**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 23RD DAY OF DECEMBER 2020**

**BEFORE**

**THE HON'BLE MR.JUSTICE ASHOK G. NIJAGANNAVAR**

**R.F.A. NO.572 OF 2019 (INJ)**

**BETWEEN:**

1. SRI. S. SRIDHAR REDDY,
   AGED ABOUT 49 YEARS,
   S/O SRI. S. PULLA REDDY,

2. SMT S.SREEDEVI,
   AGED ABOUT 43 YEARS,
   W/O SRI. S.SRIDHAR REDDY,

   BOTH ARE RESIDING AT
   FLAT NO.401,
   S.V. SKY VIEW APARTMENTS,
   NO.2219, 2ND CROSS,
   SHRIDI SAI LAYOUT,
   MUNNEKOLALA,
   BENGALURU-560037. ...APPELLANTS

(BY SRI REUBEN JACOB, ADVOCATE)

**AND:**

SRI JASPAL SINGH
S/O SRI. SARDAR P CHATTAR SINGH,
SINCE DEAD BY LRS

1. SMT.RAJINDER KAUR,
   AGED ABOUT 55 YEARS,
   W/O LATE SRI. JASPAL SINGH.

2. SRI. AMANPREET SINGH,
   AGED ABOUT 32 YEARS,
   S/O LATE SRI. JASPAL SINGH.

3. MISS GURLEEN KAUR @ NITYA,
   AGED ABOUT 30 YEARS,
   D/O LATE SRI. JASPAL SINGH,

   RESPONDENTS ARE
   RESIDING AT NO.18/2,
   2ND FLOOR,
   YELLAMMAN KOIL "C"
   NO.2ND STREET, ULSOOR,
   BENGALURU-560008.

...RESPONDENTS

(BY SRI V.B.SHIVAKUMAR, ADVOCATE FOR R1 (NOC VK)
SRI S.A.SAMI, ADVOCATE FOR C/R1 TO R3)

****

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 OF CPC., AGAINST THE ORDER DATED:29.01.2019 PASSED IN OS NO.25176/2014 ON THE FILE OF THE LXXIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU, ALLOWING THE IA FILED UNDER ORDER 7 RULE 11 (a) OF CPC., FOR REJECTION OF PLAINT.

THIS APPEAL COMING ON FOR ORDERS THIS DAY, THE COURT DELIVERED THE FOLLOWING PHYSICAL HEARING:

**JUDGMENT**

Appellant Nos.1 and 2, respondent Nos.1 to 3 and their respective counsel present before the Court.

2. Compromise petition under Order XXIII Rule 3 of CPC is filed by both parties, which is also signed by their respective counsel. The relevant portion stated in the compromise petition reads as under:

"2. TERMS AND CONDITIONS OF SETTLEMENT:

i. The appellants and the respondents have agreed to continue to comply, with the legal obligations entered into vide MOU dated 11-11-2008 and JDA dated 06-08-2011, subject to the changes, additional covenants and additional consideration that is agreed in terms of the MOU, Signed by all the parties on 15.12.2020 in presence of the witness, both the parties agreed to adhere to all the terms of MOU dated 15.12.2020 which shall become a part of this compromise petition under order XXIII Rule 3 of the code of civil procedure.

ii. Under the MOU dated 11-11-2008, the appellants had paid the respondent a sum of Rs.50,00,000/- which payment is also reflected and reiterated in the JDA dated 06-08-2011. It is hereby agreed that the appellants shall pay an additional amount of Rs.70,00,000/- (Rupees Seventy Lakhs Only) as non-fundable good will amount in addition to Rs.50,00,000/- (Rupees Fifty Lakhs Only) already paid by the appellants under the MOU dated 11-11-2008 and JDA dated 06-08-2011. The said amount of Rs.70,00,000/- shall be paid in the following manner:

(a) Rs.1,00,000/- is paid to the respondents by the appellants, by way of Cheque bearing No.295512 dated: 15.12.2020 drawn on Vijaya Bank, Bengaluru, which cheque is drawn in the name of the respondent No.1.
(b) Rs.19,00,000/- is paid on this day to the respondents by the appellants, by way of cheque which can be encashed by the respondents only after this compromise petition is accepted by the Hon'ble Court.
(c) Rs.25,00,000/- to be paid by the appellants to the respondents

within six months from this compromise order for item number 2.

(d) Rs.25,00,000/- to be paid by the appellants to the respondents on the completion of the building constriction on Item No.1 property or six months which ever is earlier.

The aforesaid payments will be made by the appellants by way of cheques drawn on either respondent No.1 or respondent No.2 or respondent No.3, as per the instructions received from the respondent No.1 and payments made to one of them in terms of the said instruction is sufficient compliance of the payments to be made in terms of the aforesaid clauses.

3. REGARDING ITEM NO.2 PROPERTY:

i. As stated above the construction of the super structure of the building on Item No.2 property is already completed. However, the building is not yet finished and before commencing with the further work on the said building in furtherance of this MOU, the appellants have to get a structural audit/stability certificate of the building from an appropriate

certified engineer in order to certify the stability of the existing building and that the same is fit for continuation of construction and completion of the building.

ii. The appellants shall be soley responsible for the safety and strength and liability in this commercial structure for all sorts of operation and including all statutory safety requirements.

iii. As stated above, the JDA dated 06-08-2011 executed between late Mr.Jaspal Singh and the appellants, is not registered and late Mr.Jaspal Singh was also not able to execute the GPA before his demise. However the appellants have obtained the sanction plan in the name of late Mr.Jaspal Singh and after obtaining the consent of late Mr.Jaspal Singh on the working drawings has proceeded with the construction on the Item No.2 property. Hence, both parties hereby agree that in order to ensure that the legal documentation in respect of the building constructed on Item No.2 is

complete and also in order to ensure that the appellant's entitlement to 50% of share in the built up area as well as the undivided share in the land is vested properly in accordance with law, the JDA dated 06-08-2011 is registered, if the registration of the said JDA is permitted by the concerned authorities. At the time of the registration of the JDA, the respondents agree to execute a GPA in respect of the Item NO.2 property.

iv. In the event the registration of the JDA dated 06-08-2011 is not permitted by the concerned authority, the respondents shall execute a fresh Joint Development Agreement ("JDA") and also a General Power of Attorney ("GPA") in respect of the Item No.2 property with 50% sharing ratio between the respondents and the appellants, with the same terms as contained in the MOU dated 11-11-2008 and JDA dated 06-08-2011.

v. The appellants had already obtained a sanctioned plan from the BBMP vide LP No. AddlCE / 1568 / 11-12 dated 19.06.2012 in respect of the building to be constructed on Item No.2 property in the name of late Mr.Jaspal Singh. Hence, there is no requirement of a fresh sanctioned plan but the appellants shall get the said sanctioned plan revalidated in order to complete the construction.

vi. The appellants shall complete the remaining construction on the item No.2 property within six months from the date of the registration of JDA and GPA or the date of the revalidation of the sanctioned plan, whichever is late.

vii. In the event, there is delay in completing the remaining construction on the Item No.2 property by the appellants, beyond the time agreed in terms of clause 9 above, the appellants shall pay a compensation amount of Rs.1,00,000/-

for each month of delay till the handing over of the respondents share.

4. REGARDING ITEM NO.1 PROPERTY

i. The respondents shall execute a Joint Development Agreement ("JDA") and General Power of Attorney ("GPA") in favour of the appellants in respect of Item No.1 property immediately after this compromise petition is accepted by the Hon'ble Court.

ii. The appellants shall secure appropriate sanction plan from BBMP together with permissions from the appropriate authorities for commencement of the construction on the Item No.1 property.

iii. On the sanction of the building plan, the sharing agreement shall be executed between the respondents and the appellants and the sharing ratio is 50% between the respondents and the appellants as agreed in the MOU dated 11-11-2008.

iv. The appellants are disentitled to borrow loan on the 50% share of the respondents on the strength of the JDA. However, the appellants shall be entitled to raise funds from Banks or financial institutions by offering the share of the appellants as security after obtaining NOC from owners/respondents of the land specifying extended details of property in the floors represented for which the respondents agree.

v. It shall be the obligation of the appellants to secure written permissions from BBMP, BESCOM, BWSSB or any other agency for the purpose of completing the construction and providing amenities to the building.

vi. The appellants shall complete the construction of the building on the Item No.1 property within 24 months from the date of the registration of the

JDA and GPA or the date of the sanction of the building plan by the BBMP, whichever is later. Both the parties hereby agree that the appellants shall be entitled to a grace period of six months in regard to the completion of the construction in the Item No.1 property in addition to the 24 months.

vii. In the event there is delay in completing the construction on the Item No.1 property by the appellants, beyond the time agreed in terms of clause 4(vi) above, the appellants shall pay a compensation amount of Rs.2,00,000/- for each month of delay till the handing over of the respondents share.

viii. It shall be the obligation of the appellants to make necessary application before the RERA authority in respect of the construction in Item No.1 property. The construction shall

be strictly in accordance with the statutory provisions.

ix. In the event of any violation of the building by laws, the respondents shall not be responsible for any prosecution or claims or demolition that may be undertaken by the authorities for any such violations.

5. COMMON CLAUSES FOR BOTH ITEM NO.1 AND ITEM NO.2 PROPERTIES:

i. The name of the development properties is to be decided by the appellants in consultation with the respondents.

ii. Any charges that are paid as statutory deposits, security deposits, official charges, cess tax and other fees etc., by the appellants for the purpose of securing approvals, plans, utility connections, NOCs, etc., which are hereinafter referred to as “Official Charges’ has to be borne equally by the respondents and the appellants in the ratio of 50% each. All such official

charges shall be borne by the appellants and on being notified of such payment by the appellants, the respondents have to reimburse the said official charges, prorate after the completion of the respective construction on Item No.1 and Item No.2 properties.

iii. The fixtures and fittings shall be at the cost of the appellants.

iv. In the event any terms and conditions of this MOU are breached by the appellants, the non-fundable goodwill amount paid to the respondents by the appellants shall be forfeited by the respondents.

WHEREFORE, plaintiff / Appellants and Defendants/ Respondents pray that this Hon'ble Court may be pleased to dispose of the above appeal (R.F.A.No.572/2019 arising out of O.S.No.25176/2014) in terms of this compromise petition, in the interest of justice and equity."

3. Both parties submit that they have voluntarily agreed to terms and conditions of the compromise as shown in the compromise petition without there being any coercion or pressure and they have signed the compromise petition. They submit that they have agreed for the terms and conditions in respect of schedule item Nos.1 and 2. Both parties have prayed to dispose of the appeal in terms of compromise petition.

4. In view of the submission of parties and their respective counsel, this regular first appeal is disposed of in terms of compromise petition.

**Sd/-**
**JUDGE**

BSR