

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

ARBITRATION APPLICATION NO. 103 OF 2025

Shree Dev Shasan Jain Shwetambar Murtipujak Trust ...Applicant

Versus

Veer Tower CHS Ltd. ...Respondent

WITH

ARBITRATION APPLICATION NO. 360 OF 2025

Bhadra Enterprises ...Applicant

Versus

Veer Tower CHS Ltd. ...Respondent

Mr. Yogesh Naidu, a/w Eden D.H. Ribeiro & Khushbu Mota
Advocates for the Applicant.

Dr. Abhinav Chandrachud, a/w. Pragya & Mr. Ameya Khot, i/b
M/s. Legal Vision, Advocates for Respondent in
ARBPL/2695/2025.

Mr. Aadil Parsurampuriah, a/w Pragya & Ameya Khot, i/b M/s.
Legal Vision, Advocates for Respondent in ARBAP/103/2025.

Mr. Anoshak Davar, a/w Ms. Subiya Kazi, i/b Mr. Talha
Siddiqui for the Applicant in ARBAP/103/2025

CORAM : SOMASEKHAR SUNDARESAN, J.

RESERVED ON : October 13, 2025

PRONOUNCED ON : February 10, 2026

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JUDGEMENT:

Context and Factual Background:

1. The captioned proceedings are Applications filed under Section 11 of the Arbitration and Conciliation Act, 1996 (“***the Act***”).
2. Arbitration Application No. 2695 of 2025 is an application under Section 11 of the Act filed by M/s. Bhadra Enterprises (“***Developer***”), a developer who has developed a building and eventually conveyed it to the respondent, Veer Tower Cooperative Housing Society Ltd. (“***Society***”).
3. Arbitration Application No. 103 of 2025 is an application by Shree Dev Shasan Jain Shwetambar Murtipujak Trust (“***Temple Trust***”), a trust that is a recipient of gifts of land from the Developer for purposes of a Jain Temple, standing on a part of the premises where a building called Veer Tower was developed by the Developer.
4. The Developer and the Temple Trust are collectively referred to as “***Applicants***”.
5. This is a case where the Developer developed a property to construct a building, which was conveyed to the Society. The Developer

executed sale agreements for various flats with individual flat purchasers. Each sale agreement explicitly made it clear that a certain portion of land had been gifted to the Temple Trust for purposes of a Jain temple and its functions. In other words, each flat purchaser entered into a purchase agreement with the Developer, with eyes open, and clear notice, that the Temple Trust was already a giftee of a certain portion of land.

6. Each agreement between the Developer and the flat purchaser contains an explicit disclosure and acknowledgement of the gift already made to the Temple Trust. Each flat purchase agreement contains an arbitration clause, which is the arbitration agreement, on the strength of which, the captioned Applications have been filed.

7. The flat purchasers constituted the Society. The formation of the Society was a facet clearly contemplated in each flat purchase agreement, which also made it explicitly clear that the development rights attendant with the land gifted to the Temple Trust would belong to the Temple Trust. It was made clear that should the requisite development by the Temple Trust not be completed at the time of executing the conveyance of the land by the Developer to the Society, upon formation of the Society or such other collective body of flat

purchasers, they would execute a fresh agreement in favour of the Temple Trust. In other words, the flat purchasers acknowledged the rights of the potential development attendant with the land gifted to the Temple Trust, to carry out the full exploitation of the land gifted to the Temple Trust.

Core Issue:

8. The core question that arises in adjudicating the two Applications contained in the caption proceedings, is whether the arbitration agreement contained in identical terms in each flat purchase agreement, would stand inherited by the relationship between the Developer and the Society, which is the body corporate formed by the flat purchasers after completion of their purchases, pursuant to agreements that each individually contained an arbitration agreement.

9. Admittedly, each flat purchase agreement between the members of the Society and the Developer contains an arbitration agreement. The flat purchasers who have privity to such arbitration agreements, formed the Society. The issue that arises for purposes of these proceedings under Section 11 of the Act, is whether an arbitration agreement can be said to be in existence between the Developer and the

Society, and indeed whether it could also deal with disputes between the Temple Trust and the Society.

10. For completeness, it may be mentioned that the original landowner was one M/s. Vandana Properties (“**Original Owner**”), which had executed a development agreement dated January 17, 2006, with the Developer. The building, Veer Tower, was constructed by the Developer, with the Completion Certificate being received for on December 8, 2014.

11. A gift of land portions along with development rights and proportionate entitlements of the Temple Trust had been made by a registered gift deed dated December 29, 2014 (“**2014 Gift Deed**”), by the Developer and the Original Owner in favour of the Temple Trust. This gift is spelt out and recited in each of the agreements between the Developer and the members of the Society. Another gift deed dated February 11, 2022, was also executed to convey the properties and rights referred to therein to the Temple Trust. The competing claims to entitlement between the Society and the Temple Trust is the subject matter of the disputes and differences among the parties.

Suit No. 2952 of 2022:

Page 5 of 29

February 10, 2026

*Corrected pursuant to speaking to the minutes order dated February 10, 2026.
Ashwini Vallakati*

12. Disputes and differences were raised by the Society by filing Suit No. 2952 of 2022 before the City Civil Court at Dindoshi (“*Suit*”). The suit was rejected by an order dated January 16, 2023 (“*Section 8 Order*”), allowing applications under Section 8 of the Act filed by the Developer and the Temple Trust, indicating that the subject matter of the dispute was covered by the arbitration agreement executed between each of the members of the Society and the Developer, as inherited by the Society.

13. Under Section 37 of the Act, only orders refusing to refer the parties to arbitration under Section 8 are appealable. The Society filed Writ Petition No. 7220 of 2023 (“*WP 7220*”), assailing the Section 8 Order, and that is pending before the relevant Bench of this Court.

14. The Society filed Writ Petition No. 211 of 2023 (“*WP 211*”), in the disposal of which, a deemed conveyance had been allowed by a Learned Single Judge of this Court by an order dated February 18, 2025.

15. The captioned Section 11 Applications have been filed by the Developer and the Temple Trust, seeking reference of the disputes and differences between the parties to arbitration.

16. In a nutshell, the arbitration agreement is contained in each of

the flat purchase and sale agreements executed between the Developer and each member of the Society. It is the flat purchasers who organised themselves into the Society. Therefore, it is claimed by the Applicants in both the captioned proceedings that the arbitration agreement has been inherited by the Society and the disputes and differences between the members of the Society and the Developer would need to be adjudicated in arbitration proceedings. The Section 8 Court has effectively ruled as such.

17. The Applicants contend that the existence of the arbitration agreement has been rightly endorsed by the Learned City Civil Court. They claim that the Society is frustrating the arbitration agreement, and is not prosecuting WP 7220 challenging the Section 8 Order, despite multiple efforts by the Applicants.

18. Therefore, the Section 8 Order having established the existence of the arbitration agreement, the Applicants contend that the arbitration must be allowed to commence and run its course. Therefore, the Applicants have filed the captioned Section 11 Applications seeking reference of the disputes to arbitration. The arbitration agreement named two arbitrators, both of whom recused in January 2025. Therefore, the Applicants request this Court to constitute the arbitral

tribunal under Section 11 of the Act.

19. The Developer claims direct privity to the arbitration agreement with each of the flat purchasers who have now organised themselves into the Society. The Temple Trust claims through, and under the Developer, who is a signatory to the arbitration agreement.

20. The Society contends that it has no privity to any arbitration agreement with either the Developer or the Temple Trust, and that no arbitral tribunal can be constituted. The Society also contends that the contrary view returned by the Learned City Civil Court has been challenged in WP 7220, which is pending.

Analysis and Findings:

Arbitration Agreement – Existence:

21. Against this backdrop, I have heard the Learned Advocates for the respective parties and with their assistance examined the material on record. At the threshold, it is evident that the arbitration agreement between the parties is contained in each of the agreements executed between the flat purchasers and the Developer, i.e., each of the constituents of the Society, who have jointly formed the Society. The

Developer has rights against, and obligations owed to, each of the constituents of the Society and the relationship between the Developer and these constituents of the Society is governed by the arbitration agreement contained in each of the flat purchase agreements.

22. The Temple Trust is claiming through the Developer in terms of the arbitration agreement executed by the Developer with each member of the Society. The rights enjoyed by the Developer are the rights conferred by the Developer on the Temple Trust, of which, the members of the Society have notice. It is noteworthy that each and every flat purchaser who is a constituent of the Society, entered into flat purchase agreements, which contain the arbitration agreement, and also clearly contain references to the gifts of land and rights to the Temple Trust, as well as the rights of the Temple Trust.

23. Therefore, each and every member of the Society clearly had notice of what rights had been granted to the Temple Trust, at the least in respect of the rights covered by the 2014 Gift Deed. The arbitration agreement provides for a sole arbitrator with two named alternative arbitrators. Each of the agreements between each and every flat purchaser and the Developer contains an identical arbitration agreement, identifying the same two potential arbitrators. The

Developer invoked arbitration on January 13, 2025, after the Section 8 Order. The Temple Trust invoked arbitration on January 15, 2025, claiming through the Developer.

24. Each of the named arbitrators has declined the arbitral mandate. This has led to the Section 11 proceedings owing to the rejection of consent by the Society to appointing an arbitrator.

25. The individual members of the Society, each of whom is a party to an arbitration agreement, have formed the Society, and the Society claims that it has no privity to any arbitration agreement with the Developer, or with the Temple Trust. On the other hand, the Developer contends that the arbitration agreement with each and every member of the Society would translate into an arbitration agreement with the Society, since each of the constituents of the Society, has an arbitration agreement with the Developer. The Temple Trust claims that it is claiming through the Developer to enforce its rights, which have clearly been recognised in each of the agreements between the Developer and each member of the Society.

26. The Section 8 Application was allowed by the Learned City Civil Court. I find that the each of the Society's constituents has privity

to the arbitration agreement with the Developer, and the Society seeks a declaration that the gift of land made to the Temple Trust, which is clearly recorded in the agreements, that each and every member of the Society has signed, is sought to be declared as illegal. On the face of it, this makes the Society a veritable party to the arbitration agreement. While the Society disclaims privity to the arbitration agreement with the Developer, each and every agreement for sale executed by each and every constituent of the Society contains an identical arbitration agreement.

27. Indeed, the Society would contend that there is no arbitration agreement between the Developer and the Society as a body corporate. The arbitration agreement between each constituent of the Society and the Developer, according to the Society, cannot translate into an intent to arbitrate that binds the Society, which is purported to be a third party to such arbitration agreement. In my opinion, this is not a reasonable stand. The very nature of the arrangement is that each constituent of the Society is a party to an arbitration agreement and when they form a society on the very same subject matter of their bilateral agreements, it would be a classic example of the Society being a veritable party to the collective arbitration agreement.

28. Therefore, for the Society to claim that there is no privity of contract between the Society and the arbitration agreement does not inspire confidence. When each and every member of the Society has privity to identical commercial provisions and, indeed, to an identical dispute resolution clause, it is a classic case of what makes the Society a veritable party.

29. It is contended on behalf of the Society that the Society is not a creature of the agreements, but is an independent body corporate constituted by its members who may have had their own arbitration clauses with the Developer. The Society further contends that it cannot be presumed to be bound by such arbitration clauses between its individual constituents. This contention does not resonate or inspire confidence in my mind. The very fact that the Society is a collection of multiple parties having the very same arbitration agreement with the Developer, would place the Society in the place of a veritable party. The Society is not an incidental element in the relationship between its constituents on one side, and the Developer on the other. The subject matter of the relationship between the Society and the Developer is but the development of the property that is contracted in individual contracts between each member of the Society and the Developer. This

is an active, direct and substantive privity, and not an incidental, ephemeral and insignificant formal privity to the subject. Each of the agreements between the flat purchasers and the Developer positively contemplates the formation of the Society, which is undeniably a product of the operation of the agreements containing the arbitration clause.

30. The Society has contended that it is not a veritable party to the agreements and that there is no mutuality of intention among the members of the Society to have their disputes resolved by arbitration. This is a mere statement of a formal objection that entirely lacks substance. The very cause for the Society's existence is the collection of interests of its members. Each and every member has privity to the arbitration agreement executed with the Developer. Each such counterparty to the arbitration agreement with the Developer has come together to form the Society. Therefore, the very cause of the Society's existence is the extension of the identical interests enjoyed by its members who came together to form the Society. In fact, each and every bilateral agreement between the Developer and each member of the Society records that the Society would be formed. The Society's incorporation is a logical extension of what was contemplated in the

agreement containing the arbitration clause. For the Society, whose very reason for existence is rooted in the agreements containing the arbitration clause, to contend that the arbitration clause would not entail the Society being a veritable party, rings hollow.

31. It is also contended on behalf of the Society that there is no subsequent agreement between the Developer and the Society ratifying the arbitration agreement. This is unnecessary in the facts of this case, since the very constitution of the Society is contemplated in the bilateral agreements between the Developer and each counterparty who is now a member of the Society. The very formation of the Society is a facet of these bilateral agreements. The fact that the Society would be formed is an action contemplated in the agreements between the Developer and each member of the Society. In the factual matrix of this case, the very existence of the Society is an outcome of the agreements between the constituents of the Society and the Developer, with the formation of the Society being an action pursuant to these very agreements.

Arbitrability Issues:

32. The Society also claims that the disputes in question are beyond the scope of arbitrability, inasmuch as what is sought by the

Society is a cancellation of the gift deeds executed by the Developer in favour of the Temple Trust with no privity of the Society to such gift deeds. The Society would contend that 89 flat purchasers who have executed the agreements containing the arbitration clause have come together to form the Society with a specific registration. Therefore, the members of the society are entitled to all the rights and entitlements upon formation of the Society and all future development rights connected with the property would belong to the Society and not to the Temple Trust. To my mind, this would fall within the ambit of what can be called “subject matter” arbitrability objection. This falls within the domain of the arbitral tribunal; and the Section 11 Court must resist the temptation to pronounce upon this facet upfront, since it could jeopardise the interests of the parties, who have actually chosen this activity to be undertaken by the arbitral tribunal.

33. The Society would also contend that in WP 211, a deemed conveyance had been allowed by a Learned Single Judge of this Court by an order dated February 18, 2025. That is again a distraction for the Section 11 Court, which has to focus on the existence of the arbitration agreement, leaving all facets, including arbitrability to the arbitral tribunal.

34. It is apparent that the Society has been formed by its constituents, each of whom had executed an arbitration agreement with the Developer. The Society is a body corporate and may have a legal identity distinct from its members but, *prima facie*, it is clear that the rights and obligations of the individual members contracted with the Developer would stand in a continuum into the relationship between such members, now constituted into the Society. Evidently, each and every member of the Society has privity to an arbitration agreement with the Developer. When the Society was formed, the rights and obligations owed to and owed by each of its constituent members were inherited by and succeeded to by the Society.

Scope of Section 11 Court – veritable party examination:

35. I have to be mindful of the scope of my jurisdiction – Section 11 of the Act. While I have to examine the existential question posed in the objections by the Society, I must be careful not to tread upon the domain of the arbitral tribunal. The requirement to examine the existence of the arbitration agreement must be married with the fact that the Society is not a signatory to the arbitration agreement between each of its members and the Developer, and the fact that the Temple

Trust is not a signatory to the arbitration agreement between the members of the Society and the Developer.

36. Towards this end, the following analysis from the declaration of the law by the Constitution Bench of the Supreme Court in *Cox and Kings*¹ would be noteworthy:

164. In case of joinder of non-signatory parties to an arbitration agreement, the following two scenarios will prominently emerge: first, where a signatory party to an arbitration agreement seeks joinder of a non-signatory party to the arbitration agreement; and second, where a non-signatory party itself seeks invocation of an arbitration agreement. In both the scenarios, the referral court will be required to prima facie rule on the existence of the arbitration agreement and whether the non-signatory is a veritable party to the arbitration agreement. In view of the complexity of such a determination, the referral court should leave it for the arbitral tribunal to decide whether the non-signatory party is indeed a party to the arbitration agreement on the basis of the factual evidence and application of legal doctrine. The tribunal can delve into the factual, circumstantial, and legal aspects of the matter to decide whether its jurisdiction extends to the non-signatory party. In the process, the tribunal should comply with the requirements of principles of natural justice such as giving opportunity to the non-signatory to raise objections with regard to the jurisdiction of the arbitral tribunal. This interpretation also gives true effect to the doctrine of competence-competence by leaving the issue of determination of true parties to an arbitration agreement to be decided by arbitral tribunal under Section 16.

¹ *Cox and Kings Ltd. v. SAP India (P) Ltd.* – (2024) 4 SCC 1

[Emphasis Supplied]

37. Applying the aforesaid *prima facie* examination standard, to my mind, what is evident is that the arbitration agreement between the constituents of the Society and the Developer is clearly in existence. The very basis of the Society coming into being is the bunch of agreements in each of which, the arbitration agreement is contained. The very formation of the Society is a facet contemplated in these agreements containing the arbitration clause. *Prima facie*, it is clear to me that the arbitration agreement is in existence and the Society, which is but a creature brought into being as contemplated in the agreements containing the arbitration agreement and whose constituents are parties to the arbitration agreement, is a ***veritable party*** to the arbitration agreement. Beyond this threshold, the Section 11 Court must be cautious not to pronounce upon any facet that would erode the sovereignty of the domain of the arbitral tribunal.

38. The very fact that the subject matter of the agreement between each flat purchaser and the Developer was always intended to subject disputes to arbitration, is a strong pointer of conduct that indicates the intent to subject disputes relating to the subject matter of the individual flat purchase agreements to arbitration. The content of the agreements

unequivocally recorded the pre-existing registered 2014 Gift Deed in favour of the Temple Trust. To that extent, considering that the dispute raised by the Society in the Suit relates to making claims against the Temple Trust, and now that the Temple Trust too is claiming through the Developer against the Society, it is apparent that the Temple Trust falls into the category of a person claiming through the Developer, who is a party to the arbitration agreement.

39. The Temple Trust is seeking to assert a right by claiming through the Developer, who is himself seeking to assert his rights as a party to the arbitration agreement with the constituents of the Society, which in turn has clear subject matter commonality with the rights of the Temple Trust, which were acknowledged and recognised by each flat purchaser, who is a constituent of the Society.

40. While these are *prima facie* findings, the Supreme Court has explicitly declared in ***Cox and Kings*** that the role of the non-signatory party is to be left to the Arbitral Tribunal. Taking a holistic view of the matter, it is loud and clear that the subject matter commonality and the denial of the Temple Trust's entitlements that lies at the heart of the Society's Suit, even while the Temple Trust's rights were explicitly recited, recognised and contracted in each of the individual agreements

between the Developer and every constituent of the Society. Satisfied with this *prima facie* position, I find no basis to deny allowing these Applications, making a reference to an Arbitral Tribunal, of course leaving it to the Arbitral Tribunal appointed hereby to examine any challenges arising out of jurisdictional facts, which would well be subject matter of adjudication of evidentiary jurisdictional facts, which fall within the domain of the Arbitral Tribunal and not the Section 11 Court. In *Cox and Kings*, the Supreme Court stated the following:

140. Section 35 of the Arbitration Act provides that an arbitral award shall be final and binding on the parties and persons claiming under them respectively. In *Cheran Properties (supra)*, this Court rightly observed that the expression “persons claiming under them” is “a legislative recognition of the doctrine that besides the parties, an arbitral award binds every person whose capacity or position is derived from and is the same as a party to the proceedings.” It was further observed that “[h]aving derived its capacity from a party and being in the same position as a party to the proceedings binds a person who claims under it.” Similarly, Section 73 also provides that a settlement agreement signed by the parties shall be final and binding “on the parties and persons claiming under them respectively.”

141. Sections 8, 35, and 45 use the phrase “parties or any person claiming through or under”. The word “or” is used in Section 8 and 45 as a disjunctive particle to express an alternative or give a choice between “parties” or “any person claiming through or under”. Consequently, either the party to an arbitration agreement or any person claiming

through or under the party can make an application to the judicial authority to refer the dispute to arbitration. It is in the interest of respecting the intention of the parties and promoting commercial efficacy, that the above provisions allow either the party or any person “claiming through or under him” to refer the disputes to arbitration.

142. On the other hand, Sections 35 and 73 use the phrase “parties and persons claiming under them”. The use of the word “and” in Sections 35 and 73 conveys the idea that “parties” is to be added or taken together with the subsequent phrase “any person claiming through or under.” The above provisions provide that an arbitration award binds not only the parties but also all such persons who derive their capacity from the party to the arbitration agreement. Again, the foundational basis for this provision is commercial efficacy as it ensures that an arbitral award leads to finality, such that both the parties and all persons claiming through or under them do not reagitate the claims. Moreover, the use of the word “and” in Sections 35 and 73 leads to an unmistakable conclusion that under the Arbitration Act, the concept of a “party” is distinct and different from the concept of “persons claiming through or under” a party to the arbitration agreement.

[Emphasis Supplied]

41. Applying the aforesaid, it is clear that the Temple Trust, as a person claiming through the Developer, would be bound by the outcome of the proceedings. Therefore, in disposal of the Section 11 Application filed by the Developer, the disputes insofar as they impinge on the rights and interests of the Temple Trust, of which each flat purchaser who has

constituted the Society has notice, gives privity to the arbitration agreement in the hands of the Temple Trust. Therefore, the Temple Trust shall be entitled to be made a respondent by the Developer in the arbitral proceedings it seeks to initiate against the Society and its constituents.

42. The interests of the Developer and the Temple Trust being aligned, it shall be open to these two parties to jointly make a claim. The Society has in any case made its own claim against the Developer in the Suit, which stands rejected by reason of the Section 8 Order. For the aforesaid reasons, I see no reason to hold up a comprehensive reference to arbitration in disposal of the both the captioned Applications, which is also consistent with the Section 8 Order, against which there is no intervention in WP 7220.

Other Contentions:

43. Purely for completeness, some of the contentions made on behalf of the Society may be noticed and dealt with, bearing in mind the limited scope of examination available to the Section 11 Court. The reasons set out above squarely deal with the contentions of the Society, which has sought to sparse the meaning of the term “party”; claiming to

not have participated in negotiations for the agreements containing the arbitration agreement; and therefore, not amenable to arbitration. These contentions are stated only to be rejected, inasmuch as the Society's existence as a veritable party is writ large in the fact that the constituents of the Society and the Developer in fact agreed to form the Society. Therefore, the very formation of the Society is an action contemplated by and covered in the agreements containing the arbitration clause.

44. In concept, the very formation of the Society is a product of the amalgam of all the agreements with the flat purchasers. The Society is without doubt a veritable party to the arbitration agreement between each constituent of the Society and the Developer. Moreover, any other member of the Society who acquires an interest subsequently from anyone who sold a flat cannot obtain rights superior to the entitlements of the person from whom he acquired the flat. Therefore, in the specific factual matrix of the case, there is no basis to deny the reference to arbitration in disposal of the captioned Applications.

45. The Society also claims that even with the rejection of the Suit, there is no basis to force the Society to litigate. The invocation notices of the Applicants are also assailed on the premise that they do not set

out the disputes sought to be raised by the Applicants. This is not tenable, inasmuch as it is the Society's own case that there are disputes and differences. The Applicants have countered the claims of the Applicants. There is full clarity and notice of the stance of the Applicants, and the Society is left in no manner of doubt about the disputing position of the Applicants. The objective of invocation is to put the counterparty to notice of the nature and content of the dispute, which, in any case, is writ large on the face of the record.

46. Therefore, the contention that the Society is being forced to litigate is misconceived. The Society has indeed initiated litigation and that is resisted and the merits are denied by the Applicants. There can be no reasonable manner of doubt in the Society's mind as to what the dispute is. If the Society no longer wishes to pursue the claims for which it initiated the Suit, it would always be open to the Society to make such submissions to the Arbitral Tribunal, but at this stage, in the absence of the Society positively stating that it no longer has any claims to make against the Applicants, there is no basis not to make a reference in exercise of the limited jurisdiction under Section 11 of the Act.

47. In fact, the Society has submitted in its Written Submissions that allowing the Section 11 Application would render WP 7220

infructuous. This is a misconceived position adopted by the Society. In fact, under Section 8(3), by a *non-obstante* provision, the legislature has made it clear that even when an application under Section 8 is pending, an arbitration may be commenced, continued and concluded. In the instant case, the Section 8 Application has actually been allowed with no intervention being made against it. Without even getting into the claim of the Applicants that WP 7220 is not even being seriously pursued, purely as a position in law, the contention that disposal of a Section 11 Application would render a challenge to the Section 8 Order, is wholly untenable.

48. The Applicants have sought to rely on a decision by a Learned Single Judge in the case of *Shivranjan Towers*². While the reasoning in *Shivranjan Towers* carries resonance, it is not necessary to invoke the declarations made therein, since the Learned Single Judge was considering the scope of intervention exercising the writ jurisdiction under Article 226 after a reference to arbitration had been allowed. In the course of dismissing the Writ Petition, the judgement in *Shivranjan Towers* observed that the agreements between the flat purchasers and the developer in that case were in the nature of pre-incorporation

² *Shivranjan Towers Sahakari Griha Rachna Sanstha Maryadit vs. Bhujbal Constructions and Ors. – judgement dated September 4, 2025 in Writ Petition No. 11281 of 2025*

contracts, and that the deemed conveyance issued in favour of the Society under the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (“**MOFA**”), was itself based on the agreements between the developer and individual flat purchasers.

49. In that context, the Learned Single Judge indicated that the Society could not be a third party to the dispute which had already been referred to arbitration. While this may resonate with the facts of this case, considering that it was a judgement rendered within the scope of whether a discretionary intervention in the exercise of the writ jurisdiction needed to be made, it is not necessary to rely on the same. The reasons already articulated above would suffice to make a reference of the disputes and differences between the parties to arbitration.

Directions and Order:

50. For the aforesaid reasons, in my opinion this is a fit case to make a reference of all disputes and differences covered by both the captioned Applications to arbitration by a Learned Arbitral Tribunal, which is hereby constituted in the following terms:

A) Justice (Retd.) Akil Kureshi, Former Chief Justice of Rajasthan and Tripura High Court and former judge of this Court, is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes and differences between the parties covered by this Application;

Office Address :- 617, Raheja Chambers,

Nariman Point, Mumbai.

Email id – akil.kureshi@gmail.com

B) A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Applicant within a period of one week from the date on which this order is uploaded on the website of this Court. The Applicant shall provide the contact and communication particulars of the parties to the Arbitral Tribunal along with a copy of this Order;

C) 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;

D) 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 for pleadings, examination of witnesses, if any, schedule of hearings etc. 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;

E) All arbitral costs and fees of the Arbitral Tribunal shall be borne by the parties equally in the first instance, and shall be subject to any final Award that may be passed by the Tribunal in relation to costs.

51. Needless to add, nothing contained herein is an expression of any opinion on the merits of the case, all of which squarely fall within the domain of the Arbitral Tribunal appointed hereby. The parties are at liberty to take out such applications as may be available to them in law. Considering the limited scope of examination by the Section 11 Court, the effect of this judgement is essentially on making a reference to the Arbitral Tribunal. It is clarified for the avoidance of doubt that on any facet of subject-matter arbitrability, nothing in this judgement would preclude the filing of any application under Section 16 of the Act before the Arbitral Tribunal, which shall deal with the same on merits in accordance with law. I have been mindful of the limited scope of examination in exercise of the jurisdiction under Section 11, in which these Applications have been filed.

52. 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.]