

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

COMMERCIAL ARBITRATION APPLICATION NO. 169 OF 2024

Regent Spaces

... Applicant

Vs.

1. Deepa Co-Operative Housing Society Limited
2. Rajiv Pushpavadan Shah
3. Arpana Rajiv Shah

... Respondents

WITH

ARBITRATION APPLICATION (L) NO. 21028 OF 2023

1. Rajiv Pushpavadan Shah
2. Arpana Rajiv Shah

... Applicant

Vs.

1. Regent Spaces
2. Deepa Co-Operative Housing Society Limited

.. Respondents

Mr. Jenish Dinesh Jain *i/b J.N. Jain, for Applicant in ARBAPL-21028-2023..*
Mr. Pankaj Pandey *a/w. Smit K. Nagda, for Regent Spaces.*
Mr. Yuvraj Singh *a/w. Mr. Ronish Mehta i/b Vinod Mistry and Co., for Deepa CHSL.*

CORAM : SOMASEKHAR SUNDARESAN, J.

Date : September 16, 2025

Order :

1. Commercial Arbitration Application No 169 of 2024 is an Application filed under Section 11 of the Arbitration and Conciliation Act, 1996 (“***the Act***”) taken out by the Applicant-Developer raising disputes and differences in relation to a Development Agreement dated May 29, 2019 (“***Development***”

Agreement") invoking arbitration against against the Respondent-Society. The core grievance is a claim for damages, for the Society not having vacated two members of the Society entitled to Flat No. A2 and Garage No. 3.

2. It is apparent from the record that the arbitration agreement was invoked by the Applicant on July 4, 2023. The existence of an arbitration clause in the development agreement is not in doubt. The objection from the Respondent Society to the application is that the grievance relates to non-vacation in time by the member, and that no claim can be made against the Society.

3. Arbitration Application (L) No. 21028 of 2023 is an application taken out by the very same members, namely Rajiv Pushpavadan Shah and Arpana Shah ("***Shahs***") who were the parties entitled to flat No. A2. The member seeks to invoke arbitration in terms of the Permanent Alternate Accommodate Agreement, which, in Clause 22 provides that this Applicant-member has explicitly endorsed that all that terms of the Development Agreement would be binding on the parties to the PAAA. Needless to say, all the three parties are signatories to the PAAA dated September 15, 2020 ("***PAAA***").

4. Learned Counsel for the Society would strenuously urge that the Shahs not having signed the Development Agreement, cannot be regarded to have

privity to the arbitration agreement. He would point to the definition of the term “Parties” in the Development Agreement and would point to the disputes and differences pertaining only to those arising between the Society and the Developer. Likewise, he would submit that Clause 22 would be of no avail to the Shahs inasmuch as it does not explicitly use the word “*incorporate*” to incorporate the arbitration agreement into the provisions of the PAAA. He would submit that the parties ought to have had an explicit intent to arbitrate, and unless there is an explicit intent to arbitrate, it cannot be said that the Society had agreed to resolve disputes relating to non-vacation by the Shahs to arbitration and participate in the proceedings reserving the disputes raised by the Developer.

5. Having heard Learned Counsel for the parties at some length, it is apparent that initially, the Shahs had held out against signing the Development Agreement. Therefore, in 2019, they did not execute the Development Agreement, whereas every other member of the Society has executed the Development Agreement. However, later on Shahs appear to have fallen in line and have executed the PAAA confirming thereby that they would be bound by all the terms and conditions of the Development Agreement. This is not, to my mind, a generic reference to the Development Agreement by incorporation but is an explicit confirmation that the Shahs

have given up their objection to signing the Development Agreement and by signing the PAAA, they have, in fact, given it the effect of signing the Development Agreement.

6. That apart, even if one were to treat the Shahs as a third party to the Development Agreement, they would fall, *prima facie*, within the ambit of “veritable parties”. This is because every other member of the Society is meant to be a signatory and meant to be bound by the Development Agreement and thereby the arbitration clause. The law on making veritable parties, a party to arbitration proceedings, is well developed now with the articulation set out in *Cox and Kings*¹ and more recently in *ASF Buildtech*². The PAAA is a deeply interconnected agreement linked to the Development Agreement. It would be apparent on the face of the record that the Shahs lie at the heart of the controversy between the Developer and the Society as well, and therefore, they would also be veritable parties who would need to be heard in the process.

7. The Developer has no objection to the Shahs being part of the arbitration proceedings inasmuch as the Developer's claims relate to the alleged losses suffered by the Developer owing to actions of the Shahs. So

¹ *Cox and Kings Ltd. v. SAP India (P) Ltd.*, (2024) 4 SCC 1.

² *ASF Buildtech (P) Ltd. v. Shapoorji Pallonji & Co. (P) Ltd.* - 2025 SCC OnLine SC 1016

also the reliance on ***MR Engineers***³ by Learned Counsel for the Society is clearly distinguishable inasmuch as the issue in the facts of that case was whether the parties had explicitly agreed to be bound by an arbitration clause in a contract distinct from the main contract merely because it was a subcontract. It was in these circumstances that the law was declared in ***MR Engineers*** whereas in the facts of a case governing a housing society and its members, who are, otherwise always treated as being bound by a decision of the collective, it would be seen that once the Society believed that a dispute to the developer is arbitrable, such decision would also have been binding on the members. Therefore, the only lacuna that the Shahs had not physically signed the Development Agreement, stands cleaned up by the Shahs executing the PAAA and agreeing to be bound by the provisions of the Development Agreement.

8. The decision in ***Avenues Seasons Properties LLP***⁴ by a Learned Division Bench of this Court is also distinguishable inasmuch as in the facts of that case the members who were not signatories to the Development Agreement did not fall in line to execute another document such as the PAAA, which has been executed by the Shahs in the facts of this case.

³ *M.R. Engineers & Contractors Pvt. Ltd. Vs. Som Datt Builders Ltd. -SC Civil Appeal No. 4150 of 2009 dated July 7, 2009*

⁴ *Avenues Seasons Properties LLP Versus. Nissa Hoosain Nensey & Ors. In Appeal Nos. 42, 43 and 44 of 2024 decided on 22 October 2024*

9. Therefore, on a conjoint reading of the Development Agreement and the PAAA, it is apparent that the Shahs have bound themselves to the arbitration agreement and would be expected to be able to be litigated against and to litigate under the arbitration clause set out in the Development Agreement. Be that as it may, the existential questions over the arbitration agreement would still be available to the Society to raise under an appropriate application to be taken out under Section 16 of the Act before the Learned Arbitral Tribunal if they are so advised.

10. In these circumstances, no useful purpose would be served keeping these applications pending any further. The two applications are interconnected and the presence of the Shahs in the proceedings as veritable parties would be quite necessary for the disputes between the Developer and the Society. In case circumstances, both the references under both the applications are made to the same arbitral tribunal, which is constituted in the following terms :

A] Mr. Bhavik Manek, an 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 particulars of the arbitrator

are set out below :

Office Address:- Office No. 20-A, 2nd Floor,
Prospect Chambers Annexe, Pitha Street, Fort,
Mumbai – 400001.

Email : bhavikpratapmanek@gmail.com

B] A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates 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 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;

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 Arbitral Tribunal in relation to costs.

11. 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.

12. The captioned Applications stand ***finally disposed of***. In view of the disposal of the proceedings, attendant Interim Applications, if any, also stand ***disposed of***.

13. 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.**]

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