

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL APPEAL NO. 45 OF 2025
IN
INTERIM APPLICATION NO. 1438 OF 2024
IN
COMMERCIAL SUIT (L) NO. 28114 OF 2023
WITH
INTERIM APPLICATION (L) NO. 8530 OF 2025
(FOR INJUNCTION)**

Huges Real Estate Developers LLP

(formerly Huges Real Estate Developers Private Limited), a limited liability Partnership registered under the Provisions of Limited Liability Partnership Act, 2008 having its office at 402-407 , Traffic Lite,M.G. Road,Ghatkopar (W), Mumbai- 400 086.

*... Appellant/Applicant
(Original Plaintiff)*

-Versus-

1. Khernagar Adarsh Co-operative Housing Society Limited,

a Co-operative Society, registered under the provisions of the Maharashtra Co-operative Societies Act,1960 having its address at Building No. 23 Kher Nagar, Bandra (East), Mumbai- 400 051.

2. Kumar Vibes LLP, a limited liability Partnership, registered under the provision of Limited Liability Partnership Act, 2008, having its office at B-Wing, 1521, One BKC, G-Block, Bandra (East), Mumbai -400 051.

*... Respondents
(Ori. Defendant Nos. 1 and 2)*

**WITH
COMMERCIAL APPEAL (L) NO. 17320 OF 2025
IN
INTERIM APPLICATION (L) NO. 28499 OF 2023
IN
COMMERCIAL SUIT (L) NO. 28114 OF 2023
WITH
INTERIM APPLICATION (L) NO. 17387 OF 2025
(FOR STAY)**

**Khernagar Adarsh Co-operative
Housing Society Limited,**

a Co-operative Society, registered
under the provisions of the Maharashtra
Co-operative Societies Act, 1960 having its
address at Building No. 23 Kher Nagar,
Bandra (East), Mumbai- 400 051.

*...Appellant/Applicant
Original Defendant No.1*

-Versus-

1. Huges Real Estate Developers LLP
(formerly Huges Real Estate Developers
Private Limited), a limited liability
Partnership registered under the
Provisions of Limited Liability Partnership
Act, 2008 having its office at 402-407 ,
Traffic Lite, M.G. Road, Ghatkopar (W),
Mumbai- 400 086.

2. Kumar Vibes Properties Private Ltd.
Formerly known as Kumar Vibes LLP
having its office at
B-Wing, 1521, One BKC, G-Block,
Bandra (East), Mumbai- 400 051.

... Respondents

Mr. Ashish Kamat, Senior Advocate with Mr. Ranbir Singh and Mr. Eshan Patel i/b Prakash & Co., for Appellant in Commercial Appeal No. 45 of 2025 and for Respondent No. 1 in Commercial Appeal (L) No. 17320 of 2025.

Mr. Mayur Khandeparkar with Mr. Santosh Pathak, Mr. Devansh Shah, Mr. Chirag Thakkar and Ms. Riya Naurya i/b Law Origin, for Appellant in Commercial Appeal (L) No. 17320 of 2025 and for Respondent No.1 in Commercial Appeal No. 45 of 2025.

Mr. Amogh Singh i/b Mr. Nimish Lotlikar, for Respondent No.2 in both Appeals.

**CORAM : ALOK ARADHE, CJ. &
SANDEEP V. MARNE, J.**

Reserved on : 12 August 2025.

Pronounced on : 19 August 2025.

JUDGMENT :- (Per Sandeep V. Marne, J.)

1) These are cross-appeals filed by the Plaintiff and Defendant No.1-Society, challenging the order dated 24 October 2024 passed in Interim Application (L) No. 28499 of 2023 by which the learned Single Judge has refused to grant temporary injunction in favour of the Plaintiff-Developer to restrain the Defendant No.1-Society from appointing any other developer for redevelopment of Society's building. Aggrieved by refusal to grant temporary injunction in its favour, Plaintiff-

Developer has filed Commercial Appeal No. 45 of 2025. While permitting Defendant No.1-Society to implement redevelopment through another developer, the learned Single Judge has observed that the new developer (Defendant No. 2) shall obtain Plaintiff's NOC for carrying out the redevelopment work. Defendant No.1-Society is aggrieved by imposition of the above condition by the learned Single Judge and has accordingly filed Commercial Appeal (L) No. 17320 of 2025.

2) Brief facts leading to the filing of the present appeals are as under:

A registered Development Agreement and Power of Attorney was executed between the Plaintiff-developer and Defendant No. 1-Society on 16 December 2011 for redevelopment of Society's building located at Kher Nagar, Bandra (East), Mumbai. After execution of Development Agreement, the Society submitted proposal dated 21 September 2012 to MHADA under DCR 33(5)(2)(c)(ii) of Development Control Regulations, 1991 (**DCR,1991**). It is the Plaintiff's case that MHADA had stopped issuing approvals to proposals under Regulation 33(5)(2)(c)(ii) and was insisting that proposals be submitted under Regulation 33(5)(2)(c)(i). In September 2018, Development Control and Promotion

Regulations, 2034 (**DCPR 2034**) were implemented. Disputes had arisen between the members of the Society and an Administrator was appointed on 30 April 2019. Plaintiff submitted revised proposal under DCPR 2034 on 13 November 2020. An Annual General Meeting of the Society was held on 31 October 2021 in which majority of the members accepted the revised proposal of the Plaintiff. Acceptances of the revised offer were communicated to the Plaintiff by the Society by letter dated 16 November 2021. According to the Plaintiff, Society failed to execute necessary documents to enable Plaintiff to avail of the discounted premium rates offered by MHADA. By letter dated 22 March 2022, the Society informed the Plaintiff that the Managing Committee was constituted after holding the elections and that the Administrator was discharged. Plaintiff submitted a revised redevelopment offer to the Society under Regulation 33(5) of the DCPR 2034. As per the request of the Society, Plaintiff submitted a revised offer on 27 June 2022, under which Plaintiff offered an enhanced RERA carpet area of 508 sq. ft. and increased the corpus amount to Rs. 9 lakh per member. The Society, however, communicated to the Plaintiff by letter dated 25 July 2022 that the revised offer was not approved by the members. Plaintiff, however, informed the society vide letter dated 13 August 2022 that the revised offer was final. Plaintiff attended Special General Body Meeting (**SGM**) of the

Society on 16 October 2022, during which members of the Society requested the Plaintiff to increase the carpet area of the flats. Plaintiff, accordingly, increased RERA carpet area to 520 sq. ft. and communicated the offer to the Society on 16 November 2022.

3) The Society held SGM on 27 November 2022 and by majority vote, approved the redevelopment proposal submitted by the Plaintiff on 16 November 2022. Society wrote to the Plaintiff on 3 December 2022, conveying the decision of the SGM and called upon Plaintiff to provide the enumerated documents within a period of 21 days. On 14 December 2022, Plaintiff claims to have clarified the information requested by the Society. The Society held another SGM on 1 January 2023 and adopted a resolution to terminate the Development Agreement executed with the Plaintiff. By letter dated 31 January 2023, the Society terminated the Development Agreement and the Power of Attorney granted to the Plaintiff. On 20 February 2023, Society floated a tender for appointment of new developer. SGM was held on 17 September 2023, resolving to appoint Defendant No. 2 as the new developer.

4) In the above background, Plaintiff filed Commercial Suit (L) No. 28114 of 2023, seeking a declaration that the Development Agreement and Power of Attorney dated

16 December 2011, read with all offers made by it as well as Society's letter dated 3 December 2022, are valid, binding and subsisting. Plaintiff challenged termination notice dated 31 January 2023 and prayed for decree for specific performance. Plaintiff also sought injunction against the Society from appointing any other developer. Plaintiff also sought monetary claims against the Society. The Plaintiff has amended the suit by impleading Defendant No.2 who is new Developer and consequently amended the prayers. In the suit, Plaintiff filed Interim Application (L) No. 28499 of 2023 seeking temporary injunction against the Defendants. By order dated 24 October 2024, the learned Single Judge has refused to grant temporary injunction in favour of the Plaintiff. Accordingly, the Plaintiff has filed Commercial Appeal No. 45 of 2025, challenging the order dated 24 October 2024. While refusing to grant temporary injunction in favour of the Plaintiff, the learned Single Judge has noted the stipulation in the tender floated by the Society, requiring the new developer to secure unconditional NOC from the Plaintiff. Therefore, the learned Single Judge has directed Defendant No. 2 to secure Plaintiff's NOC. Defendant No.1-Society is aggrieved by the said direction of the learned Single Judge and has accordingly filed Commercial Appeal (L) No. 17320 of 2025.

5) Mr. Kamat, the learned Senior Advocate appearing for the Appellant-Plaintiff, would submit that the learned Single Judge has erred in not granting temporary injunction in favour of the Plaintiff. He would take us through various findings recorded by the learned Single Judge in favour of the Plaintiff. He would submit that the learned Single Judge has rejected Society's claim of delay on the part of the Plaintiff in carrying out redevelopment process. He would submit that delay was the only reason why the Society had proceeded to terminate the Development Agreement. That once the reason for termination is found to be erroneous, temporary injunction ought to have been granted in Plaintiff's favour. That the learned Single Judge has erred in holding that there is no concluded contract between the parties. That the original Development Agreement dated 16 December 2011 continued to govern the relationship between the parties till it was terminated. That what is done by way of subsequent decisions adopted by general body of Defendant No.1-Society was merely variation in commercial terms. That the final decision taken by the Society in SGM dated 27 November 2022 did not require execution of a separate Development Agreement. That a right to redevelop the building emanated out of the original Development Agreement dated 16 December 2011. He would submit that the entire basis for rejecting temporary injunction in favour of the Plaintiff is thus completely flawed.

6) Mr. Kamat would further submit that what the Society has terminated is ultimately the Development Agreement dated 16 December 2011 which is a concluded contract between the parties. That the case does not involve novation of contract where the earlier Development Agreement would be replaced by a new contract between the parties. That the learned Single Judge has erroneously proceeded on a footing as if there is no contract between the parties. He would further submit that the Plaintiff did not have the benefit of minutes of SGM dated 27 November 2022. That SGM did not impose any conditions as are reflected in Society's letter dated 3 December 2022. That the Development Agreement was terminated with undue haste. That the Managing Committee acted in excess with the SGM Resolution by giving 21 days to the Plaintiff to comply with the conditions and on 22nd day, decision was given to convene fresh SGM for terminating the Development Agreement. That the conduct of the Defendant No.1-Society exhibits lack of commercial morality where the members of the Society have acted arbitrarily in changing their minds in less than a month and going for redevelopment through another Developer. In support of his contention that upon acceptance of a new condition by the proposer, a contract gets completed, Mr. Kamat would rely upon the judgment of the Apex Court in *Padia Timber Company Private Limited Versus. Board of Trustees of*

*Vishakapatnam Port Trust through its Secretary*¹. Mr. Kamat would accordingly pray for setting aside the order passed by the learned Single Judge and for grant of interim injunction in Plaintiff's favour as prayed for in the Interim Application.

7) Mr. Khandeparkar, the learned counsel appearing for the first Defendant-Society would oppose Commercial Appeal No.45 of 2025 filed by the Plaintiff. He would submit that the learned Single Judge has rightly rejected Plaintiff's application for temporary injunction after noticing that there is no concluded contract between the parties in terms of the revised offers. He would invite our attention to the prayers made in the plaint which seeks a declaration that Offer No.1 and Offer No.2 read with Plaintiff's letter dated 16 November 2022 and Defendant's letter dated 3 December 2022 and Plaintiff's letter dated 14 December 2022 are valid, binding and subsisting. Thus, the suit itself proceeds on a footing that Offer No.1, Offer No.2 and letters dated 16 November 2022, 3 December 2022 and 14 December 2022 also constitute a contract. That the learned Single Judge has not accepted this contention and has held that there is no concluded contract in terms of the revised offers and various letters. He would further submit that the Plaintiff has refused to accept the conditions imposed vide letter dated 3 December 2022. He would invite our attention to

¹ (2021) 3 SCC 24

Plaintiff's response dated 14 December 2022 to demonstrate as to how the Plaintiff did not desire compliance of the conditions imposed in the letter dated 3 December 2022. Mr. Khandeparkar would further submit that the Development Agreement dated 16 December 2011 was executed based on the provisions of Regulation 91 of the DCR, 1991 which has undergone a substantial change *qua* the rights of the Members of the Society upon coming into effect of the DCPR 2034. That therefore the parties intended execution of a new contract in terms of entitlement of the members under the 2034 DCPR. That though offers were discussed, the same has ultimately not got converted into a concluded contract.

8) Mr. Khandeparkar would further submit that the Society's building is in a dilapidated condition. That Plaintiff has already delayed the redevelopment process for the last 14 long years and further delay in the redevelopment process would put the lives of the Society members to risk. That the Society has secured better commercial terms from a new developer (Defendant No.2.). That new developer has shown willingness to reimburse the expenditure incurred by the Plaintiff. That Plaintiff's claim for damages can be adjudicated and the redevelopment process need not be halted during pendency of the suit. In support of the contention, Mr. Khandeparker would rely upon judgment of

the Delhi High Court in Nalini Singh Associates Versus. Prime Time – IP Media Services Ltd². He would pray for dismissal of Plaintiff's Appeal.

9) Mr. Khandeparker would submit in support of Society's Appeal [Commercial Appeal (L.) No.17320/2025] that the learned Single Judge has erroneously imposed the condition of securing Plaintiff's NOC before undertaking the redevelopment process. That imposition of such condition actually frustrates the entire project as Plaintiff, despite being unsuccessful in securing injunction, would continue to create obstacles in execution of the Project by refusing to give his NOC. That despite Defendant No.2 offering a cheque of Rs.2.60 crores, which is the alleged expenditure incurred by the Plaintiff, Plaintiff has refused to give his NOC to Defendant No.2. That once Plaintiff's application for injunction is rejected holding that there is no concluded contract, mere imposition of condition in tender for securing Plaintiff's NOC by new developer could not have been a reason for the learned Single Judge to direct Defendant No.2 to secure such NOC.

10) On the other hand, Mr. Kamat would oppose the Society's appeal and submit that Plaintiff's claim is not restricted to amount of Rs.2.60 crores as Plaintiff has sued for damages to the tune of Rs.40.03 crores. That Society, having

² 2008 (106)DRJ 734

imposed tender condition for securing Plaintiff's NOC, cannot now turn around and claim that Defendant No.2 can go ahead with execution of the Project without Plaintiff's NOC. He would accordingly pray for dismissal of the Society's Appeal.

11) Mr. Singh, the learned counsel appearing for Respondent No.2 in both the Appeals would submit that the learned Single Judge has rightly refused injunction in Plaintiff's favour. He would invite our attention to the offer made by Defendant No.2 to the members of the Society, under which carpet area of 645 sq.ft. and corpus of Rs.17 lakhs is offered to the members. That the commercials offered by Defendant No.2 is far better than the one offered by the Plaintiff. He would submit that Defendant No.2 cannot be expected to secure NOC of the Plaintiff as there is no privity of contract between Defendant No.2 and the Plaintiff. He would pray for dismissal of Plaintiff's Appeal and for allowing Society's Appeal.

12) Rival contentions of the parties now fall for our consideration.

13) Plaintiff, who is the developer appointed by the Society in the year 2011, is aggrieved by the action of the Society in terminating its Development Agreement and in appointing a new developer (Defendant No.2) to execute the

redevelopment project. He filed an application seeking temporary injunction to refrain the Society from going ahead with the redevelopment project through Defendant No.2 and upon the learned Single Judge refusing to grant temporary injunction, has filed Commercial Appeal No. 45/2025. Though the Society has succeeded in rejection of Plaintiff's application for temporary injunction, it still required to challenge order dated 24 October 2024 on account of imposition of condition by the learned Single Judge requiring new developer (Defendant No. 2) to secure Plaintiff's NOC in terms of tender conditions for undertaking the redevelopment of the Society's building.

14) We first proceed to examine the correctness of the findings recorded by the learned Single Judge in refusing to grant temporary injunction in Plaintiff's favour, which is the grievance of the Plaintiff in Commercial Appeal No.45/2025.

15) Plaintiff has filed Commercial Suit (L) No. 28114/2023 seeking following amended prayers :-

α) Declare that Development Agreement and Power of Attorney dated 16th December, 2011 read with Offer 1 and Offer 2 read with the Plaintiff's letter dated 16th November, 2022, Defendant's No.1 letter dated 3rd December, 2022 and the Plaintiff's letter dated 14th December, 2022 are valid, binding and subsisting;

b) Declare that the Termination Notice dated 31st January, 2023 (*Exhibit 'VV'*) issued by the Defendant No.1 is illegal, arbitrary, void ab initio and not binding on the Plaintiff;

c) Pass a decree of specific performance and direct the Defendant No.1 do all acts as necessary for effectively performing the Development Agreement and the Power of Attorney both dated 16th December, 2011 (*Exhibit 'T' and 'J' respectively*) read with Offer 1 and Offer 2 read with the Plaintiff's letter dated 16th November, 2022, Defendant's No.1 letter dated 3rd December, 2022 and the Plaintiff's letter dated 14th December, 2022;

d) Pass a permanent and mandatory injunction against the Defendant No.1, its members, representatives, nominees and assigns from entering into agreement, appointing another developer for redevelopment of the Defendant's No.1 Building and/or creating any third-party rights in respect of the Suit Property;

(d-1) pass a permanent and mandatory injunction against Defendant No.1, its members, representatives, nominees and assigns from entering into any arrangement and/or agreement and/or document and/or writing appointing Defendant No.2 for redevelopment of the Suit Property;

(d-2) pass a permanent and mandatory injunction against Defendant No.2 from in any manner holding itself out as having any right, title, and/or interest in the Suit Property or in any manner dealing with the same;

e) In alternative to prayers (c), this this Hon'ble Court be pleased to pass a decree against the Defendant No.1 for Rs. 8,09,51,502/-alongwith interest at the rate of 18% p.a. from the date hereof till realization as per Particulars of Claim at Exhibit - 'XX' hereto towards compensation ;

f) In alternative to prayers (c), this Hon'ble Court be pleased to pass a decree against the Defendant No.1 for Rs. 40,03,69,328.42 alongwith interest at the rate of 18% p.a. from the date hereof till realization as per Particulars of Claim at Exhibit - 'YY' hereto towards loss of profit;

g) Pending the hearing and final disposal of the suit the Defendant No.1 by itself, it's their servants and agents be restrained by an order of temporary injunction from

appointing another developer for redevelopment of the Suit Property, or in any manner creating third party rights in respect of the Suit Property.

(g-1) Pending the hearing and final disposal of the present Suit, this Hon'ble Court be pleased to order and restrain the Defendants and/or their agents, representatives, successors, or anyone acting on their behalf, from in any manner acting upon and/or in furtherance of any arrangement which may be entered into thereby qua the Suit Property;

(g-2) Pending the hearing and final disposal of the present Suit, this Hon'ble Court be pleased to restrain Defendant No.2 from in any manner holding itself out as having any right, title, and/or interest in the Suit Property or in any manner dealing with the same;

h) Ad-interim and interim reliefs in terms of prayers (g) above;

i) For costs of the Suit;

j) For such other and further reliefs as the nature and circumstances of the case may require as this Hon'ble Court deems fit and necessary.

16) Plaintiff is thus aggrieved by termination of Development Agreement dated 16 December 2011 vide notice dated 31 January 2023 issued by the Society. The termination notice is given pursuant to the Resolution adopted in the SGM held on 1 January 2023.

17) The main reason why Plaintiff feels aggrieved by termination the Development Agreement is the decision taken by the Society resolved few days earlier on 27 November 2022 to continue the redevelopment process by accepting Plaintiff's

revised offer given vide letter dated 16 November 2022. Acceptance of Plaintiff's revised offer by the SGM was communicated to the Plaintiff by the Society vide letter dated 3 December 2022. However, within about 23 days, the Managing Committee of the Society decided to convene fresh SGM vide notice dated 26 December 2022 for termination of the Development Agreement, which has baffled the Plaintiff. Plaintiff questions change of mind by the Society within extremely short time gap from 3 December 2022 to 26 December 2022.

18) Perusal of minutes of SGM meeting dated 1 January 2023 would indicate that the Development Agreement is terminated on account of failure to comply with the demands made by the members of the Society. The decision of SGM dated 1 January 2023 was communicated to the Plaintiff vide Advocate's letter dated 31 January 2023 in which two reasons were essentially cited for termination of the Development Agreement, (i) failure on the part of the Plaintiff to offer area corresponding to DCPR 2034 and (ii) delay on the part of the Plaintiff in executing the redevelopment process.

19) The learned Single Judge has however refused to accept Society's contention of delay on the part of the Plaintiff

as a valid reason for termination. The learned Single Judge has recorded following reasons for refusing to accept the ground of delay :-

A) The letter of termination proceeds entirely on the basis of delay on the part of the Plaintiff. While the fact that there has undeniably been a substantial passage of time since the DA was entered into, the question which falls for consideration is as to whether this delay was solely on account of the Plaintiff. In my view, the answer in the facts of the present case is No. The record bears out that though the DA was entered into in the year 2011, (i) not once has the Society (prior to issuance of the termination notice) complained of any delay on the part of the Plaintiff, (ii) on the contrary the Society has actively engaged with the Plaintiff in an attempt to facilitate the said redevelopment by actively engaging with the Plaintiff and (iii) crucially, the Society has in the SGM held on 27th November, 2022 resolved that the redevelopment did not take place on account of the fact that the policies governing the redevelopment were not suitable. Hence, for the Society to shortly after the SGM held on 27th November 2022 do a *volte facie* and allege that redevelopment did not take place solely on account of the Plaintiff's delay in carrying out the same is in my view clearly untenable and entirely unjustified.

20) The learned Single Judge has also made adverse observations about the conduct of members of the Society by recording following findings :-

B) It is not without reason that Mr. Kamat laboured hard on the conduct of the Society, in particular the conduct of a few members of the managing committee. In my view, there is much merit in his submission that the conduct of the Society essentially the managing committee is indeed suspect. Firstly, I say so because the entire termination notice proceeds on the basis that there was delay on the part of the Plaintiff in carrying out the redevelopment, however, the

notice of termination makes absolutely no mention of (i) the SGM held on 27th November, 2022, which records that the redevelopment did not take place, since suitable policies were not in place (ii) the fact that the Society had not once, since 2011, raised any grievance about any delay on the part of the Plaintiff and (iii) that the Society had, since 2018, been actively engaging and negotiating with the Plaintiff towards the redevelopment which culminated in the Society accepting the Plaintiff's offer at the SGM held on 27th November, 2022 even assuming it was conditional. In my view, omission of these facts in the notice of the termination is most telling and the same was clearly issued by holding back these material facts which clearly militate against delay on the part of the Plaintiff, much less delay which has been solely attributed to the Plaintiff by the Society.

C) *Additionally*, two factors are also further telling and which I must note. First, though the primary contention of the Society to resist the present Interim Application was that there was no valid and subsisting contract between the Parties, the termination does not proceed on this ground but proceeds solely on the basis of delay on the part of the Plaintiff. Second post termination, the Society has floated a tender which contains a condition that the new Developer has to obtain an NOC from the Plaintiff. Such a condition it would have been wholly unnecessary, if the Society believed there was in fact no arrangement in place with the Plaintiff. I must also note that the stand of the Society qua the assurance supposedly given by Mr. Rajesh Mehta, partner of the Plaintiff has been anything but consistent. Learned Counsel for the Society in Court on 17th October, 2024 on instructions from the members of the managing committee made a statement that Mr. Rajesh Mehta was present at the SGM held on 27th November, 2022 at which time the said assurance was given. The stand then was changed to state that Mr. Rajesh Mehta gave the said assurance in a meeting held in the office of the Plaintiff where a few members of the Society were present. The Respondent thereafter stated that once again prior to the SGM held on 27th November 2022, the managing committee had initiated talks with the Plaintiff and that Mr. Rajesh Mehta had "*in one meeting with the Managing Committee Members*" made the said assurance to the members of the managing committee. However no details of such meeting

were placed on record. Hence, it is clear that the Society had played fast and loose with this Court by consistently changing its stand on an issue, which is really a non-issue, but clearly reflects the conduct of the Society.

21) The Plaintiff wonders as to how its prayer for temporary injunction could be rejected after recording of above findings by the learned Single Judge in its favour. The learned Single Judge has not granted temporary injunction in Plaintiff's favour by holding that there appears to be no valid, binding and subsisting contract between the parties. The learned Single Judge had made following observations while recording a *prima-facie* finding that there no is concluded contract between the parties :-

D) However, for me to consider whether the Plaintiff is entitled to or has made out a case for the grant of relief in terms of prayer clause (α), I have to first come to the prima facie conclusion that there exists a valid, subsisting and binding concluded contract between the Plaintiff and the Society. The contract according to the Plaintiff which has been arrived at with the Society is to be discerned from DA, Power of Attorney dated 16th December 2011, Offer-1, Offer-2, letter of the Society dated 16th November 2022, 3rd December 2022 and letter of the Plaintiff dated 14th December 2022. It is here where the problem lies. It is not in dispute that after the DA was entered into (i) the constitution of the Plaintiff has undergone a change and (ii) the terms of the DA have also been renegotiated. The Plaintiff is additionally not the entity with whom the Society entered into the DA. Additionally, the Plaintiff has not claimed that the contract stood concluded only on the basis of the acceptance of the Plaintiffs offer at the SGM held on 27th November, 2022. The Plaintiff also placed reliance upon the Society's letter dated 3rd December 2022, in support of the contention that a valid, binding and subsisting contract was arrived at. The letter

dated 3rd December 2022 contains certain conditions/requisitions which the Plaintiff has admittedly not complied. Crucially, the Plaintiff has in response to the letter dated 3rd December 2022 vide its letter dated 14th December 2022 not taken the stand that the contract stood concluded between the Parties as per the decision taken at the SGM held on 27th November, 2022 but has infact proceeded to comply with some of the requisitions set out in the letter dated 3rd December 2022 and in respect of the others stated that the same would be complied with later i.e. before the members of the Society were called upon to vacate their respective premises. Basis this, I am unable to come to a prima facie finding that a concluded contract in which all the material terms were agreed upon by the parties pertaining to the redevelopment of the said building was arrived at between the Plaintiff and the Society. Hence, in this factual scenario, I find that the judgment in the case of ***Pitti Antariksh Grl Pvt. Ltd.*** would not apply to the facts of the present case.

E) The Plaintiff has also sought interim relief in terms of prayer clause α(1) and α(2) essentially to restrain the Defendants from proceeding with the redevelopment. However, in light of the fact that I have at this *prima facie* stage been unable to hold that there is a valid, binding and subsisting agreement between the parties, I am unable to grant relief to the Plaintiff in terms of prayer clause α(1) and α(2). I must however note that at this stage the Plaintiff's apprehension that the Society and Defendant No.2 would defeat the rights of the Plaintiff over the redevelopment project, seems to be misplaced, since the Society has floated the said tender pursuant to which Defendant No.2 has been appointed the new Developer which tender admittedly contains the following condition i.e. *"It is an essential term of the tender that the successful bidder has to procure an unconditional NOC/Settle with Erstwhile Developers by paying/reimbursing amount to Erstwhile Developers by paying /reimbursing amount to Erstwhile Developer within a period of 8-10 days from the date of issuance of LOI."* Hence, Defendant No.2 has accepted this condition and would therefore necessarily have to obtain the Plaintiff's NOC in terms thereof. Equally, the tender having been floated by the Society, the terms thereof would be binding upon the Society.

22) This is how the learned Single Judge has refused to grant temporary injunction in Plaintiff's favour despite holding that the reason of delay for termination of the Development Agreement is erroneous, despite adversely commenting on the conduct of members of the Society. Absence of *prima-facie* case of existence of concluded contract is the reason why the learned Single Judge has not granted the discretionary relief of temporary injunction in Plaintiff's favour.

23) Both the sides have canvassed submissions in support of their respective claims about existence of a concluded contract between the Plaintiff and Defendant No.1-Society. There is no dispute to the position that the Development Agreement dated 16 December 2011 is a concluded contract between the parties. However, despite execution of the Development Agreement dated 16 December 2011, the learned Single Judge has observed that there was change in constitution of the Plaintiff after execution of the Development Agreement and the terms of the Development Agreement have also been renegotiated. It is held that the Plaintiff is not the entity with whom the Society has entered into the Development Agreement. The Development Agreement was executed with Huges Real Estate Developers Private Limited. After execution of the

Development Agreement, Plaintiff's constitution has changed to that of Limited Liability Partnership under the provisions of the Limited Liability Partnership Act, 2008. However, more than change in the constitution of the Plaintiff, the learned Single Judge has emphasized on the aspect of renegotiation of terms of the Development Agreement and fresh arrangement between the parties not being converted into a conclusive contract.

24) To understand Plaintiff's exact case, it would be necessary to consider the pleadings in the Plaint. In its Plaint, Plaintiff has branded Offer-1, Offer-2 read with Plaintiff's letter dated 16 November 2022, Defendant's letter dated 3 December 2022 and Plaintiff's letter dated 14 December 2022 as 'Supplemental Agreement'. The pleadings in para 3.53 read thus :-

On 14th December, 2022, in response to the Defendant No.1's request, the Plaintiff clarified that all necessary information demonstrating its financial capability had already been provided during the tender process for the Development Agreement. However, the Plaintiff assured the Defendant No.1 that the documents would be furnished again during redevelopment. Offer 1 and Offer 2 read with the Plaintiff's letter dated 16th November, 2022, the Defendant No.1's letter dated 3rd December, 2022 and the Plaintiffs letter dated 14th December, 2022 shall be hereinafter read as "*Supplemental Agreement*"

In Para 4 of the Plaint, Plaintiff has pleaded thus :-

The Supplemental Agreement has modified the terms of the Agreement to the extent agreement therein. It is submitted that all other terms and conditions contained in the Agreement continue to be valid and binding. It is submitted that the Agreement read with Supplemental Agreement is valid, binding and subsisting. **The Plaintiff is therefore entitled to a declaration that the Development Agreement dated 16th December, 2011 read with Offer 1 and Offer 2 read with the Plaintiff's letter dated 16th November, 2022, the Defendant's letter dated 3rd December, 2022 and the Plaintiff's letter dated 14th December, 2022 constitute a concluded contract and is valid, binding and subsisting.**

(emphasis added)

25) Plaintiff's pleaded case is that Offer-1, Offer-2 read with Plaintiff's letter dated 16 November 2022, Defendant's letter dated 3 December 2022 constituted a concluded contract (*supplemental agreement*), which must be specifically performed along with the main Development Agreement. On the other hand, it is society's case that mere passing of resolution by the society does not constitute a concluded contract between the parties. Additionally, it is contended by the Society that the Plaintiff has failed to comply with the requisitions made by the society in the letter dated 3 December 2022.

26) Therefore, the issue which was at the heart of the controversy before the learned Single Judge was whether the Plaintiff's offer vide letter dated 16 November 2022, Resolution adopted in SGM meeting dated 27 November 2022, Society's letter dated 3 December 2022 and Plaintiff's response dated

14 December 2022 would constitute a concluded contract in terms of the re-negotiated offer. In the original Development Agreement dated 16 December 2011, the Plaintiff had agreed to provide flats admeasuring 484 sq.ft. carpet area in addition to transit rent and hardship compensation. The amount of hardship compensation was dependent on allotment of Tit-Bit area and FSI by MHADA.

27) It appears that the redevelopment process could not kickstart and it is not really necessary to go into the issue as to who is responsible for delay in commencement of the redevelopment process at this juncture. The learned Single Judge has *prima facie* absolved Plaintiff of allegation of delay in redevelopment process. Suffice it to observe that the Development Agreement was executed by taking into consideration the FSI admissible under the DCR 1991. Upon advent of DCPR, 2034 in September 2018, the picture has changed. The members of the Society started demanding higher area of flats and better commercial terms on account of higher FSI potential admissible under DCPR, 2034. The Plaintiff accordingly started giving revised offers to the Society. The first revised proposal was given in the year 2020-21 which is claimed to have been accepted by the Society in AGM held on 31 October 2021. It appears that at that time, there was an Administrator of the Society. After the Managing Committee took over by discharge of Administrator, Plaintiff

gave further revised offer on 30 April 2022 which Plaintiff terms as 'Offer No.1'. Upon insistence of the members of the Society, Offer No.2 was made on 27 June 2022 for grant of carpet area of 508 sq.ft. and corpus of Rs.9,00,000/- per member. The Society refused to accept the said offers. Finally, by letter dated 16 November 2022, Plaintiff offered enhanced RERA carpet area of 520 sq.ft. in addition to other entitlements under Offer-1 and Offer-2. It is this offer made vide letter dated 16 November 2022 which has found favour with the members of the Society, which resolved in the SGM held on 27 November 2022 to accept the revised offer.

28) Thus, there has been a material change in the entitlements of members as per the original Development Agreement and the revised offer made by Plaintiff on 16 November 2022 and accepted by Society on 27 November 2022. The carpet area underwent a change from 484 sq.ft to 520 sq.ft. There was also change in the amounts of hardship compensation and other financial terms. The learned Single Judge has *prima-facie* held that this renegotiated offer was required to be converted into a concluded contract between the parties. On the other hand, it is the contention of the Plaintiff that what is altered are mere commercial terms and that the Development Agreement of 2011 has remained intact.

29) Both sides have relied on various judgments in support of their respective contentions. In support of its contention that the supplemental agreement constitutes a concluded contract between the parties, Plaintiff had relied on judgment of this Court in Pittii Antariskh Grl Pvt. Ltd. Versus. Kher Nagar Sai Prasad CHS³ before the learned Single Judge. Attention of the learned Single Judge was also invited to the judgment of the Apex Court in *Padia Timber Company Private Limited* (supra). The Defendant-Society has relied on judgment of the Delhi High Court in *Nalini Singh Associates* (supra). In our view whether there is a concluded contract between the parties based on the two Offers and three letters is a serious triable issue and the main bone of contention between the parties. At the conclusion of the trial, the Trial Judge would decide whether the original Development Agreement dated 16 December 2011 remained enforceable even after renegotiated terms or whether the renegotiated terms would require execution of a fresh contract between the parties. The Court would also decide the issue whether a society can unilaterally defeat the rights of a developer created under the Development Agreement by engaging the developer in discussions for better financial terms. It is not that the developer desired alteration of the terms of the Development Agreement. It was due to demands raised by the Society that the fresh offers were made by the developer. The society

³ 2024 SCC Online Bom 528

accepted the revised terms offered by the Plaintiff-developer, but later changed its mind and terminated the Development Agreement. The issue that needs to be decided at the end of the trial is whether rights of the developer under the original Development Agreement would get defeated in entirety merely because fresh negotiations have taken place between the parties and because the society terminated the Development Agreement before the renegotiated terms could be converted into a formal contract.

30) The Suit involves challenge to the termination of the Development Agreement. Plaintiff seeks specific performance of the Development Agreement, and what it believes to be the Supplemental Agreement (comprising of two Offers and three letters). Under Order XXXIX Rule 2 of the Code of Civil Procedure, 1908 (**the Code**) the Court has power to prevent the Defendant from committing breach of contract by grant of temporary injunction. Till the Court finally decides the *lis* between the parties, the Defendant can be restrained from committing breach of the contract under Order XXXIX Rule 2 of the Code. Whether in the present case, such temporary injunction can be granted to restrain the Society from proceeding ahead with the redevelopment of the society is the issue to be decided in the present appeals.

31) Unlike suits involving specific performance of other contracts, the contracts dealing with redevelopment of old buildings of housing societies involve special circumstance where the condition of the old building gets deteriorated with passage of each day. Redevelopment of buildings is undertaken by societies mostly because the buildings are in bad shape and need to be pulled down. Therefore timely completion of reconstruction assumes importance. Therefore, while considering the issue of grant of temporary injunction to restrain a housing society from proceeding ahead with reconstruction of its building, this vital aspect needs to be borne in mind.

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

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

33) Afterall a developer is engaged by housing societies on account of lack of expertise and wherewithal for undertaking reconstruction of their buildings. If societies possess the financial capability to undertake reconstruction of their buildings, they can engage a contractor to reconstruct

the building and such construction contract would be incapable of being specifically performed. However, because of lack of expertise and financial capabilities of housing societies, development rights are granted in favour of a developer which envisage sale of some units in the reconstructed building and enables the developer not only to recover the cost of demolition of old building and construction of new building but also earn his profits through the project. This is how a developer, who is engaged essentially to reconstruct society's building, also secures some rights in the redevelopment process. On account of creation of this limited interest in the property, the Development Agreements can be specifically performed. However, what must be borne in mind is the fundamental principle that the rights of a developer to earn profits through redevelopment contracts would always remain subservient to the rights of the society to have its building reconstructed. Therefore, when it comes to deciding the prayer for temporary injunction, the Court's approach should normally be avoidance of halting of the redevelopment process in cases where it is possible to secure the rights of the developer atleast to some extent. The ultimate interest of the developer in undertaking redevelopment project is to earn profits. When rights of residents of dilapidated buildings to reside in safe houses is pitted against the rights of the developer to earn profits through redevelopment contracts, the

latter must yield to the former atleast when it comes to consideration of grant of temporary injunction. This is because developer's loss of opportunity to earn profits can always be made good by awarding monetary decree in his favour. However, if redevelopment project of buildings is halted till decision of suit filed by the developer, the loss caused to the residents of the building cannot be undone. This is particularly true where the old buildings are not in habitable condition. Therefore *prima facie* inquiry in such cases would ordinarily revolve around the issue as to who is guilty of breach of Development Agreement so as to put the guilty party to terms. Thus, if the society members are *prima facie* found to have terminated the Development Agreement in an illegal manner, the Court can put the society to terms before allowing the redevelopment process to progress further through another developer.

34) Reverting to the facts of the case, the learned Single Judge has considered Plaintiff's prayer in respect of two offers and three letters (16 November 2022, 3 December 2022 and 14 December 2022) and has formed a *prima-facie* opinion that the same do not result into a concluded contract between the parties. In our view, the learned Single Judge in the present case was driven to conduct *prima-facie* enquiry into the aspect of existence of concluded contract on account of the manner in which the plaint and prayers therein are couched. If Plaintiff

was to approach the learned Trial Judge with a plain case that it wants specific performance of the Development Agreement dated 16 December 2011 coupled with prayer for setting aside the termination notice, there would have been no occasion for the learned Single Judge to enquire into existence of concluded contract. It is the Plaintiff who took the learned Single Judge in the direction of existence of concluded contract on account of declaration sought by it that the two offers and three letters are enforceable in law as if they are a contract. Once Plaintiff approaches the Trial Judge with a case that the two offers and three letters are enforceable as a contract, in our view, it became necessary for the learned Single Judge to enquire about existence of *prima-facie* case in that regard. We have already observed that the issue whether the two Offers and three letters constitute a concluded contract or not is a triable issue which can be decided while finally deciding the suit.

35) As of now we do not consider it necessary to delve deeper into the issue of the two Offers and three letters constituting a concluded contract or not. However, one issue that we would like to *prima facie* answer at this stage is whether the redevelopment process can today proceed on the basis of Development Agreement dated 16 December 2011? The parties have discussed fresh commercial terms. It was necessary for Plaintiff and the Society to execute a fresh

Development Agreement or atleast an Addendum to the earlier Development Agreement incorporating the revised commercial terms. Plaintiff is aware of this position and therefore has taken a plea that the two Offers and three letters constitute a concluded contract. In ordinary course, if parties were not to litigate, the revised agreed terms would have taken the shape of a Supplemental Agreement, signed by both the sides, which stage could not occur in the present case. This factor has been considered by the learned Single Judge as a relevant consideration for determining whether Plaintiff has made out a *prima facie* case or not. Based on the material before it, the learned Single Judge has recorded a *prima-facie* finding that as of now there is no concluded contract between the parties. We are not inclined to interfere in the *prima facie* findings recorded by the learned Single Judge by applying the twin tests, discussed above, of (i) impermissibility to halt the redevelopment process in the light of possibility of protecting rights of developer and (ii) difficulty in progressing the reconstruction of society's building on the basis of old Development Agreement without executing a new agreement/Addendum.

36) Now we proceed to examine the manner in which the rights of the Plaintiff can be protected without halting the process of reconstruction of Society's building. It is seen that the plaint contains a prayer for recovery of amount of

Rs.8,09,51,502/- comprising of Rs.2,63,19,475/- towards expenditure incurred by the Plaintiff and Rs.5,46,32,027/- representing 18% interest till 30 September 2023. Additionally, Plaintiff has also claimed damages of Rs. 40,03,69,328.42/- from Defendant No.1. As observed above, the ultimate object of the Plaintiff-Developer in carrying out redevelopment process is to earn profits out of the project. Plaintiff is a developer by profession. Thus, there is alternate mode of performance of contract in the form of awarding a monetary sum in Plaintiff's favour representing the loss of profits due to completion of project by Defendant No. 2. Which party is responsible for non-completion of project by Plaintiff and for preventing it from earning profits therefrom is something which would be decided at the end of trial of the Suit. Therefore, even if Defendant No.2 carries on redevelopment process during pendency of the suit and Plaintiff ultimately succeeds in the suit, he can be compensated by awarding the sum prayed for in prayer clauses (e) and/or (f) in the plaint. In that sense, no irreparable loss would be caused to the Plaintiff on account of refusal of temporary injunction.

37) So far as the balance of convenience is concerned, the same appears to be tilted heavily in favour of first Defendant-Society and against the Plaintiff. Though the learned Single Judge has *prima-facie* absolved Plaintiff of allegation of delay in completion of redevelopment project,

the fact remains that the Society's building is not redeveloped during the last 14 long years. It is Society's contention that the building is in a dilapidated condition. Photographs attached with the appeal filed by the Society indicates that the condition of the building is not too healthy. The society had proposed redevelopment of the building in the year 2011, which is incomplete for the last 14 long years. The flat occupiers are currently occupying smaller tenements and if the redevelopment process is completed, they would be shifted in safe and comfortable apartments of 645 sq.ft. carpet area offered by Defendant No. 2. The issue for consideration is whether the members of the Society can be put to the risk of residing in smaller flats in a dilapidated building till the Plaintiff gets decided its alleged entitlement to earn profits through the redevelopment contract? The answer to the question appears to be emphatic in the negative.

38) As of now, Plaintiff claims to have spent amount of Rs.2,63,19,475/- in pursuance of Development Agreement executed by the Society. This amount includes amount of Rs. 1,59,00,000/- paid to society members towards corpus. The amount also includes EMD paid to society, stamp duty, registration charges and miscellaneous expenses. The corpus of Rs. 3,00,000/- to each member appears to be paid in the year 2012 while executing the consent affidavits. Plaintiff has claimed 18% interest on the amount spent by him and this is

how sought a decree for Rs. 8,09,51,502/- is sought against the Society. It appears that for seeking NOC of Plaintiff, Defendant No. 2 had offered the principal amount of expenditure incurred of Rs. 2.60 crores to the Plaintiff vide Cheque dated 20 January 2025, which the Plaintiff has refused to accept/encash.

39) Plaintiff has monetary claim of Rs. 8,09,51,502/- in addition to damages of Rs. 40.02 crores. Plaintiff will have to prove damages in case he succeeds in securing a declaration that the termination is unlawful. Since the members of the Society have changed their mind in few days after accepting revised offer and have opted to appoint a new developer for securing a better deal, *prima facie*, the society will have to reimburse, at this stage, atleast the expenses incurred by Plaintiff. In our view therefore, after adding reasonable interest @ 8% on the principal amount claimed to have been spent by the Plaintiff, it would be appropriate to direct the first Defendant-Society to deposit a lump sum amount of Rs. 5 crores to secure atleast the expenses incurred by the Plaintiff with some interest. This course of action would balance the equities between the parties. While reconstruction of society's building would not be halted, the Society does not go absolutely scot-free and is made liable to some extent for sudden change of their mind and scouting for better offers in the market despite agreeing for revised offer

given by the Plaintiff. If termination of the Development Agreement is ultimately found to be unlawful, the Defendant-Society can further be held liable to compensate the Plaintiff for the damages suffered by it.

40) Out of the amount of Rs. 5 crores which we propose to direct the first Defendant-Society to deposit, Defendant No. 2 has already shown willingness to pay to Plaintiff the amount of 2.60 crores. The Society's burden would only be towards balance amount of Rs. 2.40 crores. Since the Society had imposed the condition on the new developer securing NOC of Plaintiff, it is for the society to request Defendant No. 2 to bear the burden in respect of the remaining amount of Rs. 2.40 crores also. We express no opinion on the rights and liabilities arising out of arrangements *inter se* between the Defendants.

41) In our view therefore, the arrangement of making the Society reimburse the expenditure incurred by Plaintiff with some interest would protect the rights of the Plaintiff to some extent. It is therefore not necessary to halt the process of reconstruction of the building. Since this Court is directing deposit of amount of expenses incurred by Plaintiff with some interest, the condition imposed by the learned Single Judge in the impugned order for taking Plaintiff's NOC needs to be set aside. Leaving open the aspect of seeking Plaintiff's NOC

would delay redevelopment of Society's building indefinitely. As observed above, despite offering Rs. 2.60 crores by Defendant No.2, Plaintiff has refused to issue its NOC. This means that despite non-grant of temporary injunction in Plaintiff's favour, it would continue to prevent Defendants from reconstructing the building by refusing to grant NOC. This would be like indirect securing of temporary injunction, which is expressly not granted in Plaintiff's favour. Since this Court is securing the monetary claim of the Plaintiff to some extent, the condition of securing Plaintiff's NOC by the new developer needs to be set aside. This would ensure that the redevelopment process is not delayed any further.

42) We accordingly proceed to pass the following order :-

(i) The impugned order dated 24 October 2024 passed by the learned Single Judge refusing to grant temporary injunction in Plaintiff's favour is upheld and Commercial Appeal No.45/2025 is **dismissed**.

(ii) Defendants shall deposit amount of Rs. 5 crores in this Court within 6 weeks, out of which the amount of Rs.2.60 crores shall be deposited by Defendant No. 2 and amount of Rs. 2.40 crores shall be deposited by Defendant No.1-Society. Defendant No.1-Society shall be at liberty to seek deposit of its share of Rs. 2.40

crores from Defendant No. 2. Plaintiff shall be at liberty to withdraw the deposited amount alongwith accrued interest, after submitting an undertaking for bringing back the withdrawn amount with interest to the Court in the event of dismissal of its Suit.

(iii) Upon the above deposit being made, the condition of securing NOC of Plaintiff by the Defendant No.2 for undertaking redevelopment of the building of Defendant No.1 in pursuance of order dated 24 October 2024 shall stand set aside and Commercial Appeal (L) No. 17320/2025 filed by Defendant No.1 is **allowed** to this limited extent. If Defendants fail to deposit the amount as directed above within the stipulated time, Commercial Appeal (L) No. 17320/2025 shall stand dismissed and condition of seeking NOC of Plaintiff shall revive.

(iv) The suit shall be decided uninfluenced by any of the observations made in the judgment.

43) There shall be no order as to costs.

44) With disposal of the Appeals, nothing would survive in the Interim Applications and the same also accordingly stand disposed of.

[SANDEEP V. MARNE, J.]

[CHIEF JUSTICE]

NEETA
SHAILESH
SAWANT

Digitally signed by
NEETA SHAILESH
SAWANT

Date: 2025.08.19
16:34:04 +0530