

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMM ARBITRATION APPLICATION NO.410 OF 2026

1. Rajesh Pal
2. Arvind Pal
3. Kishore Pal
4. Mitul Pal

... Applicants

Vs.

1. Sidaan Enterprises
2. Dhiraj Shah
3. Raxit Prasad

... Respondents

Mr. Rajiv Narula with Ms. Nidhi Loya i/by Jhangiani
Narula & Associates for the Applicants.

Mr. Preet Chheda for Respondent Nos.1 to 3.

CORAM : AMIT BORKAR, J.

RESERVED ON : SEPTEMBER 17, 2026.

PRONOUNCED ON : SEPTEMBER 21, 2026

JUDGMENT:

1. By the present Arbitration Application filed under Section 11 of the Arbitration and Conciliation Act, 1996, the Applicants seek appointment of an Arbitrator to resolve the disputes and differences which have arisen between the Applicants and the

Respondents in relation to the Development Agreement dated 12 February 2016 entered into between the Applicants and the Respondents.

2. According to the Applicants, the facts which have led to filing of the present Application are as follows. A Deed of Assignment bearing Registration No. BOW/3420/1936 was registered with the Sub-Registrar, Bombay. The said Deed was entered into between Mr. Udhav Hanumant Kulkarni and the deceased owner in respect of the said property on 3 October 1963. Thereafter, by her Last Will and Testament dated 17 December 2013, the deceased owner provided in Clause (c) that, after her death, the monetary benefits which would arise from the said property after its redevelopment would be divided into five equal parts. Her share was to be given to her grandson, namely, Applicant No. 4. On 4 May 2014, a Family Settlement was entered into between the deceased owner, the Applicants and other members of the family. Under the said settlement, the parties arrived at an understanding regarding their respective rights and interests in relation to the proposed construction on the said property. Thereafter, on 21 March 2015, a Memorandum of Understanding was entered into between the deceased owner and Respondent Nos. 1 and 2. Subsequently, on 12 February 2016, a Development Agreement was entered into between the deceased owner and the Respondents. Under the said Development Agreement, it was agreed that the said property would be redeveloped on the terms and conditions stated therein.

3. On 19 January 2019, an Addendum to the Development Agreement dated 12 February 2016 was entered into between the deceased owner and the Respondents. On 4 January 2019, another Addendum to the Development Agreement dated 12 February 2015 was entered into between the deceased owner and the Respondents. Thereafter, on 4 October 2019, a Supplementary Agreement was entered into between the deceased owner along with the Applicants and the Respondents. On 16 November 2019, a third Addendum to the Development Agreement dated 12 February 2015 was entered into between the deceased owner and the Respondents. Thereafter, on 22 December 2019, the deceased owner, Mrs. Snehlata K. Pal, passed away. On 8 August 2022, Applicant No. 3 addressed a notice to the Respondents calling upon them to immediately stop construction, as according to Applicant No. 3, the construction was being carried out without obtaining his consent. Applicant No. 3 called upon the Respondents to pay him a sum of Rs. 1,53,00,000/-, which according to him was assured under the Second Addendum dated 21 January 2019. Thereafter, on 6 September 2022, Applicant No. 3, through his Advocates, addressed another legal notice bearing reference No. RNN/42512022 to the Respondents. By the said notice, the Respondents were again called upon to immediately stop construction, as the same was being carried out without obtaining the consent of Applicant No. 3. The Respondents were called upon to pay the sum of Rs. 1,53,00,000/- assured to Applicant No. 3 under the Second Addendum dated 21 January 2019, within seven days from receipt of the said notice.

4. On 21 September 2022, the Respondents, through their Advocates, replied to the legal notice dated 6 September 2022. The Respondents denied the contents of the said legal notice and stated that settlement talks between the parties were still in progress. According to the Respondents, therefore, invocation of the arbitration clause at that stage was premature. In April 2023, the original plan attached with the IOD showed that the Ground Floor was to have spaces for an electricity sub-station and a fitness centre. Subsequently, on or about 6 October 2023, the sanctioned plans were again amended and parking spaces were shown in the stilt area. On 11 September 2025, the Applicants addressed a letter to the Respondents seeking payment against the retained area of 241 sq. ft. carpet area, after statutory deductions. According to the Applicants, this amount was guaranteed to them under Clause No. 3 of the Second Addendum dated 19 January 2019 to the Development Agreement dated 12 February 2016. Thereafter, on 30 November 2025, a reminder letter was again sent to the Respondents, demanding payment of Rs. 1,32,55,000/- in four equal parts. According to the Applicants, this amount represented the value equivalent to the aforesaid 241 sq. ft. carpet area retained by the Respondents. Thereafter, on 14 May 2026, the Applicants, through their Advocates, issued notices invoking arbitration under Section 21 of the Arbitration and Conciliation Act, 1996, bearing reference Nos. RNN/239/2026, RNN/240/2026, RNN/241/2026 and RNN/242/2026. By these notices, the Applicants brought to the notice of the Respondents the breaches and defaults which, according to the Applicants, had

been committed by the Respondents under the Development Agreement.

5. In the said notices, the Applicants nominated Sole Arbitrator and called upon the Respondents to give their concurrence to such appointment within 15 days from receipt of the notices. The Applicants stated that, if the Respondents failed to concur within the said period, the Applicants would be required to take appropriate proceedings under Section 11 of the Arbitration and Conciliation Act, 1996 before this Court. On 27 May 2026, the Respondents, through their Advocate, replied to the Invocation Notice and stated that instructions were being obtained from their client. At the same time, the Respondents denied the contents of the said notice. Thereafter, on 17 June 2026, the Respondents, through their Advocate, gave a detailed reply to the Invocation Notice dated 14 May 2026. In the said reply, the Respondents stated that invocation of arbitration was unlawful, void and unsustainable in facts as well as in law. In these circumstances, the Applicants have filed the present Application seeking appointment of an Arbitrator.

6. Mr. Narula, learned Advocate for the Applicants, submits that under the Development Agreement, Clause No. 15 records the obligation of the Respondents to provide 6 approved covered/enclosed parking spaces in the Stilt area. However, thereafter, the Respondents represented to the Applicants that providing parking spaces in the Stilt area was not possible because of planning difficulties. The Respondents stated that they were proposing to provide a Fitness Centre in the Stilt area, as shown in

the IOD issued by the Corporation. On the request of the Respondents, the Applicants agreed to enter into the Addendum dated 19 January 2019 to the Development Agreement. Under Clause 2 of the said Addendum, the Applicants agreed to accept, instead of 6 covered/enclosed car parking spaces, 6 slots in the Mechanical Pit Puzzle Parking System. It was agreed that after providing the said six slots in the Mechanical Pit Puzzle Parking System, the remaining parking spaces would be shared in the proportion of 60% to the Developer, namely Respondent No. 1, and 40% to the Owners, namely the Applicants.

7. He submits that thereafter, on or about 6 October 2023, the Plans were again amended, and parking spaces were shown in the Stilt area. According to the Applicants, when the parking spaces in the Stilt area were again shown in the amended Plans, the Applicants became entitled to the said six parking spaces in the Stilt area, particularly when the earlier arrangement had been changed by the subsequent Addendum and Modification. However, the said six parking spaces have not been given to the Applicants. According to him, this amounts to a clear breach of the obligations of the Respondents, who are acting as the Developer under the Development Agreement dated 12 February 2016. He submits that the Applicants have accordingly occupied six parking spaces in the Stilt area because these spaces were meant for the Applicants and were subsequently changed by the Addendum on the representation made by the Respondents. According to the Applicants, the said modification was made on a false basis. The occupation of these six spaces is, however, being disputed by

Respondent No. 4. It is submitted that Respondent No. 1 has not taken any clear position or given any final clarification regarding the actual status of these parking spaces. It is submitted that the said area was shown for the Elevator Sub Station and Fitness Centre on the ground floor of the property. However, without informing the Applicants and without obtaining their written joint consent, Respondent No. 1 has included the said area within the property without providing the facilities for which the area was shown. According to the Applicants, this amounts to a breach of the Development Agreement dated 12 February 2016 and the subsequent Addendums entered into between the parties.

8. He submits that under Clause No. 3 of the Second Addendum dated 21 January 2019 to the Development Agreement dated 12 February 2016, Respondent No. 1 had retained a balance area of 241 sq. ft. carpet area as security for certain payments. These payments included GST on rent, if applicable, corpus payable to the family members, and stamp duty and registration charges relating to the Gift Deed executed in favour of the family members of the deceased owner. According to the Applicants, GST is not applicable in either of the cases. Even then, Respondent No. 1 has not released the amount equivalent to Rs. 1,32,55,000/-. It is submitted that the corpus amount of Rs. 9,70,800/- payable in respect of the deceased owner, which has become due to the Applicants after her death, remains unpaid. Similarly, the rent payable to Applicant No. 3 for the period from February 2020 to March 2023, amounting in all to Rs. 2,68,550/-, has not been paid by Respondent No. 1. He submits that Clause No. 8 of the

Development Agreement dated 12 February 2016 provided rights in respect of the pocket terrace on the last habitable floor, except for the common terrace situated above the last habitable floor. According to the Applicants, however, these terrace rights have not been given to them. He submits that Respondent No. 1 was required to provide certain amenities, including installation of CCTVs and Intercom facilities. These facilities have not been provided till date. At the same time, advance maintenance charges have been collected from the Applicants and from other tenants and occupiers of the said property.

9. Mr. Chheda, learned Advocate for Respondent Nos. 1 to 3, submits that the Applicants had invoked arbitration under Clause 32 of the Development Agreement much earlier and not on 14 May 2026, as is sought to be shown in the present Application. According to him, arbitration was invoked on 6 September 2022. The legal notice dated 6 September 2022 bearing Reference No. RNN/425/2022 was issued by the same Advocates who have issued the Invocation Notice dated 14 May 2026 and who are appearing for the Applicants in the present Application. In the said notice, it was stated that, if the payment was not made within seven days, “it will be deemed that disputes and differences have arisen between you and our client and our clients do hereby invoke the Arbitration Clause contained in the said Development Agreement dated 12 February 2016 and hereby nominate Advocate of this court as sole arbitrator. The Respondents were called upon to give their consent to the said nomination within seven days. He submits that Respondent Nos. 1 to 3, through their

Advocates, replied to the said notice on 21 September 2022. They denied all the allegations made against them and did not agree to the appointment of the proposed Arbitrator. According to Mr. Chheda, therefore, the right of the Applicants to approach the Court under Section 11 of the Act arose on or about 21 September 2022. In any event, according to him, such right arose at the latest after expiry of thirty days from receipt of the said notice. The period of three years provided under Article 137 of the Limitation Act, 1963 came to an end on or about 20 September 2025.

10. He submits that after the arbitration was invoked in the year 2022, the Applicants did not take any proceedings whatsoever. No application under Section 11 of the Act was filed within three years from the said invocation notices. No Arbitral Tribunal was constituted during this period. According to him, nothing was done by the Applicants for nearly four years. The present Application, which was affirmed on or about 29 June 2026, has been filed nearly four years after the right to apply first arose and more than nine months after expiry of the period of limitation. Mr. Chheda submits that the Applicants have tried to overcome this difficulty by describing the disputes raised in the Invocation Notice dated 14 May 2026 as fresh disputes. According to him, this description is clearly incorrect. A comparison of the notice dated 6 September 2022, the Invocation Notice dated 14 May 2026 and the present Application shows that the subject matter in all three is substantially the same. According to him, the dispute concerns the alleged shortfall in the area and other benefits which are claimed to be payable to the deceased Owner and her family members

under the Development Agreement and the Addendums. The parties are the same. The relevant agreements and documents are the same. The alleged breaches arise from the very same Development Agreement. He submits, in the alternative, that even if the case of the Applicants as stated in the present Application is accepted, the claims now sought to be raised had arisen more than three years before 14 May 2026.

11. Mr. Chheda submits that Applicant Nos. 1, 2 and 4, namely, Mr. Rajesh Pal, Mr. Arvind Pal and Mr. Mitul Pal, are not parties to any of the three arbitration clauses which they seek to invoke. According to him, there is not even a prima facie arbitration agreement between these Applicants and Respondent Nos. 1 to 3. As regards Applicant No. 3, Mr. Kishore Pal, he is a party to only one document, namely, the Second Addendum, and that too only as a Confirming Party. According to Mr. Chheda, the arbitration clause in that document is limited to disputes arising under that particular document. Applicant No. 3 is not a party to Clause 32 of the Development Agreement or Clause 8 of the Third Addendum, though he has sought to invoke both these clauses. He submits that merely because Applicant No. 3 is described as a Confirming Party to the Second Addendum, he cannot claim rights under that document, seek performance of obligations under it, or claim that any independent rights have accrued in his favour. According to him, therefore, there can be no dispute between Applicant No. 3 and these Respondents under the Second Addendum which would give Applicant No. 3 a right to invoke arbitration. In support of his submissions, Mr. Chheda relied upon the judgment of the Delhi

High Court in *Golden Chariot Recreations Private Limited vs. Mukesh Panika & Another*, Arbitration Petition No. 593 of 2020, decided on 9 July 2021.

REASONS AND FINDINGS:

12. I have considered the submissions made by Mr. Narula, learned Advocate for the Applicants, and Mr. Chheda, learned Advocate for Respondent Nos. 1 to 3. I have considered the documents and the dates placed before the Court. The main objection of the Respondents is that the Applicants had invoked arbitration in the year 2022. Therefore, according to the Respondents, the right of the Applicants to approach this Court under Section 11 had arisen at that time. According to them, the Applicants cannot issue another notice in the year 2026 and thereby make the limitation period start again. On the other hand, the Applicants say that the disputes mentioned in the Invocation Notice dated 14 May 2026 are different disputes and have arisen because of later breaches by the Respondents.

13. The first question which arises for consideration is whether the present Application is only an attempt by the Applicants to bring back the same disputes for which arbitration had been invoked in the year 2022, or whether the Invocation Notice dated 14 May 2026 raises separate disputes arising from later acts and breaches of the Respondents. This has to be decided by looking at the nature of the disputes. Merely because all the disputes arise from the same Development Agreement, it cannot mean that all the disputes are the same.

14. There is no dispute regarding the legal position that Article 137 of the Limitation Act, 1963 applies to an application filed under Section 11 of the Arbitration and Conciliation Act, 1996. The period of limitation is three years from the date when the right to file such application arises. The Supreme Court in *Arif Azim Company Limited v. Aptech Limited*, 2024 INSC 155, after considering the earlier judgments, has held that the right to approach the Court under Section 11 arises after a valid notice invoking arbitration is given and the other side fails or refuses to act as required under the arbitration agreement. The Supreme Court has made a distinction between the limitation for filing a Section 11 Application and the limitation relating to the actual claim or dispute. These two periods are different and cannot be treated as one.

15. In the present case, Respondent Nos. 1 to 3 rely upon the notice dated 6 September 2022. According to them, arbitration was invoked by that notice. They submit that their reply dated 21 September 2022 amounted to refusal to agree to the appointment of the Arbitrator proposed by the Applicants. Therefore, according to the Respondents, the right to file an Application under Section 11 arose in September 2022. If this submission is accepted, the present Application filed in the year 2026 would be beyond the period of three years.

16. There is substance in the submission of the Respondents to the extent that an old dispute cannot be kept alive only by sending repeated notices. Once a dispute has arisen, arbitration has been validly invoked and the other side has refused or failed to act as

required under the arbitration agreement, the period for approaching the Court cannot be started again by sending another notice after the earlier period has expired. In *Golden Chariot Recreations Pvt. Ltd. v. Mukesh Panika and Another*, 2021 SCC OnLine Del 5808 : (2021) 5 Arb LR 452, the Delhi High Court considered a similar issue. In paragraph 8, the Court observed:

“8. The Petitioner's contention that the aforesaid judgment would not have a bearing on the present petition, on the ground that it has been premised on a fresh cause of action, is fallacious. The distinction between the causes of action for the two petitions viz. the attempt to sell and the actual sale, is nothing but an attempt to creation an illusion of a fresh cause of action. This so-called ‘fresh’ cause of action would not extend the limitation period. At the cost of repeating ad nauseum, the cause of action for arbitration, being the flash point for the purpose of reckoning the period of limitation, has accrued by way of the stand of Respondent denying the arbitration agreement vide its reply dated 22nd December, 2014. Limitation is to be calculated as three years from the expiry of thirty days from the date of service of the first invocation notice. Therefore, in the present lis, the third invocation notice dated 12th September, 2020, based on the same partnership deed and arbitration agreement, but alleging subsequent actions of the Respondents, cannot infuse fresh life into a dead claim. In fact, this very contention stands rejected by this Court by way of the earlier judgment of a coordinate bench, as extracted above. Besides on facts, this court finds no difference between the causes of action urged by the Petitioner in the two petitions. In both, the petitioner had made an averment that the Respondent is selling the suit premises. No superficial change in the circumstances would amount to a fresh cause of action that would extend the period of limitation.”

17. The principle stated in the above judgment would apply where the dispute shown as a later dispute is the same dispute which had arisen earlier. But this principle cannot be understood to mean that once arbitration is invoked under an agreement, no dispute which arises later under the same agreement can ever be referred to arbitration. A contract can give rise to different disputes at different points of time. If a particular breach had not taken place when the first dispute was raised, such later breach cannot be treated as time barred only because it arises under the same contract.

18. This distinction is important in view of the later decisions of the Supreme Court. In *M/s Bhagheeratha Engineering Ltd. v. State of Kerala*, 2026 INSC 4, the Supreme Court has explained that Section 21 relates to commencement of arbitration in respect of a particular dispute and is relevant for deciding limitation. The Supreme Court has stated that a claim covered by the arbitration agreement does not become incapable of being raised merely because it was not mentioned in an earlier notice. However, such claim must otherwise be within limitation and must fall within the arbitration agreement. Therefore, merely because the Development Agreement is the same, it cannot be said that every later breach under that Agreement is part of the same cause of action. The Court has to see when the particular breach took place and what exactly was the dispute raised by the Applicants in the earlier invocation.

19. In the present case, Mr. Narula has drawn my attention to the earlier Invocation Notice dated 9 December 2022. He submits

that the dispute raised in that notice was regarding the FSI which, according to the Applicants, became available because of change in the rules. According to him, the Invocation Notice dated 14 May 2026 concerns different matters. The present notice concerns non-allotment of parking spaces, failure to provide CCTV and intercom facilities, alleged unauthorised changes in the floor plans, withholding of corpus amounts payable to the Applicants and the issue relating to the pocket terraces. When this submission is considered along with the material placed before the Court, it cannot at this stage be said that every dispute mentioned in the Invocation Notice dated 14 May 2026 is merely a repetition of the dispute raised in the year 2022. The dispute regarding six parking spaces, as pleaded by the Applicants, is connected with the subsequent amendment of the sanctioned Plans on or about 6 October 2023. The Applicants say that the earlier parking arrangement was changed by the Addendum because the Respondents had represented that Stilt parking was not possible. According to the Applicants, when the Plans were later amended and Stilt parking again appeared in the sanctioned Plans, a separate question arose as to whether the Applicants were entitled to the six Stilt parking spaces. Whether the Applicants are ultimately correct in their interpretation of the Development Agreement and the Addendum is not required to be finally decided at this stage. What is material for the present purpose is that the event relied upon by the Applicants took place in October 2023.

20. Similarly, the allegation regarding non-provision of CCTV and intercom facilities is stated to relate to the period after

completion of the building, handing over of possession and grant of the Occupation Certificate. The Applicants rely upon the fact that the Occupation Certificate was granted and possession was handed over in October 2023. The grievance regarding the pocket terrace is stated to have arisen after completion of the building and handing over of possession. On the material presently before the Court, these events cannot be said to have taken place in September or December 2022.

21. The Respondents have relied upon these allegations to submit that the disputes had arisen earlier. However, the dates relied upon by the Respondents themselves show that different claims have different dates from which they arose. The claim towards rent admittedly relates to the period from February 2020 to March 2023. Similarly, the claim of Rs.1,53,00,000/- is stated in the Applicants' own notices to have become payable at the time of casting the last slab. According to the Respondents, that event had taken place before August 2022. These claims stand on a different footing from a breach which is stated to have arisen because of the amendment of the sanctioned Plans in October 2023 or because of non-provision of facilities after completion of the building. It is necessary to keep the old claims and the later disputes separate. A claim which had arisen and had become payable in the year 2022 cannot be brought back to life merely by including it in a fresh notice dated 14 May 2026. Similarly, a claim relating to rent up to March 2023 cannot become a fresh claim in the year 2026 merely because a demand was made later. Issuing a demand or reminder does not by create a new cause of action where the right to receive

the amount had arisen earlier.

22. This position is supported by the decision of the Supreme Court in *State of West Bengal & Ors. v. M/s B.B.M. Enterprises*, 2026 INSC 358. The Supreme Court reiterated that a subsequent notice cannot be used to create a fresh starting point for a claim which had become stale. At the same time, the Court has explained that at the stage of Section 11, the Court should not conduct a detailed examination of evidence on every question of limitation. Intervention is justified where the claim is clearly and ex-facie dead.

23. The submission of Mr. Chheda that the Applicants did not take any proceedings after the 2022 invocation cannot be ignored. If the entire present Application was based upon exactly the same disputes which had been invoked in 2022, the Applicants could not have waited until May 2026 and then tried to start the period of limitation once again. The reply dated 21 September 2022 relied upon by the Respondents shows that the Respondents did not agree to the appointment proposed by the Applicants. Therefore, in respect of those disputes, the Applicants had a remedy to approach this Court under Section 11.

24. But this does not decide the separate question concerning disputes which arose later. If a particular dispute had not arisen in the year 2022, the right to seek appointment of an Arbitrator in respect of that dispute could not have arisen in 2022. The limitation for such later dispute has to be considered from the time when that particular dispute arose and when the procedure for

appointment under the agreement failed. There is difference between saying that the Development Agreement is the same and saying that the cause of action is the same. The first may be correct. The second does not follow. In the present matter, the parking dispute, as pleaded by the Applicants, is connected with the revised sanctioned Plans of October 2023. The complaints regarding amenities and pocket terrace are stated to have arisen upon completion of the building and handing over of possession in October 2023. These events are subsequent to the earlier invocation. A fresh breach arising from a later event cannot be treated as an old dispute merely because the parties are governed by the same Development Agreement.

25. The judgment in *Golden Chariot* supports the Respondents only to the limited extent that a subsequent notice cannot bring a dead claim back to life. It does not require the Court to treat an actual later breach as if it had arisen several years earlier. In *Golden Chariot*, the Court found on the facts of that case that there was no real difference between the causes of action in the two proceedings and that the alleged later event was only another stage of the same dispute. The facts before this Court are different to that extent, because several of the present complaints are based upon events which, according to the Applicants, occurred after the earlier invocation.

26. I find that the objection of limitation cannot be accepted as a reason for rejecting the present Application. At the same time, I find that those claims which had arisen in the year 2022, or which had otherwise become enforceable more than three years before

the present Section 11 proceedings, cannot be revived merely by mentioning them again in the Invocation Notice dated 14 May 2026. The old claims and the later disputes will have to be kept separate.

27. There is an objection raised by Mr. Chheda regarding the position of Applicant Nos. 1, 2 and 4. According to him, these Applicants are strangers to the relevant arbitration clauses. In respect of Applicant No. 3, it is submitted that he is only a Confirming Party to the Second Addendum and cannot claim independent rights under that document. This objection relates to the existence and extent of the arbitration agreement between the particular Applicants and the Respondents. At the stage of Section 11, the Court is required to see whether an arbitration agreement exists and whether the persons seeking reference are parties to that arbitration agreement. The Supreme Court in *Adavya Projects Pvt. Ltd. v. M/s Vishal Structurals Pvt. Ltd. & Ors.*, 2025 INSC 507, has recognised that the question whether a person is a party to the arbitration agreement is relevant at the stage of reference. At the same time, where a person is said to be a non-signatory, the Court has to look at the transaction as a whole and the conduct of the persons concerned. A person cannot be treated as a complete stranger only because his signature is not found on every document forming part of the transaction.

28. In the present case, it is not in dispute that the Applicants are connected with the overall transaction. The material before the Court refers to the Family Settlement dated 4 May 2014 and the Supplementary Agreement dated 4 October 2019, in which the

Applicants are stated to be parties. There are various Addendums which form part of the transaction between the parties. Therefore, the broad submission that the Applicants have no connection at all with the contractual arrangement cannot be accepted. However, the exact question as to which Applicant is bound by which particular arbitration clause will depend upon the terms of the relevant document and the wording of the arbitration clause contained in it. Applicant No. 3 is described by the Respondents as a Confirming Party to the Second Addendum. Merely because he is described as a Confirming Party does not by decide whether the arbitration clause in that document covers the dispute which he is seeking to raise. That question depends upon the actual language of the document and the rights and obligations recorded in it. At this stage, therefore, the objection raised by the Respondents requires examination of the contractual documents and cannot be accepted merely because Applicant No. 3 has been described as a Confirming Party.

29. At the stage of Section 11, the Court is not required to conduct a full trial regarding every breach alleged by the Applicants. The Supreme Court has stated that the Court has to make a limited examination and should not conduct a detailed examination of evidence. Where the dispute is arguable and arises from interpretation of the contract, the normal course is to leave the issue for determination by the Arbitral Tribunal. The Court can refuse reference where the claim is clearly time barred and dead. But the Section 11 proceedings should not be converted into a full trial regarding limitation or the contractual rights of the parties.

30. On considering the matter as a whole, I am unable to accept the submission that the Invocation Notice dated 14 May 2026 is barred merely because an earlier notice had been issued in the year 2022. The material before the Court shows that some of the disputes in the present invocation are based upon later events, particularly the amendment of the sanctioned Plans in October 2023, completion of the building and the alleged failure to provide facilities thereafter. At this stage, such disputes cannot prima facie be treated as dead claims merely because there was an earlier invocation. If the contrary view is taken, it would mean that once one dispute is raised under a Development Agreement, every later breach under the same Agreement would become incapable of being referred to arbitration. Such a position cannot be accepted. At the same time, the Applicants cannot use a later notice only as a way to bring back claims for which the right to approach the Court had expired. Therefore, after the Arbitral Tribunal is constituted, the individual claims will have to be examined according to the date on which each claim arose and the applicable provisions of the Limitation Act.

31. In view of the above discussion, I hold that the present Section 11 Application cannot be rejected merely on the general ground that arbitration had been invoked in the year 2022. The objection regarding stale claims is accepted only to the limited extent that a claim which had become ex-facie barred cannot get a fresh period of limitation merely because the same claim is repeated in the Invocation Notice dated 14 May 2026. However, disputes which genuinely arise from subsequent events cannot, for

that reason alone, be treated as barred.

32. In view of the finding recorded hereinabove that there exists an arbitration agreement between the parties, and in view of the submissions made by both the learned Advocates that, in the event this Court comes to such conclusion, a Sole Arbitrator may be appointed, hence I pass following the following order:

A) Ms. Arti Raghavan, Advocate of this court is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes and differences between the Applicants and the Respondents arising out of the Development Agreement dated 12 February 2016 and the subsequent Addendums and Agreements, including the claims and counterclaims arising therefrom, subject to the observations made in the judgment;

Office Address:- 401, Embassy Centre, Jamanalal Bajaj Marg, Nariman Point , Mumbai

Email: raghavan.arti1@gmail.com

B) A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Applicant within a period of one week from today. The Applicant shall provide the contact and communication particulars of the parties to the Arbitral Tribunal along with a copy of this Order;

C) The Learned Sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Act to the Advocates for the

Applicant so as to enable them to file the same in the Registry of this Court. The Registry of this Court shall retain the said Statement on the file of this Applicant and a copy of the same shall be furnished by the Advocates for the Applicant to the Advocates for the Respondent;

D) The Learned Sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Act to the parties within a period of two weeks from receipt of a copy of this Order;

E) The parties shall appear before the Learned Sole Arbitrator on such date and at such place as indicated, to obtain appropriate directions with regard to conduct of the arbitration including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings etc. At such meeting, the parties shall provide a valid and functional email address along with mobile and landline numbers of the respective Advocates of the parties to the Arbitral Tribunal. Communications to such email addresses shall constitute valid service of correspondence in connection with the arbitration;

F) All arbitral costs and fees of the Arbitral Tribunal shall be borne by the parties equally in the first instance, and shall be subject to any final Award that may be passed by the Tribunal in relation to costs.

33. All issues on merits are expressly kept open to be agitated before the arbitral tribunal appointed hereby.

34. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

(AMIT BORKAR, J.)