

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

**COMM. ARBITRATION PETITION NO. 338 OF 2017
WITH
COMM. ARBITRATION APPLICATION NO.89 OF 2017**

D.N.Nagar Samrat Co-op.Housing Society Ltd.)....Petitioner

V/s.

A.A.Estate Private Limited)....Respondent

Mr.Rajendra V.Pai a/w Mr.Vivek Kantawala, Mr.Amey Patil and
Ms.Shruti Anurag i/by M.M.Legal Associates for applicant/petitioner.

Mr.Subit Chakrabarti i/by Vidhi Partners for respondent.

**CORAM : K.R.SHRIRAM,J
DATE : 11.10.2017**

P.C.:-

1 There is one petition and one application filed by the petitioners. Petition is under Section 9 and the application is under Section 11 of the Arbitration & Conciliation Act 1996. No ad-interim orders have been passed in the petition filed under section 9.

2 Respondent has not filed any reply to both, the petition and the application.

3 Mr.Pai appearing for petitioner on instructions states that the application filed under section 11, viz. Arbitration Application No.89 of 2017 be disposed by appointing the sole arbitrator and petition filed under Section 9, viz., Petition No.338 of 2017 be

assigned to sole arbitrator who can hear the said petition as an application under section 17 of the Act.

4 Mr.Chakrabarti appearing for respondent states that he has no instructions to even go on with the matter let alone, agree to what Mr.Pai is suggesting.

5 Having considered clause-36 of the Development Agreement dated 12.10.2006 and in view of the fact that there is no reply also filed, in my view, there is an arbitration agreement between the petitioner and the respondent as stated in clause-36 of the said development agreement. Since the respondent is not in a position to even suggest the name of the arbitrator, in my view it will serve the interest of justice of both the parties if a sole arbitrator is appointed to decide on all disputes arising out of and in connection with and relating to development agreement dated 12.10.2006 read with supplementary agreement dated 26.8.2009, copies whereof are annexed to the petition.

6 Accordingly, Justice V.M.Kanade (retired) is appointed as arbitrator to arbitrate on all disputes arising out of, in connection with and relating to development agreement dated 12.10.2006 read with supplementary agreement dated 26.8.2009 between petitioner and

respondent. The fees, administrative expenses of the arbitrator, typing charges and venue charges shall be shared equally between the petitioner and respondent and the same will be cost in the arbitration proceedings.

7 Mr.Pai states that once the arbitrator is intimated about this order, the petitioner's advocate would request the learned Arbitrator to make disclosures if required under Section 12 of the Act.

8 Petition No.338 of 2017 be transferred to the learned Arbitrator who will hear the application as application under section 17 of the Act. Petitioner is at liberty to file further documents and pleadings if necessary. Respondent is at liberty to file reply to the said application for which necessary directions will be passed by the learned Arbitrator.

9 Petition No.338 of 2017 and Application No.89 of 2017 both stand disposed accordingly.

10 For a period of 4 weeks, parties to maintain status-quo. Any further order can be passed by the learned Arbitrator on the application of the petitioner/respondent.

Parties to act on an authenticated copy of this order.

(K.R.SHRIRAM,J)