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

CONTEMPT PETITION (L) NO.15172 OF 2026
IN
COMM ARBITRATION PETITION NO.311 OF 2025

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Apna Ghar Unit No.1 Cooperative
Housing Society Limited

... Petitioner

Vs.

1. Kalpataru Township Pvt. Ltd.
2. Atulkumar Girivar Shanker
Tiwari, Director
3. Bavneesh Gulati, Director
4. Devesh Dhananjay Bhatt, Director
5. Narendra Lodha
6. Rajesh Nambiyar

... Respondents

WITH
INTERIM APPLICATION NO.6366 OF 2025
IN
COMM ARBITRATION PETITION NO.311 OF 2025

Kalpataru Townships Limited

... Applicant

In the matter between

Kalpataru Townships Limited

... Petitioners

Vs.

Apna Ghar Uniot No.1 Cooperative
Housing Society Limited & Others

... Respondents

WITH
CONTEMPT PETITION (L) NO.19521 OF 2026
IN
COMM ARBITRATION PETITION NO.311 OF 2025

Rajesh C. Nambiar

... Petitioner

Vs.

Kalpataru Townships Private Limited

... Respondent

**WITH
CONTEMPT PETITION (L) NO.22992 OF 2026
IN
COMM ARBITRATION PETITION NO.311 OF 2025**

Hemant Jain

... Petitioner

Vs.

- 1. Kalpataru Township Pvt. Ltd.**
- 2. Atulkumar Girivar Shanker
Tiwari, Director**
- 3. Bavnesh Gulati, Director**
- 4. Devesh Dhananjay Bhatt, Director**
- 5. Narendra Lodha, Authorised Signatory**
- 6. Kalpataru Limited**
- 7. Apna Ghar Unit No.1 CHSL,
represented through it's
Managing Committee**

... Respondents

Mr. Aspi Chinoy, Senior Advocate with Mr. Saket Mone, Mr. Suneet Tyagi, Mr. Raghav Taneja, Mr. Krishna Raja, and Mr. Archit Rao i/by Vidhi Partners for the Applicant in IA/6366/2026 and for Respondent No.1 in CPCDL/15172/2026, CPCDL/19521/2026 and CPCDL/22992/2026 (Kalpataru Townships Pvt. Ltd.)

Mr. Shrey Fatterpekar with Mr. Omkar Khanvilkar for the Petitioner in CPCDL/22992/2026 & Respondent No.7 in IA/6366/2025 (Hemant Jain).

Mr. Rajesh C. Nambiar for the Petitioner in CPCDL/19521/2026, in-person and Respondent No.6 in CPCDL15172/2026 & Respondent No.2 in IA/6366/2025.

Mrs. S.S. Chipkar, Master (Adm.), Court Receiver Office with Mrs. M.M. Manjrekar, Section Officer, present.

Mr. Rajmani Varma with Ms. Rachana Jain i/by Navdeep Vora & Associates for the Petitioner in CPCDL/15172/2026 & for Respondent No.7 in CPCDL/22992/2026 (Society).

CORAM : AMIT BORKAR, J.

RESERVED ON : SEPTEMBER 9, 2026.

PRONOUNCED ON : SEPTEMBER 17, 2026

JUDGMENT:

1. The Petitioner housing society has filed the present Contempt Petition (CPCDL/15172/2026) for bringing to the notice of this Court that the Respondent Nos. 1 to 5, who are the Contemnors, have continuously and deliberately disobeyed the Order dated 18 March 2025 passed by this Court in the captioned Commercial Arbitration Petition. The said Order dated 18 March 2025 was passed on the basis of a unconditional undertaking given by the Respondent Nos. 1 to 5 that they would obtain the full IOD for the entire project by 30 September 2025. According to the Petitioner, the said undertaking has not been complied with till date and the Contemnors continue to remain in wilful disobedience of the said Order.

2. M/s. Kalpataru Township Pvt. Ltd. is hereinafter referred to as the “Developer”, and Apna Ghar Unit No.1 Cooperative Housing

Society Limited is hereinafter referred to as the “Society”. The Petitioner states that under the Redevelopment Agreement dated 23 January 2024, Respondent No.1 was required to obtain the full Intimation of Disapproval (IOD) covering the entire Member's Carpet Area Entitlement before asking the members to vacate their respective premises. According to the Petitioner, this was a mandatory and basic requirement, and only after its fulfillment were the members required to hand over vacant possession of their respective flats to Respondent No.1. The Petitioner submits that under the said Agreement, obtaining the full IOD covering 100% of the Members' Carpet Area Entitlement was a condition which had to be fulfilled before any member could be asked to hand over vacant and peaceful possession of his or her respective flat. The Petitioner relies upon Recital D of Annexure “9” to the Redevelopment Agreement, which contains the approved draft "Agreement for Permanent Alternate Accommodation" ("PAAA"). The said PAAA was to be executed by each member before handing over his or her respective flat to Respondent No.1. According to the Petitioner, the draft PAAA provides that its execution and registration would take place only after receipt of the IOD covering the new flat concerned. The Redevelopment Agreement was registered on 23 January 2024. Therefore, according to the Petitioner, under Clause 5.7 read with Clause 6.2 of the Agreement, the Respondents were required to obtain the IOD within 9 months from the date of registration, with a grace period of one month. This period was subject to the Petitioner handing over the consent letters of all consenting members. In respect of

the non-consenting members, the Respondents were required to obtain appropriate orders from the Court.

3. The Petitioner submits that under the Redevelopment Agreement, and from the table below Clause 2.1.22 referred to above, Respondent No.1 was required to obtain the full IOD and FSI covering all the new flats allotted to the members according to their Members' Carpet Area Entitlement before taking vacant possession from any member, whether consenting or not. In compliance with its obligation under the Agreement, the Petitioner, by letter dated 17 April 2024, handed over the consent letters of 226 out of 256 members. These members represented 90% of the total 290 flats. Therefore, according to the Petitioner, Respondent No.1 was required to take necessary steps before the competent Court in respect of the remaining non-consenting members. By its letter dated 31 December 2024, Respondent No.1 informed the Petitioner that it had obtained the IOD and enclosed a copy of the same. On examining the said IOD, the Petitioner came to know that Respondent No.1 had obtained only a part IOD. It covered the flats of 136 members, with flats allotted up to the 14th floor. However, for the remaining members, whose flats were allotted on the 15th floor and above, the IOD had not been obtained.

4. According to the Petitioner, Respondent No.1 was not entitled to take vacant possession without first obtaining IOD and FSI covering all the 290 new flats of the members. Despite this, Respondent No.1 issued a letter dated 8 January 2025 demanding vacant possession from the members. Since Respondent No.1 had not obtained IOD for the flats allotted on the 15th floor and above,

the members objected to the legality of the notice seeking vacant possession. They contended that the notice was contrary to the basic terms of the Redevelopment Agreement and that Respondent No.1 was acting in breach of the Development Agreement. The Petitioner states that instead of fulfilling its obligation of obtaining the full IOD covering 100% FSI, Respondent No.1, in order to overcome the resistance of the members and obtain possession from them, filed Commercial Arbitration Petition (L) No. 5028 of 2025 ("said Petition") before this Court. In the said Petition, Respondent No.1 sought various reliefs, including eviction of the dissenting members. The Petitioner states that a separate compilation of the said Commercial Arbitration Petition is being filed along with the present Petition.

5. The Petitioner states that the said Petition was opposed by the members mainly on the ground that Respondent No.1 had not fulfilled its obligation of obtaining the full IOD. Therefore, according to the members, Respondent No.1 was not entitled to ask them to vacate their premises and could not seek possession of their flats. The Petitioner raised the same objection. According to the Petitioner, this Court accepted the factual position that Respondent No.1 was not entitled to seek vacant possession unless 100% IOD covering all the members was obtained. However, in order to avoid delay in the redevelopment work, this Court asked Respondent No.1 whether it could obtain the full IOD by 30 September 2025. Respondent No.1 then gave a firm, clear and unconditional undertaking to this Court that it would obtain the full IOD covering the entire FSI by 30 September 2025. The

Petitioner states that this Court passed the Order dated 18 March 2025 relying upon the said undertaking. As a result of the said Order, Respondent No.1 was able to obtain vacant possession of the flats from all the members, including the non-consenting members.

6. The Petitioner states that, relying upon the said Order and believing that the undertaking given by the Contemnors would be complied with, the members vacated their flats and handed over vacant possession on 16 April 2025. They did so to avoid being forcibly dispossessed with the help of the police. The fact of handing over possession was communicated to the Respondents by letter dated 16 April 2025. The Petitioner states that when the Order dated 18 March 2025 was passed, it was hopeful that Respondent No.1 would comply with the undertaking given to this Court. According to the Petitioner, there was at that time no reason to believe that Respondent No.1 would not obtain the complete IOD by 30 September 2025. The Petitioner states that the undertaking was a specific undertaking with a fixed date. According to the Petitioner, the said undertaking formed the basis on which this Court granted reliefs in favour of Respondent No.1 and directed the members to vacate their flats, failing which they could face contempt proceedings for disobedience of the Order dated 18 March 2025.

7. The Petitioner states that since the Contemnors failed to comply with the Order dated 18 March 2025, the Petitioner, through its Advocates, issued a notice dated 27 February 2026 calling upon them to comply with the Order and with the

undertaking given to this Court. According to the Petitioner, the Contemnors failed to do so. The Contemnors replied through their Advocate's letter dated 7 April 2026 to the Petitioner's Advocate's letter dated 27 February 2026. In the said reply, they raised what the Petitioner describes as false and reckless contentions and denied having committed contempt of the said Order. The Petitioner states that instead of complying with the said Order, the Contemnors filed Interim Application No. 6366 of 2025 seeking an additional period of 12 months for obtaining the full IOD. According to the Petitioner, the Contemnors continue to remain in contempt even till date. It is therefore submitted that filing the said Interim Application amounted to contempt of the Order dated 18 March 2025.

8. According to the Petitioner, the conduct of the Contemnors shows that there was no genuine intention to comply with the Order even after 30 September 2025. The Petitioner therefore alleges that the Contemnors gave a false undertaking to this Court only for obtaining possession from the members, although they were not entitled to seek such possession under the Agreement. The Petitioner states that the period of 6 months given for compliance with the undertaking expired on 30 September 2025. Even after expiry of that period and despite sufficient time having passed thereafter, the Contemnors have failed to obtain the complete IOD as undertaken by them. Without prejudice to this submission, the Petitioner states that even after the Order dated 18 March 2025, the Contemnors were required to obtain the full IOD under Clause 5.7 of the Redevelopment Agreement. According to

the Petitioner, that obligation remains unfulfilled. The Petitioner states that by relying upon the said Order, the Contemnors obtained vacant possession from the Petitioner even though, according to the Petitioner, they were not entitled to do so under the contract. The Petitioner alleges that this was done on the basis of the undertaking given to this Court to demolish all the structures. It is submitted that the Contemnors demolished the existing structure without first obtaining the full IOD. Under Clause 2.1.35 of the Agreement, the Petitioner was required to complete the construction within 36 months from the Society hand over date, namely 16 April 2025., under Clause 6.8(c) of the Agreement, the Contemnors had undertaken to start construction immediately by obtaining the commencement certificate within 4 months from 16 April 2025. According to the Petitioner, the Contemnors have failed to obtain both the full IOD and the commencement certificate.

9. The Petitioner states that in December 2025, Respondent No.1 sent an undated Newsletter which, according to the Petitioner, was an attempt to avoid the effect of the Order dated 18 March 2025. In the said Newsletter, Respondent No.1 admitted that it had obtained only part approval for the amended plans on 5 December 2025. According to the amended approved plans, floor-wise plans had been sanctioned only up to the 23rd floor in Tower 1 and up to the 14th floor in Tower 2. The Petitioner states that, against the total permissible project FSI, Respondent No.1 admitted that it had obtained FSI of 46,490.71 square metres, which was only about 56% of the permissible project FSI.

According to the Petitioner, in order to cover this shortfall and avoid the effect of its unconditional undertaking to this Court, Respondent No.1 demanded a Body Resolution from the members authorising it to avail FSI under Section 33(7)(B) of the DCPR 2034. This was stated to be 10 square metres per flat, aggregating to 2,900 square metres for 290 flats. The said Newsletter was followed by another letter from Respondent No.1 enclosing purported Minutes of the Meeting held on 29 January 2026. The Petitioner clarified its position by letter dated 26 February 2026. The Petitioner states that the IOD and approvals which Respondent No.1 claims to have obtained suffer from a serious and basic deficiency. According to the Petitioner, there is no clear reference to, or mention of, the component under Section 33(20)(B) of the DCPR 2034. The Petitioner states that this component is necessary for obtaining the complete IOD for the whole project. It is stated that the Affordable Housing (AR) and Rehabilitation & Resettlement (R&R) components, which form part of the incentives and concessions available under the said regulation, have not been obtained and are not reflected in the IOD obtained so far. The Petitioner points out that even after the expiry of the time given in the undertaking, namely 30 September 2025, Respondent No.1 had not applied for the benefit under Section 33(20)(B) of the DCPR 2034. According to the Petitioner, the absence of any reference to Section 33(20)(B) in the IOD documents shows that the Contemnors had no real intention of complying with their unconditional undertaking to obtain the entire IOD by 30 September 2025. The Petitioner states that, from

the subsequent IOD obtained by Respondent No.1 as of April 2026, it is clear that out of the total FSI of 82,769.90 square metres, Respondent No.1 had obtained FSI of only 46,490.71 square metres. According to the Petitioner, there was therefore a shortfall of 36,279.19 square metres. Without prejudice to its rights and contentions concerning Section 33(7)(B), the Petitioner submits that even if the 2,900 square metres available as incentive to the members under Section 33(7)(B) of the DCPR 2034 is excluded, there would still be a shortfall of 33,379.19 square metres of FSI.

10. The Petitioner states that the Contemnors obtained possession of the members' premises on the strength of the undertaking given to this Court and failed to comply with that undertaking. According to the Petitioner, such conduct amounts to clear and willful disobedience of the Order dated 18 March 2025 and therefore amounts to contempt of this Court. It is alleged that the Contemnors obtained possession by misleading the Court and by using the Order for that purpose, without fulfilling the very obligation which they had undertaken before the Court to perform. The Petitioner states that the conduct of the Contemnors shows that the undertaking was given only for obtaining favourable orders from this Court and not with a genuine intention of complying with it within the time fixed. The Petitioner states that although Respondent No.1 has been paying compensation towards transit accommodation, that fact does not remove the alleged disobedience of the Order dated 18 March 2025. According to the Petitioner, the purpose of awarding the redevelopment contract to Respondent No.1 was to ensure that construction would

commence and be completed within the agreed period. It was not merely to keep the members in rented accommodation.

11. The Petitioner states that because of the alleged willful and deliberate conduct of the Contemnors in not complying with the Order dated 18 March 2025, the members have serious doubts about the bona fides of Respondent No.1 and its office bearers, namely Respondent Nos. 2 to 5. According to the Petitioner, such conduct shows disregard for the binding direction of this Court. The members therefore apprehend that if the Contemnors have failed to comply with the Court's Order, there is a serious doubt whether they will comply with their obligations under the Redevelopment Agreement. The Petitioner submits that this conduct affects the credibility of Respondent No.1 and raises serious doubts about its commitment to protect the rights and interests of the members. The Petitioner states that because of the conduct of the Contemnors, the members of the Petitioner Society, whose flats have been demolished, are left in uncertainty, anxiety, fear and confusion. The project does not have the complete approvals required for its development, and the members do not know when they will receive their new flats. According to the Petitioner, the project was required to be completed within 36 months from the Society hand over date, namely 16 April 2025. However, even the construction has not commenced.

12. The Petitioner submits that by failing to comply with the solemn undertaking given to this Court, the Contemnors have committed a breach of that undertaking. According to the Petitioner, their conduct has affected the dignity of the Court and

the seriousness attached to an undertaking given before the Court. The Petitioner therefore submits that the sanctity of the undertaking and of the judicial proceedings has been seriously affected by such conduct.

Respondent No. 1-Developers Submissions:

13. The Developer submits that Interim Application No.6366 of 2025, by which extension of the time fixed under the Order dated 18 March 2025 was sought, ought to be heard before deciding the Contempt Petition. According to the Developer, if the said Interim Application is allowed and the time is extended, the basis of the Contempt Petition would not remain. The Developer submits that it had applied for Environmental Clearance ("EC") on 17 January 2024, but there was considerable delay in processing the application by the concerned authorities. The CRZ clearance was received from MCZMA only on 26 August 2025 and the EC was ultimately granted by MOEF on 20 May 2026. According to the Developer, without the EC it could not obtain the Commencement Certificate ("CC") or commence construction. The CC was thereafter obtained on 2 June 2026. Thus, the Developer relies upon the delay in statutory approvals as a circumstance beyond its control. The Developer submits that, even before the Order dated 18 March 2025, it had been examining different proposals for obtaining additional FSI under the PTC/AH/R&R component of DCPR 33(20)(B). According to Developer, several proposals were considered between March 2024 and August 2025, including Parth Developer, Yashwant Nagar, Rizvi Plot and Shivram Plot, involving different quantities of FSI. However, none could be finalised

because of the technical, financial and practical difficulties connected with the respective proposals. The Developer relies upon these efforts to submit that it was continuously trying to arrange the additional FSI required for the redevelopment and had not simply remained inactive.

14. The Developer relies upon the permissions and approvals obtained even before the Order dated 18 March 2025. These include the Civil Aviation NOC dated 25 September 2023, NA Order dated 12 April 2024, transfer of PRC in the name of the Society dated 4 December 2024, CFO NOC dated 13 December 2024, Concession Approval dated 20 December 2024, IOD dated 30 December 2024 and NOC from the Power Company dated 12 February 2025. According to the Developer, these approvals show that the redevelopment process was already being pursued before the undertaking was given to the Court. It is submitted that the subsequent delay cannot be viewed as if no steps were taken by the Developer for progressing the project.

15. The Developer submits that, as some members were not vacating their premises, it filed Commercial Arbitration Petition No.311 of 2025 under Section 9 of the Arbitration and Conciliation Act, 1996 ("Arbitration Act"). Among other reliefs, directions were sought against the non-consenting members to execute the Members' Consent Letters and hand over possession. By the Order dated 18 March 2025, the Arbitration Petition was disposed of with directions to both sides. The few members who had not vacated were directed to do so and the Developer gave an undertaking to obtain the IOD, according to the Developer, to the

extent of the members' entitlement, by 30 September 2025. The Developer therefore submits that the undertaking has to be understood in the background in which it was given and with reference to the obligations under the Redevelopment Agreement.

16. The Developer submits that between March and September 2025 it continued to obtain various permissions required for the project. These included permission for tree branches trimming dated 26 March 2025, SWM NOC dated 30 April 2025, carriageway entrance permission dated 6 May 2025, temporary structure approval dated 30 June 2025, Federation NOC for tree transplantation dated 16 July 2025, dewatering permission dated 14 August 2025, debris removal permission dated 17 August 2025, Estate NOC dated 26 August 2025, CRZ NOC dated 26 August 2025, MPCB Consent to Establish dated 29 August 2025, Metro NOC dated 11 September 2025 and Hydraulic Engineer NOC dated 15 September 2025. The Developer again examined various proposals for additional FSI under DCPR 33(20)(B) between March and September 2025, including Shivalik Plot, Nutan Reality Plot, Nutan Realty LLP, ASK Plot, Omkar Plot, Ambivali and New Nagardas Road. It is submitted that these proposals could not be finalised for the reasons stated in the affidavits.

17. By its letter dated 12 September 2025, the Developer informed the Society that the CRZ NOC had been obtained only on 26 August 2025 and that the MOEF Environmental Clearance was still awaited. According to Developer, this constituted a Force Majeure Event under Clause 2.1.155 of the Redevelopment Agreement and was beyond its control. The Developer stated that

the Body Resolution earlier forwarded by the Society for availing TDR benefits under DCPR 33(7B) was not in the prescribed MCGM format and that a fresh resolution was awaited. It informed the Society that efforts were being made to identify and acquire a suitable plot or premises for obtaining FSI under DCPR 33(20)(B). The Developer therefore requested the Society to cooperate in seeking extension of the time for obtaining the IOD. The Society, by letter dated 21 September 2025, stated that it had taken note of the request and would extend cooperation regarding extension of timelines in the interests of the project and its members. The Developer thereafter filed Interim Application No.6366 of 2025 on 25 September 2025, before expiry of the stipulated date, seeking extension of time.

18. The Developer submits that its conduct after the Order shows bona fides. It states that it purchased 8,356.32 sq. metres of TDR, 7,564.51 sq. metres of Fungible FSI and 7,300.38 sq. metres of Additional FSI, thereby increasing the available FSI to 47,687.40 sq. metres as reflected in the Revised IOD dated 13 August 2026. For this purpose, according to Developer, an amount of Rs.207,71,21,440/- was spent. The Developer submits that it complied with its monetary obligations under the Redevelopment Agreement, including security deposit, rent, revised rent, brokerage, corpus, shifting charges and bank guarantee, totalling Rs.1,19,49,57,104/-. It relies upon the approvals obtained from October 2025 onwards, including Tree NOC, amended plan approval dated 5 December 2025, revised Civil Aviation NOC, tree transplantation permission, revalidated IOD, Environmental

Clearance dated 20 May 2026, PCO NOC and Commencement Certificate dated 2 June 2026. The Revised IOD securing the members' entitlement was thereafter obtained on 13 August 2026. The Developer states that 286 out of 290 PAAA have been executed.

19. As regards the additional FSI under Regulation 33(20)(B) of the DCPR 2034, the Developer submits that the regulation permits additional FSI upon construction and handing over of AH/R&R tenements to MCGM free of cost. According to Developer, there are two methods for doing so, namely, acquisition of an open plot and construction of the required tenements thereon, or obtaining ready-made AH/R&R tenements which are ready for obtaining OC and handing them over to MCGM. The Developer states that it chose the first method because OC-ready tenements were difficult to find. Several proposals were examined during 2026, but none could be finalised because of various difficulties. Ultimately, the Developer entered into an MoU dated 17 June 2026 with M/s Indoco Remedies Limited for purchase of land and thereafter executed a registered Deed of Conveyance dated 27 August 2026. The Developer states that the consideration was Rs.64 crores and the entire amount was paid. According to Developer, after sanction of the building plans for that plot, additional FSI of approximately 24,449.79 square metres can be loaded on the Subject Property. For the remaining approximately 6,979.24 square metres relating to the AH/R&R component, the Developer states that projects for purchasing ready-made tenements have been identified and that the necessary OC is expected within the extended period sought.

20. The Developer submits that, because of the difficulty in procuring and loading additional FSI, it modified the sequence of the building plans and obtained the Revised IOD dated 13 August 2026. According to Developer, the Revised IOD covers the entire Members' Carpet Area Entitlement comprising 290 flats for 256 members and therefore, according to the Developer, the undertaking recorded in the Order dated 18 March 2025 has been complied with within the extended period sought in Interim Application No.6366 of 2025. The Developer disputes the Society's contention that the undertaking required an IOD covering the entire project including the sale component. It relies upon Clause 2.1.19, Clause 5.7(iv), Clause 6.2 and Clause 25.1 of the Redevelopment Agreement and submits that its obligation was to obtain IOD and requisite FSI to the extent of the Members' Carpet Area Entitlement. The Developer submits that the expression "entire IOD" in the Order dated 18 March 2025 has to be understood in this context. According to Developer, the grievance considered by the Court was regarding the members' entitlement and the undertaking was given to secure that entitlement within the time stated.

21. The Developer submits that the Society had taken the position in its Contempt Notice dated 27 February 2026 and in the Contempt Petition that the Developer could not ask the members to vacate unless the IOD covering the Members' Carpet Area Entitlement was obtained. According to the Developer, the undertaking was given in that background and not for obtaining approval of the entire sale component of the project. It is therefore

submitted that the Revised IOD dated 13 August 2026 covering the entire members' entitlement substantially answers the obligation relied upon by the Society. The Developer submits that there is no basis for holding the delay to be wilful disobedience. According to Developer, wilful disobedience requires a conscious and deliberate intention to disregard the Court's Order, which is absent in the present case. The delay, according to the Developer, was caused by circumstances beyond its control, the delay in obtaining EC and the difficulty in identifying suitable land or premises for additional FSI under DCPR 33(20)(B). It is therefore submitted that the extension sought in Interim Application No.6366 of 2025 ought to be granted and that no contempt action should be taken against the Developer.

Submissions of Petitioner in CPCDL/19521/2026:

22. The Petitioner submits that the Developer obtained substantial benefit from the Order dated 18 March 2025 and, relying upon the Section 9 proceedings and the vacation notice dated 8 January 2025, obtained possession from all 256 members. According to the Petitioner, the notice was defective as the requirements for obtaining full IOD, EC, MOEF approval, CC and other approvals had not been completed. It is alleged that the Court was not placed with the complete facts and that the existing buildings were thereafter demolished in breach of Section 44 of the MRTP Act. The Petitioner raises the issue of the Society's NOC being used for creation of a mortgage without obtaining the Bank Guarantee required under the contract. It is submitted that a loan of Rs.530 crores was sanctioned and about Rs.300 crores was

availed in July 2025. Despite the undertaking given to this Court to obtain the entire IOD by 30 September 2025, the Developer failed to do so and instead filed Interim Application No.6366 of 2025 on 25 September 2025 seeking extension. According to the Petitioner, there cannot be an endless extension, after the members had vacated their homes on the understanding that new homes would be provided within the period of 36 months. It is submitted that the project remained practically stopped after demolition and was shown as restarted only in June 2026, while the partial IOD was reorganised on 13 August 2026 to show compliance with the members' entitlement.

23. The Petitioner submits that the relief granted in the Section 9 proceedings did not reduce or take away the rights available under Section 9 of the Arbitration Act and that the Contemnors cannot seek equitable consideration without explaining their failure to comply with the undertaking. The reliance on Force Majeure, according to the Petitioner, is not sufficient and is disputed. It is submitted that the Development Agreement and the Order dated 18 March 2025 continue to govern the project. The Petitioner therefore questions whether the Developer made genuine efforts between 18 March 2025 and 30 September 2025 to obtain the full IOD and whether sufficient cause has been shown for the failure. According to the Petitioner, the material circumstances show that the Developer obtained possession first and thereafter sought to justify the delay, instead of complying with the fixed undertaking given to the Court.

24. The Petitioner raises questions regarding the validity of the vacation notice dated 8 January 2025 and the Section 9 proceedings, as he claims that he was not a party to the Arbitration Agreement. He refers to the description of Mr. Mitesh Shah as a representative of the Developer and as a consenting member in the original Arbitration Petition and questions whether the necessary authority of Mr. Shah was placed on record. The Petitioner states that consent concerning Flat A-203, A Wing, Hrushikesh had been given in 2012 to the parent company and questions why this fact was not disclosed. He questions the description of himself as a non-consenting member when, according to him, such earlier consent existed. Various questions are raised regarding the introduction of the Developer or alleged SPV in 2023, the authority under which the Development Agreement was executed, the demolition of the buildings, the role of the Society's Managing Committee and MCGM, and the mortgage of the Society's property. The Petitioner questions the sanction and utilisation of the loan of Rs.530 crores and the subsequent statement regarding investment of about Rs.300 crores in the project.

25. The Petitioner submits that after the members vacated their homes, the Developer sought RERA registration showing a completion period extending up to 2032, though at that stage only partial IOD had been obtained. It is alleged that the Power of Attorney given by the Society was used to show the Society and its members as co-promoters, although the Body had not accepted the proposal. The Petitioner raises concerns regarding non-disclosure of the mortgage deed and other basic project particulars such as

the number of floors, number of flats, ceiling height and car park dimensions. According to him, the project which originally contemplated additional flats has progressively increased in size and may involve more than 600 flats and floors by using additional FSI. He apprehends that after demolition, the members may be pressured to give benefits under DCPR 33(7B), though according to him this was not part of the original arrangement. The Petitioner therefore submits that Clause 6.3, which required the necessary IOD before possession, cannot be defeated by relying upon the provisions of Clause 6.9 or by claiming an unlimited period for obtaining the remaining FSI.

26. The Petitioner raises issues concerning the financial and tax treatment of the project. He questions why, after possession and demolition, the transaction has been treated as falling under Section 194-IC of the Income Tax Act and why TDS is being deducted when, according to him, the Society and its members were not parties to any joint redevelopment arrangement. He submits that hardship allowance is a capital receipt and questions why the Society and its members should be exposed to future liabilities by being treated as promoters or parties to such arrangement. He questions the use of TDR and the benefits available under DCPR 33(20B), including the alleged utilisation of TDR from MCGM, and submits that the matter requires examination. The Petitioner refers to the circumstances in which he was allegedly obstructed while vacating his flat, the late supply of the PAAA and the objections raised by members to the draft PAAA. He submits that members signed the PAAA under the

pressure of the time fixed for vacating and that the documents themselves require correction or clarification. According to the Petitioner, the failure to attach the full IOD to the PAAA and the other alleged deficiencies have caused serious prejudice to the members who have already lost possession of their homes.

27. The Petitioner submits that time is an important part of the arrangement and that a redevelopment which may extend for many years cannot, according to him, be treated as performance within the agreed period of 36 months. He questions the capacity of the alleged SPV and submits that the parent company should be required to stand behind the project and complete it within the period, including obtaining the Occupation Certificate and providing the new homes by 15 April 2028. The Petitioner proposes Court-monitored timelines, periodic inspection and project updates, a Corporate Guarantee and an undertaking to the Court, and seeks liquidated damages of Rs.15,000 per day per member for delay beyond the completion date. He seeks appropriate compensation for the loss of possession, hardship and harassment allegedly suffered by him and other members. According to the Petitioner, the Court may examine the corporate structure and, where permissible in law, direct the parties to restore the position or take steps to protect the rights of the members. He therefore submits that appropriate orders may be passed having regard to the interests of the 256 members, while leaving the Respondents to pursue such rights and remedies as may be available to them in law.

Submissions of Petitioner in CPCDL/22992/2026:

28. The Petitioner submits that the present proceedings arise from the undertaking recorded by this Court on 18 March 2025, whereby the Developer had undertaken to obtain the IOD after taking into account the entire FSI of the project by 30 September 2025. According to the Petitioner, possession of the members' premises was handed over relying upon this Order and the undertaking. It is not in dispute, according to him, that the undertaking was not complied with by the stipulated date. The Petitioner therefore submits that the issue is not merely of some administrative delay, but of failure to comply with an undertaking given to the Court. He submits that the revised plans were submitted only on 30 July 2026 and the Revised IOD was obtained much after the undertaking had expired. According to him, partial approvals, revised plans or future approvals cannot be treated as compliance with the specific undertaking. The expenditure incurred by the Developer on TDR, transit rent, corpus, bank guarantee, finance and other project matters, according to the Petitioner, does not answer the question whether the undertaking was complied with within time. It is submitted that although Interim Application No.6366 of 2025 was filed shortly before 30 September 2025, no order extending the time was passed before that date and therefore the Developer cannot treat the undertaking as having been automatically extended.

29. The Petitioner submits that any correspondence or assurance by the Society regarding extension could not alter an undertaking recorded by the Court. He disputes the authority of the Managing

Committee to grant such extension without approval of the Body. According to him, the Developer therefore cannot rely upon such correspondence as a defence to the contempt proceedings. It is submitted that the members continue to suffer because they had surrendered their premises relying upon the Court's Order, whereas the Developer obtained possession and continued its project and commercial activities. The Petitioner refers to the RERA disclosure showing a completion date extending up to 2032 and submits that this is far beyond the period contemplated under the Development Agreement, which provided for completion within three years with the applicable extension from the Society handover date. The subsequent steps taken by the Developer, according to the Petitioner, may be relevant to the present position but cannot remove the breach which had already occurred on 30 September 2025.

30. The Petitioner submits that the breach is continuing in its effect because the redevelopment is one composite project. According to him, the saleable flats and the rehabilitation flats are situated in the same buildings and on different floors and cannot be treated as two independent projects. Therefore, even if the Revised IOD dated 13 August 2026 is taken to cover the Members' Carpet Area Entitlement, it does not, according to the Petitioner, mean that the complete IOD for the entire project has been obtained. Until the entire building is constructed and the necessary approvals and Occupation Certificate are obtained, the members cannot practically occupy their rehabilitation flats. The Petitioner therefore submits that the complete IOD is connected with the

eventual completion and handing over of the rehabilitation premises and not merely with an intermediate approval for the members' entitlement.

31. The Petitioner, Mr. Hemant Jain, submits that the prejudice to him is personal and continues even today. He surrendered his existing premises relying upon the undertaking recorded by this Court, while his allotted rehabilitation premises are Flat No. 2904, Tower No.2, Wing "C". According to him, merely stating that the interests or entitlements of 256 members are secured does not establish that all approvals required for construction, completion and occupation of his particular flat have been obtained. He points out that no flat-wise sanctioned schedule or other clear document has been produced showing how Flat No. 2904 is dealt with in the revised plans. It is submitted that no clear and binding date for completion of the redevelopment and handing over of the rehabilitation flat has been given. According to the Petitioner, the Revised IOD dated 13 August 2026 was obtained almost eleven months after the stipulated date and, even according to the Developer's case, some balance FSI is still required to be secured and loaded. Thus, in his submission, the subsequent IOD cannot retrospectively cure the failure to comply with the undertaking by 30 September 2025.

32. The Petitioner submits that his grievance is not only about the date on which the IOD was obtained but about the practical consequence of the delay. He had given up his existing home on the basis that the Developer would perform the obligation undertaken before the Court. According to him, the Developer

cannot take advantage of the possession so obtained and at the same time rely upon partial approvals, revised proposals and expected future permissions to postpone completion indefinitely. He therefore seeks a specific and time-bound schedule for completion, with stages of work and a final date for handing over possession, preferably under the monitoring of the Court. The Petitioner submits that the Respondents should not be permitted to treat the members' rehabilitation entitlement as secured merely because an IOD has subsequently been obtained for the stated entitlement, when the complete composite project is still dependent upon FSI and approvals.

33. The Petitioner finally submits that the continuing prejudice and non-compliance deserve consideration in the contempt proceedings. According to him, the Deed of Conveyance dated 27 August 2026 and other steps relied upon by the Developer cannot replace the specific undertaking recorded by this Court on 18 March 2025. The Petitioner therefore submits that the Respondents cannot indefinitely postpone compliance by relying upon later proposals, partial approvals or future assurances. He maintains that unless the IOD covering the entire composite project is obtained, the undertaking remains unfulfilled in substance and the consequences of the failure continue to affect him and the other members. He therefore seeks that this Court take note of the non-compliance and the prejudice caused to him and pass appropriate orders in the contempt proceedings, including such orders as may be considered proper in the facts and circumstances of the case.

Submissions of the Society:

34. The Society submits that the order dated 18 March 2025 required the Developer to obtain the IOD for the entire Project FSI of 82,769.90 sq. mtrs. and not only for the members' carpet area. According to the Society, the order records the clear undertaking of the Developer to obtain the "entire IOD/entire FSI involved" by 30 September 2025. Paragraph 8 of the order records that "the IOD factoring in the entire FSI involved would be obtained by 30 September 2025". There is nothing in the order to show that this undertaking was limited to the members' entitlement. The Society submits that the 256 members were allowed to hand over vacant possession only because of this clear undertaking. The Developer's present stand that the undertaking was only for the members' area, according to the Society, is a later stand and is not supported by its own pleadings filed at that time.

35. The Society submits that the Interim Application filed by the Developer on 25 September 2025 sought extension of time "to obtain the IOD for the entire Project". According to the Society, this shows that at that time the Developer understood the undertaking to relate to the entire Project and not merely to the members' flats. The Society points out that the present argument that IOD for the members' carpet area alone amounts to compliance was taken only later, in the Rejoinder dated 19 August 2026, and was thereafter pressed in arguments. The Society therefore submits that this later interpretation is contrary to the order, the undertaking and the Developer's own earlier pleadings. The Society disputes the Developer's claim regarding use of incentive FSI under Regulation

33(7B). According to the Society, Clause 4.1 of the Development Agreement does not give the Developer an automatic right to use such additional incentive FSI, and the facility of combining Regulation 33(20B) with Regulation 33(7B) became permissible only after the Government Notification dated 15 October 2024. Therefore, merely shifting saleable FSI to the rehabilitation component cannot mean that the additional FSI has actually been obtained.

36. The Society submits that the Amended Approval Letter dated 13 August 2026 only shows IOD coverage for 256 members and 290 flats because the FSI from the saleable component was shifted to the rehabilitation component. As stated by the Society, “There is no additional FSI secured”. According to the Society, the Developer’s own FSI Chart shows that only 57.61% of the total FSI is covered, leaving 42.39% of the Project FSI of 82,769.90 sq. mtrs. still to be obtained. The Society points out that earlier the IOD covered only 178 out of 290 flats and, even after the later shifting of FSI, the position is only that the members’ component has been covered. There is still no clear date by which the remaining FSI will be obtained. The Society submits that its Contempt Petition, read as a whole, never gave up the requirement of 100% Project IOD. The same position was repeated in its affidavits dated 27 July 2026, 4 August 2026 and 12 August 2026. Therefore, there was no concession, waiver or estoppel. According to the Society, the Developer has not stated clearly when possession of the new flats will actually be given.

37. The Society submits that the RERA Registration Certificate dated 19 June 2026 gives 30 June 2032 as the outer date for completion and covers only 22 floors in one tower and 13 floors in the other. According to the Society, this shows the uncertainty in completion. The Society relies on Clause 6.3 of the Development Agreement and submits that this was the specific provision which gave the Developer the right to seek vacant possession, and it required the Developer first to obtain the necessary IOD and other requirements. According to the Society, this specific condition formed the basis of the order dated 18 March 2025 and cannot now be replaced by Clause 6.9, which refers to obtaining things “as and when required”. The Developer, having obtained possession from 256 members on the basis of the order, cannot now rely on Clause 6.9 to claim an unlimited period for obtaining the balance FSI. If this is permitted, the specific condition in Clause 6.3 and the undertaking recorded in the order would become meaningless, and the members would be left waiting for an uncertain period instead of the agreed 36-month completion period.

38. The Society submits that under Clause 23.1 the Project was to be completed within 36 months from the handover date, namely 16 April 2025. However, by letter dated 23 June 2026, the Developer sought to take 3 June 2026, the date of the Commencement Certificate, as the starting point of the 42-month period. According to the Society, this cannot be done unilaterally. The mere shifting of saleable FSI to cover the members’ carpet area does not give certainty about construction of the towers, their required height and structural requirements or the obtaining of

Occupation Certificates. The Society therefore submits that the members may be left waiting for an indefinite period. It points out that 256 members continue to remain away from their homes, transit rent and hardship compensation continue to increase, and there may be long-term tax consequences and continuing financial and mental pressure because of living in rented premises. According to the Society, granting an unconditional or indefinite extension would leave the members dependent upon the Developer's future commercial decisions and would effectively give benefit to the Developer despite non-compliance with the undertaking.

39. Lastly, the Society submits that the Developer has not shown sufficient grounds for the extension sought in prayer clause 31(a), which is vague and open-ended. According to the Society, the Developer has not shown that it is ready and willing to obtain the balance IOD and FSI. The Society therefore submits that the plea that covering the members' carpet area amounts to compliance with the order dated 18 March 2025 is contrary to the Developer's own earlier pleadings and undertaking and is not supported by the record. The Society maintains that 100% of the Project FSI was required to be secured, that 42.39% still remains to be obtained, and that the Developer has not given any clear plan for doing so. It therefore submits that the extension sought should not be granted and the Developer should not be permitted to keep the members waiting for an indefinite period.

REASONS AND FINDINGS:**Scope of the Undertaking:**

40. I have considered the pleadings filed by the parties, the order dated 18 March 2025, the orders passed in the present proceedings and the submissions made by the learned Advocates appearing for the Society, the Developer and the other concerned parties. The issue before the Court is what the Developer had undertaken before this Court on 18 March 2025, whether that undertaking was complied with within the time fixed by the Court and, if it was not complied with, whether such failure was wilful so as to amount to civil contempt.

41. The position which existed before the Court on 18 March 2025 is not disputed. At that time, an IOD had been obtained, but the same was only for 14 floors. The order records in paragraph 4 as under:

“4. As regards Flat No. 203, Mr. Rajesh Nambiar, the owner of the flat has appeared as party in person on each date and with his assistance, I have been through the record His fundamental grievance is that the Intimation of Disapproval (“IOD”) obtained covers only 14 floors, whereas the redevelopment envisages two towers of 31 floors. According to him, the IOD is obtained only for 14 floors and therefore, it is incomplete and the condition to vacate has not been triggered. He would submit that he has no opposition to vacating, but unless there is compliance with the terms of the Development Agreement, which is the securing of the IOD, he cannot be asked to vacate his flat. Consequently, the situation that has emerged is that there is indeed an IOD, but for 14 floors.”

42. Thus, the problem before the Court was not absence of an IOD. An IOD was available, but it covered only 14 floors. It was not sufficient for the redevelopment which contemplated two towers of 31 floors. This background is important. The undertaking given has to be understood in the context of the incomplete IOD which was then existing.

43. Paragraph 5 of the order records the assurance given on behalf of the Developer in the following terms:

“5. Upon a query being put to get a firm assurance from the Petitioner as to the date by which the entire IOD would be obtained, he would submit that he has instructions to commit to obtaining the entire IOD within a period of six months from April 1, 2025, which is the scheduled date on which all parties would vacate their premises and correspondingly execute and register the PAAA”

44. The expression used in paragraph 5 is “the entire IOD”. The Developer did not state that the assurance was restricted only to the rehabilitation portion or only to the IOD relating to the members' flats.

45. Paragraph 7 gives the background in which this assurance came to be given. It records:

“7. Learned Counsel for the Society submits that Society has significant substantial consensus about the way forward with the Development Agreement. My attention is drawn to a letter dated January 27, 2025, by which it is apparent that the Society has dealt with a concern expressed by multiple members and drawn the attention to the fact that the IOD is only up to 14 floors and that covers an aggregate FSI of 2,79,080 square feet. However, some of the members flats

would be situated above the 14 floors and they would not be covered by the current IOD and consequently, the Society wrote to the Developer stating that they would need to obtain the IOD stage-wise, and ensure that the full IOD that is needed (entailing FSI in respect of 82769.90 square meters) shall be obtained.”

46. It can be seen why the Society was asking for the complete IOD and why the Court sought a firm assurance from the Developer. Some members' flats were proposed to be situated above the 14 floors covered by the existing IOD. Those flats would not have been covered by the existing approval. The Society accordingly wanted the full IOD which was required for the redevelopment. The FSI mentioned in this context was 82,769.90 sq. mtrs.

47. The important part is paragraph 8, where the Court took the undertaking on record:

“8. I have taken on record the undertaking made on behalf of the Petitioner upon instructions, explicitly committing that the IOD factoring in the entire FSI involved would be obtained by September 30, 2025. Towards this end, it would be appropriate that all the members vacate and hand over possession as agreed by the Society and majority of the members by 31 March 2025.”

48. The language of paragraph 8 is important. The undertaking is described as “explicitly committing”. It is an undertaking that the IOD “factoring in the entire FSI involved” would be obtained by 30 September 2025. If the intention was only to obtain an IOD for the members' replacement flats, the order could have used the expression “Members’ Carpet Area Entitlement”, which is a defined

expression in the Development Agreement and is used in Clauses 5.7(iv), 6.2 and 25.1. The Court did not use that expression while recording the undertaking. Instead, the Court used the words “the entire IOD” and “the entire FSI involved”.

49. The Developer submits that these words have to be read along with the Development Agreement. According to the Developer, “the entire IOD” means the IOD required for all 290 members' new flats and not an IOD for the entire development potential including the sale component. This submission cannot be rejected without examining the Development Agreement, because the document does contain provisions which support this interpretation to some extent. Clause 2.1.19 defines “Members Carpet Area Entitlement” as the revised carpet area offered by the Developer, being 52.2% additional over the existing carpet area of 1,83,364 sq. ft. Clause 2.1.22 gives the details of the members' new flats. It records the existing total carpet area as 1,83,364 sq. ft. and the total members' entitlement as 2,78,078 sq. ft. Therefore, “Members Carpet Area Entitlement” is a defined expression and is connected with the obligation of the Developer to provide the members with their new flats. Clause 5.7(iv) provides:

“subject to "receipt of appropriate orders from this court in respect of non-consenting members as per clause 7, the Developer shall obtain concession approval for full development potential to the extent of the Members' Carpet Area Entitlement in the name of the Society and obtain the Intimation of Disapproval (IOD)/Intimation of Approval (IOA) as the case may be for utilization thereof by loading

/purchasing the requisite FSI within a period of 9 (nine) months from the date of execution and registration of this Agreement and in addition thereof a grace period of one month will be granted by the Society".

50. Clause 6.2 similarly provides:

“The Developer shall obtain IOD/IOA and sanction to the Buildings Plans by utilization, purchasing and loading the requisite FSI/TDR to the extent of Members' Carpet Area Entitlement within 9 months from the date of execution and registration of the Redevelopment Agreement plus 1 month (grace), subject to Clause 7.8.”

51. Clause 25.1 provides:

“Developers Default: if the Developer fails to (provided such delay or failure is not on account of Extra Ordinary Event or Force Majeure Event) obtain Intimation of Disapproval or Intimation of Approval (IOD/IOA) and the approved plans and load requisite FSI/ TDR pertaining to all the Members New Flats as per Members Carpet Area entitlement within nine months from the date of this agreement with a grace period of 1 month or such extended period as mutually recorded herein, then in such event, the Society shall issue a Notice in writing to the Developer to comply with the aforesaid obligations within a period of 30 days from the date of receipt of the Notice by the Developer.”

52. These clauses provide some basis for the Developer's interpretation. The Development Agreement does use “Members Carpet Area Entitlement” while dealing with the IOD, FSI and the new flats of the members. It would not be correct to say that the interpretation placed by the Developer has no support in the document. However, the question before this Court is not only what the Development Agreement provides. The Court has to

consider what undertaking was given to the Court. A provision and an undertaking given to a Court cannot be treated as if they are the same thing. The undertaking has to be understood from the words used in the order and from the circumstances in which it was given. This is important because the Court acted upon the undertaking and directed the members to vacate their premises.

53. The order shows that the undertaking the assurance on the basis of which the Court balanced the interests of the parties. Paragraph 9 records:

“9. Taking such assurance given to Court as an undertaking given to the Court and balancing the competing interests and the interests of multiple stake holders in the Society as diverse as having 256 members, the following order is passed:-”

54. The effect of this paragraph has to be kept in mind. After taking the undertaking on record, the Court directed the members to vacate. The Court Receiver was given power to obtain possession. Directions were given regarding execution of the PAAA and, if necessary, taking physical possession with police assistance. Therefore, the undertaking was followed by directions having serious consequences for the members.

55. Paragraph B provides:

“B) It is directed that all members including those who have held out (in respect of the three flats referred to above) shall vacate by March 31, 2025 with grace period being given as an exception for members who are unable to vacate by that date, such that they too shall vacate in a manner that the premises shall be handed over by the Society to the

Developer no later than April 15, 2025. It is made clear that as of April 15, 2025, free and vacant possession shall be handed over to the Developer. The exception referred to above is only being made since we are in March 18, 2025 and the parties have been agitating their issues until now, and they may potentially need a few days more;”

56. Paragraph C provides:

“C) In these circumstances, should any member not execute the PAAA by March 31, 2025, failing which, by the outer limit of April 15, 2025, the Court Receiver shall be entitled to execute the PAAA on behalf of such member, which shall bind the members who are refusing to execute the PAAA

57. Paragraph 11 states:

“11. Keeping these contentions open would not mean that the premises are not to be vacated either on March 31, 2025 or with the grace period such that possession is handed over to the Developer as above, no later than April 15, 2025.”

58. Paragraph 12 states:

“12. It is made clear that the Court Receiver shall be entitled to take physical possession on March 31, 2025 or later such that on April 15, 2025 free and vacant possession is capable of being handed over to the Developer. . . . Should there be a need to use force or break open the lock, the Court Receiver shall be entitleText Bodyd to do so. Full assistance from the local police station shall be made available should the need arise at the expense of the Petitioner ...”

59. Reading these paragraphs together, there is a clear connection between the undertaking and the directions for handing over possession. The Society says that the members agreed to vacate because the Developer had assured the Court that

the entire IOD would be obtained. According to the Society, the members would not have been directed to surrender possession in this manner if the undertaking was only to obtain a limited IOD for the members' flats. There is force in this submission when the order is read as a whole. The Court first considered the deficiency in the existing IOD, then asked the Developer for a firm assurance regarding "the entire IOD", took that assurance on record as an undertaking and directed the members to vacate and hand over possession.

Non-Compliance with the Undertaking:

60. The conduct of the Developer after the order is relevant, though it cannot alone decide the meaning of the undertaking. Interim Application No.6366 of 2025 was filed on 25 September 2025, shortly before 30 September 2025. The Society points out that in that application the Developer sought an extension to "obtain the IOD for the entire Project". These words are difficult to reconcile with the interpretation now advanced that the undertaking was, from the beginning, limited to the members' carpet area entitlement. The words used in the application are closer to the words used in paragraph 8. A statement made later cannot by decide what an earlier undertaking meant. However, when the order dated 18 March 2025, the circumstances in which the undertaking was given and the subsequent conduct of the Developer are considered together, the interpretation placed by the Society gets greater support.

61. The Developer has placed before the Court the various steps taken by it. It submits that the application for Environmental Clearance was made on 17 January 2024, CRZ clearance was obtained on 26 August 2025, Environmental Clearance from MOEF was obtained on 20 May 2026 and the Commencement Certificate was obtained on 2 June 2026. According to the Developer, these permissions took time for reasons beyond its control and the delay falls within the Force Majeure provisions. These facts show that the Developer was not inactive. Before 18 March 2025, it had obtained or pursued Civil Aviation NOC, NA Order, PRC transfer, CFO NOC, Concession Approval, IOD dated 30 December 2024 and the Power Company NOC., according to the Developer, permissions were obtained during 2025 and 2026. These circumstances are important while considering whether the failure to obtain the IOD within the stipulated time was deliberate. The Developer relies upon its efforts to obtain additional FSI under DCPR 33(20)(B). It refers to proposals made from March 2024 onwards and to the Memorandum of Understanding dated 17 June 2026 with Indoco Remedies Ltd., followed by the registered conveyance dated 27 August 2026, for which consideration of Rs.64 crore was paid. According to the Developer, this arrangement would make approximately 24,449.79 sq. mtrs. of additional FSI available. The Developer relies upon the revised IOD dated 13 August 2026. It submits that the revised IOD covers the entire “Members carpet area entitlement” for all 290 flats. It submits that 286 PAAs out of 290 flats have been executed.

62. These are relevant circumstances while considering the conduct of the Developer. They show that the Developer continued to work towards the redevelopment and did not stop the project. They are relevant while deciding whether the failure to comply with the undertaking was wilful. A party which has taken several steps towards compliance stands on a different footing from a party which has consciously refused to obey a Court order. But there is an important distinction. Steps taken towards the project cannot be treated as compliance with the undertaking. The fact that permissions were obtained later does not mean that the undertaking which was required to be fulfilled by 30 September 2025 was fulfilled by that date.

63. The Force Majeure defence has to be considered. The Developer relies upon the time taken in obtaining CRZ clearance on 26 August 2025, Environmental Clearance on 20 May 2026 and the Commencement Certificate on 2 June 2026. It submits that the period from 16 April 2025 to 2 June 2026, being 1 year, 1 month and 17 days, should be added to the completion period. According to the Developer, this would take the completion date to about November 2029. There are difficulties in accepting this submission as answer. The undertaking given to this Court was to obtain the entire IOD by 30 September 2025. Paragraph 8 does not say that this date was subject to obtaining future permissions. It does not say that the Developer would receive an extension on account of Force Majeure. The undertaking, as recorded, does not contain such qualification. But this does not mean that every failure to meet the date amounts to contempt. The Court must still consider

whether the failure was wilful. There is a difference between a person deliberately refusing to obey an order and a person who could not comply within time because of circumstances which may have been beyond his control. There can be a genuine dispute regarding the meaning of the obligation. All these circumstances have to be considered before deciding wilfulness.

Principles Governing Wilful Disobedience:

64. In this connection, the principles stated in *Balwantbhai Somabhai Bhandari v. Hiralal Somabhai*, (2023) 17 SCC 545, are relevant. The Supreme Court has held that the purpose of contempt jurisdiction is not to protect the personal dignity of the Judge but to prevent interference with the administration of justice. Paragraph 39 states:

“39. object of contempt discipline is not to vindicate dignity of court/judge but prevent undue interference with administration of justice.”

65. Paragraph 41 states:

“41: party aware of judgment/order and consequences, acts in violation, disobedience is wilful; sufficient to prove conduct wilful and contemnor knew facts making it breach of undertaking.”

66. Paragraph 42 states the basic requirements for civil contempt:

“42: civil contempt requires (i) judgment/decreed/direction/order/writ/process; (ii) disobedience; (iii) wilful disobedience”

67. The Supreme Court has held that contempt jurisdiction has to be exercised carefully. Paragraph 43 states:

“43: court must act cautiously, allow for errors of judgment; punish only clear contumacious conduct not otherwise explainable; punishment where lapse deliberate/disregard/defiance; contempt quasi-criminal, same standard as criminal cases, alleged contemnor gets safeguards and benefit of doubt”

68. Paragraph 47 makes the requirement of wilfulness clear:

“47: “wilful disobedience” indispensable; whether conduct deliberate/wilful assessed from material and attendant circumstances.”

69. These principles mean that the Court cannot hold a person guilty of contempt merely because the result promised by him was not achieved within the time fixed. The Court has to see three things: whether there was a clear obligation, whether the obligation was not obeyed and whether the failure to obey was wilful. At the same time, where a clear undertaking is given to the Court and the Court acts upon it, the person giving the undertaking cannot later change its meaning because a different meaning is convenient to him.

70. On the first requirement, the undertaking in the present case is sufficiently clear. Paragraph 8 does not merely say that the Developer would obtain the IOD for the members' flats. It records an express commitment that the IOD “factoring in the entire FSI involved” would be obtained by 30 September 2025. Paragraph 7 identifies the FSI involved as 82,769.90 sq. mtrs. Thus, both the obligation and the date were stated.

71. On the second requirement, the material before the Court shows that the complete IOD contemplated in paragraph 8 was not obtained by 30 September 2025. The revised IOD relied upon by the Developer is dated 13 August 2026. Therefore, whatever may be the final interpretation of the Development Agreement, the undertaking in the form in which it was recorded was not completed within the time fixed by the Court.

Conduct of the Developer:

72. The question, which remains is whether this non-compliance was wilful.

73. There are various circumstances placed before the Court which are required to be considered while examining whether the non-compliance of the undertaking by the Developer was wilful or deliberate. In the first place, the Developer had obtained various permissions even before the Order dated 18 March 2025. The Civil Aviation NOC was obtained on 25 September 2023, the NA Order on 12 April 2024, the PRC was transferred in the name of the Society on 4 December 2024, the CFO NOC was obtained on 13 December 2024, the Concession Approval was obtained on 20 December 2024, the IOD was obtained on 30 December 2024 and the NOC from the Power Company was obtained on 12 February 2025. Thus, the material does not show that the Developer had remained without taking any steps before the undertaking was given. Some process relating to the redevelopment and obtaining of permissions was going on. This is relevant for seeing the conduct of the Developer from the beginning and not only from

the date on which the undertaking was recorded. The Developer has submitted that from March 2024 it had started examining different possibilities for obtaining additional FSI under Regulation 33(20)(B) of the DCPR 2034. The proposals of Parth Developer, Yashwant Nagar, Rizvi Plot and Shivram Plot were considered even before the Order dated 18 March 2025. It is true that none of these proposals resulted in acquisition or loading of the proposed FSI. But that does not mean that the efforts made for considering those proposals can be ignored. The fact remains that the Developer was considering the question of additional FSI before the undertaking was given. Thus, the issue of arranging FSI was not something which was taken up only after the date fixed by the Court had come to an end. This circumstance, though not sufficient to prove compliance, is relevant for considering whether the Developer had a deliberate intention to disregard the undertaking.

74. After the Order dated 18 March 2025, the Developer continued to take steps for obtaining various permissions. Between March and September 2025, it obtained, amongst others, tree trimming permission, SWM NOC, carriageway entrance permission, temporary structure approval, permission relating to tree transplantation, dewatering permission, Estate NOC, CRZ NOC and MPCB Consent to Establish. The CRZ NOC was obtained on 26 August 2025. Thereafter, Environmental Clearance was obtained on 20 May 2026 and the Commencement Certificate was obtained on 2 June 2026. Therefore, the record shows that the Developer was continuing with the process of obtaining permissions even after the undertaking was given. These

permissions cannot be treated as equivalent to the IOD which was required to be obtained under the undertaking. The Court is not saying that because the Developer obtained other permissions, the undertaking stood complied with. The fact remains that the IOD contemplated by the undertaking was not obtained within the stipulated period ending on 30 September 2025. But for deciding whether such failure was wilful, the steps taken during the same period are relevant. If a party is continuously taking steps towards the project, obtaining permissions and trying to complete the required process, the same conduct may have some bearing on whether the failure was a deliberate refusal or whether the result could not be achieved within the time.

75. The Developer has placed material to show that it continued to search for additional FSI even after March 2025. Various proposals such as Shivalik Plot, Nutan Reality Plot, Nutan Realty LLP, ASK Plot, Omkar Plot, Ambivali and New Nagardas Road were considered. According to the Developer, these proposals could not be finalised due to technical difficulties. The Society may dispute these difficulties and may say that the Developer could have acted earlier or in a better manner. There may be a dispute whether the difficulties relied upon by the Developer would extend the period. Those questions are different from the question presently required to be considered in contempt. What is relevant at this stage is that the Developer has shown material indicating that different proposals were being considered and that efforts were being made to arrange the additional FSI.

76. The Developer thereafter identified the transaction with M/s Indoco Remedies Limited. A Memorandum of Understanding was entered into on 17 June 2026. Thereafter, on 27 August 2026, a registered Deed of Conveyance was executed and, according to the Developer, the entire consideration of Rs.64 crores was paid. The Developer states that by acquiring this land it would be able to obtain approximately 24,449.79 square metres of additional FSI under Regulation 33(20)(B), after the necessary building plans are sanctioned. The transaction with M/s Indoco Remedies Limited is required to be considered. It was not only a proposal which remained at the discussion stage. According to the material placed before the Court, the discussions resulted in a Memorandum of Understanding and a registered conveyance upon payment of the stated consideration. It is true that this transaction was completed much after 30 September 2025. Therefore, the additional FSI said to arise from this transaction cannot be treated as having become available on the date fixed under the undertaking. Similarly, the subsequent acquisition of the land cannot be treated as compliance with the undertaking within the original period. But the transaction is still relevant for considering the conduct of the Developer. It shows that the Developer continued to pursue the question of additional FSI and took a substantial step for arranging the same. The Developer has placed on record that it purchased TDR, Fungible FSI and Additional FSI and incurred substantial expenditure for acquiring the same. It has stated that it paid rent, brokerage, corpus, shifting charges and other amounts and furnished the bank guarantee and security deposit as required

under the Redevelopment Agreement. These payments cannot amount to compliance with the undertaking given to the Court. The Court's undertaking cannot be treated as complied with merely because the Developer has spent substantial amounts on the project. The obligation was to achieve the result which was undertaken before the Court. However, the expenditure of the Developer are not irrelevant. While considering whether the non-compliance was wilful, the Court has to see the conduct of the Developer and not only the ultimate result. The fact that the Developer continued to incur substantial expenditure and continued to put its financial resources into the project indicates that the project was not left aside. This circumstance, along with the other steps taken by the Developer, requires consideration while examining whether there was a deliberate decision not to comply with the Court's undertaking.

77. The Developer has obtained the Revised IOD dated 13 August 2026. According to the Developer, the said Revised IOD covers the entire Members' Carpet Area Entitlement of 290 flats for 256 members. The Society disputes the meaning and effect of this Revised IOD. According to the Society, the undertaking recorded by the Court was not confined to the members' entitlement but required the IOD factoring in the entire FSI involved in the project, including the sale component. This is a material dispute between the parties. For the present purpose it is necessary to notice that the Developer continued the process after the earlier IOD and obtained the Revised IOD dated 13 August 2026. The Revised IOD cannot be treated as having been obtained by 30 September 2025.

It was obtained much later and, therefore, there is non-compliance with the time stipulated in the undertaking. The subsequent IOD cannot retrospectively alter that position. But it is still a circumstance which can be considered while examining the conduct of the Developer. The Court has to see whether the Developer had deliberately refused to take steps or whether it continued its efforts but could not achieve the required result within the original period.

78. The execution of 286 PAAs out of 290 flats is another circumstance which requires consideration. According to the Developer, 286 PAAs have been executed. This indicates substantial progress in relation to the rehabilitation of the members. This fact cannot be treated as an answer to the grievance of the Society. Execution of PAAs does not mean that all obligations under the Redevelopment Agreement have been completed. There may be disputes regarding delay, completion of the project and other obligations, which may have to be considered in appropriate proceedings. For the limited purpose of contempt the execution of 286 PAAs is relevant. It does not indicate that the Developer had abandoned the redevelopment project or had stopped taking steps for the members. Rather, it indicates that a substantial part of the rehabilitation process had been proceeded with. This circumstance has to be considered with the other circumstances while deciding the question of intention behind the non-compliance.

79. Another circumstance is the filing of Interim Application No.6366 of 2025. The said Interim Application was filed on 25 September 2025, whereas the undertaking required the IOD to be

obtained by 30 September 2025. Thus, the application was filed five days before the expiry of the period fixed by the Court. This fact is important because it shows that the Developer was aware of the undertaking and was aware of the date by which the undertaking was required to be performed. There is therefore no basis to say that the Developer was unaware of the date or had forgotten the obligation. At the same time, the Developer did not remain silent and allow the period to expire. Before the expiry of the undertaking, it approached the Court and sought extension of time. The filing of the Interim Application cannot be treated as an extension of the undertaking. Unless the Court granted such extension, the original date continued to have its own effect. Therefore, the Developer cannot rely only upon the filing of the Interim Application to say that there was no non-compliance on 30 September 2025. But the filing of the application before expiry has a different relevance. It shows the conduct of the Developer at the material time. The Developer was conscious that the period fixed by the Court was about to expire. Instead of ignoring the date, it brought the difficulty before the Court and sought time. This conduct is different from a case where a party knowingly decides not to obey an order and does nothing despite knowing the consequences. If the Developer had decided not to comply with the undertaking, there would have been little reason for it to approach the Court before 30 September 2025 and seek an extension. The filing of the Interim Application indicates that the Developer was seeking more time for completing a process which, according to it, was being pursued. This does not remove the fact that the

undertaking was not completed within the original period. But it is a circumstance which has a bearing on whether the failure was deliberate and wilful. The Court therefore has to distinguish between the fact of non-compliance and the intention behind such non-compliance. The fact that the IOD was not obtained by 30 September 2025 is one aspect. Whether the Developer deliberately chose not to comply with the undertaking is another aspect. The second question cannot be answered merely from the first fact. For this purpose, the entire conduct of the Developer and the circumstances in which the failure occurred are required to be considered.

80. When all these circumstances are seen together, the conduct does not appear to be of a Developer who had decided to disregard the Order dated 18 March 2025. The material indicates that the Developer continued to obtain permissions, search for additional FSI, incur expenditure, pursue the redevelopment and seek time from the Court before expiry of the original period. There may have been delay and there may be disputes as to whether the Developer could or should have completed the process earlier. There may be questions regarding the effect of such delay. But those questions are not sufficient to establish deliberate disobedience of the Court order. Thus, the subsequent conduct of the Developer does not wipe out the non-compliance with the undertaking. It cannot be treated as if the original date of 30 September 2025 did not exist. However, the same conduct is relevant for determining the nature of the non-compliance. The Court has to be satisfied about deliberate and wilful disobedience

before holding the Developer guilty of civil contempt. On considering the material as a whole, the circumstances placed by the Developer create sufficient doubt as to whether the failure to obtain the IOD within the stipulated period was a deliberate defiance of the Court's Order. In the facts and circumstances of the present case the benefit of such doubt has to go in favour of the Developer on the question of wilfulness.

Interpretation of the Undertaking and Effect of Delay on the Redevelopment:

81. The present interpretation advanced by the Developer requires consideration. It now submits that “the entire IOD” means the IOD required for the members' carpet area entitlement and does not mean the entire development potential or sale component. There is some basis for this submission. But it is difficult to accept that this was the meaning of the undertaking as recorded by the Court. The actual words used are “the entire IOD” and “the entire FSI involved”. Paragraph 7 refers to the full IOD involving FSI of 82,769.90 sq. mtrs.

82. The Developer's own conduct at the relevant time is significant. The Society relies upon the Developer's application dated 25 September 2025, in which the Developer sought an extension to “obtain the IOD for the entire Project”. This statement was made close to the date on which the undertaking was to be fulfilled. It provides some indication of how the Developer understood the obligation at that time. It is wider than the interpretation now put forward.

83. The dispute regarding additional FSI under DCPR 33(7B) and DCPR 33(20)(B) has to be noticed. The Society submits that the Development Agreement was based upon the development norms applicable to the project and that the later permission to club the benefits under DCPR 33(20)(B) and 33(7B) arose pursuant to the Maharashtra Government notification dated 15 October 2024. It submits that shifting saleable FSI to the rehabilitation component does not amount to creation of additional FSI and that the revised IOD dated 13 August 2026 only reallocates the FSI available. The Developer disputes this position. It relies upon DCPR 33(20)(B) and submits that additional FSI can be obtained by constructing and handing over the required AH/R&R tenements free of cost to MCGM. According to the Developer, it selected this method because OC-ready tenements were not readily available. It relies upon the transaction with Indoco Remedies Ltd. and submits that approximately 24,449.79 sq. mtrs. of additional FSI can thereby be loaded.

84. In the present contempt proceedings, it is not necessary to decide all questions relating to the Developer's entitlement to additional saleable or rehabilitation FSI. Those questions may require detailed examination of planning permissions, provisions, technical calculations and the Development Agreement. They are separate questions from the issue of whether the undertaking given to this Court was complied with. The question for the present purpose is whether the undertaking was complied with by 30 September 2025. On that question, the subsequent efforts to obtain additional FSI in 2026 cannot amount to compliance with

an undertaking which was required to be fulfilled by 30 September 2025.

85. The Society submits that even now, according to its calculation, the revised IOD leaves 42.39% of the Project FSI still to be obtained. It submits that only 57.61% of the entire FSI has been obtained and that 42.39% of 82,769.90 sq. mtrs. remains outstanding. The Developer disputes this calculation. According to the Developer, the revised IOD covers the entire members' carpet area entitlement and covers what was required under the Development Agreement. This dispute again shows the difference between the interpretation put forward by the Developer and the language used in the undertaking recorded in the Court's order. Even if the revised IOD dated 13 August 2026 is sufficient according to the Developer's interpretation of the Development Agreement, that does not by answer the contempt petition. The Court is not deciding the whole commercial dispute between the parties in these proceedings. The limited question is whether the undertaking given before this Court on 18 March 2025 was complied with in the manner and within the time in which it was given.

86. The Society's reliance upon Clause 6.3 requires consideration. According to the Society, vacant possession was connected with sanction of the proposed plans and receipt of IOD/IOA. It submits that the Developer cannot rely upon the more wording of Clause 6.9, referring to matters being done “as and when required”, to create an indefinite period for obtaining approvals. The Developer relies upon the overall scheme of the

Development Agreement and Clause 7.8. According to the Developer, the period for obtaining IOD/IOA could be extended by the period required for obtaining orders against non-consenting members. It relies upon Clause 25.1, which excludes delay caused by an Extra Ordinary Event or Force Majeure Event. These clauses may be relevant for deciding the rights of the parties. But they cannot change the wording of the order dated 18 March 2025. The Court recorded a separate undertaking with a specific date. If the Developer had any right to an extension, that right has to be established under the Development Agreement and applicable law. If such right is disputed, the same has to be decided by the appropriate forum. It cannot alter an undertaking given to this Court.

87. The Society submits that the Developer could not, by its letter dated 23 June 2026, unilaterally shift the commencement of the completion period from 16 April 2025 to 3 June 2026. The Society relies upon Clause 23.1 and submits that the normal period of 36 months would result in completion by 16 October 2028, with the six-month extension under Clause 25.4. It disputes the Developer's attempt to carry the completion date to November 2029. From the material before the Court, the Developer has not obtained an order granting a extension of the completion period up to November 2029. The Developer's submission is that the period covered by Force Majeure has to be excluded and that, on this basis, the completion period would stand extended.

88. A claim for extension under a contract and a question of contempt are two different matters. The Developer may have a

defence or may have a right to extension. But that claim does not discharge an undertaking given to the Court. Such undertaking can be modified, extended or discharged only in accordance with law and, where required, by an appropriate order of the competent Court. The Society relies upon the uncertainty regarding the completion of the redevelopment. It points out that the RERA registration certificate dated 19 June 2026 covers only 22 floors in one tower and 13 floors in the other and records a completion date of 30 June 2032. The Developer relies upon the permissions subsequently obtained and the steps taken for obtaining additional FSI. Whatever may be the completion period permitted under RERA, that does not decide whether the earlier undertaking given to this Court was complied with. A or regulatory completion date cannot replace a date fixed by a Court undertaking.

89. The hardship pointed out by the Society cannot be ignored. The Society submits that 256 members have vacated their homes relying upon the assurance given before this Court. According to the Society, the continued uncertainty causes financial and other difficulties, including increasing transit rent and hardship compensation and uncertainty regarding tax and other financial consequences. These submissions are relevant because they explain why the undertaking was important when the order dated 18 March 2025 was passed. The Court referred in paragraph 9 to “the interests of multiple stake holders in the Society as diverse as having 256 members”.

90. The approach of the Courts in redevelopment matters shows the importance of timely completion. In *Pioneer Constructions v.*

Sahakarnagar Co-operative Housing Society Ltd., 2026 SCC OnLine Bom 2711, the Court considered the interests of members in obtaining safer and better homes and the interest of a developer in earning profits. The Court referred to *Huges Real Estate Developers LLP* and *Khernagar Adarsh Co-operative Housing Society Limited* and *Ison Builders LLP*, where the need to avoid indefinite delay in redevelopment was emphasised. These decisions do not mean that every delay by a developer amounts to contempt. Their relevance in the present case is limited. They show that the hardship caused to members by continuing delay is a matter which the Court cannot ignore while considering the effect of an undertaking on which possession was obtained. But hardship by is not enough to establish wilful disobedience.

Subsequent Undertaking for Completion by November 2029:

91. Before proceeding to the final order, there is one more subsequent circumstance which requires consideration. After the matter was heard and was fixed for delivery of judgment, Respondent No.1 Developer has filed an undertaking before this Court. Since the same is an undertaking given to the Court, the Court cannot ignore it. However, it is necessary to see what the Developer has undertaken and whether the conditions attached to the undertaking make any difference to the nature and effect of the undertaking.

92. The relevant portion of the undertaking reads as follows:

"3. I say that, Respondent No.1 undertakes to this Hon'ble Court to complete the said Project by November 2029,

subject however to:-

(a) The Petitioner Society, extending its full and complete cooperation in all matters pertaining to and arising out of the Redevelopment Agreement dated 23rd January 2024, including, inter alia, by providing the requisite Body Resolution in the format prescribed by the MCGM, as may be required for the purposes of availing the Incentive FSI along with the corresponding Fungible FSI under Regulation 33(7) (B) of the DCPR 2034, and to take all necessary steps and execute all requisite documents in that regard;

b) All provisions of Redevelopment Agreement dated 23rd January 2024 including Force Majeure Event (as defined under Clause 2.1.15);"

93. The stage at which this undertaking has been filed is relevant. The matter had been heard and was fixed for delivery of judgment., on 9 September 2026, the Court had asked the Developer whether it was willing to give an undertaking regarding an outer date for completion of the redevelopment. At that stage, the Developer did not give any voluntary undertaking fixing a definite date. It continued to rely upon its earlier position regarding the Force Majeure period and the extension claimed under the Development Agreement. The undertaking has therefore been filed only after the matter was fixed for judgment. This does not make the undertaking of no effect. Since it is an undertaking to the Court, it has to be considered. But the Court must consider it in the form in which it has been given. It is necessary to see whether November 2029 is given as a firm date for completion or whether the Developer has kept the said date dependent upon conditions which may give rise to extension.

94. The first part of the undertaking states that Respondent No.1 “undertakes to this Hon'ble Court to complete the said Project by November 2029”. If this statement is considered, it gives a clear outer date. This is of some importance because earlier the Developer had not placed any definite outer date before the Court. The members have vacated their premises and are required to wait for completion of the redevelopment. Therefore, placing November 2029 as a proposed date does provide some certainty which was earlier absent. But the undertaking is not confined to this statement. Immediately thereafter, it says “subject however to” and then sets out two conditions. Therefore, the conditions are part of the undertaking. The Court cannot read only the first sentence and ignore the conditions attached to it.

95. Condition (a) requires the Society to extend its “full and complete cooperation in all matters pertaining to and arising out of the Redevelopment Agreement”. It refers to providing the requisite Body Resolution in the format prescribed by MCGM, as may be required for availing the Incentive FSI along with the corresponding Fungible FSI under Regulation 33(7)(B) of the DCPR 2034. It requires the Society to take all necessary steps and execute all requisite documents in that regard.

96. It is no doubt correct that the Society has to perform its obligations under the Redevelopment Agreement. The Developer cannot complete the redevelopment if the Society does not perform obligations which are required from it. Therefore, if the Society is required to pass a resolution or execute a document under the Development Agreement or applicable law, it cannot

refuse to do so without proper reason. But the words “full and complete cooperation in all matters pertaining to and arising out of the Redevelopment Agreement” are very wide. They are not restricted to any particular obligation or document. The condition refers to a Body Resolution for availing the Incentive FSI and Fungible FSI under Regulation 33(7)(B). Whether such resolution is required, whether it is required under the Redevelopment Agreement, whether the Society has performed its obligation in that regard and whether any consent or resolution can be asked for are matters which may themselves be disputed. Therefore, the words “full and complete cooperation” cannot mean that the Society is required to agree to every demand of the Developer. A genuine dispute between the parties cannot merely by using these words be treated as failure to cooperate.

97. The undertaking given to the Court should have reasonable certainty. If the Developer says that it will complete the Project by November 2029, but at the same time makes the date subject to all provisions of the Development Agreement and to the Society giving full and complete cooperation in all matters, then the question arises whether November 2029 is really intended to be the final date or whether the Developer has kept open the possibility of seeking time.

98. Condition (b) assumes greater importance in this context. The Developer has made the undertaking subject to “All provisions of Redevelopment Agreement dated 23rd January 2024 including Force Majeure Event (as defined under Clause 2.1.15)”. This reference to Force Majeure has to be considered along with the

stand taken by the Developer. In the earlier proceedings, the Developer had relied upon Force Majeure and had submitted that the period from 16 April 2025 to 2 June 2026, being 1 year, 1 month and 17 days, should be excluded from the completion period. On that basis, the Developer had sought to take the completion date to about November 2029. The present undertaking, therefore, appears to proceed on the same basis. The Developer says that it will complete the Project by November 2029, but at the same time keeps the undertaking subject to the Force Majeure provision. Thus, it cannot be said that the Developer has given an unconditional undertaking that the Project shall be completed by November 2029.

99. The Society has objected to this position. According to the Society, the Developer cannot extend the completion period by relying upon Force Majeure and the members cannot be kept waiting without a certain outer date. There is substance in the concern. If November 2029 was stated without any condition, the position would have been more clear. But the undertaking filed before the Court contains conditions and one of those conditions expressly keeps the Force Majeure provision applicable. This Court has observed that a claim for extension and an undertaking given to the Court are two different matters. A provision in the Development Agreement cannot change a time-bound undertaking given to the Court. Therefore, if the Developer wanted November 2029 to be accepted as the final outer date for completion, it could have given an undertaking in clear and unconditional terms. The words “subject however to” are therefore material. They cannot be

treated as unnecessary words. They mean that the promise to complete by November 2029 is subject to the conditions which follow. The Court cannot remove those conditions and then treat the undertaking as an unconditional promise. At the same time, the conditions cannot be read as giving the Developer an unrestricted right to keep extending the date.

100. The undertaking uses the words “complete the said Project by November 2029”. The expression “said Project” has not been explained in the undertaking. The Court has noticed disputes regarding the extent of FSI, rehabilitation component, sale component, additional FSI and the meaning of the undertaking dated 18 March 2025. Therefore, the present undertaking cannot decide those disputed issues. Likewise, this undertaking cannot be treated as an acceptance by the Developer or by the Court that the Developer's interpretation regarding “Members Carpet Area Entitlement” is correct. That issue has been considered. The present undertaking is a subsequent statement regarding completion and does not determine the rights and obligations of the parties.

101. The filing of the undertaking has some significance. The Developer has now placed before the Court November 2029 as the date by which it undertakes to complete the Project. This is a subsequent development which can be taken into account, because earlier the Developer had not given a definite voluntary outer date. The Court can therefore take note of November 2029, but the conditions subject to which that date is stated have to be kept in view. The fact that the undertaking was filed after the matter was

fixed for judgment is a circumstance which cannot be ignored. It does not make the undertaking invalid. But it is a later event and cannot alter what had happened. In particular, it cannot retrospectively convert the non-compliance with the undertaking dated 18 March 2025 into compliance. The date of 30 September 2025 had expired without the earlier undertaking being fulfilled. At the same time, the later undertaking cannot be used by the Society to say that the earlier non-compliance was necessarily wilful. The question of wilfulness has to be decided on the circumstances which existed when the earlier undertaking was to be complied with. The present undertaking is a subsequent event. It may have some relevance to the future conduct of the Developer, but it does not change the position as it existed on 30 September 2025.

102. The question then is what effect should be given to the present undertaking. In my view, the statement of the Developer that it will complete the Project by November 2029 is accepted as a subsequent undertaking. However, the conditions attached to it cannot be treated as right to extend the November 2029 date. In particular, the reference to Force Majeure cannot be understood to mean that the Developer can, by its own decision, extend the date beyond November 2029. If the Developer claims that a particular Force Majeure event has occurred and that the same gives it a right to additional time, such claim will have to be considered in accordance with the Development Agreement and applicable law. It cannot merely by being mentioned in the undertaking become an accepted or automatic extension of the date.

103. The same principle applies to the condition relating to the Society's cooperation. The Society is bound to perform its obligations. But "full and complete cooperation" cannot mean that the Society has to accept every demand made by the Developer. If a particular resolution, consent or document is required from the Society, the requirement of the same will have to be established with reference to the Development Agreement, the applicable law and the facts of the particular case. If there is any future dispute as to whether the Society has failed to give a resolution or document which it was required to give, that dispute will have to be decided. The present undertaking cannot mean that every disagreement of the Society with the Developer will extend the November 2029 date.

104. It is necessary to remember that an undertaking given to the Court is not merely statement between parties. Once an undertaking is given to and accepted by the Court, the person giving it is expected to honour it. Therefore, if November 2029 is being placed before the Court as the outer date for completion, the conditions attached to that date cannot be allowed to make the date uncertain. The present undertaking therefore does not alter the findings recorded regarding the undertaking dated 18 March 2025. The earlier undertaking was to be complied with by 30 September 2025 and was not complied with by that date. The later undertaking, filed after the matter was fixed for judgment, cannot wipe out or undo that earlier non-compliance. At the same time, the present undertaking is accepted and can be considered while passing consequential directions. The Developer has now placed

November 2029 before the Court as the date for completion. This statement can be taken note of for the future course of the redevelopment. However, the conditions attached to the undertaking cannot be understood as giving right to the Developer to extend that date unilaterally.

105. The position is therefore that the Developer has now stated before the Court that it will complete the Project by November 2029. But it has not stated this in an unconditional manner. The words “subject however to” and the conditions which follow are part of the undertaking. Therefore, November 2029 can be taken as the date stated by the Developer, but any extension beyond that date cannot be treated as automatic merely because of the conditions mentioned in the undertaking. Accordingly, the undertaking filed by Respondent No.1 after the matter was fixed for judgment is taken into consideration as a subsequent development. It does not amount to compliance with the undertaking recorded in paragraph 8 of the order dated 18 March 2025 and does not retrospectively cure the non-compliance which had occurred by 30 September 2025. The statement regarding completion by November 2029 is taken note of for the future progress of the redevelopment. However, the conditions relating to “full and complete cooperation” and “All provisions of Redevelopment Agreement” including Force Majeure do not confer upon the Developer an automatic or unilateral right to extend the November 2029 date. Any claim for extension on account of Force Majeure or any other provision of the Development Agreement will have to be established in accordance with the terms of the

Development Agreement and applicable law and, where required, before the competent forum. Similarly, the Society shall remain bound to perform its lawful and obligations. However, a dispute or disagreement regarding whether any particular consent, resolution, or document is required cannot, merely because of the present undertaking, be treated as failure on the part of the Society to cooperate.

106. The overall finding is that the Society succeeds on the question of the meaning of the undertaking, but does not succeed in establishing wilful contempt requiring punishment on the material before the Court. The Developer has shown that the delay was accompanied by substantial efforts and circumstances which make it unsafe to hold that there was deliberate defiance of the Court order. However, the Developer has not established that the undertaking recorded by the Court was limited only to the members' carpet area entitlement.

107. In view of the findings recorded above, and for the reasons stated in the preceding paragraphs, the Contempt Petitions are disposed of by passing the following order:

- i) The Contempt Petitions are partly allowed to the aforesaid extent;
- ii) It is held that the undertaking recorded in paragraph 8 of the order dated 18 March 2025 was an undertaking to obtain the IOD “factoring in the entire FSI involved” by 30 September 2025;

- iii) It is held that the said undertaking was not complied with by the stipulated date of 30 September 2025;
- iv) However, this Court is not satisfied that the non-compliance has been established to be wilful and contumacious so as to warrant punishment under the Contempt of Courts Act, 1971;
- v) Consequently, no punishment for civil contempt is imposed upon the Contemnors. The Contempt Petitions stand disposed of accordingly;
- vi) It is clarified that the rejection of the prayer for punitive action in these proceedings shall not be construed as holding that the Developer has complied with all its obligations under the Development Agreement or that it is entitled to extend the period up to November 2029;
- vii) It is clarified that the subsequent Revised IOD dated 13 August 2026 shall not be treated as retrospective compliance with the undertaking dated 18 March 2025. The effect of the said IOD and the extent to which it satisfies the obligations under the Development Agreement shall be governed by the terms of the Development Agreement;
- viii) The contentions of the parties concerning the entitlement to additional FSI, the applicability and operation of DCPR 33(20)(B), DCPR 33(7B), the extent of the sale component, the completion period and the claim for extension on account of Force Majeure are not finally adjudicated in the present contempt proceedings;

- ix) It is clarified that the Developer shall not treat the pendency of Interim Application No. 6366 of 2025 or the present order as conferring an extension of the undertaking dated 18 March 2025 or of any period under the Development Agreement;
- x) The Developer shall, in accordance with the Development Agreement, continue to take all necessary steps for obtaining the permissions and for completing the redevelopment and handing over the Members' New Flats in accordance with its contract;
- xi) Nothing contained in this order shall prevent the Society or the members from pursuing such remedies as may be available to them in law in respect of any alleged breach of the Development Agreement or delay in completion of the redevelopment;
- xii) It shall be open to the Petitioners to seek appropriate reliefs for damages or compensation arising from non-compliance with the development agreement, including any delay, if found, in completion of the redevelopment project, by instituting such appropriate proceedings as are permissible in law;
- xiii) The Interim Application No. 6366 of 2025 stands disposed of in the above terms.
- xiv) The Contempt Petitions are accordingly disposed of.

xv) In view of the circumstances of the case, there shall be no order as to costs.

xvi) In view of disposal of the contempt petitions, all pending interlocutory application(s) stand disposed of.

(AMIT BORKAR, J.)