



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

COMMERCIAL ARBITRATION PETITION (L) NO.12203 OF 2026

M/s. Ambrosial Developers

...Petitioner

V/S

Neelgagan CHS Ltd. & Ors.

...Respondents

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**Mr. Vishal Kanade** with Mr. Ketan A. Dhavle and Ms. Radhika Kulkarni  
*for the Petitioner.*

**Mr. Yahya Ghogari** with Urusah M.I. and Ms. Annie Cardoz i/b Dave &  
Co. *for Respondent No.1.*

**Mr. Anoshak Daver** with Mr. Sachin Masurkar, Mr. Burjis Doctor,  
Mr. Dhaval Sethia and Mr. Nimish Achrekar *for Respondent Nos.2 to 4.*

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**CORAM : SANDEEP V. MARNE, J.**

**DATE : 05 MAY 2026.**

**ORDER :**

1. This is an Application filed under Section 9 of the Arbitration and Conciliation Act, 1996 (**Arbitration Act**) seeking interim measures before commencement of the arbitral proceedings. The disputes and differences have arisen between the parties out of performance of the Development Agreement dated 3 February 2025. The Society apparently has 24 regular members and 3 nominal members. So far as the 24 regular members are concerned, they have co-operated in the redevelopment process and have vacated possession of their respective units. It appears that there are four stilt spaces on the ground floor of the building, meant for

parking of vehicles, which have been converted into enclosed premises and the same are being used by four occupiers for commercial purposes. These enclosed stilt premises are referred to as 'garages' by the parties and are so referred in the Order as well. One of the regular members of the first Respondent-Society occupied one such garage and he has cooperated in the redevelopment process and is willing to accept a car parking space in lieu of the covered garage occupied by him. However, so far as the balance three garages are concerned, the same are occupied by Respondent Nos.2, 3 and 4 who do not own or occupy any flat in the building of the Society. They thus merely occupy three garages on the ground floor of the building. It is the case of Petitioner and Respondent No.1 Society that on the strength of their occupation of garages, Respondent Nos.2, 3 and 4 are admitted by the Society as nominal members. Since Respondent Nos. 2, 3 and 4 are not granted Permanent Alternate Accommodations (PAA) for the use for commercial purposes/shops in the redeveloped building, they have refused to cooperate in the redevelopment process and are refusing to vacate possession of the respective garages. This has necessitated filing of the present Petition by the Petitioner-Developer for seeking interim measures for vacation of the garages by Respondent Nos.2 to 4 so as to ensure smooth progress of the redevelopment process.

2. I have heard Mr. Kanade, the learned counsel appearing for the Petitioner, Mr. Ghogari, the learned counsel appearing for Respondent No.1-Society and Mr. Daver, the learned counsel appearing for Respondent Nos.2 to 4.

3. Mr. Daver submits that the Society has sold the garages to Respondent Nos. 2 to 4 in the year 1997 since the Society was in need of funds for installation of lift in the building. He submits that the garages have been purchased by Respondent Nos.2 to 4 by paying market value prevalent in the year 1997. That for all practical purposes, the said garages are being used like shops by Respondent Nos.2 to 4 since the year 1997. He submits that if Respondent Nos.2 to 4 are allotted shop premises in the redeveloped building, they are ready and willing to cooperate in the redevelopment process by vacating the possession of their respective garages. He further submits that the first Respondent-Society does not consider Respondent Nos.2 to 4 as its members as the Society has not involved Respondent Nos.2 to 4 while taking any decisions in respect of the redevelopment process. That even under the Development Agreement, the Respondent Nos.2 to 4 are not treated as members of the Society. Since Respondent Nos.2 to 4 are not treated as members of the Society, Mr. Daver submits that the Petition is not maintainable in view of judgment of this Court in *Gulshan Townplanners LLP vs. Gulshan Co-operative Housing Society Limited*<sup>1</sup>. He further submits that Respondent Nos. 2 to 4 have not received any notice for vacating the garages in their occupation. He accordingly prays for dismissal of the Petition.

4. It appears that Respondent Nos.2 to 4 have filed their respective suits before City Civil Court at Bombay under Sections 34, 38 and 39 of the Specific Relief Act, 1963. They have sought declaration in their suits that they are entitled to be granted Permanent Alternate

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<sup>1</sup> Commercial Arbitration Petition (L) No.34078 of 2023, decided on 30 September 2024.

Accommodation/commercial enclosed garages free of cost from the Petitioner-Developer. It appears that in their respective suits, Respondent Nos.2 to 4 have sought injunction against the Petitioner-Developer and the Society securing possession of their respective garages. However, by orders dated 1 April 2026, the City Civil Court has rejected the prayer for ad-interim injunction in suits filed by Respondent Nos.2 to 4. Thus, the issues that are sought to be agitated before this Court in Section 9 Petition are already subject matter of pending suit before the City Civil Court.

5. It is well settled position that Court making interim measures under Section 9 of the Arbitration Act cannot go into the merits of disputes between occupants/members, Society and Developer. It is for members/occupiers to get their disputes resolved from appropriate Court of law. However, till proceedings filed by them are not adjudicated, they cannot put a spoke in the redevelopment process by refusing to vacate premises in their occupation.

6. So far as reliance by Mr. Daver on judgment of this Court in *Gulshan Townplanners LLP* (supra) is concerned, the judgment is rendered in the context of interim measures sought against a person who was not member of the Society. In the present case however, Respondent Nos. 2 to 4 have given emphatic admissions in their respective complaints that they are admitted as nominal members by the first Respondent-Society. It therefore cannot be contended that Respondent Nos.2 to 4 have absolutely no relationship with the Society.

In that view of the matter, Respondent Nos.2 to 4 would also be bound by the contractual covenants of the Development Agreement and therefore this Court would have jurisdiction to make interim measures against Respondent Nos.2 to 4. The judgment in *Gulshan Townplanners LLP* (supra) is thus clearly distinguished.

7. It is an admitted position that the garages in occupation of Respondent Nos.2 to 4 are not sanctioned as flats/shops in the sanctioned plans. Spaces meant for parking of vehicles are apparently converted into enclosed garages. At this juncture, it is not necessary to go into the issue of the exact entity who has undertaken such conversion. Suffice it to observe that the use of such enclosed parking spaces as commercial shops is clearly unauthorized. Therefore, the right of Respondent Nos.2 to 4 to secure PAAs in lieu of their garages is clearly questionable.

8. Division Bench of this Court had an occasion to deal with similar controversy involving non-cooperation by garage occupiers and their entitlement to receive PAAs in the redeveloped building. In *Ambit Urbanspace (Developer) vs. Potdar Apartments Co-operative Housing Society Limited and Ors.*<sup>2</sup> this Court has held that garage occupiers cannot insist on allotment of 'any space' in the redeveloped building nor can obstruct redevelopment of society's building. The judgment in *Ambit Urbanspace (Developer)* (supra) is followed by this Court in *JVPHS Estates LLP vs. Pratap Bhavan CHS Ltd. & Anr.*<sup>3</sup> It would be apposite to

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2 Commercial Arbitration Appeal (L) No.12585 of 2025, decided on 1 July 2025.

3 Arbitration Petition (L) No.38106 of 2025, decided on 29 January 2026.

reproduce findings recorded by this Court in paragraphs 5 to 13 of the judgment in *JVPHS Estates LLP* (supra):

“5) So far as the issue of entitlement of garage occupiers within the premises of a cooperative society in the redevelopment process is concerned, the same is no more *res integra*. The Division Bench of this Court in *Ambit Urbanspace vs. Poddar Apartment Co-operative Housing Society Limited and Ors.*<sup>4</sup> has held in paras-30 to 39 as under:

30) **Therefore, the issue for consideration is whether Respondent Nos.5 to 9 can put a spoke in the redevelopment process of the building of the first Respondent-Society by insisting that they would remain outside the redevelopment process by continuing to hold possession of the garages in their occupation.** There is no dispute to the position that though the four garages continue to exist, as of now, despite demolition of the entire building, they are located on such portion of the land, on which part of the new building would come up. Mere possibility of retention of the four garages despite demolition of the old building would not mean that the garages are not coming in the way of redevelopment process. Thus, retention of structures of the four garages would undoubtedly hamper the construction of the new building on the plot.

31) In *Shree Ahuja Properties Pvt. Ltd.* (supra), Single Judge of this Court has considered the issue as to whether an occupier of a garage, who has put the garage to commercial use, can oppose redevelopment process of Society's building. The developer, in whose favour the Society executed the Development Agreement, filed a suit in which Notice of Motion was taken out for appointment of Court Receiver in respect of the flats and garages occupied by Defendants who were not cooperating with the redevelopment process. So far as the garages were concerned, the issue before the learned Single Judge was whether the garage occupiers using the garages for commercial purpose could obstruct the redevelopment by refusing to vacate the garages. The Single Judge of this Court held in para36 as under :-

**36. In my view, garages will and must remain garages unless they are converted within the framework of the law for other uses. Their construction, existence was meant for a particular purpose. If it is not being put to use for that purpose and is intended to be used for some other purpose, a change of user has to be authorized. That authority is the Planning Authority. The Municipal Corporation in the case at hand has not issued any conversion order and in that behalf suffice it to say that**

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4 Commercial Arbitration Appeal (L) No. 12585 of 2025 decided on 1 July 2025

absent an order for conversion of the motor vehicle garage, merely on the basis of long and unauthorized use for commercial purposes, cannot justify continuance of such use and a demand for being provided with alternate space in a structure that does not exist today and for commercial use which is presently unauthorized. The case of defendant nos.5 to 7 cannot therefore succeed. They have been offered alternate residential space to the extent of their entitlement and they cannot insist on being allotted commercial space in the new structure in which no provision is made for such space. Any such permanent alternate space would necessarily have to flow from two factors; firstly, the existence of commercial space and with the consent of the society in a new building. Both these aspects are not to be found in the case at hand. Thus, in my view, the attempt of the defendant nos.5 to 7 to secure commercial space in the new building to be constructed by obstructing redevelopment through their refusal to vacate the premises cannot succeed.

*(emphasis added)*

The learned Single Judge, while deciding *Shree Ahuja Properties Pvt. Ltd.*, has relied upon ratio of the judgment of the Division Bench in *Girish Mulchand Mehta* (supra)

32) The judgment of the Single Judge in *Shree Ahuja Properties Pvt. Ltd.* was carried in appeal before the Division Bench by one of the garage occupiers. The father of the said garage occupier was initially a owner of a flat in the building and also a member of the Society and later purchased Garage No.12. While the flat was sold, only the said garage was retained and put to commercial use. While challenging the judgment of the learned Single Judge before the Appeal Court, the Appellant-garage occupier insisted that since the garage was being put to commercial use by securing several licenses without objection by any party, including the Planning Authority, he must be allotted commercial premises in lieu of the garage in the new building to be constructed by the developer. The Division Bench in *Rajesh Mishra* (supra) formulated following two questions for consideration in para-17 of the judgment and set out the rival positions of the parties in para-18 as under :-

17. The two issues which arise for our consideration in the present Appeal are as follows :

ISSUE-1

(i) Are the Appellants entitled to claim commercial premises in lieu of the suit Garage in the proposed new building on the suit property?

### ISSUE-2

(ii) Was the learned Single Judge justified in directing the Court Receiver to take over possession of the suit Garage for the purposes of demolition of the same ?

18. With respect to the first issue which we have framed above, as we have noted, the Appellants contend that the suit Garage is an authorised commercial unit, whereas the developer and the Trilok Society contend that the same is merely a car parking space which has been illegally converted into a commercial unit by the Appellants and their family members.

33) The Division Bench in *Rajesh Mishra* considered the definition of the term 'garage' in Regulation 2(68) of the DCPR 2034 and upheld the findings recorded by the learned Single Judge by holding in paras-21 and 22 as under :-

21. **In this view of the matter, we find that there is nothing placed on record by the Appellants which would assist us in concluding that they are authorised to use the suit Garage as commercial premises.** On the contrary, the sanctioned plans of the garages on the suit property, the authenticity of which has been confirmed by the MCGM, would prima facie show that the same are constructed as garages. Regulation 2(68) of the Development Control and Promotion Regulations, 2034 for Greater Mumbai define 'garage' as follows :

"Garage" means a place within a project having a roof and walls on three sides for parking any vehicle, but does not include an unenclosed or uncovered parking space such as open parking areas."

**A garage is clearly meant to be a space meant to park vehicles. That is how it is understood in ordinary parlance, as well as under the provisions of the development control regulations. In the face of the same, we do not think that the Appellants can today claim as a matter of right that the suit Garage under their occupation is an authorised commercial unit.**

22. At this stage we may note that it was also the stand of the MCGM before the learned Single Judge that the suit Garage is only a car parking space and not a commercial unit. The MCGM has taken action in that regard and has issued a notice and an order under section 351 of the MMC Act, holding the user of the suit Garage as a commercial unit to be unauthorised. These are of course the subject matter of adjudication in L. C. Suit No. 1266 of 2014 filed by the Appellants before the Bombay City Civil Court at Dindoshi.

34) In the present case, the learned Single Judge has distinguished the judgments in ***Shree Ahuja Properties Pvt. Ltd.*** and ***Rajesh Mishra*** by observing that the developer in that case had agreed to provide residential premises to the garage occupants, which is not the agreement in the present case. In our view, the core issue before the Single Judge and Division Bench was about permissibility for a garage occupier to obstruct the redevelopment process and entitlement of a developer to seek interim measures against such garage occupier in proceedings under Section 9 of the Act. The case did not revolve around the issue as to whether the garage occupier's entitlement to receive residential or commercial premises. Allotment of residential premises to the garage occupier was just an additional factor in that case. The core issue however was about grant of interim measures in Section 9 proceedings against a garage occupier who was not Society's member and not a signatory to the Development Agreement. In our view therefore, mere existence of agreement to provide residential premises to the garage occupier in ***Shree Ahuja Properties Pvt. Ltd.*** and ***Rajesh Mishra*** cannot be a reason to depart from the findings recorded in the said judgment that garages must remain garages, unless they are converted within the framework of law for residential/commercial uses. In ***Shree Ahuja Properties Pvt. Ltd.*** the learned Single Judge has held that '*....merely on the basis of long and unauthorized use for commercial purposes, cannot justify continuance of such use and a demand for being provided with alternate space in a structure that does not exist today and for commercial use which is presently unauthorized.*' Thus, the issue decided by the learned Single Judge is about right to receive 'alternate premises' in lieu of a garage. The insistence of the garage occupier in that case, who was allotted residential premises, for a commercial shop, was just an additional factor in that case, and we find it difficult to ignore the core ratio in the judgment about right of a garage occupier to have 'any alternate premises' allotted in lieu of a garage unauthorisedly put to commercial use. These findings are upheld by the Division Bench and would bind us. We are therefore in agreement with the views expressed by the learned Single Judge in ***Shree Ahuja Properties Pvt. Ltd.*** as confirmed by the Division Bench in ***Rajesh Mishra*** that an occupier of a garage, who has put the garage to commercial use, cannot insist for grant of alternate space in redeveloped building and more importantly, cannot obstruct redevelopment process by refusing to handover possession of garages in their occupation. Also of relevance is the fact that the garage occupier in that case had purchased the garage and was claiming ownership in the same, whereas in the present case Respondent No. 5 to 8 are not even the owners of the garages and merely claim tenancy rights therein. If an owner of a garage, put the garage to commercial use, cannot to obstruct redevelopment of Society's building, we see no reason how a person claiming mere

tenancy rights in a garage can be put on a higher pedestal and can be permitted to cause obstruction to redevelopment, especially when the owner of the garage is cooperating with redevelopment process.

35) The issue of nature of occupation of garage occupier and rights flowing out of such occupation has been dealt with by the Division Bench of this Court in *Kankubai Harakhlal Jain* (supra). In that case, the subject structure was a garage from which the business of jewellery was being conducted. It was therefore contended that though the premises were colloquially known as a garage but were essentially a commercial structure. Reliance was placed on categorisation of premises in the municipal assessment as 'non-residential'. When the garage occupier raised a claim for allotment of commercial structure in lieu of the garage in his occupation and petitioned this Court, the Division Bench observed in para-4 of the order as under :-

**4. As far as the structure goes, once it is styled as a garage, then, the user thereof cannot determine the entitlement of the petitioners. The petitioners have failed to establish any legal right in seeking an alternate commercial structure against their occupancy of a garage. The term "garage" has a specific legal connotation. In the Development Control Regulations, it is either understood as an area or premises for repairing of vehicles or parking of vehicles by enclosing the same. It is, therefore, understood as a parking space enclosed or unenclosed, covered or open area. In these circumstances, we do not think that any relief can be granted to the petitioners once they have no legal right either to occupy a garage and thereafter use it for commercial purpose and based on such a user in the old building, claim alternate commercial area on a permanent basis. Neither any law, rule, regulation or scheme has been shown to us which guarantees such entitlement.**

*(emphasis added)*

36) The findings recorded by the Division Bench in *Kankubai Harakhlal Jain* have been taken note of by the Division Bench while deciding *Rajesh Mishra* (supra).

37) In *M/s. Calvin Properties and Housing* (supra), the learned Single Judge of this Court has decided the petition under Section 9 of the Act by making interim measures of appointment of Court Receiver inter alia in respect of a garage and handing it over for completing the process of redevelopment. The Single Judge relied upon judgment of the Division Bench in *Girish Mulchand Mehta* and held that interim measures under Section 9 of the Act can be made even against a party

who is not a signatory to the arbitration agreement. It has held in para-28 as under :-

28. On perusal of the prayers in the arbitration petition, it is clear that petitioner seeks appointment of Court Receiver and mandatory injunction against respondent Nos.2 to 6C in respect of the premises in their occupation. It is thus clear beyond reasonable doubt that any order if passed in this petition as prayed, respondent Nos.2 to 6C would be affected. Such parties are thus rightly impleaded as parties to the present petition and are given an opportunity of being heard and to oppose this petition. Without going into the larger issue whether respondent No.2 to 6C are party to the arbitration agreement or not, not being signatories to the development agreement, in view of the fact that each of these respondents are claiming through respondent No.1 society in respect of the properties of the society in which these members have subservient rights and in view of the fact that any orders that would be passed in these proceedings would seriously affect the rights of the respondent Nos.2 to 6C, such interim measure can be granted by this Court under Section 9 of Arbitration Act against such parties even if they are not parties to the arbitration agreement. In my view there is no merit in the submission made by the learned counsel appearing for respondent Nos.2 to 5 and reliance placed by the learned counsel appearing for the respondents on the Judgment of Supreme Court in case of *Indowind Energy* (supra) would be thus of no assistance to the respondents.

38) Going further, the learned Single Judge in *M/s. Calvin Properties and Housing*, has considered the issue as to whether a garage occupier can be granted compensation in the redevelopment process and held that inter se disputes between the garage occupier with the developer or Society needed to be decided in appropriate proceedings and that the Court exercising jurisdiction under Section 9 of the Act cannot adjudicate upon merits of all individual claims of members of the Society. This Court held in para-35 as under :-

35. On perusal of the record, it appears that the grievance made by respondent Nos.2 to 6C is regarding the area offered by the petitioner to respondent Nos.2 to 6C in lieu of existing area in their occupation. The dispute has been raised also in respect of the compensation in lieu of the garage occupied by one of the member. In support of this submission, respondent Nos.2 to 5 placed reliance on the Judgment of Supreme Court in case of *Nahalchand Laloochand Pvt. Ltd. Vs. Panchali Co-operative*

Housing Society Ltd. (supra) on the issue whether flat includes a garage or not. In my view, 31 members of the society not having disputed the provisions of development agreement and the society not opposing the reliefs prayed by the petitioner, dispute if any interse between respondent Nos.2 to 6C with the developer or with the society will have to be decided finally in appropriate proceedings. During the course of argument upon making enquiry from the learned counsel appearing for respondent No.2 to 5 as to whether they were agreeable to appear before the arbitral tribunal and make their claim if any in arbitration proceedings against the developer or the society, respondent Nos.2 to 5 did not agree to appear before arbitral tribunal and to seek redressal of their grievance against the developer or the society. In my view, in these proceedings under Section 9 of Arbitration and Conciliation Act, this Court cannot adjudicate upon the merits of individual claims of the respondents members of the society and the same can be adjudicated only in appropriate proceedings. In these proceedings only interim measures can be granted by this Court. This Court is thus not adjudicating on the issue raised by respondent Nos.2 to 6C whether they are entitled to any larger area as claimed. In view of the fact that more than 3/4th majority of members have passed resolution and have agreed to appoint the petitioner as developer on the terms and conditions agreed upon and recorded in development agreement, in my view, respondent Nos.2 to 6C cannot stop the redevelopment project.

39) In our view, therefore the principles that can be deduced on combined reading of the judgments in *Girish Mulchand Mehta, Kankubai Harakhlal Jain, Shree Ahuja Properties Pvt. Ltd., Rajesh Mishra* and *M/s. Calvin Properties and Housing* are as under:-

(i) An occupier of a garage, who has put the garage to commercial use, cannot insist on allotment of any space in the redeveloped building.

(ii) Occupier of such a garage cannot obstruct the redevelopment process of the building and such obstruction can be removed by the Court by appointing Court Receiver with power of taking over possession of garage and handing it over to the Developer for demolition and construction of the new building.

(iii) The Court exercising power under Section 9 of the Act can make interim measures against a person who is not party to the Development Agreement by directing him to handover

possession of his premises for completion of redevelopment process.

(iv) Existence of any dispute *inter se* between members of Society or between a member and his inductee would not deter the Court exercising power under Section 9 of the Act from ensuring that the redevelopment process continues unhindered despite existence of such dispute.

6) Thus, in ***Ambit Urbanspace***, the principle of law is crystallised that an occupier of a garage, who puts the garage to commercial use, cannot be insistent on allotment of 'any space' in the redeveloped building. Garage ultimately remains a place for parking of vehicles. The parking space in a building may be of different types such as an enclosed independent structure, stilt structure with a shutter, open stilt parking, open to sky parking spaces, mechanized parking space, etc. Regardless of its nature, parking space ultimately is a place for parking of vehicles and does not get elevated to a residential flat or a shop depending on the use for which the same is put to. In the present case, merely because the garages are independent enclosed structures, which Respondent Nos. 2 to 5 are using for commercial purposes, the same would not be a flat or shop for grant of any space in the new building. Therefore, following the ratio of the judgment in ***Ambit Urbanspace***, Respondent Nos.2 to 5 would not be entitled to claim 'any space' in the redeveloped building on the strength of occupation of garage spaces by them.

7) Like in ***Ambit Urbanspace*** Respondent Nos. 2 to 5 have not been granted separate membership by the Society in respect of occupation of garages. They have not got the garages declared as 'flats' within the meaning of Maharashtra Ownership of Flats (Regulation of the Promotion of Sale, Management and Transfer) Act 1963 or under the Maharashtra Cooperative Societies Act, 1960. Thus, the garages in occupation of Respondent Nos. 2 to 5 are nothing but parking spaces allotted in respect of Flat Nos. 3 and 4. Their membership in the society is referable to Flat Nos. 3 and 4 and the garages in their occupation are nothing but an amenity attached to those flats.

8) Mr. Thorat attempts to distinguish the judgment of the Division Bench in ***Ambit Urbanspace*** by contending that unlike ordinary garages for car parking, the garages in occupation of Respondent nos.2 and 3 are specifically sanctioned by the Municipal Corporation while issuing the development permission. He invites my attention to the sanctioned plan which shows two garages on the land of the society which are sanctioned as 'PROP. OPEN GARAGE NO.1' and 'PROP. OPEN GARAGE NO.2'. In my view, merely because a garage is sanctioned by the Municipal Corporation, the same does not mean that it ceases to be a

space for parking of the vehicles. Although the garage is covered, it still has to be used only for the purpose of parking of vehicles. The only additional advantage that such garage occupier has is protection of his vehicle in the form of enclosed space. Merely because a garage is sanctioned by the planning authority, it does not mean that the same can be put to any other use than parking of the vehicles. In that view of the matter, the principles enunciated by the Division Bench in *Ambit Urbanspace* would continue to apply in the present case also. In *Ambit Urbanspace*, this Court has taken note of the judgment of another Division Bench in *Kankubai Harakhlal Jain and Ors. vs. Municipal Corporation of Greater Mumbai and Ors.*<sup>5</sup> in which the Division Bench has given a specific connotation to the phrase 'garage'. The Division Bench held that under the Development Control Regulations, garage is understood as an area and premises for repairing of vehicles or parking of vehicles by enclosing the same. A garage is a mere parking space enclosed or unenclosed, covered or open area.

9) Therefore, mere sanction of garage space by the Municipal Corporation in the development permission would not elevate the garage to a shop or a residential unit. In my view therefore, Respondent Nos.2 to 5 cannot stall the redevelopment process on the ground that they are not being granted any benefit in respect of the garage spaces occupied by them. So far as Flat Nos.3 and 4 (members) are concerned, the Petitioner-Developers have already granted all benefits to them in respect of their flats, which are as under :

- a) Additional Area: 30% additional RERA Carpet Area.
- b) Car Parking: One mechanical Car Parking, each member.
- c) Monthly displacement compensation: Rs. 65 (Sixty Five) per month on existing carpet area of the Member, with escalation of 10% after every twelve months.
- d) Relocation cost: Rs. 18,000/- (Eighteen Thousand) to each member {to and fro}
- e) Displacement Hardship: 1 Month Displacement compensation as Displacement Hardship to each member
- f) Hardship Allowance: The Developer shall pay each member an amount of Rs. 810/- per sq. Ft. of their existing carpet area, which shall be paid in following manner:-
  - (i) 50% on vacating of existing premises.
  - (ii) 25% on casting of Plinth Slab.
  - (iii) 25% on possession of new premises

10) I am also not impressed by the submission of Mr. Thorat that since FSI is consumed for construction of garages in the existing building, Respondent nos.2 to 5 must receive constructed garages in

the redeveloped building. In my view, mere utilisation of FSI for construction of garages in the existing building would still not change the nature and use of such structures and the same would continue to be a place for parking and repairing of vehicles. In *Ambit Urbanspace*, the Division Bench of this Court has recognised the principle that for occupation of the spaces meant for parking/repairing of vehicles, the occupier is not entitled to 'any space' in the redeveloped building. This ratio would apply even to the present case and mere utilization of FSI for construction of garage structures would not bring about any change for applicability of ratio of the judgment in *Ambit Urbanspace*.

11) Respondent Nos.2 to 5 can also not insist that the developer must construct covered garages in the society's land while reconstructing the building. Thus, what they expect is that they must receive similar independent covered garages in the new building. However, once garage is not held to be a flat, unit or shop, and is held to be a mere amenity enjoyable for membership in respect of another flat, there is no question of the garage occupier insisting that the same amenity must be provided in exactly same manner in the new building. Upon redevelopment of a building, the building specifications, location of existing units, amenities, etc. change on account of open space restrictions, liability to provide for additional area, etc. and it is a matter of commercial bargain for the society to choose the terms of development accordingly. It cannot be insisted by individual member that a particular amenity which he was enjoying in old building must necessarily be provided in the new building as well. Such insistence would completely upset the development plans and pose challenges for construction of the new building. Also, once it is held that 'nothing' can be granted to the occupier of a garage on the strength of occupation thereof, there is no question of mandating the developer to construct covered garages in the redeveloped building.

12) I am therefore of the view that a *prima facie* case is made out by the Petitioners for grant of interim measures under Section 9 of the Arbitration Act. However, upon a query by the Court and by way of indulgence, the Petitioners have shown willingness to provide one extra parking space each in respect of Flat Nos.3 and 4 to Respondent Nos.2 to 5 in the redeveloped building (over and above the entitlement of one mechanical car parking as provided under the Development Agreement). The Petitioner-Developers are thus willing to grant one additional car parking space each in respect of Flat Nos.3 and 4. In my view, this would balance the equities between the parties.

13) It is seen that out of the 14 members, occupiers of only two flats who occupy the two garage spaces, are putting a spoke in the redevelopment process. It is well established principle that obligations

of society under the Development Agreement are binding even to non-signatories/dissenting members of the society. In the present case, there appears to be some dispute about whether Respondent Nos.2 to 5 are signatories to the Development Agreement. It appears that they signed the Development Agreement, but did not present themselves for registration thereof. In my view, it is not necessary to delve deeper into this aspect. Even if it is assumed that Respondent Nos.2 to 5 are not signatories to the Development Agreement, the contractual covenants therein would continue to bind them as repeatedly held by this Court in *Ambit Urbanspace* and in *Pranav Constructions Ltd Vs. Priyadarshini CHS*<sup>6</sup>.

9. Thus, the issue involved in the present Petition is squarely covered by the judgments of this Court in *Ambit Urbanspace (Developer)* and *JVPHS Estates LLP* (supra). Respondent Nos.2 to 4 thus cannot oppose redevelopment of the Society's building and on that count refuse to vacate their garages. The Petitioner-Developer has already given two options to Respondent Nos.2 to 4. They can either monetize occupancy rights in respect of the garages or secure parking spaces in the redeveloped building. However, none of the offers are accepted by Respondent Nos.2 to 4 who continue to insist that they must receive PAAs in lieu of the garages occupied by them. In my view for balancing the equities, it would be appropriate to direct the Petitioner to deposit an amount of Rs.20,00,000/- each in respect of the garages with the first Respondent-Society. As and when Respondent Nos.2 to 4 are in a position to secure appropriate declarations in substantive proceedings, the amount deposited in the Society can be used for the purpose of satisfying the orders, if passed in their favour. This would also balance out the equities between the parties. However, till disputes of Respondent Nos.2 to 4 are adjudicated, the redevelopment process

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<sup>6</sup> Commercial Arbitration Appeal (L) No. 20093 of 2023 decided on 14 July 2025

cannot be kept in a limbo. It is necessary to preserve the subject matter of arbitration, which in the present case is redevelopment of the Society's building. The other Society members have already vacated possession of their respective flats. Petitioner has incurred the liability to pay transit rent to them. In such circumstances if the entire building is not demolished and reconstruction of the building is delayed, the entire project may come in danger. In that view of the matter, it would be appropriate to direct Respondent Nos.2 to 4 to vacate possession of their respective units during pendency of the arbitral proceedings.

10. At this stage, Mr. Daver, on instructions, has submitted that instead of agitating their grievances in pending suits, Respondent Nos.2 to 4 would like to have their disputes adjudicated in the arbitration. Though Respondent Nos.2 to 4 are not signatories to the Development Agreement. Mr. Kanade, on instructions, has fairly made a statement that Petitioner has no objection for referring the disputes of Respondent Nos.2 to 4 to arbitration. Mr. Ghogari, the learned counsel appearing for Respondent-Society has also consented for such arbitration. Petitioner and Respondent No. 1 society and Respondent Nos. 2 to 4 have consented for appointment of a sole Arbitrator for adjudication of disputes between Petitioner, first Respondent-Society and Respondent Nos.2 to 4. Since the disputes are being referred to Arbitration, Mr. Daver, on instructions, fairly submits that Respondent Nos.2 to 4 shall withdraw the pending suits from the City Civil Court.

11. I accordingly proceed to pass the following order:

**A. Interim Measures:**

- (i) Pending arbitration and till passing of final Award, Respondent Nos.2 to 4 shall handover possession of their respective garages on or before 30 May 2026.
- (ii) Petitioner shall deposit an amount of Rs. 20,00,000/- with the first Respondent-Society in respect of each of the garages occupied by Respondent Nos.2 to 4 and the Society shall invest the same in interest bearing deposits. The deposited amount shall be used to satisfy the Award, if passed in favour of Respondent Nos.2 to 4 in the arbitral proceedings.
- (iii) If Respondent Nos.2 to 4 refuse or fail to vacate possession of their garages by 30 May 2026, Petitioner and/or the Respondent No.1-Society shall be entitled to recover the same with the necessary police assistance. Local police station is directed to provide necessary police assistance for the Petitioner for vacation of premises by Respondent Nos.2 to 4.

**B. Appointment of Arbitrator:**

- (i) Ms. Shreya Parikh, an Advocate of this Court is appointed as sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of the Development Agreement referred to above. The contact details of the learned sole Arbitrator are as under:

Office Address:- 908, Arcadia, NCPA Marg,  
Nariman Point, Mumbai – 400 021.  
Mobile No. 97735 96086.  
E-mail ID:- parikh.shreya@gmail.com

- (ii) A copy of this order be communicated to the learned sole Arbitrator by the Advocate for the Petitioner within a period of one week from the date of uploading of this order. The Petitioner shall provide the contact and communication particulars of the parties to the Arbitral Tribunal alongwith a copy of this order.
- (iii) The learned sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12 (1) of the Arbitration Act to the parties within a period of two weeks from receipt of a copy of this order.
- (iv) The parties shall appear before the learned sole Arbitrator on such date and at such place as indicated by her, to obtain appropriate direction with regard to conduct of the arbitration including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings etc.
- (v) The learned sole Arbitrator shall be entitled to the fees prescribed under the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018 and the arbitral costs and fees of the learned sole Arbitrator shall be borne by the parties in

equal portion and shall be subject to the final Award that may be passed by the Tribunal.

- (vi) The learned Arbitrator shall first attempt to resolve the disputes amicably through mediation before issuing directions for filing of pleadings. Since the Petitioner has shown willingness to permit Respondent Nos. 2 to 4 to monetize their rights in respect of the garages, they shall consider the offer for amicable settlement of disputes. Parties consent that the Arbitrator can perform dual roles of mediator and arbitrator. If the disputes are settled through mediation, parties shall bear the fees of mediation equally.
- (vii) All rights and contentions of Respondent Nos.2 to 4 are expressly kept open and they are free to agitate their grievances in the arbitration.

12. With the above directions, the Commercial Arbitration Petition is **disposed of**. There shall be no order as to costs.

**(SANDEEP V. MARNE, J.)**