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

COMM ARBITRATION PETITION (L) NO. 23540 OF 2026

Shree Samarth Spark Developers LLP … **Petitioner**

V/s.

1. **Amardeep Constructions**
2. **Keshavji Damji Minat**
3. **Premji Velji Patel**
4. **Jeram Jetha Gami**
5. **Govind Jetha Gami** … **Respondents**

Mr. Mayur Khandeparkar with Mr. Aadil Parsurampuria, Mr. Malhar Bageshwar, and Mr. Samir Suryawanshi for the petitioner.

Mr. A.R. Gole with Ms. Vishwoli V. Botte for respondent Nos.2 and 3.

Mr.Rohan Sawant with Mr. Aman Saraf, and Ms. Sakshi Agarwal i/by Mr. Bipin Joshi for respondent Nos.4 and 5.

CORAM	:	**AMIT BORKAR, J.**
RESERVED ON	:	**JULY 24, 2026**
PRONOUNCED ON	:	**JULY 28, 2026**

JUDGMENT:

1. By this petition filed under Section 9 of the Arbitration and Conciliation Act, 1996, the petitioner is asking for interim protection of its rights arising out of the Development Agreement dated 31 December 2014, the First Supplementary Agreement dated 21 April 2016, the Second Supplementary Agreement dated 11 June 2021, the Third Supplementary Agreement dated 14 June 2021 and the Memorandum of Understanding dated 11 September 2023. According to the petitioner, these agreements govern the rights and obligations of the parties in relation to the redevelopment project and those rights require protection till the disputes are decided in arbitration.

2. The facts leading to the filing of the present petition are as follows. On 31 January 2009, the Slum Rehabilitation Authority issued a Letter of Intent in favour of the petitioner for redevelopment of the subject property. This Letter of Intent was later revised on 14 January 2012 and again on 28 April 2021. On 31 December 2014, the petitioner and respondent No.1 entered into a Development Agreement for joint development of the subject property. Under this agreement, respondent No.1 received development rights over land admeasuring 6,848.55 square metres together with development potential of 12,655.47 square metres. In return, respondent No.1 agreed to pay the petitioner Rs.52 crores in stages and also provide the constructed area mentioned in the agreement. The agreement made respondent No.1 responsible for bearing all expenses connected with the project. These included payment of premiums, obtaining permissions and approvals, construction costs, payment of transit rent to slum dwellers, dues and all other expenses relating to the rehabilitation buildings and respondent No.1's share of the project. Respondent No.1 also agreed to complete the SRA scheme, comply with all conditions imposed by the SRA authorities, engage the required workforce, obtain the Completion Certificate and secure the Occupation Certificate for the rehabilitation buildings at its own cost. The agreement also contained a clause providing that disputes between the parties would be resolved through arbitration. On 21 April 2016, the parties executed the First Supplementary Agreement. Under this agreement, the free sale units to be shared between the petitioner and respondent No.1 were identified in Annexure "B". It also recorded the security furnished by respondent No.1 for payment of the remaining consideration of Rs.38 crores. By that time, respondent No.1 had paid Rs.14 crores out of the total agreed consideration of Rs.52 crores. Subsequently, on 28 April 2021, the SRA issued a revised Letter of Intent permitting utilisation of the Incentive Sale FSI.

3. On 11 June 2021, the parties executed the Second Supplementary Agreement. Under this agreement, respondent No.1 again accepted responsibility to bear all expenses for construction of Rehabilitation Building No.4. Respondent No.1 also agreed to continue paying transit rent to all slum dwellers until the building was completed, and the Occupation Certificate was obtained. On 14 June 2021, the petitioner and respondent No.1 executed the Third Supplementary Agreement. Under this agreement, respondent No.1 provided security in favour of the petitioner towards payment of the balance consideration of Rs.11.04 crores.

4. On 11 September 2023, the parties entered into a Memorandum of Understanding because Rehabilitation Building No.4 had still not been completed. By that time, four rehabilitation buildings and one sale building had been completed and Occupation Certificates had been obtained. Rehabilitation Building No.4 and Sale Building No.2 remained incomplete. The Memorandum recorded that respondent No.1 would concentrate on completing Rehabilitation Building No.4. As security for completion of the remaining work and payment of transit rent, respondent No.1 offered 6,500 square feet of premises in favour of the petitioner. It was also agreed that if respondent No.1 failed to complete the remaining work, the secured premises would stand released in favour of the petitioner, who would then be free to sell them. Respondent No.1 assured that these premises were free from any encumbrance and had neither been sold nor mortgaged. The Memorandum also required respondent No.1 to all outstanding transit rent and, after obtaining the Occupation Certificate for Rehabilitation Building No.4, obtain the full Occupation Certificate for Sale Building No.2. The Memorandum also contained an arbitration clause.

5. On 17 September 2025, the Slum Rehabilitation Authority passed an order on its own under Section 13(2) of the Slum Act terminating the petitioner's appointment as developer of the project. The order recorded that a stop work notice had been issued on 7 March 2025 in respect of the sale building because transit rent had not been paid. The order recorded that transit rent of about Rs.3.87 crores was still payable to 73 slum dwellers. Aggrieved by this order, the petitioner filed Slum Appeal No.382 of 2025 before the Apex Grievance Redressal Committee on 9 October 2025 challenging the termination order passed under

Section 13(2) of the Slum Act. On 15 May 2026, the Apex Grievance Redressal Committee stayed the operation of the order passed under Section 13(2). While granting interim protection, it directed the petitioner to deposit Rs.50 lakhs towards transit rent and to complete the project on or before 1 September 2026. According to the petitioner, this direction was complied with by depositing Rs.50 lakhs and by making direct payments of Rs.1.5 crores to the slum dwellers towards transit rent. According to the petitioner, financial obligations in relation to the project are still outstanding. These include unpaid contractor dues of Rs.4.01 crores, pending LUC charges of Rs.3.76 crores, outstanding transit rent of Rs.3.37 crores and pro rata charges payable to the Municipal Corporation amounting to Rs.4.19 crores. The petitioner has also placed on record the details of the unsold flats which ar still available in the project.

6. On 13 June 2026, the petitioner issued a notice invoking the arbitration agreement against the respondents. On 16 July 2026, the present petition came to be filed before this Court. At the initial stage, this Court passed an ad interim order in terms of prayer clause (a), restraining the respondents from creating any third party rights or otherwise dealing with the unsold flats until orders.

7. Mr. Khandeparkar, learned Advocate appearing for the petitioner, submitted that at this stage the petitioner is pressing the reliefs contained in prayer clauses (a), (b), (e), (f), (g), (h), (i), (j) and (k) of the petition. He submitted that, considering the facts of the present case, the petitioner should be appointed as the agent of the Court Receiver because the Letter of Intent for the redevelopment project continues to stand in the name of the petitioner. Learned Advocate for the petitioner submitted that the present petition is filed to ensure completion of the rehabilitation building meant for the slum dwellers. According to him, the petitioner is not seeking any relief at this stage in relation to completion of the free sale building.

8. Learned Advocate for the petitioner submitted that the present claim is founded upon Section 20 of the Specific Relief Act. According to him, the petitioner is seeking enforcement of the obligations by adopting the substituted mode of specific performance contemplated under the said provision.

9. Inviting my attention to the Development Agreement dated 31 December 2014, learned Advocate for the petitioner submitted that under Clause 2, the petitioner had granted development rights to respondent No.1 as the co-developer. In return, respondent No.1 had agreed to pay the agreed monetary consideration and also hand over constructed premises admeasuring 6,594.42 square feet together with other agreed rights. Referring to Clause 5 of the agreement, he submitted that respondent No.1 had accepted full responsibility for bearing all expenses relating to construction of both the rehabilitation buildings and the free sale component. According to him, respondent No.1 was also required to comply with all conditions contained in the Letter of Intent and all directions and requirements imposed by the concerned authorities for development of the project. Learned Advocate for the petitioner then referred to the First Supplementary Agreement dated 21 April

2016. He submitted that Annexure "B" to the agreement identified the flats that were to be allotted to the petitioner. According to him, Annexure "B" contained details of the petitioner's share in Building No.2. He submitted that by a subsequent agreement dated 9 February 2021, both parties agreed to modify Annexure "B" of the Supplementary Agreement by substituting it with Annexure "B5". The revised annexure included, among other flats, Flat Nos.23, C-2001 and C-2002, which formed part of the petitioner's allocation. He also relied upon the Memorandum of Understanding dated 11 September 2023, which records that respondent No.1 was required to concentrate on completing the remaining work of Rehabilitation Building No.4, since completion of that building was necessary for obtaining the Occupation Certificate for Sale Building No.2.

10. Learned Advocate for the petitioner next relied upon Clause 5 of the Memorandum of Understanding dated 11 September 2023. He submitted that respondent No.1 had agreed to keep an area admeasuring about 6,560 square feet carpet area in Building No.2 as security in favour of the petitioner for completion of the remaining construction work of Rehabilitation Building No.4. Referring to Clause 6 of the Memorandum, he submitted that if respondent No.1 failed to complete the balance construction work of Rehabilitation Building No.4, the said secured area would stand released in favour of the petitioner, who would then be entitled to sell the same in the open market and utilise the sale proceeds for completing the remaining construction work. Learned Advocate for the petitioner submitted that Clause 8 of the Memorandum required respondent No.1 to pay the road pro rata charges before applying for the full Occupation Certificate of Building No.2. He submitted that under Clause 9, respondent No.1 was required to all outstanding transit rent payable to the slum dwellers through the petitioner before execution of the Memorandum. He submitted that Clause 11 required respondent No.1 to complete the balance construction work of Rehabilitation Building No.4. Referring to Clause 16, he submitted that all disputes arising out of the Memorandum, including disputes relating to interpretation of its terms, rights, and obligations of the parties and any acts or omissions connected with the agreement, were required to be referred to arbitration. According to him, Clause 16 supersedes the arbitration clause contained in Clause 31 of the Development Agreement and, therefore, the present disputes are governed by Clause 16 of the Memorandum of Understanding.

11. Learned Advocate for the petitioner also relied upon the order dated 17 September 2025 passed by the Slum Rehabilitation Authority under Section 13(2) of the Slum Act. He submitted that while terminating the petitioner's appointment as developer, the Authority recorded that the petitioner had failed to comply with the directions for payment of provisional transit rent to the slum dwellers. The Authority also relied upon the Auditor's Report dated 21 February 2025, which recorded that transit rent amounting to Rs.3,87,54,325 remained unpaid and that 73 slum dwellers had not received transit rent, which according to the Authority amounted to breach of Circular No.153. He submitted that, in the appeal preferred by the petitioner, the Apex Grievance Redressal

Committee granted interim protection and directed the petitioner to deposit 50% of the amount together with Rs.50 lakhs towards transit rent before the SRA, which direction was subsequently modified by the Committee.

12. Learned Advocate for the petitioner submitted that although prayer clause (j) seeks recoup Rs.61.15 crores, the petitioner is, at this stage, restricting its monetary claim to Rs.15.33 crores.

13. Mr. Sawant, learned Advocate appearing for respondent Nos.4 and 5, invited my attention to Clause 31 of the registered Development Agreement dated 31 December 2014. He submitted that the arbitration clause provides that the Arbitrator has no power to pass any order or award terminating or cancelling the agreement or directing stoppage, suspension, or postponement of the development work. According to him, when the Arbitrator himself has no such power, this Court, while exercising jurisdiction under Section 9 of the Arbitration and Conciliation Act, cannot grant a relief which the Arbitrator is not competent to grant. Learned Advocate for respondent Nos.4 and 5 submitted that the petitioner has suppressed important facts from this Court. He pointed out that on 6 May 2026 the petitioner had applied for a full Occupation Certificate in respect of Rehabilitation Building No.4, which according to him shows that the building was complete. He also relied upon the appeal filed by the petitioner before the Apex Grievance Redressal Committee challenging the order passed under Section 13(2) of the Slum Act. He submitted that in paragraph (p) of the appeal, the petitioner had stated that the work of the building was 99% complete and that all slum dwellers would shortly be rehabilitated. He pointed out that in paragraph (q) of the same appeal, the petitioner had stated that transit rent had been paid to all slum dwellers up to November 2025. According to him, after April 2025 the petitioner never issued any notice calling upon the respondents to pay any transit rent. He also relied upon Exhibit D to the affidavit in reply, which according to him shows that respondent No.1 had paid a total amount of Rs.6,55,64,169 to the petitioner up to 19 March 2024 and that the said amount was paid towards transit rent for the slum dwellers.

14. Referring to Clause 6 of the Memorandum of Understanding dated 11 September 2023, learned Advocate submitted that both parties had agreed that the security area would be released proportionately to respondent No.1 as and when the remaining construction work of Rehabilitation Building No.4 was completed. According to him, the area admeasuring 6,560 square feet in Building No.2, which formed part of respondent No.1's allocation, was kept as security for meeting third party liabilities. He relied upon Annexure C to the Memorandum and submitted that this area of 6,560 square feet represents the maximum security available to the petitioner and no larger claim can be made against it. He submitted that Annexure D provides for proportionate release of the respondents' flats after compliance with Clause 6 of the Memorandum. According to him, an area of 435 square feet remained to be released after completion of Rehabilitation Building No.4. He therefore submitted that the real dispute concerns 435 square feet, whereas the petitioner is seeking relief in respect of a much larger area measuring 13,627 square feet.

15. In reply to the petitioner's reliance on Section 20 of the Specific Relief Act, learned Advocate submitted that the said provision has no application to the facts of the present case. According to him, Section 20 makes its operation subject to the terms of the contract. Since the rights and obligations of the parties are governed by their agreements, the petitioner cannot invoke Section 20 to claim any independent right. He submitted that the petitioner had not issued any written notice calling upon respondent No.1 to perform its obligations before seeking substituted performance.

16. Dealing with the petitioner's contention that Clause 16 of the Memorandum of Understanding supersedes Clause 31 of the registered Development Agreement, learned Advocate submitted that this contention is contrary to the petitioner's own case. He pointed out that both in the notice invoking arbitration and in the present petition, the petitioner has relied upon the arbitration clause contained in the registered Development Agreement. He submitted that an arbitration clause contained in an unregistered Memorandum of Understanding cannot replace or modify the arbitration clause contained in a registered Development Agreement. According to him, the disputes between the parties are therefore governed by Clause 31 of the registered Development Agreement.

17. Learned Advocate also invited my attention to paragraph 24 of the affidavit in reply. He submitted that the respondents have stated therein that minor works such as painting and polishing remain to be completed and that about 99% of the construction has been completed, including all structural work and slabs. According to him, this demonstrates the willingness and ability of the respondents to complete the project. He submitted that the value of the remaining work is about Rs.4,01,37,788. As regards the alleged outstanding property tax payable to the Municipal Corporation, he submitted that such liability does not relate to Rehabilitation Building No.4 but also concerns other portions of the project being developed by the petitioner. Learned Advocate relied upon Clause 19 of the Development Agreement. He submitted that under the said clause, respondent No.1, as co-developer, is prohibited from assigning its rights, title, interest, or obligations under the agreement to any other person.

18. Learned Advocate then referred to the reliefs sought in the petition. He submitted that the relief claimed in prayer clause (a) is much wider than what the petitioner is entitled to seek. In so far as prayer clause (b) is concerned, he submitted that the said relief could operate till completion of the building. According to the respondents, the building stands completed. He submitted that prayer clause (c), which seeks a direction to the respondents to complete the building, is inconsistent with the petitioner's own statement made before the Apex Grievance Redressal Committee that the construction was 99% complete. Lastly, learned Advocate referred to Clause M of the petition, which contains the list of the respondents' alleged pending financial obligations. He submitted that the figures mentioned therein are unsupported by any documentary material and have no factual basis. On these grounds, he submitted that the petition deserves to be dismissed.

19. In rejoinder, Mr. Khandeparkar, learned Advocate for the petitioner, relied upon Clause 16 of the Memorandum of Understanding dated 11 September 2023. He submitted that this clause has replaced Clause 31 of the Development Agreement and, therefore, there is no restriction on the powers of the Arbitrator. According to him, Clause 16 authorises the Arbitrator to decide all disputes relating to the rights and obligations of the parties. He submitted that even if Clause 31 of the Development Agreement is considered, it prevents the Arbitrator from passing an award terminating the agreement or directing stoppage of the development work. According to him, this restriction does not limit the powers of this Court while exercising jurisdiction under Section 9 of the Arbitration and Conciliation Act, 1996. He therefore submitted that the reliefs sought in the present petition are not barred by Clause 31 of the Development Agreement.

20. Learned Advocate for the petitioner then relied upon the notice invoking arbitration dated 13 June 2026. He submitted that paragraphs 9 and 14 of the notice called upon the respondents to perform their obligations and, therefore, the notice satisfies the requirement contemplated under Section 20 of the Specific Relief Act. According to him, unless the respondents perform their part of the contract, the redevelopment project cannot be completed. He submitted that the photographs placed on record show that the respondents' contention that the building is complete is incorrect. According to him, though the structural work may have been completed, internal work still remains unfinished. He also submitted that from the year 2019 till October 2024, the respondents failed to pay transit rent to the slum dwellers and that transit rent payable to 73 slum dwellers still remains unpaid. He contended that three flats, which were allotted to the petitioner and kept as security under the Memorandum of Understanding, have been sold by the respondents. According to him, this conduct shows an intention on the part of the respondents to dispose of the secured assets.

21. Learned Advocate for the petitioner submitted that under the Memorandum of Understanding, ten flats and one shop were kept as security for performance of the respondents' obligations. According to him, out of these secured properties, two flats have been sold by the respondents. He submitted that completion of Rehabilitation Building No.4 is necessary in the interest of the slum dwellers who are still awaiting rehabilitation. He reiterated that the petitioner is not seeking any relief at this stage in relation to the free sale component of the project. The object of the present petition is to ensure completion of the rehabilitation building so that the slum dwellers receive possession of their premises. On these grounds, he prayed that the petition be allowed in terms of prayer clauses (a), (b), (e), (f), (h), (i), (j) and (k).

<u>REASONS AND ANALYSIS:</u>

22. I have heard the learned Advocate for the petitioner and the learned Advocate appearing for respondent Nos.4 and 5 at length. I have also carefully perused the Development Agreement dated 31

December 2014, the three Supplementary Agreements, the Memorandum of Understanding dated 11 September 2023, the order passed by the Slum Rehabilitation Authority under Section 13(2) of the Slum Act, the order passed by the Apex Grievance Redressal Committee, the correspondence exchanged between the parties, the notice invoking arbitration and the pleadings filed before this Court.

I. Whether Clause 16 of the Memorandum of Understanding dated 11 September 2023 supersedes Clause 31 of the Development Agreement dated 31 December 2014:

23. The first issue which arises for consideration is whether Clause 16 of the Memorandum of Understanding dated 11 September 2023 supersedes Clause 31 of the Development Agreement dated 31 December 2014.

24. Before considering the rival submissions, it is necessary to examine the language used in the two arbitration clauses. Clause 31 of the Development Agreement provides that if any difference arises between the parties in respect of the development of the property, interpretation of any clause, any act or omission connected with the agreement or any matter relating to the project, such dispute shall be referred to arbitration. However, the clause provides as follows:

> "The Arbitrators shall not have any power or authority to pass any order, direction or award for termination/cancellation of these presents and/or to direct discontinuance, postponement, stoppage of continuance of the development work by the Co-Developer."

25. The clause records that:

> "Pending adjudication of the dispute by the arbitrator, the construction and development work of the Project... shall continue in accordance with these presents…"

26. Clause 16 of the Memorandum of Understanding, on which reliance is placed by the petitioner, provides that disputes relating to interpretation of the agreement, legal effect of its terms and conditions, rights and liabilities of the parties and acts or omissions connected with the agreement shall be referred to arbitration. Unlike Clause 31, Clause 16 does not prohibit the Arbitrator from granting any relief.

27. In my view, the submission of the petitioner that Clause 16 supersedes Clause 31 cannot be accepted in the manner in which it is canvassed. The Memorandum of Understanding nowhere states that Clause 31 of the Development Agreement stands cancelled, deleted or substituted. There is no clause declaring that the earlier arbitration agreement shall cease to operate. Had the parties intended to extinguish the earlier arbitration clause , nothing prevented them from recording such intention in language. The absence of such words assumes significance because the Development Agreement constitutes the principal contract governing the redevelopment project.

28. At the same time, the submission of the respondents that Clause 31 governs the dispute also cannot be accepted without qualification. The Memorandum of Understanding is executed between the same parties. It creates additional rights and obligations. It earmarks fresh security. It regulates completion of

Rehabilitation Building No.4. It provides obligations regarding transit rent, property taxes, road pro rata charges and release of security area. It also records an agreement for reference of disputes to arbitration. Therefore, the Memorandum of Understanding cannot be ignored while determining the scope of the arbitral reference.

29. In my opinion, the proper approach is to read both documents harmoniously. Courts lean in favour of giving effect to the clause of a contract rather than rendering one provision redundant. Unless there is an inconsistency making operation impossible, provisions executed between the same parties should be construed in a manner which allows both to operate.

30. When so construed, Clause 31 continues to regulate disputes arising under the Development Agreement. Clause 16, on the other hand, extends the arbitration mechanism to disputes arising out of the rights and obligations created under the Memorandum of Understanding. Since the Memorandum supplements the Development Agreement rather than replacing it, both clauses can coexist. Even assuming for the sake of argument that Clause 31 governs the present disputes, the restriction incorporated therein requires examination. The prohibition is against an award directing termination or cancellation of the agreement or directing discontinuance, postponement, or stoppage of the development work. The clause does not state that the Arbitrator cannot grant form of interim or protective relief. It does not prohibit directions intended to preserve the subject-matter of arbitration or secure performance of obligations. Significantly, the second part of Clause

31 declares that pending adjudication of disputes, the construction and development work shall continue. Thus, the object of the clause appears to be continuity of the redevelopment project. Prima facie, therefore, the clause is intended to prevent either party from using arbitration as a means of stopping redevelopment.

31. The petitioner is correct to the extent that the reliefs pressed are founded upon the case that Rehabilitation Building No.4 should be completed and transit rent should continue to be paid. These reliefs, on their face, do not seek termination of the Development Agreement or stoppage of redevelopment. Whether individual prayer falls within permissible limits is a question which will require examination while dealing with each prayer. However, because Clause 31 contains a limited restriction upon the Arbitrator's powers, it cannot be said at this stage that relief claimed in the petition is barred. The respondents are justified in contending that the restriction contained in Clause 31 cannot be ignored. If any relief results in termination of the arrangement or displacement of respondent No.1 from execution of the project, the Court would have to examine whether such relief travels beyond the framework accepted by the parties.

32. Thus, the rival submissions are accepted in part. The contention of the petitioner that Clause 16 replaces Clause 31 is not borne out from the documents. The contention of the respondents that Clause 31 alone governs the dispute irrespective of subsequent Memorandum of Understanding also cannot be accepted.

33. The prima facie conclusion, therefore, is that the Development Agreement and the Memorandum of Understanding must be read together. Clause 31 continues to operate in respect of the Development Agreement, while Clause 16 governs disputes arising under the Memorandum of Understanding. Neither clause renders the other redundant. The restrictions contained in Clause 31 remain relevant, but their applicability has to be tested with reference to the nature of each relief sought by the petitioner. The question, whether those restrictions curtail the powers of this Court under Section 9 of the Arbitration and Conciliation Act, is a different issue and is required to be examined independently.

II. Whether the restriction contained in Clause 31 of the Development Agreement limits the jurisdiction of this Court under Section 9 of the Arbitration and Conciliation Act, 1996:

34. The next question which arises for consideration is whether the restriction contained in Clause 31 of the Development Agreement, that the Arbitrator shall not pass any order or award terminating the agreement or directing discontinuance of the development work, also restricts the jurisdiction of this Court while exercising powers under Section 9 of the Arbitration and Conciliation Act, 1996.

35. Mr. Sawant submitted that the jurisdiction of this Court under Section 9 is ancillary to the arbitral proceedings. According to him, Section 9 is intended to preserve the efficacy of the arbitral process and not to enlarge the powers of the Arbitrator. He submitted that where the parties have agreed that the Arbitrator shall have no authority to terminate the agreement or interfere with continuation of the development work, the Court cannot grant indirectly what the Arbitrator cannot grant directly. According to him, permitting such a course would rewrite the contract between the parties.

36. Learned counsel submitted that several of the reliefs claimed by the petitioner, particularly appointment of the Court Receiver, permission to sell the respondents' unsold flats, transfer of sale proceeds and authorising the petitioner to complete the remaining work, displace respondent No.1 from execution of the project. According to him, although the petitioner has not prayed for termination of the Development Agreement, the consequence of such reliefs would be exactly the same. He therefore submitted that such reliefs fall within the prohibition contained in Clause 31.

37. Mr. Khandeparkar, on the other hand, submitted that the argument proceeds on an incorrect understanding of Section 9. According to him, the jurisdiction of this Court under Section 9 flows from the Arbitration and Conciliation Act and not from the arbitration agreement executed between the parties. He submitted that Clause 31 limits the powers of the Arbitrator while deciding the disputes. It does not curtail the powers conferred upon the Court by Parliament under Section 9.

38. Learned counsel submitted that none of the reliefs pressed seeks cancellation of the Development Agreement or stoppage of the redevelopment project. On the contrary, the relief is intended to facilitate completion of Rehabilitation Building No.4 and payment of transit rent. According to him, continuation of the project is the object of the petition and, therefore, the respondents cannot rely upon Clause 31 to oppose interim measures which are intended to secure completion of the obligations.

39. Before considering these rival submissions, it is necessary to notice the scope of Section 9. The provision empowers the Court to grant interim measures before commencement of arbitration, during pendency of arbitration or after passing of the award but before its enforcement. The object of the provision is to preserve the subject matter of arbitration, secure the amount in dispute, protect property, maintain status quo where necessary and grant such interim measures as appear just and convenient in the facts of the case.

40. The jurisdiction under Section 9 is discretionary. The Court does not exercise ordinary civil jurisdiction while deciding a Section 9 petition. At the same time, it originates from the Arbitration and Conciliation Act. Therefore, while exercising powers under Section 9, the Court is required to give due regard to the rights of the parties, but it cannot ignore the scheme governing interim protection pending arbitration. It is well settled that Section 9 cannot be invoked to rewrite the contract between the parties. Interim relief cannot be granted because it appears equitable. The relief must remain consistent with the framework accepted by the parties. The Court cannot create new rights or impose obligations which the parties never agreed to undertake.

41. Applying these principles, the first part of the respondents' submission deserves acceptance to the extent that this Court cannot, under the guise of interim protection, alter the relationship between the parties or grant a relief which amounts to final determination of the disputes. If an interim order removes respondent No.1 from execution of the project or renders the arbitral proceedings meaningless, such relief would require close scrutiny. However, I am unable to accept the proposition canvassed by the respondents that restriction imposed upon the Arbitrator limits the powers of the Court under Section 9. Clause 31 is addressed to the powers of the Arbitrator. The language employed is significant. It states that:

> "The Arbitrators shall not have any power or authority to pass any order, direction, or award for termination/cancellation of these presents and/or to direct discontinuance, postponement, stoppage of continuance of the development work by the Co-Developer."

42. The clause does not state that the Court exercising jurisdiction under Section 9 shall also be deprived of its powers. Had the parties intended to restrict the jurisdiction of the Court, language to that effect would have been expected.

43. More importantly, the present petition cannot be examined by looking at the nomenclature of the reliefs. The true nature and effect of individual prayer must be analysed. A prayer seeking preservation of security, disclosure of assets or protection against alienation may stand on a different footing from a prayer authorising sale of the respondents' properties or appointment of a Receiver with authority to execute the remaining work. Whether any prayer crosses the limitation cannot be decided in the abstract. It has to be examined prayer wise.

44. I also find substance in the submission of the petitioner that the reliefs pressed proceed on the basis that Rehabilitation Building No.4 should be completed. Prima facie, completion of the rehabilitation building advances rather than obstructs the object underlying Clause 31, continuation of the redevelopment project.

45. The present case also possesses a feature which cannot be ignored. The dispute does not concern an ordinary contract alone. The redevelopment project is undertaken under the Slum Rehabilitation Scheme. Delay in completion directly affects rehabilitation of slum dwellers, payment of transit rent and compliance with obligations under the scheme. Therefore, while exercising jurisdiction under Section 9, the Court is required to balance not the rights of the parties but also the larger objective of ensuring that the redevelopment project is not frustrated. This Court must therefore adopt a balanced approach. The restriction contained in Clause 31 cannot be rendered meaningless. The jurisdiction under Section 9 cannot be treated as having disappeared because the parties agreed to impose certain limitations upon the Arbitrator.

46. In my prima facie view, the correct principle is that the Court, while exercising powers under Section 9, must respect the allocation of rights and obligations and should avoid granting an interim measure which defeats the prohibition accepted by the parties. At the same time, the Court retains jurisdiction to pass such protective and preservative orders as may be necessary to safeguard the subject matter of arbitration, provided such orders do not amount to termination of the arrangement or displacement of the rights of either party before adjudication by the Arbitral Tribunal. Accordingly, I hold, prima facie, that Clause 31 does not exclude the jurisdiction of this Court under Section 9 of the Arbitration and Conciliation Act. The restriction contained therein is relevant while moulding the relief, but it is not by decisive of the petition. Each interim relief claimed by the petitioner must, therefore, be examined to ascertain whether it preserves the subject matter of arbitration or whether, in substance, it travels beyond the limitations accepted by the parties.

III. Whether the documents prima facie cast upon respondent No.1 the obligations asserted by the petitioner:

47. The next question which requires consideration is whether, on a prima facie reading of the Development Agreement dated 31 December 2014, the three Supplementary Agreements and the Memorandum of Understanding dated 11 September 2023, respondent No.1 had undertaken the obligations now asserted by the petitioner. This issue assumes significance because relief sought in the present petition is founded upon the allegation that respondent No.1 committed breach of those obligations.

48. Mr. Khandeparkar submitted that the documents leave no room for ambiguity. According to him, after execution of the Development Agreement, respondent No.1 assumed complete responsibility for financing and executing the redevelopment project. He submitted that respondent No.1 undertook to bear expenditure relating to construction of the rehabilitation buildings and the free sale buildings, payment of transit rent, charges, taxes, premiums, consultant's fees, obtaining permissions, obtaining the Occupation Certificates and other obligation necessary for successful completion of the project. According to him, the subsequent Supplementary Agreements and the Memorandum of Understanding reaffirm these obligations and, therefore, respondent No.1 cannot now dispute its liability.

49. Mr. Sawant did not dispute that the agreements cast obligations upon respondent No.1. His principal submission is that respondent No.1 has performed those obligations and that insignificant finishing work remains. According to him, the petitioner seeks to magnify minor pending work into a complete failure of performance. He also submitted that some of the alleged liabilities mentioned by the petitioner have no documentary basis and cannot be accepted because they are stated in Exhibit "N" to the petition.

50. Having considered the rival submissions, it becomes necessary to examine the documents. In matters arising out of agreements, the primary source of the parties' rights and obligations is the contract executed by them. Unless the language employed is ambiguous, the Court must give effect to the terms as agreed between the parties. Clause 5 of the Development Agreement is the principal provision dealing with the obligations of respondent No.1. The language employed in Clause 5 is comprehensive. It uses expressions such as "to bear and pay", "shall obtain", "shall complete", "shall comply" and "shall be liable". These expressions are mandatory in nature and do not indicate that the obligations are dependent upon future negotiations. Under Clause 5(i), respondent No.1 agreed to bear and pay all costs, charges, and expenses until receipt of the Occupation Certificates of both the rehabilitation buildings and the free sale buildings. The clause includes expenditure relating to approvals, sanctions, construction costs, premiums, payments, professional fees and the cost of construction of the rehabilitation buildings as well as the petitioner's allocated premises. Prima facie, therefore, the obligation to finance and execute the construction work stands assumed by respondent No.1. Clause 5(ii) obliges respondent No.1 to obtain permission, approval, revised layout, commencement certificate, Occupation Certificate and other clearance necessary for implementation of the Slum Rehabilitation Scheme. The clause also requires respondent No.1 to keep those permissions valid until completion of the project. This obligation again leaves little scope for dispute. Clause 5(iii) assumes importance in the facts of the present case. The clause provides that respondent No.1 shall bear and pay all costs relating to development of the property, including amended LOI charges, premiums, infrastructure charges, transit rent, shifting charges, road pro rata charges, consultant's fees, maintenance deposits, water charges, electricity charges, compensation payable to and non-slum dwellers and other incidental expenditure necessary for completion of the redevelopment project. The clause records that respondent No.1 shall not be entitled to claim reimbursement of such expenditure from the petitioner. Therefore, the obligation to pay transit rent is not an implied obligation sought to be introduced by the petitioner. It forms part of the undertaking accepted by respondent No.1 under the Development Agreement. Whether the obligation has in fact been performed is a matter of evidence. However, the existence of the obligation is beyond dispute on a plain reading of Clause 5(iii). Clauses 5(v) and 5(vi) require respondent No.1 to comply with condition imposed by the Slum Rehabilitation Authority and other authorities and to complete implementation of the Slum Rehabilitation Scheme at its own cost. These clauses also record that respondent No.1 shall ensure that breaches committed by it do not prejudice the petitioner's rights or interrupt the development of the project. Clause 5(vii) requires respondent No.1 to engage contractors, labourers and other agencies and to carry out construction in accordance with the sanctioned plans. Clause 5(xiii) obliges respondent No.1 to obtain the Occupation Certificates of the rehabilitation buildings and call upon the petitioner to take possession of its allocated premises. These clauses collectively indicate that responsibility for actual execution of construction work was also accepted by respondent No.1.

51. The obligations undertaken under the Development Agreement are reaffirmed in the subsequent agreements. The First Supplementary Agreement records that all costs relating to the proposed additional development, approvals, sanctions, construction and obtaining the Occupation Certificate shall be borne and paid by respondent No.1. Clause 5 thereof again provides that respondent No.1 shall bear all costs relating to construction of Rehabilitation Building No.4, payment of premiums, pro rata charges, LUC charges, consultant's fees and payment of transit rent to all slum dwellers until possession of the rehabilitation premises is handed over. The Second Supplementary Agreement reinforces the same arrangement. While creating additional security for payment of the balance consideration, it does not dilute any of the obligations undertaken by respondent No.1. On the contrary, the security arrangement proceeds on the assumption that respondent No.1 remains liable to perform the obligations and that the petitioner requires adequate security in case of default.

52. The Memorandum of Understanding dated 11 September 2023 assumes significance because it was executed after the parties had acquired knowledge of the delay in completion of Rehabilitation Building No.4. Recital "E" records that respondent No.1 had completed Sale Building No.2, Rehabilitation Building No.3 and part of Rehabilitation Building No.4 and that it was then focusing on completion of the remaining portion of Rehabilitation Building No.4. Thus, even respondent No.1 acknowledged under the Memorandum that Rehabilitation Building No.4 was yet to be completed. Clause 5 of the Memorandum provides that respondent No.1 agreed to earmark a security area admeasuring 6,560 square feet from its allocation in Sale Building No.2 for completion of the remaining construction work of Rehabilitation Building No.4 and payment of transit rent, property taxes, road pro rata charges and all expenses necessary for obtaining the Occupation Certificate. This clause links the security area with performance of the obligations contained in Clauses 5(i) to 5(xv) of the Development Agreement. Clause 6 is significant. It provides that if respondent No.1 is unable to complete the remaining construction work or discharge the necessary liabilities, the security area would stand released in favour of the petitioner for sale in the open market so that the petitioner may recover the expenditure required for completion of the pending work. Thus, the parties contemplated the possibility of default and agreed upon a mechanism intended to protect completion of the rehabilitation building. Clause 7 records an assurance by respondent No.1 that the security area had not been sold or mortgaged. Clause 8 obliges respondent No.1 to bear the road pro rata charges. Clause 9 once again obliges respondent No.1 to all outstanding transit rent before execution of the Memorandum and continue payment of transit rent until possession of Rehabilitation Building No.4 is handed over to the slum dwellers. Therefore, when all the documents are read together, a consistent pattern emerges. Agreement executed between the parties proceeds on the basis that respondent No.1 bears the primary responsibility for financing, executing and completing Rehabilitation Building No.4, obtaining the necessary permissions and Occupation Certificate, paying transit rent and discharging the liabilities connected with the redevelopment project. The subsequent agreements do not substitute these obligations. They reaffirm them while strengthening the security available to the petitioner in the event of default.

53. The submission of the respondents that the project is complete may have relevance while considering whether breach has in fact occurred or whether the reliefs claimed are proportionate. However, such submission does not dilute the obligations. Completion of ninety-nine percent work, assuming the statement to be correct, does not obliterate the obligation to complete the remaining one percent if such balance work is necessary for obtaining the Occupation Certificate or handing over possession to the slum dwellers. Likewise, the respondents' contention that certain financial liabilities are disputed cannot by negate the undertaking to bear those liabilities. The exact quantum of the outstanding dues may require evidence and adjudication before the Arbitral Tribunal. Nevertheless, the agreements cast responsibility upon respondent No.1 to bear such expenditure.

54. I therefore hold, prima facie, that the documents relied upon by the petitioner impose upon respondent No.1 the obligations of completing Rehabilitation Building No.4, obtaining the requisite Occupation Certificate, paying transit rent to the slum dwellers, discharging dues and complying with the conditions imposed by the competent authorities. The foundation of the petition is therefore prima facie established.

IV. Whether the petitioner has established, prima facie, that respondent No.1 committed breach of its obligations:

55. Having held that the documents, prima facie, cast upon respondent No.1 the obligation to finance, execute and complete Rehabilitation Building No.4, pay transit rent and discharge the other liabilities, the next question which arises is whether the material placed before this Court prima facie establishes that respondent No.1 has failed to perform those obligations. It is upon an affirmative answer to this question that the petitioner can claim interim protection under Section 9 of the Arbitration and Conciliation Act.

56. Having considered the rival submissions, it is necessary to bear in mind the limited scope of the present enquiry. At this stage, the Court is not required to record a final finding that respondent No.1 has committed breach of the contract. Such a determination can be made by the Arbitral Tribunal after recording evidence. The Court is concerned with the existence of a prima facie case based upon the documents and the contemporaneous material placed on record. In my prima facie opinion, the execution of the Memorandum of Understanding dated 11 September 2023 constitutes a significant circumstance. Parties do not create fresh security or redefine obligations where the original contract has been performed. The Memorandum records that Rehabilitation Building No.4 remained incomplete and creates a mechanism for ensuring its completion together with payment of transit rent and discharge of dues. This contemporaneous document lends support to the petitioner's contention that the obligations had not been fully performed as on that date. Significant is the fact that Clause 5 of the Memorandum earmarks specific security for completion of the remaining work. If no obligation remained outstanding, creation of such elaborate security would appear unnecessary. Though this circumstance is not conclusive of breach, it prima facie indicates that both parties recognised the existence of pending obligations requiring protection.

57. The respondents' submission that ninety-nine percent of the work stands completed cannot be rejected outright. It is possible that the remaining work is comparatively limited in quantity. However, completion of a redevelopment project cannot be measured by percentage of physical construction. The obligation is not to raise a structure. It extends to obtaining the Occupation Certificate, clearing dues, paying transit rent till possession is handed over and fulfilling condition necessary for occupation by the slum dwellers. A building may be physically complete, yet if the Occupation Certificate cannot be obtained because compliances remain unfulfilled, the obligation cannot be said to have been fully discharged. Similarly, continued liability towards transit rent survives until possession is handed over in accordance with the terms. Therefore, the respondents' reliance upon the alleged stage of physical construction, by, does not answer the petitioner's allegations.

58. The proceedings initiated under Section 13(2) of the Slum Act also deserve consideration. I am unable to accept the petitioner's submission that the order passed by the Slum Rehabilitation Authority establishes breach. , I am unable to accept the respondents' submission that the order should be ignored because its operation has been stayed by the Apex Grievance Redressal Committee. The stay granted by the appellate authority suspends the operative consequences of the order; it does not erase the fact that proceedings were initiated or that findings were recorded by the Competent Authority. At this stage, the proceedings under Section 13(2) constitute one relevant circumstance among several others. They cannot be treated either as conclusive proof of breach or as irrelevant. The dispute regarding the precise quantum of transit rent and other outstanding liabilities also cannot be resolved in the present proceedings. The respondents are correct in submitting that those figures may require accounting before the Arbitral Tribunal. Nevertheless, the obligation to pay transit rent is not disputed. The controversy is confined to the amount remaining unpaid. Such dispute regarding quantum does not, at this stage, negate the petitioner's prima facie case that the obligation continues.

59. As regards the alleged dealing with the security premises, the material placed by the petitioner raises an issue requiring adjudication before the Arbitral Tribunal. Since the respondents dispute the factual allegations, this Court refrains from recording any final conclusion. However, the allegation cannot be brushed aside as without substance, particularly when the documents emphasise preservation of the security area until performance of the obligations.

60. Viewed cumulatively, the contemporaneous documents, the execution of the Memorandum of Understanding, the creation of additional security, the admitted non-obtaining of the Occupation Certificate for Rehabilitation Building No.4, the controversy regarding transit rent and the proceedings initiated under Section 13(2) collectively disclose a prima facie dispute regarding performance of respondent No.1's obligations.

61. Accordingly, I hold, prima facie, that the petitioner has succeeded in demonstrating that respondent No.1 has not shown complete performance of all the obligations undertaken under the Development Agreement, the Supplementary Agreements and the Memorandum of Understanding. Whether such non-performance constitutes a breach attracting the consequences claimed by the petitioner is a matter which must be determined by the Arbitral Tribunal upon appreciation of evidence.

V. Whether the petitioner has made out a prima facie case for protection of the security created under the documents and whether there exists a real apprehension that the subject matter of arbitration may be defeated:

62. The next question which requires consideration is whether the petitioner has established a prima facie case for protection of the security created under the contract and whether the material placed before this Court discloses a reasonable apprehension that, unless interim protection is granted, the subject matter of the arbitration may be rendered ineffective.

63. Mr. Khandeparkar submitted that the security created under the Memorandum of Understanding dated 11 September 2023 is a specific portion of the free-sale component admeasuring approximately 6,560 square feet as security to ensure completion of Rehabilitation Building No.4, payment of transit rent and discharge of the remaining obligations undertaken by respondent No.1. He submitted that the security constitutes a part of the arrangement and was created because the parties recognised that completion of the rehabilitation project remained uncertain. Learned counsel contended that out of the security area of 6,560 square feet, respondent No.1 has sold two flats without obtaining the consent of the petitioner, although the Memorandum of Understanding contemplated preservation of the security for the purposes agreed between the parties. According to him, such conduct demonstrates that respondent No.1 is dealing with the security contrary to the contract. Learned counsel further submitted that this allegation has not been denied in the affidavit-in-reply. Per contra, Mr. Sawant submitted that the petitioner has exaggerated the situation. According to him, respondent No.1 continues to be the owner of the free-sale component and is entitled to deal with its property.

64. It is necessary to appreciate the nature of the security created under the contract. The security contemplated under Clause 5 of the Memorandum of Understanding is different from an ordinary asset. A defined portion of the free-sale component measuring approximately 6,560 square feet is identified. Such identification indicates that the parties intended that a particular asset should remain available for securing performance of the contract. The contract indicate that the security was intended to ensure completion of Rehabilitation Building No.4, payment of transit rent, discharge of statutory liabilities and fulfillment of the remaining obligations undertaken by respondent No.1. Therefore, preservation of the security is directly connected with preservation of the arrangement.

65. The petitioner has made an assertion that two flats forming part of the security area have been sold without obtaining its consent. Upon examining the affidavit-in-reply, I find that there is no specific denial of this factual allegation.

66. At this stage of the proceedings, for the limited purpose of deciding the present application under Section 9, the petitioner's allegation that two flats forming part of the identified security area have been dealt with without its consent constitutes a prima facie circumstance which cannot be brushed aside. If that allegation proves to be correct, it indicates that the security created by the parties has begun to diminish. Once an identified security is alienated, restoration of the original position may become difficult. Even if the petitioner succeeds in arbitration, the contractual arrangement between the parties may cease to exist in its original form.

67. It is important that the petitioner has invoked arbitration alleging defaults in completion of Rehabilitation Building No.4, payment of transit rent and discharge of statutory liabilities. Whether those allegations succeed is a matter for the Arbitral Tribunal. Nevertheless, when those allegations are read together with the prima facie material regarding the security, the apprehension expressed by the petitioner to be justified. The object of Section 9 is to ensure that the subject matter of arbitration is not defeated before the Arbitral Tribunal has an opportunity to adjudicate the disputes. If the identified security, which forms component of the arrangement between the parties, is permitted to be alienated during pendency of arbitration, there exists a real possibility that the eventual arbitral award may become incapable of enforcement.

68. Upon an overall assessment of the pleadings, the contractual documents and the rival submissions, I am satisfied that the petitioner has established a prima facie case for protection of the security created under the Memorandum of Understanding. I further hold that the allegation regarding sale of two flats forming part of the security area gives rise to a reasonable apprehension that, unless appropriate interim protection is granted, the remaining security may be dealt with in a manner capable of frustrating the subject matter of the arbitral proceedings. Consequently, the security deserves preservation by appropriate interim orders.

VI. Whether the petitioner is entitled to invoke Section 20 of the Specific Relief Act, 1963 and whether the requirements for substituted performance stand satisfied:

69. I have given anxious consideration to the rival submissions advanced by the learned counsel appearing for the parties on the applicability of Section 20 of the Specific Relief Act, 1963. The controversy is not whether respondent No.1 has committed breach of its obligations. The real question is whether, assuming such breach exists, the petitioner has acquired the statutory right to undertake substituted performance through another agency and recover the expenditure from respondent No.1. This issue has to be answered not only by referring to the documents executed between the parties but also by examining the conditions incorporated by Parliament in Section 20 of the Specific Relief Act.

70. Mr. Khandeparkar submitted that the documents leave no manner of doubt that respondent No.1 alone accepted responsibility for completion of Rehabilitation Building No.4. He submitted that the Development Agreement, the Supplementary Agreements as well as the Memorandum of Understanding cast the obligation of financing, constructing and completing the rehabilitation building upon respondent No.1. According to him, despite execution of the Memorandum of Understanding in September 2023 and despite several assurances thereafter, respondent No.1 neither completed the rehabilitation building nor paid the transit rent nor discharged the statutory liabilities. Learned counsel submitted that the petitioner cannot be compelled to wait while the rehabilitation project remains incomplete and the burden towards the slum dwellers continues to increase every month. Learned counsel argued that the parties anticipated the possibility of such default while executing the Memorandum of Understanding. He invited attention to Clause 5 thereof and submitted that the security area was earmarked so that, in the event respondent No.1 failed to perform its obligations, the petitioner would have sufficient security available for completing the remaining construction work. According to him, the security was not created to secure repayment of money. It was intended to ensure completion of the rehabilitation project. Therefore, according to the learned counsel, permitting respondent No.1 to continue in breach would defeat the object for which the security arrangement was incorporated by the parties. Learned counsel submitted that the petitioner has invoked the arbitration agreement and called upon respondent No.1 to perform its obligations. According to him, respondent No.1 has failed to honour those obligations despite opportunities. It was therefore contended that further insistence upon performance by respondent No.1 would be formality and would prolong the hardship suffered by the slum dwellers awaiting possession of their rehabilitation premises. He submitted that the Court should, therefore, permit the petitioner to resort to substituted performance.

71. Per contra, Mr. Sawant submitted that Section 20 makes its operation subject to the terms of the contract. Since the rights and obligations of the parties are governed by their agreements, the petitioner cannot invoke Section 20 to claim any independent right. He submitted that the petitioner had not issued any written notice calling upon respondent No.1 to perform its obligations before seeking substituted performance.

72. Having considered the rival submissions, it becomes necessary to first examine the scheme and object of Section 20. Prior to the amendment of the Specific Relief Act in the year 2018, an aggrieved party was ordinarily required to approach the Court for specific performance or damages. The amendment introduced the concept of substituted performance with the apparent legislative intention that contracts should not remain unperformed merely because litigation is pending. Parliament recognised that in appropriate cases the injured party should be permitted to have the work completed through another agency and thereafter recover the expenditure from the party committing breach.

However, while creating this remedy, Parliament incorporated safeguards. The Legislature did not confer an unrestricted right upon every aggrieved party to immediately remove the defaulting contractor and substitute another agency. Instead, it prescribed conditions which are required to be fulfilled before such drastic consequences follow.

73. The first safeguard appears in sub-section (2) of Section 20 which provides:

> *"No substituted performance of contract under sub-section (1) shall be undertaken unless the party who suffers such breach has given a notice in writing, of not less than thirty days, to the party in breach calling upon him to perform the contract within such time as specified in the notice, and on his refusal or failure to do so, he may get the same performed by a third party or by his own agency.".*

74. The Legislature has employed negative language by providing that "No substituted performance... shall be undertaken unless..." a written notice of not less than thirty days is first issued. The use of negative words in a statute indicates that the condition is mandatory unless a contrary intention is apparent from the legislative scheme. I find nothing in Section 20 suggesting that Parliament intended the Court to waive or dispense with this statutory requirement. The object behind the statutory notice serves a substantive purpose. It grants the party alleged to be in breach one final opportunity to perform the contract. Commercial disputes often arise because of delays, misunderstandings or temporary difficulties. Parliament appears to have considered that before the relationship is altered by substituted performance, the party alleged to be in breach should receive a statutory notice informing it that failure to perform within the specified period would result in substitution by another agency.

75. The notice dated 13 June 2026 records several allegations of breach. It calls upon respondent No.1 to complete the project and remedy the defaults. It invokes arbitration and records that the petitioner reserves its right to seek specific performance, damages, interim protection under Section 9, completion of the project and other consequential reliefs. The notice states that the respondents should remedy the breaches and complete the pending obligations. However, a careful reading of the notice discloses that it cannot be equated with the statutory notice contemplated by Section 20(2). The Legislature has prescribed specific requirements. The notice must be "of not less than thirty days" and must call upon the defaulting party to perform the contract within the time specified therein before substituted performance is undertaken.

76. In the present case, paragraph 17 of the notice calls upon the respondents to communicate their concurrence for appointment of an Arbitrator and remedy the breaches "within seven days from the receipt of this notice." Thus, instead of granting the statutory minimum period of thirty days, the petitioner granted only seven days. Where Parliament prescribes a minimum statutory period, the Court cannot reduce that period by invoking the doctrine of substantial compliance. The Legislature has consciously chosen thirty days. Had Parliament intended to permit shorter periods depending upon the facts of each case, it would have used different language. Judicial interpretation cannot rewrite the statute.

77. Section 20 does not create an exception based upon previous breaches. Even where repeated defaults have occurred, the Legislature still requires written notice of not less than thirty days before substituted performance is undertaken. The Court cannot introduce an exception which Parliament has not enacted.

78. The petitioner relied upon the provisions contained in the Memorandum of Understanding, particularly Clause 5 and Clause 6, to contend that the parties contemplated utilisation of the security for completion of the remaining work. There can be no dispute that the contractual documents recognise such eventuality. But contractual provisions cannot override statutory requirement. If the Legislature prescribes a mandatory procedure before substituted performance can be undertaken, the parties cannot dispense with that procedure by contract.

79. Another circumstance also deserves consideration. The invocation notice simultaneously reserves the petitioner's right to seek specific performance and also reserves its right of completing the project. At this stage, no final election of remedies has been made. This is also evident from the present petition, wherein the petitioner has prayed for directions compelling respondent No.1 to perform its contractual obligations while simultaneously seeking liberty to complete the project. Such alternative pleading is permissible at the stage of litigation. However, once Section 20 is actually invoked and substituted performance is undertaken, sub-section (3) declares that the aggrieved party "shall not be entitled to claim relief of specific performance." Therefore, the consequence contemplated by Section 20(3) has not yet arisen because substituted performance has not been undertaken.

80. The proviso to sub-section (2), reads thus:

> *"Provided that the party who suffers such breach shall not be entitled to recover the expenses and costs under sub-section (1) unless he has got the contract performed through a third party or by his own agency."*.

81. The proviso to sub-section (2) also supports the above conclusion. It declares that recovery of expenditure is permissible after the contract has been performed through a third party or by the aggrieved party. Admittedly, no such substituted performance has yet taken place. Consequently, the stage contemplated by the proviso has also not yet arrived.

82. Thus, although I find substance in the petitioner's submission that respondent No.1 has prima facie failed to perform several obligations and that the documents contemplate utilisation of the security in the event of default, those circumstances do not confer the statutory right of substituted performance under Section 20. The statutory right under Section 20 arises after compliance with the statutory conditions. Those conditions include issuance of a notice of not less than thirty days, failure, or refusal of the defaulting party to perform within that period and thereafter actual substituted performance through another agency or by the aggrieved party. These stages have not yet been completed in the present case.

83. Consequently, I hold that the petitioner has established a prima facie breach requiring adjudication by the Arbitral Tribunal. The petitioner has also established that the contract envisage a mechanism for protecting completion of the project. However, the petitioner has not, as on the date of filing of the present petition on 7 July 2026, satisfied the statutory requirements prescribed under Section 20(2) of the Specific Relief Act, 1963 for invoking substituted performance, inasmuch as the notice dated 13 June 2026 granted only seven days' time and not the minimum period of thirty days contemplated by the provision. I therefore hold that the petitioner is presently not entitled to invoke substituted performance under Section 20 of the Specific Relief Act.

84. However, the matter does not conclude there. The respondents proceeded on the assumption that once Section 20 is held to be inapplicable, every form of interim arrangement enabling completion of the rehabilitation project becomes impermissible. It is necessary to bear in mind that the present proceedings are under Section 9 of the Arbitration and Conciliation Act. The source of jurisdiction exercised by this Court is different. Section 9 empowers the Court to grant interim measures for preservation, protection and securing the subject matter of arbitration pending adjudication before the Arbitral Tribunal. The jurisdiction exercised under Section 9 originates from the statute. While exercising such jurisdiction, the Court respects the contract rights agreed between the parties, but the power flows from the Arbitration and Conciliation Act. The immediate concern before the Court is of a different nature. The rehabilitation building remains incomplete. Transit rent liabilities continue. Contractor dues, statutory charges and municipal dues are outstanding. Simultaneously, there exists security in the form of the unsold free-sale premises which the parties earmarked under the Memorandum of Understanding. If the Court merely records that Section 20 has not been complied with and declines interim arrangement, the consequence may be that the rehabilitation building will remain incomplete until conclusion of arbitration. Arbitration proceedings involving disputes of this nature may require evidence. During that period the slum dwellers would continue to remain deprived of rehabilitation. The transit rent liability may increase. The security may gradually lose its utility. Section 9 has been enacted to prevent such situations where the arbitral award may become ineffective because the subject matter requiring protection has deteriorated beyond utility.

85. The distinction is important. Where substituted performance is undertaken under Section 20, the party acts in assertion of its own rights and seeks recovery of expenditure from the defaulting party. In contrast, where the Court appoints a Receiver and authorises an Agent to act on behalf of the Receiver, the authority flows from the order. The Agent does not derive any right by virtue of such appointment. A person, while acting as Agent of the Court Receiver, would execute the directions issued under the authority of the Court. Such appointment neither transfers ownership of the free-sale premises nor confers development rights upon the petitioner. The legal possession remains with the Court Receiver. Every receipt and every expenditure remain accountable. Every decision remains subject to supervision of the Receiver and, after constitution, to further directions of the Arbitral Tribunal. Thus, the interim arrangement contemplated by this Court cannot be equated with recognition of the petitioner's right under Section 20. The requirements prescribed under Section 20 remain relevant and will require consideration by the Arbitral Tribunal. However, those provisions do not extinguish the jurisdiction in this Court under Section 9 to evolve interim arrangement for preservation of the redevelopment project.

86. I, therefore, hold that this Court exercising its jurisdiction under Section 9 of the Arbitration and Conciliation Act is competent devise an interim arrangement through the Court Receiver for preservation and completion of the rehabilitation component and to safeguard the interests of the slum dwellers, providing that such arrangement does not confer proprietary rights upon the petitioner, does not amount to adjudication of the disputes and remains subject to the decision of the Arbitral Tribunal.

VII. <u>Whether the petitioner deserves to be appointed as Agent of the Court Receiver for completion of Rehabilitation Building No.4:</u>

87. Having held that the petitioner has not, at this stage, acquired a right to substituted performance under Section 20 of the Specific Relief Act, the next question which arises is whether this Court, while exercising jurisdiction under Section 9 of the Arbitration and Conciliation Act, should merely preserve the security by an order of injunction or whether the facts of the present case require an interim arrangement so that the rehabilitation project does not remain incomplete.

88. Ordinarily, a Court exercising jurisdiction under Section 9 should be slow in passing an order which has the effect of displacing one party from performance of the contract merely because breach is alleged. Interim jurisdiction is intended to preserve rights pending adjudication. The redevelopment in question forms part of a Slum Rehabilitation Scheme. The object of such scheme is not merely construction of buildings for commercial purpose. Its object is rehabilitation of eligible slum dwellers by providing them permanent alternate accommodation. Delay in completion of such project therefore has consequences extending beyond the rights of the petitioner and respondent No.1. Every month of delay results in displacement of slum dwellers. Transit rent liability accumulates. Contractor dues remain unpaid. Municipal and statutory liabilities continue to remain outstanding. Consequently, the dispute acquires a public element which cannot be ignored while moulding relief under Section 9. The Court cannot lose sight of the realities. According to the petitioner, unpaid contractor dues amount to approximately Rs.4.01 crores. LUC charges remain payable to the extent of approximately Rs.3.76 crores. Outstanding transit rent is stated to be approximately Rs.3.37 crores. Pro-rata charges payable to the Municipal Corporation are stated to be approximately Rs.4.19 crores. Whether every figure is proved or not is a matter which shall be examined before the Arbitral Tribunal. Nevertheless, the existence of liabilities prima facie indicates that the project cannot be treated as having reached closure.

89. The respondents have submitted that the project is ninety-nine percent complete and only minor finishing work remains. At this stage, this Court is not required to record any conclusive finding on the percentage of completion. The rival versions disclose that the extent of the remaining work constitutes a disputed question requiring evidence. Consequently, no final conclusion can be recorded upon affidavits.

90. One circumstance assumes considerable importance. The Apex Grievance Redressal Committee, while passing the order dated 15 May 2026, stayed the order made under Section 13(2). Simultaneously, it directed the petitioner to deposit Rs.50 lakhs towards transit rent and further directed the petitioner to complete the project on or before 1 September 2026. This Court is independently required to examine the issues arising before it. However, the order cannot be treated as irrelevant. It shows that the authority entrusted with supervision of the Slum Rehabilitation Scheme considered early completion of the rehabilitation project to be the immediate concern. It shows that, at least for the purpose of protecting the rehabilitation scheme, the authority considered it appropriate to call upon the petitioner to facilitate completion of the project. The petitioner has placed material indicating that it complied with the said order by depositing Rs.50 lakhs and making payments aggregating Rs.1.50 crores towards transit rent payable to slum dwellers. At this stage, this Court is not recording any final finding regarding the consequences of such payments. Nevertheless, such conduct prima facie indicates that the petitioner has assumed financial responsibility in relation to the rehabilitation component pursuant to the directions of authority.

91. Another aspect deserves notice. The petitioner has produced particulars of unsold flats available in the free-sale component. Thus, the present case is not one where the Court is required to create new security. The parties had earmarked assets under the contract. The Court is therefore concerned with regulating the use and preservation of an existing security and not with creating fresh rights.

92. In the facts of the present case, I am not persuaded that a order of injunction restraining alienation would protect the subject matter of arbitration. Such an order may preserve the identified flats, but it does not ensure completion of Rehabilitation Building No.4. If the rehabilitation building continues to remain incomplete, the object behind creation of the security may stand frustrated. Section 9 does not confine the Court merely to granting orders of preservation. The provision confers wide powers to mould an interim arrangement appropriate to the peculiar facts of each case, provided such arrangement remains temporary. The question therefore is not whether respondent No.1 should be replaced by the petitioner. The real question is whether an arrangement can be evolved so that the rehabilitation component is completed without finally deciding the contractual disputes.

93. In my opinion, appointment of the Court Receiver furnishes such arrangement. Once the Court Receiver is appointed, the security comes into the custody of an officer of the Court. Neither party obtains exclusive control over the property. Every step remains subject to supervision of the Receiver and to further orders of the Court or, after constitution, of the Arbitral Tribunal. Appointment of a Receiver therefore protects both sides. The petitioner is assured that the security will not disappear during pendency of arbitration. Equally, respondent No.1 is protected because the property is not handed over absolutely to the petitioner. The Receiver acts as officer of the Court and remains accountable to the Court.

94. The next question is whether some person should be authorised to execute the work necessary for completion of the rehabilitation building. In the facts of the present case, I find no compelling reason to appoint third party unconnected with the project. LOI is in the name of petitioner. The petitioner has participated in the proceedings before the Apex Grievance Redressal Committee. Pursuant to the directions issued, the petitioner has prima facie deposited Rs.50 lakhs and made direct payments of approximately Rs.1.50 crores towards transit rent. The petitioner has expressed willingness to facilitate completion of Rehabilitation Building No.4. In these circumstances, appointment of the petitioner as Agent of the Court Receiver appears to be a practical arrangement.

95. Such appointment requires strict limitations. The petitioner cannot be permitted to contend that appointment as Agent of the Court Receiver creates any rights in its favour. The authority of the petitioner must flow from the order of this Court. The petitioner is proposed to be appointed only because the Court Receiver, being an officer of the Court, requires an executing agency for implementation of the interim arrangement. The petitioner, while acting as Agent of the Court Receiver, functions under the authority of the Court. The source of such authority is the order passed under Section 9 of the Arbitration and Conciliation Act.

96. Equally, the rights of respondent No.1 remain protected. Respondent No.1 continues to retain ownership of the free-sale component, subject to the custody of the Court Receiver. Appointment of the Receiver does not divest title. Appointment of the petitioner as Receiver's Agent does not create ownership, possession in an independent capacity, in favour of the petitioner over the free-sale building or the unsold flats. Every amount realised, every expenditure incurred, pursuant to this arrangement shall remain subject to scrutiny before the Arbitral Tribunal. The Tribunal shall finally determine the respective rights and liabilities of the parties, including the entitlement of either party to reimbursement or any other monetary consequence arising from this arrangement.

97. Having regard to the cumulative effect of the contract, the public element involved in the rehabilitation scheme, the order dated 15 May 2026 passed by the Apex Grievance Redressal Committee, the payments prima facie made by the petitioner, the financial liabilities placed on record, the existence of unsold flats constituting security and the necessity of preserving the efficacy of the arbitral proceedings, I am satisfied that the ends of justice would be served by appointing the Court Receiver over the security and by appointing the petitioner only as Agent of the Court

Receiver for the limited purpose of completing Rehabilitation Building No.4.

98. In view of the foregoing discussion and for the reasons recorded hereinabove, the following order is passed:

(i) The Arbitration Petition is partly allowed;

(ii) Pending commencement and conclusion of the arbitral proceedings, the Court Receiver, High Court, Bombay is appointed as Receiver, with all powers under Order XL Rule 1 of the Code of Civil Procedure, 1908, in respect of the Security Area admeasuring approximately 6,560 sq.ft. carpet area, more particularly described Annexure "C" to the Memorandum of Understanding dated 11 September 2023;

(iii) The Court Receiver shall take symbolic possession of the aforesaid premises. The Receiver shall not dispossess any lawful occupant already in possession unless further orders are passed by this Court or by the Arbitral Tribunal;

(iv) The petitioner is appointed as Agent of the Court Receiver, without security or on such security and terms as the Court Receiver may consider appropriate, solely for the limited purpose of facilitating completion of Rehabilitation Building No.4, obtaining the Occupation Certificate and discharging the statutory obligations directly connected therewith;

(v) The appointment of the petitioner as Agent of the Court Receiver is an interim arrangement evolved by this

Court in exercise of powers under Section 9 of the Arbitration and Conciliation Act, 1996 and shall not be construed—

(a) as recognition of any right of substituted performance under Section 20 of the Specific Relief Act, 1963;

(b) as displacement of respondent No.1 as developer under the Development Agreement;

(c) as conferring any equitable rights upon the petitioner in respect of the free-sale component of the project; or

(d) as adjudicating the rights and liabilities of the parties.

(vi) The Court Receiver shall supervise implementation of this order. The petitioner shall act under the directions of the Court Receiver and shall not undertake any act inconsistent with the directions issued by the Court Receiver;

(vii) The Court Receiver is authorised, if satisfied that the same is necessary for completion of Rehabilitation Building No.4 and after hearing both parties, to permit sale of such unsold free-sale flats as may be reasonably required for generation of funds for—

(a) completion of Rehabilitation Building No.4;

(b) obtaining Completion Certificate and Occupation Certificate;

(c) payment of legitimate contractor dues directly relatable to the rehabilitation component;

(d) payment of transit rent payable to eligible slum dwellers;

(e) payment of LUC charges;

(f) payment of pro-rata premium and other statutory dues payable to statutory authorities; and

(g) meeting other expenditure directly necessary for lawful completion of the rehabilitation component.

(viii) No sale shall be effected by the petitioner in its independent capacity. Every sale shall be undertaken only with the prior written approval of the Court Receiver and upon such terms and conditions as the Court Receiver may determine. The Court Receiver shall ensure that the sale consideration broadly reflects prevailing market value and shall maintain complete records of every transaction;

(ix) All monies realised from sale of the aforesaid flats shall be deposited into a separate escrow account to be opened and operated under the control and supervision of the Court Receiver. No withdrawal shall be permitted except in accordance with the written directions of the Court Receiver and solely for the purposes specified in clause (vii);

(x) The petitioner shall maintain complete books of account of all receipts and expenditure and shall submit quarterly statements of accounts together with progress reports regarding completion of Rehabilitation Building No.4 to the Court Receiver, with copies simultaneously furnished to respondent No.1;

(xi) Respondent No.1 shall, within two weeks, hand over to the Court Receiver and the petitioner all sanctioned plans, approvals, permissions, architectural and structural drawings, licences, NOCs, correspondence with statutory authorities and all documents reasonably necessary for completion of Rehabilitation Building No.4;

(xii) Pending the arbitral proceedings, respondent No.1, its partners, servants, agents, representatives or any person claiming through or under it are restrained from selling, transferring, alienating, assigning, creating third-party rights, mortgaging, charging, encumbering or otherwise dealing with the remaining unsold flats forming part of Free Sale Building No.2 except with the prior written permission of the Court Receiver or further orders of the Arbitral Tribunal;

(xiii) Prayer clause (h) is partly allowed. Respondent No.1 shall, within three weeks, file an affidavit before the Court Receiver, with a copy to the petitioner, disclosing—

(a) complete particulars of every unit forming part of the Security Area;

(b) present status of each unit;

(c) allotment details;

(d) agreements executed, if any;

(e) consideration received;

(f) encumbrances created;

(g) particulars of third-party rights, if any; and

(h) all unsold inventory remaining in Free Sale Building No.2.

(xiv) Respondent No.1, its partners, servants, agents or any person claiming through or under it are restrained from selling, transferring, alienating, assigning, mortgaging, creating third-party rights, parting with possession or otherwise dealing with the remaining Security Area or any unsold flats forming part thereof without the prior written permission of the Court Receiver and, after constitution, subject to such further directions as may be issued by the Arbitral Tribunal;

(xv) The reliefs sought in prayer clauses (e), (f), (g), (i) and (j), seeking immediate reimbursement, payment of transit rent, deposit of sale consideration and deposit of security amount of ₹61.15 crores are not granted at this stage. Those claims involve disputed questions relating to liability and quantum and shall be adjudicated by the Arbitral Tribunal. However, the petitioner shall be at liberty to seek reimbursement of all expenditure incurred pursuant to this order before the Arbitral Tribunal, which shall decide the same on its own merits;

(xvi) It is clarified that any amount spent by the petitioner pursuant to the present order shall not entitle the petitioner to reimbursement. The entitlement, quantum, priority and adjustment of such expenditure shall be determined by the Arbitral Tribunal;

(xvii) The petitioner shall not claim any ownership, lien, possessory right, development right, beneficial interest or equity in the free-sale component merely because it has been appointed as Agent of the Court Receiver or because expenditure has been incurred pursuant to this order;

(xviii) The Court has refrained from granting substituted performance under Section 20 of the Specific Relief Act. The arrangement directed herein is an interim protective mechanism evolved under Section 9 of the Arbitration and Conciliation Act for preserving the subject matter of arbitration and facilitating completion of the rehabilitation component in the larger interest of the rehabilitation scheme and the eligible slum dwellers;

(xix) All findings contained in this judgment are prima facie in nature and shall not bind the Arbitral Tribunal. All disputes relating to breach, substituted performance, damages, reimbursement, accounting, contractual interpretation and adjustment of rights and liabilities are expressly kept open for adjudication by the Arbitral Tribunal;

(xx) Upon constitution of the Arbitral Tribunal, either party shall be at liberty to apply under Section 17 of the

Arbitration and Conciliation Act, 1996 for continuation, modification, variation or vacation of the interim arrangement created by this order. The Arbitral Tribunal shall consider such application independently and uninfluenced by the prima facie observations contained herein;

(xxi) There shall be no order as to costs.

(xxii) Parties to act upon an authenticated copy of this order.

(AMIT BORKAR, J.)