



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

ARBITRATION PETITION (L) NO. 3817 OF 2025

SHRADDHA
KAMLESH
TALEKAR

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SHRADDHA
KAMLESH TALEKAR
Date: 2025.04.04
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Santanu Sengupta & Anr

...Petitioners

Versus

Macrotech Developers Ltd.

...Respondent

WITH

ARBITRATION PETITION (L) NO. 3545 OF 2025

Kishanchand Vaswani

...Petitioner

Versus

Macrotech Developers Ltd.

...Respondent

WITH

ARBITRATION PETITION (L) NO. 3646 OF 2025

Sagarika Kumar

...Petitioner

Versus

Macrotech Developers Ltd.

...Respondent

WITH

ARBITRATION PETITION (L) NO. 3697 OF 2025

Hubertus Louis Marie Van De Ven

...Petitioner

Versus

Macrotech Developers Ltd.

...Respondent

WITH

ARBITRATION PETITION (L) NO. 3701 OF 2025

K J Infrastructure Pvt. Ltd.

...Petitioner

Versus

Macrotech Developers Ltd.

...Respondent

WITH

ARBITRATION PETITION (L) NO. 3709 OF 2025

Raju Kumar Lulla

...Petitioner

Versus

Macrotech Developers Ltd.

...Respondent

**WITH
ARBITRATION PETITION (L) NO. 3720 OF 2025**

Akshay Navnitlal Parikh	...Petitioner
<i>Versus</i>	
Macrotech Developers Ltd.	...Respondent

**WITH
ARBITRATION PETITION (L) NO. 4158 OF 2025**

Vishal Kothari	...Petitioner
<i>Versus</i>	
Macrotech Developers Ltd.	...Respondent

**WITH
ARBITRATION PETITION (L) NO. 4498 OF 2025**

Shradha Mody	...Petitioner
<i>Versus</i>	
Macrotech Developers Ltd.	...Respondent

**WITH
ARBITRATION PETITION (L) NO. 5106 OF 2025**

Mohit Hero Chuganee	...Petitioner
<i>Versus</i>	
Macrotech Developers Ltd.	...Respondent

**WITH
ARBITRATION PETITION (L) NO. 5218 OF 2025**

Ican Investments Advisors	...Petitioner
<i>Versus</i>	
Macrotech Developers Ltd.	...Respondent

**WITH
ARBITRATION PETITION (L) NO. 5220 OF 2025**

Ican Investment Advisors	...Petitioner
<i>Versus</i>	
Macrotech Developers Ltd.	...Respondent

**WITH
ARBITRATION PETITION (L) NO. 5236 OF 2025**

Smita Kaushal	...Petitioner
<i>Versus</i>	
Macrotech Developers Ltd.	...Respondent

**WITH
ARBITRATION PETITION (L) NO. 5264 OF 2025**

Jayantilal Bhandari	...Petitioner
<i>Versus</i>	
Macrotech Developers Ltd.	...Respondent

**WITH
ARBITRATION PETITION (L) NO. 5279 OF 2025**

Manish P. Jain	...Petitioner
<i>Versus</i>	
Macrotech Developers Ltd.	...Respondent

**WITH
ARBITRATION PETITION (L) NO. 5319 OF 2025**

Ojas M. Rajani	...Petitioner
<i>Versus</i>	
Macrotech Developers Ltd.	...Respondent

**WITH
ARBITRATION PETITION (L) NO. 5321 OF 2025**

Ocean Trexim Private Limited	...Petitioner
<i>Versus</i>	
Macrotech Developers Ltd.	...Respondent

**WITH
ARBITRATION PETITION (L) NO. 5325 OF 2025**

Amit Giriraj Mohatta	...Petitioner
<i>Versus</i>	
Macrotech Developers Ltd.	...Respondent

**WITH
ARBITRATION PETITION (L) NO. 5456 OF 2025**

Nirmal Madanlal Tater	...Petitioner
<i>Versus</i>	

Macrotech Developers Ltd. ...Respondent

**WITH
ARBITRATION PETITION (L) NO. 5329 OF 2025**

Archana Biyani ...Petitioner

Versus

Macrotech Developers Ltd. ...Respondent

**WITH
ARBITRATION PETITION (L) NO. 5332 OF 2025**

Shiulee Baijal ...Petitioner

Versus

Macrotech Developers Ltd. ...Respondent

Mr. Navroz Seervai, Senior Advocate *a/w. Mr. Dharam Juman, Ms. Nupur Jalan, Mr. Mihir Nerurkar, Mr. Munaf Virjee, Ms. Aakruti Jayendran i/b AMR Law, for Petitioner-Santanu Sengupta.*

Mr. Sharan Jagtiani, Senior Advocate *a/w. Mr. Chirag Kamdar, Ms. Apurva Manwani, Siddharth Joshi, Ms. Nanki Crewal, Harsh Nandu, Ms. Manasi Joglekar and Ms. Krisha Thakkar i/b Wadia Ghandy & Co., for Respondent-Macrotech Developers Limited.*

CORAM : SOMASEKHAR SUNDARESAN, J.

Reserved on : February 28, 2025

Pronounced on : April 4, 2025

JUDGEMENT:

Context and Background:

1. This bunch of Petitions under Section 9 of the Arbitration and Conciliation Act, 1996 (“***the Act***”) is a collective effort to seek interlocutory relief in the form of full access to all utilities and facilities available at the

Lodha World Towers, Worli (“**Lodha Worli**”), developed by Macrotech Developers Ltd. (“**Macrotech**”), a Respondent in all these Petitions.

2. The Petitioners who are high networth individuals, have acquired apartments at Lodha Worli. They assert having fully paid all applicable dues in respect of ‘Federation Common Area Maintenance Charges’ (“**FCAM Charges**”) towards their entitlement to use various amenities such as Gymnasium, Club House, Spa etc. (“**Common Amenities**”). Macrotech claims that the Petitioners are in default and to assert its rights, has cut off access of these Petitioners to certain Common Amenities.

3. Initially, these Petitions were mentioned before me as a matter of grave urgency on the premise that the Petitioners’ access to their own homes had been cut off by Macrotech. It was then clarified on behalf of Macrotech that access to the residential units and car parking spaces was not cut off for any Petitioner. However, it became apparent that full and free access of the Petitioners to the Common Amenities had been cut off.

4. Mr. Navroz Seervai, Learned Senior Counsel led submissions on behalf of the Petitioners while Mr. Sharan Jagtiani, Learned Senior Counsel made

submissions on behalf of Macrotech. With their assistance, I have perused the record.

5. What becomes apparent is that the parties have serious disputes about the FCAM Charges that ought to be charged. The Petitioners have serious grievances about the FCAM Charges, which they accuse of being opaque. According to the Petitioners, they ought to have a credit balance in the payments made by them to Macrotech and that denial of access to the Common Amenities is injurious to their basic right to life and health, entitled as they and their children are to use the gymnasium, the Club and other such facilities.

6. Macrotech essentially argues that the Petitioners are the only owners of apartments at Lodha Worli who are raising grievances about FCAM Charges, and that other residents have been paying their FCAM Charges dues without any grievance. According to Macrotech, this leads to an unfair outcome – those who are defaulters in paying FCAM Charges would get to enjoy the Common Amenities while others who are compliant underwrite the ability to keep the Common Amenities running. To address this inequity, Macrotech would argue, it is necessary to deny access of the defaulters to the Common Amenities.

7. Each Petitioner is in arrears to the extent of approximately Rs. ~15 lakh, Mr. Jagtiani would submit. To examine if equities could be adjusted, I put to the Petitioners if they would deposit under protest without prejudice to their contentions, a sum of Rs. 15 lakh each with the Registry of this Court, which could abide by the outcome of arbitration, while unfettered access to the Common Amenities could be ensured, pending arbitration. However, the Petitioners would not agree to the proposition. Mr. Seervai would submit that far from being in arrears, the Petitioners would have paid more than due to Macrotech.

8. On March 2, 2025, Macrotech provided inspection of the accounts to the Petitioners. The inspection is claimed by Macrotech to have been provided right from October 2017, when the FCAM Charges regime commenced, the adequacy of which is denied by the Petitioners.

9. Each of the Petitioners is party to an agreement with Macrotech, which provides the framework for Macrotech to charge FCAM Charges. For purposes of this judgement I analyse the agreement executed with Shantanu Sengupta, one of the Petitioners, treating that Petition as a lead Petition. The FCAM Charges are essentially charges payable by owners of units towards the

maintenance of the larger property other than the buildings in which the apartments are located. FCAM Charges are payable for every quarter in advance. Every year, Macrotech is required to settle accounts by June 30 after the end of every financial year (March 31). The parties are required to settle the debits or credits on or before August 30. The FCAM Charges stipulated in the agreements were provisional in nature. The estimated FCAM Charges for the first 60 months (five years) payable by the purchasers of the units was indicated. The FCAM Charges have been paid for 30 months upfront. Under the agreement, the FCAM Charges were subject to inflation of 7.5% to 10% per annum. Any hike higher than this range would need consent of the parties.

10. Mr. Seervai would strongly emphasise that nothing is payable by the Petitioners. Each Petitioner has paid in advance upfront, he would submit, and is entitled to know the actual maintenance expenses incurred by Macrotech. He would point out that Macrotech has not provided audited accounts for such expenses. He would point to every invoice being titled “proforma invoice” enabling Macrotech to charge the Goods and Service Tax component and yet not pay that over to the Revenue Department, since such tax is payable only when there is an actual tax invoice. That apart, Mr. Seervai would point out that despite the FCAM Charges having been paid in

advance, Common Amenities such as the Club and the Spa had not been made operational as per committed deadlines. Moreover, they were shut during the Covid-19 Pandemic and the anticipated maintenance expense could not have been incurred.

11. There were other grievances the Petitioners have against Macrotech. Various claims relating to defects and lack of provision of facilities as contracted, led to a settlement in the form of a commitment by Macrotech to fund the corpus of the society of members by a certain amount. Such amount was admitted as being payable by Macrotech but there had been a default, which led to insolvency proceedings being initiated against Macrotech under the Insolvency and Bankruptcy Code, 2016 ("**IBC**"). The Adjudicating Authority rejected the application to refer Macrotech to insolvency, but during an appeal before the National Company Law Appellate Tribunal ("**NCLAT**"), the parties executed consent terms for payment of such amount in two tranches – one half by a payment in cash and the other half by adjusting against FCAM Charges. The Petitioners allege that the first component of payment was made but on the second component, the FCAM Charges are not being properly accounted for, they are being inflated, and that the Petitioners and their societies are being taken for a ride.

12. In this context, the practice of issuing “proforma invoices” instead of conclusive tax invoices coupled with allegedly unaccounted and inflated accounts, is assailed by the Petitioners. The Petitioners also have a grievance about Club Usage Charges being clubbed into FCAM Charges and being charged to all residents regardless of use of the Club. That apart, the Club is a common area, they contend, and charges towards the Club would be subsumed in the FCAM Charges.

13. In August 2024, Macrotech is said to have issued another “Proforma Invoice” for the FCAM Charges for the period between March 2018 and January 2025. The FCAM Charges that had been contracted at Rs. 4.50 per square foot in the size of the apartments of the Petitioners has been escalated to Rs. 9.50 per square foot. Currently, the FCAM Charges are being charged at the rate of Rs. 9.92 per square foot. The Petitioners allege that such escalation is directly in conflict with the contracted term of escalation at the rate of 7.5% to 10%.

14. The Petitioners also have a grievance that services at the Club and the Spa are being offered to outsiders who are not residents at Lodha Worli and therefore there is no basis to load the charges entirely on the residents to underwrite the conduct of private business with outsiders. The Petitioners

have held their ground and insisted on being given full accounts without which they cannot be called upon to pay FCAM Charges at the inflated rates indicated. When this stand-off came to a head with the Petitioners refusing to pay more without being informed about the basis of the FCAM Charges, Macrotech cut off access of the Petitioners to the gymnasium and other such Common Amenities.

Reliefs Sought:

15. Therefore, the Petitioners have sought various interlocutory reliefs, the key among which, can be broadly summarised thus:-

- A) Provision of unhindered and unfettered access to the Petitioners, of all the common area pending resolution of the disputes by arbitration including by enabling access through the use of any software applications that the Petitioners may be cut off from;
- B) Rendition of accounts along with all supporting documents evidencing expenses incurred in maintenance of common areas; earnings from third party usage and exploitation of the common areas; and data on unsold flats (to crystallise Macrotech's liability to contribute to the FCAM Charges as a member of the Society in

respect of unsold flats); and a reconciliation of the various proforma invoices with the actual accounts;

C) Restraint on any coercive steps being taken towards recovery of FCAM Charges in terms of the proforma invoices; and

D) Formation of a provisional committee to oversee the common areas and to examine the actual expenditure and coordinate future escalations;

16. Learned Counsel for the parties concurred that the disputes and differences between the parties may be forthwith referred to arbitration. Who should be the arbitrator was a matter of dispute – the Petitioners would desire a junior counsel practicing in this Court and came up with suggestions, while Macrotech would desire a retired judge and came up with suggestions too.

Analysis and Findings:

17. Having heard the parties at length and having perused the record, I find that indeed, the parties had an indicative rate of Rs. 4.50 per square foot size of the apartment towards FCAM Charges. The flat owners had paid for the first 30 months. The actuals would form the basis of arriving at the actual

FCAM Charges. The inflation accepted by the parties to the FCAM Charges was 7.5% to 10%. Anything over and above the same, necessitated mutual consent. Indeed, the proforma invoices raised until March 31, 2021 had been Rs. 9.50 per square foot. The rate from April 1, 2021 is shown at Rs. 9.92 per square foot.

18. However, it is seen from an email dated September 9, 2024 that some of the concerns raised by the Petitioners purport to have been addressed. The email sent by the manager of the common area indicates that final tax invoices are indeed being issued within 48 hours of payment, to those who pay the amounts indicated in the proforma invoices. Likewise, it is asserted that audited accounts for FCAM Charges are available as of March 31, 2024 and are available for inspection. The rate of Rs. 9.92 per square foot charged now, is asserted as being well within the annual escalation range of 7.5% to 10% on the Rs. 4.50 per square foot indicated at the time of the launch of the project. FCAM Charges had been waived until October 2017 and it is only from then that they are being charged, the email would indicate. It is asserted that 70% of the residents have found this to be in order and have paid the FCAM Charges as indicated in the proforma invoices. The non-availability of the Amenities during the Covid-19 Pandemic is said to have been factored in by charging only the actuals.

19. Evidently, disputes and differences are writ large on the face of the record. On the face of it, Macrotech too appears to have answers to issues raised by the Petitioners although some of the answers would require deeper probe, which the Arbitral Tribunal ought to undertake. Macrotech seeks to emphasise that 70% of the owners of the apartments at Lodha Worli have no grievance with the FCAM Charges. The Petitioners too only assert that they ought to be given demonstrable assurance as to how the FCAM Charges being raised is in conformity with the agreement under which they have purchased apartments at Lodha Worli.

20. If Macrotech is indeed right and audited accounts are indeed available, it should be able to show this to the Arbitral Tribunal, which I intend to appoint, taking on board the consent of the parties expressed through their Learned Senior Counsel to proceed to arbitration forthwith. The Arbitral Tribunal could indeed direct discovery and inspection of specific portions of the record to crystallize the specific issues that fall for adjudication once the Statements of Claim and Counter-Claim and defences against them are filed. At this stage of the matter, I have to limit my intervention to a level that is unnecessarily obtrusive and yet protects the competing interests of the parties.

21. It is unclear how Macrotech could assert that the rate of Rs. 4.5 per square foot as contracted at the launch of the project could escalate to Rs. 9.92 per square foot, applying even the highest inflation of 10% per annum, when the FCAM Charges were made applicable only from October 2017. At the rate of 10% per annum, the escalation would come to Rs. 0.45 per annum and at that simple rate for eight years (although eight years would be completed only in October 2025) the aggregate increase would come to Rs. 3.6 per square foot, which would add up to Rs. 8.10 per square foot. If one were to take the escalation rate of 10% at a compounded annual rate (in my view this may, *prima facie*, be appropriate since it is a measure of inflation), Rs. 4.50 per square foot in October 2017 would come to Rs. 9.65 in eight years. Evidently, the Proforma Invoice payable by January 2025 charges Rs. 9.92 per square foot.

22. The upshot of the aforesaid indicative *prima facie* analysis is that the Learned Arbitral Tribunal has its task cut out – it would need to examine the actual audited expenses incurred in respect of the larger property and the common areas, and examine the escalation rate bearing in mind the contracted cap of 7.5% to 10%. That apart, any augmentation of such expenses by third party usage would need to be considered. Any increase in

excess of this rate evidently needs mutual consent by the parties – the parties could pare down the scale or complexity of the Common Amenities to keep the inflation within the pre-agreed range, if the mutual consent requirement is to be obviated. Alternately, the parties may engage and examine what the actuals are and agree to the escalation.

23. The complexity of third-party usage is indeed a relevant factor. If third parties are permitted to use the common areas on commercial terms and Macrotech and its agents are the ones earning from foot-fall of external persons, the impact of such usage on the expenses for maintenance would need to be factored in. To what extent the earnings from such usage should underwrite the FCAM Charges sought to be recovered from the Petitioners (and other flat owners for that matter) is an issue that would need to be dealt with.

24. Indeed, the agreement between the parties provides that non-payment of dues would result in denial of access to the Common Amenities. Likewise, the FCAM Charges have to be in conformity with the agreement, which only gives a leeway of a maximum of a 10% escalation without the need for mutual consent.

Directions and Order:

25. In these circumstances, purely to adjust equities and to balance the competing interests of the parties, in my opinion, the following order would meet the ends of justice, pending completion of arbitration (which is assumed to be for a period of 12 months in terms of the statutory requirements under the Act):-

- A) Without prejudice to its contentions about the actual FCAM Charges payable by the Petitioners, which shall be determined in the course of the arbitral proceedings, a provisional computation shall be made by Macrotech for purposes of implementing this order – the computation shall use rate of Rs. 4.5 per square foot of the area of each of the apartments owned by each of the Petitioners as of October 2017, and escalate the same by 10% per annum, on a compounded basis (since the 10% escalation is essentially for year-on-year inflation). Such computation in respect of each apartment owned by the respective Petitioners shall be made and delivered to the Petitioners within a period of one week from the upload of this Order on this Court's website;

- B) Without prejudice to their contentions about the actual FCAM Charges that Macrotech may charge, which shall be determined in the course of arbitral proceedings, the Petitioners shall pay such provisional FCAM Charges so communicated by Macrotech, within a period of two weeks from the receipt of such provisional computation of FCAM Charges;
- C) Macrotech shall, immediately upon receipt of such payment of provisional FCAM Charges, ensure that there is unhindered and unfettered access to all Amenities in all common areas of the Lodha Worli for all the Petitioners, pending the arbitral proceedings. Macrotech shall ensure that the access to the Amenities is not made unreasonable and difficult by imposition of any other condition of usage;
- D) Macrotech shall provide a statement of all third-party usage of the common areas since October 2017 based on which either Macrotech or any facility management company appointed by it, has earned out of such commercial exploitation of the very common areas and the Common Amenities that the Petitioners and other apartment owners at Lodha Worli are paying FCAM Charges for. Such data shall be audited by such audit firm as

may be appointed by the Learned Arbitral Tribunal for this purpose. Such statement shall be provided by Macrotech to the Learned Arbitral Tribunal within a period of four weeks from the date on which the Arbitral Tribunal enters reference;

- E) Macrotech shall provide to the Petitioners the details of unsold inventory of flats in respect of which Macrotech is the deemed member of the respective societies and account for the FCAM Charges payable by Macrotech in respect of such flats and provide the same to the Learned Arbitral Tribunal to enable determination of flat-wise apportionment of the FCAM Charges by the Arbitral Tribunal; and
- F) The amounts paid pursuant to the provisional computation of FCAM Charges as above shall abide by the outcome of the Arbitral Award. Depending on the final outcome, the parties shall adjust accounts and future payment of FCAM Charges shall comport to the outcome in the arbitral proceedings.

26. Taking on board the consent of the parties to forthwith proceed to arbitration, a Learned Sole Arbitrator is appointed in the following terms:-

A] Mr. Sandeep Parikh, an learned advocate of this Court, is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of and in connection with the Agreement referred to above;

Office Address:- 11-E, 1st floor, Examiner Press Building, opposite Lentin Chambers, Dalal Street, Fort, Mumbai – 400 001.

Email: adv.sparikh@gmail.com

B] A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Petitioner within a period of one week from the upload of this Order on this Court's website. The Petitioner shall provide the contact and communication particulars of the parties to the Arbitral Tribunal along with a copy of this Order;

D] The Learned Sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Act to the parties within a period of two weeks from receipt of a copy of this Order;

E] The parties shall appear before the Learned Sole Arbitrator on such date and at such place as indicated, to obtain appropriate directions with regard to conduct of the arbitration including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings etc. At such meeting, the parties shall provide a valid and functional email address along

with mobile and landline numbers of the respective Advocates of the parties to the Arbitral Tribunal. Communications to such email addresses shall constitute valid service of correspondence in connection with the arbitration;

F] All arbitral costs and fees of the Arbitral Tribunal shall be borne by the parties equally in the first instance, and shall be subject to any final Award that may be passed by the Tribunal in relation to costs.

27. With the aforesaid directions, these Section 9 Petitions are ***finally disposed of*** with the caveat that the proceedings filed hitherto as dealt with by this order would stand converted into proceedings under Section 17 of the Act for further consideration by the Learned Arbitral Tribunal appointed hereby. The parties shall approach the Learned Arbitral Tribunal to take appropriate instructions on how to proceed further. The filing of information stipulated in this Order shall be effected before the Learned Arbitral Tribunal to enable the Learned Arbitral Tribunal to compute and assess the FCAM Charges that ought to be legitimately paid by the Petitioners and ought to be legitimately charged by Macrotech or its facility management company.

28. Needless to say, nothing contained in this order is an expression of an opinion on merits of the matter or the relative strength of the parties. All issues on merits are expressly kept open to be agitated before the arbitral tribunal appointed hereby.

29. The computation of provisional FCAM Charges and disclosure of the information required to be given, directed above, would not preclude the parties from agitating their respective contentions on the merits of the matter, including the relevance of such information for final resolution of their disputes. The arrangements made above are only for means of balancing competing interest and to preserve the subject matter of the arbitration agreement between the parties to enable Macrotech to have cash flows from the Petitioners and also to enable the Petitioners to have full and unfettered access to Common Amenities pending resolution of the dispute over the FCAM Charges.

30. With the aforesaid directions and order, these Petitions are ***finally disposed of***. In the peculiar circumstances of these cases, there shall be no order as to costs.

31. 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.]