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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.27902 OF 2026

Ambit Estates ... Petitioner

Vs.

ATUL GANESH KULKARNI
Digitally signed by ATUL GANESH KULKARNI
Date: 2026.09.01 15:10:16 +0530

1. Malad Yojana Cooperative Housing Society Limited
2. Hasmukh Dodia
3. Anita Hasmukh Dodia
4. Prashant Pravin Sanghvi
5. Shreya Ghia
6. Aditya Ghia
7. Firoz Ebrahim Shaikh ... Respondents

Mr. Mayur Khandeparkar with Ms. Arpita Tiwari i/by Mr. Dharmesh S. Jain for the Petitioner.

Ms. Vinodini Srinivasan i/by Ms. Pranjali Bhandari for Respondent No.1.

Mr. Girish Kedia with Krushang Kedia for Respondent Nos.2 and 3.

Mr. Dileep Satale with Ms. Swati Panjwani i/by SHB Legal for Respondent Nos.5 and 6.

Mr. Anilkumar Menon for Respondent No.7.

CORAM : AMIT BORKAR, J.

RESERVED ON : AUGUST 29, 2026.

PRONOUNCED ON : SEPTEMBER 1, 2026

JUDGMENT:

1. By this Petition filed under Section 9 of the Arbitration and Conciliation Act, 1996, the Petitioner seeks relief in relation to the redevelopment of the property belonging to Respondent No. 1 Society. Respondent No. 1 owns CTS Nos. 637 and 637/1 to 9, admeasuring about 2037.50 sq. metres, situated at S.V. Road, Malad West, Mumbai 400 064 (“Land”). There is an old building standing on the Land known as "Malad Yojana Co-operative Housing Society Limited". The building was constructed in or around 1974 and consists of two wings, namely A and B. There are in all 47 units, out of which 31 are residential flats and 16 are commercial units. This building is referred to as the “Existing Building”. The Land and the Existing Building are together referred to as the "said Property".

2. Respondent Nos. 2 to 7 are members of Respondent No. 1 Society. They are 7 members holding 6 units between them. Respondent Nos. 2 and 3, namely Hasmukh Dodia and Anita Hasmukh Dodia, hold Shop No. 13-A, at the back side of B-Wing. Respondent No. 4, Prashant Pravin Sanghvi, holds Shop No. 3, facing S.V. Road. Respondent Nos. 5 and 6, Shreya Ghia and Aditya Ghia, hold Flat Nos. A/4 and A/5. Respondent No. 7, Firoz Ebrahim Shaikh, holds Flat Nos. A/10 and A/11. These units are collectively referred to as the "Subject Premises". According to the Petitioner, these Respondents are the only minority members who are presently causing obstruction to the redevelopment.

3. The Petitioner has stated that the facts which resulted in filing of the present Petition are as follows. In the later part of 2018, the Existing Building and its RCC structure had become old and weak. It had become dilapidated. Therefore, the members of Respondent No. 1 unanimously decided to redevelop the said Property. It was decided to demolish the Existing Building and construct a new building in its place. Respondent No. 1 invited offers from persons who were interested in carrying out the redevelopment. The Petitioner submitted its offer on 1 February 2022. After discussions with the Managing Committee, the Petitioner submitted a revised and clarificatory offer dated 28 April 2022. This was for undertaking the redevelopment of the said Property. A Special General Body Meeting of Respondent No. 1 was held on 4 May 2022. In that meeting, 41 members were present. All the members unanimously resolved to appoint the Petitioner as the developer for redevelopment of the said Property. According to the Petitioner, nobody has challenged this resolution till today, including Respondent Nos. 2 to 7. The resolution, therefore, continues to be valid and binding upon all the members., Respondent No. 1 issued its appointment letter/letter of intent to the Petitioner on 9 September 2022, recording the appointment of the Petitioner as developer., another Special General Body Meeting of Respondent No. 1 was held on 20 October 2022. In that meeting, 35 members were present. The members unanimously approved the drafts of the Development Agreement and Power of Attorney. The Chairman, Secretary and Treasurer were authorised to execute these documents., on 23 March 2023, the Petitioner

applied to the Slum Rehabilitation Authority ("SRA") for obtaining the Intimation of Approval and sanctioned plans for the proposed new building.

4. Respondent No. 1 executed the Development Agreement with the Petitioner ("DA") on 30 April 2024. The DA was registered with the Sub-Registrar of Assurances, Borivali. Respondent No. 1 executed a registered Power of Attorney in favour of the partners of the Petitioner ("PoA"). Clause 4.1 of the DA sets out the agreed scheme for giving permanent alternate accommodation to the members ("Allotment Scheme"). Under this scheme, residential members were to receive an additional 25% area. No particular floor or particular facing was promised to such members. Members having shops facing S.V. Road or station road were to receive an additional 20% area. Members having shops at the backside of the ground floor were to receive an additional 25% area. Their new shop was to be on the first floor of the New Building, or on such other floor as may be mutually decided, facing the Kasturba Road side. Residential members who opted for commercial units or offices were to be given new shops on the third floor, or such other floor as may be decided by the Developer. The members having backside shops were to be given shops on the first floor facing station road. Clause 6 of the DA requires the members to hand over vacant possession of their respective units within 30 days from the date of the Petitioner's notice to vacate. Clause 26 contains the arbitration agreement. This clause is stated to be binding upon the Society, its members and their successors. Neither the DA nor the PoA has been challenged by any person till

today. A Special General Body Meeting of Respondent No. 1 was held on 13 December 2025. The members approved the draft Supplementary Development Agreement containing the modified terms., in the Special General Body Meeting held on 4 April 2026, the members approved the plans of the proposed new building. The SRA issued its Letter of Intent dated 15 May 2026 ("LOI"). The SRA sanctioned the plans of the new building by its Intimation of Approval dated 3 June 2026 ("IoA"). According to the Petitioner, the sanctioned plans are the same as the building plans which had been approved by the General Body of Respondent No. 1 on 4 April 2026. After receiving the IoA, the Petitioner, by its email/letter dated 3 June 2026, informed Respondent No. 1 about the same. The Petitioner called upon Respondent No. 1 to ensure that its members hand over vacant and peaceful possession of their units within 30 days and execute the Permanent Alternate Accommodation Agreements ("PAAA"). At the same time, the majority members of Respondent No. 1 approved the draft PAAA. Respondent No. 1 executed and registered the Supplementary Development Agreement with the Petitioner ("SA") on 3 July 2026. The SA records, amongst other things, the entitlement of the members and contains new Clause 14 providing for liquidated damages payable by members who do not cooperate.

5. During June and July 2026, after receiving the notice to vacate and after execution and registration of their respective PAAAs, all the members of Respondent No. 1, except Respondent Nos. 2 to 7, vacated their respective units and handed over possession. Respondent Nos. 2 to 7 have shifted out of the Existing

Building. However, they have not handed over possession of their respective units. The Petitioner states that, till the filing of the present Petition, it has spent approximately Rs. 14.01 crores for the redevelopment project. The Petitioner has borne the entire expenses relating to the DA, SA, PoA, PAAAs, LOI and IoA. On 13 July 2026, after the expiry of the 30-day period and after giving a 7 days' grace period, the Petitioner issued a follow-up and final notice to Respondent Nos. 2 and 3. They were called upon to vacate the Subject Premises and execute the PAAA., on 24 July 2026, the Municipal Corporation of Greater Mumbai issued a notice under Section 354 of the MMC Act. By this notice, the Existing Building was placed in the C-1 category, meaning that the building was treated as dilapidated and unsafe. Respondent No. 1 and all persons occupying the building were directed to vacate it. The Petitioner relies upon this notice to show that the condition of the Existing Building is poor and unsafe.

6. The Petitioner issued final notices to all Respondent Nos. 2 to 7. Notices dated 31 July 2026 were issued to Respondent Nos. 2 and 3, Respondent No. 5 and Respondent No. 6. A notice dated 1 August 2026 was issued to Respondent No. 4 and a notice dated 4 August 2026 was issued to Respondent No. 7. By their letter dated 31 July 2026, Respondent Nos. 5 and 6 offered only "conditional compliance". They agreed to physically vacate Flat Nos. A/4 and A/5, but refused to hand over "legal possession" unless a PAAA was first executed according to their terms. They wanted their new flats to be allotted on the same second floor and at the same S.V. Road-facing position. They did not accept the proposed allotment

on the third floor. At the same time, they have clearly stated in their letter that they "fully support the redevelopment" and "will vacate" their flats in compliance with the C-1 notice. Therefore, according to the Petitioner, their dispute is only regarding the floor and facing of the new allotment and not regarding the redevelopment. It is stated that Respondent Nos. 5 and 6 are admittedly residing elsewhere. Respondent No. 7, through his Advocate, sent a reply dated 8 August 2026. He refused to hand over possession of Flat Nos. A/10 and A/11 except upon certain conditions. These conditions included that the PAAA should first be executed and registered before he vacates. He wanted displacement rent to start from the date on which he alone vacates, without linking it with the vacation by the other members. He wanted certain "rider clauses" of his choice to be included in the PAAA. He alleged that the final notice issued to him amounted to "selective enforcement". At the same time, Respondent No. 7 has admitted in his reply that he has given "irrevocable consent" under the DA and SA. He has stated that he has "full intention and readiness to vacate". Thus, according to the Petitioner, even his dispute is not about the redevelopment. His objection relates mainly to when the PAAA should be executed and from what date rent should be paid. Respondent Nos. 2 and 3 and Respondent No. 4 did not send any reply to any of the notices.

7. The Petitioner filed the present Petition under Section 9 of the Arbitration and Conciliation Act, 1996 on 11 August 2026. The position regarding possession and PAAA as on 13 August 2026 is stated by the Petitioner to be as follows. Every unit in the Existing

Building has been vacated and its keys and possession have been handed over. The PAAAs have either been registered or are in the process of registration. The only exceptions are Shop No. 13-A of Respondent Nos. 2 and 3, which is recorded as "not vacated - not consented", and Flat Nos. A/4 and A/5 of Respondent Nos. 5 and 6 and Flat Nos. A/10 and A/11 of Respondent No. 7, which are recorded as "not handed over to Society". After the present Petition was filed, Respondent No. 4 handed over the keys and possession of Shop No. 3 and approved the draft PAAA for registration. Therefore, according to the Petitioner, the present obstruction is now limited to Respondent Nos. 2, 3, 5, 6 and 7, who together hold 5 units. In cases where the PAAA formalities of members who have vacated are still pending, the delay is stated to be because of matters personal to those members, such as pending release or partnership deeds, a member presently being in the USA, or requirement of trust approvals. According to the Petitioner, none of those members is causing any obstruction to the redevelopment.

8. Mr. Khandeparkar, learned Advocate for the Petitioner, submits that Respondent No. 1 is the absolute owner of the land bearing CTS Nos. 637, 637/1 to 9, admeasuring about 2037.50 sq. metres, situated at S.V. Road, Malad West, Mumbai 400 064. The building known as "Malad Yojana Co-operative Housing Society Limited" is standing on the said land. The building was constructed in or around 1974 and has two wings, namely A and B. There are 47 units in the building, out of which 31 are residential flats and 16 are commercial units. Out of these commercial units, 13 face the road and 3 are situated at the backside of B-Wing. He submits

that by notice dated 24 July 2026, the Municipal Corporation of Greater Mumbai, under Section 354 of the MMC Act, has classified the building as C-1, meaning that the building is dilapidated and unsafe. He submits that the General Body had unanimously passed a resolution dated 4 May 2022 appointing the Petitioner as the developer., Respondent No. 1 executed a registered Development Agreement dated 30 April 2024 and a registered Supplementary Development Agreement dated 3 July 2026 in favour of the Petitioner. According to him, nobody has challenged the General Body resolutions, the Development Agreement, the Power of Attorney or the Supplementary Development Agreement till today. Respondent No. 1 has 47 members. All the members have vacated their respective premises and handed over possession. The Dissenting Members have vacated their premises, but they are refusing to hand over possession to the Petitioner so that the redevelopment work can be carried out.

9. In support of his submissions, Mr. Khandeparkar relied upon the judgment of this Court in *Abhishek Pictures vs. Abhishek Agarwal Arts LLP & Others*, 2023 SCC OnLine Bom 2440.

10. Mr. Kedia, learned Advocate for Respondent Nos. 2 and 3, submits that Respondent No. 2 is carrying on business from the rear side of the Society on the ground floor. However, in the new building, the premises allotted to Respondent No. 2 are on the first floor. He submits that the Development Agreement shows that Respondent No. 2 is to be given shop premises on the first floor. According to him, this would reduce the market value of the premises because the premises are being used for commercial

purposes. He submits that Respondent No. 2 is carrying on business of heavy electrical goods such as refrigerators, washing machines, television sets and air conditioners from the existing ground floor shop. According to him, Respondent No. 2 had never agreed to take alternative premises on the first floor. He wants commercial premises on the ground floor so that he can continue his business. He submits that initially Office No. 104, admeasuring 177 sq. ft., was offered to Respondent No. 2., Office No. 107, admeasuring 182 sq. ft., was offered. However, under the PAAA, Office No. 107 admeasuring only 159 sq. ft. is now being offered. He therefore submits that the Petitioner is not entitled to the reliefs sought in the Petition.

11. Mr. Satale, learned Advocate for Respondent Nos. 5 and 6, submits that although these Respondents were occupying premises on the second floor in the Existing Building, they are now being offered premises on the third floor. According to him, such allotment would reduce the market value of their premises.

12. Mr. Menon, learned Advocate appearing for Respondent No. 7, submits that the reliefs sought by the Petitioner in the present Petition are in the nature of final reliefs. According to him, those reliefs have become infructuous because all the persons have vacated their premises. He submits that the Petitioner has not yet invoked arbitration by issuing a notice under Section 21 of the Arbitration and Conciliation Act, 1996. He submits that Clause 6 of the Development Agreement would prevail over Clause 29. According to him, Clause 29 requires that any dispute concerning an order against dissenting members has to be dealt with by the

Cooperative Court.

13. Mr. Khandeparkar, in reply to the submissions made by the Respondents, submits that Respondent Nos. 2 and 3 are bound by the allotment provided in the Development Agreement. He submits that under the Development Agreement, Respondent Nos. 2 and 3 are entitled to premises bearing No. 1097, admeasuring 159 square feet. According to him, the Petitioner is bound by the terms of the Development Agreement and the allotment has been made strictly according to its clauses. In relation to the submissions of Respondent Nos. 5 and 6, he submits that their allotment is governed by the specific clause of the Development Agreement. According to him, the Development Agreement clearly provides that Respondent Nos. 5 and 6 are entitled to new premises on the third floor. Therefore, their demand for premises on the second floor cannot be accepted.

14. As regards the submissions of Respondent No. 7, Mr. Khandeparkar submits that Respondent No. 7 has vacated his premises. He submits that at this stage it is not necessary for the Petitioner to first issue a notice under Section 21 of the Arbitration and Conciliation Act, 1996. According to him, such notice can be issued within 90 days from the date of the order passed by this Court, or within such other period as may be fixed by this Court. He submits that Clauses 6 and 29 of the Development Agreement, when read together, are clear and do not provide that the Cooperative Court alone has jurisdiction to pass an order against dissenting members. He submits that Clauses 6.4 and 14.4 do not refer either to the Cooperative Court or to the Registrar. He

submits that the Developer cannot approach the Cooperative Court for seeking an order requiring members of the Cooperative Society to vacate their premises. According to him, the word "Court" used in Clauses 6.4 and 14.4 has to be understood as referring to the appropriate Court having jurisdiction.

15. He submits that the reason why Respondent Nos. 2 and 3 and Respondent Nos. 5 and 6 are being given premises on the first and third floors respectively is because of the set-back area of approximately 600 sq. metres in the new building. According to him, keeping this position in mind, the General Body had agreed under the Development Agreement that the concerned Respondents would be accommodated on the first floor and third floor respectively. He submits that, to protect the interest of the Respondents, the Developer is ready to make a statement before this Court that, if this Court directs the parties to remain present before the Registrar for registration of the PAAA, the Petitioner will comply with that direction. The Petitioner is ready to execute and register the PAAA in favour of the concerned Respondents on the date fixed by this Court. He therefore submits that the Petitioner is entitled to the reliefs sought in the Petition.

REASONS AND FINDINGS:

16. I have considered the Petition, the Development Agreement dated 30 April 2024, the Supplementary Development Agreement dated 3 July 2026, the clauses relied upon by both sides, the notices and replies placed on record and the present position regarding handing over of possession. I have considered the

submissions made by the learned Advocates appearing for the Petitioner and the Respondents. The judgment of this Court in *Pranav Constructions Limited v. Priyadarshini Cooperative Housing Society Limited*, Arbitration Appeal (L) No. 20093 of 2025, decided on 14 July 2025, has been considered.

17. The main facts are not in dispute. Respondent No. 1 is the Society whose property is proposed to be redeveloped. The Existing Building was constructed in or around 1974. It is an old building and is stated to have become dilapidated and unsafe. More importantly, the MCGM has issued notice dated 24 July 2026 under Section 354 of the MMC Act and has classified the building in C-1 category. Therefore, this is not a case where redevelopment is being undertaken only because the Society desires to have a new building. There is material before the Court showing that the Existing Building has been treated as unsafe.nThe Petitioner has placed on record that the General Body of the Society unanimously passed a resolution dated 4 May 2022 appointing the Petitioner as the Developer., the Development Agreement was executed and registered on 30 April 2024. A registered Power of Attorney was executed. The Supplementary Development Agreement was registered on 3 July 2026. It has not been shown that Respondent Nos. 2 to 7 have challenged these resolutions or documents before any competent forum till date. This circumstance is relevant while considering the present Petition. This Court is not sitting in appeal over the commercial decision taken by the General Body. For the present purpose, the parties have to proceed on the basis of the documents which are presently binding upon them. Clause 6 of the

Development Agreement deals with vacation of the Existing Building. Clause 6.2 provides that after receipt of the necessary approval, written intimation is to be given and the Society is required to inform its members to vacate. Clause 6.3 places responsibility upon the Society to ensure that its members vacate their premises and hand over quiet, vacant and peaceful possession. Therefore, the obligation to vacate has not arisen only because the present Petition has been filed. It is an obligation arising from the Development Agreement. Clause 6.4 is important because it deals with a situation where some members do not cooperate with the redevelopment. It provides as follows:

> "However, if there are any defaulting, non-co-operating and non-corsenting Members), then in such case, the Society agrees and confirms that the Society shall cause the consenting and co-operating Menbers to-vacate their respective Existing Flats/Shops in the Buildings, immediately upon orders being obtained against all the defaulting, non-consenting and non-co-operating Members) from the Courts or Tribunals as stated in clause 14 herein below…"

18. The same clause provides that such members "shall be caused to be vacated from their respective existing Flats/Shops as per the orders that may be obtained against them from the Courts or Tribunals as stated in clause 14 herein below."

19. Thus, the parties had contemplated that some members may not cooperate with the redevelopment. The Development Agreement therefore provides a mechanism for dealing with such members. Clause 14.4 is relevant. It permits the Society and the Developer to approach the appropriate court, tribunal or forum for

obtaining necessary orders against such defaulting members. It includes reliefs "for causing him/her/ them to gig consent and co-operation to the redevelopment" and "for eviction/ vacation" of such members from their existing premises. It provides for removal of "any impediment or hindrance or obstruction" to the redevelopment. In view of these clauses, I do not find substance in the submission that the Development Agreement prevents this Court from granting relief. Clause 14.4 uses the words "appropriate courts of law or tribanat or forum". Clause 6.4 refers to "Courts or Tribunals". The Agreement does not state that only the Cooperative Court can pass an order for vacation in every situation. The language used in the Agreement is wider. Therefore, where possession is not handed over and such non-handover is creating obstruction to the redevelopment, the Petitioner can approach an appropriate Court for interim relief.

20. Mr. Menon submitted that Clause 6 overrides Clause 26 and therefore the dispute has to be taken only before the Cooperative Court. I am unable to accept the submission in the manner in which it is made. The present Petition is under Section 9 of the Arbitration and Conciliation Act and Clause 26 of the Development Agreement contains an arbitration agreement., Clause 14.4 permits the Society and the Developer to approach an appropriate court, tribunal or forum for removal of obstruction. The judgment in *Pranav Constructions Limited* makes a distinction between an individual grievance of a member and the question whether such grievance can be used to stop redevelopment in proceedings under Section 9. In *Pranav Constructions Limited*, the Division Bench

observed that "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." Such grievances have to be decided separately. If the dispute touches the business of the Society, the remedy may be under Section 91 of the M.C.S. Act. If it does not touch the business of the Society, the member may file a Civil Suit. At the same time, the Court clearly held that "existence of such disputes cannot be a reason to defeat petition filed under Section 9 of the Act." This part of the judgment is directly relevant to the present case. The position is therefore clear to this extent. In the present Petition, this Court is not required to finally decide whether Respondent No. 2 should get a ground floor shop, whether the first floor premises would have lesser market value, whether Respondent Nos. 5 and 6 should get premises on the second floor instead of the third floor, or whether any member is entitled to some different premises. If such claims are still surviving, they can be decided before the competent forum in appropriate proceedings. But such claims cannot be used to stop the redevelopment by retaining possession of the old premises when the Development Agreement contains provisions requiring vacation.

21. Respondent Nos. 2 and 3 have submitted that Respondent No. 2 is carrying on business of heavy electrical goods such as refrigerators, washing machines, television sets and air conditioners from the existing ground floor shop. According to them, if the new premises are on the first floor, its market value would be less and it would not be suitable for the business. I have

considered this submission. It may be a genuine concern from the side of Respondent No. 2. However, in a Section 9 Petition, this Court cannot decide the commercial value or business suitability of one floor as compared to another floor and then change the arrangement agreed between the parties. The Development Agreement contains the arrangement regarding allotment. According to the Petitioner, Respondent Nos. 2 and 3 are entitled to premises bearing No. 1097, admeasuring 159 square feet. The arrangement regarding backside ground floor shops is stated to be recorded in Clause 4.1 of the Development Agreement. Therefore, merely because Respondent No. 2 considers the ground floor to be more useful for his business, the Court cannot rewrite the Development Agreement in the present proceedings.

22. The submission regarding different office numbers and different areas does not change this position. Respondent Nos. 2 and 3 may have a grievance regarding the exact premises proposed under the PAAA. But such grievance will have to be examined with reference to the Development Agreement, the Supplementary Development Agreement and the documents prepared under them. Such grievance by does not give a right to continue withholding possession of the old premises. The question of entitlement to alternate accommodation and the obligation to cooperate with redevelopment are separate matters. The objection raised by Respondent Nos. 5 and 6 is similar. They submit that they were occupying premises on the second floor and that they are now being offered premises on the third floor. According to them, this would reduce the market value of the premises. I have considered

this submission. However, according to the Development Agreement relied upon by the Petitioner, Respondent Nos. 5 and 6 are to be allotted premises on the third floor. Therefore, the proposed allotment is not shown to be something which has been introduced only after the present dispute arose. It is based upon the redevelopment documents.

23. There is one circumstance concerning Respondent Nos. 5 and 6. In their own letter they have stated that they "fully support the redevelopment" and "will vacate". Therefore, their objection is essentially regarding the floor and facing of the alternate premises. This statement is important. When the redevelopment is accepted by them, they cannot prevent the redevelopment from proceeding by retaining possession of the old flats merely because they are not satisfied with the proposed floor or facing of the new premises. Respondent No. 7 is in the same position. In his reply dated 8 August 2026, he has admitted that he has given "irrevocable consent" under the Development Agreement and Supplementary Development Agreement. He has stated that he has "full intention and readiness to vacate". His objections are mainly regarding the time when the PAAA is to be executed, the date from which displacement rent is to be paid and the inclusion of "rider clauses". If Respondent No. 7 has any legal claim regarding these matters, he can raise it before the proper forum. But these objections do not give him an unlimited right to retain possession of the Existing Building and delay the redevelopment.

24. The submission that the Petitioner has not yet issued notice under Section 21 of the Arbitration and Conciliation Act does not

make the Petition liable to be rejected. Clause 26 contains the arbitration agreement and covers disputes connected with the redevelopment. It is correct that arbitration has to be invoked in accordance with law. But the present Petition concerns interim protection. The question before the Court is whether, in the meantime, the redevelopment arrangement should be allowed to remain obstructed because some members have not handed over possession. Clause 26 provides that the arbitration agreement covers disputes involving the Society, its office bearers, members and successors. It provides that the award shall be final and binding upon the Society "for and its Members and successors" and the Developer. Thus, there is a clear contractual arrangement for resolution of disputes. The fact that arbitration may be invoked later cannot by prevent this Court from considering the present request for interim relief.

25. The judgment in *Pranav Constructions Limited* deals with this aspect. The Court observed:

> "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."The Court observed that non-vacation by members "can thus become a trigger point for invocation of arbitration by Developer against the Society." Therefore, the possibility of arbitration does exist. It cannot be said that the Petitioner has no remedy or that the Section 9 Petition is premature only because notice under Section 21 has not yet been issued.

26. I have considered the submission that the relief sought by the Petitioner is in the nature of final relief. Prayer clause (a) seeks possession of the remaining premises so that redevelopment can commence. The relief certainly has practical effect. However, the purpose for which the relief is sought has to be considered. In the present case, the redevelopment has been approved by the General Body. The Development Agreement and Supplementary Development Agreement have been executed and registered. The necessary approval and sanctioned plans have been obtained. Most of the members have vacated. In these circumstances, directing the remaining members to hand over possession does not finally decide all their rights. Their claims regarding alternate accommodation, area, floor, facing, rent or other contractual rights are not finally decided by such direction. The immediate purpose is to ensure that the redevelopment which has been approved and acted upon is not stopped because possession of a few premises continues to remain with the concerned members.

27. I find that the Respondents cannot make execution of the PAAA on their own proposed terms a condition for handing over possession. Clause 6 separately provides for vacation of the premises. The Respondents have not shown any clause in the Development Agreement which gives them an absolute right to remain in the Existing Building until every term demanded by them is first accepted by the Developer.

28. Mr. Khandeparkar has stated that the Developer is ready to remain present before the Registrar for registration of the PAAA and is ready to execute the PAAA in favour of the concerned

Respondents on the date fixed by the Court. This statement gives reasonable protection to the Respondents at this stage. However, the Respondents cannot insist upon conditions which are not found in the Development Agreement as a precondition for vacating and handing over possession.

29. The notice under Section 354 issued by the MCGM is a relevant circumstance. I do not hold that this notice finally decides the private contractual rights of the members. It does not do so. However, the fact that the building has been classified as C-1, "dilapidated/unsafe", cannot be ignored while considering whether possession of the old building should continue to be retained. The need for vacation and redevelopment has therefore become more urgent.

30. The conduct of the members is relevant. There are 47 members in all. Almost all have vacated and cooperated with the redevelopment. The status chart shows that the obstruction has now become limited to a few units. Respondent No. 4 has handed over the keys and possession of Shop No. 3 after the Petition was filed. Therefore, the present case cannot be treated as a case where the Society as a whole is opposing redevelopment. The General Body decision is being implemented.

31. I am conscious that a majority decision by cannot take away a legal right of an individual member. That aspect has been considered. However, no challenge to the General Body resolutions, Development Agreement or Supplementary Development Agreement has been shown before this Court. The

objections now raised are mainly regarding allotment and conditions concerning alternate accommodation. As held in *Pranav Constructions Limited*, such individual grievances cannot by become a ground for stopping redevelopment in a Section 9 proceeding.

32. The reliance upon *Avenues Seasons Properties LLP* does not assist the Respondents. As explained in *Pranav Constructions Limited*, that case concerned persons who claimed that their bungalows were independent structures and should be kept outside the redevelopment. The present Respondents are members or occupants of the Society's building. They have not taken a stand that their premises should be excluded from the redevelopment. Their grievance is mainly regarding the terms of their alternate accommodation. Therefore, the factual position in that case is different from the present case.

33. The Petitioner has stated that it has incurred approximately Rs. 14.01 crores towards the project and has borne expenses relating to the Development Agreement, Supplementary Development Agreement, Power of Attorney, PAAAs, LOI and IoA. The project has now reached a stage where the Existing Building is required to be vacated and redevelopment work is to commence. If possession of the remaining premises is withheld, delay and expenses are likely to arise. This shows sufficient urgency for granting interim protection.

34. The balance of convenience is in favour of the Petitioner. If the Respondents have any genuine claim regarding floor, facing,

area, rent or any other term, such claim can still be considered before the appropriate forum. But if redevelopment is stopped because a few members continue to retain possession, the Society and the Developer will continue to suffer delay. The position cannot be adequately protected merely by leaving the dispute to be decided at some later stage.

35. I therefore find that the Petitioner has established a binding redevelopment arrangement, a General Body decision in its favour, substantial compliance by the other members, a contractual obligation to vacate, failure of the concerned Respondents to complete that obligation and a present need to remove the obstruction. The objections of Respondent Nos. 2 and 3 regarding the commercial use and value of the first floor, the objections of Respondent Nos. 5 and 6 regarding the third floor and the objections of Respondent No. 7 regarding the PAAA, rent and other conditions cannot, at this stage, defeat the Petition. I am not finally deciding the individual substantive rights of these Respondents except to the extent necessary for deciding the present interim relief.

36. The Petitioner has sought appointment of the Court Receiver as an alternative relief. In the ordinary course, a direct order for handing over possession may be sufficient. However, the order of the Court must have an effective consequence if the concerned Respondents do not comply. A mere direction to hand over possession, without providing for steps in case of non-compliance, may leave the redevelopment obstructed. It is therefore necessary to provide for appointment of the Court Receiver if the

Respondents fail to comply with the order within the time granted by the Court.

37. Appointment of the Court Receiver in such circumstances is supported by Clause 14.4 of the Development Agreement. The clause contemplates seeking "for appointment of a court receiver for eviction/ vacation" of defaulting, non-co-operating and non-consenting members. The Receiver therefore need not take possession immediately. The concerned Respondents shall first be given an opportunity to comply with the order voluntarily. If they fail to do so, the Receiver shall take necessary steps for securing possession in accordance with the order of this Court.

38. The question of police assistance requires consideration. If the Court Receiver is required to take physical possession because the order is not complied with, police assistance may become necessary for proper implementation of the order. Such assistance can therefore be made available to the Court Receiver, if required. The police assistance shall remain confined to implementation of the present order and taking peaceful physical possession of the concerned premises.

39. As regards Respondent No. 4, the record shows that he has handed over the keys and possession of Shop No. 3 and has approved the draft PAAA. Therefore, no order for taking physical possession of Shop No. 3 is required against him. As regards Respondent No. 7, if he has physically vacated but has not formally handed over the keys or possession, he shall complete such handover. If possession has been formally handed over, no order

for taking physical possession will be necessary against him.

40. Prayer clauses (d) and (e) require to be granted to the necessary extent. Once it is found that the redevelopment is proceeding under binding documents and possession is necessary for that redevelopment, the remaining Respondents cannot be permitted to create complications in respect of the existing premises. They therefore have to be restrained from transferring the premises, creating third party rights or encumbrances, parting with possession or inducting any other person. They have to be restrained from obstructing the demolition and redevelopment of the said Property.

41. The injunction granted by the Court will not finally decide the title or any independent legal right which any Respondent may claim. It is intended only to prevent creation of third party rights and any obstruction which may defeat the redevelopment or implementation of the present order.

42. On considering the entire material placed before the Court, I am satisfied that the Petitioner has made out a case for interim measures under Section 9 of the Arbitration and Conciliation Act. The Respondents have not shown sufficient reason for continuing to withhold possession merely because there are disputes regarding the floor, facing, market value, area, PAAA terms or commencement of rent. Such disputes may be taken before the competent forum. They cannot be used as a means to stop the redevelopment.

43. I, therefore, hold that Respondent Nos. 2 and 3 and Respondent Nos. 5 and 6 are required to hand over vacant and peaceful possession of their respective existing premises to the Petitioner. Respondent No. 7 shall hand over possession and keys if the same have not been formally handed over. This direction is being issued to enable the redevelopment to be carried out in accordance with the Development Agreement, Supplementary Development Agreement and sanctioned plans.

44. The Respondents shall continue to remain bound by the Development Agreement and Supplementary Development Agreement. The Petitioner shall remain bound by the entitlements of the concerned members under those documents. The Petitioner has stated that it is ready to complete the PAAA formalities and remain present before the Registrar for registration of the PAAA, if required. Therefore, the Respondents shall not make their own additional or contrary conditions a reason for refusing to hand over possession.

45. In the result, the Petition deserves to be allowed. Respondent Nos. 2, 3, 5, 6 and 7 shall be directed to hand over possession within the period fixed in the operative order. If they fail to comply, the Court Receiver, High Court, Bombay shall take physical possession of the concerned premises, with necessary police assistance, and hand over such possession to the Petitioner for carrying out the redevelopment. The injunction against creation of third party rights and against obstruction to redevelopment shall operate.

46. The individual claims of the Respondents regarding alternate accommodation, floor, facing, area, rent, PAAA or any other substantive entitlement are kept open for being decided before the appropriate forum in accordance with law. If any such proceedings are filed, mere pendency of those proceedings shall not operate as a stay or obstruction to the redevelopment or implementation of the present order, unless an appropriate order is passed by a competent forum.

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

i) The Petition is allowed in terms of prayer clause (a). Respondent Nos. 2 to 7 shall vacate and hand over vacant, peaceful and physical possession of their respective premises within two weeks, namely (i) Shop No.13-A, Back Side of B-Wing, (ii) Shop No.3, (iii) Flat No. A/4, (iv) Flat No. A/5 and (v) Flat Nos. A/10 and A/11, situated in the building of Respondent No.1 Society, to the Petitioner, so as to enable the Petitioner to commence and proceed with the redevelopment of the said Property;

ii) Respondent Nos. 2 to 7 shall hand over the keys and vacant possession of their respective premises to the Petitioner within a period of 2 weeks' from the date of uploading of the present order;

iii) Respondent Nos. 2 to 7, their respective family members, servants, agents and any person claiming through or under them shall not obstruct, interfere with or create any

hindrance in the demolition of the Existing Building or in carrying out the redevelopment of the said Property by the Petitioner in accordance with the Development Agreement, Supplementary Development Agreement and sanctioned plans;

iv) In the event Respondent Nos. 2 to 7, or any of them, fail to comply with the direction contained in clause (ii) above and fail to hand over vacant and peaceful possession within the time stipulated, the Court Receiver, High Court, Bombay, shall stand appointed as Receiver in respect of the concerned premises, with all powers under Order XL Rule 1 of the Code of Civil Procedure, 1908;

v) Upon such failure, the Court Receiver shall be entitled to take physical possession of the concerned premises from the defaulting Respondent, his, or her family members, servants, agents or any person found in occupation thereof and shall hand over such vacant possession to the Petitioner for the purpose of carrying out the redevelopment of the said Property;

vi) The Court Receiver shall be entitled to seek police assistance, if found necessary, for taking physical possession of the concerned premises and for implementing the present order;

vii) The Court Receiver shall stand discharged in respect of any premises immediately upon handing over possession thereof to the Petitioner, subject to orders of this Court;

viii) In terms of prayer clause (d), Respondent Nos. 2 to 7, their servants, agents and any person claiming through or under them are restrained from selling, conveying, transferring, assigning, alienating, granting or otherwise disposing of their respective existing premises, or any part thereof, or creating any third party rights or encumbrances therein, or parting with possession thereof, or inducting any person therein;

ix) Respondent Nos. 2 to 7 are restrained from obstructing, interfering with or creating any hurdle in the demolition of the Existing Building and the redevelopment of the said Property by the Petitioner;

x) The above injunction shall continue until completion of the redevelopment, subject to orders of the competent Court or Arbitral Tribunal;

xi) It is clarified that the present order shall not finally determine the individual claims, if any, of Respondent Nos. 2 to 7 regarding the area, floor, facing, permanent alternate accommodation, displacement rent or any other contractual entitlement. Such claims, if otherwise maintainable in law, may be raised before the appropriate forum. However, pendency of such claims shall not by operate as a stay on the redevelopment or on compliance with the present order;

xii) The Petitioner shall comply with the terms of the Development Agreement and Supplementary Development

Agreement regarding execution and registration of the Permanent Alternate Accommodation Agreements with the concerned Respondents;

xiii) The Petition is accordingly disposed of in the above terms;

xiv) All concerned shall act on an authenticated copy of this order.

(AMIT BORKAR, J.)