



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

COMMERCIAL ARBITRATION PETITION (L) NO.7710 OF 2026

Roswalt Realty Private LimitedPetitioner
V/S
Sujata Nivas Co-operative Housing Society Ltd. & Ors.Respondents

Mr. Amogh Singh with Ms. Krishna Vinchhi and Mr. Sujit Gaikwad i/b
Mr. Varun Mamniya *for the Petitioner.*

Mr. Vishal Kanade with Mr. Rajesh Talekar *for Respondent No.1.*

Ms. Pallavi Pratap with Ms. Pooja Dongre *for Respondent No.2.*

CORAM : SANDEEP V. MARNE, J.

DATE : 27 MARCH 2026.

P.C.:

1. This is a Petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 (Arbitration Act) seeking interim measures before commencement of the arbitral proceedings.

2. I have heard Mr. Amogh Singh, the learned counsel appearing for the Petitioner, Mr. Vishal Kanade, the learned counsel appearing for the Respondent No.1-Society and Ms. Pallavi Pratap, the learned counsel appearing for the Respondent No.2.

3. The Petition is filed by Developer who is engaged by the first Respondent-Society for carrying out redevelopment of its building. Society's building comprises of 24 flats. It is the case of the Petitioner

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and Respondent No.1-Society that owners/occupiers of 23 flats have already undertaken to vacate possession of their respective flats. It is only Respondent No.2 who is owner/occupier of flat No.18, who has refused to give an undertaking for vacation of his flat. Ms. Pallavi Pratap submits that Respondent No.2 currently occupies flat on the ground floor which is being operated by him for office purpose. Respondent No.2 therefore insists that in the new building, he must be allotted premises on the ground floor which he can make use for office purpose. It is complained that the Developer and Society are proposing to allot flat to Respondent No.2 on 20th floor. This is disputed by the learned counsel appearing for the Petitioner who submits that Respondent No.2 is being allotted flat on 7th floor.

4. There is no dispute to the position that flat No.18 in occupation of Respondent No.2 is a residential premises. It appears that no residential flat is being constructed on the ground floor of the proposed building. May be the Petitioner/Developer would construct commercial premises on the ground floor. However, Respondent No.2 *prima facie* does not have any right to secure allotment of commercial premises in lieu of the residential flat in his occupation. In any case, in limited remit of enquiry under Section 9 of the Arbitration Act, it is beyond the jurisdiction of this Court to adjudicate the claim of Respondent No.2 in respect of allotment of premises on a particular floor. If Respondent No.2 believes that any loss is caused to him on account of allotment of premises on 7th floor, it would be open for Respondent No.2 to adopt appropriate remedies against Petitioner/Developer and/or the Society.

5. This Court has repeatedly held that an individual member cannot stall redevelopment process by taking a stand different than the one taken by the Society. He is bound by the majority decision taken by the members of the Society. Rights of individual members arising out of redevelopment process would always remain subservient to the obligations of the Society under the Development Agreement. Reference in this regard can be made to judgment of Division Bench of this Court in *Pranav Constructions Limited vs. Priyadarshini Co-operative Housing Society Limited & Ors.*¹ in which it is held as under:

“14) Respondent No.2 as well as Respondent Nos.3 and 4 are admittedly members of the Society. The Society has executed Development Agreement with the Developer and the Society is contractually bound by the covenants agreed therein. The issue about covenants of agreement executed between the Society and the Developer being binding on individual members is no more res-integra. In recent decision delivered by us in *Ambit Urbanspace* (supra), the principle of rights of individual members of the Society being subservient to Society’s obligation under the Development Agreement towards the Developer has been discussed. This Court discussed the ratio of the Division Bench judgment in *Girish Mulchand Mehta and another Versus. Mahesh S. Mehta and another*, 2010(2) Mh.L.J. 657 and held in paras-24 to 28 as under:

24) The covenants of the Development Agreement are binding on the Society and its members. The issue about a Developer seeking interim measures against a member of the Society who is not a signatory to the Development Agreement, and who have not consented for redevelopment, is no more res integra. This Court has repeatedly held that a non-co-operative member of a co-operative housing society is bound by the collective will express through the general body resolutions and that therefore the covenants of Development Agreement would bind individual member as well. **It is also equally well settled that if a particular member of the Society is not party to the Development Agreement, Court can make interim measures against such non-co-operative member by having recourse to the provisions of Section 9 of the Act.**

25) In *Girish Mulchand Mehta* (supra), the Division Bench of this Court has dealt with a situation where the Appellants therein were non-co-

1 Arbitration Appeal (L) No.20093 of 2025, decided on 14 July 2025.

operative members to the redevelopment process initiated by the Society. They refused to handover possession of their respective flats, inter alia, on the ground that they were not parties to the Development Agreement. The Developer took recourse to petition under Section 9 of the Act before the learned Single Judge of this Court, who found that the two non-co-operative members (*Appellants therein*) were causing obstruction resulting in delay in redevelopment of the Society's building. The Single Judge therefore allowed the petition under Section 9 of the Act appointing Court Receiver with power to take physical possession of the flats in question and handing it over to the Developer for the purpose of demolition and construction of the new building. In the Appeal preferred by the said two non-co-operative members before the Division Bench, one of the issues formulated was whether interim measures could be passed by the Court in exercise of power under Section 9 of the Act only against a party to an Arbitration Agreement or arbitration proceedings. The question so formulated is reflected in para-12 of the judgment which reads thus:

12. The next question is whether order of formulating the interim measures can be passed by the Court in exercise of powers under section 9 of the Act only against a party to an Arbitration Agreement or Arbitration Proceedings. As is noticed earlier, the jurisdiction under section 9 can be invoked only by a party to the Arbitration Agreement. Section 9, however, does not limit the jurisdiction of the Court to pass order of interim measures only against party to an Arbitration Agreement or Arbitration Proceedings; whereas the Court is free to exercise same power for making appropriate order against the party to the Petition under section 9 of the Act as any proceedings before it. The fact that the order would affect the person who is not party to the Arbitration Agreement or Arbitration Proceedings does not affect the jurisdiction of the Court under section 9 of the Act which is intended to pass interim measures of protection or preservation of the subject matter of the Arbitration Agreement.

26) The Division Bench answered the question so formulated in paragraphs-16 and 18 of the judgment as under:

16. In the present case, it is not in dispute that the General Body of the Society which is supreme, has taken a conscious decision to redevelop the suit building. The General Body of the Society has also resolved to appoint the respondent No. 1 as the Developer. Those decisions have not been challenged at all. The appellants who were members of the Society at the relevant time, are bound by the said decisions. The appellants in the dispute filed before the Cooperative Court have only challenged the Resolution dated 27-4 2008, which challenge would

merely revolve around the terms and conditions of the Development Agreement. As a matter of fact, the General Body of the Society has approved the terms and conditions of the Development Agreement by overwhelming majority. Merely because the terms and conditions of the Development Agreement are not acceptable to the appellants, who are in minuscule minority (only two out of twelve members), cannot be the basis not to abide by the decision of the overwhelming majority of the General Body of the Society. By now it is well established position that once a person becomes a member of the Co-operative Society, he loses his individuality with the Society and he has no independent rights except those given to him by the statute and Bye-laws. The member has to speak through the Society or rather the Society alone can act and speaks for him qua the rights and duties of the Society as a **body** (see *Daman Singh v. State of Punjab*, reported in (1985) 2 SCC 670: AIR 1985 SC 973). This view has been followed in the subsequent decision of the Apex Court in the case of *State of U.P. v. Chheoki Employees Co-operative Society Ltd.*, reported in (1997) 3 SCC 681 : AIR 1997 SC 1413. In this decision the Apex Court further observed that the member of Society has no independent right qua the Society and it is the Society that is entitled to represent as the corporate aggregate. The Court also observed that the stream cannot rise higher than the source. Suffice it to observe that so long as the Resolutions passed by the General Body of the respondent No. 2 Society are in force and not overturned by a forum of competent jurisdiction, the said decisions would bind the appellants. They cannot take a stand alone position but are bound by the majority decision of the General Body. Notably, the appellants have not challenged the Resolutions passed by the General Body of the Society to redevelop the property and more so, to appoint the respondent No. 1 as the Developer to give him all the redevelopment rights. **The proprietary rights of the appellants herein in the portion (in respective flats) of the property of the Society cannot defeat the rights accrued to the Developer and/or absolve the Society of its obligations in relation to the subject matter of the Arbitration Agreement.** The fact that the relief prayed by the respondent No. 1 in section-9 Petition and as granted by the Learned Single Judge would affect the proprietary rights of the appellants does not take the matter any further. **For, the proprietary rights of the appellants in the flats in their possession would be subservient to the authority of the General Body of the Society. Moreso, such rights cannot be invoked against the Developer (respondent No. 1) and in any case, cannot extricate the Society of its obligations under the Development Agreement.** Since the relief prayed by the respondent No. 1 would affect the appellants, they were impleaded as party to the proceedings under section 9 of the Act, which was also necessitated by virtue of Rule 803-E of the Bombay High Court (Original Side) Rules. The said Rule reads thus:—

“R. 803-E.Notice of Filing Application to persons likely to be affected.— Upon any application by petition under the Act, the Judge in chambers shall, if he accepts the petition, direct notice thereof to be given to all persons mentioned in the petition and to such other persons as may seem to him to be likely to be affected by the proceedings, requiring all or any of such persons to show cause, within the time specified in the notice, why the relief sought in the petition should not be granted”.

18. We have no hesitation in taking the view that since the appellants were members of the Society and were allotted flats in question in that capacity at the relevant time are bound by the decision of the General Body of the Society, as long as the decision of the General Body is in force. As observed earlier, the appellants have not challenged the decisions of the General Body of the Society which is supreme, insofar as redevelopment of the property in question or of appointment of the respondent No. 1 conferring on him the development rights. The appellants have merely challenged the Resolution which at best would raise issues regarding the stipulations in the Development Agreement. The General Body of the Society has taken a conscious decision which in this case was after due deliberation of almost over 5 years from August, 2002 till the respondent No. 1 came to be finally appointed as Developer in terms of Resolution dated 2nd March, 2008. Moreover, the General Body of the Society by overwhelming majority not only approved the appointment of respondent No. 1 as developer but also by subsequent Resolution dated 27th April, 2008 approved the draft Development Agreement. Those terms and conditions have been finally incorporated in the registered Development Agreement executed by the Society in favour of respondent No. 1. That decision and act of the Society would bind the appellants unless the said Resolutions were to be quashed and set aside by a forum of competent jurisdiction. **In other words, in view of the binding effect of the Resolutions on the appellants, it would necessarily follow that the appellants were claiming under the Society, assuming that the appellants have subsisting proprietary rights in relation to the flats in their possession.** It is noticed that as of today the appellants have been expelled from the basic membership of the Society. Their right to occupy the flat is associated with their continuance as member of the Society. It is a different matter that the decision of expelling the appellants from the basic membership of the Society will be subject to the outcome of the decision of the superior authority where the appeals are stated to be pending. If the decision of the Society to expel the appellants is to be maintained, in that case, the appellants would have no surviving cause to pursue their remedy even before the Co- operative Court much less to obstruct the redevelopment proposal. As a matter of fact, those proceedings will have to be taken to its logical end expeditiously. Even

if the appellants were to continue as members, they would be bound by the decision of the General Body whether they approve of the same or otherwise. In any case, keeping in mind that the Development Agreement does not absolutely take away the rights of the appellants in the flats in question, as after demolition of the existing building, the appellants would be accommodated in the newly constructed flats to be allotted to them in lieu of the existing flats, on the same terms as in the case of other members, provided the appellants continue to remain members of the Society. Under the Development Agreement, the respondent No. 1 is obliged to complete the project within 18 months from the date of receipt of full Commencement Certificate from the Corporation. The full Commencement Certificate would be issued only upon the vacant possession of the entire building is delivered to the respondent No. 1 who in turn would demolish the same with a view to reconstruct a new building in its place. Significantly, out of twelve (12) members, ten (10) members have already acted upon the Development Agreement as well as have executed separate undertaking-cum-agreement with the respondent No. 1 Developer. They have already vacated flats in their occupation to facilitate demolition of the existing building and have shifted to alternative transit accommodation as back as in February, 2009. The project has been stalled because of the obstruction created by the appellants herein who are in minuscule minority. The said ten members of the Society who have already shifted their premises, they and their family members are suffering untold hardship. At the same time, the respondent No. 1 who has already spent huge amount towards consideration of the Development Agreement and incurred other incidental expenses to effectuate the Development Agreement in addition will have to incur the recurring cost of paying monthly rent to the ten members who have already shifted to transit accommodation. The learned Single Judge has noted that the appellants are not in a position to secure the amount invested and incurred including the future expenses and costs of the respondent No. 1 herein in case the project was to be stalled in this manner. Even before this Court the appellants have not come forward to compensate the respondent No. 1 herein and the other ten members of the Society for the loss and damage caused to them due to avoidable delay resulting from the recalcitrant attitude of the appellants. **Considering the impact of obstruction caused by the appellants to the redevelopment proposal, not only to the respondent No. 1 Developer but also to the overwhelming majority of members (10 out of 12) of the Society, the learned Single Judge of this Court opined that it is just and convenient to not only appoint the Court Receiver but to pass further orders for preservation as well as protection and improvement of the property which is subject-matter of Arbitration Agreement. We have already noticed that the Court's discretion while exercising power under section 9 of the Act is very wide.** The question is whether in the

fact situation of the present case it is just and convenient to appoint Court Receiver coupled with power conferred on him to take over possession of the entire building and hand over vacant and peaceful possession thereof to the respondent No. 1 who in turn shall redevelop the property so as to provide flats to each of the members of the Society in lieu of the existing flats vacated by them as per the terms and conditions of the Development Agreement, as ordered by the learned Single Judge. For the reasons noted by the Learned Single Judge which we have reiterated in the earlier part of this decision, we find that it would be just and convenient to not only appoint Court Receiver to take over possession of the property but also pass further order of empowering the Court Receiver to hand over vacant possession of the suit building to the respondent No. 1 to enable him to complete the redevelopment work according to the terms and conditions of the Development Agreement.

(emphasis and underlining added)

27) The Division Bench in *Girish Mulchand Mehta* took note of Rule 803E of the Bombay High Court Original Side Rules under which the Court is empowered to direct issuance of notice to all persons who are likely to be affected by the proceedings. The Division Bench held that Court's powers under Section 9 are very wide and accordingly upheld the order of the Single Judge directing vacation of possession of flats even though the Appellants therein were not signatories to the Development Agreement. What is important are the findings recorded by the Division Bench holding that the proprietary rights all members of the Society in respect of the flats in their possession would be subservient to right acquired by the developer under the Development Agreement and cannot extricate the Society of its obligations under that agreement.

28) In our view, the judgment in *Girish Mulchand Mehta* clearly lays down a law that covenants of Development Agreement would bind even non-cooperative members, who are not signatories thereto and Court can exercise power under Section 9 of the Act to direct handing over of possession of the flats to the developer by such non-cooperative members for the purpose of demolition and construction of new building. The judgment in *Girish Mulchand Mehta* has consistently been followed in various decisions of this Court and in order not to increase the length of this judgment, we find it unnecessary to discuss ratio of all of those judgments. This is how the issue of jurisdiction of Court exercising power under Section 9 of the Act to make interim measures against member of Co-operative Society who is not signatory to the Development Agreement is well settled.

(emphasis and underlining supplied)

6. In my view therefore, a perfect case is made out for making interim measures against Respondent No.2 for the purpose of ensuring smooth redevelopment of the Society's building. It is pointed out that the arrangement under the Development Agreement is such that upon submission of undertakings by all members, the Petitioner/Developer would issue notice within a period of 15 days calling upon members to vacate their respective units within a period of 30 days. On account of non-submission of undertaking by Respondent No.2, further process of redevelopment is held up. In that view of the matter, it is necessary to preserve the subject matter of arbitration by making interim measures.

7. I accordingly proceed to pass the following order:

- i) Pending the arbitral proceedings and till making of the final Award, there shall be interim measure in following terms:
 - a) The Petitioner/Developer shall proceed to issue notice to members of the Society on an assumption that Respondent No.2 has undertaken to vacate possession of flat No.18.
 - b) Upon receipt of notice by Respondent No.2 from the Petitioner/Developer/Society to vacate possession of flat No.18, Respondent No.2 shall vacate the same within the period stipulated in such notice.
 - c) If Respondent No.2 fails to vacate possession of his unit on the date indicated in the notice, possession thereof shall be secured by the Petitioner/Developer from Respondent No.2 with necessary police assistance. Local police station is

directed to provide necessary police assistance to the Petitioner/Developer for taking over possession of the flat No.18 from Respondent No.2.

- d) It would be open to Respondent No.2 to execute Permanent Alternate Accommodation Agreement (PAAA) with the Petitioner/Developer.
- e) In the event, Respondent No.2 fails to execute PAAA with the Petitioner/Developer, all amounts flowing out of redevelopment process shall be deposited by the Petitioner/Developer with the first Respondent-Society, who shall proceed to invest the same in interest bearing deposits. As and when Respondent No.2 executes PAAA with the Petitioner/Developer, Respondent No.1-Society shall pay over the deposited amount alongwith accrued interest to the Respondent No.2.
- f) The interim measures shall remain in operation for a period of 90 days, before which the Petitioner/Developer shall take steps for commencement of the arbitral proceedings.
- g) Respondent No.2 shall be at liberty to exercise remedies in respect of his claims arising out of the redevelopment process and all issues in that regard are expressly kept open.

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

(SANDEEP V. MARNE, J.)