

Salgaonkar

MANDIRA MILIND
SALGAONKAR

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Date: 2025.11.15 11:11:23 +0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO.221 of 2025
WITH
INTERIM APPLICATION NO.5786 OF 2025

Aijaz Ashfaque Dadarkar & Anr. .. Applicants

Versus

Gaurang A. Parekh & Ors. .. Respondents

WITH
ARBITRATION APPLICATION NO.124 of 2025
WITH
INTERIM APPLICATION NO.5884 OF 2025

Tasneem Ashfaque Dadarkar .. Applicant

Versus

Gaurang A. Parekh & Ors. .. Respondents

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Ms.Anjali Joshi i/b Atif Shaikh for the Applicant in ARBAP/221/25.

Ms.Drishti Khurana i/b Mr.Atif Shaikh for the Applicant in ARBAP/124/25.

Mr.Aditya Udeshi with Mr.Rahul Sanghvi i/b M/s Sanjay Udeshi & Co. for the Respondent Nos.1 and 2.

Mr.Karl Tamboly with Mr.Cyrus Zal, Mr.Tejas Deshpande and Mr.Santosh Warkar i/b Lawfort Advocate for the Respondent No.4.

CORAM: BHARATI DANGRE, J.

DATE : 13th NOVEMBER, 2025

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P.C:-

1. A Development Agreement entered between Bay View Co-Operative Housing Society and M/s GVP Realty, a Developer, on 31/01/2025, comprise of a clause providing for arbitration in form of Clause No.25, which reads thus :-

“25. ARBITRATION

If any disputes or differences arise between the parties hereto arising out of this Agreement, or as to the rights, obligations, liabilities and duties of the Parties hereto or as to the interpretation of this Agreement, the same shall be referred for adjudication to a Tribunal of one Arbitrator as in terms of the Arbitration and Conciliation Act, 1996. The Award of the Arbitrator so appointed shall be final and binding on all the Parties i.e. the Society/its Members and the Developer. The Arbitration proceeding shall be conducted in Mumbai which will be in English language and shall be in accordance with contained in that behalf in the Arbitration with the provisions contained in that behalf in the Arbitration and Conciliation Act, 1996, as amended from time to time.”

2. The two Applications filed under Section 11 of the Arbitration and Conciliation Act, on invocation of the above arbitration clause, seek appointment of the Arbitrator.

Arbitration Application No.221 of 2025, being filed by the son and daughter of Respondent No.4, claim that the Applicants are in occupation of flat Nos.801/802 in the Co-Operative Housing Society, whereas the Applicant in Arbitration Application No.124 of 2025 is the wife of Respondent No.4 and is in occupation of Flat Nos.501/502 in the same society. It is the claim of the Applicants that they are in possession of the said premises since considerable length of time and there is a prevailing discord between Respondent No.4 and his wife and when the Development Agreement was entered with the society, it is signed by Respondent No.4. Respondent No.4 being estranged from his wife (Applicant-

Tasneem), she has instituted proceedings for restoration of conjugal rights before the Family Court and also under DV Act.

It is in this background the Applicants have invoked arbitration and seek appointment of an Arbitrator for making over the dispute to the Arbitrator, but as this relief is strongly opposed by learned counsel Mr. Tamboly and I find substance in his submission that the arbitration clause clearly cover the relationship between the parties to the Development Agreement and since the Applicants are not the signatories to the Development Agreement, there is no question of they invoking arbitration, merely on the basis that arbitration clause exists in the Development Agreement dated 31/01/2025.

3. The counsel for the Applicant-Tasneem has seriously argued about the maintainability of the Application, as according to her, Applicant i.e.. the wife of the Respondent No.4 has no other way to enforce her right and the Applicants continue to reside in the subject flats, which are subjected to the re-development under the Development Agreement, I feel that the wife is entitled to invoke other remedies in law, if she claim her entitlement in the flats even after its re-development and also some sort of compensation, as she alongwith her children is in occupation of the subject flats.

4. Since the Applications cannot be entertained, same are dismissed.

All the pending Interim Applications stand disposed of.

(BHARATI DANGRE, J.)