

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO.160 OF 2025**

Lalit Ashok Vazirani

.... Applicant.

V/s

M/s Chetna Global & Ors.

.... Respondents.

Mr. Pritesh Burad a/w Ms. Samita Vaivya, Mrs. Madhuri Gamre, Ms. Manali Joshi, Mr. Amey Kanse i/b Pritesh Burad Associates for the Applicant.

Mr. Satyam R. Dube i/b Mr. Aryavrat Dubey for the Respondents.

CORAM : GAUTAM A. ANKHAD, J.

DATE : 30TH SEPTEMBER 2025.

P.C. :

1. This application is filed under Section 11 of the Arbitration and Conciliation Act, 1996 (“Act”), seeking the appointment of an Arbitrator in respect of disputes arising under the Permanent Alternate Accommodation Agreement (“**PAAA**”) dated 31st December, 2014.

2. The Applicant is a dissenting member in the redevelopment of Bhalla Co-operative Housing Society Limited. The brief facts are as follows:

(a) Development Agreements dated 9th November 2012 and 10th June 2014 were executed between the Society and Respondent No.1–Developer. Respondent Nos. 2 to 5 are

partners of Respondent No.1. An undated Supplementary Agreement was also executed in 2019. Admittedly, none of the aforesaid Agreements contain an arbitration clause.

(b) Certain disputes arose between the Society, its members, and Respondent No.1 in the course of redevelopment. By a legal notice dated 1st January 2024, issued through its Advocate, the Society called upon Respondent No.1 to address the alleged breaches under the said agreements. Respondent No.1 replied on 24th January 2024. In rejoinder, on 21st February 2024 the Society proposed reference of all disputes to arbitration. This was accepted by Respondent No.1 in its letter dated 1st March 2024. It is through this exchange of correspondence of 21st February 2024 and 1st March 2024, that an arbitration agreement came into existence between the Society and Respondent No.1.

(c) The Society at the pre-arbitration stage, filed Commercial Arbitration Petition (L) No.12152 of 2024 under Section 9 of the Act, seeking interim reliefs against Respondent No.1. In the said proceedings, Consent Terms were executed between the Society and Respondent No.1. The Consent Terms were

signed by 23 out of 27 members of the Society. The Applicant did not sign these terms. The Consent Terms were taken on record and Section 9 Petition was disposed of by this Court on 9th May 2024. Paragraph 2 of the order dated 9th May 2024 records as follows:-

“2.In the wake of the Consent Terms, the grievance of the Society as well of its members stands redressed, as the Respondents have agreed and affirmed their liability to pay an amount of Rs.7,89,67,656/- towards rent, brokerage and corpus for the period commencing from 01/09/2021 to 29/02/2024. However, considering the precarious condition coupled with the obligation to complete the project, it is agreed between the parties that the project will be completed as per the approved plans as on date of execution of the Consent Terms, without any modification and time will be treated as essence of the contract.”

Recognizing that some of the dissenting members including the Applicant had not signed the Terms, Clause 29 of the Consent Terms dated 9th May 2024 records as follows:-

“29. The Parties agrees that certain members of the Petitioner no.1 are not party to the Arbitration Petition and Consent Terms hence, their rights and contentions against the Respondents are kept open.”

3] Mr. Burad, learned Counsel for the Applicant, submits that this Application is filed pursuant to Clause 20 where the rights and contentions

of the Applicant are kept open against the Developer. He submits that there is an arbitration agreement that is arrived at through a separate exchange of correspondence between the Applicant and Respondent No.1. He relies upon the Applicant's Advocate's notice dated 31st December 2024, wherein the Applicant has invoked arbitration. This notice refers to the Development Agreements and also to the prior arbitration agreement between the Society and Respondent No.1. He submitted that the Respondent, through its Advocate's letter dated 1st February 2025, does not deny the existence of this arbitration agreement but merely states that, in view of the Consent Terms executed with the Society, there is no question of entertaining any arbitration with the individual members of the Society. Mr. Burad submits that an arbitration agreement has come into existence by virtue of letters dated 31st December 2024 and 1st February 2025 between the Applicant and Respondent No.1. This arbitration agreement between the Applicant and Respondent No.1 is only an extension of the arbitration agreement between the Society and Respondent No.1. Hence this Court ought to appoint an arbitrator to adjudicate disputes between the Applicant and Respondent No.1.

4] Mr. Dube, learned Counsel for the Respondent denies the aforesaid contentions and submits that there is no arbitration agreement between the Applicant and Respondent No.1 through the letters of 31st December 2024

and 1st February 2025. It is not open to the members of the Society to individually agitate their claims, since there is no separate arbitration agreement under the PAAA between the Applicant and Respondent No.1. In support of his submissions, he relies upon the judgments passed by this Court in *Shankar Vithoba Desai vs. Gauri Associates* in Commercial Arbitration Application (L) No.21070 of 2023, *Ketan Champaklal Divecha vs. DGS Township Pvt. Ltd.* in Arbitration Petition (L) No.20483 of 2023 and *M/s Drushti Realtors Pvt. Ltd. vs. Pant Nagar Trishul Co-operative Housing Society Ltd.* in Commercial Arbitration Petition (L) No.11060 of 2021. He submits that this Application is not maintainable and ought to be dismissed.

5] I have perused the record and heard the learned Counsels for the parties at length. I am unable to accept the submissions advanced by Mr. Burad. Section 2(1)(b) read with Section 7 of the Act defines an “arbitration agreement.” The correspondence exchanged on 31st December 2024 and 1st February 2025 does not satisfy the requirements of Section 7. Respondent No.1 has not agreed to arbitrate the disputes with the Applicant and has expressly denied the Applicant’s contention that an arbitration agreement exists between the dissenting members and Respondent No.1. The parties are not *ad idem* in correspondence on the existence of arbitration agreement. There is no other signed contract referring to any arbitration agreement between the parties.

6] The correspondence of 31st December 2024 and 1st February 2025 also cannot be construed as an extension of the arbitration agreement between the Society and Respondent No.1 so as to create a fresh arbitration agreement between the Applicant and Respondent No.1. While Respondent No.1 is bound by an arbitration agreement with the Society, the same does not extend to and is not for the benefit of individual members. This position is fortified by the view taken by this Court in *M/s Drushti Realtors Pvt. Ltd. vs. Pant Nagar Trishul Co-operative Housing Society Ltd.* in Commercial Arbitration Petition (L) No.11060 of 2021 and *Shankar Vithoba Desai vs. Gauri Associates* in Commercial Arbitration Application (L) No.21070 of 2023.

7] It is not in dispute that the Society, on behalf of the majority of its members, accepted the Consent Terms with the Respondent, thereby putting an end to the pending disputes for 23 out of 27 members who signed the said Consent Terms. Clause 29 of the Consent Terms safeguards the rights of dissenting members, including the Applicant, by not foreclosing their claims against Respondent No.1. However, Clause 29 cannot be construed as an arbitration agreement between the dissenting members and Respondent No.1. The arbitration agreement exists solely between the Society and Respondent No.1. Whilst the majority decision will be binding on the

minority, it is however clarified that this order shall not preclude any proceedings that may be initiated by the Society invoking arbitration and pursuing claims against Respondent No.1 for unpaid rent, corpus, or other dues on behalf of the dissenting members, including the Applicant. If any such application is filed by the Society the same shall be decided on its own merits and in accordance with law.

8. Accordingly, the Arbitration Application No.160 of 2025 stands dismissed.

[GAUTAM A. ANKHAD, J.]

BHARAT
DASHARATH
PANDIT

Digitally signed by
BHARAT
DASHARATH
PANDIT
Date: 2025.10.09
10:53:41 +0530