



5TH INTRA-FACULTY MOOT COURT COMPETITION, 2023

**5TH INTRA-FACULTY MOOT COURT
COMPETITION, 2023**

17th - 19th MARCH, 2023

Organised by

**MOOT COURT ASSOCIATION,
FACULTY OF LAW, JAMIA MILLIA ISLAMIA**

MOOT PROPOSITION

MOOT COURT ASSOCIATION, FACULTY OF LAW, JAMIA MILLIA ISLAMIA



MOOT PROPOSITION

1. Durumland is a developing country with metropolitan cities spread across its territories. Furthermore, growing income levels and greater business activity in Durumland have eventually contributed to higher housing and commercial space demand across most of the metropolitan cities in the country. The commercial real estate sector in Durumland is particularly attractive owing to its high Return of Investment and possibility for extra revenue generation.
2. DMK is a company incorporated under the provisions of Durumland Company Law, 2013 and deals in the real estate sector. DMK saw Vimbelton, a metropolitan city in Durumland, as an emerging real estate market. Hence, DMK acquired vast areas of land in Vimbelton and launched a project named “Solitare” in December 2019 wherein commercial spaces were to be built. The project comprised a total of three towers.
3. On account of the increase in construction activities in Vimbelton, the city has been facing severe environmental issues. There have been several proposals sent to the Government of Vimbelton, by concerned citizens, regarding various measures to be opted for protecting the environment, the same are being considered by it.
4. Eran Yeager, a small farmer, owned a small plot of land in his village called “*Merci.*” Due to the death of his father, he was levied with the responsibility of running the household which prevented him from pursuing his studies beyond 11th Standard. However, he was enthusiastic and had the business acumen to take on his commercial farming to a higher level. He even mortgaged his land to arrange money to establish his venture.



5. In order to further his earnings, Eran approached the office of DMK, and enquired about the project “*Solitaire*.” The two directors of the company, spoke at length about the various amenities he will be provided with and gave assurance that by June 2022 the construction shall be complete and the possession of the unit shall be given to him. They informed him that the project consisted of three towers and one of the towers has already been completed and possession of the units has already been taken by the allottees. The cost of the unit was Rs. 30,00,000/-. The directors informed Eran about the scheme under which if he paid an amount of Rs. 12,00,000/- as the booking amount, he shall be paid assured returns of Rs. 3,000/- from the date of allotment till June 2022. The remaining amount had to be paid by Eran in two equal parts once in March 2021 and thereafter when the possession shall be offered.
6. Being satisfied with the scheme proposed by DMK’s representatives, Eran booked a unit in the project “*Solitare*” on January 10, 2021, and paid an amount of Rs. 12,00,000/- as the Booking fee. During this time, certain videos were making round on the social media, wherein the people were seen protesting at the site of the project “*Solitaire*” alleging that the directors have misappropriated their money and have not even started construction of the projects although their booking was confirmed way back in January 2020.
7. The booking of Eran was confirmed on February 22, 2021, and he was asked to visit the company for signing the ‘Builder-Buyer Agreement.’ He visited the company on February 23, 2021, and signed the ‘Builder-Buyer Agreement’ on the same date. Copy of the ‘Builder-Buyer Agreement’ is annexed herewith and marked as **Annexure A**.
8. The Company on March 31, 2021, sent a demand letter to Eran asking him to pay the amount of Rs. 9,00,000/-. On receiving the demand letter, he sent an e-mail to DMK to



enquire about the stage of construction of the project and if the company will be able to complete the project within the time stated in the agreement. Replying to the said mail, the director, being well aware of the prevailing conditions, stated that they had been facing some difficulties lately, on account of the restrictions imposed by the Government of Vimbeldon regarding the drawing of the underground water, but is hopeful that the project will be completed within the stipulated time.

9. From the month of September 2021, Eran had not been receiving the assured returns, therefore on November 17, 2021, Eran visited the office of DMK and informed the employees there that he has not been receiving the assured returns for the past two months. He was assured that the same shall be paid in the next 7 working days. However, the same remains unpaid.
10. On May 31, 2022, a letter was sent to Eran, informing him that on account of the restriction imposed by the Government of Vimbeldon, there shall be a delay in the completion of the unit. Thereafter, DMK sent another demand letter dated November 11, 2022, to Eran asking him to pay an amount of Rs. 9,00,000/-. A copy of the aforesaid 'Demand letter' is annexed herewith and marked as **Annexure-B**. Since the said amount was not paid, again a reminder letter was sent on November 21, 2022. A copy of the 'Reminder letter' is further annexed herewith and marked as **Annexure-C**.
11. However, due to Eran's non-compliance, DMK sent a 'Cancellation letter' on December 12, 2022. The letter stated that Eran's allotment stands cancelled on account of the default made by him. A copy of the 'Cancellation letter' is annexed herewith and marked as **Annexure-D**. Thereafter, Eran approached the office of DMK several times, requesting them to refund the entire amount and the assured returns from September



2021 but no response was received. He also sent several e-mails to DMK requesting a meeting with the directors to resolve the issue but to no avail.

12. Eran Yeager filed a suit in the Commercial Court of Vimbeldon against DMK and its two Directors demanding repayment of the entire deposited amount and the unpaid assured returns along with interest at the rate of 18% p.a.. DMK raised dispute regarding the maintainability of the suit on the ground that the same doesn't qualify to be a commercial dispute and that Eran has not complied with Section 12A of the Commercial Court Act, 2015. DMK further pleaded that the amount which has been deducted is in accordance with the terms of the 'Builder-Buyer Agreement.'

13. The Ld. Judge Commercial Court, Vimbeldon, on the basis of the pleadings and submissions made, vide order and judgment dated 19.02.2023 held that the suit qualifies to be a commercial dispute and that the Plaintiff has at several times made an attempt to approach the Defendant, thus the requirement of Section 12A stands satisfied. The Ld. Judge further held that the 'Builder-Buyer agreement' is void and the Defendants are liable to pay the entire amount to the Plaintiff along with the unpaid assured returns to the Plaintiff and interest at the rate of 15% p.a. Aggrieved by the aforesaid decision, DMK filed an appeal before the Commercial Appellate Division, High Court of Vimbeldon challenging the decree. The Appeal has been posted for final hearing in March 2023.

14. The Appellate Court has identified the following specific issues which are required to be addressed by the Appellant and the Respondent:

a. Whether the matter qualifies to be a commercial dispute as per Section 2(c) of the Commercial Court Act, 2015?



- b. Whether the 'Builder-Buyer Agreement' is valid in the eyes of law?
- c. Whether the relief granted to the Respondent by the Ld. Judge is erroneous and not in accordance with the applicable law?





ANNEXURE-A: BUILDER-BUYER AGREEMENT

This Agreement is made at New Delhi on February 23, 2021.

BETWEEN

DMK Pvt. Ltd. a company registered under the Companies Act, 2013 having its Regd. office at A-25, Xavier Estate, Vimbeldon through its Director Ms. H. Sayeed, d/o Y Sayeed (hereinafter referred to as the “Developer”).

AND

Mr. Eran Yeager, s/o Mr. Falic Yeager, r/o H-25, Crown Hill, Merci (hereinafter referred to as the “Allottee”).

The expressions Developer and Allottee shall unless repugnant to the context or meaning thereof be deemed to include their respective heirs, executors, administrators, legal representatives, successors and assigns;

And whereas the Developer has all the rights of Construction/Development/Marketing of the entire project “Solitare” along with all the rights of further Booking/Registration/Transfer;

And whereas the Developer has represented to the Allottee that the said project shall be completed by June 2022 and shall render the unit ready for occupation and possession by the said date unless the construction thereof is stopped or delayed for factors beyond the control of the Developer;

And Whereas the Allottee has booked a commercial space measuring 100 sq.ft. in Tower Star in project Solitare, sale consideration of the same is Rs 30,00,000/- (Rupees Thirty Lakhs only).

And Whereas the Allottee has at the time of submitting the Booking Application form made a payment of Rs. 12,00,000/- (Rupees Twelve Lakhs only) and the remaining amount has to be paid in two parts; one in March 2021 and the other when the possession shall be offered.

Signatures of all applicants as a token-of acceptance of all terms and conditions.



**Basic Terms and Conditions for Booking/Allotment
of Office Space/Flat/Unit in "SOLITAIRE"**

The applicant understands and is aware of the manner and the extent of the rights, interest and entitlement of the developer on the land measuring approximately 20 acres, situated at Plot No. 56-75, Knowledge Park V Knowledge Park V, Vimbeldon, Durumland, and the proposed project is known as "SOLITAIRE", which are briefly reproduced below:

DMK Pvt. Ltd. (herein referred to as the 'Developer 'or the company) is entitled to construct, develop, sell, lease and manage the areas in the proposed project called "SOLITAIRE" (herein also referred to as the 'Complex') and the Developer has covenanted to inter-alia develop the complex on the Project Land and to deal with all matters concerning the same.

The Developer agreed that:

- a. The possession shall be handed over to the Allottee by June 2022 unless the construction has been stopped on account of factors which are beyond the control of the Developer.
- b. The Developer shall pay to the Developer assured returns at the rate of Rs.3,000 per month from the date of allotment till June 2022.

The Applicant agreed that:

- a. The performance by the Developer of its obligation under these presents are contingent and bound and regulated upon approvals to be granted by various statutory authorities/local bodies/departments, (herein referred to as 'Authorities') from time to time and subject to all applicable laws notifications/conditions as imposed by these Authorities.
- b. The applicant(s) has applied for allotment of office space (hereinafter referred as Unit) proposed to be constructed in the state of the art Technology Park titled "SOLITAIRE" (said Project) being conceived and developed by the developer at Plot No. 56-75, Knowledge Park V Knowledge Park V, Vimbeldon, Durumland. Applicant undertakes to comply with all the requirements of the GNIDA and all other government rules and regulations in utilizing the space.

Signatures of all applicants as a token-of acceptance of all terms and conditions.



- c. All payments by the applicant(s)/allottee(s) shall be made to the company only through demand drafts /Account Payee cheques drawn upon scheduled banks in favour of DMK Pvt. Ltd. payable at Vimbelton only. All cheques are accepted subject to realization only.
- d. The applicant has seen, understood and accepted the building plans, building designs and specifications as decided by the developer which are tentative and agrees that the Developer may make such variations, additions, alterations and modifications etc. therein as may be directed by any competent authority /authorities/architect or otherwise, and the applicant hereby gives his consent to such variation, additions, deletions, alterations and modifications etc., the applicant(s) agrees that no claim, monetary or otherwise will be raised in case of any change. It is clarified that the initial rate of booking of the Unit will be applicable on the changed area in case of refund or demand.

Applicant(s)/allottee(s) agree(s) and confirm(s) to all the followings:

- a. All, existing and new, statutory charges and other levies, rates, tax, charges, service tax, lease rent, water, electricity charges, maintenance charges etc. demand or imposed by the Authorities shall be payable proportionately by applicant(s)/allottee (s) from the date of booking as demanded by the Developer.
- b. Notwithstanding what is stated herein, the Applicant hereby specifically agrees and acknowledges that the timely payment of installments as also the other charges including registration charges, maintenance charges, etc., is the essence of the terms of the booking/allotment. Interest @ 18% shall be payable by the applicant (s)/allottee (s) in case of failure to pay the installments and other dues by the due date or as demanded by the developer. However, if payment is not received within 30 days from the due date, or in event of breach of any terms and conditions of this allotment by the applicant(s)/allottee(s), the allotment will be cancelled at the discretion of the company and the earnest money (10% of the total cost of unit) paid to the company by the applicant(s)/allottee(s) shall stand forfeited. The balance amount shall be refunded to the applicant(s)/allottee(s) without any interest after the said unit is allotted to some other intending allottee.
- c. The Developer shall undertake the maintenance of the Complex either by himself and/or through a maintenance agency appointed by the Developer (hereinafter referred to as the 'Maintenance Agency'). For this purpose, the

Signatures of all applicants as a token-of acceptance of all terms and conditions.

H. Sayeed



applicant agrees to sign a separate maintenance agreement which shall contain the full scope of maintenance of the complex and shall pay the maintenance charges as decided from time to time by the Developers and/or the Maintenance Agency (calculated on the super area basis of the said unit). Similarly, a separate and additional agreement shall be signed between the developer or its nominee for the utility charges towards the scope of facility and utilities provided and cost thereon. Utilities agreement will cover the cost of power backup, water, security, etc. All the terms and conditions of the above agreements along with the flat buyer agreement shall be binding on the developer and buyer.

- d. The applicant shall not be entitled to sub-divide the said unit. However temporary internal partitions for enjoyment of the said unit shall be permissible subject to the applicable rules, regulations and bye-laws of the concerned authorities and those of the maintenance agency, as and when formulated.
- e. All external walls, windows, passages, common areas in the property, etc. shall never be occupied, and no signage or display board installed, air-conditioning units or generators shall be installed in these areas by the applicant(s)/allottee(s) and or no other activity shall be done which spoils the aesthetics of the building or area, causes noise pollution or in any other way in-conveniences to any party or the developer. For putting names of the various owners, the developer will make all the provisions and none of the allottees shall do it otherwise.

DECLARATION

I/We have read and understood the above-mentioned terms and conditions, documents referred therein and agree with them all and undertake to abide by the same. We indemnify the developer towards any loss incurred by the developer for not agreeing to or not abiding by any of the above-mentioned terms and conditions.

Name: Mr. Eran Yeager

Signature: 

Name: Ms. Humaira Sayeed

Signature: 

Signatures of all applicants as a token-of acceptance of all terms and conditions.







ANNEXURE-B: DEMAND LETTER

Dated: 11/11/2022

Customer Id: SOL-IT-5273
Mr. Eran Yeager
H-25, Crown Hill, Merci

Contact: +9846-XXX-XXX

Dear Eran,

We wish to inform you that against your booking for Unit No. **SOL-IT-5273**, measuring 100.00 sq. ft (Approx.) in our project "**Solitaire**" at 56-75, Knowledge Park V Knowledge Park V, Vimbelton, Durumland, the amount of **Rs. 9,00,000/- (Nine Lac Rupees Only)** is due on your part which has to be paid within 7 days from the date of receipt of this letter.

It may be noted that delay in payment of installment attracts simple interest @18% pa. All payments to be made through Cheque/P.O./D.D. drawn in favour of "**DMK Pvt. Ltd.**" payable at Vimbelton.

Should you have any clarifications or queries, Our Customer Care teams will be happy to help you. You can contact us at care@imperiastructures.com or call our toll-free No.1800-XXX-XXXX during business timings which are between 10 am to 6 pm Monday to Saturday (except 3rd Saturday and National Holidays).

*Note: VAT Charges Extra Payable at Rs.25/- per sq. ft.

Thanking you & assuring you of our best services always.
Ms. Humaira Sayeed

H. Sayeed



ANNEXURE-C: REMINDER LETTER

Dated: 21/11/2022

Customer Id: SOL-IT-5273
Mr. Eran Yeager
H-25, Crown Hill, Mercı

Contact: +9846-XXX-XXX

Dear Eran,

We wish to inform you that against your booking for Unit No. **SOL-IT-5273**, measuring 100.00 sq. ft (Approx.) in our project "**Solitaire**" at 56-75, Knowledge Park V Knowledge Park V, Vımbelton, Durumland, the amount of **Rs. 9,00,000/- (Nine Lac Rupees Only)** is due on your part. A demand letter dated 11.11.2022 was sent to you asking you to pay the said amount within a period of 7 days. The said amount has still not been paid; you are requested to pay the due amount. Kindly note that the delay in payment of installment attracts simple interest @18% pa. All payments to be made through Cheque/P.O./D.D. drawn in favour of "**DMK Pvt. Ltd.**" payable at Vımbelton.

Should you have any clarifications or queries, our Customer Care teams will be happy to help you. You can contact us at care@imperiastructures.com or call our toll-free No.1800-XXX-XXXX during business timings which are between 10 am to 6 pm Monday to Saturday (except 3rd Saturday and National Holidays).

*Note: VAT Charges Extra Payable at Rs.25/- per sq. ft.

Thanking you & assuring you of our best services always.
Ms. Humaira Sayeed

H. Sayeed



ANNEXURE-D: CANCELLATION LETTER

Dated: 12/12/2022

Customer Id: SOL-IT-5273
Mr. Eran Yeager
H-25, Crown Hill, Mercu

Contact: +9846-XXX-XXX

Sub: Unit No. **SOL-IT-5273** in our Commercial Project “Solitaire” at 56-75, Knowledge Park V, Vimbeldon, Durumland.

Dear Sir,

This is to place on record that you had applied to us for allotment of a Unit / Flat in our project “Solitaire”, your booking was accepted and thereafter our Company and you entered into a ‘Builder-Buyer Agreement.’

Pursuant to your application, you made certain payments to us against receipt and we received such payments against the provisional allotment of a Unit/ Flat in the subject project and subject to your compliance of the terms and conditions mentioned in the Application Form which was duly signed by you.

Since you committed the default in payment as per the agreed terms and consequently failed to pay the defaulted amount with interest @ 18% per annum in spite of our Demand letter followed by a Reminder letter and since you are in arrears of more than two consecutive installments which remain in arrears for more than thirty days, your Provisional Allotment in respect of the subject Unit/ Flat stands automatically cancelled. By way of abundant caution, we also do hereby inform you that your Allotment in respect of the subject Unit / Flat stands cancelled.

Further, according to the Terms and Conditions of the ‘Builder-Buyer Agreement’, we are entitled to forfeit the earnest money (10% of the total cost of the unit) paid to the Company. Your account status now remains as under:

Amount paid by you	Rs. 21,00,000/-
Less, 10% of the total cost of the unit	Rs. 3,00,000/-
Less, Brokerage (if any)	N.A.
Amount refundable or recoverable (plus/minus)	Rs. 18,00,000/-

You are requested to contact Customer Care on toll-free no. 1800-XXX-XXXX between Monday to Saturday (except the 2nd & 4th Saturday) to process the refund as per Company Policy. The Refund amount shall be paid on receipt of all original documents and other formalities.



Yours Sincerely.

For M/s. DMK PVT. LTD.

Ms. Humaira Sayeed

H. Sayeed

(Authorised Signatory)





NOTES FOR THE COUNSEL

1. Counsels for Appellant will present arguments on behalf of DMK Pvt. Ltd.
2. Counsels for the Respondent will present arguments on behalf of Eran Yeager.
3. The Durumland laws are in *pari materia* with the Indian laws.
4. **Annexures** have been attached, which may be used to substantiate the arguments.
5. This Moot Problem has been drafted by **Ms. Zoya Junaid (Associate, Athena Legal BALLB (JMI'19), LLM (NALSAR'20))**. Any attempt to contact her regarding the present Moot Problem shall lead to immediate disqualification.

**Please note that the legal persons and the places mentioned in the Moot Proposition and the attached Annexures are fictitious in nature.*