MOHAMMAD AREEB MOHD AKBAR
Digitally signed by MOHAMMAD AREEB MOHD AKBAR
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 58 OF 2026

Pyramid Developers & Ors. … Petitioners

Versus

Ultra Lifespace Private Limited ... Respondent

Sharan Jagtiani, Sr. Adv. a/w. Mr. Nishant Sashidharan, Ms. Shraddha Achaliya, Mr. Nishant Chothani, Mr. Nivit Srivastava, Mr. Yash Chheda, and Mr. Hrishikesh Josh i/b. Maniar Srivastava Associates, for the Petitioners.

Mr. Simil Purohit, Sr. Adv. a/w. Mr. Pulkit Sharma, Mr. Varun Nathani, Mr. Harsh Sheth, Ms. Khushbu Trivedi and Mr. Rohan Vasa i/b. MDP Legal, for the Respondent.

CORAM : ARIF S. DOCTOR, J.

RESERVED ON : 11th SEPTEMBER 2026

PRONOUNCED ON : 12th OCTOBER 2026

JUDGMENT:

1. The captioned Petition is filed under the provisions of Section 37(2)(b) of the Arbitration and Conciliation Act 1996 ("**the Arbitration Act**"), and impugns an Order dated 28th December 2025 ("**Impugned Order**") passed by the Arbitral Tribunal ("**Tribunal**") in an Application filed by the

Respondent under Section 17 of the Arbitration Act. The Respondent is the Claimant in the Arbitration proceedings.

Factual Background:

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

i. The Petitioners and the Respondent are both real estate developers.

ii. The Petitioners were undertaking a redevelopment project on a plot of land at Bandra (West), Mumbai. The project contemplated the construction of a rehabilitation building and a free-sale building called "81 AUREATE". It is not in dispute that the Petitioners had completed the construction of the rehabilitation component of the said project.

iii. On 27th December 2013, the Parties entered into a Joint Development Agreement ("**JDA**"), by which the Respondent was appointed as the Joint Developer for the construction of the free-sale building.

iv. Clause 4.1 of the JDA required the Respondent to deposit a sum of Rs.105 crores with the Petitioners as a refundable Security Deposit

("**Security Deposit**"). Clause 4.4 of the JDA provided that the Petitioners would retain two flats from their share of flats as security for the refund of the deposit. The refund of the Security Deposit was to be as per the milestones set out in Annexure E of the JDA.

v. Since Annexure E was not appended to the JDA, the Parties, on 27th April 2014, executed a Supplementary Deed to the JDA ("**SJDA**"), to which Annexure E was appended. The SJDA also corrected certain other errors that had crept into the JDA.

vi. It is the Petitioners' case that, on the same day on which the SJDA was executed, the parties also executed a Memorandum of Understanding ("**MOU**"), by which the Security Deposit was to be refunded in cash. The MOU also provided that the Petitioners shall have security over six flats for which the Respondent was to issue Allotment Letters in favour of the Petitioners. The Respondent has denied the MOU.

vii. It is, however, not in dispute that (a) instead of Rs.105 crores, the Respondent deposited Rs.78.64 crores as and by way of Security Deposit; (b) by letter dated 10th December 2016, the Petitioners assured

the Respondent that the balance amount of Rs.75.89 crores would be refunded in instalments by March 2019; and (c) the Petitioners thereafter refunded a sum of Rs.34.15 crores, leaving a balance of Rs.44.49 crores.

viii. On 23rd September 2022, the Respondent called upon the Petitioners to repay the balance Security Deposit of Rs.44.49 crores. The Petitioners vide their letter dated 27th September 2022, denied any amount being payable to the Respondent towards the Security Deposit.

ix. The Respondent thereafter, on 18th July 2023, filed Commercial Suit No. 117 of 2023 before this Court, which was withdrawn on 8th August 2023.

x. Thereafter, the Petitioners and the Respondent both filed their respective Petitions under Section 9 of the Arbitration Act. By an Order dated 10th July 2025, this Court referred the parties to arbitration and appointed the Learned Sole Arbitrator. The Section 9 Petitions were to be treated as applications under Section 17 of the Arbitration Act.

xi. The Tribunal, vide the Impugned Order, dismissed the Petitioners' Application and, in the Respondent's Application, granted the following relief viz.

(**a**) The Petitioners were permitted to dispose of Flat Nos. 602, 1603 and 804, subject to the sale proceeds being utilised to secure the Respondent's claim of Rs.71.51 crores, comprising Rs.44.49 crores towards the balance Security Deposit claimed by the Respondent and Rs.27.02 crores towards interest thereon;

(**b**) The said flats were permitted to be sold at a minimum rate of Rs.38,000/- per sq.ft. of usable carpet area, with the sale proceeds, up to Rs.71.51 crores, being deposited in a recurring fixed deposit with a nationalised or scheduled bank initially for one year and renewed until the disposal of the arbitral proceedings. The original fixed deposit receipts were directed to be deposited with the Tribunal; and

(**c**) Any surplus over and above Rs.71.51 crores was permitted to be appropriated by the Petitioners, whereas, if the total sale proceeds

of the three flats were less than Rs.71.51 crores, the Petitioners were directed to make good the deficit.

3. Hence the present Petition.

Submissions on behalf of the Petitioners:

4. Mr. Jagtiani, the Learned Senior Counsel appearing on behalf of the Petitioners, assailed the Impugned Order principally on the following grounds:

The direction of sale of three flats is contrary to the JDA.

5. Mr. Jagtiani, at the outset, submitted that it was not in dispute that instead of Rs.105 crores recorded in Clause 4.1 of the JDA, only an amount of Rs.78.64 crores had in fact been deposited. He then pointed out that the parties had agreed, as recorded in Clause 4.4 of the JDA, that in the event the Petitioners failed to refund the amount of Rs.105 crores, the Respondent would be entitled to retain two flats from the share of the Petitioner. He submitted that the parties had specifically agreed that the security for the refund of the amount of Rs.105 crores was two flats and nothing more. He therefore submitted that

the Tribunal had, by directing the sale of three flats to secure the balance Security Deposit, acted contrary to the express and agreed terms of the JDA.

6. Mr. Jagtiani then pointed out that the aforesaid contention, though specifically raised before the Tribunal as recorded in paragraph 50 of the Impugned Order, had not been dealt with. He submitted that the Tribunal had failed to consider a material contention which had a direct bearing on the Respondent's entitlement to interim protection.

7. He therefore submitted that the Tribunal in passing the Impugned Order had acted contrary to the express terms of the JDA. He also pointed out that the Tribunal had failed to provide any reasons for permitting the sale of a third flat when the JDA clearly provided that the refund of Rs. 105 crores would be secured by two flats. He submitted that the Tribunal, in directing the sale of three flats to secure the refund of the balance Security Deposit amount, had effectively rewritten the agreement between the parties.

8. He then also pointed out that the Tribunal had not provided any reasons to justify the sale of a third flat, which was contrary to the terms of the JDA. He submitted that the Impugned Order was therefore liable to be interfered with

under the provisions of Section 37(2)(b), on this ground alone. In support of this contention, that an Order of an Arbitral Tribunal which was bereft of adequate reasoning can be interfered with under Section 37(2)(b) of the Arbitration Act, he placed reliance upon the decisions in the case of ***Inter-Ocean Shipping Private Limited v. ONGC***,[1] ***BCCI v. Deccan Chronicle Holdings Ltd.***,[2] ***McDermott International Inc. v. Burn Standard Co. Ltd.***[3] and ***ECGC Ltd. v. Nifty Labs Pvt. Ltd.***[4].

9. Mr. Jagtiani submitted that the Impugned Order was thus liable to be set aside since the same was plainly contrary to the agreed terms between the Parties. He submitted that it was well settled that an arbitral tribunal cannot travel beyond or rewrite the contractual bargain arrived at between the parties. In support of his contention, he placed reliance upon the decisions in ***MMTC Ltd. v. Vedanta Ltd.***,[5] ***Bharat Coking Coal Ltd. v. Annapurna Construction***,[6]

[1] 2022 SCC OnLine Bom 1699.
[2] 2021 4 Bom CR 481.
[3] 2006 11 SCC 181.
[4] 2024 SCC OnLine Bom 3831.
[5] (2019) 4 SCC 163.
[6] (2003) 8 SCC 154.

PSA Sical Terminals Pvt. Ltd. v. V.O. Chidambaram Port Trust[7] and ***Associated Engineering Company v. Government of Andhra Pradesh***.[8]

Contractual milestones for refund were not established.

10. Mr. Jagtiani then submitted that the Respondent's entitlement to a refund of the Security Deposit was expressly predicated upon the completion of the milestones set out in Annexure E to the SJDA. He pointed out that, under Clauses 14(m) read with 11(o) of the JDA, the Respondent was required to complete the construction of the sale building and obtain an occupation certificate ("**OC**") within 36 months from the date on which the entire sale plot was made available to the Respondent. He pointed out that the Tribunal had even recorded in paragraph 59 of the Impugned Order that "*Further, the Security Deposit was to be returned in instalments on the Claimant achieving defined milestones. When these milestones were achieved is yet to be ascertained*". Despite this, he submitted that the Tribunal had passed the

[7] (2023) 15 SCC 781.
[8] (1991) 4 SCC 93.

Impugned Order and granted security for the refund of the balance Security Deposit.

11. Mr. Jagtiani submitted that the Petitioners had specifically pleaded that (i) the construction was incomplete; (ii) the OC for the 26th floor had not been obtained; and (iii) construction of the banquet hall and gymnasium also remained to be completed. He pointed out that these contentions were recorded in paragraph 30 of the Impugned Order but were also not addressed by the Tribunal. He also pointed out that the Respondent did not dispute that construction was incomplete but only sought to attribute the delay to the Petitioners.

12. He further pointed out that, although the Respondent claimed to have applied for the full OC on 1st April 2019, this fact was communicated to the Petitioners for the first time nearly five years later, by a letter dated 3rd March 2024. Given these facts, he submitted that the Tribunal could not have concluded that the Respondent had established a strong *prima facie* case for securing the amount of Rs.44.49 crores without first determining whether the contractual conditions governing the refund had been satisfied. He submitted that the

Tribunal, in securing the refund of the balance Security Deposit without first determining if the same was due as per the achievement of milestones, also failed to consider a material issue that would render the Impugned Order liable to be set aside.

13. Mr. Jagtiani submitted that the basis on which the Tribunal had been persuaded to grant relief was essentially the letter dated 10th December 2016. He clarified that the Petitioner did not dispute the said letter; however, the Tribunal had entirely misconstrued the same. He invited my attention to the said letter to point out that it did not, in any manner, dispense with the Respondent's obligation to achieve the milestones as set out in Annexure E. He also pointed out that said letter was issued before the expiry of the 36-month construction period in July 2017 and did not, in any manner, constitute a waiver of the obligations of the Parties under the JDA/SJDA. He therefore submitted that the Tribunal's reliance on the said letter to construe the obligation for refund as both admitted and unconditional was *ex-facie* erroneous, particularly when the Tribunal had specifically noted that the achievement of the milestones remained to be ascertained. He submitted that

it was therefore incumbent upon the Tribunal to have arrived at a finding that the milestones had been achieved by the Respondent before securing a refund of the Security Deposit. He submitted that the Tribunal had not only failed to do so but, on the contrary, specifically noted that "*when the milestones were achieved need to be ascertained*". He thus submitted that the Tribunal had, in failing to determine whether milestones had been achieved, failed to decide a material issue. He placed reliance upon the decision of the Hon'ble Supreme Court in ***NHAI v. Gwalior-Jhansi Express Ltd.***,[9] to submit that failure to consider a material issue would amount to a violation of the fundamental policy of Indian law. He therefore submitted that even on this ground, the Impugned Order was liable to be set aside.

Securing interest is contrary to the contractual bargain.

14. Mr. Jagtiani then pointed out that the Tribunal had also secured the interest on the amount of Rs.44.49 crores. This, he submitted, was plainly contrary to the terms of the JDA/SJDA since neither contained any provision for interest on the refund of the Security Deposit. He pointed out that the Tribunal in

[9] 2018 8 SCC 243.

paragraph 59 of the Impugned Order had in fact specifically noted that there was no provision for interest in the JDA/SJDA for the refund of the interest, despite which the Tribunal had secured an additional sum of Rs.27.02 crores as interest at 9% per annum from 1st April 2019 to 31st December 2025.

15. He submitted that Clause 4.2 of the JDA, which the Tribunal had relied upon to secure the interest, had absolutely no application to the Respondent's claim. He then pointed out that Clause 4.2 entitled the Petitioners to charge interest at the rate of 12% only if the Respondent delayed in making payment of the Security Deposit. He therefore submitted that Clause 4.2 operated in an entirely different context and could not be converted into or read as creating a reciprocal obligation on the Petitioners to pay interest on the refund of the Security Deposit.

Findings concerning the MOU are internally inconsistent and disregard material evidence.

16. Mr. Jagtiani then submitted that the MOU which was executed on the same day as the SJDA specifically provided that the Security Deposit of Rs.105 crores would be repaid by the Petitioners in cash. He submitted that not only had the Tribunal gravely erred in disregarding the said MOU, but had also, in

the Impugned Order, returned contradictions with regard to the MOU, in paragraph 49 and 55 viz.

> "*49…For the purpose of the present stage, leaving the final consideration open at the time of trial, I am prepared to proceed on the basis that merely because the MOU if implemented, would entail cash transactions, the same cannot be shut out from consideration.*"
>
> "*55. …MOU dated 27.04.2014 is an extremely suspicious doubtful document and in any case unenforceable.*" (Emphasis supplied)

Mr. Jagtiani placed reliance upon the decisions in the case of ***Union of India v. Pundakrishnanudu***,[10] ***Baker Hughes v. Shivani Oil***,[11] ***Union of India v. S.K. Sharma***[12] and ***Prema Amarlal Gehra v. Co-operative Bank***,[13] to submit that where there were inconsistent findings in an order passed by an arbitral tribunal, such order would be liable to be interfered with under Section 37 of the Arbitration Act.

[10] (2003) 8 SCC 168 (2).
[11] 2014 SCC OnLine Bom 1663.
[12] 2025 SCC OnLine Del 4925.
[13] 2017 SCC OnLine Bom 72.

17. Mr. Jagtiani further submitted that the finding in paragraph 55 of the Impugned Order that the MOU was suspicious because it introduced an arrangement not contained in the JDA completely overlooked the fact that the MOU was in the nature of a side letter, something that the JDA specifically contemplated. He pointed out that Clause 25 of the JDA expressly permitted the parties "*to add, alter and amend the terms and conditions of this Agreement*". He therefore submitted that the mere fact that the MOU introduced an additional arrangement would not render it as being suspicious or unenforceable.

18. Mr. Jagtiani then submitted that the Tribunal had also ignored material evidence produced by the Petitioners in support of the contention that the MOU had been acted upon. He pointed out that, pursuant to the MOU, Praful Satra had issued six Letters of Allotment in respect of six flats and 105 Hundies of Rs.1 crore each. He submitted that the Respondent had suppressed these documents, which the Petitioners then brought on record before the Tribunal. He pointed out that although the Tribunal had taken note of these documents, and instead of dealing with them or recording reasons for

disregarding them, the Tribunal had merely observed in paragraph 55(i) that a "*The reason why the Claimant would have given security of 6 flats or given hundies for a total of Rs.105 cr. is somewhat perplexing, but that must await the trial.*"

19. Mr. Jagtiani further pointed out that the Petitioners had also placed before the Tribunal (**i**) the board resolution dated 4th October 2013 authorising Praful Satra and/or Rajan Shah to execute the JDA, power of attorney and "*such other documents as may be required*"; (**ii**) the resolution dated 15th January 2014 similarly authorising the execution of the SJDA and other documents; (iii) an email dated 24th August 2025 from Praful Satra confirming the execution of the MOU; and (**iv**) the affidavit dated 29th September 2025 of Rajan Shah confirming that the MOU was executed in his presence. He submitted that the Respondent had not disputed the authority of Praful Satra, the signatures appearing on the MOU, or the fact of execution of the MOU by Praful Satra.

20. He submitted that, even assuming Praful Satra lacked the requisite authority to execute the MOU, the Respondent would nevertheless be bound by the MOUon the basis of the doctrine of indoor management. In support of this

contention, he placed reliance upon the decision in ***Kantu Shankar Desai v. Sociedade Agricola Dos Gauncares De & Ors.***,[14] ***Abdul Ghani El Ajou v. Dollar Land Holdings Ltd.***,[15] ***Meridian Global Funds Management Asia Ltd. v. Securities Commission***[16] and ***Indian Bank v. Godara Nagarik Co-operative Credit Society Ltd.***[17]. He submitted that the Tribunal had failed to consider these submissions and authorities while passing the Impugned Order.

Findings concerning the letter dated 10th December 2016 are contrary to the record.

21. Mr. Jagtiani submitted that the findings in paragraphs 55(d) and 55(g) of the Impugned Order, that the Petitioners had provided no explanation with regard to the letter dated 10th December 2016, were factually incorrect. He pointed out that the Petitioners had, in paragraphs 21 to 27 of the Plaint in Suit No. 348 of 2025, explained both the reduction of the Security Deposit from Rs.105 crores to Rs.78.64 crores and the circumstances in which the letter dated 10th December 2016 was issued. He therefore submitted that the Tribunal's

[14] 2019 6 Mh.L.J 910.
[15] 1993 EWCA Civ 4.
[16] 1995 2 AC 500.
[17] 2008 12 SCC 541.

conclusion that the arrangement was "*difficult to understand*" and that there was "*no explanation*" disregarded material placed before the Tribunal by the Petitioners.

22. Basis the above, he submitted that the Impugned Order was liable to be set aside in its entirety. Alternatively, only two flats as per the terms of the JDA be retained as security for the refund of the balance Security Deposit.

Submissions on behalf of the Respondent:

23. Mr. Purohit, Learned Senior Counsel appearing on behalf of the Respondent opposed the captioned Petition principally on the following grounds

The scope of interference under Section 37(2)(b) of the Arbitration Act is limited.

24. He submitted that the scope of interference by the Court under Section 37(2)(b) of the Arbitration Act with an order passed under Section 17 was extremely limited. It was well settled that, while considering a challenge to an Order passed by an arbitral tribunal under Section 17, the Court is not required to substitute its view for that of the Tribunal unless the exercise of discretion by the Tribunal was shown to be arbitrary, capricious or perverse.

25. He then submitted that in the present case, the Impugned Order was well-reasoned, and the conclusions arrived at by the Tribunal were based on the material before the Tribunal. He therefore submitted that this Court ought not to reappreciate the material on which the Tribunal had placed reliance merely because another view was possible. In support of his contention, he placed reliance upon the decisions in ***M/s. Hitech Hafizi Town (A) Developers v. Om Shree Gokul Co-operative Housing Society Limited***,[18] ***Dinesh Gupta & Ors. v. Anand Gupta & Ors.***,[19] ***Ambrish Soni v. Chetan Narendra Dhakan & Ors.***[20] and ***Khadi and Village Industries Commission v. KVIO Ventures Private Limited***[21].

The Tribunal did not act contrary to Clause 4.4.

26. Mr. Purohit submitted that the Petitioners had misunderstood or were then misconstruing the nature and effect of the Impugned Order. He submitted that the Tribunal had neither enforced nor modified Clause 4.4 of the JDA. He submitted that the Tribunal had simply exercised discretion vested in it under

[18] Judgment passed by Bombay High Court on 27th September 2017 in ARBP No. 1266 of 2016.
[19] 2020 SCC Online Del 2099.
[20] 2024 SCC OnLine Bom 2280.
[21] Judgment passed by Bombay High Court on 22nd July 2025 in CARBP (L) No. 19757 of 2025.

Section 17 of the Arbitration Act and had secured the Respondent's claim by applying principles analogous to those under Order XXXVIII Rule 5 of the Civil Procedure Code, 1908.

27. He submitted that the Impugned Order permitted the Petitioners to sell Flat Nos. 602, 1603 and 804, subject to depositing the sale proceeds, to the extent of Rs.71.51 crores, in a fixed deposit with a nationalised or scheduled bank. He pointed out that, if the sale of two flats generated Rs.71.51 crores, the Impugned Order would cease to operate, and if all three flats were sold for less than Rs.71.51 crores, the Petitioners would be required to make good the shortfall. He therefore submitted that the Impugned Order did not absolutely prohibit the Petitioners from dealing with the said flats but only required security to be furnished for the Respondent's claim pending the final determination of the arbitration proceedings.

28. Mr. Purohit then placed reliance upon Clause 5.1 of the JDA to point out that the Petitioners were restrained from dealing with 20% of the flats falling to their share until completion of the RCC work and with the remaining 15%

until receipt of the OC. He submitted that despite such a restriction, the Petitioners had admittedly dealt with the said flats.

29. He also pointed out that, immediately prior to the filing of the Section 9 Petition, and before 6th September 2023, i.e., the date of filing of the Section 9 Petition, the Petitioners had sold four flats. This conduct, he submitted, justified the Respondent's apprehension that the Petitioners might dispose of their remaining assets and thereby render an award ineffective. He submitted that this Court had also taken such conduct into account when granting relief under Section 9 by its order dated 20th September 2023.

30. Mr. Purohit also submitted that the Respondent completed the construction on about 1st April 2019, which was evident as the Petitioners themselves had sold the flats on 29th August 2023. He submitted that the Petitioners were trying to misread the Third Schedule by equating the 'completion of construction' with 'obtaining the OC'. He therefore submitted that the Petitioner was equating the Respondent's entitlement for a refund of the Security Deposit with obtaining an OC. He submitted that the refund was fixed as per the timeline

indicated in the letter dated 10th December 2016 and not on the performance of any obligation by the Respondent.

Interest.

31. Mr. Purohit then submitted that the Tribunal had awarded interest from 1st April 2019 because the Petitioners had themselves, in the letter dated 10th December 2016, undertaken to refund the balance Security Deposit by March 2019. He pointed out that the Tribunal had, infact, computed interest at 9% per annum, although Clause 4.2 of the JDA, upon which the Tribunal had placed reliance, provided for interest at 12%. He submitted that the interest component was *ad hoc* and formed part of the interim security granted by the Tribunal. This, he submitted, did not, in any manner, constitute a final determination of the Respondent's entitlement to interest. He submitted that if the Petitioners ultimately established at trial that the refund was conditional upon achievement of the contractual milestones, the same could be adjusted accordingly.

The Impugned Order was a reasoned order.

32. Mr. Purohit then submitted that the Impugned Order adequately contained the reasons basis which the Tribunal had granted the interim relief. He therefore submitted that the Impugned Order could not be termed as being unreasoned. He submitted that an arbitral tribunal was not required to answer every submission separately or provide elaborate reasons for every factual assertion. He submitted that the Impugned Order had to be read as a whole and not by dissecting individual sentences or passages as was done by the Petitioners. In support of his contention, he placed reliance upon the decisions in ***Dyna Technologies Private Limited v. Crompton Greaves Ltd.***,[22] ***OPG Power Generation Private Limited v. Enexio Power Cooling Solutions India Private Limited***[23] and ***Bhima Sahakari Sakhar Kharkhana Ltd. v. Immer Commodities India Pvt. Ltd.***,[24] .

[22] (2019) 20 SCC 1.
[23] (2025) 2 SCC 417.
[24] Judgment passed by the Bombay High Court on 7th July 2024 in ARAPP No. 8 of 2026.

The Tribunal rightly treated the MOU as suspicious.

33. Mr. Purohit submitted that the Tribunal was entirely justified in observing that the purported MOU was an extremely suspicious and doubtful document. In support of his contention, he highlighted the following (**i**) although the alleged MOU was dated 27th April 2014 and contemplated dealing with the Security Deposit in cash, the Petitioners had, between 2016 and 2022, made as many as 51 payments towards refund of the Security Deposit without once demanding a cash reversal or asserting any right under the MOU; (**ii**) the MOU referred to six flats without identifying them, and one of the said flats, i.e., Flat No. 2503, did not even exist on the date on which the MOU was allegedly executed; (**iii**) the other security flats were subsequently sold through registered instruments to the knowledge of the Petitioners without any contemporaneous assertion of a right to cash consideration; (**iv**) the letter dated 10th December 2016, referred to the JDA and SJDA and expressly recorded that the Security Deposit was to be refunded and contained no reference to the MOU or any cash adjustment; (**v**) the Petitioners' NOC dated 23rd April 2019, the Consent Terms and Share Purchase Agreement dated 8th

August 2019, and numerous registered instruments executed thereafter also contained no reference to the MOU; (**vi**) the MOU surfaced for the first time in the Petitioners' Affidavit in Reply dated 26th October 2023, nearly nine years after its alleged execution; and (**vii**) the Petitioners had, in the meantime, refunded Rs.34.15 crores without once demanding a cash reversal. He therefore submitted that the Tribunal had correctly held that the MOU was a suspicious document.

34. Mr. Purohit submitted that the Tribunal had, in paragraph 49 of the Impugned Order, merely considered whether the MOU could be taken into account at the interim stage, notwithstanding the fact that it was unstamped and unregistered and contemplated cash transactions. This, he submitted, did not amount to an acceptance of the validity or enforceability of the MOU. He submitted that, having considered the MOU, the Tribunal was entitled to in the exercise of the Tribunal's discretion u/s. 17 of the Arbitration Act arrived at a *prima facie* conclusion that the MOU was suspicious.

35. Mr. Purohit submitted that the Petitioners' reliance upon the 105 purported promissory notes was also misplaced, since Praful Satra had signed it in his

individual capacity and not on behalf of the Respondent. He further submitted that, given the admitted fact that the Respondent had deposited only Rs.78.64 crores, and not Rs.105 crores it was inconceivable that the Petitioners would retain security for Rs.105 crores without ever seeking the return of the excess Hundies or addressing the discrepancy.

36. Mr. Purohit submitted that paragraph 55(i) of the Impugned Order did not accept the validity of the Allotment Letters or Hundies but merely recorded that the same were perplexing and left the issue for determination at trial. He submitted that the Tribunal was correct in not placing reliance upon the alleged Hundies and Allotment Letters as evidencing the authenticity of the MOU, particularly since (**i**) Praful Satra had ceased to be a director of the Respondent on 30th April 2019; (**ii**) the Petitioners had issued an NOC for the subsequent share transfer to Mr. Mayank Shah; and (**iii**) the Share Purchase Agreement recorded that there were no undisclosed instruments or liabilities.

37. Mr. Purohit submitted that it was the Petitioners' own case that the MOU altered the commercial arrangement agreed to by the Parties and recorded in the JDA/SJDA, both of which were registered documents. He submitted that,

since the MOU was unregistered, the Tribunal was therefore entitled to consider whether such an alteration could be validly effected by way of an unregistered so-called side arrangement, given that a registered document could only be altered by another registered document. In support of his contention, he placed reliance upon the decisions in ***Chandrakant Shankarrao Machale v. Parubai Bhairao Mohite***[25], ***S. Saktivel v. M. Venugopal Pillai & Ors.***[26], ***Sunil Kumar Roy v. Bhowra Kankanee Collieries Ltd.***[27] and ***Deepak Arora v. Rashmi***[28].

38. Mr. Purohit also submitted that the Tribunal was entitled to assess the weight to be attached to the subsequent statements of Praful Satra and Rajan Shah, particularly since the record disclosed longstanding disputes between Praful Satra and Mayank Shah. He pointed out the findings of the NCLT in its Order dated 2nd April 2024 concerning fraudulent transactions involving Praful Satra in relation to Satra Properties (India) Limited had been affirmed by the NCLAT on 28th May 2025.

[25] (2008) 6 SCC 745.
[26] (2000) 7 SCC 104.
[27] (1970) 3 SCC 565.
[28] 2021 SCC Online Del 5360.

39. He further submitted that the Respondent's books of account contained no record of the alleged cash arrangement and that no board resolution had authorised Praful Satra to enter into such a transaction. He also pointed out that Praful Satra had himself confirmed in the Share Purchase Agreement that there were no undisclosed Hundies, promissory notes or other instruments executed on behalf of the Respondent. He therefore submitted that no credibility could be attached to the statements of Praful Satra.

40. Basis the above, he prayed that this Court be pleased to dismiss the present Petition.

Submissions on behalf of the Petitioners in Rejoinder:

41. Mr. Jagtiani did not dispute that the scope of interference under Section 37(2)(b) was limited but submitted that the present case warranted interference because the Tribunal had (**i**) departed from the express contractual terms; (**ii**) disregarded material evidence; (**iii**) failed to determine core issues; and (**iv**) rendered internally inconsistent findings.

42. He submitted that the Respondent's contention that Rs.44.49 crores constituted an admitted amount refundable by the Petitioners was plainly

incorrect, since the Petitioners had consistently maintained that the Security Deposit was to be refunded in the manner referred to in the MOU. Alternatively, he submitted that the refund of the Security Deposit was conditional upon the Respondent achieving the said milestones as stipulated in Annexure E to the SJDA.

43. He submitted that the Respondent's reliance upon the sale of the alleged security flats had neither been pleaded nor had been urged before the Tribunal. He then submitted that in any event, except in respect of Flat No. 2302, the relevant agreements had been executed on behalf of the Petitioners by Rajan Shah under the old power of attorney and without the Petitioners' knowledge or consent.

44. Mr. Jagtiani submitted that the Tribunal had, in paragraph 55(i) of the Impugned Order, proceeded on the basis that the six flats and 105 Hundies existed and merely left the reason for their creation to be determined at trial. He submitted that the Respondent, not having challenged that finding, could not now be permitted to contend that the Tribunal had rejected their existence. He also submitted that Rajan Shah had given direct evidence that the MOU,

allotment letters and promissory notes were executed in his presence. He reiterated that the board resolutions authorising Praful Satra to execute the JDA, SJDA and "*such other documents as may be required*" were not disputed by the Respondent, nor was Praful Satra's signature on the MOU. He submitted that the material before the Tribunal was, therefore, sufficient to establish a *prima facie* case concerning the existence and validity of the MOU.

45. Mr. Jagtiani reiterated that the MOU had deliberately been structured as a private side arrangement and that the letter of 10th December 2016 was issued only for the benefit of financial institutions. He therefore submitted that the letter dated 10th December 2016 could not be treated as evidence of the MOU's non-existence. The letter dated 10th December 2016, which he reiterated did not dispense with the milestones that the Respondent was required to achieve, would entitle the Respondent to a refund of the Security Deposit. He submitted that any other interpretation would result in the Respondent becoming entitled to a refund of the Security Deposit without completing the construction as agreed under the JDA. Such an interpretation, he submitted, would be contrary to the very contractual scheme of the JDA and SJDA and

to the Tribunal's own finding in paragraph 59 that the achievement of the milestones remained to be ascertained.

46. Mr. Jagtiani then submitted that the Respondent's contention that construction was complete by 1st April 2019 was neither pleaded nor established before the Tribunal. He pointed out that the Petitioners had relied upon Clause 14(m), which linked completion of construction within 36 months to enabling the project architect to apply for the OC; Clause 14(n), which prohibited possession before the OC; Clause 4.5; the Third Schedule; and Clause 5.1, all of which demonstrated that the OC formed an integral part of the contractual completion mechanism. He further pointed out that the Respondent's own letter dated 3rd March 2024 stated that the full OC had not yet been granted, and hence the mere sale of flats could not, by itself, establish contractual completion.

47. Mr. Jagtiani submitted that the MOU concerned an *inter se* commercial arrangement between the parties and did not affect the rights of flat purchasers in any manner, and hence, there was no reason for the MOU to be referred to in any Agreements for Sale. He submitted that the same also applied to the

letter dated 10th December 2016, which the Respondent had relied upon to modify the JDA but was also not referred to in the agreements for sale. Mr. Jagtiani submitted that the contention that the MOU surfaced for the first time on 26th October 2023 was also factually incorrect. He pointed out that the MOU had first been expressly referred to in the arbitration correspondence in September 2023.

48. Mr. Jagtiani submitted that the proceedings relied upon by the Respondent to discredit Praful Satra and Rajan Shah concerned a different company and were in relation to subsequent events. He submitted that the same had no bearing on the MOU or the Petitioners. He further submitted that Rajan Shah's credibility had not been challenged before the Tribunal and pointed out that the Respondent had re-appointed Rajan Shah as a director in November 2020 and had, through Rajan Shah, dealt with the 17 flats.

49. Mr. Jagtiani submitted that what was crucial was the fact that the Respondent had failed to answer the specific contention that the restraint over three flats was contrary to Clause 4.4. He pointed out that paragraph 58 of the Impugned Order expressly recorded that the Petitioners were precluded from disposing

of the three flats and it was therefore incorrect to characterise the order as merely directing the deposit of the sale proceeds. He also submitted that the Impugned Order was particularly onerous because the Petitioners could sell the flats only at a floor price of Rs.38,000/- per sq. ft. and were required to deposit the entire amount of Rs.71.51 crores in a fixed deposit. Additionally, he submitted that the Petitioners were required to make good of any shortfall in the said amount. He therefore submitted that in substance, he submitted that this converted an interim security order into a money decree.

50. Mr. Jagtiani submitted that the Tribunal's reliance upon Clause 5.1 of the JDA was also misplaced. He pointed out that the Clause applied to both parties and that the Respondent itself had dealt with flats falling within the restricted inventory. Similarly, the sale of flats after the filing of the Section 9 Petition did not establish any intention to defeat the Respondent's claim. He submitted that the Petitioners were real estate developers, and the sale of flats was undertaken in the ordinary course of business. Such sales could not, without more, justify relief analogous to attachment before judgment.

Reasons and Conclusions:

51. After having considered the rival contentions as also the case law upon which reliance has been placed, I find as follows, viz.

A. I am unable to accept the contention that the Tribunal has erred in observing that the MOU is a suspicious document or that the findings with regard to the MOU are internally inconsistent and disregard material evidence. These are *prima facie* observations made by the Tribunal in the exercise of its discretion under Section 17 of the Arbitration Act. Hence, should not be interfered with unless they are shown to be arbitrary, perverse, or capricious. A perusal of the Impugned Order, however, shows that there was sufficient material, which was not disputed by the Petitioners, for the Tribunal to have arrived at a *prima facie* finding that the MOU was a suspicious document, viz.

i. Between 2016 and 2022, the Petitioners had made as many as 51 payments towards the refund of the Security Deposit without, on any occasion, demanding a cash reversal or asserting any right under the MOU;

ii. The MOU referred to six flats without identifying them, and one of the said flats, namely Flat No. 2503, did not even exist on the date on which the MOU was allegedly executed;

iii. The other security flats were subsequently sold by registered instruments, to the knowledge of the Petitioners, without any contemporaneous assertion by them of a right to receive cash consideration;

iv. The letter dated 10th December 2016 referred to the JDA and the SJDA but made no reference whatsoever to the MOU;

v. The MOU is unstamped and unregistered.

Thus, there was adequate material before the Tribunal to have arrived at the *prima facie* conclusion that the MOU was a suspicious document.

B. I also find no merit in the contention that the Tribunal has erred in disregarding the Hundis and Letters of Allotment. To my mind, there was sufficient reason for the Tribunal to have disregarded the Hundies and Letters of Allotment, as the MOU was regarded as a suspicious document,

since (i) Praful Satra, who issued Allotment Letters, ceased to be a director of the Respondent on 30th April 2019; (**ii**) the Petitioners had issued an NOC for the subsequent share transfer to Mr. Mayank Shah; and (**iii**) the Share Purchase Agreement did not record the undisclosed instruments or liabilities. It was clearly in this context that the Tribunal observed that the Hundis and Letters of Allotment were perplexing.

C. I also find no merit in the contention that the impugned order is vitiated on account of contradictory findings in paragraphs 49 and 55. It is well settled that the Order must be read as a whole and not in a myopic manner, focusing on stray sentences or observations. However, even assuming that the observations in those two paragraphs, when read in isolation, may give rise to some perceived inconsistency, this would not, in my view, be sufficient to warrant setting aside the Impugned Order in its entirety since it does not detract from the overall assessment made by the Tribunal in arriving at the *prima facie* finding that the MOU was a suspicious document. These observations do not, therefore, suggest that the Tribunal has, in toto, accepted the existence and validity of the said Hundis and

Letters of Allotment and yet proceeded to disregard the MOU. That adjudication has been left for trial.

D. Hence, for the reasons set out in (B) and (C), I find that the decisions in ***Dyna Technologies Private Limited v. Crompton Greaves Ltd.***, ***OPG Power Generation Private Limited v. Enexio Power Cooling Solutions India Private Limited*** and ***Bhima Sahakari Sakhar Kharkhana Ltd. v. Immer Commodities India Pvt. Ltd.***, upon which the Respondent has placed reliance, would apply.

E. Mr. Satra's authority to execute the Hundies and Letters of Allotment and the Petitioners' reliance upon the decisions in ***Kantu Shankar Desai v. Sociedade Agricola Dos Gauncares De & Ors.***, ***Abdul Ghani El Ajou v. Dollar Land Holdings Ltd.***, ***Meridian Global Funds Management Asia Ltd. v. Securities Commission*** and ***Indian Bank v. Godara Nagarik Co-operative Credit Society Ltd.*** would also not at this stage assist the Petitioners since they proceed on the footing that the relevant act or transaction was in fact undertaken. In the present case, the Tribunal has *prima facie* observed that the MOU is a suspicious document and hence

did not accept the same. The question, therefore, was not whether Mr. Satra did or did not have authority to execute the MOU, but whether the MOU was a sham or a bogus document.

F. It is, however, crucial to note that there is no dispute that (**i**) the Respondent's claim in the arbitration is in respect of the Security Deposit furnished by the Respondent to the Petitioners under the JDA/SJDA; (**ii**) the existence and contents of the JDA and the SJDA are undisputed; (**iii**) although Clause 4.1 of the JDA contemplated a Security Deposit of Rs.105 crores, admittedly only an amount of Rs.78.64 crores was deposited by the Respondent and not Rs.105 crores as recorded in the JDA; (**iv**) the Petitioners have refunded an amount of Rs.34.15 crores, leaving a balance of Rs.44.49 crores; (**v**) the Section 17 Application was filed to secure this balance claim of Rs.44.49 crores; (**vi**) neither the JDA nor the SJDA contains any provision entitling the Respondent to interest on the refund of the Security Deposit; and (vii) Clause 4.4 provides for two flats to be retained as security for the refund of an amount of Rs.105

crores. In my view, it is against the backdrop of these facts that the Impugned Order would have to be tested.

G. Clause 4.4 of the JDA specifically provides that, in the event of the Petitioners' failure to refund the Security Deposit, two flats would be retained by the Respondent from the Petitioners' share of flats under the JDA/SJDA. The Tribunal has, in paragraph 50, infact recorded that the Respondent "*would be entitled to recover such an amount from the two flats agreed to be retained*". Despite this, the Tribunal has secured the refund of the balance Security Deposit of Rs.44.49 crores, along with interest, by directing the sale of three flats. This is plainly contrary to what the parties had specifically agreed in Clause 4.4 of the JDA.

H. Another aspect where I find much merit in the Petitioners' contention that the Tribunal had gravely erred in directing the sale of three flats to secure the balance security deposit of Rs. 44.49 crores is that while the JDA contemplated in no uncertain terms that Rs. 105 crores would be secured by two flats, the Tribunal has, by the Impugned Order, effectively secured an amount of Rs. 44.59 crores by the sale of three flats. This, as rightly

contended by the Petitioner, would not only be contrary to the plain terms of the JDA but would also be plainly absurd. Hence, the Petitioner is justified in contending that the Impugned Order is perverse, as it grants the Respondent security in excess of what the parties specifically agreed to under the JDA.

I. Additionally, Clause 4.1 of the JDA expressly predicates the Respondent's entitlement to a refund of the Security Deposit to completion of the milestones stipulated in Annexure E to the SJDA. Clauses 14(m) and 11(o) of the JDA required the Respondent to complete the construction of the sale building within 36 months from the date on which the entire sale plot was made available to it. It is not in dispute that neither the OC for the 26th floor has been obtained, nor has the construction of the banquet hall and gymnasium been completed. The Tribunal, in fact, in paragraph 59 of the Impugned Order, specifically observed that "*Further, the Security Deposit was to be returned in installments on the Claimant achieving defined milestones. When these milestones were achieved is yet to be ascertained.*" Despite this finding,

the Tribunal has proceeded to secure the balance Security Deposit without arriving at even a prima facie finding that the milestones set out in Annexure E had been achieved. The Tribunal has also not explained how, despite the fact that the milestones had admittedly not been achieved, the Respondent would nevertheless be entitled to a refund of the Security Deposit.

J. For the reasons set out in (G) to (I) I find the Petitioners' reliance upon the decisions in ***MMTC Ltd. v. Vedanta Ltd.***, ***Bharat Coking Coal Ltd. v. Annapurna Construction***, ***PSA Sical Terminals Pvt. Ltd. v. V.O. Chidambaram Port Trust*** and ***Associated Engineering Company v. Government of Andhra Pradesh***, to be apposite in the facts of the present case. The said decisions, *inter alia,* lay down that (i) an arbitrator must decide within the terms of the contract and cannot travel beyond the terms of the contract; (ii) where an arbitrator travels beyond the agreed terms of the contract, the resulting decision is liable to be set aside; (iii) that a contractual obligation cannot be unilaterally added to or altered so as to impose on a party a liability that did not form part of the agreed bargain;

(iv) a departure from the contract and other serious errors apparent on the face of the decision may furnish grounds for interference in an appropriate case; and (v) the terms of the contract and the manner in which the parties structured their bargain must be given due consideration, and an arbitral tribunal cannot, under the guise of interpretation, rewrite the contract or impose on a party a liability that is not contractually provided.

K. I also find merit in the Petitioners contention that despite the fact that the Petitioner had specifically raised before the Tribunal that (i) under Clause 4.4, the Respondent would be entitled to retain two flats from the share of the Petitioners and not three flats; (ii) construction remained incomplete, the OC for the 26th floor had not been obtained, and construction of the banquet hall and gymnasium also remained incomplete; and (iii) neither the JDA nor the SJDA contained any provision for interest on refund of the Security Deposit. Although the Tribunal noted these contentions in paragraphs 50, 30 and 59, respectively, the same have not been dealt with. In my view these were material contentions which ought to have been dealt with by the Tribunal. In these facts I find that the Petitioners' reliance

upon the decision of the Hon'ble Supreme Court in ***NHAI v. Gwalior-Jhansi Express Ltd.*** is well founded.

L. I must also note that, although the Respondent had sought to equate the completion of the RCC work with the completion of construction, which would entitle the Respondent to a refund of the Security Deposit, such contention was not raised before the Tribunal. However, even assuming such contention was raised, in my view the same is *prima facie* untenable. A plain reading of the JDA/SJDA clearly posits that completion of the construction was understood to mean as certified by the issuance of a Completion Certificate, since it is only upon such contractual completion that the parties would become entitled to the corresponding benefits contemplated under the development arrangement. It cannot be lost sight of that the Respondent was appointed as a co-developer and not merely a contractor who could have possibly urged that completion of construction meant completion of civil construction and not the procurement of a completion certificate.

M. The Tribunal has also directed the Petitioners to secure an amount of Rs.27.02 crores, being interest on Rs.44.49 crores computed at the rate of 9% from 1st April 2019 to 31st December 2025. This is despite the fact that (i) the JDA nor the SJDA provides for interest to be paid on refund of the Security Deposit; (ii) the Tribunal's own finding in paragraph 59 is that the Security Deposit was to be returned when the defined milestones were achieved by the Respondent; and (iii) the Tribunal has not even *prima facie* determined whether those milestones have been achieved. The Tribunal has relied upon Clause 4.2 of the JDA to justify the grant of interest. However, a plain reading of the said clause makes it clear that it applies only in the event of a delay by the Respondent in making the Security Deposit and does not apply to the repayment of the Security Deposit. Thus, on the face of it, Clause 4.2 has no application whatsoever in the context of the refund of the Security Deposit by the Petitioners.

N. The entire premise on which the Tribunal appears to have granted relief to the Respondent is on the basis of the letter dated 10th December 2016. However, the said letter (i) does not in any manner dispense with

Annexure E or the Respondent's obligation to achieve the milestones stipulated therein; (ii) expressly preserves the other terms of the JDA/SJDA; (iii) was issued before expiry of the 36-month construction period; (iv) does not constitute an unconditional waiver of the milestones or an admission that the Security Deposit had become refundable irrespective of performance of the Respondent's obligations under the JDA/SJDA; and (v) makes no provision for interest. Thus, the said letter did not in any manner give a go-by to or vary the terms of the JDA/SJDA or the obligations of the Parties as recorded therein. Crucially, it is not even the Respondent's case that the said letter in any manner varied or altered the terms of the JDA/SJDA, much less gave a go-by to either.

O. Accepting the Respondent's interpretation of the letter dated 10th December 2016 would effectively mean that the Respondent would be entitled to an unconditional refund of the Security Deposit notwithstanding the Respondent's failure to discharge the contractual obligations and achieve the milestones stipulated under the JDA/SJDA. Such an interpretation, in my view, is contrary to the contractual scheme

agreed upon between the parties. Crucially, the Tribunal has infact noted that the achievement of milestones remains to be ascertained.

P. For the reasons set out above, I find no merit in the Respondents' contention that the Tribunal passed the Impugned Order on the basis of the provisions of Order XXXVIII Rule 5 or the principles analogous to. In my view, Order XXXVIII Rule 5, or the principles analogous thereto, cannot be invoked to grant relief that is plainly contrary to the agreed terms governing the rights and obligations of the parties. In the facts of the present case, the Tribunal could not have resorted to the provisions of Order XXXVIII Rule 5 of the CPC or the principles analogous to the said provision to justify the grant of interim relief which was contrary to the JDA.

52. For the reasons mentioned hereinabove, I pass the following Order:

(i) The Petition is partly allowed.

(ii) The Impugned Order dated 28th December 2025 passed by the Learned Sole Arbitrator, in IA-1, is set aside to the extent of allowing the present

Petitioners to sell three flats, not below the rate of Rs.38,000/- per square feet and creating the fixed deposit of the amount of Rs.71.51 crores.

(iii) The Petitioners shall, as per Clause 4.4 of the JDA, retain two flats as security for the refund of the deposit payable to the Respondent.

(iv) There shall be no orders as to costs.

[ARIF S. DOCTOR, J.]