

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

ARBITRATION PETITION NO.357 OF 2017

Nisar Properties Pvt. Ltd. ... Petitioner
Versus
Frances Co-operative Housing Society
Limited ... Respondent

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Mr. Zubin Behramkamdin a/w Vyom Shah and Dipti Das i/b Divya Shah
Associates for the Petitioner.

Mr. Mayur Khandeparkar i/b Lancelot Lewis for the Respondent.

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CORAM : S.C.GUPTE, J.

DATE : 2 AUGUST 2017

P.C. :

. Heard learned Counsel for the parties.

2 After the matter was heard for sometime, it is agreed between the parties that the Arbitration Petition can be disposed of in terms of the following order. It is ordered accordingly as follows :

- (i) The Petitioner shall pay the arrears of rent in terms of clause -(f) of paragraph 87 of the impugned order dated 17 March 2017 to the members of the respondent Society. The Petitioner shall also pay future rent by 10th day of each month till the Occupation Certificate is issued and the members of the respondent Society are offered possession of

permanent alternative accommodation in the new building;

(ii) Neither the respondent Society nor any of its members shall write to the Municipal Corporation of Greater Mumbai (MCGM), concerning the Petitioner's application for issuance of occupation certificate for the redevelopment building or in any manner oppose the issuance of occupation certificate to the Petitioner;

(iii) The payment of rent by the Petitioner to the members of the respondent Society in terms of the present order shall not in any way prejudice the Petitioner's claim before the Arbitrator that the respondent society and its members are not entitled to this rent, on account of having committed default or breach of the development agreement or on account of any other act on their part;

(iv) Likewise, it will be open to the respondent and its members to agitate before the arbitrator the question of deficit area in the permanent alternative accommodation being/to be offered to them in the new building. So also, it will be open to the Petitioner to contend that the area offered to the Respondent and its members is not only in accordance with, but actually in excess of the area of permanent alternative

accommodation to be offered to them in accordance with the agreement. The rights and contentions of the parties in this behalf are kept open;

(v) If the arrears of rent or future rent paid/to be paid by the Petitioner to the members of the respondent society are not in accordance with the agreement between the parties, it will be open to the respondent society and its members to agitate the matter of quantum of arrears of rent or future rent before the Arbitrator in a fresh application under Section 17 of the Arbitration and Conciliation Act, 1996. The rights and contentions of both the parties in this behalf are kept open;

(vi) It is, however, made clear that if the respondent society or any of its members writes to MCGM in breach of clause -(ii) above, the Petitioner will be at liberty to apply for setting aside this order and revive its Arbitration Petition before this Court. It is also clarified that this order shall not come in the way of the respondent society or its members applying to MCGM for documents/information under Right to Information Act or agitate the matter of incomplete or non-compliant construction before the Arbitrator;

(vii) In keeping with this order, the respondent society and its members will be entitled to withdraw the amounts deposited by the Petitioner in this Court in pursuance of the order passed by this Court on 19 April 2017 along with accrued interest, if any;

(viii) M/s Shetgiri & Associates, shall comply with the second part of their mandate, namely, submission of a report on whether the construction is carried out as per the sanctioned plan. Such compliance will be made within a period of three weeks from today. The Report, however, shall be directly submitted to the Arbitrator. It will be open to both the parties to communicate their response to such report to the Arbitrator for seeking or opposing any relief in the arbitration;

(ix) It is also made clear that this Court has not applied its mind to the merits of controversies, forming the subject matter of the present Arbitration Petition;

(x) All rights and contentions of the parties on merits are kept open, to be agitated before the Sole Arbitrator.

3 The Arbitration Petition is disposed of in above terms.

(S.C. GUPTA, J.)