2025:DHC:11842-DB

$~J1 to J6

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

Reserved on: 1st November, 2025

Pronounced on: 24th December, 2025

Uploaded on: 24th December, 2025

2

\+ **FAO (COMM) 210/2025, CM APPL. 47810/2025, CM APPL. 65305/2025 & CM APPL. 65306/2025**

RAHUL BHARGAVA & ANR. .....Appellants

versus

M/S NEO DEVELOPERS PVT LTD .....Respondent

1 WITH

\+ **FAO (COMM) 204/2025& CM APPL. 47782/2025**

HARMEET SINGH KAPOOR & ANR. .....Appellants

versus

M/S NEO DEVELOPERS PVT LTD .....Respondent

3 WITH

\+ **FAO (COMM) 211/2025 & CM APPL. 47813/2025**

RAHUL BHARGAVA & ANR. .....Appellants

versus

M/S NEO DEVELOPERS PVT LTD .....Respondent

4 WITH

\+ **FAO (COMM) 237/2025 & CM APPL. 53581/2025**

HARMEET SINGH KAPOOR & ANR. .....Appellants

versus

M/S NEO DEVELOPERS PVT LTD .....Respondent

5 WITH

\+ **FAO (COMM) 238/2025 & CM APPL. 53584/2025**

M/S JAGMOHAN ENTERPRISES LLP .....Appellant

versus

M/S NEO DEVELOPERS PVT LTD ....Respondent

6 AND

\+ **FAO (COMM) 239/2025 & CM APPL. 53587/2025**

RAHUL BHARGAVA & ANR. .....Appellants

versus

M/S NEO DEVELOPERS PVT LTD ....Respondent

Appearances:

For Appellants:

Mr. Tanmay Mehta, Mr. Rajinder Singh & Mr. Arjun Sharma, Advs.

For Respondent:

Mr. Jitender Chaudhary, Ms. Shilpa Chohan, Ms. Ritika Harplani, Ms. Aditi Tripathi, Ms. Vaishali Rathi & Mr. Mohit Matani, Advs.
Ms. Vaishnavi Gaur, Mr. Waseem & Mr. Shozeb Ali, Advs
Mr. Syed Hussain Adil Taqvi, Local Commissioner (9911694947), taqvihussain@gmail.com.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

JUDGMENT

Shail Jain, J.

> ***"The relationship between Courts and Arbitral Tribunals has been said to swing between forced cohabitation and true partnership. The process of arbitration is dependent on the underlying support of the Courts who alone have the power to rescue the system when one party seeks to sabotage it."***
>
> ***—'Adhunik Steels Ltd. v. Orissa Manganese and Minerals (P) Ltd., (2007) 7 SCC 125'***

1. This hearing has been done through hybrid mode.

2. Present Appeals have been filed by six Appellants under **Section 13 (1A) of the Commercial Courts Act, 2015, read with Section 37(1)(b) of the Arbitration and Conciliation Act of 1996** (herein after referred to as the Act of 1996), *inter-alia*,, challenging the Final Orders passed by the District Judge (Commercial Court), Central Delhi, Tis Hazari Courts, Delhi, by which the Petitions filed under **Section 9 of the Act of 1996**, were dismissed by the concerned Commercial Courts.

3. ***FAO (COMM) NO. 210/2025***, titled ***"Rahul Bhargava &Anr. vs. Neo Developers Pvt. Ltd.",*** has been treated as the lead matter in the present bunch of Appeals.

BRIEF FACTS:

4. The brief background of cases leading to these Appeals is as follows-

A. In the year 2015, the Appellants entered into a commercial transaction with the Respondent, Neo Developers Pvt. Ltd., for the purchase of commercial units in a project titled **"Neo Square"**, situated at **Sector 109, Dwarka Expressway, Gurugram, Haryana.**

B. Pursuant thereto, the Appellants executed a Builder Buyer Agreement ("BBA") and a Memorandum of Understanding ("MoU") with the Respondent in respect of **Unit No. 21, Third Floor,** admeasuring **250 sq. ft.**, at the rate of **Rs. 4,500/-** (Rupees Forty Five Hundred) per sq. ft. for a total consideration of **Rs.11,66,715/-** (Rupees Eleven Lakh Sixty-Six Thousand Seven Hundred Fifteen Only).

(CHART 1)

BELOW IS A FACTUAL CHART OF ALL APPEALS

APPEAL NO.	NAME OF THE APPELLANT	PRIORITY UNIT NO.	AMOUNT OF SALE CONSIDERATION	ASSURED RETURNS FIXED PER MONTH	UNSPECIFIED DEMANDS AND FIT-OUT CHARGES
FAO (COMM) 204/2025	Harmeet Singh Kapoor & Satvinder Kapoor	58C (Commercial Shop, Ground Floor, measuring 275 sq. ft. at Rs. 8,250/- per sq. ft.)	Rs. 23,70,844/-	Rs. 35,035/-	Rs. 6,75,679/- Rs. 11,35,750/-
FAO (COMM) 210/2025	Rahul Bhargava & Ragini Bhargava	21 (Restaurant, Third Floor, measuring 250 sq. ft. at Rs. 4,500/- per sq. ft)	Rs. 11,66,715/-	Rs. 22,500/-	Rs. 5,13,941/- Rs. 10,32,500/-
FAO (COMM.) 211/2025	Rahul Bhargava & Ragini Bhargava	23 (Restaurant, Third Floor, measuring 250 sq. ft. at Rs. 4,500/- per sq. ft)	Rs. 11,66,715/-	Rs. 22,500/-	Rs. 5,14,474/- Rs. 10,32,500/-
FAO (COMM.) 237/2025	Harmeet Singh Kapoor & Satvinder Kapoor	58A (Commercial Shop, Ground Floor, measuring 505 sq. ft. at Rs. 8,250/- per sq. ft.)	Rs. 43,53,732/-	Rs. 64,337/-	Rs. 12,35,362/- Rs. 20,85,650/-
FAO (COMM.) 238/2025	Jagmohan Enterprises LLP	22 (Commercial Shop, Ground Floor, measuring 583 sq. ft. at Rs. 4,100/- per sq. ft.)	Rs. 24,76,460/-	Rs. 49,555/-	Rs. 4,57,748/- Rs. 24,07,790/-

FAO (COMM.) 239/2025	Rahul Bhargava & Ragini Bhargava	25 (Restaurant, Third Floor, measuring 250 sq. ft. at Rs. 4,500/- per sq. ft)	Rs. 11,66,715/-	Rs. 22,500/-	Rs. 5,14,393/- Rs. 10,32,500/-

C. The entire sale consideration was duly paid by all the Appellants at the time of execution of the said agreements.

D. As per the terms of the MoU, the Respondent assured the Appellants of **Assured Monthly Returns** amounting to **Rs. 22,500/-** (Rupees Twenty-Two Thousand Five Hundred Only). The Respondent was contractually bound to disburse the said assured returns, beginning from the date of execution of the MoU and BBA, i.e., 31.01.2015, until the commencement of the first lease in respect of the said unit. The obligation to pay assured returns was unconditional and unequivocal under the MoU.

E. However, beginning from the year 2019, disputes arose between the parties, *inter alia*, on account of the following acts and omissions on the part of the Respondent –

   a. The unilateral cessation of payment of assured monthly returns with effect from July 2019;

   b. Issuance of a Final Notice dated 07.06.2021 by the Respondent, raising vague, unexplained dues, coupled with an intimation of cancellation of allotment in the event of non-payment of the very dues.

c. Unjustified delay in construction, and failure to hand over possession of the allotted commercial units within the stipulated time.

F. Aggrieved thereby, all the Appellants approached the Economic Offences Wing, Delhi Police, which culminated in the registration of a common **F.I.R. No. 46/2022 under Sections 406, 420, and 120B of IPC** dated **March 16, 2022,** against the Respondent. In addition, all the Appellants instituted proceedings before the Haryana Real Estate Regulatory Authority (hereinafter, 'HARERA'), by filing various **Complaints,** including one titled ***"Rahul Bhargava and Ragni Bhargava vs. Neo Developers Pvt. Ltd."*** dated **24.03.2023.** Other Appellants also filed similar proceedings in their respective matters.

G. The Complaints of the Appellants in FAO (COMM.) 210/2025, FAO (COMM.) 211/2025, FAO (COMM.) 238/2025, FAO (COMM.) 239/2025, and in FAO (COMM.) 204/2025, FAO (COMM.) 237/2025 were adjudicated by **HARERA** vide Orders dated **14.08.2024 and 14.05.2025,** respectively.

- Vide Order dated 14.08.2024, HARERA was pleased to grant reliefs in favour of the Appellants, mainly in Petitions filed by Appellants bearing ***FAO (COMM) 210/2025, FAO (COMM) 211/2025, FAO (COMM) 238/2025, and FAO (COMM) 239/2025***. The said order reads as under-

> *"**H. Directions of the authority***
> *41. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the*

promoter as per the function entrusted to the authority under section 34(f):

i. The cancellation dated 07.06.2021 is hereby set aside and the respondent is directed to pay the arrears of amount of assured return at the rate i.e., Rs.22,500/- per month from the date i.e., 31.01.2015 till the commencement of the first lease on the said unit as per the memorandum of understanding, after deducting the amount already paid by the respondent on account of assured return to the complainants.

ii. The respondent is directed to pay arrears of accrued assured return as per MOU dated 31.01.2015 till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainants and failing which that amount would be payable with interest @9% p.a. till the date of actual realization.

iii. The respondent is directed to offer possession of the unit within 2 months from the date of obtaining occupation certificate from the concerned authorities.

iv. The respondent is directed to execute conveyance deed in favour of the complainants within 3 months after obtaining the occupation certificate.

v. The respondent shall not charge anything from the complainants which is not the part of the agreement of sale."

- Vide Order dated 14.05.2025, HARERA was pleased to grant reliefs in favour of other Appellants in ***FAO(COMM.) 204/2025***, ***FAO (COMM.) 237/2025***. The said order reads as follows:

  "H. Directions of the authority

  50. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 3(f) :

i. The demand letter dated 22.01.2020 as well as final notice dated 07.06.2021 is hereby set aside.
ii. The respondent is directed to pay assured return to the complainants at the agreed rate per month from the date, i.e., 01.11.2018 till notice of possession is issued to the complainants as per the memorandum of understanding dated 01.11.2016, after deducting the amount already paid on account of assured return to the complainants.
iii. The respondent is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainants and failing which that amount would be payable with interest @ 9.10% pa. till the date of actual realization.
iv. The respondent is directed to handover possession of the unit to the complainants in terms of the MoU as well as buyer's agreement executed between them, on payment of outstanding dues if any, within 60 days. The respondent is further directed to get the conveyance deed of the allotted unit executed in their favour in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable within three months from the date of this order.
v. The respondent shall not charge anything from the complainants which is not the part of the BBA/MoU dated 01.11.2016.
vi. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow."

H. It is also contended by the Appellants herein that no Appeal has been filed by the Respondent against the Final Orders of HARERA dated 14.08.2024 and 14.05.2025.

I. Subsequent to the passing of the said Order by HARERA, the Respondent, *vide* communications dated 27.02.2025, in FAO (COMM.) 210/2025 conveyed to the Appellants that the

Occupation Certificate (OC) had now been obtained and the possession was now being offered, subject to the clearance of outstanding dues and completion of documentation. The Respondent raised further demands upon the Appellants towards the **alleged dues** and certain **fit-out charges,** pertaining to the respective commercial unit, **amounting to Rs. 5,13,941/-** (Rupees Five Lakh Thirteen Thousand Nine Hundred and Forty One only) and **Rs. 10,32,500/-** (Rupees Ten Lakh Thirty Two Thousand and Five Hundred only), respectively, without furnishing any contractual or factual basis for the same.

Similar unexplained demands and fit-out charges were also raised in respect of the units allotted to the other Appellants, particulars whereof are reflected in the Chart 1, set out hereinabove.

J. It is, further, submitted by the Appellants that in the said letter dated 27.02.2025, the Respondent also communicated to the Appellants that the units purchased by the Appellants had already been leased out to the prospective lessor for the second time since the same could not be finalised due to the Appellants' failure to sign the relevant documents. Further, the Respondent stated that if the payment demanded was not made, the allotment of the units to the Appellants would stand cancelled.

K. In the meantime, the Appellants in ***FAO (COMM.) 210/2025*** initiated **Execution Proceedings** in April 2025, for the enforcement of the **Order** dated **14.08.2024 before HARERA**, registered as **HARERA-GRG-2235-2025,** which is stated to be **pending**. The Appellants also filed a Petition under Section 9 of the Act of 1996,

being ***OMP (I) (Comm.) No. 470/2025***, titled ***"Rahul Bhargava & Anr. v. M/s Neo Developers Pvt. Ltd."***, before the Commercial Court, Central District, Tis Hazari Courts, Delhi.

The said Petition was dismissed vide **Order dated 09.06.2025**, passed by the Ld. Commercial Court, wherein the following order has been passed against the Petitioner:

> *"This Court does not have territorial jurisdiction to try and entertain the present Petition, and hence, the present Petition is disposed of for want of territorial jurisdiction."*

L. Similarly, the corresponding Petitions filed by the other Appellants were also dismissed *vide* separate orders, primarily on the ground that the Appellants, having already availed remedies under the **Real Estate (Regulation and Development) Act, 2016** (hereinafter, *"RERA Act"*), and therefore, were precluded from maintaining the Petitions under Section 9 of the Act of 1996. The reasoning adopted in the impugned judgments proceeds on the premise that the Appellants cannot be permitted to seek identical reliefs before multiple fora.

M. Being aggrieved by the aforesaid Impugned Orders in Section 9 Petition under the Act of 1996, present Appeals have been preferred by the Appellants, *inter alia*, seeking the following reliefs.-

> *1. Set aside the Impugned Order dated 31.07.2025 passed under Section 9 of the Arbitration and Conciliation Act, 1996 in **OMP(I)(COMM) No. 470 of 2025**, titled **"Rahul Bhargava vs. M/s Neo Developers Pvt. Ltd."**, by the Ld. District Judge (Commercial), Tis Hazari Courts, New Delhi;*

*2. Grant the interim reliefs as prayed for in **OMP (I) (COMM.) No. 470 of 2025** under Section 9 of the Arbitration and Conciliation Act, 1996.*

> *"i. Pass an interim order of injunction in favour of the Petitioner and against the Respondent, thereby restraining the Respondent and their agents, servants, attorneys, heirs, contractors, labourers, representatives, etc. from leasing out the property or creating any third-party interests till the commencement of arbitration, and*
>
> *ii. Pass an interim order of injunction in favour of the Petitioner and against the Respondent, thereby restraining the Respondent from cancelling the Unit/BBA or MOU till the commencement of the Arbitration, and*
>
> *iii. Pass such other and further orders in the Interest of Justice as this Hon'ble Court deems necessary in the facts and circumstances of the present case."*

N. Appeals seeking similar reliefs have been filed by all the Appellants. The Petitions under Section 9 of the Act of 1996 were basically dismissed on one ground that, since the Appellant has already availed of his remedy under the RERA Act, he cannot seek a simultaneous remedy under the Arbitration & Conciliation Act,1996. Except in the case of ***Rahul Bhargava*** bearing ***OMP (I) (COMM.) 470/2025,*** where it was dismissed on the ground that the Commercial Courts of the Central District have no jurisdiction, as the seat of Arbitration provided in the MOU is 'New Delhi', hence the 'Delhi' Court cannot have jurisdiction. Thus, except for ***FAO (COMM) 210/2025***, in all Appeals, the issue involved is whether the Appellant

can be allowed to avail a simultaneous remedy of Arbitration after availing the remedy under the RERA Act.

O. All the present Appeals are against the Orders of dismissal of the Section 9 Petitions by different Ld. District Judges (Commercial Court) on two major grounds.

The present chart provides the details of different OMPs filed and the order/ reasoning thereof passed in those OMPs, which led to the filing of the present Appeals.

(CHART 2)
A CHART OF ALL THE SECTION 9 PETITIONS FILED

APPEAL NO.	ARISING OUT OF	IMPUGNED ORDER DATE AND PASSED BY	DECISION AND REASONS
FAO (COMM) 210/2025	**OMP (I) (COMM.) No. 470/2025,** titled "Rahul Bhargava &Anr. Vs. *M/s Neo Developers Pvt.Ltd.* "	Order dated **09.06.2025** Passed by Ld. District Judge, Commercial Court -01, Central District, THC, Delhi	The Petition was **dismissed** by the Ld. Commercial Court on the ground that the Court did not have the territorial jurisdiction to try and entertain the Petition, by technically differentiating between 'Delhi' and 'New Delhi' as the seat of Arbitration.
FAO (COMM) 204/2025	**OMP (I) (COMM.) No. 485/2025**, titled *"Harmeet Singh Kapoor &Anr. Vs. M/s Neo Developers Pvt. Ltd."*	Order dated 10.07.2025 Passed by Ld. District Judge, Commercial-11 Central District, THC, Delhi	The Petition was **dismissed** by the Ld. Commercial Court on the ground that the reliefs sought by the Appellant/Petitioner in the Section 9 Petition were already sought before HARERA, and the grievances of the Appellant/Petitioner were duly heard and adjudicated vide Order dated 14.05.2025 of HARERA.
FAO (COMM.) 211/2025	**OMP (I) (COMM.) No. 486/2025,** titled *"Rahul Bhargav &Anr. Vs. M/s Neo Developers Pvt.*	Order dated 10.07.2025 Passed by Ld. District Judge, Commercial-11,	The Petition was **dismissed** by the Ld. Commercial Court on the ground that the reliefs sought by the Appellant/Petitioner in the Section 9 Petition were already sought before HARERA, and the grievances of the Appellant/Petitioner were duly heard and

	Ltd."	Central District, THC, Delhi	adjudicated vide Order dated 14.08.2024 of HARERA.
FAO (COMM.) 237/2025	**OMP (I) (COMM.) No. 487/2025,** titled *"Harmeet Singh Kapoor &Anr Vs. M/s Neo Developers Pvt. Ltd."*	Order dated **31.07.2025.** Passed by Ld. District Judge, Commercial Court -04, Central District, THC, Delhi	The Petition was **dismissed** by the Ld. Commercial Court on the ground that the Appellants/Petitioners already availed their remedy before Haryana RERA, seeking similar relief and their grievances were heard and adjudicated vide order dated 14.05.2025. Herein, the Ld. Judge applied the Doctrine of Election.
FAO (COMM.) 238/2025	**OMP (I) (COMM.) No. 489/2025,** titled *"M/s Jagmohan Enterprises LLP Vs. M/s Neo Developers Pvt. Ltd."*	Order dated **31.07.2025.** Passed by Ld. District Judge, Commercial Court-04, Central District, THC, Delhi	The Petition was **dismissed** by the Ld. Commercial Court on the ground that the Appellants/Petitioners already availed their remedy before Haryana RERA, seeking similar relief and their grievances were heard and adjudicated vide order dated 14.05.2025. Herein, the Ld. Judge applied the Doctrine of Election.
FAO (COMM.) 239/2025	**OMP (I) (COMM) No. 488/2025,** titled "*Rahul Bhargav &Anr. Vs. M/s Neo Developers Pvt. Ltd.*"	Order dated **31.07.2025.** Passed by Ld. District Judge Commercial Court -04, Central District, THC, Delhi	The Petition was **dismissed** by the Ld. Commercial Court on the ground that the Appellants/Petitioners already availed their remedy before Haryana RERA, seeking similar relief and their grievances were heard and adjudicated vide order dated 14.05.2025. Herein, the Ld. Judge applied the Doctrine of Election.

5. Thus, for these impugned orders, it is clear that the ***OMP (I) (COMM.) 485 /2025*** and ***OMP (I) (COMM.) 486/2025*** were dismissed on the ground that the relief sought in RERA and Section 9 are the same. Though perusal of the Impugned Orders shows that the orders lack proper consideration of the relief sought in the two Petitions and the effect thereof.

6. Also, the Impugned Order in ***OMP (I) (COMM.) 470/2025*** appears to be on a hyper-technical ground. If the Court was of the opinion that it did not have jurisdiction, the Petition should have been returned for

consideration by the appropriate Court under Order 7 Rule 10 of the Code of Civil Procedure,1908, and therefore, the dismissal of the Petition on this ground is not valid.

7. The other three OMPs, particularly ***OMP (I) (COMM.) 487/2025, OMP (I) (COMM.) 488/2025, & OMP (I) (COMM.) 489/2025,*** have been dismissed by a detailed order on the ground that since the Petitioners have chosen their remedies under the RERA Act, they cannot seek relief under Section 9 of the Arbitration Act, 1996. The Court, in these Petitions, discussed the Doctrine of Election of Remedy.

GROUNDS OF APPEAL:

8. Present Appeals have been preferred by the Appellants on the following grounds in respect to the reliefs claimed by them -

a. The **cause of action for invoking jurisdiction under Section 9 of the Arbitration and Conciliation Act, 1996, is distinct from the proceedings before HARERA.**

b. The **coercive threat to lease out the Appellants' unit unless baseless fit-out and other charges were paid was never the subject matter before HARERA.**

c. The **remedies under the RERA Act and the Arbitration and Conciliation Act are concurrent**, as Section 88 of the RERA Act expressly provides that its provisions are in addition to, and not in derogation of, any other law.

d. **Denial of interim protection defeats the object of Section 9, which is to preserve the subject matter of arbitration,** the

Court being required only to assess a *prima facie* case, balance of convenience, and irreparable injury.

e. The Impugned Order is **non-speaking and devoid of reasons**, as the learned District Judge (Commercial) failed to disclose the basis for concluding that it lacked territorial jurisdiction under Section 9 of the Arbitration and Conciliation Act, 1996.

9. The issues before this Court in all six Appeals are more or less similar, i.e., whether the Commercial Courts had the jurisdiction to decide Section 9 Petition under the Act of 1996, or in other words, whether the Section 9 Petition was maintainable in the light of the orders passed by HARERA.

10. During the course of proceedings of these Appeals, both parties vehemently argued about the terms of the **Banning of Unregulated Deposit Schemes Act, 2019 (BUDS Act),** the MoU, the existence of the units, the creation of third-party interest by the Respondent, and other rights & liabilities of the Parties.

11. Subsequent to oral submissions, parties were directed to file short affidavits giving the exact facts. Further, a Local Commissioner (LC) was appointed *vide* Order dated 18.09.2025, to present a Report regarding the present status of units in question. The LC submitted its Report dated 05.10.2025, stating that:

a. The construction/labour work is being carried out in relation to the iron partition. The work is raw as of now and is in its initial stages.

b. The fourth floor was pitch dark without any source of light/electricity due to the partition on both sides of the lobby.

Additionally, the lift portion on the fourth floor is also incomplete as of now.

c. On Respondent being requested to provide the copies of the leases and sub–leases (if any) executed with respect to the premises in question, the Respondent provided only a copy of the Lease Deed executed between M/s Neo Developers Pvt. Ltd. and M/s Vexto Commercials Pvt. Ltd.

12. Since, before this Court, in the present Appeals, only the short point of maintainability of the Section 9 Petition is concerned, considering the orders of RERA and also, when the Appellants are seeking interim relief of protection before initiating the Arbitration, this Court is not to consider the rights & liabilities of parties under the MoU, as it is the subject-matter of Arbitration.

ISSUES INVOLVED :

13. The Questions before this Court at present are the following:

a. Whether the reliefs sought by the Appellants under Section 9 of the Arbitration and Conciliation Act, 1996, were distinct from, and not a duplication of, the reliefs granted or adjudicated upon by HARERA?

b. Whether the Commercial Court failed to appreciate the limited and protective nature of jurisdiction exercised under Section 9 of the Arbitration and Conciliation Act, 1996, which is intended to preserve the subject-matter of arbitration and secure the ends of justice?

ARGUMENTS ON BEHALF OF PARTIES :

14. As for the submissions of the parties, Mr Tanmay Mehta, ld. Counsel for the Appellants vehemently urged that *vide* order dated 14th August, 2025, whereby HARERA has directed the Respondents herein to offer possession to the Appellants and also has held that the demand against Appellants for fit-out has no basis. The present Lease, dated 30.06.2025, is a complete sham, as it is a company with which the promoters of the Respondent are intrinsically linked. The incorporation of the said company was itself on 06.05.2025. Further, the Local Commissioner's (LC) Report dated 05.10.2025 is referred to by the ld. Counsel for the Appellants to demonstrate that the character of the floor has also been changed from a double-heighted restaurant, which is recognised in the sanctioned plan by splitting the floor and inserting beams in the floor to create a floor of different measures.

15. Further, the submissions of Mr Mehta are that the LC's Report and the photographs therein show, without any doubt, that there is no tenant presently in the property. It is also submitted by the Appellants that the Mall is yet to be finished for occupation. The ld. Counsel for the Appellants further submits that, except for one small shop on the ground floor, no tenant is occupying the entire premises, which is about 17 floors.

16. Mr. Chaudhary, ld. Counsel for the Respondent, on the other hand, has made detailed submissions as under:-

a. Since the Appellants' allotment of the units is only on the third floor, no submissions can be made in respect of the fourth floor. He has presented the plan to show that some areas on the third floor are not

double-heighted. There are only a few areas which are areas of double height. According to him, no area of the third floor is double-heighted. The allottees in these floors do not have any identified space which is to be given to them. In fact, the rent has to be negotiated by the Company as a whole, and the only entitlement of the allottees is for the assured returns and nothing more. He further submits that six allottees who are before this Court have an allotment of only 1500 sq. feet, whereas the total super area of the third floor is 46036.63 sq. feet. The Appellants form a very small minority, according to Mr. Chaudhary.

b. Furthermore, it is submitted that the allottees are bound by the BBA as well as the MOU. The MOU is different in all the cases, and the allottees do not take any escalation benefit. It is merely in the form of an investment, which is recognised as per the BBA and MOU. The RERA which was only dealing with the BBA and not MoU, but the MOU is sought to be enforced before the Commercial Court. Once the remedy of RERA was availed of by the Appellants and the order was passed by RERA, the Petition under Section 9 of the Act of 1996 cannot be filed.

c. The submission is that once the RERA has passed the order, the Commercial Court under Section 9 Petition cannot be approached to enforce and execute the RERA's order for which the execution is already pending before RERA. It is further submitted that the amounts paid by the Respondent up to June 2019 clearly demonstrate that the total assured returns paid to each of the parties exceed the amounts originally received from them. Insofar as one of the allottees is

concerned, the assured returns paid exceed the amount received; however, in the case of the remaining two allottees, the returns paid may be less. Nevertheless, for the purpose of amicably resolving the dispute, the Company is willing to pay the assured returns to them as well. This is without prejudice to the submissions on behalf of the respondent.

d. Mr. Chaudhary, ld. Counsel for the Respondent also highlighted that the dispute arose only in respect of fit-out amounts, which were demanded in 2019, and recently, the RERA in respect of the same Mall has recognised that the Respondent can demand fit-out amounts. The clauses in the MOU are broad enough to permit the Respondent to negotiate the terms of the lease, and that would include demanding of the fit-out amounts from the allottees. Finally, it is submitted that Clause 9 (b) also makes it clear that any condition and agreement which are agreed to by the Respondent with the tenants would also be binding on the allottees. Mr. Chaudhary highlights Section 9 Petition, which is only in the nature of the injunction and nothing more.

17. Further, Clauses 9 (a), 10 (i), (ii) and 13 are referred to and relied upon to argue that the MOU overrides the BBA. In addition, the consequences of not leasing within two years period have also been provided in the MoU. If those conditions are satisfied, then the possession can be granted. Further, the submission was made that in these cases, it is a normal practice not to give allottees any specific identified space; only a proportionate right is given, and the possession is symbolic.

18. In the rejoinder, Mr. Mehta, ld. Counsel for the Petitioner submits that the RERA judgment which the respondent is relying upon to demand fit out

charges, would have no application in the present case as in the said case there was a clause, namely Clause 8 (d) which was a specific clause to the MOUs which were the subject matter of the RERA order dated 16.09.2025, and such a clause does not exist in the present agreements and there is a difference in the terms. The demand for fit-out is completely arbitrary. The RERA has already directed the Respondent to hand over the possession of the unit along with assured returns. The order of RERA has not been challenged finally. The lease deed, which has been entered into with M/s Vexto Commercials Pvt. Ltd for a period of 9 years, is also an unregistered lease, and it is not enforceable in law.

DISCUSSION :

A. First Issue pertains to relief sought before RERA and Section 9.

19. At the outset, it is stated here that the complaints instituted by the Appellants before the Haryana Real Estate Regulatory Authority were **in exercise of their statutory rights** under the Real Estate (Regulation and Development) Act, 2016. The reliefs sought therein included the following:

> *"1. A direction to the Respondent to comply with its contractual and statutory obligations, including completion of construction and handing over possession of the allotted commercial units in accordance with the agreed timelines, including appropriate directions, compensation, and/or interest as contemplated under the RERA Act, along with the execution of the sale deed;*
>
> *2. A direction for payment of assured monthly returns as stipulated under the Memorandum of Understanding, along with arrears accrued on account of unilateral stoppage of such payments;*

Relief against the Respondent creating any third-party rights until the completion of the project and handing over of the possession to the Appellants;

3. A declaration that the demands raised by the Respondent were illegal, arbitrary, and contrary to the Builder Buyer Agreement and MoU, insofar as they were unexplained or not contractually payable."

20. In addition, the reliefs therein pertained mainly to substantive adjudication of rights, including issues of delay in construction, non-payment of assured returns, and other violations falling squarely within the regulatory jurisdiction of the Authority. HARERA, while exercising its statutory mandate, **rendered determinations which are final in character**, subject, of course, to remedies available under the RERA Act.

21. In contradistinction, the Petitions filed before the Commercial Court under Section 9 of the Act of 1996 were limited to seeking interim and protective measures, pending initiation and commencement of arbitral proceedings, and therefore, were instituted in a **materially different context.** The reliefs sought were not adjudicatory and included:

"A. Pass an interim order of injunction in favour of the Petitioner and against the Respondent, thereby restraining the Respondent and their agents, servants, attorneys, heirs, contractors, labourers, representatives, etc. from leasing out the property or creating third-party interest till the commencement of arbitration; and

B. Pass an interim order of injunction in favour of the Petitioner and against the Respondent, thereby restraining the Respondent from cancelling the Unit/BBA or MoU till the commencement of the Arbitration; and

C. Pass such other and further orders in the Interest of Justice as this Hon'ble Court deems necessary in the facts and circumstances of the present case."

22. The Appellants did not seek adjudication of disputes on the merits, nor did they invite the Commercial Court to sit in Appeal over the orders passed by HARERA. The jurisdiction invoked under Section 9 was **purely interim and protective**, intended to secure the subject-matter of the arbitration and to prevent the Respondent from taking steps which could irreversibly prejudice the Appellants' rights pending arbitral adjudication.

23. A principal error that disseminates the impugned orders is the assumption that the Appellants, by approaching different fora, sought the same reliefs arising out of the same cause of action, thereby engaging in impermissible parallel proceedings. A closer scrutiny of the pleadings and the nature of reliefs sought, however, reveals that the proceedings before HARERA and those under Section 9 of the Act of 1996 occupy distinct legal terrains and were invoked for different and well-defined purposes.

24. The Court would like to mention that a perusal of the complaint filed before HARERA shows that the relief sought was in respect of payment of assured returns and for restraining the Respondent from entering into any lease deed with the third party **till the completion of the project and handing over of possession to the Appellants**. On the other hand, the prayer in the Petitions under Section 9 of the Arbitration and Conciliation Act, 1996, is for restraining the Respondents from leasing out the property to any third party **after the occupation certificate is issued and also for restraining the cancellation of the unit till the commencement of arbitration.**

25. In the present case, reliance has been placed upon the Judgment of the Supreme Court in ***'IREO Grace Realtech (P) Ltd. v. Abhishek Khanna, (2021) 3 SCC 241'***, wherein the Scope of alternative remedies available to the Petitioner was discussed. The relevant extract from the Judgement reads as follows :

> *".. [……..]*
> *37. We will now consider the provisions of the RERA Act, which was brought into force on 1-5-2016. The Statement of Objects and Reasons of the RERA Act, 2016, reads as follows:*
> *"The Statement of Objects and Reasons.—The real estate sector plays a catalytic role in fulfilling the need and demand for housing and infrastructure in the country. While this sector has grown significantly in recent years, it has been largely unregulated, with the absence of professionalism and standardisation, and lack of adequate consumer protection. Though the Consumer Protection Act, 1986 is available as a forum to the buyers in the real estate market, the recourse is only curative and is not adequate to address all the concerns of buyers and promoters in that sector. The lack of standardisation has been a constraint to the healthy and orderly growth of industry. Therefore, the need for regulating the sector has been emphasised in various forums. In view of the above, it becomes necessary to have a Central legislation, namely, the Real Estate (Regulation and Development) Bill, 2013 in the interests of effective consumer protection, uniformity and standardisation of business practices and the transactions in the real estate sector. The proposed Bill provides for the establishment of the Real Estate Regulatory Authority (the Authority) for regulation and promotion of real estate sector and to ensure sale of plot, apartment or building, as the case may be, in an efficient and transparent manner and to protect the interest of consumers in real estate sector and establish the Real Estate Appellate Tribunal to hear Appeals*

from the decisions, directions or orders of the Authority." (emphasis supplied)

37.3. Section 79 of the RERA Act bars the jurisdiction only of civil Courts in respect of matters which an authority constituted under the RERA Act is empowered to adjudicate on. Section 79 reads as:

> *"79. Bar of jurisdiction.—No civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.*

37.5. An allottee may elect or opt for one out of the remedies provided by law for redressal of its injury or grievance. An election of remedies arises when two concurrent remedies are available, and the aggrieved party chooses to exercise one, in which event he loses the right to simultaneously exercise the other for the same cause of action.

38. The doctrine of election was discussed in A.P. State Financial Corpn. v. Gar Re-Rolling Mills [A.P. State Financial Corpn. v. Gar Re-Rolling Mills, (1994) 2 SCC 647], in the following words : (SCC pp. 660-61, paras 15-16)

> *15.* ***The doctrine of election clearly suggests that when two remedies are available for the same relief, the party to whom the said remedies are available has the option to elect either of them but that doctrine would not apply to cases where the ambit and scope of the two remedies is essentially***

different. To hold otherwise may lead to injustice and inconsistent results. *... Since, the Corporation must be held entitled and given full protection by the Court to recover its dues it cannot be bound down to adopt only one of the two remedies provided under the Act. In our opinion, the Corporation can initially take recourse to Section 31 of the Act but withdraw or abandon it at any stage and take recourse to the provisions of Section 29 of the Act, which section deals with not only the rights but also provides a self-contained remedy to the Corporation for recovery of its dues. If the Corporation chooses to take recourse to the remedy available under Section 31 of the Act and pursues the same to the logical conclusion and obtains an order or decree, it may thereafter execute the order or decree, in the manner provided by Sections 32(7) and (8) of the Act. The Corporation, however, may withdraw or abandon the proceedings at that stage and take recourse to the provisions of Section 29 of the Act. A "decree" under Section 31 of the Act not being a money decree or a decree for realisation of the dues of the Corporation, as held in Gujarat State Financial Corpn. v. Natson Mfg. Co. (P) Ltd. [Gujarat State Financial Corpn. v. Natson Mfg. Co. (P) Ltd., (1979) 1 SCC 193] , SCC at p. 198, AIR at p. 1768 recourse to it cannot debar the Corporation from taking recourse to the provisions of Section 29 of the Act by not pursuing the decree or order under Section 31 of the Act, in which event the order made under Section 31 of the Act would serve in aid of the relief available under Section 29 of the Act.*

16. The doctrine of election, as commonly understood, would, thus, not be attracted under the Act in view of the express phraseology used in Section 31 of the Act viz. 'without prejudice to the provisions of Section 29 of this Act'. While the

Corporation cannot simultaneously pursue the two remedies, it is under no disability to take recourse to the rights and remedy available to it under Section 29 of the Act even after an order under Section 31 has been obtained but without executing it and withdrawing from those proceedings at any stage. The use of the expression "without prejudice to the provisions of Section 29 of the Act" in Section 31 cannot be read to mean that the Corporation after obtaining a final order under Section 31 of the Act from a Court of competent jurisdiction, is denuded of its rights under Section 29 of the Act. To hold so would render the above-quoted expression redundant in Section 31 of the Act and the Courts do not lean in favour of rendering words used by the Legislature in the statutory provisions redundant. The Corporation which has the right to make the choice may make the choice initially whether to proceed under Section 29 of the Act or Section 31 of the Act, but its rights under Section 29 of the Act are not extinguished, if it decides to take recourse to the provisions of Section 31 of the Act. It can abandon the proceedings under Section 31 of the Act at any stage, including the stage of execution, if it finds it more practical, and may initiate proceedings under Section 29 of the Act."

[.....]

41. In Transcore v. Union of India [Transcore v. Union of India, (2008) 1 SCC 125 : (2008) 1 SCC (Civ) 116], this Court considered the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 ("the Sarfaesi Act") and the Recovery of Debts due to Banks and Financial Institutions Act, 1993 ("the RDDB Act"), wherein it was held that there are three elements of election viz. existence of two or more remedies, inconsistencies between such remedies, and a

choice of one of them. If any one of the three elements is not there, the doctrine will not apply. The judgment in Transcore was subsequently followed in Mathew Varghese v. M. Amritha Kumar [Mathew Varghese v. M. Amritha Kumar, (2014) 5 SCC 610 : (2014) 3 SCC (Civ) 254] , where it was held that : (SCC p. 641, para 46)

> *"46. A reading of Section 37 discloses that the application of the Sarfaesi Act will be in addition to and not in derogation of the provisions of the RDDB Act. In other words, it will not in any way nullify or annul or impair the effect of the provisions of the RDDB Act. We are also fortified by our above statement of law as the heading of the said section also makes the position clear that application of other laws are not barred. The effect of Section 37 would, therefore, be that in addition to the provisions contained under the Sarfaesi Act, in respect of proceedings initiated under the said Act, it will be in order for a party to fall back upon the provisions of the other Acts mentioned in Section 37, namely, the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956, the Securities and Exchange Board of India Act, 1992, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, or any other law for the time being in force.*

…..
[……..] ".

26. From a bare perusal of the judgement in ***IREO (supra)***, it is clear that if the Petitioner has two remedies, which are not identical and are not concurrent, then the Doctrine of Election will have no application. It is clearly laid down herein above that this doctrine would not apply if the ambit and scope of two remedies are essentially different.

27. In the present Appeals, the Appellants are challenging the orders passed by the Ld. Commercial Court, by which the Petitions under Section 9 of the Act of 1996 were dismissed on the ground that since Petitioners have already availed a remedy under the RERA Act, they cannot claim relief under Section 9 of the Act of 1996, as the doctrine of election would apply. However, this Court is of the opinion that the ld. Commercial Court dismissed the Petitions without proper application of law and facts. In all the Petitions adjudicated under Section 9 of the Act of 1996, no Commercial Court below examined or compared the reliefs sought before the RERA authorities with those prayed for in the proceedings instituted under Section 9. In the absence of any analysis of the character, scope, timing, and surrounding circumstances governing the remedies pursued in the two distinct fora, it was legally impermissible for the concerned Courts to conclude that the Section 9 petitions were non-maintainable on the ground that an alternative remedy had already been invoked. Specifically, in light of facts that there is an arbitration clause in the MOU between the parties, which requires them to proceed to the arbitration in case of dispute. The bare reading of the reliefs claimed by Petitioners shows that the remedies sought by them in two different proceedings are distinct and separate.

SCOPE OF SECTION 9 - INTERIM MEASURES

28. In the present matter, the interim measures sought before the Commercial Courts were confined to **preservation of the allotted commercial units**, restraint on coercive actions such as cancellation of allotment or creation of third-party rights, and protection against enforcement of disputed and unexplained demands raised subsequent to

HARERA's Orders. These reliefs are **ancillary in nature** and are designed to ensure that the arbitral proceedings, once initiated, are not rendered in vain or illusory.

29. Section 9 of the Arbitration and Conciliation Act reads as follows -

> ***" 9. Interim measures, etc., by Court.***—*(1) A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a Court—*
> *(i) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or*
> *(ii) for an interim measure of protection in respect of any of the following matters, namely:—*
>
> *(a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;*
> *(b) securing the amount in dispute in the arbitration;*
> *(c) the detention, preservation or inspection of any property or thing which is the subject matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;*
> *(d) interim injunction or the appointment of a receiver;*
> *(e) such other interim measure of protection as may appear to the Court to be just and convenient,*
>
> *and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.*

> *(2) Where, before the commencement of the arbitral proceedings, a Court passes an order for any interim measure of protection under sub-section (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such further time as the Court may determine.*
> *(3) Once the arbitral tribunal has been constituted, the Court shall not entertain an application under sub-section (1), unless the Court finds that circumstances exist which may not render the remedy provided under section 17 efficacious."*

30. This Court is of the view that under Section 9 of the Act of 1996, the Court can pass various interim measures of protection, including –

- Preservation of the subject matter of the agreement
- Securing the amount in dispute in arbitration
- As also such other interim measures of protection as it appears to the Court to be just and convenient.
- The Court is also empowered to appoint receivers or grant an interim injunction.

31. Thus, the power of the Court under Section 9 of the Act of 1996, is quite broad and would permit the grant of relief in cases where, *prima facie*, a balance of convenience and irreparable injury is made out in favour of the Petitioner.

32. A Division Bench of the '***Andhra Pradesh High Court in Vijayawa Transport, Hyderabad v. A.P. State Civil Supplies Corpn. Ltd., 1982 SCC OnLine AP 256'*** has discussed the scope of granting Interim measures of the Civil Courts. The relevant extract from the judgment reads as follows :

> *"The arguments of Sri S. Ranga Reddy, for the Corporation that power under S. 41(b) of the Arbitration Act would not be available to be exercised by the Court till*

an arbitrator has been appointed does not appear to be correct. S. 41 of the Arbitration Act is worded very widely and empowers a Court to exercise the powers of passing interim orders and mentioned in the II Schedule not only for the purpose of an arbitration proceeding, but also in relating to an arbitration proceeding. An arbitration proceeding may not be the same thing as an arbitration. An arbitration proceeding covers a much wider area than an arbitration in strict sense. In the context of the Arbitration Act, arbitration proceedings need not necessarily be held to commence only from the point of time when an arbitration proper is commenced with the appointment of an Arbitrator by the Court. Arbitration proceeding would take in a proceeding taken for the appointment of an Arbitrator. Construing the language of S. 41 of the Arbitration Act and considering its purpose, we find no justification to give that Section such a restricted interpretation that would deny a civil Court the necessary adjunctive authority and jurisdiction to entertain any application and grant of any interim relief so essential for administration of justice. In many cases obtaining of interim relief is no less important than obtaining of final relief. Whether we are dead or not in the long run as Kenyes predicted, many of us may not be alive to see the fruits of our Court litigation. The fruits of Court litigation are not oft interred with our bones. It follows, therefore, that Court jurisdiction to grant an interim relief should not be lightly denied by interpretation unless the language used by the Statute is intra table. We not only find that there is no such clear words of limitation used in S. 41 of the Arbitration Act compelling us to deny the Court jurisdiction to grant an interim relief till an arbitrator is appointed, but on the contrary we also find the phrase 'arbitration proceeding' is wide enough to justify the granting of interim relief even before an arbitrator is appointed. The judgment of the Kerala High Court reported in Baby Paul v. Hindustan Paper Corporation Ltd., AIR 1978 Kerala 223 no doubt supports the view which is advanced by the respondent Corporation. That judgment

> *holds that arbitration proceedings commence only on the arbitrator getting authority to arbitrate and act on that behalf. According to this view, the applicability of S. 41 of the Arbitration Act would be postponed till the Court appoints an arbitrator under S. 20 of the Act. This view of the law would create a vacuum to meet the situation that might arise from the time an application for the appointment of an arbitrator has been made to the Court and till that application has been disposed of by the Court by appointing an arbitrator. Considering the fact that S. 41 of the Arbitration Act is a remedial section and provides for a machinery of justice, we consider it proper not to clog its operational efficiency and functional effectiveness by such a restricted interpretation. The language used in the section also does not compel us to take that view and deny the Court jurisdiction to exercise this power. For these reasons, we do not think that we can accept the judgment of the Kerala High Court in Baby Paul v. Hindustan Paper Corporation (supra).”*

33. In addition, it is established that the jurisdiction under Section 9 of the Arbitration and Conciliation Act, 1996, is not an adjudicatory substitute for the final determination of rights, but a **supportive mechanism** to facilitate effective dispute resolution through arbitration. The mere fact that a party has availed a statutory remedy under a special enactment does not, by itself, denude the Court of jurisdiction to grant interim protection, particularly where the reliefs sought do not overlap in substance or effect. In the opinion of this Court, there can be no doubt that persons like the Appellants are forced to avail of remedies at different stages before different Authorities.

34. Before proceeding further, this Court finds it necessary to refer to the ‘***International Commercial Arbitration in UNCITRAL Model Law Jurisdictions’ by Dr Peter Binder,*** wherein it is stated:

> *"It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a Court an interim measure of protection and for a Court to grant such measure."*
>
> *It is further stated:*
>
> *"In certain circumstances, especially where the Arbitral Tribunal has not yet been established, the issuance of interim measures by the Court is the only way assets can be saved for a future arbitration. Otherwise, the claimant could end up with a worthless arbitral award due to the fact that the losing party has moved his attachable assets to a 'safe' jurisdiction where they are out of reach of the claimant's seizure. The importance of such a provision in an arbitration law is therefore evident, and a comparison of the adopting jurisdictions shows that all jurisdictions include some kind of provision on the issue, all granting the parties permission to seek Court-ordered interim measures."*

35. The Courts exercising such jurisdiction under Section 9 of the Act do not determine the merits of the underlying dispute, but intervene to ensure that the arbitral process is not rendered futile by unilateral or irreversible acts of one party. This supportive role of the Court is integral to the arbitral framework and is premised on the recognition that arbitration, unlike traditional civil litigation, lacks coercive powers to immediately restrain actions that may cause irreparable harm.

36. In disputes involving **immovable property**, particularly in the real estate sector, the need for interim protection assumes heightened significance. Property, once alienated, encumbered or subjected to third-party rights, may become impossible to restore to its original position. The law, therefore, recognises that **preservation of the same** is central to ensuring that the final adjudication, whether by an arbitral tribunal or a statutory authority, remains effective and enforceable.

37. On the same lines, in all these Appeals, the Appellants have been running from pillar to post for the last several years, as is evident from the proceedings before the HARERA and the Petitions under Section 9 of the Arbitration and Conciliation Act, 1996, in order to secure their units, which they have booked. They have made substantial payments to the Respondent and have not enjoyed any fruits of the said payment.

38. In cases where one party is in a position of dominance, such as a developer exercising control over possession, allotment, or documentation, the absence of interim restraint may permit actions that effectively foreclose the other party's remedies. Section 9 enables the Court to neutralise such an imbalance, ensuring procedural fairness and preserving the sanctity of the arbitral process.

39. Reference may also be made to ***'The Law and Practice of Commercial Arbitration in England by Mustill and Boyd',*** wherein it was discussed that:

> *"(b) Safeguarding the subject-matter of the dispute*
> *The existence of a dispute may put at risk the property which forms the subject of the reference, or the rights of a party in respect of that property. Thus, the dispute may prevent perishable goods from being put to their intended use, or may impede the proper exploitation of a profit-earning article, such as a ship. If the disposition of the property has to wait until after the award has resolved the dispute, unnecessary hardship may be caused to the parties. Again, there may be a risk that if the property is left in the custody or control of one of the parties, pending the hearing, he may abuse his position in such a way that even if the other party ultimately succeeds in the arbitration, he will not obtain the full benefit of the award. In cases such as this, the Court (and in some instances the arbitrator) has power to intervene, for the purpose of maintaining the status*

> *quo until the award is made. The remedies available under the Act are as follows:*
> *(i) The grant of an interlocutory injunction.*
> *(ii)The appointment of a receiver.*
> *(iii) The making of an order for the preservation, custody or sale of the property.*
> *(iv) The securing of the amount in dispute."*

INJUNCTION TO PRESERVE THE PROPERTY

40. Moreover, interim injunctions under Section 9 serve multiple protective functions. They maintain the status quo, prevent dissipation or alienation of property, restrain coercive actions such as cancellation of allotment, and ensure that disputed claims are not enforced in a manner that would cause irreversible prejudice. Such injunctions are not granted as a matter of course, but are guided by well-established principles of prima facie case, balance of convenience, and irreparable harm, adapted to the arbitral context.

41. The importance of injunctions in this context also flows from the principle that 'equity intervenes to prevent irreparable injury'. Monetary compensation may not always be an adequate remedy where immovable property is involved, particularly when the property is unique, commercially significant, or forms the core of the contractual relationship. Injunctive relief, therefore, operates as a means of preventing harm rather than compensating for it after the fact.

42. The Supreme Court in ***'Adhunik Steels Ltd. v. Orissa Manganese and Minerals (P) Ltd., (2007) 7 SCC 125'*** has observed as under :

> *"18. The approach that at the initial stage, only the existence of an arbitration clause need be considered is not*

justified. In ***Siskina (Cargo Owners) v. Distos Compania Navieria SA (The Siskina) [1979 AC 210 :(1977) 3 WLR 818 : (1977) 3 All ER 803 (HL)]*** *Lord Diplock explained the position: (All ER p. 824f-g)*

"A right to obtain an interlocutory injunction is not a cause of action. It cannot stand on its own. It is dependent on there being a pre-existing cause of action against the defendant arising out of an invasion, actual or threatened, by him of a legal or equitable right of the plaintiff for the enforcement of which the defendant is amenable to the jurisdiction of the Court. The right to obtain an interlocutory injunction is merely ancillary and incidental to the pre-existing cause of action. It is granted to preserve the status quo pending the ascertainment by the Court of the rights of the parties and the grant to the plaintiff of the relief to which his cause of action entitles him, which may or may not include a final injunction."

43. A full Bench of the Supreme Court in ***Wander Ltd. v. Antox India (P) Ltd., 1990 Supp SCC 727,*** while discussing the scope of an interlocutory injunction, has held as under :

"9. Usually, the prayer for grant of an interlocutory injunction is at a stage when the existence of the legal right asserted by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. The Court, at this stage, acts on certain well-settled principles of administration of this form of interlocutory remedy which is both temporary and discretionary. The object of the interlocutory injunction, it is stated

"...is to protect the plaintiff against injury by violation of his rights for which he could not adequately be compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting

> *from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The Court must weigh one need against another and determine where the 'balance of convenience' lies."*
>
> *The interlocutory remedy is intended to preserve in status quo, the rights of parties which may appear on a prima facie case. The Court also, in restraining a defendant from exercising what he considers his legal right but what the plaintiff would like to be prevented, puts into the scales, as a relevant consideration whether the defendant has yet to commence his enterprise or whether he has already been doing so in which latter case considerations somewhat different from those that apply to a case where the defendant is yet to commence his enterprise, are attracted."*

44. Also, in the case of '***Sir Ganga Ram and Sons v. Punjab State Electricity Board*, 1973 SCC OnLine P&H 87,** it was observed that:

> *"6. It is true that the main dispute between the parties would be settled by the arbitrators if the application under section 34 succeeds and it is held that the matter in dispute has been agreed to be referred to arbitration. But we are concerned with a situation where the matter in dispute has not yet gone to the arbitrators and one of the parties wants an injunction from the dun regarding the preservation of the property in dispute. Among the five items mentioned in the Second Schedule, the power of the Court is also regarding the preservation and the interim custody of any goods which are the subject-matter of the reference vide item No. 1 in the said schedule. Item No. 3 thereof deals with the detention, preservation or inspection of any property and item No. 4 specifically deals with interim injunctions. In my opinion, therefore, the Court had the power to make an order of a temporary injunction regarding the preservation of the property in dispute. The reason for this also seems to be quite simple, because, if ultimately the dispute is referred to the arbitrators and an award is given in favour of a party,*

> *the award will become meaningless if, in the meantime, the property in dispute is wasted or disposed of by any of the parties to the litigation. It is precisely for that reason that the Court has been empowered under section 41 of the Arbitration Act to pass interim orders in respect of the matters, which have been set out in the Second Schedule irrespective of the fact whether one of the parties had already made an application under section 34 of the Arbitration Act before the said Court. It perhaps might have been a different matter if the power to issue temporary injunctions regarding the preservation of the property had also been specifically agreed to be referred to arbitration in the contract between the parties, but that is not the position in the instant case."*

45. Thus, in the present Appeals, the reliefs before HARERA were **regulatory and determinative**, whereas the reliefs under Section 9 were **preventive and preservative**. The failure of the Commercial Court to appreciate this vital distinction has resulted in a conflation of jurisdictions and an erroneous conclusion on maintainability.

B. ***Second Issue pertains to the limited and protective nature of jurisdiction exercised under Section 9***

46. Impugned Orders in ***FAO (COMM.) 204/2025, FAO (COMM.) 211/2025, FAO (COMM.) 237/2025, FAO (COMM.) 238/2025,*** and ***FAO (COMM.) 239/2025***, however, proceed on a broad proposition that invocation of remedies under the RERA Act constitutes an absolute bar to the maintainability of proceedings under Section 9. Such an approach overlooks the settled position that **concurrent remedies may coexist**, provided the reliefs sought are not identical, and the proceedings are not

vexatious or oppressive. The test is not the identity of parties or transactions, but the **identity of reliefs and the nature of jurisdiction exercised**.

47. However, as regards the reasoning adopted in the Impugned Judgment dated 09.06.2025 in ***FAO (COMM.) 210/2025*** on the issue of territorial jurisdiction, it is noted that the Ld. District Judge appears to have adopted an unduly technical approach by drawing a distinction in the venue of Arbitration between "Delhi" and "New Delhi", as reflected in Paragraph 14 of the said order (CHART 2) (**supra**). In proceedings under Section 9 of the Act of 1996, such a narrow territorial distinction was not warranted.

48. On consideration being made to **CHART 2 (supra),** in:-

- **OMP (I) (COMM.) No. 485/2025 & OMP (I) (COMM.) No. 486/2025,** no reasoning has been given as to how the reliefs sought before HARERA and under Section 9 Petition are the same.
- **OMP (I) (COMM.) No. 487/2025, OMP (I) (COMM.) No. 488/2025 & OMP (I) (COMM.) No. 489/2025,**

  a. The court did not consider the judgment relied upon by Petitioner in ***Priyanka Taksh Sood & Ors. Vs Sunworld Residency Pvt. Ltd & Anr., 2022 SCC Online Delhi 4717*.**

  b. Also prayers of both the Petitions were not compared and applied the 'Doctrine of Election of Remedy' without considering it properly.

  c. The Court held that 'Respondent' had the right to let out the property in dispute, hence no relief can be granted to Petitioner. But, the Petitioner herein was not seeking relief before the Court to get the adjudication of his rights, but to protect the property until the commencement of arbitration. Only the Arbitrator could adjudicate

and decide upon the rights & liabilities of the parties, in case there is an arbitration clause in the Agreement. Whether the property was rightly or wrongly let out could not have been decided by Ld. Commercial Court, and even this Court is not to pass any order on the merits of the case, while considering the grant of interim relief only.

49. In '***Priyanka Taksh Sood & Ors. Vs Sunworld Residency Pvt. Ltd & Anr., 2022 SCC Online Delhi 4717',*** the following was observed by the Apex Court-

> *"32. From the foregoing, there is no doubt in the mind of this Court that, giving a purposive interpretation to Sections 79, 88 and 89 of the RERA Act, there is no bar under the RERA Act from application of concurrent remedy under the A&C Act, and thus, there is no clash between the provisions of the RERA Act and the A&C Act, as the remedies available under the former are in addition to, and not in supersession of, the remedies available under the A&C Act."*

50. The Ld. Commercial Court failed to appreciate the judgment rendered in ***Priyanka Taksh Sood (supra)***, which was relied upon by the Appellant before the Court below. The said order ought to have been duly considered, as the reasoning therein directly supports the Appellant's case on the maintainability of the Petition under Section 9 of the Act of 1996, in terms of the provisions of the Real Estate (Regulation and Development) Act, 2016 and the Arbitration and Conciliation Act, 1996.

51. Accordingly, this Court is of the view that the dismissal of the Section 9 Petitions on the ground of overlap of reliefs is unsustainable in law and discloses a **jurisdictional error** warranting appellate interference.

52. At this stage, it is also worth mentioning that the Respondent has laid considerable emphasis on the alleged execution of a Lease Deed dated 30.06.2025 in favour of M/s Vexto Commercials Pvt. Ltd., purportedly in respect of the entire Third Floor of Neo Square Building, Sector-109, Gurugram, Haryana, comprising multiple units, for a period of nine years. The very existence of the said Lease Deed is vehemently denied by the Appellants. It is the specific case of the Appellants that M/s Vexto Commercials Pvt. Ltd. is a sham and bogus entity, whose promoters are intrinsically and inextricably linked to the Respondent. It has further been pointed out that the said company itself came to be incorporated only on 06.05.2025, casting serious doubt on the genuineness and bona fides of the alleged transaction.

53. On the basis of the submissions made by the ld. Counsel for the Respondent, in order to balance the competing claims, the Court *vide* order dated 18.09.2025, directed as under:

> *"i)* ***The Respondent shall, deposit the entire lease amount being earned qua each of the Appellants and in respect of each of the units which belong to the Appellants with the worthy Registrar General of this Court.*** *The date of lease entered into by the Respondent is stated to be from 30th June, 2025, therefore, from 1st July, 2025 onwards, the entire rent amount, without any deduction, applicable to the units of Appellants shall be deposited by 30th September, 2025 by Respondent with the worthy Registrar General of this Court. Going forward, the said rent from 1st October, 2025 onwards shall be deposited by the Respondent by 15th of each month with the worthy Registrar General. The entire amount received shall be kept in a fixed deposit on an auto-renewal mode;*

> *ii) The Appellants and the Respondent shall file computations of all the amounts which are due to them in respect of each of the units by at least one week before the next date of hearing.*
> *[...]"*

54. As per the above order, the lease amount was to be deposited before the Court which was not done.

55. Thereafter, the Report of the Local Commissioner dated 05.10.2025 was received by this Court, along with the photographs annexed thereto. The Report of the Local Commissioner clearly demonstrate that the mall in question is neither fully complete nor occupied. The photographs reveal that renovation and construction activities are still being carried out on the Third Floor, thereby rendering the said premises uninhabitable and unfit for any commercial use as on date.

56. *Prima facie*, therefore, the alleged execution of the Lease Deed, as projected by the Respondent, appears to be a sham transaction, seemingly brought into existence with the sole object of defeating the purpose and intent of the Memorandum of Understanding and to unlawfully deny the Appellants their legitimate rights, thereby causing undue hardship to them.

57. Having regard to the legal position crystallised by the precedents discussed and the findings recorded herein, this Court is of the considered view that the Appellants have made out a fit case for interference. Accordingly, and in consequence of the foregoing reasons, the present Appeals are allowed to the effect that:-

a. **The Respondent and their agents, servants, attorneys, heirs, contractors, labourers, representatives, etc., are restrained from creating any third-party interest/right(s), including, but**

not limited to, that of leasing out the property till the commencement of Arbitration proceedings;

b. **The Respondent is further directed to maintain *status quo* in relation to the respective Units under the BBA or MOU till the commencement of the Arbitration proceedings;**

c. **Once the Arbitral tribunal is constituted, either of the parties may seek modification of this order from the Arbitral Tribunal.**

58. All Appeals are allowed. Pending applications, if any, are disposed of.

SHAIL JAIN
JUDGE

PRATHIBA M. SINGH
JUDGE

DECEMBER 24, 2025
HP/MM/CK