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C.S(COMM.DIV.)No.2 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	20.02.2023
Pronounced On	09.06.2023

CORAM

THE HON'BLE **MR.JUSTICE C.SARAVANAN**

C.S.No.2 of 2021

(Comm. Div.)

Kansai Nerolac Paints Limited
Represented by its
authorised representative

... Plaintiff

Vs.

1.Perungudi Real Estates Private Limited
2.Brigade Enterprises Limited,
3.Brigade Properties Private Limited

... Defendants

Prayer:- Civil Suit filed under Order IV Rule 1 of the Original Side Rules read with Order VII Rule 1 of the Code of Civil Procedure, 1908 read with Section 7 of the Commercial Courts Act, 2015 praying to pass a Judgment and Decree against the defendants as follows:-

- (a) Directing defendant No.1 and Defendant No.2 jointly and severally to pay Rs.14,08,07,721/- which includes the principal amount of R.12,13,74,500 (Rupees Twelve Crores Thirteen Lakhs Seventy Four Thousand Five Hundred Only) being the amount due as per the terms of the



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agreement dated 30.03.2016 along with interest of Rs.1,93,53,413/- calculated at the rate of 12% on the principal amount calculated from 02.08.2019 namely the date of sanctioning of the plans for the residential plot until 30.11.2020 and further future interest at the rate of 12% on Rs.12,13,74,500/- from the date of the plaint till the date of realization;
(b) To pay the cost of the suit

For Plaintiff : Mr.Ravikumar Paul
Senior counsel for
Mr.Allwin erodwin
Ms.Akhila & Niranjana Pandian

For Defendants : Mr.Sathish Parasaran
Senior Counsel
for M/s.Apoorva Vinjamur
for M/s.Dua Associates

JUDGMENT

The plaintiff has filed this suit to recover a sum of Rs.12,13,74,500/- from the first and second defendants jointly and severally under Ex.P25 Agreement dated 30.03.2016 together with interest calculated at 12% from 02.08.2019 being the date of sanctioning of the plans for the residential plot till 30.11.2020 and further interest at 12% on the aforesaid principal amount of Rs.12,13,74,500/- from the



date of the plaint till the date of realization.

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2. The prayer in the suit reads as under:-

- i. To pass a Judgment and Decree directing the first and second defendants jointly and severally to pay Rs.14,08,07,721/- which includes the principal amount of Rs.12,13,74,500/- being the amount due as per the terms of the Agreement dated 30.03.2016 along with interest of Rs.1,93,53,413/- calculated at the rate of 12% on the principal amount calculated from 02.08.2019 namely the date of sanctioning of the plans for the residential plot until 30.11.2020 and further future interest at the rate of 12% on Rs.12,13,74,500/- from the date of the plaint till the date of realization;
- ii. To grant costs of the suit; and
- iii. To grant such further relief or reliefs as this Court may deem fit and proper in the circumstances of the case.

3. This Court by an order dated 05.07.2021, the following issues were framed for consideration in this suit:-

- i. Whether the suit filed by the plaintiff is maintainable under law?
- ii. Whether there were discrepancies in the FMB sketch dated 24.03.2016 furnished by the plaintiff to the first defendant and if so,



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to what extent did it contribute to the determination of the FSI by the Chennai Metropolitan Development Authority (CMDA)?

- iii. Whether as per the Agreement dated 30.03.2016, the first defendant was required to apply for maximum permissible FSI?
- iv. Whether the plaintiff is entitled to compensation from the first defendant as per the Agreement dated 30.03.2016?
- v. Whether the plaintiff is entitled to INR 12,13,74,500/- or part thereof as per the Agreement dated 30.03.2016?
- vi. Whether the plaintiff is entitled to future interest on Rs.12,13,74,500/- at 12% per annum from the date of the plaint until realization and if so, to what extent?
- vii. Whether the relief sought by the plaintiff is maintainable against the second defendant in the suit?
- viii. Whether the parties are entitled to any other reliefs?

4. Following witness were examined on the side of the respective



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parties:-

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<i>On the side of the plaintiff</i>		<i>On the side of the defendants</i>	
P.W.1	Mr.G.T.Govindarajan	D.W.1	Mr.E.S.Senthilvel

5. During the trial, on the side of the plaintiff, following documents were marked:-

Sl. No.	Exhibit No.	Date	Description of Document
1	Ex.P1	03.11.2020	Board Resolution in favour of Mr.GT Govindarajan
2	Ex.P2	21.06.1966	Deed of Indenture of Sale dated 21.06.1966 bearing No.2913 of 1966.
3	Ex.P3	05.01.2005	Patta bearing No.289
4	Ex.P4	April, 2006	Order in Proceedings of the Special Tahsildar (LA) IT Expressway Scheme Tambaram
5	Ex.P5	29.06.2015	Term Sheet between the plaintiff and the defendants
6	Ex.P6	31.10.2015	Supplementary Term Sheet between the plaintiff and the defendants
7	Ex.P7	03.12.2015	Understanding between the plaintiff and the defendants
8	Ex.P8	22.12.2015	E-mail between the defendants and the plaintiff
9	Ex.P9	30.12.2015	Certificate of Tahsildar, Sholinganalur
10	Ex.P10	31.12.2015	Patta bearing No.289
11	Ex.P11	02.01.2016	E-mail between the defendants and the plaintiff
12	Ex.P12	21.01.2016	E-mail between the defendants and the plaintiff
13	Ex.P13	26.01.2016	E-mail between the defendants and the plaintiff



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14	Ex.P14	05.02.2016	E-mail between the counsel for the defendants and the counsel for the plaintiff
15	Ex.P15	10.02.2016	E-mail between the defendants and the plaintiff
16	Ex.P16	03.03.2016	E-mail between the defendants and the plaintiff
17	Ex.P17	10.03.2016	E-mail between the counsel for the defendants and the counsel for the plaintiff
18	Ex.P18	26.03.2016	E-mail between the defendants and the plaintiff
19	Ex.P19	30.03.2016	Sale Deed bearing No.2227 of 2016
20	Ex.P20	30.03.2016	Sale Deed bearing No.2228 of 2016
21	Ex.P21	30.03.2016	Deed of Indemnity between the plaintiff and the first defendant
22	Ex.P22	30.03.2016	Letter between the plaintiff and the first defendant
23	Ex.P23	30.03.2016	Letter between the plaintiff and the first defendant
24	Ex.P24	30.03.2016	Letter between the plaintiff and the first defendant
25	Ex.P25	30.03.2016	Agreement/Letter between the plaintiff and the first defendant
26	Ex.P26	13.11.2017	E-mail from the plaintiff to the second defendant
27	Ex.P27	20.11.2017	E-mail from the second defendant to the plaintiff
28	Ex.P28	19.02.2019	Legal Notice sent by the plaintiff to the first defendant
29	Ex.P29	11.03.2019	Reply sent by the first defendant to the plaintiff
30	Ex.P30	23.03.2019	Letter sent by the plaintiff to the first defendant
31	Ex.P31	25.03.2019	Reply sent by the first defendant to the plaintiff
32	Ex.P32	02.04.2019	Letter sent by the plaintiff to the first defendant
33	Ex.P33	03.04.2019	Reply sent by the first defendant to the plaintiff
34	Ex.P34	23.10.2019	Letter sent by the plaintiff to the first defendant
35	Ex.P35	02.11.2019	Reply sent by the first defendant to the plaintiff
36	Ex.P36	02.11.2020	Report of Horizon Valuers & Associates
37	Ex.P37	-	MGT-7 for the year 2019-2020 starting from 01.04.2019 ending with 31.03.2020 of the



			first defendant
38	Ex.P38	-	Brochure of the first and second defendants advertising their residential development on the Schedule Property
39	Ex.P39	01.09.2021	Online Patta for Survey Nos.134/1A2A & 134/2A1
40	Ex.P40	01.09.2021	Online Patta for Survey Nos.134/4A1 & 134/5A
41	Ex.P41	26.07.2021	Certificate for admission of Electronic Evidence under Section 65B of the Indian Evidence Act, 1872 for copy of E-mail Exchanges dated 02.01.2016 (Ex.P11), 21.01.2016 (Ex.P12), 26.01.2016 (Ex.P13), 05.02.2016 (Ex.P14), 10.02.2016 (Ex.P15), 22.12.2015 (Ex.P8), 03.03.2016 (Ex.P16), 10.03.2016 (Ex.P17), 26.03.2016 (Ex.P18), 13.11.2017 (Ex.P26) & 20.11.2017 (Ex.P27)

6. During the trial, on the behalf of the defendants, following documents were marked:-

Sl. No.	Exhibit No.	Date	Description of Document
1	Ex.D1	28.01.2021	Board Resolution of the first defendant in favour of Mr.Arindham Mukherjee
2	Ex.D2	24.09.2021	Power of Attorney in favour of the Deponent
3	Ex.D3	24.09.2021	FMB Sketch handed over by the plaintiff
4	Ex.D4	19.05.2017	Letter issued by the Chennai Metropolitan Development Authority to the first defendant
5	Ex.D5	-	Planning Permission accorded to the first defendant for commercial development
6	Ex.D6	-	Planning Permission accorded to the first defendant for residential development
7	Ex.D7	-	Sketch showing the actual extent of land as



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			compared to the FMB dated 24.03.2016 provided by the plaintiff
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7. First defendant a Special Purpose Vehicle (SPV) was incorporated under the provisions of the Companies Act, 2013 for putting up the construction in the subject properties measuring a total extent of 15.856 Acres, pursuant to Ex.P25, Agreement, dated 30.03.2016 signed between the plaintiff and the defendants.

8. The land in question originally measured a total extent of 17 Acres in Survey Nos.134/1, 134/2, 134/3, 134/4 and 134/5 on Rajiv Gandhi Salai (previously OMR),Perungudi, Chennai – 600096 was originally purchased by M/s.Chandra Paints (Madras) Private Limited from M/s.South India Export Company Limited under Ex.P2 Deed of Indenture of Sale, dated 21.06.1996 registered as Document No.2913/1966.

9. The name of the vendor M/s.Chandra Paints (Madras) Private Limited was later changed to M/s.GNP (Madras) Limited. The said company merged with the plaintiff pursuant to the Scheme of



Amalgamations sanctioned by this Court on 07.03.2003 and by the Bombay High Court on 31.03.2003. This land thus stood vested with the plaintiff.

10. The plaintiff decided to monetize the above assets/property by selling it in the open market. The defendants evinced interest in purchasing the property for constructing both commercial and residential buildings thereon. It appears that the parties negotiated.

11. It was agreed that the total extent of 15.856 Acres of land will be sold to the third defendant or any of its nominees or group companies or a separate Special Purpose Vehicle (SPV) that was to be formed by the second defendant or its nominees and GIC, Singapore's Sovereign Wealth Fund, through one of its affiliates. Accordingly, the plaintiff and the third defendant entered into Ex.P5 Terms Sheet dated 29.06.2015.

12. These arrangements were prior to the incorporation of the first defendant, a Special Purpose Vehicle (SPV). According to the



plaintiff, as per Ex.P5 Terms Sheet dated 29.06.2015, the first defendant would be formed by the third defendant as a Special Purpose Vehicle (SPV) for the proposed transaction and the sale of the subject properties in favour of the first defendant.

13. Eventually, the first defendant was incorporated by the second defendant as a Special Purpose Vehicle (SPV).According to the plaintiff, as per Clause 4 of the terms in Ex.P5 Terms Sheet dated 29.06.2015, the defendants would conduct due diligence of the subject property. Ex.P5 Terms Sheet dated 29.06.2015 was followed by Ex.P6 Supplemental Term Sheet dated 31.10.2015. By Ex.P6 Supplemental Term Sheet dated 31.10.2015, the time for execution of sale deed was extended to 15.12.2015.

14. Being satisfied with the title of the plaintiff over the entire extent of 15.856 Acres, a Sale Deeds was to be executed in favour of the first defendant. After completion of the due diligence by the defendants, the plaintiff conveyed the entire extent of the propertytotal land measuring an extent of 15.856 Acres to the first respondent vide Exs.P19



& P20 Sale Deeds both dated 30.03.2016. The sale was spilt into for the convenience of the first defendant as the 1st intended to develop commercial and residential complex.

15. The plaintiff thus conveyed an extent of land measuring 10.571 Acres in S.Nos.134/1A2A and 134/2A1 vide Ex.P19 Sale Deed dated 30.03.2016 to the first defendant for a total consideration of Rs.358,32,50,000/-.

16. Similarly, the plaintiff conveyed the land in S.Nos.134/4A1 and 134/5A measuring an extent of 5.285 Acre to the first defendant vide Ex.P20 Sale Deed dated 30.03.2016, for a total consideration of Rs.179,53,75,500/-.

17. In all a sum of Rs.537,86,25,500/- [358,32,50,000 + 179,53,75,500] was paid to the plaintiff for execution of Exs.P19 & P20 Sale Deeds both dated 30.03.2016. The original documents including the title documents, revenue documents, FMBs etc and the physical possession of the land were handed over by the plaintiff to the first



defendant.

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18. According to the plaintiff, the first defendant entertained an apprehension that the entire extent of 15.856 Acres conveyed *Vide* Ex.P19 Sale Deed dated 30.03.2016 and *vide* Ex.P20 Sale Deed dated 30.03.2016 may not be taken into consideration for computation of the Floor Space Index (FSI) by the Chennai Metropolitan Development Authority (CMDA) for the proposed development due to non-availability of the land awarded for the Veeranam Acquisition Project.

19. It was assumed that there was a possibility of Chennai Metropolitan Development Authority (CMDA) reckoning only 15.51 Acres for computation of the Floor Space Index (FSI) from and out of 15.856 Acres conveyed *Vide* Ex.P19 Sale Deed dated 30.03.2016 and *vide* Ex.P20 Sale Deed dated 30.03.2016.

20. It was therefore agreed that the first defendant would pay to the plaintiff a sum of Rs.12,13,74,500/- as compensation if the first



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defendant was permitted to utilize the entire extent of 15.856 Acres or proportionate portion thereof. Ex.P25 Agreement dated 30.03.2013 was therefore executed in respect of the above agreement, in which, both the first defendant and the plaintiff have signed.

21. It is pointed out that as per the terms of Ex.P25 Agreement dated 30.03.2013, payment of compensation was subject to first defendant obtaining the planning permission from the Chennai Metropolitan Development Authority (CMDA) and building plan approval from the Chennai Corporation before commencement of construction on the subject property.

22. As per Clause 5 of Ex.P25 Agreement/Letter dated 30.03.2013, it was agreed that copies of the application submitted to the Chennai Metropolitan Development Authority (CMDA) and the corresponding building plan approval would be made available to the plaintiff for the extent of schedule property which ultimately would be accepted by the Chennai Metropolitan Development Authority (CMDA) for computation of the Floor Space Index (FSI).



23. It is averred in the plaint that pursuant to the sale of the subject property to the first defendant *Vide* Ex.P19 Sale Deed dated 30.03.2016 and *vide* Ex.P20 Sale Deed dated 30.03.2016, the first defendant had applied for and obtained online pattas for the aforesaid portion *vide* Exs.P39 & P40 both dated 01.09.2021.

24. The first defendant had applied for various approvals from the concerned Authorities for the development of the Commercial Plot and Residential Plot. The first defendant had started promoting sale of the apartments proposed to be constructed on the Residential Plot.

25. It is case of the plaintiff that since the defendants had commenced construction on both the Commercial Plot and the Residential Plot, the plaintiff called upon the defendants to pay the agreed compensation of Rs.12,13,74,500/- *vide* Ex.P26 Email dated 13.11.2017.

26. The second defendant *vide* Ex.P27 Email dated 20.11.2017 informed the plaintiff that with respect to the Commercial Plot, in-principal approval was granted by the Chennai Metropolitan



Development Authority (CMDA), but, the building plan sanctions was yet to be granted by Corporation of Chennai.

27. It is further case of the plaintiff that the defendants had an obligation to inform the plaintiff about the further development of the applications and approval as it had a monetary value attached to it. Though the plaintiff requested such details, the defendants did not provide copies of the plan applications submitted before the Authorities for FSI approval.

28. Therefore, the plaintiff issued Ex.P28 Legal Notice dated 19.02.2019 to the first defendant and asked for the payment of compensation, copy of the approved plans, details of plans submitted along with the applications and inspections of documents.

29. The first defendant *vide* Ex.P29 Reply dated 11.03.2019 informed that the construction of World Trade Centre had begun on the Commercial Plot and that the Chennai Metropolitan Development Authority (CMDA) had granted planning permission for construction of



the World Trade Centre on 10.51 Acres out of 10.571 Acres meant for Commercial Plot and Corporation of Chennai has issued Building Plan Approval accordingly.

30. In Ex.P28 reply dated 11.03.2019, the first defendant further stated that the application submitted for planning permission to construct the Residential Building on 4.944 Acres out of 5.285 Acres of Residential Plot was still under consideration by the Chennai Metropolitan Development Authority (CMDA) and that the Chennai Metropolitan Development Authority (CMDA) refused to consider balance land area for FSI mismatch between FMB sketch and physical boundary due to Veeranam / road widening.

31. In light of the above, it was stated that the Chennai Metropolitan Development Authority (CMDA) had considered only 15.454 Acres of land out of 15.856 Acres and therefore as per the terms of the Ex.P25 Agreement/Letter dated 30.03.2013, no compensation was to be paid to the plaintiff since only an extent of 15.51 Acres or less had been considered from the schedule property measuring for the



computation of FSI.

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32. It was therefore stated that it was evident that the defendants were conscious of their obligations to pay compensation under Ex.P25 Agreement/Letter dated 30.03.2013 but pleaded that the contingencies contemplated by Ex.P25 Agreement/Letter dated 30.03.2013 did not occur. Ex.P28 Reply dated 11.03.2019 permitted the plaintiff to only inspect the documents.

33. It was stated that pursuant to the Veeranam acquisition, Ex.P3 Patta dated 05.01.2005 was issued by the Tahsildar after the acquisition of land for Veeranam and Ex.P10, Patta dated 31.12.2015 was also issued after acquisition for IT Expressway.

34. With respect to Veeranam acquisition, parties were well aware from the Ex.P3 Patta dated 05.01.2005, that 0.81 Acres of the total extent of 17 Acres held by the plaintiff from the year 1966 had been acquired for the Veeranam project.



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35. The FMB sketch, along with the land records (patta) for survey number 134/1, 134/2, 134/3, 134/4, and 134/5, clearly indicate that 0.81 Acres has been acquired from the plaintiff's original extent of 17 acres.

36. It is the contention of the plaintiff that it was also agreed by the parties that *bonafide* attempts would be made to retrieve the documents relating to Veeranam acquisition. However, same could not be retrieved from the public records as the said records were more than 20 years old and from their enquiries made with the Chennai Metropolitan Development Authority (CMDA), the records relating to the Veeranam acquisition was neither available with them or with the Chennai Metropolitan Development Authority (CMDA).

37. Therefore, parties relied on Ex.P3 Patta dated 05.01.2005 issued by the concerned Tahsildar and therefore the Chennai Metropolitan Development Authority (CMDA) could arbitrarily reject any land, as the plaintiff has taken all steps to procure Ex.P3 Patta dated



05.01.2005 which affirms that only 0.81 Acres was acquired for Veeranam Project out total extent of land measuring 17 acres.

38. It is submitted that from the rough survey carried out jointly by the parties, the physical extent of the land measured 15.74 Acres. However, from the table below the original extent of land, its survey numbers before the acquisition made for the Veeranam project was as follows:-

Survey Nos. as per Ex.P2Deed of Indenture dated 21.06.1966	Area (in acres) as per Ex.P2Deed of Indenture dated 21.06.1966	Survey no. as per Ex.P3 Patta dated 05.01.2005, bearing No.289	Area (in acres) as per Ex.P3 Patta dated 05.01.2005, bearing No.289	Area Acquired (in acres) for Veeranam
134/1	5.64	134/1A2	5.64	0.00
134/2	3.80	134/2A	5.21	0.39
134/3	1.80			
134/4	3.76	134/4A	3.50	0.26
134/5	2.00	134/5A	1.84	0.16
Total	17.00	-	16.19	0.81

39. According to the plaintiff, after acquisition of 0.81 Acres of

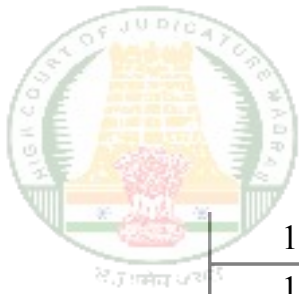


land by the Government towards the Veeranam project, the extent of land remained in the hands of the plaintiff was reduced to 16.19 Acres from 17 Acres and not more.

40. It is therefore submitted that subsequent to the acquisition for the Veeranam project, further acquisitions was made from the remaining 16.19 Acres in the year 2006, towards road widening of IT Expressway by the Award dated 28.02.2006 bearing No.03/2006, passed by the District Collector, Kancheepuram.

41. A reference was made to the following table showing the extent of acquisition towards road widening and the relevant Survey Nos.:-

Survey no. as per Ex.P3 Patta dated 05.01.2005, bearing No.289	Area (in acres) as per Ex.P3 Patta dated 05.01.2005, bearing No.289	Survey number as per award dated 28.02.2006 bearing no. 03/2006	Extent acquired (in acres) as per award dated 28.02.2006 bearing no. 03/2006
134/1A2	5.64	134/1A2B	0.12



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134/2A	5.21	134/2A2	0.15
134/4A	3.50	134/4A2	0.05
134/5A	1.84	-	0.00
Total	16.19	Total	0.32

42. It is submitted that a conjoint perusal of above Table would make it abundantly clear that the plaintiff's original extent of 17.00 Acres was reduced to 15.856 Acres $[17.00 - 0.81 + 0.32]$ pursuant to the acquisitions of land for the Veeranam project and the road widening project for IT expressway corridor.

43. It is submitted that the defendants were also aware of the acquisitions of land for the Veeranam project and road widening acquisitions and the extent of land that went towards such acquisitions and consequently the extent of land available with the plaintiff. Pursuant to the acquisitions Ex.P10, Patta dated 31.12.2015, was issued by the Tahsildar, Sholinganallur in the name of the plaintiff for an extent of 15.856 Acres.

44. It is submitted that, the plaintiff wanted to inspect the



records only after satisfaction on the representations and the applications made by the defendants relating to the planning permission so that any confusion in the mind of the contracting parties could be removed and consequently, the plaintiff *vide* Ex.P30 Letters dated 23.03.2019 and Ex.P32 Letter dated 02.04.2019 sought for copies of the approved plan, planning permission and applications submitted before the concerned authorities.

45. It is submitted that the first defendant *vide* Ex.P31 Reply dated 25.03.2019 agreed for the inspection of documents on 15.04.2019. However, refused to provide copies of the approved plans and applications submitted to the concerned authorities, citing reasons that the documents requested by the plaintiff were private in nature and that the Ex.P25 Agreement/Letter dated 30.03.2016 did not require the first defendant to provide copies.

46. It is submitted that although, the said stand of the first defendant was not legally tenable as the planning permits/building permits issued by the concerned authorities are not private documents



and in the circumstances the plaintiff had every right to have copies.

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47. The first defendant agreed for inspection of the documents on 15.04.2019 relating to commercial plot by the representatives of the plaintiff. The representatives of first defendant informed that an application for getting planning permit with respect to the Residential Plot was made to the Chennai Metropolitan Development Authority (CMDA) on 01.12.2017 and that the said planning permit was expected to be granted in the next 2-3 months i.e. by July 2019.

48. The plaintiff vide E.P34 Letter dated 23.10.2019 inquired with the first defendant about the status of the application made to the Chennai Metropolitan Development Authority (CMDA) with respect to the Residential Development. The first defendant vide Ex.P35 Reply dated 02.11.2019, stated that the application with respect to the planning permit to construct residential building on 4.944 Acres was approved by the Chennai Metropolitan Development Authority (CMDA) and Corporation of Chennai only on 4.944 acres of land and had issued a



building plan accordingly.

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49. The first defendant however reiterated that the Chennai Metropolitan Development Authority (CMDA) took into consideration only 15.454 Acres for FSI purpose thereby refused to pay any compensation to the plaintiff as per Ex.P25 Agreement/Letter dated 30.03.2016.

50. It is main allegation of the plaintiff that the first defendant had agreed for the inspection of documents with respect to residential development of the Schedule Property on 14.11.2019 and on inspection by the representative of the plaintiff, the plaintiff came to know about the attempt on the part of the defendantsto deny the amount due to the plaintiff by submitting plans only for 15.51 Acres instead of the remaining extent of 15.856 Acres that was conveyed by the plaintiff to the first defendant.

51. It is submitted that though the plaintiff requested the first defendant for a copy of the plan sanction/ approvals, same was not



furnished.

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52. It is submitted that upon inspection of the documents with respect to the Commercial Plot on 15.04.2019, the plaintiff came to the know that the Chennai Metropolitan Development Authority (CMDA) has considered the entire 10.571 Acres for the purpose of computation of FSI and planning permit was issued by the CMDA on 18.02.2018. However, in Ex.P29 Reply dated 11.03.2019, the first defendant has falsely stated that the Chennai Metropolitan Development Authority (CMDA) has considered only 10.51 Acres out of 10.571 Acres for the computation of FSI of the Commercial Plot and has wilfully withheld the information with respect to 0.06 Acres (6 cents).

53. It is submitted that the first defendant in Ex.P27 E-mail dated 20.11.2017 had stated that in principal approval was granted for 10.571 Acres. The first defendant in Ex.P27 E-mail dated 20.11.2017 stated that there was no obligation to pay as the defendants had not derived any additional benefits contemplated in Ex.P25 Agreement/Letter dated 30.03.2016.



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54. In other words, it was submitted that the first defendant accepted Ex.P25 Agreement/Letter dated 30.03.2016 as a binding contract but pleaded that the contingencies contemplated in the Agreement had not happened and that the action of the defendants thereby constituted a willful breach of contractual obligations under Ex.P25 Agreement/Letter dated 30.03.2016 and was in violation of its spirit and understanding between the parties.

55. As far as the Residential Plot is concerned, it is submitted that the first defendant in the application for a planning permit to the Chennai Metropolitan Development Authority (CMDA) had applied for FSI based on a plot area of only 4.944 Acres instead of 5.285 Acres and it was the duty of the first defendant to apply to the concerned authorities for the entire area of the Residential Plot for the purpose of ascertaining the maximum FSI.

56. It is submitted that the first defendant has wilfully refrained



from making an application for the entire area of 5.285 Acres to negate the payment obligations as per the terms of the Ex.P25 Agreement/Letter dated 30.03.2016.

57. It is submitted that it is a classic case where the defendants were taking advantage of their own wrong by omitting to apply for the entire extent of land purchased and have deliberately breached the terms of Ex.P25 Agreement/Letter dated 30.03.2016 resulting in this claim by the plaintiff.

58. It is submitted that on account of the clandestine manner in which the defendants have acted in violation of the spirit and understanding reached between the parties in Ex.P25 Agreement/Letter dated 30.3.2016. It is submitted that the first defendant had deliberately applied for approval for development, only for an extent of 15.51 Acres as against the total plot area 15.856 Acres conveyed by the plaintiff to the first defendant.



59. It is therefore the case of the plaintiff that the plaintiff has to be put in the same position where it would have been, had the defendants performed their obligations as per Ex.P25 Agreement/Letter dated 30.03.2016.

60. It is therefore prayed for a decree of joint and several liability against the first and second defendants in relation to the compensation payment under Ex.P25 Agreement/Letter dated 30.03.2016 as the second defendant is the holding company of the first defendant and the first defendant was created by the second defendant as a Special Purpose Vehicle (SPV) with the sole objective of acquiring and/or developing the suit schedule property.

61. It is submitted that the third defendant is a proper party to the suit as Ex.P5 Term Sheet dated 29.06.2015 was entered into by the plaintiff and the third defendant although the plaintiff is not claiming any relief against the third defendant.

62. As far as the cause of action is concerned, in the plaint it is



stated that a part of cause of action arose in Chennai within the jurisdiction of this Court, where the negotiations pertaining to the sale of the Schedule Property were held and the terms agreed upon in the offices of the plaintiff's counsels and defendant's counsel at Alwarpet and T Nagar respectively on various dates including 22.12.2015, 02.01.2016, 03.03.2016, 05.02.2016, 10.02.2016, 10.03.2016, where on 26.01.2016 the verification of the original title documents were undertaken by the representatives of the defendants along with their lawyers, where the terms of the agreement between the parties were finalized and reduced in writing which included the transaction documents, deed of indemnity, sale deeds and Ex.P25 Agreement/Letter dated 30.03.2016 executed between the plaintiff and the first defendant where, the parties conferred exclusion jurisdiction to the Courts in Chennai.

63. In the cause of action paragraph it is further submitted that the applications for the development of the Schedule Property were received by the Chennai Metropolitan Development Authority (CMDA) in Chennai seeking sanction for a smaller plot area resulting in the liability under Ex.P25 Agreement/Letter dated 30.03.2016, when the defendants



obtained planning permit and started construction on 13.11.2017 with respect to the Commercial Plot, on 19.02.2019 when the plaintiff gave the necessary instructions and caused a legal notice to be sent by its counsel in Chennai, and on 23.03.2019 when the first defendant sent a reply to the counsel of the plaintiff with a copy to the plaintiff's counsel office situate in Chennai; the cause of action also arose when the plaintiff and the defendant exchanged communications dated 11.03.2019 and 02.04.2019 which were received by both the representatives of the plaintiff in Chennai and defendants at their registered office.

64. It is further submitted that the cause of action further arose when the first defendant from its registered office sent replies to the plaintiff *vide* letters dated 25.03.2019 and 03.04.2019. The cause of action further arose on 15.04.2019 when the representatives of the plaintiff went to the premises of the first defendant and inspected the documents relating the Commercial Development of the Schedule Property. The cause of action also arose on 23.10.2019, when the plaintiff sent a letter to the first defendant enquiring about the status of the application made to the Chennai Metropolitan Development Authority



(CMDA) with respect to the Residential Plot.

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65. It is submitted that the reply sent by the first defendant on 02.11.2019 to the plaintiff's letter dated 23.10.2019 also constituted a valid cause of action within the jurisdiction of this court. It is further stated that when the representatives of the plaintiff inspected the documents relating to the Residential Development of the Schedule Property at the premises of the first defendant on 14.11.2019, cause action further arose.

66. As far as the jurisdiction of this court, it is submitted that that this Court will have jurisdiction under the first *proviso* to Section 7 of the Commercial Courts Act, 2015 (Act 4 of 2016) as the suit deals with an immovable property used exclusively in trade or commerce.

67. It is further submitted that the dispute falls within the definition of 'commercial dispute' as provided for in Section 2(1)(c)(vii) of the Commercial Courts Act, 2015, as the dispute relates to failure to pay the compensation due as per the terms of Ex.P25 Agreement/Letter



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dated 30.03.2016 with respect to the sale of the Schedule Property and is of specified value under section 12 of the Commercial Courts Act, 2015 (Act 4 of 2016).

68. The first defendant has filed Written Statement, wherein, it stated that the present dispute was not a commercial dispute and thus, this suit is not maintainable under the law. The contention of the plaintiff that the dispute is a “commercial dispute” as per Section 2(1)(c)(vii) of the Commercial Courts Act, 2015 cannot be accepted as the instant dispute does not fall within the ambit and meaning of “commercial dispute” in terms of Section 2(1)(c)(vii) of the Commercial Courts Act. Hence, this Suit suffers from lack of jurisdiction.

69. The first defendant raised the additional objections to the maintainability of the suit, each of which was without prejudice to the other. It is submitted that the plaintiff has not made out a case under Law, including the CPC, or in terms of the Ex.P25 Agreement/Letter dated 30.03.2016 for grant of directions as sought for in this suit.



70. It is submitted that the first defendant has not committed any breach with regard to the terms of the letter Ex.P25 Agreement/Letter dated 30.03.2016.

71. It is submitted that during title verification of the subject property, it was brought to the notice of the plaintiff on several instances, including in the Meeting dated 14.10.2015, that there were following discrepancies with regard to the extent of land comprised under each survey number in respect of the subject property:-

- i. the FMB was inaccurate which the first defendant came to know thereafter,
- ii. lack of proper documentation with regard to the Veeranam land acquisition process resulted in a relinquishment by the plaintiff to an extent of 1.12 acres and not 0.81 acres resulting in a further reduction of 0.31 acres.
- iii. a shortage of at least 0.12 acres land was noticed(15.86 less 15.734 acres) during physical inspection of the subject property.
- iv. no explanation or documentation to show what has happened to the land extent of 1.80 Acres in Survey No. 13/4.
- v. no explanation or documentation to show how the new Survey No.134/2A (under the Patta No.289) has merged or the land extent of 5.21 Acres recorded under the said Survey Number.



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72. The aforesaid minutes of meeting dated 14.10.2015 was duly signed by both parties. It is therefore submitted that while the first defendant was satisfied with the title of the plaintiff over the subject property (except for matters which the plaintiff had given an indemnity) out of 15.86 Acres, concerns to the extent of 0.43 Acres (0.12 Acres + 0.31 Acres) were raised even prior to the execution of the Ex.P19 & P20 Sale Deeds.

73. It is submitted that the first defendant had informed the plaintiff that due to the aforementioned discrepancies, the Planning Authority may not grant FSI on the basis of the entire extent of 15.86 Acres and even as per the plaintiff's own understanding, it cannot seek a claim FSI in respect of 15.86 Acres but can at the best confine itself to a claim proportionate to an extent of 15.736 Acres only which was the total extent of land available.

74. It is submitted that the plaintiff is therefore not entitled to a claim on even proportionate to the extent of 15.736 Acres in the facts and



circumstances of this case.

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75. It is submitted that several clarifications and documents were sought from the plaintiff with regard to the subject property. However, instead of answering the concerns of the first defendant and providing necessary documents, the plaintiff attempted the process of execution of the sale deed and receive the sale consideration thereof.

76. It is submitted that due to the existence of the aforementioned discrepancies in the land extent of the subject property and the uncertainty of the planning authorities considering the entire extent of 15.86 Acres in the granting of the building plan approvals, it was further agreed between the first defendant and the plaintiff that a sum of Rs.12,13,74,500/- would be paid to the plaintiff as compensation in the event of the planning authorities permitting the entire extent of 15.86 Acres to be taken into account for calculation of FSI for the subject property. Therefore, Ex.P19 & P20 Sale Deeds dated 30.03.2016 were executed by the plaintiff in favour of the first defendant.



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77. It is submitted that the first defendant vide Ex.P25 Agreement/Letter dated 30.03.2016 stated that Rs.12,13,74,500/- would be paid by the first defendant to the plaintiff subject to the Planning Authority permitting the first defendant *“to utilise the entire Plot Area measuring 15.856 acres for the computation of FSI”* and that in the event that the first defendant is permitted by the Planning Authority to utilize an area in excess of 15.51 acres and below 15.856 acres, proportionate compensation would be paid in terms of the formula mentioned under the Ex.P25 Agreement/Letter dated 30.03.2016.

78. It was further stated in Clause 3 of the Ex.P25 Agreement/Letter dated 30.03.2016, notwithstanding anything contained in Ex.P25 Agreement/Letter dated 30.03.2016, in the event the first defendant was permitted by the planning authority to utilise only 15.51 acres or less, for the purpose of computing FSI, no compensation would be payable by the first defendant to the plaintiff.

79. It is the further contention of the first defendant in the



Written Statement that when the first defendant submitted applications for planning permission of both the Commercial (10.571 acres) and Residential (5.285 Acres) before the Chennai Metropolitan Development Authority (CMDA), the Chennai Metropolitan Development Authority (CMDA), upon scrutinizing all relevant documents and after physical inspection of the commercial site, issued Ex.D4Letter dated 19.05.2017 seeking clarification that the survey number delineation and the extents recorded in the FMB sketch submitted as part of the planning permission documentation (being the FMB sketch given by the plaintiff in 2016) did not match with the actual physical layout or measurement of the respective land extents and called upon the first defendant to obtain a revised FMB sketch recording the actual physical layout of the lands. The first defendant had obtained the revised FMB sketch and submitted the same to the Chennai Metropolitan Development Authority (CMDA).

80. It is contention of the first defendant, that with an intention of obtaining the maximum land area for FSI eligibility, the first defendant had taken all possible steps to ensure that the above requirement are satisfied and gave clarifications to the questions raised by the Chennai



Metropolitan Development Authority (CMDA). Only after satisfaction, the Chennai Metropolitan Development Authority (CMDA) processed and the building plan. Thereafter, the Chennai Metropolitan Development Authority (CMDA) issued a demand dated 03.10.2017 towards development charges and other charges.

81. It is submitted that the first defendant paid the development charges and other charges on 31.10.2017 and pursuant to which the Chennai Metropolitan Development Authority (CMDA) issued the planning permit dated 28.02.2018 along with the sanctioned plan.

82. After taking into consideration the extent mentioned in the Sale Deed which is the least of the extent as between the area mentioned in the Sale Deed, the Patta and physical verification of the site, the Chennai Metropolitan Development Authority (CMDA) considered an extent of 42,779.25 sq.mts. (10.57 Acres) while permitting an FSI of 1,60,384.84 sq.mts. i.e. 3.747 times the plot area of 42,779.25 sq.mts. (10.57 Acres).



83. In so far as the residential site is concerned, it is the averment of the first defendant that the physical extent of land that was available after land used for the commercial site was only 4.944 Acres. The first defendant applied for the planning permission through online for the residential site before the Chennai Metropolitan Development Authority (CMDA) on 01.12.2017 (physically submitted on 28.12.2017).

84. The Chennai Metropolitan Development Authority (CMDA) noticed certain discrepancies between the site extent as per the document, site extent as per the Patta and the physical extent on-site while scrutinising the documents for the purpose of issuing the planning permission.

85. It is submitted that the Chennai Metropolitan Development Authority (CMDA) noticed the following discrepancies:-

- i. Site extent as per Patta: 21,400 sq. m.
- ii. Site extent as per document / Sale deed: 21,388 sq. m,
- iii. Site extent as per physical: 20,003.46 sq. m.



iv. Least plot extent: 19,984.36 sq. m.

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86. It is further contention of the first defendant that the Chennai Metropolitan Development Authority (CMDA), while determining the area upon which the FSI was to be applied on the Residential Site, took into consideration the least plot extent available on-site for the purpose of development viz., 19,984.36 sq.mts.

87. The Chennai Metropolitan Development Authority (CMDA) considered an extent of 19,984.36 sq.mts. i.e. 4.938 Acres and not 5.285 Acres while permitting an FSI of 50,229.42 sq.mts. i.e. 2.513 times the plot area of 19,984.36 sq.mts.

88. It is submitted that the Chennai Metropolitan Development Authority (CMDA) had raised a demand dated 29.03.2019 towards development charges and other charges which was paid by the first defendant on 22.04.2019. It is submitted that pursuant to the payment of the development charges amongst other charges, the Chennai Metropolitan Development Authority (CMDA) issued the planning permit



along with the sanctioned plan on 02.08.2019 for residential complex.

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89. It is submitted that meanwhile, during the process of the Chennai Metropolitan Development Authority (CMDA) considering the first defendant's application for the commercial complex, the plaintiff had addressed an Ex.P26 Email dated 13.11.2017 seeking the release of an amount of Rs.12,13,74,500/- on the erroneous presumption that development rights/ FSI was determined by the Chennai Metropolitan Development Authority (CMDA) on the entire extent of the subject property.

90. It is stated that the plaintiff neither requested for inspection of the planning application nor the planning permission with regard to the commercial site or for the residential site in the aforementioned Ex.P26 Email dated 13.11.2017.

91. It was informed to the plaintiff that an in-principal approval towards the commercial site for an extent of 10.57 Acres was being considered by the Chennai Metropolitan Development Authority (CMDA)



and that for the balance extent, no approval has been granted.

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92. It is submitted that subsequently, the plaintiff, through its counsel, sent Ex.P28 Legal Notice dated 19.02.2019 and called upon the first defendant herein to pay an amount of Rs.12,13,74,500/- purportedly in terms of the Ex.P25 Agreement/Letter dated 30.03.2016 and further requested the first defendant to furnish a copy of the Plans submitted to the Chennai Metropolitan Development Authority (CMDA) and a copy of the sanctioned plans obtained as on that date.

93. According to the defendant, it was erroneously stated in Ex.P28 Legal Notice dated 19.02.2019 that the plaintiff had requested the first defendant, *vide* Ex.P26 Email dated 13.11.2017, to “*make available*” the final plan sanctions issued by the Chennai Metropolitan Development Authority (CMDA) and at the Corporation of Chennai in favour of the first defendant.

94. It is contention for the first defendant that the first defendant replied to the aforementioned Ex.P28 Legal Notice dated



19.02.2019 *vide* Ex.P29 Letter dated 11.03.2019 and refused the allegations of the plaintiff and further stated that the Chennai Metropolitan Development Authority (CMDA) refused to consider an area in excess of 4.944 Acres with regard to the Residential Site due to discrepancies arising out of the Veeranam water project and related land acquisition and the mismatch between the FMB sketch and the land that was available by measuring and considering the physical boundary.

95. It is submitted that at this juncture, it is stated that the reference to 10.51 Acres with regard to the commercial site, in the Ex.P29 Reply dated 11.03.2019, was inadvertently mentioned and ought to be read as 10.57 Acres. It was further communicated by the first defendant that the plaintiff along with their consultants were free to inspect the plans submitted by the first defendant to the Chennai Metropolitan Development Authority (CMDA) and Corporation of Chennai for the commercial and residential complex and further, inspect the planning permit and sanctioned plan with regard to the commercial complex in the office of the first defendant.

96. On 15.04.2019, the application for planning permission



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with regard to the commercial and residential complex was inspected by the plaintiff and their consultants along with the planning permit and the sanctioned plan for the commercial complex and detailed notes were taken by the plaintiff's consultants during the inspection of the above-mentioned documents. Thereafter, the counsel for the plaintiff had again sent Ex.P34 Notice dated 23.10.2019 referring to the inspection carried out on 15.04.2019 and further inquired about the status of the application of the planning permission for the residential complex to be put up on the residential site and the corresponding building plan approval from the Corporation of Chennai.

97. The first defendant, in Reply to Ex.P34 Notice dated 23.10.2019, informed the plaintiff that the Chennai Metropolitan Development Authority (CMDA) had only considered an extent of 10.57 Acres (wrongly mentioned as 10.51 acres) for the commercial site for the purpose of the commercial complex and 4.944 Acres for the purpose of the residential complex, thereby, considering a total area of 15.51 Acres (inadvertently mentioned as 15.454 Acres) in the subject property and not 15.856 Acres.



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98. It is submitted that the defendant was informed that the question of paying an amount of Rs.12,13,74,500 did not arise. The first defendant further invited the plaintiff's counsel to inspect the planning permit and the sanctioned plan issued by the authorities concerned. It is submitted that the present Suit is neither maintainable nor sustainable and hence, ought to be dismissed.

99. It is submitted that on account of the non-availability of FSI to the extent of 34 Cents, the first defendant has lost its opportunity (for an extent of at least around Rs. 28 Crores, after taking into account the sum of Rs.12,13,74,500/-) and there has also been a shortage of land, to an extent of 0.12 Acres or 12 Cents in respect of which excess payment was made by the first defendant. It is stated that the plaintiff is not entitled to claim the proportionate cost of the land to the extent of this deficit in the extent of land and consequently the plaintiff cannot claim the entire sum of Rs.12,13,74,500/- or any amount as compensation. On the other hand, it is stated that the plaintiff was paid in excess proportionate to 0.12 Acres deficit area), which it is liable to refund to the first defendant.



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100. It is submitted that the Suit Summons from this Hon'ble Court was received by the First Defendant on 10.02.2021. Recently, the registered office of the first defendant was changed to Door No. 5/142, Rajiv Gandhi Salai (previously Old Mahabalipuram Road), Perungudi, Chennai – 600 096. It is submitted that no cause of action had arisen for the plaintiff to maintain the instant Suit before this court.

101. It is stated that the first respondent was not aware about the reputation of the plaintiff in the paint industry and hence is not traversing on the same and such non-traversal ought not to be treated as an admission of the contents of the plaintiff. It is stated that the first defendant alone is involved in the development of the subject property and not the other defendants.

102. It is stated that an amount of Rs.550,00,00,000/- was subject to the plaintiff establishing clear and marketable title for the entire extent of the subject property and confirming the availability of its physical extent admeasuring 15.856 Acres.



103. It is further stated that various discrepancies including discrepancies concerning the physical extent of the Subject Property were raised even prior to the execution of the Ex.P19 & P20 Sale Deeds. It is for this reason that the plaintiff had executed Ex.P21 Deed of Indemnity dated 30.03.2016 and guarantee in favour of the first defendant. Further, it is also for the reason of uncertainty in the actual extent of land that the first defendant would be able to develop on and capitalize that a compensation mechanism being an amount of Rs.12,13,74,500/- was agreed to be payable only upon the planning authority permitting the first defendant to utilise the entire extent of 15.856 Acres for the purpose of completing the FSI.

104. It is submitted that even at the time of execution of the Sale Deeds, the plaintiff was informed and hence was aware that the first defendant would utilise the commercial site for the purpose of developing a commercial complex and the residential site for the purpose of developing a residential complex, and accordingly applications for planning permission were to be made with the planning authority.



105. It is submitted that for reasons of uncertainty in the extent of developable area, the first defendant had agreed on a compensation mechanism and addressed a Ex.P25 Agreement/Letter dated 30.03.2016 to the plaintiff in this regard.

106. It is submitted that during title due diligence search, the defendant discovered discrepancies and irregularities in the title of the plaintiff over the said property. Since the plaintiff was unable to remedy or rectify such defects, it was agreed by the plaintiff that the plaintiff would indemnify the first defendant in the event the first defendant was put to any loss or faces a claim due to the identified issues listed under the Ex.P21 Deed of Indemnity dated 30.03.2016.

107. It is submitted that it is a standard commercial and legal practice that while the conveyance documentation has a generic clause on indemnity, specific identified issues or defects in title are, based on the agreement between parties concerned, addressed under a specific deed of indemnity and guarantee document. In the present case, the plaintiff was willing and agreeable to provide such indemnities and guarantee as they



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were unable to rectify the defects in title and were keen on the first defendant purchasing the said property at the earliest.

108. It is submitted that the plaintiff is not entitled to rights and obligations that are neither provided therein nor agreed to in Ex.P25 Agreement/Letter dated 30.03.2016. As per the Ex.P25 Agreement/Letter dated 30.03.2016, the first defendant was not duty bound to apply with the planning authorities for utilisation of the entire extent of 15.856 Acres as no such obligation was cast upon the first defendant in the said letter.

109. It is however submitted that it is obvious that the first defendant being a developer would always submit the building plan approvals in such manner that they are able to avail the maximum constructed area as this would increase the saleable constructed area in the development leading to increase in revenue for the developer.

110. However, in the present case, considering that the physical extent with regard to the residential site is lesser than the extent mentioned in the relevant sale deed, the Chennai Metropolitan



Development Authority (CMDA) only considered the lesser of the extents viz. 19,984.36 sq.mts. (4.938 Acres) while determining the extent of FSI area the first defendant is entitled to.

111. It is submitted as regards to the allegation contained in the plaint by the plaintiff that on the date of the Ex.P26 E-mail dated 13.11.2017, the planning permit for the commercial complex was yet to be received. Hence, the first defendant could not commence with the project until the planning permission was issued by the planning authority.

112. It is submitted that the delay in obtaining necessary sanctions/ approvals was on account of the discrepancies in the FMB sketch furnished by the plaintiff and the actual extent of land that was physically available and this consequently delayed the project which in turn caused severe loss of time and money to the first defendant.

113. It is submitted that the only condition under the Ex.P25 Agreement/Letter dated 30.03.2016 was that if the planning authority



permitted the first defendant to utilise the entire extent of 15.856 Acres for computation of FSI, the plaintiff herein would be entitled to an amount of Rs.12,13,74,500/-. However, if the planning authority considers only an extent of 15.51 Acres or less, no compensation would be payable to the plaintiff.

114. It is also vehemently denied that the plaintiff was kept in the dark about the application made to the planning authorities concerned and the outcome of such applications. In this regard, it is submitted that the requirement to intimate the plaintiff would only arise if the first defendant was permitted to utilise an area of more than 15.51 Acres which did not occur in the present case. It is submitted that the plaintiff, with full knowledge that they are not entitled to any compensation under Ex.P25 Agreement/Letter dated 30.03.2016 as the utilisation of land area was not achieved.

115. It is submitted that even as per the minutes of the meeting dated 14.10.2015, the uncertainty concerning the land acquisition of 31 Cents of land (in addition to 81 Cents) apart from the shortfall in the

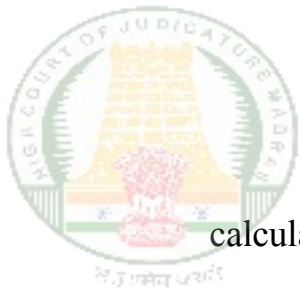


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physical area by an extent of 12 Cents was brought to the notice of the plaintiff. It is further false to state that the FMB sketch for survey numbers 134/1, 134/2, 134/3 and 135/5 indicates that only 0.81 Acres were acquired from the plaintiff's original extent of 17 Acres.

116. It is submitted that the table in the Paragraph 20 of the plaint under reply demonstrates the discrepancies in the land extent and Survey numbers between the title documents and the revenue records. While the parent Sale Deed of 1966 records the land extent under Survey No. 134/2 and 134/3 as 3.80 Acres and 1.80 Acres respectively, the corresponding Patta No.289 issued for the same land does not record Survey No.134 /3 or the land extent of 1.80 Acres and instead records a new Survey No.134/2A with a land extent of 5.21 Acres.

117. It is therefore submitted that the plaintiff has been unable or unwilling to provide any document or information to substantiate the manner or reason for this change other than making hypothetical



calculations relating to land acquisition for the Veeranam project and clubbing of Survey numbers etc.

118. It is therefore submitted that due to these discrepancies, the plaintiff had agreed to execute Ex.P21 Deed of Indemnity dated 30.03.2016 and guarantee in favour of the first defendant, indemnifying the first defendant from any loss suffered or claims faced by the first defendant due to the issues mentioned under the Deed of Indemnity.

119. It is particularly stated that despite repeated requests for a copy of the award pertaining to the land acquisition and receipt of compensation by the plaintiff with regard to the said acquisition, the plaintiff has failed to provide a copy of the same. Only on an examination of this award, it would be clear as to the actual extent of the lands acquired for the purpose of the Veeranam project. However, for reasons best known to the Plaintiff, a copy of the same has not been produced by the Plaintiff till date.

120. It is submitted that the plaintiff having made allegations



against the Chennai Metropolitan Development Authority (CMDA) as regards the alleged extents of lands under the Veeranam acquisition, cannot maintain any claim as against the first defendant. It is submitted that even as per the plaintiff, the physical extent of land was 15.74 Acres and not 15.856 Acres.

121. It is submitted that the first defendant is required only to present the application and planning permission for the purpose of inspection and is not required to furnish a copy of the same to the plaintiff and therefore, the first defendant is well within its rights in refusing to furnish a copy of the planning permission.

122. It is stated that the allegation of the plaintiff that the first defendant had only sought for the planning permission for an extent of 4.944 Acres, deliberately, with intent to negate payment obligations under the Ex.P25 Agreement/Letter dated 30.03.2016 is not agreeable.

123. It is submitted that the allegation is not sustainable from a



commercial perspective as well considering that the first defendant would have made more than double the amount of Rs.12.13 Crores if the first defendant had been able to persuade the Chennai Metropolitan Development Authority (CMDA) to calculate the FSI on the entire land extent of 5.285 Acres.

124. It is submitted that the differential between 21400 sq.mts. (the extent mentioned in the Sale Deed concerning the residential site) and 19,984.36 sq.mts. (the extent considered by the CMDA) is 1415.64 sq.mts. Applying 2.513 times FSI on 1415.64 sq.mts., the total extent of FSI amounts to 3557.50 sq. m. Considering the average base price for the residential complex of Rs.10,290/- per sq.ft. as on date, the consideration that the first defendant would have obtained from the sale of Rs.38,292.93 sq.ft. (i.e., 3557.50 sq.mts.) would be Rs.39,40,34,249.70.

125. Hence, upon considering the amounts the first defendant would have received had the Chennai Metropolitan Development Authority (CMDA) permitted the first defendant to utilise the entire extent of the subject property, the first defendant would have gladly paid



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an amount of Rs.12,13,74,500/- to the plaintiff had it been entitled to utilise the entire extent of 15.856 Acres.

126. In other words, it is submitted that the first defendant, being a prudent developer would have taken all efforts possible to obtain the maximum constructed area possible from the Chennai Metropolitan Development Authority (CMDA) and would not have deprived themselves of nearly Rs.40 Crores because they would have to pay the plaintiff a sum of Rs.12.13 Crores.

127. However, the facts are that on account of the discrepancies with regard to the subject property, more particularly with regard to the residential site, the Chennai Metropolitan Development Authority (CMDA) had only considered an extent of 15.51 Acres. Therefore, the plaintiff is not entitled to any compensation referred to in Ex.P25 Agreement / Letter dated 30.03.2016.

128. It is submitted that the second and third defendants do not have any privity of contract in so far as the subject matter transaction



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between the plaintiff and the first defendant relating to the subject property. It is further submitted that Ex.P25 Agreement / Letter dated 30.03.2016, which the plaintiff seeks to rely upon, does not state that the defendants would be jointly and severally liable for the amounts allegedly due from the first defendant to the plaintiff.

129. It is submitted that no relief can be sought against the second and third defendants. In any event, the plaintiff is not entitled to the instant relief sought in the suit as against any of the defendants.

130. The second defendant filed its Written Statement. It is the contention of the second defendant that the first defendant alone is involved in the development of the subject property and not the second defendant. It is submitted that since the Sale Deeds are only between the plaintiff and first defendant and Ex.P25 Agreement/Letter dated 30.03.2016 was only issued by the first defendant in favour of the plaintiff, there is no privity of contract to the aforementioned transaction insofar as the second defendant is concerned.



131. It is further submitted that there is no legal and binding contract between the plaintiff and the second defendant and hence the suit is also not maintainable as against the second defendant and the second defendant has therefore preferred an Application to seek deletion of its name from the array of defendants in the suit. It is submitted by the second respondent that as there is no breach of any terms of the covenants by the second defendant that has given rise to any cause of action, the second defendant is not liable to pay any compensation to the plaintiff. It is therefore prayed for dismissal of this suit against the second defendant.

132. The third defendant has filed its Written Statement. The contention of the third defendant is same of the second respondent that since no breach of any terms of the contract has been committed by the third defendant, third defendant is neither a proper nor necessary party to the dispute, the third defendant has therefore preferred an application to seek deletion of its name from the array of defendants in the suit and no cause of action that has arisen against this Defendant, this suit may be dismissed against the third defendant.



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133. I have considered the arguments advanced by the learned Senior Counsel for the plaintiff and the learned Senior Counsel for the defendants. I have perused the plaint, Written Statements filed by the respective defendants, issues framed by this Court and the Proof Affidavits filed by P.W.1 and D.W.1.

134. I have also perused the documents that were marked as Exhibits on behalf of the plaintiff and the defendants during Chief and Cross Examination of the parties. I have also perused and considered the deposition of the respective parties.

135. A reading of overall facts indicates that when Ex.P5 Term Sheet dated 29.06.2015 was signed between the plaintiff and the third defendant, the first defendant was yet to be incorporated. Ex.P5 Term Sheet dated 29.06.2015 was signed in the background of an auction which is said to have preceded the signing of the aforesaid Ex.P5 Term Sheet dated 29.06.2015. Thereafter, the first defendant was incorporated as a Special Purpose Vehicle (SPV).



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136. The total extent of land that was to be conveyed by the plaintiff to the defendants as per Ex.P5 Term Sheet dated 29.06.2015 was 15.86 Acres in S.Nos.134/1A2, 134/2A, 134/3, 134/4A & 134/5A in Pallavakkam Village, Shollinganallur Taluk, Kancheepuram District, Tamil Nadu. The total consideration that was agreed between the parties was Rs.550,00,00,000/- (Rupees Five Hundred Fifty Crores only). The defendants were to also carry out a private survey measurement at their own expenses.

137. As per Ex.P5 Term Sheet dated 29.06.2015, Sale Deed was to be executed between the parties within a period of 30 days from the date of receipt of Title Due Diligence Report and Title Certificate which period stood extended by Ex.P6 Supplementary Term Sheet dated 31.10.2015 to 15.12.2015 and to 31.01.2016 *vide* Ex.P7 Understanding dated 03.12.2015.

138. At the time of signing of Ex.P6 Supplementary Term Sheet dated 31.10.2015, it was clear between the parties that the extent of land



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as per Ex.P10 Patta No.289 dated 31.12.2015 was 15.860 Acres, whereas, the physical area of land that was available was only 15.736 Acres which was rounded off to 15.74 Acres. This deficit was purportedly on account of a portion of the land in composite S.No.134 acquired for Veeranam Water Project.

139. In Ex.P6 - Supplementary Term Sheet dated 31.10.2015, it was also concluded based on the difference in area mentioned in 2 Pattas that 0.81 Acres of land was acquired for Veeranam Water Project. On the said date, it was also decided that the plaintiff will provide a certified copy of the Field Measurement Book (FMB) sketch to the defendants duly certified by the Tahsildar, Shollinganallur.

140. It was in this background the plaintiff appears to have furnished Ex.D3 Field Measurement Book (FMB) sketch dated 24.03.2016 duly certified by the Tahsildar, Shollinganallur. Ex.D3 Field Measurement Book (FMB) sketch dated 24.03.2016 which was eventually utilized for execution of Exs.P19 & P20 Sale Deeds dated 30.03.2016.



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141. In Exs.P19 & P20 Sale Deeds dated 30.03.2016, the plaintiff conveyed a total extent of 15.856 Acres of land to the first defendant although the parties were aware that only 15.736 Acres (rounded off to 15.74 Acres) was available as per Ex.P6 Supplementary Term Sheet dated 31.10.2015.

142. The following Table will demonstrate the discrepancies in the extent of land that was physically available in the respective Survey Nos., total extent of land that was actually conveyed on paper to the first defendant and the actual measurement of land reckoned by the planning authority namely, the Chennai Metropolitan Development Authority (CMDA):-

<i>Sale Deed</i>		<i>Patta</i>		<i>Planning Permission</i>
<i>[For Commercial site]</i>				
	Ex.P19 Dt.30.3.16	In 2015 As per Ex.P10 Patta No.289 dt.31.12.15	In 2021 As per Ex.P39 Patta No.13329 dt.1.9.21	As per Ex.D5 Planning Approval dt.28.2.2018
Survey No.	Extent(in Acres)	Extent(in Acres)	Extent(in Acres)	Extent(in Acres)
134/1A2	5.508	5.510	5.510	



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A		[2 Hec. 23.00 Ares]	[2 Hec. 23.00 Ares]	
134/2A1	5.063	5.065	5.065	10.790
		[2 Hec. 5.00 Ares]	[2 Hec. 5.00 Ares]	[43665.15 Sq.mts]
Sub Total	10.571	10.575	10.575	10.790
<i>[For Residential site]</i>				
	Ex.P20 Dt.30.3.16	In 2015 As per Ex.P10 Patta No.289 dt.31.12.15	In 2021 As per Ex.P40 Patta No.13352 dt.1.9.21	As per Ex.D6 Planning Approval dt.2.8.2019
134/4 A1	3.445	3.434 [1 Hec. 39.50 Ares]	3.434 [1 Hec. 39.50 Ares]	4.942 [20003.46 sq. mts.]
134/5 A	1.840	1.828 [74.50 Ares]	1.828 [74.50 Ares]	
Sub Total	5.285	5.262	5.262	4.942
Total	15.856	15.837	15.837	15.732

143. There could be minor variations in the above calculation as the extent of land in Exs.P19 & P20 Sale Deeds dated 30.03.2016 is in Acres, whereas, the extent of land in Ex.P10 Composite Patta No.289 dated 31.12.2015 and Ex.P.39 & Ex.P.40 Online Pattas dated 01.09.2021 bearing reference No.13329 & 13352 respectively are in Ares and the extent of land in Ex.D5 & D6 Planning Permissions dated 28.02.2018 &



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02.08.2019 respectively are in sq.mts. For comparison, it was to be converted into Acres.

144. In the above Table, it is noted that the total extent of land that was actually and physically conveyed to the first defendant after physical measurement by the planning authority was approximately 15.732 Acres (63668.61 sq.mts) and not 15.856 as shown in Exs.P19 & P20 Sale Deeds dated 30.03.2016 .

145. It is noticed that the difference between the physical extent of land that was mentioned in Ex.P6 Supplementary Term Sheet dated 31.10.2015 and the physical extent of land that was mentioned in both Ex.D5 & D6 Planning Permissions dated 28.02.2018 and 02.08.2019 is only marginal.

146. On the date of execution of Exs.P19 & P20 Sale Deeds dated 30.03.2016, two other documents namely Ex.P21 Deed of Indemnity dated 30.03.2016 on the stamp paper and Ex.P25 Agreement also dated 30.03.2016 on the letter head of the first defendant (SPV),



were signed between the parties.

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147. Purchase of lands into two Sale Deeds in Exs.P19 & P20 dated 30.03.2016 was split for the convenience of the defendants as the defendants wanted to construct a commercial complex on the land conveyed *vide* Ex.P19 Sale Deed dated 30.03.2016 and a residential complex on the land conveyed *vide* Ex.P20 Sale Deed dated 30.03.2016.

148. Thus, at the time when Exs.P19 & P20 Sale Deeds dated 30.03.2016 were executed, the parties were aware of the physical extent of land as 15.736 Acres (rounded off to 15.74 Acres). This extent more or less matches with the extent of land that was available as per Ex.D5 & D6 Planning Permission issued by the Chennai Metropolitan Development Authority (CMDA).

149. It is perhaps on account of the above circumstances mentioned above the total consideration of Rs.550,00,00,000/- (Rupees Five Hundred Fifty Crores only) that was originally agreed between the signatories when Ex.P5 Term Sheet dated 29.06.2015 was reduced to



Rs.537,86,25,500/- (Rupees Five Hundred Thirty Seven Crores Eighty Six Lakhs Twenty Five Thousand and Five Hundred only) [i.e. Rs.358,32,50,000.00 + Rs.179,53,75,500] which is evident from the respective Exs.P19 & P20 Sale Deeds dated 30.03.2016.

150. Details of sale consideration agreed in Ex.P5 Term Sheet dated 29.06.2015 and Exs.P19 & P20 Sale Deeds dated 30.03.2016 are given in a Table as follow:-

<i>Particulars</i>	<i>Ex.P5 Term Sheet dated 29.06.2015</i>	<i>Ex.P19 Sale Deed dated 30.03.2016</i>	<i>Ex.P20 Sale Deed dated 30.03.2016</i>
Amount	Rs.550,00,00,000/-	Rs.358,32,50,000/-	Rs.179,53,75,500/-
Total	Rs.550,00,00,000/-	Rs.537,86,25,500/-	
<i>Difference between the sale considerations</i>	<i>Rs.12,13,74,500.00 [Rs.550,00,00,000.00 - Rs.537,86,25,500.00]</i>		

151. It is this amount of Rs.12,13,74,500/- which the plaintiff now seeks to recover from the first defendant along with interest though for alleged breach of the terms of Ex.P25 Agreement also dated 30.03.2016.

152. Thus, the parties were clear that though the extent of land



that was conveyed on paper *vide* Exs.P19 & P20 Sale Deeds dated 30.03.2016 was only 15.856 Acres in reality, the actual land that was available physically was only 15.736 Acres and was rounded off to 15.74 Acres.

153. Ex.P21 which was executed on stamp paper was intended to indemnify the defendants against any loss that may be suffered by the defendants on account of uncertainties surrounding sale concluded in favour of the first defendant *vide* Exs.P19 & P20 Sale Deeds dated 30.03.2016.

154. Ex.P25 Agreement dated 30.03.2016 signed on the letter head of the first defendant was intended to benefit the plaintiff. Clause 2 of Ex.P25 Agreement dated 30.03.2016 which is relevant reads as under:-

2. The Purchaser shall pay a compensation ("Compensation") to the Vendor towards the procurement of maximum permissible floor space index (FSI) for the development of the Plot Area in the manner set out below:
 - i. Compensation of Rs.12,13,74,500/- (Rupees Twelve Crores Thirteen Lakhs Seventy Four Thousand Five Hundred only) shall be paid by the Purchaser to the Vendor if the Purchaser is



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permitted, by the planning authorities, to utilise the entire Plot Area measuring 15.856 acres for the computation of FSI;

[OR]

- ii. Proportionate Compensation shall be paid by the Purchaser to the Vendor if Purchaser is permitted, by the planning authorities, to utilise only a portion of Plot Area measuring over 15.51 acres but below 15.856 acres for the computation of FSI. The applicable formula to calculate the proportionate Compensation is as follows:

$$\text{Proportionate Compensation} = \frac{(\text{sanctioned land area} - 15.51 \text{ acres})}{0.345 \text{ acres}} \times \text{Rs.12,13,74,500}$$

[Purchaser – First defendant; Vendor – Plaintiff]

3. Notwithstanding anything contained herein, parties expressly agree that if the purchaser is permitted to utilize only a portion of the Plot Area measuring 15.51 acres or less for the computation of FSI, then no compensation or any other kind of cost, expense or reimbursement will be payable by the purchaser to the vendor. It is clarified that the payment of compensation to the vendor is contingent upon the purchaser having obtained a planning permit from the Chennai Metropolitan Development Authority and a building plan approval from the Corporation of Chennai (both approvals together shall be referred to as “Plan Sanction”) by being permitted to utilize either the entire Plot Area or a portion of the Plot Area measuring over and above 15.51 acres for the computation of FSI.

155. The parties were thus aware of the fact that the physical

extent that was available for being conveyed was 15.736 Acres (rounded off to 15.74 Acres), they conveyed 15.836 Acres on paper and arrived at the above formula in Clause 2 in Ex.P25 Agreement dated 30.03.2016.



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156. As per Clause 3 in Ex.P25 Agreement dated 30.03.2016, the parties agreed that if the first defendant is permitted to utilize only a portion of the Plot Area measuring 15.51 Acres or less for computation of Floor Space Index (FSI), no compensation or any other kind of cost, expense or reimbursement will be payable by the first defendant to the plaintiff.

157. Clause 3 in Ex.P25 Agreement dated 30.03.2016 further clarified that the payment of compensation to the plaintiff is contingent upon the first defendant having obtained a planning permission from the Chennai Metropolitan Development Authority (CMDA) and a building plan approval from the Chennai Corporation by being permitted to utilize either the entire Plot Area or a portion of the Plot Area measuring over and above 15.51 Acres for computation of Floor Space Index (FSI).

158. Thus, there was a clear understanding between the parties that the entire extent of land being conveyed to the first defendant *vide* Exs.P19 & P20 Sale Deeds dated 30.03.2016 will be utilized for



construction of commercial complex and residential complex.

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159. However, while splitting the land for being conveyed, for construction of commercial complex in Ex.P19 Sale Deed dated 30.03.2016, an extent of 10.571 Acres in S.No.134/1A2A & 134/2A1 was identified and for residential complex in Ex.P20 Sale Deed dated 30.03.2016, an extent of 5.285 Acres in 134/4A1 & 134/5A was identified.

160. Thus, the land that was conveyed in S.Nos.134/1A2A & 134/2A1 measured approximately 10.790 Acres (43665.15 sq.mts.) which is subject matter of Ex.P19 Sale Deed dated 30.03.2016. However, the land in S.Nos.134/4A1 & 134/5A was only limited to 4.942 Acres (20003.46 sq.mts.) as against the total extent of 5.285 Acres *vide* Ex.P20 Sale Deed dated 30.03.2016 as detailed in the above Table. However, for sake of clarity, the above position is explained below:-

<i>Sale Deed</i>		<i>Planning Permission</i>
	Ex.P19	As per Ex.D5
	Dt.30.3.16	Planning Approval dt.28.2.2018



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Survey No.	Extent (in Acres)	Extent (in Acres)
134/1A2A	5.508	10.790 [43665.15 Sq.mts]
134/2A1	5.063	
Sub Total	10.571	10.790
	Ex.P20 Dt.30.3.16	As per Ex.D6 Planning Approval dt.2.8.2019
134/4A1	3.445	4.942 [20003.46 sq. mts.]
134/5A	1.840	
Sub Total	5.285	4.942
Total	15.856	15.732

161. Although the extent of land in Exs.P19 & P20 Sale Deeds dated 30.03.2016 conveyed was 15.856 Acres (10.571 + 5.285), in reality, the extent of land for commercial site was 10.790 Acres (43665.15 sq.mts) and not 10.571 Acres as mentioned in Ex.P19 Sale Deed dated 30.03.2016.

162. This led to the difficulties in getting appropriate planning permission from the planning authority namely, Chennai Metropolitan Development Authority (CMDA) as the physical extent of lands that were conveyed *vide* Exs.P19 & P20 Sale Deeds dated 30.03.2016 were in



variance with the actual extent mentioned in these documents.

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163. Based on the physical extent of land that was available after conveyance in Exs.P19 & P20 Sale Deeds dated 30.03.2016, application was filed by the first defendant for putting up a commercial complex and thereafter the residential complex which culminated in Ex.D5 Planning Permission bearing reference No.C3(S)/3448/2017 dated 28.02.2018 for commercial complex and Ex.D6 Planning Permission bearing reference No.C3(S)/18593/2017 dated 02.08.2019 for residential complex.

164. As per the provisions of the Second Master Plan for Chennai Metropolitan Area as amended upto 2013, the planning permission will be granted on the least extent of area in case there is any discrepancy between the Sale Deed, Patta, and Physical Extent. The relevant Clause reads as under:-

2.Definition:-

(33) Plot/Site Area – means the area of contiguous parcel of land enclosed by definite boundaries



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over which the applicant has legal right for development. **If the extent of plot differs as per site conditions, PLR extract/patta and registered ownership document, then for application of FSI and plot coverage regulations, lowest of the same (excluding any encroachment) will be counted.** For application of setback regulation the inner boundary arrived excluding any encroachment or the part of the land for which the applicant/developer do not have the right over it will be the basis.

165. Thus, as per Second Master Plan for Chennai Metropolitan Area as amended upto 2013, maximum FSI which could be achieved for the land that was conveyed *vide* Exs.P19 & P20 Sale Deeds dated 30.03.2016 is 15.732 Acres [10.790 + 4.942].

166. The facts on record also indicates that while first defendant had filed applications for residential complex with the Chennai Metropolitan Development Authority (CMDA), the said application was returned by the Chennai Metropolitan Development Authority (CMDA) on 19.05.2017 *vide* Ex.D4 Letter, wherein, one of the objections was that boundary as per FMB sketch & as on Site Measurement requires correction and boundary as per Site Measurement and FMB sketch were to be properly superimposed and the difference portion was to be



distinguished with proper hatching. In Ex.D4 Letter dated 19.05.2017, the first defendant was requested to furnish the revised FMB sketch for the residential site.

167. In the light of the above, I shall take up the issues framed by this Court on 05.07.2021.

Issue No.(1): Whether the suit filed by the plaintiff is maintainable under law?

168. The objection of the defendants is that the suit is time barred under Section 10 of the Transfer of Property Act, 1882. Section 10 of the Transfer of Property Act, 1882 reads as under:-

10.Condition restraining alienation.- Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void, except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him: provided that property may be transferred to or for the benefit of a woman (not being a Hindu, Muhammadan or Buddhist), so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein.



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169. The conveyance of land in Exs.P19 & P20 Sale Deeds dated 30.03.2016 contain no restrictions so as to render the sale void. Therefore, it is not open for the defendants to state that the suit is not maintainable. Thus, the Issue No.(1) is answered against the defendants.

Issue No.(2): Whether there were discrepancies in the FMB sketch dated 24.03.2016 furnished by the plaintiff to the first defendant and if so, to what extent did it contribute to the determination of the FSI by the Chennai Metropolitan Development Authority (CMDA)?

170. As discussed above, indeed there was discrepancy in the Ex.D3 FMB sketch dated 24.03.2016 that was furnished by the plaintiff to the defendants. In fact, parties were aware of the physical extent of land that was to be conveyed as is evident from a reading of Ex.P6 Supplementary Term Sheet dated 31.10.2015, wherein, it has been clearly recorded that the physical extent of land that was available was 15.736 Acres (rounded off to 15.74 Acres). Although the Ex.D3 FMB sketch dated 24.03.2016 contains incorrect extent of land, the parties agreed for compensation on account of uncertainty prevailing in the extent of land



that was conveyed vide Exs.P19 & P20 Sale Deeds dated 30.03.2016 and therefore arrived at a formula in Ex.P25 Agreement dated 30.03.2016 (on the same day). The Issue No.(2) is accordingly answered.

Issue No.(3): Whether as per the Agreement dated 30.03.2016, the first defendant was required to apply for maximum permissible FSI?

171. Yes. This is evident from a reading of Clause in Ex.P25 Agreement dated 30.03.2016 which has been extracted above. Thus, the Issue No.(3) is answered against the defendants.

Issue No.(4): Whether the plaintiff is entitled to compensation from the first defendant as per Ex.P25 Agreement dated 30.03.2016?

172. Yes as the total extent of land that was conveyed for getting Planning Permission was 15.732 Acres which is rounded off to 15.74 Acres as discussed above.

Issue No.(5): Whether the plaintiff is entitled to Rs.12,13,74,500/- or part thereof as per Ex.P25 Agreement dated 30.03.2016?

173. As per Ex.P25 Agreement dated 30.03.2016, the plaintiff



is entitled the proportionate compensation if the Planning Authority namely, Chennai Metropolitan Development Authority (CMDA) permits the first defendant to utilise only a portion of Plot Area measuring over 15.51 Acres but below 15.856 Acres for the computation of FSI.

174. In this case, admittedly, the extent of land that was available as per Exs.D5 & D6 was 15.732 Acres [43665.15 sq.mts. + 20003.46 sq.mts. = 63668.61 sq.mts.]. Therefore, the plaintiff is not entitled to whole amount of Rs.12,13,74,500/-.

175. Therefore, the plaintiff is entitled to the following amount as compensation arrived as per formula given in Clause 2 in Ex.P25 Agreement dated 30.03.2016:-

Formula : (sanctioned land area – 15.51 acres) x
Rs.12,13,74,500/-
0.345 acres

Compensation : (15.74 – 15.51) x Rs.12,13,74,500/-
0.345 acres

: 0.23 x Rs.12,13,74,500/-
0.345

= Rs.8,09,16,333/-



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176. Therefore, the plaintiff is entitled for a partial compensation of Rs.8,09,16,333/- as per Ex.P25 Agreement dated 30.03.2016.

Issue No.(6): Whether the plaintiff is entitled to future interest on Rs.12,13,74,500/- at 12% per annum from the date of the plaint until realisation and if so, to what extent?

177. The plaintiff is also entitled for interest on the aforesaid amount of Rs.8,09,16,333/- at 12% per annum from the due date till the date of realisation. The due date shall be computed from the date of Ex.D6 Planning Permission dated 02.08.2019.

Issue No.(7):Whether the relief sought by the plaintiff is maintainable against the second defendant in the suit?

178. The first defendant is a Special Purpose Vehicle (SPV) incorporated by the second defendant. The sale to the first defendant



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was pursuant to Ex.P5 Term Sheet dated 29.06.2015, Ex.P6 Supplementary Term Sheet dated 31.10.2015 and Ex.P7 Understanding entered into between the plaintiff and the second and third defendants. The first defendant is only a nominee nominated by the second defendant. Therefore, the defendants are jointly and severally liable to pay the aforesaid compensation.

Issue No.(8): Whether the parties are entitled to any other reliefs?

179. No. Barring the above compensation, the plaintiff is not entitled to any other reliefs. The defendant is not entitled for any relief.

180. In the result, this suit is partly decreed to the extent of aforesaid compensation of Rs.8,09,16,333/- together with interest at 12% per annum from the due date i.e. 02.08.2019 till the date of realisation. Parties to bear their own cost.

09.06.2023

Index : Yes/No



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Neutral Citation : Yes/No
jen/kkd

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Plaintiff's side witness:

Mr.G.T.Govindarajan : P.W.1

Defendants' side witness:

Mr.E.S.Senthilvel : D.W.1

Documents exhibited by the Plaintiff:

Sl. No.	Exhibit No.	Date	Description of Document
1	Ex.P1	03.11.2020	Board Resolution in favour of Mr.GT Govindarajan
2	Ex.P2	21.06.1966	Deed of Indenture of Sale dated 21.06.1966 bearing No.2913 of 1966.
3	Ex.P3	05.01.2005	Patta bearing No.289
4	Ex.P4	April, 2006	Order in Proceedings of the Special Tahsildar (LA) IT Expressway Scheme Tambaram
5	Ex.P5	29.06.2015	Term Sheet between the plaintiff and the defendants
6	Ex.P6	31.10.2015	Supplementary Term Sheet between the plaintiff and the defendants
7	Ex.P7	03.12.2015	Understanding between the plaintiff and the defendants
8	Ex.P8	22.12.2015	E-mail between the defendants and the plaintiff
9	Ex.P9	30.12.2015	Certificate of Tahsildar, Sholinganalur
10	Ex.P10	31.12.2015	Patta bearing No.289
11	Ex.P11	02.01.2016	E-mail between the defendants and the plaintiff
12	Ex.P12	21.01.2016	E-mail between the defendants and the plaintiff



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13	Ex.P13	26.01.2016	E-mail between the defendants and the plaintiff
14	Ex.P14	05.02.2016	E-mail between the counsel for the defendants and the counsel for the plaintiff
15	Ex.P15	10.02.2016	E-mail between the defendants and the plaintiff
16	Ex.P16	03.03.2016	E-mail between the defendants and the plaintiff
17	Ex.P17	10.03.2016	E-mail between the counsel for the defendants and the counsel for the plaintiff
18	Ex.P18	26.03.2016	E-mail between the defendants and the plaintiff
19	Ex.P19	30.03.2016	Sale Deed bearing No.2227 of 2016
20	Ex.P20	30.03.2016	Sale Deed bearing No.2228 of 2016
21	Ex.P21	30.03.2016	Deed of Indemnity between the plaintiff and the first defendant
22	Ex.P22	30.03.2016	Letter between the plaintiff and the first defendant
23	Ex.P23	30.03.2016	Letter between the plaintiff and the first defendant
24	Ex.P24	30.03.2016	Letter between the plaintiff and the first defendant
25	Ex.P25	30.03.2016	Agreement/Letter between the plaintiff and the first defendant
26	Ex.P26	13.11.2017	E-mail from the plaintiff to the second defendant
27	Ex.P27	20.11.2017	E-mail from the second defendant to the plaintiff
28	Ex.P28	19.02.2019	Legal Notice sent by the plaintiff to the first defendant
29	Ex.P29	11.03.2019	Reply sent by the first defendant to the plaintiff
30	Ex.P30	23.03.2019	Letter sent by the plaintiff to the first defendant
31	Ex.P31	25.03.2019	Reply sent by the first defendant to the plaintiff
32	Ex.P32	02.04.2019	Letter sent by the plaintiff to the first defendant
33	Ex.P33	03.04.2019	Reply sent by the first defendant to the plaintiff
34	Ex.P34	23.10.2019	Letter sent by the plaintiff to the first defendant
35	Ex.P35	02.11.2019	Reply sent by the first defendant to the plaintiff
36	Ex.P36	02.11.2020	Report of Horizon Valuers & Associates
37	Ex.P37	-	MGT-7 for the year 2019-2020 starting from



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			01.04.2019 ending with 31.03.2020 of the first defendant
38	Ex.P38	-	Brochure of the first and second defendants advertising their residential development on the Schedule Property
39	Ex.P39	01.09.2021	Online Patta for Survey Nos.134/1A2A & 134/2A1
40	Ex.P40	01.09.2021	Online Patta for Survey Nos.134/4A1 & 134/5A
41	Ex.P41	26.07.2021	Certificate for admission of Electronic Evidence under Section 65B of the Indian Evidence Act, 1872 for copy of E-mail Exchanges dated 02.01.2016 (Ex.P11), 21.01.2016 (Ex.P12), 26.01.2016 (Ex.P13), 05.02.2016 (Ex.P14), 10.02.2016 (Ex.P15), 22.12.2015 (Ex.P8), 03.03.2016 (Ex.P16), 10.03.2016 (Ex.P17), 26.03.2016 (Ex.P18), 13.11.2017 (Ex.P26) & 20.11.2017 (Ex.P27)

Documents exhibited by the Defendants:

Sl. No.	Exhibit No.	Date	Description of Document
1	Ex.D1	28.01.2021	Board Resolution of the first defendant in favour of Mr.Arindham Mukherjee
2	Ex.D2	24.09.2021	Power of Attorney in favour of the Deponent
3	Ex.D3	24.09.2021	FMB Sketch handed over by the plaintiff
4	Ex.D4	19.05.2017	Letter issued by the Chennai Metropolitan Development Authority to the first defendant
5	Ex.D5	-	Planning Permission accorded to the first defendant for commercial development
6	Ex.D6	-	Planning Permission accorded to the first defendant for residential development



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7	Ex.D7	-	Sketch showing the actual extent of land as compared to the FMB dated 24.03.2016 provided by the plaintiff
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C.SARAVANAN, J.

jen/kkd

Pre-Delivery Judgment
in
C.S.(Comm.Div.)No.2 of 2021

09.06.2023