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

ARBITRATION PETITION (L) NO.40791 OF 2025

Real Infrastructure Company
through its Partner Keshavji Damji Minat ....Petitioner
V/S
Tilak Nagar Mahalaxmi Co-Operative
Housing Society Limited and Ors. ....Respondent

Mr. Pramod Bhosle i/b Ms. Devika Nigde *for the Petitioner.*

Mr. Anshul Kochar *for Respondent No.1.*

Mr. Himanshu Rai with Mr. Harishchandra M. Margaje *for Respondent No.3*

CORAM : SANDEEP V. MARNE, J.
DATE : 7 JANUARY 2026.

P.C.:

1. This is the Petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 (**Arbitration Act**) seeking the following prayers:

> (a) This Hon'ble Court be pleased to direct the Respondent No. 2 to handover the vacant possession of the existing tenement in her occupation, that is Unit number 310 situated in the subject premises being building number 60, which are constructed on the parcel of land, having CTS No. 20 (Pt.), Survey No. 14 (Pt.) admeasuring 1143.33 sq. mtrs. or thereabouts at Tilak Nagar, Village Chembur, Kurla, Mumbai Suburban District to the Petitioner;
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> (b) in alternative to prayer clause (a), this Hon'ble Court be pleased to appoint a Court Receiver of the Hon'ble Court or any other fit and proper person as a Court Receiver with respect to unit No. 310 situated in the subject premises with all powers under Order XLI Rule 1 of the Code of Civil Procedure, 1908, including the power to take physical possession of the tenement No. 310, if necessary by breaking locks and taking police protection and handover the peaceful and physical possession of the tenement No. 310 to the Petitioner to enable the Petitioner to demolish the building and commence the construction of new building/s as contemplated under the Development Agreement dated 2nd February 2025;

(c) this Hon'ble Court be pleased to pass an order or injunction restraining Respondent No. 2 from dealing with transferring, entering and/or creating any third-party rights of any nature whatsoever with respect to tenement No. 310 situated in the subject premises in any manner whatsoever without prior written permission of the Respondent No. 1 Society and the Petitioner;

(d) cost of the petition be provided for;

(e) such further and other reliefs as appropriate in the circumstances of the case.

2. Respondent No.1-Society has decided to undertake redevelopment of its building. It appears that the building of the first Respondent-Society has a peculiar feature. The building is constructed by Maharashtra Housing and Area Development Authority (MHADA) and had originally only 36 tenements of size of 180 square feet. After procuring permission from MHADA the size of the tenements were increased to 295 square feet. Since there was surrounding land around the building, it appears that additional flats are constructed around the building which are of different sizes but are much larger than the original 36 flats of area of 295 square feet. The Society's building thus has total 62 flats comprising of original 36 flats and added 26 flats.

3. On 9 April 2023, Society adopted resolution in Special General Body Meeting (SGM) and it was decided that additional area arising out of redevelopment shall be equally shared by all 62 members. Respondent No.2 did not question the said SGM resolution dated 9 April 2023. On 22 September 2024, Petitioner was appointed as a Developer to carry out redevelopment of first Respondent-Society's building. On 2 February 2025, Development Agreement was executed between Petitioner and Respondent No.1-Society. Under the Development Agreement, the Petitioner has proposed to distribute the

additional area arising out of redevelopment equally amongst all the 62 members. Accordingly, each of the 62 members are granted additional area of 315 square feet irrespective of the size of their flats.

4. In terms of the Development Agreement, all other members have vacated possession of their flats for redevelopment of the building. Even the flats of larger area are vacated by occupiers. It is only Respondent No.2 who is refusing to vacate possession of her flat on the ground that she must get additional area in proportion to the area of her existing flat of 573 square feet. She is aggrieved by grant of additional area of only 315 square feet by the Petitioner and has accordingly refused to co-operate in redevelopment of Society's building. On account of refusal by Respondent No.2 to vacate possession of her flat, the entire redevelopment process has come to a grinding halt necessitating filing of the present Petition by the Petitioner-Developer.

5. I have heard Mr. Bhosale, the learned counsel appearing for the Petitioner, Mr. Rai, the learned counsel appearing for Respondent No.2 and Mr. Kochar, the learned counsel appearing for Respondent No.1-Society. I have considered the submissions canvassed by them. I have also gone through the records of the case filed alongwith the Petition.

6. The issue of individual member of the Society separating herself/himself from the Society and taking s position different than the one taken by the Society is no more *res integra* and has been decided in numerous judgments delivered by this Court. In ***Pranav Constructions Limited vs. Priyadarshini Co-operative Housing Society***

Limited and others, Arbitration Appeal (L) No.20093 of 2025 decided on 14 July 2025, Division Bench of this Court, of which I was a member had formulated the following two questions for decision:

> (i) Whether individual members of a Co-operative Society are bound by the covenants in the Development Agreement executed by the Society with the Developer and whether their individual rights are subservient to the obligations of Co-operative Society under the Development Agreement ?
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> (ii) Whether existence of disputes between the members and the Society about their entitlements flowing out of redevelopment process can be a ground for the Court not to make interim measures directing vacation of premises in exercise of power under Section 9 of the Act ?

7. After considering judgment of another Division Bench of this Court in ***Girish Mulchand and Another vs. Mahesh S Mehta and Another,*** 2010 (2) Mh.L.J. 657, the Division Bench in ***Pranav Constructions Limited*** (supra) held in paragraphs 15 to 19 as under:

> 15) In Ambit Urbanspace, the garage occupiers were not members of the Society and therefore this Court has decided the further issue of permissibility to make interim measures under Section 9 of the Act against a person occupying premises in the Society's building but not a member thereof. In the present case, it is not necessary to go into the said aspect as Respondent No.2-garage occupier is not only a member of the Society but the Developer has agreed to allot him permanent alternate accommodation. Therefore, the ratio of the judgment in Ambit Urbanspace is relevant to the present Appeals only to the extent of principle of rights of individual members of the Society being subservient to Society's obligation under the Development Agreement. This Court exercising jurisdiction under Section 9 of the Act can make interim measures against individual members of the Society who refuses to co-operate in the redevelopment process. Thus covenants of Development Agreement would bind even a non-cooperating member of the Society. The Court exercising powers under Section 9 of the Act can therefore make interim measures qua such nonco-operating members by directing them to vacate possession of premises for ensuring smooth redevelopment of Society's building. This would conclude the first issue for determination.
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> 16) Now we turn to the second and the main issue involved in the Appeals. As observed above, the learned Single Judge has taken note of dispute between Respondent Nos.2 to 6 with the Society about grant of lesser additional area in redevelopment process. It is held that Respondent

Nos.2 to 4 are being discriminated by not granting pari pasu benefit of additional area as compared to residential unit owners. The issue for consideration is whether the Court exercising power under Section 9 of the Act can refuse to make interim measures on the ground of existence of such dispute between Society and members. As held in Girish Mulchand Mehta (supra), the grievances between the Society and its members qua entitlements flowing out of redevelopment process cannot be agitated in proceedings filed under Section 9 of the Act. They need to be decided separately under Section 91 of the M.C.S. Act as the Co-operative Court alone has jurisdiction to decide validity of Resolutions adopted by the General Body of the Society. If such disputes do not touch upon business of Society, the member will have to file a Civil Suit. This position is also clear from the following observations made by this Court in judgment in Calvin Properties and Housing (supra) :-

> In my view, in these proceedings under Section 9 of Arbitration and Conciliation Act, this Court cannot adjudicate upon the merits of individual claims of the respondents members of the society and the same can be adjudicated only in appropriate proceedings. In these proceedings only interim measures can be granted by this Court. This Court is thus not adjudicating on the issue raised by respondent Nos. 2 to 6C whether they are entitled to any larger area as claimed. In view of the fact that more than 3/4th majority of members have passed resolution and have agreed to appoint the petitioner as developer on the terms and conditions agreed upon and recorded in development agreement, in my view, respondent Nos. 2 to 6C cannot stop the redevelopment project.
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> (emphasis and underlining added)

17) In our view, therefore the alleged grievances of Respondent Nos.2 to 4 in respect of various decisions taken by the General Body and Managing Committee of the Society in implementing the redevelopment process cannot be decided in petition filed under Section 9 of the Act nor existence of such disputes would be a bar for Section 9 Court to make interim measures in a given case. The members of the Society are bound by the covenants of the Development Agreement and if they act contrary to the covenants of the Development Agreement, the Court exercising power under Section 9 of the Act can step in and make necessary interim measures. Merely because an individual member has some grievances against the Society in respect of either appointment of Developer or implementation of redevelopment process or grant of additional area, the same needs to be resolved outside the framework of Section 9 of the Arbitration Act. Such grievances can be agitated either in a dispute filed under Section 91 of the M.C.S. Act if they touch upon the business of the Society or in the alternative members can file a Civil Suit in respect of their grievances qua the decisions adopted by the Society if they do not touch upon the business of the Society. In the present case, Respondent No.2 has

raised serious disputes about the manner in which the redevelopment process is implemented by the Society. Undertaking redevelopment through a Developer, choice of Developer made by the General Body of the Society, as well as the benefits granted to the garage owners are sought to be questioned by Respondent No.2. He needs to adopt appropriate proceedings qua his grievances. While Respondent Nos.3 and 4 have filed a dispute before Co-operative Court, Respondent No.2 has apparently not filed any proceedings to challenge the Resolutions adopted by the General Body of the Society. However, existence of such disputes cannot be a reason to defeat petition filed under Section 9 of the Act.

18) Reliance placed by Mr. Narula on Division Bench judgment of this Court in Avenues Seasons Properties LLP (supra) does not cut any ice. This Court has decided Appeal under Section 37 of the Act in which order passed under Section 8 of the Act was under challenge. In case before the Division Bench, the Plaintiffs had sought a declaration that their bungalows were separate and individual structures and that the Resolution passed by the Housing Society seeking to include their bungalows in redevelopment process was illegal. In that suit, the Developer filed an application under Section 8 of the Act for return of plaint by relying on arbitration clause in the Development Agreement executed with the Society. In the light of this factual position, the issue before the Division Bench was whether Plaintiffs, who did not sign the Development Agreement, were bound by arbitration clause and whether the plaint in their suit could be directed to be returned by having recourse to Section 8 of the Act. This Court concluded that a party who is not a signatory to the Development Agreement and who had filed a suit seeking a declaration for exclusion of bungalows from redevelopment process could not be relegated to arbitration by virtue of agreement executed between the Developer and the Society. In our view, the judgment has no application to the facts of the present case. Though it is sought to be suggested by Mr. Narula that the views expressed in Avenues Seasons Properties LLP and in Ambit Urbanspace are not consistent, in our view, there is no inconsistency in the views as the issue before the Division Bench in Avenues Seasons Properties LLP was entirely different and arose in the context of a suit filed by bungalow owners for a declaration that they should be treated separately from the other structures of the Society and should not be included with Society's redevelopment process. On the other hand, in Ambit Urbanspace, the garage occupiers, who were not signatories to the Development Agreement, wanted to participate in the redevelopment process, but were insisting that they must be provided with permanent alternate accommodations while carrying out redevelopment of the Society's building. Apart from this, there is a fundamental difference between the nature of proceedings involved in both the judgments. Avenues Seasons Properties LLP proceedings arose out of Developer's application under Section 8 of the Act seeking return of plaint and relegation of dispute to arbitration, whereas proceedings in Ambit Urbanspace arose out of petition filed under Section 9 of the Act. The position remains consistent that a nonmember and a non-signatory to the Development Agreement can

also be roped in for seeking interim measures under Section 9 of the Act if such a person occupies any premises in the building of the Society. In Avenues Seasons Properties LLP, the claim of the Plaintiffs was that they do not occupy any part of the building of the Society and their bungalows are independent than that of structures of the Society. This the fundamental difference between the two judgments. In the instant case, Respondent Nos.2 to 4 are part of Society's building and have not taken a position that they need to be excluded from redevelopment process. In our view, therefore reliance by Mr. Narula on judgment of Division Bench of this Court in Avenues Seasons Properties LLP does not assist the case of Respondent No.2.

19) Mr. Narula has relied upon celebrated judgment of the Apex Court in Wander Ltd. (supra) in support of his contention that Appellate Court cannot interfere in exercise of discretion of the Trial Court while passing interim order. It must be observed at once that the judgment in Wander Ltd. outlines the jurisdiction of the Appellate Court exercisable under Order 43 of the Civil Procedure Code, 1908 against an order of Trial Court granting or refusing to grant temporary injunction under Order XXXIX Rules 1 and 2 of the Code. In that sense, principles may not strictly apply to proceedings before the Appellate Court under Section 37 of the Act while deciding correctness of order made under Section 9 of the Act. However, even if the principle enunciated in Wander Ltd. are held to be applicable to Appeal under Section 37 of the Act, we are of the view that interference in the order passed by the learned Single Judge is warranted in the facts and circumstances of the present case as exercise of discretion is based on irrelevant consideration of entitlement of Respondent Nos.2 to 4 in the matter of allotment of additional area in the new building. As held above, dispute of allotment of additional area is not a relevant consideration for deciding the petition under Section 9 of the Act as the said dispute needs to be resolved in independent proceedings under Section 91 of the M.C.S. Act or by filing a Civil Suit. Ordinarily, the Appellate Court would be loathe in interfering with discretion exercised by the learned Single Judge. However, where irrelevant consideration has affected the mind of the Court while exercising the discretion, the Appellate Court would be justified in interfering with exercise of discretion. In the instant case, the equitable and discretionary relief of interim measures is declined to the developer by taking into consideration the aspect of alleged discriminatory treatment meted out to Respondent Nos.2 to 4. What is however ignored is the position that the Developer has no role to play in deciding the distribution of additional area between the members. That decision is taken by majority of members of the society. Thus, the relief of interim measures is declined to the developer by taking into consideration a factor over which it has no control. Therefore, in our view exercise of discretion while declining relief under Section 9 of the Act is improper warranting interference by the Appellate Court.

8. The judgment in ***Pranav Constructions Limited*** (supra) is followed by another Division Bench in ***Rajendra Builders vs. Balaji Padmavati Development***[1]. The judgment in ***Pranav Constructions Limited*** (supra) is also followed by me in ***Ranisati Sarvajanaik Aushadalaya and Ors. vs. Malad Co-operative Housing Society Limited***[2].

9. Thus the law appears to be fairly cited that the individual members of the Co-operative Society are bound by covenants in the Development Agreement executed by the Society with the Developer and individual rights of a member are subservient to the obligations of the Society under the Development Agreement. It is also equally well settled that mere existence of disputes between the members and the Society about their entitlements flowing out of redevelopment process cannot be a ground for the Court not to make interim measures directing vacation of premises in exercise of power under Section 9 of the Arbitration Act.

10. Mr. Rai has relied upon judgment of the Division Bench in ***Ambit Urban Spaces Limited vs. Potdar Apartment Co-operative Housing Society Limited,*** Commercial Arbitration Appeal (L) No.12585 of 2025 decided on 1 July 2025 in support of his contention that the right of a member to bargain with the Developer or with the Society has been expressly recognized by this Court. In my view, the submission arises out of misreading of the ratio of the judgment in ***Ambit Urban Spaces Limited*** (supra). It is well settled position of law that a judgment is an authority for what it decides and not what can be

1 2025 SCC OnLine Bom 2995
2 2025 SCC OnLine Bom 4155

logically deduced therefrom. In ***Ambit Urban Spaces Limited*** (supra) the issue before this Court was about entitlement of non-members of a Co-operative Society to stall redevelopment process. The ratio of the judgment in ***Ambit Urban Spaces Limited*** (supra) has been considered in subsequent Division Bench judgment in ***Pranav Constructions Ltd.*** (supra) and has been distinguished. In the present case, Respondent No.2 is the member of first Respondent-Society and therefore, the judgment in ***Ambit Urban Spaces Limited*** (supra) would have no application to the facts of the present case.

11. In the present case, the only reason why Respondent No.2 is refusing to vacate possession of flat in her occupation that is her expectation to receive larger pie of the additional area i.e. proportionate to the size of her existing flat. She complains that while other members of the Society having existing flats of only 295 square feet are being granted additional area of 315 square feet whereas Petitioner occupies much larger flat of 573 square feet and must receive proportionate share in the additional area. Though not required, Mr. Bhosale has explained this position by producing copy of offer letter dated 27 December 2024 issued by MHADA. The letter clarifies that the development is under Regulation 33(5) of the Development Control and Promotion Regulations 2034 (**DCPR 2034**). Perusal of the offer letter dated 27 December 2024 would indicate that MHADA has decided to grant pro-rata layout FSI of 50 square meters per tenement only in respect of the original 36 flats. Thus the additional constructed 26 flats, which are without occupancy certificate, are not taken into consideration for the purpose of granting additional FSI for redevelopment. In that view, the Society would have been justified in

restricting the additional area granted by MHADA of 50 square meters in respect of only 36 tenements. Thus the 36 tenement owners who were occupying flats of area of 295 square feet are made eligible for additional area 50 square meters equivalent to 538 square feet. However, they have shown magnanimity in sharing the additionally made available area of 538 square feet per tenement in respect of 36 tenements by sharing the same with all 62 tenements. Thus though they are entitled to additional area of 538 square feet, they have decided to accept lesser additional area of 315 square feet as a commercial bargain for the purpose of ensuring smooth and quick redevelopment of the building. It must also be noted that out of the 26 additional flat occupiers, 25 flat occupiers have accepted this bargain and have vacated possession of their respective flats. It is only Respondent No.2 who alone has put a spoke in the redevelopment process by insisting that she must be granted additional proportionate area. If the offer letter dated 27 December 2024 is to be strictly construed, Respondent No.2 is actually not entitled to even an inch of additional area since MHADA has not sanctioned the same in respect of her flat. The Society has resolved to share the entire additional area equally. This has ensured that Respondent No.2 would receive additional area of 315 square feet in the newly constructed flat. This, in my view, otherwise represents a fair bargain for Respondent No.2.

12. In my view therefore, Respondent No.2 cannot create a hurdle in the redevelopment process and must vacate the possession of her flat for the purpose of smooth implementation of redevelopment process. If Respondent No.2 is aggrieved by size of Permanent Alternate Accommodation, it would be for her to adopt appropriate legal

remedies in that regard. However, the redevelopment process cannot be stalled till Respondent No.2 resolves her disputes with the Society/Developer.

13. In my view therefore, a perfect case is made out for granting relief in favour of the Petitioner in terms of prayer clause 13(a).

14. The Arbitration Petition is accordingly made absolute in terms of prayer clause 13(a) which reads thus:

> (a) This Hon'ble Court be pleased to direct the Respondent No. 2 to handover the vacant possession of the existing tenement in her occupation, that is Unit number 310 situated in the subject premises being building number 60, which are constructed on the parcel of land, having CTS No. 20 (Pt.), Survey No. 14 (Pt.) admeasuring 1143.33 sq. mtrs. or thereabouts at Tilak Nagar, Village Chembur, Kurla, Mumbai Suburban District to the Petitioner;

15. With the above directions, the Arbitration Petition is allowed and **disposed of.** There shall be no order as to costs.

16. At this stage, Mr. Rai, on instructions, makes a statement that Respondent No.2 shall vacate the possession of her flat within a period of two weeks. The statement is accepted as an undertaking given to this Court. Accordingly, the direction issued above shall not be implemented for a period of two weeks. Needless to observe that if the Respondent No.2 refuses to vacate possession of flat within two weeks as undertaken, she shall forthwith be evicted by provision of necessary police assistance.

(SANDEEP V. MARNE, J.)