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

ARBITRATION APPLICATION NO.114 OF 2026
WITH
ARBITRATION PETITION NO.131 OF 2026

ATUL GANESH KULKARNI

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Dharmesh Chandrakant Mirani ... Applicant/ Petitioner

Vs.

1. Satguru KNS Construction Pvt. Ltd.
2. Satguru Supreme Cooperative Housing Society Limited ... Respondents

WITH
ARBITRATION APPLICATION NO.113 OF 2026
WITH
ARBITRATION PETITION NO.115 OF 2026

Dharmesh Chandrakant Mirani ... Applicant/ Petitioner

Vs.

1. Satguru KNS Construction Pvt. Ltd.
2. Satguru Drishti Cooperative Housing Society Limited ... Respondents

Mr. J.S. Kini with Mr. Aum Kini, and Mr. Parth Kini i/by Ms. Sapna Krishnappa for the Applicant/Petitioner.

Mr. Bhaavin Gada with Mr. Deepak Shukla, Mr. Praveen Maurya, and Ms. Shweta Thakur i/by BNS Legal for Respondent No.1 in all the matters.

Mr. Virendra Pethe for Respondent No.2 in ARBAP/114/2026 & ARBP/131/2026.

CORAM : AMIT BORKAR, J.

RESERVED ON : SEPTEMBER 23, 2026.

PRONOUNCED ON : SEPTEMBER 29, 2026

JUDGMENT:

1. Since the facts and the question of law involved in both these Applications are common, both the Applications are being decided by this common Judgment. For convenience, the facts in Arbitration Application No.114 of 2026 are being referred to.

2. By these Applications, the Applicant is seeking appointment of an Arbitrator for deciding the disputes between the parties under Section 11(4) of the Arbitration and Conciliation Act, 1996.

3. The Applicant is the joint owner and authorised representative of T.J. Mirani Estate. The said Estate is the owner of the plot of land consisting of certain pieces or parcels of land situated at Mulund, abutting Ganesh Gawade Road, Dr. Ambedkar Road and Valji Ladha Road, bearing Plot Nos.143, 144, 145, 150, 151 and 152 of Survey No.1000, corresponding to C.T.S. Nos.1314 and 1313/1 to 122, admeasuring about 11,677.71 sq. yards, equivalent to about 9,755.9 sq. metres, after deducting 268.94 sq. metres of setback area from the total area of 10,124.84 sq. metres, together with the buildings and structures standing thereon. This property is hereinafter referred to as the "said property". Respondent No.1 is the builder/developer appointed by late Chandrakant T. Mirani, who was the father and predecessor in title of the Applicant. Respondent No.2 is the society formed by the flat

purchasers who are occupying the building constructed on the said property. According to the Applicant, the facts which have resulted in filing the present Applications are briefly as follows. Under the Development Agreement dated 4 October 2002, late Chandrakant T. Mirani granted development rights in favour of Respondent No.1 for the consideration and on the terms and conditions stated in the said Agreement.

4. The Applicant states that although the redevelopment of the said property was completed long ago, Respondent Nos.1 and 2 have not performed their obligations under the Development Agreement. According to the Applicant, the Respondents were required to execute the Lease Deed and pay the lease rent as provided in the Agreement. Since these obligations were not performed, the Applicant issued a notice dated 1 August 2022 calling upon the Respondents to comply with the agreed terms and conditions by executing the Lease Deed and by paying the outstanding lease rent. The Respondents received the said notice. However, they neither accepted the appointment of an Arbitrator nor suggested any other person for appointment. They did not reply to the said notice. In these circumstances, according to the Applicant, there was no other effective remedy available except to approach this Court by filing the present Applications.

5. Mr. Kini, learned Advocate appearing for the Applicant, submits that the existence of the arbitration agreement between the parties is not disputed. According to him, the objections raised by the Respondents regarding non-joinder of other legal heirs, limitation and other related issues are matters which can be

considered and decided by the Arbitral Tribunal. He submits that such objections fall within the scope of Section 16 of the Arbitration and Conciliation Act, 1996 and, therefore, need not be decided by this Court at the stage of considering the present Applications.

6. Mr. Gada, learned Advocate appearing for Respondent No.1, submits that the Applicant has no locus to file the present Application. According to him, the Applicant is not the executor of the estate of late Mr. Chandrakant Mirani. There has been no change or substitution of the executor of the estate of late Mr. Chandrakant Mirani. It is the executor who is required to execute the Lease Deed in favour of Society Nos.1 to 4. The Applicant alone, therefore, cannot execute any Lease Deed in favour of Society Nos.1 to 4. In the absence of such authority, according to Mr. Gada, the Applicant cannot maintain the present Arbitration Application. He submits that the Application deserves to be dismissed on this ground.

7. Mr. Gada submits that the Applicant has not joined the other heirs and legal representatives of the estate of late Mr. Chandrakant Mirani as parties. According to him, the other heirs and legal representatives are necessary and/or proper parties to the present proceedings. The Application is bad for non-joinder of necessary and proper parties. It is submitted that the LLP has constructed the building of Society No.4. The agreements with the purchasers of the tenements in Respondent No.2, Society No.4, have been executed by the LLP. According to Mr. Gada, the LLP is a necessary and/or proper party to the present Application. In its

absence, the Application is liable to be dismissed for non-joinder of a necessary party.

8. Mr. Gada submits that Mr. Jayesh Mirani had filed a complaint against the directors of Respondent No.1 in May 2019 on the allegations stated in that complaint. In the said complaint, Mr. Jayesh Mirani had alleged that the consideration contemplated under the Development Agreement and the Supplemental Agreement had not been paid or complied with by Respondent No.1 and its directors. Criminal proceedings were thereafter initiated on the basis of the said complaint. According to Mr. Gada, the cause of action relating to the Development Agreement and the Supplemental Agreement had, therefore, arisen as far back as in 2019. The Applicant had supported the said complaint by giving a statement on 20 July 2019 and a statement on 13 December 2024. It is submitted that there cannot be a cause of action for the criminal complaint and for the alleged civil dispute. The invocation of arbitration in the year 2025 is, therefore, barred by limitation. The Applicant is consequently not entitled to any relief in the present Applications.

9. Mr. Gada submits that Respondent No.2 was not a party to either the Development Agreement or the Supplemental Agreement. He submits that the Applicant was not a party to the Development Agreement and the Supplemental Agreement. According to him, there is no arbitration agreement between the Applicant and Respondent No.2. Therefore, there is no question of the Applicant maintaining any proceedings against Respondent No.2 either under Section 11 or under Section 9 of the Arbitration

and Conciliation Act, 1996.

10. Mr. Gada submits that the present Arbitration Application appears to have been filed after several years only because the Development Agreement was executed in favour of Shreeji Buildcon in the year 2025. According to him, there is an impediment or restriction imposed by the Municipal Commissioner and/or the authorities of the Municipal Corporation of Greater Mumbai regarding sanction of the plan submitted by Shreeji Buildcon. The present Application, therefore, according to him, has been filed only in view of the said circumstances.

11. Mr. Gada submits that the Lease Deed forwarded by the Applicant, claiming to be the Administrator of the estate of the deceased, is not in accordance with the terms and conditions of the Development Agreement and/or the Supplemental Agreement. According to him, the proposed Lease Deed is contrary to and inconsistent with the terms of those Agreements. He submits that the question regarding execution of the Conveyance and the area to which Society Nos.1 to 4 may be entitled can be decided by the competent authority in accordance with law and in terms of the Notification dated 22 June 2018. According to him, for deciding the entitlement of Society Nos.1 to 4, all the societies are required to be before the competent authority and must be given an opportunity of being heard. Such an issue, he submits, cannot be decided by considering each society separately and without hearing the other societies.

12. Mr. Gada submits that the rights, title and entitlement of each society in respect of its portion of the property, as well as the rights of the estate of the deceased, are required to be determined in the presence of all concerned parties. According to him, these rights are connected with and dependent upon each other. They cannot properly be decided in an arbitration between one society and the Applicant alone. He submits that the present dispute has an effect on the rights of persons who are not parties to the arbitration and has an erga omnes effect. For this reason, according to him, the dispute is not capable of being referred to arbitration. The Arbitration Application deserves to be dismissed.

13. In support of his submissions, Mr. Gada relied upon the judgment of the Supreme Court in *Vidya Drolia & Others vs. Durga Trading Corporation,* (2021) 2 SCC 1. He placed reliance particularly upon paragraph 76.

14. Mr. Pethe, learned Advocate appearing for Respondent No.2, submits that the limitation for a claim seeking specific performance of an agreement to execute a lease or conveyance, or for compensation for breach of such an agreement, is three years from the date fixed for performance. Alternatively, according to him, the period is three years from the date when the right to sue first accrues. On this basis, he submits that the limitation period for the claim in the present case had expired, at the latest, in or about February 2019. The Applicant's alleged letter of demand is dated 1 August 2022, which was issued more than six years after the cause of action had arisen. The notice invoking arbitration is dated 4 November 2025, which was issued more than nine years after the

alleged cause of action and more than three years after the alleged demand of August 2022.

15. Mr. Pethe submits that the Supreme Court has held that while considering an application under Section 11 of the Act, the Court hearing the reference application is entitled and, in appropriate cases, required to examine whether the claims sought to be referred to arbitration are ex facie and clearly barred by limitation. According to him, where the claim is a "dead claim", the Court can refuse to make a reference so that the arbitral proceedings, as well as the time and expenses of the parties and the Arbitral Tribunal, are not wasted on a claim which cannot succeed in law. Respondent No.2 submits that the claim sought to be raised against it is such a dead claim and, therefore, this Court ought not to refer the dispute to arbitration.

REASONS AND FINDINGS:

16. I have considered the submissions made by Mr. Kini for the Applicant, Mr. Gada for Respondent No.1 and Mr. Pethe for Respondent No.2. At this stage, this Court is not required to decide whether each and every claim made by the Applicant will succeed. The first thing which is required to be seen is whether, prima facie, there is an arbitration agreement covering the dispute which the Applicant seeks to refer to arbitration. Once such agreement is found, the other disputed questions are required to be considered keeping in view the limited jurisdiction of this Court under Section 11 of the Act.

17. The legal position on this aspect has been explained by the Supreme Court. In *A.P. Power Generation Corpn. Ltd. v. Tecpro Systems Ltd.,* (2026) 3 SCC 491, the Supreme Court has made a distinction between the limited enquiry which the Court is required to make at the Section 11 stage and the detailed enquiry which can be made by the Arbitral Tribunal. The Supreme Court has stated that the legislature has "consciously confined the domain of judicial scrutiny to the mere 'existence of an arbitration agreement'". The Supreme Court has stated that the referral Court is required to make only a "prima facie determination of the existence of an arbitration agreement and no further".

18. The same position was explained by the Constitution Bench in *Interplay Between Arbitration Agreements under the Arbitration Act, 1996 and the Indian Stamp Act, 1899*, *In re* (2024) 6 SCC 1. The Court explained that the word "examination" used in Section 11(6-A) requires the Court to make only a limited prima facie examination. It does not mean that the Court should conduct a mini-trial regarding disputed facts before referring the parties to arbitration. The later decision in *SBI General Insurance Co. Ltd. v. Krish Spg.,* (2024) 12 SCC 1 has made it clear that where a question requires detailed evidence and examination of facts, such question should be left for consideration by the Arbitral Tribunal.

19. In view of this legal position, there is substance in the submission of Mr. Kini to the extent that the objections regarding the authority of the Applicant, joining of the other heirs, rights of the societies and limitation of the substantive claims cannot be finally decided in these Applications merely because such

objections have been raised. At this stage, the Court has first to see whether the arbitration agreement exists and whether the Section 11 Application has been filed within the prescribed period of limitation.

20. In the present case, Clause 33 of the Development Agreement is a written arbitration clause. It provides that disputes and differences arising out of the Development Agreement, including disputes relating to interpretation of its terms and conditions, shall be referred to an Arbitral Tribunal consisting of three Arbitrators. The existence of this clause is not disputed by Respondent No.1. The main objection raised by Respondent No.1 is that the Applicant cannot invoke this clause because, according to Respondent No.1, the Applicant is not the executor of the estate of late Mr. Chandrakant Mirani. At this stage, I am unable to accept this objection as a ground for refusing the reference. It may be necessary for the Applicant to ultimately establish his right to invoke and enforce the arbitration agreement. It may be necessary to decide whether the Applicant is an executor, administrator, legal representative, successor or otherwise entitled to represent the estate. These questions may become important while deciding the actual claims. However, Clause 33 refers to disputes between the parties and "their respective heirs and executors". The Applicant claims his right through the estate of late Mr. Chandrakant Mirani. Therefore, there is sufficient prima facie basis for considering the arbitration agreement. Whether the Applicant has the final authority to execute the Lease Deed, whether such authority belongs only to the executor, whether there has been any valid

substitution of the executor and whether the Applicant can enforce all rights arising from the Development Agreement are questions which may require examination of the succession documents, title documents and the manner in which the estate has been dealt with. Other evidence may be required. Such detailed enquiry cannot properly be undertaken in the present Applications as if this Court is finally deciding the rights of the parties.

21. In this regard, the observations of the Supreme Court in *A.P. Power Generation Corpn. Ltd.* are relevant. The Supreme Court held:

> "Beyond the prima facie enquiry, it should be the discipline of the referral court to refrain from undertaking a detailed enquiry on basis of evidence to arrive at a finding of fact in the nature of a 'proof'."

22. The same judgment has held that under Section 16, the Arbitral Tribunal has the power to decide its own jurisdiction, including questions concerning the existence and validity of the arbitration agreement. Therefore, the objection of Respondent No.1 that the Applicant is not the executor cannot be accepted as a reason to hold that there is no prima facie arbitration agreement. This finding is only for deciding the present Section 11 Applications. I am not recording any final finding that the Applicant has established his right, title or authority to act for the entire estate. If this question is raised before the Arbitral Tribunal, the Tribunal will consider it on the basis of the documents and other material produced before it.

23. The objection regarding non-joinder of the other heirs and legal representatives cannot be accepted as a ground for refusing the reference. There may be cases where, in absence of a necessary party, the dispute cannot be decided. But merely stating that other heirs have not been joined does not by mean that there is no arbitration agreement. Whether any particular heir is a necessary party, whether the Applicant can maintain the claim without joining the other heirs and whether final relief can be granted without affecting the rights of persons who are not parties are matters which will depend upon the evidence and upon the nature of the relief ultimately claimed.

24. The same reasoning applies to the objection concerning the LLP. Respondent No.1 submits that the LLP constructed the building of Society No.4 and entered into agreements with the purchasers. This fact may have some relevance while deciding the final rights and liabilities of the parties. However, merely because the LLP was involved in construction and entered into agreements with the purchasers, it cannot be held at the Section 11 stage that the arbitration clause contained in the Development Agreement has ceased to operate. It cannot be held on this ground alone that there is no arbitral dispute between the Applicant and Respondent No.1.

25. Another objection raised by Respondent No.1 is that the Applicant had supported the complaint filed by Mr. Jayesh Mirani in May 2019. The Applicant had given a statement on 20 July 2019 and another statement on 13 December 2024. According to Respondent No.1, the cause of action must be treated as having

arisen in 2019. It is submitted that the arbitration invoked in 2025 is barred by limitation.

26. This submission requires consideration. There is a difference between the limitation applicable to the substantive claim and the limitation applicable to the Section 11 Application. Merely because a grievance was raised in an earlier proceeding, it does not follow that this Court can finally decide in a Section 11 proceeding as to when limitation for every claim started. The nature of the earlier complaint, what exactly was alleged in that complaint, what relief was sought, which obligations are now sought to be enforced and whether any subsequent event gave rise to a fresh or continuing dispute are matters which may require examination of facts and evidence.

27. The Supreme Court considered this issue in *Aslam Ismail Khan Deshmukh v. ASAP Fluids (P) Ltd.(2025) 1 SCC 502* After considering *Vidya Drolia, Arif Azim* and the later Constitution Bench decision in *Interplay*, the Supreme Court explained that the referral Court should not undertake an intricate enquiry based on evidence for deciding whether the substantive claims are time-barred. The Supreme Court stated:

> "136. Thus, we clarify that while determining the issue of limitation in exercise of the powers under Section 11(6) of the 1996 Act, the referral Court should limit its enquiry to examining whether Section 11(6) application has been filed within the period of limitation of three years or not. The date of commencement of limitation period for this purpose shall have to be construed as per the decision in Arif Azim... As a natural corollary, it is clarified that the referral Courts, at the

> stage of deciding an application for appointment of arbitrator, must not conduct an intricate evidentiary enquiry into the question whether the claims raised by the applicant are time-barred and should leave that question for determination by the arbitrator."

28. In the present case, the Applicant relies upon the notice dated 1 August 2022 and thereafter upon the notice invoking arbitration dated 4 November 2025. The present Applications have been filed in the year 2026. On the material before the Court, the Section 11 Applications cannot be said to have been filed after expiry of three years from the date on which the right to approach the Court under Section 11 accrued following the invocation of arbitration and the failure or refusal of the Respondents to act upon the notice. The submission of Respondent No.2 that the original cause of action arose much earlier does not alter this position. Whether the substantive claim is barred by limitation is a question. That question can be raised before the Arbitral Tribunal. The Tribunal can examine the Development Agreement, correspondence between the parties, the alleged non-payment of lease rent, the notice dated 1 August 2022, the notice invoking arbitration dated 4 November 2025 and the earlier complaint and statements relied upon by the Respondents.

29. It is true that the earlier decision in *Arif Azim* permitted a somewhat wider enquiry where the claim was found to be ex facie dead. However, this aspect was reconsidered in *SBI General Insurance Co. Ltd.* v. *Krish Spg*. The Supreme Court clarified that the referral Court should confine its enquiry regarding limitation to whether the Section 11 Application is within limitation. The

Court should not conduct an intricate evidentiary enquiry for deciding whether the substantive claim is time-barred.

30. Therefore, the objection based upon the criminal complaint of 2019 does not persuade me to refuse the reference. A criminal complaint and a claim may arise from some common facts. But that alone does not mean that both proceedings have to be treated as the same proceeding for deciding limitation under Section 11. At this stage, what is required to be seen is whether an arbitration agreement exists and whether the Section 11 Application is within limitation. Whether the Applicant's claims are stale, extinguished or otherwise barred by limitation is left open for consideration by the Arbitral Tribunal.

31. I now turn to the objection relating to Respondent No.2. There is a material difference between Respondent No.1 and Respondent No.2. Respondent No.1 is the developer with whom the Development Agreement was entered into. Respondent No.2 is, according to the record, the co-operative society formed by the flat purchasers. Respondent No.2 is not shown to be a signatory to the Development Agreement or to the Supplemental Agreement. It is correct that Clause 8 of the Development Agreement contemplated execution of Lease Deeds in favour of the Developers or their nominees, including a co-operative society or societies. But merely because a society may be a nominee or beneficiary of a lease, it cannot be said that the society became a party to the arbitration agreement contained in Clause 33. There must be some prima facie material showing that the non-signatory society was in fact a “veritable party” to the arbitration agreement.

32. The Supreme Court in *Cox & Kings Ltd. v. SAP India (P) Ltd.*, as reproduced in *A.P. Power Generation Corpn. Ltd.*, has explained this position in paragraph 169. It held:

> "169. In case of joinder of non-signatory parties to an arbitration agreement, the following two scenarios will prominently emerge: first, where a signatory party to an arbitration agreement seeks joinder of a non-signatory party to the arbitration agreement; and second, where a non-signatory party seeks invocation of an arbitration agreement. In both the scenarios, the referral court will be required to prima facie rule on the existence of the arbitration agreement and whether the non-signatory is a veritable party to the arbitration agreement. In view of the complexity of such a determination, the referral court should leave it for the Arbitral Tribunal to decide whether the non-signatory party is indeed a party to the arbitration agreement on the basis of the factual evidence and application of legal doctrine."

33. The Supreme Court stated:

> "170.12. At the referral stage, the referral court should leave it for the Arbitral Tribunal to decide whether the non-signatory is bound by the arbitration agreement."

34. In the present case there is no sufficient prima facie material before the Court to show that Respondent No.2 became a party to Clause 33. The fact that Respondent No.2 consists of flat purchasers, occupies the building or that the Development Agreement contemplated execution of a lease in favour of a co-operative society does not, by, establish consent to arbitration. The arbitration agreement cannot be extended to Respondent No.2 merely because the ultimate performance of the Development

Agreement may give some benefit to the society.

35. I find substance in the objection of Respondent No.2 to this limited extent. A reference under Section 11 cannot be made against a person when there is not even prima facie material to show that such person is a party to the arbitration agreement. The fact that the Arbitral Tribunal has power under Section 16 to decide questions of jurisdiction does not mean that an arbitration agreement can be presumed against a person who is otherwise a stranger to it. This does not mean that the disputes between the Applicant and Respondent No.1 become non-arbitrable merely because the property is occupied by a society or because the final relief may have some connection with the rights of the flat purchasers. The Applicant's claim arises from the Development Agreement. It concerns the alleged obligations relating to execution of the Lease Deed and payment of lease rent. On the material before the Court, this is a dispute connected with the Development Agreement. Merely for that reason, it does not become a dispute in rem.

36. Mr. Gada has relied upon *Vidya Drolia*, particularly paragraph 76. I have considered this submission. The Supreme Court has stated that a dispute may be non-arbitrable where the subject matter "affects third party rights; have erga omnes effect; require centralized adjudication, and mutual adjudication would not be appropriate and enforceable". The Supreme Court has explained that these tests are not watertight compartments and have to be considered together. But merely because an arbitral award may have some practical effect upon persons who are not

parties to the arbitration, it cannot be concluded that the dispute requires centralized adjudication. The actual nature of the dispute brought for arbitration has to be seen. In the present case, the immediate dispute arises from the Development Agreement dated 4 October 2002 and the obligations said to arise under that Agreement. The Applicant is not asking this Court in these Applications to finally decide the title of every flat purchaser or to determine the independent proprietary rights of all the societies. The question is whether the dispute between the Applicant, claiming through the estate of late Chandrakant Mirani, and Respondent No.1, the developer, should be referred to the arbitration mechanism agreed under the Development Agreement.

37. The objection that Society Nos.1 to 4 should all be heard together may have some relevance while deciding the nature and extent of the final relief. But that does not mean that the Court must decide all those questions before constituting the Arbitral Tribunal. If any particular relief requires adjudication of the rights of persons who are not parties to the arbitration agreement, the Arbitral Tribunal will have to consider the limits of its jurisdiction under Section 16 and whether such relief can be granted. This is different from holding that no part of the dispute between the Applicant and Respondent No.1 can be referred to arbitration.

38. The submission that the Lease Deed sent by the Applicant is not in accordance with the Development Agreement or the Supplemental Agreement is a matter concerning the merits of the dispute. Whether the proposed Lease Deed correctly represents the agreement between the parties, whether there has been any

change in the area of the land, whether the lease rent has been correctly calculated and whether the proposed terms are according to the original Agreement are matters requiring interpretation of the documents. These disputes arise from the Agreement and fall within the language of Clause 33.

39. Similarly, the submission that the Competent Authority has jurisdiction under the Notification dated 22 June 2018 regarding conveyance or deemed conveyance cannot, on the material before the Court, result in dismissal of the Applications. A statutory remedy relating to one part of the property rights does not by remove a arbitration agreement concerning disputes arising from the Development Agreement. If any particular relief is claimed which is exclusively within the jurisdiction of a statutory authority, that question can be considered by the Arbitral Tribunal when such claim is placed before it.

40. I do not find that the submission regarding Shreeji Buildcon and the alleged restriction imposed by the Municipal Commissioner or the Municipal Corporation of Greater Mumbai changes the issue before this Court. Whether the present proceedings were filed because of the Development Agreement allegedly executed in favour of Shreeji Buildcon in 2025, or because there was difficulty in obtaining sanction of the plan, relates to the surrounding circumstances. It does not by remove or cancel the arbitration clause contained in Clause 33.

41. At the Section 11 stage, the Court cannot examine every disputed question as if it were finally deciding a civil suit. The

Supreme Court has repeatedly stated that the enquiry at this stage is limited. In *Aslam Ismail Khan Deshmukh*, after considering the position in *Interplay* and *Krish Spg.*, the Supreme Court made it clear that the referral Court should not conduct an intricate evidentiary enquiry into whether the substantive claim is time-barred. The Court took note of the fact that entering into the jurisdiction of the Arbitral Tribunal at this stage may leave the claimant without an effective remedy for adjudication of the claim.

42. In the present case, the existence of the written Development Agreement and Clause 33 is clear. The Applicant claims through the estate of the original party. Respondent No.1 was the developer under the Development Agreement. The disputes raised by the Applicant arise from the said Agreement. The authority of the Applicant to represent the estate is a disputed question which may require deeper examination. The question of limitation of the substantive claims depends upon the factual history. Similarly, the objections regarding the Lease Deed and the respective rights of the societies concern the merits and the extent of relief.

43. I hold that, between the Applicant and Respondent No.1, there is sufficient prima facie material to hold that an arbitration agreement exists and that the disputes raised by the Applicant arise from that agreement. The objections of Respondent No.1 regarding the Applicant's locus, non-joinder, limitation, the earlier criminal complaint and the correctness of the proposed Lease Deed do not, on the material before the Court, provide sufficient ground to refuse the reference. At the same time, I am not satisfied that Respondent No.2 can be compelled to participate in arbitration

merely because it is a society of flat purchasers or because the Development Agreement contemplated execution of a Lease Deed in favour of a co-operative society. There is no sufficient prima facie material to show that Respondent No.2 accepted or became bound by the arbitration agreement contained in Clause 33. Therefore, the reference against Respondent No.2 cannot be made on the material available before the Court.

44. All other objections raised by the parties are left open to be raised before the Arbitral Tribunal, subject to law. These include the authority of the Applicant to represent the estate, the effect of the rights of the other heirs and legal representatives, the effect of the earlier complaint and statements, the limitation of the substantive claims, the interpretation of Clause 8, the correctness of the proposed Lease Deed, the claim for lease rent and the nature and extent of the relief which can finally be granted. The Arbitral Tribunal shall consider these questions independently and in accordance with law.

45. In the result, the Applications are allowed to the limited extent of referring the disputes between the Applicant and Respondent No.1 arising from the Development Agreement dated 4 October 2002 to arbitration. The objection of Respondent No.1 that the substantive claims of the Applicant are barred by limitation is left open for determination by the Arbitral Tribunal. However, insofar as the Applications seek appointment of an Arbitrator for adjudicating disputes against Respondent No.2, the same cannot be granted in the absence of sufficient prima facie material showing that Respondent No.2 is bound by the arbitration

agreement contained in Clause 33.

46. In the aforesaid circumstances, the present Applications under Section 9 and 11 of the Act, are disposed of in terms of the following order:

A) Mr. Tushad Kakalia, an advocate of this Court, is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes and differences between the Applicant and Respondent No.1 arising out of or in connection with the Development Agreement dated 4 October 2002, including the disputes relating to execution of the Lease Deed and payment of lease rent, are liable to be referred to arbitration in terms of Clause 33 of the said Development Agreement;

Office Address:- Aban House, 25-31, 6th Floor, Kakushroo Dubash Marg, Kala Ghoda, Fort, Mumbai – 400001.

Contact No.9833212724

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 may be indicated by the Learned Sole Arbitrator, for obtaining appropriate directions with regard to the conduct of the arbitral proceedings, including fixing the schedule for filing of pleadings, examination of witnesses, if any, and dates of hearing. At such meeting, the parties shall furnish to the Arbitral Tribunal valid and functional email addresses, together with the mobile and landline telephone numbers of their respective Advocates. Communications sent to the said email addresses shall constitute valid service of correspondence in connection with the arbitral proceedings.

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

47. Both the Applications, originally filed under Section 9 of the Arbitration and Conciliation Act, 1996, are treated and converted

as Applications under Section 17 of the Arbitration and Conciliation Act, 1996.

48. The Learned Sole Arbitrator shall be at liberty to adjudicate upon the claims and counterclaims, if any, and to determine all questions relating to merits, in accordance with law.

49. 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.)