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

ARBITRATION PETITION NO.17 OF 2024

Tejas Ashish Naik & Anr. ....Petitioners
V/S
Piramal Capital & Housing Finance Ltd. & Anr. ....Respondents

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Mr. Nitesh Acharya with Mr. Akash S. Bhogil *for the Petitioners.*

CORAM : SANDEEP V. MARNE, J.
DATE : 12 DECEMBER 2025.

P.C.:

1. This Petition is filed under provisions of Section 34 of the Arbitration and Conciliation Act, 1996 (**the Arbitration Act**) challenging the Arbitral Award dated 11 December 2021 passed by the learned sole Arbitrator. By the impugned Award, the learned Arbitrator has directed the Petitioners to jointly and severally pay to Respondent No.1 sum of Rs.6,47,011/- alongwith interest failing which the amount is directed to be recovered by sale of Flat No.1209, 12^{th} Floor, Building No.3, Rupare Optima, Near Ashkar Hospital, GaneshNagar, Old Link Road, Kandivli (West), Mumbai.

2. I have heard Mr. Acharya, the learned counsel appearing for the Petitioners. Respondent No.1 was earlier represented by Advocate. However, on 10 October 2025 the Advocate appearing on behalf of Respondent No.1 sought the discharge. There is a background in which such discharge is sought, which is being discussed in the later part of the order. However, none has appeared on behalf of Respondent No.1.

Since Respondent No.1 is served with notice of Arbitration Petition, he had engaged an Advocate and he is fully aware of filing of the present Petition, it is not necessary to await appearance on behalf of Respondent No.1 any longer.

3. The first ground on the basis of which the impugned Award is challenged is the unilateral appointment of the Arbitrator. As a matter of fact Article 12 of the alleged Agreement provided for the Managing Director, Executive Director, President, Vice-President or other officers of Diwan Housing Finance Limited to act as the sole Arbitrator. The Award however shows that a Retired District Judge has acted as the Arbitrator.

4. The second ground of challenge is that the transaction in question has not fructified and the Petitioners have not purchased the concerned flat. On 10 October 2025 this Court had posed the query to the learned Advocate appearing for Respondent No.1 about documents and evidence of purchase of the flat in question by the Petitioners. This Court expected Respondent No.1 to place on record the original documents to verify the claim of purchase of flat. It appears that due to inability of Respondent No.1 to place on record documents showing purchase of flat, the Advocate appearing for the Respondent No.1 withdrew his Vakalatnama on 10 October 2025. Order dated 10 October 2025 reads thus:

> "1. The learned Advocate for the Respondents seeks a discharge in the matter, stating that he has been instructed by the Respondents that the loans in question have been assigned to another company.
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> 2. On the previous occasion, the Petitioners' Advocate had pointed out that the Petitioners are not purchasers of the flats in question. It is

> their case that, during the first meeting, the Respondents had obtained their signatures on certain forms but eventually did not execute any Agreement for Sale.
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> 3. Despite there being no such agreement, the concerned bank apparently disbursed the loan amounts to the developer, allegedly in collusion.
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> 4. In this backdrop, this Court directed the Respondents' Advocate to produce the original Agreements for Sale to verify the correctness of the rival contentions.
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> 5. Surprisingly, today, the Advocate for the Respondent seeks discharge.
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> 6. The Advocate for the Petitioners explains that, based on the alleged agreement containing an arbitration clause, an Arbitrator was unilaterally appointed and an *ex parte* Award was passed, which is now sought to be executed against the Petitioners.
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> 7. In these circumstances, the Petitioners were compelled to institute the present Application under section 34 of the Arbitration Act and Conciliation Act, 1996. A *prima facie* case is made out which warrants an unconditional stay on the implementation of this Award.
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> 8. In view of the above, I am inclined to grant prayer clause (B) which reads as under:-
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>> "(B) Pending the hearing and final disposal of this Petition, this Court be pleased to stay the effect, implementation and operation of *ex-parte* Award dated 11.12.2021 passed by the learned Sole Arbitrator-Rajendra B. Agarwal (Retd. District Judge) [Respondent No.2] in all manner."
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> 9. The learned Advocate for the Respondents is permitted to make an appropriate application before the Registry to obtain discharge.
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> 10. List the matter on 12th December 2025.
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> 11. All parties to act on an authenticated copy of this order."

5. There is thus reason to infer that the transaction of purchase of flat has actually not taken place.

6. The arbitration proceedings were initiated for recovery of principal amount of Rs.5,76,006/- which is shown as money lent towards housing loan. It is impossible to believe that a flat in Kandivli

can be purchased with loan amount of Rs.5,76,006/-. It is the case of the Petitioners that when they approached the Developer, their signatures were taken on blank and format papers with a clear idea that proper documents relating to loan would be executed once the Agreement for Sale is registered. It appears that by taking signatures of the Petitioners on loan documents, certain amount was transferred by Respondent No.1 to the Developer for booking of a flat. There is nothing on record to indicate that the flat in question is ultimately purchased by the Petitioners.

7. The next ground of challenge to the Arbitral Award is violation of principles of natural justice as Petitioners were not served with the notice of arbitral proceedings. The arbitral proceedings appear to be conducted merely by way of formality. This Court has otherwise come across several *ex-parte* Awards passed by Arbitrators of Respondent No.1 in a mechanical manner.

8. The majority view in Constitution Bench in ***Central Organization for Railway Electrification vs. ECI SPIC SMO MCML (JV) a Joint venture Company***, 2025 (4) SCC 641 has ruled against unilateral appointment of Arbitrator. It is held in paragraphs 129 and 170.5 as under:

> **129.** Equal treatment of parties at the stage of appointment of an arbitrator ensures impartiality during the arbitral proceedings. A clause that allows one party to unilaterally appoint a sole arbitrator is exclusive and hinders equal participation of the other party in the appointment process of arbitrators. Further, arbitration is a quasi-judicial and adjudicative process where both parties ought to be treated equally and given an equal opportunity to persuade the decision-maker of the merits of the

> case. An arbitral process where one party or its proxy has the power to unilaterally decide who will adjudicate on a dispute is fundamentally contrary to the adjudicatory function of Arbitral Tribunals. [Gary Born, *International Commercial Arbitration*, (2nd Edn., Kluwer 2014) p. 1952.]
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> **170.5.** Unilateral appointment clauses in public-private contracts are violative of Article 14 of the Constitution;

9. In my view therefore the impugned Arbitral Award is unsustainable and liable to be set aside. Setting aside the Award would not render Respondent No.1 remediless as it can take necessary steps for constitution of Arbitral Tribunal for resolution of disputes.

10. The Petition accordingly succeeds. Award dated 11 December 2021 is set aside. Arbitration Petition is allowed in above terms. No order as to costs.

SUDARSHAN RAJALINGAM KATKAM
Digitally signed by SUDARSHAN RAJALINGAM KATKAM Date: 2025.12.15 19:22:40 +0530

(SANDEEP V. MARNE, J.)