

MPBalekar

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

COMMERCIAL ARBITRATION PETITION (L) NO. 20310 OF 2026

N Mehta Infra Realty LLP ... Petitioner
V/s.
Deepa Co-operative Housing Society
Limited and Ors. ... Respondents

Mr. H. Lakhani a/w Kalpesh Mehta, Vasim Shaikh and Prachi Badani i/by Pravin Mehta & Mithi Co. for the petitioner.

Mr. Aman Angad, a/w Arpita Tiwari i/by Dharmesh S. Jain for respondent No.1

Dr. Abhinav Chandrachud for respondent Nos. 3 & 4.

CORAM : AMIT BORKAR, J.

DATED : JULY 1, 2026

P.C.:

1. By filing the present petition, the petitioner has prayed for a direction against respondent Nos. 2 to 4 to immediately vacate and hand over vacant and peaceful possession of their respective premises, namely Flat No. 102 and Shop No. 5, situated in the building of respondent No. 1 Society. According to the petitioner, unless possession of these remaining premises is received, the redevelopment work of the property cannot begin and the entire project will continue to remain delayed.

2. The facts leading to the present petition are these. The petitioner is a registered partnership firm engaged in the business

of real estate development. Respondent No. 1 is a registered Co-operative Housing Society and is the owner of the property on which the building known as Deepa CHS Ltd. stands. The Society consists of 17 members. Respondent Nos. 2 to 4 are members or joint members of the Society and are stated to be the only members who are not cooperating with the redevelopment process. The building was constructed in the year 1980. It is a standalone structure consisting of a ground floor and three upper floors, having 17 units in all, out of which 9 are residential and 8 are commercial. According to the petitioner, because of the age of the building, it had become old and required major repairs. In the year 2023, all the members of the Society mutually decided that, instead of spending money on appointing a Project Management Consultant, preparing tender documents and issuing public advertisements for inviting offers from developers, each member would be free to approach developers known to them and obtain redevelopment proposals for consideration by the Society.

3. Thereafter, on 6 January 2024, the petitioner, under its earlier proposed name of M/s. N.M. Realty, submitted its redevelopment proposal to the Society. In the middle of January 2024, the petitioner submitted a revised and clarificatory offer. It is the petitioner's case that the General Body thereafter considered the proposal and resolved to appoint the petitioner as the developer. The Society also informed the petitioner about such appointment by its communication. Subsequently, by a letter dated 7 June 2024, the petitioner informed the Society that the redevelopment project would be undertaken in the name of M/s.

N. Mehta Infra Realty LLP, which is the present petitioner, instead of the earlier proposed name of M/s. N.M. Realty.

4. The petitioner has further stated that another revised or clarificatory offer was submitted by it and thereafter the General Body resolved to appoint the petitioner as the developer. On 15 April 2025, drafts of the Development Agreement and the Power of Attorney were circulated by the petitioner to the Society and its members for their consideration. Thereafter, a Special General Body Meeting of the Society was held on 20 April 2025 for approving the drafts of the Development Agreement and the Power of Attorney and for authorising the office bearers of the Society to execute those documents.

5. On 15 July 2025, fifteen members of the Society, representing fifteen units, executed and registered the Development Agreement and the Power of Attorney. According to the petitioner, the Development Agreement was registered only after the plans of the proposed redevelopment were approved by the majority members of the Society. Thereafter, on 9 September 2025, the petitioner applied to the Municipal Corporation for obtaining the Intimation of Disapproval and sanction of the building plans. On 30 March 2026, the Municipal Corporation granted the Intimation of Disapproval and approved the plans for the proposed construction.

6. The petitioner has further stated that on 5 April 2026 it informed the Society and all its members through email that the Intimation of Disapproval and sanctioned plans had been received.

By the same communication, the members were requested to hand over vacant and peaceful possession of their respective premises within thirty days, that is, on or before 5 May 2026. The majority members of the Society also approved the draft Permanent Alternate Accommodation Agreement to be executed between the petitioner and the members. According to the petitioner, all members except respondent Nos. 2 to 4 expressed their willingness to vacate and hand over possession of their respective premises.

7. It is further the case of the petitioner that since respondent Nos. 2 to 4 did not vacate their premises, reminder emails dated 4 May 2026 were sent calling upon them once again to hand over possession. Further communications dated 4 May 2026 and 15 May 2026 were also addressed requesting them either to suggest changes to the draft Permanent Alternate Accommodation Agreement or to confirm their acceptance of it. On 15 May 2026, the petitioner requested the Society and its members to remain present at its office on 16 May 2026 and 17 May 2026 for execution of the Permanent Alternate Accommodation Agreements. The petitioner has already executed and registered such agreements with all the remaining members in respect of fifteen units, except respondent Nos. 2 to 4. It is also stated that on 8 May 2026, the Society itself addressed an email to all its members requesting them to vacate and hand over possession of their respective units on or before 20 May 2026.

8. Learned Advocate appearing for the petitioner invited attention to the arbitration clause contained in the Development Agreement. He submitted that out of the total seventeen members

of the Society, fifteen members have already vacated their respective premises and have acted upon the redevelopment arrangement. According to him, the Development Agreement is binding upon all the members of respondent No. 1 Society, including respondent Nos. 2 to 4. He further submitted that in view of the principles laid down by the Division Bench of this Court in *Pranav Constructions Limited v. Priyadarshini Co-operative Housing Society Limited & Others* 2025 SCC OnLine Bom 6498,, the petitioner has made out a case for grant of interim relief and is therefore entitled to the directions sought in the present petition.

9. Learned Advocate appearing for respondent No. 1 Society supported the petition. He submitted that under the terms of the Development Agreement, the petitioner's obligation to pay transit rent would arise only after all the members vacate and hand over possession of their respective premises. According to him, since only respondent Nos. 2 to 4 have not vacated their premises, the redevelopment project has come to a standstill. He therefore submitted that appropriate directions should be issued requiring the said respondents to hand over possession without any further delay.

10. Learned Advocate appearing for respondent Nos. 3 and 4 submitted that respondent Nos. 3 and 4 are carrying on a liquor business from the premises in their occupation in the name of Priyanka Wines. He submitted that before they can vacate the premises, it is necessary to complete the procedure for transfer of the licence under the provisions of the Bombay Prohibition Act,

1949. According to him, the process of obtaining the required permissions and completing the formalities for transfer of such licence takes considerable time. He therefore submitted that respondent Nos. 3 and 4 cannot be compelled to vacate immediately until the statutory formalities relating to the licence are completed.

11. Learned Advocate appearing for respondent No. 2 submitted that there is a dispute regarding the area of the permanent alternate flat proposed to be allotted to respondent No. 2 under the Development Agreement. According to him, the area promised to respondent No. 2 is disputed and the issue has not yet been resolved. He therefore contended that until this dispute regarding the entitlement of respondent No. 2 is decided, the petitioner cannot seek a direction requiring respondent No. 2 to vacate and hand over possession of the existing premises.

12. I have considered the submissions made on behalf of all the parties. I have also carefully gone through the documents placed on record. In my view, the issue involved is whether the petitioner has shown sufficient grounds for grant of interim relief by directing respondent Nos. 2 to 4 to vacate and hand over possession of their respective premises so that the redevelopment work can proceed further.

13. It is not disputed that respondent No. 1 is a Co-operative Housing Society having 17 members. The material on record also shows that the existing building was constructed in the year 1980 and because of passage of many years it has become an old

structure consisting of both residential and commercial units. It further appears that all members had taken a decision to redevelop the property. Instead of spending money on appointing consultants and inviting offers through public advertisements, the members had agreed that each member could bring offers from developers known to them. That decision appears to have been taken by mutual understanding of the members. Thereafter, different offers were placed before the Society and, after considering those offers, the petitioner came to be selected as the developer in the General Body Meeting. The record further shows that the Development Agreement and the Power of Attorney have already been executed and registered by 15 members representing 15 units. Therefore, the redevelopment has gone much ahead and several steps for implementation have been completed.

14. The learned Advocate appearing for the petitioner submitted that the Development Agreement is binding upon every member of the Society. According to him, once the overwhelming majority of the members have accepted the redevelopment and have acted upon the agreement, a small number of members cannot be permitted to stop the entire project for an uncertain period. Reliance has been placed upon the judgment of the Division Bench of this Court in the case of *Pranav Constructions Limited v. Priyadarshini Co-operative Housing Society Limited & Others*. The principles laid down therein indicate that once redevelopment is approved in accordance with law and the agreement binds the Society as well as its members, the Court can grant appropriate protection so that the redevelopment is not defeated only because

a few members are not willing to cooperate. This submission deserves acceptance because redevelopment of a housing society concerns every member collectively. Delay by only a few members may not remain confined to their own premises. It may affect the rights and expectations of all remaining members and may also cause financial difficulties and uncertainty to the entire redevelopment project.

15. The learned Advocate appearing for respondent No. 1 Society has also supported the petitioner. He submitted that under the Development Agreement, the petitioner's obligation to start payment of transit rent would arise only after every member vacates and hands over possession. Therefore, unless respondent Nos. 2 to 4 vacate their premises, the obligations under the Development Agreement cannot be fully performed by either side. This submission also appears to have substance. The obligations of the developer and the members are connected with each other. One party cannot be expected to perform its obligations unless the other side also performs what is required from it. Therefore, the Society cannot be said to be incorrect in contending that because respondent Nos. 2 to 4 have not vacated, the redevelopment has remained held up till today.

16. The learned Advocate appearing for respondent Nos. 3 and 4 submitted that respondent Nos. 3 and 4 are carrying on liquor business from the premises in their occupation and transfer of licence under the provisions of the Bombay Prohibition Act, 1949 requires completion of several formalities. According to him, such procedure takes considerable time and therefore they cannot

immediately vacate the premises. Merely because transfer of licence requires certain formalities, that cannot become a sufficient reason for keeping the entire redevelopment project pending for an unlimited period. The material available before this Court does not show that respondent Nos. 3 and 4 had taken prompt steps for obtaining transfer of licence immediately after the redevelopment process was approved. It is also not shown before this Court as to within what definite period such process is likely to be completed. In absence of any such material, it will not be proper to permit the redevelopment to remain delayed.

17. The learned Advocate appearing for respondent No. 2 submitted that there is dispute regarding the area of the permanent alternate premises proposed to be allotted to respondent No. 2 under the Development Agreement. From the material available on record, it does not appear that the alleged dispute regarding the area has reached any final determination or that such dispute makes the Development Agreement impossible to implement. The grievance of respondent No. 2 regarding exact area can always be examined and decided in any other proceedings available under law. Such dispute is capable of being resolved independently and, if necessary, suitable directions or compensation can also be granted in accordance with law. But such dispute, by itself, cannot be treated as a valid ground to stop the entire redevelopment of the Society.

18. One more circumstance also deserves importance. Out of 17 members, as many as 15 members have already executed the Development Agreement, the Power of Attorney and also the

Permanent Alternate Accommodation Agreements. They have accepted the redevelopment and have expressed readiness to hand over possession. Necessary municipal permissions have also been obtained by the petitioner. Even the Society supports the redevelopment. These facts indicate that the redevelopment process has progressed and has crossed several stages. In such situation, the balance of convenience cannot be examined only from the point of view of respondent Nos. 2 to 4. The Court is also required to consider the interest of the remaining members who have acted upon the agreements and are waiting for commencement of redevelopment.

19. If interim relief is refused, the petitioner will not be able to commence redevelopment despite obtaining necessary permissions and despite overwhelming support of the Society. The remaining members will also continue to suffer uncertainty regarding redevelopment of their property. Delay may further increase construction cost and create additional burden upon the project. On the other hand, if respondent Nos. 2 to 4 establish their rights regarding licence transfer or the area of permanent alternate accommodation, such rights can always be protected in appropriate proceedings. Therefore, on overall comparison, refusal of interim relief is likely to cause much greater prejudice to the redevelopment project and to the majority members than the prejudice which may presently be caused to respondent Nos. 2 to 4.

20. Considering the overall facts and circumstances placed before this Court, I am satisfied that the petitioner has made out a

strong prima facie case. The balance of convenience is also in favour of permitting the redevelopment to proceed. If possession is not made available at this stage, serious prejudice is likely to be caused to the petitioner as well as to the Society. The objections raised by respondent Nos. 2 to 4 are matters which can be independently considered and decided in accordance with law. Those objections, in the facts of the present case, are not sufficient to justify withholding possession and delaying the redevelopment project any further.

21. For all these reasons, after considering the submissions advanced on behalf of every party and after overall appreciation of the material placed before this Court, I am of the opinion that the petitioner has made out a proper case for grant of the reliefs prayed for.

22. Accordingly, the present petition stands allowed in terms of prayer clause (a).

23. Respondent Nos. 2 to 4 shall vacate and hand over vacant and peaceful possession of their respective premises within a period of two weeks from today.

24. If respondent Nos. 2 to 4 fail to vacate within the aforesaid period, the Court Receiver shall proceed to take possession in accordance with prayer clause (c). For that purpose, the concerned jurisdictional police authorities shall render all necessary assistance to the Court Receiver so that peaceful possession of the

premises is obtained and the present order is effectively implemented.

(AMIT BORKAR, J.)