

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

COMM. ARBITRATION APPLICATION NO.164 OF 2024

Shree Sai Realty .. Applicant
Vs.
Jan Vikas Co-operative Housing Society Ltd. .. Respondent

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Mr. Pankaj Pandey a/w Mr. Smit Nagda, Advocates for the Applicant.

Mr. Mehul Shah i/by Mr. Abhishek Nikharge & Mr. Karan Desai, Advocates for the Respondent.

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CORAM : GAUTAM A. ANKHAD, J.

DATE : 3rd OCTOBER 2025.

P.C. :

1. This Application seeks appointment of an arbitrator under a Memorandum of Understanding for development of a property dated 29th September 2019. The arbitration agreement is at Clause 23 of the agreement (at page 66-67 of the Application). The arbitration was invoked on 20th October 2022. Mr. Pankaj Pandey, learned counsel for the Applicant submits that the existence of the arbitration agreement is not denied and hence the sole arbitrator ought to be appointed to adjudicate the disputes.

2. Mr. Mehul Shah, learned counsel for the Respondent opposes the Application on the ground that this is only an agreement to enter into an agreement. The parties have not executed any development agreement and no rights accrued in favour of the Applicant. He further submits that document is not stamped in accordance with law and the question of appointing tribunal does not arise.

3. I have heard the learned counsels and perused the paper-book. I find that the arbitration agreement exists at Clause 23 referred to above. In my limited jurisdiction under Section 11, I am not getting into contested facts or matters that require appreciation of evidence. It is settled law that as held by the Hon'ble Supreme Court in *Interplay between Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, in Re* (2024) 6 SCC 1 and followed in subsequent judgment in the case of *SBI General Insurance Company Vs. Krish Spinning*, (2025) 3 SCC (Civ) 567 that the Section 11 Court ought not to venture beyond examining the existence of an arbitration agreement. Any objection in relation to the stamping of the agreement also falls within the ambit of the Arbitral Tribunal.

4. Being satisfied that an arbitration agreement is in existence and that the arbitration has been duly invoked, I refer all disputes and differences between the parties under the above Memorandum of Understanding dated 29th September 2019 to arbitration by a Sole Arbitrator. In these circumstances, the Commercial Arbitration Application No.164 of 2024 is disposed of in the following terms :-

- A) Mr. Cyrus Bharucha, learned Advocate of this Court is appointed as 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 Mr. Cyrus Bharucha, the Sole Arbitrator, are 2nd Floor, Savla Chambers, Cawasji Patel Road, Kalaghoda, Fort, Mumbai-400 001, Email: cy.bharucha@gmail.com.

- B) A copy of this order will be communicated to the learned Sole Arbitrator by the advocate for the Applicant within a period of one week from the date on which this order is uploaded on the website of this Court. The Applicant 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 advocate for the Applicant so as to enable them to file the same in the Registry of this Court. The Registry of this Court shall retain the said Statement on the file of this Application and a copy of the same shall be furnished by the advocate for the Applicant to the Respondent;
- 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;

- E) The fees of the learned Sole Arbitrator shall be as per the Fourth Schedule of the Act read with the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018. 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.
- F) The arbitration shall be held at Mumbai. All rights and contentions of the parties including on stamp duty, jurisdiction are kept open to be agitated before the Arbitral Tribunal.

[GAUTAM A. ANKHAD, J.]