

Sayali

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

COMMERCIAL ARBITRATION PETITION (L) NO.20459 OF 2026

Mayfair Housing	... Petitioner
V/s.	
Vishwa Kutir Co-operative Housing Society Limited and Others	... Respondents

Mr. Mayur Khandeparkar with Sahil Priyanka Singh
Saiyed, Vinay Nair, Ramesh Pathak i/b Arun
Panicker, for Petitioner.

Mr. Anand Pai i/b Saurabh Chitnis, for Respondent
no. 1.

Mr. Sameer Jagtap, for Respondent nos. 2 and 3.

CORAM : AMIT BORKAR, J.

DATED : JULY 02, 2026

PC.:

1. The petitioner has filed the present petition under Section 9 of the Arbitration and Conciliation Act, 1996 seeking mandatory and prohibitory interim reliefs against respondent Nos. 2 and 3. According to the petitioner, such reliefs are necessary to protect its rights arising out of the redevelopment project and to ensure that the arbitration proceedings are not rendered ineffective.

2. The facts giving rise to the present petition are as follows. The petitioner contends that respondent Nos. 2 and 3 are deliberately and unlawfully obstructing the redevelopment of the property belonging to respondent No. 1 Society. According to the petitioner, the redevelopment project was approved in duly convened General Body Meetings of the Society and thereafter received approval from the competent authority under Section 79A of the Maharashtra Co operative Societies Act, 1960. The project is also based on a registered Development Agreement and an Irrevocable Power of Attorney executed in favour of the petitioner. It is the petitioner's case that all major statutory permissions have already been obtained, substantial amounts have been spent for the project, and vacant possession has been received from 40 out of 42 members, covering 47 out of 49 premises. In spite of being bound by the decisions taken by the Society and the terms of the Development Agreement, respondent Nos. 2 and 3 have continued to occupy their respective premises and have refused to hand over possession. According to the petitioner, because of this refusal, the entire redevelopment project has come to a standstill. It is further contended that the building is more than 36 years old and is in a dilapidated condition, raising concerns regarding the safety of its occupants. The petitioner therefore submits that the conduct of respondent Nos. 2 and 3 is causing serious prejudice not only to the petitioner but also to the large majority of members who have already vacated their premises and are awaiting

completion of the redevelopment.

3. The record shows that on 21 August 2022, a Special General Body Meeting of respondent No. 1 Society was held, wherein the members resolved to undertake redevelopment of the Society property. In the same meeting, M/s. M.K. Rao & Associates was appointed as the Project Management Consultant to supervise and conduct the redevelopment process. Thereafter, public tender notices were issued on 1 December 2022 and again on 10 January 2023 inviting offers from interested developers. A Special General Body Meeting was thereafter held on 14 May 2023 in the presence of the Authorized Officer. After considering the bids received from different developers, the petitioner was unanimously selected and appointed as the developer. The resolution was supported by 33 members and none voted against it. Subsequently, on 24 May 2023, the Deputy Registrar, Co operative Societies, G/North Ward, Mumbai granted approval under Section 79A of the Maharashtra Co operative Societies Act, 1960 confirming the appointment of the petitioner as the developer. On the following day, respondent No. 1 Society formally communicated the appointment of the petitioner. Thereafter, the petitioner obtained various statutory permissions required for redevelopment, including the Airport Authority No Objection Certificate on 5 December 2023, the Metro No Objection Certificate on 24 March 2025, the Chief Fire Officer No Objection Certificate on 17 June 2025, and the Intimation of Disapproval issued by the Municipal Corporation

of Greater Mumbai on 6 November 2025. The IOD was obtained by the petitioner on behalf of the Society. Thereafter, on 14 December 2025, another Special General Body Meeting was held in which the final drafts of the Development Agreement and other related redevelopment documents were placed before the members and were duly approved.

4. Thereafter, on 26 March 2026, the Development Agreement between the petitioner and respondent No. 1 Society was executed and duly registered. On the same day, an Irrevocable Power of Attorney was also executed and registered in favour of the petitioner. The Development Agreement contains an arbitration clause which is stated to be binding upon the Society and all its members. After registration of these documents, on 31 March 2026, the petitioner issued a notice calling upon all members to vacate their respective premises within 30 days so that demolition and redevelopment work could begin. The Society also circulated the said notice among all its members. Pursuant to the notice, several members vacated their premises and handed over possession to the petitioner. The petitioner also started paying transit rent, corpus amount and other contractual benefits to the members in accordance with the terms of the Development Agreement.

5. On 22 May 2026, respondent No. 3 issued a legal notice alleging that the water supply had been illegally disconnected and that he was being harassed. The petitioner denied these allegations and stated that the notice was issued only with a

view to obstruct the redevelopment project. Thereafter, on 27 May 2026, respondent No. 1 Society addressed a letter to the petitioner recording that 39 out of 42 members had already vacated their premises and requesting the petitioner to take appropriate steps against respondent Nos. 2 and 3 and one Mr. Neeraj Mohan Desai, who had still not vacated. It is the petitioner's case that Mr. Neeraj Mohan Desai subsequently vacated his premises and handed over possession. As a result, respondent Nos. 2 and 3 remained the only occupants who continued to refuse to hand over possession of their respective shops. According to the petitioner, on the date of filing of the present petition, 40 out of 42 members had vacated their premises and possession of 47 out of 49 premises had already been handed over. Only Shop No. S1 occupied by respondent No. 2 and Shop No. S3 occupied by respondent No. 3 remained in their possession, thereby preventing demolition of the existing structure and delaying the redevelopment project.

6. It is in these circumstances, and on the ground that the continued occupation of respondent Nos. 2 and 3 is obstructing the redevelopment and affecting the subject matter of the proposed arbitration, that the petitioner has filed the present petition under Section 9 of the Arbitration and Conciliation Act, 1996 seeking mandatory as well as injunctive interim reliefs.

7. Mr. Khandeparkar, learned counsel appearing for the petitioner, submitted that the Society consists of 49 premises owned and occupied by 42 members. Out of these, 40 members

have already vacated their premises and handed over possession. As a result, possession of 47 out of 49 premises has already been received by the petitioner. According to him, only the two shops occupied by respondent Nos. 2 and 3 are yet to be vacated, and because of their refusal, the entire redevelopment project has been held up.

8. Inviting my attention to Clause 14 of the Development Agreement, learned counsel submitted that the only condition required before issuing a notice to vacate is the registration of the Development Agreement. He submitted that the agreement has already been registered and, therefore, the petitioner's right to call upon the members to vacate their premises has already come into operation. According to him, once this condition was fulfilled, respondent Nos. 2 and 3 were under an obligation to hand over possession.

9. Learned counsel further invited my attention to page 131 of the Development Agreement. He submitted that Annexure H contains details of every flat and shop in the Society. He pointed out that Clauses 38 and 40 describe the premises occupied by respondent Nos. 2 and 3 as commercial shops and also specify the benefits and entitlement available to such members. According to him, the chart clearly records that after redevelopment the petitioner is required to hand over the reconstructed commercial premises to the concerned members in accordance with the agreed terms.

10. On the other hand, the learned counsel appearing for respondent Nos. 2 and 3 submitted that although the premises are described as shops, the Society has accepted their actual residential use for several years. According to him, once the Society has accepted such residential use, the petitioner, as the developer, is under an obligation to provide residential flats of a similar nature after redevelopment instead of treating the respondents only as occupants of commercial premises.

11. Learned counsel further submitted that other similarly placed members have been promised reconstructed premises measuring 394 square feet, whereas respondent Nos. 2 and 3 have been offered an area which is 16 square feet less. According to him, this unequal treatment has not been properly explained by the petitioner. He therefore submitted that respondent Nos. 2 and 3 cannot be compelled to vacate their premises until their entitlement is appropriately protected, and consequently no relief should be granted against them in the present petition.

12. Having regard to the issue involved in the present matter, in my opinion, the controversy is no longer *res integra*. The Division Bench of this Court in the case of *Pranav Constructions Limited v. Priyadarshini Co-operative Housing Society Limited & Others*, 2025 SCC OnLine Bom 6498, has already explained the principles which are required to be applied while considering such petitions arising out of redevelopment projects. The rights and obligations of the parties are therefore required to be

examined in the light of the observations and findings recorded in the said judgment. In the present case, Clause 14.1 of the Development Agreement clearly provides that the developer becomes entitled to call upon the members to vacate their respective premises immediately upon registration of the Development Agreement. It is not in dispute that the Development Agreement has already been duly registered. Once this admitted fact exists, the condition mentioned in Clause 14.1 stands satisfied. As a result, the contractual right of the petitioner to seek vacant possession of Shop Nos. S1 and S3 has already come into existence and the consequences contemplated under the agreement automatically follow. Therefore, the respondents cannot refuse to vacate merely because they have raised other disputes which are independent of the right flowing from the registered Development Agreement.

13. The objection raised by respondent Nos. 2 and 3 regarding the nature of their premises and their contention that the premises should be treated as residential instead of commercial cannot be finally decided in the present proceedings. The scope of the present petition under Section 9 of the Arbitration and Conciliation Act is limited, and the extent of such jurisdiction has already been explained by the Division Bench in *Pranav Constructions Limited*. This Court is presently concerned only with the question whether the petitioner has established a right to seek interim protection in furtherance of the redevelopment project. Questions relating to the exact nature of the premises,

the area to which respondent Nos. 2 and 3 may ultimately be entitled, or any independent right claimed by them require detailed examination of evidence and are matters which can appropriately be decided only by the competent Court or forum. Therefore, if respondent Nos. 2 and 3 desire to assert any such independent rights, it shall always be open for them to approach the appropriate Court or forum and pursue their remedies in accordance with law. Those proceedings shall be decided on their own merits without being influenced by the present order. However, such disputed claims cannot be permitted to obstruct the redevelopment work or deprive the petitioner of the relief flowing from the registered Development Agreement, the decision of the overwhelming majority of the members of the Society, and the valid resolutions passed by the General Body. Acceptance of such objections at this stage would result in holding up the entire redevelopment project because of the dispute raised by only a few members, which would seriously prejudice the remaining members who have already vacated their premises.

14. In view of the above discussion and after considering the material placed on record, I am satisfied that the petitioner has made out a strong prima facie case for grant of interim relief. The balance of convenience also lies in favour of the petitioner, as almost all the members have already handed over possession and the redevelopment project has reached a stage where it cannot proceed further unless the remaining premises are

vacated. If the relief is refused, greater hardship will be caused to the petitioner as well as to the majority of the members who are waiting for completion of the redevelopment. On the other hand, the rights and contentions of respondent Nos. 2 and 3 regarding their alleged entitlement can always be examined separately before the appropriate forum. Hence, the petition deserves to be allowed.

15. Accordingly, the petition is allowed in terms of prayer clause (a).

16. It is made clear that respondent Nos. 2 and 3 shall hand over peaceful and vacant possession of their respective premises to the petitioner within a period of two weeks from today.

17. If they fail to hand over possession within the said period, the Court Receiver shall stand appointed in respect of the premises occupied by respondent Nos. 2 and 3 without any further orders of this Court. The Court Receiver shall thereafter take possession of the said premises from respondent Nos. 2 and 3 and hand over the same to the petitioner so that the redevelopment work can proceed without any further delay. If any obstruction is caused while taking possession, the jurisdictional police station shall extend all necessary assistance and protection to the Court Receiver for implementation of this order.

18. The petition stands disposed of.

(AMIT BORKAR, J.)