

Shabnoor

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

ARBITRATION APPLICATION NO.330 OF 2026

Flying Earth LLP

... Applicant

Vs.

1. Date Bungalow Cooperative
Housing Society Limited
2. Shivji Bhojraj Gada
3. Rekha Shivji Gada
4. Hiruben Lakhamshi Gala
5. Leena Mansukh Gala

... Respondents

Mr. M.B. Saraf i/by L.J. Law for the Applicant.

Mr. Jainesh Jain for Respondent No.1.

Mr. Y.R. Mishra with Mr. Sachidanand T. Singh for
Respondent Nos.2, 3, 4, and 5.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 24, 2026.

P.C.:

1. By the present Application under Section 11 of the Arbitration and Conciliation Act, 1996, the Applicant seeks appointment of an Arbitrator to decide the disputes and differences between the parties arising out of and in connection with the Development Agreement dated 22 March 2025.

2. According to the Applicant, the relevant facts leading to the filing of the present Application are as follows. The Applicant is a limited liability partnership registered under the Limited Liability Partnership Act, 2008. Respondent No. 1 is a housing society registered under the Maharashtra Co-operative Societies Act, 1960. Respondent Nos. 2 to 5 are adult Indian inhabitants and members of Respondent No. 1. The building is occupied by 17 members of the Society. Respondent Nos. 2 to 5 are occupying the flats which are the subject matter of the present proceedings. On 19 March 2006, a Deed of Conveyance was executed in favour of Respondent No. 1 in respect of the land and building. There were, however, certain clerical errors in the said Deed. These errors were corrected by a Deed of Rectification dated 17 February 2025. In the Special General Body Meeting held on 14 January 2024, Respondent No. 1 resolved to redevelop the property as the building had become old and was in a severely deteriorated condition. Thereafter, in the Special General Body Meeting held on 25 February 2024, Respondent No. 1 appointed Mr. Kapil Bakshi as the Project Management Consultant ("PMC"). The Society invited offers from developers for redevelopment of the property by publishing advertisements in newspapers. Pursuant to the public advertisement dated 25 August 2024, Respondent No. 1 received 16 redevelopment offers from different developers. The Applicant submitted its revised redevelopment offer on 1 October 2024 as requested by Respondent No. 1. On 2 October 2024, the shortlisted developers, including the Applicant, made presentations before the Society. Respondent No. 1 asked the shortlisted developers to

submit modified plans on the basis of the suggestions and feedback received from its members. The Applicant accordingly submitted its modified redevelopment plans on 18 October 2024. In the Special General Body Meeting held on 24 November 2024, the Applicant was selected as the Developer by majority vote. Respondent Nos. 2 to 5 were present at the meeting but did not participate in the voting. Thereafter, on 12 December 2024, Respondent No. 1 issued a Letter of Intent appointing the Applicant as the Developer for redevelopment of the property.

3. In the Special General Body Meeting held on 26 January 2025, in the presence of the officer appointed by the Deputy Registrar, Co-operative Societies, "K" East Ward, Mumbai, the majority of the members approved the appointment of the Applicant as the Developer. The Deputy Registrar, Co-operative Societies, confirmed and approved the appointment of the Applicant as Developer on 27 January 2025. On 22 March 2025, a Development Agreement containing an arbitration clause was executed between the Applicant, Respondent No. 1 Society and 13 out of its 17 members. On 23 March 2025, Respondent No. 1 executed a Power of Attorney in favour of the Applicant for implementation of the terms of the Development Agreement. Mr. Sunil Paradkar, one of the members who had initially dissented, subsequently executed a declaration dated 28 July 2025 consenting to the appointment of the Applicant as Developer and confirming the Development Agreement. In pursuance of the Development Agreement, the Applicant incurred substantial expenditure towards stamp duty, hardship compensation, statutory

premiums and consultant fees. Respondent Nos. 2 to 5 initiated various proceedings against Respondent No. 1 and the Applicant with the object of obstructing the redevelopment. According to the Applicant, none of those proceedings resulted in any relief being granted in favour of Respondent Nos. 2 to 5. The Applicant obtained approval from the BMC for the redevelopment concessions on 11 October 2025. On 24 November 2025, the BMC issued an Intimation of Disapproval ("IOD") approving the plans up to seven floors. On 26 November 2025, the Applicant informed Respondent No. 1 about receipt of the IOD and requested the Society to obtain written consent from all its members for vacating their respective premises. Fourteen out of the 17 members gave their written consent to vacate. Respondent Nos. 2 to 5, however, refused to cooperate.

4. On 23 December 2025, the Applicant invoked the arbitration agreement and called upon Respondent Nos. 2 to 5 to comply with the Development Agreement. The Applicant filed a Petition under Section 9 of the Arbitration and Conciliation Act before this Court on 29 January 2026. The Co-operative Court, Mumbai, rejected the application for interim injunction filed by Respondent No. 5 on 7 March 2026. On 9 March 2026, this Court allowed the Section 9 Petition and directed Respondent Nos. 2 to 5 to vacate their respective premises upon issuance of notices after obtaining the Full FSI IOD. The Applicant obtained the amended Full FSI IOD on 8 May 2026. Thereafter, on 9 May 2026, notices were issued to the Respondents calling upon them to vacate their respective flats and hand over possession. The Maharashtra State Co-operative

Appellate Court, by its order dated 21 May 2026, dismissed Appeal No. 24 of 2026 with costs and confirmed the order passed by the Co-operative Court. According to the Applicant, Respondent Nos. 2 to 5 have still not vacated their respective premises. They continue to obstruct the redevelopment despite their alleged obligations under the Development Agreement, the orders passed by the Courts and the notices calling upon them to vacate. The Applicant submits that this has delayed commencement of the redevelopment project, resulted in increase in costs and caused substantial financial loss. It is in these circumstances that the Applicant has filed the present Application.

5. Mr. Saraf, learned Advocate appearing for the Applicant, submits that the Applicant invoked the arbitration agreement on 23 December 2025. According to him, the dispute arises out of the Development Agreement and concerns the failure and refusal of Respondent Nos. 2 to 5 to comply with the obligations arising from the said Agreement. Pursuant to the order dated 9 March 2026 passed by this Court, the Applicant issued notices calling upon Respondent Nos. 2 to 5 to vacate their respective flats and hand over possession. Respondent Nos. 2 to 5, however, failed to comply with those notices and have continued to obstruct the redevelopment project. It is therefore submitted that there is a continuing breach of the Development Agreement. Such breach has delayed commencement of the project, increased the cost of redevelopment and caused substantial financial loss to the Applicant. According to the Applicant, the delay is continuing and, therefore, its claim is within limitation and is not barred by the law

of limitation. Learned Advocate appearing for the Petitioner, has placed reliance upon the judgment of the Supreme Court in *Cox and Kings Limited v. SAP India Private Limited*, (2024) 1 SCC 1, as the judgment in *ASF Buildtech Private Limited v. Shapoorji Pallonji and Company Private Limited*, (2025) 9 SCC 76.

6. Mr. Singh, learned Advocate appearing for Respondent Nos. 2 to 5, submits that Respondent Nos. 2 to 5 neither signed nor executed the Development Agreement dated 22 March 2025 on which the Applicant relies. They never agreed to Clause 27 of the Development Agreement and never otherwise agreed to refer any dispute with the Applicant to arbitration. According to him, therefore, the requirements of Section 7 of the Arbitration and Conciliation Act are not satisfied in respect of Respondent Nos. 2 to 5. It is submitted that Respondent Nos. 2 to 5 had opposed the process adopted for appointment of the Applicant as Developer and had consistently disputed the legality and validity of the redevelopment process. Their decision not to execute the Development Agreement was deliberate. Their conduct throughout shows that they never intended to become parties to the Development Agreement or to its arbitration clause.

7. It is further submitted on behalf of Respondent Nos. 2 to 5 that the Applicant was aware that they had not signed the Development Agreement. In the notice invoking arbitration dated 23 December 2025, the Applicant called upon Respondent Nos. 2 to 5 to confirm in writing that they would abide by the Development Agreement and, upon their failure to do so, purported to invoke Clause 27. According to the Respondents, the

very fact that such confirmation was sought shows that they had never agreed to be bound by the Development Agreement or its arbitration clause. It is submitted that merely because Respondent Nos. 2 to 5 are members of Respondent No. 1 Society, an arbitration agreement cannot come into existence between them and the Applicant. A resolution passed by the majority of the Society, or execution of the Development Agreement by the Society, may, subject to the applicable law, bind individual members in respect of certain substantive obligations relating to redevelopment. However, according to the Respondents, it does not amount to individual consent to have disputes decided by a private arbitrator.

8. The Respondents submit that there is an important difference between being bound by certain obligations relating to redevelopment and becoming a "party" to an arbitration agreement. Arbitration is based on the consent of the parties. Therefore, according to the Respondents, statutory or collective obligations imposed upon a member of a Co-operative Housing Society cannot be treated as consent to an arbitration agreement which that member has neither signed nor otherwise accepted.

9. Reliance is placed upon the judgment in *Avenues Seasons Properties LLP v. Nissa Hoosain Nensey & Ors.* Appeal Nos. 42, 43 and 44 of 2024 decided on 22-10-2024. It is submitted that the issue under Section 11 has already been considered by this Court in that case and is covered by the decision. The members in that case had opposed redevelopment and had not signed the Development Agreement. The Developer nevertheless sought to

refer them to arbitration. The Division Bench held that a person who is not named in the Development Agreement and who has not signed the Agreement cannot, merely on that basis, be referred to arbitration. It is submitted that the Division Bench distinguished between interim protection under Section 9 and actual arbitration proceedings. The fact that interim measures may, in an appropriate case, be granted against a third party or non-signatory does not mean that arbitration proceedings can be commenced against such person in the absence of an arbitration agreement.

10. Reliance is placed upon the judgment of this Court in *Space Master Realtors v. Mulund Sandhyaprakash Co-operative Housing Society Ltd. & Anr.*, 2026 SCC OnLine Bom 1803. It is submitted that this Court expressly described the decision in *Avenues Seasons* as being "directly on the point" and held that a person who has not signed the Development Agreement cannot be compelled to arbitrate merely because the Development Agreement contains an arbitration clause. According to Respondent Nos. 2 to 5, therefore, the controversy raised in the present Application is squarely covered by the judgment of this Court in *Space Master Realtors*.

11. The issue considered in *Space Master Realtors* was whether a Developer who had entered into a Development Agreement with a Co-operative Housing Society could rely upon the arbitration clause contained in that Agreement and seek appointment of an Arbitrator against an individual dissenting member who had not signed the Development Agreement. This Court answered the question in the negative and dismissed the Section 11 Application. This Court made a distinction between proceedings under Section

9 and proceedings under Section 11 of the Arbitration and Conciliation Act. Interim protective measures may, in an appropriate case, operate against a non-signatory dissenting member. However, that does not mean that the non-signatory member can be compelled to participate in arbitration when there is no agreement on his or her part to submit the dispute to arbitration.

REASONS AND FINDINGS:

12. I have considered the facts placed by the Applicant, the objections raised by Respondent Nos. 2 to 5. At this stage, the question which arises is whether there is an arbitration agreement between the Applicant and Respondent No. 1 Society. The second question is whether such an arbitration agreement can be said to exist between the Applicant and Respondent Nos. 2 to 5, who admittedly have not signed the Development Agreement.

13. So far as Respondent No. 1 Society is concerned, there is no difficulty in holding that an arbitration agreement exists between the Applicant and the Society. The Development Agreement dated 22 March 2025 was executed between the Applicant and Respondent No. 1. The said Agreement contains an arbitration clause. Respondent No. 1 is therefore a party to the Agreement containing the arbitration clause. Thus, the Applicant and Respondent No. 1 are parties to an arbitration agreement in writing as required under Section 7 of the Arbitration and Conciliation Act.

14. The Applicant has placed before the Court the circumstances in which the Development Agreement came to be executed. The Society had decided to redevelop the property. It appointed a PMC and invited offers from developers. The Applicant submitted its offer and submitted revised and modified plans. In the Special General Body Meeting held on 24 November 2024, the Applicant was selected as the Developer by majority. Thereafter, the Society issued a Letter of Intent dated 12 December 2024. The appointment of the Applicant as Developer was again approved in the Special General Body Meeting held on 26 January 2025 in the presence of the officer appointed by the Deputy Registrar. The Deputy Registrar confirmed and approved the appointment on 27 January 2025. The Development Agreement was then executed on 22 March 2025. These facts are important because the Applicant is not relying upon with the Society for invoking the arbitration clause. The Development Agreement is a completed document. It was executed by Respondent No. 1 Society. The Society has not disputed that it executed the Agreement. Therefore, as between the Applicant and Respondent No. 1, the existence of the arbitration agreement is clear. At this stage, this Court is not required to decide whether the Applicant will succeed in the claims made under the Development Agreement. The allegations of breach, the effect of any delay, the financial loss claimed by the Applicant and the defence of the Society are matters which can be considered by the learned Arbitrator. In a Section 11 Application, the Court is required to consider whether an arbitration agreement exists and, if the legal requirements are satisfied, to appoint an

Arbitrator. Therefore, at this stage, the Court is concerned with the existence of the arbitration agreement and not with the final merits of the claims.

15. The position is different when the Applicant seeks to refer Respondent Nos. 2 to 5 to arbitration. It is not in dispute that Respondent Nos. 2 to 5 did not sign the Development Agreement dated 22 March 2025. They did not become parties to the Agreement in their individual capacity. They have stated that they never agreed to Clause 27 and never agreed that their disputes with the Applicant should be decided by arbitration.

16. The Applicant has relied upon the fact that Respondent Nos. 2 to 5 are members of Respondent No. 1 Society. The Applicant has relied upon the majority decision of the Society, the steps taken for redevelopment, the orders passed in the Section 9 proceedings and the alleged obligation of the members to vacate their flats. These facts may be relevant for deciding the rights and obligations of the members in relation to redevelopment. But these facts do not answer the question whether Respondent Nos. 2 to 5 agreed to arbitration.

17. A member of a Co-operative Housing Society may, depending upon the law and the facts, be bound by a decision of the Society relating to redevelopment. But being bound by such a redevelopment decision is different from agreeing that disputes with the Developer will be decided by a private Arbitrator. Both these matters cannot be treated as one and the same.

18. The Constitution Bench of the Supreme Court in *Cox and Kings Ltd. v. SAP India Pvt. Ltd.*, 2023 INSC 1051, has recognised that the arbitration agreement is from the main contract. In the case of a non-signatory, the important question is whether such person has consented to the arbitration agreement from the underlying contract.

19. This principle has been applied by this Court in relation to redevelopment agreements in *Space Master Realtors*. Paragraph 111 of that judgment states:

"111. A reference to arbitration cannot be made in absence of existence of arbitration agreement between parties. Ordinarily, 'parties' to arbitration agreement are those who have 'signed' the same. However, Section 7 of the Arbitration Act uses the expression 'parties' and not 'signatories'. Therefore, in a given case, even a non-signatory can be treated as veritable party to arbitration. This principle applies when the doctrines of 'group of companies' or 'alter ego' or 'composite transaction', etc. can be invoked to gather intention of non-signatory to be bound by the obligations of the contract. As held by the Constitution Bench in *Cox and Kings*, a non-signatory can be subjected to arbitration by applying the tests of mutual intent, relationship, commonality of subject matter, composite nature of transaction, participation in performance of contract, etc. However, participation in performance of contract by a non-signatory must be positive, direct and substantial so that the same must create an impression of assumption of obligations upon under the contract. To join a non-signatory to arbitration, court must satisfy that the non-signatory consented to the arbitration agreement as contradistinct from the underlying contract containing arbitration agreement. This is the decisive test for

determining whether a non-signatory is a veritable party to the arbitration agreement."

20. Therefore, merely because a person has not signed an Agreement, it cannot be said in every case that such person can never be made a party to arbitration. There may be cases where the conduct and circumstances show that a non-signatory had agreed to be bound by the arbitration agreement. But for that purpose, there must be some material from which such intention can be seen. Merely having a relationship with a signatory, receiving some benefit under the contract or taking part in some part of the transaction cannot mean that the person has agreed to arbitration. The intention to bind a non-signatory has to be found from the facts and conduct of that particular transaction.

21. In the present case, the material before the Court shows a different position in respect of Respondent Nos. 2 to 5. They did not sign the Development Agreement. They did not accept Clause 27. They were dissenting members. They had opposed the appointment of the Applicant as Developer and had disputed the redevelopment process. Their conduct therefore cannot be treated as conduct showing that they had agreed to arbitration. The Applicant has relied upon the fact that Respondent Nos. 2 to 5 were present in the Special General Body Meeting held on 24 November 2024 but abstained from voting. This fact cannot amount to an agreement to arbitrate. Merely being present in a meeting and not voting cannot be treated as written or implied consent to a arbitration agreement. In fact, when this conduct is seen along with their subsequent conduct, it supports their case

that they had not consented to the appointment of the Applicant as Developer.

22. The Applicant has relied upon the later events, including issuance of the IOD, consent given by 14 members to vacate and the proceedings filed by Respondent Nos. 2 to 5. These events show that there is a continuing dispute between the Applicant and Respondent Nos. 2 to 5 regarding the redevelopment. But merely because a dispute exists, an arbitration agreement does not come into existence. The important question is whether there is an agreement between the parties that the dispute will be decided by arbitration.

23. The orders passed by this Court in the Section 9 proceedings do not change this position. Proceedings under Section 9 and proceedings under Section 11 have different purposes. In an appropriate case, an interim order may affect a person even though that person may not be a party to the arbitration agreement. Such an order does not mean that the person has agreed to arbitration of the main dispute.

24. This distinction has been noticed in *Space Master Realtors*. Paragraph 116 of the judgment states:

"116. While examining the issue of *prima facie* existence of arbitration agreement under Section 11 of the Arbitration Act, the Referral Court needs to examine and hold as to whether the nonsignatory is a veritable party. The Referral Court need not adopt hands-off approach in relation to the inquiry into the status of non-signatory as veritable party. However such inquiry can be conducted by the Arbitral Tribunal under Section 16 of the Arbitration Act. (*ASF*

Buildtech and HPCL v. BCL Secure Premises Pvt. Ltd.)."

25. This principle applies to the present case. This Court therefore cannot hold that Respondent Nos. 2 to 5 became parties to the arbitration agreement merely because the redevelopment may affect them or because certain orders were passed against them. The Court has to see whether there is material showing their consent to arbitration. On the material placed before this Court, such consent is not shown.

26. The judgment in Space Master Realtors is relevant because it considers the position of dissenting members in redevelopment matters. Paragraph 112 states:

"112. In relation to development agreements executed for redevelopment of society's building however, a member, who dissents and who has no intention of signing the DA and opposes its execution, cannot become veritable party to the DA. His participation in the redevelopment process becomes an involuntary act, as he is forced to vacate the old flat and execute PAAA with the developer on account of imposition of will of majority. In such a case, his participation in the redevelopment process cannot be a factor for inferring that he is a veritable party to the DA. He becomes beneficiary of DA, not by choice, but because of imposition of majority will on him. Therefore, his capacity as third-party beneficiary would not make him a variable party to the arbitration agreement contained in the DA. Far from any intention to arbitrate, the dissenting member actually does not want to act as per the DA, but is forced to do so by applying the principle of loss of individuality and by forcing the majority decision on him. Thus, the mutual intention to arbitrate cannot be inferred in case of a dissenting member."

27. The facts of the present case are in line with the above principle. Respondent Nos. 2 to 5 were dissenting members. Their conduct was not that of members who accepted the Development Agreement but did not sign it for some technical reason. Their case is that they did not agree with the redevelopment process and did not agree to the Development Agreement. Their later conduct is consistent with this position. Therefore, merely from the alleged obligation of Respondent Nos. 2 to 5 to vacate their flats, it cannot be said that they had agreed to the arbitration clause. The Applicant may have a case that the decision of the majority Society binds the dissenting members in matters concerning redevelopment. That is a question. While deciding the present Section 11 Application, this Court is not required to finally decide every substantive obligation which may arise against Respondent Nos. 2 to 5 in relation to redevelopment. The question before the Court is whether they agreed to arbitration. On this question, the Applicant has not established the necessary consent.

28. The same position is clear from paragraph 113 of Space Master Realtors, which states:

"113. Ultimate participation by a dissenting member in the redevelopment process, reaping of benefits by him under the DA and execution of PAAA, etc. may, at the highest, give rise to a presumption that he has finally consented to the underlying contract (DA), but as held in para 128 of the judgment in *Cox and Kings*, this would not necessarily mean his consent for arbitration agreement."

29. Therefore, even if it is assumed that Respondent Nos. 2 to 5 may have to accept some consequences of the redevelopment or

may receive some benefits under the Development Agreement, that cannot create consent to the arbitration clause. The redevelopment agreement and the arbitration agreement have to be considered.

30. The Applicant has relied upon the fact that the redevelopment process was approved by the majority and that Respondent No. 1 executed the Development Agreement on behalf of its members. This may have relevance while considering the substantive authority of the Society and the obligations of its members. But it cannot be extended to create an arbitration agreement with a member who did not sign the Development Agreement and who has consistently disputed the redevelopment process.

31. The decision in *Avenues Seasons Properties LLP* supports the requirement of consent in such a case. This Court has considered the position of members who had not signed the development agreement. This principle is consistent with the later decision in *Cox and Kings*, where mutual intention and consent have been treated as important while considering whether a non-signatory can be bound by an arbitration agreement.

32. The Applicant's reliance upon the order passed in the Section 9 proceedings cannot assist it. The Court exercising jurisdiction under Section 9 was considering whether interim protection was required in the facts before it. The present Application under Section 11 requires the Court to consider whether an arbitration agreement exists. These two proceedings cannot be treated as the

same. The fact that the Applicant obtained an order under Section 9 does not establish that an arbitration agreement exists between the Applicant and every person against whom the interim order operates.

33. The Applicant has submitted that Respondent Nos. 2 to 5 continue to obstruct the redevelopment and that this has caused delay and financial loss. There may be a dispute on these matters and the Applicant may have remedies available in law. But even if the breach is continuing, it cannot create an arbitration agreement where there was no such agreement. A continuing breach may be relevant to limitation and to the merits of a claim where a person is already bound by an arbitration agreement. It cannot take the place of the basic requirement of consent to arbitration.

34. There is no material before the Court to show that Respondent Nos. 2 to 5 subsequently executed any document accepting Clause 27 of the Development Agreement. There is no later conduct shown which can be treated as positive, direct and substantial acceptance of the arbitration obligation. On the contrary, the material before the Court shows that these Respondents have disputed the appointment of the Applicant and have continued to oppose the redevelopment.

35. Paragraph 114 of *Space Master Realtors* explains the difference between a participating member and a dissenting member in the following terms:

"114. Thus, in redevelopment agreements, the key is to find out whether the non-signatory member has consented for

arbitration. The consent or otherwise to arbitration can be determined by finding out as to whether the individual member is a participating member or dissenting member to the redevelopment process. In case of participating member signing the DA containing the arbitration clause, reference to arbitration may be permissible depending on the language of the arbitration clause and permissibility to take stand different than the one taken by the society (*Ketan Champaklal Divecha* and *Shankar Vithoba Desai*). Where a participating member is not a signatory in individual capacity, either because the DA is signed in representative capacity by the society or because the participating member was not physically available for signature, reference to arbitration can still be made (*Harshad B. Shah*). This is because, in both eventualities, the participating members have intention to arbitrate. However, in case of a dissenting member, he never intends to act in terms of DA nor expresses any intention to arbitrate. He acts contrary to the DA. Therefore, no reference can be made for adjudication of disputes arising out of DA between non-signatory dissenting member and developer."

36. In the present case, Respondent Nos. 2 to 5 fall in the second category. They were not members who were willing to participate but whose signatures were left out for some technical or accidental reason. Their case is that they did not agree to the redevelopment arrangement and did not agree to the arbitration clause. The material before the Court supports this position.

37. I, therefore, find that Respondent Nos. 2 to 5 cannot be made parties to the proposed arbitration merely because they are members of Respondent No. 1. They cannot be referred to arbitration merely because they occupy flats in the building or because the redevelopment decision of the Society may have

consequences for them. These matters may have relevance in other proceedings. But they are not enough to establish an arbitration agreement.

38. Paragraph 117 of *Space Master Realtors* puts the position in clear terms:

"117. The conspectus of the above discussion is that Respondent 2 is not a veritable party to the DA. Mere capacity of Respondent 2 as beneficiary of the DA would not make him a party to arbitration agreement contained in the DA. Applicability of contractual obligations in the principal contract (DA) to an individual member is a different and distinct concept than the concept of being governed by arbitration agreement contained in the principal contract. Therefore, even if any contractual stipulations provided for in the DA are held to be applicable to a dissenting member, the same would not *ipso-facto* make him party to arbitration agreement. To paraphrase, enforceability of DA against dissenting member is a different concept than applicability of arbitration agreement contained in the DA. Therefore, mere availing of benefits flowing out of DA would not make a non-signatory member party to arbitration agreement. Execution of PAAA by a member who has not signed the DA would again not make him a party to arbitration agreement contained in the DA. Composite nature of transaction or commonality of subject matter of DA and PAAA would again not make non-signatory member party to the arbitration agreement in the DA. arbitration agreement between developer and society does not get incorporated in PAAA executed between the developer and members. Thus, there is no agreement to arbitrate between the Applicant and Respondent 2 and this Court is unable to make reference to arbitration. Consequently, the application deserves to be dismissed."

39. The principle stated in paragraph 117 applies to Respondent Nos. 2 to 5 in the present case. The Applicant cannot combine the substantive obligations claimed against the dissenting members with the arbitration clause contained in the Development Agreement and, on that basis, create an arbitration agreement which those members never accepted.

40. I accordingly hold that the Applicant has established the existence of an arbitration agreement between and Respondent No. 1 Society. The disputes arising out of and in connection with the Development Agreement dated 22 March 2025 are therefore required to be referred to arbitration between the Applicant and Respondent No. 1. At the same time, the Applicant has failed to establish the existence of any arbitration agreement between and Respondent Nos. 2 to 5. They therefore cannot be compelled to participate in arbitration in respect of disputes arising from the Development Agreement. The Application therefore succeeds against Respondent No. 1 and fails against Respondent Nos. 2 to 5. The Arbitrator can accordingly be appointed only for deciding the disputes between the Applicant and Respondent No. 1. The claims against Respondent Nos. 2 to 5 cannot be made part of that arbitration only on the basis of the arbitration clause contained in the Development Agreement.

41. In view of the aforesaid, the present Application filed under Section 11 of the Act is disposed of by passing the following order:

A) Mr. Harsh Moorjani, an advocate of this Court, is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes and differences arising out of and in

connection with the Development Agreement dated 22 March 2025 between the Applicant and Respondent No. 1 Society;

Office Address:- C/o Sr. Ashish Kamat, 501, 5th Floor, Oval House, Old British Lane, Kala Ghoda, Fort, Mumbai – 400001.

Email ID: harshmoorjani.legal@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 today. 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 Advocates for the Applicant so as to enable them to file the same in the Registry of this Court. The Registry of this Court shall retain the said Statement on the file of this Applicant and a copy of the same shall be furnished by the Advocates for the Applicant to the Advocates for the Respondent;

D) 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;

E) 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;

F) 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.

42. All issues on merits including limitation are expressly kept open to be agitated before the arbitral tribunal appointed hereby.

43. 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.

(AMIT BORKAR, J.)