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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 225 OF 2017
IN
ARBITRATION PETITION NO. 119 OF 2013**

Bharat Infrastructure & Engineering Pvt Ltd ...Applicant
Versus
Park Darshan CHS Ltd & Ors ...Respondents

**WITH
NOTICE OF MOTION (L) NO. 527 OF 2017
IN
ARBITRATION PETITION NO. 1009 OF 2014**

Ms Jyoti L Mehta & Ors ...Applicants
Versus
Park Darshan CHS Ltd & Anr ...Respondents

Mrs Prachi Khandke, *i/b MP Vashi Associates, for the Petitioner in ARBP/199/13 & Applicant in CHS/225/17.*

Mr Sheelang Shah, *with RB Singhvi & Amar Datta, for the Applicants in NMS/527/17 in ARBP/1009/14.*

Mr Uday S Samudrala, *for Respondent No. 1.*

Mr Zal Andhyarujina, *with Ankita Singhania, Punit Damodar & Nikita Vardhan, i/b Kanga & Co., for Respondents Nos. 6A to 6C in CHS/225/17.*

Mrs Kavita Ambekar, *Ist Assistant to the Court Receiver, with Mrs. R. Gulekar, Section Officer, from the Office of Court Receiver.*

CORAM: G.S. PATEL, J
DATED: 18th April 2017

PC:-

1. This is a Chamber Summons by the original Petitioner, a developer, seeking a discharge of the Court Receiver appointed on 18th March 2013 in respect of four flats.
2. A short background is necessary. The 1st Respondent is a Cooperative Society. Respondents Nos. 2 to 6 are members of the Society. Respondent No. 6 having passed away his heirs are brought on record as Respondents Nos. 6a to 6c. Defendants Nos. 2, 2a and 2b, are entitled to one single flat. In the present Chamber Summons we are actually concerned with three flats, i.e., those allotted to Respondents Nos. 2-2a-2b, Respondent No. 5 and Respondents Nos. 6a, 6c and 6c.
3. The Receiver was appointed in respect of the flats in a building that was to be demolished in the course of reconstruction. The building has since been demolished. A new building has been put up. Flats have been allotted to Respondents Nos. 2-2a-2b, Respondent No. 5 and Respondents Nos. 6a to 6c in the new construction. What has not yet been done is the execution of agreements of permanent alternate accommodation and their registration and payment of stamp duty and delivery of possession of these three flats to these members.
4. In the meantime, the Petitioner/Developer and the 1st Respondent Society are yet in arbitration. I am given to understand

that the Petitioner has made a claim *inter alia* in damages alleging that the 1st Respondent Society delayed delivery of possession etc. Nearly Rs. 10 crores is claimed from the Respondent No. 1. The argument seems to be that because of the alleged delay by the Society, the developer had to pay additional amounts as transit rent, brokerage, shifting charges and so on.

5. The only society members in question, the Respondent No. 2 group, Respondent No. 5 and the Respondent No. 6 group are not parties to this arbitration. Indeed, I do not see how they can be since there is no arbitration agreement between the Petitioner and these parties at all although, on the basis of the decision of this Court in *Girish Mulchand Mehta & Anr v Mahesh Mulchand Mehta*¹ these members were properly were joined as party respondents to the application for relief under Section 9 of the Arbitration & Conciliation Act, 1996.

6. I do not think it is possible to suggest that without a specific order of a Court the Receiver automatically stands appointed of the new flats in the new building. It is quite common in fact to appoint a Receiver of flats in the old building to ensure that possession of these is delivered to the developer for demolition and reconstruction, but such an order of receivership does not always carry over to the corresponding allotted flats in the new building. When it does, the order always says so and directs the Receiver then to take possession of the flats in the new building and to deliver possession either to the Society or to the member/s to whom the

¹ (2010) 1 BCR 31.

flat/s is or are allotted. I do not find any such order in favour of the Petitioner at all. In fact, the order of RD Dhanuka J appointing Receiver, and which is an elaborate judgment dated 18th March 2013, makes it clear that the Receiver was appointed to take physical possession of the flats from Respondents Nos. 2, 2a and 2b, Respondent No. 5 and Respondents Nos. 6a to 6c alone in the old building. There was no provision made for the Receiver's continuance of the allotted flats in the new building.

7. This short discussion is necessary because I propose to allow the Petitioner's Chamber Summons in terms of prayer clause (a) discharging the Court Receiver and directing the Petitioner to pay his costs, charges and expenses within two weeks. The Court Receiver is not required to pass any accounts.

8. The Chamber Summons is disposed of in these terms and subject to these observations.

9. It will be open to these Respondents to file an application for delivery of possession or for appointment of the Receiver of the flats allotted to them. Defendants Nos. 2, 2a, 2b have already filed Notice of Motion asking for precisely this relief, i.e., possession and execution of the necessary documents. Ms Khandke seeks time to file an Affidavit in Reply to this Notice of Motion.

10. Mr Andhyarujina for Defendants Nos. 6a, 6b and 6c states that he too will file a Notice of Motion for a substantially similar reliefs on or before 20th April 2017.

11. Affidavits in Reply to both the Notices of Motion to be filed and served on or before 28th April 2017. Affidavits in Rejoinder, if any, to be filed and served on or before 5th May 2017.

12. List both the Notices of Motion for directions on 6th June 2017. Liberty to any of the parties to apply for ad-interim reliefs, but not before the regular or special vacation judges.

(G. S. PATEL, J.)