

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION PETITION NO. 868 OF 2025

Bhairav Erectors Ltd. .. Petitioner
Versus
National (India) Contractor & .. Respondent
Engineers.

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Mr.Rohaam Cama a/w Kyrus Modi and Vedant Rane i/b Amit Mehta for the Petitioner.
Mr.Mukesh Pabari a/w Krupa Parekh for the Respondent.

CORAM: BHARATI DANGRE, J.
DATED : 28th NOVEMBER, 2025

P.C:-

1 Heard learned counsel Mr. Cama for the Petitioner, who claim that the Petitioner has advanced a sum of Rs.7 Crores to have development rights for developing the suit property.

Pursuant thereto a Development Agreement was initialed/signed by the Parties in May 2015, with an arbitration clause viz. Clause 22 , setting out that the disputes and differences arising between the Parties out of the Development Agreement shall be resolved through Arbitration.

2 It is the claim of the petitioner that pursuant to the Development Agreement, the Petitioner issued a public notice for investigating the title of the Respondents in the subject property and steps were taken for converting the proposed project from residential to commercial. It is only in the year 2023 it was revealed to the Petitioner that the suit property has been given as a surety in the matter pending before the Court and that is the reason why the project could not take off.

3 My attention is invited by Mr.Cama to the communication entered between the Parties repeatedly, which has a clear mention of an amount of Rs.7 Crores being paid as an advance and the sanction of residential building on the said plot of land.

It also has come on record with clarity, that the subject property was offered as a surety to secure release of an amount of Rs.30 Crores and pursuant to the proceedings in form of Commercial Appeal (L) No.4915/2020, decided on 12/08/2025, once again the Petitioner initiated the talks of continuing with the project, since the subject property came to be released and necessary correspondence placed on record, in no uncertain terms refer to the payment of Rs.7

Crores and the arrangement which was proposed between the Parties in form of development of the property.

4 Today the apprehension expressed by the Petitioner is that upon the property being now free of the charge, the Respondents are in the process of entering into any arrangement dealing with the said property and this would put the Petitioners in complete fix, as it has already parted with the sum of Rs.7 Crores. Therefore, relief is sought in Section 9 Petition for imposition of restraint order on the Respondent in form an injunction from creating any third party rights in any manner whatsoever., or in the alternative providing an irrevocable bank guarantee or solvent surety for an amount of Rs.7 Crores in favour of the Petitioner or deposit of such amount before this Court.

5 I have also heard the learned counsel representing the Respondents, who would raise three preliminary objections i.e. the first being there is no Development Agreement executed between the parties, though it is admitted that the Parties have put their initials at the end of the Development

Agreement. Therefore, it is his submission that since there is no privity of contract between the two, the contemplated arbitration clause in the Agreement cannot be invoked. Apart from this, another submission advanced by Mr.Pabari is, the amount of Rs.7 Crores was by way of advance and he would specifically deny that it was an advance towards the execution of Development Agreement for developing the subject property.

I find no merit in the said contention, as it is evident from Exhibit A which is placed on record, which is in form of a Development Agreement and though it do not bear the date, it has initials of both the Parties. Two Power of attorney are so placed on record, which are also initialed and what prima appears is that the Parties had entered into a Development Agreement though the Agreement is not registered, and in fact the parties started working on the stipulations in the Development Agreement and the payment of Rs.7 Crores by the Petitioner to the Respondent was in furtherance of this understanding between the parties.

6 In addition, Clause 4.2 of the Development Agreement clearly mention to the following effect :

“4.2 The consideration of Rs.7,00,000/- (Rupees seven crores only) has been paid by the Developers to the Owners in the manner folloiwng, viz.

- a. Rs.11,00,000/- (Rupees Eleven Lakhs only) on or before 9th March 2013.
- b. Rs.50,00,000/- (Rupees Fifty Lakhs only) on or before 28th March, 2013,
- c. Rs.4,39,00,000/- (Rupees Four Crore Thirty Nine Lakhs only) on or before 12th April 2013.
- d. Rs.1,50,00,000/- (Rupees One Crore Fifty Lakhs only) on or before 16th April 2013.
- e. Rs.50,00,000/- (Rupees Fifty Lakhs only) on or before 25th April 2013.

The owners do hereby admit and acknowledge the payment and receipt of the aggregate sum of Rs.7,00,00,000/- (Rupees Seven Crores Only).”

7. In the wake of the aforesaid, and apart from the fact that there is a clear admission on the part of Respondents of receipt of the said amount, even through the communications exchanged, I am satisfied that the amount of Rs.7,00,00,000/- shall be secured by the Respondents though the dispute arise between the parties, as to whether there is compliance of other stipulations in the Development Agreement, which need to be carried forward and the details of financial terms and conditions shall be left for the Arbitrator, to be decided as the Agreement clearly stipulate that the disputes should be resolved through the mode of arbitration and it is also informed that the Petitioner has already invoked arbitration on 16/09/2025 through a notice.

However, when specific suggestion is given to the learned counsel for the Respondent about appointment of an Arbitrator, he make a statement that he has no instructions in that regard.

8 In such circumstances, from the pleadings placed before me including the specific clause in the Development Agreement and subsequent communication, it evidently appear that the Respondents have clearly acknowledged receipt of Rs.7 Crores, hence, pending the arbitration until its final disposal, I deem it appropriate to grant interim relief in terms of prayer clause (b) and direct the Respondent to provide irrevocable bank guarantee or solvent surety in the sum of Rs.7 Crores in favour of the Petitioner within a period of eight weeks form today.

Till the time and thereafter, if there is no compliance of the aforesaid direction, there shall be ad interim relief in terms of prayer clause (a) which reads thus :

“The Respondents its agents or servants or any person claiming through or under the Respondents be restrained by an order or injunction from creating any third-party rights by entering into Agreement for Sale or mortgaging, selling, transferring, conveying, assigning, alienating, dealing with and / or disposing of in any manner encumbering the said Property or entering into any arrangement or writing or declaration or in respect of the said

Property or by appointing any other developer for carrying out development work on the said property.”

In the wake of above, the Petition under Section 9 of the Arbitration and Conciliation Act, 1996, is disposed of.

(BHARATI DANGRE, J)