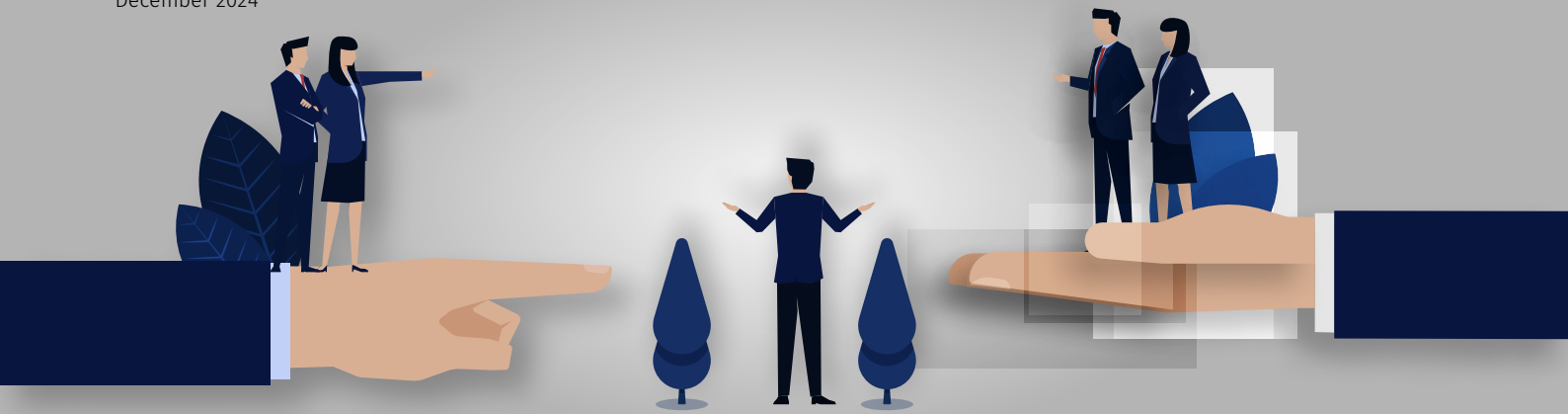




December 2024



## High Court of Bombay holds that non-signatories to a development agreement concerning a housing society cannot be referred to arbitration<sup>1</sup>

### Brief Facts

18 members (out of a total 22 members) of the Pali Hill Neptune Co-operative Housing Society (“**Housing Society**”) and Avenues Seasons Properties LLP (“**Appellant**” / “**Developer**”) entered into a development agreement whereby the Appellant was to redevelop the property of the Housing Society. The development agreement contained a dispute resolution clause, which provided that any disputes arising must be referred to arbitration.

Nissa Hoosain Nensey and Rakeysh Omprakash Mehta (collectively, “**Respondents**”) filed civil suits before the High Court of Bombay (“**Court**”), seeking declarations that their respective bungalows are separate and independent bungalows with exclusive open space from the remainder of certain property, and that the resolution passed by the respondent Housing Society is illegal, non-est and void (“**Civil Proceedings**”). Along with these civil suits, the Respondents filed applications for interim relief seeking a stay on the resolutions passed by the Housing Society and also that no steps be taken to vacate the Respondents from their bungalows while the Civil Proceedings are pending.

The Respondents’ case was that they had previously consented to redevelopment by a different developer, who had promised that the Respondents would receive individual bungalows after redevelopment of the entire property. Since the arrangement with that developer had failed, the Respondents were agreeable to the present developer redeveloping the entire property, but only on the same terms as earlier promised to them. Instead, the Housing Society passed certain resolutions approving redevelopment on different terms.

In the Civil Proceedings, the Appellant filed an application under Section 8 of the Arbitration and Conciliation Act, 1996 (“**Act**”) seeking *inter alia* that the disputes before the Court be referred to arbitration. The Appellant also filed an application under Section 9 of the Act, seeking certain interim reliefs. The Appellant contended that under Section 8 of the Act, as amended by the Arbitration & Conciliation (Amendment) Act, 2015, a person claiming “*through or under*” a party to the arbitration agreement is included in the definition of a “*party*” to the arbitration agreement. Further, individual members of a housing society lose their identity to the housing society. Therefore, the Appellant and the Housing Society mutually intended to bind non-signatory members of the Housing Society to the Development Agreement when they executed it.

By its order dated 23 September 2021, a Single Judge of the Court dismissed the Appellant’s applications under Sections 8 and 9 of the Act. The Appellant filed the instant appeals before the Division Bench of the Court challenging the Single Judge’s decision.

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# Arbitration Case Insights

### Issue

Whether a member of a housing society, who has not signed an arbitration agreement between the society and a developer, can be referred to arbitration under that arbitration agreement?

### Judgment

The Division Bench affirmed the decision of the Single Judge and held that the disputes between the Respondents and the Developer could not be referred to arbitration as the Respondents were not signatories to the arbitration agreement. Further, while 18 members of the Housing Society had signed the Development Agreement, the Respondents, admittedly, were not signatories to it or mentioned in it as parties.

The Court, therefore, held that only signatory members, the Housing Society or the Developer, who have signed the Development Agreement, can invoke arbitration in case of a dispute. This has expanded the existing jurisprudence of the Court on this subject. Earlier this year, in **Ketan Champaklal Divecha v. DGS Township Pvt. Ltd. & Anr.**,<sup>2</sup> a Single Judge of the Court found, on a reading of the arbitration agreement in the development agreement in question there, that only the housing society or the developer could invoke arbitration, and not individual members of the housing society even if they are signatories to the agreement. However, in the present judgment, the Division Bench (even though the arbitration agreement<sup>3</sup> was worded similarly to the one in issue in **Ketan Champaklal** (*supra*)), indicated that either the housing society or the individual signatory members, should they have filed a suit against the developer, could be referred to arbitration under Section 8 of the Act. The Division Bench has referred to the Single Judge’s finding in **Ketan Champaklal** (*supra*) but has not separately commented on it or distinguished it from the fact situation that the Division Bench was considering. That said, as the present judgment is by a Division Bench, it will be binding on lower courts.

The Court found that the judgments cited by the Developer on the group of companies doctrine were inapplicable to the facts of the instant case. The Court noted that those judgments related to companies whereas here the question was whether individuals, i.e., natural persons, were signatories to the arbitration agreement.

### Analysis

This decision furthers the Court’s existing jurisprudence on the principle that a member of a co-operative housing society cannot be compelled to arbitrate under an arbitration agreement signed by the developer and the housing society to which the member is a non-signatory. The existing jurisprudence generally concerned cases where a non-signatory member was trying to invoke arbitration. This judgment clarifies that the same principles are applicable when a party tries to refer disputes with a non-signatory member to arbitration.

Further, this case could be used by a member of a housing society to arbitrate under a development agreement to which the member is a signatory or by a developer to seek reference to arbitration in a suit filed by such a signatory member.

Also, the Court noted that the Single Judge had specifically recorded the Developer’s arguments that the Respondents have lost their identity to the Housing Society and that therefore, the question of whether the majority opinion must prevail has been kept open. This indicates that the question of whether the identity of an individual member gets subsumed into the cooperative society is different from whether that member can be considered a signatory to an arbitration agreement signed by the society. The Court has effectively answered the latter question in the negative.

The decision, accordingly, affirms the significance of party consent to an arbitration agreement and provides an important clarification on the signature requirement of an arbitration agreement in the case of members of a cooperative society.

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Endnote

- 1 Authored by Bikram Chaudhuri, Partner and Sanjana Kattoor, Associate; *Avenues Seasons Properties LLP v. Nissa Hoosain Nensey & Ors.*, Appeal Nos. 42-44 of 2024, High Court of Bombay, judgment dated 22 October 2024.  
**Coram:** A.S. Chandurkar and Rajesh S. Patil, JJ.
- 2 2024 SCC OnLine Bom 1.
- 3 The arbitration agreement is not reproduced in the Division Bench judgment, and can be seen in the judgment appealed from, available at 2021 SCCOnline Bom 9811.

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