

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

COMMERCIAL EXECUTION APPLICATION NO. 90 OF 2025

Evertop Apartments Cooperative Hsg. Soc. Ltd.	...Applicant
V/s.	
Lotus Logistics and Developers Pvt. Ltd. & Ors.	...Respondents

**WITH
INTERIM APPLICATION NO. 5068 OF 2025
IN
COMMERCIAL EXECUTION APPLICATION NO. 90 OF 2025
WITH
INTERIM APPLICATION NO. 5533 OF 2025
IN
INTERIM APPLICATION NO. 5068 OF 2025
WITH
INTERIM APPLICATION NO. 6670 OF 2025
IN
COMMERCIAL EXECUTION APPLICATION NO. 90 OF 2025
WITH
INTERIM APPLICATION NO. 6671 OF 2025
IN
COMMERCIAL EXECUTION APPLICATION NO. 90 OF 2025**

Mr. Piyush Raheja with Mr. Vikramjit Garewal, Mr. Aadil Parsurampur, Mr. Tejas Agarwal, Ms. Ria Goradia and Ms. Tejaswi Pania i/b IC Legal for the Applicant in COMEX 90 of 2025.

Mr. Prateek Seksaria, Senior Advocate with Mr. Rohit Agarwal, Mr. Arun Panicker and Mr. Vinay Nair for the Respondent No.1.

Mr. Dharam Juman with Mr. Somesh Pathak i/b Mr. Saiyed Sahil Moinuddin Nahid for the Respondents No. 2 and 3 in IA 5068 of 2025.

Mr. Navroz Seervai, Senior Advocate with Mr. Sharan Jagriani, Senior Advocate, Mr. Priyank Kapadia, Ms. Nikita Bhansali and Ms. Dristi Solanki i/b Yasmin Bhansali & Co. for the Respondent No. 4 in IA 5068/25 and for the Applicant in IA 5533/25.

Mr. Milind Nar with Ms. Pinki Yadav for the Applicant in IA 29483/25 and for the Respondents No. 5 and 6 in IA 5068/25.

CORAM : **ABHAY AHUJA, J.**
DATE : **29th JANUARY, 2026**

PC. :

1. Pursuant to the earlier orders of this Court, today when the matter is called out, Mr. Seksaria, learned Senior Counsel appears for the Respondent No.1 and submits that in view of the order dated 13th January, 2026 of the learned Single Judge of this Court in Commercial Arbitration Petition (L) No. 34791 of 2024 under Section 34 of the Arbitration and Conciliation Act, 1996 (the “Arbitration Act”), modifying / extending the timeline for the Respondent No.1 to directly go for regularisation and obtain occupation certificate for ‘A’ wing building within a period of 9 months, the Respondent No.1 is not liable as on date to make payments of Rs. 128.98 Crs as the said liability would arise only in the event the occupation certificate is not secured by the Respondent No. 1 or in the alternative, the ‘A’ wing of the building is not regularised by the Respondent No.1.

2. Learned Senior Counsel for the Respondent No.1 has submitted that as regards the other five items under the award under execution, with respect to the monthly compensation payable for the period from February, 2014 to October, 2015 at the rate of Rs. 80 per sq. feet per month, per member, sum of Rs. 45,82,500/- towards alleged area

shortfall, the property tax liability for the period from November, 2008 to 15th October, 2015, interest at the rate of 8% p.a. or 12% p.a. as awarded by the Arbitral Tribunal on the above amounts and the costs of Rs. 35,00,000/-, he is tendering to the learned Counsel for the Execution Applicant, pay orders of a consolidated sum of Rs. 10,65,48,083/- in satisfaction of the award which are accepted by Mr. Raheja, learned Counsel for the Execution Applicant without any demur. Mr. Seksaria draws this Court's attention to the affidavit in reply dated 22nd January, 2026 of the Judgment Debtor viz. the Respondent No.1 to the Interim Application and in particular to paragraph-11 where the pay order numbers and the corresponding amounts are mentioned. Mr. Seksaria, learned Senior Counsel has submitted that, therefore, the award as regards the aforementioned five items is concerned, be marked satisfied.

3. As regards the amount of Rs. 128,98,00,000/- together with interest, Mr. Seksaria, learned Senior Counsel reiterates that the same would become payable only after the expiry of the extended aggregate period of 9 months from 13th January, 2026 and that too only upon contingencies mentioned in the said order.

4. Mr. Seksaria has drawn this Court's attention to paragraphs 100,114,118 and 129 of the order dated 13th January, 2026 of the learned Single Judge of this Court in Commercial Arbitration Petition (L) No. 34791 of 2024 under Section 34 of the Arbitration Act and also has relied upon the decision of the Hon'ble Supreme Court in the case of *W.B. Essential Commodities Supply Corpn. Vs. Swadeshi Agro Farming & Storage Pvt. Ltd. and Anr.*¹ in support of his contention.

5. Mr. Seksaria submits that in this view of the matter, the Commercial Execution Application be dismissed as not maintainable as nothing would survive and that, therefore, the order dated 18th September, 2025 directing status-quo would also stand vacated.

6. On the other hand, Mr. Raheja, learned Counsel appearing for the Applicant has opposed the submissions of Mr. Seksaria, submitting that even after the payment of Rs. 10,65,48,083/- with respect to the five items referred to by Mr. Seksaria, the execution proceedings would be valid as even though the amount of Rs. 128.98 Crs is contingent upon certain events, the executing Court cannot oust the execution Applicant on the ground of maintainability in view of the decision of the Hon'ble Supreme Court in the case of *Pushpa Sahakari Avas Samiti*

1 (1999) 8 SCC 315.

Limited Vs. Gangotri Sahakari Avas Samiti². Mr. Raheja submits that the Hon'ble Supreme Court has clearly rejected the submission that the executing court could not have entertained the execution proceedings solely because it was instituted before the expiry of the period stipulated in the compromise decree. Mr. Raheja submits that in the case before the Hon'ble Supreme Court the compromise between the parties stipulated certain conditions and one such condition was that the Defendant would pay a certain sum to the Plaintiff within a span of six months' time and although the execution proceedings were filed before the expiry of six months, the Hon'ble Supreme Court repelled the submission that the decree was unexecutable. That, therefore, although Rs. 128.98 Crs is to be paid as damages upon the Respondent No.1 not being able to secure occupation certificate or regularise 'A' wing of the building within 9 months from 13th January, 2026 and which period is yet not over, the award is executable and therefore, this Execution Application is maintainable.

7. Mr. Raheja further submits that the very conduct of the Respondent No.1 as has been recorded in the order dated 13th January, 2026 of the learned Single Judge that despite a lapse of 14 years the occupation certificate has not been furnished to the society, has been

2 (2012) 4 SCC 751.

such that this Court secure the amount of Rs. 128.98 Crs after holding that the Execution Application is maintainable.

8. Mr. Seervai, learned Senior Counsel appearing for the Respondent No.4 firstly submits that the Respondent No.4 is neither a Judgment Debtor nor was a party to the arbitration proceedings and has been unnecessarily dragged in the litigation through the Interim Application. That the Respondent No.4 is only developing property of a society. Supporting the case of the Respondents No. 1 to 3, Mr. Seervai submits that in any event as of date there is no liability as the damages of Rs. 128.98 Crs would arise only upon a contingency where no occupation certificate has been obtained or a regularisation has not been done within a period of 9 months from 13th January, 2026. That there cannot be an order to secure a non existent liability. That once the payment of Rs. 10,65,48,083/- covering the five items is made, nothing would remain to execute and as far as damages of Rs. 128.98 Crs are concerned, there is nothing to execute as the liability has not arisen as yet.

9. Mr. Seervai submits that conditional or contingent liability cannot be executed and the Execution Applicants are best advised to withdraw the Execution Application or else this Court may dismiss the

execution proceedings and also vacate the order of status-quo which is affecting the Respondent No.4, who has nothing to do with the litigation, which submissions are denied by the learned Counsel for the Execution Applicants.

10. I have heard the learned Senior Counsel and the learned Counsel and considered the rival contentions.

11. By order dated 13th January, 2026, the learned Single Judge of this Court in Commercial Arbitration Petition (L) No. 34791 of 2024 under Section 34 of the Arbitration Act, challenging the award dated 16th August, 2024 has after hearing the parties and considering the rival contentions at length upheld the award dated 16th August, 2024 under Execution except extending the timelines for procurement of occupation certificate by the Respondent No.1, who was the Petitioner therein or in the alternative for regularisation of the 'A' wing by 9 months from 13th January, 2026, and expressing an expectation from the Municipal Corporation of Greater Mumbai to show the necessary alacrity in processing and deciding the applications for regularisation and for grant of occupation certificate as overshooting the timelines would invite the drastic consequences of payment of damages. The Learned Single Judge has in paragraph 129 of the said order deemed it

appropriate to extend the period specified in paragraph 87(a)(ii) of the award by six months and which would also have the effect of extension of time in paragraph 87(e) of the award by three months. It has been left open to the Respondent No.1 to go for regularisation and obtain occupation certificate for 'A' wing building within the extended time limit of 9 months, observing that the timelines are being extended in the interest of both the parties and that if the timelines are not extended, the direction for payment of damages and other sums would then be immediately executable and the main purpose of litigation would remain frustrated. That the Respondent No.1 would also have an opportunity of avoiding payment of damages by getting the occupation certificate for the building and in the event the Respondent No.1 fails to get the occupation certificate even during extended timeline fixed by the Court, the original direction for payment of interest on awarded damages of Rs. 128.98 Crs. on the expiry of 9 months from the date of award would continue to operate.

12. In paragraph 130, which is the operative part of the order, as noted above, the time limit has been extended by an aggregate period of 9 months.

13. For the sake of convenience it would be pertinent to set out paragraphs 100, 114, 118, 129 and 130 of the order dated 13th January, 2026 :-

“100. The Arbitral Tribunal has awarded a sum of Rs.128,98,00,000/- in favour of the Respondent-Society in paragraph 87(g) of the Award. As observed above, this direction for payment of damages is only the third consequence made applicable to the Petitioner-Developer. Petitioner can easily avoid the payment of even a single farthing towards damages to the Respondent-Society by implementing the first direction for securing the occupation certificate. If the Petitioner-Developer was to procure the occupation certificate within the period of six months as stipulated in the Award, the direction for payment of awarded sum of Rs. 128.98 crores would have been rendered meaningless. However, if for some reason the Petitioner's application for occupation certificate was to be rejected by the MCGM, the Petitioner has one more option to opt for regularization of 'open to sky ducts' by procuring outside FSI/shortfall FSI. If MCGM was to regularise the irregularities committed by the Petitioner, again Petitioner would not be liable to pay even a farthing to the Respondent-Society towards damages. It is only if the first direction to secure occupation certificate and alternate direction for regularization of 'A' wing building fail that the Petitioner-Developer becomes liable to pay damages of Rs.128.98 crores to the Respondent-Society.

114. As observed above, the eventuality of the Petitioner-Developer paying any damages to the Respondent-Society would arise only if it is unable to secure occupation certificate and also fails in getting 'open to sky duct' regularised by procuring outside FSI. In fact, during the course of his submissions, Mr. Dwarkadas has repeatedly highlighted the position that the DCPR permits procurement of FSI under the 'pick and choose' policy and it is easily possible to secure occupation certificate by feeding 'A' wing building with deficit quantity of FSI. If this is the position, it is not really

understood as to why the Petitioner-Developer has unnecessarily indulged in the present litigation. Instead of wasting time in challenging the Award, Petitioner ought to have procured occupation certificate from the MCGM. This could have been done even during pendency of the present Petition to demonstrate its bonafides. The moment Petitioner secures occupation certificate or gets 'A' wing building regularised, as the case may be, the direction for payment of damages of Rs.128.98 to the Respondent-Society would become redundant. I must keep in mind this vital aspect while deciding whether the impugned Award requires interference merely because the yardstick applied by the Arbitral Tribunal in determining the amount of compensation/damages may not be entirely right. Application of an erroneous yardstick in assessing the damages does not amount to patent illegality in the award. This is particularly true where the ultimate sum awarded as damages can be justified by application of correct yardstick.

118. Also, the direction for payment of damages of Rs.128.98 cr is essentially *in terrorem*. It kicks in only if the Petitioner, who has already defaulted, commits further defaults and fails to procure the occupation certificate for the building. This drastic consequence is also necessary considering the past conduct of Petitioner, who has violated the undertaking given to this Court with impunity. If Petitioner continues with the same attitude, the Respondent-society would recover the amount of damages from it and take necessary steps for ensuring that the society members have flats conforming to the DCPR.

129. Accordingly, I deem it appropriate to extend the period specified in paragraph 87(a)(ii) of the impugned award by six more months and which would also have the effect of extension of time in paragraph 87(e) of the impugned award. It would be open for the Petitioner to directly go for regularisation and obtain occupation certificate for 'A' wing building within overall time limit of 9 months. The timelines are being extended in the interest of both the parties. If timelines are not extended, only the direction for payment of damages and other sums can now be executed and the main purpose of litigation would remain frustrated. Petitioner

would also have an opportunity of avoiding payment of damages by getting the occupancy certificate for the building. However, the extension timeline would not impact the liability to pay interest on various sums awarded by the Arbitral Tribunal. Therefore in the event Petitioner fails to get the occupation certificate even during extended timeline fixed by this Court, the original direction for payment of interest on awarded damages of Rs.128.98 crores on expiry of 9 months from the date of the Award would continue to operate.

130. I accordingly proceed to pass the following order:

(i) The impugned Award dated 16 August 2024 is upheld, except to the limited extent as indicated below.

(ii) The time limit specified in paragraph 87(a)(ii) of the Award shall stand extended by a period of six months from today with corresponding further extension of time of three months stipulated in paragraph 87(e) of the Award. It would be open for the Petitioner to directly opt for regularization of 'A' wing building and to procure occupation certificate in respect of the regularized building within aggregate period of 9 months.

(iii) It is however, made clear that if the Petitioner-Developer fails to secure the occupation certificate for 'A' wing building within the extended time limit, the direction in paragraph 87(h) of the impugned Award for payment of interest @ 8% shall continue to operate from the date of expiry of 9 months from the date of the Arbitral Award.”

14. As can be seen, from paragraphs 100, 114, 118, 129 and 130 of the award, the direction of payment of damages in the award is only the third consequence applicable to the Respondent No.1 and the Respondent No.1 can easily avoid payment of any damages to the Applicant by implementing the directions to secure the occupation certificate and/or to regularise 'A' wing of the building in question. In such an event, the Respondent No. 1 would not be

liable to pay anything towards the damages. It is only upon the failure to secure the occupation certificate or in the alternative directions for regularisation of the 'A' wing building is when the Respondent No.1 becomes liable to pay the damages of Rs. 128.98 Crs to Execution Applicant. The learned Single Judge has extended the period for obtention of the occupation certificate and in the alternate for regularisation of the 'A' wing of the building by a period of 9 months from the date of the order. It is only if the occupation certificate is not obtained or regularisation is not obtained within the said period, that the Respondent No.1 would become liable for damages of Rs. 128.98 Crs. In fact in paragraph 129, as noted above also, the learned Single Judge has clarified this position where it has been observed that, *"If timelines are not extended, only the direction for payment of damages and other sums can now be executed and the main purpose of litigation would remain frustrated. Petitioner would also have an opportunity for avoiding payment of damages by getting the occupancy certificate for the building."*

15. As noted above, Mr. Seksaria, learned Senior Counsel appearing for the Respondents No. 1 to 3 has tendered the pay

orders on behalf of the Respondent No.1 of Rs. 10,65,48,083/- to Mr. Raheja, learned Counsel appearing for the Execution Applicant in payment of the other sums covering 5 items referred to by him in paragraph 11 of the affidavit in reply dated 22nd January, 2026 of the Judgment Debtor which it have been accepted by Mr. Raheja without any demur.

16. If that be the case, then the award as far as the above payments viz. the “other sums” are concerned, is satisfied in view of Order XXI Rules 1 and 2 of the Code of Civil Procedure, 1908 (“CPC”). However, as regards the damages of Rs. 128.98 Crs., since the damages are to be paid only upon the contingency that the occupation certificate with respect to the ‘A’ wing of the building or the regularisation is not obtained within a period of 9 months from the date of the order of the learned Single Judge dated 13th January, 2026, the liability with respect to the damages has not yet arisen and therefore, the question of executing a contingent liability does not arise.

17. Rejoinding to the submissions made by Mr. Raheja, with respect to the decision of the Hon’ble Supreme Court in the case of *Pushpa Sahakari Avas Samiti Limited Vs. Gangotri Sahakari Avas*

Samiti (supra), Mr. Seksaria, learned Senior counsel for the Respondents No. 1 to 3 has submitted that clause of the compromise in the said case provided that the Defendant No. 1 acknowledged and undertook to pay Rs. 38,38,000/- to the Plaintiff within six months from the date of compromise. Mr. Seksaria has submitted that in the case before the Hon'ble Supreme Court, the amount of Rs. 38,38,000/- was due and the Defendant No. 1 was liable to pay the same but only the time to pay the same had been spread over six months, which is not the fact of the case at hand. Mr. Seksaria submits that in the case at hand only if the occupation certificate is not obtained or regularisation is not done till the extended period of 9 months,(which period has as yet not expired), is when the liability to pay the damages of Rs. 128.98 Crs would arise and not otherwise. Mr. Seksaria would submit that therefore, in the case before the Hon'ble Supreme Court, the liability was present and executable but in the facts of the present case at hand there is no liability to execute as yet, the payments in respect of the "other sums" having being satisfied by way of pay orders totalling to Rs. 10,65,48,083/-. Mr. Seksaria further draws this Court's attention to paragraph 6 of the said decision of the Hon'ble Supreme Court, where the Hon'ble Supreme Court has clearly

recorded that by the time the matter was taken up and the order came to be passed, the decree had become mature for execution. Mr. Seksaria has submitted that it is in this context that in paragraph 26, the Hon'ble Supreme Court has rejected the submissions that the executing Court could not have entertained the execution proceedings solely because it was instituted before the expiry of the period stipulated in the compromise decree despite the factum that by the time the Court adverted to the Petition the said period was over. Mr. Seksaria has submitted that, therefore, also the submission that the decree had lost its potentiality of executability having been filed on a premature date was rejected by observing that the said submissions on a deeper probe and keener scrutiny melted into insignificance. Mr. Seksaria is right. The decision in the case of *Pushpa Sahakari Avas Samiti Limited Vs. Gangotri Sahakari Avas Samiti (supra)* relied upon by Mr. Raheja, therefore, does not assist his case.

18. The Hon'ble Supreme Court in the case of *W. B. Essential Commodities Supply Corpn. Vs. Swadeshi Agro Farming & Storage Pvt. Ltd. and Anr.(supra)* relied upon by Mr. Seksaria, learned Senior Counsel, has in paragraph 12 clearly observed that there

may be situations in which the decree may not be enforceable and *inter alia* observed that a case where a decree is not executable until the happening of a given contingency, giving an example that when a decree for recovery of possession of immovable property directs that it shall not be executed till the standing crop is harvested, in such a case time will not begin to run until harvesting of the crop and the decree becomes enforceable from that date and not from the date of the judgment / decree.

19. The liability to pay the damages in the facts herein would arise only in the event that the said occupation certificate or regularisation is not obtained within the period of 9 months from 13th January, 2026. Therefore, there is no liability at present and the executing Court, therefore, cannot permit the Execution Applicant to maintain the execution proceedings. I, therefore, agree with Mr. Seervai that as on date there is no liability as the damages of Rs. 128.98 Crs would arise only upon a contingency where no occupation certificate has been obtained or regularisation has not been done within the period of 9 months extended from 13th January, 2026 and that a contingent liability cannot be executed and therefore, the question of securing a non-existent liability

would also not arise. I have, therefore, no hesitation in holding that the Execution Application as far as the damages of Rs. 128.98 Crs is concerned is not maintainable, the award as regards the “other sums” having been satisfied.

20. In view of the submissions by Mr. Seervai, learned Senior Counsel for the Respondent No. 4, this Court had given an option to the learned Counsel for the Execution Applicant to withdraw the Execution Application with liberty to file a fresh one as and when liability arose and the award became executable however, the learned Counsel has, on instructions, submitted that this Court may pass the order on merits. Accordingly, this Court is passing this order.

21. Ergo, the Execution Application stands dismissed as not maintainable. The interim, ad-interim order of status-quo to stand vacated. The connected Interim Applications also to accordingly stand disposed. In this view of the matter, it would not be necessary to deal with the other arguments of the learned Senior Counsel/learned Counsel including those with respect to the Order XXI Rule 30 of the CPC.

22. After the aforesaid order is passed, Mr. Raheja requests for two weeks' extension of the status-quo order that was passed on 18th September, 2025, which is opposed by the learned Senior Counsel / learned Counsel appearing for the Respondents.

23. In view of the dismissal of the Execution Application, I am not inclined to extend the order of status-quo, the request for extension is also rejected.

(ABHAY AHUJA, J.)

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