

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO.148 OF 2024

Abhay Damodar Kanhere

....Petitioner

Versus

Morya Infraconstruct Pvt. Ltd.

...Respondent

Mr. Sanjeev Sawant a/w. **Mr. Malhar Bageshwar i/b Abhishek Matkar**, Advocate for Petitioner.

Mr. Pankaj J. Das, Advocate for Respondent.

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : JUNE 16, 2025

ORAL JUDGEMENT :

Context and Background:

1. This Petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (***“Arbitration Act”***) seeking appointment of an arbitrator in connection with disputes and differences arising out of an Agreement for Sale dated November 16, 2019 (***“Agreement”***). The arbitration agreement is contained in Article 13.2 (found at Page 83 of the Petition) of the Agreement. In the interest of brevity, the arbitration agreement is not being extracted here. Suffice it to say that this matter falls within the jurisdiction of this Court.

2. The core scope of dispute between the parties is about the provision of amenities in the flat purchased by the Petitioner from the Respondent not being in conformity with the Agreement. It is common ground that the agreement in question has an arbitration clause as an arbitration agreement contained in Article 13.2 (Page 83).

Core Issue:

3. For purposes of these proceedings, the only objection that is presented for my consideration on behalf of the Respondent is a point of law, namely, that the disputes sought to be raised by the Petitioner are not arbitrable in view of a judgment dated October 25, 2024 passed by the Learned Single Judge of this Court in Second Appeal No.434 of 2023 (“**Second Appeal Judgement**”), whereby in the conclusion, it is stated that disputes amenable to the jurisdiction of the Real Estate (Regulation And Development) Act, 2016 (“**RERA Act**”) are non-arbitrable in nature. Consequently, it is submitted that the Learned Single Judge of this Court has held that once jurisdiction of RERA is attracted, the dispute is not amenable to arbitration. The upshot is that judicial discipline would require this Court to follow the same position as declared in that judgement.

Analysis and Findings:

4. In my opinion, this objection need not detain my attention significantly because of multiple reasons – *first*, the jurisdiction under Section 11 of the Arbitration Act is a specific one with very limited contours of examination permitted; *second*, issues of jurisdiction are actually left to the arbitral tribunal under Section 16 of the Act; and *third*, the ratio in the Second Appeal Judgement is not about whether arbitration is ousted by RERA but the converse – whether RERA’s jurisdiction is ousted by arbitration.

Not the Ratio:

5. In Para 3 of the said judgment in the Second Appeal, the question of law framed is explicitly set out, and reads as follows:-

*“**Whether the jurisdiction of Real Estate Regulatory Authority established under Section 20 of the Real Estate Regulation and Development Act, 2016 is ousted, if the agreement between the promoter and the allottee contains arbitration clause?**”*

*[**Emphasis Supplied**]*

6. Therefore, it is quite clear that what the Learned Single Judge ruled on was the question as to whether the jurisdiction of RERA, which has been established under the RERA Act would be ousted, if the agreement between the parties in those proceedings were to contain an arbitration clause. Evidently, that has been answered by the Learned

Single Judge in the said judgment, holding that the existence of an arbitration clause would not oust the jurisdiction of RERA.

7. This is a fairly straightforward ratio because the RERA is a regulatory authority, vested with certain punitive as well as remedial powers. That statutory jurisdiction created by legislation could never stand ousted by the existence of an arbitration agreement. On the other hand, whether the existence of RERA's statutory powers would render arbitral proceedings impossible to commence is not a question that was framed in the judgment, and therefore any observation in that regard can never be regarded as the *ratio* of the judgement.

8. As stated by the Supreme Court in *Ravi Ranjan*¹:

41. It is well settled that a judgment is a precedent for the issue of law that is raised and decided. The judgment has to be construed in the backdrop of the facts and circumstances in which the judgment has been rendered. Words, phrases and sentences in a judgment, cannot be read out of context. Nor is a judgment to be read and interpreted in the manner of a statute. It is only the law as interpreted by in an earlier judgment, which constitutes a binding precedent, and not everything that the Judges say.

[Emphasis Supplied]

9. Consequently, any observation that may indicate that the existence of jurisdiction of RERA would oust the arbitration

¹ *Ravi Ranjan Developers Pvt. Ltd. Vs. Aditya Kumar Chatterjee* – 2022 SCC OnLine SC 568

jurisdiction would be an obiter or a comment that does not form part of the ratio laid down in the aforesaid judgment.

Ouster – Mixed Question of Fact and Law:

10. A quick *prima facie* set of observations on the RERA Act would also be in order. The RERA Act contains a conventional provision on the jurisdiction of RERA being in addition to and not in derogation of other laws (Section 88). It also has a provision on the legislation having effect notwithstanding anything inconsistent contained in other laws (Section 89). These provisions would show that the RERA Act would apply in addition to other laws and other laws would apply in addition to RERA. Section 79 of the RERA Act provides for an ouster of jurisdiction of civil courts. However such ouster is in respect of entertaining suits and proceedings in respect of any matter that RERA, its adjudicating officers and the Appellate Tribunal is empowered to determine under the RERA Act. Therefore, it would be necessary for the court approached to examine whether the subject matter of determination presented to it is something that the RERA, the adjudicating officers or the Appellate Tribunal is empowered to determine.

11. Section 31 of the RERA Act provides for complaints against any promoter, allottee or real estate agent, alleging violation of the RERA

Act and subordinate law made thereunder. This essentially lays down the foundation of what RERA is empowered to determine – whether the RERA Act and subordinate law under it, is violated. Section 35 empowers RERA to investigate. Section 36 empowers RERA to issue interim orders in the context of any contravention of the RERA Act – basically a remedial power. Section 37 entails power to issue directions in implementation of the RERA Act. Section 38 entails powers to impose penalty or interest upon contravention of the RERA Act and subordinate legislation under it. Section 71 empowers adjudicating officers to compute compensation payable under Section 12 (truth in advertising and promotion), Section 14 (adherence to sanctioned plans and layouts), Section 18 (return of funds and restitution) and Section 19 (information rights).

12. Therefore, it is in respect of these matters that a civil court's jurisdiction would be ousted. What the court is called upon to determine would need to be examined from what the pleading discloses. Whether that matter is something that the instrumentalities under the RERA Act are empowered to determine would have to be considered next. This would present essentially a mixed question of fact and law. It is only thereafter that one could determine if the ouster in Section 79 of the RERA Act is attracted.

13. Therefore, in the context of arbitration, if one were to extrapolate that the ouster of the civil court's jurisdiction automatically means an ouster of the arbitral tribunals too (in itself, another important question of law), it is only when the arbitral tribunal is presented with a subject matter of adjudication that the import of the ouster would come into consideration.

Section 16 and Section 11 of the Arbitration Act:

14. This is eminently something capable of being adjudicated in an application under Section 16 of the Arbitration Act. I have to agree with Learned Counsel for the Petitioner in this regard. He would submit that the arbitral tribunal is eminently capable of dealing with any question of ouster under Section 16 of the Arbitration Act, and that this Court should restrict its examination to existence of the arbitration agreement, in terms of Section 11(6A) of the Arbitration Act.

15. There is considerable force in this submission. It is not for a Section 11 Court to lay down the law and articulate the ratio on whether the Learned Single Judge in the Second Appeal meant to hold that arbitration jurisdiction stands ousted when that was not the issue framed for being answered.

Directions:

16. On a separate note, Learned Counsel for both sides also express a joint view that the disputes in question in the present case are eminently capable of being resolved and given a little bit of time, the parties may not need to proceed to any dispute resolution forum.

17. Taking this into account and considering that an arbitration agreement is indeed in existence, no useful purpose would be served keeping these proceedings pending any further, but it would be appropriate to defer the effect of this order by a period of six weeks from the upload of the order on the website of this Court to enable the parties to constructively engage and attempt to resolve their disputes. That would be a course of action that they ought to prefer to presenting intricate questions of law that could end up with both parties expending serious financial resources in litigation.

18. Needless to say, should the disputes be resolved, there shall be no need for them to approach the arbitrator appointed hereby. Should the dispute not be resolved within the aforesaid period of six weeks, the arbitral tribunal appointed hereby shall have jurisdiction to commence the reference once the parties approach the arbitral tribunal.

19. With the aforesaid observations and directions this Petition is ***finally disposed of*** in the following terms :-

A] Mr. Rohit Joshi, a Learned Advocate of this Court is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of and in connection with the Agreement referred to above. The contact details of the Learned Arbitrator are set out below:-

Address : 203, Anmol Sapphire,
Baji Prabhu Deshpande Road,
Near Gajanan Vada Pav Centre,
Vishnunagar, Naupada,
Thane (West) – 400 602.

Email Id : : Joshi.rohit87@gmail.com

B] A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Petitioner within a period of one week from today. The Petitioner shall provide the contact and communication particulars of the parties to the Arbitral Tribunal along with a copy of this Order;

C] The Learned Sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Arbitration Act to the parties within a period of two weeks from receipt of a copy of this Order;

D] The parties shall appear before the Learned Sole Arbitrator on such date and at such place as indicated, to obtain appropriate directions with regard to conduct of the arbitration including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings etc. At

such meeting, the parties shall provide a valid and functional email address along with mobile and landline numbers of the respective Advocates of the parties to the Arbitral Tribunal. Communications to such email addresses shall constitute valid service of correspondence in connection with the arbitration and;

E] All arbitral costs and fees of the Arbitral Tribunal shall be borne by the parties equally in the first instance, and shall be subject to any final Award that may be passed by the Tribunal in relation to costs.

20. Needless to say, nothing contained in this order is an expression of an opinion on merits of the matter or the relative strength of the parties. All issues on merits are expressly kept open to be agitated before the arbitral tribunal appointed hereby.

21. All actions required to be taken pursuant to this order, shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]