

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO. 291 OF 2025**

Nainraj Enterprises Pvt Ltd..

.....APPLICANT

: VERSUS :

Prime Property Development Corporation..

....RESPONDENT

**WITH
ARBITRATION PETITION NO. 472 OF 2025 (Not on Board)**

Mr. Shrey Fatterpekar with Mr. Anand Pandey i/b Mr. Aditya Bhatt for the Applicant.

Mr. Piyush Raheja with Mr. Ronish Mehta i/b Vinod Mistry and Co. for Respondent No.1.

Mr. Chetan Kapadia, Senior Advocate with Ms. Anushka Divakaran, Mr. Jay Vyas i/b Dhru & Co. for Respondent No.2.

CORAM : SANDEEP V. MARNE, J.

DATED : 17 FEBRUARY, 2026.

P.C. :

1) This is an application filed under Section 11 of the Arbitration and Conciliation Act, 1996 (**'Arbitration Act'**) for appointment of an Arbitrator for adjudication of disputes, which the applicant claims to have arisen out of the Development Agreement(**'DA'**) dated 11.07.2003 and supplemental Development Agreement dated 01.03.2004.

2) Arbitration Petition No. 472/2025 is not on board. It is filed under Section 9 of the Arbitration Act. At the request of the learned counsel appearing for the Petitioner, the same is taken on board.

3) I have heard Mr. Fatterpekar, the learned counsel appearing for Applicant. Mr. Raheja, the learned counsel appearing for Respondent No. 1 and Mr. Kapadia, the learned Senior Advocate appearing for Respondent No. 2. I have considered the submissions canvassed by them. I have also perused the records of the case filed along with the application.

4) After having considered the submissions canvassed by the learned counsel, it is seen that the cause of action which has necessitated filing of the present application is the act on the part of Respondent No. 2 to cover terrace adjoining Unit No. 501 by loading FSI/BUA of 866.64 sq. ft. Respondent No.2 is the 5th purchaser in line in respect of Unit No.501, which had come to the share of the land owner-Strawberry Electronics Pvt. Ltd. ('**Strawberry**' for short) under the DA and supplemental DA. There is no privity of contract as such between the Applicant and Respondent No. 2. The DA and supplemental DA were executed between the Applicant, Respondent No. 1 and Strawberry. There is no dispute to the position that the Applicant, Respondent No. 1 and Strawberry received their entitlements flowing out of the construction actually carried out in pursuance of the DA and supplemental DA. Under that arrangement, Unit No. 501 together with terrace attached thereto came to the share of Strawberry. Unit No. 501 was accordingly sold by Strawberry to a purchaser and the same has changed hands 4 times thereafter and finally the same is purchased by Respondent No. 2.

5) Mr. Fatterpekar relies on Clause (c) (ii) of the DA under which the owner (Strawberry) and the Applicant were to own 30% and 33.¹/₃% respectively of entire future FSI. According to the Applicant, what

Respondent No. 2 utilises is the future FSI that has accrued in respect of the building. According to the Applicant, the source of utilisation of such future FSI by Respondent No. 2 is the so called agreement between Respondent No. 2 and Respondent No. 1 under which Respondent No. 1 has allegedly sold his FSI including future FSI to Mayfair and from whom Respondent No. 2 has purchased the same. According to the Applicant, this is how Respondent No. 2 is actually utilising future FSI available in respect of the building out of which $33\frac{1}{3}\%$ share belongs to the Applicant. Even if this contention of the Applicant is momentarily held to be correct, it is seen that under the DCPR 2034, the total additional FSI becoming available in respect to the building is 4926.71 sq. meters and what is sought to be used by Respondent No. 2 is BUA of 866.64 sq. meters. This 866.64 sq. meters is far less than the entitlement of Respondent No. 1 in respect of $36\frac{2}{3}\%$ of future FSI under the DA. This shows that there is no subsisting dispute between the Applicant and Respondent No. 2 or even between Applicant and Respondent No. 1 which needs to be referred to Arbitration.

6) Even otherwise Respondent No. 2 is a purchaser in respect of Unit No. 501 and is attempting to get regularised the use of terrace by applying for available FSI. Whether Respondent No. 2 can utilise the additional FSI or whether only Society can use the same, is something with which the Applicant cannot have any concern. The construction of the building is long since complete and the O. C. is issued in the year 2005. The Applicant has already received all his entitlements under the DA and supplementary DA. There is no privity or contract between Applicant and Respondent No. 2.

7) The reliance by Mr. Fatterpekar on judgments of Karnataka High Court in **M/s. Devtree Corporation LLP Vs. M/s. Bhumika North Gardenia**¹, Judgment of Calcutta High Court in **Basant Kumar Kemka & Anr. Vs. City**

¹ 2024 SCC OnLine Kar 13040

Shoppe Estates Ltd.² and a Judgment of this Court in **M/s. Siemens Factoring Pvt. Ltd. Vs. Future Enterprises Pvt. Ltd.³**, is inapposite. In view of the fact that there is no live dispute between the Applicant and Strawberry, there is no question of Respondent No. 2 being roped in arbitration in its capacity as successor in title in respect of Unit No. 501. Curiously the Applicant has not even bothered to implead Strawberry as a party Respondent to the present application.

8) In my view, therefore, there is no valid agreement to arbitrate between the Applicant and Respondent No. 2 with whom the Applicant is mainly pressing the claim. There is no lis between the Applicant and Respondent No. 1 as such which is the position admitted even by Mr. Fatterpekar who has conceded that Respondent No. 1 is merely aiding Respondent No. 2 in utilisation of the additional FSI. However, there is no direct lis between the Applicant and Respondent No. 1.

9) In absence of any dispute between the Applicant and Respondent Nos. 1 and 2 and in absence of Arbitration Agreement, I am unable to make a reference to arbitration. The application is accordingly rejected.

10) Since this court is unable to make a reference to arbitration in Section 11 application, there is no question of grant of any interim measures in petition filed under Section 9 of the Arbitration Act. Accordingly, Arbitration Petition No.472 of 2025 is also dismissed.

[SANDEEP V. MARNE, J.]

2 2024 SCC OnLine Cal 7464

3 CARAP/174/2022 (O.S.)