Sayali

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

COMM ARBITRATION PETITION (L) NO. 15449 OF 2026

Prospective Estate and Realty Logical Solutions Private Limited ... Petitioner

Vs.

Nirvana Lifestyle Homes LLP ...Respondent

Mr. Anand Pai i/b Mhatre Law Associates, for Petitioner.

Mr. Piyush Raheja, Mr. Yash Momaya with Mr. Rishabh Dhanuka, Ms. Vibha Joshi, Ms. Mahima Shah, Mr. Vamsh Shetty i/b Agarwal and Dhanuka Legal, for Respondent.

CORAM : AMIT BORKAR, J.

RESERVED ON : JUNE 18, 2026.

PRONOUNCED ON : JULY 6, 2026

JUDGMENT:

1. By the present arbitration petition, the petitioner is seeking appointment of a Court Receiver in respect of the 152 plots forming part of the said smaller portion of the said land admeasuring 5,26,193.79 sq. ft., equivalent to 48,885.05 sq. mtrs., bearing Survey Nos. 156/11, 14, 15, 17, 18, lying, being and situated at Village Amboli, Taluka Dahanu, District Palghar under Order XL Rule 1 of the Code of Civil Procedure, 1908.

2. Facts giving rise to the filing of the present arbitration petition, as narrated in the petition, are as under. The petitioner is seeking to restrain the Respondent from in any manner further selling, transferring, alienating, encumbering, creating third-party rights, or otherwise dealing with any balance unsold plots/infrastructure forming part of the said smaller portion of the said land in Village Amboli, Dahanu, without the prior written consent of the Petitioner, owing to the alleged breaches by the Respondent in violation of the terms and conditions of the Registered Conveyance Deed dated 6 April 2022 and the Addendum to Sale Deed No. 652/2022 dated 6 December 2024.

3. The Petitioner is a Private Limited Company, and the Respondent is a Limited Liability Partnership. The petitioner is the lawful owner of the land bearing (i) Survey No. 156 Hissa No. 15 admeasuring 2-00-00 (H-A-P); (ii) Survey No. 156 Hissa No. 17 admeasuring 2-00-00 (H-A-P); (iii) Survey No. 156 Hissa No. 11 admeasuring 3-20-00 (H-A-P); (iv) Survey No. 156 Hissa No. 14 admeasuring 4-03-00 (H-A-P); and (v) Survey No. 156 Hissa No. 18 admeasuring 4-00-00 (H-A-P), lying, being and situated at Village Amboli, Taluka Dahanu, District Palghar. The portion of the said land admeasuring 86,795.16 sq. meters has been divided into 260 plots bearing Plot Nos. A1 to A260 vide an order passed by the Tahsildar's Office, Dahanu. The Petitioner undertook the development and construction of a RERA project namely “VIROHA CITY” on the said land. Discussions regarding execution of a Development Agreement were made for granting development

rights in respect of 54 plots to the Respondent, which failed. Thereafter, a Marketing Services Agreement was executed, and the Petitioner agreed to refund the partially paid deposit of Rs.4.25 crores to the Respondent under the Development Agreement. Out of Rs.4.25 crores, the Petitioner paid Rs.1.42 crores and the balance Rs.2.83 crores was to be adjusted towards sale consideration.

4. Thereafter, a Registered Conveyance Deed was executed and registered in favour of the Respondent for conveyance of a smaller portion of the land admeasuring 48,885.05 sq. mtrs. bearing Survey Nos. 156/11, 14, 15, 17 and 18, divided into 152 plots, for a total consideration of Rs.31,83,00,000/-. The Respondent already paid Rs.5.83 crores and agreed to pay the balance Rs.26 crores by post-dated cheques (PDCs). A PDC of Rs.42,80,000/- deposited by the Petitioner got dishonoured vide Cheque No.000000001232. The Respondent assured the Petitioner that the cheque would be honoured and requested the Petitioner not to deposit the remaining cheques up to 25th September 2024. No payment was honoured despite giving a 60-day cure period. The Petitioner has complied with its obligations under the said Deed and spent more than Rs.2,85,36,134/- till 31 August 2023 for completion of the project as per the Third Schedule to the said Deed. The Respondent made an offer for execution of the Addendum to the Sale Deed, which was executed, and the payment schedule was revised for the outstanding amount of Rs.11,31,39,103/- within 49 months, including 12% interest, i.e., monthly EMIs of Rs.30 lakh from

December 2024 till December 2028 amounting to Rs.14,45,67,699/-.

5. The Respondent paid a sum of Rs.19,98,55,933/- along with interest and failed to pay the balance amount of Rs.19,87,98,471/- accruing till 31 January 2026. The Petitioner discovered that the Respondent had created third-party rights in respect of 76 plots without consent, in breach of the Deed. A sum of Rs.12,69,61,067/- along with accrued interest of Rs.4,53,83,824/- and the EMD forfeited amount of Rs.3,00,00,000/- remains unpaid, aggregating to a sum of Rs.20,23,44,891/-. A legal notice/ intimation granting 15 days' time was issued as per the Deed, to which the Respondent replied accepting its liability and calling for amicable resolution of the dispute. The amicable resolution failed, and the Petitioner issued an Arbitration Notice and also filed a police complaint. The Respondent replied once again seeking an amicable resolution; however, no bona fide steps were taken. Hence, the present Petition has been filed seeking interim measures to secure the Petitioner's claim pending arbitration.

6. Mr. Anand Pai, learned Advocate for the petitioner, invited my attention to the Addendum to the Sale Deed dated 6 April 2022, and submitted that a table contained in the said document shows the amount agreed to be paid by the respondent, which is towards the consideration of the Sale Deed executed by the petitioner in favour of the respondents. A part of such consideration was to be paid in instalments as reflected in the said table. He submitted that the respondent has complied with

Instalments Nos. 1 to 19 out of the said instalments payable; however, the respondent has failed to pay the balance amount of consideration agreed under the Sale Deed. He invited my attention to Clause 16 of the Sale Deed, which restrains the respondent from selling or creating third-party rights in respect of the property in dispute until the consideration is paid by the purchaser to the vendor. He submitted that the petitioner is entitled to the reliefs as prayed for in the petition.

7. Mr. Piyush Raheja, learned Advocate for the respondents, invited my attention to Clauses 5 and 6 of the Agreement dated 6 April 2022, and submitted that under the said agreement, the terms and conditions of the Sale Deed stand modified. He submitted that on the default committed by the respondent as per the schedule mentioned in the said agreement, the petitioner was to issue a 15-day notice to clear the outstanding EMI amount and, on failure to clear the EMI amount within the prescribed period, the parties shall enter into an agreement whereby the respondent shall be entitled to recover the outstanding EMI from the sale proceeds of the Viroha Project undertaken. He submitted that the respondent is selling plots to various customers from the Viroha Project and that the amount was agreed to be transferred to an escrow account, and a mutually agreed percentage of the sale proceeds shall be transferred to the petitioner towards the outstanding amount. Therefore, the petitioner cannot claim an injunction against the respondents from selling the property in dispute.

8. In rejoinder, the learned Advocate submitted that the Sale Deed is a registered instrument and the Agreement dated 6 April 2022 is an unregistered document. The terms of the registered document cannot be varied or modified by an unregistered document and, therefore, he submitted that the respondent is not entitled to sell the property in dispute.

REASONS AND ANALYSIS:

9. I have considered the submissions made on behalf of both the parties. I have also gone through the pleadings and the documents placed on record. At this stage, the Court is dealing with a petition seeking interim protection pending arbitration. Therefore, the Court is not expected to finally decide the rights and liabilities of the parties. The Court is only required to see whether the petitioner has made out a case for interim protection and whether refusal of such protection may affect the subject-matter of the arbitration.

10. From the material placed before the Court, it is not in dispute that a Registered Conveyance Deed dated 6 April 2022 was executed by the petitioner in favour of the respondent in respect of 152 plots forming part of the land in question. It is also not disputed that thereafter an Addendum came to be executed between the parties revising the payment schedule for the outstanding consideration. Therefore, the relationship between the parties and the transaction under which the respondent acquired rights in the property are not matters in dispute. The dispute is regarding the manner in which the balance consideration was to be paid and the rights of the parties after the respondent allegedly

committed default.

11. The petitioner has relied upon the payment schedule contained in the Addendum and has submitted that though several instalments have been paid, the respondent has failed to pay the remaining amount. The petitioner has also placed reliance upon Clause 16 of the Registered Conveyance Deed. According to the petitioner, till the entire sale consideration is paid, the respondent is not entitled to create any third party rights or deal with the property. It is further alleged that despite such restriction, the respondent has created third party rights in respect of 76 plots. If this allegation is correct, then the petitioner has shown a prima facie breach of an important condition contained in the registered document.

12. The respondent does not dispute that some amount still remains payable. In fact, from the pleadings referred to by the petitioner, it appears that in reply to the legal notice the respondent had accepted its liability and requested that the dispute be settled. Though the extent of liability may require examination before the Arbitral Tribunal, the material available does indicate that the respondent has acknowledged that some amount remained payable. Therefore, at least at this stage, the submission of the petitioner that substantial consideration still remains unpaid cannot be brushed aside.

13. The respondent has opposed the relief on a different ground. According to the respondent, Clauses 5 and 6 of the Agreement dated 6 April 2022 have modified the original arrangement

between the parties. It is submitted that after default, the parties had agreed that the outstanding amount would be recovered from the sale proceeds of the Viroha Project. It is submitted that the sale proceeds were to be deposited in an escrow account and thereafter an agreed percentage would be transferred to the petitioner. On this basis, it is argued that the respondent was permitted to continue selling the plots and, therefore, the petitioner cannot now seek an injunction restraining further sales.

14. However, the respondent has not pointed out any material before this Court to show that such escrow mechanism has been implemented or that the agreed percentage of sale proceeds has been regularly transferred towards the petitioner's outstanding dues. On the contrary, according to the petitioner, substantial amounts still remain unpaid. Therefore, even if the respondent's interpretation is assumed for the purpose of argument, the material presently available does not establish that the arrangement relied upon by the respondent has been acted upon.

15. The petitioner has also argued that the Agreement dated 6 April 2022 relied upon by the respondent is an unregistered document, whereas the Conveyance Deed is a registered instrument. According to the petitioner, the terms of a registered conveyance cannot be altered by an unregistered document. This submission raises an important issue regarding the effect of the documents executed between the parties. Prima facie there is substance in the contention raised on behalf of petitioner.

16. The petitioner has alleged that third party rights have already been created in respect of 76 plots without its consent and that a substantial amount still remains unpaid. If during the pendency of arbitration the remaining plots are also transferred and further third party interests come into existence, the dispute may become more complicated. Such transfers may also make it difficult for the petitioner to secure the fruits of award that may be passed in its favour. This aspect cannot be overlooked while exercising powers under Section 9.

17. The conduct of the parties also deserves consideration. The petitioner has stated that after dishonour of one of the post dated cheques, the respondent requested that the remaining cheques should not be deposited and assured payment. It is also stated that even after granting a cure period, payment was not made. Thereafter, an Addendum was executed by revising the payment schedule. Even according to the petitioner, several instalments were paid by the respondent. At the same time, the material shows that despite revision of the payment schedule, according to the petitioner a substantial amount still remains outstanding. The respondent has not placed before this Court any material showing that the outstanding amount has been cleared or that there is no default. Thus, though the respondent's conduct does not answer the petitioner's case regarding continuing default.

18. The Court also cannot ignore that the property forms the subject-matter of the dispute between the parties. Once third party rights are created during pendency of the dispute, restoration of

the original position may become difficult. Such difficulty is one of the relevant circumstances while considering interim protection. The purpose of an interim order is not to decide the rights finally but to preserve the subject-matter so that the arbitration does not become ineffective.

19. Looking to the material placed before this Court, the petitioner has made out a prima facie case that substantial consideration remains unpaid and that restrictions regarding transfer of the property are contained in the registered Conveyance Deed. The respondent has raised a defence based on the subsequent Agreement and the alleged escrow arrangement. That requires detailed examination before the Arbitral Tribunal.

20. Taking an overall view of the matter, I am satisfied that the balance of convenience leans in favour of protecting the remaining property until the disputes between the parties are decided in arbitration. If no interim protection is granted and transfers are permitted, enforcement of award may also become difficult. On the other hand, the respondent will have full opportunity before the Arbitral Tribunal to establish that the subsequent Agreement governs the rights of the parties and that the transfers effected by it were in accordance with the contractual arrangement. Therefore, without expressing any final opinion on the rival contractual interpretations, this Court finds that the petitioner has made out a case for grant of appropriate interim protection pending arbitration.

21. In view of the foregoing discussion, and upon overall assessment of the material on record, and the findings arrived at hereinabove, the following order is passed:

(i) The Commercial Arbitration Petition is partly allowed;

(ii) Pending commencement and conclusion of the arbitral proceedings, the respondent shall not create any fresh third party rights, transfer, alienate, assign, encumber or otherwise deal with the balance unsold plots forming part of the property described in the petition, except with the prior written consent of the petitioner or with the leave of the Arbitral Tribunal, if constituted, or this Court;

(iii) The Court Receiver, High Court, Bombay, is appointed as Receiver in respect of the balance unsold 152 plots forming part of the property described in the petition. However, the appointment shall be symbolic in nature. The Court Receiver shall not take physical possession of the said property unless specifically directed by this Court or by the Arbitral Tribunal;

(iv) The respondent shall maintain complete accounts of all transactions relating to the said project and shall not divert the sale proceeds received from the project except in accordance with law and subject to further orders that may be passed by the Arbitral Tribunal;

(v) It is clarified that this order shall not affect the rights of bona fide third parties, if any, created prior to the filing of the

present petition. The validity and effect of such transactions shall remain subject to the arbitral proceedings;

(vi) The observations made in this judgment are prima facie in nature and confined only to the consideration of interim relief under Section 9 of the Arbitration and Conciliation Act, 1996. The Arbitral Tribunal shall decide all issues independently and on their own merits without being influenced by any observations contained in this order;

(vii) The petition is accordingly disposed of in the above terms.

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

(AMIT BORKAR, J.)