IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION PETITION NO.155 OF 2025

Elite Housing LLP ...Petitioner

Versus

The Spectrum CHS Ltd. ...Respondent

Mr. Rohaan Cama *a/w. Kyrus Modi & Dipesh Yadav i/b. M/s. Narayanan & Narayanan, Advocates for Petitioner.*

Mr. Kaevaan Setalvad *a/w. Nitin Raut, M/s. G.P. Vas & Son ITA Serrao i/b. P. Vas & Co., Advocates for Respondent No.1.*

Mr. Aseem Naphade *a/w. Rajshree Dhole & Rakshita Poojary i/b. Samatya Legal Associates, Advocates for Respondent No.2.*

Ms Deepali Bagla *i/b. Bagla & Associates, Advocate for Respondent No.3.*

Mr. Raj Patel *a/w. Srividya Venkat & Raghav S. i/b. J Law Associates, Advocates for Respondent No.6.*

Mr. Vikram Grewal *a/w. Nivit Srivastava, Amit Hailkar & Brena Gala i/b. Maniar Srivastava Associates, Advocates for Respondent No.7.*

Mr. Sahil Saiyed *a/w. Mr. Amit Padwal, Advocates for Respondent No.8.*

Ms Aditi Bhargave *a/w. Nitya Shah i/b. Divya Shah Associates, Advocate for Respondent No.9.*

Mr. Shrichand Lulla, *Respondent No.3 present in Court.*

CORAM: **SOMASEKHAR SUNDARESAN, J.**
RESERVED ON: **March 24, 2025**
PRONOUNCED ON: **April 16, 2025**

JUDGEMENT :

Context and Background:

1. This is a Petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 ("***the Act***") in connection with a Development Agreement dated July 31, 2024 ("***Development Agreement***") between the Petitioner, Elite Housing LLP ("***Elite***") and a co-operative housing society i.e. Respondent No. 1, Spectrum Co-operative Housing Society Ltd. ("***Spectrum***"). The Development Agreement entails redevelopment of the property and structures standing thereon situated at Road No.14-B Road, Khar West, Mumbai – 400052.

2. Spectrum has 20 members, of which 18 members have agreed to hand over vacant possession of their premises in terms of the Development Agreement. Respondent No. 2, Chandra Bhagwansingh Lulla ("***Lulla***") and Respondent No. 7, Ritesh Haldar ("***Haldar***") are the members who are

holding out. In the records of Spectrum, Lulla is the holder of Flat No. 6 on the second floor of the building, and occupies it. Respondents No. 3 to 6 are siblings of Lulla. The siblings have an inheritance dispute and litigation is underway.

3. Haldar and his mother Mrs. Sabita Haldar (stated to be deceased) are said to be holders of Flat No. 12 on the first floor of the building, in the records of Spectrum. Respondents No. 8 and 10 are siblings of Haldar while Respondent No. 9, Leena Rohitesh Haldar ("***Leena***") is the wife of Respondent No. 8 and is said to be occupying the said flat with her two sons. Respondent No. 8 is said to be living elsewhere. Haldar is willing to hand over possession through his brother Respondent No. 8. Leena, who is said to be occupying the premises, is willing to hand over possession but wants the transit compensation to be paid to her.

4. According to the Petitioner, against Flat No. 6, the earmarked flat in the redeveloped building would be Flat No. 1101 admeasuring 1060 square feet. As regards Flat No. 12, the earmarked flat in the redeveloped building would be Flat No. 801 admeasuring 1002 square feet.

Contentions of the Parties:

5. Mr. Rohaan Cama, Learned Counsel representing Elite would submit that each member who has executed the tripartite agreement with Elite and Spectrum has been paid the first installment of 10% of the hardship compensation due under the Development Agreement. An aggregate of Rs. 37,27,000 has been paid by Elite towards this end. Elite has also settled with an earlier developer with whom Spectrum had executed a development agreement and paid the earlier developer a sum of Rs. 5 crore. Every member of Spectrum has confirmed that it is willing to move forward and it is only in respect of the two flats i.e. Flat No. 6 and Flat No. 12 that there is a hurdle. The amounts due and payable in respect of these two flats are also ready to be paid and only because the owners and occupants have led to a stand-off, these sums have not been paid.

6. The requisite Intimation of Disapproval dated December 20, 2024 has been obtained. However, Mr. Cama would undertake, on instructions from Elite, that a revised Intimation of Disapproval ("***Revised IOD***") would be obtained by loading the further developmental rights on to the property, after which all members would need to vacate so that the demolition could be effected and the redevelopment could commence. Towards this end, the

Petition prays for the Court Receiver to take possession of Flat No. 6 and Flat No. 12 and hand it over to Elite when the Revised IOD is obtained.

7. Mr. Aseem Naphde, Learned Counsel on behalf of Lulla would find fault with the terms of the Development Agreement including the purported inadequacy of the security for performance of Elite's obligations; sharing of development potential; treatment of terraces; absence of terms to deal with force majeure conditions and the like. Lulla is indeed free to convince the other members of Spectrum about the veracity, relevance and import of such contentions. It is seen that the rest of the members of Spectrum do not share such concerns and it is the collective view of Spectrum that has led to the execution of the Development Agreement. The individual view of specific members that do not catch the fancy and acceptance of the rest of the members of Spectrum are not of consequence for purposes of these proceedings. Lulla would also insist that the processes prior to vacating the premises, namely, execution of the Permanent Alternate Accommodation Agreement ("***PAAA***"), receipt of the Revised IOD, and then issuance of a notice to vacate.

8. Ms. Deepali Bagla, Learned Counsel for Respondent No. 3 and her client in person, entered appearance and tabled contentions about how Lulla

is bound by a *status quo* order dated December 15, 2009 ("***Status Quo Order***") passed by a Learned Single Judge of this Court when hearing Notice of Motion No. 3607 of 2007 in Suit No. 2534 of 2007. He joins issue with Lulla not having given him notice of the Development Agreement. This grievance too has no relevance to the larger collective good of the members of Spectrum that is being pursued. It is open to these two Respondents to agitate their *inter se* grievances with each other in any forum that is already seized of their dispute including in the aforesaid suit. This is precisely the framework presented by Elite in the Petition.

9. Lulla's grievance about the entitlements under the Development Agreement not being in consonance with the area being claimed in respect of Flat No. 6 too need not detain the attention of this Court. The entitlements in question would be in relation to what the records provide, and in any case, this is not an issue that can detain the attention of this Court. Mr. Kaevaan Setalvad on behalf of Spectrum would submit that since 2018, at least 11 general body meetings have been held and numerous correspondence has been exchanged. Lulla has chosen not to attend a single meeting, and instead has stated in writing that steps to effect forcible vacation of Flat No. 6 may be taken since expecting her to vacate on her own by writing letters would be a waste of time and energy. A party that is disengaged and disruptive cannot

be criticizing the Development Agreement, which is the product of a collective engagement taking into account of all the members who were invested in the process. Spectrum has also pointed out that the flats above and below Lulla's flat have identical measurements in the records and until this Petition came up for hearing, there has not been any protest about the area.

10. Mr. Raj Patel, Learned Counsel on behalf of Respondent No. 6, another sibling of Lulla too entered appearance and has filed a note containing contentions near-identical to those filed on behalf of Lulla. The observations made in relation to Lulla's contentions above would apply with equal force to these contentions.

11. Mr. Vikram Grewal, Learned Counsel on behalf of Haldar has entered appearance to submit that Flat No. 12 had been purchased by Haldar out of his own funds and he had added his mother's name only for convenience. He would submit that the premises were occupied by him, his mother and Respondent No. 8, his brother. Leena was allowed to live in the flat with his brother only out of natural love and affection. He would submit that his brother (Leena's husband) has executed a release deed in his favour. Haldar has been resting his brother and sister-in-law to vacate the premises and

hand over possession, which would enable the redevelopment. Haldar contends that the gratuitous license has been revoked and he has filed an eviction suit against his brother and Leena which is pending in the Small Causes Court, Bandra. Haldar would highlight that any orders passed in these proceedings would be subject to the outcome of the aforesaid suit.

12. Mr. Sahil Saiyed, Learned Counsel on behalf of Respondent No. 8 would contend that his client has a one-third share in Flat No. 12. In the same breath, Respondent No. 8 would claim the right to the entire payment of whatever is due to members of Spectrum under the redevelopment. He would contend that matrimonial disputes with Leena cannot lead to any rights in her favour and yet he would claim that Leena's assertion that she and two children live in Flat No. 12 would point to the entitlement being that of Respondent No. 8.

13. Ms. Aditi Bhargave, on behalf of Leena entered appearance and has submitted that Leena was in receipt of notices threatening legal proceedings if she did not vacate Flat No. 12, which would show that she and her children live in that flat. She would also produce copies of the passports of her two children to show that their recorded residential address is Flat No. 12 at Spectrum.

Directions and Order:

14. I have gone through the record with the assistance of Learned Counsel representing the parties. What is writ large on the face of the record is that disagreement in handover of just two flats is holding up the redevelopment of the entire property. The hold-off too is primarily based on *inter-se* disputes and claims relating to the two flats. Indeed, there are objections raised on behalf of these members about the terms of the redevelopment, their entitlements to the redeveloped area, and alleged procedural infirmities in Spectrum's conduct. However, it is now trite law that such objections are meant for agitation before such other forum as may have jurisdiction in the matter – for instance, the regulatory and quasi-judicial authorities under the law governing co-operative housing societies.. At this stage, what is apparent is that the redevelopment is being prevented from proceeding further for no reason other than the fact that no documentation is being executed in respect of Flat No. 6 and Flat No. 12, and the *inter se* disputes among the family members is holding up the redevelopment entirely.

15. In these circumstances, having examined the material on record and having heard the parties, the following order would balance competing interests of the parties, balance equalities and would enable protection of the best interests of all the parties involved. Each of the following steps forms

part of an integral interwoven bundle of adjustments to address the ends of justice and the best interests of all parties, without prejudicing them in their respective positions in other litigation underway among them:-

(A) The Petitioner shall be entitled to approach the Learned Court Receiver within a period of one week from the upload of this Order on the website of this Court, to execute the tripartite agreement in respect of Flat No. 6 and Flat No. 12 of Spectrum, by demonstrating to the Learned Court Receiver that the terms of the documentation presented for signing, accord *pari passu* treatment to the entitlements for these flats and that any variations to the documentation is only in respect of the identification of these flats and the proportionate and commensurate variations linked to the area and related features of these flats in line with the Development Agreement;

(B) For the avoidance of doubt, Flat No. 6 shall be the flat described in Exhibit J1 to the Petition while Flat No. 12 shall be the flat described in Exhibit K1 to the Petition;

(C) Execution of the tripartite agreement by the Learned Court Receiver in respect of each of the aforesaid flats would bind the respective Respondents. The documentation executed by the Learned Court Receiver would bind the members of the Lulla Family and the members of the Haldar Family who respectively claim interests in Flat No. 6 and Flat No. 12;

(D) Upon receipt of the Revised IOD, Elite shall issue a formal written notice to all members of Spectrum including to the Respondents in these proceedings, marking a copy of the same to the Learned Court Receiver. Elite shall fix a specific and reasonable deadline for vacation of all the flats in Spectrum in such notice, which shall be not less than four weeks from the date of such intimation of the Revised IOD. Concurrent with the delivery of the Revised IOD to the Learned Court Receiver, Elite shall ensure that all amounts due and payable in respect of the said two flats shall be deposited in the Registry of this Court with a detailed statement showing the working of the amounts due and payable in respect of these flats. This Court is not commenting on the accuracy of the contents of Exhibit J3 and

Exhibit K3, and Elite shall demonstrate to the satisfaction of the Learned Court Receiver, the accuracy of the computation of the amounts due and payable in respect of the two flats;

(E) Should the two aforesaid flats not be vacated within the deadline stipulated by Elite (which shall be not less than four weeks from the delivery of the Revised IOD to the Learned Court Receiver), the Learned Court Receiver shall be entitled to take physical possession of Flat No. 6 and Flat No. 12, if necessary by force, with protection from the local police station and hand over possession of these flats forthwith to Elite for redevelopment. The local police station shall provide all necessary assistance in this regard. Upon this order being uploaded on the Court's website, a copy of this order shall be served by the Learned Court Receiver, on the office of the Deputy Commissioner of Police in whose jurisdiction the property of Spectrum falls, for information and requisite planning, should the need arise;

(F) All amounts payable in respect of Flat No. 6 towards hardship compensation, transit accommodation rent and brokerage

and displacement compensation shall be paid by the Learned Court Receiver to Lulla i.e. Respondent No. 2, after free and vacant possession of Flat No. 6 is handed over to Elite. Nothing contained in this Order and for that matter, the direction to pay these amounts to Respondent No. 2 shall affect or influence the *inter se* claims among members of the Lulla Family. Their disputes and differences shall be adjudicated in litigation, whether existing or to be initiated among them, and the release of the amounts to Respondent No. 2 shall not be a pointer to any assessment of merits of any of the parties to such litigation involving claims to entitlement to Flat No. 6. Such release is being directed only because the cash flows arising out of the Development Agreement in respect of a flat shall be available to those residing in the flat to enable them to obtain and pay for alternative accommodation and to fend for their shelter pending redevelopment as a matter of cash flow management, and not as a matter of legal entitlement;

(G) Likewise, all amounts payable in respect of Flat No. 12 towards hardship compensation, transit accommodation rent

and brokerage and displacement compensation shall be paid by the Learned Court Receiver to Leena i.e. Respondent No. 9 who is living in the premises with her sons, after free and vacant possession of Flat No. 12 is handed over to Elite. Nothing contained in this Order and for that matter, the direction to pay these amounts to Respondent No. 9 shall affect or influence the *inter se* claims among members of the Haldar Family. Their disputes and differences shall be adjudicated in litigation, whether existing or to be initiated among them, and the release of the amounts to Respondent No. 9 shall not be a pointer to any assessment of merits of any of the parties to such litigation involving claims to entitlement to Flat No. 12. Such release is being directed only because the cash flows arising out of the Development Agreement in respect of a flat should be available to those residing in the flat to enable them to obtain and pay for alternative accommodation and to fend for their shelter pending redevelopment as a matter of cash flow management and not as a matter of legal entitlement; and

(H) Upon completion of the redevelopment, in the first instance, possession of the redeveloped Flat No. 1101 and Flat No. 801 shall be handed over by Elite to Lulla and Leena respectively, subject of course, to any other order that may have been obtained by any member of the Lulla Family and as the case may be, the Haldar Family.

16. Needless to say, and for avoidance of any doubt, whether real, perceived or apprehended, each of the Respondents, who is a member of the Lulla Family or of the Haldar Family shall be at liberty to approach the relevant forums where they are engaged in litigation with other members of these respective families, to seek arrangements that would adjust their respective positions in their *inter se* disputes in the light of the directions contained in this Order. Such arrangements shall be *inter se* arrangements among them, with Elite and Spectrum being able to proceed with the redevelopment envisaged in the Development Agreement, insulated from such *inter se* disputes and further arrangements as may be secured by such members of these families.

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17. With the aforesaid directions, this Petition is ***finally disposed of***. Liberty to apply should any non-compliance arise from the conduct of the parties.

18. 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.]

Ashwini Vallakati