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2026:BHC-OS:11280

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION PETITION (L) NO.11370 OF 2026

Kanakia Transparent Developers Pvt.
Ltd.

...Petitioner

V/s.

Shree Balwant Co-operative Housing
Society Ltd. & Ors.

...Respondents

Mr. Naushad Engineer, *Senior Advocate with Mr. Rishikesh Soni, Mr. Hemang Raythattha & Mr. Manav Chetwani i/b. M/s. RMG Law Associates for the Petitioner.*

Mr. Rubin Vakil *with Mr. Shlok Bodas, Mr. Sangram Parab and Ms. Sandhya Yadav i/b. M/s. Ashok Purohit and Co. for Respondent No.1.*

Mr. K.H. Holambe Patil *with Mr. K.K. Holambe Patil and Mr. Bhalchandra M. Kumbhar for Respondent Nos.2, 4 and 5.*

CORAM: SANDEEP V. MARNE, J.

DATED: 28 APRIL 2026.

P.C.:

1) This is a Petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 (**the Arbitration Act**) seeking interim measures before commencement of the arbitral proceedings. The disputes and differences between the parties have arisen out of Development Agreement dated 12 September 2024.



2) Heard Mr.Engineer, the learned Senior Advocate appearing for the Petitioner, Mr. Vakil, the learned counsel appearing for Respondent No.1 and Mr. Holambe Patil with Mr. K.K. Holambe Patil and Mr. Bhalchandra M. Kumbhar for Respondent Nos.2, 4 and 5.

3) The Society has total 179 members and except Respondent Nos.4 and 5, who own and occupy two flats, all other members have co-operated in the redevelopment process and have already vacated /ready to vacate the possession of their respective units. Respondent Nos.4 and 5 have refused to vacate possession of Flat Nos.23 and 24 in Building No.18A. The only reason put forth by Respondent Nos.4 and 5 for not vacating flat Nos.23 and 24 is that they desire allotment of a singular flat as Permanent Alternate Accommodation (**PAA**) in lieu of flat Nos.23 and 24. Under the Development Agreement, Respondent Nos.4 and 5 are being granted Flat Nos.705 and 706 each admeasuring 452 sq.ft. Since the two flats of 452 sq.ft. each (total area of 904 sq.ft.) are being allotted to Respondent Nos.4 and 5, they desire that Petitioner-Developer must allot them one single flat of 904 sq.ft. Other demand of Respondent Nos.4 and 5 is for allotment of exclusive parking since the area of flat to be allotted to them would be 904 sq.ft.

4) Mr. Engineer has expressed inability to meet either of the two demands raised by Respondent Nos.4 and 5. He submits that there are total 7 members in the Society, who are occupying two flats adjoining each other and Petitioner-Developer has granted to all of them two separate flats next to each other. It is submitted that Flat Nos.705 and 706 are situated next to each other and it is for Respondent Nos.4 and 5



to put to use such adjoining flats after receipt of occupation certificate. So far as the car parking space is concerned, it is submitted on behalf of the Petitioner that 51 car parking are being handed over to the Society for the purpose of being used by 179 members and it is for the Society to take decision about rotating the car parking spaces amongst its members. Mr. Engineer and Mr. Vakil submit that Respondent Nos.4 and 5 are not physically occupying the Flat Nos.23 and 24 and are residing elsewhere.

5) What is sought to be done in the present case is that Respondent Nos.4 and 5 are deliberately opposing the redevelopment process for the purpose of pressing their demands for allotment of single large flat and car parking space for the same. Thus, by opposing redevelopment process Respondent Nos.4 and 5 are seeking extra benefits for themselves as compared to other cooperating members. If this Court directs the Petitioner to meet the demands of Respondent Nos.4 and 5 it would tantamount to putting a premium on the actions of Respondent Nos.4 and 5, who have failed to act in terms of contractual stipulations of the Development Agreement. As per the Development Agreement Respondent Nos.4 and 5 are under obligation to vacate possession of their units within the period of 45 days of receipt of notice to vacate. In the present case, IoD was issued on 4 November 2025 and notice to vacate is issued on 21 November 2025. In such circumstances, this Court is unable to consider the demands of Respondent Nos.4 and 5. In fact, non-vacation of units by Respondent Nos.4 and 5 is delaying the entire redevelopment process. The other 177 flat occupiers have vacated possession of their flats. Petitioner-Developer is incurring liability to pay



rents to other 177 members. The building of the Society is not getting demolished on account of non-cooperation by Respondent Nos.4 and 5. In this circumstances, it is necessary to make interim measures to ensure that Respondent Nos.4 and 5 vacate the possession of Flat Nos.23 and 24 in Building No.18A for ensuring smooth redevelopment of the Society's building. This Court has repeatedly taken a view that individual members of a co-operative society are bound by the covenants of the Development Agreement executed by the Society with the Developer and their individual rights are subservient to the obligation of the Society under the Development Agreement. Mere existence of disputes by individual members relating to benefits flowing out of redevelopment process cannot be a ground for permitting such individual members to hold onto possession of their flats thereby indefinitely delaying redevelopment process.

6) In view of the above discussion, I proceed to pass the following order:-

(i) Pending the hearing and till making of the final Award, there shall be interim measures in favour of the Petitioner in following terms:

(a) Respondent Nos.4 and 5 shall vacate possession of Flat Nos.23 and 24 in Building No.18A on or before 10 May 2026.

(b) In the event Respondent Nos.4 and 5 refuse to handover possession of Flat Nos.23 and 24 by the



stipulated date, the Petitioner shall be entitled to secure the same with necessary police assistance. Local Police Station shall provide necessary police assistance to the Petitioner-Developer for recovery of possession of Flat Nos.23 and 24 from Respondent Nos.4 and 5.

(c) It would be open to Respondent Nos.4 and 5 to execute Permanent Alternate Accommodation Agreement (PAAA) with the Petitioner-Developer. Upon execution of PAAA all the benefits flowing out of redevelopment agreement shall be paid over by the Petitioner-Developer to Respondent Nos.4 and 5.

(d) In the event Respondent Nos.4 and 5 refuse to execute PAAA with the Petitioner, all benefits flowing out of redevelopment process shall be deposited with the Respondent-Society and the Society shall invest the same in interest bearing deposits. As and when Respondent Nos.4 and 5 execute PAAA with the Petitioner, the deposited amount alongwith accrued interest shall be paid over to Respondent Nos.4 and 5.

(e) The above arrangements shall be without prejudice to the rights and contentions of Respondent Nos.4 and 5 to be agitated before the appropriate court/authority.



- (ii) The interim measures shall come to an end if Petitioner fails to take steps for commencement of arbitral proceedings within a period of 90 days.
- 7) All rights and contentions of the parties on merits are expressly kept open.
- 8) With the above directions, Arbitration Petition is **disposed of**.

[SANDEEP V. MARNE, J.]

Note: This order is corrected vide order dated 6 May 2026.