IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION PETITION NO. 224 OF 2024

Pant Nagar Ashwamegh Co-operative Housing Society Limited ... Petitioner

Versus

Kavya Construction Company (formerly known as Akruti Constructions Company) ... Respondent

Mr. Ranjeev Carvalho *a/w Mr. Rishab Murali and Ms.Sakshi Agarwal i/b Mr. Bipin Joshi for the Petitioner.*
Mr. Chetan Kapadia, Senior Advocate *a/w Ms. Kausar Banatwala and Ms. Sneha Mahawar i/b Mr. Tushar Goradia for the Respondent.*

CORAM:	**SOMASEKHAR SUNDARESAN, J.**
RESERVED ON:	**MARCH 6, 2025**
FURTHER RESERVED ON:	**OCTOBER 15, 2025**
PRONOUNCED ON:	**NOVEMBER 21, 2025**

JUDGEMENT :

<u>Context and Factual Background:</u>

1. This Petition is filed under Section 9 of the Arbitration and Conciliation Act, 1996 (***"the Act"***) essentially seeking, pending execution of an Arbitral Award dated August 2, 2021 (***"Arbitral Award"***), payment of a sum of Rs.1.68 Crores of which Rs.1.43 Crores is towards arrears in rent and brokerage along with interest @ 18% per annum; and a

direction that the original documentation surrounding the subject redevelopment be handed over to the Petitioner.

2. The Petitioner, Pant Nagar Ashwamegh Co.operative Housing Society Limited (***"Society"***) is a Housing Society which had appointed the Respondent, Kavya Construction Company a partnership firm (***"Developer"***) for redevelopment of its premises by executing a Development Agreement dated January 17, 2007. The Society comprises 30 members and occupants and is entitled to land admeasuring 6600 sq. ft bearing Survey No. 236-A corresponding to CTS No. 5681 (Part) namely Building No. 16 at Pant Nagar, Ghatkopar (***"Property")***.

3. The Development Agreement was accompanied by a Power of Attorney of the same date, i.e., January 17, 2017. The Intimation of Disapproval (***"IOD"***) for the project had been received on September 1, 2010. A few months thereafter, the parties executed a first Supplemental Agreement on April 4, 2011. A second Supplemental Agreement followed on December 6, 2013. All the aforesaid documents are collectively referred to as ***"Development Documentation"***.

4. The second Supplemental Agreement cancelled the first Supplemental Agreement and it was agreed that each member of the

Society would get certain entitlements set out in more detail therein including Permanent Alternate Accommodation with a new building comprising a ground floor, stilt and 16 upper floors being created by the redevelopment. The members of the Society were entitled to transit rent of Rs.17,000/- per month with an escalation of 10% every 11 months. So also brokerage in the sum of Rs.17,000/- per month escalated by 10% every 11 months was contracted. Each member was entitled to a corpus sum of Rs.3,50,000/- of which Rs.2,65,000/- was payable at the time of vacation and balance of Rs.85,000/- was payable against handing over of the possession of the redeveloped premises. In the event of certain enhanced FSI being available, a further sum towards corpus were also contracted. The new building was meant to be constructed and handed over within a period of 24 months with a grace period of six months from the issuance of the Commencement Certificate. The Developer was to provide a bank guarantee of Rs. 2 Crores which was meant to be released in stages. Certain enhanced payments were also to be made by way of further rent and compensation in the event of the deadline with an aggregate period of 30 months for the delivery of the new flats being missed by the Developer.

5. The members of the Society vacated their premises and the building was demolished in June 2014. The Commencement Certificate

was however issued only by June 24, 2016. The deadline of 30 months would therefore be computed from June 24, 2016.

6. Various breaches were alleged against the Developer. The Society filed a Arbitration Petition (L) No.1495 of 2019 under Section 9 of the Act (***"First Section 9 Petition")***. The parties arrived at Consent Terms dated February 18, 2020 (***"Consent Terms"***). The arrears were to be cleared by the Developer with further compensation while the deadline for completion was reset to March 2022. The Supplemental Agreements were meant to be registered and building plans were meant to be amended with two wings one for the rehabilitation component and the other for free sale component.

7. Further breaches of the Consent Terms took place leading to filing of Arbitration Petition (L) No.1949 of 2021 under Section 9 of the Act (***"Second Section 9 Petition")*** and Contempt Petition (L) No. 1590 of 2021 for breach of the Consent Terms. An order dated February 9, 2021 (***"Section 9 Order"***) was passed under the Second Section 9 Petition, disposing it of by converting it into an Application under Section 17 of the Act and recording that all contentions would be left open to the Arbitrator with the amounts accepted by the Society until then being treated as without-prejudice acceptance of payments. A

schedule of payments until 2023 was recorded and agreed by the parties.

8. The Learned Arbitral Tribunal treated the Section 9 Order as an Order under Section 17 of the Act and kept the Section 17 Application pending to monitor compliance. The Developer was directed to file affidavit of disclosure with an update of the status of various approvals, permissions, timelines etc. One such disclosure led to the discovery that the property had been encumbered in favour of a non-banking finance company, ECL Finance Limited (***"ECL"***).

9. Eventually, the Learned Arbitral Tribunal passed the Arbitral Award on August 2, 2021. The Award essentially was a direction to comply with the Consent Terms dated February 18, 2020, with a full disclosure of the status of the project being directed. That apart, deficit stamp duty on the Supplemental Agreements and registration was directed. The other documentation such as Permanent Alternate Accommodation were also to be executed and registered and the arbitral proceedings came to be disposed of. The Society's counter claim was also disposed of as withdrawn.

10. Essentially, this would substantially constitute second round of consent terms and the Arbitral Award is a Consent Award between

the parties. Thereafter, the disputes again arose between the parties with the Consent Award not being complied with. This led to the Society passing a resolution at a Special General Body Meeting terminating the Development Documentation on September 18, 2021. On October 2, 2021, the Society issued a notice communicating the termination of the Development Documentation (***"Termination Notice"***). Thereafter, the captioned Petition was filed on March 31, 2022.

11. On September 1, 2023 a Learned Single Judge of this Court passed an order recording the undertaking by the Developer to pay a sum of Rs.1.40 Crores without prejudice to the rights and contentions of the parties, only to demonstrate *bona fides* of the Developer. On October 9, 2023, the Society confirmed receipt of the said sum of Rs.1.40 Crores. On November 22, 2023 the Maha RERA issued a Registration Certificate for the project valid until December 21, 2024 subject to renewal.

12. On August 6, 2024 the Municipal Corporation of Greater Mumbai, (***"MCGM"***) issued a warrant of attachment on the Property on account of outstanding property taxes being in arrears. By December 3,

2024 the MCGM issued further demand notice threatening to sell the Property by auction in the event of a default.

13. Pursuant to an order dated February 25, 2025 an affidavit cum indemnity dated March 3, 2025 was filed by the Developer undertaking that the project would be completed and the flats will be handed over by March 2027. The Developer also assured that out of borrowings from ECL, only an amount of Rs.21.50 Crores related to the project and the Court was assured that such dispute would be settled within a period of four months and that the Society would be indemnified from any claim made by ECL on the property and that rehabilitation component of the building would be handed over to the members of the Society. The Developer also assured that the compensation due to the members of the Society as well as Municipal dues would be paid within specific deadlines.

14. On June 18, 2025 Beacon Trusteeship Limited (***"Beacon"***) claiming to be a debenture trustee acting on behalf of ECL issued a possession notice purporting to take symbolic possession of the Property purportedly in exercise with clause under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (***"the SARFAESI Act"***). The claim against

the Developer and its related parties was in the sum of Rs.429.04 Crores. Securitisation Application No.404 of 2025 challenging a notice of symbolic possession and other measures under the SARFAESI Act have been filed by the Society before the Debt Recovery Tribunal, and is pending.

Contentions of the Parties:

15. The core grievance by the Society is that the Developer has not completed the construction of the project in terms of the bar chart submitted to the Learned Arbitral Tribunal in the run up to the Arbitral Award. So also, there is allegedly non-compliance with the directions to provide full disclosure as well, leaving the Society in the dark. Neither have arrears been paid in full nor have the Permanent Alternate Accommodation Agreement and the Supplemental Agreement been registered. Additional FSI of 0.5 had been availed of, which also leads to an entitlement of the Society to be paid a further sum of Rs.55 Lakhs.

16. The Developer's contention is that the Petition under Section 9 of the Act is not the avenue available in law to the Society since the Arbitration Award has already been passed. The Developer would contend that the Arbitral Award ought to be executed instead of filing an Application under Section 9 of the Act. It is further contended that

having accepted a sum of Rs.1.40 Crores in the course of hearing of this Petition, the Society has given a go-by to its Termination Notice and in fact has taken further steps in line with the Arbitral Award to further redevelop the property, rather than moving away from the Arbitral Award to terminate it. Construction of six floors is said to have been completed, with nine floors remaining and total payment of Rs.25.78 Crores is said to have been made towards the project. The disclosures are defended as having been valid in compliance with the Arbitral Award and indeed it is claimed that it was the Society that refused to furnish the No Objection Certificate to MHADA even while expecting the Developer to pay premium to MHADA.

17. The Developer contends that he is ready and willing to make payment to MHADA subject to the Society confirming the withdrawal of the Termination Notice. It is further contended that the Developer is in the midst of arriving at a settlement with ECL and the Petitioner's concerns in relation to enforcement of security interest by ECL would stand addressed and indemnified by the Developer.

Analysis and Findings:

18. I have heard Learned Advocates for the parties Mr. Ranjeev Carvalho, Learned Advocate on behalf of the Society and Mr. Chetan

Kapadia, Learned Advocate on behalf of the Developer at length. With the assistance of Learned Advocates, I have examined the material on record. Initially, the matter had been heard and reserved on March 6, 2025. Thereafter, considering the further time having passed by, the matter was listed afresh on October 15, 2025 to get an update of any subsequent development in the matter and to factor in the same.

19. At the threshold, it must be noted that this Petition is filed for protective measures to secure the Arbitral Award, i.e. after the award was passed, which essentially would need to entail that the stance of the Society would need to be in furtherance of the Arbitral Award. However, the post-award Section 9 Petition unequivocally records facts and contentions that move in a diametrically opposite direction. While the Arbitral Award entails completion of the redevelopment by the Developer within specific deadlines, the intention to terminate the Agreement would flow in the opposite direction.

20. Therefore, the Termination Notice truly cannot be in aid of the execution of the Arbitral Award, which is the prayer made by the Society. It is another matter if the termination were to be treated as a separate and new event, with a Section 9 Petition being filed without any linkage to the execution of the Arbitral Award. This directional

dichotomy in the position of the Petition is what needs to be dealt with while considering the appropriate manner of disposal of this Petition. What is noteworthy is that, in the course of hearing of this very Petition, there has been a further movement towards the redevelopment rather than termination.

21. The Petitioner would contend that an Application under Section 9 may indeed be filed after an Arbitral Award and would cite multiple judgments in support of this proposition. While one cannot with the proposition, it cannot be forgotten that the Arbitral Award entails completion of the redevelopment within the same relationship whereas the Termination Notice entails parting of ways and the cessation of the relationship. It is in this light, that the reliefs as sought in terms of return of the Development Documentation and non-interference in the project would not only run counter to the Arbitral Award but also would present facts relating to a fresh cause of action being pursued by the Society.

22. After this Petition was filed, the Developer has indeed paid a sum of Rs.1.40 Crores to the Society, which has indeed been accepted by the Society. Indeed such acceptance is without prejudice to the Petitioner's rights and contentions. Whether such payment and

acceptance is an action that recognizes that the Termination Notice is given a go-by cannot be conclusively and finally ruled upon in a Section 9 Petition, but *prima facie* it would suggest that the direction is contrary to the direction of the Termination Notice issued after the Arbitral Award, while it is securing the Arbitral Award that would form the subject matter of a post-award Section 9 Petition.

23. Therefore, *de hors* this Petition, if the Society were to initiate fresh arbitration proceedings in view of the disputes and differences between the parties, recourse to Section 9 of the Act would be differently available. Indeed, receipt of Rs.1.40 Crores after this Petition was filed may suggest a *prima facie* view of the intent to terminate having been diluted, but equally, it can be stated that such receipt is without prejudice to its rights and contentions which would indeed mean that the Society is not estopped and precluded from terminating the Development Documentation. After all, the redevelopment was originally envisaged in 2007 and eventually commenced in June 2016 and is yet to be completed in 2025. It would be totally open to the Society to give a redevelopment agreement a go-by and assert a fresh bundle of enforcement rights by reason of the cause of action to issue the Termination Notice now being available to the Society. However,

that is not the framework in which the current Section 9 Petition has been filed. This cannot be wished away.

24. Therefore, whatever is stated in this judgment is also without prejudice to the rights that may be available in law to the Society to take such fresh action as may be available to it in law, whether under Section 9 or otherwise.

25. It is equally seen that the Developer has not made payment of the outstanding property taxes, which could jeopardize the interests of the Society. So also, the security interest said to have been created over the Society's property, with the indebtedness secured running into several hundred crores, undermines the interest of the Society and that too when the overall indebtedness is said to be much wider and larger outside the ambit of the monies borrowed and deployed in the project for redeveloping the Society's building. Therefore, the Section 9 Court cannot be blind to the situation at hand, particularly in view of the jurisdiction being an equitable jurisdiction.

26. In these circumstances, the question that arises is how the Section 9 Court, regardless of the dichotomy between seeking protection of the rights flowing under the Arbitral Award and the attempt to terminate the relationship, can best balance the competing interests of

the parties. Rather than taking a narrow technical view that the Section 9 Petition in the manner drafted cannot be considered at all, it is considered appropriate to issue directions to the Developer, adopting the Developer's own stand that the payment and receipt of Rs.1.40 Crores is an indication of moving forward with the redevelopment rather than proceeding with the termination.

27. By merely stating so, the Developer cannot be said to be absolved from the need to take specific measures under directions of this Court to secure the interests of the Society. Therefore, bearing the aforesaid stance of the Developer in mind, and indeed the position of the Society that it had approached this Court to secure the fruits of the Arbitral Award, it is felt necessary to issue specific directions to the Developer so that the interests of the Society can be protected and the competing interests of the parties can be balanced and adjusted.

Directions and Order:

28. With the aforesaid analysis in mind the following order is passed:

(a) The Developer is directed to clear all dues payable in respect of the property taxes payable to MCGM in respect of the Society's property within a period of four weeks from this order;

(b) The proposed schedule of computation contained in the affidavit of the Developer tendered by the Learned Senior Advocate on behalf of the Developer shall be adhered to, and the amounts payable to the Society shall be cleared in the following manner:

(i) The outstanding compensation payable as of December 31, 2024, then computed in the sum of Rs.3,07,19,160/- shall be paid in three equal instalments between the date of this Order and January 31, 2026, in the terms set out below;

(ii) It is noteworthy that in the affidavit dated March 3, 2025, the entire amount had been promised to be cleared by the Developer by August 16, 2025. The Developer was expecting execution of fresh Consent Terms for this commitment to commence. However, without the need for signing fresh consent terms, it is directed that such amount shall be cleared by extended deadline granted hereby. Should the

Society write to the Developer indicating that it intends to pursue the redevelopment and not effect the termination (such indication may be made by a written notice to be issued by Advocates on record for the Society to Advocates on record to the Developer), the aforesaid direction to pay this entire amount in three equal instalments shall be complied with;

(iii) Should the Society indicate in writing to the Developer that it is not interested in continuing with the redevelopment (the Society shall be entitled to confirm that it stands by the Termination Notice) the parties shall effect adjustment of the sum of Rs.1.40 Crores towards the dues owed by the Developer to the Society in respect of the period preceding the Termination Notice. The amounts due and owed from the Developer to the Society and its members would stand adjusted against the said sum of Rs.1.40 Crores. Should there be any residual amount, the same would be held by the Society subject to adjustment in any new arbitration proceedings that may be initiated and conducted including a claim for damages, for the disputes going forward. Should there be a shortfall in the amount owed by the Developer to the Society, the Society shall be at liberty to pursue the same including by way of a fresh Section 9 Petition to secure its interests after an unequivocal stance on the Termination Notice; and

(iv) Should the Society opt for continuing with the redevelopment, all amounts payable after December 31, 2024 until December 31, 2025 shall be paid by the Developer to the Society (over and above the three equated instalments referred to above) no later than January 31, 2026. In such event, the monthly compensation starting from January 1, 2026 shall be paid before 15th day of each and every calendar month without any delay, and any delay shall attract interest in the first instance at 18% per annum, subject to such orders as an Arbitral Tribunal may deem fit after hearing the parties;

(c) The No Objection Certificate to be secured from MHADA shall also be secured no later than December 31, 2025;

(d) Should the Society agree to continue with the redevelopment, the bar chart set out in Exhibit 1 to the affidavit dated March 3, 2025 shall be acted upon and further steps to be taken by the Developer in respect of the redevelopment shall be implemented, with the only adjustment that the commencement of such activity would be from January 1, 2026 whereas the commencement of the activity indicated in the bar chart is from April 2025; and

(e) Nothing contained in this judgement shall preclude the Society from making a claim for continued payment of transit rent and compensation even after the date of the Termination Notice until free and vacant possession of the Society's property is handed back to the Society either in the form of redeveloped premises or without the premises being redeveloped as it stands.

29. With the aforesaid directions, the ***Petition is finally disposed of.***

30. It is noteworthy that the Arbitral Award itself was a consent award and not a product of adjudication of issues. Needless to reiterate, it would be completely open to the Society to take a decision that it does not desire to act further on the Arbitral Award by entrusting the redevelopment to the Developer, and initiate arbitration proceedings. In such event it shall be completely open to the Society to file fresh arbitration proceedings including proceedings under Section 9 of the Act to protect its interests pending such newly initiated arbitration.

31. With the aforesaid directions, the caption Section 9 Petition is ***finally disposed of.***

32. 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.]