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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.13424 OF 2026

ATUL GANESH KULKARNI
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Date: 2026.06.18 17:43:07 +0530

Wadhwa Estates and Developers
(India) Private Limited ... Petitioner

Vs.

1. Moon Craft Apartments Coop. Housing Society Limited
2. Sajida Ul Haq
3. Muthar Shaikh
4. Maryana Ratus
5. Sofia Shaikh
6. Imtiaz Ahmed
7. Seema Ashok
8. Afzal Ahmed
9. Sabeena Ahmed
10. Imtiaz Ahmed
11. Sabeena Ahmed

... Respondents

Mr. Mayur Khandeparkar with Mr. Tushar Guujar and Mr. Deep Madnani i/by SL Partners for the petitioner.

Mr. Shanay Shah with Mr. J.R. Vakil i/by J.R. Vakil & Associates for respondent No.1.

Mr. Aurelius D'Silva with Ms. Reema Maurya i/by D'Silva & Co., for respondent No.2.

Dr. Abhinav Chandrachud with Mr. Altaf Khan, Mr. Akash Mangalgi and Mr. Janay Jain for respondent No.3.

Mr. Aniesh Jadhav i/by Mr. Shubham Choudhari for respondent No.4.

Mr. Nikhil Adkine with Mr. Avinash Bailmare for respondent No.5.

Mr. Amrut Joshi i/by Mr. Nikhil Adkine for respondent Nos.6 to 11.

CORAM : AMIT BORKAR, J.

RESERVED ON : JUNE 11, 2026.

PRONOUNCED ON : JUNE 18, 2026

JUDGMENT:

1. By filing the present arbitration petition, the petitioner is seeking a direction against respondent Nos. 2 to 11, who are stated to be dissenting members, to vacate their respective flats situated in respondent No.1 society, namely Moon Craft Apartments Cooperative Housing Society Limited, located at Plot No.1485/1487, Shirley Rajan Road, Off Carter Road, Bandra (West), Mumbai 400 050.

2. The facts which led to the filing of the present arbitration petition, as stated in the petition, are that respondent No.1 society was formed around the year 1972 and the building was constructed in the year 1975. The building consists of 38 residential flats and 7 garages and is occupied by 36 members. In December 2021, respondent No.1 society, with the required majority of its members, decided to start the process of redevelopment of the building, which was then about 49 years old. In the Special General Body Meeting held on 5 December 2021, a unanimous resolution was passed for redevelopment of the

building. Thereafter, in the Special General Body Meeting held on 4 September 2022, Palash PMC LLP was appointed as the Project Management Consultant.

3. In the Special General Body Meeting held on 21 May 2023, the petitioner was appointed as the developer for carrying out the redevelopment of the building. Thereafter, by letter dated 8 June 2023, the Deputy Registrar of Cooperative Societies (H/W Ward) issued a No Objection Certificate confirming that the petitioner had been appointed in accordance with the prescribed procedure. Thereafter, in the Special General Body Meetings held on 18 August 2024 and 26 January 2025, the majority members of respondent No.1 approved the final draft of the Development Agreement and authorised certain members to execute and register the same on behalf of the society. Accordingly, on 31 March 2025, the petitioner, respondent No.1 society and 22 members executed and registered the Development Agreement.

4. Under the Development Agreement, the petitioner was required to perform the following obligations:

> "17.1 Subject to Force Majeure, the Developer shall get the concessions for the entire project approved, obtain CRZ permission from the competent authority and get plans sanctioned and procure MDP IOD up to MDP FSI, within 9 (nine) months plus 2 (two) months grace period from the date of execution hereof. The Developer shall provide a copy of the MDP IOD along with CRZ permission to the Society and shall give notice to the Society within seven days from

fulfilling the MDP IOD conditions, stating that the Developer is willing to proceed to obtain Full IOD (including Civil Aviation permission from the Central Government) subject to all Members providing Consenting Members Declaration in the format attached hereto at Annexure 'D/2'. In the event the Developer fails and/or neglects to fulfil the MDP IOD within the aforesaid period of 9 (nine) months plus 2 (two) months grace period from the date of execution hereof, consequences shall follow as per the terms agreed herein.

17.2 Within 15 (fifteen) days of receipt of the notice from the Developer as stated in Clause 17.1 above, the Members shall provide the Consenting Members Declaration in the format attached hereto at Annexure 'D/2'. In the event all Members have provided their Consenting Members Declaration within the timeline stated above, the Developer shall proceed to procure and load TDR, obtain Civil Aviation permission from the Central Government and obtain Full IOD for the said project. In the event some Members of the Society fail to provide such Consenting Members Declaration, then the Developer shall, with the cooperation of the Society, take such legal steps as may be required against the dissenting members, including approaching the appropriate Court to vacate the dissenting members' existing flats for the purpose of redevelopment. Upon obtaining orders from the Court against the dissenting members, if any, the Developer shall obtain Full IOD (including Civil Aviation permission from the Central Government) after loading full

TDR/FSI, fungible FSI and making all required payments for obtaining Full IOD for the new building, within 12 (twelve) months plus 3 (three) months grace period from the date of execution hereof, subject to all Members providing Consenting Members Declaration or Court orders being passed in respect of dissenting members, as the case may be.

17.3 The Developer shall furnish a copy of the Full IOD along with copies of the approved plans to the Society for verification. The Society's appointed Project Management Consultant (PMC) shall verify the plans and submit a detailed report to the Society within 15 (fifteen) days from the date of receipt of such plans from the Developer. In case there is any shortfall in the IOD, the Developer shall rectify the same within one week from the date on which the PMC report is provided to the Developer. In the event the Developer fails and/or neglects to obtain Full IOD with the entire development potential from the MCGM within the aforesaid period of 12 (twelve) months plus 3 (three) months grace period from the date of execution hereof, subject to all Members providing Consenting Members Declaration or Court orders being passed in respect of dissenting members, consequences shall follow as per the terms agreed herein.

17.4 Upon obtaining Full IOD with full development potential being loaded, the Developer shall give the Society 45 (forty five) days' written notice (hereinafter referred to as 'Notice to Vacate') calling upon the Society to hand over

vacant possession of the property to the Developer for redevelopment. The entire property shall be vacated and handed over to the Developer in accordance with the dates stated in the Court orders obtained against the dissenting members so that all Members hand over the plots, existing building, existing flats and existing garages on the same day.

17.5 The Society shall, within 45 (forty five) days from receipt of the Notice to Vacate, vacate and hand over the respective existing flats and existing garages to the Developer for the purpose of redevelopment.

17.6 It is agreed and clarified that the Society shall hand over vacant possession of the property to the Developer for redevelopment only after the Developer procures Full IOD for the entire area proposed to be constructed and after the Developer obtains orders from the Court for taking possession of the existing flats of any dissenting members who have not consented to redevelopment or who have failed to execute the Development Agreement.

17.7 Although the expenses of litigation against dissenting members shall initially be borne by the Developer, the Developer shall be entitled to recover all such amounts, including fees paid to advocates and counsel, from such dissenting member or members. The Developer shall also be entitled to adjust such amounts against any sums payable by the Developer to such dissenting members, including hardship allowance and rental compensation payable to such

dissenting or non cooperating members.

17.8 The Society and its Members shall be responsible for ensuring that any licensees occupying the premises vacate the same within 30 (thirty) days from issuance of the Notice to Vacate by the Developer.

17.9 In the event any Member fails to provide the aforesaid confirmation letter and/or dissents, fails or refuses to vacate and hand over possession of the Member's existing flat or garage, the Developer shall initiate appropriate legal proceedings at its own cost and expense for securing vacant possession of the property and proceeding with redevelopment. The Developer shall be entitled to recover such costs and expenses from the concerned Member. Further, the Developer agrees to reimburse all costs and expenses, including advocate's fees incurred by the Society, within 15 days from the date such costs are incurred by the Society in relation to the aforesaid legal proceedings and shall provide necessary support and cooperation for securing vacation of the dissenting member or occupant from the existing flats and garages so that redevelopment of the property can proceed.

17.10 The Developer shall, seven days prior to the Specified Date, provide the Society's Advocates, Solomon & Co., with copies of the ledger showing that the amounts payable to the Society and its Members are ready and available with the Developer, together with copies of the following demand

drafts/pay orders:

17.10.1 Demand Draft/Pay Order in favour of each Member towards hardship compensation as per Clause 9.1.4.2 hereof. It is agreed that these amounts shall be handed over to the Members on the Appointed Date.

17.10.2 Demand Draft/Pay Order in favour of each Member towards displacement compensation as per Clause 10 hereof, which shall be handed over to the Members on the Appointed Date.

17.11 It is confirmed that the actual date on which the Developer is handed over the entire property in a fully vacated condition for redevelopment, whether before or after the Specified Date, shall be treated as the 'Appointed Date'. On the Appointed Date, the Society shall issue a handover letter to the Developer and the Developer shall acknowledge receipt of possession of the property by countersigning the same in accordance with the terms of this Agreement."

5. According to the petitioner, and in compliance with its obligations under the Development Agreement, it obtained the MDP IOD from the BMC on 5 March 2026. A copy of the same was forwarded to respondent No.1 society by letter dated 7 March 2026, and the members were called upon to submit their respective declarations. It is further stated that respondent No.1 society, by email dated 6 March 2026, informed all its members about receipt of the MDP IOD and requested them to execute and submit their declarations to the society.

6. Thereafter, the members of respondent No.1 society started executing their respective declarations. By 24 March 2026, 32 out of 38 members had submitted their declarations. However, respondent Nos. 2 to 11 did not submit their declarations. The petitioner and respondent No.1 society thereafter called upon respondent Nos. 2 to 11 to vacate their respective flats in the building. According to the petitioner, despite such requests, respondent Nos. 2 to 11 have till date neither submitted their declarations nor vacated their flats.

7. The petitioner has, therefore, sought the following reliefs from the Court:

> (a) The petitioner has prayed that, pending constitution of the Arbitral Tribunal and during the pendency of the arbitration proceedings, respondent Nos. 2 to 11 be directed to execute and submit the Consenting Member Declarations as required under the Development Agreement dated 31 March 2025, in the format prescribed at Annexure D/2 to the said Agreement.
>
> (b) The petitioner has further prayed that after obtaining Full Intimation of Disapproval (IOD) from the Planning Authority in accordance with the terms of the Development Agreement and after issuing notices to respondent Nos. 2 to 11, those respondents be directed to vacate and hand over vacant and peaceful possession of Flat Nos. 2, 4, 5, 8, 10, 12 and 15 situated in Moon Craft Apartments Cooperative Housing Society Ltd., described in Exhibit "A" to the petition,

within 45 days from receipt of such notice.

(c) In the alternative, if the relief sought in prayer clause (b) is not granted, the petitioner has requested that the Court Receiver, High Court, Bombay, or any other fit and proper person, be appointed as Receiver in respect of Flat Nos. 2, 4, 5, 8, 10, 12 and 15 situated in Moon Craft Apartments Cooperative Housing Society Ltd. The petitioner has sought that such Receiver be vested with all powers available under Order XL Rule 1 of the Code of Civil Procedure, 1908, including the power to take physical possession of the said flats. The petitioner has further requested that the Receiver be authorised, if necessary with police assistance, to break open locks or doors, prepare an inventory of articles found in the flats and thereafter hand over vacant possession of the said flats occupied by respondent Nos. 2 to 11 to the petitioner.

(d) The petitioner has also prayed for an order of injunction restraining respondent Nos. 2 to 11 from in any manner dealing with, transferring, encumbering, alienating or creating any third party rights in respect of Flat Nos. 2, 4, 5, 8, 10, 12 and 15 occupied by them in Moon Craft Apartments Cooperative Housing Society Ltd., described in Exhibit "A" to the petition, until further orders.

8. Mr. Khandeparkar, learned Advocate appearing for the petitioner, invited my attention to the judgment of the Division Bench of this Court in *Pranav Constructions Limited vs.*

Priyadarshini Cooperative Housing Society Limited in Arbitration Appeal (L) No.20093 of 2025 decided on 14 July 2025. He submitted that the issue whether a developer can file proceedings under Section 9 of the Arbitration and Conciliation Act, 1996 against dissenting members of a cooperative housing society for securing vacant possession of their premises is now well settled and no longer open for debate. According to him, the Division Bench, while relying upon the earlier judgment in *Girish Mulchand Mehta & Another vs. Mahesh S. Mehta & Another 2010 (2) Mah.L.J. 637*, has clearly held that a developer is entitled to invoke Section 9 against the society as well as dissenting members for enforcing the terms of the redevelopment agreement. He submitted that such enforcement can extend even against those members who have not signed the development agreement or who did not participate in the General Body Meeting, if the redevelopment proposal has been validly approved by the society. According to him, the law now recognises that such members cannot obstruct the redevelopment process merely because they have chosen not to sign the agreement or remain absent from the meeting where redevelopment was approved.

9. Referring to Clause 17 of the Development Agreement, learned counsel submitted that the clause provides a complete and stage wise mechanism for carrying out redevelopment of the society. He submitted that under Clause 17.1, after obtaining the necessary CRZ permission and MDP FSI approval, the developer becomes entitled to call upon the members to execute and submit the Consenting Members Declaration in the prescribed format

annexed as Annexure D2 to the agreement. He submitted that Clause 17.2 further provides that if any member fails or refuses to submit such declaration, the developer is authorised to initiate appropriate legal proceedings against such dissenting member and may approach the competent Court for securing orders necessary for redevelopment, including orders concerning vacation of the existing premises occupied by such members.

10. According to him, Clause 17.4 operates at a later stage. He submitted that after obtaining the Full IOD and after the full development potential is loaded, the developer is required to issue a written notice of 45 days calling upon the society to hand over vacant possession of the property. At that stage, the entire building would have to be vacated, including the premises occupied by dissenting members. He submitted that Clause 17.4 cannot be read in isolation and has to be understood along with Clause 10 of the Development Agreement. Under Clause 10, the developer becomes liable to pay compensation and transit benefits to the members for shifting to alternative accommodation. Such liability arises when the members are actually required to vacate their flats.

11. He therefore submitted that Clauses 17.1 and 17.2 operate at an earlier stage and require all members to submit declarations expressing their willingness to vacate when the appropriate stage arrives. If any member refuses to provide such declaration, Clause 17.2 specifically empowers the developer to take legal action against such member. He fairly submitted that the actual obligation to hand over vacant possession would arise only after Full IOD is obtained, the full development potential is loaded and

a notice of 45 days is issued in terms of Clause 17.4.

12. However, according to him, the fact that the stage contemplated under Clause 17.4 has not yet arrived does not mean that the developer is without a remedy. He submitted that the conduct of the dissenting members gives rise to a genuine apprehension that they may obstruct the redevelopment process in future. He pointed out that these members have neither signed the Development Agreement nor participated in the General Body Meetings which approved the redevelopment. In such circumstances, the petitioner is justified in seeking protective orders under Section 9 of the Arbitration and Conciliation Act, 1996.

13. Learned counsel submitted that a real and reasonable apprehension of breach of contractual obligations is itself sufficient for seeking interim protection under Section 9. According to him, the petitioner is not required to institute separate proceedings every time a different stage under Clause 17 is reached. He submitted that the purpose of Section 9 is to grant effective protection and avoid multiplicity of proceedings. At the same time, the rights of the dissenting members remain adequately safeguarded because they cannot be compelled to physically vacate their premises until the contingency contemplated under Clause 17.4 actually arises.

14. He therefore submitted that the relief sought by the petitioner is of a qualified and conditional nature. The petitioner is not seeking immediate eviction of the dissenting members. On the

contrary, prayer clause (b) merely seeks a direction that the dissenting members should vacate their respective premises within 45 days from the issuance of the notice contemplated under Clause 17.4 of the Development Agreement. According to him, since the relief is linked to a future contractual event, the objection raised by the dissenting members that no cause of action presently exists for grant of such relief is without substance and deserves to be rejected.

15. Dr. Chandrachud, learned Advocate appearing for respondent No.3, submitted that a dissenting member of a cooperative housing society, who has neither signed the redevelopment agreement nor participated in the redevelopment process, cannot be treated as a veritable party to the arbitration agreement. Placing reliance on the decision in *Space Master Realtors v. Mulund Sandhyaprakash CHS Ltd.(Arbitration Application (L) No. 35545 of 2025 decided on 6 March 2026)*, he submitted that arbitration proceedings can ordinarily be maintained only against parties who are bound by the arbitration agreement. According to him, respondent No.3 has not executed the redevelopment agreement and has consistently opposed the redevelopment process. Therefore, respondent No.3 cannot be regarded as a party to the arbitration agreement so as to permit any relief to be sought against him under the Arbitration and Conciliation Act, 1996.

16. Learned counsel further submitted that proceedings under Section 9 of the Arbitration Act cannot be converted into a mechanism for granting final relief without any requirement of

arbitration. Relying upon the judgment in *K. Metha & Co. v. Jay Shrinath CHSL,(2021) SCC Online Bom 3169* he submitted that Section 9 is intended only to grant interim protection in aid of arbitral proceedings and does not contemplate a summary adjudication of substantive rights. According to him, the relief sought by the petitioner against respondent No.3 virtually amounts to granting final relief itself. If such relief is granted, nothing further would survive for adjudication in arbitration. He therefore submitted that the petition seeks relief which is beyond the permissible scope of Section 9 and is consequently not maintainable.

17. It was further submitted that interim relief can be granted only when it is intended to protect or support a final relief which can ultimately be granted in arbitration. Reliance was placed on the decision in *SJK Buildcon LLP v. Kusum Pandurang Keni, Commercial Arbitration Petition (L) No. 20834 of 2024 decided on 16 April 2025.* Learned counsel submitted that there is presently no dispute between the petitioner developer and respondent No.1 society, both of whom are parties to the arbitration agreement. According to him, the stage at which members are required to vacate their premises has not yet arrived, and therefore no dispute exists between the developer and the society. The only dispute, if any, is between the developer and respondent No.3. However, respondent No.3 is not a party to the arbitration agreement. Consequently, no final arbitral relief can be granted against respondent No.3. If no final relief is legally possible against respondent No.3 in arbitration, no interim relief can be granted

against him under Section 9. On this ground also, the petition deserves to be rejected.

18. Learned counsel next submitted that Courts do not approve of collusive proceedings and relied upon the judgments in *Gram Panchayat of Village Naulakha v. Ujagar Singh, (2000) 7 SCC 543; Nagubai Ammal v. B. Shama Rao, (1956) 1 SCC 698; Rupchand Gupta v. Raghuvanshi Pvt. Ltd., (1964) SCC Online SC 325.* According to him, in the present case the petitioner developer and respondent No.1 society are completely ad idem and there is no disagreement between them whatsoever. He submitted that both of them are supporting the same cause and are jointly seeking orders against respondent No.3. According to him, Section 9 proceedings are being used as a device to secure relief against a third party who is not a party to the arbitration agreement. He therefore contended that the present proceedings bear the characteristics of a collusive action and ought not to be entertained.

19. Learned counsel further submitted that a dispute capable of attracting Section 9 jurisdiction may arise at a later stage if a dissenting member refuses to vacate after the contractual stage for handing over possession has actually arrived. Referring to the judgment of the Division Bench in *Pranav Constructions Ltd.*, he submitted that if members refuse to vacate after becoming liable to do so, the developer may have a dispute with the society arising from the society's inability to ensure compliance by its members. In such circumstances, proceedings under Section 9 may be maintainable and appropriate directions may be issued against dissenting members. However, according to him, that stage has not

yet arisen in the present case. Since no member is presently under an obligation to vacate, the petition has been filed prematurely and is liable to be dismissed on that ground alone.

20. Learned counsel submitted that Courts ordinarily do not grant relief in matters which are premature or based upon hypothetical future events. Reliance was placed on the decisions in *Union of India v. Narender Singh, (2005) 6 SCC 106; Rushabh Outdoors v. State of Maharashtra, (2021) SCC Online Bom 6817*. According to him, the petitioner's own case is that the obligation to vacate would arise only after the Full IOD is obtained and the contractual requirements under Clauses 3.3, 3.4 and 17 of the Development Agreement are fulfilled. Admittedly, that stage has not yet been reached. No member of the society has vacated the building. The petitioner has not issued the 45-day notice contemplated by the Development Agreement. Learned counsel submitted that the entire cause of action put forward by the petitioner is based upon a future possibility that after obtaining the Full IOD and other permissions, and after issuing the notice to vacate, respondent No.3 may refuse to comply. According to him, such a possibility is speculative and uncertain. The Court cannot grant relief merely on the basis of what may or may not happen in future. He therefore submitted that the petition is premature and liable to be rejected.

21. Elaborating further, learned counsel submitted that there are several contingencies because of which the stage requiring members to vacate may never arise at all. According to him, the petitioner may become financially insolvent and may be unable to

proceed with the redevelopment project. It is also possible that the petitioner may fail to obtain the Full IOD or other statutory permissions such as civil aviation approval. There may arise circumstances where allegations of serious misconduct against the petitioner result in registration of criminal proceedings, making continuation of the redevelopment project impracticable. Likewise, an accident in another project undertaken by the petitioner may raise concerns regarding quality and safety standards. It is also possible that the society may terminate the redevelopment agreement before the stage of vacation of premises arrives. Further, statutory approvals may take an unusually long time, resulting in substantial delay in the project. Learned counsel submitted that all these possibilities demonstrate that the obligation to vacate remains uncertain and contingent upon several future events. Therefore, the present cause of action is entirely hypothetical, and the petition is both premature and infructuous.

22. Learned counsel lastly submitted that even if the petition is treated as a quia timet action based on apprehended injury, the petitioner must establish a clear and imminent threat of harm. Relying upon the decisions in *Keisham Meghachandra Singh v. Speaker, Manipur Legislative Assembly, (2021) 16 SCC 503; Kuldip Singh v. Subhash Chander Jain, (2000) 4 SCC 50*, he submitted that a mere apprehension is not sufficient. There must be convincing material showing that the anticipated injury is immediate, probable and likely to cause irreparable consequences. According to him, no such facts have been pleaded or established

in the present case. The petitioner has merely expressed a concern that respondent No.3 may not cooperate at a future stage. Such apprehension, according to learned counsel, falls far short of the standard required for grant of quia timet relief. He therefore submitted that the petition does not disclose any case warranting exercise of powers under Section 9 of the Arbitration Act.

23. Mr. Aniesh Jadhav, learned Advocate appearing for respondent No.4, submitted that the present petition under Section 9 is founded entirely upon the Development Agreement and therefore the terms of that agreement must be followed strictly. According to him, this requirement becomes even more important when relief is sought against persons who are not signatories to the agreement. He submitted that unless the conditions prescribed in the agreement are fulfilled in the manner agreed between the parties, no cause of action can arise for filing the present petition. Learned counsel submitted that the present proceedings are based upon the arbitration clause contained in the Development Agreement dated 31 March 2025. However, respondent Nos.2 to 11 are admittedly not signatories to the said agreement. He submitted that the Development Agreement is a commercial arrangement entered into between the petitioner and respondent No.1 society and its terms must be followed as they stand. According to him, when such agreement is sought to be used for obtaining a serious relief like eviction against non signatories, strict adherence to its terms becomes necessary. He pointed out that the petitioner itself has stated that the agreement contemplates issuance of a Notice to Vacate only after obtaining

the Full IOD, which also includes permissions from the Civil Aviation authorities. According to him, if any relief is granted at this stage, it would create an anomalous situation. Firstly, the petitioner would secure an executable order directing eviction of respondent Nos.2 to 11 without first obtaining the Full IOD contemplated by the agreement. Secondly, the express contractual terms agreed between the petitioner and the society would effectively stand altered, and such alteration would then be used against persons who are not even parties to the agreement. He therefore submitted that no such relief can be granted at this stage.

24. Learned counsel further submitted that a party seeking relief under Section 9 before commencement of arbitration must demonstrate a clear and manifest intention to commence arbitral proceedings. According to him, such intention is a fundamental requirement for invoking jurisdiction under Section 9. Reliance was placed on the judgment in *Firm Ashok Traders and Another v. Gurumukh Das Saluja and Others 2004 (3) SCC 155*. He submitted that in the present case the petitioner has neither invoked the arbitration clause nor initiated proceedings under Section 11 for appointment of an arbitrator. Even in the petition there is no specific pleading showing an intention to commence arbitration proceedings. According to him, a party which has no genuine intention of pursuing arbitration and obtaining final relief through that process cannot seek interim relief under Section 9. Interim protection can only be granted in aid of final arbitral relief. Reliance was also placed on the decision in *Minochar Irani v. Deenyar Jehani 2014 SCC Online Bom 901*. Learned counsel

therefore submitted that the petition suffers from a fundamental defect and is liable to be rejected.

25. Learned counsel further argued that interim measures under Section 9 cannot be granted merely on the basis of apprehensions regarding uncertain future events. Referring to paragraph 36 of the petition, he submitted that the petitioner's case is founded only upon an apprehension that the respondents may resist vacating their premises after the Full IOD and other permissions are obtained. According to him, the Court exercises jurisdiction under Section 9 at the pre arbitration stage only to ensure that the arbitral process remains effective and that any eventual award does not become meaningless. Interim relief must therefore have a direct connection with imminent arbitral proceedings. Reliance was placed on the judgment in *Narangs International Hotels Private Limited v. Delhi International Airport Limited 2021 SCC Online Del 4197*. Learned counsel submitted that in the present case there is no immediate necessity warranting exercise of powers under Section 9 and therefore the petition deserves to be dismissed.

26. Mr. Amrut Joshi, learned Advocate appearing for respondent No.6 to 11, submitted that the petitioner seeks enforcement of obligations from individual members of the society while overlooking its own obligations under the Development Agreement. According to him, where a contract prescribes a particular sequence in which obligations are to be performed, one party cannot insist upon performance by the other side without first performing those obligations which fall upon it at an earlier

stage. He submitted that the contractual scheme agreed between the parties must be followed in the sequence contemplated by the agreement itself. Learned counsel submitted that the contract in question is the Development Agreement dated 31 March 2025. The agreement has been executed between three sets of parties. The first party is the society. The second party consists of those individual members who have signed the agreement. The third party is the petitioner developer. Referring to Recital F of the agreement, he submitted that the petitioner undertook redevelopment of the society property strictly in accordance with Regulation 33(7) of the DCPR.

27. According to learned counsel, this forms an essential part of the bargain agreed between all the parties. He submitted that Recital G specifies that the total project FSI is approximately 6,450 square metres. The agreement also defines the term "Development Potential" as the maximum FSI of approximately 6,450 square metres, which is directly connected with the redevelopment scheme under Regulation 33(7) of the DCPR. Similarly, the term "MDP FSI" or Minimum Development Potential FSI has also been defined in the agreement and is stated to be approximately 3,415 square metres of RERA carpet area.

28. Referring to Clauses 3.3 and 17 of the Development Agreement, learned counsel submitted that the contractual scheme is clear. According to him, it is only after obtaining the MDP FSI IOD that the developer becomes entitled to seek declarations and consents from members regarding vacation of their premises. He further submitted that the actual obligation to vacate arises only

after obtaining the Full IOD with the full development potential loaded, as contemplated by Clause 17.4. It is only thereafter that the developer can issue a notice calling upon the society and its members to vacate the premises.

29. Learned counsel therefore submitted that the MDP FSI IOD required under the agreement must be one obtained in respect of 3,415 square metres RERA carpet area and must be strictly under the scheme of Regulation 33(7) of DCPR 2034. According to him, the IOD dated 5 March 2026 obtained by the petitioner does not clearly indicate whether it has been granted solely under Regulation 33(7) or under a combination of Regulations 33(7) and 33(20). He submitted that this aspect creates serious doubt regarding compliance with the contractual requirements.

30. Learned counsel further submitted that under the registered Development Agreement the petitioner is required to obtain the MDP IOD exactly in the manner contemplated by the contract and not otherwise. In support of this submission, he relied upon the petitioner's letter dated 12 January 2026. According to him, the said letter reveals that the petitioner had expressed willingness to consider a revised redevelopment scheme based on a combination of Regulation 33(7) and Regulation 33(20), subject to approval of the society. He submitted that the petitioner had also circulated a draft supplementary agreement proposing such revised arrangement.

31. Learned counsel pointed out that a copy of the proposed supplementary agreement has been placed on record. Referring to

Recital C thereof, he submitted that the proposed agreement contemplates redevelopment by utilizing additional FSI under Regulation 33(20) after exhaustion of the maximum permissible FSI under Regulation 33(7). However, he emphasised that this supplementary agreement has never been executed by the parties and therefore has no binding force.

32. He further submitted that there is also no resolution of the General Body of the society approving the proposed supplementary agreement. According to him, although the society has placed on record certain letters said to have been executed by individual members expressing consent to redevelopment under a combination of Regulations 33(7) and 33(20), such individual consents cannot substitute a formal decision of the society taken through its General Body. Learned counsel also submitted that these individual letters do not conform to the format prescribed in the registered Development Agreement. According to him, the declarations contemplated by the agreement are required to be in a specific format. Therefore, even assuming such letters were executed, they cannot be treated as compliance with the contractual requirements. He submitted that this circumstance further indicates that the IOD dated 5 March 2026 may not be the IOD contemplated by the registered Development Agreement, particularly if it proceeds on the basis of a combined scheme under Regulations 33(7) and 33(20) of DCPR 2034.

33. Learned counsel submitted that even if some individual members have agreed to the revised redevelopment proposal, such understanding would at best bind only those members and the

developer. According to him, the society itself is an independent legal entity and a party to the Development Agreement. Unless the society formally accepts the revised proposal, no alteration of the original contractual arrangement can take place. He therefore submitted that it is necessary for the society to convene a Special General Body Meeting, deliberate upon the proposal and take an informed decision regarding acceptance or rejection of the proposed supplementary agreement. According to him, unless such approval is obtained, the existing terms of the registered Development Agreement continue to govern the relationship between the parties and no unilateral change can be introduced.

34. Learned counsel accordingly submitted that the precondition relating to obtaining the MDP FSI IOD, which according to him is linked exclusively to Regulation 33(7), has not yet been satisfied. If that be so, even the petitioner's request for obtaining declarations and consents from dissenting members is premature. He submitted that the petitioner is effectively seeking relief on the basis of anticipated future breaches and not on the basis of any existing contractual default.

35. Learned counsel further submitted that the petitioner seeks a comprehensive order at one stage itself so that it is not required to repeatedly approach the Court under Section 9 of the Arbitration and Conciliation Act, 1996. According to him, the petitioner is in substance seeking what may be described as a single window clearance of all future reliefs. He submitted that if such reliefs are granted, the members of the society would be left entirely dependent upon the actions of the developer.

36. Elaborating further, learned counsel submitted that if the petitioner subsequently issues a notice to vacate and relies upon anticipatory orders obtained in the present proceedings, the members may be compelled to repeatedly approach the Court to protect their rights. This may become necessary particularly if the developer has not fulfilled its obligations regarding obtaining the Full IOD or loading the full development potential as contemplated under the agreement. According to him, grant of such broad and unconditional reliefs would seriously prejudice the members and upset the contractual safeguards built into the Development Agreement. He therefore submitted that no blanket or anticipatory relief ought to be granted in the facts of the present case.

37. Mr. Shanay Shah, learned counsel appearing for respondent No.1 Society, supported the submissions advanced on behalf of the petitioner. He submitted that the redevelopment proposal had been approved by the Society through the prescribed process and that the Society had already taken necessary steps in furtherance of the redevelopment project. According to him, despite repeated communications and requests, the dissenting members have continued to adopt a non-cooperative approach, which has unnecessarily delayed progress of the redevelopment. Learned counsel submitted that the building is old and the Society has been attempting to move forward with the redevelopment process through the mechanism approved by the General Body. He contended that a substantial majority of the members have already accepted the redevelopment proposal and have acted upon the decisions taken by the Society. According to him, the refusal of a

few dissenting members to cooperate at the present stage has resulted in avoidable obstruction and uncertainty in the implementation of the redevelopment scheme. He further submitted that unless appropriate directions are issued by this Court, the redevelopment process would continue to remain stalled at an intermediate stage, causing prejudice not only to the developer but also to the Society and the overwhelming majority of its members who are desirous of seeing the project proceed expeditiously. According to him, the conduct of the dissenting members is preventing the Society from moving towards completion of the contractual milestones contemplated under the Development Agreement. Learned counsel therefore submitted that, having regard to the resolutions passed by the Society, the approvals already obtained and the obligations cast upon the members under the Development Agreement, the reliefs sought by the petitioner deserve to be granted so that the redevelopment process can proceed without further delay and the Society can secure timely redevelopment of its property.

Reasons and Analysis:

38. I have gone through the rival submissions. The matter is about redevelopment of a cooperative housing society. The petitioner developer contends that the society has already taken valid decisions for redevelopment, that the development agreement is signed, and that the dissenting members cannot block the project only because they are in minority or because they have not signed the agreement. On the other hand, the dissenting members arue that the petitioner is trying to get an order of

eviction before the contract stage has actually come, and that the petition is being used against persons who are not signatories to the development agreement.

39. The first aspect which requires consideration is the character of a cooperative housing society. The dispute before this Court cannot be examined as if it concerns a group of flat owners dealing with separate property having no legal relationship with each other. A cooperative housing society occupies a distinct position in law. It is not merely a building where several persons happen to reside. It is a legal entity recognised by statute. It comes into existence under the provisions of the Maharashtra Cooperative Societies Act and functions in accordance with the Act, the Rules and the bye-laws. The rights enjoyed by members and the obligations cast upon them do not arise solely from ownership or occupation of flats. They also arise from membership of the cooperative society also. When a person seeks membership of a cooperative housing society, he becomes part of a collective arrangement. Such person acquires valuable rights in relation to the premises occupied by him. However, at the same time, he also accepts the liabilities of cooperative structure. Membership in a cooperative society is not only a source of rights but also a source of obligations. The concept of cooperation itself requires that matters affecting the society must be decided collectively. If member were permitted to insist that only his view must prevail irrespective of the wishes of the majority, the object of cooperative society would collapse. It is for this reason that the General Body of a cooperative society has been recognised as the supreme

authority in matters concerning the affairs of the society. The General Body represents the collective will of the membership. Decisions concerning redevelopment and matters affecting the property of the society are taken through resolutions of the General Body. Such decisions are not decisions of office bearers. They are decisions of the society acting through its highest body.

40. In redevelopment matters this principle assumes importance. Redevelopment is not an activity affecting one flat or one member. It concerns the entire building. It concerns the land on which the building stands. It concerns the collective welfare of all members. Therefore, redevelopment cannot proceed on the basis of consent of every individual member in every case. The law recognises the reality that collective decisions must govern such matters. Otherwise, even a single member may prevent implementation of a project desired by the overwhelming majority. Therefore, unlike owners of separate properties who may deal with their properties in any manner they choose, a member of a cooperative housing society is required to function in accordance with the provisions Act. Once valid decisions are taken by the General Body, those decisions carry binding force unless they are set aside by a competent forum.

41. The foundation of this principle is explained by the Supreme Court in *Anita Enterprises v. Belfer Coop. Housing Society Ltd., (2008) 1 SCC 285*. The judgment explains how the cooperative movement started in the country and what is the legal position of a cooperative housing society and its members. The judgment traces the background of cooperative societies and discusses the nature of

rights which members enjoy within such societies. The decision therefore becomes relevant while understanding the relationship between the society and its members. The Supreme Court observed that the cooperative movement in India can be traced back to the Cooperative Credit Societies Act of 1904. The purpose behind that legislation was to encourage people to come together, help each other through collective effort. The idea was that people acting together could achieve things which may not be possible individually. The Court further explained that under the Maharashtra Cooperative Societies Act, a cooperative society is not merely an association of persons. It is a body registered under the statute. Such a society functions through its bye-laws, which regulate the rights and obligations of its members. In the case of a housing society, the object generally is to provide plots, flats and common facilities to its members. Therefore, the relationship between the society and its members is not governed only by principles of property law but is also controlled by the provisions of the statute and the bye-laws. The Supreme Court also examined the concept of membership under the Act. The Court observed that a member may be a person who joins in the formation of the society or a person who is admitted as a member in accordance with the Act and the bye-laws. The rights enjoyed by a member therefore flow from the Act. The Court further noted that the object behind registration of a cooperative society is welfare of its members through collective functioning.

42. While discussing different types of housing societies, the Supreme Court referred to the classifications recognised under the

rules. One such category is a tenant co-partnership housing society. In such a society, both the land and the building vest in the society itself, while the members are allotted occupation rights in respect of flats. Thus, the structure of such a society differs from an ownership arrangement where title and possession are both vested in the same individual. The Court then explained the special rights available to members of a tenant co-partnership housing society. It was observed that although ownership of the land and building remains with the society, members contribute towards acquisition and construction costs and, in return, acquire rights of occupation. The Court therefore held that although the member may not be the owner of the flat in the legal sense, the member enjoys rights resembling ownership. However, those rights do not exist independently of the society. They continue to operate under Maharashtra Cooperative Societies Act and the bye-laws of the society. The member's rights are therefore accompanied by corresponding obligations.

43. I have also considered the Constitution Bench judgment in *Daman Singh v. State of Punjab(1985) 2 SCC 670*. Though that matter was arising in different background concerning amalgamation of cooperative societies, many observations give guidance about relation between a cooperative society and its members. In my view, those observations become important in redevelopment matters because many times dissenting members proceed on footing that they stand separate from society and therefore can independently resist decisions taken by the collective body. The principles explained in *Daman Singh* help the Court in

understanding how far a member can separate himself from actions undertaken by the society. True it is that the judgment is not rendered in arbitration matter, but the discussion about nature of membership and representative character of a cooperative society still remains relevant while considering reliefs sought under the Arbitration and Conciliation Act, 1996.

44. The first principle which comes out from *Daman Singh* is that a cooperative society has its own existence separate from individual members. The Constitution Bench observed that once a society is registered under the statute, it acquires status of a body corporate recognised by law. Such society can hold property in its name. It can enter contracts. Thus, society functions as an independent legal entity. This aspect assumes importance in redevelopment matters because when a society executes a Development Agreement through authorised office bearers after resolutions are passed by the General Body, the agreement cannot be treated as only a collection of promises given by members. The agreement is entered by the society. Rights and obligations flowing from such agreement belong to the society. Therefore, while examining redevelopment disputes, it may not be correct to proceed as if the Development Agreement is nothing more than personal arrangements with individual members.

45. This distinction is important because redevelopment projects are undertaken on property belonging to the society. The society acts through resolutions, committee decisions and authorised representatives. The Constitution Bench emphasised that a cooperative society must be viewed as an independent entity. In

redevelopment matters, this principle forms the foundation for understanding why obligations undertaken by the society may extend consequences to all members.

46. The second principle emerges from the observations of the Constitution Bench regarding the status of a member vis-a-vis the society. The Court observed that once a person becomes a member of a cooperative society, he loses his individuality qua the society and possesses no independent rights except those conferred by statute and bye-laws. The Court explained that in matters concerning rights and obligations of the society as a body, it is the society which acts and speaks for the member. If every member is permitted to insist that his view must prevail over the decision of the collective body, the object of cooperative functioning would collapse.

47. The reason behind this principle appears to be that cooperative societies function through collective decision-making. Members join such institutions knowing that decisions will be taken through General Body Meetings. If every member is allowed to disregard decisions taken by the society merely because he does not agree with them, then no project can move forward. The Constitution Bench observed that membership necessarily carries acceptance of collective scheme. Individual rights are protected by statute and bye-laws. However, a member cannot insist on functioning as if he is detached from the society.

48. The Constitution Bench observed that notice given to the society amounts to notice to all members. This observation shows

the character of a cooperative society. In matters concerning affairs of the society, the law treats the society as the representative of its members. Such representation flows from the nature of the cooperative scheme. Consequently, when the society takes decisions through resolutions, individual members cannot claim ignorance of such actions or independence from their consequences. The law proceeds on the basis that the society acts for and on behalf of the body in matters affecting the institution.

49. These principles have relevance in redevelopment disputes. Where redevelopment has been approved by majority in accordance with statute and bye-laws, a dissenting member may disagree with the proposal. He may even challenge resolutions before an appropriate forum. However, he cannot contend that the redevelopment arrangement itself has no relevance to him. The decision remains one taken by the society in its representative capacity. So long as such decision remains operative, it continues to bind the members.

50. The third principle emerging from *Daman Singh* is that collective decision-making prevails over individual dissent in matters concerning the society. The Constitution Bench recognised that cooperative institutions function through democratic processes. Membership carries acceptance of a statutory scheme under which decisions are taken by majority. The law therefore recognises that collective decisions prevail over individual disagreement.

51. Applied to redevelopment matters, this principle becomes important. Redevelopment projects involve many members having different views. Some may support redevelopment. Others may oppose it. Yet once the proposal is approved through requisite majority, the project cannot be rendered incapable of implementation merely because a small group disagree.

52. *Daman Singh* provides support for grant of appropriate interim measures under Section 9. If the society has entered into a redevelopment arrangement and if conduct of a member threatens to obstruct implementation of obligations arising from that arrangement, such member cannot rely upon his non-signatory status. The observations of the Constitution Bench regarding loss of individuality qua the society and representative character of the society support the view that a member cannot detach himself from obligations flowing from collective decision. This reasoning can also be seen reflected in decisions such as *Girish Mulchand Mehta* and later judgments where Courts have recognised that dissenting members cannot frustrate redevelopment approved by the collective body.

53. Accordingly, a dissenting member of a housing society may become subject to interim measures under Section 9, but not only because he is holding membership of the society. His occupation in the premises, his claim for redevelopment benefits, his right to get permanent alternate accommodation, his entitlement towards corpus, transit rent and other advantages connected with redevelopment come through the society and because of his position as a member of that society. These rights draw their

source from the redevelopment arrangement entered into by the society for the benefit of all members together. Therefore, where such rights arise out of the redevelopment scheme, a member cannot take a stand that he is outside that arrangement.

54. Therefore, where facts of a case show that the member derives his rights through the society, occupies the premises because of membership, seeks benefits arising from redevelopment and raises disputes which are connected with the redevelopment arrangement, the Court may consider grant of appropriate interim protection under Section 9. The enquiry therefore does not end merely because the member has not signed the Development Agreement. The Court must examine the nature of the relationship between the member, the society, the redevelopment project and the rights, benefits and obligations claimed by him thereunder. If that relationship shows that the member's position is rooted in the redevelopment arrangement, the absence of an individual signature may not conclude the issue while considering grant of interim measures under Section 9.

55. However, the matter cannot end because it is held that the dissenting members are bound by the decisions of the society and cannot separate themselves from the redevelopment process. That is only one side of the issue. The Court is also required to look at the Development Agreement because the rights and duties of all parties flow from that document. Merely because a society has taken a decision for redevelopment does not mean that every relief claimed by the developer must follow. The agreement remains the main document between the parties. Therefore, while considering

the reliefs sought in the present petition, it becomes necessary to see when those rights become enforceable under the terms of the agreement.

56. In matters arising out of contracts, it is not permissible to pick one clause and read it isolation from the remaining document. Equally, one clause cannot be interpreted in such a manner that another clause becomes redundant. Normally, a development agreement proceeds stage by stage. One obligation gives rise to another obligation. One event is intended to happen first and thereafter the next event is expected to occur. Such sequence is created by the parties after deliberations. Therefore, where the agreement itself lays down a procedure for redevelopment, neither the Court nor the parties can skip one stage and directly move to a later stage. Unless there is some compelling reason in law, the sequence agreed between the parties must be followed.

57. I have considered the language used in Clause 17 of the Development Agreement. When the clause is read as a whole, it appears that the parties have arranged the redevelopment process in different stages and have not intended that every obligation should become enforceable at the same time. The clause moves step by step. At the beginning, the developer is required to obtain permissions and approvals. After that comes the stage of obtaining the MDP IOD. It is only after reaching that stage that the members are expected to give the Consenting Members Declarations. Thereafter, the agreement speaks about loading of development potential and ultimately securing the Full IOD. Only after completion of those stages does the agreement contemplate

issuance of a notice requiring members to vacate their premises. Thus, the agreement itself appears to make a distinction between the stage where declarations are to be furnished and the later stage where possession is to be handed over.

58. In my opinion, the parties have decided that members would first indicate their willingness to participate in redevelopment by giving declarations. At the same time, they have also decided that vacation of premises would take place only after fulfilment of further contingencies. Therefore, the obligation to furnish declarations and the obligation to vacate cannot be treated as the same thing. The agreement itself keeps these two events separate. To my mind, this distinction answers a the controversy before the Court because it shows that while willingness to participate may be required at an earlier stage, possession is contemplated at a later stage.

59. At this stage, it becomes necessary to deal with the submissions advanced on behalf of respondent No.4 regarding the nature of the redevelopment scheme and the development potential forming part of the project. Learned counsel for respondent No.6 to 11 submitted that the entire redevelopment proposal, as reflected in the project documents, principally proceeds under Regulation 33(7)(B) of DCPR 2034. According to him, the commercial basis of the Development Agreement itself is built around a Total Project FSI of approximately 6450 square metres. He submitted that the expression “Development Potential” used in the agreement is also linked with the same figure. Learned counsel pointed out that even according to the Society, the

redevelopment proposal approved by the members contemplated utilisation of a maximum permissible FSI of approximately 6450 square metres and not something beyond that figure. Learned counsel further submitted that although there is some reference to Regulation 33(20)(B), the Society's own stand appears to be that only a limited component of approximately 400 square metres under that provision can be utilised and that too within the overall cap of 6450 square metres. According to him, this indicates that the project was accepted by the members on the basis of a specific model and a specific quantum of development potential. He submitted that if at a later point of time the developer seeks to expand that development potential or seeks to proceed on some revised redevelopment basis, such exercise may require fresh approval from the General Body of the Society. According to learned counsel, such modification cannot become part of the existing Development Agreement merely because the developer desires to proceed in that manner. Learned counsel also invited attention to the draft supplementary arrangement circulated by the petitioner. According to him, that document appears to proceed on the basis that after exhausting the maximum FSI available under Regulation 33(7)(B), the developer may seek to utilise additional development potential under Regulation 33(20)(B). Learned counsel submitted that this very aspect appears to be the principal concern expressed by the dissenting members. According to him, if additional development rights are introduced without formal approval of the Society, the redevelopment project which ultimately comes into existence may materially differ from the

project which was originally approved by the members.

60. These submissions cannot be brushed aside altogether. The material placed before the Court indicate existence of some disagreement regarding the extent of development potential and the manner in which Regulations 33(7)(B) and 33(20)(B) are expected to operate. Reference has also been made to the recommendation issued by MCZMA under the CRZ regime. That recommendation appears to require the planning authority to ensure that the total FSI sanctioned and consumed remains within the limits permitted under the Development Control Regulations and Development Control Promotion Regulations. Therefore, respondent No.4 is justified in contending that whatever redevelopment takes place must remain within the scheme and within the permissions granted by the competent authorities.

61. At the same time the controversy regarding the quantum of FSI, the permissibility of scheme between Regulations 33(7)(B) and 33(20)(B), may assume significance at a later stage. Those questions may require adjudication if and when they mature into an actual dispute. But that is not the question of which presently falls for determination. The issue presently before the Court is much narrower. The Court is not called upon at this stage to decide whether the developer is finally entitled to consume a particular quantity of FSI. Nor is the Court required to determine whether a revised redevelopment is based upon Regulations 33(7)(B) and 33(20)(B) is permissible. Likewise, the Court is not presently adjudicating upon the validity of any draft supplementary arrangement. All those issues may survive for

consideration before an appropriate forum at the appropriate time. At present, the Court is only required to determine whether the contractual stage contemplated by Clause 17.2 has arrived.

62. For answering that question, the Court must look at the Development Agreement as it stands, and the permissions already obtained under that agreement. The material on record indicates that the petitioner has obtained the MDP IOD and thereafter called upon the members to furnish declarations in the prescribed format. Therefore, irrespective of the debate regarding ultimate FSI consumption or future development potential, the contractual event contemplated under Clause 17.2 appears, prima facie, to have been crossed. It is also necessary to note that the submissions advanced on behalf of respondent No.4 proceed on the footing that the controversy regarding utilisation of Regulation 33(20)(B), the exact extent of FSI consumption and the validity of any supplementary arrangement still remains unresolved. If that be so, those matters necessarily belong to a future stage. However, their unresolved nature does not alter the fact that the Development Agreement presently remains operative and binding upon the parties. So long as the agreement continues to govern the relationship between the parties, each stage contemplated under Clause 17 must be examined on its own terms.

63. Turning to the petitioner's case, the circumstance remains that the MDP IOD has been obtained and communicated to the Society. The Society appears to have informed all members and called upon them to furnish the declarations. It is also not disputed that majority of the members have acted upon that communication

and have submitted their declarations.

64. The petitioner has contended that respondent Nos.2 to 11 alone have not furnished their declarations. According to the petitioner, their refusal has the effect of keeping the redevelopment process frozen and prevents movement towards the next stage. There appears to be considerable substance in that submission. If the interpretation suggested by the dissenting members is accepted, a small group of members may postpone progress of the redevelopment by refusing to perform an obligation which the agreement contemplates.

65. Clause 17.2 itself recognises the possibility that some members may not cooperate. The clause authorises the developer to initiate legal proceedings against dissenting members. Such a provision would serve little purpose if it were held that no remedy is available until the stage of actual vacation arrives. The very presence of such a clause suggests that the parties themselves contemplated the possibility of judicial intervention even at the declaration stage.

66. For these reasons, I am unable to accept the submission that furnishing of declarations must wait until every controversy regarding development potential stands resolved. Those issues may become important at a later stage. At that stage, all available objections arising from the contract may be raised by the parties.

67. In these circumstances, I find that prayer clause (a) stands on a footing different from the relief relating to actual vacation of premises. The stage for furnishing declarations appears to have

already arrived. Accordingly, at least prima facie, I am of the view that the dissenting members cannot keep the redevelopment process in a condition of uncertainty by withholding declarations after the MDP IOD has been obtained, and after the Society has called upon all members to comply with Clause 17.2.

68. However, prayer clause (b) stands on different ground and therefore needs separate consideration. Unlike prayer clause (a), where the obligation reached the stage of performance under the agreement, prayer clause (b) relates to something which is still to happen. By this prayer, what is sought is a direction that after Full IOD is obtained and after the notice to vacate is issued, respondent Nos.2 to 11 should hand over vacant possession of their premises within forty-five days. Thus, the basisof this prayer is not a present event but an event which may arise later after contractual conditions are fulfilled. In other words, the relief is connected with a future stage of redevelopment. For this reason, it becomes necessary to consider the agreement. Clause 17 of the Development Agreement dividee the process into several stages. One stage concerns obtaining permissions. Another stage concerns obtaining the MDP IOD. Thereafter, comes the stage where declarations are required from members. Further ahead is the stage of obtaining Full IOD together with loading of the entire development potential. It is only after these requirements are crossed that the agreement speaks of issuance of a notice calling upon members to vacate their premises. Therefore, the obligation to vacate is attached to certain conditions and becomes operative only after conditions are satisfied.

69. This distinction, assumes significance. There is a difference between an obligation which has already matured and an obligation which is expected to mature upon happening of future events. A Court exercising powers under Section 9 is empowered to protect contractual rights and preserve the subject matter of disputes. At the same time, the Court cannot ignore the sequence incorporated by the parties. If the parties have agreed that one obligation will arise after completion of a step, the Court cannot treat the later obligation as having become immediately enforceable. Such an exercise may result in altering the contract.

70. The petitioner has submitted that prayer clause (b) is conditional. According to the petitioner, there is no request for immediate eviction. It is argued that the direction sought would operate after Full IOD is obtained, and after the notice contemplated by Clause 17.4 is issued. There is some substance in this submission because the language employed in the prayer indicate that actual vacation is linked with compliance of other requirements. Nevertheless one cannot ignore that the petitioner is asking the Court to recognise in advance a future obligation which has not yet matured under the contract. On the other hand, the respondents have contended that the contractual stage requiring vacation of premises has not yet arrived. Their submission is that until the stage contemplated under Clause 17.4 is reached, there is no cause of action for seeking directions relating to handing over possession. I find substance in Respondents' contention that the obligation to vacate remains, at least for the present, a future obligation.

71. The material placed before the Court indicates that the petitioner has obtained MDP IOD. That circumstance may justify progress to the stage contemplated under Clause 17.2. However, the material does not establish that Full IOD, together with loading of the entire development potential has been secured. Indeed, part of the arguments advanced before this Court concerns the extent of development potential. Questions have been raised regarding utilisation of Regulation 33(7)(B), utilisation of Regulation 33(20)(B) and satisfaction of other conditions. These matters may be resolved one way or the other. But at present they indicate that the stage contemplated under Clause 17.4 cannot be said to have been reached.

72. It is also necessary to remember that Clause 17.4 does not appear to be a procedural requirement. The agreement appears to attach importance to obtaining Full IOD and loading the full development potential before members are asked to vacate. Such conditions seem to have been incorporated to provide assurance that the redevelopment project has reached a sufficient stage of preparedness before occupants surrender possession. The parties appear to have considered it appropriate that members should not be asked to vacate merely because redevelopment is proposed in principle. Instead, they have linked vacation with fulfilment of specific conditions.

73. If this Court were to grant prayer clause (b), there is a possibility that the distinction between the declaration stage and the possession stage may become blurred. The contractual terms which the parties chose to incorporate may lose their significance.

Courts enforce contracts in the form in which they have been agreed. Therefore, the sequence chosen by the parties deserves to be respected.

74. There is also a another aspect which cannot be ignored. The stage requiring actual vacation may still be affected by future developments. It is possible that the developer may obtain Full IOD in the manner contemplated by the agreement. It is possible that questions may arise regarding compliance with conditions. At this stage, the Court cannot proceed on the assumption that future event will occur in a particular manner. Rights must be determined on the basis of existing facts.

75. The respondents have argued that the relief sought is based upon future breach. I am not prepared to hold that apprehension of future obstruction is irrelevant while exercising jurisdiction under Section 9. Nevertheless, there remains distinction between protecting a existing contractual right and performance of an obligation whose time for performance has not yet arrived. In my view, prayer clause (b) falls in the latter category. The agreement contemplates vacation of premises. However, the point of time at which that obligation becomes enforceable has not yet arrived.

76. The judgments relied upon by the petitioner, including *Girish Mulchand Mehta* and *Pranav Constructions*, recognise the power of the Court to grant appropriate relief against dissenting members in redevelopment matters. Those decisions make it clear that minority members cannot obstruct a redevelopment project approved by the society. However, those authorities do not suggest

that contractual stages can be ignored. The existence of power and the occasion for exercise of that power are two different matters. Even where the Court possesses wide powers under Section 9, those powers must be exercised having regard to the contractual position existing at the relevant point of time.

77. Seen from this perspective, I am unable to conclude, at least at this stage, that respondent Nos.2 to 11 can be directed to vacate their premises within forty-five days of a notice which may be issued in future. Accordingly, although the Development Agreement contemplates that members shall vacate their premises at a later stage, that obligation has not yet become enforceable. The obtaining of Full IOD, loading of the full development potential and issuance of a notice to vacate are events which lie ahead. Until those events occur, any direction of vacation of premises would be premature.

78. For all these reasons, while I find substance in the petitioner's request relating to execution of Consenting Members Declarations, I am unable to accept the relief sought in prayer clause (b) at the present stage. The request for directing respondent Nos.2 to 11 to vacate their premises must await fulfilment of the contractual conditions. To that extent, the prayer cannot presently be granted.

79. The alternative relief asked by the petitioner in prayer clause (c), namely appointment of a Court Receiver with authority to take actual possession of the premises stands on more serious footing. Such a direction touches possession of residential premises and

affects the existing occupation of members. Therefore, before granting a relief of this nature, the Court must be satisfied not only that the applicant has legal right in his favour, but also that the factual situation has reached a stage where exercise of such power has become necessary.

80. No doubt, Courts have appointed Court Receivers in redevelopment disputes. Reliance has rightly been placed on the decision in *Girish Mulchand Mehta*. However, the factual background of that case was different. In that matter, the redevelopment process had advanced. Almost all members had vacated their premises. They had shifted to transit accommodation and had acted upon the redevelopment agreement. The project was ready to move ahead. The only obstacle was created by a small minority of members. The Court found that because of that resistance, not only the developer but also the large majority of members were suffering hardship. The project had come to a standstill because of the conduct of a few members. It was in those special circumstances that the Court found it just and convenient to appoint a Court Receiver and handing over of possession.

81. The situation before this Court is that the contractual stage requiring delivery of possession has not yet arrived. Clause 17.4 contemplates that before members are called upon to vacate, certain events must occur. The material available does not show that Full IOD has been obtained. Equally, the stage for issuance of Notice to Vacate, which is the trigger point for surrender of possession, has not yet been reached. Therefore, the foundation on which a possession related order would rest is absent.

82. The Court must also keep in mind that the Development Agreement appears to proceed on the basis that members will continue in occupation until the developer reaches a particular stage. The requirement of obtaining Full IOD, loading the entire development potential and issuing a formal notice have been incorporated for a purpose.

83. Another circumstance which weighs with me is that the petitioner's case proceeds on the footing that vacation is contemplated at a later stage. The petitioner says that Clause 17.4 will operate after Full IOD is obtained, and after other contractual requirements are satisfied. If that is the position, there is difficulty in seeking appointment of a Receiver. For all these reasons, I am unable to hold that appointment of a Court Receiver with powers to take forcible possession is justified on the present material. The relief sought according to the contract intended to arise at a later point of time. Consequently, prayer clause (c) is not fit to be granted at this stage.

84. The respondents have argued that the entire petition is premature and is founded only on an apprehension that they may obstruct redevelopment at some future point of time. However, I am unable to accept the wider submission of the respondents that because some parts of the petition may be premature, the entire petition must fail. It cannot be ignored that the petitioner has already obtained the MDP IOD. It also cannot be ignored that after obtaining the same, the Society called upon its members to furnish declarations in accordance with the agreement. Therefore, the petition is not founded entirely upon future possibilities. Certain

contractual events have already occurred, and certain obligations have already become operative. In that sense, entire petition cannot be described as speculative. A distinction must be maintained between reliefs of future possession and reliefs of present cooperation. Once this distinction is kept in view, it becomes clear that while some prayers may not yet be ripe for consideration, the petition itself cannot be rejected in its entirety.

85. Coming to the contention that respondent Nos.2 to 11 are not signatories to the Development Agreement, I am unable to accept that submission as a answer to prayer clauses (a) and (d). It is true that the dissenting members have not signed the Development Agreement. However, the matter cannot end there. The agreement has been executed by the Society and, in matters concerning redevelopment, the Society acts as the collective body representing its members. The legal position emerging from *Girish Mulchand Mehta* and reaffirmed in *Pranav Constructions* is that individual members cannot place themselves outside the decisions taken by the Societ. The law governing cooperative housing societies proceeds on collective functioning. Decisions taken through lawful procedures bind all members. If every member were allowed to disregard redevelopment decisions merely because he has not signed the Development Agreement, redevelopment projects would become impossible. The judgments relied upon by the petitioner also make it clear that a dissenting member is not left without remedies. He may challenge resolutions before an appropriate forum. He may question his entitlements in proceedings available under law. He may pursue remedies

concerning his individual grievances. However, the existence of those remedies does not confer upon him a right to halt implementation of the redevelopment process itself. His legal remedies may survive. But the redevelopment process cannot remain suspended because those objections continue to exist. Therefore, although the non-signatory status of respondent Nos.2 to 11 may have relevance in certain contexts, I am unable to hold that such status defeats the petition insofar as present obligations flowing from a approved redevelopment scheme are concerned. To that extent, the contention does not persuade me.

86. I also do not find substance in the allegation of collusion raised by respondent No.3. According to the respondents, the Society and the petitioner are proceeding together and are jointly seeking relief against the dissenting members. From this circumstance an allegation of collusion has been sought to be drawn. In my view, the argument proceeds on a mistaken basis. Once a Society, through its General Body, has approved redevelopment and appointed a developer, it is only natural that the Society and the developer would support implementation of that redevelopment. Their common stand on redevelopment does not amount to collusion. Rather, it reflects the contractual arrangement entered into between them. If every situation where a Society supports its chosen developer is to be labelled collusive, redevelopment disputes would become incapable of resolution. The Court's duty is not to examine whether the Society and developer are speaking in one voice. The Court's duty is to examine whether the relief sought is lawful. So long as the

decisions of the Society remain valid, the Society is entitled to support implementation of those decisions. The law does not require the Society to oppose its own redevelopment proposal.

87. I also find little merit in the respondents' reliance on future contingencies such as possible insolvency of the developer, delay in approvals, modifications in the redevelopment scheme, future disputes, termination of the agreement or other uncertain events. Such possibilities cannot be ruled out entirely. They may happen. Equally, they may never happen. At present, they remain matters of speculation. A Court exercising jurisdiction under Section 9 cannot proceed on the assumption that every adverse possibility suggested by a party will necessarily materialise. If such an approach is adopted, almost every redevelopment project could be brought to a halt on the basis of hypothetical issues. More importantly, the present petition is not founded merely on future contingencies. It is founded on approved redevelopment proposal and refusal by certain members to furnish declarations. Therefore, the cause of action relied upon by the petitioner arises, at least in part.

88. In these circumstances, I am of the opinion that the respondents' arguments based on insolvency, delay in approvals, future changes in the project or possible termination of the agreement do not provide a sufficient answer to the petitioner's request for limited relief concerning present obligations. Those possibilities remain uncertain and may never occur. The obligation to cooperate at the declaration stage exists at the present moment. That circumstance is sufficient to justify a limited interim direction

while declining the more drastic possession related reliefs.

89. The submission advanced on behalf of respondent No.3 on the basis of the decision in *Space Master Realtors* also deserves consideration. In my view, that decision is required to be understood in the context in which it was delivered and cannot be read as laying down a proposition wider than what the Court was actually called upon to decide. A careful reading of the judgment in *Space Master Realtors* shows that the Court was concerned with the question whether a developer could invoke an arbitration clause contained in a redevelopment agreement and seek appointment of an arbitrator under Section 11 of the Arbitration and Conciliation Act against a dissenting member who had not signed that redevelopment agreement. The Court observed that such an issue raises considerations different from those arising in proceedings for interim protection. The question before the Court was essentially whether a non-signatory member could be compelled to participate in arbitral adjudication. The Court in *Space Master Realtors* recognised that there exists a distinction between proceedings under Section 11 and proceedings under Section 9 of the Arbitration Act. In matters arising under Section 11, the Court is directly concerned with the constitution of the arbitral tribunal and with the issue whether the person sought to be referred to arbitration can be treated as a party to the arbitration agreement. For that reason, I find substance in the submission that Section 11 and Section 9 do not occupy the same field. In fact, the observations made in *Space Master Realtors* appear to recognise this distinction.

90. The legal position emerging from *Girish Mulchand Mehta* and later considered in *Pranav Constructions* indicates that, in appropriate circumstances, interim measures may extend even to dissenting members when their conduct has the effect of obstructing implementation of a redevelopment project approved by the society. Thus, in my opinion, the judgment in *Space Master Realtors* cannot be read in isolation. Accordingly, I am unable to accept the submission that the decision in *Space Master Realtors* furnishes answer to the present petition.

91. Accordingly, upon an overall assessment of the facts, the contractual provisions and the legal principles governing redevelopment disputes, I hold that the petitioner is entitled to limited interim relief. Respondent Nos.2 to 11 shall execute and submit the Consenting Member Declarations in accordance with the Development Agreement. They shall also be restrained from creating third party rights, transfers, encumbrances or alienations in respect of their respective flats. However, the reliefs seeking actual eviction, delivery of possession or appointment of a Court Receiver for taking physical possession are, in my view, premature at this stage and must await the arrival of the contractual stage contemplated for vacation of premises under the Development Agreement.

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

(i) The Arbitration Petition is partly allowed.

(ii) Respondent Nos.2 to 11 shall, within a period of four

weeks from the date of this order, execute and submit the Consenting Member Declarations in the format prescribed under Annexure D/2 to the Development Agreement dated 31 March 2025 and shall hand over the same to respondent No.1 Society and/or the petitioner.

(iii) Pending constitution of the Arbitral Tribunal and conclusion of arbitral proceedings, respondent Nos.2 to 11 are restrained from creating any third party rights, transferring, alienating, parting with possession, encumbering or otherwise dealing with their respective flats, being Flat Nos. 2, 4, 5, 8, 10, 12 and 15 situated in Moon Craft Apartments Cooperative Housing Society Limited, in any manner whatsoever so as to prejudice the redevelopment contemplated under the Development Agreement dated 31 March 2025.

(iv) Prayer clause (b) seeking directions against respondent Nos.2 to 11 to vacate and hand over possession of their respective flats upon issuance of notice under the Development Agreement is rejected at this stage as being premature.

(v) Prayer clause (c) seeking appointment of a Court Receiver with powers to take physical possession of the flats of respondent Nos.2 to 11 is rejected.

(vi) It is clarified that this Court has not adjudicated upon the merits of any dispute relating to entitlement of FSI, development potential, implementation of any

supplementary redevelopment proposal, validity of any future permissions, or any individual claims and objections of respondent Nos.2 to 11, and all such contentions are expressly kept open to be agitated before the appropriate forum, if occasion so arises.

(vii) It is further clarified that the observations made in this order are prima facie in nature and confined to consideration of the present application under Section 9 of the Arbitration and Conciliation Act, 1996.

(viii) The issue whether the respondents can be directed to vacate their respective premises and hand over possession, may arise after the necessary stages contemplated under the agreement are completed. Such issue can be considered by appropriate forum at appropriate stage on its own merits.

(ix) There shall be no order as to costs. All pending Interim Applications, if any, stand disposed of.

(AMIT BORKAR, J.)