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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION (L) NO. 1380 OF 2016**

Shaikh Habibunnisa G Rehman	...Petitioner
<i>Versus</i>	
Aafiyah Realtors	...Respondent

Mr Ashwin Shete, *with Shruti Bordia, i/b Jayakar & Partners, for the Petitioner.*
Ms Eventa A Gonsalves, *for the Respondent.*

CORAM: G.S. PATEL, J
DATED: 6th March 2017

PC:-

1. This is an Application under Section 9 of the Arbitration & Conciliation Act 1996. On 25th January 2017 the following order was passed:

“1. The Respondent has been served. Ms Gonsalves appears for the Respondent. She seeks time to take instructions.

2. In the meantime, the Respondent will not disturb the possession of the Petitioner in respect of both Flat N. 1502 and Flat No. 1702 of Aafiyah Heights, Byculla, Mumai 400 008.

3. List the matter on 3rd February 2017.”

2. Time to file the Affidavit in Reply was then extended on 3rd February 2017, when it was reiterated that the possession of the Petitioner in respect of Flat No. 1702 in Aafiyah Heights was not to be disturbed.

3. The case of the Petitioner is that she was a tenant of Room No. 18 with a carpet area of about 180 sq ft on the second floor of a building previously known as United Mansion at Dimtinkar Road, Plot No. 15, Nagpada Estate 1, Byculla Division, Mumbai 400 008. The Petitioner was born in this house, and lived there all her life.

4. The building was taken up for redevelopment. The Petitioner, like other occupants or tenants, entered into an agreement for permanent alternative accommodation with the Respondent. This agreement dated 31st March 2010, a copy of which is at Exhibit "A" to the Petition, is registered. The agreement itself makes no mention of any particular flat to be allotted to the Petitioner in the redeveloped building. It does however mention first that she was a tenant of the old structure in Room No. 18 (the room number is specifically mentioned on the first page of the agreement). In Clause (6) of that agreement the Petitioner was to be given a new tenement of 300 sq ft plus an additional area of 90 sq ft.

5. The Petitioner was also to receive Rs. 10,000/- per month towards transit accommodation or rent. While the building was redeveloped, the Petitioner moved to temporary accommodation at Mazgaon. She makes a complaint that from April 2016 to November

2016 the Respondent did not pay the transit rent and that the Petitioner paid this herself.

6. On 18th March 2011, the Petitioner says, she entered into a separate and independent agreement for purchase of Flat No. 1502 admeasuring 415 sq ft on the 15th floor. The consideration was supposedly Rs 20.25 lakhs. The Petitioner paid this. A copy of the second agreement is at Exhibit “B” to the Petition.

7. On 16th May 2016 one of the partners of the Respondent supposedly signed an allotment letter in favour of the Petitioner for Room No. 1702 on the 17th floor of the building. A copy of this allotment letter is at Exhibit “C”. It is on the letter head of the Respondent and it is signed at its end by person claiming to have done so as a partner. This was the allotment that related to the first agreement of 31st March 2010, according to the Petitioner. Thus, the Petitioner’s case is that she was allotted Flat No. 1702 in lieu of her old tenement No.18; and she independently bought Flat No. 1502.

8. According to the Petitioner she was then told that she should take Flat No. 1602 instead of the allotted Flat No. 1702. She also found that Flat No. 1702 was not in an appropriate state of readiness. There were various other complications and although the Petitioner claims to have taken possession of Flat No. 1602 she never did move into it. The Petitioner says that on 19th October 2016 she found that her name plate and the main door of Flat No. 1502 were broken and that some unknown persons had broken into

both Flat Nos. 1502 (her separately purchased flat) and 1602 (the exchanged allotted flat). On making a police complaint, and on taking legal advice the Petitioner was told that since she has allotment letter for Flat No. 1702 and an independent agreement for Flat No. 1502 these were the two flats of which she should resume possession. She did.

9. Ms Gonsalves on behalf of the Respondent argues that there is in fact no arbitration agreement. She says that the allotment letter has been fraudulently obtained. According to her the second agreement of 18th March 2011, Exhibit “B” to the Petition, and which mentions Flat No. 1502, was only for purchase of additional area and not for a separate flat. This can be gauged, she says, from the amount of consideration of a mere Rs. 20.25 lakhs, too little to ever be for the purchase of an entire apartment in this area.

10. The second agreement of 18th March 2011 at Exhibit “B”, which the Petitioner says is for a separate flat, is also signed by the Respondent. It specifically mentions Flat No. 1502 and an area of 325 sq ft with additional area of 90 sq ft usable area. This agreement contains no arbitration clause. The Petitioner makes no claim under this agreement and says that this was not the flat that was allotted to her in lieu of her previous tenancy; it was a flat she purchased in addition.

11. The agreement at Exhibit “A” of 31st March 2010 mentions a completely different area of 300 sq ft carpet area plus an additional area of 90 sq ft. It does not mention any particular flat. It contains an

arbitration clause and according to the Petitioner this is the agreement that is relatable to the allotment letter in lieu of her previous tenanted accommodation. It has nothing at all to do with her purchase of the second flat under the Agreement of 18th March 2011 at Exhibit “B”.

12. Ms Gonsalves accepts that the signatory of the allotment letter is in fact a partner but the Respondent is unaware how any such allotment letter came to be issued with a mention of Flat No. 1702.

13. All this urged in support of the Respondent’s contention that there is no arbitration agreement. *Prima facie*, it is not possible to accept this submission. There is clearly one agreement which has an arbitration clause and it is relatable to the allotment of a flat in lieu of the earlier tenement and of which the Petitioner currently in possession.

14. I see no reason not to confirm the ad-interim order as the final order under on Section 9 Petition. The order dated 25th January 2017 is confirmed. The Petitioner will continue in possession of both Flat Nos. 1502 and 1702 pending arbitration.

15. In view of the statements made on behalf of the Respondent, the Petitioner will take necessary steps to file an Arbitration Application under Section 11 by 27th March 2017.

16. The Petition is disposed of in these terms with no order as to costs. All rights and contentions are expressly kept open.

(G. S. PATEL, J.)