Sayali

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

ARBITRATION PETITION NO. 45 OF 2026

Pant Nagar Indrayani Chs. Ltd	… Petitioner
V/s.	
Shagun Reality and Others	… Respondents

Mr. Mohit Jadhav with Mr. Manish Shirke i/b Mohit Jadhav, for Petitioner.

Ms. Lizum Wangdi with Mr. Aniket Mokashi, Mr. Aneesh Shahade, Mr. Kaustubh Bhosale i/b Aniket Mokashi, for Respondent nos. 1 and 2.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 23, 2026

P.C.:

1. The Petitioners seek directions against the Respondents and/or any person claiming through them to enter into and execute an agreement with each of the members/flat owners in respect of the additional carpet area of about 72 sq. ft. and to register such agreement before the Registrar of Assurances.

2. On 29 June 2006, the Petitioners entered into registered Development Agreements with the Respondents. Thereafter, on 10 September 2010, the parties executed a registered Deed of Rectification of the Development Agreement. Subsequently, on 30 August 2011, the Petitioners and the Respondents entered into a registered Supplementary Agreement. On 8 January 2023, Respondent No. 2 attended the Managing Committee meeting of the Petitioner and assured that the terms of the Development Agreement would be complied with. Thereafter, on 12 July 2024, the Petitioners, through their Advocate, issued a notice calling upon the Respondents to comply with the terms of the Development Agreement. According to the Petitioners, the Respondents have, till date, failed to comply with the said terms. The Petitioners have, therefore, filed the present Arbitration Petition.

3. Mr. Mohit Jadhav, learned Advocate appearing for the Petitioners, submitted that under the Development Agreement, Respondent No. 1 had principally agreed to provide Self-Contained Permanent Alternate Accommodation (PAA) admeasuring about 323 sq. ft. to the original 30 members. He submitted that Respondent No. 1 had agreed to pay compensation of Rs.45,00,000/- to the Petitioners. According to the Petitioners, Respondent No. 1 had agreed to fulfil the other obligations and commitments set out in the Development Agreement. The Petitioners have placed before the Court a tabular statement setting out the relevant terms and features of the Development Agreement dated 29 June 2006. Learned Advocate submitted that the Petitioners rely upon the statement showing the monthly rent compensation payable by the Respondents under the redevelopment agreements. According to the Petitioners, substantial amounts towards such monthly compensation remain unpaid. The Petitioners claim the outstanding amount from the Respondents together with interest at the rate of 18% per annum until the date of payment. Learned Advocate submitted that in January 2023, the Petitioners received a Property Tax Notice from the MCGM demanding payment of arrears. The Petitioners, therefore, by their letter dated 30 January 2023, called upon the Respondents to pay the said arrears. Thereafter, by a letter dated 8 December 2023, the Petitioners again called upon the Respondents to pay all amounts payable to the competent authorities and to furnish the receipts evidencing such payment. According to the Petitioners, despite the assurances given by the Respondents under the agreements and in the meetings held between the parties, the Respondents failed to discharge their and statutory obligations. Being aggrieved by such failure, the Petitioners issued a notice invoking arbitration under Clause 64 of the Development Agreement dated 29 June 2006. The said notice was sent by Registered Post A.D. The postal record indicates that Respondent Nos. 1 and 2 refused to accept the notice, while Respondent No. 3 had left the address.

4. The Respondents had agreed under the Supplementary Agreement dated 30 August 2011 to provide each member a flat having a carpet area of 484 sq. ft. in the redeveloped building. According to the Petitioners, the Respondents have in fact constructed and provided flats having a carpet area of 556 sq. ft. Thus, there is an additional carpet area of 72 sq. ft. According to the Petitioners, the Respondents are required to execute an agreement recording the said additional carpet area of 72 sq. ft. in favour of each member/flat owner and to register such agreement before the Registrar of Assurances. The Petitioners have relied upon various statements of accounts in support of their claim. According to the Petitioners, these statements show that the Respondents are jointly and severally liable to pay a sum of Rs.6,01,98,113/- to the Petitioners. On this basis, the Petitioners seek an order directing the Respondents to secure the said amount of Rs.6,01,98,113/- before this Court, in such manner and within such time as this Court may consider appropriate.

5. Ms. Lizum Wangdi, learned Advocate appearing for the Respondents, submitted that Respondent No. 1 had made substantial payments towards transit rent to the original members of the Petitioner Society from the time when the respective members vacated their premises for redevelopment. According to her, these payments commenced around May 2010 and continued, in the case of the concerned members, until around December 2018. She submitted that around December 2018, the financial position of Respondent No. 1 was brought to the notice of the members of the Petitioner Society. The members were informed that Respondent No. 1 was facing financial difficulties and was no longer in a position to continue making transit rent payments at the existing rate while at the same time arranging the funds required for completing the redevelopment project. She submitted that Flat No. 401 was allotted to Mr. Prakash Kundalia under an allotment letter dated 18 May 2010. Subsequently, due to changes in the sanctioned plans and the configuration of the redevelopment project, the allotment was changed and Mr. Prakash Kundalia was allotted Flat No. 901. She submitted that Flat No. 1002 was allotted to Mr. Ashok B. Vadalia (HUF) under an allotment letter dated 14 August 2021. Flat No. 1503 was allotted to Mrs. Arti Asit Kothari and Mr. Maulik Asit Kothari under an allotment letter dated 14 October 2019. Flat No. 1602 was allotted to Mr. Maulik Asit Kothari and Mrs. Arti Asit Kothari under an allotment letter dated 22 September 2021.

Reasons and Findings

6. I have considered the pleadings and what is submitted by both sides. I have gone through the documents and agreements relied upon by the Petitioners and the Respondents. The reliefs claimed by the Petitioners are arising from the obligations of the Respondents under the Development Agreement dated 29 June 2006, the Deed of Rectification dated 10 September 2010 and the Supplementary Agreement dated 30 August 2011.

7. The first relief claimed by the Petitioners is regarding the additional carpet area of 72 sq. ft. The Petitioners are relying upon the Supplementary Agreement dated 30 August 2011. Their case is that under the said agreement the Respondents were required to give 484 sq. ft. carpet area to each concerned member. According to the Petitioners, the flats constructed and given are of 556 sq. ft. carpet area. Therefore, there is an additional area of 72 sq. ft. The Petitioners have stated this part of their case. They say that the Respondents "agreed that they would be providing a Flat admeasuring 484 sq. ft. carpet area in the redeveloped building, but constructed and provided a Flat admeasuring 556 sq. ft. carpet area." Thus, when 484 sq. ft. is deducted from 556 sq. ft., the difference is 72 sq. ft. The basis of the Petitioners' claim is seen from the figures themselves.

8. The Petitioners seek a direction to the Respondents to execute and register an agreement showing this additional area in favour of each member/Flat Owner. In this view, prayer (a) is not asking for some entirely new right which has no connection with the Development Agreement. The Petitioners are asking that the additional carpet area which, according to them, has already been constructed and provided, should be recorded by a registered agreement.

9. The Respondents have not placed sufficient material before the Court to explain why, if the flats provided are having 556 sq. ft. carpet area, an agreement recording such area should not be executed and registered. There is no material before the Court to show that the additional 72 sq. ft. is unauthorised. There is no material showing that the Petitioners are claiming an area which is against the sanctioned plan or against the agreement between the parties.

10. The main defence of the Respondents is about their financial difficulties. Ms. Lizum Wangdi, learned Advocate appearing for the Respondents, submitted that Respondent No. 1 had made substantial payments towards transit rent from around May 2010 and these payments continued for the concerned members till around December 2018. This shows that Respondent No. 1 had made payments for a considerable period. However, this submission does not answer the particular claim of the Petitioners about the additional 72 sq. ft. carpet area. It was submitted on behalf of the Respondents that around December 2018 the members were informed that Respondent No. 1 was facing financial hardship. It was stated that Respondent No. 1 was not in a position to continue paying transit rent at the same level and arrange the funds needed to complete the redevelopment project. This may explain the difficulty in making some payments. But financial difficulty alone cannot change an obligation which is contained in a registered agreement. For changing such obligation, there should be a valid agreement between the parties. No such agreement regarding the additional 72 sq. ft. has been shown before the Court.

11. The earlier history of the transaction is important. The parties first entered into the registered Development Agreement dated 29 June 2006. Thereafter, the registered Deed of Rectification dated 10 September 2010 was executed. Subsequently, the parties entered into the registered Supplementary Agreement dated 30 August 2011. These documents are the basis of the relationship between the parties. They cannot be put aside. The rights and obligations of the parties have to be seen from these documents and the terms contained therein.

12. The Respondents have stated that some flats were allotted to different persons at different times. Flat No. 401 was allotted to Mr. Prakash Kundalia under an allotment letter dated 18 May 2010. Subsequently, because of changes in the sanctioned plans and the configuration of the redevelopment project, the allotment was changed to Flat No. 901. Flat No. 1002 was allotted to Mr. Ashok B. Vadalia (HUF) under an allotment letter dated 14 August 2021. Flat No. 1503 was allotted to Mrs. Arti Asit Kothari and Mr. Maulik Asit Kothari under an allotment letter dated 14 October 2019. Flat No. 1602 was allotted to Mr. Maulik Asit Kothari and Mrs. Arti Asit Kothari under an allotment letter dated 22 September 2021.

13. The Respondents have relied upon these allotments while opposing prayer (b). I have considered the submission. The fact that allotment letters have been issued in favour of certain persons does not bring an end to the claim of the Petitioners. In fact, when these allotments are relied upon, it becomes necessary that no rights are created in respect of these flats which may make the claim of the Petitioners more difficult to enforce.

14. Prayer (b) relates to four flats, namely Flat Nos. 901, 1002, 1602 and 1503 in Pantnagar Indrayani CHS Ltd., Building No. 13, Pantnagar, Ghatkopar (East), Mumbai. The Petitioners seek an injunction restraining the Respondents and persons claiming through them from dealing with these flats, parting with possession, creating any third-party right, title or interest, alienating or encumbering the said flats.

15. The Petitioners have placed their statements of accounts before the Court. According to them, Rs.6,01,98,113/- is payable by the Respondents jointly and severally. They have relied upon unpaid transit rent compensation and other amounts claimed under the redevelopment arrangements. According to the Petitioners, they had called upon the Respondents to perform their obligations and make the payments which were required.

16. The Petitioners have relied upon the Property Tax Notice received from the MCGM in January 2023. According to them, by letter dated 30 January 2023, they called upon the Respondents to pay the arrears. Thereafter, by another letter dated 8 December 2023, they again called upon the Respondents to pay the amounts payable to the competent authorities and to provide the receipts. Therefore, it cannot be said that the grievance was raised by the Petitioners for the first time only when the present proceedings were filed.

17. The Petitioners have relied upon the Managing Committee meeting held on 8 January 2023. According to them, Respondent No. 2 attended the meeting and assured that the Development Agreement would be complied with. Thereafter, on 12 July 2024, the Petitioners, through their Advocate, issued a notice calling upon the Respondents to comply with their obligations. According to the Petitioners, even after this notice the obligations were not complied with.

18. The Petitioners thereafter invoked the arbitration clause contained in Clause 64 of the Development Agreement dated 29 June 2006. The notice was sent by Registered Post A.D. According to the postal record relied upon by the Petitioners, Respondent Nos. 1 and 2 refused to accept the notice and Respondent No. 3 had left the address. The mere refusal to accept the notice cannot be treated as compliance with the obligations under the Development Agreement.

19. I have considered the submission regarding transit rent. The Respondents' case is that Respondent No. 1 had made substantial payments from around May 2010 till around December 2018. This submission is required to be considered. It shows that payments were made for a long period. At the same time, the Respondents themselves state that after December 2018 the payments could not continue because of financial difficulties. The plea of financial difficulty cannot change the rights of the Petitioners. A party which has undertaken obligations under registered agreements continues to be bound by those obligations unless a valid arrangement changes them. No such arrangement has been shown before the Court regarding the additional 72 sq. ft. or the relief sought in prayer (a).

20. There is another aspect which is required to be considered. The Petitioners are not at this stage seeking an order for sale of the flats. They are not seeking a final money decree for the entire amount claimed by them. Prayer (b) is for protecting the properties. The purpose is to prevent the identified flats from being transferred, encumbered or otherwise dealt with in a manner which may make the rights claimed by the Petitioners difficult to protect during the proceedings.

21. If third-party rights are created in these flats, the dispute may become more difficult. Persons who are not parties to the present proceedings may acquire rights in the flats. The Petitioners may then have to take proceedings against such persons. Such a situation is required to be avoided when the Petitioners have shown a basis for their claim and have identified the particular properties for which protection is sought.

22. I have considered the submission of the Respondents regarding the allotment of Flat Nos. 901, 1002, 1503 and 1602. Even if the allotment letters have been issued, that fact alone does not show that the Respondents are free to create rights or encumbrances in these flats contrary to the rights claimed by the Petitioners under the Development Agreement and the registered documents. The exact effect of each allotment can be considered in the arbitration proceedings. For the present, it is necessary to preserve the properties. The Petitioners have relied upon their claim of Rs.6,01,98,113/-. At this stage, I am not recording a final finding that the Petitioners are entitled to recover the entire amount. The actual amount payable will depend upon examination of the accounts, the obligations under the agreements, the payments already made and the other material relied upon by both sides. These issues can be examined in the arbitration proceedings. However, merely because the amount claimed by the Petitioners is disputed, the properties cannot be allowed to be dealt with in such a manner that the claim of the Petitioners may become ineffective. The Court is required to preserve the subject matter of the dispute so that, if the Petitioners succeed, the relief granted to them does not become ineffective.

23. On considering the material placed before me, I find that the Petitioners have shown a basis for their claim regarding the additional 72 sq. ft. carpet area. The Respondents have not shown sufficient reason as to why the additional area, which according to the Petitioners has already been constructed and provided, should remain without being recorded in a registered document. Therefore, the relief sought in prayer (a) deserves to be granted.

24. I find that the four flats mentioned in prayer (b) require protection during the pendency of the proceedings. The injunction is confined only to the four flats mentioned in the prayer. The Respondents are not restrained from dealing with any other property in accordance with law. The order is limited to what is necessary for protecting the rights claimed by the Petitioners.

25. The submission of the Respondents regarding the payments made towards transit rent and the financial difficulties faced by

Respondent No. 1 has been considered. These matters may have relevance while deciding the final monetary liability of the Respondents. However, they do not answer the claim of the Petitioners regarding the additional carpet area. They do not give sufficient reason to permit creation of third-party rights in the four identified flats during the pendency of the proceedings.

26. In view of the above discussion and the material placed before the Court, I find that the Petitioners are entitled to the reliefs sought in prayer clauses (a) and (b). Grant of these reliefs does not finally decide all the monetary claims made by the Petitioners. The rights and liabilities of the parties regarding the disputed monetary claims will remain open for adjudication in accordance with law. The relief granted at this stage is confined to recording the additional carpet area and protecting the four specified flats from dealing with or encumbrance.

27. In view of the foregoing discussion, and upon overall assessment of the material record, the following order is passed:

(i) Prayer Clause (a) is allowed. The Respondents and/or any person claiming through or under them shall execute an agreement in respect of the excess carpet area admeasuring 72 sq. ft. in favour of each of the concerned members/Flat Owners and shall register the said agreement before the Registrar of Assurances.

(ii) Prayer Clause (b) is allowed. Pending the hearing and final disposal of the arbitration proceedings, the

Respondents and/or any person claiming through or under them are restrained from dealing with, parting with possession of, creating any third-party right, title or interest in, alienating, transferring or encumbering, in any manner whatsoever, Flat Nos. 901, 1002, 1602 and 1503 situated in Pantnagar Indrayani CHS Ltd., Building No. 13, Pantnagar, Ghatkopar (East), Mumbai 400 052.

(iii) It is clarified that the observations made in the judgment and the present order concerning the claim of Rs.6,01,98,113/- and other monetary claims are only for the purpose of deciding the present Petition. The final rights and liabilities of the parties in respect of such monetary claims shall be decided in the arbitration proceedings in accordance with law.

(iv) The present order shall not prevent the Respondents from dealing with any property other than the four flats referred to in clause (ii) above, in accordance with law.

(v) The Arbitration Petition is accordingly disposed of in the above terms.

(vi) All contentions of the parties which are not decided herein and which are required to be adjudicated by the Arbitral Tribunal are kept open.

(vii) There shall be no order as to costs.

(AMIT BORKAR, J.)