

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.388 OF 2025

WITH

ARBITRATION APPLICATION (L) NO.17739 OF 2025

M. D. Infra

....Applicant

Versus

Ave Maria CHS. Ltd. & Anr.

....Respondents

Mr. Atul Damle, Senior Advocate *a/w. S.B. Mishra, A.R. Shaikh
i/b. ASD Associates, Advocates for Applicant.*

Mr. Sandeep R. Waghmare, Advocate *for Respondent No.1.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : SEPTEMBER 11, 2025

ORDER :

1. Learned Counsel for Respondent No.2 submits on instructions that there is no quarrel with vacating the premises and falling in line with the Development Agreement but needs assurance that the entitlements under the Development Agreement would indeed be made available.

2. Learned Senior Counsel for the Petitioner points out to Clauses 11, 12, 13, 14 & 15 of the Development Agreement, pursuant to which, in view of the current Flat No.B/205 admeasuring 340 sq.ft., Respondent No.2 would be entitled to Flat No.202 with an area of 523 sq.ft., which

includes additional area of 94.28 sq.ft. for which additional purchase has been made by Respondent No.2. The Petitioner also undertakes to pay the arrears of payments due, upon Respondent No.2 vacating the premises in accordance with the Development Agreement. The Permanent Alternate Accommodation Agreement (***“PAAA”***) shall also be executed within a week from today.

3. In these circumstances, the commitment by Respondent No.2 to vacate the premises and remove the belongings contained therein is taken on record. Such vacation shall be effected no later than ***12 Noon on September 20, 2025***. Respondent No.2 is requested not to necessitate resort to this order appointing the Court Receiver for such purpose. Should such vacation not be effected, the vacation shall be effected in accordance with the following terms:-

4. 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.2 (“***Respondent in Possession***”) shall vacate Flat No. 202 (“***Subject Flat***”), remove all belongings kept in the Subject Flat, and hand over vacant possession of the Subject Flat to the Developer no later than 12:00 noon on ***September 20, 2025***.

(B) Should the Respondent in Possession fail to do so, the Learned Court Receiver shall be entitled to take physical possession of the Subject Flat at any time within a week thereafter, if necessary by force, with protection from the local police and hand over possession of the Subject Flat forthwith to the Developer for redevelopment. The Learned Court Receiver shall also take an inventory of any belongings contained in the Subject Flat and hand over the same for storage by the Petitioner, who shall then call upon the Respondent in Possession 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 Respondent in Possession shall execute permanent alternate accommodation agreement and other related ancillary

documentation evidencing the takeover of the Subject Flat and the entitlement to the redeveloped flat (“**PAAA Documentation**”) such that they accord *pari passu* treatment to the entitlements for the Subject Flat 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 Respondent in Possession for scheduling appointment at the office of the relevant Registrar’s office for execution of the PAAA Documentation;

(F) Should the Respondent 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 Respondent 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 the Subject Flat would bind the Respondent in Possession as also any other person

who may have competing claims to entitlements to the Subject Flat;

(H) All amounts payable by the Developer under the Development Agreement and the PAAA Documentation in respect of the Subject Flat such as payments towards hardship compensation, transit accommodation rent, brokerage and displacement compensation shall be paid to the Respondent in Possession against free and vacant possession of the Subject Flat being handed over to the Developer;

(I) 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 Respondent in Possession in respect of the Subject Flat to the Learned Court Receiver, with a detailed statement showing the working of the amounts due and payable in respect of the Subject Flat. Such payment instruments in the name of the Respondent 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 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 Flat. The Court Receiver shall hand over the payment instruments so received from the Developer to the Respondent 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.

5. 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.

6. With the aforesaid directions, this Petition is ***finally disposed of.***

7. 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.]