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

ARBITRATION PETITION NO.106 OF 2026

Jaycee Homes Private Limited ... Petitioner
V/s.
Kurla Moon Rock Municipal Employee
Cooperative Housing Society Limited ... Respondent

Mr. Sahil Mahajan with Mr. Saurabh Godbole for the petitioner.

Mr. Amrut Joshi with Ms. Pooja Batra, Mr. Pratik Amin and Mr. Harsh Agarwal for the respondent.

CORAM : AMIT BORKAR, J.

DATED : JULY 2, 2026

P.C.:

1. The present petition is filed under Section 9 of the Arbitration and Conciliation Act, 1996. By this petition, the petitioner seeks interim protection pending the arbitral proceedings and the execution of the award, if ultimately passed in its favour. The petitioner has prayed for appointment of the Court Receiver, High Court, Bombay, or any other fit and proper person, as Receiver in respect of the property bearing Survey No.187, Hissa No.2, corresponding to CTS No.823, admeasuring 826.50 square metres, situated at 823, Pipe Lane, New Hall Road, Kurla West, Mumbai, together with the structures standing thereon, with all powers under Order XL Rule 1 of the Code of Civil Procedure.

The petitioner has also prayed for an order of temporary injunction restraining the respondent, its servants, agents or any person claiming through it from selling, transferring, parting with possession, alienating, creating any third party rights, or otherwise dealing with the said property till the arbitral proceedings are concluded.

2. The facts giving rise to the present petition, as stated by the petitioner, are as follows. The petitioner is a company incorporated under the Companies Act, 1956 and is engaged in the business of construction and redevelopment. The respondent is the owner of the property in question. According to the petitioner, the parties entered into a registered Development Agreement dated 16 August 2014, under which the respondent granted development rights in favour of the petitioner for redevelopment of the property. The respondent also executed and registered a General Power of Attorney in favour of a Director of the petitioner company for carrying out the work contemplated under the agreement. It is further stated that on 8 April 2014, the petitioner company was converted from a limited company into a private limited company.

3. It is the case of the petitioner that it paid an amount of Rs.12,64,375/- towards corpus to the members of the respondent society. Thereafter, it submitted the building plans to the Municipal Corporation for approval. The Municipal Corporation sanctioned the plans and issued the Intimation of Disapproval (IOD) on 22 June 2015. According to the petitioner, despite obtaining the necessary approvals, the respondent failed to hand over possession of the property in terms of the Development Agreement. As a

result, the petitioner, through its Advocate's notice dated 1 August 2023, invoked the arbitration clause contained in Clause 59 of the Development Agreement. Though the notice was admittedly received by the respondent, no reply was given. The petitioner therefore contends that it is entitled either to seek specific performance of the Development Agreement or, in the alternative, recovery of the corpus amount together with interest and damages.

4. The petitioner further states that it has learnt that the respondent is taking steps to appoint another developer for redevelopment of the property. According to the petitioner, if such steps are permitted, its contractual rights under the Development Agreement would be seriously prejudiced. It is in these circumstances that the present petition under Section 9 of the Act has been filed seeking interim protection.

5. Mr. Mahajan, learned counsel appearing for the petitioner, submitted that the building plans had already been approved by the Municipal Corporation and the IOD was issued on 22 June 2015 in the name of the constituted attorney of the owner. According to him, this clearly demonstrates that the Development Agreement had been substantially acted upon and that valuable contractual rights had already accrued in favour of the petitioner.

6. Learned counsel submitted that it was the respondent which failed to comply with the terms of the Development Agreement by not handing over vacant and peaceful possession of the property. According to him, without possession, the petitioner could not

proceed with the redevelopment work. He submitted that the petitioner was always ready to perform its obligations, but because of the respondent's failure to fulfil its part of the agreement, the project could not proceed. It was therefore compelled to invoke the arbitration clause by notice dated 1 August 2023. He further submitted that after learning that the respondent was proposing to appoint another developer, the petitioner approached this Court seeking protection of its contractual rights till the disputes are decided in arbitration.

7. Learned counsel placed reliance upon the judgment of this Court in *Jankalyan Sahakari Bank Limited v. State of Maharashtra* in Writ Petition No.5354 of 2025, decided on 15 October 2025. He submitted that under the registered Development Agreement, the petitioner had acquired valuable rights to develop and sell the property after redevelopment, which created an interest in the property itself. According to him, once such rights were created under a registered document, the respondent could not have unilaterally terminated the Development Agreement. He therefore submitted that the petitioner has made out a prima facie case for grant of the interim reliefs prayed for in the present petition.

8. Per contra, Mr. Joshi, the learned counsel appearing for the respondent relied upon several judgments of this Court and particularly the decision in *Ison Builders LLP v. Om Sairam Co-operative Housing Society*, 2026 SCC OnLine Bom 319. He submitted that in a case involving similar facts, this Court had refused interim protection to a developer who had sought to restrain the society from appointing another developer after

termination of the Development Agreement. He submitted that the Court found that the developer had failed to perform its contractual obligations within the stipulated period and that the society had consequently lost confidence in the developer. It was held that a developer who is in default cannot prevent the society from proceeding with redevelopment through another developer and that its remedy, if any, is only to claim damages before the arbitral tribunal. In support of these submissions, reliance was placed on paragraphs 33 to 35, 37, 44 and 46 of the said judgment.

9. Learned counsel appearing for the respondent, submitted that the respondent's building was constructed in the year 1981 and had, over a period of time, become old and dilapidated. According to him, the members were anxious to have the property redeveloped so that they could shift to a safe building at the earliest. After negotiations between the parties, a Development Agreement came to be executed on 16 August 2013 under which the respondent granted development rights in respect of its property bearing Survey No.187, Hissa No.2, corresponding to CTS No.823, admeasuring 826.50 square metres, situated at Pipe Lane, New Hall Road, Kurla West, Mumbai, together with the existing building known as "Kurla Moon Rock", upon the terms and conditions contained therein.

10. Learned counsel submitted that under the Development Agreement, the petitioner was required to complete the redevelopment within two years from the date of issuance of the Commencement Certificate, with a further grace period of six

months. However, despite execution of the agreement, the petitioner failed to even commence construction for several years. During this period, the members continued to reside in the old building, whose condition kept deteriorating. He further submitted that the agreement contemplated that within thirty days from the issuance of the IOD, and after the petitioner called upon the members to vacate, the members would hand over vacant possession of their respective premises. Although the petitioner obtained the IOD on 22 June 2015, it never fulfilled its own basic obligations, including payment of transit rent, brokerage and shifting charges. According to the respondent, the petitioner did not have sufficient financial resources to undertake the project and therefore deliberately never called upon the members to vacate. He further submitted that even according to the petitioner, it had invested only Rs.12,64,375/- towards corpus, which payment itself is disputed by the respondent.

11. Learned counsel further submitted that sometime in the year 2016, nearly three years after execution of the Development Agreement, the petitioner itself expressed its inability to carry out the redevelopment and proposed that its development rights be assigned in favour of M/s. Bhatia & Rahat Realty LLP. Considering the urgent need for redevelopment and the poor condition of the building, the respondent agreed to the proposal in its Special General Body Meeting held on 3 April 2016 and granted its No Objection Certificate. Thereafter, the petitioner assigned all its rights and interests under the Development Agreement in favour of M/s. Bhatia & Rahat Realty LLP and acknowledged the said

assignment by its letter dated 27 October 2016 addressed to the respondent.

12. Learned counsel lastly submitted that despite the assignment, no redevelopment work commenced even till the year 2018. In these circumstances, the respondent terminated the Development Agreement and all related arrangements with the petitioner as well as M/s. Bhatia & Rahat Realty LLP by its letter dated 14 February 2018. According to the respondent, this termination has been deliberately suppressed by the petitioner in the present proceedings. He submitted that the petitioner neither replied to the termination notice nor challenged it before any Court or arbitral forum. Even thereafter, the petitioner remained completely silent for almost five years. It was only in August 2023 that the petitioner issued a notice invoking arbitration, without disclosing the termination of the Development Agreement, and alleged that the respondent had failed to hand over possession of the property. On that basis, the petitioner has now sought specific performance of the Development Agreement and the interim reliefs claimed in the present petition.

13. I have considered the submissions made by both sides and have gone through the documents placed before the Court. At this stage, while considering a petition under Section 9 of the Arbitration and Conciliation Act, this Court has to see whether the petitioner has made out a prima facie case, whether the balance of convenience is in its favour and whether refusal of interim protection is likely to cause such loss which later may not be properly compensated by money.

14. There is no dispute that a registered Development Agreement came to be executed between the parties. It is also not disputed that by the said agreement, the respondent granted development rights of the property in favour of the petitioner. The material further shows that the Municipal Corporation approved the building plans and issued the IOD on 22 June 2015. The petitioner has placed material to show that certain amount was paid towards corpus. Though the respondent disputes such payment, for the present purpose it appears that at least some amount was invested by the petitioner in relation to the redevelopment project.

15. However, only because there is a Development Agreement and municipal approvals are obtained, it does not mean that the petitioner becomes entitled to all interim reliefs claimed in the petition. The Court is also required to examine whether the petitioner was ready and capable of performing the obligations undertaken under the agreement.

16. The main submission of the petitioner is that redevelopment could not begin because the respondent did not hand over vacant possession of the property. At first glance, this submission appears to carry some weight because redevelopment cannot begin without obtaining possession from the existing occupants. The record indicates that under the Development Agreement, the members of the respondent society were required to vacate their premises only after the petitioner fulfilled certain obligations, including payment of transit rent, brokerage, shifting charges and thereafter called upon the members to hand over possession. The respondent has

contended that these obligations were never fulfilled by the petitioner. It is the respondent's case that because the petitioner did not have financial capacity, it never called upon the members to vacate the premises. At this stage also, no material is placed by the petitioner to show that it had complied with obligations and thereafter demanded possession from the respondent.

17. One more circumstance also deserves consideration. Though the Development Agreement was executed in the year 2013 or 2014 and the IOD was obtained on 22 June 2015, no redevelopment work started for many years. During this long period, the record does not show any meaningful progress in the redevelopment project. Except obtaining the municipal approvals, no material is pointed out to show that the petitioner was in a position to commence the work. Merely obtaining approvals may not establish that the petitioner remained ready and willing to perform its obligations under the agreement.

18. The respondent has also relied upon the later conduct of the petitioner. The material on record shows that in the year 2016, the petitioner itself proposed assignment of its development rights in favour of M/s. Bhatia & Rahat Realty LLP. The respondent accepted the proposal considering that redevelopment was getting delayed and granted its consent. The petitioner also acknowledged such assignment. Prima facie, this conduct appears to indicate that the petitioner was finding difficulty in executing the redevelopment on its own. It is true that assignment of development rights may not amount to breach of the agreement. Still, when this circumstance is read together with the remaining material on record, it lends

support to the respondent's case that the petitioner was facing financial difficulties in carrying forward the redevelopment project.

19. The respondent has also placed strong reliance upon the termination letter dated 14 February 2018. According to the respondent, the Development Agreement already stood terminated much before the arbitration notice dated 1 August 2023 came to be issued. It is also submitted that this termination has not been disclosed by the petitioner. The material on record does not show that after receipt of the termination letter, the petitioner challenged the same before any competent forum or invoked arbitration within a reasonable period. On the contrary, arbitration appears to have been invoked only after five years. Whether such termination is legal or otherwise is a matter to be decided in the arbitral proceedings. However, the long silence on the part of the petitioner is one relevant circumstance which cannot be ignored while considering whether discretionary interim relief should be granted.

20. Learned counsel appearing for the petitioner relied upon the decision in *Jankalyan Sahakari Bank Limited* and submitted that a registered Development Agreement creates an interest in the property and therefore such agreement cannot be terminated unilaterally. There is no difficulty in accepting the proposition that rights created under a registered Development Agreement deserve protection. However, such protection cannot be granted in every matter as a matter of routine. It always depends upon the facts of each case and the conduct of the parties and nature of terms of

agreement. The Court is also required to examine whether the party seeking such protection has complied with the obligations undertaken under the agreement. On the other hand, the respondent relied upon the judgment in *Ison Builders LLP*. The principle emerging from the said decision is that where a developer has failed to perform its obligations within the agreed time and the society has lost confidence in such developer, the Court should not restrain the society from appointing another developer. This principle appears to have relevance in redevelopment matters because the members continue to stay in old and unsafe buildings waiting for redevelopment. If redevelopment projects remain pending for years because of disputes between the developer and the society, greater hardship is caused to the persons residing in such buildings. Therefore, while protecting contractual rights, the Court also cannot ignore the larger interest of the members who have been waiting for redevelopment.

21. In the present case, the respondent has placed material to show that the building was constructed in the year 1981 and has become old and dilapidated. This position has not been disputed by the petitioner. The redevelopment project has remained incomplete for almost ten years. If at this stage the respondent is restrained from appointing another developer, the redevelopment is likely to remain stalled till completion of arbitration, which may take time. Such a situation is likely to cause greater prejudice to the members of the respondent society who are still residing in the old building. Therefore, this circumstance assumes importance

while considering the balance of convenience.

22. The petitioner has also sought appointment of the Court Receiver over the property. Such relief is an extraordinary one and ordinarily is granted only where sufficient material is placed before the Court to show that the property is likely to be wasted, alienated or dealt with in such a manner as may defeat the arbitral proceedings. In the present case, the property belongs to the respondent and continues to remain occupied by its members. The dispute between the parties relates to enforcement of rights arising under the Development Agreement. Appointment of a Receiver over the entire property would amount to taking away control of the respondent over its own property, though material justifying such an extreme order is not available on record.

23. Likewise, the prayer seeking injunction restraining the respondent from appointing another developer also cannot be granted merely because arbitration has been invoked. If such injunction is granted, the Development Agreement would continue despite disputes regarding its performance and regarding its termination. Such an order would amount to granting the final relief itself at the interim stage. While exercising powers under Section 9, the Court should avoid passing an order which finally decides the dispute.

24. For all the aforesaid reasons, I do not find any merit in the present arbitration petition and the same is accordingly dismissed.

25. It is, however, clarified that all observations made in this order are only prima facie and confined only to the adjudication of

the present petition under Section 9 of the Arbitration and Conciliation Act, 1996.

(AMIT BORKAR, J.)