

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

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COMMERCIAL APPEAL (L) NO. 277 OF 2019
IN
COMM. ARBITRATION PETITION NO. 448 OF 2018
WITH
NOTICE OF MOTION (L) NO. 544 OF 2019
IN
COMMERCIAL APPEAL NO. 277 OF 2019
IN
COMM. ARBITRATION PETITION NO. 448 OF 2018

Satyanarayan Agrawal & Ors. .. Appellants
Vs.
Kamla Homes and Lifestyle Pvt. Ltd. .. Respondents

Mr. Gauraj Shah a/w. Mr. Sholak Parekh I/b Yatin Shah for the Appellants.

Mr. Farhan Khan a/w. Mr. Maulik Vora I/b Pramodkumar & Co. for Respondent No.1.

Mr. Mayur Khandeparkar a/w. Ms. Sarika Mehra a/w. Mr. Sumeet Bansod I/b L. J. Law for Respondent No.2.

CORAM : PRADEEP NANDRAJOG, C.J. &
N. M. JAMDAR, J.
DATE : 6th JUNE, 2019.

P. C. :

1. Heard learned Counsel for the parties.
2. Second Respondent is a Co-operative Society having 12 members, to whom a flat each was allotted and the members are in possession of

the respective flat. Building being old, the management of the society took a decision to re-develop the building which necessitated its members to vacate their respective flats. A development agreement was entered into between the Co-operative Society and the first Respondent. The development agreement envisaged the vacant possession of the flats to be handed over to the developer so that after demolishing the same a new building could be erected. Terms and conditions upon which redevelopment was to be effected have been incorporated in the agreement in question. A supplementary agreement, modifying the main agreement has been executed between the builder and the society on 23.05.2019.

3. 11 allottees of the 12 flats have agreed to vacate 11 flats and the project is withheld on account of appellant No.1 not agreeing to deliver vacant possession of the flat in his possession.

4. Vide impugned order dated 03.05.2019, the appellant has been directed to vacate the flat in his possession by 30.05.2019, extended till 06.06.2019 i.e. today.

5. Learned Counsel for the appellant questions the development agreement entered into by the society with the builder and its modification on 23.05.2019.

6. We propose not to note the grounds of challenge thereto for the reason that this would be a dispute between the Petitioner and the Co-operative Society and unless the Petitioner manages to successfully overcome the decision taken by the Co-operative Society, in the issue between the builder and the Co-operative Society requiring the society to ensure that its members vacate the respective flats in their possession,

we would not be in a position to decide the said issue because it would not be a dispute arising out of the development agreement.

7. Suffice it to state that as of today the agreement between the builder and Co-operative Society subsists. Thus, we find no infirmity in the impugned order and while dismissing the Appeal, extend the time for the appellant to vacate the flat in his possession by 30.08.2019.

[N. M. JAMDAR, J.]

[CHIEF JUSTICE]