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

COMM ARBITRATION PETITION (L) NO.19007 OF 2026

Satguru Marunochi Developers
Private Limited

... Petitioner

Vs.

1. Evergreen Cooperative Housing
Society Limited
2. Kamal Gaba
3. Poonam Gaba
4. Nitin Lalchandani (member of Managing
Committee of Respondent No.1)
5. Rupa G. Hingorani
6. Gaurav Chanana (Chairman of
Respondent No.1.)
7. Mohan Thakur

... Respondents

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Mr. Ashish Kamat, Senior Advocate with Mr. Aditya Kiskita, Mr. Shiraj Salelkar, Ms. Viveka Truman, and Mr. Hamza Mir i/by Lexicon Law Partners for the petitioner.

Mr. Karl Tamboly with Mr. Nishant, Ms. Nitya Shah, Mr. Kinnar Shah, & Ms. Aditi Bhargava i/by Divya Shah Associates for respondent No.1.

Mr. Mayur Khandeparkar with Mr. Kunal Mehta, Mr. Mahesh Dube, Mr. Gautam Sahni, Mr. Aviral Jain, and Ms. Siddhi Parekh i/by Vesta Legal for respondent Nos.2 to 6.

Mr. Shoaib I. Memon with Mr. Ibrahim S. Memon for respondent No.7.

CORAM : AMIT BORKAR, J.

RESERVED ON : JULY 10, 2026.

PRONOUNCED ON : JULY 14, 2026

JUDGMENT:

1. The present petition is filed under Section 9 of the Arbitration and Conciliation Act, 1996. The petitioner seeks interim protection directing respondent Nos.2 to 7 to vacate and hand over possession of their respective flats situated in the building known as "Evergreen" belonging to respondent No.1 society. According to the petitioner, the redevelopment of the building is being carried out by it. Respondent Nos.2 and 4 to 6 are non consenting members of the society. Along with respondent Nos.3 and 7, they are opposing the redevelopment even though 10 out of 14 members of respondent No.1 society have already given their consent. The petitioner has also obtained Intimation of Disapproval (IoD) dated 28 April 2026 from MCGM for the redevelopment of the property.

2. According to the petitioner, the relevant facts are as follows. On 25 February 2025, a Development Agreement was executed between the petitioner, respondent No.1 society and its members for redevelopment of the property. The agreement was duly registered. Thereafter, on 27 March 2025, the society and its members approved the layout plan. In September 2025, consent letters approving the revised layout plan were executed by 10 out of the 14 flat holders of the society.

3. The petitioner submits that on 26 February 2026, a meeting was held between the petitioner, respondent No.1 society, its members and the Advocate of the society. In that meeting, the majority of the members expressed their willingness to vacate their existing flats. Thereafter, on 28 April 2026, the petitioner obtained the final IoD from MCGM for redevelopment of the property.

4. The petitioner further submits that in the Special General Body Meeting held on 14 May 2026, the members present passed resolutions by majority accepting the revised layout plan annexed to the IoD under Clause 2.5 of the Development Agreement. Before that, by letter dated 11 May 2026, the petitioner had called upon respondent Nos.2 to 6 to comply with their obligations under the Development Agreement and submit their declarations as consenting members. The petitioner also informed them that failure to comply would attract the consequences and penalties provided under Clause 25 of the Development Agreement.

5. According to the petitioner, on 28 May 2026, all members of respondent No.1 society, except respondent Nos.2, 4 to 7, vacated their respective flats and handed over possession to the petitioner. Since the remaining respondents failed to do so, the present petition has been filed seeking the following interim reliefs:

(a) A direction to respondent Nos.2 to 7 to vacate their respective existing flats and hand over possession to the petitioner through respondent No.1 society during the pendency of the arbitral proceedings;

(b) In case respondent Nos.2 to 7 fail to vacate within the

time granted by the Court, appointment of the Court Receiver, High Court, Mumbai, or any other suitable person, with powers under Order XL Rule 1 of the Code of Civil Procedure, to take physical possession of the flats, remove the occupants with police assistance, if necessary, and hand over possession to the petitioner through respondent No.1 society;

(c) An order restraining respondent Nos.2 to 7 from creating any third party rights or inducting any person into their respective existing flats during the pendency of the arbitral proceedings.

6. Mr. Ashish Kamat, learned Senior Advocate appearing for the petitioner, submits that the building is more than 55 years old and is in a dangerous condition. According to him, the building urgently requires redevelopment. He submits that respondent No.1 society obtained a structural audit report from SS Structural Engineer. The report classifies the building as a C 1 category building and states that it is in severe distress and may become dangerous. It recommends immediate evacuation. The report records that there is serious seepage and leakage at several places, resulting in deterioration of the structure. It further records that leakage has caused corrosion in the reinforced concrete members, major cracks have developed in the external walls, waterproofing has failed at several places, and the reinforced concrete frame structure is in a distressed condition. On this basis, immediate evacuation has been recommended.

7. Learned Senior Advocate further submits that it is well settled that once a person becomes a member of a co-operative housing society, his individual rights are governed by the statute and the bye-laws of the society. According to him, an individual member cannot prevent redevelopment which has been approved by the majority of the members. He further submits that under Recitals O and T(v) of the Development Agreement, every decision taken by respondent No.1 society is binding upon all its members, including those members who have not executed the Development Agreement.

8. It is further submitted that Clause 18.1 of the Development Agreement requires the petitioner to issue a 30 day notice calling upon the members to vacate their flats. According to the petitioner, this requirement has been complied with. A further reminder notice was also issued to respondent Nos.1 to 7. Despite these notices, respondent Nos.2 to 7 have neither vacated their flats nor handed over possession within the prescribed period. The petitioner therefore submits that disputes have arisen between the parties which are covered by Clauses 47.2 to 47.4 of the arbitration clause contained in the Development Agreement.

9. On the other hand, Mr. Khandeparkar, learned Advocate appearing for respondent Nos.2 to 6, submits that the petitioner was appointed as the developer because it had promised that every new flat would have three open sides. According to him, the Development Agreement was approved pursuant to the resolution dated 21 November 2024 passed in the Special General Body Meeting. That resolution specifically provided that any layout plan

should be approved by at least 75 percent of the 13 members of respondent No.1 society. He submits that this resolution has been incorporated into the Development Agreement through Recital T read with Clauses 1.2.6 and 1.2.12. Therefore, it forms part of the contractual terms and binds both the society and the developer.

10. Learned counsel further submits that the members acted upon the said resolution and approved the layout plan by the required majority of more than 75 percent. According to him, once the layout plan was approved in that manner, it could not be changed unless another resolution was passed with the same majority. He submits that the special rights granted to the members could be modified only by following the same procedure. Since the resolution forms part of the Development Agreement, it has become one of the contractual terms agreed between the parties.

11. It is further submitted that the approval granted to the revised layout plan is contrary to the Development Agreement because it completely changes the earlier approved layout plan. According to the respondents, such approval is in breach of Clause 6.6 of the Development Agreement. Learned counsel submits that although the general body is the supreme authority of the society, it cannot pass arbitrary or unreasonable resolutions merely because it has the support of the majority. He submits that the rights and obligations of all parties arise from the Development Agreement. Therefore, every stage contemplated under the agreement must be followed, and no stage can be ignored.

12. Learned counsel further submits that the resolution dated 21 November 2024 was fully acted upon. Respondent Nos.2 to 6 signed the Development Agreement because they were assured that the layout of their new flats would remain protected and that each flat would have three open sides. According to him, they signed the agreement on the understanding that no change would be made without approval of 75 percent of the members. He submits that this requirement was also included in the draft Development Agreement and ultimately became part of the registered agreement.

13. It is further submitted that the requirement of providing three open sides was a part of the understanding on which the members agreed to redevelopment and executed the Development Agreement. According to the respondents, this gives each member an individual contractual right which cannot be taken away by an ordinary resolution of the society. Learned counsel therefore submits that:

- (i) If the society and the petitioner intended to modify the approved layout plan, such modification could be made only by obtaining approval of 75 percent of the members;
- (ii) Such a contractual requirement is not prohibited by any law and parties are free to agree that certain decisions will require a higher majority;
- (iii) Since the requirement of 75 percent approval and the condition regarding three open sides form part of the registered Development Agreement, any change to these

terms requires amendment of the agreement itself;

(iv) Such amendment gives rise to separate legal issues regarding the validity of the alteration;

(v) The terms of a registered document can be modified only by another registered document;

(vi) A resolution passed by the society cannot alter the terms of a registered Development Agreement or take away contractual rights already vested in the members;

(vii) Since respondent Nos.2 to 6 are parties to the Development Agreement, their consent is necessary for any valid alteration or novation of the agreement. In the absence of their consent, such alteration cannot bind them.

14. Learned counsel therefore submits that since the resolution dated 21 November 2024 forms part of the Development Agreement, it cannot be ignored or modified except by following the procedure prescribed therein. According to him, neither the society nor its general body can, by a simple majority, alter the contractual procedure agreed between the parties for amendment of the Development Agreement.

15. Learned counsel finally submits that in the facts of the present case, the society or its general body cannot, merely because it has a simple majority, take away the vested contractual rights or special entitlements granted to its members or approve revised layout plans which are contrary to the Development Agreement. He submits that if such action is permitted, a

developer who has already acquired some flats in the society may obtain additional flats through related entities or other persons, create a simple majority and thereafter alter the terms of the Development Agreement for its own benefit. According to him, such a course would defeat the binding nature of the Development Agreement and seriously prejudice the contractual rights of the remaining members in the redevelopment project.

16. Mr. Memon, learned Advocate appearing for respondent No.7, submits that the petitioner itself has admitted in the petition that Flat No.9 originally belonged to late Mr. Hiroo Matai and that respondent No.7 is in possession of the said flat. He submits that the statement made by the petitioner regarding a dispute between respondent No.7 and the legal heirs of late Mr. Hiroo Matai is not correct. According to him, the disputes are only among the alleged legal heirs themselves and even their petition for grant of Letters of Administration has been dismissed. He further submits that respondent No.7 has been in continuous, open and exclusive possession of Flat No.9 since the year 2009 and is claiming independent rights over the flat by adverse possession. According to him, respondent No.7 is not occupying the flat under any permission or licence from late Mr. Hiroo Matai or his legal heirs, but is occupying it in his own right.

17. Learned counsel further submits that the draft consent terms exchanged between the parties recorded that the petitioner and the society would not execute any Permanent Alternate Accommodation Agreement or create any rights in favour of the alleged legal heirs of late Mr. Hiroo Matai unless they first

obtained an order of possession from a competent court. However, despite the said understanding, the petitioner has not executed the Permanent Alternate Accommodation Agreement with respondent No.7 and has instead filed the present petition seeking directions to evict him. He therefore submits that no mandatory order directing respondent No.7 to vacate should be granted unless the petitioner simultaneously extends to him the same benefits as given to other members, including execution of the Permanent Alternate Accommodation Agreement, payment of transit rent, hardship compensation, shifting charges and other agreed benefits, and further protects the alternate premises from being allotted or transferred to the alleged legal heirs of late Mr. Hiroo Matai until they obtain appropriate orders from the competent court.

REASONS AND ANALYSIS:

18. The present petition is filed under Section 9 of the Arbitration and Conciliation Act, 1996. Three distinct issues arise. First, whether objections raised by respondent Nos.2 to 6 regarding revised layout plans and reduction of redevelopment benefits can be examined while deciding a petition under Section 9 of the Arbitration and Conciliation Act. Second, whether respondent No.7, who continues to remain in possession of Flat No.9, can be directed to hand over possession without safeguarding his possessory rights. Third, whether interim measures deserve to be granted in the facts of the present case.

19. At this stage, it becomes necessary to notice the statutory scheme under the Maharashtra Co operative Societies Act.

20. Section 72 provides:

"Subject to the provisions in this Act and the rules, the final authority of every society shall vest in the general body of members in general meeting, summoned in such a manner as may be specified in the bye-laws."

21. The section confers primacy upon the General Body. However, the opening words make the authority of the General Body subject to the provisions of the Act, the Rules and the bye laws. Therefore, the supremacy of the General Body is subject to statutory limitations.

22. Section 154B-10(5)(ii) further provides:

"Member shall vacate the flat when required for redevelopment of the building or buildings of the society as decided in its general meeting."

23. The statute therefore casts a duty upon every member to vacate when redevelopment has been approved by the General Body. At the same time, the right of a member under sub-section (1) continues to remain protected because it declares that a member is entitled to exercise such rights as are provided under the Act, the Rules and the bye-laws. Thus, the obligation to vacate and the right to enforce contractual or statutory protections operate simultaneously.

24. The submission of respondent Nos.2 to 6 is that the revised layout plan violates the Development Agreement. The respondents have pointed out clauses of the Development Agreement and the earlier resolution which required approval by seventy-five percent majority before alteration of the plans. They also contend that

three open sides formed part of the assurance which persuaded them to execute the Development Agreement.

25. At first look, the argument appears attractive because it proceeds on the basis of a contract accepted by the parties. However, while considering such submission, this Court cannot look only at the Development Agreement in isolation. The Development Agreement came into existence because the Society resolved to undertake redevelopment. The Society is a statutory body functioning under the Maharashtra Co-operative Societies Act. Therefore, every decision of its General Body has to satisfy not only the contractual arrangement between the parties but also the statutory requirements regulating the functioning of the Society.

26. The General Body of a co-operative society does not derive its authority from the Development Agreement. Its authority flows from the Maharashtra Co-operative Societies Act, the Rules framed thereunder and the registered bye-laws of the Society. Section 72 declares that the final authority of every society vests in the General Body, but it provides that such authority is "subject to the provisions in this Act and the Rules." Thus, the power of the General Body is not contractual power. It is a statutory power. The procedure regarding convening meetings, passing of resolutions and the manner in which decisions are taken is regulated by the statute.

27. It is well settled that parties are free to agree upon contractual terms. However, such freedom is never absolute. A contract can regulate only those matters which law permits the

parties to regulate. Parties cannot, by agreement, modify a statutory requirement unless the statute permits such modification. If the law prescribes a particular manner in which the General Body has to pass resolutions, the parties cannot by incorporating a clause in the Development Agreement create another procedure which is inconsistent with the statute. To permit such a course would mean that the parties, by executing a agreement, have amended governing provision of co-operative societies.

28. The requirement incorporated in the Development Agreement that any modification of the building plans must receive approval of seventy-five percent members has therefore to be examined from this perspective. If the Act, the Rules or the registered bye-laws themselves prescribe the majority by which a General Body is required to take decisions relating to redevelopment or approval of revised plans, that statutory prescription cannot be altered because the parties have inserted a different clause in the Development Agreement. The contract cannot become a source of power overriding the statute. The statute is supreme, and every contractual arrangement must give way to it whenever inconsistency arises.

29. The respondents submitted that the condition regarding seventy-five percent approval became part of the registered Development Agreement and therefore acquired contractual sanctity. There can be no dispute that a registered Development Agreement is binding upon the parties who execute it. Nevertheless, a registered agreement cannot confer upon the parties a power which the statute does not recognise. Registration

of a document does not elevate contractual clause to the status of a statute. If any term of the agreement is found to be inconsistent with the provisions of the Act, the Rules or the registered bye-laws, the source of authority contained in the statute must prevail over the contractual clause.

30. This conclusion appears consistent with the nature of a co-operative society. A co-operative society is not merely an association created by contract. It is a statutory body governed by an enactment. Every member becomes subject to that statute. Every developer entering into redevelopment with such society enters into that relationship knowing well that the internal functioning of the Society is controlled by the Act, the Rules and the bye-laws. Therefore, the developer or a member cannot insist that a contractual provision should override the statute governing the decision-making process of the General Body.

31. For these reasons, at this prima facie stage, I am unable to accept the contention that the clause requiring approval of seventy-five percent members can govern every subsequent decision of the General Body irrespective of the statute. To the extent such contractual stipulation is inconsistent with the provisions of the Maharashtra Co-operative Societies Act, the Rules or the bye-laws governing passing of resolutions, the statutory provisions must prevail, and the contractual clause cannot be enforced in preference to them.

32. It is, however, necessary to clarify that these observations are only prima facie and are confined to the limited jurisdiction

exercised under Section 9 of the Arbitration and Conciliation Act. Those issues are kept open to be decided in appropriate proceedings by the competent forum without being influenced by the prima facie observations recorded in the present order.

33. The defence raised by respondent No.7 stands on a different footing. Unlike respondent Nos.2 to 6, respondent No.7 has not questioned the redevelopment itself or the resolutions passed by the Society. His case is founded on his continued possession of Flat No.9 and the consequences flowing from such possession. According to him, though the petitioner has admitted that Flat No.9 belonged to late Hiroo Matai, it has also admitted in the petition that respondent No.7 is in occupation and possession of the said flat. Respondent No.7 therefore submits that his possession cannot be disturbed merely because redevelopment has commenced.

34. The petitioner disputes the basis of respondent No.7's claim and submits that respondent No.7 has no title over Flat No.9. According to the petitioner, respondent No.7 is not entitled to claim any right merely because he is occupying the premises. It is submitted that respondent No.7 cannot obstruct redevelopment which has been approved by the Society and that all occupants are required to vacate in terms of the Development Agreement.

35. Respondent No.7, however, submits that he has remained in exclusive possession of Flat No.9 since the year 2009. According to him, such possession is not under any licence or permission granted by late Hiroo Matai or his legal heirs. He further submits

that disputes are amongst the alleged legal heirs themselves and even their proceedings for Letters of Administration have not succeeded. He also relies upon the draft consent terms exchanged between the parties to contend that the petitioner had agreed not to create any rights in favour of the legal heirs until they obtained an order of possession from Court. According to respondent No.7, after having accepted such position, the petitioner cannot now seek his eviction without extending to him the redevelopment benefits.

36. This submission requires consideration in the light of the law laid down by the Division Bench in *Ritesh Halder v. Elite Housing LLP*.

37. In paragraph 11, the Division Bench observed:

"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."

38. The Court further held:

"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."

39. Again, in paragraph 13, the Division Bench held:

"Leena's possession of Flat No.12 shall remain protected until she is lawfully evicted by decree of the competent Court."

40. The Division Bench further held:

"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."

41. The above principles recognise the distinction between ownership rights and possessory rights. The Court held that redevelopment cannot be utilised as a substitute for eviction proceedings. A person who is in possession cannot be dispossessed except in accordance with law. At the same time, redevelopment also cannot be stalled because of such dispute. The Division Bench evolved arrangement by protecting both ownership and possession until the competent Court determines the rival rights.

42. Applying the above principles to the facts of the present case, it is necessary to consider that the petitioner has pleaded that respondent No.7 is occupying Flat No.9. Therefore, the factum of possession is not in dispute. Whether such possession has matured into any legal right, whether respondent No.7 has perfected title by adverse possession, whether the rights of late Hiroo Matai or his legal heirs have been extinguished, and whether respondent No.7 succeeds in establishing any proprietary interest, are questions which cannot be finally decided in the present proceedings under Section 9. Those questions involve disputed facts which must be decided in appropriate proceedings.

43. However, mere absence of adjudication on title does not result in extinguishment of the possession of respondent No.7. The law declared in *Ritesh Halдар* makes it clear that possession deserves protection until such possession is displaced in accordance with law.

44. Thus, respondent No.7 cannot insist that redevelopment should remain stalled till dispute relating to title is adjudicated. The rights claimed by respondent No.7 may succeed or may fail. That issue remains entirely open. But until such determination is made by the competent forum, any interim arrangement must be in the manner recognised by the Division Bench in *Ritesh Halдар*.

45. Therefore, on an overall consideration of the rival submissions and the judgements of the Division Bench, this Court is satisfied that redevelopment cannot be permitted to remain stalled on account of disputes which fall outside the limited jurisdiction exercisable under Section 9 of the Arbitration and Conciliation Act. Simultaneously, while directing implementation of redevelopment, the rights of respondent No.7 flowing from his possession deserve to remain protected in accordance with law and subject to the final outcome of proceedings before the competent forum.

46. In view of the foregoing discussion and for the reasons recorded hereinabove, the following order is passed:

- (i) The Arbitration Petition is partly allowed;
- (ii) Prayer clause (a) is allowed against respondent Nos.2 to 6;

(iii) Respondent Nos.2 to 6 shall vacate their respective flats and hand over vacant and peaceful possession thereof to the petitioner through respondent No.1 Society within two weeks from the date of this order;

(iv) In the event respondent Nos.2 to 6 fail to hand over possession within the aforesaid period, the Court Receiver, High Court, Mumbai, is appointed Receiver of their respective flats with all powers under Order XL Rule 1 of the Code of Civil Procedure, 1908. The Court Receiver shall take physical possession of the said flats with police assistance, if necessary, and shall hand over possession to the petitioner through respondent No.1 Society for the purpose of redevelopment;

(v) Prayer clause (c) is allowed against respondent Nos.2 to 6. Pending the arbitral proceedings, respondent Nos.2 to 6 are restrained from creating any third party rights or inducting any person into their respective flats;

(vi) So far as respondent No.7 is concerned, respondent No.7 shall hand over vacant and peaceful possession of Flat No.9 to the petitioner through respondent No.1 Society within two weeks from the date on which the petitioner simultaneously:

(a) executes the Permanent Alternate Accommodation Agreement in respect of the alternate premises with legal representatives claiming through late Hiroo Matai, and

(b) pays to respondent No.7 the transit rent, brokerage, shifting charges and other displacement related benefits payable to the person who is actually handing over possession during redevelopment.

(vii) The execution of the Permanent Alternate Accommodation Agreement and payment of any ownership related benefits, including corpus or hardship compensation, shall remain subject to the rights and claims, if any, of persons claiming title or ownership in respect of Flat No.9, and subject to the outcome of proceedings before the competent Court;

(viii) Upon respondent No.7 handing over possession of Flat No.9, the petitioner shall hand over possession of the alternate premises to respondent No.7 immediately upon the same becoming ready for occupation. Such possession shall remain subject to the result of any proceedings relating to title, ownership, succession, adverse possession or eviction pending or hereafter instituted before the competent Court;

(ix) If respondent No.7 fails to hand over possession after compliance by the petitioner with clause (vi) above, the Court Receiver, High Court, Mumbai, shall stand appointed Receiver of Flat No.9 with all powers under Order XL Rule 1 of the Code of Civil Procedure, 1908. The Court Receiver shall take physical possession with police assistance, if necessary, and hand over the same to the petitioner through respondent No.1 Society;

- (x) The Court Receiver shall be entitled to seek police assistance from the jurisdictional police station, if required, for implementation of this order;
- (xi) The observations made in this order are prima facie in nature and are confined to the adjudication of the present petition under Section 9 of the Arbitration and Conciliation Act, 1996. All contentions of the parties regarding title, ownership, adverse possession, succession, validity of resolutions, contractual rights and all other disputes are expressly kept open to be decided in appropriate proceedings before the competent forum;
- (xii) The arbitral tribunal, as well as any competent Court or statutory authority, shall decide such proceedings independently and without being influenced by any prima facie observations contained in this order;
- (xiii) There shall be no order as to costs.

(AMIT BORKAR, J.)