

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

COMMERCIAL APPEAL NO. 371 OF 2019

IN

COMMERCIAL NOTICE OF MOTION NO. 285 OF 2016

IN

COMMERCIAL SUIT NO. 509 OF 2016

WITH

NOTICE OF MOTION NO. 679 OF 2019

IN

COMMERCIAL APPEAL NO. 371 OF 2019

1. Bay Home Properties Developers Pvt. Ltd.]
A company incorporated under the]
Companies Act, 1956 having its office]
address at Laalasis, Plot No.219, 11th]
Road,Chembur (East), Mumbai-400 071]

And

Flat No. A-10, Gurukripa Building,]
Sindhi Immigrants Co-operative Housing]
Society Ltd: Chembur, Mumbai-400 071.]

2. Yashraj Sunil Kukreja]
Age-Adult, Occ.- Not known,]
residing at 5A, Ashish, Nargis Dutt Road,]
Pali Hill, Bandra (W), Mumbai-400 050]

And

Flat No. B-14, Gurukripa Building,]
Sindhi Immigrants Co-operative Housing]
Society Ltd; Chembur, Mumbai-400 071.]

3. Priyanka Sunil Kukreja]
Age-Adult, Occ.- Not known,]
residing at 5A, Ashish, Nargis Dutt Road,]
Pali Hill, Bandra (W), Mumbai-400 050]

And

Flat No.C-25, Gurukripa Building,]
Sindhi Immigrants Co-operative Housing]
Society Ltd; Chembur, Mumbai-400 071.]

4. M/s. Sodality Investments]
A partnership firm having its office at]
Laalasis, Plot No.219, 11th Road,]
Chembur (East), Mumbai-400 071]

And

Flat No. E-38, Gurukripa Building,]
Sindhi Immigrants Co-operative Housing]
Society Ltd; Chembur, Mumbai-400 071.]

5. Rhea Sunil Kukreja]
Age-Adult, Occ.- Not known,]
residing at 5A, Ashish, Nargis Dutt Road,]
Pali Hill, Bandra (W), Mumbai-400 050]

And

Flat No.C-40, Gurukripa Building,]
Sindhi Immigrants Co-operative Housing]
Society Ltd; Chembur, Mumbai-400 071.]

6. M/s. Sonu Realtor Pvt. Ltd.]
A company incorporated under the]
Companies Act, 1956 having its office at]
Laalasis, Plot No.219, 11th Road,]
Chembur (East), Mumbai-400 071]

And

Flat No. E-42, Gurukripa Building,]
Sindhi Immigrants Co-operative Housing]
Society Ltd; Chembur, Mumbai-400 071.]

7. Rupa Sunil Kukreja]
Age-Adult, Occ.- Not known,]
residing at 5A, Ashish, Nargis Dutt Road,]
Pali Hill, Bandra (W), Mumbai-400 050]

And

Flat No.A-5, Gurukripa Building,]
Sindhi Immigrants Co-operative Housing]
Society Ltd; Chembur, Mumbai-400 071.]

8. Tanu Mohan Kukreja]
Age-Adult, Occ.- Not known,]
residing at 5A, Ashish, Nargis Dutt Road,]
Pali Hill, Bandra (W), Mumbai-400 050]

And

Flat No. D-32, Gurukripa Building,]
Sindhi Immigrants Co-operative Housing]
Society Ltd; Chembur, Mumbai-400 071.]

9. Girish Gupta]
Age-Adult, Occ.- Not known,]
residing at 306, 3rd Floor,]
Oliva Apartment,]
Govandi, Mumbai-400 071]

And

Having address at]
Flat No.C-19, Gurukripa Building,]
Sindhi Immigrants Co-operative Housing]
Society Ltd; Chembur, Mumbai-400 071.]

10. Raj S. Razda]
Age-Adult, Occ.- Not known,]
residing at 5A, Ashish, Nargis Dutt Road,]
Pali Hill, Bandra (W), Mumbai-400 050]

And

Flat No.D-30, Gurukripa Building,]
Sindhi Immigrants Co-operative Housing]
Society Ltd; Chembur, Mumbai-400 071.]

11. Sanjay Mahendru]
Age-Adult, Occ.- Not known,]
residing at 404, 4th Floor, Chembur]
Heights Sindhi Society, Chembur,]
Mumbai-400 071]

And

Flat No. D-31, Gurukripa Building,]
Sindhi Immigrants Co-operative Housing]
Society Ltd; Chembur, Mumbai-400 071.]

12. Anju Mahendru]
Age-Adult, Occ.- Not known,]
residing at 404, 4th Floor, Chembur]
Heights Sindhi Society, Chembur,]
Mumbai-400 071]

And

Flat No. D-31, Gurukripa Building,]
Sindhi Immigrants Co-operative Housing]
Society Ltd; Chembur, Mumbai-400 071.]

13. Geeta Deepak Ratnani]
Age-Adult, Occ.- Not known,]
having address at B-16,]
Gurukripa Building,]
Sindhi Immigrants Co-operative Housing]
Society Ltd; Chembur, Mumbai-400 071]

..Appellants

Versus

1. M/s. National Properties]
Builders and Developers]
A proprietary Concern through its]
Proprietor Mr. Sanjay Ghansham Juman]
having its address at 203, 3rd Floor,]
Eastern Court, Sion Trombay Road,]
Chembur, Mumbai-400 071.]
2. Sindhi Immigrants Co-operative]
Housing Society Ltd.]
A Co-operative Housing Society]
registered under the Maharashtra]

- Co-operative Societies Act, 1960 and]
having its registered office at Nichaldas]
Market, Little Malabar]
Hill, Chembur (E), Mumbai – 400 071.]
3. Manoj Amamani]
Age-Adult, Occ.- Not known,]
residing at Flat No.1, “D” Wing,]
Vijay Vihar CHS Ltd,]
Sion Trombay Road,]
Chembur Naka, Chembur,]
Mumbai – 400 071]
- And
- Having address at Flat No.E-36,]
Gurukripa Building, Sindhi Immigrants]
Co-operative Housing Society Ltd;]
Chembur, Mumbai-400 071.]
4. Sushil Soni]
Age-Adult, Occ.- Not known,]
having address at Flat No.A-1,]
Gurukripa Building, Sindhi Immigrants]
Co-operative Housing Society Ltd;]
Chembur, Mumbai-400 071.]
5. Ulhas P. Gupte]
Age-Adult, Occ.- Business,]
residing at Flat No.A-6,]
Gurukripa Building, Sindhi Immigrants]
Co-operative Housing Society Ltd;]
Chembur, Mumbai-400 071.]
6. Rajesh A. Talreja]

- Age-Adult, Occ.- Business,]
residing at Flat No. A-2,]
Gurukripa Building, Sindhi Immigrants]
Co-operative Housing Society Ltd;]
Chembur, Mumbai-400 071.]
7. Pinky Naina Jeyaraj]
Age-Adult, Occ.- Housewife,]
residing at Flat No. A-4,]
Gurukripa Building, Sindhi Immigrants]
Co-operative Housing Society Ltd;]
Chembur, Mumbai-400 071.]
8. Usha D. Ambolkar]
Age-Adult, Occ.- Housewife,]
residing at Flat No. A-3,]
Gurukripa Building, Sindhi Immigrants]
Co-operative Housing Society Ltd;]
Chembur, Mumbai-400 071.]
9. Poonam I. Bhambani]
Age-Adult, Occ.- Housewife,]
residing at Flat No.A-7,]
Gurukripa Building, Sindhi Immigrants]
Co-operative Housing Society Ltd;]
Chembur, Mumbai-400 071.]
10. Kishore H. Punjabi]
Age-Adult, Occ.- Business,]
residing at Flat No. A-8,]
Gurukripa Building, Sindhi Immigrants]
Co-operative Housing Society Ltd;]
Chembur, Mumbai-400 071.]

- 11 Kumar R. Vazirani]
Age-Adult, Occ.- Service,]
residing at Flat No. A-9,]
Gurukripa Building, Sindhi Immigrants]
Co-operative Housing Society Ltd;]
Chembur, Mumbai-400 071.]
12. Anil D. Bhasme]
Age-Adult, Occ.- Service,]
residing at Flat No. B-11,]
Gurukripa Building, Sindhi Immigrants]
Co-operative Housing Society Ltd;]
Chembur, Mumbai-400 071.]
13. Nandkishore J. Menda]
Age-Adult, Occ.- Business,]
residing at Flat No. B-12,]
Gurukripa Building, Sindhi Immigrants]
Co-operative Housing Society Ltd;]
Chembur, Mumbai-400 071.]
14. Parsram K. Bachwani]
Age-Adult, Occ.- Retired,]
residing at Flat No. B-13,]
Gurukripa Building, Sindhi Immigrants]
Co-operative Housing Society Ltd;]
Chembur, Mumbai-400 071.]
15. Rajesh K. Ratnani]
Amrita R. Ratnani]
Age-Adult, Occ.- Business,]
residing at Flat No. B-17,]
Gurukripa Building, Sindhi Immigrants]
Co-operative Housing Society Ltd;]
Chembur, Mumbai-400 071.]

16. Arjun Jagasia]
Age-Adult, Occ.- Retired,]
residing at Flat No. B-18,]
Gurukripa Building, Sindhi Immigrants]
Co-operative Housing Society Ltd;]
Chembur, Mumbai-400 071.]
17. Meena A. Jagasia]
Age-Adult, Occ.- Housewife,]
residing at Flat No. C-20,]
Gurukripa Building, Sindhi Immigrants]
Co-operative Housing Society Ltd;]
Chembur, Mumbai-400 071.]
18. Mira K. Chhugani]
Age-Adult, Occ.- Housewife,]
residing at Flat No. C-21,]
Gurukripa Building, Sindhi Immigrants]
Co-operative Housing Society Ltd;]
Chembur, Mumbai-400 071.]
19. Anand T. Jagasia]
Age-Adult, Occ.- Retired,]
residing at Flat No. C-22,]
Gurukripa Building, Sindhi Immigrants]
Co-operative Housing Society Ltd;]
Chembur, Mumbai-400 071.]
20. Nisha P. Rohira]
Age-Adult, Occ.- Housewife,]
residing at Flat No. C-23,]
Gurukripa Building, Sindhi Immigrants]
Co-operative Housing Society Ltd;]
Chembur, Mumbai-400 071.]

21. Manju S. Lalwani]
Age-Adult, Occ.- Housewife,]
residing at Flat No. C-24,]
Gurukripa Building, Sindhi Immigrants]
Co-operative Housing Society Ltd;]
Chembur, Mumbai-400 071.]
22. Deepak R. Punjabi]
Age-Adult, Occ.- Business,]
residing at Flat No. C-26,]
Gurukripa Building, Sindhi Immigrants]
Co-operative Housing Society Ltd;]
Chembur, Mumbai-400 071.]
23. Ashok G. Khanna]
Age-Adult, Occ.- Retired,]
residing at Flat No. D-27,]
Gurukripa Building, Sindhi Immigrants]
Co-operative Housing Society Ltd;]
Chembur, Mumbai-400 071.]
24. Lakshmi J. Kundu]
Age-Adult, Occ.- Housewife,]
residing at Flat No. D-28,]
Gurukripa Building, Sindhi Immigrants]
Co-operative Housing Society Ltd;]
Chembur, Mumbai-400 071.]
25. C. P. Menon]
S. P. Menon]
Age-Adult, Occ.- Retired,]
residing at Flat No. D-29,]
Gurukripa Building, Sindhi Immigrants]

- Co-operative Housing Society Ltd;]
 Chembur, Mumbai-400 071.]
26. K. Ramalingam]
 Age-Adult, Occ.- Retired,]
 residing at Flat No. D-34,]
 Gurukripa Building, Sindhi Immigrants]
 Co-operative Housing Society Ltd;]
 Chembur, Mumbai-400 071.]
27. Krishan Kumar Sharma]
 Age-Adult, Occ.- Business,]
 residing at Flat No. E-35,]
 Gurukripa Building, Sindhi Immigrants]
 Co-operative Housing Society Ltd;]
 Chembur, Mumbai-400 071.]
28. Shashikala Y. Bokil]
 Age-Adult, Occ.- Housewife,]
 residing at Flat No. E-37,]
 Gurukripa Building, Sindhi Immigrants]
 Co-operative Housing Society Ltd;]
 Chembur, Mumbai-400 071.]
29. Neeta P. Bachwani]
 Age-Adult, Occ.- Housewife,]
 residing at Flat No. E-39,]
 Gurukripa Building, Sindhi Immigrants]
 Co-operative Housing Society Ltd;]
 Chembur, Mumbai-400 071.]
30. Mahendrakumar M. Chawla]
 Age-Adult, Occ.- Retired,]
 residing at Flat No. E-41,]
 Gurukripa Building, Sindhi Immigrants]
 Co-operative Housing Society Ltd;]
 Chembur, Mumbai-400 071.]

...Respondents

...

Mr. G. R. Joshi, Senior Advocate a/w. Mr. Gautam Ankhad, Ms. Rishika Harish, Mr. Samit Shukla & Ms. Saloni Shah i/b DSK Legal for the Appellants.

Mr. Virag Tulzapurkar, Senior Advocate and Mr. Prasad Dani, Senior Advocate a/w. Mr. Mandar Soman i/b Sahil Mahajan for Respondent No.1.

Mr. S. K. Nair a/w. Mr. Satish Rao & Mr. Suresh Kabra for Respondent No.2.

Ms. Saumya Srikrishna i/b Ms. Reshma Kurle for Respondent Nos.5 to 8, 10 to 12, 14, 15, 17 to 19, 21 to 27, 29, 31, 33 to 39, 41 & 42.

...

**CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.**

**RESERVED ON : DECEMBER 06, 2019
PRONOUNCED ON : DECEMBER 11, 2019**

JUDGMENT : [PER PRADEEP NANDRAJOG, C.J.]:

1. The correctness of the view taken by the learned Single Judge in allowing Notice of Motion No. 285/2016 in Commercial Suit No. 509/2016 vide impugned order dated 2nd May 2019 is under scrutiny in the present appeal. Vide order dated 2nd May 2019 a Court Receiver has been appointed to

take possession of the suit property. Defendant Nos. 2 to 16 in the suit have been directed to execute permanent alternative accommodation agreements and receive temporary accommodation charges. Said defendants have been directed vide an interim mandatory injunction to hand over possession of the flats and two garages in their possession.

2. The backdrop facts necessary to be noted, while deciding the appeal are that the 1st Defendant in the suit, which is respondent No.2 in the appeal was registered as a Co-Operative Society under the Bombay Co-Operative Societies Act, 1925. It is named Sindhi Immigrants Co-Operative Housing Society Ltd. ("**Society**"). The Society was allotted 38 Acres and 15 Gunthas of land comprising 162 plots, each plot is a single entity plot, which means that Floor Space Index ("**FSI**") available is plot-wise and not to the entire land which was allotted to the Society. The appeal concerns only one plot of land bearing CTS No. 199. The Society has 500 Members. In the building constructed on CTS No. 199 there are 42 residential flats and 11 garages. The building is named "Gurukripa".

3. It was constructed in the year 1970. With passage of

time the building deteriorated and reached a stage where it was not advisable to refurbish the building. After demolition the building, reconstructing a new building was the only way forward. 37 out of the 42 flat owners in Gurukripa building, decided on 7th May 2002 to appoint a 8 Member Sub-Committee to decide on the redevelopment of the building. The Committee invited quotations from well-known developers to submit offers to demolish existing building and re-construct a new building. Six developers: (i) M/s. Pranjee Properties Ltd., (ii) M/s. Dlbit Associate, (iii) M/s. Goyal Builders, (iv) M/s. Gulraz Contractors, (v) M/s. D.S. Group, and (vi) National Properties (the Plaintiff/Respondent No.1) submitted offers. National Properties was short-listed as the Developer and on 19th May 2008 the Gurukripa Building Committee addressed a communication to it informing that the redevelopment work would be allotted to it on the conditions set out therein.

4. In response, National Properties informed the Society and the Development Committee vide letter dated 31st May 2008 that it would provide to each Member 770 square feet carpet area with one stilt parking and ₹ 2 lakhs to each flat owner. The construction would be of the best quality. Other monetary and non-monetary benefits were offered.

5. At the asking of the Development Committee, a General Body Meeting of Gurukripa Building Flat Owners was held on 1st June 2008 where the Honorary Secretary of the Society was present. 33 out of 42 Members who were owners of the flats in Gurukripa building attended the meeting and unanimously accepted the proposal sent by National Properties.

6. On 3rd January 2009, in exercise of the power conferred by Section 79A of the Maharashtra Co-Operative Societies Act, 1960 a directive was issued prescribing the procedure to be followed by Group Housing Societies for redevelopment, and succinctly put the same required the Society to obtain quotations from at least 5 persons for the redevelopment of buildings and approval at the Special General Body of the Society with 3/4th members of the Society approving the proposal and the award of work to the re-developer.

7. On 29th January 2009 Gurukripa Building Development Sub-Committee addressed a letter to the Society forwarding the proposal to redevelop Gurukripa Building, seeking a No Objection to form a separate Co-operative Housing Society as a limb of the Society.

8. On 22nd February 2009 the Society issued a notice convening a Special General Body Meeting of the Members of the Society to consider the proposal received from the Gurukripa Development Sub-Committee on 29th January 2009. At the said General Body Meeting, 62 out of the 500 Members of Society out of which 34 were owners of flats in Gurukripa Building were present. A Resolution was passed on 1st March 2009 resolving to permit formation of Society within the Society as also re-development of Gurukripa Building with the authority vested in the Gurukripa Development Sub-Committee to execute the Deed of Agreement and Development.

9. On 25th April 2010 the Managing Committee of the Society confirmed the decision of the Gurukripa Flat Owners to appoint National Properties as the Developer and on 27th July 2010 the Society formally executed a Memorandum of Understanding (“**MoU**”) with National Properties to redevelop Gurukripa Building. Pursuant thereto National Properties paid ₹ 18.44 lakhs to the Society out of ₹ 1,18,44,000/- required to be paid as per the MoU. Notwithstanding 32 out of 42 flat owners in Gurukripa Building accepting on 1st March 2009 the

redevelopment proposal, on 19th August 2010, 23 flat owners communicated to the Society that they do not approve the redevelopment proposal submitted by National Properties. 25 flat owners addressed a communication in response on 23rd August 2010 stating that they stand by the decision taken to redevelop Gurukripa Building and assign the work to National Properties.

10. Various correspondence i.e. letters dated 17th August 2010, 20th August, 2010, 2nd September 2010, 17th September 2010 and 12th October 2010, was exchanged between the appellants and the respondent Nos.1 and 2 pointing out that respondent Nos.1 and 2 had not followed guidelines prescribed under Section 79A of the Maharashtra Co-Operative Societies Act, 1960.

11. On 10th March 2012 a meeting of the flat owners of Gurukripa Building was held wherein National Properties was called upon to submit a fresh proposal.

12. Pursuant to the said meeting, on 8th April 2012 National Properties requested all 42 flat owners to provide a signed letter for National Properties to provide a revised proposal and finalize to start the work.

13. On 1st May 2012, 35 occupants of Gurukripa Building addressed a communication to National Properties recording therein that they would like to forget the unfortunate events of the past and would like to move forward as per the decision taken on 1st March 2009. In view of the inordinate delay, on 27th June 2013 the Society filed an application in the Co-Operative Court seeking declaration that the decisions taken by the General Body were binding on all flat owners of Gurukripa Building which proceedings came to be ultimately withdrawn on 5th September 2018. In the interregnum commencing from 2010, 40 out of 42 Members executed individual affirmation duly notarized that they had agreed and consented to redevelop the existing building through M/s. National Properties. One Member Shri. S.S. Sarkar having expired and no legal heir having approached the Society to claim the flat, did not execute any such affirmation. One Member Shri. Sushil Soni refused to do so.

14. On 2nd May 2012 National Properties submitted a fresh proposal to all the members of the Gurukripa Building requesting all the members to give consent of all 42 flat owners.

15. On 30th October 2012 National Properties vide its

letter requested flat owners to take a final decision on the revised proposal and revert back with their comments and the revised agreement draft sent.

16. But before that on 1st November 2009, 38 out of 42 flat owners in Gurukripa Building approved the Plan prepared by the Architect Mr. B.H.Wadhava and pursuant to the decisions taken M/s. National Properties obtained Intimation of Disapproval (“IOD”) from Municipal Corporation, Greater Mumbai on 30th April 2010 and as noted above, on 27th July 2010 the MoU was executed. Certain communications which are not necessary to be noted, were exchanged between the parties. National Properties agreed to increase the corpus for each flat owner from ₹ 2 lakhs to ₹ 3 lakhs.

17. On 27th June 2013 National Properties approached the Co-operative Court and on the very same cause of action as is now sought to be agitated in the suit i.e. on the erroneous basis that there existed a valid and binding resolution dated 1st June 2008 passed by the General Body of Gurukripa Building.

18. On 8th August 2013 Society addressed a communication to the Deputy Registrar, Co-operative Societies

seeking its approval to appoint National Properties as the Developer. On 16th August 2013 Deputy Registrar granted the necessary permission and on 19th December 2014 a formal Development Agreement was executed between the Society and the National Properties.

19. On 19th November, 2013, Flat owners of the Gurukripa Building filed application before the Deputy Registrar seeking a division of society and registration of another society exclusively concerned with the residents of Gurukripa building.

20. On 17th December 2014 the Developer obtained the No Objection concerning the Height Clearance from Airport Authority of India.

21. On 19th December 2014 a Development Agreement on the basis of the 2009 proposal was executed between National Properties and Society.

22. On 15th January 2015 National Properties appointed Barve Consultants for Structural Audit. On 24th November 2015 the Developer obtained parking lay-out Plan approval

from Municipal Corporation, Greater Mumbai. On 2nd January 2016 the Developer obtained the necessary No Objections from the Fire Department and by March 2016 applied for Commencement Certificate.

23. On 4th January 2016, 26 Members of Gurukripa Building executed the Agreement for permanent alternative accommodation.

24. On various dates between the months of May 2013 and December 2014, 10 erstwhile flat owners sold their flats to (i) Bay Home Properties Developers Pvt. Ltd., (ii) Yashraj Sunil Kukreja, (iii) Priyanka Sunil Kukreja, (iv) M/s. Sodality Investments, (v) Rhea Suil Kukreja, (vi) M/s. Sonu Realtor Pvt. Ltd. (vii) Rupa Sunil Kukreja, (viii) Tanu Mohan Kukreja, (ix) Girish Gupta and (x) Raj S. Raizada.

25. It is not in dispute that said individuals or corporate entities are part of the Kukreja Group which is also a Developer.

26. The dispute originated when said 10 persons/entities purchased 10 flats in Gurukripa Building from the erstwhile owners and withdrew consent given by their Predecessor-in-

interest to not only redevelop Gurukripa Building but even appoint National Properties as the Developer. The Society refused to accept the 10 as Members of the Society and refused to transfer the Share Certificates of Membership in their names. The 10 persons/entities initiated proceedings before the Deputy Registrar, Mumbai who passed an order in their favour directing the Society to admit the said 10 persons/entities as Members of the Society and transfer the Share Certificate in their names. Aggrieved by the said decision of the Deputy Registrar, Mumbai the Society filed an Appeal before the Divisional Joint Registrar who vide order dated 3rd March 2016 affirmed the decision taken by the Deputy Registrar, Mumbai but with direction that said 10 persons/entities shall abide by the decisions of the General Body of the Society which had already been taken.

27. The said 10 individuals/entities refused to hand over possession of the flats to the Developer. It is not in dispute that the said flats have not been occupied by the Purchasers. The reason is obvious. The flats are in such a dilapidated condition that they are unworthy of occupation. The project getting delayed.

28. National Properties sought specific performance of

the MoU and the Development Agreement between the parties.

29. Opining that in a Co-operative Society bona-fide decisions taken by majority vote are binding on all members in the aforesaid backdrop of the case, the impugned order has been passed noting various judgments passed by this Court holding that if the spirit of the guidelines issued on 3rd January 2009 has been adhered to, minority members of a Co-operative Society cannot be permitted to put a spanner in the wheels and that the will of the majority shall prevail.

30. Needless to state the effect of the impugned order is the 10 recalcitrant members of the Society, being flat owners of 10 out of 42 flats in Gurukripa Building being directed to hand over possession of the flats to the Receiver and on failure to do so the Receiver authorized to take possession of the flats. The injunction is a mandatory interim injunction pending disposal of the suit.

31. The first argument in Appeal is that law declared by the Supreme Court in the decision reported as (1990) 2 SCC 171 Dorab Cawasji Warden Vs. Coomi Sorab Warden has been violated inasmuch as, as per the said decision an

interlocutory mandatory injunction can be issued only to restore the *status-quo ante* i.e. the position which existed prior to the offending act being committed, and that too in exceptional circumstances. As per the appellants, they were in possession of the flats which they had purchased from 10 members who owned 10 flats in Gurukripa Building on various dates from the Months of May 2013 till December 2014 and the question of restoring *status-quo ante* by directing them to surrender possession of the flats did not arise. The extended limb of the argument was that the learned Single Judge had observed that while issuing mandatory orders principle of moulding of relief could be adopted. Relying upon the decision reported as 2018 (5) Bom.C.R. 731 Samir Narain Bhojwani Vs. Aurora Properties & Investments & Anr., it was urged that as per the said decision principle of moulding of relief while issuing a mandatory directive could be applied at the final decree stage in a suit and not at an interlocutory stage.

32. The second argument advanced is that the Circular dated 3rd January 2009 issued in exercise of the power conferred by Section 79A of the Maharashtra Co-Operative Societies Act, 1960 was violated. With reference to the decision reported as 2007(4) Mh.L.J. 595 Mont Blanc Co-

operative Housing Society Ltd. Vs. State of Maharashtra & Ors.

it was urged that directives issued in exercise of power under Section 79A of the Maharashtra Co-Operative Societies Act, 1960 were mandatory and not directory. With reference to the directive it was urged that it mandates 75% of the Members of a Co-Operative Society to approve a redevelopment Plan. On facts it was urged that in the instant case at the meeting of the Co-Operative Society which met on 1st March 2009 only 62 out of 500 Members attended the General Body Meeting. The strength of Membership of the Society was 500.

33. The third argument advanced is that letters addressed by Members on 19th July 2010 and 9th August 2010 evincing 23 out of 42 Members withdrawing their consent is proof that the proposal for redevelopment was abandoned. Though styled as the fourth submission, but in fact being an extension of the third argument, it was urged that the Development Agreement dated 19th December 2014 was illegal because on 10th March 2012 the flat owners of Gurukripa Building had resolved to call for a fresh proposal and on 8th April 2012 National Properties had requested the 42 flat owners to provide a revised proposal. It was thus urged that the Development Agreement dated 19th December 2014 was nothing but an

attempt to overcome the requirement of a proper proposal emanating from the Society. We note that two more arguments being number 5 and 6 as penned in the Written Submissions were not argued during hearing of the Appeal for the reason learned Senior Counsel for the Appellants fairly conceded that nothing really turned thereon.

34. Since the first and the second argument are somewhat interlinked, we propose to deal with the two together.

35. On the subject of the directive dated 3rd January, 2009, suffice it to record that large number of complaints were being made to the Assistant Registrar Co-operative Societies pertaining to the re-development of co-operative housing complexes. A study group was constituted to frame a policy, and needless to state the policy had to be of a kind which conformed to the principles of co-operative democracy, meaning thereby transparency at various decision making stages - commencing from the decision to re-develop the housing complex, inviting offers from developers, discussing the offers made at special general body meetings of the members of the co-operative society and acceptance of the offers made. When a

body of individuals takes collective decision there are bound to be dissent and thus the requirement of majority will to prevail. The directive dated 3rd January, 2009 precisely does this.

36. Now, many directives covering different areas can be issued under Section 79A of the Maharashtra Co-operative Societies Act, 1960. Whether such directives are directory or mandatory would require each directive to be looked into. The directive which was held to be mandatory in the decision reported as *2007 (4) Mah. L. J. 595 Mont Blanc Cooperative Society Ltd. & Anr. vs. State of Maharashtra & Ors.* pertained to non-occupancy charges levied by housing societies. Noting that co-operative societies were charging exorbitant non-occupancy charges, the directive limited the non-occupancy charges which could be levied. The directive concerned itself with the business of the affairs of the societies being conducted in a manner detrimental to the interests of the members and in said context the directive was held to be mandatory.

37. The instant directive dated 3rd January, 2019 has been the subject matter of various judicial decisions pronounced by learned Judges of this court and we find that in the decision reported as *(2016) 6 Bom CR 629 M/s. Maya Developers vs. Neelam R. Thakkar*, in para 79 of the decision, the directive

was read as under :-

“79. This itself makes it clear that, notwithstanding the use of words like ‘regulation’, what the 2009 Directive seeks to set in place are a set of guidelines. This is also apparent from the fact that the Government chose to issue these under Section 79A rather than some other section of the Act. What is set out is a broad policy; and this stands to reason, for not every single provision of this Directive lends itself to strict compliance. Clauses 1, 2, 5, 7, 8 and 10 all use the word ‘should’, not ‘must’ or ‘shall’. Clause 11 in terms says that the Development Agreement ‘should’ contain some conditions and provisions but these are specifically subject to the terms and conditions approved by the General Body Meeting of the Society. This Directive must be read as a whole, and not in the manner Mr. Pai suggests by plucking out one clause here and another there. Read thus, it is clear that the whole of the 2009 Directive is recommendatory, not obligatory. If it were otherwise, and to be read as Mr. Pai would have me do, it would undermine the authority of the society in general meeting, and the fundamental democratic underpinnings of cooperative societies. When Mr. Pai asks that is it possible that a majority can decide the fate of all, the answer must be an unequivocal yes; that is the basis of the entire edifice of the MCSA,

subject to specific statutory exceptions. It is impossible to accept his submission that the 2009 Directive is mandatory. It is, as Mr. Kapadia says, a broad road map, and was brought into existence to provide guidance when there were far too many problems in redevelopment of societies. Material compliance is more than sufficient; and it in no way undermines or detracts from the overall authority of the general body of a society's members. It is sufficient if participation, notice and disclosure are ensured. Where majority decisions are consistent with material compliance with the provisions of the Directive, that is surely enough."

38. In the decision reported as 2011 (3) Mh.L.J. 433 Vasant Kheraj Bhanushali & Ors. vs. Goregaon Siddharth Nagar Sahakari Grih Nirman Sanstha Ltd. & Ors., it was held that where an overwhelming large body of the members of a co-operative society consent to a scheme of re-development it would not be open to a few dissenting members to resist the proposal for re-development.

39. In an unreported decision dated 8th March, 2010 in Writ Petition No. 10285 of 2009 Harsha Co-op. Housing Society Ltd. & Ors. vs. Kishandas S. Rajpal & Ors., though not

with reference to the directive in question, in paragraph 11 it was held as under :-

“11. The reliance upon the Government Notification is itself misplaced. When the members of the co-operative housing society which, under law of co-operation, decides by a majority of 11:1 members that the society premises be developed in a particular fashion by a particular developer, it would be contrary to principles of democracy by which the society is governed, for the sole dissenting member to interfere and require a procedure, not required by the majority of the members to be followed which would only consume time and be counter-productive. The Government Resolution would be required to be followed by the society where the members are unable to come to any decision by a resolution of their own.”

40. In the decision reported as 2018(6) Mh. L.J. 769 Kamgar Swa Sadan Co-operative Housing Society Ltd. vs. Divisional Joint Registrar, Co-operative Societies & Ors., dealing with the directive, the view taken in M/s. Maya Developers' case (Surpa) was reaffirmed in the following words :-

“36. This Court in case of M/s Maya Developers (Supra) has held that it is impossible to accept that 2009 directive is mandatory. It is sufficient if the participation, notice and disclosure were ensured. Where majority decisions are consistent with material compliance with the provisions of the Directive, that is surely enough. In my view, the principles laid down in the aforesaid two judgments are applicable to the facts of this case. I am respectfully bound by the principles of law laid down by this Court in those judgments.

41. In another unreported decision dated 7th April, 2016 in *Appeal From Order No. 264 of 2016 Omate Housing Pvt. Ltd. vs. The Abhyuday Nagar Sahakari Gruhanirman Sanstha Sangh Ltd. & Ors.*, concerning the directive in question, in paragraphs 23 and 24 it was held as under:-

“23. It is important to notice the reason why the Directives dated 3 January 2009 were issued. The introduction to the Directives makes the object clear. Various cooperative housing societies are undergoing redevelopment process. The Government was in receipt of various

complaints from members of such societies regarding the mal administration of the cooperative housing societies. Some of the complaints were regarding the manner in which the administrations of the societies, without taking their members in confidence, were carrying out the redevelopment. Various instances of the developers misleading the members and administration of the housing societies had also come to the light. The State Government formulated a study group, which opined that certain guidelines were necessary for the purpose of carrying out redevelopment in the cooperative housing societies. The Directives lay down a methodology. They specify the requirement of holding a special general body meetings, appointment of project management consultant/ architect, considering the suggestions of the members, informing all the members, the role of the project management consultant, the selection of the developers, the agreement to be executed with the developers, etc. The primary object of the Directives is to protect the members of the cooperative housing societies from being deprived of their rights and to protect them from being exploited. The Directives therefore are for the benefit of the cooperative housing societies.

Ultimately the redevelopment process has to be carried out by the cooperative housing societies themselves. The Government, by issuing the Directives dated 3 January 2009, has not taken away this right of the cooperative housing societies. The final decision making vests with the society. The relation between the society and the developer is of trust and confidence. The members, by majority, select a developer in whom they repose their trust.”

24. *Thus the Directives have been issued to secure the interest of the members in the redevelopment process. While interpreting these Directives as either mandatory or directory the interpretation cannot be irrespective of the fact situation and for all persons. There cannot be a universal interpretation of these Directives in all fact situations and against all concerned. A member of a society may argue that the guidelines are mandatory. However, the Directives cannot be used by a third party to enforce the provisions in such a manner that it takes away the basic right of the members to appoint the developer of their choice. Such is not the objective of the Directives dated 3 January 2009.”*

42. In another unreported decision dated 29th September, 2016 disposing of *Notice of Motion (L) No. 72 of 2016 in Commercial Suit (L) No. 86 of 2016 Hari Om Sayaji Properties LLP vs. Yoga Yog Co-op. Housing Society & Ors.*, in paragraph 32 it was held as under :-

32.An assignment after a General Body Resolution and no objection issued by the Assistant Registrar of Cooperative Societies shows that the procedure followed is more or less the same which is required to be followed by the purpose of appointment of the developer at the first instance and the same would therefore not be in contravention of the Government of Maharashtra Notification dated 3rd January, 2009 issued under Section 79A of the Maharashtra Co-operative Societies Act, 1960 more particularly Clause 11(7) of the aforesaid Notification. No provision in the Co-operative Societies Act or the Rules or any other legal provisions has been brought to my notice which would curtail the right of the Society to redevelop the property when the General Body of the Society intends to do so. Essentially, that is the commercial wisdom of the General Body of the Society. It is not open for the Court to sit over the wisdom of the General Body as an Appellate Body/Appellate Authority, merely because some members in minority

disapprove of the decision of the General Body, unless it is shown that the decision was the product of fraud or misrepresentation or was opposed to some statutory prohibition. The aforesaid view has consistently been taken by this Court in (i) Girish Mulchand Mehta and another vs. Mahesh S. Mehta and another, (ii) M/s. Akash Pruthvi Lifestyle vs. Akash Co-op. Hsg. Soc. Ltd. and another and (iii) M/s. Maya Developers vs. Neelam R. Thakkar and others. In the present case the General Body took a conscious decision after due deliberations to redevelop its property. It is now well settled in the case of Maya Developers (supra) that the 2009 direction is not mandatory when there is substantial compliance. Moreover, 34 out of 37 occupants have vacated the said building without any demur or protest showing that the majority overwhelmingly supported the development by the Plaintiffs, amendment of the Bank Guarantee clause and execution of the Supplementary Deed as well as the Deed of Assignment. Defendant Nos.2 to 4 have also addressed a letter dated 27th May, 2016 (Exhibit-SS to the Complaint) wherein they have stated that they were ready for an amicable solution so that the redevelopment process goes as per schedule and that they were not against redevelopment. I find that in the present case there is substantial compliance and the actions of the Society are supported by all its members save and except Defendant Nos.2, 3 and 4.”

43. In yet another unreported decision dated 24th February, 2017 in *Arbitration Petition No. 141 of 2017 Pratham Varadvinayak Developers LLP vs. Azad Nagar Shiv Sagar CHS Ltd. & Ors.*, in paragraph 34 it was held as under :-

“34. This case, perhaps more than most, highlights one of the ongoing catastrophes facing this city. More and more, we find flat owners and society members being dishoused for years on end, forced into transit accommodation, their dreams of improved housing evaporating. The causes are many and varied. Often, errant developers are responsible. We have evolved strategies to deal with those situations. But when this damage to fellow members and to the society is occasioned by other society members, then the enemy is not outside the gates. The enemy is within. In that situation, to allow such opposition is against every notion of equity. There is no equity in favour of Respondents Nos.2 to 5. Acceding to this demand would result in an order that could only be perverse in law, that is to say, an order that could not rationally be made, one that no court of equity ever could make.”

44. In the decision reported as 2010 (2) Mh.L.J. 657

Girish Mulchand Mehta & Anr. vs. Mhesh Mehta & Anr., not in the context of the Circular, but with reference to the principle of co-operative democracy, in paragraphs 15 and 16 it was held as under :-

“15. The appellants would then rely on the decision of the Apex Court in *Ramesh Himmatlal Shah vs. Harsukh Jadhavji Joshi*, reported in AIR 1975 SC 1470 to contend that the flats in question occupied by them have been allotted to them by the Housing Society which allotment is coupled with the right to transfer their shares of the Society and interest in the said flat which is the property of the Society. In the said decision, the Apex Court has observed that the right so enjoyed by the member is the species of the property namely the right to occupy a flat of this type, which assumes significant importance and acquires under the law a stamp of transferability in furtherance of interest of commerce. It went on to observe that there is no fetter in any of the legal provisions against such a conclusion and for which reason the attachment and sale of the property of the member in execution of the decree are valid under the law. The legal position expounded by the Apex Court in the said decision will be of no avail to the case on hand. The crucial question is whether the members can be heard to say that their

rights in the flats occupied by them were de hors the rights of the Society therein and that they were not claiming under the Society at all. In our considered opinion such stand of the members (appellants herein) cannot be countenanced.

16. *In the present case, it is not in dispute that the General Body of the Society which is supreme, has taken a conscious decision to redevelop the suit building. The General Body of the Society has also resolved to appoint the respondent No.1 as the Developer. Those decisions have not been challenged at all. The appellants who were members of the Society at the relevant time, are bound by the said decisions. The appellants in the dispute filed before the Cooperative Court have only challenged the Resolution dated 27-4-2008, which challenge would merely revolve around the terms and conditions of the Development Agreement. As a matter of fact, the General Body of the Society has approved the terms and conditions of the Development Agreement by overwhelming majority. Merely because the terms and conditions of the Development Agreement are not acceptable to the appellants, who are in minuscule minority (only two out of twelve members), cannot be the basis not to abide by the decision of the overwhelming majority of the General Body of the Society. By now it is well established*

position that once a person becomes a member of the Co-operative Society, he loses his individuality with the Society and he has no independent rights except those given to him by the statute and Bye-laws. The member has to speak through the Society or rather the Society alone can act and speaks for him qua the rights and duties of the Society as a body (see Daman Singh and ors. vs. State of Punjab, reported in AIR 1985 SC 973). This view has been followed in the subsequent decision of the Apex Court in the case of State of U.P. vs. Chheoki Employees Co-operative Society Ltd., reported in AIR 1997 SC 1413. In this decision the Apex Court further observed that the member of Society has no independent right qua the Society and it is the Society that is entitled to represent as the corporate aggregate. The Court also observed that the stream cannot rise higher than the source. Suffice it to observe that so long as the Resolutions passed by the General Body of the respondent No.2 Society are in force and not overturned by a forum of competent jurisdiction, the said decisions would bind the appellants. They cannot take a stand alone position but are bound by the majority decision of the General Body. Notably, the appellants have not challenged the Resolutions passed by the General Body of the Society to redevelop the property and more so, to appoint the respondent No.1 as the Developer to give him all the

redevelopment rights. The proprietary rights of the appellants herein in the portion (in respective flats) of the property of the Society cannot defeat the rights accrued to the Developer and/or absolve the Society of its obligations in relation to the subject-matter of the Arbitration Agreement.....”

45. The legal position which emerges from the aforesaid decisions is that if material placed before the court shows that a Co-operative Society has played by the Rule Book, one has to adjust to situations, so long as there is no fraud, concealment, willful default or any hint of underhand dealing, there is no reason to stop development work.

46. In the instant case one cannot lose sight of the fact that 40 out of 42 members occupying 42 flats in Gurukripa Building originally accepted the development proposal. 23 renegaded but fell in line. All except the 10 flat buyers who formed the Kukreja Group have agreed to vacate their flats. 32 cannot be made to wait or held to ransom by the 10 whose motives are suspected. There is merit in the contentions advanced by learned counsel for the respondents that Kukreja Builders, having purchased 10 flats through its associates, is adopting predatory tactics.

47. The argument that 3/4th members of the Society have not approved the redevelopment plan and the requirement of the directive dated 3rd January 2009 is that 3/4th members of the Co-operative Society should grant the approval needs to be noted and rejected for the reason the directive in question does not envisage a situation where a Co-operative Society is the owner of different plots of lands, each functionally independent from the other and only one building on one plot of land needs redevelopment. The underlying intent of the Circular is that members of the Society who are affected by a decision should be given adequate notice of the decision and should be allowed to participate in the decision making process. Thus, since interest of only 42 members of the Society out of 500 members was affected, the requirement of 3/4th members has to be understood to mean said 42 members who owned flats in Gurukripa Building.

48. With respect to the decision reported as *2018 (10) SCALE 33 Samir Narain Bhojwani V. M/s. Aurora Properties and Investments & Anr.*, cited by learned senior counsel for the Appellants, we note that :

(i). The challenge before the Supreme Court arose

against a decision of the Division Bench of the Bombay High Court that had affirmed the Order dated 09.10.2017 passed by the Learned Single Judge in Notice of Motion No.147/2013 wherein a mandatory interlocutory injunction had been granted against the Appellant/Defendant No.2. The Appellant was directed to hand over 8 flats along with 16 car parking spaces in terms of Settlement Agreement dated 04.11.2016 and Consent Terms dated 25.09.2017 entered between Respondent Nos.1 & 2 *inter parties*.

(ii). We may briefly allude to the factual conspectus of the case in light of which the relevant Orders came up to be passed.

(iii). Respondent No.1/Plaintiff was appointed as a 'developer' by Andheri Kamgar Nagar Co-operative Housing Society Ltd. under a Development Agreement dated 06.10.1996. The Agreement envisaged development of a plot of land situated at Verosova Link Road, Taluka Andheri under the Slum Development/Rehabilitation Scheme. One part of the suit property was required to be set aside for constructing tenements free of charge for project affected persons and the remaining property could be used to develop and sell the

balance FSI.

(iv). The Respondent No.1 executed an Agreement for Sub-Development dated 22.09.1999 with Respondent No.2/Defendant No.1 transferring the benefits of Development Rights in favour of Respondent No.2 with the consent of the society after keeping aside 15,000 Sq.Ft. for itself.

(v). Subsequently, Respondent No.2 executed an Agreement for Development dated 10.03.2003 with the Appellant/Defendant No.2 where under the Appellant would be entitled to 55% of the total area available for free sale buildings and car parking in the suit property, whereas, Respondent No.2 retained 45% of the total area available for construction of free sale buildings and car parking. The said Agreement was entered into without the consent of Respondent No.1 and therefore, all the 3 parties consequently executed a Tripartite Agreement dated 11.09.2009, wherein, a reference was made to the previous agreements dated 06.10.1996 and 22.09.1999.

(vi). Disputes arose during the currency of the project at the stage of construction of the building. Respondent

No.1/Plaintiff instituted Commercial Suit No.62/2013 against Respondent No.2/ Defendant No.1 and the Appellant/Defendant No.2, *inter alia*, seeking specific performance of the Development Agreement dated 22.09.1999 which was required to be read in conjunction with the Tripartite Agreement dated 11.09.2009. It was prayed that constructed area of 22,500 Sq.Ft. in the free sale buildings along with proportionate car parking space in the form of 12 flats in Wings 'A' and 'B' of the building 'bay-view' along with 24 car parking spaces be handed over to Respondent No.1/ Plaintiff. Respondent No.1/Plaintiff also took out Notice of Motion No.147/2013 seeking to restrain Respondent No.2/Defendant No.1 and the Appellant/Defendant No.2 from creating third party rights in the suit property without first handing over possession of 22,500 Sq.Ft. constructed areas in the form of flats and car spaces. It was alleged that this interim relief was necessitated in view of the fact that it had been learnt that a Mortgaged Deed had been executed by the Appellant in favour of a third party with respect to 12 flats and 24 parking spaces in the building 'bay-view' and it apprehended that the Appellant would sell or create third party rights in respect of the said flats.

(vii). An ad-interim consent Order was passed on 03.12.2012 in the said Notice of Motion No.147/2013 whereby Respondent No.2 and the Appellant agreed to not dispose of or create third party rights in respect of 8 flats in the completed wings 'A' and 'B' of the building and 4 flats in the under construction Wing 'C' of the building.

(viii). The Defendant No.2/the Appellant adopted a stance that he had fulfilled his share of contractual obligation and offered Respondent No.2/Defendant No.1 its entitlement of 45% area in the constructed buildings, however, Respondent No.2/Defendant No.1 had failed to take possession of the same. It was contended that the subsequent delay in construction of Wing 'C' of the building was due to the failure of Respondent No.2/Defendant No.1 to obtain a Commencement Certificate for Wing 'C'. It was thus submitted that owing to this breach committed by Respondent No.2/Defendant No.1, it was no longer entitled to its 45% share in the constructed area and as a consequence, Respondent No.1/Plaintiff was not entitled its 22,500 Sq.Ft. area which could only be claimed out of the Respondent No.2's entitlement.

(ix). Arbitration proceedings were also commenced

between the parties and by an interim Order dated 12.10.2016, a sole arbitrator made *prima-facie* observations that construction of Wing 'C' in the building situated on the suit property had been delayed owing to the failure attributable to Respondent No.2/Defendant No.1 to obtain the Commencement Certificate for the same. It was observed that Respondent No.2/Defendant No.1 had allowed the appellant to construct only 88 flats so far, which worked out to 72% of the total area to be constructed. On the said basis, the arbitrator was of the opinion that Respondent No.2/Defendant No.1 could not receive its entire 45% share in the constructed area of 88 flats, which worked out to 31.6 flats, but instead, would receive 72% of its 45% share which worked out to 28.5 flats. From these 28.5 flats, 12 flats were to be kept aside for Respondent No. 1 as directed in the High Court's ad interim order dated 03.12.2012 and thus, Respondent No.2/Defendant No.1 was entitled to 16.5 flats. Out of 16.5 flats, the Appellant/Defendant No.2 was directed to hand over possession of 16 flats to Respondent No.2/Defendant No.1, after which Respondent No.2/Defendant No.1 would refund the deposit given by the appellant in respect of such flats. The remaining amount of Respondent No.2/Defendant No.1's entitlement in one flat would be discharged by both

Respondent No.2/Defendant No.1 and the Appellant/Defendant No.2 jointly disposing of the said flat at a mutually agreed price.

(x). The said Order was assailed by the Appellant/Defendant No.2 before the High Court and ultimately before the Supreme Court, however without any success. The Supreme Court vide its Order dated 14.12.2016 while refusing to set aside the decision of the High Court recorded its finding that the observations made by the Sole Arbitrator and the High Court would not influence the final outcome of the matter.

(xi). In the interregnum, the Notice of Motion No.147/2013 was finally heard and judgment reserved. Pending its decision, Respondent Nos. 1 & 2 filed Consent Terms dated 25.09.2017 according to which Respondent No.2/Defendant No.1 agreed to hand over an additional 8 flats along with 16 parking spaces to Respondent No.1/Plaintiff in full and final settlement of the Development Agreement dated 22.09.1999 and the Tripartite Agreement dated 11.09.2009.

(xii). Taking notice of the said development, the Learned

Single Judge vide its judgment dated 09.10.2017 disposed of the Notice of Motion No.147/2013 by directing the Appellant/Defendant No.2 to hand over keys and possession of 8 flats to Respondent No.1/Plaintiff along with 16 parking spaces. The Single Judge relied upon the interim Order dated 12.10.2016 passed by the Sole Arbitrator and was of the opinion that the apportionment of flats done by the Arbitrator had become *res-judicata*. The Court took cognizance of the fact that the finding of the Arbitrator that Respondent No.2/Defendant No.1 was entitled to 28.5 flats had attained finality since the Appeal was rejected title the Supreme Court. It was further observed that from these 28.5 flats, 12 flats along with 24 parking spaces formed part of Respondent No.2/Defendant No.1's entitlement, which, in turn, belonged to Respondent No. 1/Plaintiff, and had been kept out of the scope of the arbitration since there was an ad interim order of the High Court operating in that regard. Possession and keys of the remaining 16 flats out of the 28.5 flats had been handed over by the Appellant/Defendant No.2 to Respondent No. 2/Defendant No.1, for which the appellant's deposit had also been refunded by Respondent No. 2/Defendant No.1, as directed by the arbitrator.

(xiii). The Single Judge further opined that even if Respondent No.2/Defendant No.1 was ultimately held liable to compensate the appellant for damages, the same could not be recovered from the said 12 flats as these flats were ultimately and rightfully due to Respondent No.1/Plaintiff (original plaintiff) and out of bounds for the appellant. The Single Judge rejected the appellant's argument that since Respondent No.1/Plaintiff claimed through Respondent No.2/Defendant No.1, any breach by Respondent No.2/Defendant No.1 would automatically affect the entitlement of Respondent No.1 as well.

(xiv). It was also held that the Respondent No.2/Defendant No.1 was obligated to hand over possession of 8 flats to Respondent No.1/Plaintiff as per the Settlement Agreement dated 04.11.2016 and the Consent Terms dated 25.09.2017. The Court observed that Respondent No.2/Defendant No.1 was the rightful owner of the balance 39.6 flats, including the 8 flats, out of the 88 constructed flats, and that the Appellant/Defendant No.2 had no rights over the same. The conclusion of the Court that Respondent No.2/Defendant No.1 was the rightful owner of the 8 flats rested upon three reasons. Firstly, Respondent

No.2/Defendant No.1 alone was entitled to develop the suit property as the letter of intent from the SRA was in favour of Respondent No.2/Defendant No.1. Secondly, the Appellant/Defendant No.2 was a contractor who had been given the right to develop the suit property and his rights flowed from Respondent No.2/Defendant No.1. Lastly, the Court observed that Respondent No.2/Defendant No.1 had retained its right to construct 45% of the total area available and the Appellant/Defendant No.2 had even executed a power of attorney (PoA) in favour of Respondent No.2/Defendant No.1 entitling Respondent No.2/Defendant No.1 to execute agreements for sale on ownership basis, leave and licence, etc. for the flats and car-parking spaces in the suit property, including the said 8 flats and similarly, Respondent No.2/Defendant No.1 had executed a PoA in favour of the Appellant/Defendant No.2 allowing the Appellant/Defendant No.2 to dispose of his flats and car-parking spaces which he was entitled to receive as part of his 55% share. This fact was even conceded to by the Appellant/Defendant No.2 in the arbitration proceedings and in light of the same, the Appellant/Defendant No.2 was estopped from objecting to Respondent No.2/Defendant No.1 handing over 8 flats to Respondent No.1/Plaintiff.

(xv). The Learned Single Judge concluded its reasoning by observing that merely because the Appellant/Defendant No.2 had constructed the said flats and had the keys to the same, he could not be construed to be the owner of the said flats and could not prevent Respondent No.2/Defendant No.1 from handing over possession of the 8 flats to Respondent No.1/Plaintiff. The Court held that the Appellant/Defendant No.2 merely had derivative rights over the suit property flowing from Respondent No.1/Plaintiff through Respondent No.2/Defendant No.1. Any dispute between Respondent No.2/Defendant No.1 and the Appellant/Defendant No.2 would not in any manner affect the right of Respondent No.1/Plaintiff over the suit property.

(xvi). The decision of the Single Judge was taken up in appeal before the Division Bench of this Court in Commercial Appeal No.173/2017. This Court upheld the mandatory direction issued by the Single Judge at an interlocutory stage and rejected the appeal. It was held that no infirmity could be perceived in the approach adopted by the Single Judge to mould the relief, even at the interim stage, in light of changed circumstances in the case. The Court clarified that the

Appellant/Defendant No.2 was not remedy-less in the eventuality Respondent No.1/Plaintiff failed in the suit, as his remedies were kept open.

(xvii). The Judgment of the Division Bench dated 09.07.2018 was subject matter of challenge before the Supreme Court.

(xviii). Before rendering its findings, The Supreme Court carefully analyzed the scope of the suit by noticing the substantive reliefs prayed for. The Court also took note of the interim reliefs sought in the Notice of Motion No.147/2013.

(xix). Upon reviewing the findings of the Learned Single Judge and the reasons adduced in support thereof, the Supreme Court was of the considered view that the Courts below glossed over the vital circumstance that the Settlement Agreement dated 04.11.2016 and the Consent Terms dated 29.02.2017 were entered into between Respondent No.1/Plaintiff and Respondent No.2/Defendant No.1 *inter parties*. It was held that such arrangement could not be thrust upon the Appellant/Defendant No.2 who had executed a separate agreement with Respondent No.2/Defendant No.1. The Appellant/Defendant

No.2 could be bound only by the Agreement dated 10.03.2003 in his favour and executed by him. The Court further observed that the said Agreement was subject matter of arbitration proceedings since Respondent No.2/Defendant has failed to discharge its obligations thereunder. The Court took notice of the circumstance that the Appellant/Defendant No.2 had already parted with the possession of flats to Respondent No.2/Defendant No.1 in furtherance of Agreement dated 10.3.2003 and Respondent No.1/Plaintiff could be accommodated only against those flats. It was observed that asking the Appellant/Defendant No.2 to hand over additional 8 flats and 16 parking spaces by way of mandatory order, would amount to superimposing the liability of Respondent No.2/Defendant No.1 on the Appellant/Defendant No.2 for discharging its obligation qua Respondent No.1/Plaintiff in relation to the agreement entered between them dated 22-9-1999 and including Settlement Agreement dated 4-11-2016 and consent terms dated 25-9-2017, to which the Appellant/Defendant No.2 is not a party.

(xx). The Supreme Court also observed that the Courts below committed fundamental error in applying the principle of moulding of relief which could at best be resorted to at the

time of consideration of final relief in the main suit and not at an interlocutory stage. The Court opined that the Order in question in substance granted mandatory relief at an interlocutory stage. It was held that Orders of such nature could only be granted in exceptional circumstances to restore the *status-quo ante* and not to establish a new set of things differing from the state which existed at the date when the suit was instituted.

(xxi). The Supreme Court observed that the decision of the Supreme Court reported as (2014) 8 SCC 294 *Gaiv Dinshaw Irani & Ors. v. Tehmtan Irani & Ors.* which was relied upon by the Single Judge to mould the relief in accordance with the changed circumstances did not pertain to an interlocutory stage of proceedings. The Court noticed that the said pronouncement arose in the backdrop of final stage of disposal of proceedings.

(xxii). The Court reiterated the age old principles of grant of interlocutory mandatory injunction as crystallized by it earlier in the decision reported as (1990) 2 SCC 117 *Dorab Cawasji Warden v. Coomi Sorab Warden.* The Supreme Court also cited with approval relevant extracts from Halsbury's Laws of England on this subject.

(xxiii). The Supreme Court while setting aside the decision of the High Court, deemed it appropriate to revive the *ad-interim* Order dated 03.12.2012 passed by the Learned Single Judge in Notice of Motion No.147/2013 and as corrected on 17.12.2012. It was directed that the said Order would operate until the disposal of the suit or until the same is modified by the High Court on account of subsequent developments, if any. The Court made it clear that observations in its judgment were confined for considering the matter in issue and would not influence the substantive proceedings pending between the parties.

49. The legal position could be stated thus : Members of a Co-operative Housing Society cannot claim that their rights in the flats occupied by them are de hors the rights of the Society. Once a person becomes a member of a Co-operative Society he loses his individuality and has no independent right except those given to him by the Statute and the By-laws. A stream cannot rise higher than the source. Minority members cannot take a stand-alone position and are bound by the majority decisions. The proprietary rights of the flat owners cannot defeat the rights accrued to the Co-operative Society and the

Developer. These disgruntled minority members would be estopped from questioning the majority decisions and in that sense have no rights which needs to be protected. The principle of Co-operative Democracy would govern the decision by a Court and not principles of mandatory interim injunctions.

50. Assuming that the principle of mandatory interim injunction being that at best status-quo ante can be restored i.e. the position which existed before the offending act was committed and no more is applicable in the instant case, the grant of the mandatory injunction has in the facts of the present case restored the status-quo ante. Before the ten flat owners of the Kukreja Group purchased the flats, their Predecessor-in-interest had approved the redevelopment project and had signed the consent letters. These ten persons by their act of withdrawing the consent had altered the status-quo which the impugned order restores.

51. Concerning the third and fourth argument advanced, from the facts which we have noted herein above the factual position would be that 37 out of 42 members of the Society who owned flats in Gurukripa Building took the decision on 7th May 2002 to appoint a 8 Member Sub-Committee to invite quotations from well-known developers. Thus, the decision

which triggered the redevelopment process was taken by more than 3/4th of the affected members. After the Sub-committee obtained quotations from six developers and short-listed National Properties as the best, at the General Body meeting of Gurukripa Building Flat Owners held on 1st June 2008 where 33 out of 42 flat owners were present the proposal sent by National Properties was accepted. Since the Society had to formally approve the decision taken by the majority of the 42 flat owners affected, on 1st March 2009 the meeting took place. The coram was present and notwithstanding only 62 out of 500 members present it cannot be lost sight of that 34 were owners of the flats in Gurukripa Building. The unanimous resolution passed shows that more than 3/4th of the 42 flat owners of Gurukripa Building gave the necessary approval. This led to the MoU dated 27th July 2010 being executed. National Properties proceeded with the execution of the development work by obtaining necessary sanctions and permissions. On 19th August 2010, 23 flat owners sought to withdraw their consent. Some of them had 2nd thought evidenced by the fact that on 23rd August 2010, 25 flat owners informed that they stood by the earlier decision. It may be true that on 10th March 2012 the flat owners requested National Properties to submit fresh proposal in response where to National Properties wrote

on 8th April 2012 to provide a signed letter for it to provide to revised proposal, but on 1st May 2012, 35 occupants addressed a communication to National Properties recording that they would like to forget the unfortunate events of the past and would like to move forward as per the decision taken on 1st March 2009. It was only thereafter that 10 members of the Kukreja Group surfaced and relevant would it be to highlight that before that 40 out of 42 members owning the 42 flats in Gurukripa Building affirmed, duly notarized affirmations that they agreed and consented to redevelopment through National Properties. It may be further true that on 2nd May 2012 National Properties had submitted a fresh proposal to the Members of the Gurukripa Building and had requested on 30th October 2012 to take a final decision, but from the fact that thereafter on 17th December 2014 National Properties obtained the clearance from the Airport Authority of India and thereafter on 2nd January 2016 the necessary No Objection from the fire department, on 4th January 2016, 26 members of Gurukripa Building executed the agreement for permanent alternative accommodation. Thus, it cannot be said that an abandoned proposal was sought to be implemented by National Properties.

52. Keeping in view the ratio of law declared by the Supreme Court in the decision reported as *1990 Suppl (1) SCC*

727 Wander Ltd. Vs. Antox India Pvt. Ltd. wherein it was held in paragraph 9 that in appeals before a Division Bench against exercise of discretion by Single Judges would not justify the Appellate Court to interfere with the exercise of the discretion except wherein the discretion has been shown to have been exercised arbitrarily or capriciously or perversely or where the Court has ignored the settled principles of law regulating grant or refusal of interlocutory injunction; an appeal against exercise of discretion is said to be an appeal on principle, we dismiss the appeal, but without any order as to costs.

53. Notice of Motion No. 679 of 2019 is disposed of as infructuous.

SMT. BHARATI DANGRE, J.

CHIEF JUSTICE