



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
COMMERCIAL ARBITRATION PETITION (L.) NO. 36533 OF 2025

WITH  
COMMERCIAL ARBITRATION APPLICATION (L.) NO. 37280 OF 2025

ISON Builders LLP

..... PETITIONER/  
APPLICANT

: VERSUS :

Om Sai Ram Cooperative Housing  
Society (Proposed) & Ors.

.... RESPONDENTS

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**Mr. Karl Tamboly** with Mr. Rohan Savant, Mr. Chirag Sarawagi and Mr. Yash Sinha  
i/by. Tushar Goradia, for the Petitioner-Applicant.

**Mr. Prateek Seksaria, Senior Advocate** with Mr. Rohit Agarwal, Mr. Nishant  
Chothani and Mr. Yash S. Jain, for Respondent Nos.3 to 22.

**Ms. Pooja Yadav** i/b. Ms. Komal Punjabi, for MCGM-Respondent No.2.

Mr. Santosh Nachnekar, AO, (I/C) Estate Present.

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CORAM : SANDEEP V. MARNE, J.

JUDGMENT RESD. ON : 13 JANUARY 2026.

JUDGMENT PRON. ON : 23 JANUARY 2026.

JUDGMENT:

1) Petitioner-Developer has filed Commercial Arbitration Petition (L)  
No. 36533 of 2025 seeking interim measures under Sections 9 of the  
Arbitration and Conciliation Act, 1996 (**Arbitration Act**) seeking stay on  
termination notice dated 25 October 2025 by which the First Respondent-

Society has terminated the Development Agreement executed by it in favour of the Petitioner. Petitioner has further sought injunction against Respondent No.1-Society and against its members (Respondent Nos.3 to 22) from appointing any other developer to develop the property.

**2)** Commercial Arbitration Application (L.) No. 37280 of 2025 is filed under Section 11 of the Arbitration Act for appointment of Arbitrator for adjudication of disputes and differences between the Petitioner and First Respondent-Society.

**3)** The land bearing C.S.No. 109 (Part) situated at D/8, Gandhi Nagar Dainik Shivneri Junction and Majrekar Lane, Lower Parel (West) Mumbai is owned by Municipal Corporation of Greater Mumbai (**MCGM**). There are 28 tenanted structures on the said land, allottees of which are municipal tenants. Respondent Nos. 3 to 22 claim to be the municipal tenants and have formed Respondent No.1 as the proposed cooperative housing society for the purpose of carrying out development on the land. In the Annual General Meeting held on 29 March 2014, the society resolved to appoint Petitioner as the developer for developing the property. A Development Agreement dated 22 December 2014 was executed between the Petitioner and Respondent No.1-proposed Society. The Power of Attorney dated 30 December 2014 was also executed in favour of the partners of the Petitioner-Firm.

**4)** The Petitioner claims to have submitted redevelopment proposal under Regulation No. 33(7) of Development Control Regulations, 1991 (**DCR 1991**). Petitioner relies on Architect's letter dated 20 June 2015. A circular was issued on 10 October 2016 by MCGM providing for guidelines for redevelopment of municipal tenanted properties under the modified Regulation 33(7) of DCR 1991. The revised guidelines were issued on 17 November 2020. Under both the guidelines various steps are prescribed for processing the redevelopment proposal which includes the process of tenancy verification/consent verification and issuance of Annexure-2. According to the Petitioner, a technical scrutiny in respect of

the redevelopment proposal was conducted in July and August 2018. Petitioner claims that due to Covid-19 pandemic, the proposal could not progress. It is claimed that 28 sub-tenants were converted into principal tenants by the Municipal Corporation. On 31 March 2021, the Municipal Commissioner wrote to the Petitioner calling it upon to provide its financial capacity. By further letter dated 17 November 2021, Petitioner was once again called upon to demonstrate its financial capacity. On account of Petitioner's failure to do so, the redevelopment proposal was recorded as filed by the Municipal Corporation vide letter dated 23 May 2022. The society and the Petitioner wrote to the Municipal Corporation whereafter the proposal was revived. Petitioner claims to have submitted the requisite documents. By notice dated 29 March 2023, consent verification of 28 tenants was proposed to be conducted by MCGM. The consent verification of 28 tenants was held on 6 April 2023. A biometric report was prepared on 6 April 2023. According to the Petitioner, out of the 28 tenants, 3 tenants fell under residential category, 17 tenants in commercial category and 8 tenants fell under residential-cum-commercial category.

5) On 22 May 2024, a show cause notice was issued to the Petitioner alleging delay in redevelopment. The Society issued reply dated 3 June 2024 supporting the Petitioner. Petitioner also replied to the show cause notice. In the meantime, the Petitioner and Society entered into correspondence for issuance of Annexure -2.

6) In the above background, Intimation of Disapproval (IOD) was issued to Kamsai Nerolac Paints Ltd./Runwal Group on 10 Sep 2024 in respect of the adjoining property. Under that IOD, the subject land was shown as encroachment on MCGM plot and the same was designated as entry and exit point for the adjoining plot. Since MCGM had not issued Annexure-2, Petitioner filed Writ Petition NO. 3457 of 2025 in this Court, which was disposed of on 23 September 2025 expecting MCGM to take a

decision and granting liberty to the Petitioner to exercise appropriate remedy in the event of being aggrieved by MCGM's decision.

7) On 3 October 2025, the society forwarded letter to MCGM recording that it had adopted a resolution to terminate the Development Agreement and Power of Attorney in Special General Body Meeting held on 24 September 2025. On 25 October 2025, Society issued termination letter to the Petitioner terminating the Development Agreement and Power of Attorney. The society simultaneously appointed Aethon Developers Pvt. Ltd as a new Developer. A hearing was conducted before the Municipal Corporation on 28 October 2025. However, Municipal Corporation passed order dated 30 October 2025 refusing to issue NOC in respect of the redevelopment proposal of the Petitioner on account of termination of the Development Agreement.

8) In the above background, Petitioner has filed Commercial Arbitration Petition (L) No. 36533 of 2025 under Section 9 of the Arbitration Act seeking interim measures in terms of following prayers :-

a) Pending the hearing and final disposal of the Arbitration proceedings and enforcement of the Award, this Hon'ble Court be pleased to pass appropriate orders/directions to stay the effect, implementation and operation of the purported Termination Notice dated 25th October 2025 being Exhibit "BBB" hereto;

(b) Pending the hearing and final disposal of the Arbitration proceedings and enforcement of the Award, this Hon'ble Court be pleased to pass appropriate orders/directions of injunction restraining Respondent No.1. and and Respondent Nos 3 to 22 either by themselves or by any officer, employee, agent and/or person claiming through him or under him from acting upon or implementing or taking any steps in furtherance of the purported termination Notice dated 25th October 2025 being Exhibit the "BBB" hereto;

(c) Pending the hearing and final disposal of the arbitration proceedings and the enforcement of the Award, this Hon'ble Court be pleased to pass appropriate orders/directions of injunction restraining Respondent No.1, and Respondent Nos. 3 to 28 either by themselves or by any officers, employees, agents and/or persons claiming through him or under them from dispossessing and/or M creating third party rights, title and/or interest of whatsoever in the nature in connection with the Property;

(d) Pending the hearing and final disposal of the Arbitration proceedings and enforcement of the Award, this Hon'ble Court be pleased to pass appropriate orders/directions of injunction restraining Respondent No.1 and Respondent Nos 3 to 28 either by themselves or by any officers,

employees, agents and/or persons claiming through him or under them from entering into any agreement and/or writing of whatsoever nature appointing any third person and/or entity as the Developer of the Property;

(e) Pending the hearing and final disposal of the Arbitration proceedings and enforcement of the Award, this Hon'ble Court be pleased to pass appropriate orders/directions against Respondent No.1 and Respondent Nos. 3 to 28 Respondent No. 1 to disclose any third party right, title and/or interest created by Respondent No.1 and Respondent Nos 3 to 28 in connection with the subject property and in the event any third party right, title and/or interest is created including any development rights then to stay the further effect, operation or implementation of the same;

(f) Ad-interim reliefs in terms of prayer clause (a) to (e) above;

(g) for costs; and

(h) for such other and further reliefs as this Hon'ble Court deems fit and proper in the facts and circumstances of the case.

9) On 19 November 2025, Petitioner has filed Commercial Arbitration Application (L) No. 37280 of 2025 under Section 11 of the Arbitration Act seeking appointment of Arbitrator in pursuance of arbitration clause in the Development Agreement dated 22 December 2014 and Power of Attorney dated 30 December 2014. Both the Petitions are taken up analogous hearing.

10) Mr. Tamboly, the learned counsel appearing for the Petitioner submits that the Respondent-Society has erroneously and malafidely terminated the Development Agreement without any justifiable cause. That the ground of termination is delay between execution of Development Agreement and termination notice. That the delay is an event-based contention and mere lapse of time does not constitute delay. That there is no delay as the initial period was spent in inventory and tenancy verification and the same was attributable to MCGM and Respondent Nos.3 to 22. That post completion of inventory and tenancy verification, there were further delays by MCGM in finalizing Annexure-2 and granting approvals to the Petitioner.

11) According to Mr. Tamboly as per MCGM Circulars dated 10 October 2016 and 17 November 2020, the prescribed procedure for

redevelopment of MCGM tenanted properties involves completion of two vital steps before issuance of Annexure-2. Those steps involve inventory and tenancy verification. In the present case, there was error at the end of MCGM's end where by 8 tenants were recorded as 'non-residential' in place of 'non-residential-cum-residential tenants'. That this error on the part of MCGM is an admitted position. That MCGM spent substantial time to remedy these issues. That Society had also accused MCGM of delay while responding to show cause notice dated 22 May 2024. That therefore time spent upto 3 June 2024 is clearly due to fault on the part of MCGM.

12) Mr. Tamboly would further submit that the second vital step as per Circulars dated 10 October 2016 and 17 November 2020 is verification of consents of 51 % principal tenants. He would submit that it was the obligation of Respondent Nos.3 to 22 to have their names recorded as the principal tenants. That there was delay in attornment process, which, according to Petitioner was a complex process, in which several years were spent in completing the same. Thus, the delay in the process of attornment of tenancies cannot be attributed to the Petitioner. That the process of consent verification was commenced on 6 April 2023 when the biometric report was prepared and irrevocable consents of 28 principal tenants were obtained in favour of the Petitioner. That the society held General Body Meeting on 17 March 2024 appreciating the developer for completing the consent verification.

13) Mr. Tamboly would further submit that after completion of consent verification, Petitioner and Respondent No.1-Society addressed several letters to MCGM for grant of permissions for redevelopment. That the Petitioner also filed Writ Petition in this Court for expediting the process of issuance of Annexure-2. However, no final decision was taken by MCGM for issuance of Annexure-2. He would therefore submit that Petitioner cannot be blamed for delay as the blame needs to be shared by MCGM and Respondent Nos. 3 to 22.

14) Mr. Tamboly would further submit that there is a mala fide intention behind the purported termination, which has been effected in total suppression of vital correspondence. That the very fact of appointment of another developer while taking decision of termination clearly indicates that the said developer is acting behind the scenes and is actually responsible for termination of Petitioner's Development Agreement. That the timing at which the termination decision is taken also assumes importance as the neighboring developer, who is interested in the subject land, has actually fueled the termination. The society was initially opposing to the IOD issued to the neighboring developer and has now turned around and acted in collusion with the neighboring developer. He therefore brands the termination as mala fide.

15) Mr. Tamboly would further submit that the Petitioner has proved its financial capacity to MCGM on account of which the earlier remark of 'daftari' put on Petitioner's proposal is withdrawn and the proposal is revived. He would submit that Development Agreement creates an interest in favour of the Petitioner as sale component premises in the building can be sold by the Petitioner. That Petitioner has settled with the tenants and made substantial investments in the property. He relies on judgment in Sushil Kumar Agarwal Versus. Meenakshi Sadhu and Others<sup>1</sup> in support of his contention that Development Agreement is capable of being specifically performed. He would submit that mere non-registration of the Development Agreement is irrelevant. Since the earlier requirement under the Circular dated 10 October 2016 for registration of Development Agreement is now removed in the subsequent Circular dated 17 November 2020 which now contemplates registration of only a tripartite agreement between the Developer, MCGM and Society after issuance of requisite permissions. That the time for execution and registration of such tripartite agreement is yet to arrive at.

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1 2019 2 SCC 241

**16)** Mr. Tamboly would further submit that the order dated 30 October 2025 of MCGM rejecting grant of Annexure-2 is illegal and based squarely on the illegal termination notice. That since MCGM's decision dated 30 October 2025 is mere consequential action flowing out of termination, once termination is held to be illegal, MCGM's decision dated 30 October 2025 would automatically be rendered nugatory. He would submit that the doubts raised about the project viability are misplaced in view of subsequent clarification by MCGM on 19 September 2025. He would submit that without prejudice meeting held with Runwal Group could not be a reason for not granting interim measures in favour of the Petitioner. Mere negotiations with another developer does not mean that Petitioner does not have financial wherewithal to complete the project. That the Development Agreement otherwise permits Petitioner to take partners in the project without the consent of the society and its members. On above broad submissions, Mr. Tamboly would pray for making the Petition absolute in terms of the prayers made therein.

**17)** Mr. Seksaria, the learned Senior Advocate appearing for Respondent Nos.3 to 22 would oppose the Petition submitting that 28 municipal tenants are operating from dilapidated structures which are over 72 years old. That Petitioner has failed to make any progress in the redevelopment proposal for 11 long years. That it has not even bothered to register the Development Agreement though the same specifically mandates him to register the same. That the members have lost faith in the Petitioner who has not taken any steps for developing the land. He submits that MCGM has also accepted termination of the Petitioner-Developer vide order dated 30 October 2025. That since land taken for development is owned by MCGM, the decision of MCGM accepting termination of the Petitioner is final and binding between the parties.

**18)** Mr. Seksaria would further submit that the Petitioner has committed breach of contractual stipulations under the Development Agreement disentitling it to specific performance. That under Section 17



read with Section 49 of the Registration Act, 1908 Petitioner is not entitled to seek specific performance of unregistered Development Agreement. He relies on judgment of the Apex Court in Sushil Kumar Agarwal (supra). That Petitioner cannot claim any equities having himself not registered the Development Agreement. That in any case, the unregistered Development Agreement has been terminated by the members of the society on account of delay on the part of the Petitioners, inability to resolve disputes with MCGM, inability to secure permissions from MCGM, financial issues of the Petitioner and consequent loss of faith. That Petitioner has failed to secure the requisite NOCs for redevelopment of the subject property.

19) Mr. Seksaria further submits that rights of the tenant/members of the society to have dilapidated buildings redeveloped would prevail over Petitioner's right to make profits out of such redevelopment. That the society cannot be prevented from carrying out the objective of redevelopment till adjudication of Petitioner's claims flowing out of the terminated Development Agreement. In support, he relies upon judgment of Division Bench of this Court in Huges Real Estate Developers LLP Versus Khernagar Adarsh Co-operative Society Housing Society Limited <sup>2</sup> and Swashray Co-operative Society Housing Society Limited and Others Versus. Shanti Enterprises <sup>3</sup>.

20) Mr. Seksaria further submits that unregistered Development Agreement is otherwise determinable and incapable of specific performance and that therefore no stay on termination thereof can be granted. That merely because the tenant/members of the proposed society did not protest in respect of Petitioner's conduct at prior point of time, the same does not mean that they must continue the development process with the Petitioner. That the Society was entitled to terminate Petitioner's appointment. That even the land owner i.e. MCGM has lost faith in Petitioner's abilities since Petitioner has failed to perform contractual obligations despite grant of repeated opportunities by the MCGM. He takes

<sup>2</sup> Commercial Appeal No. 45 of 2025 decided on 19 August 2025

<sup>3</sup> CARBP (L) 10432 of 2023 decided on 3 November 2023.

me through various correspondence between the Petitioner and MCGM to demonstrate as to how Petitioner has repeatedly defaulted in respect of its obligations to complete the redevelopment process.

**21)** Lastly, Mr. Seksaria would submit that the real motive of the Petitioner is merely to profiteer as he was trying to negotiate the deal for handing over the Project to another developer. That no interim order can be granted in favour of the Petitioner for the purpose of ensuring his goal of earning profits at the cost of municipal tenants. He would accordingly pray for dismissal of the Petition filed under Section 9 of the Arbitration Act. So far as application filed under Section 11 of the Arbitration Act is concerned, he submits that the Society and Respondent Nos.3 to 22 do not have any serious objection for appointment of an Arbitrator.

**22)** I have also heard Ms. Yadav, the learned counsel appearing for MCGM who also opposes the Petition and submits that the Municipal Corporation has time and again taken action against the Petitioner, who has failed to take necessary steps for the purpose of completing development on the municipal tenanted land. She would take me through various correspondence at the instance of MCGM where his appointment was terminated due to failure to demonstrate financial capacity and show cause notice was issued for termination of his appointment. She would submit that the Municipal Corporation has accepted the termination of Petitioner's appointment by order dated 30 October 2025 after grant of due opportunity of hearing to all the parties. She would accordingly pray for dismissal of Section 9 Petition.

#### **REASONS AND ANALYSIS :**

**23)** Petitioner is a developer appointed by the municipal tenants for construction of building on the land owned by MCGM. It appears that MCGM had allotted portions of the land to various persons for setting up

residential, commercial and residential-cum-commercial structures. They are treated as municipal tenants. It is contended that the structures forming part of the subject land are in existence since the year 1951. It appears that over the period of years, there have been changes in the tenancies. Respondent Nos.3 to 22, who now claim tenancies in respect of the said 28 structures, did not apparently have the capacity or expertise to have their tenancies regularised from MCGM and accordingly expected the developer to assist them in that process.

**24)** To carry out development of the subject land, the persons claiming to be tenants in respect of the 28 structures on the subject municipal land formed Respondent No.1 proposed Society and adopted a Resolution dated 29 March 2014 appointing Petitioner as the developer. Accordingly, Development Agreement dated 22 December 2014 was executed. The agreement was not registered at the time of execution and the responsibility of registering the same was put on the Petitioner-Developer. The Development Agreement specifically records obligation on the part of the Petitioner to assist the tenants in regularisation of their tenancies.

**25)** Petitioner relies on Circular dated 10 October 2016 in support of his contention that the redevelopment proposal of tenanted premises in accordance with 33(7) of DCR, 1991 envisages stage wise process which includes two vital steps of (i) inventory and tenancy verification and (ii) consent verification. On 17 November 2020 the guidelines have been revised particularly in view of advent of Development Control & Promotion Regulations 2034 (**DCPR 2034**). As per revised guidelines also, there are two vital steps of inventory and tenancy verification and consent verification before issuance of Annexure-2. It is Petitioner's contention that the Municipal Corporation has delayed the steps of inventory and tenancy verification and consent verification. As observed above, there was change in the name of tenants over the period of years and the names of current tenants/occupants were required to be updated. According to

the Petitioner, it cannot be held responsible for delay in the process of inventory and tenancy verification and consent verification. It is contended by the Petitioner that issuance of Annexure-2 is delayed on account of non-fulfillment of these vital stages. Petitioner also seeks to blame MCGM for erroneous recording of 8 structures in its records.

**26)** However, it is seen that on 31 March 2021, Petitioner was informed that inventory and tenancy verification list was procured on 4 March 2021, and it was proposed to conduct consent verification. Petitioner was called upon to submit Annexure-3 for proving his financial capacity to complete the project. Petitioner failed to submit the requisite documents for a period of 7 long months and the Municipal Corporation was constrained to issue another letter dated 17 November 2021. It would be relevant to reproduce relevant portion of the said letter:

As per the circular dt. 17.11.2020, verification of the consent letters in the redevelopment proposal of the tenanted properties under Development Control Regulation 2034 Regulation 33 (?) is being done under the chairmanship of the Commissioner (Improvement). Before that, this office had informed you vide letter dt. 31.03.2021 to submit the documents proving your financial competency such as certificate of net value from statutory auditor, bank account statement etc. with Annexure-3 in the said proposal. However, you have so far not complied with the said documents.

Therefore, this is to again inform you that the proposal of the above scheme has been submitted in the year 2015, and you have not even issued Annexure-2 for the scheme in past 6 years. Further, the search list of the scheme has been received by this office after 6 years in March 2021. Besides, you have not submitted the documents proving your financial competency even after lapse of 7 months. This is causing delay in further processing the scheme.

Therefore, you are once again advised to submit the documents proving your financial competency such as net assets certificate from the statutory auditor for 2020-21, bank account statement, income tax statement etc. along with your explanation about the delay in the project, within 15 days to this office, else your proposal will be filed in records, which may please be noted.

**27)** Despite grant of second opportunity to the Petitioner to submit documents of financial capacity in Annexure-3, Petitioner failed to submit any such documents till May 2022. Thus, from 31 March 2021 till 23 May 2022, Petitioner did not cooperate with the Municipal Corporation

by producing documents of financial ability. The Municipal Corporation was left with no other alternative but to treat the proposal submitted by the Petitioner as 'closed' by letter dated 23 May 2022, the relevant portion of which reads thus : -

As per the circular dt. 17.11.2020, verification of the consent letters in the redevelopment proposal of the tenanted properties under Development Control Regulation 2034 Regulation 33 (7) is being done under the chairmanship of the Commissioner (Improvement). Before that, this office had informed you vide letter dt. 31.03.2021 to submit the documents proving your financial competency such as certificate of net value from statutory auditor, bank account statement etc. with Annexure-3 in the said proposal. However, so far the said documents have not been submitted.

The proposal of the scheme was submitted in the year 2015 and even after lapse of 6 years; the Annexure-2 also has not been issued. Search list of the scheme has been received by this office after 6 years during March 2021.

It has been more than 7 months that the Developers were informed vide letter dt. 31.03.2021 to submit the documents proving their financial competency. Thereafter again the developers were informed vide letter dt. 17.11.2021 to submit the documents proving their financial competency and the explanation for the delay in the project within 15 days, else the proposal will be filed in records.

Thus even after informing the developers / architects /society vide letters dt. 31.03.2021 and 17.11.2021, there has been no response since March 2021 i.e. even after lapse of 14 months till date.

Looking at the above facts, it appears that the developers have no interest in implementing the project, hence the redevelopment proposal received by this office on 29.06.2015 is being filed in records, which may be noted.

**28)** Petitioner finally woke up out of the deep slumber and submitted letter dated 2 June 2022 requesting time of 3 months to submit the requisite documents. In the meantime, Society also wrote to Municipal Corporation on 1 June 2022 stating as under:

When we had repeatedly contacted the developers as well as the architect, they have informed us that they have complied with the documents relating to the work.

Having come to know from the letter dt. 23.05.2022 that the redevelopment is being adversely affected, we hereby undertake to consult with the developers and the architects and conduct general body meeting with the developers and architects, and shall comply with the documents required. If this does not materialize, we shall appoint a new developer and inform you accordingly

We therefore earnestly request you to grant us two months period.

**29)** There is thus contradiction in the stand of the Society and the developer. The society accused in its letter that Petitioner had misrepresented the Society that the requisite documents were submitted. The society sought time of 2 months and assured to appoint a new developer if Petitioner failed to submit the documents within 2 months. On the other hand, Petitioner sought time of 3 months to submit the documents. Be that as it may, Petitioner finally submitted the documents to prove his net worth only on 27 February 2023. Accordingly, Municipal Corporation revived the closed proposal by letter dated 29 March 2023. By that letter, process was directed to be initiated for consent verification. Thus, it is more than apparent that the consent verification could not be conducted from 31 March 2021 till 29 March 2023 (for 2 long years) for reasons attributable only to the Petitioner.

**30)** After the Petitioner's proposal was revived by the Municipal Corporation on 29 March 2023, the consent verification was apparently conducted on 6 April 2023. It appears that there were some disputes with regard to the 8 structures. It appears that the said disputes were directed to be resolved in an expeditious manner by the Municipal Corporation. However, the final report of the Assistant Commissioner, G-South Ward was yet to be received, which was resulting in delay in issuance of Annexure-2. Petitioner was therefore issued show cause notice on 22 May 2024, relevant portion of which reads thus:-

However, since there was no response from the developers, it was observed that they had no interest implementing the said redevelopment project, therefore the redevelopment proposal received on 29.06.2015 was filed in the records.

Thereafter pursuant to the request letter from the Architects M/s Consultant Combined dt. 02.12.2022, and as per the necessary documents submitted, the proposal of the above scheme was rejuvenated vide this office Ref. No. (7).

Thereafter the verification of consent letters of Municipal tenants in the scheme was carried out by the Consent Letters Verification Committee on 06.04.2023.

There are total 28 Municipal tenants and there appears to be disputed about non-residential or residential-non residential user of 08 tenants out of them. In this regard, the Estate Officer, G/South has been informed vide letter No. SA/Malmatta/509733/PraA SGS/Soc-2 dt. 02.04.2024 to take appropriate decision regarding user of the said 08 tenants and inform this office accordingly at the earliest. However so far the report with the signature of Asst. Commissioner G/South has not been received. Therefore, it is causing delay in issuing Annexure-2 of the scheme. The proposal of the scheme was submitted in 2017 and even after lapse of about 6.5 years, there is no proper progress in redevelopment.

Annexure-2 of the scheme has not been issued even after 13 months from rejuvenation of the proposal of the scheme. Since the scheme is getting delayed, the Municipal tenants in Om Sairam Co-operative Housing Society are being deprived of the redevelopment.

Looking at the above situation, it can be seen tyhat,

1. You have failed to complete the said redevelopment project within the prescribed time period.
2. It appears that you have no interest in completing the said redevelopment project within appropriate time period.

Therefore this show Cause Notice is being served to you to explain as to why your appointment as developers of the scheme should not be cancelled.

You are advised to submit the explanation within 15 days from receipt of this notice. if your explanation is not received within the prescribed period, further action will be taken as per the rules, which may please be noted.

**31)** Both, Petitioner as well as Respondent No.1-Society responded to the show cause notice and requested for its withdrawal.

**32)** However, it is a matter of fact that till the Society adopted Resolution in the Meeting held on 24 September 2025, Annexure-2 was not issued. Society accordingly adopted a Resolution on 24 September 2025 to terminate Petitioner's appointment and proceeded to appoint another developer-Aethon Developers Pvt. Ltd. Petitioner was accordingly served termination notice dated 25 October 2025.

**33)** The conspectus of the above discussion is that from 31 March 2021, when Municipal Corporation began the process of issuance of Annexure-2, the same was not issued for 4 and ½ long years. Thus what could have been done within a matter of few months has not been done for over 4 and ½ years. The first vital step in the process of inventory and tenancy verification was long since complete in March 2021. Petitioner is solely responsible for delay in conduct of consent verification. Due to closure of its proposal and subsequent revival, the process of consent verification was withheld for over two years. The same was finally completed on 6 April 2023. However, for next 2 years, the issues relating to 8 structures still remained to be resolved on account of which Annexure-2 has not been issued till the Petitioner was terminated. It must be noted that Petitioner is a professional developer and is expected to possess necessary expertise in relation to municipal tenanted properties. Petitioner is supposed to know the nitty-gritties involved in such development process. Petitioner ought to have liaison with municipal officials to ensure that Annexure-2 is issued in an expeditious manner. As observed above, Petitioner is solely responsible for non-conduct of consent verification for over 2 years. He has thereafter done precious little for issuance of Annexure -2 after the consent verification was completed on 6 April 2023.

**34)** Respondent No.1 and its members cannot be made to wait endlessly for Petitioner to take necessary steps in the redevelopment process. After going through the revised guidelines dated 17 November 2020, it is seen that after consent verification, there are various other steps to be taken by the developer as under :

- (i) Annexure-2
- (ii) Technical scrutiny
- (iii) Letter of intent
- (iv) Vacating of dilapidated building
- (v) Specification of project period.



- (vi) Verification by Vigilance Committee
- (vii) Issuance of Intimation of Disapproval
- (viii) NOC for Commencement Certificate for rehab building
- (ix) NOC for amended plan approval.
- (x) NOC to Commencement Certificate for sale building
- (xi) NOC to Occupancy Certificate
- (xii) Transfer cases and allotment of tenements
- (xiii) Execution of agreements.

**35)** In my view, Petitioner's proposal remained stuck at initial two stages (before issuance of Annexure-2) for 11 long years. The Society and its members have lost faith in the Petitioner. In my view, therefore the decision taken by the Society and its members for termination of Petitioner's contract does not appear to be arbitrary or erroneous in any manner.

**36)** In the Division Bench judgment rendered by this Court in *Huges Real Estate Developers LLP*, (supra) the issue was about termination of the development agreement on the ground of delay on the part of the developer. While deciding the issue of entitlement of the developer for temporary injunction to restrain the society from appointing new developer on the ground of delay, this Court took into consideration, special circumstances involved in redevelopment of buildings of housing societies. The Division Bench weighed the right of society-members to secure alternate accommodations against the right of the developer to earn profits through redevelopment contracts and held in paras-32 and 33 as under :-

**32.** It is well settled principle that an order of temporary injunction is essentially a discretionary relief. The Court passing an order of temporary injunction application does not really adjudicate upon the subject matter on merits and considers the application for temporary injunction in the light of well-known principles and exercises its discretion weighing all relevant considerations without expressing any opinion on the merits of the matter. While determining the existence of *prima-facie* case in Plaintiff's favour before leading of evidence, the Trial Court essentially exercises its discretion after arriving at a conclusion that there is a triable

case. In the present case, the learned Single Judge, in addition to recording the finding of absence of concluded contract, has also considered the aspect of Plaintiff's rights being protected by the Society incorporating the condition of seeking Plaintiff's NOC by the new developer. What the learned Single Judge has considered is the fact that Plaintiff's rights are secured and that therefore the redevelopment process need not be halted. We are in broad agreement with the arrangement where the redevelopment process can continue by protecting the rights of the Plaintiff to some extent, though we have not agreed with the direction that Plaintiff's NOC would be necessary to proceed ahead with the redevelopment process. In our view, the rights of Plaintiff can be secured through other means and this aspect is being dealt with in the latter part of the judgment. But what must be ensured is that the redevelopment process is not halted till the Court decides the contesting claims between the parties. If it is possible for the Court to protect rights of the earlier developer, even to some extent, Court's approach ordinarily must be to permit the progress of redevelopment process rather than interdicting the same by grant of temporary injunction.

33. After all a developer is engaged by housing societies on account of lack of expertise and wherewithal for undertaking reconstruction of their buildings. If societies possess the financial capability to undertake reconstruction of their buildings, they can engage a contractor to reconstruct the building and such construction contract would be incapable of being specifically performed. However, because of lack of expertise and financial capabilities of housing societies, development rights are granted in favour of a developer which envisage sale of some units in the reconstructed building and enables the developer not only to recover the cost of demolition of old building and construction of new building but also earn his profits through the project. This is how a developer, who is engaged essentially to reconstruct society's building, also secures some rights in the redevelopment process. On account of creation of this limited interest in the property, the Development Agreements can be specifically performed. However, what must be borne in mind is the fundamental principle that the rights of a developer to earn profits through redevelopment contracts would always remain subservient to the rights of the society to have its building reconstructed. Therefore, when it comes to deciding the prayer for temporary injunction, the Court's approach should normally be avoidance of halting of the redevelopment process in cases where it is possible to secure the rights of the developer at least to some extent. The ultimate interest of the developer in undertaking redevelopment project is to earn profits. When rights of residents of dilapidated buildings to reside in safe houses is pitted against the rights of the developer to earn profits through redevelopment contracts, the latter must yield to the former at least when it comes to consideration of grant of temporary injunction. This is because developer's loss of opportunity to earn profits can always be made good by awarding monetary decree in his favour. However, if redevelopment project of buildings is halted till decision of suit filed by the developer, the loss caused to the residents of the building cannot be undone. This is particularly true where the old buildings are not in habitable condition. Therefore *prima facie* inquiry in such cases would ordinarily revolve around the issue as to who is guilty of breach of Development Agreement so as to put the guilty party to terms. Thus, if the society members are *prima facie* found to have terminated the Development Agreement in an illegal manner, the Court can put the society to terms before allowing the redevelopment process to progress further through another developer.

37) In my view, the principles discussed in *Huges Real Estate Developers LLP* by the Division Bench would apply squarely to the present case where the members of the Society are deprived of permanent alternate accommodations and are languishing in 75-year-old structures and are eagerly awaiting redevelopment of the land. Petitioner's interest in the project are limited to earning profits. Petitioner can claim damages against the Society and members if it can prove that the termination is invalid. However, whether the Petitioner can further stall the process of redevelopment till adjudication of its claims in respect of the termination? The answer to the question appears, to my mind, to be in the negative. Sufficient opportunities have been given to the Petitioner both by the Society, as well as by MCGM to make progress in the project. The case does not involve a circumstance where construction of the building has commenced and certain difficulties have prevented the Petitioner-Developer from completing the Project. The present case involves a situation where even existing structures are yet to be demolished. The *status quo* at the land prevails for the last 12 long years. It is therefore appropriate that the Society and MCGM are permitted to proceed with development on the land through another developer chosen by the Society and it is not necessary to stall the process till Petitioner gets its claims relating to termination adjudicated.

38) A Single Judge of this Court in *Swashray CHSL* (supra) has also taken note of cases where members of Societies suffer due to gross delay in the redevelopment process. This Court referred to judgments of this Court in *Borivali Anamika Niwas CHSL Versus. Aditya Developers & Ors.* <sup>4</sup> and *Rajawadi Arundaya CHSL Versus. Value Project Pvt. Ltd.* <sup>5</sup> and has held in para-32 of the judgment as under:

32. Thus, the Petitioner - Society has clearly made out a strong prima facie case in its favour as regards termination of the development agreement and the necessity to take steps for working out the redevelopment project through other means. There is sufficient material on record to show that the Petitioner - Society has completely lost faith

4 2019 SCC Online Bom. 10718

5 2021 SCC Online Bom. 9572

and trust in the Respondent - Developer about completion of the redevelopment project. The Petitioner - Society is not expected to be at the mercy of the Respondent - Developer. The Petitioner - Society cannot be shackled with a Development Agreement in which the Respondent - Developer indulges in repeated defaults, without any hope of the redevelopment project actually being completed. The members of the Petitioner - Society have been out of possession since the year 2017 and none of the timelines specified in the Development Agreement or the Supplementary Development Agreement or even PAAAs have been honored by the Respondent - Developer. There is nothing to show that the Petitioner - Society in any manner obstructed the Respondent - Developer in executing the project. Thus, the factual position in the present case is akin to cases in which this Court while exercising power under Section 9 of the said Act has granted directions that amount to mandatory injunctions at interim stage. The position of law expounded and confirmed by this Court repeatedly in the aforementioned judgments, inures to the benefit of the Petitioner - Society in the present case. Therefore, a clear case is made out by the Petitioner - Society for granting reliefs as claimed in its petition filed under Section 9 of the said Act. For the same reasons, the reliefs sought by the Respondent - Developer deserve to be rejected. This Court is of the opinion that holding otherwise would grant a premium to a defaulting developer like the Respondent before this Court and the Petitioner - Society and its members would continue to suffer for no fault on their part. Even today the Respondent - Developer is liable to pay monetary benefits to the members of the Petitioner - Society under the documents executed between the parties. The Respondent - Developer was not forthcoming at any stage during pendency of the present petitions about making good such payments to the members of the Petitioner - Society.

39) It is contended on behalf of the Petitioner that the Development Agreement is capable of being specifically performed and reliance is placed on judgment of the Apex Court in *Sushil Kumar Agarwal*. However, in my view it is not necessary to consider or decide the issue of Petitioner's entitlement to specific performance of Development Agreement at this stage and this issue would be relevant when parties go in for arbitration. Therefore, merely because specific performance of Development Agreement can be granted by this Court in a given case, it would not mean that Petitioner would be automatically entitled to any interim measures under Section 9 of the Arbitration Act. Considering the peculiar facts and circumstances of the case, I am of the view that Petitioner has failed to make out a prima facie case for grant of any interim measures.

40) Petitioner has also relied upon judgment of Division Bench of this Court in *Bevenu Infra Projects Pvt. Ltd. Versus. High Power Committee and others*<sup>6</sup> in support of the contention that it is impermissible for the tenants to revoke the consents given for execution of the project through the Petitioner. In my view, the judgment cannot be cited in support of an abstract proposition that in every case, a Society opting for redevelopment under the DCR, 1991 33(7) would stand estopped from terminating appointment of a developer even though he fails to take any steps in execution of the project merely on account of use of the expression 'irrevocable consents' in DCR 33(7). As a matter of fact, under the revised guidelines dated 17 November 2020, there is a provision for change of developer in para-(q) which reads thus:-

#### Change of Developer

The approval of Improvements Committee and Corporation is required as per Section 92(c) of MMC Act 1888 for disposal of land by lease nt, therefore the approval of Improvements Committee and Corporation for change of developer an well as Termination of LOI' as described in Para (Q) below, will not be required for the redevelopment on Municipal tenanted property.

When -

- i) a Co-operative Society of municipal tenants has appointed a developer for carrying out redevelopment of municipal tenanted properties by passing a general body resolution,
- ii) more than 51% tenants have given irrevocable consents in the name of Chief Promoter or Society and the developer, as the case may be,
- iii) obtained LOI in the name of the Society and the developer
- iv) but due to any reason, such appointed developer is not in a position/not shown any performance to carry out redevelopment as per terms, conditions and covenants of development agreement

And

v) if Society has appointed a new developer for carrying out the redevelopment through general body resolution with more than 51% consents of eligible Municipal tenants, to be recorded in minutes book, for termination of earlier developer, appointment of new developer and to continue / carry out the redevelopment from newly appointed developer, and submits the copy of same general body resolution duly notarized and certified by authorized signatory of the Society, development agreement with proposed developer, no objection certificate of previous developer

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6 2012 SCC Online Bom 784

addressed to Society and Assistant Commissioner (Estates) for replacing them with proposed developer in favour of whom Society has passed general body resolution with more than 51% consents of eligible Municipal tenants along with a request for change of developer.

vi) Indemnity bond from the Society and newly appointed developer against any possible losses, litigations etc. shall have to be submitted to MCGM.

vi) In case earlier developer does not give NOC for appointment of new developer then Society shall submit fresh consents of minimum 51% of eligible Municipal tenants in the name of new developer in the prescribed format of MCGM to be followed with the process of Consent verification. No fresh Annexure-II shall be issued for change of developer as the Annexure-II is already issued for the eligible tenants in the scheme.

viii) The proposal for change of developer may be considered on its merits with prior approval of AMC concerned and revised LOI shall be issued in the name of the Society and new developer with applicable terms and conditions as per the prevailing policies at the time of issue of the said revised LOI. Such proposal shall be got scrutinized from the office of Dy.Ch.E. (Imp.) before issue of LOI.

ix) If there is any policy change after issue of original LOI, terms and conditions of revised LOI shall be changed to be in consonance with such changed policy.

x) The new developer so recognized shall enter into shoes of previous developer for all practical purposes. Project period shall be computed from issue of original LOI issued to Society and previous developer, by considering any earlier extensions granted to project period. New developer shall have to pay all balance MCGM payments and payments made by earlier developer shall be adjusted against payments to be made by new developer. MCGM will not be party to any transaction between earlier and proposed new developer. If in future there is any litigation between the developers and Society and if MCGM is made party to such litigation, entire cost incurred by MCGM on such litigation shall be recovered from proposed new developer.

**41)** It therefore cannot be contended that a developer once appointed to develop municipal tenanted property can never be changed.

**42)** There is yet another reason why this Court is not inclined to grant equitable relief in favour of the Petitioner in the present proceedings. It has transpired that the Petitioner has been negotiating with another developer for transfer of the Project. This is evident from the minutes of the General Body Meeting held on 17 August 2025 in which it is recorded as under :-

Mr. Ishwarlal Lakhara then for the first time disclosed that he was in advanced stages of negotiations with another developer to carry out the

redevelopment process and even showed some papers which he claimed was a draft agreement with the developer. He even disclosed certain terms and conditions of the said draft agreement. The above disclosure led to an uproar within the members. They expressed their shock and disappointment with Mr. Ishwal Lakhara. They felt that it was him who was untrust-worthy and that he had back stabbed them.

**43)** Mr. Tamboly has not disputed the position that the Petitioner has made efforts for transfer of the Project to another developer. He relies on a clause in the Development Agreement which entitles the Developer to take on board partners without the consent of the Society.

**44)** In my view, attempts on the part of the Petitioner to handover Project to another developer and conducting negotiations clearly indicates that the objective behind retaining the Project is merely to sell the same to another developer. *Prima-facie*, it appears that the Petitioner wants to profiteer at the cost of the members of the Society. This would be yet another reason for this Court not to grant any equitable relief in favour of the Petitioner.

**45)** This Court also notices the attitude of the Petitioner in dealing with the society members, which is reflected in the following minutes of meeting held on 17 August 2025 :-

Mr. Ishwarlal Lakhara attended this society meeting after remaining absent in multiple earlier society meetings held in the past 10 yrs despite requests to attend the same. **Within 5 minutes of the beginning of the meeting on a question raised by member, Mr. Gangaram Tawde on his intentions, Mr. Ishwarlal and his son walked out of the meeting. The other members requested and convinced them to come back. However, their intention was to somehow or the other disrupt the meeting to ensure that no decisions were taken.**

The members once again expressed their desire of terminating the developer i.e. Ison Builders LLP and appointing a new one in its place. **To this Mr. Ishwarlal Lakhara and his son challenged and warned the society members and said that they wouldn't let this project happen if the society went to another developer, Mr. Ishwarlal Lakhara and his son behaved very arrogantly and did not allow society members to talk.** The society felt that he was intentionally trying to delay the project and take maximum advantage of the other developer with whom he was negotiating. Mr. Ishwarlal Lakhara and his son threatened the members to work with them or else they won't allow the project to be completed.

*(emphasis added)*

46) Considering the above position where Petitioner is using the project only for the purpose of securing profits by selling the same to another developer and has grossly delayed even its commencement, I am of the view that no interim measures deserve to be granted in its favour.

47) So far as the contention of the Petitioner of Society opting for neighboring developer is concerned, I do not see much issue with the same. There are multiple valid reasons for the society to go with the developer on the adjoining plot. Firstly, Petitioner has grossly delayed the project. Secondly, the adjoining developer has already secured IOD for the adjoining land, whereas the society members have waited for 12 long years and the project is still a non-starter. Thirdly, in the IOD issued for adjoining land, certain conditions are imposed for entry and exit from the subject municipal land. Fourthly, there appear to be certain difficulties in independent development of the subject municipal land, as apparent from MCGM's letter dated 2 December 2025. It appears that by decision dated 2 December 2025, MCGM has concluded as under :-

Please refer above mentioned letter received from AE(I)-I, wherein it is requested to ascertain whether proposed building plan submitted by Architect is permissible as per DCPR 2034 provisions.

As per plans submitted by Architect it is seen that the plot under reference is having very narrow width and the same is also affected by proposed/sanctioned 24.38 m wide RL of Drainage Channel Road.

Also the proposed building plans submitted by Architect does not meet the requirements stipulated in DCPR 2034 (especially with respect to provisions of Compulsory Open Space and Fire protection requirements) and the same may attract concessions/relaxations in provisions of DCPR 2034 to large extent.

In view of above, it can be concluded that the redevelopment on such a narrow plot is not feasible as per provisions of DCPR 2034 and from better planning point of view.

48) If the Society members believe that the neighboring developer would be in a position to execute the Project in a faster and better manner, I do not see any reason why they can be restrained from appointing



developer on the neighboring plot for development on the subject property. Therefore this factor cannot be relevant for grant of interim measures of stalling the project further when Petitioner has failed to make out any prima facie case.

**49)** Considering the overall conspectus of the case, I am of the view that no case is made out by the Petitioner for grant of any equitable relief in its favour under Section 9 of the Arbitration Act.

**50)** So far as Commercial Arbitration Application (L) No. 37280 of 2025 is concerned, parties have expressed willingness to go for arbitration and have requested for appointment of a sole Arbitrator. In my view, Smt. Justice Anjua Prabhudesai, Former Judge of this Court can be appointed as a sole Arbitrator to adjudicate the disputes and differences between the parties.

**51)** I accordingly proceed to pass the following order:

- (i) Commercial Arbitration Petition (L.) No. 36533 of 2025 filed under Section 9 of the Arbitration Act is dismissed.
- (ii) Commercial Arbitration Application (L.) No. 37280 of 2025 filed under Section 11 of the Arbitration Act is allowed by appointing Smt. Justice Anuja Prabhudesai, former Judge of this Court as Sole Arbitrator to adjudicate the disputes and differences between Petitioner and Respondent Nos. 1 and Respondent Nos. 3 to 22.

(iii) The contact details of the Arbitrator are as under:

Office Address:- 104, Arcadia Building, NCPA Marg,  
Nariman Point, Mumbai 400021 \_

Mobile No :- 9823855445

Email ID :- desaianuja@yahoo.com

(iv) A copy of this order be communicated to the learned sole Arbitrator by the Advocate for the Petitioner/Applicant within a period of one week from the date of uploading of this order. The Petitioner/Applicant shall provide the contact and communication particulars of the parties to the Arbitral Tribunal alongwith a copy of this order.

(iv) 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 2 weeks from receipt of a copy of this order.

(v) 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.

(vi) The fees of the learned sole Arbitrator shall be as prescribed under the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018 and the arbitral costs and fees of the 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.

**52)** It is clarified that the findings in the judgment are prima-facie and are recorded solely for the purpose of determining Petitioner's entitlement to interim measures. The same shall not affect final adjudication of claims of parties to arbitration.

**53)** With the above directions, the Petition and the Application are **disposed of**.

**[SANDEEP V. MARNE, J.]**

**54)** After the judgment is pronounced, the learned counsel appearing for the Petitioner prays for continuation of the assurance given on behalf of Respondent Nos.3 to 22 as extended in the order dated 4 December 2025. The learned Senior Advocate appearing for Respondent Nos.3 to 22 submits that his clients are not willing to continue the oral assurance. Considering the nature of findings recorded in the judgment, I am not inclined to continue the arrangement of oral assurance any further. The request is accordingly rejected.

**[SANDEEP V. MARNE, J.]**