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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.19179 OF 2026

Antariksh Realtors Private Limited ... Petitioner

Vs.

1. The Vidyavihar Palmview Coop. Housing Society Limited
2. Sushil H. Navani
3. Pratibha N. Sanghavi
4. Kalpesh Narendra Sanghavi
5. Rashmi G. Gambani
6. Sunil Mirchandani
7. Pradeep G. Pradhan
8. Sunil I. Bhatia
9. Haresh S. Kothari
10. Prith H. Kothari
11. Chitralekha S. Soman
12. Swati S. Soman
13. Sunita R. Nariani
14. Jagdish Kaur
15. Gautam G. Doshi
16. Nilima T. Ruparel
17. Forum T. Ruparel ... Respondents

Mr. Mayur Khandeparkar with Mr. Nishant Chotani, Mr. Nivit Srivastava, Ms. Sneha Patil, Ms. Isha Vyas and Bhavya Shah i/by Maniar Srivastava Associates for the petitioner.

Mr. Arun Panicker for respondent No.1.

Ms. Lizum Wangdi with Mr. Aniket Mokashi and Ms. Anushka S. for respondent Nos.2, & 5 to 10.

Mr. Amogh Singh i/by Mr. Jeet Gandhi for respondent Nos.3, 4, 14, & 17.

Mr. A.M. Saraogi for respondent No.16.

CORAM : AMIT BORKAR, J.

RESERVED ON : JUNE 25, 2026.

PRONOUNCED ON : JULY 07, 2026

JUDGMENT:

1. By this petition filed under Section 9 of the Arbitration and Conciliation Act, 1996, the petitioner has asked for interim reliefs. The petitioner has prayed that respondent Nos. 2 to 17 should be directed to immediately hand over quiet, vacant and peaceful possession of their respective flats to the petitioner so that demolition and redevelopment work can start under the registered Development Agreement dated 7 August 2024. The petitioner has also prayed that if these respondents do not vacate, the Court Receiver, High Court, Bombay, should be appointed as Receiver for the said flats with all powers under Order XL Rule 1 of the Code of Civil Procedure, 1908, including power to take physical possession with police help, if required, and hand over possession to the petitioner. The petitioner has further prayed that the Court Receiver

should also be appointed in respect of any other flats whose members fail to honour the undertakings required under Clause 6.1 of the Development Agreement. The petitioner has also sought an injunction restraining respondent Nos. 2 to 17 and all persons claiming through them from creating any obstruction in demolition and redevelopment work. A further injunction is sought restraining them from transferring, parting with possession, creating third party rights or otherwise dealing with their respective flats till completion of the proceedings.

2. According to the petitioner, the present petition arises in the following facts. Respondent No. 1 is a Co-operative Housing Society registered under the Maharashtra Co-operative Societies Act, 1960 on 15 February 1980. The Society consists of four residential buildings having total 80 flats. Respondent Nos. 2 to 17 are members occupying 12 flats and they are opposing the redevelopment. The petitioner submitted its offer letter to respondent No. 1 and made a detailed presentation before the members on 5 June 2022. Thereafter, on 30 November 2022, the petitioner submitted a revised offer. Under this revised offer, every member was offered a total area of 1080 square feet consisting of 1040 square feet RERA carpet area and 40 square feet balcony. The revised offer also clearly stated that since the project would be carried out under RERA, no bank guarantee would be provided.

3. Thereafter, a Special General Body Meeting was held on 21 April 2023 in the presence of the representative deputed by the Deputy Registrar, Co-operative Societies, MHADA. In that meeting,

the petitioner was appointed as the developer by a majority of 61 out of 80 members. According to the petitioner, this appointment was made by following the directions issued under Section 79A dated 4 July 2019. The resolution passed in the meeting was thereafter approved by the Deputy Registrar, Co-operative Societies, MHADA, by communication dated 26 April 2023 issued under Section 79A of the Maharashtra Co-operative Societies Act. Later, on 21 June 2024, respondent No. 1 issued a formal Letter of Appointment appointing the petitioner as the developer for redevelopment of the Society. The petitioner states that the draft Development Agreement, along with the draft Power of Attorney, GST side letter and FSI side letter, was circulated to all members 15 days before the meeting. In the Special General Body Meeting held on 20 January 2024, the majority of members approved these documents, subject to certain clarifications from the petitioner. By email dated 29 January 2024, respondent No. 1 forwarded four questions raised by members to the petitioner. The petitioner replied by email dated 31 January 2024 and gave clarification on all four points. These clarifications were circulated to all members. Thereafter, respondent No. 1 and several of its members executed the Development Agreement dated 7 August 2024 in favour of the petitioner. The agreement was duly registered before the Sub Registrar of Assurances, Kurla No. 3 under Serial No. KRL3-17893-2024. On the same day, respondent No. 1 also executed and registered an irrevocable Power of Attorney in favour of the petitioner under Serial No. KRL3-17912-2024.

4. The petitioner relies upon Clause 6.1 of the Development Agreement. Under this clause, after the developer obtains the required vacation approvals and informs the Society in writing, the Society has to ask all members to give undertakings to vacate their respective premises within 15 days. Clause 6.1(b) further provides that if any member fails to give such undertaking or does not cooperate, the Society and or the developer is entitled to start legal proceedings against such non cooperating member for obtaining vacant possession.

5. The petitioner further states that on 30 August 2024, respondent No. 1 and the cooperating members executed the First Deed of Adherence in favour of the petitioner. This document was duly registered under Serial No. KRL3-19725-2024 and confirmed and ratified the redevelopment documents. Thereafter, on 9 December 2024, respondent No. 1 executed the Second Deed of Adherence in favour of the petitioner, which was also duly registered under Serial No. KRL3-26712-2024.

6. It is the petitioner's case that respondent No. 1 held another Special General Body Meeting on 28 February 2026. In that meeting, by an overwhelming majority, the members approved the draft Permanent Alternate Accommodation Agreement with 44 members voting in favour. The members also approved the Floor Continuity and Spiral Allocation method for allotment of new flats by a majority of 43 members. Thereafter, on 30 April 2026, the petitioner received the Intimation of Approval issued by MHADA. On the same day, the petitioner informed respondent No. 1 in

writing about receipt of the approval and also forwarded copies of the approved plans. According to the petitioner, this was done in compliance with Clause 6.1 of the Development Agreement and the process for vacating the flats then started. The petitioner states that except respondent Nos. 2 to 17, all the remaining 68 members gave written undertakings agreeing to vacate their flats. As respondent Nos. 2 to 17 did not do so, the petitioner filed the present arbitration petition before this Court on 5 June 2026.

7. Mr. Khandeparkar for petitioners submitted that out of 80 members of respondent No.1 Society, 68 members have accepted the redevelopment and have executed the Development Agreement along with the Society. He submitted that Clause 6 of the Development Agreement lays down the complete procedure for members to vacate their premises. According to him, after the developer receives the required vacation approvals and gives written intimation to the Society, the Society has to call upon all members to furnish undertakings within 15 days agreeing to vacate. If all members furnish such undertakings, the developer has to issue a further notice of 30 days calling upon them to vacate. However, where any member does not furnish the required undertaking within 15 days, Clause 6.1(b) permits either the Society or the developer to initiate legal proceedings against such non cooperating member. He submitted that in the present case, this contingency has already arisen. According to him, once the Court directs such members to vacate, the developer will thereafter issue the required notice and possession will be taken in accordance with the

Development Agreement.

8. Referring to the petitioner's communication dated 30 November 2022, Mr. Khandeparkar submitted that the petitioner had clearly informed the Society while submitting its final proposal that the redevelopment would be carried out under RERA and therefore no bank guarantee would be furnished. He submitted that the Society accepted this condition. He also relied upon the decision of this Court in *Nitin Ambavi Gami v. State of Maharashtra and Others, decided on 18 October 2022*, wherein it has been held that the requirement of furnishing a 20% bank guarantee is only recommendatory. He submitted that, therefore, the dissenting members cannot insist upon a bank guarantee. He also argued that the issue of bank guarantee falls outside the scope of proceedings under Section 9. He further made a statement on behalf of the petitioner that the Permanent Alternate Accommodation Agreements with the dissenting members would be executed as and when directed by this Court.

9. Inviting attention to Proforma B forming part of the approved plans, Mr. Khandeparkar submitted that the total gross built up area of the project is 17,526.45 square metres. According to him, the entire balance FSI available for the property has already been loaded and utilised for the present redevelopment project.

10. Opposing the petition, Ms. Wangdi, learned Advocate appearing for respondent Nos.2 and 5 to 10, submitted that the petition itself is not maintainable. She submitted that the petition has been filed prematurely because the respondents have never

received the notice contemplated under Clause 6.1 of the Development Agreement. According to her, after receipt of the Intimation of Approval, the developer has to give written intimation to the Society and thereafter the Society has to request every member to furnish an undertaking to vacate within 15 days. She submitted that no such notice was ever served either by the Society or by the petitioner upon these respondents. She argued that even the affidavit filed by respondent No.1 Society does not clearly state that such notice was served upon them. According to her, service of notice under Clause 6.1 is a mandatory condition before any proceedings for eviction can be started. She submitted that the petitioner cannot bypass one step of the contractual procedure and directly seek orders directing members to vacate. According to her, since no notice has been issued, the obligation of the respondents to vacate has not yet arisen and, therefore, the petition deserves to be dismissed as premature. In support of these submissions, she relied upon the decision of this Court in *Wadhwa Estates v. MoonCraft Apartments Co-operative Housing Society, Commercial Arbitration Petition (L) No.13424 of 2026*, decided on 18 June 2026.

11. Ms. Wangdi further submitted that admittedly no member has yet executed the Permanent Alternate Accommodation Agreement as required under Clause 9.4 of the Development Agreement. According to her, on this ground also the petition is premature. She also submitted that proceedings under Section 9 of the Arbitration and Conciliation Act cannot be used for granting what are virtually final reliefs without the dispute being referred to arbitration. She

further submitted that none of the respondents is a signatory either to the Development Agreement or to the arbitration agreement contained therein. According to her, by filing the present petition, the petitioner is seeking final relief of obtaining possession of the respondents' flats under the guise of interim relief, which is not permissible. She submitted that this legal position is already well settled.

12. Ms. Wangdi also submitted that interim relief under Section 9 can be granted only if the Court is satisfied that the main dispute is capable of being referred to arbitration. She invited attention to paragraph 26 of the petition and submitted that the petitioner's grievance is only that the respondents have failed to furnish undertakings to vacate under Clause 6.1. According to her, the ultimate relief sought by the petitioner is possession of the respondents' flats. She submitted that since there is admittedly no arbitration agreement between the petitioner and the contesting respondents, no arbitral proceedings seeking such relief can ever be maintained against them. Therefore, according to her, the present petition itself is not maintainable. She further submitted that the petition deserves to be dismissed because the Development Agreement does not comply with the communication dated 26 April 2023 issued by the Deputy Registrar while approving appointment of the petitioner as developer. She submitted that the said communication required the Society to follow all requirements contained in the Government Resolution dated 4 July 2019, including furnishing of a bank guarantee. According to her, instead

of providing such bank guarantee, Clause 4.7 of the Development Agreement merely reserves residential units measuring about 11,000 square feet as security. She submitted that this does not provide sufficient protection to the members of the Society.

13. Lastly, Ms. Wangdi submitted that the contesting respondents are senior citizens and one of them has been medically advised to remain confined to the house. She submitted that if this Court is inclined to allow the petition, reasonable time may be granted to the respondents on humanitarian grounds to vacate their premises.

14. Mr. Amogh Singh, learned Advocate appearing for respondent Nos.3, 4, 14 and 17, submitted that the petitioner should not insist upon recovery of the 18% penalty provided under the Development Agreement. In reply, Mr. Khandeparkar, on instructions, stated that if the respondents vacate their flats in accordance with the order passed by this Court, the petitioner will not insist upon payment of the said 18% penalty.

15. Mr. Saraogi, learned Advocate appearing for respondent No.16, adopted the submissions advanced on behalf of respondent Nos.2 and 5 to 10.

16. Mr. Khandeparkar, learned Advocate for the petitioner, in rejoinder submitted that one of the objections raised by the respondents is regarding absence of a bank guarantee. According to the respondents, since no bank guarantee has been furnished, the redevelopment is contrary to the guidelines issued under Section 79A of the Maharashtra Co-operative Societies Act, 1960. In

rejoinder, Mr. Khandeparkar submitted that this objection has no merit. He submitted that the issue is already settled by this Court in the case of *Nitin Ambavi Gami* . According to him, this Court has held that the requirement of furnishing a bank guarantee under the Section 79A guidelines is only recommendatory and not mandatory. He submitted that the Court, while following the decision in *Maya Developers v. Neelam R. Thakkar, 2016 SCC OnLine Bom 6947*, has held that where the developer has provided sufficient alternative security, the purpose of the guidelines stands satisfied. He submitted that such guidelines cannot override the decision taken by an overwhelming majority of the members of the Society.

17. He further submitted that even otherwise, the Development Agreement itself provides sufficient security to the members. He invited attention to Clause 4.7 of the Development Agreement and submitted that the petitioner has reserved residential units having about 11,000 square feet carpet area, along with one car parking space for each unit, as security for due performance of its obligations. According to him, if the petitioner commits any default, respondent No.1 Society is entitled, under Clauses 21.3 and 21.4 of the Development Agreement, to sell those reserved units and appropriate the sale proceeds.

18. Mr. Khandeparkar then dealt with the objection that several proceedings filed by the contesting respondents are still pending. He submitted that respondent Nos.3, 4 and 14 have filed Suit No.890 of 2025 challenging the redevelopment resolutions, the Development Agreement and the Power of Attorney. He further submitted that

respondent No.16 has also filed Suit Nos.1367 and 1417 of 2025. According to him, none of these proceedings has resulted in any order staying the redevelopment project. He submitted that there is no injunction restraining implementation of the redevelopment resolutions, the Development Agreement or the Power of Attorney. He submitted that all these suits are still pending and no interim relief has been granted in favour of the plaintiffs. According to him, merely because such proceedings are pending, it does not prevent the petitioner from filing a petition under Section 9 of the Arbitration and Conciliation Act or from seeking interim protection. He submitted that unless the redevelopment resolutions or the registered Development Agreement are stayed or set aside by a competent Court, they continue to remain valid and enforceable.

19. He further submitted that the individual grievances raised by some members in those suits will be decided in those proceedings. According to him, those disputes cannot be permitted to stop a redevelopment project which has been approved by an overwhelming majority of the members. He submitted that a possibility of an adverse decision in future litigation, delay in obtaining approvals or similar contingencies cannot be a ground to halt the redevelopment.

20. Mr. Khandeparkar then dealt with the objection that respondent Nos.2 and 5 to 8 were not informed about receipt of the Intimation of Approval (IOA). He submitted that this objection is also without substance. He submitted that respondent No.1 Society itself has stated in its affidavit in reply that immediately after

receiving the IOA dated 30 April 2026, it informed all members through the Society's official WhatsApp group, of which every member is a part. He submitted that the Society also called upon all members to attend its office and that its office bearers remained present from 30 April 2026 till 5 May 2026, during which period undertakings from 68 members agreeing to vacate were obtained. According to him, this amounts to sufficient compliance with Clause 6.1 of the Development Agreement. He further submitted that even otherwise, the present arbitration petition itself enclosed the IOA dated 30 April 2026. The petition was filed on 8 June 2026 and was served upon the contesting respondents on 10 and 11 June 2026 by hand delivery and on 12 June 2026 by email. The matter was first listed before this Court on 18 June 2026. According to him, service of the petition itself amounted to sufficient notice under Clause 6.1. He submitted that even after receiving the petition, none of the contesting respondents came forward to give any undertaking to vacate. Therefore, if lack of notice was the only grievance, they ought to have furnished such undertakings after service of the petition. He submitted that any dispute amongst the members regarding the manner in which the IOA was communicated or received is only an internal dispute of the Society and cannot be used as a ground to obstruct redevelopment carried out in accordance with Clause 6.1 of the Development Agreement.

Reasons and Analysis

21. Before examining the rival submissions, it is necessary to see what is the real dispute before this Court. The dispute is about

whether this Court, while exercising powers under Section 9 of the Arbitration and Conciliation Act, 1996, can direct the dissenting members to vacate their flats at this stage. The contesting respondents have objected on the grounds that the petition is not maintainable, there was no notice under Clause 6.1 of the Development Agreement, the Permanent Alternate Accommodation Agreement has not been executed, no bank guarantee has been furnished, several proceedings are pending and the respondents are not parties to the arbitration agreement. Therefore, each of these objections is required to be considered separately.

22. The first objection of the respondents is that the present petition is premature. According to them, the procedure under Clause 6.1 of the Development Agreement has not been completed. They submitted that the Society never issued any written notice calling upon them to give undertaking to vacate their premises. Therefore, according to them, the stage for filing proceedings has not yet come. On the other hand, the petitioner submitted that after receiving the Intimation of Approval dated 30 April 2026, the Society informed all its members through the WhatsApp group. It is also submitted that the Society office remained open for several days for collecting undertakings from the members. According to the petitioner, as many as 68 members acted upon this communication and gave written undertakings to vacate. This shows that the communication had reached the members. The petitioner also submitted that even after the present petition along with the copy of the Intimation of Approval was served upon the contesting

respondents, none of them came forward to give any undertaking to vacate.

23. At this stage, it is not necessary to decide whether every respondent personally received the communication. Clause 6.1 requires that after obtaining the approvals, the developer should intimate the Society and thereafter the Society should call upon members to give undertakings for vacating the premises. The material placed before the Court prima facie shows that the Intimation of Approval was received on 30 April 2026. The Society thereafter informed its members. It also received undertakings from 68 members. Only the present respondents did not cooperate. Therefore, merely because the respondents dispute the manner in which the communication was given, it cannot be said that there was complete non-compliance of Clause 6.1. If really the only grievance of the respondents was that they had not received proper communication, then even after receiving the present petition along with the Intimation of Approval, they could have furnished undertakings to vacate. Admittedly, they did not do so. Therefore, at this prima facie stage, this objection is not sufficient to reject the petition.

24. The next objection relates to execution of the Permanent Alternate Accommodation Agreement under Clause 9.4 of the Development Agreement. According to the respondents, unless the PAAA is executed and registered, no member can be asked to vacate his premises. The petitioner submitted that it has been ready and willing to execute the PAAA. According to the petitioner, execution

of the PAAA is required before actual handing over of possession and not before proceedings under Clause 6.1 are started. The petitioner also pointed out that the draft PAAA has been approved by the General Body. It has also made a statement before this Court that the PAAA with the dissenting members will be executed whenever this Court directs.

25. In my view, the submission of the respondents cannot be accepted. Clause 9.4 protects the members by requiring execution of the Permanent Alternate Accommodation Agreement before they hand over possession. However, this clause cannot be read by ignoring Clause 6.1. Clause 6.1 provides that if any member does not even give undertaking to vacate, proceedings can be initiated. If the interpretation suggested by the respondents is accepted, then proceedings under Clause 6.1 can never begin unless every member first agrees to execute the PAAA. Such interpretation will make the mechanism under Clause 6.1 ineffective. That does not appear to be the intention of the Development Agreement. Moreover, the petitioner has made a statement before this Court that the PAAA will be executed before actual vacation of the premises. Therefore, sufficient protection is available to the respondents at this stage.

26. The respondents have next argued that the Development Agreement is contrary to the Government Resolution issued under Section 79A because the petitioner has not furnished a bank guarantee. It is submitted that while approving appointment of the petitioner as developer, the Deputy Registrar required compliance with the Government Resolution. According to the respondents, the

security created under Clause 4.7 of the Development Agreement by reserving constructed area cannot replace a bank guarantee.

27. The petitioner, on the other hand, submitted that before it was selected as developer, it had informed the Society that the redevelopment project would be carried out under RERA and therefore no bank guarantee would be furnished. This condition was accepted by an overwhelming majority of the members while accepting the petitioner's offer. The petitioner has also relied upon the judgment of this Court in *Nitin Ambavi Gami*, wherein it has been held that the requirement of furnishing a bank guarantee under the Government Resolution is only recommendatory and not mandatory. It is also submitted that under Clause 4.7 of the Development Agreement, about 11,000 square feet carpet area has been kept as security for due performance of the petitioner's obligations.

28. Prima facie, this submission of the petitioner deserves acceptance. Once this Court has already held that furnishing of bank guarantee under the Government Resolution is recommendatory and not mandatory, mere absence of a bank guarantee cannot make the redevelopment process invalid. It is also important that the Society accepted the petitioner's offer with knowledge that no bank guarantee would be furnished. Apart from that, the Development Agreement provides alternative security. Whether such security is sufficient or not is a matter which may arise between the Society and the developer. That issue cannot be a ground to refuse interim protection under Section 9 of the Arbitration and Conciliation Act.

29. The respondents have also relied upon the fact that different civil suits are pending, wherein the redevelopment resolutions, the Development Agreement and the Power of Attorney have been challenged. According to them, till those proceedings are decided, redevelopment should not be allowed to proceed.

30. It is an admitted position that in none of those proceedings any interim order has been passed staying the redevelopment resolutions, the Development Agreement or the Power of Attorney. Mere pendency of a suit does not suspend the rights and obligations flowing from a valid agreement. If redevelopment is required to wait till every dispute filed by members reaches its conclusion, then no redevelopment project can proceed within a reasonable time. Such a position cannot be accepted unless the competent Court has granted interim protection. Therefore, merely because those proceedings are pending, it cannot be said that the petitioner is not entitled to seek relief under Section 9.

31. Apart from this, the Division Bench of this Court in *Pranav Constructions Limited* has held that disputes raised by members regarding implementation of redevelopment, appointment of the developer, distribution of benefits or validity of decisions taken by the Society are not required to be examined in proceedings under Section 9 of the Arbitration and Conciliation Act. Such disputes have to be agitated before the proper forum under Section 91 of the Maharashtra Co-operative Societies Act or before the Civil Court. The Division Bench has held that mere pendency of such proceedings cannot become a ground to refuse interim measures.

The principles laid down in the said judgment apply to the present case. Therefore, the pending suits relied upon by the respondents do not create legal bar against exercise of powers under Section 9.

32. The respondents have next submitted that they are not signatories either to the Development Agreement or to the arbitration agreement contained therein. According to them, no relief under Section 9 can therefore be granted against them. It is also their submission that the main dispute cannot be referred to arbitration and, therefore, the present petition is not maintainable.

33. It is true that the respondents have not signed the arbitration agreement. However, the proposed arbitration is between the petitioner and respondent No.1 Society, which has executed the Development Agreement. Under that agreement, the Society has undertaken to secure vacant possession of the premises from its members. If the Society fails to discharge that obligation because some members refuse to vacate, such failure can give rise to an arbitral dispute between the petitioner and the Society. The refusal of the individual members is only the event which gives rise to such dispute. The Division Bench in *Pranav Constructions Limited* has held that refusal of members to vacate can become the trigger for invoking arbitration against the Society. It has also been held that while exercising powers under Section 9, the Court can grant appropriate interim relief even against persons who are not signatories to the arbitration agreement, if they are occupying premises of the Society building. In view of this settled position, the objection raised by the respondents cannot be accepted.

34. The respondents have also relied upon the judgment in *Wadhwa Estates*. In my view, that judgment does not assist the respondents. Every case has to be decided on its own facts and on the terms of the agreement involved. In the present case, the material placed before the Court prima facie shows that the requirements of Clause 6.1 have been complied with and that an overwhelming majority of the members have cooperated with the redevelopment. Therefore, prima facie, the ratio of the said decision does not support the case of the respondents.

35. Another submission of the respondents is that the petitioner is seeking final relief in the form of interim relief. According to them, by directing the respondents to vacate their premises, this Court would in substance be granting the final relief itself. It is true that a direction to vacate affects the possession of the respondents. Therefore, such relief cannot be granted routinely. At the same time, redevelopment agreements stand on a different footing. The agreement provides that the members have to vacate their premises before demolition and redevelopment can begin. Where an overwhelming majority of the members have accepted the redevelopment and only a few members refuse to vacate, the entire project may come to a standstill. In such a situation, a direction to vacate is intended to facilitate performance of the Development Agreement pending arbitration. It is not a final adjudication upon the ownership or any independent rights of the parties. Therefore, merely because the interim relief is substantial, it cannot be said that such relief is altogether impermissible under Section 9.

36. The Court cannot ignore certain facts which have come on record. Out of total 80 members of respondent No.1 Society, 68 members have accepted the redevelopment proposal. They have executed the Development Agreement and have also given undertakings to vacate their respective premises. The redevelopment has crossed many stages. The petitioner has been appointed as the developer by the General Body. The Development Agreement and the Power of Attorney have been executed and duly registered. Thereafter, two Deeds of Adherence have also been executed. The General Body has approved the Permanent Alternate Accommodation Agreement. MHADA has issued the Intimation of Approval. The plans have also been sanctioned. Therefore, the redevelopment has moved much beyond the stage of a mere proposal. If at this stage the project is stopped because twelve members are not cooperating, prejudice is likely to be caused not only to the petitioner but also to the remaining 68 members who have accepted the redevelopment and are waiting for its implementation.

37. At the same time, the objections raised by the respondents cannot be brushed aside. Every member has a right to point out if there is any illegality in the redevelopment process. However, the question before this Court is not whether those grievances are correct or not. The question is whether those grievances can be examined in proceedings under Section 9 of the Arbitration and Conciliation Act. The law laid down by the Division Bench in *Pranav Constructions Limited* says that such individual grievances regarding

implementation of redevelopment, appointment of the developer, validity of resolutions or distribution of redevelopment benefits are required to be decided before the competent forum and not in proceedings under Section 9. Therefore, merely because such grievances are raised by the respondents, the redevelopment itself cannot be brought to a halt.

38.

39. The respondents have also raised objections regarding validity of the resolutions passed by the Society, the Development Agreement, the Power of Attorney and other steps taken during the redevelopment process. As noted earlier, proceedings challenging those actions are pending before the competent Courts. Those Courts will decide those disputes on their own merits. This Court is not required to express any opinion on those issues while exercising jurisdiction under Section 9. Any observations made in the present order are only for deciding whether interim protection is required and they shall not affect the rights and contentions of the parties in those proceedings.

40. It is also required to be noticed that the petitioner has stated that the Permanent Alternate Accommodation Agreements with the dissenting members shall be executed before actual vacation of the premises, as and when directed by this Court. The petitioner has also stated that if the respondents vacate their premises in accordance with the order of this Court, the petitioner will not insist upon payment of the 18% penalty provided under the Development Agreement. These statements have been made on instructions and

are accepted as undertakings to this Court. They provide protection to the contesting respondents while implementing the redevelopment project.

41. The humanitarian request made on behalf of the respondents also deserves consideration. It is submitted that some of the respondents are senior citizens and one of them has been advised to remain home bound because of medical condition. There can be no dispute that shifting from premises occupied for many years causes hardship, particularly to elderly persons. However, such personal hardship cannot override the obligations undertaken by the Society through the decisions of its General Body. Such hardship can be balanced by granting reasonable time for compliance. It cannot become a ground to deny the relief altogether when the redevelopment has otherwise progressed and the overwhelming majority of the members have accepted the project.

42. Taking an overall view of the matter, this Court is satisfied that the petitioner has made out a prima facie case for grant of interim protection under Section 9 of the Arbitration and Conciliation Act, 1996. The balance of convenience is in favour of permitting the redevelopment to proceed. Refusal of interim relief is likely to cause greater prejudice to the petitioner, respondent No.1 Society and the majority of members who have accepted the redevelopment than the inconvenience which may be caused to the contesting respondents. The inconvenience to the respondents can be balanced by granting them reasonable time and by ensuring compliance with the obligations undertaken by the petitioner under the Development

Agreement, including execution of the Permanent Alternate Accommodation Agreement before vacation. Subject to those safeguards, the objections raised by the respondents do not justify refusal of relief under Section 9.

43. Hence, the following order is passed:

(a) The Arbitration Petition is allowed.

(b) Respondent Nos. 2 to 17 shall execute the Permanent Alternate Accommodation Agreement with the petitioner, if not already executed, within a period of two weeks from today. The petitioner shall keep the agreements ready for execution and shall comply with all its obligations under Clause 9.4 of the Development Agreement.

(c) Upon execution of the Permanent Alternate Accommodation Agreement, respondent Nos. 2 to 17 shall hand over vacant possession of their respective premises, namely Flat No. 1/16, Flat No. 4/67, Flat No. 1/15, Flat No. 1/20, Flat No. 2/33, Flat No. 4/65, Flat No. 1/12, Flat No. 3/53, Flat No. 3/54, Flat No. 1/08, Flat No. 1/17 and Flat No. 1/09, to the petitioner within a period of six weeks thereafter.

(d) In the event respondent Nos. 2 to 17 or any of them fail to execute the Permanent Alternate Accommodation Agreement or fail to hand over possession within the above period, the Court Receiver, High Court, Bombay, is appointed as Receiver in respect of the aforesaid premises with all powers under Order XL Rule 1 of the Code of Civil Procedure, 1908,

including power to take physical possession of the premises with police assistance, if necessary, and to hand over possession to the petitioner for carrying out demolition and redevelopment in accordance with the Development Agreement dated 7 August 2024.

(e) The Senior Inspector of the concerned Police Station shall extend all necessary police protection and assistance to the Court Receiver for implementation of this order, if such assistance is demanded.

(f) Respondent Nos. 2 to 17, their family members, servants, agents or any person claiming through or under them are restrained from in any manner obstructing, interfering with or preventing the petitioner, its contractors, agents or workmen from carrying out redevelopment work in accordance with the Development Agreement after possession is handed over.

(g) Respondent Nos. 2 to 17, their family members, servants, agents or any person claiming through or under them are further restrained from creating any third party rights, transferring, alienating, encumbering or parting with possession of their respective premises till conclusion of the arbitral proceedings or until further orders.

(h) In view of the statement made on behalf of the petitioner and accepted by this Court, the petitioner shall execute the Permanent Alternate Accommodation Agreement with the contesting respondents before taking actual possession of their

respective premises and shall not insist upon payment of the contractual penalty of 18% from respondent Nos. 3, 4, 14 and 17 if they comply with this order within the time granted by this Court.

(i) It is clarified that all observations made in this order are prima facie in nature and confined only to adjudication of the present petition under Section 9 of the Arbitration and Conciliation Act, 1996. All rights and contentions of the parties in the pending suits, arbitration and all other proceedings are expressly kept open.

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

(AMIT BORKAR, J.)