

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

COMM. ARBITRATION PETITION NO.187 OF 2025

Ms Orange Infra Housing LLP ...Petitioner

Versus

Rajshree Co-operative Housing Society
Limited & Ors. ...Respondents

**WITH
IN PERSON APPLICATION (L) NO.8660 OF 2025
IN
COMM. ARBITRATION PETITION NO.187 OF 2025**

Aarti Gunjekar ...Applicant

Versus

Ms Orange Infra Housing LLP & Ors. ...Respondents

Mr. Ranjeev Carvalho, a/w Mr. *Rishab Murali*, Ms *Sakshi Agarwal* i/b Mr. *Bipin Joshi*, *Advocates for the Petitioner.*

Mr. Shanay Shah, a/w *Uttam Rane* i/b *U.S.Rane*, *Advocate for Respondent No. 1.*

Ms. Aarti Gunjekar, *Party In Person.*

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : APRIL 21, 2025

PC :

1. This Petition has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 (***“the Act”***). This is a case of invocation of the equitable jurisdiction of this Court by the Petitioner-Developer, Orange Infra Housing LLP (***“Orange”***) in respect of redevelopment of a building of Rajashree Co-operative Housing Society Ltd. (***“Rajashree”***). One of the members, Ms. Aarti Gunjekar (***“Aarti”***) who is entitled to two flats in the building is the target of Orange’s grievances with all other members of Rajashree having agreed to the terms negotiated with Orange.

2. Ms. Gunjekar is at pains to point out that she is not opposed to redevelopment. However, she has a few grievances about the manner in which redevelopment has been contracted and feels short-changed. I have heard the parties at length and have arrived at what I believe is a fair, reasonable and equitable measure that would balance the competing interests and considerations presented by all parties including the constituents of Rajashree.

3. Ms. Gunjekar has a complaint about the manner of negotiation and terms of choice of Developer including the size of the increase of area offered and the size of the corpus entitlement offered. However, in my opinion the terms of selection of Orange by Rajashree need not detain my attention. Having examined the record, I am of the view that the Society has made a conscious choice of the combination of features offered by the Orange, comparing with the offers by other potential developers. While some have offered a better deal on some features, they may have a less robust offer in some other features – for

example, a developer offering a larger corpus amount may offer a smaller carpet area enhancement. Be that as it may, it would not be appropriate for the Section 9 Court to second guess the conscious choice made by the Society. I refrain from commenting on the merits of it, since I do not want to give a certificate either way on a point outside my jurisdiction. The Society's wisdom in making the selection is not a matter that can be adjudicated in this forum – indeed, I am informed that forums under the co-operative law have been involved and they may take their own view on merits.

4. However, there is one question raised by Ms. Gunjekar that indeed requires attention. She would submit that the entitlement to additional carpet area under the relevant provisions of Regulation 33 of the Development Control and Promotion Regulations-2034 (“**DCPR 2034**”) on which the redevelopment has been based and has been approved, gives her a statutory right and entitlement to a higher additional area. Learned Counsel for Orange and Rajashree submit that by an overwhelming majority of the general body of Rajashree, it has been decided to give up such entitlements in favour of Orange. Ms. Gunjekar would counter that what is her special sovereign statutory entitlement under the DCPR 2034 regulations meant to protect her, are not for the larger collective to give up on her behalf.

5. Based on a suggestion from me, Learned Counsel for the parties and Ms. Aarti Gunjekar are willing to submit this very specific question for consideration by an Arbitral Tribunal that I would appoint by this Order. Towards this end, a reference is made by consent to the Arbitral Tribunal appointed hereby to examine the specific provisions

under which the redevelopment plan of Rajashree as it stands today is envisaged and sanctioned, identify the additional carpet area benefits that would accrue to the flat owners under the provisions, and answer the question of whether such entitlements of Ms. Gunjekar are capable of being waived and contracted out by a majority of Rajashree against her wish not to waive the same.

6. It is made clear that the arbitration reference is a reference on the aforesaid specific question of law. Orange and Rajashree on the one hand, and Ms. Gunjekar on the other hand, would submit a written note of their submissions to the Learned Arbitral Tribunal to present their propositions on the issue within a period of two weeks from the upload of this order on the website of this Court. The Learned Arbitral Tribunal shall convene at the earliest upon receipt of this order, which shall also be sent by the Registry to the Learned Arbitral Tribunal. Each side shall be entitled to make a verbal presentation to canvas their propositions before the Learned Arbitral Tribunal within a time limit of **90 minutes**, and shall only address the Learned Arbitral Tribunal on this specific question of law. Each party may file supplemental written submissions in this regard within such timeframe and within such word and page length as the Learned Arbitral Tribunal may permit. The Learned Arbitral Tribunal shall endeavour to answer the reference within a period of four weeks of completion of hearing.

7. I have undertaken a broad estimate the value of such additional entitlement claimed by Ms. Gunjekar arising out of the interpretation of the relevant provisions of Regulation 33 of DCPR 2034 – approximately 100 sq ft. per member – and the approximation of

value at the ready reckoned rate (and not the market value rate at this stage). This is broadly said to be in the region of Rs. 40 lakhs. Orange shall open a fixed deposit in the sum of Rs.40 lakhs and mark a lien in favour of the Prothonotary and Senior Master of this Court, all of which shall be completed prior to May 5, 2025.

8. The fixed deposit so created shall abide by the outcome of arbitration to be conducted on this sole and limited issue by consent of the parties. To clarify, the question of law to be answered by the Learned Arbitral Tribunal shall not have any impact on the other members who have consciously waived their entitlement without grievance. Therefore, the outcome of the arbitration has relevance only to Ms. Gunjekar who alone holds the view that her statutory rights under the DCPR 2034 as above, cannot be waived by others on her behalf. It is made clear that no evidence would be required to be led, no questions of fact would be required to be answered, and there is no element of equity that is permitted to be presented by either side to the Learned Arbitral Tribunal. The timelines fixed for the arbitration proceedings factors in this premise and framework for an equitable and fair resolution and interlocutory balancing of the competing interests being canvassed.

9. Ms. Gunjekar seeks to rely upon a judgment of a Division Bench of this Court in Writ Petition No. 1254 of 2016 by which, it is her contention, that such right cannot be waived on behalf of a member by the larger collective. She would be at liberty to present these submissions to the Learned Arbitral Tribunal.

10. Learned Counsel for Orange and Rajashree also graciously

submit that leaving the past rancor behind, Ms. Gunjekar shall not be treated as a non-cooperating member in terms of the framework envisaged in the Development Agreement between Orange and Rajashree. Nothing contained in this Order would impact the merits of the contentions of either Rajashree or Ms. Gunjekar who may have claims against each other in other forums.

11. The Section 9 jurisdiction is an equitable jurisdiction and it needs to adjust and balance multiple competing interest of the parties. This order has been passed bearing in mind the larger collective good that would benefit all the members put together. The appointment of the Learned Arbitral Tribunal as above, is made on the following terms:-

A] Mr. Gautam Ankhad, a learned advocate of this Court, is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes and differences between the parties covered by this Petition;

B] 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;

C] 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 in accordance with the framework set out in this Order. 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;

D] The Arbitral Tribunal is requested to fix the fees consistent with the framework stipulated in the Act, bearing in mind that this is a very narrow and specific reference being specially made to bring potential quietus to the parties on a narrow issue.

12. With the aforesaid arrangement in place, and taking on board Ms. Gunjekar's commitment to vacate in time with all other members since she is not opposed to the redevelopment but perceives being short-changed by the terms of redevelopment, in disposal of this Petition, the following order is passed:-

A] All members of the Society are expected to vacate their respective premises no later than June 15, 2025. Should any member not vacate the premises as aforesaid (in any case all but one member are supporting the redevelopment) the Learned Court Receiver shall be entitled to take physical possession, if necessary, by use of force with assistance of the local police, and handover the premises for redevelopment to Orange;

B] It is expected that all documentation including the Permanent Alternative Accommodation Agreement

(“**PAAA**”) and other connected agreements shall be signed by the members before June 15, 2025. Should any member not execute the documentation, the Learned Court Receiver would be entitled to execute it on behalf of such member making it clear, however, that the financial emoluments due under the Development Agreement and the PAAA, to such member, shall be paid, not to the Registry of this Court but to the respective member;

C] The terms contained in the PAAA to be executed by any member with Orange and Rajashree shall accord them *pari passu* treatment with all other members of Rajashree except for proportional factual differences such as area of the flat, name of the member etc. save and except for the outcome of the arbitration between Orange, Rajashree and Ms. Gunjekar. It is clarified for the avoidance of doubt that the terms of the PAAA as executed shall not come in the way of any additional entitlement that may arise owing to the declaration made by the Learned Arbitral Tribunal. Put differently, execution of the PAAA will not preclude Ms. Gunjekar from agitating her claim in the arbitration proceedings on how to interpret her entitlement and its usage under the DCPR 2034;

D] The Fixed Deposit to be created as directed above shall abide by the outcome of the arbitration. The Fixed Deposit shall be opened for an initial period of six months and shall be renewed from time to time, if necessary,

subject to orders of any Court that may consider any challenges to the arbitral award. Considering the very specific and narrow framework and protection granted to both Orange and Ms. Gunjekar, it is hoped that there would be quietus to the issue once the arbitral award declares the law.

13. This Section 9 Petition is ***finally disposed of*** in the aforesaid terms.

14. 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.

15. 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.]

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signed by
RUSHIKESH
VISHNU
PATIL
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