

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION PETITION NO.813 OF 2024

Excel Enterprises Realty LLP

...Petitioner

Versus

Sharmila S. Amin & Ors.

...Respondents

Mr. Gaurav Joshi, Senior Counsel *a/w, Sarosh Bharucha, Tushar Gujjar & Deepak Singh i/b SL Partners, for the Petitioner.*

Mr. Yousuf Khan, *for Respondent No.1 to 23 and 25.*

Mr. Rathore Sunil Kumar, *for Respondent No.24.*

Mr. Balasaheb Deshmukh *a/w. Aditya Sawant, Advocate for Respondent No.26.*

Mr. J.S. Kini *a/w. Aum J. Kini i/b. Ms Sapna Krishnappa, for Respondent No.27.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : JUNE 16, 2025

ORAL JUDGMENT :

1. This is a typical Petition involving redevelopment filed under Section 9 of the Arbitration and Conciliation Act, 1996 (***“the Act”***) in connection with a development agreement.

2. In the facts of this case, the Petitioner is a Developer, Respondent No.27 is a Society, and the other Respondents fall in two distinct classifications, which I shall advert to shortly.

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June 16, 2025

(This order is corrected pursuant to the Speaking to the minutes of Oral Judgment dated June 16, 2025.)

3. The Society has a total of 60 members, of which 56 members have signed and executed the Development Agreement dated October 29, 2021 (*“Development Agreement”*). A bare reading of the Development Agreement would show that each of the members of the Society who have signed the Development Agreement would fall within the meaning of the term *“party”* as defined in the Development Agreement. Any dispute or difference among the “parties” is covered by the arbitration agreement contained in Clause 29 (found at Page No.140 of the Petition) of the Development Agreement.

4. Consequently, in the facts of this case, there is direct privity to the arbitration agreement by each of the members of the Society who have signed the Development Agreement. Four members have held out without signing the Development Agreement. Even among those who have executed and bound themselves to the bargain reached in the Development Agreement (56 in number), 22 members have not vacated their premises. A total of 34 members have vacated their premises.

5. It is in this backdrop that this Petitioner has urged for this Court’s intervention, in its equitable jurisdiction under Section 9 of the Act, to enable the redevelopment work to commence.

6. Learned Senior Counsel on behalf of the Petitioner submits that the financial payments that are required to be made under the

Development Agreement are being paid, and the expenditure incurred in terms of premium etc. for additional area has resulted in a total outgo of Rs.28 Crores so far from the pockets of the Developer. The development plan, pursuant to the Development Agreement, has undergone a change to enhance the area made available for members for the rehabilitation flats from 600 square feet computed under the Real Estate (Regulation and Development) Act, 2016 (**“RERA”**) formula to an area of 600 square feet computed under the Maharashtra Ownership of Flats Act, 1963 (**“MOFA”**) definition. The latter does not include the balcony area and the space occupied by the walls.

7. The Intimation of Approval (**“IOA”**) from MHADA received in the past had lapsed. This is the fourth time this Petition is listed. On an earlier occasion, I had directed that the Petitioner come back to the Court as and when the IOA from MHADA were actually renewed, so that the Court is not requested to exercise its equitable jurisdiction in a vacuum.

8. Learned Counsel for the Petitioner tenders across the bar, the renewed IOA dated June 13, 2025, by which the earlier IOA dated September 15, 2022 is now revived. He submits that this time it would be vital not to have redevelopment be delayed and lose the timelines anticipated to work in line with the new IOA.

9. Having examined the above factual matrix, the Respondents who are holding out i.e. those who are refusing to vacate despite signing the Development Agreement, and also those who have not signed the Development Agreement at all, were asked to present their objections.

10. Learned Counsel on behalf of Respondent Nos.1 to 23 and Respondent No.25 submitted that his clients have all signed the Development Agreement and the new IOA dated June 13, 2025, has been received only on Saturday. However, his primary contention is that the building height for which approval appears to have been granted was meant to be 70 meters, whereas approval has been granted only for 53 meters and this would need clarification. To this, Learned Senior Counsel on behalf of the Petitioner submits that the 53-metre height would adequately accommodate the rehabilitation flats. As and when the project progresses the Petitioner would be making further payments to load further entitlements to construct and secure further approvals for the residual height out of the total height of 70 meters for the building.

11. Consequently, this objection on behalf of Respondent Nos.1 to 23 and Respondent Nos.25 *prima facie* stand addressed and would not stand in the way of making an intervention for the larger public good of the members of the Society, in particular, those who have signed the

agreement and have vacated, as compared to those who are refusing to vacate despite having committed to adhering to the terms of the Development Agreement, and are now vacillating.

12. Learned Counsel for Respondent No.24 submits that it is unclear as to whether the bank guarantee for Rs.10 Crores, as committed by the Petitioner has been tendered. A similar objection is raised by the Learned Counsel for Respondent No.26 stating that the bank guarantee must be secured before demolishing the premises. Learned Senior Counsel for the Petitioner submits that the bank guarantee is ready and the minute it is issued, the Petitioner would start incurring further expenses on the guarantee fee. Therefore, he undertakes, on instructions, that if this Court's intervention to enable vacating the premises is made, the bank guarantee would be handed over no sooner than the premises are vacated and well before demolition. Learned Senior Counsel for the Petitioner undertakes that the bank guarantee would be provided before demolition work can commence and immediately after all the premises are vacated. This assurance is taken on record as an undertaking given to the Court.

13. Learned Counsel on behalf of Respondent No.26 has a number of objections to the redevelopment. It is noteworthy that Respondent No.26 is one of the four parties who has not signed the Development

Agreement and therefore submits that he is a third party to the Development Agreement. Most of his objections centre around the quality of governance of the Society at the hands of its Managing Committee. In particular, he would point to anomalies in the minutes of the meeting at which the appointment of the Developer had been approved.

14. Learned Counsel for this Respondent would submit that as of the date of the meeting, when the appointment of the Developer was approved, the Developer did not have a three-year track record. He would point to the certificate issued by the Registrar of Companies to show that the LLP was formed on July 8, 2021, and which would inexorably point out that the Developer did not have a three-year track record at the time of appointment. To this, Learned Senior Counsel for the Petitioner would submit that the Petitioner is a special purpose vehicle in the form of a limited liability partnership formed by a well known promoter with track record of far more than three years.

15. The second objection is that the persons who are not members have attended the General Body Meeting of the Society to approve the appointment of the Developer. He would point to seven names shown in the minutes of the meeting to indicate that non-members appear to

have voted, thereby calling into question the veracity and the integrity of the governance process by which the Developer has been appointed.

16. The third objection raised by Learned Counsel for Respondent No.26 is that the minutes record that the quorum was validly formed whereas the video recordings would show that there was no quorum at the appointed time for commencement of the meeting. According to him, once the quorum is unavailable at the designated time, the meeting must mandatorily be adjourned by seven days and it cannot be adjourned by a short period on the same day for quorum to be formed afresh to conduct the meeting. Consequently, the contention is that the very conduct of the meeting is bad in law and therefore the decision taken in that meeting is bad in law.

17. Finally, Learned Counsel for Respondent No.26 would submit that under Clause 3.2 (found at Page No.110 & 111 of the Petition) any additional area that becomes available due to any change in law or policy, would need to be negotiated among the members for appropriate and proportionate entitlement being distributed across members. According to him, additional area has emerged and this additional area allocation to the members has not been done. He would point to the approved built up area communicated by MHADA vide its letter dated December 30, 2021 to indicate that additional area

had been obtained and contend that such additional area should be made available to all members. This not having been done, he would submit, is a violation of the very Development Agreement.

18. Learned Counsel for Respondent No.26 would also point to discrepancies between the official authorized representative's report to the co-operatives department on the conduct of meeting and its conflict with the contents of the minutes of the meeting maintained by the Society, to indicate that the number of people who have attended and the number of people who have voted are at variance in the two documents.

19. Learned Counsel for Respondent No.1-Society would submit that the names of individuals who are not members as found in the minutes, are names of authorized representatives who attended the meeting on behalf of members who could not remain present for the meeting. He would submit that one has to look to the signatures on the Development Agreement, which is an integral part of the Petition, to see that it is only the members who have executed the Development Agreement and consequently they have consciously agreed to the bargain contained therein, and no infirmity can be found with the conduct of the meeting.

20. Learned Counsel for the Society submits that since there is an official report by the officer who attended the meeting and has filed the report with Deputy Registrar, one may go by that and any infirmity in the minutes would boil down to a difference of one member and that may be put down as an inadequate and inefficient record of the minutes. However, he would submit, this cannot have any bearing on the legality of the process conducted and the selection of the Petitioner as the Developer.

21. Be that as it may, having heard the parties, I find that the objections raised by Respondent No. 26 against the Managing Committee are all matters which essentially point to grievances that a member can have against the Society's administration. I am informed by the Learned Counsel for Respondent no.26 that there is already a complaint filed under the law governing co-operative societies and proceedings would be taken up against the Society for violation of protections available to a member of the Society. It is made clear that any relief granted in this Section 9 Petition will evidently not have any influence on those proceedings and if there is any shortcoming in the conduct of governance of the members of the Society, the consequences for that would be dealt with in accordance with the laws governing the conduct of co-operative societies.

22. However, the core question that falls for consideration today is what would be an appropriate relief in the factual matrix, whereby 34 members who are signatories to the Development Agreement have vacated their premises and are undergoing the hardship of relocation. On the other hand, 22 members, despite signing the Development Agreement and having committed to comply with the same are holding out and have indeed secured a marginally better bargain than what was contained in the Development Agreement, such as a marginally greater ceiling height and a marginally larger square feet area in the premises.

23. In my opinion, there may be matters of detail that can be thrashed out by the parties, should they so desire, in arbitration proceedings since all these 22 members have privity to the arbitration agreement. As stated earlier, in the facts of this case, the arbitration agreement binds all “*parties*” and each of the members who has signed the Development Agreement is indeed a party to the arbitration agreement. If there are any grievances that any member has about the true interpretation of the Development Agreement, that would be amenable to arbitration. No grievance is incapable of being resolved by denominating it in value terms and should the members be right, they can always be compensated in the course of the arbitration proceedings.

24. What falls for consideration today is to protect the subject matter of the arbitration agreement i.e. the redevelopment of the building covered by the Development Agreement. The short question that needs to be considered today is whether the redevelopment should be held up any further in the teeth of 22 members holding out being parties to the Development Agreement. The condition precedent to vacating the premises has been met by the re-issuance of the IOA. To my mind, this calls for an intervention in exercise of jurisdiction under Section 9 of the Act, particularly taking into account all the members who have signed the Development Agreement are party to the arbitration agreement.

25. In these circumstances the following order is passed:-

A] All the residual members who have yet to vacate, regardless of whether they have executed the Development Agreement, shall vacate their premises no later than August 14, 2025.

B] This is a rather extraordinary long time that is being granted only because of the strength of the rains in the city of Mumbai at this stage. To my mind, it would have been appropriate to have them vacate by July 31, 2025, but an additional period of 15 days is granted purely as a matter of grace;

C] Should any member of the Society not vacate by ***12.00 noon on August 14, 2025***, the Learned Court Receiver of this Court shall be entitled to take physical possession with police assistance, if necessary, and hand over such possession to the Petitioner for commencement of the redevelopment activity. Once such possession is handed over to the Petitioner, either by the Court Receiver or by the Society upon taking possession from the members, the Petitioner shall hand over to the Learned Court Receiver, the bank guarantee in the sum of Rs.10 Crores, who shall then hand it over to the Society upon ascertaining that the premises have indeed been vacated;

D] Should any of these Respondents fail vacate by the aforesaid deadline, when taking forcible possession with police assistance, the Learned Court Receiver shall also take an inventory of any belongings contained in the premises and hand over the same for storage by the Petitioner, who shall then call upon the Respondents to have them collected within a period of one month of receipt of the belongings from the Learned Court Receiver, failing which such belongings may be disposed of;

E] The local police station shall provide all necessary assistance to the Learned Court Receiver for taking possession as above. The Petitioner's advocates shall serve a copy of this Order on the local police station as also on the office of the Deputy Commissioner of Police in whose jurisdiction the property falls, for information and requisite planning for the forcible possession, should the need arise;

F] The Petitioner, the Society and the Respondents in Possession shall execute permanent alternate accommodation agreements and other related ancillary documentation evidencing the takeover of the premises and the entitlement to the redeveloped flats (“**PAAA Documentation**”) such that they accord *pari passu* treatment to the entitlements of these Respondents as compared with all other flats where this Court has not had to intervene to have them vacated. Any variations to the documentation may only be in respect of the identification of these flats and the proportionate and commensurate variations linked to their size, area and related features of these flats in line with the Development Agreement;

G] The outer deadline for executing the PAAA Documentation shall be **July 31, 2025** by each member. The Developer shall ensure that appropriate appointments are taken in consultation with the respective members, seeking the convenience of the members for attending the Registry office, and work out a schedule for execution of all the PAAA documentation by **July 31, 2025**.

H] Should the Respondents fail or refuse to execute the PAAA Documentation by the aforesaid deadline, the Petitioner shall be entitled to approach the Learned Court Receiver within a period of one week after the aforesaid deadline, to execute such documentation, and demonstrate to the Learned Court Receiver that the terms of the PAAA Documentation are in conformity with the requirements stipulated above. Execution of the PAAA

Documentation by the Learned Court Receiver in respect of each of the Respondent's premises would bind the Respondents;

I] It is hoped that the members would use this extraordinarily long time given to them effectively to find alternate accommodation and remove all their belongings from the premises by the deadline stipulated above without the need for any physical force and use of police assistance, which has been specifically authorised above.

26. Learned Counsel for Respondent No.26 submits that despite this leeway for delayed vacating of the premises, all accrued financial benefits that would be payable upon vacation, should be paid to them as arrears. This would be inequitable as a direction under Section 9 of the Act. One would need to examine the terms contracted in the Development Agreement to determine when and subject to what condition, the hardship compensation and transit rent has to be paid. The parties can always resort to arbitration on this issue. Learned Senior Counsel for the Petitioner assures that those who have indeed vacated and are undergoing hardship and have to pay for rent have indeed been paid all their dues. This statement is accepted. The parties are free to engage with each other and should disputes and differences persist, they are free to initiate arbitration. Even the members who have not signed the Development Agreement are given liberty to

execute the same and get privy to the arbitration agreement to proceed to arbitration.

27. It is made clear, that immediately upon premises being handed over by any member, regardless of when he does so in the next eight weeks, such member shall be paid the amounts payable upon vacation, and also any payment under the Development Agreement that is due without linking it to the date of vacating the premises.

28. All the Respondents who have held out and are represented today have submitted that the Court may appoint an arbitrator of its choice without the need for any party having to file a formal application under Section 11 of the Act. Such arbitrator shall be approached should disputes and differences persist between the parties even after this order works itself out.

29. In these circumstances, a Sole Arbitrator is hereby appointed in the following terms:-

A] Mr. Aadil Parasrampur, a Learned 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 details of the Learned Arbitrator are set out below:-

Address : c/o Mr. Karl Tamboly
3, Bardy House,
Veer Nariman Road,
Fort, Mumbai – 400 001.

Email Id : : aadil.parsurampuriah@gmail.com

B] A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Petitioner within a period of one week from today. 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 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 and;

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.

30. 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.

31. With these directions, nothing survives in this Petition, and it is finally *disposed of*. Despite being disposed of, the matter shall be listed for *reporting compliance* on *August 16, 2025*.

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.]