IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION PETITION (L) NO.20999 OF 2025

Jai Gopal Krishna CHSL & Ors. ...Petitioners

Versus

Vitrag Infra Projects LLP ....Respondent

Mr. Gauraj Shah *a/w. Ms Aakansha Anand & Ms Sweta Jalgaonkar i/b. Mahesh Menon & Co., for Petitioners.*

Mr. Nikhil Seth, *for Respondent.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : FEBRUARY 27, 2026

ORAL JUDGEMENT:

Context and Factual Background:

1. This is a Petition filed under Section 37 of the Arbitration and Conciliation Act, 1996 (***"the Act"***) impugning an Order dated June 24, 2025, passed by the Learned Sole Arbitrator making certain arrangements for interlocutory reliefs in connection with arbitration of disputes arising over a Development Agreement dated December 31, 2021 ("***Development Agreement***").

2. Petitioner No.1, Jai Gopal Krishna Co-operative Housing Society Limited (***"Society"***) comprises 20 members in respect of a building comprising ground plus four storeys, constructed in 1979-80. Petitioner No.2, Raju Lokumal Achpilia and Petitioner No.3, Haresh Lokumal Achpilia (***"Land Owners"***) are the original Land Owners on whose land, the building came to be constructed. The Land Owners occupy a bungalow standing on the same parcel of land. The land on which the Building and the Bungalow stand, totally admeasures 938.80 square meters, and is located at Borivali, Mumbai (collectively, "***Subject Property***"). The Society, the Land Owners (Petitioner No.2) and the Respondent, Vitrag Infra Projects LLP (***"Developer"***), have executed the Development Agreement, by which the Developer was granted development rights over the Subject Property.

3. In terms of the Development Agreement, specific transit rent, de-housing compensation, hardship allowance, brokerage, transportation charges, and the like had been contracted. The development period was envisaged as 24 months, extendable by 6 months, with such period commencing after obtaining the Commencement Certificate. The Intimation of Disapproval (***"IOD"***) was to be obtained on or before December 31, 2021, with a 60-day grace period. The Development Agreement contains provisions relating to modification of layout and the tentative plans annexed to it.

4. The redeveloped building was to comprise ground floor plus nine storeys. The Development Agreement envisaged redevelopment in terms of Regulation 33(7)(B) of the DCPR 2034. A Power of Attorney was executed by the Petitioners in favour of the partners of the Developer, only on April 18, 2022.

5. The Development Agreement was sought to be terminated by way of a termination notice dated October 9, 2023 (***"Termination Notice"***), which had been preceded by pre-termination notice dated August 29, 2023, as provided for in the Development Agreement. The disputes pursuant to the Termination Notice eventually led to arbitration proceedings in which the Impugned Order came to be passed.

6. The Impugned Order disposed of cross-applications by the parties under Section 17 of the Act, each of which is said to have been partially allowed. The Learned Arbitral Tribunal directed that *status quo* be maintained over the Subject Property and that neither party shall create any third-party rights on the Subject Property. The Developer was directed to pay transit rent of an amount of Rs.20,000/- per month and Rs.15,000/- per month to the members of the Society, as stipulated under the Development Agreement, with effect from July 1, 2025, until disposal of the arbitral proceedings, without claiming any

equities and without prejudice to the rights and contentions of the parties.

7. Monthly cheques are directed to be forwarded to the members of the Society by the seventh day of each calendar month for that month. The Learned Arbitral Tribunal also ruled that any failure to pay such amounts would lead to the automatic vacation of the Impugned Order, with the Society and the Land Owners then being free to undertake redevelopment as they deem appropriate. The arbitral proceedings have been expedited and are actively underway.

Contentions of the Parties:

8. Against this backdrop, I have heard Mr. Gauraj Shah, Learned Counsel for the Petitioners and Mr. Nikhil Seth, Learned Counsel for the Respondent, and with their assistance, I have examined the record.

9. Mr. Shah on behalf of the Petitioner would submit that the Impugned Order is perverse, inasmuch as it fails to take into account the fact that the Society and the Land Owners have lost confidence and faith in the Developer. He would submit that the Developer violated material terms of the Development Agreement. Although the IOD was obtained on January 2, 2023, the Developer escalated the matter with the municipal authorities about the dilapidated nature of the building,

to get the demolition to be effected at the hands of the Municipal Corporation of Greater Mumbai (***"MCGM"***). He would submit that there had been default in payment of rent as well and the Developer, mid-course, sought to alter the project from being a project contemplated under Regulation 33(7)(B) of the DCPR 2034 to a project under Regulation 33(11) of DCPR 2034.

10. Mr. Shah would submit that this would lead to the accommodation of project-affected persons on the Subject Property, which was not something envisaged in the course of development of the property under the Development Agreement. By virtue of the Impugned Order, he would submit, the rent has been paid only since July 1, 2025. Therefore, the Impugned Order is perverse inasmuch as right since May 2023, when the members of the Society vacated their premises to enable demolition by the MCGM, no transit rent has been paid until after the Impugned Order. He would rely on the line of judgements following ***Rajawadi Arunodaya CHSL***[1].

11. Mr. Nikhil Seth, Learned Advocate on behalf of the Developer would submit that the Society had a different set of office-bearers when the Development Agreement was executed. When the Managing Committee changed in July 2023, the attempt to disrupt the Development Agreement commenced, he would submit, to contend

[1] *Rajawadi Arunodaya CHSL Vs. Value Projects Pvt. Ltd. - 2021 SCC OnLine Bom 9572*

that transit rent was indeed offered to be paid over, but it was the Society that refused to collect it. The Developer has been committed to the Development Agreement, specifically under Regulation 33(7)(B) of the DCPR 2034. The proposal to alter the development to one under Regulation 33(11) of the DCPR 2034 was merely a proposal, which is sought to be exploited in favour of supporting the Termination Notice.

12. Mr. Seth would also submit if the appellants chose not to create third-party rights for more than 20 months even after the Termination Notice, the *status quo* for a few more months while the arbitration is actively underway would not harm the Petitioners. He would dispel the contentions about the merits of the Termination Notice and would submit that the two grounds of termination, namely, non-execution of the project as per timeline, and the change in approach from a development under Regulation 33(7)(B) to one under Regulation 33(11) were rightly, on a *prima facie* basis, found to be untenable by the Learned Arbitral Tribunal.

13. Mr. Seth would submit that the deadline for the IOD in the Development Agreement was December 31, 2021, which is the date on which the Development Agreement was executed. He also submitted that if this deadline was missed, a further 60 days were already provided for the purposes of obtaining the IOD. The Developer issued

a vacation notice to the Society within 15 days of obtaining the IOD and called upon the members to vacate by the third week of April 2022.

14. The Society and its members delayed the execution of the Permanent Alternate Accommodation Agreement (***"PAAA"***), and with each of the timelines stipulated in the Development Agreement being missed, there was no protest whatsoever because the parties were engaged in working on the development. He would submit that the Learned Arbitral Tribunal has rightly relied upon the letter dated October 16, 2022, which indicates the extension of timelines and the participation by the parties in working on the project. He would submit that the Land Owners wield an outsized influence over the decisions of the Society, and they have not vacated the bungalow at all. Therefore, they cannot expect the timelines for the redevelopment to be adhered to when they themselves have refused to vacate. The Land Owners have allowed the building to be demolished and now want to renegotiate the Development Agreement. When the Termination Notice was issued, the Developer explicitly confirmed its willingness to proceed under Regulation 33(7)(B) of the DCPR 2034 as contracted, and it cannot be stated that the Developer is not ready and willing to perform.

Scope of Review:

15. I have closely reviewed the Impugned Order from the perspective of the scope of jurisdiction available to this Court in terms of Section 37 of the Act, bearing in mind that the challenge in question is to an interlocutory order passed by the Arbitral Tribunal. It is important to examine whether the interlocutory arrangement complained of is perverse and implausible to a degree that warrants the Section 37 Court's interference. It is equally well-settled that an Appellate Court exercising the power under Section 37 of the Act to review the exercise of discretion by an Arbitral Tribunal at an interim stage, would be well guided by the principles set out by the Supreme Court in ***Wander vs. Antox***[2], namely, that interference is warranted only if there is something perverse or implausible in the exercise of discretion in making an interlocutory arrangement. The following extract from ***Wander*** would suffice:

> *14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge.* ***In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions****. An appeal against exercise of discretion is said to be an appeal on principle.* ***Appellate court will not***

[2] *Wander Ltd. Vs. Antox India (P) Ltd. – 1990 Supp SCC 727*

> ***reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material****. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage, it would have come to a contrary conclusion.* ***If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion.***
>
> ***[Emphasis Supplied]***

16. In a plethora of judgements under Section 37 of the Act, the principle articulated in ***Wander v. Antox*** has been followed and reiterated. In other words, the Section 37 jurisdiction, when considering a challenge to an order passed under Section 17 of the Act, is a light-touch jurisdiction, where the Court must not substitute the Learned Arbitral Tribunal's plausible view with its own competing plausible view. The Learned Arbitral Tribunal is the forum that is seized of the factual facets of the matter, and thereby is the master of the evidence, with control over what constitutes the quality and quantity of evidence. In such effort, if the Learned Arbitral Tribunal has conducted itself perversely, or has been arbitrary and unreasonable or has returned an interlocutory arrangement that could be regarded as perverse, the Section 37 Court would indeed correct the position. This is the standard to apply.

Analysis and Findings:

17. Having heard Learned Advocates for the parties and having examined the material on record with their assistance, it is clear that on each and every issue raised by the Petitioners, the Learned Arbitral Tribunal has squarely examined the material before it to return the findings and the arrangements that the Learned Arbitral Tribunal believed to be reasonable and in the best interests at an interlocutory stage.

18. The letter dated October 16, 2022, on which the Learned Arbitral Tribunal relied to indicate that the Society was indeed happy with the Development Agreement and was engaging with the Developer, is strongly contested by Mr. Shah on the premise that it is a handwritten letter written by a lone member. However, on examination of the same, it is apparent that it is a letter written by the Secretary of the Society and confirms that the Society would furnish a letter approving the draft of the PAAA as soon as possible. Upon such approval, it was proposed that the Developer would pay the requisite charges for the IOD and obtain the same, and thereafter the Society would issue a letter to the MCGM consenting to carry out the procedures in law for the demolition of the building on the ground that it is dilapidated. These developments would indeed transpire.

19. The Developer was meant to continue to release payments under the Development Agreement upon the Municipal Authorities issuing the letter for eviction and disconnection of water and electricity supply, and meanwhile, all the PAAAs were to be registered. It is also recorded that the non-dissenting members would be paid the amounts of transit rent upon issue of notice by the Municipal Authorities since that would constitute the act of vacating the premises. When one examines this letter and the manner in which the Learned Arbitral Tribunal has dealt with the same, it would be difficult to conclude that the findings of the Learned Arbitral Tribunal are perverse and implausible. The Learned Arbitral Tribunal has taken an informed view that on a *prima facie* basis, the timelines in the Development Agreement indeed got readjusted as late as October 2022. The further approach of the parties, with the vacation of the building in May 2023 and the demolition in May 2023, was consistent with the letter.

20. The IOD was indeed obtained by the Developer on January 2, 2023. Against this backdrop, the Learned Arbitral Tribunal has examined the termination clause in the Development Agreement as indeed to the provisions relating to alteration of plans. While the Development Agreement indeed provided for the Developer to modify the plans without disturbing the area allocation to the Society, the Learned Arbitral Tribunal has in fact concluded that the very

framework of the development could not be changed from Regulation 33(7)(B) to a project under Regulation 33(11). That apart, the Learned Arbitral Tribunal has noticed the commitment of the Developer to stick to the development under Regulation 33(7)(B) and has therefore factored that into its assessment of the *prima facie* case. Moreover, it is apparent that the PAAAs were not signed because of this issue and since this issue stands addressed, there should be no impediment to executing the PAAA.

21. While the Society contends that the Developer was meant to pay twelve months' transit rent and paid only one month's transit rent, the Learned Arbitral Tribunal has directed that transit rent be paid from July 1, 2025 on a monthly basis. Evidently, the Petitioners are unwilling to accept the transit rent because they believe in their right to terminate the Development Agreement. Whether the Termination Notice was valid, is a facet that the Learned Arbitral Tribunal has kept open and would examine at the stage of trial.

22. Mr. Shah contends that the Land Owners have not consented to any extension of time. Even if one could say the Society had done so, he would contend, that would itself point to the fact that the Society, with its members undergoing the hardship of having vacated their premises, had indeed endorsed the letter dated October 16, 2022. Yet the Land

Owners, who are but one of the members of the Society are holding out without vacating their bungalow and desire to terminate the Development Agreement. In response to a specific query from the Bench as to whether the Land Owners have effected the conveyance that they were obliged to make in favour of the Society, it was found that such conveyance has not been effected. Therefore, it is apparent that the Land Owners are potentially exercising an outsized influence over the Development Agreement, whereas ordinarily they ought to have only one vote for every flat.

23. That apart, the Learned Arbitral Tribunal has noticed that the power of attorney itself had been executed only in April 2022, four months after the execution of the Development Agreement, and that the Petitioners had positively participated in obtaining of the IOD and getting the building demolished. The change in office-bearers of the Society intervened in July 2023. The fundamental ground of termination i.e. the plan being changed by such a magnitude by shifting from Regulation 33(7)(B) to Regulation 33(1) has also been put to rest.

24. In these circumstances, in my view, the Learned Arbitral Tribunal cannot be faulted for the outcome it arrived at in respect of maintenance of *status quo* pending the expedited conclusion of the arbitration proceedings. The competing positions adopted by the

respective parties are diametrically opposite, inasmuch as the Petitioners are desirous of walking away with the termination of the Development Agreement, while the Developer is desirous of specifically performing the Development Agreement.

25. Judgements in ***Rajawadi*** and in ***ISON Builders LLP***[3] have been cited by the Petitioners to emphasise the observations made in ***Rajawadi*** to indicate that this is what the Learned Arbitrator ought to have done. In my opinion, the facts in ***Rajawadi*** are different from the facts of instance case. *Prima facie*, the outsized influence that the Land Owner seems to wield over the redevelopment is markedly distinct and different from the fact patterns in ***Rajawadi*** and ***ISON Builders LLP***.

26. That apart, even if one were to take the view that the same position ought to be adopted in the facts of the instant case, such a contention would at best represent a prayer for taking one plausible view that is being canvassed, only to substitute another plausible view that has been taken by the Learned Arbitral Tribunal. The role of this Court is not to pick what appears to be the best out of competing plausible views, but to determine whether the view challenged in the Section 37 Petition is an implausible and perverse view warranting Court intervention. Seen from that prism, the judgments relied upon

[3] *ISON Builders LLP Vs. Om Sai Ram Cooperative Housing Society (Proposed) & Ors.-2026 SCC OnLine Bom 319*

and the principles invoked by Mr. Shah to assail the Impugned Order do not appeal to me for blanket application to the facts of the case.

Order and Directions:

27. I do find the need to make a small intervention to address the contention that the interlocutory arrangement is not consistent with the Development Agreement in its entirety. The arrangement made by the Learned Arbitral Tribunal for transit rent being paid from July 1, 2025, until the final disposal of the arbitration proceedings at the same rate as originally provided for, although the Development Agreement provides for an escalation, is the only vulnerable element in the Impugned Order. Therefore, in my view, if this vulnerability is also addressed, there is no basis at all to interfere with the Impugned Order.

28. The members of the Society evidently vacated their premises in May 2023, and therefore ought to be paid transit rent since then. The Developer claims to have offered to pay and that the Society refused to accept it. The Developer was obliged to pay for twelve months, and thereafter, there was to be an escalation.

29. Therefore, the only intervention being made in exercise of jurisdiction under Section 37 of the Act, even while upholding the Impugned Order, is to direct the Developer to pay transit rent and

other amounts payable under the Development Agreement from June 2023 until July 2025, within a period of four weeks from the upload of this order on the website of this Court.

30. I do note that other payments due under Clause 12 (hardship allowance), Clause 13 (brokerage) and Clause 14 (transportation) have indeed been made and accepted by members of the Society. The clause governing transit rent, in fact, envisages an escalation, but does not stipulate the rate of escalation.

31. Therefore, as a protective measure, considering that the parties had indeed agreed upon the need for an escalation, it is also directed that the transit rent component from May 2023 until July 2025, when the transit rent was first paid by the Developer to the Society, shall be paid. If the Society is unwilling to accept it, the same shall be deposited with the Registry of this Court. With effect from April 2026, there shall be an escalation in the amount deposited at the rate of 10% per annum calculated on the base rates of such rent. All amounts so deposited in this Court, if the Society does not accept them, shall be swept into a fixed deposit every month with a lien being marked in favour of the Society; such deposit, along with accruals, shall abide by the outcome in the arbitration proceedings.

32. Within four weeks from the upload of this order, the Developer shall file an affidavit before the Learned Arbitral Tribunal demonstrating compliance with this modified version of the Impugned Order. Every month thereafter, within a week of making the deposit as scheduled on the seventh day of each calendar month, i.e. by the fourteenth day of each calendar month, an affidavit shall be filed with the Learned Arbitral Tribunal demonstrating compliance with the payment already made with documentary proof of a lien actually having been marked.

33. That apart, since the Impugned Order has relied upon the Developer having given up redevelopment in terms of Regulation 33(11) and the same is being confirmed in the course of these proceedings, it is made clear that the entire arrangement would be predicated on the development being pursued in terms of Regulation 33(7)(B) of the DCPR 2034, subject of course to the final determination of the issue in the arbitration proceedings.

34. With the aforesaid directions, there being no basis to interfere with the Impugned Order, the Petition is disposed of, subject to the aforesaid modification. The Impugned Order is left undisturbed.

35. The limited intervention made above is only to make the interlocutory arrangement consistent with the Development

Agreement, which would cure even the smallest potential to find fault with the Impugned Order – a course indeed available to the Section 37 Court, whose jurisdiction is coextensive with the jurisdiction of the Learned Arbitral Tribunal under Section 17 of the Act.

36. With the aforesaid directions and marginal modifications, the Petition is ***finally disposed of***.

37. 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.]