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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.22060 OF 2026

Aum Serenity,
a Partnership firm ... **Petitioner**

Vs.

1. **Santacruz Ark Cooperative Housing Society Limited**
2. **Santacruz New Aashish Cooperative Housing Society Limited**
3. **Ajay & Company**
4. **Chatrbhuj Ramchand Wadhwani**
5. **Samir Kailash wadhwani**
6. **Urvashi Kailash Wadhwani**
7. **Shibani Prahladrai Wadhwani**
   Nos. 5 to 7 legal heirs of Kailash Prahladrai Wadhwani
8. **Malti Ashok Wadhwani**
9. **Subhadra Niranjan Wadhwani**
10. **Kumkum Premchand Wadhwani**
11. **Ashwin Manilal Mehta**
12. **Parita Manish Patel**
13. **Hema Chandrakant Shah** ... **Respondents**

Mr. Piyush Raheja with Tanvi Gandhi, Sahil Gandhi, Dimple Vora, Darshil Desai i/by Markand Gandhi & Co., for the petitioner.

Mr. Feroze Patel i/by Ankur Kalal for respondent Nos.1 and 2.

Mr. Sunny Shah with Yash Kataria, Pankaj S. Shinde i/by Ashish T. Suryavanshi for respondent No.8.

Mr. Amrut Joshi with Shahrukh Shaikh i/by Rohit Shetty for respondent No.9.

Mr. Ranjeev Carvalho with Nanki Grewal, Luke Jose, Krisha Thakkar i/by Wadia Ghandy & Co., for respondent No.10.

Mr. Ashwin Manilal Mehta, respondent No.11 in-person.

Mr. Nikhil Varma with Rajmani Varma, Hemal Dedhila i/by Navdeep Vora & Associates for respondent Nos.12 and 13.

CORAM	**: AMIT BORKAR, J.**
RESERVED ON	**: JULY 24, 2026.**
PRONOUNCED ON	**: JULY 28, 2026**

JUDGMENT:

1. The present Petition is filed under Section 9 of the Arbitration and Conciliation Act, 1996. The petitioner says that the redevelopment work has come to a standstill because of two dissenting members who are creating obstruction. According to the petitioner, out of total 30 members of the two societies, 28 members have agreed to vacate their premises and hand over possession for redevelopment.

2. The arbitration agreement between the parties is contained in Clause 40 of the Development Agreement dated 30 September 2025. The petitioner is the developer appointed by respondent

Nos. 1 and 2 under the Development Agreement dated 30 September 2025, read with the Supplementary Development Agreements dated 25 February 2026 and 5 June 2026, for carrying out redevelopment of the buildings belonging to respondent Nos. 1 and 2.

3. Respondent No. 1 is Santacruz Ark Co operative Housing Society Limited consisting of 12 members occupying 12 residential flats. Respondent No. 2 is Santacruz New Aashish Co operative Housing Society Limited consisting of 18 members occupying 14 residential flats, one dispensary and three closed garages. Respondent No. 3 is a partnership firm which is a member of respondent No. 1 Society in respect of Flat No. G 01 situated on the ground floor. Respondent Nos. 4 to 10 are the erstwhile partners of respondent No. 3. The record shows that respondent No. 8 is in possession of Flat No. G-01 and claims herself to be the proprietress of respondent No. 3. It is stated that respondent Nos. 5 to 7 are not claiming any right, title, share, or interest in respondent No. 3. Respondent Nos. 11 to 13 are the joint members of respondent No. 2 Society in respect of Flat No. 2 situated on the ground floor. It is stated that respondent No. 11 is presently in possession and occupation of the said flat.

4. The petitioner states that it came to be appointed as the developer by respondent Nos. 1 and 2 under the Development Agreement dated 30 September 2025, read together with the Supplementary Development Agreements dated 25 February 2026 and 5 June 2026, for carrying out redevelopment of the buildings belonging to the two societies. According to the petitioner, the events leading to execution of the Development Agreement are set out separately in Annexure-1 to the Petition. Clause 5 of the Development Agreement lays down the obligations which the petitioner was required to complete before the members were called upon to vacate. These obligations mainly included obtaining the required concession approvals, securing the Intimation of Disapproval up to the minimum development potential and procuring as well as loading the necessary FSI. Clause 18 of the Development Agreement thereafter provides the procedure for handing over possession of the premises to the developer. Clause 18.1 provides that after completion of all the pre-vacating obligations, the developer shall issue a Notice to Vacate mentioning the date on or before which the members are required to hand over vacant possession of their respective premises for redevelopment. Clause 18.2 further provides that within ten days from receipt of such notice, respondent Nos. 1 and 2 shall obtain letters from all their members and occupants confirming that they will vacate their respective premises and hand over possession to the developer by the date mentioned in the Notice to Vacate. The same clause provides that if any member or occupant fails to give such confirmation, or dissents, or refuses to vacate and hand over possession, then the petitioner is entitled to take appropriate legal proceedings against such member or occupant. Clause 18.3 further provides that after receiving confirmations from all members or after obtaining appropriate orders from the Court, whichever happens earlier, the developer shall deposit with the Advocates for both the societies the cheques towards hardship compensation, rental compensation and security deposit.

5. The petitioner submits that it has taken several steps for implementing the redevelopment project and has made substantial progress in accordance with the Development Agreement. It is stated that the petitioner received the Intimation of Disapproval dated 9 April 2026. The petitioner further states that it has procured and loaded the necessary FSI required for the minimum development potential by paying the prescribed premiums and by using Transferable Development Rights. According to the petitioner, by doing so it has fully complied with Clauses 5.1.1 to 5.1.3 of the Development Agreement. The petitioner states that it has paid the first instalment of hardship compensation amounting to Rs. 12,94,044 to respondent No. 1 Society and Rs. 7,53,166 to respondent No. 2 Society in accordance with Clauses 12.1.1 and 12.2.1 of the Development Agreement.

6. After completing these requirements, the petitioner issued a Notice to Vacate dated 10 April 2026 under Clause 18.1 of the Development Agreement calling upon respondent Nos. 1 and 2 to hand over vacant possession of all the premises on or before 9 May 2026 so that the redevelopment work could commence. Pursuant to Clause 18.2 of the Development Agreement, respondent Nos. 1 and 2 requested all their members to submit their written confirmations agreeing to vacate and hand over possession. According to the petitioner, 28 out of the total 30 members of the two societies have given their written consent to vacate their premises. However, no such consent has been given by respondent Nos. 3 to 10 in respect of Flat No. G-01 or by respondent Nos. 11

to 13 in respect of Flat No. 2. The petitioner further states that respondent Nos. 3 to 10 and respondent Nos. 11 to 13 are not opposing the redevelopment project as such. According to the petitioner, the affidavits filed by respondent Nos. 8, 9, 10 and 12 clearly state that they have no objection to the redevelopment. Their refusal to hand over possession is only because of their internal disputes regarding entitlement and distribution of benefits.

7. So far as Flat No. G 01 is concerned, respondent No. 3 is the recorded member of respondent No. 1 Society. Respondent No. 8 claims that she is the proprietress of respondent No. 3. The Advocates appearing for respondent No. 10 have addressed correspondence stating that respondent No. 3 partnership firm stands dissolved and that an Arbitral Tribunal has been appointed by this Court to decide the disputes between the partners of respondent No. 3.

8. In relation to Flat No. 2, respondent Nos. 11 to 13 are joint members of respondent No. 2 Society. Respondent No. 11, who is in possession of the flat, claims that he alone is entitled to receive all redevelopment benefits. On the other hand, respondent Nos. 12 and 13 contend that the redevelopment benefits should be distributed equally and proportionately amongst all the joint members.

9. Respondent Nos. 1 and 2 have filed their affidavits dated 24th July 2026. They state that respondent Nos. 11 to 13 are joint members of respondent No. 2 Society in respect of Flat No. 2 with their respective shares being in the ratio of 50:25:25. They further state that, according to the knowledge of respondent No. 1 Society, Flat No. G-01 is presently vacant and respondent No. 8 is believed to be in possession of the said flat.

10. The societies have further stated that the share certificate of Flat No. G-01 continues to stand in the name of respondent No. 3. In respect of Flat No. 2, respondent No. 2 Society has stated that, to the best of its knowledge, respondent No. 11 has been occupying the flat and has been paying the monthly maintenance charges for several years.

11. Learned Advocate appearing for respondent No. 10 submitted that it is not in dispute that respondent No. 3 Firm is the lawful member of respondent No. 1 Society in respect of Flat No. G 01. He submitted that the share certificate issued by respondent No. 1 Society for the said flat continues to stand in the name of respondent No. 3 Firm. According to him, the said flat is a property of the partnership firm within the meaning of Section 14 of the Partnership Act.

12. He further submitted that since there are admitted disputes regarding Flat No. G-01, this Court cannot decide the rival claims of the parties in the present proceedings. According to him, those disputes are pending before the learned Arbitral Tribunal and will have to be decided in those proceedings. He submitted that the rights of respondent No. 10, being one of the partners of respondent No. 3 Firm, are required to be protected. He pointed out that even according to the petitioner, Flat No. G 01 is lying vacant and nobody is occupying it. Therefore, he submitted that execution of the Permanent Alternate Accommodation Agreement, payment of hardship compensation, transit rent, brokerage, and all other redevelopment benefits should remain subject to the final outcome of the arbitration proceedings pending between respondent Nos. 4 to 10.

13. In support of these submissions, reliance was placed upon the following decisions. *Vaswani Projects Pvt. Ltd. v. Utsahi Maratha Mandal CHSL,* Bombay High Court order dated 3 July 2026 in Comm Arbitration Petition (L) 16351 of 2026; *Ritesh Haldar v. Elite Housing LLP*, 2025:BHC-OS:9704-DB; *DG Land Developers Pvt. Ltd. v. Apna Ghar Unit No.11 CHSL* 2026:BHC-OS-6977.

14. Without prejudice to the above submissions, learned Advocate further submitted that merely because respondent No. 8 had been dealing with respondent No. 1 Society in relation to Flat No. G-01, that by itself does not give her an exclusive right to receive the money or any other benefits arising from the redevelopment. According to him, the record shows that respondent Nos. 8, 9 and 10 were partners of respondent No. 3 Firm and disputes between them are pending in arbitration. It was further submitted that respondent No. 10, being a partner of respondent No. 3 Firm, which stands dissolved though its winding up is still not completed, has a legal right to ensure that Flat No. G-01, being an asset of the partnership firm, is first used for completing the winding up of the affairs of the firm and thereafter the remaining benefits, if any, are distributed amongst all the partners or their legal representatives according to their respective rights. He submitted that respondent No. 10 is entitled to prevent respondent No. 8 or any other partner from using the said flat for their own benefit until the affairs of the partnership firm are finally wound up, as contemplated under Sections 46 and 53 of the Partnership Act. Learned Advocate further submitted that under the Partnership Act, a partnership firm has no separate legal existence. According to him, the property of the partnership is treated as property belonging to all the partners and is held by them for the purposes of the partnership business. Therefore, every partner has an interest in the partnership property. During the continuation of the partnership, no partner can treat any part of the partnership property as his or her own exclusive property or deal with it in that manner. In support of this submission, reliance was placed upon the following judgments. *Narayanappa v. Krishtappa*, 1966 SCC Online SC 6; *Sachin Jaiswal v. Hotel Alka Raje*, 2025 SCC Online SC 446.

15. Learned Advocate submitted that where property is jointly owned by co sharers, including partners of a firm, possession of one co sharer in law amounts to possession of all the co sharers unless there is a specific plea and proof of ouster. He submitted that possession need not always mean actual physical occupation. Even constructive possession of all the co sharers is recognised in law so long as no case of ouster is either pleaded or established. For this proposition, reliance was placed upon the following decisions. *Kailash Rai v. Jai Jai Ram*, (1973) 1 SCC 527; *Vidya Devi v. Prem Prakash*, (1995) 4 SCC 496; *Nagabhushanammal v.*

Chandikeswaralingam, (2016) 4 SCC 434.

16. Learned Advocate submitted that the documents relied upon by respondent No. 8 appear on the face of the record to have been created after disputes had arisen between the parties and, therefore, according to him, they do not establish her exclusive possession over the subject flat. He submitted that the bank account opened in the name of respondent No. 3 Firm, from which respondent No. 8 claims to have paid the maintenance charges, as reflected in Exhibit A at Pages 943 and 944 of her Reply, shows payments only from 1 February 2025. According to him, this was much after respondent No. 10 had issued notice dated 24 December 2024 to the Society, with a copy to respondent No. 8, informing about dissolution of the partnership firm and asserting his claim as a partner. Reliance was placed on Exhibit W at Page 856 of the Petition. He further submitted that the certificate issued by the bank in favour of respondent No. 8 describing her as the sole proprietress of respondent No. 3, produced as Exhibit B at Page 949 of her Reply, was issued only on 16 July 2026. The certificate records that the account was maintained only from 29 January 2025. According to him, this shows that the account was opened by respondent No. 8 after disputes had started and only with a view to create a false record.

17. He submitted that the suit filed by respondent No. 8 before the City Civil Court claiming herself to be the sole proprietress of respondent No. 3, produced as Exhibit C at Page 951 of her Reply, was instituted only on 30 January 2025. He submitted that the maintenance bills and receipts issued by respondent No. 1 Society, produced as Exhibit D at Pages 1007 and 1025 to 1110 of respondent No. 8's Reply, are all issued in the name of respondent No. 3 Firm and not in the individual name of respondent No. 8. According to him, these documents do not support the claim of exclusive ownership or possession made by respondent No. 8.

18. Insofar as Flat No. 2 is concerned, learned Advocate appearing for respondent No. 2 Society submitted that it is an admitted position that respondent No. 11 is in possession and occupation of Flat No. 2. He further submitted that respondent Nos. 11 to 13 are the joint members of respondent No. 2 Society in respect of the said flat.

REASONS AND ANALYSIS:

19. I have carefully gone through the pleadings, documents placed on record, affidavits filed by the parties and considered the submissions made by the learned Advocates. From the material available before this Court, it appears that the main dispute is whether the objections raised by respondent Nos. 3 to 13 are of such nature that the redevelopment, which is accepted by almost all members, should be stopped or delayed. One more issue comes for consideration. It is whether the disputes between respondent Nos. 3 to 10 and respondent Nos. 11 to 13 can be looked into in this Petition filed under Section 9 of the Arbitration and Conciliation Act, or whether those disputes are required to be decided before the proper forum while redevelopment is allowed to continue.

20. The petitioner has relied upon the Development Agreement, supplementary agreements and the Notice to Vacate issued after completing the required formalities. The documents on record show that the Development Agreement contains an arbitration clause. It further appears that the petitioner has obtained the Intimation of Disapproval, taken the required FSI and paid the first instalment of hardship compensation to both the societies. Only after doing these things, the Notice to Vacate came to be issued. These facts are not disputed before this Court. It is not disputed that out of thirty members, twenty-eight members have agreed to vacate and have submitted their consent letters. Therefore, it appears that the redevelopment has support from almost all the members of both the societies.

21. Now the objection remains only regarding Flat No. G-01 and Flat No. 2. Therefore, this Court has to consider whether the objections relating to these two flats are sufficient for refusing the interim protection sought by the petitioner.

22. Learned Advocate appearing for respondent No. 10 submitted that Flat No. G-01 is an asset of respondent No. 3 partnership firm. According to him, disputes between the partners are pending before the learned Arbitral Tribunal. Therefore, redevelopment benefits should not be released in favour of any one partner alone. He further submitted that execution of the Permanent Alternate Accommodation Agreement, payment of hardship compensation, transit rent, brokerage, and all other redevelopment benefits should remain subject to the final result of the arbitration proceedings.

23. This submission, in my view, deserves acceptance only to a limited extent. There is some substance in the submission that disputes between the partners regarding their own rights cannot be finally decided in the present proceedings. The material placed on record shows that correspondence regarding dissolution of the partnership firm had started before filing of the present Petition. It appears that arbitration proceedings between the partners are pending. Those proceedings will decide who has rights in the partnership property and who becomes entitled to redevelopment benefits arising from that property. If this Court records any finding regarding ownership or entitlement, it may affect those pending proceedings. Therefore, such questions are neither necessary nor proper for decision in this Petition.

24. However, the further submission that redevelopment should remain pending till those disputes are decided cannot be accepted. The Development Agreement binds both the societies and all their members. The issue before this Court is not about dissolution of the partnership firm or settlement of partnership accounts. The issue before this Court is redevelopment of the society building. These two matters are different, and they operate in separate fields. If every dispute between partners, legal heirs, co-owners or family members is permitted to stop redevelopment, then no redevelopment project will ever reach completion. The purpose of Section 9 is to protect the subject matter of arbitration. It is not meant to permit private disputes of a few persons to defeat a redevelopment project which has been accepted by an majority of members.

25. Learned Advocate for respondent No. 10 relied upon Sections 46 and 53 of the Partnership Act. Therefore, those submissions require consideration. There is hardly any dispute that these provisions recognise the rights of partners after dissolution of the partnership and provide that the partnership assets should be utilised for winding up the affairs of the firm. The judgments in *Narayanappa v. Krishtappa* and *Sachin Jaiswal* explain that partnership property belongs to all the partners together and one partner alone cannot treat it as his exclusive property. This legal position is well settled.

26. However, these judgments do not lay down that redevelopment of the society building should remain stopped till the partnership accounts are finally settled. The Partnership Act regulates the rights between partners. It does not give one partner a right to indefinitely delay redevelopment undertaken under a valid Development Agreement. Therefore, while protecting the rights of all the partners, this Court can direct that redevelopment benefits shall remain subject to the final outcome of the pending arbitration without stopping redevelopment .

27. The submission regarding constructive possession requires consideration. Respondent No. 10 relied upon *Kailash Rai, Vidya Devi* and *Nagabhushanammal* and submitted that possession of one co sharer is treated in law as possession of all co sharers unless ouster is proved. This principle is well settled. Where property belongs jointly to several persons, possession of one generally enures for the benefit of all. However, even if this principle is assumed to apply in the present case, it does not carry the case of respondent No. 10 much further. Constructive possession may determine possessory rights between partners or co-owners. But it does not answer the question whether redevelopment under the Development Agreement should continue or not. Even if all the partners are treated as being in constructive possession, redevelopment cannot remain suspended for an indefinite period. Their respective proprietary as well as possessory rights can be protected while permitting redevelopment to continue.

28. Respondent No. 10 submitted that the documents relied upon by respondent No. 8 were created after disputes had arisen, and, therefore, those documents cannot establish her exclusive possession or ownership. These submissions raise disputed questions which may require detailed evidence. The dates of opening of the bank account, institution of the civil suit, issuance of the bank certificate and payment of maintenance may all become relevant while deciding the disputes between the partners. However, such disputed questions of fact cannot be finally decided in proceedings under Section 9. Those matters are required to be examined by the competent forum after recording evidence. Therefore, no final finding regarding genuineness of those documents can be recorded in the present Petition.

29. Learned Advocate appearing for respondent No. 2 Society submitted that, so far as Flat No. 2 is concerned, respondent No. 11 is admittedly in possession of the flat whereas respondent Nos. 11 to 13 are the joint members of the society. This factual position appears from the affidavits filed by the society. The society has stated that respondent Nos. 11 to 13 are joint members in the ratio of 50:25:25. It has stated that respondent No. 11 has been occupying the flat and paying maintenance charges for many years. Therefore, the dispute is not regarding redevelopment. The dispute is regarding distribution of redevelopment benefits amongst the joint members. Respondent No. 11 claims that he alone should receive all the benefits whereas respondent Nos. 12 and 13 claim proportionate shares. This is only an inter se dispute between the joint members. It neither affects the validity of the Development Agreement nor the authority of the society to carry out redevelopment.

30. The legal position on this issue is now fairly settled. The Division Bench in *Pranav Constructions Limited v. Priyadarshini Cooperative Housing Society Limited*, Arbitration Appeal (L) No. 20093 of 2025 decided on 14 July 2025 has held that disputes raised by individual members regarding redevelopment benefits, allotment of additional area or implementation of redevelopment cannot be decided in proceedings under Section 9. Such disputes have to be decided separately under Section 91 of the Maharashtra Co-operative Societies Act or by filing an appropriate civil suit, depending upon the nature of the dispute. The Court exercising jurisdiction under Section 9 is mainly concerned with protecting redevelopment and cannot decide private disputes between the members and the society. The principle laid down in *Pranav Constructions*, in my opinion, fully applies to the facts of the present case.

31. The disputes between respondent Nos. 3 to 10 and between respondent Nos. 11 to 13 are mainly regarding entitlement to redevelopment benefits. None of them challenge the validity of the Development Agreement. None of them dispute the resolution approving redevelopment. They do not dispute that redevelopment has been approved by an overwhelming majority of members. In fact, from the affidavits filed before this Court, it appears that several contesting respondents themselves have stated that they are not opposing redevelopment. Their objections arise only because of their internal disputes. Such disputes cannot be allowed to obstruct redevelopment.

32. The judgment of the Division Bench in *Ritesh Haldar v. Elite Housing LLP* gives guidance while deciding the present controversy. The Division Bench recognised the distinction between ownership rights and possessory rights. It held that although the recorded member may execute the Permanent Alternate Accommodation Agreement and receive corpus, the person who is actually in possession cannot be deprived of transit rent, alternate accommodation or protection of possession except by following due process of law. Thus, the Court balanced the rival rights without allowing redevelopment to fail. Therefore, the principle coming from *Ritesh Haldar* is that redevelopment should continue while the competing rights of the parties are properly protected. The judgment does not support the contention that redevelopment must remain pending till every private dispute reaches finality.

33. So far as Flat No. G-01 is concerned, this Court finds that two different rights are involved in the present matter. One right comes because respondent No. 3 is the recorded member of respondent No. 1 Society and because the Development Agreement has been executed on that basis. The other right comes from the disputes between respondent Nos. 4 to 10 regarding the partnership property and their respective shares in that partnership. Though both these rights concern the same flat, they are not of the same nature.

34. The material placed before this Court shows that even as on today, respondent No. 3 continues to be shown as the member in the records of respondent No. 1-Society. The Society has not produced any document showing that the membership has been transferred or that any other partner has replaced respondent No. 3 in the Society records. It also appears that the Development Agreement has been executed on the basis of these existing membership records. Therefore, so far as the Society and the petitioner are concerned, they can only proceed according to the membership position which presently exists. While exercising jurisdiction under Section 9, this Court cannot change the membership records or decide which partner becomes entitled to the partnership property. Such questions are outside the scope of the present proceedings and are required to be decided before the proper forum.

35. At the same time, the record also shows that disputes between respondent Nos. 4 to 10 relating to the partnership firm are pending. Those proceedings include questions regarding dissolution of the partnership, settlement of accounts, rights in the partnership assets and also entitlement to redevelopment benefits flowing from those assets. Such questions require detailed evidence. They cannot be examined in proceedings under Section 9. If this Court records any finding regarding ownership of Flat No. G-01 or regarding final entitlement to redevelopment benefits, such finding may affect the proceedings which are pending. Therefore, all rival rights of the partners regarding ownership and entitlement deserve to remain open.

36. However, only because such disputes are pending, redevelopment cannot be made to remain pending. If this argument is accepted, then every dispute between partners, co-owners, legal heirs or family members would become sufficient to stop redevelopment. Such a situation would defeat the object of redevelopment and would also frustrate the obligations undertaken by the societies and the petitioner under the Development Agreement. The object of Section 9 is to protect the subject matter of arbitration and to facilitate implementation of lawful contractual obligations. It is not intended to provide an opportunity to a few persons to obstruct redevelopment which has received approval from majority of the members.

37. One more aspect also requires consideration. The material placed before this Court including stand of the society shows that respondent No. 8 has paid maintenance, attended general body meetings, and paid electricity bills, whereas other contesting respondents have failed place on record any material showing their possession over said Flat No. G-01. Therefore, prima facie it appears that respondent No. 8 is the person who is occupying and using Flat No. G 01. Whether such possession gives respondent No. 8 any ownership right or whether such possession is on behalf of the partnership firm cannot be finally decided in these proceedings. Those questions are required to be left open. Even so, while granting interim protection, this Court cannot ignore the fact that respondent No. 8 is presently in actual possession because such possession has its importance during redevelopment.

38. The Division Bench in *Ritesh Haldar* has held that ownership rights and possessory rights do not go together. The Division Bench held that the recorded member may execute the Permanent Alternate Accommodation Agreement and receive redevelopment benefits flowing from the membership. At the same time, the person who is occupying the premises cannot be deprived of transit rent, alternate accommodation and protection of possession except by following due process of law. Thus, the Division Bench balanced the competing rights instead of allowing redevelopment to come to a standstill because rival claims were pending. Though the facts in the present matter are not identical, the principle laid down therein gives guidance while deciding the present controversy.

39. Applying the said principle to the facts of the present case, this Court finds that the Permanent Alternate Accommodation Agreement relating to Flat No. G 01 should be executed in the name of respondent No. 3 because respondent No. 3 continues to be the recorded member in the records of respondent No. 1 Society. Execution of such agreement is only for the purpose of carrying forward redevelopment and cannot be understood as a declaration that respondent No. 3 has ownership over the partnership property or is entitled to all redevelopment benefits.

Similarly, corpus, hardship compensation and other redevelopment benefits, except transit rent and brokerage, should also follow the existing membership records. However, all such benefits shall remain subject to the final decision in the pending arbitration proceedings and shall neither create any right nor finally conclude the disputes pending between the partners.

40. So far as transit rent and brokerage are concerned, a different consideration applies. Such payments are not made merely because a person is the owner or the recorded member. They are paid because the person who is occupying the premises has to vacate the flat and undergo hardship during redevelopment. The material available before this Court indicates that respondent No. 8 is in actual possession of Flat No. G-01. If transit rent and brokerage are denied to respondent No. 8, then the person who is required to vacate the premises would lose the protection which redevelopment intends to provide. Therefore, in my opinion, transit rent and brokerage deserve to be paid to respondent No. 8 from the date possession of the existing premises is handed over till the permanent alternate accommodation becomes available. However, such payment shall not be treated as recognition of ownership or exclusive entitlement in favour of respondent No. 8. Those payments shall continue to remain subject to the final result of the proceedings pending between the partners.

41. For the same reason, this Court is also of the view that after redevelopment is completed, possession of the permanent alternate accommodation should initially be handed over to respondent No. 8, who is presently occupying the existing premises. Such delivery of possession is only to maintain continuity of possession during the redevelopment period and also to avoid disputes and further proceedings. It cannot be understood as conferring any ownership or proprietary interest upon respondent No. 8. All rights of respondent Nos. 4 to 10 regarding ownership, possession, partnership accounts and redevelopment benefits shall continue to remain open and shall ultimately abide by the final decision of the competent forum.

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

(i) The Petition is partly allowed in terms of the following directions:

(ii) Respondent Nos. 3 to 10 and respondent Nos. 11 to 13 shall hand over vacant and peaceful possession of Flat No. G-01 and Flat No. 2 respectively to the petitioner within a period of four weeks from the date of this order;

(iii) The Permanent Alternate Accommodation Agreement in respect of Flat No. G-01 shall be executed by the petitioner in the name of respondent No. 3, whose name presently stands recorded in the records of respondent No. 1-Society. Execution of such Permanent Alternate Accommodation Agreement shall remain subject to the rights and contentions of respondent Nos. 4 to 10 in the proceedings pending between the partners of respondent No. 3. Execution of the Permanent Alternate Accommodation Agreement shall not create or extinguish any proprietary rights inter se between the partners;

(iv) The hardship compensation, corpus, and all other redevelopment benefits in respect of Flat No. G-01, except transit rent and brokerage, shall be paid deposited by the petitioner in this Court in the name of respondent No. 3. Such payment shall abide by and remain subject to the final award or orders passed in the pending proceedings between respondent Nos. 4 to 10;

(v) Since respondent No. 8 is presently found to be in possession of Flat No. G-01, the petitioner shall pay transit rent and brokerage to respondent No. 8 from the date of handing over possession of the existing flat until possession of the permanent alternate accommodation is handed over. Payment of transit rent and brokerage shall not create any equity in favour of respondent No. 8 regarding ownership of the premises and shall remain subject to the result of the pending proceedings;

(vi) Upon completion of the redevelopment project, possession of the permanent alternate accommodation in respect of Flat No. G-01 shall initially be handed over to respondent No. 8, being the person presently in possession of the existing premises. Such possession shall be purely without prejudice to the rival claims of respondent Nos. 4 to 10 and shall remain subject to the final adjudication of their rights in the pending arbitration proceedings;

(vii) In respect of Flat No. 2, the Permanent Alternate Accommodation Agreement shall be executed by the petitioner in the joint names of respondent Nos. 11 to 13 in the same manner in which their membership presently stands recorded in the records of respondent No. 2 Society. Execution of such agreement shall remain subject to the rights and contentions of respondent Nos. 11 to 13 in any proceedings concerning their respective shares and entitlement;

(viii) The hardship compensation, corpus, and all redevelopment benefits in respect of Flat No. 2, except transit rent and brokerage, shall be disbursed in accordance with the membership records of respondent No. 2 Society, without prejudice to the rival claims of respondent Nos. 11 to 13 and subject to the final outcome of any proceedings between them;

(ix) Since respondent No. 11 is admittedly in possession of Flat No. 2, the petitioner shall pay transit rent and brokerage to respondent No. 11 from the date of handing over possession of the existing premises until possession of the permanent alternate accommodation is delivered. Such payment shall not confer any additional ownership or exclusive right upon respondent No. 11 and shall remain subject to the final adjudication of the disputes between respondent Nos. 11 to 13;

(x) Upon completion of redevelopment, the petitioner shall hand over possession of the permanent alternate accommodation relating to Flat No. 2 to respondent No. 11, being the present occupant of the premises. Such possession shall remain subject to the final determination of the rights of respondent Nos. 11 to 13 in the appropriate proceedings;

(xi) In the event respondent Nos. 3 to 13 fail to hand over possession within the period stipulated above, the Court Receiver, High Court, Bombay, is appointed Receiver of Flat No. G-01 and Flat No. 2 with all powers under Order XL Rule 1 of the Code of Civil Procedure, including power to take forcible possession with police assistance, if necessary, and to hand over possession to the petitioner for implementation of the redevelopment project;

(xii) The Court Receiver is further authorised to execute all redevelopment documents, including the Permanent Alternate Accommodation Agreement and all ancillary documents, on behalf of any defaulting respondent if such respondent fails to execute the same despite service of notice;

(xiii) All rival claims, rights and contentions of respondent Nos. 4 to 10 in relation to Flat No. G-01 and of respondent Nos. 11 to 13 in relation to Flat No. 2 are expressly kept open. Nothing contained in this order shall amount to a final adjudication of their proprietary, possessory or monetary rights, all of which shall be decided by the competent forum in accordance with law;

(xiv) It is clarified that the directions contained in this order are issued only to facilitate implementation of the redevelopment project and shall not prejudice the merits of the arbitration proceedings or any other proceedings pending or to be instituted between the contesting parties;

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

(AMIT BORKAR, J.)