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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.28145 OF 2026

Empire Realty ... Petitioner

Vs.

ATUL GANESH KULKARNI

Digitally signed by ATUL GANESH KULKARNI
Date: 2026.08.27 11:25:21 +0530

1. HighRise Cooperative Housing Society Limited
2. Sunil Alimchandani
3. Sangeeta Jain
4. Ashvin Jain ... Respondent

Mr. Mayur Khandeparkar with Ms. Vishaki Bhatia for the Petitioner.

Mr. Sunil Alimchandani, Respondent No.2, present in-person.

Mr. Dushyant Purekar with Esther Mary Mathew for Respondent Nos.3 and 4.

CORAM : AMIT BORKAR, J.

RESERVED ON : AUGUST 21, 2026.

PRONOUNCED ON : AUGUST 27, 2026

JUDGMENT:

1. By the present Arbitration Petition filed under Section 9 of the Arbitration and Conciliation Act, 1996, the Petitioner is seeking urgent ad-interim and interim reliefs against Respondent Nos. 2 to 4. The grievance of the Petitioner is that these Respondents have

refused or failed to give their written consent for redevelopment of the subject property in favour of Respondent No.1, though such consent is required under the terms and conditions of the Development Agreement dated 6 June 2025.

2. The facts which have led to filing of the present Arbitration Petition, as stated by the Petitioner, are as follows. Respondent No.1 Society is the owner of land bearing C.T.S. No.157B, Survey No.15, Hissa No.2 of village Mandpeshwar, admeasuring approximately 2191.6 square metres, situated at Borivali West, Mumbai 400 103. The property consists of structures known as "Highrise", having two Wings, namely A and B. These buildings contain 58 residential flats and 12 shops or commercial units, making a total of 70 units. According to the Petitioner, because of the age and poor condition of the existing buildings, major repairs would not give a permanent solution. The Society therefore decided to redevelop the property by demolishing the existing structures and constructing new buildings in their place. The Society, in its Special General Body Meeting held on 11 April 2010, decided to undertake redevelopment of the property through a suitable developer, considering the age and deteriorated condition of the existing building. The Society invited offers from different developers and, from time to time, appointed Ankur Realty Limited, M/s. Shagun Construction and Da Vincy Constructions, hereinafter referred to as the "Erstwhile Developers", for carrying out the redevelopment. However, the redevelopment could not proceed. Their appointments were subsequently terminated on account of breach, non-compliance, delay and other defaults. Da

Vincy Constructions filed Suit No.1856 of 2024 before the Bombay City Civil Court at Dindoshi, along with Notice of Motion No.3026 of 2024. The said Notice of Motion was rejected by an Order dated 3 October 2024., the Society and Da Vincy Constructions entered into Consent Terms and settled their disputes amicably.

3. On 1 June 2024, the MCGM issued a notice under Section 353(B) of the Mumbai Municipal Corporation Act, 1888, directing the Society to carry out a structural audit of the existing building, which was then about 44 years old. The Society invited fresh offers for redevelopment. In its Special General Body Meeting held on 4 August 2024, the Society resolved to appoint M/s. Empire Realty as the Developer. Pursuant to the said resolution, the Society issued an appointment and acceptance letter dated 5 August 2024 confirming Empire Realty as the Developer. On 18 August 2024, the members gave their common consent for redevelopment and approved the main terms of the Developer's offer, including the additional area and other terms relating to redevelopment., at the Special General Body Meeting held on 27 April 2025, the Society approved the draft Development Agreement, the Power of Attorney, the proposed redevelopment plans and the Court Consent Terms relating to Da Vincy Constructions. The Development Agreement was executed between Highrise Co-operative Housing Society Ltd. and M/s. Empire Realty. The Society executed a Power of Attorney in favour of the Developer. The Development Agreement was registered on 6 June 2025 before the Sub-Registrar of Assurances, Borivali, under Registration No. MBI-22/11088/2025. Clause 24 of the

Development Agreement contains the list of members along with the carpet area of their existing premises.

4. Between 27 November 2025 and 22 January 2026, the CFO NOC and NOC from the NMA Authority were received in relation to the redevelopment project., on 11 May 2026, the MCGM issued the Intimation of Disapproval, permitting the Developer to proceed with redevelopment in accordance with the sanctioned proposal. On 21 May 2026, the Society called upon the Developer to disburse the agreed transit rent and to obtain vacant and peaceful possession of the premises from the members, considering the highly dilapidated and unsafe condition of the existing building. On 27 May 2026, Empire Realty issued a 30-day Vacate Notice calling upon the members to vacate their respective flats and shops and hand over peaceful and vacant possession so that demolition and redevelopment could commence. On 29 May 2026, the Society circulated the Vacate Notice to its members and informed them that the Developer had issued a 30-day notice. The Society enclosed the IOD, Fire NOC and the vacating letter. Between 17 March 2026 and 4 June 2026, the Society communicated the redevelopment documents and the Vacate Notice to Respondent Nos. 2 to 4 through emails. On 11 July 2026, the Society issued notices and reminders to Mr. Sunil Alimchandani in respect of Flat No. A/10 and to Mrs. Sangeeta Jain and Mr. Ashvin Jain in respect of Shop No. SA/4. They were called upon to hand over peaceful and vacant possession. Copies of the communications were sent through email. On 14 July 2026, Empire Realty issued a final and ultimate vacating notice to the remaining non-consenting members

because they had failed to vacate their respective premises within the stipulated period. On 15 July 2026, the Society informed Mr. Sunil Alimchandani that the redevelopment documents, IOD, Fire NOC and Vacate Notice had been communicated to him on 29 May 2026, 4 June 2026, 22 June 2026 and 11 July 2026. He was therefore called upon to execute the PAAA and hand over the keys.

5. Between 17 July 2026 and 3 August 2026, the Society informed Empire Realty that Respondent Nos. 2 to 4 had failed or refused to give their written consent and to hand over vacant and peaceful possession despite repeated requests. The Society therefore requested the Developer to take appropriate legal steps. The Society informed the Developer that most of the members had vacated their premises and that only Mr. Sunil Alimchandani, in respect of Flat No. A/10, and Mrs. Sangeeta Jain and Mr. Ashvin Jain, in respect of Shop No. SA/4, remained non-cooperative. On 31 March 2026, Respondent No.2, Mr. Sunil Alimchandani, had addressed correspondence to the Society raising issues regarding the documents and information relating to the redevelopment and referring to his earlier correspondence. The main issue raised by him appears to be regarding the maintenance bill. On 21 July 2026, Respondent Nos.3 and 4 informed the Society that they would vacate by 1 August 2026. However, on 19 August 2026, Respondent Nos.3 and 4 filed a Civil Suit before the Dindoshi Court, which is at the Login Stage, seeking injunction. A copy of the said proceedings was received by the Petitioner on 20 August 2026. According to the Petitioner, all members have vacated their respective flats and have received transit rent, except Respondent

Nos.2 to 4. Out of the 70 members, PAAA in respect of 33 members have been registered. In these circumstances, and because Respondent Nos.2 to 4 have failed or refused to execute the required written consents and to hand over vacant and peaceful possession, the Petitioner has been compelled to invoke the jurisdiction of this Court under Section 9 of the Arbitration and Conciliation Act, 1996 and seek the necessary interim and ad-interim reliefs.

6. The Petitioner has filed an Affidavit of Proof of Service stating that copies of the Petition have been duly served upon the Respondents. It is stated that the dispute with Respondent No.2 has been settled with the Petitioner. Therefore, the Petitioner is not pressing the reliefs sought against Respondent No.2.

7. Mr. Khandeparkar, learned Advocate appearing for the Petitioner, submitted that the registered Sale Deed executed in favour of Respondent Nos.3 and 4 shows a lesser area than the area now claimed by them. He submitted that Respondent Nos.3 and 4 have filed Civil Suit bearing St. No.17510 of 2026. In that Suit, they are seeking a declaration that they are entitled to a shop admeasuring 213 square feet and an injunction restraining the Petitioner and the Society from disturbing their possession. According to the learned Advocate, the dispute regarding the exact area need not be decided in the present Petition. He therefore submitted that, considering the circumstances and the rights flowing from the redevelopment arrangement, the Petitioner is entitled to the reliefs prayed for.

8. On the other hand, Mr. Purekar, learned Advocate appearing for Respondent Nos.3 and 4, submitted that Respondent Nos.3 and 4 have, in the aforesaid Civil Suit, applied for appointment of an Architect to measure Shop Nos.14, A5, B10 and B11 and to ascertain whether any excess area is in their possession. According to him, the said application is still pending. He submitted that this Court should appoint an Architect to measure the four shops and determine the exact area in possession of Respondent Nos.3 and 4. He submitted that the Society has acted in a biased manner against Respondent Nos.3 and 4. According to him, Respondent Nos.3 and 4 should be treated in the same manner as Shop Nos.5, 10 and 11. He submitted that the Developer is taking coercive steps without first considering the actual entitlement of Respondent Nos.3 and 4. He therefore requested that an Architect be appointed to ascertain the exact area in their possession before any steps are taken against them.

REASONS AND ANALYSIS:

9. I have considered the Petition, the material placed by the Petitioner, the submissions made on behalf of Respondent Nos.3 and 4, the documents relied upon by both sides and the legal position explained in *Pranav Constructions Limited v. Priyadarshini Cooperative Housing Society Limited,* Arbitration Appeal (L) No.20093 of 2025, decided on 14 July 2025. The present dispute has to be considered in this background. The issue is whether their dispute regarding measurement and area can be treated as a reason for stopping the redevelopment and for permitting them to continue in possession of the existing premises.

10. The material placed before the Court shows that the subject property belongs to Respondent No.1 Society. The Society had decided to undertake redevelopment. From the material placed by the Petitioner, it appears that the process was not suddenly started. As far back as on 11 April 2010, the Society had decided to undertake redevelopment as the building was old, and its condition had deteriorated. Different developers were appointed from time to time. However, the redevelopment could not be completed. The disputes with the earlier developers came to an end, including the dispute with Da Vincy Constructions, which was settled by Consent Terms., after the structural audit and after receiving fresh offers, the Society, in its Special General Body Meeting held on 4 August 2024, decided to appoint M/s. Empire Realty as the Developer. The said appointment was confirmed by letter dated 5 August 2024.

11. It is material that on 18 August 2024, the members gave common consent for redevelopment and approved the main terms of the Developer's offer., on 27 April 2025, the Society approved the draft Development Agreement, Power of Attorney and redevelopment plans. The Development Agreement was executed and registered on 6 June 2025. Thus, the redevelopment arrangement is not based merely upon some understanding now stated by the Petitioner. There is a registered Development Agreement, and the General Body had taken a decision before execution of the same. Clause 24 of the Development Agreement contains the list of members along with their existing carpet areas. These facts are relevant while considering whether an individual

member can stop the redevelopment because of a separate dispute regarding area.

12. There is material showing that the redevelopment has progressed considerably. The necessary NOCs were received between 27 November 2025 and 22 January 2026. On 11 May 2026, MCGM issued the IOD permitting the Developer to proceed in accordance with the sanctioned proposal., the Society called upon the Developer to arrange transit rent and obtain vacant possession. On 27 May 2026, the Developer issued the 30-day Vacate Notice. The Society circulated the said notice on 29 May 2026. Communications were sent to the concerned members. According to the Petitioner, most members have vacated their premises and have received transit rent. PAAA in respect of 33 out of 70 members have been registered. These facts show that the redevelopment has reached a stage where continued possession by a few members can affect the implementation of the project.

13. The position of Respondent No.2 stands on a different footing. The Petitioner states that the dispute with Respondent No.2 has been settled, and no relief is now pressed against him. Therefore, no issue requires adjudication against Respondent No.2. The present discussion is accordingly confined to Respondent Nos.3 and 4.

14. Mr. Khandeparkar, learned Advocate for the Petitioner, has relied upon the registered Sale Deed of Respondent Nos.3 and 4 and submitted that the area shown in that document is less than the area now claimed by them. He has pointed out that

Respondent Nos.3 and 4 have filed Civil Suit St. No.17510 of 2026 claiming a declaration in respect of a shop admeasuring 213 square feet and seeking an injunction against the Petitioner and the Society. To this limited extent, I find substance in the submission. The exact area claimed by Respondent Nos.3 and 4 cannot properly be finally decided in the present Section 9 proceedings. Their own Civil Suit shows that the question of their exact entitlement is before another forum. Therefore, this Court should not record any final finding at this stage as to whether they are entitled to 213 square feet or to any other particular area. However, it cannot be accepted that merely because there is a dispute regarding the area, the redevelopment must remain stopped until that dispute is decided. These are two separate questions. One question is what area Respondent Nos.3 and 4 are legally entitled to. The other question is whether they can continue to remain in possession of the existing premises and, because of such possession, prevent the redevelopment from proceeding. The first question may require evidence, measurement and final adjudication. The second question has to be considered in view of the powers available to this Court under Section 9.

15. Mr. Purekar, learned Advocate for Respondent Nos.3 and 4, has submitted that his clients have applied for appointment of an Architect in the pending Civil Suit for measuring Shop Nos.14, A5, B10 and B11 and for finding out whether any excess area is in their possession. If Respondent Nos.3 and 4 dispute the measurement relied upon by the Society, they are entitled to have that grievance examined by the proper forum. The exact area may

have a bearing on their final entitlement in the redeveloped property. But this submission does not answer the separate question as to whether they can continue in possession of the existing premises when the redevelopment has been approved and has substantially progressed.

16. The submission of Mr. Purekar that the Society has acted in a biased manner requires consideration. However, from the material before the Court, it is not shown that the redevelopment resolution has been set aside or stayed by any competent forum. There is no material showing that the General Body resolution appointing the Developer has been cancelled or declared invalid. An allegation of bias, without any order showing that the redevelopment decision has been legally stopped, cannot defeat the registered Development Agreement and the steps taken under it.

17. The submission that Respondent Nos.3 and 4 should be treated at par with Shop Nos.5, 10 and 11 does not justify stopping the redevelopment. Whether the shop owners have been treated equally, whether their areas are comparable and whether the Society's resolutions are valid are matters which may require examination of the Society's records and the applicable law. Those questions need not be decided in the present Section 9 Petition. The question before this Court is whether such grievance gives Respondent Nos.3 and 4 a legal right to obstruct the redevelopment until those issues are decided. On the material placed before the Court, I do not find such a right.

18. The judgment in *Pranav Constructions Limited* is important on this issue. The Division Bench was considering disputes raised by members regarding additional area and the manner in which redevelopment was being carried out. The Division Bench considered whether such disputes could prevent interim relief under Section 9. It held:

> "Now we turn to the second and the main issue involved in the Appeals. As observed above, the learned Single Judge has taken note of dispute between Respondents 2 to 6 with the Society about grant of lesser additional area in redevelopment process. It is held that Respondents 2 to 4 are being discriminated by not granting pari pasu benefit of additional area as compared to residential unit owners. The issue for consideration is whether the Court exercising power under Section 9 of the Act can refuse to make interim measures on the ground of existence of such dispute between Society and members. As held in *Girish Mulchand Mehta (supra)*, the grievances between the Society and its members qua entitlements flowing out of redevelopment process cannot be agitated in proceedings filed under Section 9 of the Act. They need to be decided separately under Section 91 of the M.C.S. Act as the Co-operative Court alone has jurisdiction to decide validity of Resolutions adopted by the General Body of the Society. If such disputes do not touch upon business of Society, the member will have to file a Civil Suit. This position is clear from the following observations made by this Court in judgment in Calvin Properties and Housing (supra): In my view, in these proceedings under Section 9 of Arbitration and Conciliation Act, this Court cannot adjudicate upon the merits of individual claims of the respondents members of the society and the same can be adjudicated only in appropriate proceedings. In these proceedings only interim measures can

> be granted by this Court. This Court is thus not adjudicating on the issue raised by Respondents 2 to 6C whether they are entitled to any larger area as claimed. In view of the fact that more than 3/4th majority of members have passed resolution and have agreed to appoint the petitioner as developer on the terms and conditions agreed upon and recorded in development agreement, in my view, Respondents 2 to 6C cannot stop the redevelopment project. (emphasis and underlining added)"

19. The above principle applies to the present dispute with sufficient clarity. Respondent Nos.3 and 4 say that their area is disputed and that an Architect should measure the premises. The Petitioner says that the registered document shows a lesser area than what is now claimed. Whatever may be the correct position, that dispute has to be decided in the proper proceedings. At the stage of Section 9, such dispute cannot become a reason for permitting the existing premises to remain occupied for an unlimited period and thereby stopping the redevelopment.

20. The Division Bench observed in paragraph 17:

> "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. The members of the Society are bound by the covenants of the Development agreement and if they act contrary to the covenants of the Development agreement, the Court exercising power under Section 9 of the Act can step in and make necessary interim measures. Merely because an individual member has some

> grievances against the Society in respect of either appointment of Developer or implementation of redevelopment process or grant of additional area, the same needs to be resolved outside the framework of Section 9 of the Arbitration Act. Such grievances can be agitated either in a dispute filed under Section 91 of the M.C.S. Act if they touch upon the business of the Society or in the alternative members can file a Civil Suit in respect of their grievances qua the decisions adopted by the Society if they do not touch upon the business of the Society. In the present case, Respondent 2 has raised disputes about the manner in which the redevelopment process is implemented by the Society. Undertaking redevelopment through a Developer, choice of Developer made by the General Body of the Society, as well as the benefits granted to the garage owners are sought to be questioned by Respondent 2. He needs to adopt appropriate proceedings qua his grievances. While Respondents 3 and 4 have filed a dispute before Co-operative Court, Respondent 2 has apparently not filed any proceedings to challenge the Resolutions adopted by the General Body of the Society. However, existence of such disputes cannot be a reason to defeat petition filed under Section 9 of the Act."

21. Thus, even if a member has a grievance regarding the redevelopment process, the mere existence of such grievance is not a reason to refuse interim protection. The member has a remedy before the proper forum. However, a separate dispute cannot be used to stop the Court from protecting the subject matter and from permitting the obligations under the Development Agreement to be carried out.

22. The submission of Respondent Nos.3 and 4 that the Court should first appoint an Architect therefore has to be understood within these limits. Such appointment may assist in deciding the

dispute regarding measurement. I am not holding that the application for measurement has no merit. I am not holding that the area stated by the Petitioner is correct. But even if there is a dispute regarding measurement, the pendency of that dispute does not give Respondent Nos.3 and 4 a right to stop the redevelopment.

23. The Division Bench has considered whether allegations regarding the resolutions of the General Body can be decided in Section 9 proceedings. In paragraph 20, it held:

> "20. Reliance is placed by both the parties on judgment of the Supreme Court in *Bengal Secretariat cooperative Land Mortgage Bank and Housing Society Ltd. (supra)*. Mr Khandeparkar has relied on the said judgment in support of the contention that Court cannot sit as an appellate authority over commercial wisdom of General Body of the Society, whereas, Respondents have relied upon very same judgment in support of the contention that if the decision of General Body of the Society is product of fraud or misrepresentation or is opposed to statutory provisions, the Court can interfere in the decision of the General Body of the Society. There can be no dispute about this proposition. 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 such dispute can be raised in proceedings filed under Section 9 of the Act."

24. Therefore, the submission of Respondent Nos.3 and 4 that the Society has not treated them fairly cannot, be a reason to refuse the Petition. There may be cases where a decision of the General Body can be challenged on the ground of fraud, misrepresentation or violation of statutory provisions. But such a dispute has to be decided by the forum having jurisdiction. Section 9 proceedings are not meant for deciding whether the resolution of the Society is valid or invalid. Unless a competent Court or forum has stayed or set aside the redevelopment decision, the registered Development Agreement and the steps taken under it cannot be treated as having no effect merely because an individual member disputes the manner in which the Society has acted.

25. The submission of the Petitioner that Respondent Nos.3 and 4 have approached the Civil Court is relevant. Their Civil Suit is pending and an application for injunction has been made. As informed to the Court, the proceedings are at the Lodging Stage and a copy was received by the Petitioner on 20 August 2026. No order has been shown to this Court restraining the Society or the Developer from proceeding with the redevelopment. Mere filing of a suit does not mean that an injunction has been granted. Therefore, filing of the Civil Suit cannot be treated as creating a restriction against the Petitioner in the present proceedings.

26. The Petitioner has relied upon the fact that a large number of members have vacated. This fact alone may not decide every issue. However, it is relevant when the Court considers whether continued possession of a few members is affecting a project which has been approved by the General Body, is governed by a

registered Development Agreement and has reached the stage of IOD and the vacating process. The fact that PAAA of 33 out of 70 members have been registered and that most members have vacated shows that the redevelopment is no longer at its initial stage.

27. The material regarding the age and condition of the building cannot be ignored. MCGM had issued notice under Section 353(B) of the Mumbai Municipal Corporation Act, 1888, and the Petitioner has stated that the building was about 44 years old. The redevelopment was pursued through the General Body. This Court need not assume that the building is unsafe merely because such statement has been made. However, the structural audit, municipal proceedings, IOD and vacating notices are all part of the material placed before the Court. These circumstances show why unnecessary obstruction to the redevelopment should be avoided.

28. I have considered the argument that the Developer is taking coercive steps. If the Developer acts outside the Development Agreement or beyond the authority given to it, Respondent Nos.3 and 4 can raise a proper grievance. However, no material has been shown to establish that the Developer is attempting to decide the disputed entitlement of Respondent Nos.3 and 4 without following the proper legal process. The relief sought in the present Petition is for obtaining possession so that redevelopment can proceed. The final dispute regarding area can still be decided separately.

29. The judgment in Pranav Constructions Limited explains this distinction. In paragraph 19, the Division Bench held:

"19. Mr Narula has relied upon celebrated judgment of the Supreme Court in *Wander Ltd. (supra)* in support of his contention that appellate court cannot interfere in exercise of discretion of the trial court while passing interim order. It must be observed at once that the judgment in Wander Ltd. outlines the jurisdiction of the appellate court exercisable under Order 43 of the Civil Procedure Code, 1908 against an order of trial court granting or refusing to grant temporary injunction under Order XXXIX Rules 1 and 2 of the Code. In that sense, principles may not strictly apply to proceedings before the appellate court under Section 37 of the Act while deciding correctness of order made under Section 9 of the Act. However, even if the principle enunciated in Wander Ltd. are held to be applicable to appeal under Section 37 of the Act, we are of the view that interference in the order passed by the learned Single Judge is warranted in the facts and circumstances of the present case as exercise of discretion is based on irrelevant consideration of entitlement of Respondents 2 to 4 in the matter of allotment of additional area in the new building. As held above, dispute of allotment of additional area is not a relevant consideration for deciding the petition under Section 9 of the Act as the said dispute needs to be resolved in independent proceedings under Section 91 of the M.C.S. Act or by filing a Civil Suit. Ordinarily, the appellate court would be loathe in interfering with discretion exercised by the learned Single Judge. However, where irrelevant consideration has affected the mind of the Court while exercising the discretion, the appellate court would be justified in interfering with exercise of discretion. In the instant case, the equitable and discretionary relief of interim measures is declined to the developer by taking into consideration the aspect of alleged discriminatory treatment meted out to Respondents 2 to 4. 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. Therefore, in our view exercise of discretion while declining relief under Section 9 of the Act is improper warranting interference by the appellate court."

30. The principle stated above is clear. If an individual dispute regarding additional area is allowed to control the Section 9 proceedings, the Court may refuse relief because of a dispute over which the Developer has no final control. The distribution of additional area is governed by the decisions of the Society and the applicable provisions. The Developer cannot be expected to keep the redevelopment stopped for an unlimited period until every such dispute is finally decided.

31. I have considered the submission of Respondent Nos.3 and 4 that they should be treated at par with Shop Nos.5, 10 and 11. That claim cannot be rejected merely by calling them non-cooperative. If other members have been given different areas under some separate decision, Respondent Nos.3 and 4 can have that grievance examined in the proper proceedings. But their final entitlement and the immediate requirement to vacate the existing premises for redevelopment are two different matters. They cannot be mixed in such a manner that the whole redevelopment becomes dependent upon deciding one individual claim.

32. The record shows that Respondent Nos.3 and 4 had, on 21 July 2026, informed the Society that they would vacate by 1 August 2026. At that stage, their position appears to have been that they would vacate, rather than that the redevelopment could

not proceed or that they must remain in possession until their claim was decided, they filed the Civil Suit on 19 August 2026. I am not treating this change in position as deciding the merits of their Civil Suit. But it shows that the issue of possession cannot be treated as protected merely because the dispute regarding area is pending.

33. I have considered the submission that an application for appointment of an Architect is pending. The pendency of an application has to be given its proper meaning. Until the competent Court passes an order and the measurement issue is decided, mere pendency of the application does not establish the exact area claimed by Respondent Nos.3 and 4. It does not establish that they have a right to stop the Society's redevelopment. At this stage, the Court has to consider the documents and orders available, subject to the final decision of the competent forum on the disputed questions.

34. The Petitioner's submission based upon the registered Sale Deed cannot be treated as deciding the controversy. A registered document is a relevant document. However, the exact effect of all documents and the actual physical measurement may require proper adjudication. I therefore do not consider it necessary to hold at this stage that Respondent Nos.3 and 4 have no claim beyond the area mentioned in the Sale Deed. Such a finding is not necessary for deciding the present Section 9 Petition and may affect the separate proceedings.

35. What is, therefore, required is to consider the balance between the two sides. On one side, there is the registered Development Agreement, the resolutions of the Society, the municipal permission in the form of IOD, the vacating notices, the large number of members who have vacated, and the progress made in the redevelopment. On the other side, there is the individual dispute of Respondent Nos.3 and 4 regarding measurement, area and alleged unequal treatment. Their grievance may be found correct or may not be found correct. That question has to be decided in the proper proceedings. At this stage the grievance does not have sufficient legal force to stop the redevelopment process.

36. The decision in Pranav Constructions Limited considers the possibility of arbitration. In paragraph 22, the Division Bench held:

> "22. The last issue that remains is about possibility of arbitration taking place between the parties. 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."

37. This observation is relevant to the present matter. The Developer and the Society have entered into a registered Development Agreement. The Society has obligations under that

Agreement. If possession is not obtained because some members refuse to vacate, the Developer may have remedies against the Society according to the arbitration clause. Therefore, the existence of a dispute between the members and the Society does not mean that there is no possibility of an arbitral dispute. Continued failure to vacate may affect the performance of the Development Agreement.

38. It is therefore necessary to keep the present proceedings separate from the final rights claimed by Respondent Nos.3 and 4. This Court is not deciding their final entitlement to any particular area. It is not deciding their title beyond what is necessary for considering the interim relief. Their allegation of unequal treatment is not being decided. Their application for measurement is not being decided. All these questions can be considered by the competent forum. The question before this Court is whether these unresolved disputes can be used to obstruct the redevelopment.

39. On this limited question, the finding has to be against Respondent Nos.3 and 4. They are occupying premises forming part of the Society's building. They have not claimed that their premises are outside the redevelopment scheme. The redevelopment has been approved by the Society and is recorded in a registered Development Agreement. The necessary municipal permission has been obtained. The vacating process has started. A substantial number of members have vacated and PAAA have been registered. No order of any competent Court staying the redevelopment has been shown to this Court.

40. The pending Civil Suit filed by Respondent Nos.3 and 4 does not alter this position. Their right to pursue that Civil Suit remains unaffected. The fact that this Court permits the redevelopment to proceed does not mean that their substantive claim regarding area is dismissed. At the same time, this order cannot be read as holding that they have no right to any additional area. Their substantive rights, if any, can be worked out in the proceedings where such rights are properly raised.

41. The apprehension of Respondent Nos.3 and 4 that they may lose their proper entitlement therefore cannot be made a reason for keeping possession of the premises for an unlimited period. Their entitlement, whatever it may finally be found to be, can be protected in proper proceedings. The redevelopment need not remain stopped for that reason. The judgment in *Pranav Constructions Limited* makes this distinction clear. The grievance of an individual member and the right and obligation of the Society to proceed with redevelopment are separate matters.

42. I therefore find that the submissions of Respondent Nos.3 and 4 have merit only to the extent that their dispute regarding the exact area requires proper adjudication and should not be finally decided in the present Section 9 Petition. However, I do not find merit in their submission that the redevelopment must first be stopped until the measurement dispute is decided. If appointment of an Architect is required, that question can be considered by the competent Court dealing with the dispute. The pendency of such an application does not create a legal bar to the redevelopment.

43. I find that the Petitioner's submission that the dispute regarding area need not be decided in the present proceedings is correct, with one qualification. This Court cannot declare the entitlement of either side regarding the disputed area. That question remains open. But merely because that question remains open, the Court is not prevented from passing interim measures which are necessary for protecting and facilitating the redevelopment under the registered Development Agreement.

44. On considering the entire material placed before the Court, the balance therefore lies in permitting the redevelopment to proceed. If Respondent Nos.3 and 4 continue in possession when most of the members have vacated and the project has reached the stage of municipal approval and registration of PAAA, their continued possession would affect the common redevelopment decision of the Society. Their individual dispute regarding area can be examined separately without stopping the entire project.

45. In these circumstances, I hold that the grievance of Respondent Nos.3 and 4 regarding measurement, additional area or alleged unequal treatment cannot, at this stage, be treated as sufficient reason to deny the Petitioner interim relief under Section 9 of the Arbitration and Conciliation Act, 1996. Their substantive rights in the pending Civil Suit or before any other competent forum shall remain unaffected by this finding. At the same time, their continued refusal to vacate the premises cannot be permitted to delay the redevelopment approved by the Society and recorded in the registered Development Agreement.

46. The reliefs sought by the Petitioner therefore have to be considered on this basis. This Court is not finally deciding the disputed area claimed by Respondent Nos.3 and 4. The Court is only giving effect, at the interim stage, to the redevelopment process which has been approved and substantially acted upon. This approach is in accordance with the principle stated by the Division Bench in Pranav Constructions Limited that "Respondents 2 to 6C cannot stop the redevelopment project" merely because they have an individual dispute regarding their entitlement in the redevelopment process.

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

i) The Arbitration Petition is partly allowed in terms of prayer clauses (a), (c) and (d), subject to the following directions:

ii) Respondent Nos.3 and 4 shall hand over vacant and peaceful possession of Shop No. SA/4, situated in the buildings known as “HighRise” of Respondent No.1 Society, to Respondent No.1 Society and/or the Petitioner within a period of 7 days from the date of receipt of written intimation from the Petitioner calling upon them to hand over possession. Such possession shall be handed over along with the keys and without any obstruction, so as to enable the Petitioner to proceed with demolition of the existing building and redevelopment of the subject property in accordance with the sanctioned plans;

iii) Insofar as Flat No. A/10 is concerned, the Petitioner has stated that the dispute with Respondent No.2 has been settled and that no relief is pressed against Respondent No.2. Therefore, no order is required in respect of Flat No. A/10 against Respondent No.2;

iv) Respondent Nos.3 and 4, their agents, servants, representatives and any person claiming through or under them shall not obstruct, interfere with or create any hindrance in the demolition of the existing buildings and the redevelopment of the subject property by the Petitioner and/or Respondent No.1 Society in accordance with the sanctioned plans and the Development Agreement dated 6 June 2025;

v) Respondent Nos.3 and 4 shall not sell, transfer, assign, alienate, encumber, part with possession of, or create any third-party rights, title or interest in respect of Shop No. SA/4, or otherwise deal with the said premises in any manner which may prejudice the redevelopment process or the rights of the Petitioner and Respondent No.1 Society;

vi) In the event Respondent Nos.3 and 4 fail to hand over vacant and peaceful possession of Shop No. SA/4 within the period stated in clause (ii) above, the Court Receiver, High Court, Bombay, is appointed as Receiver of Shop No. SA/4, with all powers under Order XL Rule 1 of the Code of Civil Procedure, 1908;

vii) Upon such failure, the Court Receiver shall take physical possession of Shop No. SA/4 from Respondent Nos.3 and 4 and shall hand over possession thereof to Respondent No.1 Society and/or the Petitioner for the purpose of demolition of the existing buildings and implementation of the redevelopment in accordance with the sanctioned plans;

viii) The Court Receiver shall be entitled to seek police assistance, if required, for taking physical possession of Shop No. SA/4 and for implementing this order. The concerned police authorities shall render necessary assistance upon a written request made by the Court Receiver;

ix) The appointment of the Court Receiver shall become operative only upon failure of Respondent Nos.3 and 4 to comply with clause (ii) above. Until such failure, Respondent Nos.3 and 4 shall remain in possession subject to the directions contained in this order;

x) It is clarified that the question regarding the exact area or entitlement claimed by Respondent Nos.3 and 4 in respect of Shop No. SA/4 is not finally adjudicated by this order. Their rights and contentions in that regard are kept open for adjudication in the appropriate proceedings. Nothing stated in this order shall be construed as a final determination of such rights;

xi) Respondent Nos.3 and 4 shall not rely upon the pendency of their Civil Suit, or any application made therein

for measurement or appointment of an Architect, as a ground to obstruct implementation of the present order, unless there is a specific order of the competent Court staying or modifying the effect of this order;

xii) The Petitioner shall communicate a copy of this order to Respondent Nos.3 and 4 and to Respondent No.1 Society forthwith. The period of 7 days prescribed above shall commence from the date of receipt of such intimation by Respondent Nos.3 and 4;

xiii) Liberty is granted to the Petitioner and Respondent Nos.3 and 4 to apply in case of any difficulty in implementation of this order;

xiv) The Petition is disposed of in the above terms.

xvi) All contentions are kept open for adjudication in the appropriate proceedings.

48. At this stage, Mr. Purekar, learned Advocate for Respondent Nos.3 and 4 prayed for stay of this Judgment and Order. However, for the reasons recorded herein above, request for stay stands rejected.

(AMIT BORKAR, J.)