

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :01.10.2021

Pronounced on:20.10.2021

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Civil Suit No.506 of 2019

1.Mr.C.Rathnam

2.Ms.Rezoo James Joseph

3.Mr.Thomas James

4.Ms.Anita Sundar

.. Plaintiffs

/versus/

1.M/s Green Avenue Homes and Gardens,  
Represented by its Proprietor Mr.D.Dhinakaran  
Dakshin City III Phase,  
Unamacherry, Kolappakkam Bus Stop,  
Vandaloor, Velampakkam Road,  
Chennai 600 048.

2.Mr.Subash Chand Jain,

3.Mr.D.Dhinakaran,  
S/o V.Dakshinamurthy,  
Proprietor Green Avenue Homes and Gardens,  
Dakshin City Site Office,  
Kolappakkam Post,  
Unnamancheri,  
Chennai 600 048.

4.Mr.Sriram

5.Mr.Srikumar

6.Ms.Chitra

7.Mrs.Sarojam Gopinath N

8.Mr.Sanath Gopinath

.. Defendants

Prayer:- Civil Suit has been filed under Order IV, Rule 1 of O.S. Rules, read with Order VII Rule 1 of the Code of Civil Procedure, praying to pass judgment and decree against the defendants.

(a)To declare that the Joint Development Agreement dated 16.04.2012 entered into between the plaintiffs and the 1<sup>st</sup> defendant for developing the Schedule mentioned property, as null and void, as the same has become in executable and not binding on the plaintiffs.

(b)To declare that all acts, deeds, things done by the defendant 1 and 3 pursuant to the Joint Development Agreement dated 16.04.2012 and the Registered Deed of Power of Attorney dated 16.04.2012 registered as Doc.No.363/2012 before the SRO, Anna Nagar as null and void and not binding on the plaintiffs.

(c)To declare that all acts, deeds, things done by the defendant 1 and 3 pursuant to the Joint Development Agreement dated 16.04.2012 and the Registered Deed of Power of Attorney dated 04.09.2012 vide Document No.931/2012 before SRO, Anna Nagar to and in favour of the first defendant to deal with 2/8<sup>th</sup> undivided share of an extent of 70 sq.ft from and out of 285 sq.ft as null and void and not binding on the plaintiffs.

(d)To declare that all acts, deeds, things done by the Defendant 1 & 3 pursuant to

the Joint Development Agreement dated 16/04/2012 and the Registered Deed of Power of Attorney dated 18/09/2012 in favour of the First Defendant vide Document No. 9801/2012 before SRO Anna Nagar to deal with 2/8th undivided share of an extent of 70 sq.ft as null and void and not binding on the Plaintiffs.

(e)To declare that Sale Deed dated 19/09/2013 executed by the 1<sup>st</sup> Defendant as the Power Agent of the Plaintiffs herein to and in favour of 2nd Defendant registered as Doc No. 3728/2013, SRO Anna Nagar as null and void and not binding on the Plaintiffs to the extent of Plaintiffs 2/6th Share on the Schedule mentioned Property.

(f)To declare that Sale Deed dated 19/09/2013 executed by the 1<sup>st</sup> Defendant as the Power Agent of the Plaintiffs herein to and in favour of 2nd Defendant registered as Doc no. 3729/2013, SRO Anna Nagar as null and void and not binding on the Plaintiffs to the extent of Plaintiffs 2/6th Share on the Schedule mentioned Property.

(g)To declare that the Plaintiffs are the owners of the 2/6<sup>th</sup> share of the subject property without any Encumbrances.

(h)For a permanent injunction restraining the Defendants, their en, agents, servants or any other person making claim under the defendants from in any way interfering with the Plaintiffs peaceful possession.

(i)For a permanent injunction restraining the Defendants, their men, agents, servants or any other person making claim under the defendants from in any way creating encumbrance over the suit schedule property.

(j)For a permanent injunction restraining the Defendants, their men, agents, servants or any other person making claim under the Defendants from in any way

interfering with the Plaintiffs' rights to deal in any manner including that of putting up construction as owners of the suit schedule property.

(k) For recovery of sum of Rs,32,00,000/- (Rupees Thirty Two Lakhs only) from the 1st Defendant towards the Outstanding monthly rent from the period of May'2014 to March'2019 with interest at 18 % per annum from the Date of suit till realisation.

(l) To pay the cost of the suit.

For Plaintiffs : Mr.S.S.Rajesh

For Defendants : Mr.Avinash Wadhwa for  
Mr.V.Lakshminarayanan for  
D1, D3, D4 to D8  
(Mr.C.Ramesh) D2-set exparte

J U D G M E N T

(This case has been heard through Video Conferencing)

The suit for Declaration, Permanent Injunction and recovery of Rs.32 lakhs with interest at the rate of 18 % per annum.

2.The plaintiffs are four in number. Though the plaint is against eight defendants, in effect defendants 4 to 8 sail with the plaintiffs and the real contesting party is the 3<sup>rd</sup> defendant, who also represent the first defendant as the Proprietor of the 1<sup>st</sup> defendant Partnership firm.

3.The gist of the plaint is that, the land and building more fully described in the schedule annexed to the plaint is a two story residential [G+2F] apartment consisting of six dwelling units each measuring plinth area about 1022 sq.ft each upon land measuring to an extent of 5561 sq.ft. promoted by Tamil Nadu Housing Board and allotted to six different persons. On the date of entering into Joint Development Agreement (16.04.2012) with the first defendant Partnership firm represented by the 3<sup>rd</sup> defendant Mr.D.Dhinakaran, plaintiffs 1 to 4 and defendants 3 to 8 were the owners of the dwelling units identified as flat No.66-A to 66-E.

4.As per the terms of the agreement, the 3<sup>rd</sup> defendant through the 1<sup>st</sup> defendant has to demolish the existing building and build a Multi-Storeyed residential complex consisting of eight dwelling units. As a consideration for the said construction, free of costs, the owners of the building namely, the plaintiffs and defendants 3 to 8 had agreed to divide the right in the land and the buildings to be constructed into 8 shares and share 2/8<sup>th</sup> in the property to the developer (i.e) the first defendant or its nominee. The first defendant had agreed to pay a sum of Rs.20,000/- per month to the flat owners from the date of they handing over the vacant possession, till taking over the newly constructed flat. If the first defendant

failed to demolish and complete the construction of the flat within 12 months from handing over, the rent shall be increased by 10%, after expiry of 12 months.

5.Pursuant to the said Joint Development Agreement dated 16.04.2012, the flat owners namely the plaintiffs and defendants 3 to 8, had executed a registered deed of Power of Attorney dated 16.04.2012 appointing the first defendant Proprietary concern represented by its Proprietor, the third defendant to enable him to develop the subject property and also to sell his 2/8<sup>th</sup> undivided share of the total extent of 1320.75 sq.ft allotted to the first defendant being the consideration for the Joint Development of the property.

6.The first defendant in the capacity as the Power agent of the plaintiffs and defendants 3 to 8 had entered into an agreement for sale of 50% of the 2/8<sup>th</sup> undivided share under two registered agreements dated 14.05.2012 in favour of the second defendant. Also, the third defendant entered into a registered agreements for sale dated 19.06.2012 in favour of the second defendant in respect of 1/3<sup>rd</sup> undivided share in 1022 sq.ft of his flat in flat 66-D.

7.The first defendant also obtained another deed of power of attorney dated 04.09.2012 to deal with 2/8<sup>th</sup> undivided share of an extent of 70 sq.ft from and out of 285 sq.ft from defendants 1 and 2 along with James Joseph, who is the husband of the second plaintiff and father of the third and fourth plaintiff and also Power of Attorney from the third plaintiff was obtained by the first defendant to deal with 2/8<sup>th</sup> undivided share of extent of 70 sq.ft on 18.09.2012. Subsequently, the first defendant cancelled the agreement for sale which was executed to and in favour of the second defendant on 25.09.2012.

8.However, on the very same day, the first defendant represented by the third defendant executed to and in favour of the second defendant two registered agreements for sale of 50% of the 2/8<sup>th</sup> undivided share in total extent of 1320.75sq.ft and 50% of the 2/8<sup>th</sup> undivided share in total extent of 70 sq.ft. In the similar way, the third defendant also subsequently executed a registered agreement for sale dated 25.09.2012 in respect of the flat No.66D along with the undivided 1/8<sup>th</sup> share in total extent of 5561 sq.ft. to and in favour of the second defendant.

9.It is further averred in the plaint that, the first defendant acting as power agent of the plaintiffs and thereafter, sold 2/8<sup>th</sup> undivided share i.e., 50% of the undivided share of 1320.75 and 285 sq.f.t by two sale deeds dated 19.09.2013 in favour of the second defendant.

10.The case of the plaintiffs is that, the third defendant Mr.D.Dhinakaran, entered the Joint Development Agreement for developing the subject property as Proprietor of the first defendant concern. They executed a registered power of attorney along with the other owners of the property empowering the first defendant to transfer his common share/right in the property. While so, he in his individual capacity cannot assign his right once again through an independent sale in favour of the second defendant. The act of the third defendant executing two different agreements, one as power agent of the first defendant and another in his individual capacity in favour of the second defendant is illegal and void. The very act of the third defendant, who is also the proprietor of the first defendant concern, in collusion with the second defendant creating encumbrance over the property bristles with mala fide and in violation of terms of the Joint Development Agreement done with ulterior motive to grab the property. It is alleged by the

plaintiffs that the Joint Development Agreement was created by way of a fraud with an intention to, snatch away the property and had misled the plaintiffs and defendants 4 to 8. Though the Joint Development Agreement entered as early as on 16.04.2012, there was enormous delay in carrying out the project. The building was demolished only in the month of September 2012 and thereafter, just pile foundation was initiated and no serious efforts taken by defendants 1 and 3 to put up the construction. However, defendants 1 and 3 had created encumbrance by executing registered deeds as mentioned above. All the deeds executed by the first defendant represented by the third defendant and the third defendant in his personal capacity are sham and nominal executed with fraudulent intent of usurping the plaintiffs' property.

11.The original documents of the property was agreed to be kept in the locker. But, contrary to the agreement, the third defendant had removed the document and sold the property beyond the knowledge of the plaintiffs. Hence, the suit is filed on the premises that, as per the Joint Development Agreement, (i) the first defendant demolished the property in the month of September 2012, but had not constructed the building. (2) As per the agreement, he has not paid

monthly rent from the month of May 2014 and (3) had created a sham and nominal document in favour of the second defendant. Collusive sale agreement and sale deeds fraudulently created are to be declared as null and void. The defendants must be restrained from dealing with the suit property in any manner and the consequential relief.

12. Along with the plaint, the plaintiffs filed application for interim injunction in which, the third defendant on his behalf and on behalf of the first defendant proprietary concern, filed a common counter wherein he had admitted the Joint Development Agreement dated 16.04.2012 with the six owners of the flats in the building at flat No.66 in Z Block, V Avenue, Anna Nagar, Chennai 600 040. Further, the third defendant had admitted that though he commenced the project earnestly, he could not complete the same, due to the reasons enlisted in the counter. Primarily, one of the flat owner Mr.S.C.Agarwal (66-D) initially was not agreeable for the Joint Development Agreement and he refused to join the other five owners, Since the first defendant has already committed to the other five flat owners, he was forced to buy the flat from Mr.S.C.Agarwal for a fancy price three times more than the market value. After removing the said obstacles, the

Joint Development Agreement dated 16.04.2012 was drawn setting forth the terms and conditions, under which, he offered to construct a new building at his own cost after demolishing the existing building. He offered the six owners a new and bigger flat for each of them in the new building to be constructed and also offered to pay a sum of Rs.8 lakhs to each of them, apart from paying monthly rent to them during the period of construction. As a consideration, he was entitled for two flats. Having so agreed, he paid a sum of Rs.40 lakhs to the other 5 owners before getting the vacant possession of their flats.

13.The building plan application submitted to CMDA and Corporation of Chennai for demolition and reconstruction got delayed. To get 'No Objection Certificate' from the Tamil Nadu Housing Board, the first defendant was constrained to file a Writ Petition No.27342 of 2012 and got suitable direction on 26.04.2013. Only thereafter, the CMDA gave approval for construction and new building consisting of stilt floors + four floors with 8 dwelling units vide order dated 20.12.2013. Pursuant to this approval, the existing building was demolished. The first defendant started putting up Pile Foundation to a depth of 60 ft. and constructed stilt floor for parking of vehicles and raised columns for the

first floor. Thereafter, the first defendant could not do any more construction due to severe financial shortage he faced.

14.At this juncture, he approached the financier Mr.N.Sibhash Chand Jain the second defendant, seeking loan and as a security towards the said loan, two sale deeds were executed in favour of the second defendant conveying the flats. However, after executing the two sale deeds dated 19.09.2013, the second defendant refused to give the balance loan amount and therefore, the first defendant was left high and dry. He was unable to mobilise any more fund to go ahead with construction beyond the first floor stage.

15.In addition, the Income Tax Department caused Department notice for service charge due and penalty for a sum of Rs.4,04,98,483/- and the appeal preferred against the demand is still pending. The Joint Venture Project went awry due to the exorbitant price paid to Mr.S.C.Agarwal purchasing one of the flats and due payment of Rs.40 lakhs to the other five flat owners. There is no malafide intention for creating encumbrance or entering the sale deeds with the second defendant.

16. Therefore, denying the allegation of fraud and collusion, sought for dismissal of the suit filed for declaring the three sale deeds as illegal and null and void and the consequential injunction sought.

17. In the said affidavit dated 09.11.2019, the third defendant has given explicit undertaking that he will not interfere with the plaintiffs' possession till the disposal of the suit and he has no intention to interfere with the plaintiff's right to deal with the property. At paragraph No.20 of the affidavit, he has reiterated the fact that out of six flats demolished, plaintiffs 1 to 4 owned two flats. He claim right over three flats. One which he purchased from Mr.S.C.Agarwal and other two which he entitled as developer of the building. Defendants 4 to 8 owned the remaining three flats. Without consent of all the owners, no further construction will be put up by him. Therefore, he has no intention to interfere with the plaintiffs' right to deal with the property.

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18. Having filed the counter to the above effect, the defendants 1 and 3 have not chosen to file any written statement. The suit having been filed as Commercial

Suit, the defendants are supposed to file their written statement within 30 days from the date of receipt of the suit summons or not later than 120 days from the date of service of suit summon with petition to condone delay. Defendants 1 and 3 failed to file the written statement within the limitation period. Whereas defendants 4 to 8 had filed written statement sailing with the plaintiffs, recording their consent to pass the decree as prayed in the suit.

19.The second defendant in whose name the sale deeds were executed by the first and third defendants remained absent and not appeared either personally or through counsel. The third defendant, after filing the counter in the interlocutory applications Nos.794 to 796 of 2019 failed to file written statement. Therefore, after giving sufficient time to the contesting defendants to file the written statement, they were set exparte. The plaintiff was directed to appear before the Additional Master No.IV on 23.09.2021 for recording evidence. Accordingly, Mrs. Anita Sundar, the fourth plaintiff had filed her proof affidavit in lieu of chief examination and marked 22 documents and evidence was recorded by the Additional Master No.IV and the case was reverted back to the Court.

20.The learned counsel appearing for the plaintiffs submitted that, all the six owners of the flats for block No.66, 5<sup>th</sup> Avenue, Anna Nagar (West), Chennai, entered into the development agreement with the first defendant proprietor concern on 16.04.2012 with the specific understanding and terms. The third defendant as Proprietor of the first defendant and also being one of the six owners of the flats, had taken advantage of his dual capacity and schemed to grab the property in connivance with the second defendant. The documents creating the encumbrance over the suit property clearly expose the malafide intention of defendants 2 and 3.

21.Referring the terms of the agreement found in Joint Development Agreement, the learned counsel submitted that, the land and building was offered for development with a specific understanding that the developer will demolish and construct the building at free of costs with the agreed specification for the owners. As consideration for the free construction, the developer will be entitled to put up two more dwelling units and have 2/8<sup>th</sup> share in the property. While the terms of agreement is as clear as crystal, even before putting up any construction, the third defendant had created encumbrance over the property creating several

documents in favour of the second defendant including sale deed. These documents executed either in his individual capacity or as proprietor concern of the first defendant firm by using the power of attorney deed executed in his favour. Neither of the documents is valid in the eye of law, since the third defendant had no legal capacity to convey the property over which he had no right. The right of  $2/8^{\text{th}}$  share over the suit property will accrue to the third defendant only on constructing eight dwelling units over the undivided land. Till the construction is completed, the right of each owners shall be  $1/6^{\text{th}}$  share each. At the most, the third defendant can claim only  $1/6^{\text{th}}$  in his individual capacity. Therefore, the documents executed by defendants 1 and 3 in favour of the  $2^{\text{nd}}$  defendant is sham and nominal. Null and void the deeming right of  $2/8^{\text{th}}$  share in the land will vest upon the developer or his nominee, only after the development and not prior to that.

22.To decide whether the impugned deeds in favour of the  $2^{\text{nd}}$  defendant is valid or not, it is essential to find out, the right of the third defendant as power agent of the flat owners and the right of the first defendant as developer, the same can be tested from the terms found in the Joint Development Agreement.

23.Clause 1 of the Joint Development Agreement dated 16.04.2012 reads as

below:- 01.Offer for Development

The owners, who are the Joint Owners of the Property, do hereby permit the Developer to develop the Property by constructing stilts for car parking together with 4(four) floors thereon as residential apartments (herein after collectively referred to as the “Building Complex”) and to use existing FSI, any additional FSI, area free of FSI and all the benefits directly and/or indirectly attached to the Property to provide the new flats to the OWNERS free of cost together with 6/8<sup>th</sup> (six-eighth) share in the Property to sell the 2/8<sup>th</sup> (two-eighth) share in the Property to the Developer in accordance with the terms and conditions stated herein.

24.The terms and conditions of sharing is mentioned in Clauses 4 and 5 as

below:-

04.SHARING OF LAND IN THE SCHEDULE “A”

Each OWNER shall retain 1/8<sup>th</sup> (one-eighth) share of the Property and the 2/8<sup>th</sup> (two-eighth) share of the property shall be conveyed to the DEVELOPER and/or its nominee/s

05.SHARING OF PLINTH AREA

(a) The DEVELOPER shall construct the Building Complex with the permissible FSI for residential space. The DEVELOPER

shall endeavour to obtain the maximum permissible FSI as per the prevailing rules on the Property and the Developer is further permitted to build with a cushion of permissible deviation provided however, that the benefit of any such permissible deviation is equally distributed among all the eight flats. However, the construction shall be carried out only as per the sanctioned approval with minimum permissible deviation and the OWNERS shall not insist for any additional FSI apart from the sanctioned approval.

(b) The OWNERS and the DEVELOPER agree that the allocation of the 6 (six) flats belonging to the OWNERS is morefully described in Schedule 'E' hereunder and the 2 (two) flats proposed for the DEVELOPER is morefully described in Schedule 'F' hereunder.

25.Schedule “F” which is flats proposed to be allotted to the Developer is as

below:-

**SCHEDULE “F”**

**TOTAL FLATS ALLOTTED TO DEVELOPER**

| <b>SR. No.</b> | <b>FLAT NO. &amp; CAR PARK NO.</b> | <b>FLOOR</b> | <b>TOTAL PLINTH AREA</b> | <b>OWNER</b> |
|----------------|------------------------------------|--------------|--------------------------|--------------|
| 1.             | G                                  | Fourth       | 935 sq.ft                | Developer    |
| 2.             | H                                  | Fourth       | 935 sq.ft                | Developer    |

(# subject to approval by competent sanctioning Authorities)

26.In the deed of Joint Development, it is also pertinent to note that, the time for completion of construction is fixed as 18 months under Clause 12. More particularly, under Clause 36, the Developer is restrained from assigning, transferring, encumbering any of his rights and obligations under this Act, without the prior written consent of the owners and any such attempted assignment shall be null and void.

27.If the impugned transactions of defendants 1 and 3 in favour of the second defendant is tested with Clause 36 of the agreement, it could be safely concluded that without written consent of the other flat owners, these impugned transactions have been taken place that too for the shares in the property not devolved upon defendants 1 and 3. 2/8<sup>th</sup> share on the developer will blossom only on construction of eight flats. It is admitted fact that the construction has not been taken place and the third defendant has admitted that due to his financial constraint, he is not able to proceed with the project. While so, he has no right to alienate any part or whole of his share, which is only a deemed clause which will blossom only after construction.

28.Schedule “F” of the Joint Venture Agreement describes the flats allotted to the Developer. Two flats bearing 'G' and 'H' in the fourth floor with the total plinth area 935 sq.ft each, are allotted to the developer/the third defendant. Through the third defendant, the first defendant as general power of attorney of the owners and the third defendant on his individual capacity, had executed the impugned sale deeds in favour of the the second defendant Mr.Subash Chand Jain. These sale deeds are marked as Exs.P16, P17 and P18.

29.The UDS land under Exhibits 16,17 and 18 are extracted below:-

| <b>Date &amp; document No.</b>                   | <b>Executed by</b>                                            | <b>Executed in favour of</b> | <b>Property involved</b>                                                                                   |
|--------------------------------------------------|---------------------------------------------------------------|------------------------------|------------------------------------------------------------------------------------------------------------|
| 19.09.2013<br>(No.3728/2013, SRO,<br>Anna Nagar) | First Respondent/First<br>Defendant as GPA of<br>the 6 Owners | N.Subash Chand Jain          | (i)50% UDS in land of<br>an extent of 1320.75<br>sq.ft<br>(ii)50% UDS in land<br>of an extent of 70 sq.ft. |
| 19.09.2013<br>(No.3729/2013 SRO,<br>Anna Nagar)  | First Respondent/First<br>Defendant as GPA of<br>the 6 Owners | N.Subash Chand Jain          | (i)50% UDS in land of<br>an extent of 1320.75<br>sq.ft<br>(ii)50% UDS in land<br>of an extent of 70 sq.ft. |
| 15.07.2016<br>(No.3210/2016, SRO,<br>Anna Nagar) | D.Dhinakaran                                                  | N.Subash Chand Jain          | Flat No.66 D together<br>with 1/8 <sup>th</sup> UDS in land<br>of an extent of 5561<br>sq.ft.              |

30.The 2<sup>nd</sup> defendant herein, who claims to be a financier, according to the third defendant, for the alleged lending, had created encumbrance over the property by registering the sham and nominal sale deeds, which does not have any legal validity. What being conveying to him is an illusory share on the undivided property, where the vendor namely, the third defendant himself has no tangible right.

31.The Joint Development Agreement dated 16.04.2012 marked as Ex.P3 has become inexecutable, due to efflux of time and due to the failure of the first defendant to complete the construction within the time prescribed. The third defendant in his common counter had admitted that he is unable to complete the construction due to finance constraints. Furthermore, the building plan approval granted by CMDA on 20.12.2013 is valid only upto 19.12.2016 as per Ex.P22. Since the plan approval has expired long ago, the agreement has become defunct. Further, under Clause 12 of the agreement, the time for completion of construction is fixed as 18 months and under Clause 7 of the agreement, the flat owners are entitled for rent of Rs.20,000/- per month for the developer from the date of handing over for initial period of 12 months and thereafter, increased rent of

Rs.22,000/- onwards. But, the developer has not paid the rent, after the month of May 2014.

32.In the above circumstances, due to breach of the terms and conditions, the Joint Development Agreement dated 16.04.2012 has become unenforcible. Therefore, it is declared that, the Joint Development Agreement dated 16.04.2012 is null and void. Defendants 1 and 3 in breach of the Joint Development had executed sale deed dated 19.09.2013 in favour of the second defendant under Doc.No.3728 of 2013 and Doc.No.3729 of 2013 at Sub Registrar Office, Anna Nagar. These documents were executed fraudulently without consent of the flat owners and in violation of Clause 36 of the Joint Venture Agreement. Hence, they are declared as null and void.

33.In sofar as the power of attorney deed executed by the owners to enable the 3<sup>rd</sup> defendant to carry on the construction project has now become unenforcible and redundant. Therefore, the registered power of attorney deed dated 16.04.2012 as Doc.No.363 of 2012; the power of attorney deed dated 04.09.2012, registered as Doc.No.931 of 2012 and the power of attorney deed dated 18.09.2012,

registered as Doc.No.9801 of 2012 are declared to be null and void.

34.In view of the fact that without superstructure on the vacant land constructed by the third defendant, his undivided share in the vacant land cannot get enlarge. The power of attorney deeds obtained by suppression of facts are declared as null and void and not binding on the plaintiffs.

35.From the evidence, the plaintiffs have established that defendants 1 and 3, have no valid right under the power of attorney deed or under the Joint Development Agreement to convey/alienate/encumber/assign the suit schedule property without written consent of the owners. Hence, the rights assigned through the deeds is non est in law.

In the result,

The declaratory relief under prayer (a) to (g) is granted.

Serious breach and default has been proved against the developer, hence, the plaintiffs have right to restrain defendants 1 to 3 from any way interfering with the plaintiffs' peaceful possession and creating encumbrance over the suit schedule property. Hence, prayer (h) and (i) is granted.

Since the 3<sup>rd</sup> defendant in his individual capacity being the co-owner, Permanent Injunction under prayer (j) is granted as against defendants 1 and 2, their men and agents.

The plaintiffs have proved that since May 2014, the third defendant as Proprietor of the first defendant had not paid the agreed monthly rent. Therefore, the plaintiffs are entitled for recovery of Rs.32 lakhs from the first defendant towards outstanding monthly rent from May 2014 to March 2019 with interest at the rate of 18% p.a., from the date of suit, till the date of realisation as prayed in prayer (k).

36. Accordingly, *this Civil Suit is allowed as above with costs.*

20.10.2021

Index:yes/no  
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List of witnesses were examined on the side of the Plaintiffs:-

Mrs.Anita Sundar (PW1)

List of witnesses were examined on the side of the defendants:-

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List of the exhibits marked on the side of the plaintiffs:-

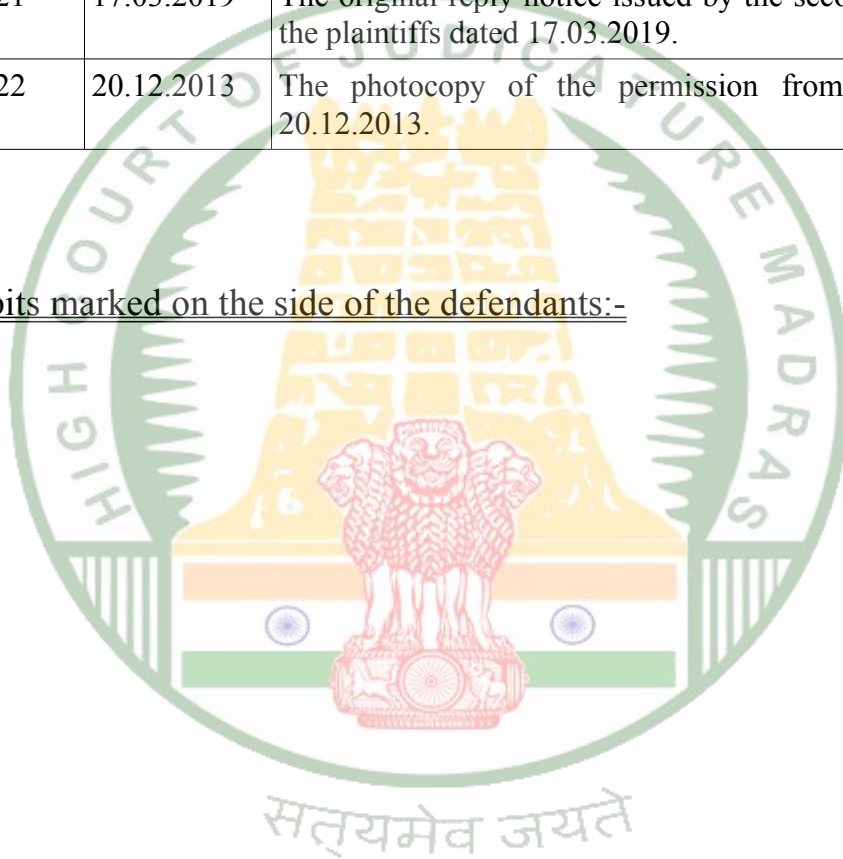
| Sl.No. | Exhibits | Dated      | Description of documents                                                                                                                                                                                                                                                            |
|--------|----------|------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.     | Ex.P1    | 04.10.1990 | The certified copy of the Registered Sale Deed executed by TNBH to and in favour of 1 <sup>st</sup> plaintiff registered as Doc.No.5089/1990 before SRO Anna Nagar, dated 04.10.1990                                                                                                |
| 2.     | Ex.P2    | 25.05.1994 | The certified copy of the Registered Sale Deed executed by TNBH to and in favour of (i) Jamesh Joseph, 2 <sup>nd</sup> and 3 <sup>rd</sup> plaintiffs registered as Doc.No.1500/1994 before SRO Anna Nagar, dated 25.05.1994.                                                       |
| 3.     | Ex.P3    | 16.04.2012 | The photocopy of the Joint Development Agreement executed by plaintiffs 1 to 3 along with Defendants 3 to 8 flat owners to and in favour of 1 <sup>st</sup> defendant dated 16.04.2012.                                                                                             |
| 4.     | Ex.P4    | 16.04.2012 | The certified copy of the deed of Power of Attorney executed by Jamesh Joseph (deceased), the defendants 3,6,7,8 to and in favour of 1 <sup>st</sup> defendant registered as Doc.No.363/2012 before SRO, Anna Nagar, dated 16.04.2012.                                              |
| 5.     | Ex.P5    | 14.05.2012 | The certified copy of the agreement for Sale executed by 1 <sup>st</sup> defendant as the Power Agent to and in favour of the 2 <sup>nd</sup> defendant registered as Doc.no.1805/2012 before SRO, Anna Nagar, dated 14.05.2012.                                                    |
| 6.     | Ex.P6    | 14.05.2012 | The certified copy of the Agreement for Sale executed by 1 <sup>st</sup> defendant as the Power Agent to and in favour of the 2 <sup>nd</sup> defendant registered as Doc.No.1806/2012 before SRO, Anna Nagar, dated 14.05.2012.                                                    |
| 7.     | Ex.P7    | 19.06.2012 | The certified copy of the Agreement for Sale executed by 3 <sup>rd</sup> defendant to and in favour of the 2 <sup>nd</sup> defendant registered as Doc.No.2183/2012 before SRO, Anna Nagar dated 19.06.2012.                                                                        |
| 8.     | Ex.P8    | 04.09.2012 | The certified copy of the Deed of Power of Attorney executed by James Joseph (deceased), the plaintiff 1, 2 V.R.Srinivasan (deceased), defendants 3,6,7,8 to and in favour of the 1 <sup>st</sup> defendant registered as Doc.No.931/2012 before SRO, Anna Nagar, dated 04.09.2012. |
| 9.     | Ex.P9    | 18.09.2012 | The certified copy of the Deed of Power of Attorney executed by 3 <sup>rd</sup> plaintiff to and in favour of 1 <sup>st</sup> defendant                                                                                                                                             |

| Sl.No. | Exhibits | Dated      | Description of documents                                                                                                                                                                                                        |
|--------|----------|------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|        |          |            | registered as Doc.No.9801/2012 before SRO, Anna Nagar, dated 18.09.2012.                                                                                                                                                        |
| 10.    | Ex.P10   | 25.09.2012 | The certified copy of the Cancellation of Agreement of Sale executed by 1 <sup>st</sup> defendant to and in favour of the 2 <sup>nd</sup> defendant registered as Doc.No.3300/2012 before SRO, Anna Nagar dated 25.09.2012.     |
| 11.    | Ex.P11   | 25.09.2012 | The certified copy of the Cancellation of Agreement of Sale executed by the 1 <sup>st</sup> defendant to and in favour of the 2 <sup>nd</sup> defendant registered as Doc.No.3301/2012 before SRO, Anna Nagar dated 25.09.2012. |
| 12.    | Ex.P12   | 25.09.2012 | The certified copy of the Cancellation of Agreement of Sale executed by 3 <sup>rd</sup> defendant to and in favour of the 2 <sup>nd</sup> defendant registered as Doc.No.3302/2012 before SRO, Anna Nagar dated 25.09.2012.     |
| 13.    | Ex.P13   | 25.09.2012 | The certified copy of the Agreement of Sale executed by the 1 <sup>st</sup> defendant to and in favour of the 2 <sup>nd</sup> defendant registered as Doc.No.3303/2012 before SRO, Anna Nagar dated 25.09.2012.                 |
| 14.    | Ex.P14   | 25.09.2012 | The certified copy of the Agreement of Sale executed by the 1 <sup>st</sup> defendant to and in favour of the 2 <sup>nd</sup> defendant registered as Doc.No.3304/2012 before SRO, Anna Nagar dated 25.09.2012.                 |
| 15.    | Ex.P15   | 25.09.2012 | The certified copy of the Agreement of Sale executed by the 1 <sup>st</sup> defendant to and in favour of the 2 <sup>nd</sup> defendant registered as Doc.No.3305/2012 before SRO, Anna Nagar dated 25.09.2012.                 |
| 16.    | Ex.P16   | 19.09.2013 | The certified copy of the Sale Deed executed by the 1 <sup>st</sup> defendant as Power Agent to and in favour of the 2 <sup>nd</sup> defendant registered as Doc.No.3728/2013 before SRO, Anna Nagar dated 19.09.2013.          |
| 17.    | Ex.P17   | 19.09.2013 | The certified copy of the Sale Deed executed by the 1 <sup>st</sup> defendant as Power Agent to and in favour of the 2 <sup>nd</sup> defendant registered as Doc.No.3729/2013 before SRO, Anna Nagar dated 19.09.2013.          |
| 18.    | Ex.P18   | 19.09.2013 | The certified copy of the Sale Deed executed by the 3 <sup>rd</sup> defendant to and in favour of the 2 <sup>nd</sup> defendant registered as Doc.No.3210/2016 before SRO, Anna Nagar dated                                     |

| Sl.No. | Exhibits | Dated      | Description of documents                                                                                                                           |
|--------|----------|------------|----------------------------------------------------------------------------------------------------------------------------------------------------|
|        |          |            | 19.09.2013.                                                                                                                                        |
| 19.    | Ex.P19   | 22.10.2018 | The photocopy of the Death Certificate of O.T. James Joseph dated 22.10.2018.                                                                      |
| 20.    | Ex.P20   | 04.01.2019 | The office copy of the legal notice sent by the plaintiffs to the defendants along with returned covers and acknowledgement card dated 04.01.2019. |
| 21.    | Ex.P21   | 17.03.2019 | The original reply notice issued by the second defendant to the plaintiffs dated 17.03.2019.                                                       |
| 22.    | Ex.P22   | 20.12.2013 | The photocopy of the permission from CMDA dated 20.12.2013.                                                                                        |

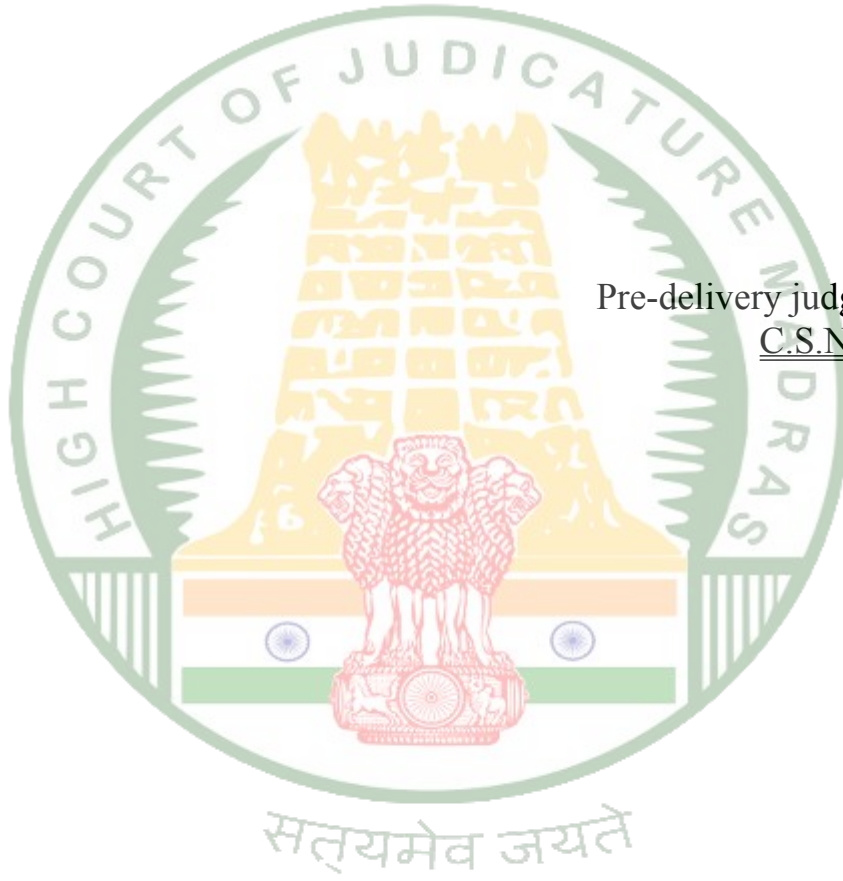
List of exhibits marked on the side of the defendants:-

Nil



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DR.G.JAYACHANDRAN,J.



Pre-delivery judgment made in  
C.S.No.506 of 2019

20.10.2021

WEB COPY