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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.20037 OF 2026
WITH
IN PERSON APPLICATION (L) NO.21781 OF 2026

Adityaraj Homes

... petitioner

Vs.

1. Hazara Cooperative Housing
Society Limited
2. Suchitra Suresh Murudkar
3. Suresh Baburao Murudkar
4. Sandeep Suresh Murudkar
5. Yogesh Suresh Murudkar

... respondents

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Mr. Mohanish Chaudhari for the petitioner.

Ms. Apeksha Sharma for respondent No.1.

Mr. Mohit Singh for respondent Nos.2 to 5.

CORAM : AMIT BORKAR, J.

RESERVED ON : JULY 24, 2026.

PRONOUNCED ON : JULY 28, 2026

JUDGMENT:

1. The petitioner has filed this Petition asking for interim relief against the only non co-operating member of respondent No.1 Society. Respondent Nos.2 to 5 are joint owners of one residential

flat. The relief is asked so that the redevelopment work of the Society can go ahead without delay.

2. The record shows that on 14 July 2025, a Development Agreement was executed between the petitioner and respondent No.1 Society. Thereafter, on 4 August 2025, the petitioner paid a sum of Rs.49,42,200/- to 47 members of respondent No.1 Society as the first instalment of hardship compensation. On the same day, the petitioner deposited the cheques meant for respondent Nos.2 to 5 with respondent No.1 Society. On 23 December 2025, the petitioner paid the FSI premium of Rs.6,33,70,795/ for the subject property. Thereafter, on 30 December 2025, the petitioner addressed a letter to respondent No.1 informing that the FSI premium had been paid and requested the members to start searching for transit accommodation. On 19 January 2026, the petitioner obtained the NOC for the Intimation of Approval as well as the NOC for the Commencement Certificate upto the plinth level.

3. On 23 January 2026, the petitioner informed respondent No.1 Society by a letter that the above NOCs had been received. Thereafter, on 1 April 2026, the petitioner obtained the Intimation of Approval for the redevelopment project. On 2 April 2026, the petitioner again wrote to respondent No.1 Society informing them that the Intimation of Approval had been received. By the same letter, the members were requested to vacate their old premises and hand over possession within thirty days.

4. On 24 April 2026, respondent No.1 Society informed the petitioner by its letter that respondent Nos.2 to 5 were the only non co-operating members in the redevelopment project. Thereafter, on 30 April 2026, respondent No.1 Society requested the petitioner to permit the members to continue staying in their old premises at least till 10 June 2026. Finally, on 27 May 2026, respondent No.1 Society addressed a letter to respondent Nos.2 to 5 calling upon them to confirm the date on which they would vacate their old flat. As the flat has still not been vacated and possession has not been handed over, the present Petition seeking interim measures has been filed.

5. Learned Advocate for the petitioner submitted that it is an admitted position that respondent Nos.2 to 5 have never challenged any resolution passed by the General Body of respondent No.1 Society regarding redevelopment of the property. However, they have not formally signed the Development Agreement. It is submitted that respondent No.2 has deliberately remained silent on the issue and has not taken any clear stand. According to the petitioner, respondent Nos.2 to 5 are unnecessarily creating obstacles in the redevelopment project. Though they were repeatedly requested, respondent No.2 has neither informed the petitioner about the date on which the old flat would be vacated nor agreed to hand over possession for demolition. Even after being specifically asked to give a definite date, respondent No.2 has not replied either for herself or on behalf of the other co-owners. It is submitted that this conduct is deliberate and shows a lack of cooperation which every member is

expected to extend in the redevelopment process. The petitioner submitted that all the other members of respondent No.1 Society have agreed to vacate and hand over possession of their premises by the middle of June 2026. If respondent Nos.2 to 5 alone do not vacate their single flat without any valid reason, the entire redevelopment work will come to a standstill.

6. It is submitted that as early as 30 December 2025, the petitioner had informed all the members of respondent No.1 Society to start looking for transit accommodation. According to the petitioner, sufficient notice and repeated reminders were given. Although the members were originally expected to vacate by early May 2026, the petitioner, acting in good faith, extended the time till the middle of June 2026. It is submitted that once the remaining members vacate their premises, the petitioner will become liable to pay them transit rent and other amounts payable under the Development Agreement. Therefore, according to the petitioner, it would be unfair and contrary to law if respondent Nos.2 to 5, who occupy only one flat and are the only non-cooperating occupants, are allowed to keep the entire redevelopment project on hold while at the same time forcing the petitioner to bear recurring monthly expenses without any justified reason. It is submitted that such non-cooperation by a small number of occupants is one of the main reasons why several redevelopment projects in the city fail. On these grounds, the petitioner contended that the conduct of respondent Nos.2 to 5, individually as well as jointly, is unjustified and cannot be permitted in law.

7. Learned Advocate for respondent Nos.2 to 5 submitted that the Development Agreement has been executed fraudulently. According to him, the Agreement shows certain persons as members and occupants of flats on the seventh floor, even though no such seventh floor exists in the building. On this basis, he contended that the Development Agreement is not genuine and cannot be relied upon.

8. He submitted that the petitioner has an alternative remedy available under Section 95A of the MHADA Act. According to him, instead of seeking the present reliefs before this Court, the petitioner ought to have taken recourse to the remedy provided under the said provision.

9. It was submitted that although it is claimed that 47 out of 48 members have agreed to the redevelopment project, in reality none of those members has actually vacated and handed over possession of their respective premises. According to respondent Nos.2 to 5, the petitioner's case that only one flat is holding up the redevelopment is therefore factually incorrect.

REASONS AND ANALYSIS:

10. I have carefully gone through the Petition, the papers placed on record and considered the submissions made by the learned Advocates for both sides.

11. Most of the facts are not disputed. The record shows that the Development Agreement is executed between the petitioner and respondent No.1 Society. It appears that the Society accepted the redevelopment proposal and after that the petitioner started taking

steps for moving the project ahead. The petitioner has paid hardship compensation to almost all members. FSI premium is paid. Necessary NOCs are obtained. Intimation of Approval is received. After that, letters were sent asking the members to search for transit accommodation and vacate the old premises. The record show that according to the Society, only respondent Nos.2 to 5 have not agreed to hand over possession of their flat. These facts are supported by documents placed before this Court.

12. The first submission of the petitioner is that respondent Nos.2 to 5 never challenged any General Body Resolution approving the redevelopment. Even then, they did not sign the Development Agreement, and they did not hand over possession of their flat. According to the petitioner, they have only remained silent and have not even informed on which date they will vacate. Because of this conduct, the entire redevelopment work is getting stopped.

13. If any member is not satisfied with a decision taken by the Society, law always provides remedy for challenging such decision. But only continuing to remain in possession without taking any proceeding against the redevelopment cannot become a reason for keeping the project stopped. Mere silence cannot take place of a challenge. Therefore, to this extent, the submission of the petitioner appears to have merit.

14. The petitioner has submitted that sufficient notices were given asking all members to make arrangements for transit accommodation. Though members were first expected to vacate

earlier, later the time was extended till the middle of June 2026. According to the petitioner, once the remaining members vacate, the petitioner has to start paying transit rent and other amounts under the Development Agreement. If only one flat still remains occupied, then every month the petitioner will have to continue paying those amounts though demolition of the building cannot even begin. This submission cannot be ignored. In redevelopment matters, obligations are upon both sides. When the developer has started performing many obligations and most members are acting according to the redevelopment scheme, delay caused by one occupant may affect the entire project. At the same time, only because the developer may suffer financial loss cannot by itself become enough ground for granting relief. This Court still has to see whether the right claimed by the petitioner is supported by law.

15. The learned Advocate for respondent Nos.2 to 5 submitted that the Development Agreement is fraudulent because some persons are shown as occupants of the seventh floor though, according to him, no seventh floor is existing in the building. This submission is certainly serious because allegation of fraud cannot be put aside easily. But making allegation and proving allegation are two matters. Except making this statement, no material is placed before this Court at this stage to show how this alleged mistake has affected the execution of the Development Agreement or made the resolutions of the Society invalid. Whether really fraud has happened, whether some entries are incorrect, whether any document is fabricated or whether somebody is wrongly

shown as occupant are all disputed questions. Such issues normally require evidence. They cannot be finally decided while considering a Petition under Section 9. Therefore, though this contention is noted, this Court is not able at this prima facie stage to hold that the Development Agreement becomes unenforceable only because such allegation is made.

16. The second submission of respondent Nos.2 to 5 is that the petitioner has another remedy under Section 95A of the MHADA Act and therefore this Court should not exercise powers under Section 9. This argument deserves consideration. Sometimes another remedy being available may have some relevance. But only because one more remedy exists, it does not mean that Section 9 cannot be invoked. Both provisions are operating in fields. Proceedings under Section 95A are for obtaining possession under that statute. Proceedings under Section 9 are for granting temporary protection in aid of arbitration. Therefore, the purpose of both provisions is not the same. Hence, only because remedy under Section 95A may be available, it cannot be said that powers under Section 9 go away. Therefore, this submission cannot be accepted as a bar.

17. Respondent Nos.2 to 5 have submitted that though it is stated forty-seven members have agreed for redevelopment, actually none of them has yet vacated the premises. If this factual position is correct, it may indicate that the redevelopment has not yet reached the stage where only one flat is creating obstruction. Therefore, this submission has some relevance while considering urgency. However, the documents produced by the petitioner show

that the Society informed the petitioner that respondent Nos.2 to 5 were the only non-cooperating occupants and had requested that occupation may continue till a particular date. At least at the prima facie stage, these documents support the petitioner's case. At present, no sufficient material is placed before this Court to dislodge those documents. Therefore, this contention does not weaken the petitioner's case.

18. The position on this issue is now clear. 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 explained the scope of powers under Section 9. It is held that disputes regarding validity of General Body resolutions, entitlement to larger area, manner in which redevelopment is carried out or complaints against decisions of the Society have to be taken before the proper forum under the Maharashtra Co operative Societies Act or by filing an appropriate Civil Suit depending upon the nature of the dispute. Such questions are outside the limited inquiry under Section 9. The Division Bench has held that once redevelopment is approved by the required majority and the Development Agreement is executed, one member cannot stop redevelopment because he has some grievance against the Society. Such grievance may continue and may even succeed before the competent forum. But it cannot become a ground for refusing interim protection under Section 9. In the opinion of this Court, this principle applies to the facts of the present matter.

19. This Court finds that the allegations made by respondent Nos.2 to 5 regarding fraud in the Development Agreement, showing occupants on the alleged seventh floor and other complaints are in substance challenges to the actions taken by the Society. Whether those allegations are correct or not is not the issue before this Court in the present proceedings. If respondent Nos.2 to 5 desire, they are always at liberty to approach the competent forum and take such remedies as are available under law. But these allegations cannot become sufficient reason to refuse interim protection under Section 9, when no order is placed before this Court staying either the redevelopment resolutions or the Development Agreement.

20. This Court cannot ignore that redevelopment concerns all members. If the whole project is delayed because of dispute raised by only a few occupants, the effect is not only upon the developer but upon all remaining members who are waiting for redevelopment to move. At the same time, rights of respondent Nos.2 to 5 cannot be ignored. Those rights remain protected because whatever is decided in this Petition is for the present stage. Their independent claims regarding validity of redevelopment or any other grievance are kept open, and they may always be decided in separate proceedings before the competent forum.

21. After considering the entire material placed before this Court, this Court finds that the petitioner has made out a prima facie case for grant of interim protection. The balance of convenience, at present, appears to be in favour of allowing the

redevelopment work to continue. If interim protection is refused, the redevelopment project may remain stopped and this is likely to cause prejudice not only to the petitioner but to all members who have agreed for redevelopment. On the other hand, if respondent Nos.2 to 5 succeed before the competent forum regarding their separate grievances, appropriate relief according to law can still be granted to them. Therefore, at this stage, refusal of interim protection is likely to cause greater prejudice than its grant.

22. For all these reasons, though some submissions made by respondent Nos.2 to 5 may require detailed examination in separate proceedings, they do not provide sufficient ground for refusing interim relief under Section 9 of the Arbitration and Conciliation Act. The principles laid down by the Division Bench in *Pranav Constructions Limited* apply to the present matter. Applying those principles to the facts before this Court, this Court is satisfied that the petitioner has made out a case for grant of interim measures. This is however subject to the final result of the arbitral proceedings and without expressing any final opinion on the rights and remedies of respondent Nos.2 to 5 before the competent forum.

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

- (i) The Petition is allowed;
- (ii) Pending the constitution of the Arbitral Tribunal, the hearing and final disposal of the arbitral proceedings and the enforcement of the arbitral award that may be passed,

respondent Nos.2 to 5 are directed to vacate and hand over quiet, vacant and peaceful possession of Flat No.505 in Building No.6, Hazara Co operative Housing Society Ltd., MHB Colony, Near Gurudwara, Opposite Everard Nagar, Chunabhatti, Sion, Mumbai 400022 to the petitioner within a period of four weeks from the date of this order;

(iii) In the event respondent Nos.2 to 5 fail to comply with clause (ii) above within the stipulated period, the Court Receiver, High Court, Bombay, shall stand appointed as Receiver of Flat No.505 in Building No.6, Hazara Co operative Housing Society Ltd., MHB Colony, Near Gurudwara, Opposite Everard Nagar, Chunabhatti, Sion, Mumbai 400022, with all powers under Order XL Rule 1 of the Code of Civil Procedure;

(iv) The Court Receiver shall be entitled to enter the said flat, remove the occupants together with their articles, furniture, goods and belongings, take vacant and peaceful possession thereof and hand over possession to the petitioner;

(v) If necessary, the Court Receiver shall be entitled to seek police assistance from the jurisdictional Senior Police Inspector for implementation of this order. On such request being made, the concerned police authorities shall render all necessary assistance to the Court Receiver for effective execution of this order;

(vi) It is clarified that this order is passed only as an interim measure under Section 9 of the Arbitration and Conciliation Act, 1996. The observations made in this order are prima facie in nature and shall not prejudice the rights and contentions of the parties in the arbitral proceedings or in any other proceedings which respondent Nos.2 to 5 may initiate before the competent forum regarding their independent grievances;

(vii) The petitioner shall continue to comply with all obligations undertaken under the Development Agreement, including payment of transit rent, hardship compensation and other benefits payable to respondent Nos.2 to 5 in accordance with the terms of the Development Agreement upon their handing over possession;

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

(ix) All pending Interim Applications, if any, stand disposed of.

(AMIT BORKAR, J.)