

MHCO120000492025



**IN THE COURT OF JUDGE, CO-OPERATIVE COURT NO
I, PUNE.**

(Presided over by Smt. A. V. Jadhav-Judge)

Dispute No.39/2025

Shri. Mukesh Abhayshing Rajput

& ors

:-Disputants

V/s

Chandraneel Co-operative

Housing Society Ltd. & ors

:-Opponents

ORDER PASSED BELOW EXH.NO.5

(on dated 04/11/2025)

1. Disputants have filed the present application for temporary and mandatory injunction and requested to restrain the opponents by an order of injunction from implementing and acting in furtherance of resolution no. 7 passed in the SGBM dated 01/06/2024 and the resolution nos. 1, 4 and 7 shown to have been passed in SGBM dated

19/01/2025 till the final decision of the dispute. Disputants further requested to restrain the opponents by an order of the temporary injunction from acting against the resolutions passed in the SGBM dated 24/11/2024 till the final decision of the dispute. It is also requested by the disputants to hold the redevelopment afresh as per the guidelines of State Government.

2. It is the contention of the disputants that there are 39 flat holder members and 9 shop holder members in a building of opponent no.1 society, which is registered in the year 2010.

3. The disputants are the members of the opponent no.1 society and the opponent nos. 2 to 9 are the alleged members of Managing Committee. Since 2013 no elections took place and the same persons are working as a committee of the opponent no.1 society. No audit carried out since 2013 and 11 years consolidated audit was carried out which is not permissible. Hence, the said committee is already disqualified by operation of law as contemplated under the provisions of Section 75 of the Maharashtra Co-operative Societies Act, 1960. Thus, the opponent nos. 2 to 9 are not elected committee members, but are self declared committee by themselves. Hence, their working and functioning is against the provisions of the Acts, Rules and Bylaws. The disputants have challenged their authority and also

complained to the Registrar for their removal.

4. The disputants stated that the opponents realizing that the committee is not legally constituted tried to show that they are holding the elections and all of sudden co-opted four persons in the meeting dated 19/01/2025 vide resolution no. 4, which is challenged by the disputants.

5. The main subject matter of the dispute is redevelopment of the building of the opponent no.1 society, which subject was under consideration of the so-called committee. The building is only 15 years old and does not appear to be ready for redevelopment. The opponents have deliberately did not carry out the structural audit with malafide intentions.

6. In January 2024, the committee tried to initiate the redevelopment activities at their own without following any procedure and guidelines. Moreover, the committee never sends any notices of the meetings to the members physically nor provided any documents, minutes of any of the meetings, audit reports etc., to any member in spite of the applications.

7. The members are not aware of the proceedings, minutes of meetings and the decisions taken etc., including the redevelopment procedure. The guidelines of Government of Maharashtra were never followed; moreover, no tenders were published and without structural audit, the said committee has directly initiated the redevelopment

procedure.

8. It appears that the committee invited the names of four builders, who sent their quotations for the purpose of redevelopment work and their names i.e. (i) M/s. Orbit Spaces, (ii) M/s. Sterling Properties, (iii) M/s. Giridhar Construction and (iv) Joshi-Dave Builders. On 6th May 2024, the opponents on comparative statements finalized three builders i.e. M/s. Orbit Spaces, M/s. Sterling Developers and Joshi-Dave Builders and the opponents decided to select the final builder in the meeting dated 01/06/2024.

9. In the General Body Meeting dated 01/06/2024; the representative of Deputy Registrar Office Mrs. S. H. Patil was present and declared the name of said M/s. Orbit Spaces for the redevelopment as a highest bidder. In the said meeting, no sufficient time was given for presentation of other two builders and decided to finalize on the same day by 30 min voting period. Many members expressed their objection to such a procedure before the opponents.

10. The said M/s. Orbit Spaces quoted 32% of additional area on flat, balcony and terrace as per RERA carpet area. However, the said developer M/s. Orbit Spaces changed its quote on last minutes, thereby for terrace, it offered 32% rise on 50% of the terrace area. Due to this, last minute reduced offer, the members got disappointed and expressed their opinion to cancel the selection process to which the

opponents ignored and continued and declared the name of Orbit Spaces.

11. The opponent without considering the voting of members present, the opponents hurriedly recorded the votes of those who were not present in the said meeting, their votes were wrongly recorded. Moreover, the votes of non-members (representing members) were taken suitably. Thus, the entire procedure is hurriedly and wrongly conducted, which can be seen from the recording. The members have seriously opposed the procedure and the selection; however, the opponents have hurriedly declared the name of said M/s. Orbit Spaces.

12. There are many valid objections/reasons for the selection of the said M/s. Orbit Spaces as their developer as the members have serious objections for its selection. The wife of opponent No.4 (committee member) is the partner/director in the said M/s. Orbit Spaces. (on 06/10/2024, the opponent no. 4 furnished his resignation from the committee). In fact, the persons who are working for redevelopment procedure are from the team of said M/s. Orbit Spaces i.e. Architect Aishwarya Falak and Advocate Mayuri Walimbe.

13. Many members have raised objections and queries about the financial credentials of the said developer. However, the opponents not only misguided the members

but tried to pressurize them to give consent. The objection was also regarding their experience, knowledge or redevelopment project information, the opponents are pressurizing members. Many members of the society like disputants objected to the name of said builder; however, the opponents ignored the same and did not record anywhere. The opponents were in a hurry to give consent to said M/s. Orbit Spaces.

14. The disputants state that due to the above issues and various objections from the members by email, the opponents called Special General Body meetings on 01/09/2024 and item no. 17 of the subject was regarding decision about redevelopment of the building. Thus, the matter of finalization of name of said Orbit Spaces was kept pending. Thereafter, again a Special General Body meeting was called on 06/10/2024 with a vague agenda and again many objections raised by the members. The subject was "redevelopment process delay" and many objections were raised by the members against the selection of builder. It is worth noting that Mr. Swapnil Choudhary resigned on 06/10/2024 from the managing committee on the point of conflict of interest. No resolutions were passed in the meeting dated 06/10/2024.

15. Finally, the opponents again called a meeting on 24/11/2024, there were six subjects on the agenda dated

06/11/2024, which are specifically mentioned in the dispute application. In the said meeting, the members have raised their serious objections to the entire process and it was resolved by majority, the selection of said Orbit Spaces was cancelled and further resolved to initiate the redevelopment process afresh, vide resolution no. 6. The said proceedings were written in the meeting itself. The opponents thereafter created much hue and cry and the Chairman and Secretary informed the members that accordingly, they will call meeting on the subject of fresh procedure for redevelopment. Thus, the selection of said Orbit Spaces got cancelled and issue of LOI did not arise.

16. The disputants state that as the fresh process was to be initiated for redevelopment matter, meanwhile, the elections of the managing committee was expected to be conducted by the Co-operative Department/Tribunal. The present committee was disabled and was not the valid committee. However, all of sudden, the secretary sent email dated 10/01/2025 calling the Special General Body meeting on 19/01/2025.

17. On 19/01/2025, in the Special General Body Meeting, the disputants shocked to know that the opponents during the meeting without any knowledge of the members asked for the consent form in favour of said M/s. Orbit Spaces and the same was objected. The opponents continued asking the

letter of intent and confirmation from the members present. In the said meeting only 11 members were present and out of that 7-8 members are opponents/committees and remaining members objected to the form in favour of said M/s. Orbit Spaces as builder/developer. Thus, no resolution was passed regarding said M/s. Orbit Spaces or issuing the LOI as there was no such subject and no serious business took place, as it was already decided in the meeting dated 24/11/2024 to start the redevelopment process afresh.

18. On receiving the mail dated 25/01/2025 through society email, members shocked to see the minutes wherein new resolutions shown to have been passed vide resolution nos.1, 4 and 7, which were out of agenda.

19. The disputants state that the meeting dated 19/01/2025 and resolutions passed therein circulated to the members via email dated 25/01/2025 are illegal and cannot be executed for the reasons mentioned in the application.

- a) There was no agenda as no. 7 for confirmation of selection of developer.
- b) In the meeting dated 24/11/2024, it was already resolved to initiate redevelopment process afresh.
- c) No resolutions were actually passed about issuance of LOI to M/s. Orbit Spaces. The said resolution is falsely shown to have been passed.

d) The resolutions passed in the meeting dated 24/11/2024 are binding on the opponent no. 1 society and the members and cannot stand as null and void as mentioned in the minutes as resolution no. 1. The previous meeting cannot be cancelled in such a manner. There was no subject for discussion of cancellation of meeting dated 24/11/2024.

e) There was no subject for adding four new committee members as shown in minutes at resolution No.5. There was no agenda (subject). Such illegal cooption is not permissible, when elections are overdue and the present committee is not legally constituted & is unauthorizedly functioning with malafide intentions.

f) No resolutions are passed in the meeting dated 19/01/2025 as stated in the minutes sent by email at Sr. nos. 1, 4 and 7 as the decisions allegedly taken.

g) Even otherwise, said resolutions being never passed are clearly fabricated and prepared by the committee to favour said M/s. Orbit Spaces and avoid the election and cancelled the decisions taken in the meeting dated 24/11/2024.

h) The members have already immediately objected to the said minutes and they have not given their consent including disputants.

i) The said resolutions are against the provisions of Acts,

Rules and Bylaws.

j) The managing committee is liable for criminal prosecution for doing such illegal acts against the interest of the society and its members.

20. The disputant further surprised with email dated 31/01/2025 thereby informing the members that the opponents issued a letter of intent in favour of said M/s. Orbit Spaces. This act of the opponents is very serious one, thereby betraying and cheating the members. Once the selection of the said developer was already cancelled in the meeting dated 24/11/2024, further process of development was stopped and the said resolution is binding on the opponent no. 1 society as well as members and cannot cancel it as per the whims of opponents. In fact, no such resolutions are passed in the meeting dated 19/01/2025, as stated in the minutes sent on 25/01/2025.

21. The decision of conducting the fresh process was proper decision of the general body as the committee is not in existence, the opponents running the society is not a valid committee, not elected members of the committee, the opponents have vested interest in the particular developer. Moreover, the guidelines for redevelopment were never followed, the conduct of the committee of the opponents is not only suspicious, but they are circulating fabricated proceedings and acting against the interest of the members

as well as the opponent no. 1 society. Hence, all their acts are illegal, null and void and not binding on the members. Therefore, the disputants are challenging the resolutions passed in Special General Body Meeting dated 19/01/2025 and also authority of the present opponents.

22. The disputants state that on the face of record, the resolutions are illegal, admittedly no audit for 13 years, no elections ever took place and present opponents never got elected and are avoiding to hold the elections and by way of backdoor method trying to co-opt the members of the committee. Moreover, the opponents are trying to fold upon the members. The said developer M/s. Orbit Spaces ignoring the resolution passed in the meeting dated 24/11/2024 and creating false record of 19/11/2025. In such circumstance, the members realized that the opponents are in favour of said M/s. Orbit Spaces with all the above mentioned illegal acts and ulterior motive and malafide intentions. The members cannot be taken for granted and their valuable legal rights to select the developer by way of prescribed procedure cannot be taken away by the opponents by creating false record. In view of resolution passed in the Special General Body meeting dated 24/11/2024, the resolution passed in the Special General Body meeting dated 01/06/2024 does not survive and not binding on the members. Hence, the disputants have no other option but to approach this Hon'ble Court for protection of their rights, challenging illegal acts of

the opponents.

23. The disputants want to specifically put on record that all the communications are sent from the society email account to the members and except the decision taken in the meeting dated 01/09/2024 and 19/01/2025, in spite of request by the disputants to furnish the true copies of all the resolutions. However, the opponents are not furnishing any of the minutes of General Body and Managing Committee with malafide intentions so as to fabricate the same. Therefore, in the meeting dated 24/11/2024, the disputants and members compelled to write the minutes in the meeting itself. The disputants have got copy of the proceedings of 24/11/2024, copied from the proceeding book. This conduct of the opponents is also complained to the Registrar. However, the malafide intentions of the opponent nos. 2 to 9 can be seen.

24. Thus it is a matter of record that the selection of one developer in the Special General Body meeting dated 01/06/2024 was cancelled in the Special General Body meeting dated 24/11/2024; however, the opponents shown to have passed resolution no. 1 in the meeting dated 19/01/2025 that the meeting and resolutions are cancelled and by resolution no. 7 shown afresh appointment of the developer M/s. Orbit Spaces calling for confirmation and issuance of LOI. Thus, the illegal committee is in a hurry to

take illegal decisions regarding the appointment of the said developer against the will, wish and objection by the members and also against the previous General Body decision. The opponents are even otherwise not legally constituted committee and may continue working illegally and hence, they need to be restrained by necessary order of injunction to avoid further complications and stop further illegal activities.

25. The disputants have a strong prima facie case as also the balance of convenience is in favour of the disputants in view of resolution passed in the Special General Body meeting dated 24/11/2024. If the injunction, as prayed for is not granted, the members of the opponent no. 1 society and the disputants will suffer irreparable loss, hardship and injury, which cannot be compensated in any term and therefore disputants prayed as under:-

a. The opponents may kindly be restrained by an order of temporary injunction from implementing and acting in furtherance of resolution no. 7 passed in the Special General Body Meeting dated 01/06/2024 and the resolutions nos. 1, 4 and 7 shown to have been passed in Special General Body Meeting dated 19/01/2025 till the final decision of the dispute.

b. The opponents may kindly be restrained by an order of temporary injunction from acting against the resolutions

passed in the Special General Body Meeting dated 24/11/2024 till the final decision of the dispute.

c. The necessary orders by way of mandatory temporary injunctions may kindly be passed to hold the redevelopment process afresh as per the guidelines of State Government.

d. Costs of the present application be awarded to the disputants from the opponents.

e. Any other just and equitable orders be passed in the interest of justice and equity.

An affidavit in support of this application is filed herewith.

26. Opponent society filed say at Exh. 15 and further submitted that the original Developer Star Construction through Rakesh Motilal Sharma via Power of Attorney holder Shri. Ravi Kadam (husband of disputant number 6) who has constructed the building and as per the initial plans, got sanction for 38 flats and 9 shops. Accordingly, a society namely Chandraneel Co-operative Housing Society Ltd.' was incorporated consisting of 38 flats and 9 shops on 19/07/2010.

27. The opponent submits that in spite of sanction of 38 flats, the developer constructed 40 flats i.e. 2 flats illegally, which led to a litigation before Civil Court bearing no. 289/2010 and before Hon'ble High Court, wherein Hon"

Mumbai High Court on 17/10/2011 ordered the PMC to proceed the proposal for regularization of the structure constructed. It is submitted that in spite of the order of the Hon'ble High Court the developer hand in hand with one of disputant Yogita Kadam submitted revised plans to the PMC and obtained sanction of flat number 39 in the year 2019 (14/05/2019) i.e. 8 years after the order of Hon'ble High Court. They have further obtained completion certificate from the PMC for 39 flats but only for 7 shops instead of 9 shops.

28. It is further submitted by the opponent society that in spite of formation of society in the year 2010, the society was kept in dark about revisions in the sanctioned plans, litigations before Hon'ble High Court and regularization of illegal construction of one flat (flat number 39). In fact even today, there is one flat, which is illegally constructed by the earlier developer and the electricity bill is generated in the name of Star Construction. The number of members as per the records with the Co-operative department, as submitted at the time of registration of society, the number of units in the society are 38 flats and 9 shops, whereas, as per the completion certificate (dated 30/08/2019) it is 39 flats and 7 shops only. The process of addition of member for flat no. 39 is still not complied which is owned by disputant no. 6 and therefore she cannot be considered as member of the opponent society.

29. The society has conducted election process through general body meeting being 'D' type society. The disputant has already approached the Hon'ble Registrar regarding the audit compliance and the same is pending.

30. There is no bar to a society for going ahead with redevelopment if the building is 15 years old. In spite of the building being only 15 years old due to poor construction quality, it is inviting, recurring expenses against drainage, open passage common tiles, cracks in pillars and compound wall facing Ramnadi River. In the year 2014 and 2015 i.e. only within 5-6 years, the society had to do the major expenses on common floor tiles, society leakage from outside etc. It is not a pre requisite that the society should comply the structural audit process prior going ahead with redevelopment and the General Body decision should be considered in that behalf.

31. Society has followed all the procedure as per settled position of law, in case of redevelopment of housing society. The society has called an Annual General Body Meeting on 13th August 2023 and with due majority the members decided to go for redevelopment of the property of the society. In the said meeting a redevelopment committee was formed consisting of some members of the society including wife of disputant number 3 and disputant number 5 to assist the managing committee. The society circulated the minutes

of meeting of the said meeting.

32. It is the contention of the opponent society that it has followed the substantial compliance of the directives of the Government directives under 79 of the Maharashtra. Co-operative Societies Act. In fact, some of the disputants on 09/05/2024 sent an email to the committee sharing their requirements in the redevelopment process being shop owners. It is submitted that the subject of redevelopment was well discussed in the general body meetings and minutes were circulated to all members in due course of time.

33. It is stated that the committee has not invited tenders from developer. It was discussed and decided that all members can approach their known developers for submitting offers. In fact one of the shortlisted developer M/s Sterling Properties was approached to the society through Shri. Abhilash Rathor Hansraj Phadtare (disputant no. 3), Shri. Hansraj Phadtare (disputant no. 7) and Omsingh Rajpurohit (disputant no. 4). Further another developer Joshi-Dave Constructions was approached to the society through Shri Mukesh Rajput i.e. disputant no.1. Giridhar Construction was approached to the society through Shri Ravi Kadam i.e. husband disputant no. 6. Three out of the four offers received by the society are from the developers recommended by the disputants and as such the disputants

were well aware about the entire process of the redevelopment. The opponent submits that if the disputants were not aware about any resolution pertinent to redevelopment then how they have raised their demands on 09/05/2024, prior to the actual builder selection meeting.

34. A meeting in the presence of the representative of the Co-operative Registrar Shrimati Patil was conducted and the entire process was video recorded. It is not correct to state that sufficient time was not given to other two developers. In fact in spite of the invitation, Joshi-Dave builder was absent for the presentation. The other two developers i.e. Sterling Developers and Orbit Spaces were present and presented before the general body. Sterling developer's presentation was almost for 2 hours and Orbit Spaces presentation was almost for 40 minutes. Members who were present also were allotted time to discuss their issues and questions with the developers. After the presentation, the voting process was conducted through secret ballot papers process and the result was declared by the Hon'ble representative of the Registrar immediately for appointment of M/s Orbit Spaces. 42 members were present out of them 31 members voted for M/s Orbit Spaces, 01 member voted for Sterling Developers and 10 votes were none of the above (NOTA). The disputants were present in the said meeting and participated in the voting process by casting their votes.

35. The original offer of the developer M/s Orbit Spaces was 32% rise of the 100% terrace area, which was discussed in the meeting at the time of presentation prior to voting. Since members raised their concerns about the lesser area, M/s Orbit Spaces by accepting the concerns of the members, agreed to revise its proposal from 32% on 100 sq.ft. terrace area to 50% on the 100 sq.ft terrace area. Even after selection of developer, majority of the opponents were insisting for revision in the offer and has series of meeting with the selected developer M/s Orbit Spaces. M/s Orbit Spaces further revised the offer again for this terrace area and has agreed to give 70% additional area on 100 sq.ft area.

36. The entire voting process has been done thoroughly and in the presence of the Co-operative Registrar, who herself declared the selection of developer. Disputants have not filed a single document to show that wife of opponent No. 4 is brother of M/s Orbit Spaces. The disputant's intellectual qualification shows the allegation made on lawyer and architect. By making such type of allegations disputant's themselves shows that they are only interested in delaying redevelopment process for their own benefits by alleging working professionals.

37. M/S Orbit Space Developer is selected by majority before representative of DDR office and all procedure is duly recorded. The society has appointed Ugale and Associates CA

firm for reviewing financial stability of the selected developers and prior selection requested all 3 developers to submit their financial documents for verification and financial feasibility. Out of 3 developers only M/s Orbit Spaces responded on their financial documents for verifications and confirm that since financial documents are personal & confidential documents, it will be shown to the CA on selection confirmation. The opponent, accordingly while passing the resolution of selection of developer has passed a resolution that prior executing agreement with developer, society shall check the financial status of Orbit Spaces.

38. The meeting dated 01/09/2024 was cleared to discuss the further process of redevelopment. Disputants constantly filed various complaints with the registrar for not issuing NOC for the process of redevelopment. Except the disputants none of the member of the society took any objection with respect to the redevelopment or process of redevelopment or selection of developer. The resignation of Mr. Swapnil Choudhari has nothing to do with the process of redevelopment and his resignation was purely on the grounds of health issues.

39. It is true that opponent called meeting on 24/11/2024 but at the time of meeting since there was no quorum the committee was of the opinion to postpone the meeting, however one Mr. Ravi Kadam, who is not even a

member of the society, forcibly pulled out the proceeding book from the hands of the secretary and himself wrote resolution. In fact, this action itself is illegal and violation of by law no. 108, which states that “To record the minutes of all the meetings of the general body is the responsibility of the secretary”, therefore resolution dated 24/11/2024 so allegedly passed is illegal and should be treated as null and void and is not binding on members of the society.

40. The opponent submits, since the disputants forcefully wrote a resolution on the proceedings book of the society, it was necessary to cancel the same and declare the same as null and void. Since the developer has been selected by majority vote in the meeting dated 01/06/2024 further discussion was held on issuing Letter of Intent to the developer in the meeting. In fact, total 20 members were present in the meeting dated 19/01/2025 as against 11 members as claimed by the disputants. Further none of the disputants were present in the said meeting.

41. The developer has been selected on 01/06/2024, there was no need to issue a separate agenda for confirmation of selection of developer. It was specifically discussed in the meeting itself that on receipt of majority consent, Letter of Intent shall be issued to Orbit Spaces. The opponent submits, majority members are in favour of redevelopment through Orbit Spaces and after this meeting dated

19/01/2025, 27 members out of 48 members submitted their consent letters for confirmation of selection of developer. The resolution passed by the society on dated 19/01/2025 is absolutely valid and binding on each and every member of the society.

42. The society has followed due process and passed the resolutions in the redevelopment process of the society. The resolution dated 24/11/2024 itself is illegal; it cannot the bar to the society to proceed further in the process of redevelopment. It is the will and wish of the majority members to go ahead with Orbit Spaces.

43. It is the contentions of the opponent society that majority of the disputants are defaulters and they are not paying the dues of the society. In fact disputant nos. 1 and 3 are carrying out a business of diagnostic center and dental clinic respectively and have not informed society, whether they are disposing the bio medical waste as per the guidelines of the corporation. In fact the society has issued notices to them for this reason and has time and again requested them to comply with the same; however no action has been taken by them for such disposal.

44. Disputant no. 2 is carrying out his business from the residential premises and has registered the flat as registered office for his company, which is legally not permissible. The flat owned by disputant no. 6 is constructed illegally and

regularized by deceiving the rights of the society and its members. The society has already initiated the complaint process with the Encroachment Department of Pune Municipal Corporation against the same.

45. The disputant no. 13 has enclosed and converted their open terrace into a kitchen and connected kitchen waste pipeline into the society's common rain water harvesting pipe. The society has already sent notices to her for the same. The committee of the society is initiating actions against the disputants for the above said reasons and for this reason the disputants are objecting for the committee and redevelopment process. The society has not selected the developer as referred by some of the disputants; it is for this reason as well the disputants are objecting the redevelopment process.

46. It is the contention of the opponent society that the redevelopment is in the interest of majority of the members of the society as against 13 disputants and as such the balance of convenience is in favour of the majority members of the society. There will be no irreparable loss, hardship and injury caused to the disputants, as being members of the society they will be benefited in the process of redevelopment in terms of additional area and monetary valuation. However, if the redevelopment process got delayed and if the developer revise the offer due to such delay then

there will be an irreparable loss to all members, which cannot be compensated in any term. In fact due to adamant behaviour of the disputants, the society and its members have already suffered irreparable loss of 8-9 months of delay and cannot afford additional delay for the whims of the disputants. Hence, opponent society requested to reject the application with heavy cost.

47. Heard Ld. Adv. Shri. Arvind Shaha for disputants and Ld. Adv. Smt. Mayura Walimbe for opponents.

POINTS

FINDINGS

1. Whether the applicants prove prima-facie case in their favour ? : Partly affirmative
2. Whether applicants prove balance of convenience in their favour? : Partly affirmative
3. Whether applicants will suffer irreparable loss, if stay is not granted ? : Partly affirmative
4. What order? : Application is partly allowed

REASONS

48. As point nos. 1 to 4 are co-related and interlinked with each other, therefore for the sake of convenience

and to ensure brevity these are taken up together summarily in order to avoid repetition.

49. While arguing the application counsel for disputants Adv. Shri. Shaha argued that the guidelines of Government of Maharashtra were never followed and no tenders were published and without structural audit, the said committee has directly initiated the redevelopment procedure.

50. In this regard, I relied upon a case **Maya Developers & Others Vs Neelam R. Thakkar & Others, Bombay High Court decided on 13.07.2016**, in this case Hon'ble High Court in para no. 85 has held that,

Para no. 85 "apart from the decision in Girish Mulchand Mehta 107 in regard to the majority principle, Mr. Kapadia cites Supreme Mega Construction LLP V. Symphony Co-operative Housing Society Ltd. & Others 108 in paragraph no. 7 of this decision, Honble Justice Gupte in terms held that substantial compliance with the very same 2009 directive under Section 79A was sufficient. An earlier decision that of R. D. Dhanuka J in Bharat Infrastructure & Engineering Pvt. Ltd. V. Park Darshan Co-operative Housing Society Ltd. & Others

109 puts the controversy beyond the pale. In paragraph 19, the court expressly negative the submission that this very 2009 directive does not bind the third party, viz., Maya Developers; they cannot be red into the agreement between the society and the developer. While this was in the context of an arbitration clause, it nonetheless tells us that this directive is not of the kind of mandatory nature that Mr. Pai makes it out to be. Further, Bharat Infrastructure in the very next paragraph reaffirms the principle that the General Body is the supreme authority and that the view of the majority will bind.”

These, two cited judgments, affirm and declare that;

- i) General body is supreme;*
- ii) View of majority will bind minority;*
- iii) Directives under Section 79A of the M.C.S. Act are not mandatory and sufficient compliance is sufficient;*
- iv) Directives under Section 79A of the MCS Act, do not bind the third party;*
- v) Decisions taken in accordance with the principles of democracy cannot interfere with*

or displaced, unless it is shown that same were sanctioned fraud or misrepresentation.

51. The Government vide Government resolution dated 03/01/2009 has prescribed procedure for the redevelopment of buildings belonging to the CHS by giving directions under Section 79(A) of the M.C.S. Act 1960. The government thereafter modify the directives and the government contemplated the matter of issuing revised guidelines in this regard. The government has issued the fresh circular by certain amendments in earlier circular on dated 04/07/2019 and has given the directives under Section 79A of the M.C.S. Act.

52. As per the above cited case of Maya Developers (supra), the directives under Section 79 (A) of M.C.S. Act are not mandatory but recommendatory in nature and sufficient compliance of the same is sufficient. Hence, having applied the above case to the present dispute, the directions cannot be given to the opponent society to strictly follow the GR dated 04/07/2019.

53. Disputants have challenged the resolution of the SGBM dated 01/06/2024 and requested to restrain the opponent society from implementing and acting resolution no. 7. Opponent society filed the minutes of

the meeting dated 01/06/2024 alongwith list of documents at Exh. 18. After perusing the minutes of the said meeting, it appears that the builder M/s Orbit Space was selected but there is no proposer and secondar to the said resolution. As well as how many builders have given their tenders, out of which, whose tenders of builders were selected, all these things have not been mentioned in the minutes. As well as the separate attendance list of members attached with the minutes of the meeting but how many members voted in favour of the builder and how many members voted against the builder is not mentioned in the minutes book. There are no signatures of chairman and secretary under the resolution and who was selected as chairman of the meeting is also not mentioned in the minute's book. It is also not mentioned, whether the resolution is passed majority or unanimously. All these things are absent in the minutes of SGBM dated 01/06/2024, which creates doubt about the passing of the resolution. Hence, because of above grounds, it is necessary to grant stay to the said resolution.

54. Disputants requested to restrain the opponent society from acting against the resolution passed in the SGBM dated 24/11/2024. Opponents admitted in their

reply that the meeting was called on dated 24/11/2024. Opponents filed the copy of the said minutes of the meeting along with list of document at Exh. 29 at Sr. no.5.

55. I have perused the said minutes of the meeting dated 24/11/2024 and it appears that there are 6 subjects on the agenda of the meeting, which are as under:-

1. Discussion on process of election of new committee;
2. New Auditor for 2024-25 onwards;
3. P.M.C. notice regarding compound wall;
4. Nomination form (14) submission;
5. Late fee on defaulters 1.75% per month;
6. To issue Lol to Orbit Spaces for redevelopment.

It appears from the minutes that the resolution no. 6 passed in the meeting dated 24/11/2024 by majority and selection of M/s Orbit Spaces is cancelled and resolved to conduct a fresh redevelopment process of the society.

56. With respect to the meeting dated 24/11/2024, it is a contention of the opponents that the so called resolution was not passed through legal process and it is

not binding on society and its members. Opponent society admitted that the SGBM dated 24/11/2024 was called but at the time of meeting since there was no quorum, the committee was of opinion to postpone the meeting. However, one Mr. Ravi Kadam who is not even a member of the society forcibly pulled out the proceeding book from the hands of the secretary and himself wrote resolution. Though the opponents have taken the objection on the meeting dated 24/11/2024, but on grounds, which are mentioned in the say, they have not challenged the meeting dated 24/11/2024.

57. According to the disputants, the resolution nos. 1, 4 and 7 shown to have been passed in the SGBM dated 19/01/2025, which were out of agenda. In this regard I have perused the minutes of the SGM dated 19/01/2025, which is filed by the opponent along with list of document at Exh. 18 at Sr. no. 5.

58. As per the minutes of the said meeting the first subject of the meeting is that the last SGM dated 24 November stands null and void due to poor attendance. It appears that the society has revoked the resolutions passed in earlier general body meeting. The resolutions passed in the meeting dated 24/11/2024 are the resolutions of the general body meeting and as per bye-

law no. 109, if a resolution passed in the general meeting of the society is to be revoked the resolution to revoke it cannot be brought before the general meeting of the society until a period of six months has elapsed from the date of passing of the original resolution. It manifest that before the completion of six months the opponent society against the bye-law no. 109 has revoked the resolutions passed in the meeting dated 24/11/2024 and hence, on this ground, opponent society is required to be restrained from implementing the resolutions passed in the meeting dated 19/01/2025.

59. The resolution no. 4 is regarding to send the final reminder to maintenance defaulter. And in the meeting, the resolution no. 7 is appeared to be written as under:-

“The society unanimously and with majority approved the appointment of Orbit Space as builder for redevelopment of the society after getting consent letters from members. is regarding appointment of the Orbit Space as builder for redevelopment of the society after getting consent letters from members.”

60. While arguing on this point counsel for disputant argued that on 24/11/2024 the appointment of the M/s Orbit Space was cancelled and thereafter on dated

19/01/2025, the opponents created fabricated proceeding by showing resolutions, which were never passed.

61. I have perused the minutes of the meeting dated 19/01/2025 and it appears that nothing is mentioned in the minutes as to how many members were present to the said meeting, whether there was quorum of the meeting or not, who is the proposer and who is the seconder of the resolutions. The attendance of the members is not mentioned in the minute's book. It does not appear from the resolution that how many members are in favour of the resolutions and how many members are against the resolutions. Hence, it is difficult to understand that whether the resolutions are passed unanimously or not. As well as there is no signature of chairman and secretary on the proceeding book along with the stamp of the society. Prima facie, it creates doubt regarding calling the meeting and passing the resolutions therein. Therefore, on the above grounds, it is necessary to restrain the opponents from implementing and acting on the resolution nos. 1, 4 and 7.

62. It appears from the minutes of meeting of the society that the resolutions which have been shown to be passed in the SGBM dated 01/06/2024 and 19/01/2025

are not passed as per the law and bye-laws. And the resolutions, which have been passed in the SGBM dated 24/11/2024 are not challenged by the opponents. Hence, considering the discussion of earlier paras, it is necessary to restrain the opponents by an order of temporary injunction from implementing and acting the resolution no. 7 passed in the SGBM dated 01/06/2024 and resolution nos. 1, 4 and 7 passed in the SGBM dated 19/01/2025.

63. It is settled principle of law that the redevelopment cannot be stayed. While passing resolution no. 6 in the meeting dated 24/11/2024, it was resolved to conduct the fresh redevelopment process of the society. In the present application disputant requested mandatory temporary injunction to hold the redevelopment process as per the guidelines of State Government, but while discussing the earlier paras, I come to the conclusion that the guidelines of the State Government are not mandatory in nature but recommendatory in nature and therefore the sufficient compliance of the same is sufficient. Hence, opponent society cannot be directed to hold the redevelopment process as per the directives of the state government. As per my conscience, it will be justified to direct the opponent society to hold afresh

redevelopment process by calling the General Body Meeting and by calling the offers from developers. If the majority members are in favour of any specific builder, then it is required to be decided in the General Body Meeting as because the General Body is supreme body and resolutions of General Body which are passed properly and legally are binding on the members.

64. Considering the above discussion, disputants have partly prima facie case and party balance of convenience is also lies in favour disputants and if opponent society is not restrained from implementing the resolutions then irreparable loss would be caused to the disputants and members of the society. Hence, I answered issue nos. 1 to 3 partly affirmative and in answer to issue no. 4, I proceed to pass the following order.

ORDER

- 1) The application is partly allowed.
- 2) Pending hearing and final disposal of the present dispute, the opponents are herewith restrained by an order of temporary injunction from implementing and acting of resolution no. 7 passed in the SGBM dated 01/06/2024 and resolution nos. 1, 4 and 7 passed in the SGBM meeting dated 19/01/2025.

- 3) Pending hearing and final disposal of the present dispute the opponents are herewith restrained by an order of temporary injunction from acting against the resolution passed in the SGBM dated 24/11/2024.
- 4) Opponents are directed to hold the redevelopment process a fresh.
- 5) No order as to cost.

Date: 04/11/2025

(Smt. A. V. Jadhav)

Place: Pune

Judge,

Co-operative Court No. I, Pune.