

**HON'BLE SRI JUSTICE SANJAY KUMAR**

**AND**

**HON'BLE Dr. JUSTICE SHAMEEM AKTHER**

**CIVIL MISCELLANEOUS APPEAL No.347 OF 2017**

**JUDGMENT:** (Per Hon'ble Dr. Justice Shameem Akther)

1. This appeal arises from the order dated 16.03.2017 passed in A.O.P. No.970 of 2016 by the XV Additional District Judge-cum-II Additional Family Judge, Ranga Reddy District at Kukatpally (For short, 'the trial Court).

2. Heard Sri N.Subba Rao, learned counsel for the appellants-respondents, and Sri R.A.Achuthanand, learned counsel for the respondents-petitioners and perused the record.

3. The case of the respondents herein as averred in the petition, in brief, is that they are owners of Plot bearing Nos.115 and 116 admeasuring 481.43 Sq. yards each totaling 962.86 Sq. yards, situated in Survey No.78, Madhapur village, Serilingampally Mandal, Ranga Reddy District, entered into development agreement-cum-General Power of Attorney dated 17.09.2012 with the appellants herein for construction and development of the land as per the terms and conditions mentioned in the agreement and accordingly the respondents herein had received an amount of Rs.50,00,000/- from the appellants towards interest free security deposit by way of demand draft dated 10.09.2012, which amount would be refunded to them only after completion of the entrusted work *i.e.*, after having fully furnished the flats along with occupancy certificates. Further, it was agreed that the appellants herein should construct cellar and stilt for parking and five upper floors with their own fund with a total

built up area of approximately 24,000/- sq. feet, inclusive of all common area, balcony and permissible area of premises and as such complete the entrusted work within 15 months from the date of plans got sanctioned by the G.H.M.C. The appellants failed to adhere to the terms and conditions of the development agreement, suppressing all the facts, arbitrarily got issued a legal notice dated 23.05.2016 to the respondents herein asking to refund the interest free security deposit. The respondents herein issued a reply notice dated 02.06.2016 requesting the appellants herein to adhere to the specifications of the development agreement and replace the defective items with the agreed specifications and as such called upon them to comply with the same within a period of one (1) month. After receipt of the same, the appellants herein gave reply notice dated 17.06.2016 with all false allegations stating that they leased out some of the flats fell to the share of the respondents to realize the deposited amount and called upon the respondents herein to register Flat No.502 and the appellants herein also alienated the schedule property, without the consent of the respondents and deprived their right by receiving sale consideration in respect of said flats. When the appellants have illegally alienated the property of the respondents, which the respondents are legally entitled to, they can withhold the sale consideration amounts with them and as such there are chances of misusing the sale consideration, which cannot be recovered by the respondents in future. Hence, the respondents herein filed the petition seeking a direction to the appellants to deposit the sale consideration received by them in respect of schedule C1 and C2 to the credit of the instant petition to protect their interests.

4. The appellants herein filed counter admitting the ownership of the respondents herein in respect of Plot bearing Nos.115 and 116 admeasuring 481.43 Sq. yards each totaling 962.86 Sq. yards, situated in

Survey No.78, Madhapur village, Serilingampally Mandal, Ranga Reddy District and execution of development agreement-cum-General Power of Attorney dated 17.09.2012 between them. It was further contended therein that they agreed to give 12,000 Sq. feet area, to the respondents herein in the ratio of 50:50 and as such the claim of the respondents herein is illegal and they are not entitled to any area more than 50%, as agreed under the development agreement. As the construction was over, the appellants issued notice to the respondents to occupy the flats allotted to them and return the interest free security deposit amount but without returning the same, by taking into illegal clauses of the agreement, the respondents got issued reply notice with false averments. Under these circumstances, appellants were compelled to alienate flat Nos.C1 and C2 and those flats are in possession and enjoyment of those purchasers. The appellants have 50% share over the schedule property and sold away flat Nos.C1 and C2, as flat No.C1 fell to their share exclusively but flat No.C2 fell to the share of both the parties and as such the amount has to be shared equally in respect of flat No.C2. Apart from these, the appellants have created oral lease in respect of flat Nos.A1, A2, A3, B1, B2, B3 and C3 in favour of T.Raghavendra Rao with effect from June, 2016 and he is running service apartment and as such the appellants herein were compelled to lease out the same only to meet the expenditure made and to realize the amounts that were incurred to met out the terms and conditions of the agreement. It was further contended that the notice issued by the respondents herein invoking clause 29 of the development agreement for arbitration proceedings is not at all applicable and there is no issue to be adjudicated and finally requested to dismiss the petition.

5. The trial Court, after hearing arguments of both parties and considering the material available on record, allowed the petition directing

the appellants herein to deposit the sale consideration of flat Nos.C1 and C2 to the credit of the petition within thirty (30) days from the date of impugned order.

6. Learned counsel for the appellants would contend that the trial Court failed to appreciate the facts and circumstances of the case and erroneously directed the appellants to deposit the sale proceeds of flat Nos.C1 and C2; the arbitration petition itself is not maintainable; the built up area is required to be shared equally; flat No.C1 fell to the share of the appellants and no permission is required to alienate the same; flat No.C2 is required to be shared by both the parties equally; the direction to deposit the entire sale consideration of flat No.C1 is incorrect, when an amount of Rs.50 lakhs is with the respondents as deposited; the trial Court ought not have passed the direction to deposit the sale proceeds; and ultimately, prayed to set aside the impugned order.

7. On the other hand, the learned counsel for the respondents has supported the impugned order and decree and contended that there is no infirmity in the impugned order; there are no grounds to interfere with the said order; and ultimately, prayed to confirm the same by dismissing the appeal.

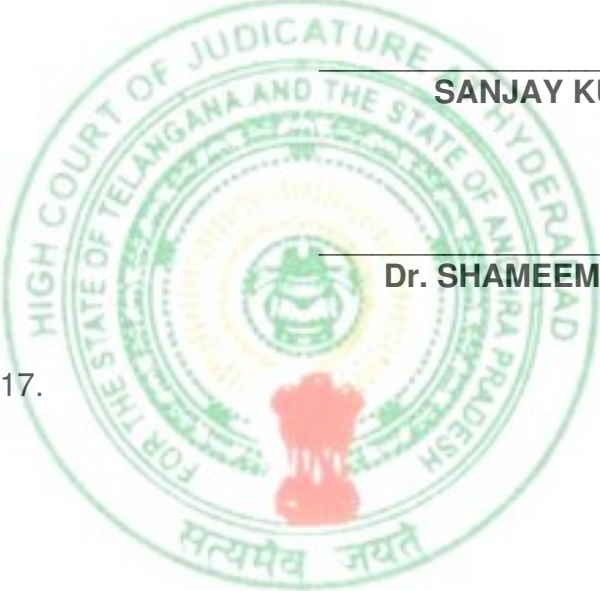
8. In view of the contentions putforth, the point for determination is, whether the impugned order dated 16.03.2017 passed by the Court below in A.O.P. No.970 of 2016 is liable to be set aside?

9. As per the record placed, there is development agreement dated 17.09.2012 between the parties. Respondent Nos.1 and 2 are the owners of the land and the appellants are the developers. The respondents have to complete the construction within 15 months from the date of approval of the plans. The contention of the respondents is that the construction has

not been completed. The appellants have sold flat Nos.C1 and C2 under the registered sale deeds and received sale consideration without the consent and permission of the respondents. As per Clause No.3 of the development agreement, the developers have agreed to give 12000 square feet (including all common areas) minimum guarantee floor area out of five upper floors only, excluding the cellar and stilt to the land owners at any cost and the cellar and stilt parking would be shared 50:50 ratio among the land owners and developers. There is also mention in Clause No.1 of the development agreement that the land owners and developers shall be entitled to the constructed area in 50:50 ratio. It is contended by the respondents that the building has not been constructed as per the terms and conditions of the development agreement and there are many deficiencies. The appellants have let out the flats that had fallen to the share of the respondents. As per the terms of the development agreement, the appellants have no absolute right, title and interest to sell flat Nos.C1 and C2. 50% share claimed by the appellants would not entitle them to alienate Flat Nos.C1 and C2. Therefore, it cannot be said that the respondents have no right to question the sale of those two flats. When there is no absolute right over the flat Nos.C1 and C2, the appellants ought not have sold the same unilaterally. The trial Court while analyzing the material on record, had assigned elaborate reasons and ultimately directed the appellants to deposit the entire sale consideration received by the appellants in respect of sale of flat Nos.C1 and C2. There is arbitration clause in agreement. The deposit of Rs.50,00,000/- is refundable on completion of construction as per the terms of agreement and delivery of due share of flats to respondents. The allegations are that the construction is not made as per the specification mentioned in agreement and the appellants let out the flats fallen to the share of respondents. So that the advance amount cannot adjust towards part sale

consideration of flat Nos.C1 and C2. There is no force in the contentions putforth on behalf of the appellants. The interest of respondent Nos.1 and 2 requires to be protected. We do not find any infirmity in the impugned order and the same is liable to be confirmed. Therefore, the appeal is devoid of merit.

10. In the result, the appeal is dismissed confirming the impugned order passed by the trial Court in A.O.P. No.970 of 2006. As a sequel, pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.



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SANJAY KUMAR, J

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Dr. SHAMEEM AKTHER, J

Date: 29-08-2017.  
Dsh/siva

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**CIVIL MISCELLANEOUS APPEAL No.347 OF 2017**

(Judgment of the Division Bench delivered by  
Hon'ble Dr. Justice Shameem Akther)

Date. 29-08-2017

**DSH**