



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
COMMERCIAL ARBITRATION PETITION (L)  
NO. 21165 OF 2025

The Mulund Endeavour Co-operative Housing  
Society Ltd. ...Petitioner

*Versus*

M/s Alag Property and Constructions Private ...Respondents  
Ltd. and Ors.

*Mr. Mayur Khandeparkar a/w. KS Vardhan, Anna and Somya  
i/by TN Tripathi and Co., for the Petitioner.*

*Mr. Karl Tamboly i/b. Mr. Sanjay P. Shinde, for the Respondents.*

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : February 16, 2026

**JUDGEMENT :**

1. This Petition has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 (*“the Act”*), seeking interim reliefs in respect of land bearing City Survey No. 554/1 admeasuring approximately 4182.60 sq. mtrs. at Mulund, Mumbai (*“Subject Property”*). Four buildings, titled as A, B, C and D stand on the Subject Property. The buildings belong to the Petitioner, The Mulund Endeavour Co-operative Housing Society Ltd. (*“Society”*), which entered into a Development Agreement dated July 2, 2016 (*“Development Agreement”*) with

Respondent No. 1, M/s. Alag Property and Constructions Private Ltd.  
(*“Developer”*).

2. It is the case of the Society that despite execution of the Development Agreement, no concrete steps had been taken by the Developer to make progress and obtain the Intimation of Disapproval (*“IOD”*) and commence redevelopment. Eventually, the application for an IOD was made only on September 13, 2017, about 14 months after the execution of the Development Agreement. The IOD was eventually obtained only on September 3, 2019. Thereafter, the parties executed a Supplementary Development Agreement dated September 30, 2019 (*“Supplementary DA”*), intended to provide for the impact of the efflux of time, as well as introduction of Development Control and Promotion Regulations, 2034 (*“DCPR 2034”*). Eventually, the possession of the Subject Property was handed over to the Developer on January 5, 2020. The IOD was re-validated by the Developer on September 3, 2020, and on January 27, 2021, the Developer obtained the first Commencement Certificate up to the plinth level, five years after the execution of the Development Agreement.

3. It is the Society’s case that there was a constant change of plans and contractors, and no progress had been made in the

redevelopment. The scheduled date for completion of the redevelopment in terms of the Supplementary DA was January 26, 2025, while according to the Society, only 30% of the work had been completed. It is the Society's case that additional Transferable Development Rights / Floor Space Index ("**TDR/FSI**") that was required to be loaded on to the redevelopment of the Subject Property has not been effected till date.

4. The Society contends that various amounts payable to its members, including amounts owed in terms of transit rent, brokerage, transportation expenses and hardship compensation, remain unpaid, and the arrears have mounted to the tune of Rs. 9.77 crores. That apart, in breach of its obligation, the Developer has not paid Municipal taxes since 2023 and arrears of the same add up to Rs 1.13 crores.

5. The Society contends that, as of the second week of January 2025, work at the Subject Property has come to a complete stop. Therefore, on February 23, 2025, the Society passed a unanimous resolution at a Special General Body Meeting ("**SGBM**") to terminate the Development Agreement & the Supplementary DA and attendant documentation on account of various defaults and breaches on the part of the Developer. On February 28, 2025, a notice of termination

(***“Termination Notice”***) was sent by the Society to the Developer pursuant to the SGBM resolution.

6. The Society invoked arbitration by an Invocation Notice dated May 10, 2025. It is the Society’s case that apart from a generic letter containing bald denials in response to the Termination Notice, there has been no response from the Developer. Eventually, in May, 2025, this Petition under Section 9 of the Act was filed, seeking interlocutory protective reliefs, including roping in the Court Receiver to take charge of the Subject Property and hand it over to the Society to pursue redevelopment either by itself or through any other Developer.

**Contentions of the Parties:**

7. It is in this background that I have heard Mr. Mayur Khandeparkar, Learned Advocate for the Society as well as Mr. Karl Tamboly, Learned Advocate for the Developer. With their assistance, I have examined the material on record.

8. Mr. Khandeparkar would submit that the members of the Society had vacated the premises as early as January 5, 2020, and have suffered non-payment of amounts owed to them by the Developer. The transit rent payable to members of the Society entailed a year-on-year

escalation, and that too has not been paid since January 2023. Compiling all the financial obligations owed by the Developer, it is his contention that there is an admitted liability of Rs. 9.77 crores due and owing by the Developer. The non-payment of Municipal taxes would, in fact, expose the Society to the risk of its property being attached towards recovery of taxes.

9. Mr. Khandeparkar would submit that even the Commencement Certificate has lapsed. The Developer seeks to convert the redevelopment project on the Subject Property into a slum rehabilitation project, and a permanent transit camp under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 may come up on the Subject Property. He would submit that the members of the Society would simply be uninterested in the Subject Property becoming a slum rehabilitation project, and they are fully entitled to not be held to ransom by a Developer in this manner. The provisions in the Development Agreement prohibits bringing in a third party into the project without the Society's consent, and the Development Agreement clearly envisages that the Municipal Corporation of Greater Mumbai has the authority and not the Slum Rehabilitation Authority.

10. Mr. Karl Tamboly, Learned Advocate on behalf of the Developer would submit that the Society is not justified in terminating the Development Agreement without granting any opportunity for cure in terms of the Development Agreement. He would quarrel with the estimation of 30% completion in the project and contend that there have been ongoing negotiations between the parties to work out modalities for future development, payment of arrears and other facets necessary for continuation and completion of the redevelopment project.

11. Adverting to the affidavit-in-reply filed by the Developer, Mr. Tamboly would submit that the Developer has already completed the ground, basement, podium and 2 to 3 residential floors, in each of the 3 wings that constitute the redevelopment project. Relying upon the impact of the Covid-19 pandemic, he would submit that the delay until February 28, 2022, is attributable to the aftermath of the pandemic. Contending that 40-45 % construction using the Real Estate Regulatory Authority (“**RERA**”) standards had been completed, Mr. Tamboly would submit that third party rights have also been created in the constructed premises and it would not be just or legal to terminate the Development Agreement or to appoint a Court receiver.

12. The IOD, had been received on September 3, 2019, which led to execution of the Supplementary DA on September 30, 2019, but handover of possession had been delayed until January 5, 2020. Three 19-storey buildings that are to be constructed are well underway and construction until the third floor has been completed on the Subject Property, and third-party rights with execution of agreements with other flat purchasers have also been executed. He would point to a chart of various such agreements executed with third parties as set out in Exhibit R-3 annexed to the affidavit-in-reply, as indeed execution of agreements with the members of the Society.

13. Mr. Tamboly would pitch the completion percentage at 40% and contend that the Developer has incurred expenses of more than Rs. 60 crores. He would submit that the Developer had fairly and validly proposed redevelopment under Clause 33 (11) of the DCPR 2034, which would create a win-win situation for all the parties and would also lead to an additional FSI, which would enable fulfilment of various financial and non-financial obligations contracted between the parties. He would submit that the Developer has specifically assured the Society that no permanent transit camp would be accommodated on the Subject Property, and the entire plan, as envisaged in the existing sanction plan, would remain unchanged and there would be no change to the area

deliverable to the members on the Society under the Development Agreement or the Supplementary DA. He would submit that the Developer is also keen to deliver post-dated cheques for the total rent amount to the Society, as security for future rental payments.

14. Mr. Tamboly also has instructions to submit that there would be no clubbing of the Subject Property with any other layout and the same would remain an independent property in the land records. He would submit that owing to Public Interest Litigation on air pollution in the city, several restrictions were imposed on the Developer which led to a delay in the implementation schedule. He would also allude to litigation before the National Green Tribunal, Bhopal Bench, which led to a direction to the Ministry of Environment and Forests to strictly enforce and comply with environmental regulations, in respect of buildings located within a 5 km radius for protected area under the law governing wildlife protection. He would submit that if the Developer is allowed to complete the project, he would be able to smoothly effect closure for the project. Mr. Tamboly would also point to various other denials of individual allegations made against the Developer in the Section 9 Petition.

**Analysis and Findings:**

15. Having heard the Learned Advocates for the parties, it is apparent that the project is way behind schedule, and the Society now has to depend upon a material alteration to the originally envisaged redevelopment plan. The Developer is evidently hoping to leverage a deviation from the Development Agreement as the basis of moving forward. It is seen from the record that the Developer is seeking permission of the Society to permit a dilution of stake of the present promoter of the Developer and also to convert the redevelopment into a project connected to a slum rehabilitation project.

16. Indeed, the Developer, who is already in default on multiple counts, has made an assurance that there would be no permanent transit camp on the Subject Property. While he has already indicated that there may be some changes to the layout of the sale flats, there would be no change to the layout of the flats of existing members of the Society. Assurances of post-dated cheques are being held out by the Developer, and payments of “*ad hoc*” amounts towards municipal taxes are sought to be relied upon to give comfort to the Society.

17. In a nutshell, what is writ large on the face of the record is that the Developer is seriously in default in the time and cost commitments owed under the Development Agreement. Indeed, the

Society has also pointed to multiple development agreements executed between the same Developer and other societies in the years 2015 and 2016, which are also embroiled in inordinate delays, payment defaults and arbitration proceedings. These are denied by the Developer, but what is writ large is that the Developer is in default and hopes to renegotiate the contract to even continue with the project.

18. The Society has also *prima facie* been able to bring to bear evidence, that in the RERA records, the project is shown as having been kept in abeyance. That apart, from the entries made in the RERA records, it appears, *prima facie*, that the Developer has registered sale agreements on multiple floors without even loading the requisite TDR/FSI and obtaining the Commencement Certificate. The upshot of this position is that potentially sales of entitlements that do not yet exist, are being effected.

19. Having examined such material, a review of the Commencement Certificate would also indicate that it was valid until January 26, 2024, with Commencement Certificate approval extending up to sixth to eighth slab of various wings, whereas the project entails a total of 19 floors. What is actually constructed in each wing is about two to three floors. In these circumstances, having examined the current

plight of the Society, the following extract from the judgement in the case of **Rajawadi<sup>1</sup>** would be instructive:-

*“65. These development agreements are, above all, in the nature of an entrustment. They are not entered into blindly. There is a long and laborious process of society notices, general body meetings, the appointment of a consultant as an advisor, calling for tenders, scrutinizing the bids, ensuring compliance with laws and regulations, looking at the proposals and so on to the end of the chapter. This is as it must be. For what is it that is actually happening here? The society is entrusting an outsider with the one single asset that justifies the society's existence, that actually defines the society : the society's property. This is not the entrustment of some other land on which to build so that the society can make handsome profits; no, this is the entrustment of the actual property being used by the society and its members, the very homes in which they live. The society's members agree to this upheaval, to move out altogether, to separate from each other while their new homes are built. The promise to them is that they will be looked after and provided for while their new homes are being built. Days, weeks, months and years pass; the members do not receive the promised rent. Thus begins the downward slide. The promised homes are delayed, then delayed further, and then delayed even further. This cuts at the root of the initial entrustment. A development project for a society demands commitment, fidelity, respect and honesty. When these begin to disappear, the contractual relationship collapses. Where there was anticipation and confidence, there is now just bitterness, disappointment and despair. There is a breakdown of confidence, and there is only distrust. Loss of faith and confidence on account of contractual*

<sup>1</sup> *Rajawadi Arunodaya Co-operative Housing Society v. Value Projects Pvt Ltd. – 2021 SCC OnLine Bom 9572*

violations and breaches by a developer are sufficient grounds to find for the society and against the developer. Indeed, I would go a step further. There is urgency for the society. Therefore, the slightest delay in project completion, unless specifically accepted by the society, and even one single default in payment of transit rent or other dues is actually sufficient to warrant a termination. There is no such thing in these matters as 'substantial compliance'. That is not the principle of obligations in the realm of private law.

[Emphasis Supplied]

20. Indeed, Mr. Tamboly would contend that it is not necessary to grant interim relief of the extreme nature claimed on behalf of the Society, and one must instead explore how to balance the competing interests of the parties. He would submit that appointing a Court Receiver to take custody of the project and hand it over to another Developer would be grossly unfair and disproportionate to the situation at hand. I have also given my anxious consideration to the facet of what would be a more appropriate means of adjusting the balance between the parties. I find that this facet, too, has been aptly answered in the following extract from **Rajawadi** :-

"64. I mention this (and some of this may indeed be speculation) because when one speaks of the 'balance of convenience', another umbrella term, one must attempt to give it some life and colour and actual societal context. This speaks of the comparative mischief or hardship to be weighed when granting or refusing relief. But there is

*nothing here but imbalance. The defaults by the Developer have undoubtedly caused immense prejudice and harm to the members of the Society. The hardship to the members is real and immediate; the so-called hardship to the Developers is notional. When it spent in the project, this was no altruism or charity. It was an investment toward great profit. Every investment involves risk. The Developer gambled on the project. Receiving monthly rent is not a sop, not a matter of 'convenience'. It is a matter of survival. Therefore, the non-payment of dues, the delays in project completion, and not paying transit rent for months together speaks to an inherent, and constantly growing, social injustice. It should not be allowed to continue. Therefore, apart from the exceptionally strong prima facie case that the Society makes out, the 'balance of convenience' is decidedly in its favour.*"

*[Emphasis Supplied]*

21. The situation that the Society in the captioned Petition finds itself in, would well fit what has been described by the Learned Single Judge in ***Rajawadi***, which is extracted above.

22. As regards the third-party interests having been created, it would not be inappropriate, however unfortunate, to quote from another judgement of a learned Single Judge of this Court in ***Vaidehi Akash***<sup>2</sup>, which would indicate that the third-party purchasers who derive their interests from the redevelopment do so by taking a risk on their assessment of performance by the Developer. The Society itself cannot

<sup>2</sup> *Vaidehi Akash Housing Pvt. Ltd. v. New D.N. Nagar Co-operative Housing Society Union Ltd. – 2014 SCC OnLine Bom 5068*

be tied down by the third-party interests created by a defaulting Developer. The following extract from ***Vaidehi Akash*** would be noteworthy:

*“85. There being no privity of contract between the Society and the third party purchasers claiming under Vaidehi, the third party purchasers cannot claim specific performance of their respective agreements for sale except through Vaidehi. They stand or fall by Vaidehi. If the rights of Vaidehi are brought to an end upon a lawful termination of the Society Development Agreement, the third party purchasers cannot lay any independent claim against the Society or anyone claiming through the Society. The agreements with third party purchasers are premised upon a valid, subsisting and enforceable agreement between their vendors, namely, Vaidehi and the owners, namely, the Society and in fact refer to the Society Development Agreement in this behalf. Admittedly, therefore, the third party purchasers had, or at any rate, ought to have, notice of the Society Development Agreement and its terms and conditions and Vaidehi's obligations to perform the same. If Vaidehi fails to perform these obligations, the purchasers cannot but suffer the consequences. In other words, the purchaser's rights are subject to Vaidehi's rights and not higher than those. Therefore, from a contractual standpoint, the third party purchasers have no case against the Society or Rustomjee, who claim through the Society.”*

*86. Let us now consider if these third party purchasers have any rights under MOFA against the Society. It is submitted on their behalf that the Society is very much a ‘promoter’ within the meaning of MOFA as regards their respective agreements for sale. Learned Counsel for the*

*purchasers rely upon the definition of “promoter” contained in Section 2(c) of the MOFA. The definition is in the following terms:*

*“promoter” means a person and includes a partnership firm or a body or association of persons, whether registered or not who constructs or causes to be constructed a block or building of flats, or apartments for the purpose of selling some or all of them to other persons, or to a company, co-operative society or other association of persons and includes his assignees; and where the person who builds and the person who sells are different persons, the term includes both.”*

*87. It is submitted that the Society can at any rate be said to have caused the building of flats to be constructed for the purpose of selling the same and as a person, who causes such building to be built, is as much a promoter as a person who sells premises in such building.*

*88. The Society is the owner of the property and has entered into an agreement with the developers, i.e. Vaidehi, for redevelopment of its property. The redevelopment envisages construction of the Society's building to accommodate its members and also construction of building/s of flats/premises to be sold to outsiders. The agreement authorizes or entitles the developers to construct such building/s and sell flats/premises therein to outsiders. Such authority or entitlement is to the developers' account and in their own right and as an independent contractor. If in exercise of such authority or entitlement, a building is constructed by the developers, it cannot be said that such building is caused to be constructed by the Society within the meaning of Section 2(c) of the MOFA.*

*89. Any other interpretation would lead to anomalous consequences.*

*which could never have been contemplated by MOFA. The owners of lands entering into agreements for sale or development agreements with promoters/developers would be held as being subject to all liabilities of a promoter, such as liability of disclosure of plans and specifications, outgoing etc. under Section 3 of the MOFA, entering into agreements in accordance with Section 4, giving possession of flats and suffering the consequences of Section 8, forming co-operative societies of flat purchasers under Section 10 and so on. This would be plainly inconceivable.”*

*[Emphasis Supplied]*

23. It is also apparent to me that the Developer has had a lengthy period of time to comply with his committed obligations and perform on the Development Agreement. Yet, the members of the Society who have vacated their premises over five years ago remain out of their homes, and towards this end, the observation of another Learned Civil Judge in the case of and ***SSD Escatics***<sup>3</sup> would be noteworthy, which is follows :-

*“28. In my view, this submission of Mr. Narula overlooks the fact that the respondent members had agreed to redevelopment in the hope of better prospects and payment was made only in inducement for the members of the society who agreed to redevelop and vacating their homes rather than continue in the premises during repairs that would have to be undertaken. Payment of rent cannot be in any manner considered to be a “benefit”. It only facilitated the members to be housed in different premises. There is substantial collateral hardship*

<sup>3</sup> *SSD Escatics Pvt. Ltd. v. Goregaon Pearl Co-operative Housing Society Ltd., through its Hon. Secretary Mr. T.G.K. Kartha – 2018 SCC OnLine Bom 21429*

*that is associated shifting from one own home to rented premises and during the period that is to be taken for the new and permanent home to be constructed. The respondents are out of their homes for about 11 years. When they vacated their premises they were expecting to be back in their new homes within a reasonable period of time. Although shifting to rented premises may appear to be a formality to facilitate redevelopment, in fact it is a commitment made in anticipation of performance of the petitioners promises to rehouse them in permanent accommodation. While resolving to enter into such agreement, the members of the society, for that matter no home owner, would expect or tolerate delay of this nature. The contention that the order passed by the tribunal is a final order must be repelled. In the facts and circumstances of the case and in my view it is a just order. Sufficient opportunities have been given to the petitioners to remedy their breaches. The submissions made at the bar in support of the challenge as to the need to return alleged benefit, hardship that may be caused to third party purchasers, failure to issue NOC resulting in starvation of funds etc. are not reason enough to keep the project in limbo.”*

*[Emphasis Supplied]*

24. It is in these circumstances, that in my opinion, the facts at hand represent a fit case for an intervention in terms of Section 9 of the Act. I am satisfied that a case has been made out, warranting the grant of reliefs in terms of prayer clauses (a), (a-1), (a-2), and (b), which, with some moulding is set out below:-

*“(a) The Respondent No. 1, its directors, servants, agents and/or persons claiming through them are directed to hand over peaceful*

*possession of the said property, viz., all that piece or parcel of land or ground situated at Mulund (East), Mumbai - 400 081 bearing CTS No. 554/1 admeasuring 5002.40 sq. yards equivalent to 4182.60 sq. mtrs. or thereabouts in the Registration Sub-District of Bandra, Mumbai Suburban District, Taluka Kurla along with the existing structure/s (completed or otherwise) standing thereon to the Society;*

*(a-1) The Learned Court Receiver of this Court having all powers under Order XL Rule 1 of the Civil Procedure Code shall take possession of the said property, viz all that piece or parcel of land or ground situated at Mulund (East), Mumbai 400 081 bearing CTS No. 554/1 admeasuring 5002.40 sq. yards equivalent to 4182.60 sq. mtrs. or thereabouts in the Registration Sub-District of Bandra, Mumbai Suburban District, Taluka Kurla along with the existing structure/s (completed or otherwise) standing thereon (with police assistance, if required) and hand over the said redevelopment project to the Petitioners herein;*

*(a-2) The Respondent No. 1, its Directors, officers, servants, agents, and/or all or any persons claiming through and under them by an order of temporary injunction from creating third party rights i.e. mortgages, sale lien, leave and license, lease, gift and/or encumbrance of any kind whatsoever in respect of the said property, viz., all that piece or parcel of land or ground situated at Mulund (East), Mumbai - 400 081 bearing CTS No. 554/1 admeasuring 5002.40 sq. yards equivalent to 4182.60 sq. mtrs. or thereabouts in the Registration Sub-District of Bandra, Mumbai Suburban District, Taluka Kurla along with the existing structure/s (completed or otherwise) standing thereon and the said redevelopment project in any manner whatsoever;*

*(b) The Respondent No. 1, its Directors, servants, agents, contractors and/or all or any person claiming through or under them by way of a temporary injunction from intermeddling, interfering, obstructing in the redevelopment process of the said property, construction by the Petitioners by appointment of a third party developer, contractor, completion by self-development process and/or all or any other acts done on the said property and the said project by the Petitioners and/or their assignees, nominees, agents, contractors, developers;*

25. The Society has already invoked arbitration and it shall be open to the Society to proceed further and take steps to have the arbitration proceedings commenced at the earliest. The Society is directed to file an appropriate Application under Section 11 of the Act, if not already filed, within a period of eight weeks from the upload of this order on the website of this Court, should there have been no consensus on the identity of the arbitrator by now.

26. The reliefs granted above shall continue until four weeks after an Arbitral Tribunal is appointed, provided a Section 11 Application is filed in the absence of consensus over formation of the Arbitral Tribunal. The Arbitral Tribunal shall then take over these proceedings as continuing proceedings under Section 17 of the Act, and pass such orders as it deems fit, including directions to substitute, reduce, retain

or enhance the interim protection granted hereby, after hearing the respective parties.

27. With the aforesaid directions, this Section 9 Petition is finally *disposed of*.

28. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

29. At the time of pronouncement, Learned Advocate for the Respondent seeks a stay. For the reasons set out in the judgement, the request of stay is not worthy of acceptance.

[ SOMASEKHAR SUNDARESAN, J.]