

SHEPHALI

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
ARBITRATION PETITION NO. 36 OF 2017**

Ghela Bachu Patel		...Petitioner
<i>Versus</i>		
Yog Realty		...Respondents

Mr VM Vaghela, *for the Petitioner.*
Mr Z Behramkamdin, *with Ms Vidya Nair, Mr Dhiren Shah, Mr Jayesh Rathod, i/b Dhiren Shah, for the Respondent.*

CORAM: G.S. PATEL, J
DATED: 1st February 2017

PC:-

1. I have heard Mr Vaghela for the Petitioner and Mr Behramkamdin for the Respondent on this Petition under Section 9 of the Arbitration and Conciliation Act 1996. For the reasons that follow, I am inclined to dismiss this Petition.

2. The Petitioner is a member of the Bhaveshwar Workers Cooperative Housing Society. That society entered into a Development Agreement dated 6th October 2012 with Yog Realty, the Respondent. The Development Agreement is registered. This was followed by a Deed of Rectification dated 12th December 2012.

3. It seems that the Petitioner has some grievance about his Deed of Rectification but that cannot possibly arise in an alleged dispute between the Petitioner and the developer, for the simple reason the Petitioner and the Respondent have a separate registered agreement for permanent alternate accommodation dated 4th April 2013. A copy of this is annexed at Exhibit “D” to this Petition from pages 170 to 260.

4. The principal grievance of the Petitioner is that although he was to be allotted flat or unit No. 302 on the 3rd floor —which Mr. Behramkamdin for the Respondent says, on instructions, is even today available and ready for being handed over (a part OC being awaited) — the Petitioner insists that he is also entitled to stilt car parking on the ground floor. His case is that on the ground floor there are no stilts at all and instead a very large area has been given to HDFC Bank Limited. It is not in doubt, at least from the Affidavit in Reply, that HDFC Bank has put in possession, fitted out the premises and that its branch is in fact operational.

5. The Petitioner seeks injunctive relief in respect of the ground floor premises and a restraint against these being handed over to HDFC Bank. Apart from the fact that possession is already been given to HDFC Bank, what needs to be assessed is whether on the document between the Petitioner and the Respondent, i.e., the permanent alternate accommodation agreement dated 4th April 2013, there is any such entitlement for stilt car parking. A few clauses of this agreement make it clear that there is in fact no such entitlement. Recital (xviii) at page 178 speaks of the Petitioner surrendering old Room No. 20 and in lieu being allotted a flat No.

302 of 225 sq ft carpet area free of cost and on ownership basis on the third floor of the new construction. There is no dispute about the flat number or its area. There is no mention in this recital of any stilt car parking. The operative Clause 3 at pages 179–180 is also relevant. This again speaks of Flat No. 302 on the third floor, of an area of 225 sq ft, but it references the Third Schedule to the agreement as containing a specific description of the Petitioner's entitled. The Third Schedule is at page 190 and it reads thus:

**“THE THIRD SCHEDULE OF THE PROPERTY
HEREINABOVE REFERRED TO:**

A Flat No. 302, admeasuring 225 sq.ft (Carpet), situated on the 3rd floor of the proposed building known as Bhaveshwar Nagar Building No. 3, situated at TPS III, Final Plot No. 25, Ghatkopar (E), Mumbai 400 077.”

There is absolutely no mention of any stilt parking being made available to the Petitioner under this agreement.

6. What is suggested today is that under the original Development Agreement between the Respondent and the society, there was a mention (at page 69) of car parking spaces being made available under stilts for the society members. According to the Petitioner, this requirement supersedes his subsequent permanent alternate accommodation agreement and gives him his entitlement to a ground-floor stilt-level parking space.

7. *Prima facie* it is impossible to accept this case. The agreement between the Petitioner and the Respondent is the one at Exhibit

“D” for permanent alternate accommodation. It is not possible for the Petitioner to try and get an injunction in this fashion by raising a claim that the society has not made and of which the Petitioner is himself a member to additional amenities not included in the Petitioners’ own agreement with the Respondent.

8. There is absolutely no case made out for the grant of relief under Section 9 of the Arbitration Act. The Petition is dismissed. There will be no order as to costs.

9. Reply and Rejoinder to be filed in the Registry.

(G. S. PATEL, J.)