

**IN THE COURT OF LXXXII ADDL. CITY CIVIL & SESSIONS
JUDGE,AT BENGALURU (CCH. 83)**

THIS THE 06TH DAY OF APRIL 2021.

PRESENT:

**SRI. DEVARAJA BHAT. M., B. COM, LL. B.,
LXXXII ADDL. CITY CIVIL & SESSIONS JUDGE,
BENGALURU.**

Com. A.A. No. 117/2019

BETWEEN:

**Smt.Komal Kalra Parnami,
W/o Mr.Bakul Parnami,
Aged about 31 years, R/at
No.B-113-Shivalik, New
Delhi - 110 017,
Represented by her
General Power of Attorney
Holder, Sri.Anuj Kalra, S/o
Mr.Ramesh Chander Kalra,
Aged about 35 years, R/at
No.B-113-Shivalik, New
Delhi - 110 017.**

: PETITIONER

**(Petitioner is Represented
by Sri.Ganesh Bhat.Y.H.-
Advocate)**

AND

M/s. Harvest Hotels & Serviced Apartments Private Limited, A Company Incorporated under the Companies Act, 1956, having its Registered Office at No.K-52-A, S/F, Kalkaji, New Delhi - 110 019,

And having its office at

M/s Harvest Hotels & Serviced Apartments Private Limited, No.95/2, Margosa Avenue, Green Glen Layout, Bellanduru, Bengaluru - 560 103, Represented by its Managing Director.

: RESPONDENT

(Respondent is represented by Sri.Rohan Kotari - Advocate).

Com. A.A. No. 118/2019

BETWEEN:

**Smt.Komal Kalra Parnami,
W/o Mr.Bakul Parnami,
Aged about 31 years, R/at
No.B-113-Shivalik, New
Delhi - 110 017,
Represented by her**

**General Power of Attorney
Holder, Sri.Anuj Kalra, S/o
Mr.Ramesh Chander Kalra,
Aged about 35 years, R/at
No.B-113-Shivalik, New
Delhi - 110 017.**

: PETITIONER

**(Petitioner is Represented
by Sri.Ganesh Bhat.Y.H.-
Advocate)**

AND

**M/s. Harvest Hotels &
Serviced Apartments
Private Limited, A
Company Incorporated
under the Companies Act,
1956, having its
Registered Office at No.K-
52-A, S/F, Kalkaji, New
Delhi - 110 019,**

And having its office at

**M/s Harvest Hotels &
Serviced Apartments
Private Limited, No.95/2,
Margosa Avenue, Green
Glen Layout, Bellanduru,
Bengaluru - 560 103,
Represented by its
Managing Director.**

: RESPONDENT

(Respondent is represented by Sri.Rohan Kotari - Advocate).

Com. A.A. No. 119/2019

BETWEEN:

**Smt.Arun Kalra, W/o
Mr.Ramesh Chander Kalra,
Aged about 57 years, R/at
No.B-113-Shivalik, New
Delhi - 110 017,
Represented by her
General Power of Attorney
Holder, Sri.Anuj Kalra, S/o
Mr.Ramesh Chander Kalra,
Aged about 35 years, R/at
No.B-113-Shivalik, New
Delhi - 110 017.**

: PETITIONER

**(Petitioner is Represented
by Sri.Ganesh Bhat.Y.H.-
Advocate)**

AND

**M/s. Harvest Hotels &
Serviced Apartments
Private Limited, A**

Company Incorporated under the Companies Act, 1956, having its Registered Office at No.K-52-A, S/F, Kalkaji, New Delhi - 110 019,

And having its office at

M/s Harvest Hotels & Serviced Apartments Private Limited, No.95/2, Margosa Avenue, Green Glen Layout, Bellanduru, Bengaluru - 560 103, Represented by its Managing Director.

: RESPONDENT

(Respondent is represented by Sri.Rohan Kotari - Advocate).

Com. A.A. No. 120/2019

BETWEEN:

Smt.Arun Kalra, W/o Mr.Ramesh Chander Kalra, Aged about 57 years, R/at No.B-113-Shivalik, New Delhi - 110 017, Represented by her General Power of Attorney Holder, Sri.Anuj Kalra, S/o Mr.Ramesh Chander Kalra,

**Aged about 35 years, R/at
No.B-113-Shivalik, New
Delhi - 110 017.**

: PETITIONER

**(Petitioner is Represented
by Sri.Ganesh Bhat.Y.H.-
Advocate)**

AND

**M/s. Harvest Hotels &
Serviced Apartments
Private Limited, A
Company Incorporated
under the Companies Act,
1956, having its
Registered Office at No.K-
52-A, S/F, Kalkaji, New
Delhi - 110 019,**

And having its office at

**M/s Harvest Hotels &
Serviced Apartments
Private Limited, No.95/2,
Margosa Avenue, Green
Glen Layout, Bellanduru,
Bengaluru - 560 103,
Represented by its
Managing Director.**

: RESPONDENT

(Respondent is represented by Sri.Rohan Kotari - Advocate).

Com. A.A. No. 121/2019

BETWEEN:

Smt.Aakriti Kalra, W/o Mr.Anuj Kalra, Aged about 30 years, R/at No.B-113-Shivalik, New Delhi - 110 017, Represented by her General Power of Attorney Holder, Sri.Anuj Kalra, S/o Mr.Ramesh Chander Kalra, Aged about 35 years, R/at No.B-113-Shivalik, New Delhi - 110 017.

: PETITIONER

(Petitioner is Represented by Sri.Ganesh Bhat.Y.H.- Advocate)

AND

M/s. Harvest Hotels & Serviced Apartments Private Limited, A Company Incorporated under the Companies Act, 1956, having its Registered Office at No.K-

**52-A, S/F, Kalkaji, New
Delhi - 110 019,**

And having its office at

**M/s Harvest Hotels &
Serviced Apartments
Private Limited, No.95/2,
Margosa Avenue, Green
Glen Layout, Bellanduru,
Bengaluru - 560 103,
Represented by its
Managing Director.**

: RESPONDENT

**(Respondent is
represented by Sri.Rohan
Kotari - Advocate).**

Com. A.A. No. 122/2019

BETWEEN:

**Smt.Aakriti Kalra, W/o
Mr.Anuj Kalra, Aged about
30 years, R/at No.B-113-
Shivalik, New Delhi - 110
017, Represented by her
General Power of Attorney
Holder, Sri.Anuj Kalra, S/o
Mr.Ramesh Chander Kalra,
Aged about 35 years, R/at
No.B-113-Shivalik, New
Delhi - 110 017.**

: PETITIONER

**(Petitioner is Represented
by Sri.Ganesh Bhat.Y.H.-
Advocate)**

AND

**M/s. Harvest Hotels &
Serviced Apartments
Private Limited, A
Company Incorporated
under the Companies Act,
1956, having its
Registered Office at No.K-
52-A, S/F, Kalkaji, New
Delhi - 110 019,**

And having its office at

**M/s Harvest Hotels &
Serviced Apartments
Private Limited, No.95/2,
Margosa Avenue, Green
Glen Layout, Bellanduru,
Bengaluru - 560 103,
Represented by its
Managing Director.**

: RESPONDENT

**(Respondent is
represented by Sri.Rohan
Kotari - Advocate).**

Com. A.A. No. 123/2019**BETWEEN:**

**Sri.Anuj Kalra, S/o
Mr.Ramesh Chander Kalra,
Aged about 35 years, R/at
No.B-113-Shivalik, New
Delhi - 110 017.**

: PETITIONER

**(Petitioner is Represented
by Sri.Ganesh Bhat.Y.H.-
Advocate)**

AND

**M/s. Harvest Hotels &
Serviced Apartments
Private Limited, A
Company Incorporated
under the Companies Act,
1956, having its
Registered Office at No.K-
52-A, S/F, Kalkaji, New
Delhi - 110 019,**

And having its office at

**M/s Harvest Hotels &
Serviced Apartments
Private Limited, No.95/2,
Margosa Avenue, Green
Glen Layout, Bellanduru,
Bengaluru - 560 103,**

**Represented by its
Managing Director.**

: RESPONDENT

**(Respondent is
represented by Sri.Rohan
Kotari - Advocate).**

Com. A.A. No. 124/2019

BETWEEN:

**Sri.Anuj Kalra, S/o
Mr.Ramesh Chander Kalra,
Aged about 35 years, R/at
No.B-113-Shivalik, New
Delhi - 110 017.**

: PETITIONER

**(Petitioner is Represented
by Sri.Ganesh Bhat.Y.H.-
Advocate)**

AND

**M/s. Harvest Hotels &
Serviced Apartments
Private Limited, A
Company Incorporated
under the Companies Act,
1956, having its
Registered Office at No.K-
52-A, S/F, Kalkaji, New**

Delhi - 110 019,

And having its office at

**M/s Harvest Hotels &
Serviced Apartments
Private Limited, No.95/2,
Margosa Avenue, Green
Glen Layout, Bellanduru,
Bengaluru - 560 103,
Represented by its
Managing Director.**

: RESPONDENT

**(Respondent is
represented by Sri.Rohan
Kotari - Advocate).**

COMMON ORDERS

These Petitions are filed by the respective Petitioners under Section 9(1)(ii)(a),(b),(c),(d) & (e) of the Arbitration & Conciliation Act, 1996, praying for an interim measure restraining the Respondent from creating any encumbrances, lien, charges or security interest in respect of the Schedule-B Property and restraining from alienating, selling, transferring, conveying the Schedule-B Property to third parties, creating third parties right, inducting third parties into the Schedule-B Property, directing the Respondent to preserve the Schedule-B

Property which is the subject matter of the dispute in the Arbitration and to secure the re-payment of the sum of Rs.41,50,544.50/- by the Respondent by issuing appropriate directions to the Respondent.

2. The Brief facts as narrated in the Petitions are as under:-

The Respondent is the absolute owner of the land detailed in the Schedule-A annexed to the Petition, having acquired right, title and interest as per a Registered Sale Deed dated 20.08.2011 executed by Sobha Innercity Technopolies Private Limited and Sobha Developers Limited, that the Respondent got constructed a Multi-storied Commercial Building Comprising of basement, ground and seven upper floors along with lobbies, reception, banquet halls, restaurants, club area, parking space, lifts, staircases, common passages, common areas, utilities, amenities, facilities and other service area in the Schedule-A Property and granted the same in favour of Marriot Hotels India Private Limited on Long Term Lease and the said Marriot Hotels India Private Limited is operating serviced apartment under the name and style "Marriot Executed Apartments" in the Schedule-A Property, that the Respondent through property agents/marketing in New Delhi-NCR as well as its whole time Director Sri.Chander Mohan Sawhney, its Director Sri.Manoj

Airon, and Sri.Jathindar Suri, Officials/Employees held out representations, promises, assurances and undertakings to be Petitioner that Marriot Hotels India Private Limited will operate serviced apartments in the Schedule-A Property under the name and style Marriot Executive Apartments : that B-Schedule Property upon lease in favour of the Respondent for a period of 20 years for use of as a serviced apartment will fetch her monthly lease rent of Rs.1,43,213/- once in a quarter of each financial year : that in the event of the delay in payment of rent the Respondent shall be liable to pay interest on the delayed rent at 9% per annum and that the rent shall be increased by 10% after every three year anniversary lease has offered to sell B-Schedule Property to the Petitioner for a total consideration of Rs.50 Lakhs, that the Respondent induced the Petitioner to make payment of the entire sale consideration of Rs.50 Lakhs with respect to the Schedule-B Property to the Respondent and to enter into Registered Sale Agreement dated 13.10.2016, with the Respondent for purchase of Schedule-B Property, that the subsequent to the execution of same, as per the recitals therein the Respondent as obtained execution of Deed of Lease on 01.11.2016 in its favour, that the Registered Sale Agreement dated 13.10.2016 stipulates that upon payment of the entire sale consideration, the Petitioner at any time, either seek execution of the Sale Deed by the Respondent in respect of

Schedule-B Property in her favour or accept refund of the entire sale consideration paid together with the difference between the sale consideration amount paid and the then prevailing market value of the Schedule-B Property, that the Respondent shall execute the Sale Deed in respect of the Schedule-B Property in favour of the Petitioner within 15 days of the receipt of the intimation/demand by the Petitioner upon procuring no objection from the concerned bank for such sales, that Deed of Lease dated 01.11.2016 through which the Respondent obtained Lease of the Schedule-B Property in its favour for a period of 20 years from the Petitioner for use as a serviced apartment stipulates that the Respondent shall pay to the Petitioner monthly Lease rent of Rs.1,43,213/- once in a quarter of each financial year, that in the event of delay in payment of rent by the Respondent it shall be liable to pay interest on the delayed rent at 9% per annum and that the rent shall be increased by 10% after every three year anniversary of lease, amongst other terms, that in spite of having received entire sale consideration from the Petitioner and obtaining lease of Schedule-B Property in spite of several demands in person and over phone the Respondent has failed to execute and registered sale deed in respect of Schedule-B Property in favour of the Petitioner upon obtaining no objection from the concerned bank and as failed to pay monthly lease rental within the stipulated

period, that in view of the said breach of the terms and conditions, the Petitioner lodged the complaint on 19.09.2019 before the Police Authority and issued legal notice on 14.09.2019, that the Respondent failed to comply with the said demand and hence, filed the present Petition for the above mentioned reliefs.

3. The Respondent has filed its detailed objections on 18.10.2019 and prayed to dismiss the said Petitions.

4. I have heard the arguments of Sri. Ajay Nandalike. - Advocate for the Petitioners and Sri.Rohan Kotari - Advocate for the Respondent.

5. Based on the contentions of the respective parties, submissions made by the learned Advocates for both parties, I formulate the following Points for my consideration:-

(1) Whether the Petitioners are entitled for a relief of Interim Measure under Section 9 of Arbitration and Conciliation Act restraining the Respondent from alienating the disputed properties ?

(2) What Order ?

6. My findings are as follows:-

Point No. 1 : - In the Affirmative

Point No. 2 : - As per my final orders for
the following reasons.

REASONS

7. Point No. 1: -The contentions of the Petitioner are as detailed above. I am not reproducing the same in order to avoid repetition. The Respondent has contended that the Application has been filed in relation to two different Agreements, i.e., the Registered Agreement dated 13.10.2016 and Lease Agreement dated 01.11.2016 in Com.AA.No.117/2019 (in other cases, the similar Agreements were executed on different dates), that the said Agreements are involving in separate and distinct rights and hence, the present Petitions are not maintainable. The Petitioner has produced the Certified copy of the Registered Sale Agreement dated 13.10.2016 entered into between the Respondent and the Petitioners, wherein the Petitioner agreed to purchase the disputed property from the Respondent. In the said Agreement itself, the Clause No.3 relates to "Leasing" and as per Clause-3.3, the Petitioner has unconditionally agreed to lease back the demised premises to the Respondent for the period of 20 years with an option to further renew the same as may be agreed under the Lease to enable Vendor to use the

demised premises as a Serviced Apartment operated through an Operator appointed by the Respondent as a part of the Serviced Apartment Building and that the terms of such lease shall be governed under a separate Lease Deed executed by the Petitioner in favour of the Respondent simultaneous to the execution of the said Agreement of Sale.

8. Therefore, the contention of the Respondent that the said Agreements are two separate and distinct Agreements creating distinct rights, cannot be accepted and from the said transaction, it is very clear that the said transaction is Lease Back Transaction.

9. The Respondent has also contended that the Agreement dated 13.10.2016 is insufficiently stamped in terms of Karnataka Stamp Act and hence, based on the same, no interim relief can be granted. However, I have passed a detailed separate order on I.A.No.IV filed by the Respondent in respect of the said aspect and I rejected the said I.A. as per the Orders dated 03.02.2021. In view of the said Order, the said contentions of the Respondent cannot be accepted.

10. The Respondent has contended that the Petitioners are only in constructive possession of their respective flats which

were handed over to them and the Respondent continued to remain in possession as a “lessee”. Further, he has contended that there is a prior charge over the said flats as on the date of entering to such Agreement and the Petitioners are fully aware about the same. The Respondent has also contended that as per Clause-2 & 4 of the said Agreement, the Petitioners have a drag along right and hence, under any circumstances, they cannot be allowed to seek interim relief obstructing the ownership of the said flats of the Petitioners.

11. The Advocate for the Respondent has produced an Order dated 01.03.2019 passed by the National Company Law Tribunal, Delhi in CP.No.IB-79(PB/2019). The said is in between Central Bank of India Limited and the Respondent. The Petitioners are not party to the said Proceedings. He has also produced another Order dated 05.09.2019 passed by the National Company Law Tribunal Delhi in IB-79(PB/2019). That is also passed in the same Proceedings, to which the Petitioners are not parties. However, as per the Orders dated 05.09.2019, the said Company Petition was withdrawn. Just to show that the said disputed property was having prior charge to the said Bank, is taken note of.

12. At this stage, the dispute arose between the parties and the Petitioners issued a Legal Notice dated 14.09.2019 to the Respondent. In the said Legal Notice, the Petitioners made several allegations of breach of trust, fraud, cheating, collusion and conspiracy, demand of rent due and hence, terminated the said Lease Deed and also demanded vacant possession of the Apartment from the Respondent. Further, the Petitioners have also lodged a Police Complaint dated 19.09.2019. Thereafter, the Petitioners have also issued another Legal notice dated 19.09.2019, invoking the Arbitration Clause under Section 21 of the Arbitration & Conciliation Act.

13. Having terminated the lease deed, in view of the Registered Sale Agreement dated 13.10.2016, the Respondent has no right to alienate, sell, transfer, convey the disputed property to third parties. If any prior charge is already created to which the present Order will not come in the way.

14. Though the Petitioners have sought for to depot the Lease Rent or any other amount received from M/s Marriot Hotels (India) Pvt.ltd. In respect of the disputed property, the learned Advocate for the Petitioners has submitted that he is not pressing the said prayer, during the course of arguments. The other prayers prayed by the Petitioners, is only in respect of

restraining the Respondent from creating any further encumbrances, alienating or selling the disputed property to third parties. In view of the above-mentioned two Agreements and subsequent termination of the Lease Deed, the Petitioners are entitled for such reliefs. The validity of termination of the Lease Deed is to be determined by the Arbitral Tribunal and not by this Court in this Proceedings. Hence, in view of the contractual relationship between the parties, such an interim measure has to be granted to preserve the disputed property, which is subject matter of the dispute in Arbitration.

15. The learned Advocate for the Respondent has submitted, by referring certain observations in the decision reported in **2021 - S.C.C. OnLine - S.C. - 13 (N.N.Global Mercantile Private Limited vs. Indo Unique Flame Limited and Others)** and requested that in the event of allowing these Petitions, the Registered Agreement dated 13.06.2016 shall be ordered to be impounded. However, the Respondent is at liberty to raise the said contention before the Arbitral Tribunal and in this proceedings no such directions are given.

16. The learned Advocate for the Respondent has relied on several decisions mentioned in the Memo dated 24.03.2021, which are more or less pertaining to principles granting or

rejecting the Interim Measure under Section 9 of the Arbitration & Conciliation Act, 1996. While passing this Order, I kept in mind the said principles and accordingly, this Order is passed. By keeping the said principles in my mind, if the contentions of both parties are appreciated, since the Respondent is only a Lessee of the disputed property, which is also terminated by the Petitioner, if he is allowed to be alienated or creating further charge over the disputed property, the Petitioners may be put to great hardship and the same is to be restrained by way of an interim measure under Section 9 of the Arbitration & Conciliation Act, 1996.

17. In view of above discussions, the Petitioners have prima facie case about their contentions so as to grant an interim measure which is similar to that of grant of temporary injunction. For the same reasons, the Petitioners will suffer irreparable injury which cannot be compensated by way of damages, if temporary injunction in the nature of interim measure is not granted. For the same reasons, the balance of convenience also lies in favour of the Petitioners. **Hence, I answer this Point in the “Affirmative”.**

18. Point No. 2 :- Therefore, I proceed to pass the following

Order.

ORDER

The Petitions filed under Section 9 of Arbitration and Conciliation Act 1996, are Partly allowed.

The Respondent is hereby restrained from creating any encumbrances, lien, charges or Security Interest in respect of the property detailed in the Schedule-B annexed to the Petitions till the commencement of Arbitral Proceedings.

The Respondent is hereby further restrained from alienating, selling, transferring, conveying the the property detailed in the Schedule-B annexed to the Petitions to third parties, creating third party rights, inducting third parties into the Schedule-B property till the commencement of Arbitral Proceedings.

The Respondent is hereby directed to preserve the property detailed in the Schedule-B annexed to the Petitions till the commencement of Arbitral Proceedings.

So far as the prayer interim measure of protection, secure the repayment of the amount mentioned in the respective Petitions, no directions are given to the Respondent as prayed by the Petitioners.

The Respondent shall pay the cost of

these Petitions to the Petitioners.

The Office is directed to send copy of this Order to the Petitioners and Respondent to their email ID as required under Order XX Rule 1 of the Civil Procedure Code as amended under Section 16 of the Commercial Courts Act.

The Original of this Order is kept in Com.AA.No.117/2019 and Copies thereof are kept in Com.AA.No.118/2019 to Com.AA.No.124/2019.

(Dictated to the Judgment Writer, typed by her directly on the computer, verified and pronounced in the open court on **6th day of April, 2021**).

(M. DEVARAJA BHAT)
LXXXII Addl. City Civil & Sessions Judge,
Bengaluru.

The Common Order is pronounced in Open Court. The operative portion of the said Order is as follows :-

ORDER

The Petitions filed under Section 9 of Arbitration and Conciliation Act 1996, are Partly allowed.

The Respondent is hereby restrained from creating any encumbrances, lien, charges or Security Interest in respect of the property detailed in the Schedule-B annexed to the Petitions till the commencement of Arbitral Proceedings.

The Respondent is hereby further restrained from alienating, selling, transferring, conveying the the property detailed in the Schedule-B annexed to the Petitions to third parties, creating third party rights, inducting third parties into the Schedule-B property till the commencement of

Arbitral Proceedings.

The Respondent is hereby directed to preserve the property detailed in the Schedule-B annexed to the Petitions till the commencement of Arbitral Proceedings.

So far as the prayer interim measure of protection, secure the repayment of the amount mentioned in the respective Petitions, no directions are given to the Respondent as prayed by the Petitioners.

The Respondent shall pay the cost of these Petitions to the Petitioners.

The Office is directed to send copy of this Order to the Petitioners and Respondent to their email ID as required under Order XX Rule 1 of the Civil Procedure Code as amended under Section 16 of the Commercial Courts Act.

The Original of this Order is kept in

***Com.AA.No.117/2019 and
Copies thereof are kept in
Com.AA.No.118/2019 to
Com.AA.No.124/2019.***

(vide my separate detailed Orders
dated 06.04.2021).

(Typed to my dictation).

LXXXII ACCJ, B'LURU.