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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 02ND DAY OF NOVEMBER 2021

THE HON'BLE MR. JUSTICE N. SATHISH KUMAR

O.P.No.495 of 2018

and

O.P.No. 616 of 2016

O.P.No.495 of 2018

In the matter of Arbitration and
Conciliation Act, 1996

And

In the matter of Arbitration of Disputes
between

M/s. Srijan developers LLP Vs.

Mrs. E.S.M. Ahmed Mariyam & 16
Others in relation to the joint
Development Agreement dated
14.02.2007

and

In the matter of award passed by
Mr.Justice K.P.Sivasubramaniam,
Sole Arbitrator, Chennai

1.Mrs. E.S.M.Ahamed Mariyam,
W/o. Mr.S. Hamid Abdul Quadir,
No. 15, College Road,
Chennai – 600 006.

2.Mrs. S.M.K.Hiriya,
W/o. Mr. S.M.A.J Habeeb Md. Sadakathullah,
No. 15, Vidyodaya 2nd Cross Street,
T.Nagar, Chennai – 600 017.

3. Mr. S.M.H.Sharmila,
W/o. Late P.R.L.S Hussain Sadak abdul Rahman



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No. 15, College Road,
Chennai – 600 006.

4. Mr.S.M.K.Hamid Ali,
S/o. Mr.S.M Kabeer,
No. 6, Corporation School Road,
Nungambakkam,
Chennai – 600 034.

5. S.M.K.Sammana,
S/o. Mr.S.M Kabeer,
No. 6, Corporation School Road,
Nungambakkam,
Chennai – 600 034.

6. Mr.S.M.K.Hussain Abdul Cader,
S/o. Mr.S.M Kabeer,
No. 6, Corporation School Road,
Nungambakkam,
Chennai – 600 034.

7.Mr. S.M.A.J.Ammath Nazeera,
W/o. Mr.S.M.A.S Hamid Hussain,
No. 1, Subba Rao Avenue, 1st Street,
Chennai – 600 006.

8.Mrs.S.M.A.J.Vajeedha,
W/o M. AslamHussain,
No. 1A, Subba Rao Avenue, 1st Street,
Nungambakkam,
Chennai – 600 034.

9 . Mrs.S.M.Habibathul Alima,
W/o. S.M. Basheer Ahmed,
No.3, Wallace Garden 1st Street,
Chennai – 600 006.

10. Mr.S.M.Y.Asam Hussain,
S/o. S.M. Mohamed Yousuff,
No. 10, Habibullah Avenue,



Chennai – 600 034.

11. Mrs.Fathima Buhari,
W/o. Mohamed Jahufar Buhari
No. 02, NawabHabibullah Avenue Cross Street,
Greams Road,
Chennai – 600 006.

12. Mr. Mohamed Abdul Cader,
S/o. Late M. Dastagir,
No. 14, Josier Street,
Nungambakkam,
Chennai – 600 034.

...Petitioner

Vs

1. M/s. PS Srijan Developers LLP,
Rep. by. Its Authorised Signatory,
Mr.Praful Kumar Nahata,
No. 36/1, Elgin Road, Kolkata – 700 002.
Also at
New No. 56(44), Block A, Suite No. 10,
4th Floor, Thirumalai Pillai Road,
T.Nagar, Chennai – 600 017.

2. Mr. S.M.K. Sadak Jaffer,
S/o. Late S.M. Kabeer,
No. 6, Corporation School Road,
Nungambakkam,
Chennai – 600 034.

3.Mr.S.M.A.J. Habeeb Mohammed Sadakathullah,
S/o. S.M. Ahmed jalaluddin,
No. 15, Vidyodaya 2nd Cross Street,
Chennai – 600 017.

4. Mr. S.M.A.J Abdul Haleem
S/o. Late S.M.Ahmed Jalaluddin,
No. 15-A, College Road,
Chennai – 600 006.



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5. Mr. S.M.Y.Mohamed Sathak,
S/o. S.M. Mohamed Yousuff,
No. 02, Habibullah Avenue,
Chennai – 600 034.

6. Justice K.P.Sivasubramaniam (Retd)
Sole Arbitrator,
New No. 47, Old No. 46, Pulla Avenue,
Shenoy Nagar, Chennai – 30.

...Respondents

O.P.No. 495 of 2016

Original petition praying that this Hon'ble Court be pleased to set aside the award dated 19.03.2018 passed by the 6th respondent in Arbitration dispute between the petitioners, Respondents 2 to 5 and the 1st Respondent and consequently direct the 1st respondent to pay to the petitioners and the respondents 2 to 5 damages of Rs.8,20,00,000/- (Eight Crores twenty lakhs) with subsequent interest @ 18% per annum from the date of filing of the counter claim; further direct the return of the title deeds from the escrow account to the petitioners and the respondents 2 to 5 jointly; and also direct the 1st respondent herein to pay the costs of this petition to the petitioner.

O.P.No. 616 of 2016

In the matter of Arbitration and
Conciliation Act, 1996

And

In the matter of Arbitration of Dispute
between

M/s. Srijan developers LLP Vs.

Mrs. E.S.M. Ahmed Mariyam & 16
Others in relation to the joint
Development Agreement dated
14.02.2007



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M/s. PS Srijan Developers LLP,
(Formerly Known as M/s. PS Srijan Developers)
Rep. by. Its Authorised Signatory,
Mr.Praful Kumar Nahata,
No. 36/1, Elgin Road, Kolkata – 700 002.
Also at
New No. 56(44), Block A, Suite No. 10,
4th Floor, Thirumalai Pillai Road,
T.Nagar, Chennai – 600 017.

. . . Petitioner

Versus

1.Mrs. E.S.M.Ahamed Mariyam,
W/o. Mr.S. Hamid Abdul Quadir,
No. 15, College Road,
Chennai – 600 006.

2.Mrs. S.M.K.Hiriya,
W/o. Mr. S.M. Habeeb Mohammed Sadakathullah,
No. 6, Rajaji North Street,
Nungambakkam,
Chennai – 600 034.

3.Mr. S.M.K. Sadak Jaffer,
S/o. Mr.S.M. Kabeer,
No. 6, Rajaji North Street,
Nungambakkam,
Chennai – 600 006.

4. Mr. S.M.H.Sharmila,
D/o. Mr.S. Hamid Abdul Quadir,
No. 15, College Road,
Chennai – 600 006.

5. Mr.S.M.K.Hamid Ali,
S/o. Mr.S.M Kabeer,
No. 6, Rajaji North Street,
Nungambakkam,
Chennai – 600 034.

6. S.M.K.Samana,
W/o. Mr.Mohamed Arshad,



No. 6, Rajaji North Street,
Nungambakkam,
Chennai – 600 034.

7. Mr.S.M.K.Hussain Abdul Cader,
S/o. Mr.S.M.Kabeer,
No. 6, Rajaji North Street,
Nungambakkam,
Chennai – 600 034.

8. Mr.S.M.A.J. Habeeb Mohammed Sadakathullah,
S/o. Late S.M. Ahmed jalaluddin,
No. 8, Vidyodaya II Cross Street,
Chennai – 600 034.

9. Mr. S.M.A.J Abdul Haleem
S/o. Late S.M.Ahmed Jalaluddin,
No. 15-A, College Road,
Chennai – 600 006.

10.Mr. S.M.A.J.Ammath Nazeera,
W/o. Mr.S.M.A.S Hamid Hussain,
No. 1A, Subba Rao Avenue
Chennai – 600 006.

11.Mrs.S.M.A.J.Vajeedha,
W/o Mr. S.M.Y Aslam Hussain,
No. 1A, Subba Rao Avenue
Chennai – 600 006.

12. Mrs.S.M.Habibathul Alima,
W/o. Mr.E.S.M. Basheer Ahmed,
No.3, Wallace Garden 1st Street,
Chennai – 600 006.

13. Mr.S.M.Y.Asam Hussain,
S/o. Mr.S.M. Mohamed Yousuff,
No. 10, Habibullah Avenue,
1st Cross Street,
Chennai – 600 006.



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14. Mrs.S.M.Y.Fathima,
W/o. Mr.S.M.B. Buhari
No. 10, Habibullah Avenue,
1st Cross Street,
Chennai – 600 006.

15. Mr. S.M.Y.Mohamed Sathak,
S/o. Mr.S.M. Mohamed Yousuff,
No. 10, Habibullah Avenue,
Chennai – 600 006.

16. Mr.S.M. Mohamed Abdul Cader,
S/o. Late S.M. Dastagir,
No. 4/21, Josier Street,
Nungambakkam,
Chennai – 600 034.

. . . Respondents

O.P. No.616 of 2018

Original petition praying that this Hon'ble Court be pleased to

1. Set aside the award dated 19.03.2018 passed by the Learned Sole Arbitrator and consequently direct the Respondents to specifically perform their part of the obligations of the Joint Development Agreement dated 14.02.2007 and amendment thereof by executing and registering sale deed or deeds/ co-operating in execution and registration of sale deed or deeds in respect of the suit property and receive the balance consideration and taking over 32% of the built up area in the Schedule Property, upon completion of construction and allotment of construction area, as per the terms of joint Development



Learned Sole Arbitrator

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2. Direct the respondents to pay the costs of the Petition.

These Original Petitions coming on this day before this court for hearing in the presence of Mr. A.Sirajudeen, Senior Advocate for J.Deliban Advocate for the petitioner in O.P.No.495/18 and for the respondents in O.P.No.616 of 2018 Mr.M.S.Krishnan, Senoir Counsel for M/s. AAV Partners, advocates for the respondents in O.P.No. 495 of 2018 and for the petitioner in O.P.No. 616 of 2018 and upon reading the petitions and the award dated 19/03/2018 filed in both Original petitions and memo of terms of compromise signed by the petitioners and the respondents in both original petitions therein with their respective advocates and the said advocates for the parties hereto praying this court to pass an order in terms and compromise morefully setout in the schedule hereunder, **it is ordered as follows:-**

1. That the petitioners 1 to 12 and respondents 2 to 5 on the one hand and the 1st respondent on the other hand had mutually agreed for a full and final settlement of Rs. 6,00,00,000/- (Rupees Six Crores Only/-) i.e, Rs. 3,00,00,000/- towards refund of security deposit Rs. 2,00,00,000/- towards interest and Rs. 1,00,00,000/- towards reimbursement of expenses, payable

to the 1st respondent by the petitioners 1 to 12 and Respondent 2 to 5 either



individually or jointly. Mr. Praful Kumar Nahata (Contact Number 90037 00000: E-mail ID praful@pssrijan.com) Shall receive the same in his capacity as the Designated partner of M/s. PS Srijan Developers LLP, Having PAN NO. AAJFP2025K, (Formerly known as M/s. PS Srijan developers), the Cheque or DD for every payment shall be drawn in the name of M/s. PS Srijan Developers LLP and the same shall be handed over to Mr. PrafulKumar Nahata in the following manner:

S.No.	Date	Amount
1.	02.12.2021	Rs. 1,00,00,000/-
2.	02.01.2022	Rs. 1,00,00,000/-
3.	02.02.2022	Rs. 1,00,00,000/-
4.	02.03.2022	Rs. 1,00,00,000/- (Deducting Applicable TDS)
5.	02.04.2022	Rs. 1,00,00,000/- (Deducting Applicable TDS)
6.	02.05.2022	Rs. 1,00,00,000/- (Deducting Applicable TDS)

2. That upon payments being received by the 1st respondent in full without default, the 1st respondent shall not have any objections for the petitioner 1 to 12 and Respondents 2 to 5 in receiving all the documents /Title deeds relating to the said property that are deposited into this Hon'ble court in relation to O.P.No.616 of 2018 and O.P.No.495 of 2018.

3. That upon payments being received by the 1st respondent in full without default, the Joint development Agreement dated 14.02.2007 as amended by the amendments dated 29.04.08 and 30.01.10 shall stand terminated and the General Power of Attorney dated 04.03.08 registered as

Doc.No. 288/08 in the office of the SRO, Thiruporur, shall stand revoked.



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4. That upon payments being received by the 1st respondent in full without default, all the mutual rights and obligations that arise as a result of the abovesaid joint development Agreement as amended and the power of attorney as stated above shall stand terminated and except the rights and obligations specified in this memo, the parties to these two proceedings shall have no other rights or obligations against each other. On such payment by the petitioners 1 to 12 and respondents 2 to 5 in full, the award passed by the arbitrator which is under challenge in these two original petitions shall stand fully satisfied.

5. That upon payments being received by the 1st respondent in full without default, the 1st Respondent shall execute all necessary documents, which are legally permissible in connection with the said property in order to put the petitioners 1 to 12 and Respondent 2 to 5 to status quo ante prior to the date of entering into joint development agreement.

6. That in case of any delay or default of payment by the petitioners 1 to 12 and Respondent 2 to 5 within the time as agreed above, with respect to the first 5 instalments, the petitioners 1 to 12 and Respondents 2 to 5 are liable to pay an interest accrued at the rate of 18% for the period delayed, to the 1st Respondent. In case of any default, which goes beyond the upper time limit of 02.05.2022, the Arbitral Award dated



shall be put to execution by the 1st respondent before the appropriate courts.

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7. That since the Joint development Agreement was entered in to by the petitioners 1 to 12 and Respondent 2 to 5 with a partnership firm and the same was converted into a limited liability partnership concern, and the managing partner in both are one and the same, this compromise binds the erstwhile firm also.

SCHEDULE

Memo of Compromise



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22.11.2021

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O.P. No.495 of 2018 and O.P. 616 of 2018

ORDER
DATED 02/11/2021

THE HON'BLE MR. JUSTICE
N.SATHISH KUMAR

FOR APPROVAL: 22/12/2021
27/12/2021

APPROVED ON: 28/12/2021



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Original Petition No. 495 of 2018

1. E.S.M.Ahamed Mariyam,
2. S.M.K.Hiriya,
3. S.M.H.Sharmila,
4. S.M.K.Hamid Ali,
5. S.M.K.Sammana,
6. S.M.K.Hussain Abdul Cader,
7. S.M.A.J.Ammath Nazeera,
8. S.M.A.J.Vajeedha,
9. S.M.Habibathul Alima,
- 10.S.M.Y.Aslam Hussain,
- 11.Fathima Buhari,
- 12.Mohamed Abdul Cader

..Petitioners

Vs

1. M/s. PS Srijan Developers LLP,
Rep. by. Its Authorised Signatory,
Mr.Praful Kumar Nahata
2. S.M.K.Sadak Jaffer,
3. S.M.A.J.Habeeb Md.Sadakathullah,
4. S.M.A.J.Abdul Haleem,
5. S.M.Y.Mohamed Sathak,
6. Justice K.P.Sivasubramaniam (Retd.)
Sole Arbitrator.

...Respondents



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Original Petition No. 616 of 2018

M/s. PS Srijan Developers LLP,
Rep. by. Its Authorised Signatory,
Mr.Praful Kumar Nahata

...Petitioner

Vs

1. E.S.M.Ahamed Mariyam,
2. S.M.K.Hiriya,
3. S.M.K.Sadak Jaffer,
4. S.M.H.Sharmila,
5. S.M.K.Hamid Ali,
6. S.M.L.Sammana,
7. S.M.K.Hussain Abdul Cader,
8. S.M.A.J.Habeeb Mohammed Sadakathullah,
9. S.M.A.J.Abdul Haleem,
- 10.S.M.A.J.Ammath Nazeera,
- 11.S.M.A.J.Vajeedha,
- 12.S.M.Habibathul Alima,
- 13.S.M.Y.Aslam Hussain,
- 14.S.M.Y.Fathima,
- 15.S.M.Y.Mohamed Sathak,
- 16.Mohamed Abdul Cader

...Respondents

Prayer in O.P.No.495 of 2018:

Petition filed under Section 34(2) (B) (II) & (V) r/w Section 16(6) of the Arbitration and Conciliation Act 1996, to set aside the award dated 19.03.2018 passed by the Learned Sole Arbitrator and consequently direct the Respondents to specifically perform their part of the obligations of the Joint Development Agreement dated 14.02.2007 and amendment thereof by executing and registering sale deed or deeds/ co-operating in execution and registration of sale deed or deeds in respect of the suit property and receive the balance consideration and taking over 32% of the built up area in the Schedule Property, upon completion of construction and allotment of construction area, as per the terms of joint Development Agreement dated 14.02.2007 as sought by the Petitioner, before the Learned Sole Arbitrator and also direct the respondents to pay the costs of the Petition.



Prayer in O.P.No.616 of 2018:

Petition filed under Section 34(1) (23) & (3) of the Arbitration and Conciliation Act 1996 r/w Order XLIII Rule 1 of Madras High Court Original Side Rules, to set aside the award dated 19.03.2018 passed by the 6th respondent in Arbitration dispute between the petitioners, Respondents 2 to 5 and the 1st Respondent and consequently direct the 1st respondent to pay to the petitioners and the respondents 2 to 5 damages of Rs.8,20,000/- (Eight Crores twenty lakhs) with subsequent interest @ 18% per annum from the date of filing of the counter claim; further direct the return of the title deeds from the escrow account to the petitioners and the respondents 2 to 5 jointly; and also direct the 1st respondent herein to pay the costs of this petition to the petitioner.

For Petitioners : Mr. A.Sirajudeen, Senior Advocate
For J.Deliban. (in O.P.No.495/18)

Mr.M.S.Krishnan, SC for
M/s. AAV Partners. (in O.P.No.616/18)

For Respondents : Mr.M.S.Krishnan, SC for
M/s. AAV Partners. (in O.P.No.495/18)

Mr. A.Sirajudeen, Senior Advocate
For J.Deliban. (in O.P.No.616/18)

COMMON ORDER

In application in O.P.No. 495 of 2018, 4th petitioner namely S.M.K.Hamid Ali and the 10th petitioner namely S.M.Y. Aslam Hussain are present before this Court. On behalf of the respondents Managing Director of the 1st respondent company Mr.Praful Kumar, designated partner are present. All other parties signed in the Memorandum of compromise.



only the 4th & 10th petitioners are present before this Court and other family members have signed in the memorandum of compromise, which has been acknowledged and agreed by the learned counsels appearing on either side and they have also signed in the memorandum of compromise.

3. On behalf of the 1st respondent, the designated partner is present and signed on behalf of the partnership firm. It is also stated that the 3rd petitioner namely Sharmila in O.P.No. 498 of 2018 is not signed, however the family members assert that they have got consent to record the compromise.

4. It is agreed between the parties that towards the award amount, the respondent is agreed to receive a sum of Rupees Six Crores in full quit on six instalments payable in every month. The details of the payment to be made is also incorporated in the memorandum of compromise entered between parties. Accordingly, the memorandum of compromise is taken on record. It is also agreed between parties that in the event of default of monthly instalment as agreed in the memorandum of compromise, the applicants in O.P.No.495/2018 shall be liable to pay the entire award amount on expiry of six months as stated in the memorandum of



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5. It is made clear that such default clause will come into force only after expiry of six months as stated in the memorandum of compromise. The Memorandum of compromise dated 30.10.2021 shall form part of the order.

6. Accordingly, both the original petitions are disposed of in terms of the agreement entered into between the parties in the memorandum of compromise dated 30.10.2021.

Sd/- N.S.K.J.
02/11/2021

//Certified to be true copy//
Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.