

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

ARBITRATION PETITION NO. 179 OF 2025

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Sosar Corporation LLP

...Petitioner

Vs

Kamal Kunj Co Operative Housing Society Ltd
& 18 Ors.

...Respondents

Mr. Sean Wassoodew a/w *Ms. Naina Jain, Ms. Sharmeen Bukhari and Mr. Vikas Mishra, for Petitioner.*

Ms. Vijaya Ingule and *Aditi Sharma, for Respondent No. 1.*

Mr. Manoj Agiwal, *for Respondent No. 2.*

Mr. Rahul Pandey a/w. *Pramila Prajapati and Suchita Pandey, for Respondent Nos. 5, 7, 8 and 10.*

Mr. Dushyant S. Lilani, *for Respondent Nos. 15 to 19.*

Mr. Ravi Rattesar, *for Intervenor -Mrs. Poonam Gulati.*

CORAM : SOMASEKHAR SUNDARESAN, J.

Date : June 17, 2025

Order :

1. This is a Petition under Section 9 of the Arbitration and Conciliation Act, 1996 ("***the Act***") in connection with a Development Agreement dated May 6, 2024 ("***Development Agreement***"), whereby, the Petitioner, Sosar Corporation LLP ("***Developer***") was appointed by Respondent No. 1, Kamal Kunj Co Operative Housing Society Ltd ("***Society***") to carry out redevelopment of the building known as "Kamal Kunj". The Society has 15 flats and the corresponding members, of which, 12 have vacated or agreed to

vacate pursuant to the Development Agreement. All the members of the Society (save for six members) are signatories to the Development Agreement and therefore have privity of contract with the arbitration agreement.

2. As things stand, the differences in relation to the Development Agreement subsists in respect of three flats, namely, flat Nos. 1, 3 and 6. The disputes and differences in relation to flat Nos. 9 and 10 as also garage Nos. 1 and 2 stand resolved by execution of Consent Terms between the Developer and the Respondent Nos. 15 to 19. Liberty is granted to file the Consent Terms with the Registry to complete the record.

3. Respondent No. 3 has passed away after the filing of this Petition and consequently, two of the legal heirs are proposed to be added as Respondent No. 3A and 3B in lieu of Respondent No. 3, in terms of the draft amendment handed in. Liberty to carry out the same in front of the Associate of this Court. Re-verification is dispensed with.

4. Respondent Nos. 11 to 14 claim entitlements to flat No. 1. There are *inter se* disputes among these Respondents in connection with succession to the interests of one Suribai Khemani. Respondent No. 11 is in possession of flat No. 1.

5. As regards flat No. 3, Respondent Nos. 5 to 10 claim entitlement to the same. Here too, they have *inter se* disputes in connection with succession. Respondent No. 10 is in possession of the said flat.

6. As regards, flat No. 6, Respondent Nos. 2, 3 and 4 claim entitlement to the same in connection with succession. The flat is currently in occupation of Respondent No. 2 who was a caretaker for the original member, namely, Mr. Lal M. Villait.

7. After the matter was argued for some time, Learned Counsel for the respective Respondents agreed that they would be willing to vacate their premises if they are given reasonable time to vacate these flats and for removal of their belongings and they are assured that the vacation of the flat should not disrupt or have any influence on the disputes and differences among them, as also claims relating to the succession disputes that they are involved in relation to their respective flats.

8. Learned Counsel for the Developer and the Society fairly state that should these Respondents vacate these flats as ordered today, they would not treat the respective members connected to these flats as defaulting and non-cooperating parties in terms of the framework as envisaged in terms of the Development Agreement. The same is noted.

9. In these circumstances, having examined the material on record and having heard the parties, the following order would balance competing interests of the parties, balance equalities and would enable protecting the best interests of all the parties involved. Each of the following steps forms part of an integral interwoven bundle of adjustments to address the ends of justice and the best interests of all parties without prejudicing them in their respective positions in other litigation, whether underway or potential, among them:-

(A) Respondent No. 11 (in respect of Flat No. 1), Respondent No. 10 (in respect of Flat No. 3) and Respondent No. 2 (in respect of Flat No. 6) (“**Respondents in Possession**”) shall vacate the aforesaid flats (“**Subject Flats**”), remove all their belongings kept in the Subject Flats, and hand over vacant possession of the Subject Flats to the Developer no later than 12:00 noon on July 22, 2025;

(B) Should the Respondents in Possession fail to do so, the Learned Court Receiver shall be entitled to take physical possession of the **Subject Flats** at any time within a week thereafter, if necessary by force, with protection from the local police and hand over possession of the Subject Flats

forthwith to the Developer for redevelopment. The Learned Court Receiver shall also take an inventory of any belongings contained in the Subject Flats 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;

(C) 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;

(D) 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 Subject Flats and the entitlement to the redeveloped flats (***PAAA***

Documentation”) such that they accord *pari passu* treatment to the entitlements for the Subject Flats as compared with all other flats in the Society 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;

(E) The PAAA Documentation shall be executed within a period of three weeks from the upload of this order on the website of this Court. The Petitioner shall coordinate with the Respondents in Possession for scheduling appointments at the office of the relevant Registrar’s office for execution of the PAAA Documentation;

(F) Should the Respondents in Possession fail or refuse to execute the PAAA Documentation by the aforesaid deadline, the Developer shall be entitled to approach the Learned Court Receiver within a period of one week after the aforesaid deadline, to execute such documentation on behalf of the Respondents in Possession, and demonstrate to the Learned

Court Receiver that the terms of the PAAA Documentation are in conformity with the requirements stipulated above;

- (G) Execution of the PAAA Documentation by the Learned Court Receiver in respect of each of the Subject Flats would bind the Respondents in Possession as also any of the other Respondents who may have competing claims to entitlements to the Subject Flats;
- (H) All amounts payable by the Developer under the Development Agreement and the PAAA Documentation in respect of each of the Subject Flats such as payments towards hardship compensation, transit accommodation rent, brokerage and displacement compensation shall be paid to the respective Respondents in Possession against free and vacant possession of the respective Subject Flat being handed over to the Developer;
- (I) Nothing contained in this Order including the direction to pay the amounts payable by the Developer under the Development Agreement and the PAAA Documentation to the Respondents in Possession shall affect or influence the *inter se* claims among the Respondents who have competing

claims to entitlements relating to the respective Subject Flats. Their *inter se* disputes and differences shall be adjudicated in litigation, whether existing or to be initiated among them. The release of the amounts to the Respondents in Possession shall not be a pointer to any assessment of merits of the respective positions adopted by any of the Respondents in such other litigation involving claims to entitlement to the Subject Flats;

- (J) Such release of monies to the Respondents in Possession is being directed only because the cash flows arising out of the Development Agreement in respect of the Subject Flats ought to be available to those residing in the flat to enable them to obtain alternative residential accommodation and to help them fend for their shelter pending redevelopment, as a matter of cash flow management and not as a matter of declaring legal entitlement;
- (K) Should possession have to be taken by force through the Court Receiver **or** should the execution of the PAAA Documentation have to be done through the Learned Court Receiver, the Developer shall hand over payment instruments

in the name of the Respondents in Possession in respect of the respective Subject Flats to the Learned Court Receiver, with a detailed statement showing the working of the amounts due and payable in respect of each of the Subject Flats. Such payment instruments in the names of the respective Respondents in Possession shall be handed over to the Learned Court Receiver by the Developer at least one working day prior to the Developer being handed over possession of the respective Subject Flat by the Learned Court Receiver. The Developer shall demonstrate to the satisfaction of the Learned Court Receiver, the accuracy of the computation of the amounts due and payable in respect of the Subject Flats. The Court Receiver shall hand over the payment instruments so received from the Developer to the Respondents in Possession. It is made clear that the receipt of such payments shall be without prejudice to the pursuit of claims to entitlements by other Respondents in other appropriate litigation;

- (L) Upon completion of the redevelopment, in the first instance, possession of the respective redeveloped flats in lieu of the Subject Flats shall be handed over to respective Respondents

in Possession i.e. possession of the redeveloped premises shall be handed over to the parties from whom the possession of the Subject Flats is taken pursuant to this order. The handing over of such possession shall, of course, be subject to any order that may be obtained by any of the competing and contesting Respondents who lay claim to these flats, from any appropriate forum with jurisdiction;

(M) All the Respondents are at liberty to approach the relevant forums where they are engaged or can be engaged in litigation in respect of their claims to the Subject Flats and to seek such other arrangements that would adjust their equities *inter se* in the light of the directions contained in this order. Such arrangements would be *inter se* among them without disturbing the right of the Developer and the Society to proceed with the redevelopment without hindrance, insulated from such disputes.

10. Nothing contained in the order shall prejudice or come in the way of any litigation to assert and enforce the rights and contentions that the competing Respondents perceive they have, in relation to the Subject Flats. Proceedings, if any, in relation to these disputes shall continue uninfluenced

by the contents of this order. The aforesaid framework is a purely meant to be an equitable adjustment in exercise of jurisdiction of this Court under Section 9 of the Act. With the aforesaid directions, this Petition is *finally disposed of*.

11. 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.]