

## **Arbitration Clause In Earlier Agreement Gets Incorporated Where Later Agreement Makes All Terms Binding: Supreme Court**

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### **Introduction**

In *Hirani Developers v. Nehru Nagar Samruddhi CHS Ltd.* [2026 INSC 484], the Supreme Court considered whether an arbitration clause contained in an earlier development agreement could be incorporated into later agreements by reference.

The Supreme Court held that where a later agreement expressly provides that all terms, conditions and clauses of an earlier agreement shall form part of the later agreement and bind the parties, the arbitration clause contained in the earlier agreement also stands incorporated. The Supreme Court clarified that this was not a case of a mere reference to an earlier document, but a case of incorporation of the earlier agreement in its entirety.

The judgment reiterates the distinction between a general reference to another document and incorporation of that document into a contract especially in context of Section 7(5) of the Arbitration and Conciliation Act, 1996. In this article, we navigate through the facts of the case and the findings rendered by the Supreme Court.

### **Brief Facts**

Hirani Developers entered into a Development Agreement dated 20 December 2011 with Nehru Nagar Samruddhi Co-operative Housing Society Limited for redevelopment of the society's project. The Development Agreement was registered on 4 July 2012.

Clause 36 of the Development Agreement contained an arbitration clause. It provided that any dispute or difference arising in respect of the terms and conditions of the Development Agreement would be referred to arbitration under the Arbitration and Conciliation Act, 1996.

Subsequently, Hirani Developers entered into separate Permanent Alternate Accommodation Agreements with the society and its members. Each of these agreements contained Clause 14, which provided that all the terms and conditions of the Development Agreement dated 4 July 2012 would form part of the Permanent Alternate Accommodation Agreements and that all clauses of the Development Agreement would be binding on the parties.

Thereafter, disputes arose between Hirani Developers and certain members of the society. Hirani Developers issued notices under Section 21 of the Arbitration Act invoking Clause 36 of the Development Agreement. The members refused to proceed with arbitration and stated that they had already approached the Consumer Disputes Redressal Commission.

Hirani Developers then filed applications before the Bombay High Court under Section 11 of the Arbitration Act seeking appointment of an arbitrator. The High Court dismissed the applications, holding that the arbitration clause was contained only in the

Development Agreement between Hirani Developers and the society, and not in the Permanent Alternate Accommodation Agreements executed with the individual members.

Aggrieved by the order of the High Court, Hirani Developers approached the Supreme Court.

## Arguments from Both Sides

Hirani Developers contended that Clause 14 of the Permanent Alternate Accommodation Agreements clearly incorporated all terms and conditions of the Development Agreement. It was submitted that this was not a limited or casual reference to the Development Agreement. Rather, the parties had expressly agreed that all clauses of the Development Agreement would bind the parties to the later agreements.

On this basis, Hirani Developers argued that Clause 36 of the Development Agreement, being the arbitration clause, stood incorporated into the Permanent Alternate Accommodation Agreements.

The respondent members opposed the reference to arbitration. Their case, as accepted by the High Court, was that the Permanent Alternate Accommodation Agreements did not contain an independent arbitration clause. It was contended that a mere reference to the Development Agreement could not incorporate the arbitration clause into the later agreements.

The High Court held that Section 7(5) of the Arbitration Act was not satisfied. According to the High Court, a firm commitment to arbitrate had to be discernible from the later agreement itself. Since there was no separate arbitration clause in the Permanent Alternate Accommodation Agreements, the High Court held that the members could not be compelled to arbitrate.

## Findings of the Supreme Court

The Supreme Court allowed the appeals and set aside the order passed by the High Court.

The Supreme Court first considered Section 7(5) of the Arbitration Act. The provision states that a reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.

The Supreme Court then referred to ***M.R. Engineers and Contractors Private Limited v. Som Datt Builders Limited [(2009) 7 SCC 696]***, where the Supreme Court had explained the difference between a mere reference to another document and incorporation of another document into a contract. In ***M.R. Engineers (supra)***, the Supreme Court held that where a contract provides that all terms and conditions of another document shall form part of the contract, the earlier document is incorporated in its entirety. In such a case, the arbitration clause contained in the earlier document would also apply.

The Supreme Court also referred to ***NBCC (India) Limited v. Zillion Infraprojects Private Limited [(2024) 7 SCC 174]***, where the Supreme Court held that an arbitration clause in another document would be incorporated only where the later contract contains a clear reference to the document containing the arbitration clause and indicates an intention to incorporate that arbitration clause. In ***NBCC (supra)***, the Supreme Court had clarified that a general reference to another contract would not, by itself, incorporate the arbitration clause.

Applying these principles, the Supreme Court held that Clause 14 of the Permanent Alternate Accommodation Agreements was not a case of mere reference to the Development Agreement. The clause expressly provided that all terms and conditions of the Development Agreement would form part of the later agreements and that all clauses of the Development Agreement would bind the parties.

The Supreme Court observed that there could be no clearer indication of the intention of the parties to incorporate the Development Agreement into the Permanent Alternate Accommodation Agreements in its entirety. The Supreme Court noted that Clause 14 did not stop at stating that the terms and conditions of the Development Agreement would form part of the later agreements. It went further and affirmed that all clauses of the Development Agreement would be binding on the parties.

The Supreme Court therefore held that the parties had clearly intended to incorporate the Development Agreement into the later agreements. Consequently, Clause 36 of the Development Agreement, being the arbitration clause, also stood incorporated into the Permanent Alternate Accommodation Agreements.

The Supreme Court held that the High Court had erred in its understanding of Section 7(5) of the Arbitration Act. The Supreme Court concluded that there was an arbitration agreement between Hirani Developers and the respondent members by incorporation.

Accordingly, the Supreme Court appointed a sole arbitrator to resolve the disputes between the parties.

## Comment

The judgment in ***Hirani Developers (supra)*** clarifies the practical operation of Section 7(5) of the Arbitration Act. The decision reiterates that the decisive test is not whether the later agreement reproduces the arbitration clause in full, but whether the later agreement demonstrates a clear intention to incorporate the earlier agreement and its clauses.

The Supreme Court has drawn an important distinction between reference and incorporation. A general or limited reference to an earlier document may not be sufficient to import the arbitration clause. However, where the later agreement expressly states that all terms, conditions and clauses of the earlier agreement shall form part of it and bind the parties, the arbitration clause will ordinarily stand incorporated.

The judgment is particularly relevant in redevelopment arrangements, construction contracts and composite commercial transactions where parties often execute multiple agreements at different stages. In such cases, the absence of a fresh arbitration clause

in every subsequent agreement may not be fatal if the later agreement incorporates the earlier agreement in clear and comprehensive terms.

At the same time, the decision does not dilute the settled principle in ***M.R. Engineers (supra)*** and ***NBCC (supra)*** that a mere general reference is not enough. The intention to incorporate must be clear from the language of the later agreement.

The judgment therefore reinforces contractual certainty. Where parties expressly agree that all clauses of an earlier agreement will bind them under a later agreement, they cannot later avoid the arbitration clause forming part of the earlier agreement.

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