

AGK

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

COMM ARBITRATION PETITION (L) NO.19055 OF 2026
WITH
IN PERSON APPLICATION (L) NO.21672 OF 2026

Nirvaana Builders & Developers LLP

... Petitioner

Vs.

1. Ghatkopar Aditya Cooperative
Housing Society Limited
2. Sanjana Sandeep More
Sandeep Ankush More
3. Bipin D. Shah
4. Raju Ganpat Gopale
5. Nikita Namdev Prabhalkar
6. Ravindra C. Hirejagner
7. Prashant H. Bhande
8. Rajesh M. Chilvary

... Respondents

ATUL
GANESH
KULKARNI

Digitally signed by
ATUL GANESH
KULKARNI
Date: 2026.07.21
15:00:06 +0530

Mr. Karl Tamboly with Rhythm Rathod for the
petitioner.

Mr. M.M. Vashi with Duhita Garate i/by M.P. Vashi &
Associates for respondent No.1.

Mr. Anil S. Patel for respondent Nos.2 to 8.

CORAM : AMIT BORKAR, J.

RESERVED ON : JULY 16, 2026.

PRONOUNCED ON : JULY 21, 2026

JUDGMENT:

1. The present petition is filed under Section 9 of the Arbitration and Conciliation Act, 1996. The petitioner has asked for different interim reliefs. The petitioner first seeks a direction against respondent Nos.2 to 8 to hand over vacant and peaceful possession of their respective flats so that the redevelopment work can start under the Development Agreement dated 6 March 2026. In the alternative, the petitioner has prayed for appointment of the Court Receiver, High Court, Bombay, with police protection and all necessary powers, including taking forcible possession of the flats if required and handing over the same to the petitioner. The petitioner has also prayed for interim reliefs in the same terms during the pendency of the petition. It has further sought an order restraining respondent Nos.2 to 8 from creating any third party rights or from causing any obstruction or interference in respect of their respective flats.

2. According to the petitioner, the facts leading to the present petition are these. On 10 April 2006, respondent No.1 society had appointed Kumar Builders Pune Private Limited as its developer under a registered Development Agreement and Power of Attorney. Later, in the Special General Body Meeting held on 10 August 2020, the society decided to terminate that Development Agreement and also revoked the Power of Attorney by issuing notice. Thereafter, in another Special General Body Meeting held on 21 July 2021, the society appointed the present petitioner, Nirvaana Builders & Developers LLP, as the new developer. The said meeting was held in the presence of the Authorized Officer,

Mr. Satish Mane.

3. On 28 July 2021, the Deputy Registrar of Cooperative Societies, MHADA, confirmed the appointment of the petitioner as the developer by issuing a certificate under Section 79 of the Maharashtra Cooperative Societies Act, 1960. Around the same time, in July 2021, respondent No.2 purchased Flat No.1865 in the society. The petitioner states that because of complaints made by respondent No.2, the Deputy Registrar, by order dated 2 May 2023, appointed an Administrator for the society. However, this Court, by its order dated 11 February 2026, stayed the appointment of the Administrator.

4. The petitioner and respondent No.1 society thereafter executed and registered a Development Agreement on 6 March 2026 for redevelopment of the property. On 13 April 2026, the petitioner received the Intimation of Approval from MHADA. On the same day, the petitioner informed the society about receipt of the approval and requested the society to ask all its members to vacate their premises within forty-five days. The petitioner also issued notices on the same day to all the members of the society, including respondent Nos.2 to 8, requesting them to vacate their respective premises.

5. The petitioner states that respondent Nos.2 to 8 neither replied to the notices nor cooperated in the redevelopment process. Therefore, the petitioner issued reminders and further letters asking them to vacate their premises. Respondent No.1 society also, through its authorised representative, issued letters

dated 8 May 2026 to respondent Nos.2 to 8 calling upon them to vacate their flats. Though the last date fixed for vacating the premises was 31 May 2026, respondent Nos.2 to 8 did not do so. According to the petitioner, this has compelled it to file the present arbitration petition.

6. Mr. Tamboly, learned Advocate appearing for the petitioner, submitted that the petitioner is ready and willing to extend to respondent Nos.2 to 8 the same benefits which have been given to all the other members of the society who have already vacated their flats and executed irrevocable consent documents. He submitted that respondent Nos.2 to 8 are equally bound to perform their obligations arising out of the Development Agreement. According to him, respondent Nos.2 to 8 are deliberately refusing to vacate their premises without any valid reason. He further submitted that the buildings of the society are old, dilapidated and in a dangerous condition, creating risk to the lives of the occupants as well as persons passing nearby. He pointed out that except respondent Nos.2 to 8, almost all other members have already vacated their premises.

7. Learned counsel for the petitioner further submitted that out of 30 members of the society, 24 members had already vacated their premises on or before 31 May 2026. He placed reliance upon the judgment in *Satguru Marunochi Developers Private Limited vs. Evergreen Cooperative Housing Society Limited*, Commercial Arbitration Petition (L) No.19007 of 2026 decided on 14 July 2026. On the strength of the said decision, he contended that the objections raised by respondent Nos.2 to 8 are outside the scope of

consideration in a petition filed under Section 9 of the Arbitration and Conciliation Act, 1996.

8. Mr. Vashi, learned Senior Advocate appearing for respondent No.1 society, supported the petitioner. He submitted that by notice dated 27 May 2026, the society convened a Special General Body Meeting to consider and approve the Development Agreement dated 6 March 2026 and also the draft Permanent Alternate Accommodation Agreement proposed to be executed in favour of the members. He submitted that in the General Body Meeting held on 1 June 2026, the members approved and ratified the Development Agreement executed by the Managing Committee. Therefore, according to him, the objection of respondent Nos.2 to 8 that the Managing Committee did not have the required quorum when the Development Agreement was executed no longer survives. In support of this submission, he relied upon the notice, the resolution, and the affidavit dated 10 July 2026 placed on record.

9. Mr. Patel, learned Advocate appearing for respondent Nos.2 to 8, submitted that the Managing Committee originally consisted of 11 members. However, on the date when the Development Agreement was executed, only 7 members were functioning as members of the Managing Committee. According to him, the committee therefore did not have the required quorum and was not legally competent to execute the Development Agreement. He submitted that the agreement executed by such committee is illegal and cannot be made the basis for granting any relief to the petitioner. He further contended that the Managing Committee

had ceased to be a legally constituted committee and, therefore, it had no authority to take any decision. On this ground, he submitted that the present petition deserves to be dismissed.

10. I have carefully gone through the rival submissions, pleadings, documents placed on record and the judgments relied upon by the learned advocates. I have seen the Development Agreement dated 6 March 2026, the resolutions passed by the society, notices issued to the members and the other papers produced before this Court. At this stage, this Court is not deciding finally every dispute raised by the parties. What is required to be seen now is whether the petitioner has made out a case for interim protection under Section 9 of the Arbitration and Conciliation Act, 1996 and whether refusal of such protection may affect the arbitration proceedings or the dispute between the parties.

11. Main objection of respondent Nos.2 to 8 is that on the date when the Development Agreement was executed, the Managing Committee was not properly in existence. According to them, though committee was of eleven members, only seven members were functioning. Therefore, required quorum was not available and because of this the committee had no authority to execute the Development Agreement. It is their submission that if agreement is not executed by competent body, then petitioner cannot ask any relief on basis of such agreement.

12. This submission, in my view, cannot be accepted in the way it is argued. Whether the Managing Committee had proper quorum, whether correct procedure was followed, or whether

committee had authority to bind the society, all these questions are connected with internal affairs of the society and legality of its decisions. Such questions cannot be decided only by looking at few papers. They require detailed examination of bye-laws, provisions of the Maharashtra Cooperative Societies Act, attendance of committee members, vacancies, minutes of meetings and other material. These are disputed questions needing proper evidence. Such detailed enquiry is not possible in proceedings under Section 9. While exercising powers under Section 9, this Court is not expected to hold trial regarding validity of action taken by the society before deciding request for interim protection.

13. There is one more aspect. Material placed before this Court shows that after execution of the Development Agreement, respondent No.1 society issued notice dated 27 May 2026 for convening Special General Body Meeting. In that meeting held on 1 June 2026, General Body approved and ratified the Development Agreement executed in favour of the petitioner. Notice of meeting and copy of resolution are placed on record along with affidavit filed by respondent No.1 society. Therefore, even assuming for some time that there was some objection regarding authority of the Managing Committee when agreement was executed, still later approval given by the General Body cannot be ignored at this stage.

14. General Body is highest authority for taking decisions in cooperative society. Unless resolution passed by General Body is set aside or declared illegal by competent forum, this Court cannot proceed on assumption that such resolution has no value merely

because few members are questioning it. Nothing is placed before this Court to show that resolution dated 1 June 2026 has been stayed or declared illegal by any competent court. Therefore, prima facie, Development Agreement still remains in force.

15. Learned Advocate appearing for respondent Nos.2 to 8 repeatedly submitted that committee had ceased to be legal committee and therefore every decision taken by it becomes void. Even if such issue survives, it is dispute relating to management and internal affairs of the society. Such dispute has to be examined by the competent court under the Maharashtra Cooperative Societies Act or by such forum recognised in law. Scope of enquiry under Section 9 is different. These proceedings cannot become trial for deciding whether Managing Committee was legally constituted or not.

16. At this stage, law laid down by the Division Bench in *Pranav Constructions Limited v. Priyadarshini Cooperative Housing Society Limited* clearly applies. Division Bench has held that grievances raised by members regarding appointment of developer, manner of redevelopment, benefits available under redevelopment or validity of resolutions passed by the society are not required to be decided in proceedings under Section 9. Such disputes have to be taken before the forum having jurisdiction under the Maharashtra Cooperative Societies Act or before Civil Court depending upon nature of dispute. Merely because such disputes are existing, petition filed under Section 9 cannot be rejected on that ground alone.

17. Principle coming from the said judgment is that after society has entered into Development Agreement and redevelopment is accepted by majority members, one member cannot stop entire redevelopment only because he has some dispute which has to be decided before another forum. Court exercising powers under Section 9 is concerned with protecting arbitration proceedings and preserving subject matter of dispute. It is not expected to decide every grievance which individual members may have against the society.

18. In present case also, objection regarding absence of quorum directly questions authority of the society while executing Development Agreement. Such objection is connected with internal functioning of the society. Even if respondent Nos.2 to 8 may succeed in proving such contention before proper forum, remedy is to challenge that decision before competent court. Till such challenge succeeds, Development Agreement cannot be treated as non-existing merely because few members dispute its validity.

19. Another circumstance also cannot be ignored. Out of thirty members, twenty-four members have already vacated their premises. This factual position is not disputed. Therefore, redevelopment has moved substantially because large majority members have accepted redevelopment scheme. If redevelopment is made to wait only because few members continue in possession, prejudice is likely to be caused not only to petitioner developer but also to remaining members who have vacated their premises and shifted.

20. This Court also cannot ignore submission that buildings are old and in dilapidated condition. Whether structure has become dangerous or not may require technical examination. However, one thing is clear that redevelopment has been approved by the society and statutory authority has also granted Intimation of Approval. This shows that redevelopment process has crossed important stages and cannot be disturbed.

21. Learned counsel for the petitioner submitted that respondent Nos.2 to 8 are offered same benefits which are given to every other member. At this stage, no material is produced before this Court to prima facie show that respondent Nos.2 to 8 are separately treated or denied benefits available to other members under Development Agreement. On the other hand, petitioner has stated that it is ready to execute necessary documents and extend same benefits to them also. Therefore, at present there is no sufficient material to hold that respondent Nos.2 to 8 are treated differently from remaining members.

22. It was also argued that respondent Nos.2 to 8 cannot be directed to vacate because Development Agreement is illegal. This submission proceeds on assumption that agreement stands declared invalid. Such position is not existing. No competent court has till today declared Development Agreement illegal or unenforceable. While exercising powers under Section 9, Court cannot proceed on assumptions. Until agreement is set aside by competent court, it continues to operate between parties who have executed it.

23. It is also necessary to notice that respondent No.1 society supports the present petition. Society has accepted execution of the Development Agreement. It has also produced subsequent resolution approving and ratifying the same. Therefore, dispute before this Court is not between petitioner developer and the society. In substance, dispute is between developer, supported by the society, on one side and few dissenting members on the other side. Such dissent cannot stop redevelopment unless competent court grants protection.

24. Conduct of parties also deserves consideration. Notices were issued asking members to vacate their premises. Thereafter, reminders were also sent. Respondent No.1 society requested respondent Nos.2 to 8 to hand over possession. Even after these communications, respondent Nos.2 to 8 have continued in possession. Nothing is placed before this Court to show that any competent authority has granted interim protection restraining redevelopment or implementation of the Development Agreement. In absence of any such order, continued refusal to vacate does not appear to be justified at this stage.

25. At the same time, this Court is conscious that respondent Nos.2 to 8 cannot be deprived of remedies available in law. If according to them Managing Committee acted illegally, or General Body resolution is invalid, or Development Agreement deserves to be set aside, they are always free to take appropriate proceedings before competent forum. Observations made in this order are for deciding present petition and shall not affect such proceedings on their own merits.

26. After considering overall pleadings, documents and rival submissions, this Court finds that objections raised by respondent Nos.2 to 8 relate to legality of internal decisions taken by the society and authority of the Managing Committee. Such disputes go beyond limited enquiry permissible under Section 9 of the Arbitration and Conciliation Act. Material placed before this Court prima facie shows that Development Agreement has later been approved by the General Body, statutory approval has also been received, large majority of members have vacated their premises and petitioner has shown readiness to extend same redevelopment benefits to respondent Nos.2 to 8 also. In these circumstances, objections raised by respondent Nos.2 to 8 do not provide sufficient ground for refusing interim protection. Their grievances may still be decided by competent forum. However, those grievances cannot be permitted to stop redevelopment in proceedings of present nature. Looking to overall facts, balance of convenience is in favour of protecting redevelopment process while keeping remedies of respondent Nos.2 to 8 open in accordance with law.

27. In view of the foregoing discussion, and upon overall assessment of the material record, the following order is passed:

- i) The Arbitration Petition is allowed;
- (ii) Pending commencement and conclusion of the arbitral proceedings and until further orders of the Arbitral Tribunal, respondent Nos.2 to 8 are directed to hand over quiet, vacant and peaceful possession of their respective flats

bearing Room No.1865, Room No.1885, Room No.1888, Room No.1878, Room No.1882, Room No.1863 and Room No.1868 in Building No.63 of respondent No.1 Society to the petitioner within a period of four weeks from the date of this order;

(iii) Upon respondent Nos.2 to 8 handing over possession, the petitioner shall simultaneously extend to them all benefits, rights, and entitlements available to the other members of respondent No.1 Society under the Development Agreement dated 6 March 2026, including execution of necessary documents and payment of all admissible monetary benefits, if not already paid;

(iv) In the event respondent Nos.2 to 8 fail to hand over possession within the time stipulated above, the Court Receiver, High Court, Bombay, is appointed Receiver in respect of the aforesaid premises with all powers under Order XL Rule 1 of the Code of Civil Procedure, 1908;

(v) The Court Receiver shall be entitled to take physical possession of the aforesaid premises from respondent Nos.2 to 8, with police assistance, if necessary, including by breaking open the locks, after giving forty-eight hours' advance notice to the concerned occupants, and shall hand over possession thereof to the petitioner for implementation of the redevelopment project;

(vi) The Senior Inspector of the jurisdictional Police Station shall provide all necessary police protection and assistance to

the Court Receiver for implementation of this order, whenever called upon to do so;

(vii) Pending the arbitral proceedings, respondent Nos.2 to 8, their agents, servants or any person claiming through or under them are restrained from creating any third party rights, transferring, alienating, encumbering, parting with possession of, inducting any person into, or otherwise dealing with their respective premises in any manner prejudicial to the rights of the petitioner under the Development Agreement dated 6 March 2026;

(viii) It is clarified that the observations made in this order are prima facie in nature and are confined to adjudication of the present petition under Section 9 of the Arbitration and Conciliation Act, 1996. All rights and contentions of the parties on the merits of their disputes are expressly kept open for adjudication before the appropriate forum;

(ix) There shall be no order as to costs.

(x) Parties to act on an authenticated copy of this order.

(xi) All pending interlocutory applications stand disposed of in terms of this order.

(AMIT BORKAR, J.)