

AGK

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

COMM ARBITRATION PETITION (L) NO.23506 OF 2026

Digitally
signed by
ATUL
GANESH
KULKARNI
Date:
2026.08.18
12:55:53
+0530

Tricity Realty LLP

... Petitioner

Vs.

1. Sandeep Park Cooperative
Housing Society Limited

2. Madan Lamba

2(a) Meena Lamba

3. Rummy Kumar

4. Ravi Kumar

... Respondents

Mr. Mayur Khandeparkar with Mr. Vikramjit Garewal,
Ms. Darshita Parekh, Mr. Harshil Parekh, and Ms.
Praharshi Saxena i/by M/s. Purnanand & Co., for the
Petitioner.

Mr. Bhavik Lalan with Ms. Gauri Joshi i/by Ganesh &
Co., for Respondent No.1.

Mr. Pawan Rajpal for Respondent No.2.

Mr. Rohan Savant with Ms. Parita Mashruwala i/by
Jayakar & Partners for Respondent Nos.3 and 4.

CORAM : AMIT BORKAR, J.

RESERVED ON : AUGUST 13, 2026.

PRONOUNCED ON : AUGUST 18, 2026

JUDGMENT:

1. By the present Petition filed under Section 9 of the Arbitration and Conciliation Act, 1996, the Petitioner, amongst other reliefs, seeks urgent interim measures against Respondent Nos. 2 to 4. The Petitioner seeks directions requiring them to cooperate with the redevelopment of the property belonging to Respondent No. 1 Society and to hand over vacant and peaceful possession of their respective premises situated in the said property.

2. The facts and circumstances leading to the filing of the present Petition, according to the Petitioner, are as follows. In the Special General Meeting, referred to as the “SGM”, held on 9 July 2023, Respondent No. 1 Society resolved to appoint the Petitioner as the developer for redevelopment of its property. On 7 August 2023, the Deputy Registrar, Co-operative Societies confirmed the appointment of the Petitioner as the developer. On 22 November 2023, Respondent No. 1 Society issued a Letter of Intent in favour of the Petitioner. On 10 November 2024, the members unanimously approved the Development Agreement, referred to as the “DA”, the Power of Attorney and other documents relating to redevelopment. On 15 December 2024, the Petitioner, Respondent No. 1 Society and the majority of its members executed the DA for redevelopment of the property. Respondent Nos. 2 to 4, however, did not execute the DA. On 8 March 2026, Respondent No. 1 Society passed a resolution authorising circulation of Consent Letters to all its members. It was resolved that those members who failed to submit the Consent Letters would be treated as Non-

Cooperating Members. Accordingly, on 11 March 2026, Consent Letters were circulated to all members by email.

3. On 2 June 2026, the Municipal Corporation of Greater Mumbai issued an Intimation of Disapproval, referred to as the “IOD”, in respect of the redevelopment project. On 11 June 2026, the Petitioner issued a notice calling upon the members to vacate their premises under Clause 3(c) of the DA. On 12 June 2026, separate notices were issued to Respondent Nos. 2 to 4 calling upon them to execute the Consent Letters within four days. Respondent No. 3 accepted service of the notice. Respondent No. 2 refused to accept service, while Respondent No. 4 could not be served as his premises were found locked. On 15 June 2026, the Advocates for the Petitioner issued a notice to Respondent No. 2 by courier and email calling upon him to cooperate with the redevelopment process and hand over possession of his premises. Similarly, on 17 June 2026, the Petitioner’s Advocates issued a notice to Respondent No. 4 by courier and email calling upon him to cooperate with the redevelopment process. On 18 June 2026, Respondent No. 1 Society approved the draft Permanent Alternate Accommodation Agreement in its SGM. On 25 June 2026, Respondent No. 1 Society informed the Petitioner that, despite the efforts made by the Society, Respondent Nos. 2 to 4 had failed to cooperate with the redevelopment. The Society, therefore, requested the Petitioner to take appropriate legal proceedings against them. On 1 July 2026, the Petitioner invoked arbitration under Section 21 of the Arbitration and Conciliation Act, 1996 by issuing a notice invoking arbitration to the Respondents. It is in

these circumstances that the present Petition has been filed.

4. Mr. Khandeparkar, learned Advocate appearing for the Petitioner, submitted that Respondent No. 1 Society has in all 36 members, out of which 33 members are consenting members. Respondent No. 1 Society is the owner of the land bearing CTS No. 688 together with 14 row houses and one multi storeyed building consisting of 22 residential flats standing thereon, referred to as the “Property”. Respondent No. 2 and Respondent No. 2(a) are co-owners of Row House No. A-004. Respondent No. 3 is the owner of Row House No. A-011 and Respondent No. 4 is the owner of Row House No. A-012.

5. Mr. Khandeparkar submitted that 30 out of 36 members have vacated their respective premises. According to him, the existing buildings are in a dilapidated condition. Respondent Nos. 2, 2(a), 3 and 4 have still not vacated their respective premises. It is submitted that Respondent Nos. 3 and 4 are not residing in their respective premises. According to the Petitioner, Respondent Nos. 2, 2(a), 3 and 4 are required to be treated as Non-Cooperating Members as they have failed to execute the DA dated 15 December 2024, have not furnished the Consent Letters circulated by the Society pursuant to the resolution dated 8 March 2026 and have failed to hand over vacant possession of their respective premises to Respondent No. 1 Society.

6. In relation to the objection raised by Respondent No. 2 regarding the location and floor of the flats proposed to be allotted to him, Mr. Khandeparkar submitted that the allotment of flats to

all members, including Respondent No. 2, was resolved in the Special General Body Meeting of Respondent No. 1 Society held on 25 August 2024. According to him, Respondent No. 2 had voted in favour of the said resolution. He submitted that the grievance of Respondent No. 2 that he should be allotted flats on a higher floor has been raised for the first time in his Affidavit in Reply and is an afterthought. According to the Petitioner, Respondent No. 2 had accepted the allotment in the meeting dated 25 August 2024 and had voted in favour of approval of the DA. It is submitted that Respondent No. 2 is fully aware that, under Clause 3(c) of the DA, payment of rent is connected with the process of members vacating their premises and that a majority of the members who have vacated are awaiting such benefits. According to the Petitioner, Respondent No. 2 is withholding possession only to press for allotment of flats on a higher floor. It is, therefore, submitted that appropriate costs should be imposed and Respondent No. 2 should be directed to vacate the premises.

7. In relation to the issue of parking raised by Respondent No. 2, Mr. Khandeparkar submitted that Respondent No. 2 is seeking parking at the podium level. He submitted that the DA provides that car parking spaces for the members shall be provided at the second basement level. Mr. Khandeparkar submitted that the other contentions raised in the Affidavit in Reply filed on behalf of Respondent No. 2 were not pressed during the hearing.

8. In relation to the objections of Respondent Nos. 3 and 4 concerning the location, floor, and wing of the new flats, Mr. Khandeparkar submitted that the resolution passed in the Special

General Body Meeting dated 25 August 2024 provided that the allotment of new flats was to be made sequentially with reference to the respective Row House numbers. According to him, the allocation was carried out tower-wise and according to the entitlement area of the respective members. It is submitted that the Row Houses of Respondent Nos. 3 and 4 had a different configuration and an area of about 600 sq. ft. each, which was smaller than the other Row Houses. According to the Petitioner, considering their entitlement area, their entitlement could be accommodated within the layout of 2BHK flats in Tower A. Therefore, Respondent Nos. 3 and 4 were each allotted two 2BHK flats in Tower A. The allotment was made sequentially and from the lower floors upwards, in accordance with the resolution passed in the meeting dated 25 August 2024.

9. Regarding the contention of Respondent Nos. 3 and 4 that the allotment chart was contrary to the resolution passed in the Special General Body Meeting dated 25 August 2024, Mr. Khandeparkar submitted that the draft allotment chart was prepared by Respondent No. 1 Society and circulated amongst the members by email dated 15 August 2024. According to him, Respondent Nos. 3 and 4 had received the allotment chart and had responded to it. The Petitioner relies upon the emails of Respondent Nos. 3 and 4 dated 15 August 2024 and 24 August 2024 in this regard. It is submitted that the allotment chart was approved in the Special General Body Meeting dated 25 August 2024 and was subsequently circulated to all members by email dated 2 September 2024.

10. In relation to the contention that other Row House owners have been allotted 3BHK flats either in Tower A or Tower C, whereas Respondent Nos. 3 and 4 have been allotted 2BHK flats in Tower A, Mr. Khandeparkar submitted that the allocation was made tower-wise having regard to the entitlement area of each member. According to him, the Row Houses of Respondent Nos. 3 and 4 were smaller than the other Row Houses. Therefore, according to their respective entitlement areas, they were allotted two 2BHK flats each in Tower A.

11. As regards the contention that the allotment chart was not final under Clause 5(c) of the DA, Mr. Khandeparkar submitted that Clause 5(c) only gives the power and responsibility of allotment of flats and parking to Respondent No. 1 Society and not to the Petitioner. According to him, the said clause does not mean that an allotment made by the Society stands cancelled or becomes unsettled. He submitted that Clause 5(d) of the DA provides that, if there is any change in the orientation or location of a member's flat, the Petitioner may make necessary changes in the plans after obtaining written permission from the affected member or members. According to him, this provision indicates that the allotment had been decided. It is submitted that Respondent Nos. 3 and 4, who are admittedly not residing in their respective premises, approached the Petitioner only after issuance of the IOD. According to the Petitioner, when they were informed that the flats desired by them were not available, they raised the present grievance. The Petitioner contends that Respondent Nos. 3 and 4 are withholding their cooperation and possession despite knowing

that the majority of the members have vacated their premises and are awaiting the benefits arising under Clause 3(c) of the DA. The Petitioner contends that Respondent Nos. 3 and 4 were aware of their proposed allotment even before the meeting dated 25 August 2024. It is, therefore, submitted that they should be directed to vacate and appropriate costs should be imposed.

12. The submissions and documents placed on record show that Respondent No. 1 Society has supported the case of the Petitioner and has held the manner in which the entitlement and allotment of the members was considered by the Society.

13. Respondent No. 1 Society has filed an Affidavit stating that, in its Special General Body Meeting held on 22 October 2023, the area entitlement of each member was discussed and an entitlement chart showing the carpet area to be made available to the respective members was approved. The Society has stated that Respondent Nos. 3 and 4 had a different and smaller configuration compared to the other bungalow units. According to the Society, the areas of Bungalow Nos. A-001 to A-005 were 882 sq. ft. each, the areas of Bungalow Nos. A-006 to A-010 were 898 sq. ft. each, and Bungalow Nos. B-001 and B-002 had an area of 787 sq. ft. each. In comparison, Bungalow Nos. A-011 and A-012 belonging to Respondent Nos. 3 and 4 respectively had an area of only 600 sq. ft. each. The Society has stated that, after approval of the entitlement chart, it issued the Letter of Intent dated 22 November 2023 in favour of the Petitioner accepting the commercial offer made by the Petitioner. The approved entitlement chart was annexed to the Letter of Intent. According to the Society, the

entitlement chart annexed to the Letter of Intent was the same chart which had been approved in the Special General Body Meeting held on 22 October 2023. It is, therefore, the case of the Society that the entitlement of all the members had been fixed. The Society has relied upon Clause 7(4) of the Letter of Intent, which provides as follows:

“The new flats to be provided to the members will be from lowest residential floor and upwards. Society may allot the same amongst its members. This shall be undertaken as per rules, regulations and bye-laws of the Society read with regulations passed from time to time.”

14. It is stated that, under the Letter of Intent, if any member intended to purchase additional area, such purchase was required to be finalised within 30 days from the date of the Letter of Intent. This was necessary so that the Petitioner could finalise the layout and design and incorporate the same in the Development Agreement. The Society has stated that on 27 July 2024, the Petitioner made a presentation before all members of the Society in relation to the redevelopment proposal and the details of the project. The presentation included details of the tower-wise allocation proposed for the members. According to the Society, the relevant details were circulated to the members by email on 15 August 2024. The Society held a Special General Body Meeting on 25 August 2024. According to the Society, the allocation as per the chart circulated to the members was accepted by the General Body and a resolution was passed in that regard. The Society has stated that, due to an oversight, the chart was not annexed to the minutes of the said meeting which were filed along with the

Affidavit in Reply. It is stated that Respondent Nos. 3 and 4 were aware of the agenda of the meeting, but they chose to remain absent. The Society relies upon the attendance sheet of the said meeting in support of this contention.

15. Mr. Rajpal, learned Advocate appearing for Respondent No. 2, submitted that the flat proposed to be allotted to Respondent No. 2 faces the Metro Railway Station and, according to him, the location is therefore not suitable. His second submission concerns the proposed parking arrangement. According to Respondent No. 2, the parking proposed for him is not suitable, and he requires a parking space at the podium level.

16. Mr. Savant, learned Advocate appearing for Respondent Nos. 3 and 4, invited my attention to the relevant clauses of the Development Agreement. He submitted that, as consideration for grant of development rights, the Petitioner had agreed to provide each member of the Society with a flat in the new redevelopment project. He relied upon sub-clause (viii) of Clause 4 of the Development Agreement to submit that the responsibility for allotment of the respective flats of the members was placed upon the Society and the developer was required to provide necessary assistance and cooperation to the Society for this purpose.

17. Mr. Savant relied upon Clause 5(c), which provides the procedure for allotment of flats to the members in the new building. According to him, after the developer identifies the premises to be provided to the members in the new building, the responsibility of allocation and distribution amongst the members

remains with the Society. The Society is then required to communicate such allocation to the developer in writing. He submitted that, according to Respondent Nos. 3 and 4, the Society has till date not informed them about the final allocation of their respective new premises.

18. Mr. Savant invited my attention to Clause (I) of the Development Agreement. He submitted that the said clause contemplates that, before a member vacates his existing premises, the developer and the concerned existing member are required to execute a standard individual agreement approved by the developer and the Society in respect of the new premises. Such agreement is required to specify the details of the premises proposed to be allotted to the concerned member. He submitted that Respondent Nos. 3 and 4 were assured by the Petitioner and Respondent No. 1 Society that the owners of the Row Houses would be allotted 3BHK flats either in Tower A or Tower C. According to him, the proposed allotment shown to Respondent Nos. 3 and 4 is contrary to the discussions held between the parties and contrary to the resolution dated 25 August 2024. He submitted that the allotment of the new flats was required to be made sequentially with reference to the respective Row House numbers of the members. According to Respondent Nos. 3 and 4, this principle has not been followed by the Petitioner and Respondent No. 1 Society. On this basis, it is submitted that Respondent Nos. 3 and 4 cannot be directed to hand over possession of their respective premises.

REASONS AND ANALYSIS:

19. I have considered the submissions made by Mr. Khandeparkar, learned Advocate for the Petitioner, Mr. Rajpal, learned Advocate for Respondent No. 2 and Mr. Savant, learned Advocate for Respondent Nos. 3 and 4. I have considered the affidavit filed by Respondent No. 1 Society, the Development Agreement dated 15 December 2024, the resolutions and allotment documents placed on record. I have considered the decision of 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.

20. The question is whether, in facts of the present case, these objections are sufficient to permit Respondent Nos. 2 to 4 to continue withholding possession of their respective premises and thereby keep the entire redevelopment project held up, though majority of members have accepted the redevelopment arrangement and acted upon the same.

21. The factual position does not appear to be disputed. Respondent No. 1 Society consists of 36 members. According to the Petitioner, 33 members are consenting members. It is stated that 30 out of 36 members have vacated their premises. The redevelopment process has gone much beyond the stage of only a proposal. The Petitioner was appointed as the developer pursuant to resolutions passed by the Society. A Letter of Intent was issued in favour of the Petitioner., the Development Agreement dated 15 December 2024 was executed by the Petitioner, Respondent No. 1

Society and majority of its members. The IOD was issued on 2 June 2026. Notices were issued calling upon the members to vacate their respective premises.

22. Thus, it can be seen that the redevelopment project has proceeded ahead. The material placed before the Court indicates that majority of members have accepted the redevelopment process and most of them have vacated their respective premises. The objections raised by Respondent Nos. 2 to 4 are required to be considered in this factual background. The Court cannot overlook the position of a large number of members who have acted upon the decisions of the Society and vacated their homes for redevelopment.

23. Mr. Rajpal, learned Advocate appearing for Respondent No. 2, has raised two objections. The first objection concerns the location of the flat proposed to be allotted to Respondent No. 2. According to him, the said flat faces the Metro Railway Station and is, therefore, not suitable. The second objection concerns parking. Respondent No. 2 desires that parking should be provided at podium level.

24. So far as the first objection is concerned, the Petitioner has relied upon the Special General Body Meeting dated 25 August 2024. According to the Petitioner, allotment of flats to all members, including Respondent No. 2, was considered and resolved in the said meeting. It is submitted that Respondent No. 2 had voted in favour of the said resolution and had voted in favour of approval of the Development Agreement. According to the

Petitioner, grievance regarding allotment of a flat on higher floor has been raised by Respondent No. 2 for the first time in his Affidavit in Reply. At this stage, it may not be necessary to decide whether Respondent No. 2, because of his conduct, has given up every objection regarding location of his proposed flat. That question may depend upon exact wording of the resolution, the allotment chart and other surrounding circumstances. However, what is material for present purpose is that the record before the Court does not show that Respondent No. 2 had raised this objection at the time when allotment and redevelopment proposal were being considered by the General Body. The grievance that proposed flat is facing the Metro Railway Station is essentially an individual grievance relating to location and suitability of the flat. By, such grievance does not show that entire redevelopment process is illegal or that the Petitioner has no right to proceed with redevelopment. At this stage, there is no material before this Court to show that proposed allotment to Respondent No. 2 is outside his entitlement or contrary to any resolution in such manner that the entire redevelopment project is required to remain stopped.

25. The objection regarding parking stands on similar footing. The Petitioner relies upon the Development Agreement and submits that car parking spaces are to be provided at the second basement level. Respondent No. 2 desires parking at podium level. Such desire for parking at a particular level cannot become sufficient reason for refusing to vacate existing premises. The present proceedings under Section 9 cannot be converted into adjudication regarding preference of one member as to particular

level on which his parking should be provided.

26. The submissions made on behalf of Respondent Nos. 3 and 4 require different consideration because Mr. Savant has relied upon provisions of the Development Agreement. It is submitted that responsibility for allotment of respective flats is placed upon Respondent No. 1 Society. Reliance is placed upon Clause 4(viii) and Clause 5(c) of the Development Agreement. It is contended that the Society has to allocate and distribute the premises amongst its members and inform the developer in writing. It is submitted that Respondent Nos. 3 and 4 have not been informed about their final allocation. Mr. Savant has relied upon the provision requiring execution of an individual agreement before vacation of the existing premises. Such agreement is to contain details of new premises proposed to be allotted to concerned member. According to the learned Advocate, Respondent Nos. 3 and 4 were assured that Row House owners would be given 3BHK flats either in Tower A or Tower C. The proposed allocation shown to them is contrary to such understanding and contrary to the resolution dated 25 August 2024.

27. These submissions cannot be brushed aside. The Development Agreement has to be given its proper meaning. If the agreement places responsibility of allocation upon the Society, such arrangement cannot be ignored. Similarly, if there is any binding procedure regarding manner in which the flats were to be allotted, the same is required to be followed. However, after considering the material placed before the Court, I do not find sufficient material at this interim stage to hold that proposed

allocation to Respondent Nos. 3 and 4 is prima facie arbitrary or contrary to decisions taken by Respondent No. 1 Society. The affidavit filed by Respondent No. 1 Society gives detailed explanation regarding entitlement of members and basis on which allocation was made. Respondent No. 1 Society has stated that in the Special General Body Meeting held on 22 October 2023, area entitlement of each member was discussed, and an entitlement chart was approved. According to the Society, the entitlement chart was annexed to the Letter of Intent dated 22 November 2023. The Society has pointed out that the Row Houses of Respondent Nos. 3 and 4, namely, A-011 and A-012, each have an existing area of 600 sq. ft. Other Row Houses have larger areas. The affidavit refers to areas of 882 sq. ft., 898 sq. ft. and 787 sq. ft. in respect of different categories of Row Houses.

28. This difference in existing area cannot be ignored. The case of the Petitioner and the Society is that allocation was made by considering the entitlement area and configuration of proposed redevelopment buildings. According to them, Respondent Nos. 3 and 4 could be accommodated within the grid of 2BHK flats in Tower A and, accordingly, two 2BHK flats each were allotted to them. Whether a member is entitled to two 2BHK flats or one 3BHK flat, or whether a particular member should be accommodated in Tower A or Tower C, may be a matter of concern for that member. However, the question here is whether such dispute gives right to member to refuse vacation and thereby prevent redevelopment of the entire property. The answer to this question has to be found from law applicable to proceedings under

Section 9 and from facts of present case.

29. The Division Bench in *Pranav Constructions Limited* has considered such a situation. In paragraph 17, the Division Bench has held:

“17. In our view, therefore the alleged grievances of Respondents 2 to 4 in respect of various decisions taken by the General Body and Managing Committee of the Society in implementing the redevelopment process cannot be decided in petition filed under Section 9 of the Act nor existence of such disputes would be a bar for Section 9 Court to make interim measures in a given case.”

30. The Division Bench held that members of the Society are bound by covenants of the Development Agreement. If they act contrary to such covenants, the Court exercising jurisdiction under Section 9 can grant necessary interim measures. The Division Bench has observed that individual member may have grievances regarding appointment of developer, implementation of redevelopment process or grant of additional area. However, such grievances are required to be resolved outside framework of Section 9 proceedings. This principle applies to the present matter. The objections of Respondent No. 2 regarding floor and location of his flat and level of parking are individual grievances. Similarly, objections of Respondent Nos. 3 and 4 regarding whether they should receive 3BHK flats, whether they should be accommodated in another tower, or whether allotment was correctly made in a particular sequence, are grievances concerning manner in which redevelopment benefits have been distributed.

31. This does not mean that these grievances are of no importance or that Respondent Nos. 2 to 4 have no remedy. Their grievances may require examination before proper forum. However, they cannot be decided in present proceedings under Section 9. Mere existence of such grievances does not mean that redevelopment of the entire Society must remain suspended till every individual issue is decided.

32. In paragraph 20 of *Pranav Constructions Limited*, the Division Bench has considered the question regarding challenge to decisions of the General Body of a Co-operative Society. It has held:

“However, the issue is about the exact forum which can go into the correctness of the resolution adopted by the General Body of the Society. If the resolution adopted by the General Body of the Society touches upon business of the Society, such resolution needs to be challenging by filing application under Section 91 of the M.C.S. Act. On the other hand, if such resolution does not touch upon business of the Society, the remedy for an affected party is to file a Civil suit. Under no circumstances, however, such dispute can be remotely raised in proceedings filed under Section 9 of the Act.”

33. Therefore, even assuming that Respondent Nos. 2 to 4 dispute validity or correctness of resolutions or allotment decisions of the Society, the present Petition is not the proceeding in which such disputes can be adjudicated. Availability of a different remedy does not mean that this Court should decide such dispute indirectly while considering interim protection under Section 9.

34. The objection of Respondent Nos. 3 and 4 that allotment chart was not final because Clause 5(c) of the Development Agreement leaves allocation to the Society does not assist them in resisting vacation. The Petitioner is correct to the extent that Clause 5(c) places responsibility of allocation upon Respondent No. 1 Society. Material before the Court shows that Respondent No. 1 Society has supported the proposed allocation and filed an affidavit explaining basis of such allocation. The Society has stated that the entitlement chart was approved on 22 October 2023 and was incorporated in the Letter of Intent dated 22 November 2023. The Society has stated that project details and tower-wise allocation were held to members and circulated before the Special General Body Meeting dated 25 August 2024. It is stated that the allocation chart was accepted by the General Body in that meeting. It is true that the Society has stated that the allotment chart was not annexed to the minutes of the meeting because of oversight. This circumstance may become relevant if validity of allotment is challenged before appropriate forum. However, on present material, such omission by is not sufficient to hold that no allocation was ever made or that Respondent Nos. 3 and 4 can continue in possession till every question relating to allotment chart is decided.

35. The Society has relied upon Clause 7(4) of the Letter of Intent, which provides:

“The new flats to be provided to the members will be from lowest residential floor and upwards. Society may allot the same amongst its members. This shall be undertaken as per

rules, regulations and bye-laws of the Society read with regulations passed from time to time.”

36. Thus, even the document relied upon by the Society indicates that allotment of new flats was to be undertaken by the Society. The Petitioner was not required to unilaterally decide distribution between members. The affidavit of the Society shows that it has taken a stand supporting the allotment which is now objected to by Respondent Nos. 3 and 4. In this background, submission that Respondent Nos. 3 and 4 were assured that all Row House owners would get 3BHK flats in Tower A or Tower C cannot be accepted as sufficient reason for stopping redevelopment. No material has been pointed out which establishes that there was any binding term in the Development Agreement or a binding resolution providing that every Row House owner, irrespective of area of his existing premises and entitlement, was required to get a 3BHK flat either in Tower A or Tower C. On the other hand, material relied upon by the Society shows that existing Row Houses were not of uniform area. Respondent Nos. 3 and 4 had smaller Row Houses having an area of 600 sq. ft. each. The Society has held that proposed allocation was made on basis of entitlement area and available configuration of flats. At this stage, this explanation cannot be said to be without any basis.

37. Mr. Savant has contended that allotment was required to be made sequentially according to Row House numbers and that this procedure has not been followed. Again, this is a dispute concerning implementation of the allotment resolution. Material

relied upon by the Petitioner and the Society is that allocation was carried out sequentially and tower-wise after considering entitlement and available configuration. Respondent Nos. 3 and 4 dispute this position. This Court is not required to conduct a final trial regarding correctness of allotment sequence in a Petition under Section 9. Such dispute can be examined by appropriate forum if Respondent Nos. 3 and 4 pursue remedy available to them. At present, it is sufficient to note that there is material on record showing that the Society has taken a decision regarding allocation and the Petitioner is proceeding on basis of such decision.

38. The decision in *Pranav Constructions Limited* makes clear that such disputes cannot be used as complete defence to prayer for interim measures. In paragraph 17, the Division Bench observed:

“However, existence of such disputes cannot be a reason to defeat petition filed under Section 9 of the Act.”

39. This principle becomes relevant in facts of present case. Here, 30 out of 36 members have vacated their premises. The majority of members have accepted the redevelopment arrangement. The IOD has been issued. The Petitioner has commenced process of implementing redevelopment arrangement. Continued occupation by only few members has direct effect upon progress of project and rights of other members who have vacated.

40. The Petitioner has submitted that existing structures are in dilapidated condition. The present relief cannot be granted merely

because such submission is made. However, fact remains that the project cannot reasonably remain at a standstill because individual members are seeking a preferred location, preferred floor, different tower or different level of parking.

41. The submission of the Petitioner that Respondent Nos. 3 and 4 are not residing in their premises is relevant to some extent. It is not the sole basis for granting relief. A member does not lose his rights in property merely because he is not residing in the premises. However, fact that premises are not being used as their present residence can be considered while examining balance of convenience and effect of continued refusal to vacate upon redevelopment project. Similarly, the Petitioner has contended that Respondent Nos. 2 to 4 are treated as Non-Cooperating Members because they have not executed the Development Agreement, have not submitted Consent Letters and have not vacated their premises. Mere description of a member as Non-Cooperating Member does not decide rights of parties. The Court has to consider legal basis for relief sought. However, conduct relied upon by the Petitioner is relevant while considering whether interim measures are necessary to prevent obstruction to redevelopment process.

42. Another important aspect is that the Petitioner has invoked arbitration by notice dated 1 July 2026. Therefore, the present Petition is not filed without taking any step towards arbitration. The Petitioner contends that failure of members to vacate and resulting inability of the Society to perform its obligations under the Development Agreement may give rise to a dispute between

the Petitioner and the Society. This issue was considered in paragraph 22 of *Pranav Constructions Limited*. The Division Bench observed:

“The Society and its members are bound by the covenants of the Development agreement. If Society fails to discharge its obligations under the Development agreement and if its members do not vacate possession of premises, the Developer will have to invoke arbitration and seek appropriate reliefs against the Society. Non-vacation of premises by Respondents 2 to 4 can thus become a trigger point for invocation of arbitration by Developer against the Society. It is therefore difficult to hold at this juncture that there is absolutely no possibility of arbitration taking place between the parties.”

43. The above reasoning applies to present facts. The Development Agreement is between the Petitioner and the Society and has been acted upon by majority of members. If the Society is unable to ensure vacation of premises and, as a result, the Petitioner is prevented from proceeding with redevelopment, a dispute concerning performance of obligations under the Development Agreement can arise between Petitioner and Society. Therefore, it cannot be said that present Petition under Section 9 has no connection with existing or contemplated arbitration.

44. The reliance placed by Respondent Nos. 3 and 4 on requirement of execution of individual agreements before vacation requires consideration. Such agreements are important because a member should have clarity regarding premises to which he will be entitled in the redeveloped building. However, this requirement cannot be understood to mean that any member can refuse to

vacate merely by raising a dispute concerning preferred location of his permanent alternate accommodation.

45. The Division Bench in *Pranav Constructions Limited* has considered issue regarding vacation of premises and continuity of rights in redevelopment process. In paragraph 21, it observed:

“Vacation of possession of the premises need not wait admission of donees as members of the society. Vacation of premises by original member and grant of possession of alternate accommodation to the succeeding member is not barred.”

46. The effect of above observation is that redevelopment process and vacation of existing premises need not remain stopped because of some other dispute relating to identity, entitlement or future rights of a person who may receive alternate accommodation. The rights can be protected and recognised in accordance with law while redevelopment is allowed to proceed.

47. The Court is conscious that an order directing a member to vacate his existing premises is a serious order. Therefore, such relief cannot be granted only because majority of members have taken a decision. Rights of minority members require protection. However, protection of their rights does not mean that their physical occupation of old premises has to continue till all individual disputes are resolved. In present case, Respondent No. 2 has not shown that his grievance concerning Metro-facing flat or podium parking makes the proposed redevelopment arrangement illegal. His objections are concerning his preference and suitability of proposed accommodation.

48. Respondent Nos. 3 and 4 have raised more detailed objections regarding their entitlement, tower in which they are to be accommodated, number and nature of flats proposed to be allotted and manner in which Society has applied the allotment chart. These objections may require adjudication if they are pursued before competent forum. However, material available does not show that no allotment was ever made by Society or that proposed allotment is so uncertain that Respondent Nos. 3 and 4 cannot be required to vacate under any circumstances. The affidavit of Respondent No. 1 Society assumes importance in this regard. The Society has held entitlement chart, difference in areas of existing Row Houses, circulation of redevelopment proposal and approval of allocation by General Body. The Society is not supporting objections of Respondent Nos. 2 to 4. Rather, the Society has requested the Petitioner to take legal action because of their continued non-cooperation.

49. Therefore, the overall position which emerges is that objections raised by Respondent Nos. 2 to 4 are individual disputes concerning benefits to be received by them in redevelopment project. These disputes cannot be ignored. However, on material available, they do not provide sufficient basis for allowing redevelopment project, which has been accepted by majority of members and acted upon by 30 members who have vacated, to remain obstructed.

50. The observations of the Division Bench in paragraph 19 of *Pranav Constructions Limited* are relevant. The Court held that a dispute concerning distribution of additional area was an

irrelevant consideration for refusing interim relief to developer when developer had no control over distribution between members. The Division Bench observed:

“What is however ignored is the position that the Developer has no role to play in deciding the distribution of additional area between the members. That decision is taken by majority of members of the society. Thus, the relief of interim measures is declined to the developer by taking into consideration a factor over which it has no control.”

51. The same reasoning has relevance in present matter. Allocation amongst members is a matter within responsibility of Respondent No. 1 Society. The Petitioner cannot be denied interim protection merely because individual members dispute allocation made or supported by Society. The Petitioner cannot be made to suffer delay because of a dispute over which it does not have final authority. At the same time, while granting interim protection, rights of Respondent Nos. 2 to 4 regarding their permanent alternate accommodation must remain protected. An order directing them to vacate cannot mean a final adjudication that they have no grievance regarding allotment. It cannot mean that proposed allocation has become final and beyond challenge. Their vacation of existing premises, therefore, has to remain subject to rights and entitlements arising under the Development Agreement, decisions of Respondent No. 1 Society and remedies which may be available to them before competent forum. Handing over possession cannot be used by Petitioner or Society as ground to contend that they have waived all objections or abandoned their legal rights regarding entitlement in redeveloped building.

52. Thus, upon overall consideration, I find that the Petitioner has made out a prima facie case for protection of the redevelopment process. The balance of convenience lies in ensuring that project is not held up because of individual disputes of a few members when overwhelming majority has accepted redevelopment and substantial number of members have vacated. The irreparable prejudice in present case is not confined only to Petitioner. The members who have vacated their premises are affected if redevelopment remains delayed. Their rights under redevelopment arrangement, including benefits connected with vacation and completion of project, would remain uncertain if existing structures cannot be vacated. On the other hand, objections of Respondent Nos. 2 to 4 can be protected without permitting them to continue retaining possession of existing premises. Their right to raise appropriate challenge before competent forum can remain open. Their vacation of premises would not amount to final acceptance of every aspect of proposed allotment.

53. Accordingly, upon an overall assessment of material on record, conduct of parties, stage reached by redevelopment project and principles laid down in *Pranav Constructions Limited*, I am of view that individual disputes raised by Respondent Nos. 2 to 4 regarding location, floor, configuration, tower, area or parking of their proposed permanent alternate accommodation cannot, in facts of present case, operate as complete bar to grant interim measures under Section 9 of the Arbitration and Conciliation Act, 1996.

54. The Petition, therefore, deserves to be allowed to the extent necessary for protecting redevelopment process and for directing Respondent Nos. 2 to 4 to cooperate and hand over vacant and peaceful possession of their respective premises. At the same time, their rights, and contentions regarding their individual entitlement in redevelopment project shall remain protected and remain open. Any such dispute can be pursued before appropriate forum in accordance with law and shall not be treated as decided merely because interim measures are granted in present proceedings.

55. In view of the discussion and findings recorded above, the following order is passed:

- i) Respondent Nos. 2 to 4 shall, within two weeks from today, execute and submit the Consent Letters in the format prescribed and circulated by Respondent No. 1 Society by email dated 11 March 2026. The Consent Letters shall be handed over to Respondent No. 1 Society, with a copy thereof to the Petitioner;
- ii) Respondent No. 2 and Respondent No. 2(a), in respect of Row House No. A-004, Respondent No. 3, in respect of Unit No. A-011, and Respondent No. 4, in respect of Unit No. A-012, shall, within four weeks from today, vacate and hand over vacant and peaceful possession of their respective premises to Respondent No. 1 Society for being handed over to the Petitioner for the purpose of redevelopment;

iii) Before handing over possession of their respective premises, Respondent Nos. 2 to 4 shall execute the Permanent Alternate Accommodation Agreement, as approved by Respondent No. 1 Society, together with such other usual and necessary ancillary documents as may be required for recording the handing over of possession of their existing premises and their entitlement in respect of the permanent alternate accommodation;

iv) The execution of the Permanent Alternate Accommodation Agreement and other ancillary documents by Respondent Nos. 2 to 4 shall be without prejudice to their rights and contentions in respect of the location, floor, tower, configuration, area, parking or any other aspect of their entitlement in the redeveloped premises. The execution of such documents and the vacation of the existing premises shall not be treated as an acceptance of the correctness of the disputed allotment or as a waiver of any remedy available to Respondent Nos. 2 to 4 in accordance with law;

v) Respondent No. 1 Society and the Petitioner shall, while executing the Permanent Alternate Accommodation Agreements with Respondent Nos. 2 to 4, record therein the premises proposed to be allotted to the respective Respondents as per the allotment approved or adopted by Respondent No. 1 Society. The said agreements shall appropriately preserve the rights and contentions of the parties;

vi) If Respondent Nos. 2 to 4, or any of them, fail to execute the necessary Permanent Alternate Accommodation Agreement and other ancillary documents within two weeks from today, Respondent No. 1 Society and the Petitioner shall be entitled to take appropriate steps for execution of such documents through the Court Receiver, High Court, Bombay, upon obtaining directions from this Court;

vii) If Respondent Nos. 2 to 4, or any person claiming through or under them, fail to vacate and hand over possession within the period stipulated above, the Petitioner shall be entitled to apply to the Court Receiver, High Court, Bombay, for implementation of this order and for taking possession of the respective premises. Upon such application, the Court Receiver shall take necessary steps for obtaining possession, after issuing such notice as may be considered necessary in the circumstances, and shall hand over possession to Respondent No. 1 Society or the Petitioner, as may be directed;

viii) For the purpose of implementation of the order in clause (vii), the Court Receiver shall be entitled to seek police assistance, if required. In the event the premises are found locked, the Court Receiver may take appropriate steps for opening the premises in accordance with law and prepare an inventory of the articles, if any, found therein before taking possession. The articles shall be dealt with in accordance with directions of the Court Receiver or this

Court;

ix) Respondent Nos. 2 to 4 are restrained, until further orders, from transferring, assigning, encumbering, alienating or creating any third-party rights in respect of Row House No. A-004, Unit No. A-011 and Unit No. A-012, or from inducting any third party into possession of the said premises or any part thereof;

x) It is clarified that the present order is confined to the grant of interim measures under Section 9 of the Arbitration and Conciliation Act, 1996. The observations and findings recorded in this order regarding the respective contentions of Respondent Nos. 2 to 4 concerning their entitlement, allotment, location, floor, tower, area, configuration, or parking are only for the purpose of deciding the present Petition. They shall not be treated as a final adjudication of such disputes. All rights and contentions of the parties in respect thereof are kept open to be decided in appropriate proceedings before the competent forum or in arbitration, if otherwise maintainable;

xi) Respondent No. 1 Society and the Petitioner shall ensure that, upon Respondent Nos. 2 to 4 handing over possession in accordance with this order and complying with the necessary documentation, the contractual benefits and obligations arising under the Development Agreement and the Permanent Alternate Accommodation Agreements

are extended to them in accordance with their respective entitlements;

xii) The Petition is accordingly disposed of in the above terms. There shall be no order as to costs.

(AMIT BORKAR, J.)