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**IN THE HIGH COURT OF JUDICATUREc AT BOMBAY**  
**ORDINARY ORIGINAL CIVIL JURISDICTION**  
**ARBITRATION PETITION NO. 1547 OF 2019**

|                              |                |
|------------------------------|----------------|
| Ashok Sony Kulaye            | ...Petitioner  |
| <i>Versus</i>                |                |
| Divisha Developers LLP & Anr | ...Respondents |

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**Mr Firoz Bharucha**, *with Omkar Khaiyam Shaikh, for the Petitioner.*  
**Mr Sunil Gangal**, *with Amil Bagar, Alisha Khan & Shrikant*  
*Shigreeela, i/b RMG Law Associates, for Respondent No. 1.*  
**Mr PK Pandey**, *i/b H Singh, for Respondent No. 2.*

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**CORAM: G.S. PATEL, J.**  
**DATED: 13th December 2019**

**PC:-**

1. The following order, by consent, will dispose of the Arbitration Petition, subject to certain further conditions.
  
2. There is a Deed of Rectification between the Ruturaj Vasant Coop Hsg Soc Ltd, Ashok S Kulaye (the Petitioner) and Divisha Developers LLP (the developer). This Deed has been signed in Mumbai. Essentially it rectifies the Permanent Alternate Accommodation Agreement to show that the allotment to Kulaye is of Flat No. B-604 and not B-601 on the 6th floor in “B” Wing admeasuring 462 sq ft carpet area of the reconstructed building at 22 MHB Colony, Gorai Nagar, Borivali (west) Mumbai 400 091.

There will be a corresponding Deed of Rectification required by Savitri and Kamal Idnani who will be taking Flat No. B-601 in rectification of their allotment of flat No. B-604. Stamp and registration will be attended to in due course, if necessary.

3. A copy of the Deed of Rectification and the confirmation emails from Idnanis are taken on record and marked “R2” collectively for identification.

4. Mr Bharucha on behalf of the Petitioner Kulaye has instructions to state that the Petitioner still has a claim in relation to the non-provision of an agreed car parking space and for certain other monetary compensation. Kulaye has invoked arbitration under the Permanent Alternate Accommodation Agreement but no Petition under Section 11 has been filed nor is there an agreement between the contracting parties for nomination of an Arbitrator.

5. In the meantime, the Society is presently contemplating invoking arbitration against the Developer, because, according to the society, the Developer has provided it with far fewer car parking spaces than agreed in the Redevelopment/Development Agreement between the Society and the Developer. Obviously, the individual flat purchaser will not be a party to that Society-Developer arbitration but the claims of the individual flat purchasers (including Kulaye) will be completely subsumed and covered by any arbitration between the Society and the Developer.

6. For the present, therefore, I will make no order in regard to the appointment of an arbitrator. I do, however, note Mr Bharucha's statement that he will file an appropriate Section 11 Application. He hopes at least that will trigger a Society v Developer arbitration, thereby addressing his issues on car-parking.

7. On instructions, Mr Bharucha confirms that Kulaye has no surviving claim for hardship compensation or arrears or rent, having received Rs. 2.84 lakhs from the developer in full satisfaction of these claims. Kulaye's claims in regard to any alleged area deficit in and other claims for damages are not abandoned or given up, but will be pressed if so advised. So noted.

8. Liberty to Mr Bharucha to have the Section 11 application after it is filed and served.

9. The Arbitration Petition is disposed of in these terms. There will be no order as to costs.

**(G. S. PATEL, J)**