2026 INSC 875

Non-Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal Nos.10899-10904 of 2026
(Arising out of SLP (C)Nos.10086-10091 of 2026)

Neo Developers Private Limited ...Appellant (s)

Versus

Rahul Bhargava and Anr. Etc. ...Respondent (s)

O R D E R

Leave granted.

2. The appellant is the developer of a project titled 'Neo Square', who entered into commercial agreements for sale of undivided, un-demarcated commercial space with the respondents who agreed to purchase such space in the project situated at Sector 109, Dwarka Expressway, Gurugram, Haryana. Separate Builder Buyer Agreement[1] and Memorandum of Understanding[2] were entered into regulating the construction, conveyance and use of the premises. As

1 In short 'BBA'
2 In short 'MoU'

per the BBA, there was an assured return payable to the purchasers, which initially was paid and then defaulted. The project too got delayed and the respondents herein approached the Haryana Real Estate Regulatory Authority[3] for enforcement of its rights under the BBA. The HRERA passed an order which is produced as Annexure P-13. It is seen from the impugned order that the respondents had initiated execution proceedings in April 2025 for the enforcement of the order dated 14.08.2024 before the HRERA, which is pending.

3. In the meantime, the respondent is said to have issued two communications dated 24.02.2025 and 11.03.2025, informing that the property is proposed to be leased out. Demands were also raised for development and fit out charges. The respondents then approached the Commercial Court under Section 9 of the Arbitration and Conciliation Act, 1996[4], seeking interim measures against the alienation in any manner including the leasing out of the premises. The

3 In short 'HRERA'
4 Hereinafter referred to as 'the Act of 1996')

Commercial Court found that the respondents having first approached the HRERA and obtained orders, cannot turn around and invoke the arbitration clause. An appeal filed under Section 37 led to the impugned order, which restrained the appellant herein from creating any third-party interests or rights, including but not limited to that of leasing out the property, till the commencement of the arbitration proceedings. The respondent was further directed to maintain *status quo* in relation to the respective units under the BBA/MoU, again till the commencement of the arbitration proceedings. The request for arbitration is pending before the High Court.

4. The appellant is concerned with the interim orders passed, especially in the case of the respondents herein; when numerous persons have already taken conveyance and permitted the leasing out of such premises, which if leased out above the assured return, would inure to the benefit of the purchasers in the proportion agreed to in the BBA. The appellant is also concerned with the parallel proceedings having been taken up by the respondents.

5. We heard Sri Amit Sibal, learned Senior Counsel on behalf of the appellant and Sri Rajinder Singh, learned AoR for the respondents.

6. By the impugned order, the High Court found quite distinction insofar as the prayers made before the HRERA and before the Commercial Court under Section 9 of the Act of 1996. The impugned order held that the complaints instituted by the respondents before the HRERA, were in exercise of their statutory rights under the Real Estate (Regulation and Development) Act, 2016, whereas under Section 9, they do not seek adjudication of disputes on merits nor do they invite the Commercial Court to sit in appeal or the order of the HRERA, but only seeks interim measures to protect the subject property from further alienation, and handing over of possession to lessees, which would defeat their rights. We are unable to concur with the said finding of the High Court.

7. Learned Counsel for the respondents argued with reference to a Constitution Bench decision in ***In***

Re: Interplay between Arbitration agreements under Arbitration and Conciliation Act, 1996 and Stamps Act, 1899[5], wherein it was categorically held the scope of interference when an arbitration clause is provided in the agreement between the parties is very limited. At this stage, according to the respondents, this Court can only look at whether there is an arbitration clause and if there is one, the issue of maintainability should be left to the arbitrator.

8. Be that as it may, we have to observe that despite the arbitration clause, the respondents elected to go before the HRERA. Before the HRERA, the reliefs sought, as extracted in the impugned order, were a direction to the appellant to comply with their statutory and contractual obligations, ensuring completion of construction and handing over possession of the allotted commercial units in accordance with the agreed timelines, including appropriate directions for compensation and/or interest. A prayer was also made for payment of the

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assured monthly returns, which though initially made, was later stopped by the appellants. There was also a declaration sought that the demands made as development and fit out charges were illegal, arbitrary and contrary to the BBA. The relief claimed before the Commercial Court was to pass an interim order of injunction restraining leasing out of the property or creation of third party interests till the commencement of the arbitration. It has to be emphasized that the interim measure was sought to enable arbitration to enforce their rights under the BBA & the MoU; which was the attempt before the HRERA, which also attained fruition. The interim measures were sought when the respondents had already initiated execution proceedings before the HRERA.

9. We are not convinced that parallel proceedings of arbitration and execution of HRERA orders can be carried out and the former cannot be resorted to, for reason of the respondents having elected first, to go before the HRERA. The prayers made before both the authorities are substantially the same and the respondents having elected first to approach the HRERA, merely based on a communication issued, proposing leasing out of the properties and demanding development and fit out charges, there cannot be a fresh cause of action plea, to be agitated in arbitration. The application for arbitration in the facts of this case is misplaced.

10. In fact, we have to specifically notice the reliefs as granted by the HRERA coming out from Annexure P-13, which has now become final since there is no appeal filed against the said order. The HRERA issued the following directions: -

> *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 complainant which is not the part of the agreement of sale.*

11. A reading of the above extract would indicate that the HRERA intended that the assured return should be paid at the rate provided in the BBA till the commencement of the first lease of the said unit as per the MoU. Obviously, the HRERA reckoned the fact that on leasing out of the properties, there could be an enhancement insofar as the returns are concerned.

12. We need to look at the BBA for better understanding of the directions issued by the HRERA. We looked at one of the BBAs produced as Annexure 3, which relates to the retail space in the area designated for the Food Court in the said project and the specific assured plan scheme availed of by the respondents herein, from the very many schemes floated by the Developer.

13. Clause 3 entitles the respondents/allottee, a preference to occupy the space equivalent to the area purchased, which in the present case, for all the respondents, is on the 3^{rd} Floor, forming part of the area designated for the Food Court in the said project. The assured return plan opted by the party in Annexure 3, for which the sale consideration is Rs.4,500/- per sq. ft., ensures a monthly assured return of Rs.22,500/-. Clause 7 (a) speaks of the responsibility of the developer to pay the assured return, which ceases on the commencement of the first lease of the said unit and Clause 7 (b) further stipulates that on the allotted portion being leased out, if the monthly rental exceeds the assured return, the allottee would be paid Rs.54.55 per sq. ft. for each rupee increase in the monthly rental. On reduction of the monthly rental, for each decreased rupee, Rs.109.10/- per sq. ft. would be deducted.

14. The above clauses would indicate that there was no handing over of possession contemplated in the agreement but only a nominal ownership of the un-demarcated undivided extent purchased by the allottee, which on lease would generate a rental income in lieu of assured return, which could either be in excess of the assured return or lesser, depending on the commercial market conditions; which govern the rental of any commercial space. These terms along with Clause 8(a) to (e) puts it beyond any cavil that the scheme of purchase of the respondents would only give them the assured returns on the undivided portion conveyed and not separate possession. Hence, the direction of the High Court, not to lease out the properties would put the spanner in the works and impede the project insofar as the Food Court not being commenced. As we already noticed, since the respondents had approached the HRERA and execution proceedings are pending before it, which was first elected by the respondent, proceedings will have to be continued there. There is no reason to now invoke the arbitration clause since the respondents had elected to approach the HRERA in the first instance. The proceedings under Section 9 of the Act of 1996, as held by the Commercial Court, cannot be continued.

15. We set aside the order of the High Court impugned in the appeal and restore the order of the Commercial Court. We make it clear that the respondents would be entitled to approach the HRERA and agitate their cause regarding the conveyance of the undivided area and with respect to the development and fit out charges claimed by the developer-appellant. The contentions of the developer-appellant would be left open before the HRERA regarding the balance due as per the BBA & MoU.

16. We make it clear that the findings rendered by us on the assured return scheme, are based on the BBA and the respondents cannot raise any contention in derogation of the specific agreement entered into by both the parties. Clause (iii) in the contract of the operative portion of the HRERA would stand modified to this extent.

17. With the above observation, the appeals are allowed and the parties are relegated to the HRERA, which has ample powers under Section 63 of the Real Estate (Regulation and Development) Act of 2016 read with Rule 27 of the Real Estate (Regulation and Development) Rules, 2017.

18. Pending application(s), if any, shall stand disposed of.

.... J.
(J. B. PARDIWALA)

.... J.
(K. VINOD CHANDRAN)

NEW DELHI;
AUGUST 11, 2026.