

Ritesh Haldar vs Elite Housing Lp on 24 June, 2025

2025:BHC-OS:9704-DB

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

COMMERCIAL ARBITRATION APPEAL (L) NO.14486 OF 2025
WITH
INTERIM APPLICATION (L) NO.14544 OF 2025
IN
COMMERCIAL ARBITRATION APPEAL (L) NO.14486 OF 2025

Ritesh Haldar

...App
(Orig. Respon

V/s.

Elite Housing LLP and Ors.

...Res

WITH
COMMERCIAL ARBITRATION APPEAL (L) NO.15542 OF 2025
WITH
INTERIM APPLICATION (L) NO.16453 OF 2025
IN
COMMERCIAL ARBITRATION APPEAL (L) NO.15542 OF 2025

Rohitesh Haldar

...A

V/s.

Elite Housing LLP and Ors.

...Respondents

Mr. Mayur Khandeparkar with Mr. Nivit Srivastava, Ms.
Sneha Patil, Mr. Yash Chedda, Brena Gala and Mr. Rohit Bamne
i/b. M/s. Maniar Srivastava Associates for the Appellant in
CARBAL/14486/2025 & for Respondent No.8 in
CARBAL/15542/2025.

Mr. Pravin Samdani, Senior Advocate with Mr. Sahil Saiyed &

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signed by
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Mr. Amit Padwal for the Appellant in CARBAL/15542/2025.

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Mr. Rohaan Cama with Mr. Kyrys Modi & Mr. Shanmukh
Puranik i/b. M/s. Narayanan & Narayanan for Respondent No.1
in both the Appeals.

Ms. Sunita Serrao with Mr. Krisandra Hegde i/b. M/s. P. Vas &
Co. for Respondent No.2.

Mr. Nimay Dave with Ms. Nitya Shah, Ms. Aditi Bhargavan &
Ms. Shitha Jain i/b. M/s. Divya Shah Associates for Respondent
No.9 in CARBAL/15542/2025 and for Respondent No.4 in
CARBAL/14486/2025.

CORAM: ALOK ARADHE, CJ. &
SANDEEP V. MARNE, J.

Dated: 24 JUNE 2025.

Judgment: (Per Sandeep V. Marne J.)

1) Commercial Arbitration Appeal (L) No. 14486/2025 is not on board. Upon request made by the learned counsel appearing for the parties, the same is taken on board and heard along with Commercial Arbitration Appeal (L) No. 15542/2025. Both the Appeals are admitted and with the consent of the learned counsel appearing for parties, they are taken up for final disposal.

2) These two appeals are filed under Section 37 of the Arbitration and Conciliation Act, 1996 (the Act) challenging the judgment and order dated 16 April 2025 passed by the learned Single Judge of this Court in Petition filed by Respondent No.1 seeking interim measures under Section 9 of the Act. By the 24 June 2025 Megha 10_carbal_14486_2025_fc.docx impugned order, the learned Single Judge has granted liberty to Respondent No. 1 to approach the Court Receiver for execution of tripartite Agreement in respect of the Flat in question for carrying out redevelopment of the building, with further direction to take over possession thereof and hand over the same to Respondent No. 1-Developer for demolition of the building. The impugned Order directs payment of all amounts arising out of package towards redevelopment of the flat, including the corpus and

transit rent, to be paid to Smt. Leena Rohitesh Haldar (Leena), who is found to be in possession of said Flat. Upon completion of the redevelopment process, possession of new flat is also directed to be handed over to Leena. Two of the Haldar family members - Ritesh Haldar (Ritesh) and Rohitesh Haldar (Rohitesh) are aggrieved by the judgment and order dated 16 April 2025 and have filed the present appeals.

3) A very brief factual background leading to filing of the present Appeals is stated thus:

Flat No.12, situated in the building 'Spectrum' Road No. 14-B, Khar (W), Mumbai (the Flat) is the subject matter of controversy. Haldar family comprises of three brothers: Ritesh, Rohitesh and Rajesh. Leena is the wife of Rohitesh. The Flat is claimed to have been purchased by Ritesh, but at the time of applying for society membership, it is claimed that the name of mother-Sabita Haldar was also included in respect of the flat. Ritesh claims that after marriage between his brother Rohitesh with Leena, he permitted the duo to occupy the flat as gratuitous 24 June 2025 Megha 10_carbal_14486_2025_fc.docx licensees. On 8th May 2002, the mother passed away and Ritesh claims exclusive ownership in respect of the flat, whereas his two brothers-Rohitesh and Rajesh claim that the mother had 50% share in the flat and after her death, her share has devolved on to them. Though Rohitesh and Leena have been occupying the flat (as gratuitous licensees, as per Ritesh), there appears to be a marital discord between the couple and Leena claims that her husband-Rohitesh no longer occupies the flat, in which she resides along with her two children. It is claimed that Rohitesh owns a separate flat in the building Sangeeta Apartments, in which he resides separately from his wife. The building in which the flat is situated has been taken up for redevelopment and the society has executed agreement with the developer (Elite Homes LLP) on 31 July 2024. Ritesh claims that Rohitesh has surrendered his alleged 16.67% share in the flat, which he was erroneously claiming, vide surrender deed dated 24 February 2025. The developer has called upon Ritesh to handover possession of the flat for demolition of the building by executing an Agreement for Permanent Alternate Accommodation (PAAA).

Ritesh is willing to handover possession of the flat to the developer and to execute the PAAA. However, Leena has raised a claim that the flat is her matrimonial house and staked a claim to receive rental compensation from the developer.

4) In the above factual background, the developer filed Commercial Arbitration Petition No. 155 of 2025 under Section 9 of the Act seeking interim measures for appointment of Court 24 June 2025 Megha 10_carbal_14486_2025_fc.docx Receiver in respect of the flat for securing its possession. By Order dated 16 April 2025, the learned Single Judge has allowed the Petition. By the impugned order, the learned Judge has granted liberty to Respondent No. 1 to approach the Court Receiver for execution of tripartite Agreement in respect of Flat No. 12 for carrying out redevelopment of the building. Respondent No.1 has been directed to issue notice to all members of the society including the Appellants and Court Receiver intimating a specific and reasonable deadline for vacation of Flat No. 12. It is further directed that in the event of non-vacation of possession of flat No. 12, the Court

Receiver shall be entitled to take possession thereof by seeking aid of local police station. It is further directed that all amounts payable in respect of Flat No. 12 towards hardship compensation, transit accommodation rent, brokerage and displacement compensation shall be paid by the Court Receiver to Leena, who is found to be in possession of Flat No.12. It is further directed that upon completion of construction of Flat No.801 (in lieu of Flat No. 12), possession thereof shall be handed over to Leena. Liberty has been granted to the other members of Haldar family to approach relevant forum to stake their claims to the flat in question. Ritesh and Rohitesh are aggrieved by the judgment and order dated 16 April 2025 and have filed the present appeals.

5) We have heard Mr. Khandeparkar, the learned counsel appearing for the Appellant-Ritesh in Commercial Arbitration Appeal (L) No.14486 of 2025, Mr. Samdani, the 24 June 2025 Megha 10_carbal_14486_2025_fc.docx learned senior advocate appearing for the Appellant-Rohitesh in Commercial Arbitration Appeal (L) No.15542 of 2025, Mr. Dave, the learned counsel appearing for Respondent No.9- Leena, Mr. Rohaan Cama, the learned counsel appearing for Respondent No.1-M/s. Elite Housing LLP (original Petitioner) and Smt. Serrao, the learned counsel appearing for Respondent No.2- Spectrum Co-operative Housing Society.

6) After having considered the submissions canvassed by the learned counsel appearing for the parties, it is seen that Leena claims exclusive possession of the flat, whereas her husband -Rohitesh claims that he too resides in the said flat. On the other hand, Appellant-Ritesh, though does not dispute occupation of the flat in question by Leena, claims that he is the owner thereof. Leena, as of now, has not claimed ownership of the flat, but claims that the flat is her matrimonial house and that she has the right of residence therein.

7) It is the contention of Ritesh that he is the owner of the flat. Our attention is invited to notice issued at the instance of Leena on 6 January 2025 to the first Respondent-developer and to the Secretary of the Society in which there is an admission that in the records of the Society, the flat, as of now, stands in the name of Ritesh. However, Ritesh's two other brothers- Rohitesh and Rajesh apparently claim shares in respect of the flat in question. Be that as it may. It is not the case of Leena that she is the owner of the flat in question. However, 24 June 2025 Megha 10_carbal_14486_2025_fc.docx the position remains undisputed that as of now, Leena and her two children reside in the subject flat. There is some dispute between Leena and her husband Rohitesh about occupation of the flat. Leena claims that Rohitesh has been living in a separate flat at Sangeeta Apartment near Juhu Tara Road and that Leena exclusively occupies the flat in question alongwith her children.

8) In the light of the above position where ownership of the flat is claimed by Ritesh and possession is with Leena, the issues before the learned Single Judge were essentially three: (i) in whose name the PAAA is to be executed; (ii) who would receive the monetary redevelopment package in the form of hardship compensation (corpus), transit rent, brokerage, etc upon handing over possession of the flat for redevelopment and (iii) who will be put back in possession of the permanent alternate accommodation (Flat No. 801).

9) This Court has consistently taken a view that redevelopment process cannot be utilized for the purpose of seeking eviction of an occupant from the old premises and that possession of the permanent alternate accommodation must be handed over and the transit rent must be paid to the person, who was actually in possession of the old premises. Such an arrangement ensures that possession of the person in occupation of old premises is not disturbed only on account of demolition of the building for its redevelopment. Reference in this regard can be made to the Order passed by the Division Bench of this Court 24 June 2025 Megha 10_carbal_14486_2025_fc.docx in Vipul Fatehchand Shah Vs. Nav Samir CHS1 in which it is held as under:

We have heard learned Counsel and find that in so far as the issue of transit rent is concerned, the law is now well settled. It is not in dispute that the transit rent is to be paid to the person, who is being dishoused from the premises in question. It is also clear that the person dishoused for the purpose of redevelopment shall be put back into possession on completion of the redevelopment. It is clear that inter se disputes qua title and/or entitlement to the flat, which is subject to redevelopment, are not factors which are relevant or to be considered for purposes of payment of transit rent as also possession being handed back to the person dishoused on completion of the redevelopment. To that extent, the Appeal must succeed.

10) In Harshad Shah Vs. Labharti Realities & Ors 2 it is held as under:

5. We have heard learned Counsel and find that the law with regard to entitlement of transit rent, etc., is now well settled by a catena of judgements including as has been held by this Bench in the case of Vipul Fatehchand Shah (supra). In the present case given that there is no dispute to the fact that possession of the said flat is being taken from the Appellant, it is the Appellant alone, who is entitled to payment of transit rent as also the other amounts, more particularly mentioned in the development agreement. Consequently, it is the Appellant who will also have to be put back into possession of the flat on completion of redevelopment. However, insofar as the balance corpus amount is concerned, we direct that the same shall be deposited by Respondent No.1-Developer in this Court within a period of four weeks from today. We further make it clear that except for transit rent all the other amounts paid under the development agreement shall be subject to the final outcome of the entitlement of the said flat in any proceedings which may be adopted by the parties qua title to the said flat. In the event that no proceedings are taken in respect of the said flat by either the Appellant or Respondent Nos.3 and 4 on the date of completion of the said redevelopment, then the corpus amount shall also be handed over to the Appellant at the time of handing over said redeveloped flat.

Commercial Appeal(L) No. 25162 of 2023 decided on 6 October 2023 Appeal (st) No. 29617 of 2023 decided on 25 October 2023 24 June 2025 Megha 10_carbal_14486_2025_fc.docx

11) In the present case as well, Leena is described by Ritesh as his gratuitous licensee. Thus, Leena's possession is admitted by Ritesh, who claims to be the exclusive owner of the flat. In ordinary

circumstances, Ritesh will have to secure a decree from the court of competent jurisdiction for eviction of Leena. He cannot circumvent that procedure in law and use the redevelopment process to evict Leena. Merely because redevelopment process requires handing over of possession of old premises to the developer, the same would not mean that the person in actual possession of old premises would lose such possession. In our view therefore redevelopment process undertaken by the Respondent No.1-Developer cannot result in dispossession of Leena, who is described as a gratuitous licensee by Ritesh. It appears that Ritesh has already initiated proceeding for eviction of Leena (Suit No. LE/C Stamp No. 202 of 2024 in the Court of Small Causes at Mumbai). Leena's occupation of old premises as well as securing of benefits by her under redevelopment process would obviously be subject to the outcome of that Suit. However, since Leena would be handing over possession of the premises, it is Leena alone who must be put in possession of alternate accommodation. Similarly, transit rent needs to be paid to Leena, who would be dispossessed and needs to make interim arrangement in some other house during currency of the redevelopment process. This approach has been consistently followed by this Court and we do not see any reason why a departure needs to be made in the present case as well. To this extent, we find that the interim measures made by the 24 June 2025 Megha 10_carbal_14486_2025_fc.docx learned Single Judge directing handing over possession of alternate accommodation (Flat No.801) as well as payment of transit accommodation rent and brokerage to Leena need not be disturbed.

12) However, the learned Judge has also directed that PAAA shall be executed in the name of the Court Receiver. As of now, there is no pending litigation qua ownership of the flat. Name of the Appellant-Ritesh is entered in the records of the Society as a member and he claims ownership in respect of the flat in question. Ritesh has relied on Surrender Deed executed by Rohitesh relinquishing his share in the flat. Rajesh has apparently not filed any proceedings claiming ownership in the flat. Far from filing any proceedings claiming ownership in the flat, Leena is actually facing eviction suit filed by Ritesh in the Court of Small Causes, Mumbai describing her as a gratuitous licensee. In absence of pendency of any litigation, execution of PAAA with the Court Receiver is unwarranted, in the facts of the present case. In our view, therefore, PAAA needs be executed in the name of the person, whose name is reflected in the records of the Society. Similarly, the amounts towards hardship compensation (corpus) also needs to be paid in the name of Appellant-Ritesh. Execution of PAAA as well as payment of hardship compensation (corpus) in the name of Appellant-Ritesh shall however be subject to claim of alleged shares in the flat raised by his two brothers- Rohitesh and Rajesh.

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In our view, the above arrangement would balance

the equities as Leena's possession of Flat No.12 shall remain protected until she is lawfully evicted by decree of the competent Court. Though she would be handing over possession of the flat to the Respondent No.1-Developer, she would continue to receive transit rent so as to enable her to scout for temporary accommodation till the new building is constructed and flat No.801 is ready for occupation. Once permanent accommodation (Room No.801) becomes available for possession, Leena would secure possession thereof subject to pendency of eviction proceedings against her. At the same time, the person claiming ownership in respect of flat and whose name is reflected in the Society records (Ritesh) would have PAAA executed in his name and shall also receive the hardship compensation (corpus) in respect of the old premises. Mere execution of PAAA in the name of the Appellant-Ritesh would not affect the claim of Leena towards possessory right in respect of the old as well as new premises, subject to outcome of eviction proceedings.

14) So far as the appeal filed by Rohitesh is concerned, he is the husband of Leena and there appears to be matrimonial dispute between the couple. Learned Single Judge has found Leena to be in possession of Flat No.12 and on that count, has directed payment of transit rent, brokerage, etc. to Leena. If indeed Rohitesh believes that he is also in possession of Flat No.12, it is for him to seek appropriate directions in respect of alleged shared household from the court of competent 24 June 2025 Megha 10_carbal_14486_2025_fc.docx jurisdiction, which can also make an arrangement in respect of amount received by Leena towards transit rent and brokerage. We are therefore not inclined to interfere in the direction of the learned Single Judge in directing payment of transit rent and brokerage to Leena as well as for handing over possession of permanent accommodation (Flat No.801) to Leena in the Appeal filed by Rohitesh. His Appeal therefore deserves to be dismissed.

15) In our view, therefore some modification in the impugned judgment and order passed by the learned Single Judge is warranted in the facts and circumstances of the present case.

16) We accordingly proceed to pass the following order:-

(i) The direction by the learned Judge for execution of tripartite Agreement in respect of Flat No.12 in the name of Court Receiver is set aside. Instead, Respondent No.1-Developer shall execute tripartite Agreement/PAAA in respect of Flat No.12 in the name of Ritesh. Execution of such Agreement in the name of Ritesh would be subject to claim of ownership raised by any other party. The amount of hardship compensation (corpus) and all amounts, except transit rent and brokerage, shall be paid by Respondent No.1 -Developer to the Appellant -

Ritesh subject to the claim of ownership in respect of Flat No.12 by any other party.

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(ii) The transit rent and brokerage in respect of flat No.12 shall be paid by Respondent No.1-Developer to Leena from the date of vacation of flat No.12 till the date of handing over possession of permanent accommodation (flat No.801).

(iii) Even though tripartite Agreement/PAAA is directed to be executed in the name of Appellant-Ritesh, Respondent No. 1-Developer shall handover possession of permanent accommodation (Flat No.801) in favour of Ms. Leena immediately upon the said flat becoming available for occupation. Leena would hold possession of flat No.801 subject to the orders that may be passed in the eviction proceedings initiated against her.

(iv) Ms. Leena shall hand over possession of flat No.12 to Respondent No.1-Developer within a period of four weeks from the date of receipt of written intimation from Respondent No.1.

17) To the above extent, impugned judgment and order dated 16 April 2025 shall stand modified.

18) It is clarified that present order shall operate only in respect of flat No.12 and the judgment and order dated 16 April 2025 shall remain unaffected in respect of Flat No.6.

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19) With the above directions, Commercial Arbitration

Appeal (L) No. 14486 of 2025 is partly allowed and disposed of. Commercial Arbitration Appeal (L) No. 15542 of 2025 is dismissed.

20) In view of disposal of the appeals, interim applications do not survive and the same stand disposed of.

[SANDEEP V. MARNE, J.]

[CHIEF JUSTICE]

24 June 2025