

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION (L) NO. 19161 OF 2026

Usha A Chandrasekhar & Anr.

... Applicants

Versus

Narang Realty Pvt. Ltd. & Anr.

... Respondents

AND

ARBITRATION APPLICATION (L) NO. 19259 OF 2026

Pranjil Garhwal & Anr.

... Applicants

Versus

Narang Realty Pvt. Ltd. & Anr.

... Respondents

Adv. Bhavik Lalan a/w Adv. Suraj Iyer, Adv. Gauri Joshi i/b Ganesh & Co. for Applicants.

Adv. Rohaan Cama a/w Adv. Pheros Mehta, Adv. Gaurav Gohal, Adv. Kanu Upadhyaya i/b Wadia Ghandy for Respondent No.1.

Adv. Rohan Sawant a/w Adv. Sahil Menon, Adv. Ishan Jha, Adv. Rutuja Joshi i/b Link Legal for Respondent No.2.

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CORAM : ARUN R. PEDNEKER, J.

DATE : 24 JULY, 2026

P.C. :-

1. The present Applications are taken up together, as the facts and issues are identical. The facts in Arbitration Application (L) No. 19161 of 2026 (Usha A Chandrasekhar & Anr. Vs. Narang Realty Pvt. Ltd. & Anr.) are as follows:

2. The present Application is filed under Section 11 of the Arbitration and Conciliation Act, 1996 invoking the arbitration Clause 32 of the agreement dated 30 March 2024 executed between the Respondent No. 1, as a first party, Respondent No.2-Society as a second party and all the members of the Respondent No.2-Society as a third party, which included the Applicants being members of the Society, for the re-development of the Asit Premises situated at Kane Road, Bandra West, Mumbai.

3. The Applicants issued a notice dated 26 March 2026 invoking the arbitration clause of agreement to the Respondents. However, the same was replied to by the Respondent No.1, who denied the existence of arbitration agreement. The primary objection is that, as provided under Clause 32 of the Agreement, the arbitration clause can be

invoked only by the Society and its members on one side and the Developer on the other. In the meantime, the Applicants also filed application under Section 9 of the Arbitration and Conciliation Act, the same was disposed of by this Court by following order :

(i) Petitioners and Respondents shall register PAAA on 30 March 2026. Within a period of one week from date of registration of PAAA, Respondent No.1-Developer shall pay to the Petitioners all amounts arising out of the redevelopment process.

(ii) Execution of PAAA shall not come in the way of Petitioners exercising remedy in respect of sizes and locations of the parking spaces.

(iii) The grievance of the Petitioners with regard to the sizes and locations of parking spaces is kept open and the Petitioners would be at liberty to adopt appropriate proceedings including arbitration, if permissible in law, against the concerned Respondents in respect of the said grievance.

(iv) Petitioners and Respondents agree that except the grievance relating to sizes and locations of parking spaces, the parties shall not have any claims against each other relating to redevelopment process.

In view of the opposition raised by the Respondents in the notice invoking arbitration, present Application under Section 11 is filed for the appointment of an Arbitrator.

4. The learned counsel appearing for the Applicants submits that the Applicants and the Respondent Nos. 1 and 2 are independent signatories to the agreement dated 30 March, 2024 and the disputes raised are individual disputes with regard to parking spaces as provided under Clause 4.2 of the agreement. It is submitted that, the Society and the Developer are in sink with one and other and are opposing the claim of the present Applicants. The dispute in present case relates to Clause 4.2 of the agreement, it is an individual claim against the Developer. The learned counsel also submits that, in terms of order passed under Section 9 of the Arbitration and Conciliation Act, liberty was also granted to Applicants to invoke arbitration, and accordingly, the present application is filed.

5. Learned counsel for Applicants submits that the Applicants are parties to the agreement and the agreement provides for arbitration clause and that this Court is only required to examine the arbitration clause and refer the parties to arbitration, leaving all other issues to be decided by the arbitrator. He particularly relies upon the judgments of the Supreme Court in ***Andhra Pradesh Power Generation Corporation Limited & Ors. Vs. Tecpro Systems Limited & Ors.*** (2026) 3 SCC 491 and ***Space Master Realtors Vs.***

Mulund Sandhyaprakash CHS Ltd. And Anr. 2026 SCC Online Bom 1803.

6. Per contra, Mr. Cama, the learned counsel appearing for Respondent No.1 submits that the arbitration clause provides for reference of disputes to arbitration only where the Society and its existing members are on one side and the Developer is on the other. He submits that an individual member cannot apply for appointment of an Arbitrator without the society joining as a party to the cause of the Applicants, as clause 32 of the Arbitration Agreement restricts the arbitrating parties. He relies upon the judgment of this Court in the case of ***Ketan Champaklal Divecha Vs. DGS Township Pvt. Ltd & Anr.*** 2024 SCC OnLine Bom 1.

7. Having considered the rival submissions, it is outset it is necessary to note clause 32 of the development agreement which provides as under:

"Arbitration

32. *All disputes, claims and questions whatsoever which may arise with respect to this Agreement between the Parties hereto touching or relating to or arising out of these presents or*

the construction or application thereof or any clauses or thing herein contained or in respect of the duties responsibilities and obligations of either party hereunder or as to any act or omission of any party or as to any other matter in anywise relating to these presents or the rights, duties and liabilities of either party under these presents shall be referred to arbitration under the Arbitration and Conciliation Act, 1996 or any statutory modification and/or re-enactment thereof in the following manner:

(a) The Society and the Existing Members as one Party and the Developer as the other Party shall jointly appoint a Sole Arbitrator, failing which the Sole Arbitrator shall be appointed as per the provisions of the Arbitration and Conciliation Act, 1996. The fees of the Sole Arbitrator shall be payable as per the Schedule-IV of the Arbitration and Conciliation Act, 1996.

(b) The seat as well as the venue of arbitration shall be Mumbai.

(c) The Award of the Arbitrator shall be final and binding on the Parties to the reference.

(d) Unless other directed by the Court or Arbitration Tribunal, the existence or subsistence of a dispute between the Parties, or the commencement or continuation of the arbitration proceedings, shall not, in any manner, prevent or postpone the performance of those obligations of Parties under this Agreement, which are not in dispute, and the arbitrators shall give due consideration to such performance, if any, in making a final award.

(e) The cost of arbitration shall be decided by the Arbitration Tribunal."

8. In the Agreement dated 30 March, 2024, it is seen that the developer, the society and the members have individually signed the Development Agreement. The Applicants are also the independent signatories to the agreement.

9. In the case of **Ketan Champaklal Divecha** (supra) this Court considered a very identical same clause which is noted in paragraph No. 13 as under:

13. In the present case, since the petitioner has emphasized upon individual members of the respondent - society being signatories to the development agreement and hence, being entitled to invoke arbitration, it would be appropriate to refer to the relevant sections of the Arbitration Act. Section 2(1)(h) of the said Act defines 'party'. Section 7 thereof defines an 'arbitration agreement', as an agreement by parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship. The arbitration clause in the present case has to be interpreted on the basis of the aforesaid definition of 'party' and 'arbitration agreement'. The arbitration clause in the present case, contained in the development agreement, reads as follows:

35.1 All disputes, claims and questions whatsoever which may arise with respect to this Agreement between the Parties hereto touching or relating to or arising out of these presents or the construction or application thereof or any clauses or thing herein contained or in respect of the duties responsibilities and obligations of either party

hereunder or as to any act of omission of any party or as to any other matter in anywise relating to these presents or the rights, duties and liabilities of either party under these presents shall be referred to arbitration under Arbitration and Conciliation Act, 1996 or any statutory modification and/or re-enactment thereof in the following manner:

35.2 *The Society and the Members as one party and the Developer as the other Party may forward a panel of names to facilitate the task of selection of the Sole Arbitrator, and a Sole Arbitrator shall then be appointed jointly by the Society and the Developer.*

10. It is brought to my notice that the Supreme Court has granted leave to appeal against the judgment in ***Ketan Champaklal Divecha*** (supra). However, there is no stay to the judgment. The arbitration clause contained in the present development agreement and the clause as noted in the case of ***Ketan Champaklal Divecha*** (supra) is exactly identical and this Court has held that although the Applicants therein, i.e. individual members of the society, have grievances against the Respondent No.1-Developer and also against the Respondent No.2-Society, but such grievances and disputes arising therefrom do not enable them to approach for arbitration due to the peculiar arbitration clause contained in the Development Agreement.

11. In ***Ketan Champaklal Divecha*** (supra) this Court gave primary importance to the consent as provided in Section 7 of the Arbitration and Conciliation Act. The Court also observed that, in the matters relating to redevelopment and development agreements, the will of the majority prevails and the individual identity of the member is within the will of the cooperative housing society which collectively represents the aspirations and the cause of its members. In any event, the Court held that the individual member can take such steps as are available in law for seeking redressal of their grievances, but arbitration cannot be invoked by the individual members in view of the peculiar clause contained in the arbitration agreement.

12. Reliance is placed by the learned counsel for the Applicants on ***Andhra Pradesh Power Generation Corporation Limited & Ors.*** (supra). In the said case before the Supreme Court, The Supreme Court has held in Paragraph Nos. 12, 13 and 15 has observed as under:

12. We must, at the outset, address an important submission advanced on behalf of the appellants, namely, that in the present case there exists no arbitration agreement insofar as the individual constituent of a consortium is concerned. This submission is founded upon certain decisions

of the Delhi High Court and the Bombay High Court which have taken the view that a member of a consortium, in its individual capacity, cannot invoke the jurisdiction-of the Court under Section 11 of the Arbitration and Conciliation Act, 1996. The appellants contend that in the absence of a direct arbitration agreement between the employer and the individual consortium member, the very assumption of jurisdiction by the referral court would be impermissible,

13. *In our considered view, these objections must be answered in the broader perspective of the nature and scope of the jurisdiction exercised by a referral court under Section 11 of the Act. With the introduction of the statutory restraint under Section 11(6-A), the legislature has consciously confined the domain of judicial scrutiny to the mere "existence of an arbitration agreement". This legislative design is further reinforced by the express empowerment of the AT under Section 16 to rule on; (i) its own jurisdiction, (ii) objections (iii) objections relating to the validity of such an agreement. The statutory scheme thus envisages a clear demarcation between the limited threshold scrutiny at the referral stage on the one hand and the substantive jurisdictional adjudication to be undertaken by the AT on the other.*

15. *The Reference Court will, however, confine its enquiry only to a prima facie satisfaction as to whether a member of a consortium qualifies as a party to the arbitration agreement. This prima facie satisfaction is sufficient for the referral court to constitute and refer the dispute to the AT.*

13. The Supreme Court has held that the Referral Court would examine the existence of arbitration agreement and such enquiry would only be prima facie satisfaction as to whether the member of consortium qualifies as a party to the arbitration agreement and this

prima facie satisfaction is sufficient for the Referral Court to constitute arbitral tribunal and refer the dispute to arbitration.

14. In the instant case, there is no dispute as regard to the Applicants being one of the individual parties to the arbitration agreement. However, arbitration clause itself provides as to who can refer the dispute to arbitration. The said Clause No. 32 provides that the Applicants i.e. the individual members of the society, cannot invoke arbitration against the Developer or the Society. The arbitration clause provides that only the Society and its members, on one side can raise a dispute against the Developer.

15. In view of the specific arbitration clause and the limitations placed therein and the parties having agreed to refer only particular disputes to arbitration, all other disputes inter se between the parties will have to be adjudicated outside the process of arbitration. Arbitration Agreement means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. In the instant case any dispute between the Society and its members on one side and the Contractor on the other are agreed to be referred to arbitration by the arbitration clause in the

agreement. Relevant in this regard is the judgment of the Supreme Court in ***State of Goa Vs. Praveen Enterprises*** (2012) 12 SCC 581, wherein at paragraph 41 the Supreme Court held as under:

41.

(a)

(b) Where the arbitration agreement provides for referring all disputes between the parties (whether without any exceptions or subject to exceptions), the arbitrator will have jurisdiction to entertain any counterclaim, even though it was not raised at a stage earlier to the stage of pleadings before the arbitrator.

(c) Where however the arbitration agreement requires specific disputes to be referred to arbitration and provides that the arbitrator will have the jurisdiction to decide only the disputes so referred, the arbitrator's jurisdiction is controlled by the specific reference and he cannot travel beyond the reference, nor entertain any additional claims or counterclaims which are not part of the disputes specifically referred to arbitration.

16. In this view of the matter, this Court finds that the disputes raised by the individual member against the Society and the Developer cannot be referred to arbitration. Applicants are left to seek such remedies as available to them in law against the Respondents. Accordingly, the Arbitration Application is **dismissed**.

[ARUN R. PEDNEKER, J.]