

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMM. ARBITRATION APPLICATION NO. 257 OF 2024
ALONGWITH
COMM. ARBITRATION PETITION NO. 469 OF 2024

Nirlon Employees Co-operative Housing So- ...Applicant/
ciety Limited ...Petitioner

Versus

Shivam Parivar Developers Private Limited
and Ors. ...Respondents

Mr. J.S. Kini a/w *Mr. Aum Kini i/b Ms. Sapna Krishnappa for the
Petitioner in CARBP/469/2024.*

Mr. Arun Dubey i/b *Mr.Sanjay Mishra Nos.2 and 3 in CARBP/
469/2024.*

Mr. Chetan Kapadia, Senior Advocate a/w *Mr. Sheelang Shah,
Ms.Sabina Mahadik and Mr. Pankaj Uttaradhi for Respondent Nos.
1, 5 and 6 in CARBP/469/2024.*

Mr. Ajit Bhosale, Director of Respondent No.1 present

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : JULY 1, 2025

ORDER :

1. Commercial Arbitration Petition No. 469 of 2024 is a Petition under Section 9 of the Arbitration and Conciliation Act, 1996 (“***the Act***”). Commercial Arbitration Application No. 257 of 2024 is an Application under Section 11 of the Act.

2. Even a bare reading of the annexures to the Section 9 Petition will show that there has been series of orders in the past by various Benches of this Court which have been filed in relation to the arrears payable by Respondent No.1 – Developer to the Petitioner – Society from time to time. It is common ground that since November 2024 there has been no payment made to the Petitioner – Society.

3. Learned Counsel for the Petitioner submits that arrears of transit rent alone is to the tune of Rs.10.87 Crores, while the total arrears are to the tune of Rs.27.46 Crores. Learned Counsel for the Petitioner also points out that interest has also been directed by various Learned Single Judges of this Court in the past and that is not even forming part of these numbers. According to him, Respondent No.1 – Developer has no intention to pay without use of force by this Court.

4. Learned Senior Counsel on behalf of Respondent No.1 has instructions to commit to a schedule of payment and a committed time-line for completion of the project. According to him, Occupation Certificate should be available by September 2025. This statement is made on the basis of confirmed instructions from one Mr. Ajit Bhosale who is Director of Respondent No.1 who is also present in the Court.

5. The committed time-line for completion of project is set out in the table below :

Sr. No.	Event	Date
1.	Completion of construction of 126 Flats	By 31 st July, 2025
2.	Submission of Application for Occupation Certificate	By 8 th August, 2025
3.	Handover of fit out possession (optional)	By 10 th August, 2025
4.	Occupation Certificate	By 30 th September, 2025

6. Learned Counsel for Respondent No.1 would submit that all that needs to be spent further is Rs. 4 Crores to complete the project and he has instructions to commit that there will be completion of project by the aforesaid deadline.

7. As regards rent, Learned Senior Counsel for Respondent No.1 has instructions to commit to the following payment schedule for the rent payable in respect of July, August and September 2025. He would be present this on the premise that such payment would cease from September since he has made a commitment to get the Occupation Certificate by September 30, 2025.

Sr. No.	Event	Dates
1.	Rent of July 2025 (75,00,000/-)	By 15 th August, 2025
2.	Rent of August 2025 (75,00,000/-)	By 15 th September, 2025
3.	Rent of September 2025 (75,00,000/-)	By 7 th October, 2025

8. The aforesaid commitments are accepted as undertakings given to the Court. As regards the transit rent arrears that have accrued as of today, it would be necessary to have the same cleared. Respondent No.1 is directed to ensure that the arrears as of today are cleared no later than **August 15, 2025** in three equal installments between today and **August 15, 2025**.

9. Respondent No.1 may approach the arbitrator being appointed

pursuant to this order for any variation to this order by demonstrating to the Arbitral Tribunal the bonafides of such request. Be that as it may, since the Petitioner has only sought the clearance of the basic transit rent, which has been allowed to accumulated to this sizable amount, the Learned Arbitral Tribunal shall not excuse the performance in relation to the transit rent except for variation of time lines for clearance of the arrears.

10. Section 11 Petition is *finally disposed of* in the following terms :

A] Mr. Ranjeev Carvalho, a learned advocate of this Court is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes and differences between the parties ;

Address : 501, 502, Shanti Building, Banaji Street, Fort,
Mumbai – 400 001.

E mail : ranjeev.carvalho@gmail.com

B] A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocate for the Petitioner within a period of one week from the date on which this order is uploaded on the website of this Court. 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 Advocate for the Petitioner 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 Petition and a copy of the same

shall be furnished by the Advocate for the Petitioner 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] 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.

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. 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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