crucial to note was the fact that the Tribunal had done so even in the absence of any interim prayers to that effect. Mr. Seervai submitted that Jagruti had apart from the unsubstantiated bald statements, had not placed anything on record to show that the termination notice was in any manner bad. He submitted that at the interim stage, the Tribunal could have only determined/adjudicated the said Application on a *prima facie* basis and that the record as it stood unequivocally, showed that the said Agreements had automatically come to an end/stood terminated after 30 days form the issuance of the said

9 (2011) 11 SCC 786

termination notice. It was thus he submitted that the Tribunal had erred in conducting a mini trial instead of restricting the adjudication of the said Application on the well settled principles on which interim applications are to be heard and the basis on which interim reliefs are to be granted. Mr. Seervai then placed reliance upon the judgments in the case of ***Kantilal Khimji Haria vs. Sanyam Realtors Private Limited***[10] and ***Stoughton Street Tech Labs Pvt. Ltd. vs. Jet Skysports Gaming Pvt. Ltd.***[11] to submit that it was well settled that while considering an application for interim relief, the Court was not permitted to conduct a mini trial and the court was required make an assessment on the basis of *prima facie* case.

14. Mr. Seervai then submitted that the said application for interim reliefs having been filed by Jagruti, the burden of proof would necessarily lie upon Jagruti and not the Petitioners. He pointed out that though it was the specific case of Jagruti that they had infact deposited money received from sale proceeds into their separate bank account, hence essentially accepting the breach of the said agreement, despite which fact the Tribunal had erroneously reversed the burden of proof and held that the burden of proof of the alleged breaches was on the Petitioners and that without sufficient evidence being led by the Petitioners, at trial, it cannot be said at this stage that deposit of some amounts into a separate bank account would amount to siphoning of those amounts by Jagruti

10 2023 (SCC) Online Bom 1524

11 2022 SCC Online Bom 11770

warranting termination of the said Agreements. Mr. Seervai then also submitted that the Impugned Order was akin to an order of attachment before judgment under the provisions of Order XVIII Rule 5 of the CPC. He then placed reliance upon the judgement of the Hon'ble Supreme Court in the case of ***Raman Tech vs. Solanki Traders***[12] from which he pointed out that the Hon'ble Supreme Court had in the context of an application under Order 38 Rule 5 of the CPC, held as follows, viz.

> *"6. A defendant is not debarred from dealing with his property merely because a suit is filed or about to be filed against him. Shifting of business from one premises or removal of machinery to another premises by itself is not a ground for granting attachment before judgment. A* ***plaintiff should show, prima facie, that his claim is bonafide and valid and also satisfy the court*** *that the defendant is about to remove or dispose of the whole or part of his property, with the intention of obstructing or delaying the execution of any decree that may be passed against his, before power is exercised under Order 38 Rule 5 CPC …"*

Mr. Seervai submitted that in the facts of the present case, the Tribunal (majority) had infact passed a drastic order not only in the absence of Jagruti having made out a case for the same but also by reversing the burden of proof by *inter alia* holding as follows, viz.

> *63. The Respondents have not brought anything on record to show that the partners of Resp.no.1 firm have assets that the Claimants would be able to get the fruits of an award, if and when passed in their favour…*

12 (2008) SCC 302

He reiterated that the fact that Tribunal had directed Jagruti to disclose the amounts spent and received in the said project itself demonstrated that Jagruti's claim was unsubstantiated. He also pointed out that the Tribunal had in fact held that the amounts claimed/spent in the construction of the project was a matter of trial. He thus submitted that the Tribunal (majority) had therefore without ascertaining Jagruti's claim against the Petitioners passed an order which was akin to an order under Order 38 Rule 5 of the CPC and had in doing so gravely erred in law.

15. Mr. Seervai then submitted that even the order directing the Petitioners and Respondent Nos. 6(a) to 6(d) to make disclosures was expressly in aid of ascertaining the amounts to be deposited. He reiterated that since no case for deposit had been made out, it would naturally follow that the order for disclosure, which he reiterated was sweeping in nature must necessarily also be set aside. Mr. Seervai, then, without prejudice pointed out that the Impugned Order also contained no reason/explanation as to how such disclosure would protect the rights/interests of the Jagruti in the project. He then submitted that Jagruti were infact rank outsiders who neither had any vested interest in the land or the said project.

16. Basis the above he submitted that the Impugned order was required to be set aside.

**Submissions of Mr. Shah on behalf of Jagruti**

17. Mr. Shah Learned Senior Counsel appearing on behalf of Jagruti at the outset submitted that there was absolutely no infirmity with the Impugned Order. He pointed out that under the said Agreements Jagruti was entitled to 58% of the sale proceeds and the Petitioner was entitled to 42% of the sale proceeds from the said project. He submitted that it was not in dispute that Jagruti had in fact carried out substantial construction work on the said project which consisted of 5 wings and a total of 250 flats with 60 shops. He submitted that Jagruti had spent an amount of Rs.27,66,92,905/- towards the said construction. He then submitted that Jagruti had also paid an amount of Rs.2 crores as and by way of security deposit and another sum of Rs.3,28,04,806/- towards the purchase of TDR which amounts were not disputed. He thus submitted that Jagruti had admittedly paid amounts equaling to Rs.5,28,04,806/- which were not disputed.

18. Mr. Shah then submitted that the conduct of the Petitioners was such that the same would shock conscious of any person. To substantiate this, he submitted that after Jagruti had expended the amounts as stated above and carried on substantial construction, the Petitioners had forcibly taken control of the said project in the year 2017 and had thereafter without the knowledge and consent of Jagruti, sold of

84 flats/shops, many of which he submitted were below the ready reckoner rate. Mr. Shah submitted that the Petitioners had also refused to give the details of these transactions to Jagruti even after the passing of the Impugned Order. Additionally, he submitted that the Petitioners had not even updated the RERA website with the latest details of sales despite the fact that the details had to be updated every quarter. He submitted that the last update on the RERA website reflected the status of the said project as on 30th November, 2023. He submitted that it was thus in view of this conduct of the Petitioners that the Tribunal (majority) had come to the conclusion that unless limited interim reliefs were granted, Jagruti would not have any property to turn to for execution of the award in case Jagruti succeeds in the arbitration.

19. Mr. Shah then placed reliance upon judgment of this Court in ***Mr. Gulamali Amrullah Babul and others vs. Shabbir Salebhai Mahimwala***[13] and submitted that this Court had while exercising its jurisdiction under Section 37 of the Arbitration Act refused to interfere with an Order passed in an application filed under Section 17, despite the fact that even in the said case there was a delay of seven years in filing of the application under Section 17. He also placed reliance upon a judgment of this Court in ***Kewal Kiran Clothing Limited vs. Hasmukh Dedia***[14] to submit that mere delay cannot be a ground to not grant interim injunction

13 2015 SCC OnLine Bom 5624
14 2019 SCC OnLine 10266

if there had not been any alteration in the position of the parties in the interregnum. It was basis this that he submitted that the Tribunal had rightly considered and dealt with the aspect of delay in the filing of the said Application and it was not open for this Court to now reconsider the same while exercising its the jurisdiction under Section 37 of Arbitration Act.

20. Mr. Shah then pointed out that though the Petitioners had challenged the Impugned Order on various grounds, the scope of challenge under Section 37 of the Arbitration Act was well settled. He placed reliance upon the judgment of this Court in the case of ***Raymonds Ltd. vs. A. Singhania***[15] to submit that in an Appeal under Section 37, it was not open to this Court in a Petition filed under Section 37 of the Arbitration Act, against an order passed under Section 17 of the Arbitration Act, to interfere with the view taken by the tribunal if the view so taken by the Tribunal was plausible one and did not suffer from any perversity. Mr. Shah then also submitted that the Impugned Order was an interim order passed under Section 17 of the Arbitration Act in which the Tribunal (majority) had chosen to exercise their discretion in favour of Jagruti. He placed reliance upon the judgement of the Hon'ble Supreme Court in the case of ***Wander Ltd. vs. Antox India P. Ltd.***[16] to submitted that it was not open to this Court in a challenge to such order Appellate Court to interfere with the discretion exercised by the Court of first instance, in this case the Tribunal, which had

15 2019 SCC OnLine Bom 227

16 1990 SCC 727

exercise discretionary jurisdiction unless it was found that the exercise of such discretion was arbitrary, capricious, perverse or ignoring the well settled principles regarding the law regulating the grant of interlocutory injunctions. He submitted that as long as an order and the finding/s on which the same is based are plausible, it is not open for the Appellate Court to, under Section 37 of the Arbitration Act intervene and substitute the view taken by the Tribunal. He submitted that in the present case the view taken by the Tribunal (majority) is certainly a plausible view and not one which can be said to be perverse or implausible.

21. Mr. Shah then submitted that the Tribunal both the majority and the minority had held that there was no delay on the part of Jagruti in the filing of the SOC after noting that the delay between the period of 2015 to 2022 i.e. when the statement of claim was filed was not such as would disentitle Jagruti from any interim reliefs. He submitted that the Tribunal (majority) had also after recording reasons, held that there was no merit in the Petitioners' contention that the delay from the date of the filing of the Statement of Claim to the filing of the said Application would not come in the way of granting limited interim reliefs to Jagruti, because by granting such limited reliefs, no injustice and/or prejudice would be caused to the Petitioners. He submitted that this view was also not an implausible view and hence was not one which could be interfered with in an Appeal.

22. Mr. Shah then in dealing with the Petitioners' contention that the Impugned Order would cause prejudice to the Petitioners submitted that the Tribunal (majority) had given reasons in support of the grant of interim relief, including a specific finding that the interim relief granted would not cause any injustice to the Petitioners. He pointed out that the Tribunal (majority) had after noting that under the said Agreements Jagruti was entitled to 58% of the sale proceeds and the Petitioners were entitled to 42% of the sale proceeds passed the Impugned Order. He also took pains to point out that the Tribunal (majority) had infact not granted Jagruti the reliefs for deposit as prayed for, but had directed the Petitioners to deposit only 25% of the sale proceeds in respect of the flats/units which had been constructed upto the 6$^{th}$ floor in wing A,B,C, upto 8$^{th}$ floor in Wing D,E and 10% for the flats on the remaining floors instead of grating an order to deposit 30% of sale proceeds which was prayed for by Jagruti. He also pointed out that though under the said Agreements, the Petitioners were entitled to get 42% of the sale proceeds, the Petitioners would still be holding at least 75% and/or 95% respectively of the sale proceeds. He also took pains to point out that it was not as though the Tribunal (majority) had directed the Petitioners to make payment of the said amounts to Jagruti but all that had been done was to direct the Petitioners to deposit these amounts into an escrow account only to secure the Jagruti in the event of Jagruti succeeding in the arbitration.

23. Mr. Shah then pointed out that the Tribunal (majority)had passed the Impugned Order after coming to the *prima facie* conclusion that the termination was illegal. He submitted that in view of these facts it was thus incumbent upon the Petitioners while impugning the said order to have pointed out how such a finding was perverse and/or not a plausible view. He submitted that the Petitioners had not so much argued that the termination was valid which shows that the Petitioners had no answer to the *prima facie* finding of the Tribunal qua the invalidity of the said termination. He therefore submitted that the contention of delay taken by the Petitioners was entirely devoid of merit in this factual backdrop.

24. Mr. Shah then submitted that the Petitioners had also completely misconstrued the order dated 20th February 2020 passed by this Court in the Section 9 Petition. He submitted that the Section 9 Petition filed by Jagruti *inter alia* sought to restrain the Petitioners from creating any third-party rights and/or putting up any further construction and for no other reliefs. He then pointed out that the order dated 20th February 2020 only precluded Jagruti from pressing for the same reliefs and did not in any manner preclude Jagruti from seeking the reliefs which had been sought for in the said Application, which he submitted were independent reliefs.

25. Mr. Shah then submitted that the Petitioners contention that Jagruti was not entitled to urge any of the grounds taken in the Section 9 Petition in view of the Order dated 20th February 2020 was also plainly devoid of any merit. He submitted that in the first place the order dated 20th February, 2020 did not contain any finding to this effect and secondly that the Petitioners were seeking to add words into the order which did not exist. He then pointed out that one of the major grounds taken by Jagruti in the said Application was that the Petitioners were disposing of the said flats/shops at an undervaluation which has been accepted by the Tribunal (majority). He pointed out that this ground was admittedly not taken by Jagruti in the said Section 9 Petition. Mr. Shah therefore submitted that there was no merit in the Petitioners' contention that the order dated 20th February 2020 had foreclosed Jagruti's right to file any application whatsoever in arbitration. Mr. Shah also laid great emphasis on the fact that the Tribunal had unanimously held that the order dated 20th February 2020 did not come in the way of granting reliefs which were granted to Respondent Nos.1 to 5 vide the Impugned Order.

26. Mr. Shah then in dealing with the Petitioners' contention that there was an automatic termination of the said Agreements submitted that even assuming there was such automatic termination, if the reasons based on which the termination was issued were not accepted by the Tribunal, then the termination was invalid and of no consequence. Mr. Shah then

pointed out that the Tribunal (majority) had in great detail and with reasons came to the *prima facie* conclusion that the termination was invalid. He therefore submitted that there was no question of Jagruti then having to comply with the requisitions set out in such termination within a period of 30 days and consequently for such termination to have automatically come into force after 30 days. Mr. Shah also submitted that the view taken by the majority on the aspect of automatic termination was neither perverse nor implausible and thus in such an event, the said Agreements between the parties were deemed to be subsisting and the Petitioners were thus bound to comply with the terms thereof.

27. Mr. Shah then, in dealing with the Petitioners' contention that the order of deposit was a harsh order which would cause grave prejudice to the Petitioner, pointed out that the Petitioners' reliance upon the judgment of the Hon'ble Supreme Court in the case of ***Raman Tech and Process Engg. Co.*** was also misplaced. He pointed out that the decision of the Hon'ble Supreme Court in the case of ***Raman Tech and Process Engg. Co.*** was rendered in the context of provisions of Order 38 Rule 5 of the CPC which required strict compliance of the said provisions. He pointed out that the Impugned Order was not passed under the provisions of Order 38 Rule 5 of the CPC but had been passed in an Application filed under Section 17 of the Arbitration Act. He then placed reliance upon a judgment

of this Court in the case of ***Jagdish Ahuja & Anr. vs. Cupino Limited***[17] and pointed out that Court had discretion to grant a wide range of Interim Orders which as appear to be just and convenient and the same is though guided by the principles by which Civil Courts granting interim relief under Order 39 Rule 1 and 2 or Order 38 Rule 5 of the Code of Civil Procedure,1908 (CPC), the Court, would not be unduly bound by the plain text of the CPC. He submitted that though said principle was applicable to Section 9 of Arbitration Act, same would also apply to the Tribunal while deciding application under Section 17 of Arbitration Act. He thus submitted that the Petitioners' reliance upon the judgment of the Hon'ble Supreme Court in the case of ***Raman Tech and Process Engg. Co.*** was wholly inapplicable.

28. Mr. Shah then submitted that the Petitioner's contention that there had been a violation of the principles of natural justice, since the Tribunal (majority) had relied upon the judgment in the case of ***Copper vs. Smith*** was not only misplaced but also legally untenable. He placed reliance upon a judgment of the Delhi High Court in the case of ***Dalmia Brothers Pvt. Ltd. vs. Commissioner of Income Tax Delhi 10 & Anr.***[18] to submit that the Delhi High Court had expressly rejected a similar contention and *inter alia* held as follows, viz.

17 2020 SCC Online Bom 849

18 2011 SCC Online 4918

> *"...It is not possible to accept the contention of the petitioner that the courts cannot rely upon judgments which are not cited but which are relevant to the legal issues raised and which are required to be answered. Court do and can rely upon judgments which are not cited but are relevant to the issue in controversy. ...."*

He then also took pains to point out that the minority view in the case of ***Cropper Vs. Smith*** had also been reproduced by the Hon'ble Supreme Court in the case of ***Revajeetu Builders & Developers Vs. Narayanswamy and Sons***[19].

29. Mr. Shah then in dealing with the Petitioners' contention that the Tribunal had conducted a mini trial submitted that the same was infact an unfair and unfortunate submission, since what the Tribunal had done was to give both sides a full and fair opportunity to argue the matter in detail. He thus submitted that it was unfortunate that the indulgence given by the Tribunal was being now misconstrued as a mini trial. He submitted that given the conduct of the Petitioners, had the Tribunal constricted the timelines for permitting arguments to be advanced, the Petitioners would then have possibly contented that the Tribunal had acted in violation of the principles of natural justice in not giving the parties a detailed and full hearing. He therefore submitted that it was wholly unfair for the Petitioners to now contend that the Tribunal had conducted a mini trial.

19 2009 (10) SCC 84

30. Mr. Shah then submitted that the order of disclosure was passed in aid of the order of deposit which he submitted was wholly justified in the facts of the present case. He submitted that the Petitioners' contention that no reasons had been given in support of such order of disclosure was factually erroneous. He invited my attention to paragraph 72 of the Impugned Order and pointed out that the same made clear that it was only after the Tribunal had perused the records and considered the submissions made and had arrived at a *prima facie* finding that the Tribunal had granted the prayer for disclosure. He reiterated that the order of disclosure was in aid of the order of the deposit and thus was granted as a natural sequitur to the said order of deposit.

**Submissions of Mr. Ankhad, on behalf of Respondent Nos.6(a) to 6(d).**

31. Mr. Ankhad, Learned Senior Counsel appearing on behalf of Respondent Nos.6(a) to 6(d) at the outset, adopted the submissions made by Mr. Seervai. He then additionally submitted that the Impugned Order was perverse and ought to be set aside for the following reasons, viz.

i. That the Tribunal had while allowing the application filed by Jagruti seeking to implead Respondent Nos. 6(a) to 6(d) as parties to the Arbitration had not only held that there was delay on the part of Jagruti in moving the application for amendment

but had infact awarded costs of Rs. 50,000/- upon Jagruti. He then pointed out that the Tribunal had on the one hand, held that there was delay on the part of Jagruti and imposed costs and however on the other hand, in the Impugned Order held that Jagruti was not guilty of delay and laches.

ii. That though under Order 30 Rule 4[20] of the CPC it was not necessary to implead Respondent No. 6(a) to 6(d) to the Arbitration, since they were the legal heirs of as deceased partner, they were impleaded and the question of whether they were necessary or proper parties was kept open.

iii. That the Tribunal had, in the Impugned Order, recorded "*after hearing several technical objections raised by the Respondents against the claimant's application for bringing the legal heirs of Respondent No.3 on record*", however, if the said objections were technical in nature, (a) the same would have been rejected by the Tribunal whereas the Tribunal had infact imposed costs upon Jagruti and (b) the issue of of whether Respondent Nos 6(a) to 6(d) would not have been kept open by the Tribunal.

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20 "***4. Rights of suit on death of partner.—***

***(****1) Notwithstanding anything contained in section 45 of the Indian Contract Act, 1872 (9 of 1872) where two or more persons may sue or be sued in the name of a firm under the foregoing provisions and any of such persons dies, whether before the institution or during the pendency of any suit, it shall not be necessary to join the legal representative of the deceased as a party to the suit.*

*(2) Nothing in sub-rule (1) shall limit or otherwise effect any right which the legal representative of the deceased may have—*

*(a) to apply to be made a party to the suit, or*

*(b) to enforce any claim against the survivor or survivors"*

## Reasons and Conclusion

32. After having heard Learned Counsel for the parties and having considered the case law upon which reliance was placed, I find that the Impugned Order (majority view) requires to be set aside for the following reasons, viz.

A. There is gross delay and laches in filing of the said Application. It is not in dispute that the letter of termination is dated 28th September 2015 and the said Application was filed only on 14th February, 2024 i.e. over 9 years after the issuance of the letter of termination. Even accepting the case of Jagruti that they were ousted from the project only in May 2017, even so the delay is over 7 years from the date on which the cause of action, according to Jagruti arose. This delay to my mind is indeed telling and would in the facts of the present case disentitle Jagruti to any interim relief on this ground alone. This Court has in several judgments[21] which deal with the issue of termination of Development Agreements, declined to grant interim relief solely on the ground that the party applying for interim reliefs had not

21 Jal Ratan Deep Co-operative Housing Society Ltd. vs Kumar Builders Mumbai Realty Private Limited ( 2015 SCC OnLine Bom 5928)
*Punjab National Bank Workers Co-Operative Housing Society Limited Vs. Meeti Developers* (2021 SCC OnLine Bom 5280);
Bank of Baroda Employees Mayuresh Co-operative Housing Society vs. Kamla Holmes & Lifestyles Pvt. Ltd. (Order dated 13th August 2024 of this Court in Interim Application No. 916 of 2024 in Suit No. 94 of 2024)

acted with due dispatch. This Court has infact refused interim reliefs even when the termination of the Development Agreement was challenged after two months from the date of termination.[22] In the present case, as already noted above the delay is of a period of 9 years or then 7 years, either way the delay is clearly gross and inordinate.

B. Also, crucially the Tribunal (majority) had justified the delay by placing reliance upon Section 14(2)[23] of the Limitation Act. However, Jagruti had admittedly in the said Application not even pleaded a case seeking exclusion of time under Section 14(2) of the Limitation Act. The Tribunal despite this, excluded the time spent by Jagruti in the proceedings adopted before RERA. What the Tribunal has however completely overlooked while doing so is the fact that the reliefs sought for by Jagruti in the proceedings before RERA and the reliefs sought for by Jagruti in the present Application were not the *'same reliefs'*. Therefore, even aside from the fact that Jagruti had not sought exclusion of time under Section 14(2) of the Limitation Act, *ex facie* Section 14(2) of the Limitation Act would have no application in the facts of the

22 *Punjab National Bank Workers Co-Operative Housing Society Limited Vs. Meeti Developers (*supra)

23 *(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.*

present case. Therefore, the Tribunal (majority) has not only erred in placing reliance upon Section 14(2) of the Limitation Act, but has infact misapplied the same.

C. The Tribunal had, in justifying the grant of interim relief despite the delay, relied upon the judgments in the case of ***Astra Ideal Limited*** and ***Kewal Kiran Clothing Ltd.*** However, neither of the said judgments would have any application to the facts of the present case, since both the said judgments were delivered in the context of Suits filed for infringement of trademarks by the registered owners/proprietors of the said trademarks. The rights of registered owners of a trademark stand on a much higher and completely different footing. It is thus that the Hon'ble Supreme Court had in the case of ***Midas Hygiene Industries*** noted that in cases of infringement of trademarks or copyrights *normally an injunction must follow*. In the present case, admittedly Petitioner No.1 is the owner of the said land and Jagruti was only appointed as a sub-developer. Thus, unlike a registered trademark holder, Jagruti had no vested right, title or interest in the land.

D. The judgment of this Court in the case of ***Gulamali Amrullah Babul*** relied upon by Jagruti in my view has no application in the facts of the present case. *Firstly*, the said judgment was in the

context of dissolution of a partnership firm and *secondly*, the Court in the facts of the said case, concluded that delay on part of the Claimant therein in an Application under Section 17 of the Arbitration Act, rather than causing prejudice, had infact benefited the Respondents therein, since the Respondents had carried on the firm's business exclusively and generated profit out of the same during the period of the delay. It was thus and in these facts that the Court had held that no prejudice was caused because of the delay. Equally, the judgment in the case of ***Cropper Vs. Smith*** would also have no application, since firstly what was relied upon by the Tribunal (majority) was the minority view of the said judgment, and secondly even the minority view relied upon by Jagruti was delivered in the context of an application for amendment of pleadings to which it is well settled different considerations apply.

E. *Additionally,* and to my mind crucially in the facts of the present case, Jagruti in the said Application had not even sought a stay on the termination. Despite this the Tribunal (majority) has at the interim stage (and absent any prayer to this effect) gone on to hold that the termination was *prima facie* illegal and invalid. The Tribunal (majority) then granted interim relief on the sole basis that no prejudice would be caused to the Petitioners by the grant

of such reliefs. While it is not in dispute that an Arbitral Tribunal is not bound by strict rigors of the CPC, nonetheless when considering the grant of interim relief under Section 17 of the Arbitration Act, an Arbitral Tribunal is bound to act in accordance with the well settled principles that govern the grant of interim relief i.e. prima facie case, balance of convenience and irreparable injury. Therefore, it was incumbent upon the Tribunal (majority), before granting interim relief to Jagruti, to have first ascertained as to whether Jagruti had in fact made out a case for the grant of interim reliefs based on these well settled principles. I find that the Tribunal (majority) has in fact completely failed and neglected to do so.

F. The Tribunal (majority) has in holding that no prejudice would be caused to the Petitioners, completely overlooked and failed to consider the fact that the Petitioner No.1 is admittedly the promoter of the said project under RERA and in that capacity is required to discharge various statutory obligations including depositing 70% of the amount released from sale proceeds into a separate bank account which were to be kept in reserve and top be utilized only towards the said project.. The Tribunal has also failed to appreciate the consequences that could potentially be visited upon Petitioner No.1, and the consequences the same may

have on the said project and the unit purchasers, in the event Petitioner No.1 fails to discharge its statutory obligations as Promoter. Similarly, the Tribunal (majority) also failed to take into consideration as to whether the Petitioners had in fact retained amounts from the units sold as far back as the year 2017 before directing that the same be deposited into an escrow account. The Tribunal also failed to consider the financial hardship that could be visited upon the Petitioners, if at this stage the Petitioners were required to make a deposit from sales which took place from the year 2017 onwards and consequently the effect of the same could have on the said project. Hence, the Tribunal (majority) in granting interim reliefs to Jagruti on the basis that delay would not prejudice Petitioner No.1 had in my view completely overlooked all these facts.

G. There is also much merit in the submission that Impugned Order was effectively in the teeth of the order dated 20th February 2020 passed in the Petition filed by Jagruti under Section 9 of the Arbitration Act. While the Order dated 20th February 2020 did not prevent Jagruti from filing an Application before the Tribunal, it in terms precluded Jagruti from seeking the same reliefs before the Tribunal as had been sought for in the said Section 9 Petition. Thus, what is to be seen are the reliefs sought

for by Jagruti in the Section 9 Petition and the effect of the Order dated 20th February 2020 by which this Court had disposed of the Section 9 Petition. Jagruti had in the Section 9 Petition essentially sought an injunction against the Petitioners from (i) proceeding with the said construction and (ii) from creating any third party rights in respect of flats/units. Hence, the plain effect and purport of the Order dated 20th February 2020 was that the Petitioners could, carry on the said construction and also sell the flats/units unfettered. In my view, the effect of the Impugned Order would most likely if not in all certainty affect the Petitioners unfettered right to carry on the construction and infact imperil the same, for the reasons indicated in ground 'F' above. Hence, by the Tribunal's Order (majority) Jagruti would have achieved indirectly what they had failed to achieve directly. Hence, in any view the Tribunal's Order (majority) is in the teeth of the order dated 20th February 2020.

H. I also find merit in the contention that the Tribunal had, at the interim stage conducted a mini trial. This is more so because the aspect of termination was never really called into question in the said Application. Admittedly, the said Application did not even contain any prayer for stay on termination, despite which the

Tribunal (majority) had in great detail, in over 40 pages gone into and dealt with the aspect of termination. I find that it is here where the Tribunal (majority) has also erred in firstly going into an issue/aspect which was not put in issue in the said Application and secondly based thereon granting Jagruti the reliefs which had been sought for in the said Application. As I have already noted above, at the interim stage, after considering the rival contentions, it was incumbent upon the Tribunal to have decided the said Application based on the well settled principles for the grant of interim relief, i.e. *prima facie* case, balance of convenience and irreparable injury.

33. Hence, for the aforesaid reasons I find that the view taken by the Tribunal (majority) in the facts of the present case, cannot be said to be a plausible view, since the same proceed on a misapplication of the law as also on the basis of facts which were never put in issue in the said Application. Therefore, I find that the judgments in the case of ***Wander Limited*** and ***Raymond India*** would not be of any assistance or application in the present case.

34. Hence, I pass following Order:-

(i) The Arbitration Petition is allowed in terms of prayer clause (a) which reads viz;

*"(a) This Court may be pleased to quash and set aside the Impugned Order dated 21 June 2024 passed in the Respondent nos. 1 to 5' S17 application;"*

(ii) The captioned Interim Application is also disposed of accordingly.

(ARIF S. DOCTOR, J.)