

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

**ARBITRATION PETITION (L) NO. 12726 OF 2021
ALONGWITH
ARBITRATION APPLICATION (L) NO. 12743 OF 2021**

Bhupatrai K. Mehta

....Petitioner

V/s.

M/s. Aafcon Developers

....Respondent

Mr. Ranjeev Carvalho a/w Mr. Prayag Joshi i/b Joshi Law Associates for
Petitioner/Applicant.

Mr. Denish Desai- Partner of Respondent appeared in-person.

CORAM : K.R.SHRIRAM, J.

DATED : 15th JULY 2021

P.C. :

1. No affidavit in reply has been filed. On 08/07/2021 one Mr. Denish Desai partner of respondent appeared in person and stated that his advocate was not available. The matter was therefore stood over to today. Even today, he says his advocate is not available. It appears from the petition that petitioner has been out of possession since 2012. According to petitioner he has not been given possession of the flat that was to be given by respondent and the area with the facilities being offered also was less than what has been promised. Mr. Desai states, and he has his own reasons, he was willing to give alternate flat to petitioner which petitioner is unreasonably not taking. Mr. Desai states that all others have taken up

lesser than that was promised but petitioner is not accepting. Mr. Desai is unable to state how much money according to him is payable to petitioner. Mr. Desai states that he has given possession to all other members but because petitioner is not accepting the alternate flat and lesser amount which he has unilaterally decided to give to petitioner, he has not handed over possession to petitioner and he was not paying compensation to petitioner. This kind of arrogance of respondent cannot be accepted particularly when they are in breach and they have not fulfilled the promise given to petitioner. Respondent cannot be dictating terms. In the particulars of claim, petitioner is claiming a sum of Rs.17,22,000/- and also claiming interest @ 18% per annum. Respondent shall therefore, pay a sum of Rs.15,00,000/- to petitioner and the balance amount as claimed in Exhibit E to the petition shall be deposited with the Prothonotary and Senior Master, High Court, Bombay without prejudice to respondent's rights and contentions to be raised in the arbitral proceedings. This amount of Rs.15,00,000/- shall be paid within two weeks from today. For every day's delay respondent shall pay interest @ 2% per month or part thereof on this amount.

2. As regards the flat of which possession has to be given, petitioner states that respondent is offering 3 BHK Flat No.502 instead of 2 BHK Flat No.301. But Mr. Carvalho states that Flat No.502 is also lesser

than what petitioner has paid for. Mr. Desai agrees. Therefore, certainly there has to be an injunction with regard to both flats, Flat No.301 and Flat No.502 because if petitioner succeeded in the arbitral proceedings, he cannot be made to chase respondent for execution of the award. Here is a respondent who has taken money for extra area and offers lesser area.

Therefore, respondent, pending hearing and final disposal of arbitral proceeding, by themselves, or through their partners or servants, agents and assigns or any person claiming through or under them is enjoined from in any manner dealing with, or disposing, or parting with possession of, or alienating, or creating any third party right in respect to Flat No.301 as allotted to petitioner under the Registered Agreement dated 18/04/2012 and Flat No.502 which respondent is offering in Aafcon Classic, Ashok Anand Co.op. Housing Society Limited, Ashok Nagar Cross Road No.3, Kandivali (East), Mumbai – 400 101.

3. For any other reliefs as mentioned in the application under Section 9 of the Arbitration and Conciliation Act, 1996 (the Act) petitioner may apply to the Arbitrator with fresh application under Section 17 of the Act.

4. Arbitration Petition (L) No. 12726 of 2021 stands disposed. Place this petition for compliance on 26/07/2021.

ORDER IN ARBITRATION APPLICATION (L) NO. 12743 OF 2021

5. There is also an application under Section 11 of the Arbitration and Conciliation Act, 1996 which is listed today to which no reply has been filed though served. Notice is at Exhibit C to the application and the arbitration clause which is at Clause 19 to the agreement provides for arbitration by a Sole Arbitrator. In the notice dated 01/04/2021 applicant has suggested names of three advocates practicing in this court, one of whom is Mr. Shanay Shah. The court therefore appoints Mr. Shanay Shah, Advocate practicing in this court (Address : Chambers of Mr. Rohaan J. Cama, Room No.17-18, 1st Floor, Islam Building, 46-48, Veer Nariman Road, Fort, Mumbai – 400 001, Mobile No.: 9987483450, Email ID : shahshanay@hotmail.com) as Sole Arbitrator to arbitrate on all disputes arising out of and/or in connection with and/or relating to the Agreement dated 18/04/2012 and counter claim, if any.

6. The fees of the learned Arbitrator together with administrative expenses and out of pocket expenses to be shared equally between the parties and the same will be costs in the arbitral proceedings. All rights and contentions are kept open except, on arbitrability of disputes and jurisdiction of the learned arbitrator.

7. Learned Arbitrator to make disclosure in writing as required under Section 11 (8) read with Section 12 (1) of the Arbitration and Conciliation Act, 1996 directly to the parties within two weeks of receiving a copy of this order from any of the parties.

8. Arbitration Application (L) No.12743 of 2021 accordingly stands disposed.

(K.R. SHRIRAM, J.)