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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.8938 OF 2026

1. Jayant Shetty
2. Poornima Shetty
3. Radhakrishna Shetty ... Petitioners

Vs.

1. Xcellent Realty Private Limited
2. Dnyaneshwar Nagar Cooperative Housing Society Limited
3. Dinesh Shetty ... Respondents

ATUL GANESH KULKARNI

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Date: 2026.07.07 12:29:18 +0530

Mr. Shanay Shah with Hamza Lakhani, Nishant Rana, and Chinmayee Ghag i/by Zastriya for the petitioners.

Mr. Vikramjit Singh Garewal with Sneha Patil, Bhavya R. Shah, Aditi Sinha & Isha Vyas i/by Maniar Srivastava Associates for respondent No.1.

Mr. Nishant Chothani i/by Sujata Pujare for respondent No.2.

Mr. Prathamesh Kamat with M.S. Kadu for respondent No.3.

CORAM : AMIT BORKAR, J.

RESERVED ON : JULY 2, 2026.

PRONOUNCED ON : JULY 07, 2026

**JUDGMENT:**

**1.** The present petition is filed under Section 9 of the Arbitration and Conciliation Act, 1996 ("the Act"). The petitioners are asking this Court to give interim protection for the subject matter of arbitration. According to them, all money benefits and other benefits arising from the redevelopment should be protected. They also seek a direction that physical possession of the redeveloped premises should be handed over jointly after completion of the project. They further pray that all the respondents should continue to perform and follow the obligations and commitments undertaken by them under the redevelopment agreements.

**2.** The facts, as stated by the petitioners, are as follows. The flat was originally owned by Mr. Shetty. He died intestate on 22 July 2015. After his death, the petitioners and respondent No.3 remained his only legal heirs. As per the provisions of the Hindu Succession Act, 1956, the share of late Mr. Shetty came equally to all four legal heirs and each got 25% share in the flat. The petitioners say that respondent No.3 has taken exclusive control of the flat and has kept the petitioners out from enjoying their rights in the property.

**3.** Around the year 2011, a decision was taken to redevelop the property of which the said flat forms a part. Respondent No.1 was appointed as the developer of the project. Respondent No.2 executed an Agreement for Development dated 30 December 2011. The said agreement was later supplemented from time to

time and the last document is the Second Supplemental Agreement dated 27 March 2025. The petitioners, respondent Nos.1 to 3 also executed a Permanent Alternate Accommodation Agreement dated 23 September 2025.

**4.** The petitioners say that they addressed several letters and made repeated follow ups with respondent Nos.1 and 2. According to them, no reply, clarification or communication was given by those respondents. Because of this continued silence and inaction, disputes arose between the parties. The petitioners therefore decided to invoke the arbitration clause contained in the Permanent Alternate Accommodation Agreement read with the Development Agreement. Accordingly, through their attorney, they issued a notice dated 28 November 2025 under Section 21 of the Arbitration and Conciliation Act, 1996 to respondent Nos.1 and 2. The notice was duly served. Even thereafter, according to the petitioners, the respondents neither replied nor gave any information about the redevelopment or showed any willingness to cooperate.

**5.** The petitioners further state that after they examined certain documents and an email dated 24 November 2025, they came to know for the first time that respondent Nos.1 and 2 had been dealing only with respondent No.3 regarding the redevelopment and the financial as well as other benefits arising from it. According to the petitioners, they were completely kept out from such dealings. They say that the documents disclosed important facts and arrangements which were never informed to them and for which their consent was never taken. According to them, this

conduct is against the admitted position that all of them are co owners and is also contrary to the obligations under the Development Agreement and the Permanent Alternate Accommodation Agreement. The petitioners contend that these agreements require respondent Nos.1 and 2 to deal equally with all coowners and to act together and in good faith while carrying out the redevelopment.

6. According to the petitioners, respondent Nos.1 to 3 are jointly and or severally liable to pay them an amount of Rs.15,80,179.50, which had become due as on December 2025. They also claim interest at the rate of 15% per annum on the defaulted amount from January 2026 till payment or realisation, together with other expenses, costs and charges payable under the Permanent Alternate Accommodation Agreement and the Development Agreement. The petitioners further state that the present market value of the flat is about Rs.2 Crore and their undisputed 75% share in the flat is worth about Rs.1.5 Crore. They therefore claim that they have a valuable and legally enforceable interest in the property. According to them, because of the unilateral acts of the respondents there is a real possibility of serious prejudice to their rights. On this basis, they contend that this Court should exercise powers under Section 9 of the Arbitration and Conciliation Act, 1996 and protect their rights till the arbitration proceedings are decided.

7. Mr. Shah, learned Advocate appearing for the petitioners, invited my attention to Clause 7.3 of the Development Agreement. He submitted that the agreement between the developer and the

society clearly provides that the developer shall pay monthly hardship compensation to the existing members at the rate of Rs.100 per square foot of carpet area. He further submitted that pursuant to the said Development Agreement, a Permanent Alternate Accommodation Agreement (PAAA) was executed between the society, the petitioners and respondent No.3 jointly. According to him, the PAAA records that the society and the members have confirmed that all the statements, representations, declarations and assurances made in the earlier recitals are true and correct. He also relied upon Clause J of the PAAA, which states that the PAAA has been executed in continuation of the Development Agreement and that the rights and obligations of all the parties will continue to be governed by the Development Agreement.

8. Mr. Shah further invited my attention to Clause 16(3) of the PAAA. He submitted that the clause specifically provides that the developer shall pay all amounts, including hardship compensation, additional hardship compensation and monthly hardship compensation, in the manner agreed under the Development Agreement. He further submitted that after the developer issued a vacation notice dated 19 July 2025, the petitioners and respondent No.3 jointly sent a communication stating that all four of them had vacated Flat No.35 in C 2 Building. According to him, this communication bears the signatures of all the petitioners as well as respondent No.3 and clearly shows that they were in joint possession of the flat. He therefore submitted that the judgment in *Ritesh Haldar vs. Elite Housing LLP & Others* is distinguishable on

facts. According to him, in that case the persons claiming relief were neither joint members nor joint owners of the flat. In the present case, the petitioners and respondent No.3 are admittedly joint members as well as joint owners of the flat.

**9.** On the other hand, Mr. Kamat, learned Advocate appearing for respondent No.3, submitted that by communications dated 2 January 2026 and March 2026, the society has specifically recognised respondent No.3 as the person entitled to receive monthly hardship compensation. Relying upon the judgment in Ritesh Haldar, he submitted that the Division Bench of this Court has held that the person who is in exclusive possession of the flat is entitled to receive transit rent and brokerage. He submitted that in that case, considering the ownership rights of Ritesh, the Court directed that hardship compensation and all other amounts except transit rent and brokerage should be paid to Ritesh and that the Permanent Alternate Accommodation Agreement should also be executed in his name. However, since Leena was found to be in exclusive possession of the flat, the Division Bench directed that after redevelopment, actual possession of the redeveloped premises should be handed over to her.

**10.** Mr. Kamat further submitted that in paragraph 4(c) of the present petition, the petitioners themselves have stated that respondent No.3 has wrongfully exercised exclusive control over the flat. According to him, this statement amounts to an admission by the petitioners.

**11.** On the basis of the above statement, Mr. Kamat submitted that an admission made in the pleadings carries greater value than any other evidence produced by the parties. In support of this submission, he relied upon paragraph 27 of the judgment of the Supreme Court in *Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram & Others, (1974) 1 SCC 242*. He therefore submitted that respondent No.3 is entitled to receive transit rent and brokerage in the same manner as directed by the Division Bench in the case of Ritesh Haldar.

**12.** Mr. Kamat further submitted that under the Development Agreement dated 30 December 2011, read with the Supplemental Development Agreement dated 31 March 2014 and the Second Supplemental Agreement dated 31 March 2025 executed with respondent No.2, different amounts payable in relation to the flat have already been paid.

**Reasons and Analysis**

**13.** Before considering the rival submissions, it is necessary to keep in mind the limited nature of jurisdiction under Section 9 of the Arbitration and Conciliation Act, 1996. The Court has to see whether there is a prima facie case, whether balance of convenience exists and whether refusal of interim protection is likely to cause prejudice which may not be properly compensated later.

**14.** It is also not disputed that the Development Agreement and thereafter the Permanent Alternate Accommodation Agreement have been executed. It is also not disputed that the petitioners and

respondent No.3 are legal heirs of late Mr. Shetty. The petitioners claim 75% share in the flat while respondent No.3 claims entitlement to redevelopment benefits on the basis of his exclusive possession. Therefore, the controversy is regarding the person or persons who should presently receive those benefits pending arbitration.

**15.** The first submission of Mr. Shah is based upon the Development Agreement and the PAAA. Clause 7.3 of the Development Agreement provides payment of monthly hardship compensation to the existing members. Clause J of the PAAA records that it is executed in continuation of the Development Agreement and that rights and obligations of the parties shall continue to be governed by the Development Agreement. Clause 16(3) provides that the developer shall pay hardship compensation, additional hardship compensation and other amounts in the manner agreed under the Development Agreement. These clauses show that redevelopment benefits arise under contract are binding upon all parties to the agreements. They show that the PAAA is forms part of one contractual framework.

**16.** The submission of Mr. Shah that the PAAA has been executed jointly by the petitioners as well as respondent No.3 also deserves consideration. Execution of the PAAA by all four legal heirs is not disputed. Equally important is the communication sent after the vacation notice issued by the developer. That communication bears signatures of all the petitioners and respondent No.3 and records that all four had vacated Flat No.35. Prima facie, this document indicates participation of all four persons in the redevelopment

process. It also shows that for the purpose of redevelopment, the developer accepted such communication signed by all of them. At least at this stage, the said document cannot be ignored.

**17.** However, the submission of Mr. Kamat also cannot be brushed aside. He has relied upon communications issued by the society in January and March 2026 recognising respondent No.3 as the person entitled to receive monthly hardship compensation. Those communications constitute material placed before the Court. But those communications are issued by the society. They cannot determine inter se rights between co owners, particularly when such rights are disputed and arbitration has been invoked.

**18.** Mr. Kamat has then placed considerable reliance upon the averment made by the petitioners themselves in paragraph 4(c) of the petition that respondent No.3 has wrongfully exercised exclusive control over the flat. According to him, this amounts to an admission that respondent No.3 alone was in possession and therefore he alone should receive transit rent and brokerage.

**19.** There cannot be any dispute with the principle laid down by the Supreme Court in *Nagindas Ramdas* that admissions made in pleadings stand on a higher footing than ordinary evidentiary admissions and ordinarily bind the party making them. This principle is well settled.

**20.** However, the question is what has been admitted by the petitioners. A pleading has to be read as a whole and not by picking one sentence separately. The petitioners have stated that respondent No.3 has "wrongfully exercised exclusive control" over

the flat. The words used are "exercised exclusive control". This is not the same as admitting that respondent No.3 alone had exclusive possession by excluding all the petitioners. On the contrary, the allegation is that such control was wrongful. Therefore, at this prima facie stage, this statement cannot be treated as an unconditional admission giving up all possessory or ownership rights in favour of respondent No.3. Whether respondent No.3 had exclusive possession throughout and whether such possession gives exclusive entitlement to redevelopment benefits are matters which require evidence before the arbitral tribunal.

**21.** The judgment of the Division Bench in *Ritesh Haldar* also requires careful consideration. The Division Bench has made a distinction between possessory rights and ownership rights. The Court held that the person handing over possession should receive transit rent and brokerage because those benefits compensate temporary displacement during redevelopment. At the same time, the Court directed execution of the PAAA and payment of hardship compensation and corpus in favour of the person whose ownership stood reflected in society records. Thus, the Division Bench recognised that redevelopment benefits may follow different principles depending upon their nature.

**22.** In my opinion, the background before the Division Bench was different from the present case. There, the owner admitted that Leena was only a gratuitous licensee. There was no dispute that Ritesh alone was recorded owner in the society records. There was also no pending litigation regarding ownership. The dispute

was essentially between ownership and possessory rights.

**23.** The present case stands on a different footing. Here, respondent No.3 is not claiming as a licensee or occupant under another owner. He himself is one of the legal heirs. Equally, the petitioners are also legal heirs. The petitioners assert that each of the four legal heirs inherited equal shares after death of late Mr. Shetty. Respondent No.3 has not disputed execution of the PAAA jointly with the petitioners. Nor is it disputed that the communication regarding vacation of the flat bears signatures of all four persons. Therefore, the documents available before this Court recognise participation of all four persons in the redevelopment process.

**24.** The petitioners claim seventy five percent ownership in the flat. The approximate market value of the flat is stated to be around Rs.2 crores. They also claim monetary amounts already due under the redevelopment agreements. If the redevelopment benefits continue to be released only in favour of respondent No.3 during pendency of arbitration, recovery by the petitioners at a later stage may become difficult. On the other hand, if all benefits are withheld till conclusion of arbitration, respondent No.3 would also suffer because redevelopment benefits are intended to compensate members during redevelopment. Therefore, complete denial to either side may create further hardship.

**25.** It is also necessary to notice that respondent No.3 has received several payments under different heads such as transit rent, brokerage and other redevelopment benefits as reflected in

the statement produced before the Court. Whether such payments were rightly made or not is a matter which will fall for consideration before the Arbitral Tribunal. At this stage, this Court is concerned with ensuring that future payments are regulated in a manner which protects competing claims.

**26.** In the facts of the present case, a balanced arrangement would better serve the object of Section 9. Since the petitioners as well as respondent No.3 derive their rights from late Mr. Shetty and all of them are parties to the PAAA, it would not be proper at this stage to permit one party to exclusively enjoy all redevelopment benefits.

**27.** Having considered the documents, the pleadings, the communications placed on record, the execution of the PAAA by all four legal heirs and the distinction emerging from the judgment in *Ritesh Haldar,* I am of the prima facie view that the interest of justice would be served if hardship compensation, additional hardship compensation, corpus, transit rent, brokerage, shifting charges and all other redevelopment related monetary benefits payable in respect of the subject flat are released equally in favour of the three petitioners and respondent No.3. Since respondent No.3 has asserted exclusive entitlement and the petitioners seek release of amounts claimed by them, it would be appropriate to protect respondent No.3 against any future adjustment. Therefore, release of the petitioners' respective shares shall be subject to each of the petitioners executing an indemnity bond before the Prothonotary and Senior Master of this Court in such form as may be approved, undertaking to refund or make good the amount, if

ultimately directed by the Arbitral Tribunal or any competent Court. Such arrangement preserves the subject matter of arbitration, protects the competing claims of all parties.

**28.** In view of the foregoing discussion and for the reasons recorded hereinabove, the following order is passed:

(a) The Arbitration Petition is partly allowed.

(b) Pending disposal of the arbitral proceedings, respondent No.1 shall release and pay all redevelopment related monetary benefits payable in respect of the subject flat, including hardship compensation, additional hardship compensation, corpus, transit rent, brokerage, shifting charges and any other monetary benefits arising under the Development Agreement, the Supplemental Agreements and the Permanent Alternate Accommodation Agreement, in four equal shares to the three petitioners and respondent No.3.

(c) Release of the respective shares of the petitioners shall be subject to each of the petitioners executing an indemnity bond before the Prothonotary and Senior Master of this Court, within a period of two weeks from today, in such form as may be approved by the Prothonotary and Senior Master, undertaking to refund or make good the amount, if so directed by the Arbitral Tribunal or any competent Court upon final adjudication of the disputes between the parties.

(d) Upon execution of the indemnity bonds by the petitioners, respondent No.1 shall release all amounts then due and payable in terms of clause (b) above within a period

of two weeks thereafter. Future redevelopment related monetary benefits shall also be released in the same manner as and when they become due and payable during the pendency of the arbitral proceedings.

(e) The directions contained in this order are interim in nature and are passed for the purpose of preserving the subject matter of arbitration. They shall not be construed as expressing any final opinion on the rights, title, ownership or ultimate entitlement of any of the parties, and all such issues are kept open for determination by the Arbitral Tribunal.

(f) All contentions of the parties on merits are kept open.

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

(AMIT BORKAR, J.)