
IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO.59 OF 2025

Gaurang Associates

....Petitioner

Versus

The Bombay Postal Co-operative

Housing Society Limited & Anr.

....Respondents

Mr. Allibas Delhiwala *a/w. Diksha Khadye i/b. L R & Associates,*
Advocate for Petitioner.

Mr. Rushikesh Gole, *Advocate for Respondents.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : APRIL 15, 2025

PC :

1. This Petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (***“the Act”***) seeking appointment of an arbitrator in connection with disputes and differences arising out of an Agreement dated March 18, 2016, pursuant to which the Petitioner had been engaged to carry out redevelopment of the Respondents' property.

2. It is not in dispute that the development agreement stood terminated. It is also not in dispute that the termination of the Development Agreement was considered by the Maharashtra Real Estate Regulatory Authority (***“RERA”***) and the same was upheld by an

Order dated April 25, 2024. This has been in cancellation of the project registration with RERA. Consequently, Learned Counsel for the Respondents submit that nothing would survive in the agreement between the parties, for arbitration to be permitted.

3. Be that as it may, it is now trite law that the existence of the arbitration agreement is the sole facet that the Section 11 Court must examine. Even if it is argued that disputes and differences between the parties as invoked stand adjudicated by the Order dated April 25, 2024 passed by RERA, that is a question for the arbitral tribunal to rule on in exercise of the jurisdiction under Section 16 of the Act. In the peculiar facts and circumstances of the case, while this Petition is disposed of by appointing an arbitral tribunal, the arbitral tribunal is requested to consider dealing with the objection on the availability of jurisdiction upfront as a preliminary issue in exercise of its powers under Section 16 of the Act.

4. In these circumstances, this Petition is *finally disposed of* by referring all disputes and differences covered by this proceeding to arbitration by the Learned Sole Arbitrator hereby appointed in the following terms:-

A] Mr. Rohit D. 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.

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 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.

5. 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.

6. 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.]