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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.30794 OF 2026

MIG (Bandra) Realtors & Builders Private Limited ... Petitioner

Vs.

Middle Income Group Cooperative Housing Society Limited ... Respondent

ATUL GANESH KULKARNI

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Date: 2026.10.27 12:11:16 +0530

Mr. Ravi Kadam, Senior Advocate with Mr. Rohan Kadam, Ms. Rujuta Patil, and Mr. Yohaan Shah i/by Negandhi Shah & Himayatullah for the Petitioner.

Dr. Sanjay Jain with Mr. Nishant Sasidharan, Mr. Karan and Mr. Divyand Shukla i/by LJ Law for the Respondent.

CORAM : AMIT BORKAR, J.

RESERVED ON : OCTOBER 21, 2026.

PRONOUNCED ON : OCTOBER 27, 2026

JUDGMENT:

1. The present Petition is filed by the Petitioner under Section 9 of the Arbitration and Conciliation Act, 1996, along with its amendments (hereinafter referred to as the "Arbitration Act"). The Petitioner is seeking a mandatory injunction directing the Respondent, Middle Income Group Co-operative Housing Society

Limited, to immediately admit the 177 Flat Purchasers of the Petitioner as members of the Respondent Society. The Petitioner is seeking a direction that the Respondent should not insist upon any condition which is not provided in Clauses 9.5 and 9.9 of the Development Agreement read with Clause 20 of the Consent Terms dated 27 December 2021 ("Consent Terms"), which were recorded between the parties in the arbitration proceedings before the Sole Arbitrator. According to the Petitioner, the proportionate Corpus, Share Money and Sinking Fund payable in respect of the said 177 Flat Purchasers have been paid fully and without any default. It is the Petitioner's case that Clauses 9.5 and 9.9 of the Development Agreement, read with Clause 20 of the Consent Terms, provide all the grounds on which the Respondent can refuse to admit the Flat Purchasers as members. The Petitioner states that the circumstances in which such admission can be refused admittedly do not exist. This is clear from the correspondence exchanged between the parties. Therefore, according to the Petitioner, the Respondent has no right to refuse admission of the 177 Flat Purchasers as members of the Respondent Society.

2. The facts and circumstances which have given rise to the present Petition are as follows. On 31 October 2010, the Respondent, which is a co-operative housing society registered under the Maharashtra Co-operative Societies Act, 1960 ("MCS Act"), entered into a Development Agreement ("DA") with the Petitioner for redevelopment of the property of the Respondent situated at Gandhinagar Layout, Bandra (East), Mumbai 400 051 ("Project"). Thereafter, in the year 2015, the parties entered into a

Deed of Modification in respect of the Development Agreement. On 8 May 2020, the Respondent issued a letter to the Petitioner stating that it was terminating the Contract. Thereafter, on 27 December 2021, the parties arrived at a settlement before the learned Sole Arbitrator. The terms of this settlement were recorded in the Consent Terms. Clause 20 of the Consent Terms, among other things, provided that the Respondent would refuse to admit a Flat Purchaser as a member of the Respondent Society only if there was a default in payment of the proportionate Corpus payable in respect of that Flat Purchaser. On 4 January 2022, the learned Sole Arbitrator passed a Consent Award in accordance with the Consent Terms dated 27 December 2021. Thereafter, on 23 February 2026, the Respondent addressed a letter to the Petitioner.

3. On 24 February 2026, the Respondent addressed another letter to the Petitioner. On 25 February 2026, the Petitioner replied by addressing a letter to the Respondent. Thereafter, on 7 March 2026, the Petitioner addressed a letter to the Respondent, informing it that the proportionate Corpus in respect of 354 Flat Purchasers had been paid. Along with this letter, the Petitioner forwarded 96 application forms, undertakings and copies of agreements for sale or possession letters relating to the Flat Purchasers. The Petitioner provided their complete particulars, including details of payment of the entrance fee and Sinking Fund, and called upon the Respondent to admit these Flat Purchasers as members of the Respondent Society. On 10 March 2026, the Petitioner again addressed a letter to the Respondent, providing

the UTR details relating to the deposit and payment made on 7 March 2026.

4. On 24 May 2026, a Special General Body Meeting ("SGM") of the members of the Respondent Society was held. At this meeting, the Respondent passed a resolution which it sought to rely upon for imposing additional conditions for admitting the Flat Purchasers as members of the Society. According to the Petitioner, these conditions were not provided in Clause 20 of the Consent Terms. Thereafter, on 8 June 2026, the Petitioner addressed another letter to the Respondent, calling upon it to admit the new Flat Purchasers as members of the Respondent Society. As the Respondent did not do so, the Petitioner addressed a letter on 12 June 2026, again requesting the Respondent to admit the new Flat Purchasers as members.

5. On 25 June 2026, the Respondent addressed a letter to the Petitioner, seeking to make the admission of the Flat Purchasers as members subject to their agreeing to the Respondent's proposed use of the amount held by the Respondent in excess of Rs. 18,00,00,000/- towards the Corpus. This included the proposed use of the amount for meeting maintenance expenses on behalf of the original 176 members occupying an area of 2,61,375 square feet of RERA carpet area. According to the Petitioner, such a condition was not provided in Clause 20 or in any other clause of the Consent Terms. The Petitioner contends that the Respondent could not make the admission of the Flat Purchasers dependent upon acceptance of this additional condition.

6. On 26 June 2026, the Petitioner addressed a letter to the Respondent, objecting to the condition mentioned in the Respondent's letter dated 25 June 2026. The Petitioner stated that this condition had never been agreed to by it and had no basis in the Consent Terms, the Contract, the bye-laws of the Respondent Society or the law. Thereafter, on 3 July 2026, the Petitioner addressed another letter to the Respondent, confirming and completing payment of the entire proportionate Corpus at the rate of Rs. 688.66 per square foot, along with the Share Money and Sinking Fund payable in respect of the concerned Flat Purchasers. According to the Petitioner, by making these payments, it had fully complied with its obligations under Clause 20 of the Consent Terms.

7. On 15 July 2026, the Petitioner addressed a letter to the Respondent because the Respondent had still not admitted the Flat Purchasers as members of the Society. Thereafter, on 16 July 2026, the Petitioner again called upon the Respondent, by a letter, to admit the new Flat Purchasers as members. Since the Respondent continued to refuse admission, the Petitioner addressed yet another letter on 24 July 2026, once again requesting the Respondent to admit the new Flat Purchasers as members of the Respondent Society.

8. On 1 September 2026, the Petitioner addressed a final letter to the Respondent, without giving up any of its rights and contentions. In this letter, the Petitioner referred to the correspondence exchanged between the parties and stated that it had fully complied with Clause 20 of the Consent Terms. The

Petitioner called upon the Respondent to admit the Flat Purchasers as members of the Society within 24 hours. It stated that, if the Respondent failed to do so within that period, the Respondent would be treated as having committed a default and breached Clause 20 of the Consent Terms, as well as its obligations under the MCS Act and the bye-laws of the Respondent Society.

9. Even after the period granted by the Petitioner had expired, the Respondent did not admit the Flat Purchasers as members of the Society. According to the Petitioner, there was no default in payment of the proportionate Corpus, Share Money or Sinking Fund. Despite this, the Respondent has continued to refuse admission of the Flat Purchasers as members. The Petitioner contends that the Respondent is insisting upon conditions which are not provided in Clauses 9.5 and 9.9 of the Development Agreement read with Clause 20 of the Consent Terms. According to the Petitioner, these additional conditions are not supported by the Consent Terms, the Contract, the bye-laws of the Respondent Society or the MCS Act. In these circumstances, as the Respondent has continued to withhold admission of the Flat Purchasers despite the Petitioner's claim of having fulfilled its payment obligations, the Petitioner has been compelled to file the present Petition before this Court.

10. Mr. Ravi Kadam, learned Senior Advocate appearing for the Petitioner, submitted that under the registered Development Agreement dated 31 October 2010 (“DA”), read with the Deed of Modification dated 23 August 2014 (“DOM”), the Deed of Confirmation dated 29 September 2015 and the Deed of

Rectification dated 30 September 2015, the Petitioner had undertaken redevelopment of the Respondent Society's property at Gandhinagar Layout, Bandra (East). The Society purported to terminate the Contract on 8 May 2020. The dispute was thereafter referred to a Sole Arbitrator, before whom the parties entered into Consent Terms dated 27 December 2021 ("CT"), resulting in the Consent Award dated 4 January 2022. Learned Senior Advocate submitted that the redevelopment is now substantially complete. The Occupation Certificate for the rehabilitation component was received on 5 February 2025 and all 176 original members have received possession of their new flats. Out of 601 flats sold by the Petitioner, possession of 445 flats, having RERA carpet area of 5,81,012 square feet, has been handed over to the purchasers. According to the Petitioner, the corpus of Rs. 18 crores for the Society has been constituted as required under the Consent Terms. The Petitioner is seeking admission of these purchasers as members, since their proportionate corpus of Rs. 40,00,90,711/-, along with share application money, sinking fund and fixed deposit interest, is with the Society. It is submitted that under Clauses 9.5 and 9.9 of the DA, read with Clause 20 of the CT, the Society is required to admit the purchasers and cannot continue to keep them out of membership after receiving the amounts payable in respect of their flats.

11. Learned Senior Advocate submitted that the Society's objections relate to money claims and should not be used to deny membership to the purchasers. Before filing the Petition, the only dispute was regarding the "Excess Amount" under Clause 10 of the

CT. The Society had quantified this amount at Rs. 5.10 crores in its SGM resolution dated 24 May 2026. The Petitioner has kept ready a demand draft dated 8 September 2026 for Rs. 5,10,00,000/- in favour of the Prothonotary & Senior Master to secure this claim, so that the amount can be decided later without withholding the purchasers' membership in the meantime. It is submitted that the Society has raised different claims, including a corpus of Rs. 19.94 crores for the original members, a rate of Rs. 711.16 per square foot instead of Rs. 688.61 per square foot, and a total corpus of Rs. 94,98,25,333.30/-. The Society has questioned the difference between Rs. 890 per square foot collected from purchasers and Rs. 688.61 per square foot deposited with it. According to the Petitioner, the figures claimed by the Society have changed from time to time, whereas the Society's own resolutions had adopted the rate of Rs. 688.66 per square foot on RERA carpet area. The Petitioner relies upon the Society's acceptance of more than Rs. 40 crores towards corpus between 7 March 2026 and 30 September 2026, along with fixed deposit interest of Rs. 71,97,206/-. It is submitted that the Society had acknowledged that admission of the purchasers was “currently underway” and had earlier referred only to financial issues with the developer. The Petitioner contends that the later objections cannot be made a ground for refusing membership, particularly when the Society has accepted the payments on the basis earlier adopted by it.

12. Learned Senior Advocate submitted that Clauses 9.5 and 9.9 of the DA require the Society to admit the new purchasers after the necessary applications and documents are submitted and the

required payments are made. Article 2.3 of the DA, read with Clause 2(h)(2.3) of the DOM, provides for payment of a proportionate corpus calculated with reference to the FSI and the sinking and reserve funds of the Society. Clause 20 of the CT requires this corpus to be paid before possession is handed over and states that the Society's own corpus shall be Rs. 18 crores. According to the Petitioner, this amount is made up of Rs. 10 crores under Clause 9 and Rs. 8 crores under Clause 11 of the CT. On this basis, the rate works out to Rs. 688.61 per square foot on RERA carpet area. The Petitioner submits that its calculation is supported by the Society's own SGM agenda and resolution dated 24 May 2026, which adopted the rate of Rs. 688.66 per square foot. It is submitted that the Excess Amount under Clause 10 is payable to the original members as Hardship Compensation and is separate from the corpus payable under Clause 20. The Society cannot include the same amount in the members' corpus and claim it separately as the Excess Amount. The Petitioner disputes the Society's later calculation based on FSI or built-up area, including the alleged shortfall of Rs. 22.55 per square foot, as it is based on a different method from the RERA carpet area calculation earlier adopted by the Society. The Petitioner submits that the amount charged from purchasers under their Agreements for Sale is a commercial decision and does not determine the Society's entitlement under the DA, DOM and CT. Therefore, according to the Petitioner, the corpus payable to the Society must be decided under the agreed formula and not by using a later calculation which was never previously adopted.

13. Learned Senior Advocate submitted that the dispute regarding the Excess Amount is not a reason to withhold admission of the purchasers, particularly when the Petitioner has offered to secure Rs. 5.10 crores by demand draft. The Society has not consistently calculated this amount. It first referred to Rs. 4,76,63,288/-, later to approximately Rs. 5.10 crores and thereafter to Rs. 1,94,63,320/- with interest. The Petitioner disputes the later calculation and says that it includes amounts which were not lying with the Society on the relevant date. It is submitted that this money claim can be examined in appropriate proceedings and that the Society's claim is protected by the demand draft. The Petitioner explains that corpus payments began after possession because the Society did not disclose its calculation of the Excess Amount until 23 February 2026, despite earlier requests and an offer made by the Petitioner to begin depositing the corpus. The money was kept in fixed deposits, and the Society accepted the interest earned during the intervening period. The Petitioner says that the Society cannot now treat the timing of payment as a permanent disqualification, after accepting substantial amounts and interest. As regards the bank guarantees, the Petitioner submits that both guarantees were furnished and accepted by the Society on 25 January 2022. On compliance with the Conditions Precedent, the earlier termination stood cancelled under Clause 6 of the CT. According to the Petitioner, the later expiry of the guarantees cannot revive a termination which had been cancelled. It is submitted that Clause 3, which deals with the guarantees, is not included in the obligations mentioned in Clause

5, under which the Society cannot terminate the Contract while the Petitioner performs the stated obligations. The Petitioner says that the redevelopment is substantially complete, the Occupation Certificate has been received and only limited landscaping work on the northern side remains. Without prejudice, the Petitioner has offered to revalidate the guarantees until the remaining work is completed. It is submitted that the Society's belated objection regarding the guarantees cannot be allowed to put the rights of the purchasers who have taken possession at risk.

14. Learned Senior Advocate submitted that the Petition is maintainable under Section 9 of the Arbitration and Conciliation Act, 1996, which permits interim measures after an arbitral award is made but before it is enforced. The passing of the Consent Award does not prevent the Petitioner from seeking interim relief from this Court. The objection under Section 163 of the Maharashtra Co-operative Societies Act, 1960, is said to be misplaced, since the Petitioner is seeking enforcement of its own rights against the Society under the DA, DOM and CT and is not seeking to exercise any independent remedy belonging to the purchasers. It is submitted that the purchasers are not necessary parties because no relief is claimed against them; the relief sought is a direction to the Society to perform its obligation to admit them as members. The Petitioner relies upon *Periyakkal v. Dakshyani*, (1983) 2 SCC 12, paragraph 4, to submit that the Court has power under Section 151 of the Code of Civil Procedure, 1908, to grant relief against forfeiture where necessary to prevent serious injustice. Reliance is placed on *Dorab Cawasji Warden v. Coomi*

Sorab Warden, (1990) 2 SCC 117, paragraphs 16 and 17, and *Deoraj v. State of Maharashtra*, (2004) 4 SCC 697, paragraph 12, in support of the submission that a mandatory injunction can be granted where a strong case is made out and refusal of relief would cause serious and irreparable injury. According to the Petitioner, the purchasers have taken possession of their flats, while their corpus and other amounts are being held and invested by the Society. Even then, they have not received share certificates, voting rights or a voice in the Society's affairs. It is submitted that their continuing exclusion causes serious prejudice, whereas the Society's money claims can be secured and decided separately. The Petitioner maintains that it is ready and willing to perform its obligations under the Consent Terms.

15. Learned Senior Advocate submitted that the Society's objections are essentially monetary and do not justify refusing membership to the purchasers. The only dispute existing before the Petition was filed concerned the Excess Amount under Clause 10, and the Petitioner has secured the highest amount claimed by the Society by offering the demand draft of Rs. 5,10,00,000/- dated 8 September 2026. The other claims raised after filing of the Petition can be decided separately, and admitting the purchasers as members would not prevent the Society from pursuing those claims according to law. It is submitted that the Society's own resolutions and its acceptance of substantial corpus payments support the Petitioner's case that the agreed rate was Rs. 688.61 to Rs. 688.66 per square foot on RERA carpet area. The Society cannot now adopt a different calculation and use it to keep the

purchasers out of membership. The Petitioner submits that the redevelopment is substantially complete, the original members have received their flats and 445 purchasers have taken possession. In these circumstances, refusal to admit the purchasers despite the Society holding substantial amounts belonging to or collected in respect of them causes continuing prejudice. The Petitioner submits that the requirements for granting a mandatory injunction are satisfied and prays that this Court make the Petition absolute in terms of prayer clauses (a) and (b).

16. Dr. Sanjay Jain, learned Advocate appearing for the Respondent, submitted that the Respondent had appointed the Petitioner to redevelop its property. However, the Respondent terminated the Contract by its letter dated 8 May 2020. The Petitioner challenged the termination in the arbitration proceedings. The learned Arbitral Tribunal granted a conditional stay of the termination under Section 17 of the Arbitration and Conciliation Act, 1996 ("the Act"). The Petitioner was required to perform certain obligations, including furnishing bank guarantees of approximately Rs. 100 crores. Instead of complying with these conditions, the Petitioner challenged the order under Section 37 of the Act. The arbitration proceedings ultimately ended in a Consent Award dated 31 January 2022, passed in terms of the Consent Terms dated 27 December 2021 ("the CT"). The Consent Terms and the Consent Award are collectively referred to as "the Award".

17. Mr. Sanjay Jain submitted that the Petitioner has filed the present Petition under Section 9 of the Act, seeking mandatory injunctions directing the Respondent to admit the new flat

purchasers as members of the Society. The Petitioner alleges that the Respondent has failed to comply with the Award. However, the Petitioner has not joined the purchasers as parties to the Petition. According to the Respondent, the Petitioner is seeking a finding that it has complied with the Award or, alternatively, that its breaches should be excused. The Petitioner has raised the following grounds in support of its request.

(i) The Respondent is refusing to admit the new purchasers as members because the Petitioner has not obtained their written confirmations permitting the Respondent to retain Rs. 5.1 crores towards the maintenance expenses of the original 176 members. The Petitioner contends that the money would benefit all the members. It has offered to deposit the amount in Court until the Respondent obtains appropriate relief in the arbitration proceedings.

(ii) The Petitioner relies upon the working prepared in 2021 and the resolutions passed at the Special General Body Meeting ("SGM") dated 24 May 2026. According to the Petitioner, these documents approved the rate of Rs. 688.61 per square foot, and the corpus has been paid for every applicant seeking membership. The Petitioner contends that the Respondent cannot now claim a higher amount. It alleges that the resolution dated 30 September 2026 is an afterthought because it was passed after the Petition had been adjourned to enable the Respondent to file its Reply.

(iii) In the alternative, the Petitioner seeks an extension of time to remedy its alleged breaches. It submits that the original members have been provided with their new flats and that revival of the termination would unfairly prejudice the new purchasers.

18. Mr. Sanjay Jain submitted that the dispute regarding Rs. 5.1 crores arises under Clause 10 of the Consent Terms and must be considered separately.

(i) The resolutions passed on 24 May 2026 sought confirmation regarding the proposed treatment of the Excess Amount under Clause 10 of the Consent Terms.

(ii) Clause 10 requires the Excess Amount to be paid exclusively to the original 176 members as Hardship Compensation. Instead of distributing the amount among those members, the Respondent proposed to retain it towards their maintenance expenses. The Respondent sought express confirmations from the new purchasers so that they would not later raise any claim against the retained amount, which, according to the Respondent, belongs exclusively to the original members. Mr. Jain submitted that this request was consistent with the purpose of Clause 10.

(iii) Mr. Jain submitted that the Petitioner has admittedly not paid the Excess Amount and has committed a breach of its financial obligation under the Consent Terms.

19. Mr. Sanjay Jain submitted that Clause 20 of the Consent Terms concerns a separate dispute and creates a separate financial

obligation.

(i) Clause 20 requires the Petitioner to pay the Respondent the proportionate corpus payable in respect of each new flat purchaser, in accordance with Article 2.3 of the Development Agreement ("DA") read with the Deed of Modification ("DOM"), before handing over possession of the concerned flat.

(ii) Clauses 10 and 20 deal with different amounts and provide for different consequences. Clause 20 permits the Respondent to refuse admission of a flat purchaser as a member if the required payment is not made. This right is without prejudice to the other rights and remedies available to the Respondent.

(iii) According to the Respondent, the proportionate corpus under Clause 20 has to be calculated by considering three factors. These are the proportion between the FSI consumed for the rehabilitation component and the FSI consumed for the sale component, the sinking fund of the Respondent Society, and its reserve funds.

(iv) Mr. Jain submitted that the FSI ratio between the rehabilitation component and the sale component is 21:79. Therefore, the new purchasers are required to contribute 79% of the resulting corpus, while the contribution attributable to the original members is 21%.

(v) He submitted that Clause 20 includes the sinking fund and reserve funds while calculating the contribution

attributable to the original members. According to the Respondent, the amount of Rs. 18 crores, being the aggregate amount under Clauses 9 and 11 of the Consent Terms, forms part of the agreed arrangement for the original members' maintenance. The Respondent submitted that this amount was part of the settlement formula. Having rejected that arrangement, the Petitioner cannot seek to enforce the Consent Terms selectively for its own benefit.

20. Mr. Sanjay Jain submitted that the Petitioner cannot rely upon the rate of Rs. 688.61 per square foot merely because the Respondent had earlier considered that rate.

(i) According to the Respondent, the resolutions dated 24 May 2026 did not finally settle the amount payable under Clause 20. The request for confirmation regarding the Excess Amount under Clause 10 was a separate matter. The Petitioner cannot treat the two issues as one and claim that the Respondent has accepted all its calculations.

(ii) Without prejudice to its contention that the rate of Rs. 688.66 per square foot was not finally accepted, the Respondent submitted that it is entitled to correct an erroneous calculation and recover the amount payable under the Award.

(iii) The Respondent submitted, in the alternative, that even if the resolutions are treated as a concluded settlement, they would amount to a compromise or adjustment of a money decree. Such a compromise or adjustment was

required to be recorded under Order XXI Rule 2 of the Code of Civil Procedure, 1908, within 30 days. Since no such recording was obtained, the Petitioner cannot rely upon the resolutions to claim a compromise or adjustment contrary to the Award.

(iv) Mr. Jain submitted that the SGM held on 30 September 2026 took note of the Petitioner's breaches and authorised the Respondent to take appropriate action. According to him, the earlier proposal was no longer operative. He submitted that the date on which the resolution was passed does not affect the Respondent's right to rely upon the Petitioner's breaches.

21. Mr. Sanjay Jain submitted that the Petitioner has committed two breaches of Clause 20 of the Consent Terms.

(i) The first breach concerns the shortfall in the proportionate corpus. According to the Respondent, the Petitioner has calculated the amount at an incorrect rate of Rs. 688.61 per square foot and has failed to deposit the full amount payable under the Award.

(ii) The second breach concerns the timing of payment. Possession of the flats commenced in February 2025, whereas the Petitioner began making payments towards the corpus only in July 2026. The Respondent contends that even the amounts paid were insufficient. According to Mr. Jain, the Petitioner has failed to comply with the requirement that the corpus be paid before possession is

handed over to the purchasers.

22. Mr. Sanjay Jain submitted that Clauses 2 to 6 of the Consent Terms must be read together. Clause 2 keeps the termination in abeyance, subject to strict and timely compliance with Clause 3. Under Clause 4, a default results in revival of the termination. According to the Respondent, the Petitioner accepts this consequence under the Consent Terms. Clause 5 prevents termination only so long as the Petitioner strictly performs its specified obligations, including those under Clauses 10 and 20. Clause 6 provides for automatic cancellation of the earlier termination upon compliance with the Conditions Precedent. Mr. Jain submitted that the Petitioner has failed to fulfil these requirements and cannot, therefore, claim that the termination remains cancelled.

23. Mr. Jain submitted that Clause 3(i) requires the relevant bank guarantee to remain valid for two years after possession of all the rehabilitation premises is handed over or the part Occupation Certificate ("OC") is received, whichever is later. The part Occupation Certificate was received on 5 February 2025, and possession of the rehabilitation premises followed. According to the Respondent, the bank guarantee was required to remain valid until at least 5 February 2027. However, it expired on 6 June 2026. The Respondent contends that this amounts to a breach of Clause 3(i).

24. Mr. Jain submitted that Clause 3(ii) requires the other bank guarantee to remain valid until the specified milestones are

achieved. That guarantee expired on 6 June 2024, whereas the part Occupation Certificate was received only on 5 February 2025. Further, all the amenities specified in Annexure 26 of the Consent Terms have not yet been completed. According to the Respondent, the Petitioner has breached Clause 3(ii).

25. Mr. Sanjay Jain submitted that merely furnishing the bank guarantees at the initial stage did not bring the Petitioner's obligations under Clauses 3(i) and 3(ii) to an end. The Petitioner was required to keep the guarantees valid for the periods specified in the Consent Terms. According to the Respondent, their expiry attracts the consequences provided under Clause 4, irrespective of whether the Respondent had separately demanded their renewal or replacement. Subsequent correspondence and resolutions cannot undo the breaches committed or prevent the termination from reviving in accordance with the Consent Terms.

26. Mr. Jain submitted that Clause 3 lays down conditions which had to be fulfilled for the settlement to operate in the agreed manner. Under Clause 6, the earlier termination would stand cancelled only upon compliance with the Conditions Precedent. According to the Respondent, this required strict and timely compliance with the obligation to keep the bank guarantees valid. The Respondent contends that compliance with these conditions was essential for the Contract to continue and that failure to comply results in revival of the termination without any action being necessary.

27. Without prejudice to its contention that the termination has revived, Mr. Sanjay Jain submitted that even if the Court holds that the Contract continues to subsist, the Petitioner's breaches of Clauses 10 and 20 entitle the Respondent to terminate the Contract under Clause 5 of the Consent Terms. He pointed out that the SGM held on 30 September 2026 authorised the Respondent to take action in respect of these and other breaches.

28. Mr. Jain submitted that the Petitioner has sought an extension of time during the course of arguments to remedy the alleged defaults. According to the Respondent, the Award must be enforced in accordance with its terms. The Court cannot alter the agreed conditions or extend the time for compliance when the Consent Terms themselves specify the consequences of a default. Since the termination has revived under the Award, the Petitioner cannot seek an extension of time to cure the breaches and thereby avoid the agreed consequences.

29. Mr. Sanjay Jain submitted that the conditional stay of termination was a concession available to the Petitioner only upon strict and timely compliance with the agreed conditions. According to the Respondent, once the Petitioner failed to comply with those conditions, the protection against termination came to an end. The resulting revival of termination is neither a forfeiture nor a penalty. It is the consequence which the parties themselves agreed to in the Consent Terms.

30. Mr. Sanjay Jain submitted that granting the mandatory injunctions sought by the Petitioner would confer the benefit of the

Award upon a party which has failed to comply with its obligations. According to the Respondent, once the new purchasers are admitted as members, they cannot be removed merely because the Petitioner has committed breaches of the Consent Terms. He submitted that the Petitioner has failed to establish any urgent need for the preventive relief sought in the Petition.

31. Mr. Jain submitted that, even according to the Petitioner's own case, the cause of action, if any, arose in February 2026. The Petitioner has not adequately explained the delay in approaching the Court. It has not explained why it has not initiated execution proceedings for obtaining reliefs which, according to the Respondent, are final in nature. Nor has the Petitioner explained why execution proceedings would not be an available remedy.

32. Mr. Sanjay Jain submitted that the new purchasers are entitled to pursue such remedies as may be available to them under the Maharashtra Co-operative Societies Act, 1960. The Respondent would contest any such proceedings on their merits. However, according to the Respondent, the possibility of the purchasers pursuing their independent remedies does not entitle the Petitioner, which is alleged to have defaulted in its obligations under the Award, to obtain the mandatory injunctions sought in the present Petition.

REASONS AND FINDINGS:

33. I have heard Mr. Ravi Kadam, learned Senior Advocate for the Petitioner, and Mr. Sanjay Jain, learned Advocate for the Respondent. The main issue before this Court is whether the

Petitioner has shown sufficient grounds for directing the Respondent Society, by a mandatory injunction under Section 9 of the Arbitration and Conciliation Act, 1996 ("the Arbitration Act"), to admit the 177 Flat Purchasers named in Exhibit "Q" as members of the Society.

34. According to the Petitioner, the redevelopment work is mostly completed, possession of the flats has been given to the purchasers and the required proportionate corpus, Share Application Money and Sinking Fund under the Consent Terms have been paid. The Petitioner says that the Society is not admitting the purchasers because it is asking for conditions which are not found in the DA or the CT. The Respondent says that the Petitioner has not followed the Consent Terms. According to the Respondent, the corpus was not correctly calculated, the payments came after possession was handed over and the bank guarantees expired before the secured obligations were completed. On this ground, the Respondent says that the earlier termination of the Contract has again become effective under the Consent Terms.

35. The Respondent first says that the Petitioner must go before the executing Court and cannot seek relief under Section 9 after the Consent Award has been passed. However, Section 9 permits a party to approach the Court for interim protection "at any time after the making of the arbitral award but before it is enforced in accordance with section 36". Therefore, the passing of the Consent Award alone does not stop the Petitioner from approaching this Court under Section 9. To this extent, the Respondent's objection cannot be accepted. However, the Court having power under

Section 9 does not mean that every relief connected with an award can be given in such proceedings. Section 9 is for interim protection. It cannot normally take the place of execution proceedings or be used to finally decide rights which need a fuller examination. Here, the Petitioner wants an immediate order directing the Society to admit the purchasers as members. Once they are admitted, it may be difficult to reverse that position if the Respondent later proves that the Contract has been terminated. The relief is mandatory in nature and would give the Petitioner a substantial part of what it ultimately wants.

36. The Supreme Court has explained the law relating to interim mandatory injunctions in *Dorab Cawasji Warden v. Coomi Sorab Warden*, (1990) 2 SCC 117, particularly in paragraphs 16 and 17. For such relief, the Court requires a stronger case than the ordinary prima facie case needed for a prohibitory injunction. The Court must be satisfied that the applicant has a strong case, that refusal of relief would cause serious injury which money cannot compensate and that the balance of convenience supports granting the injunction. The Court must see whether granting the injunction may cause injustice to the other party if the applicant ultimately fails.

37. The Supreme Court has explained in *Deoraj v. State of Maharashtra*, (2004) 4 SCC 697, particularly in paragraph 12, that where an interim order would substantially give the applicant the final relief, there must be a very strong prima facie case and circumstances showing that relief is necessary to prevent serious injustice. The Court must consider whether refusing relief would

cause greater injustice than granting it. Such relief is meant for exceptional situations. These principles must be applied while considering the arguments of both sides in this Petition.

38. The first issue is about the Society's duty to admit the new purchasers as members. Clause 9.5 of the DA provides as follows:

> "9.5 It is agreed that within a period of 30 days from the receipt of the intimation by the Society from the Developer along with necessary membership application, the Society shall, admit the new purchasers, as its Members on payment of the requisite entrance fee, share application money and a copy of the Sale Agreement duly stamped and registered, without any premium or unauthorized payments."

39. Clause 9.9 provides:

> "9.9 The Society undertakes to induct all the new Purchasers as members of the said Society upon the Developer handing over possession of the new Purchasers Flats and take all necessary steps in that regard and grant to them identical privileges as those enjoyed by the Members including the usage of Common Areas and Facilities, subject of payment of the additional corpus amount…"

40. These clauses show that the parties intended to admit the new purchasers as members after the necessary documents were given and the required payments were made. The Society cannot refuse membership only because it wants to introduce a condition which was never agreed upon. At the same time, the Petitioner cannot demand membership without completing its financial and other duties under the agreed arrangement. Clauses 9.5 and 9.9 must be read together with Clause 20 of the CT, which deals with payment of the proportionate corpus.

41. Clause 20 provides, among other things, as follows:

> "In the event of any default in payment of the aforesaid payment, then without prejudice to other rights and remedies of the Respondent, the Respondent shall not admit such flat purchaser as member of the Claimant (sic). If any amount is not paid as contemplated by this clause, then the Claimant shall be treated as in default of its financial obligation under this clause."

42. The clause states:

> "It is clarified that the Respondent will have with an amount of Rs. 18,00,00,000/- (being the aggregate of the amount mentioned in clause 9 and 11)."

43. Clause 20 must be understood according to what it says. Payment of the proportionate corpus is an duty of the Petitioner. The clause allows the Society to refuse admission if the required amount has not been paid. The question is whether the Petitioner has shown, for the present proceedings, that it has paid the full corpus required under the Consent Terms in the agreed manner.

The dispute regarding the Excess Amount:

44. The Petitioner says that the Society has wrongly connected admission of the purchasers with the amount of Rs. 5.10 crores claimed as the Excess Amount under Clause 10 of the CT. According to the Petitioner, Clause 10 relates to Hardship Compensation payable to the original 176 members. This is a separate money obligation and cannot be made a condition for admitting the new purchasers as members.

45. There is force in the Petitioner's argument that the Excess Amount under Clause 10 and the proportionate corpus under Clause 20 are different matters. Clause 10 concerns an amount payable to the original members in the proportions given in Annexure '28'. Clause 20 concerns the proportionate corpus payable for the Petitioner's flats. Therefore, the Society cannot make the dispute about the Excess Amount an additional condition for membership when such a condition is not supported by the relevant clauses of the agreement.

46. The Respondent says that it asked the new purchasers to give confirmations because it wanted to keep the Excess Amount for the maintenance expenses of the original members instead of distributing the money among them. According to the Respondent, these confirmations were needed so that the new purchasers would not make future claims against money belonging only to the original members. I cannot say that the Society's request is unreasonable from its point of view. But the question is whether the Consent Terms make acceptance of this proposal necessary for admission of the purchasers. No such condition appears in the relevant parts of Clauses 9.5, 9.9 or 20.

47. The Respondent says that the Petitioner has not paid the Excess Amount and has breached Clause 10. The Petitioner relies upon its demand draft dated 8 September 2026 for Rs. 5,10,00,000/-, which, according to it, covers the highest amount claimed by the Society. The correspondence and figures before the Court show that the exact amount payable under Clause 10 is still disputed. The Society has mentioned different figures at different

times, including Rs. 4,76,63,288/-, approximately Rs. 5.10 crores and Rs. 1,94,63,320/- with interest.

48. The material before the Court does not allow a final decision about the amount payable under Clause 10. The Petitioner's offer to secure Rs. 5.10 crores is relevant when considering the balance of convenience. It shows that the Petitioner is willing to protect the Society's money claim. But securing this amount does not prove that every other obligation under the Consent Terms has been completed. It does not remove the effect of a separate breach under Clause 20 or the clauses relating to bank guarantees.

49. I find that the Society cannot rely only on the dispute about the Excess Amount to impose a membership condition which is not part of the agreed terms. However, the Petitioner's willingness to secure this money claim cannot be treated as if all its duties have been completed. These are separate matters and must be considered separately.

The dispute regarding the rate and calculation of the proportionate corpus:

50. The next issue is the rate at which the proportionate corpus had to be calculated. The Petitioner relies upon the calculation prepared in 2021 and the resolutions passed by the Society at its SGM held on 24 May 2026. According to the Petitioner, the Society had accepted the rate of Rs. 688.66 per square foot based on RERA carpet area. It had accepted payments at Rs. 688.61 per square foot. Therefore, the Petitioner says that the Society cannot now demand Rs. 711.16 per square foot or calculate the corpus using

another method.

51. The Respondent says that the Petitioner's calculation is wrong. According to it, the proportionate corpus must be worked out by considering the FSI used for the rehabilitation component and the sale component, together with the Society's sinking fund and reserve funds. The Respondent says that the FSI ratio between rehabilitation and sale is 21:79. Therefore, the new purchasers must contribute 79% of the corpus calculated on that basis. It says that the Society's corpus cannot be limited to Rs. 18 crores if the correct calculation under Clause 20 gives a higher amount.

52. The Society's own resolutions and its acceptance of payments at around Rs. 688.61 per square foot are important in this matter. The SGM Agenda dated 24 May 2026 is stated to have accepted the rate of Rs. 688.66 per square foot based on RERA carpet area. The resolution communicated by the Society on 25 June 2026 required corpus payment at that rate on RERA carpet area. These facts support the Petitioner's argument that the rate now claimed by the Respondent is different from the basis it had earlier followed. The Respondent cannot ignore its earlier conduct. If the Society had adopted a particular method to calculate the corpus, asked for payment on that basis and then accepted substantial amounts without raising an objection, it must explain why it is now following a different method. A later resolution alone does not prove that the earlier calculation was wrong or that the Petitioner must pay the additional amount now claimed. However, the earlier resolutions and the payments received must be seen along with the Consent Terms. The rate of Rs. 688.61 per square

foot is not mentioned in the part of Clause 20 placed before this Court. Clause 20 refers to the proportionate corpus payable under Article 2.3 of the DA read with the DOM. The Petitioner relies upon its own calculation, while the Respondent says that this calculation does not include the relevant FSI, sinking fund and reserve funds.

53. The figures given to the Court are different. The Petitioner refers to a corpus of Rs. 18 crores for the original members and Rs. 64,82,22,379/- for the sale component. According to its calculation, the total corpus for the whole project is about Rs. 83.91 crores. The Respondent refers to a members' corpus of Rs. 19,94,63,320/- and a total corpus of Rs. 94,98,25,333.30/-. It claims that there is a shortfall of at least Rs. 22.55 per square foot. These calculations are disputed. On the material now available, the correct amount payable under the Consent Terms cannot be finally decided.

54. I am unable to accept the Petitioner's argument that the Respondent has lost its right to question the calculation only because it accepted payments earlier. Acceptance of money is an important fact, particularly when no objection was made at that time. But whether this acceptance became a final settlement or adjustment of the obligations under the Consent Award is a separate question. The Respondent denies that the resolutions were a final settlement. It has relied upon Order XXI Rule 2 of the Code of Civil Procedure, 1908, saying that no compromise or adjustment was recorded in the manner required by law. The Respondent's objection under Order XXI Rule 2 cannot be decided

only by looking at the name given to the resolution. The actual terms of the resolution, the authority under which it was passed, the conduct of the parties and whether they intended to settle their obligations under the Consent Award will have to be examined. These matters need not be finally decided in this Petition. For the present purpose, the resolutions and payments relied upon by the Petitioner do not conclusively prove that the full amount payable under Clause 20 has been finally calculated and paid.

55. The Respondent alleges that the Petitioner collected Rs. 890 per square foot from the purchasers but deposited only Rs. 688.61 per square foot with the Society. This allegation needs consideration. The Petitioner says that it made a commercial decision to recover the corpus cost for the entire project from the sale component. This included the amount of Rs. 18 crores funded by the Petitioner. According to the Petitioner, the amount collected under the Agreements for Sale does not decide how much the Society is entitled to receive under the Consent Terms.

56. There is merit in the distinction made by the Petitioner on this issue. The amount collected from the purchasers does not decide the amount payable to the Society. The Society's entitlement must be worked out from the DA, the DOM and the CT. If the Petitioner collected more than the amount it was required to deposit with the Society under the contract, this fact alone does not give the Society a right to claim the whole difference. Equally, collecting Rs. 890 per square foot does not prove that the amount deposited satisfies the formula. The amount payable must be decided by applying the relevant clauses. I find

that the Society's later claims cannot be accepted only because they are mentioned in its Reply or Sur-Rejoinder. The claim of Rs. 711.16 per square foot and the claim that the members' corpus should be Rs. 19.94 crores require proper examination of the formula and the calculations supporting them. At the same time, the Petitioner has not shown, on the material considered in this Petition, that Rs. 688.61 per square foot was finally accepted as the only rate permitted under the Consent Award.

The time of payment of the corpus:

57. The time when the corpus was paid is a different issue from the rate at which it had to be calculated. Clause 20 says that the proportionate corpus must be paid before possession of the concerned flat is handed over to the purchaser. The Respondent says that possession started in February 2025, but the corpus payments began much later. The Petitioner says that payments started on 7 March 2026 and were later completed at the rate which it considers correct. From the material before the Court, it appears that the corpus payments were not completed before possession was handed over. Possession is stated to have started in February 2025, while the payments relied upon by the Petitioner started in March 2026. Therefore, even if the Petitioner's statement about the first payment date is accepted, the payments were made after possession had been given. This does not follow the requirement stated in Clause 20.

58. The Petitioner explains the delay by saying that the Respondent did not disclose its calculation of the Excess Amount

until 23 February 2026, even though earlier requests were made and an offer to start depositing the corpus had been given. The Petitioner says that the collected money was kept in fixed deposits and that the Society received Rs. 71,97,206/- towards the interest earned during this period. The Petitioner relies upon the Society's SGM Agenda dated 24 May 2026 and its letter dated 11 July 2026, in which the admission of purchasers was stated to be “underway”. These facts must be considered. The Society's own conduct is relevant to see whether it accepted the delayed payments and whether it can now treat the delay as a complete and permanent disqualification. The interest received for the intervening period is relevant. But accepting interest does not prove that the Society agreed to give up the requirement of payment before possession or agreed to extend the time under Clause 20. The material before the Court does not show any clear and final agreement of this kind. I find that the Respondent cannot ignore its own conduct while objecting to delayed payment. However, the Petitioner has not shown that the delay was accepted in a manner which removes the consequences of not following Clause 20. The question whether the Petitioner committed a default cannot be answered only by saying that the Society received the money later.

Expiry of the bank guarantees and the alleged revival of termination:

59. The objection of the Respondent concerns the bank guarantees and what follows from their expiry. The Respondent says that Clauses 2 to 6 of the Consent Terms must be read together. According to it, Clause 2 kept the termination in

abeyance, Clause 3 required the bank guarantees to be given and kept valid for the stated periods, Clause 4 provided for revival of termination in case of default, Clause 5 restricted the Society's right to terminate while the Petitioner performed the specified obligations and Clause 6 provided for cancellation of termination after compliance with the Conditions Precedent.

60. The Petitioner says that both bank guarantees were given within the required time and were accepted by the Society on 25 January 2022. According to the Petitioner, after this compliance, the earlier termination stood cancelled under Clause 6. It says that the later expiry of the guarantees cannot bring back a termination which had been cancelled. The Petitioner argues that Clause 3 is not included in the list of obligations mentioned in Clause 5. Therefore, even if the guarantees expired, the Respondent could only seek enforcement of the relevant obligation and could not terminate the Contract.

61. This argument requires the different clauses of the Consent Terms to be read together. Clause 5 identifies certain obligations, the performance of which prevents the Respondent from terminating the Contract. Clause 6 provides for automatic cancellation of the earlier termination after compliance with the Conditions Precedent. However, the Respondent says that Clause 3 requires the guarantees to remain valid until certain future events or milestones are completed. If this is the correct meaning of Clause 3, the duty does not end only because the guarantees were given and accepted in January 2022.

62. The Respondent says that the guarantee under Clause 3(i) had to remain valid for two years after possession of all rehabilitation premises was handed over or the part Occupation Certificate was received, whichever was later. The part Occupation Certificate was received on 5 February 2025. However, the guarantee expired on 6 June 2026, before the period which the Respondent says was required. The other guarantee, which according to the Respondent had to remain valid until the stated milestones were completed, expired on 6 June 2024. The Respondent says that some amenities mentioned in Annexure 26 of the Consent Terms are still incomplete.

63. The Petitioner has not specifically disputed that the guarantees expired on the dates stated by the Respondent. It describes the failure to renew them as an oversight because the project was mostly completed. It has offered to revalidate the guarantee of Rs. 52.50 crores, which was reduced to Rs. 12.50 crores after the Occupation Certificate was received, until the remaining amenity under Annexure 26 is completed. It has offered to revalidate the guarantee of Rs. 5 crores until 5 February 2027.

64. The Petitioner's willingness to renew or revalidate the guarantees is a relevant fact. However, it does not prove that the guarantees remained valid during the periods for which they were required. A fresh undertaking may protect performance in the future. Whether it can correct the earlier breach or prevent the consequences mentioned in the Consent Terms will depend on the Award and the legal effect of the default.

65. The Petitioner relies upon the fact that the project is mostly completed. It says that the original members have received their flats, the Occupation Certificate has been issued and about 99% of the project is complete. According to the Petitioner, only the landscaping on the northern portion of the plot remains. It says that the remaining amenities are largely complete and that it continues to pay the common area maintenance charges for the original members under Clause 30(A) of the Consent Terms.

66. These facts support the Petitioner when considering the seriousness of the harm which may follow from termination. The project is stated to be mostly complete. Possession has been given to the original members and many purchasers. The Society has received a substantial amount towards the corpus. It is necessary to carefully consider whether bringing termination back into effect, with all its consequences, would cause injustice to people who have taken possession and are living in the flats. However, the Court cannot ignore a condition only because the result of a breach may be serious. The question is whether the Petitioner has shown a strong case that the Society cannot rely upon the expiry of the guarantees under the Consent Terms. The offer to give fresh guarantees is not the same as proof that the original obligations were fulfilled. The Court cannot assume in Section 9 proceedings that the expiry of the guarantees has no effect under the contract.

67. The Petitioner's reliance upon Clause 5 is not enough to settle the issue at this stage. Clause 5 may restrict termination while the Petitioner performs the obligations mentioned in it. But the Respondent relies upon Clause 4 and says that default under

Clause 3 brings back the earlier termination. Whether the later expiry of the guarantees has this effect must be decided by reading Clauses 3, 4, 5 and 6 together. The Petitioner's argument that Clause 3 is not mentioned in Clause 5 does not answer the separate objection based on Clause 4.

68. On the material now available, I cannot treat the Respondent's objection about the bank guarantees as a mere technical matter. The guarantees were meant to secure performance of certain obligations. Their expiry before the periods or milestones relied upon by the Respondent raises a serious question about whether the Petitioner followed the Consent Terms. This question directly affects the Petitioner's claim that it has an unconditional right to force the Society to admit the purchasers.

Whether the Court can extend time or grant relief against forfeiture:

69. The Petitioner relies upon *Periyakkal* , particularly paragraph 4, and says that the Court has power under Section 151 of the Code of Civil Procedure, 1908, to grant relief against forfeiture and extend time when necessary to prevent serious injustice. The Respondent disputes the Petitioner's right to such relief. It says that the Consent Award must be followed according to its terms and the Court cannot extend time when the parties have agreed upon the consequences of default. In *Periyakkal*, the Supreme Court accepted that the Court may, in a proper case, extend the time fixed under a compromise decree when this is necessary to prevent serious injustice. However, the Court made it clear that time

cannot be extended or merely because a party asks for it. This power is to be used in rare cases, depending upon the facts and circumstances of that case. The Petitioner's reliance on this decision cannot be rejected only because the parties had agreed to a particular date for performance. But the decision does not mean that every default under a Consent Award can be excused by extending time. The Court must consider what the obligation was, why the default happened, how the parties acted and what may happen if relief is granted or refused. It must ensure that the order does not change the settlement agreed upon by the parties.

70. In this case, the Petitioner relies upon completion of the redevelopment project, possession being given to the purchasers, the amounts received by the Society and its willingness to give fresh bank guarantees. These are important facts. The Respondent, on the other hand, relies upon the financial duties under Clauses 10 and 20, the failure to pay before possession and the expiry of the bank guarantees before the required periods or milestones. It says that termination has again become effective under the Consent Terms. The difficulty is that the extension of time sought by the Petitioner is not about only one delayed payment. It would require the Court to consider the delayed corpus payments, the correct calculation of the corpus, the unpaid Excess Amount and the expiry of the bank guarantees. It would affect the question whether the Contract still exists. The Petitioner's offer to give fresh guarantees does not settle the effect of the earlier defaults. I find that the principle in *Periyakkal* cannot be used to reject the Respondent's objections. The Court may have power to prevent

unfair forfeiture in a proper case. But there must be a clear reason to conclude that relief is necessary to prevent serious injustice. Such a basis has not been shown to the extent needed for granting the mandatory injunction sought in this Petition.

Whether the Petition satisfies the requirements for a mandatory injunction:

71. The Petitioner's complaint about the purchasers' membership deserves serious consideration. According to the Petitioner, 445 purchasers have taken possession of their flats and substantial amounts towards the corpus, Share Application Money and Sinking Fund are with the Society. The Society has received interest on the fixed deposits. Even then, the purchasers have not received share certificates or voting rights. If the Petitioner's case is correct, the purchasers are not getting the usual rights of membership even after the required amounts have been paid.

72. The Respondent says that the Petitioner cannot ask for membership for the purchasers while it has not completed its own duties under the Consent Terms. It says that granting the injunction would, in effect, give the Petitioner the final relief it has asked for in the Petition. Once the purchasers are admitted, it may be difficult for the Society to reverse their admission if the Petitioner is later found to have committed the breaches alleged by the Respondent.

73. Both these matters are important. The difficulties faced by the purchasers cannot be ignored. They have bought flats, taken possession and, according to the Petitioner, paid the required

amounts. The Society's receipt of substantial money makes it necessary to examine why their membership is being withheld. However, it is the Petitioner which has approached the Court under Section 9 and it must establish its right to the relief it seeks. The fact that the purchasers may face difficulty does not remove the need to show a strong case under the Consent Terms.

74. The test laid down in *Dorab Cawasji Warden* requires more than showing that the applicant has a case which can be argued. The Court must be satisfied that the case is strong enough to justify a mandatory order before the final rights of the parties are decided. In *Deoraj*, the Supreme Court explained that where an interim order would practically give the final relief, the circumstances must be exceptional and the balance of convenience and irreparable injury must strongly support the applicant. The Petitioner's case must be tested on this higher standard.

75. In the present Petition, Clauses 9.5 and 9.9 of the DA support the Petitioner's case that the Society must admit the purchasers as members. The Society cannot impose conditions only because it wants a different financial arrangement. The dispute about the Excess Amount under Clause 10,, does not give the Society a reason to refuse membership. These findings support the Petitioner. However, the Petitioner must satisfy the Court that it has performed its duty under Clause 20 or that any default has been accepted or condoned. The corpus payments were made after possession was given. The correct amount payable under the formula remains disputed. The Society's earlier resolutions and acceptance of payments support the Petitioner's case about the

rate, but they do not finally decide the entire amount payable under the Consent Award. Further, the bank guarantees expired before the periods or milestones which the Respondent says had to be covered. The Petitioner has offered to give fresh guarantees and a demand draft of Rs. 5.10 crores to secure the Excess Amount. These offers may protect the Society from some financial risk. However, they do not answer the separate question whether termination has again become effective under Clauses 3 and 4 of the Consent Terms. Nor do they show that the Court can admit the purchasers at this stage when such an order would substantially decide the final dispute.

76. The balance of convenience is not fully in favour of either side. The purchasers may continue to face difficulty if their membership is withheld. But the Society has raised serious questions about the Petitioner's compliance with the Consent Award and whether the Contract still exists. Granting the mandatory injunction would give the Petitioner and the purchasers the main benefit they are asking for, even though important questions about the conditions for receiving that benefit remain unanswered.

77. It is necessary to note that the Petitioner seeks admission of the 177 Flat Purchasers named in Exhibit “Q”. Its arguments refer to 445 purchasers who have taken possession and 217 membership application forms. These figures relate to different matters and cannot be treated as the same. Any relief granted in this Petition would have to be limited to the persons and applications covered by the prayers and the relevant requirements. The larger figures

relied upon by the Petitioner do not show that every purchaser has fulfilled the conditions for admission.

78. The delay in approaching the Court is another matter to be considered. The Respondent says that, according to the Petitioner's own case, the cause of action arose in February 2026, but the Petition was filed on 2 September 2026. The Petitioner relies upon the continuing correspondence and its repeated demands for admission. I do not consider that the delay alone is enough to reject the Petition. However, while deciding whether to grant a mandatory order which substantially gives the final relief, the Court must consider the urgency of the matter along with the strength of the case. Here, the delay does not remove the serious questions arising from the alleged defaults. I am unable to hold that the Petitioner has shown the very strong and clear case required for the mandatory injunction. This does not mean that every objection raised by the Respondent is correct. It does not mean that the Respondent can impose any condition it wants for admitting the purchasers. It only means that, since the questions about performance of Clause 20 and expiry of the bank guarantees remain unresolved, the mandatory relief cannot be granted at this stage under Section 9 of the Arbitration Act.

The objections under Section 163 of the MCS Act and regarding non-joinder of the purchasers:

79. The Respondent has relied upon Section 163 of the Maharashtra Co-operative Societies Act, 1960 (“MCS Act”), and says that the present Petition is barred. The Petitioner says that it is

asking the Society to perform its duties towards the Petitioner under the DA, the DOM and the CT. It is not asking for any relief against the purchasers or using an independent remedy which belongs to them under the MCS Act.

80. The Respondent's objection under Section 163 cannot be accepted only because it is a co-operative housing society. The nature of the dispute and the relief asked for must be considered. The present dispute comes from the redevelopment contract and the Consent Terms between the Petitioner and the Respondent. On the material considered here, the Respondent has not shown that the statutory bar relied upon by it stops this Court from examining the claim under Section 9. Therefore, this objection alone is not enough to reject the Petition.

81. The Respondent has objected that the flat purchasers have not been joined as parties. The Petitioner says that it is not asking for any relief against them. It only wants the Court to direct the Society to perform its duty to admit them, which, according to the Petitioner, arises under the DA and the CT. The fact that the purchasers would benefit from such an order does not mean that they must be parties for the dispute to be decided.

82. I find that the purchasers not being parties does not show that the Petition cannot be maintained. The main dispute is between the Petitioner and the Society about their duties under the DA and the CT. At the same time, the identity of the purchasers, the applications made by them and the payments relating to their flats remain relevant when considering the relief.

Therefore, this objection does not independently require dismissal of the Petition. However, the purchasers not being parties cannot remove the other shortcomings in the Petitioner's case.

83. The Petitioner wants the purchasers to be immediately admitted as members by a mandatory order. It is not only asking for an order to secure money or protect property until the dispute is decided. Such an order would give the purchasers a substantial benefit which may be difficult to reverse later. In the circumstances of this case, the strong and exceptional reasons needed for granting such relief have not been established. I find that, although some objections of the Respondent cannot be accepted as separate grounds for refusing membership, the Petitioner has not shown sufficient grounds for the mandatory injunction sought under Section 9 of the Arbitration Act. The questions about the amount and timing of payment under Clause 20, the expiry of the bank guarantees and the alleged revival of termination remain unresolved. For this reason, the relief requested cannot be granted at this stage.

84. The Petition is accordingly dismissed. This dismissal is limited to the relief asked for in the present proceedings under Section 9 of the Arbitration Act. It does not finally decide the amount payable under Clause 10 or Clause 20 of the Consent Terms. It does not finally decide the rights and duties of the parties arising from the alleged breaches. Those issues will have to be decided in the appropriate proceedings according to law. The Society's claims for money are left open for such decision. The purchasers' right to pursue any independent remedies available to

them under the MCS Act is not affected by this decision.

85. There shall be no order as to costs.

(AMIT BORKAR, J.)