Arb.Appln.Nos.113 to 115 of 2023,
172 to 179 of 2023, 227 to 230 of 2023
and O.A.Nos.127 to 129 and 259 of 2023

Reserved on	28.04.2023
Pronounced on	12.06.2023

KRISHNAN RAMASAMY, J.

When this matter came up for hearing on 22.02.2023, this Court had passed the following order:

"The above Original Applications have been filed by the applicant for the following reliefs:

(i) O.A.No.127 of 2023 – To grant an order of interim injunction restraining the first respondent, their men, agents, servants or any other person/s claiming under them from and in any manner interfering with or obstructing the implementation of the Project by the applicant strictly in accordance with the terms of the JDA, pending adjudication of the disputes between the parties before the Arbitral Tribunal

(ii) O.A.No.128 of 2023 – To grant an order of interim injunction restraining the second respondent from proceeding with the registration of the Deed of Cancellation of the Power of Attorney presented to him for registration by the respondent on 13.02.2023 seeking to cancel the General Power of Attorney dated 22.02.2018 executed by the respondent in favour of the petitioner

which is registered as Document No.982 of 2018 before the Sub Registrar of Puraswalkam, pending adjudication of the disputes between the parties before the Arbitral Tribunal.

(iii) O.A.No.129 of 2023 – To grant a order of interim injunction restraining the first respondent, their men, agents, servants or any other person/s claiming under them from and in any manner writing any letters, emails or notices to any statutory authorities, banks, financial institutions, customers or any other person/s or entity regarding the Project or the implementation thereof or the disputes pending adjudication between the parties which is likely to hinder or obstruct the progress of the Project or cause prejudice to the applicant.

2. Mr.K.G.Raghavan, learned Senior Counsel for the applicant submitted that the applicant and the first respondent have entered into a Joint Development Agreement (JDA) dated 26.06.2015, for developing the lands admeasuring to an extent of 63.89 Acres situated at Farens Road comprised in various Survey Numbers of Perambalur Division, Purasawalkam – Perambalur Taluk, Chennai, pursuant to which, the first respondent had executed an Irrevocable Power of Attorney (POA) dated 29.06.2015 in favour of the applicant. The said POA was registered as Document No.3048 of 2015 on the file of second respondent. Subsequently, the applicant found that the actual extent of the lands available for development (Project Land) was only 60.99 Acres. The applicant had commenced the work on

Project Land. The applicant had conceived the development of available 60.99 Acres of the Project Land into an Integrated Smart Township consisting of the State of the Art Residential High Rises, Villas, Market of India, Shopping Mall, Cinema Screens, School, Hospital, Club House, Health Club, Sports Arena, Swimming Pool and several other amenities.

2.1. While so, consequent to the enactment of the Real Estate (Development & Regulation) Act, 2016 (RERA), the applicant and first respondent have entered into an Amended Joint Development Agreement dated 22.02.2018. Accordingly, the POA dated 29.06.2015 was cancelled and a fresh Irrevocable Power of Attorney (POA) dated 22.02.2018 was executed by the first respondent in favour of the applicant, which was registered as Document No.982 of 2018 on the file of second respondent. Subsequent to the JDA dated 22.02.2018, the applicant company has invested more than Rs.1000 Crores for the purpose of project on the security of Project Land.

2.2. The learned Senior Counsel further submitted that according to the applicant, the first respondent received a sum of Rs.600 Crores from them. That apart, the applicant has paid the total Interest Free Refundable Security Deposit (IFRSD) of Rs.250 Crores to the first respondent to secure the due performance of the obligations contained in the JDA. In terms of Clause 31 of the POA dated 22.02.2018, it is clearly stated that the said POA is irrevocable and cannot be repudiated, altered or changed by the *first respondent under any circumstances. The applicant and the first respondent have availed loan from Banks, Public Financial Institutions as well as Private Financial Institutions to the tune of Rs.700 Crores approximately against the Receivables of Project as well as on the security of the Project Land. Hence, the first respondent cannot unilaterally cancel the POA without the consent of the lenders since the same would affect their rights to recover their dues.*

3. Mrs.Narmadha Sampath, learned counsel appearing for the first respondent submitted that the first respondent vide Legal Notice 05.12.2022, unilaterally cancelled the irrevocable POA dated 22.02.2018 executed in favour of the applicant. Thereafter, the first respondent gave a Protest Petition dated 13.02.2023 to the Inspector General of Registration stating that they have revoked POA dated 22.02.2018, however, the petition is pending before the second respondent.

4. The learned Senior Counsel for the applicant submitted that unilateral cancellation of POA dated 22.02.2018 by the first respondent is against the terms and conditions of the JDA as well as POA dated 22.02.2018. If the Project is collapsed, not only the applicant but also more than 2,500 customers who have invested their hard earned money will also be affected. Moreover, a school is running in the campus, in which, more than 1000 students are studying. If the POA is revoked, it will result in closure of the said school. Under such circumstances, if the first respondent makes *an attempt to revoke the POA dated 22.02.2018, the entire Project will get completely collapsed.*

4.1. The learned Senior Counsel for the applicant submitted that the first respondent cannot be permitted to revoke or repudiate the POA dated 22.02.2018 for the following reasons:

(a) As on date, more than 2,500 customers have booked units in SPR City and have paid more than Rs.1,300 Crores towards their dues. They have invested in the project based on the terms of the JDA and the irrevocable nature of the POA which gave them confidence in investing in such a unique Project with a substantially long gestation period;

(b) More than 600 of these customers have also availed retail home loans / shop loans for booking their units in the Project from various public and private financial institutions by mortgaging their respective units / undivided shares in the land as security. Thus, huge amounts of public monies are invested in the Project by the banks and financial institutions through these customers and any delay in completion the Project would not jeopardize the interest of the customers but also the banks and financial institutions;

(c) The Applicant and the first respondent have availed loans from Financial Institutions to the tune of approx. Rs.700 Crores against the Receivables of Project as well as on the security of the Project Land. These include Public Financial Institutions such as LIC Housing Finance Limited (LICHFL) as

well as Private Financial Institutions such as JM Financial and Ares SSG Advisors (Catalyst Trusteeship Limited) and the servicing of the said loans will be jeopardized if the Project comes to standstill, resulting in the loan accounts becoming irregular or defaulted;

(d) The Applicant and the first respondent are joint borrowers for the loan availed form LICHFL and the first respondent has also borrowed funds from the other two lenders viz., JM Financial and Ares SSG Advisors and hence, it is absolutely illegal on the part of the first respondent to unilaterally cancel the POA without the consent of said lenders as the same would affect their rights to recover their dues;

(e) There is a running School in the campus with more than 1000 students studying in the same. Disputes between parties and the title of property can result in closure of the school, which can lead to severe consequences for those students.

(f) There are more than 700 employees and 1500 labourers engaged by the applicant who are exclusively working to make this Project a reality. If this project comes to standstill, the livelihood of all these 2200 families will be at stake;

(g) More than 300 Vendors, Contractors and Consultants are supplying materials and rendering services towards construction of this Project thereby indirectly creating many more jobs. If this Project comes to an abrupt standstill, there shall be severe cascading effect on the businesses of these Vendors,

Contractors and Consultants;

(h) The dispute between the parties would result in adverse publicity and may cause serious and irreparable loss of reputation to the applicant and the Project and would result in a complete standstill of new sales and collection of moneys with respect units which are already sold. Without adequate cash flow, the Project will come to a grinding halt leading to incomplete ghost buildings and the hard earned monies of 2500 buyers would be at stake and

(i) The said Project was part of the Global Investor Meet of 2019 wherein, MOU was signed between Government of Tamil Nadu and SPR Group for Investment of Rs.5,500 Crores along with creation of thousands of job. Any adverse impact on Project can create serious damage to the Investor Friendly Investment Environment of Tamil Nadu.

4.2. Further, the learned Senior Counsel for the applicant submitted that no prejudice would be caused to the first respondent because

(a) The IFRSD of Rs.250 Crores has been paid by the applicant to the first respondent as due security for the performance of its obligations in terms of the JDA. This amount of Rs.250 Crores is very much available with the first respondent as only a small portion of the same has been adjusted till date. Thus, the first respondent has enough and more security to cover its claim or money against the applicant, which is the root cause of the dispute between the parties and

(b) The first respondent has benefited to the tune of Rs.812 Crores till date from the Project as against the Guide Line Value of the Project Land, which is in the range of 1000 Crores and only about 1/3 rd of the Project has been completed by applicant. The breakup details of the approximate payments made to the respondent till date are as follows: Sl.No. Particulars of Payments made to first respondent from Project Amount A Towards revenue share during the period 2016 to 2023 Rs.228 Crores B Miscellaneous amounts paid to Binny towards need based requirement either out of SPR's funds or via raising funds through NBFCs (including interest paid to NBFCs for funds raised) paid during the period 2016 to 2023 Rs.133 Crores C Total direct payments = A+B Rs.361 Crores D Security deposit paid in advance as per JDA paid in FY 2015-16 Rs.250 Crores E Interest incurred by SPR Group on excess payments made to Binny during the period 2016 to 2023 (Paid to Piramal Finance @ 24 % p.a and other NBFCs @ 18% p.a.) Rs.201 Crores F Total = C+D+E Rs.812 Crores. Therefore, the learned Senior Counsel prayed this Court to safeguard the interest of the applicant as well as the customers/investors who invested their money in the Project, by granting an order of interim injunction in favour of the applicant.

5. The learned counsel appearing for the first respondent submitted that there is a possibility for settlement of dispute between the parties and therefore, the matter may be referred to Mediation. She further submitted that for the next two weeks, her *client will not precipitate the issue and sought time for filing the counter affidavit.*

6. In reply, the learned Senior Counsel for the applicant submitted that already for the past eight months, settlement talks are going on, however, no settlement has been arrived at. Hence, there is no chance for settlement.

7. The learned counsel for the applicant prayed this Court to issue direction to the first respondent not to precipitate the issue and not to proceed with the registration of Deed of Cancellation of POA dated 22.02.2018 and also, not to write any letters, e-mails or notice to any statutory authorities, banks, financial institutions, customers or any other persons, for a period of two weeks.

8. In view of the above submissions made by the leaned counsel on either side and consideration of Clause 2(2) of the Joint Development Agreement dated 26.06.2015, whereby, the respondent irrevocably grants the developer the exclusive right to develop the schedule property and the developer has agreed to develop the schedule mentioned property on the terms and conditions contained therein and in view of absolving the responsibility or liability by the owner in terms of Clause 3.6 of JDA, the payment of sum of Rs.250 Crores as interest free refundable deposit in order to secure the due performance of its obligations by the developer to the owner in terms of Clause 8 of the JDA, in view of the Clause No.10.1(xx), the owner undertakes that they will not make or authorise any communication or any *statutory authority, whereby, the development of the project is hindered or obstructed in any manner or is against the agreement or shall prejudicially affect the rights of the parties in the projects, in view of Clause No.14.1, whereby, the owner has agreed that in case of any dispute between the parties, the owner shall not interfere or restrain or obstruct the Developer from their undertaking the construction or development therein whilst both the parties works to resolve the dispute or disagreement, in view of the agreement by virtue of Clause 18 to execute the Power of Attorney in view of the developer or owner and further provision of the owner to the developer that owner will not revoke the general Power of Attorney granted as per Clause 18.2 of JDA and in view of Clause 31 of the irrevocable general POA executed by the respondent in favour of the petitioner dated 22.02.2018, whereby, the respondent undertakes that the POA shall remain irrevocable and developer shall not have any right to repudiate, or alter or seek and change the terms and conditions of the irrevocable POA settled between owner and the attorney holder shall bind the successors in interest and permitted assigns, this Court directs the first respondent not to precipitate the issue till the next date of hearing. The second respondent is directed not to register the Deed of Cancellation of POA dated 22.02.2018 presented by the first respondent or any other deeds with regard to the subject property, if any presented by the first respondent. Further, this Court also directs the first respondent not to write* *any letters, e-mails or notice to any statutory authorities, banks, financial institutions, customers, etc. In the meantime, the applicant shall keep proper accounts for sale of the flats from today.*

9. Issue notice to the second respondent through Court as well as privately, returnable by 15.03.2023.

List the matter on 15.03.2023."

2. The respondent in the above original applications had filed the arbitration applications in Arb.Appln.Nos.113 to 115 of 2023 to vacate the interim order granted by this Court vide order dated 22.02.2023 in O.A.Nos.127 to 129 of 2023. The respondent had also filed Arb.Appln.Nos. 172 to 179 and 230 of 2023 and O.A.Nos.259 of 2023 for various reliefs prayed therein.

3. The applicant, in the above original applications, had filed an application in Arb.Appln.Nos.227 of 2023 to appoint an independent audit firm to conduct the audit of the accounts of the Joint Venture Development and to submit the report before this Court and the applicant had also filed the applications in Arb.Appln.Nos.228 and 229 of 2023 for various reliefs prayed therein.

4. The parties shall hereinafter be referred to by their respective ranks in the aforesaid O.A.Nos.127 to 129 of 2023, i.e., M/s.SPR Construction Private Limited shall hereinafter be called as "the applicant/SPR" and M/s.Binny Limited shall hereinafter be called as "the respondent/Binny".

5. Mr.C.Aryama Sundaram and Mr.P.S.Raman, learned Senior counsel appeared on behalf of the applicant/SPR and Mr.C.S.Vaidhyanathan, learned Senior counsel appeared on behalf of the respondent/Binny.

6. The brief facts of the case are as follows:

6.1 M/s.Binny Limited is a Public Listed company with 10,000 shareholders incorporated under the provisions of the Indian Companies Act 1956. It owns 62.7 acres parcels of land in Perambur, Chennai.

6.2 Binny and SPR had entered into the first Joint Development Agreement (JDA) dated 26.06.2015 for development of the said property and the respondent had executed Irrevocable Power of Attorney to and in favour of the applicant on 29.06.2015. Thereafter, the said JDA and Irrevocable Power of Attorney were amended on 22.02.2018 and the reinstated JDA and General Power of Attorney (GPOA), both dated 22.02.2018 were executed by the respondent to and in favour of the applicant. In terms of the reinstated JDA, the revenue receivable were to be split in the 60:40 ratio with SPR getting 60% and Binny getting 40%.

6.3 While development is in progress, the disputes arose between the parties with regard to the sharing of revenue and interpretation of certain clauses in the reinstated JDA with regard to the permissible deductions, which are to be made from the share of revenue, which has to be paid by Binny.

6.4 All the efforts for mediation and conciliation of the disputes between the parties appears to be failed. In February 2023, the Binny attempted to cancel the GPOA dated 22.02.2018 issued to SPR, which empowers them to do all the necessary acts for the development and the sale of the property. As the SPR was constrained to invoke the arbitration clause contained in the Clause No.37.1 of the GPOA, SPR had approached this Court and obtained the interim order.

6.5 The respondent/Binny had filed the vacate stay petition to vacate the interim injunction granted by this Court vide order dated 22.02.2023 in O.A.Nos.127 to 129 of 2023.

7. Mr.C.S.Vaidhyanathan, learned Senior counsel, who is appearing for the respondent, would submit that the SPR had failed to disclose the details with regard to the accounted and unaccounted sale transactions. In terms of the agreement, the applicant is supposed to disclose the entire sale transaction, i.e., both accounted and unaccounted, if any. However, when the respondent made a request, all the aforesaid details had not been provided by the applicant, which is against the provisions of JDA. Further, he would contend that apart from the failure on the part of the applicant to provide proper accounts with regard to the sale proceeds, the applicant have been creating double mortgage on the subject property under the provisions

of JDA. While creating the double mortgage, the applicant had not at all disclosed all these facts. Concealing these material facts, the applicant had created the double mortgage, which is totally against the interest of the respondent and also against the provisions of the JDA.

8. Further, he would contend that since the present JDA is for the revenue sharing, the applicant is supposed to provide the details of the collection and if the same is not provided, the interest of the respondent would be affected prejudicially, since the respondent is entitled for 40% of the revenue collection. When such being the case, according to the learned Senior counsel for the respondent/Binny, the applicant had suppressed the details with regard to the collections received from the customers. Since the applicant have made suppression of collection, the respondent was compelled to proceed for cancellation of the GPOA.

9. As per the terms of JDA, the applicant is entitled for 60% of the revenue and respondent is entitled for 40% of the revenue. For the purpose of development of the lands, the applicant was granted permission to create

mortgage to borrow money from the banks and the financial institutions and the permission was granted to the applicant to mortgage only to the extent of their 60% of revenue. As far as the remaining 40% of revenue is concerned, since the same belongs to the respondent, the applicant is not supposed to mortgage the said 40% of the revenue with the bank. However, according to the respondent, the applicant had also mortgaged the aforesaid 40% of the respondent to the bank for obtaining loans, which is contrary to the agreement. In the event of nonpayment of loan, the 40% share of the property will get affected and the respondent will lose everything.

10. Further, the learned Senior counsel for the respondent would contend that the SPR had made default in payment of loan to the banks and financial institutions, which ultimately bring the project into standstill and the financial institutions may take action for bankruptcy against the SPR, in which case not only the interest of the respondent will get affected, but at large the interest of more than 3000 purchasers of the flats, who are general public, will also get affected. Therefore, the Binny was forced to take

decision with regard to the cancellation of the GPOA.

11. He would also contend that SPR had failed to act transparently as required under JDA and as per the terms and conditions of the said JDA, if any information is sought by the respondent, the applicant has to provide the same. However, in the present case, the applicant had refused to provide the same. Under these circumstances, the respondent had made a request to the applicant to inform about the time and place of execution of the sale deed to the buyers so as to make it convenient for the respondent/its representatives, who were the owners of the properties, to be present. However, the said request was also completely ignored by the applicant. Further, the applicant had also failed to provide the CRM data, booking forms, etc., to the respondent as required under the JDA.

12. The learned Senior counsel would contend that as per the terms of JDA, Binni is entitled for 40% of the revenue in every sale proceed. When such being the case, though the SPR had made sale in the month of February 2023, March 2023 and April 2023, they have not shared any

payment with Binny. He would further contend that the SPR is arbitrarily selling the constructed area without entering into the Sale Price Strategy with Binny. In terms of the JDA, at every quarter, the parties have to enter into the Sale Price Strategy. Though the parties have determined the price at every quarter, the SPR is arbitrarily selling the constructed areas without any price strategy on their whims and fancies.

13. He would also contend that the applicant had paid the Interest Free Refundable Security Deposit (IFRSD) by mortgaging the project land, which is also against the provisions of terms and conditions of the agreement. Therefore, due to the act of misdeed on the part of the applicant, the respondent was compelled to take a harsh decision of cancellation of GPOA executed on 22.02.2018.

14. He would further contend that in terms of the Section 202 of the Indian Contract Act, 1872 (hereinafter called as "Contract Act"), the GPOA is certainly revocable, since it is a contract of agencies without interest. Any contract of agencies, without interest, can be revocable as held by the Hon'ble Apex Court in ***Suraj Lamp and Industries Private Limited vs.***

State of Haryana and another reported in ***AIR 2012 SC 206***. Further he would also referred the Bombay High Court Judgment in ***Barses J.A. D'Douza vs. Municipal Corporation of GR.Brihan Mumbai and others*** reported in ***(2003) 4 MAH LJ 451 to 464***.

15. The learned Senior counsel would further contend that as far as the present case is concerned, the GPOA expressly states that it is not granted for any remuneration and it does not grant any interest to SPR. Hence, he would submit that the GPOA is certainly revocable and it had been duly revoked with a notice of revocation within the meaning of Section 202 of the Contract Act.

16. Further, by referring Section 214 of the Contract Act, he would submit that it is the duty of the agent to use all reasonable diligence to communicate his principal and to obtain his instructions. However, in the present case, even on the request of the principal, the agent has not obliged to provide the information. Therefore, since the SPR has breached its statutory duty to use all reasonable diligence in communicating with Binny

as required under Section 214 of the Contract Act, the respondent is certainly entitled to revoke the GPOA in the terms of Section 202 of the Contract Act.

17. The learned Senior counsel would also submit that the SPR had made a claim that they have provided accurate statement of accounts as on 31.01.2023. However, in the course of reconciliation of the statement of accounts it has sevaral discrepancies. Therefore, he would contend that the accounts are not accurate.

18. The learned Senior counsel would also contend that, apart from the above, the applicant had also failed to provide any business plan in terms of Clause 3.2 of JDA and hence, for all these reasons, he requested this Court to appoint a forensic Audit to find out all the misdeeds accurately and to cull out everything. Initially he would submit that he is agreeable for the appointment of Auditor to scrutinize the books and accounts with regard to the collections and the distributions made by the respondent. But he insist for the appointment of the forensic audit. Further, apart from conducting the

audit, he also prays to vacate the interim injunction granted by this Court.

19. Further, he would contend that as per the terms of JDA, the respondent has no responsibility or liability for the actions of the agents. For all these reasons stated above, since the respondent acted in the terms of JDA and also well within his power, in terms of Sections 202 and 214 of the Contract Act, he prays to vacate the interim injunction granted by this Court dated 22.02.2023.

20. On the other hand, Mr.C.Aryama Sundaram, learned Senior counsel, who is appearing for the applicant would submit that after elaborative discussion, both the parties have entered into the first JDA on 26.06.2015. Subsequently, on 29.06.2015, the Irrevocable Power of Attorney was also executed by the respondent in favor of the applicant. Thereafter, the terms and conditions were modified in the said JDA, thus, the respondent had executed the reinstated JDA and the Irrevocable Power of Attorney, both dated 22.02.2018, in favour of the applicant. In terms of the reinstated JDA, the respondent is supposed to execute the Irrevocable

Power of Attorney/GPOA. It is not that the GPOA is irrevocable as per the terms and conditions contained in the Irrevocable Power of Attorney. But it was agreed in terms of JDA by both the parties to execute the Irrevocable Power of Attorney/GPOA dated 22.02.2018. In terms of the said agreement alone, the GPOA was executed. Having executed the JDA and GPOA, now the respondent is coming forward to cancel the same citing certain untenable allegations of financial misdeeds. The parties are bound by the terms and conditions of reinstated JDA and GPOA.

21. He would further contend that it is not that the applicant has not implemented the project in terms of the JDA, but it is only with regard to some doubts on the aspect of the finance, which were raised in the minds of the respondent and for which, the respondent wanted to get clarification. Therefore, he would contend that assuming even if there is an admitted financial irregularities as alleged by the respondent, it would not give any cause for the respondent to go to the extent of canceling the GPOA. It was agreed by the parties by virtue of JDA that the agreement cannot be terminated until the completion of the project, which means that the parties are crystal clear that irrespective of any difference of opinion, the project has

to be completed and if there is any difference of opinion, it has to be resolved amicably between the parties and until the completion of the project, the agreement should not be terminated. The said term was agreed by the parties only due to the reasons that huge public money is involved and many flats are going to be constructed. At present, about 2500 flats were sold, the public financial institutions were also invested and hence, at any cost, the parties do not want to stall the project because of one party's misunderstanding. If that being the understanding of the parties, irrespective of the misunderstanding, the respondent is not entitled to go for the cancellation of GPOA.

22. Further, he would contend that the present project has been approached by the RERA and now 3000+ customers have purchased the flats, home loans were also availed and there is a school, where more than 1000 students are studying, 1,700 laborers are working and several third party contracts were entered into and 300 vendors were also involved. Therefore, he would submit that in terms of JDA, until the completion of the project, irrespective of any misunderstanding, the project has to be

completed without any interruption and the misunderstanding has to be resolved between the parties amicably.

23. Mr.C.Aryama Sundaram, learned Senior counsel appearing for SPR would submit that the project has been going on as per the business plan and there is no deviation on the aspect of the business plan as contended by the leaned Senior counsel for the respondent/Binny. As far as the allegation of non-disclosure of the accounts and creation of mortgage is concerned, he would submit that all those allegations are false. As on 31.01.2023, the comprehension revenue report was shared with Binny vide email dated 06.02.2023, which clearly contains the details of all the revenue transaction entered into by SPR with respect to Phase-I of the project as on the said date. In response to the said e-mail, the Binny vide email dated 06.02.2023 has categorically stated that they are not willing to look into the contents of the revenue report receipt shared by SPR. Therefore, he would submit that the said revenue reports would clarify all the doubts of the Binny with regard to the allegations of failure to disclose the accounts by the applicants. In any event, the veracity of the accounts and the truth of

allegations made by Binny can be ascertained by the Auditor by virtue of audit.

24. As far as the double mortgage is concerned, he would submit that the transaction referred to by Binny are only agreement of sale entered into by some investors/private financiers and such agreement of sale do not create a mortgage in favour of the agreement holders, which would require the permission or approval from the first share holders/original owner of the property. Similarly, the said agreement of sale could be canceled upon the repayment of the loan availed by SPR. If the agreement holders decided to retain few apartment/shops at a later date, the same would be treated as concluded sale. Binny having misconstruing these agreements of sale entered into for the purpose of availing short term loan as creation of double mortgages, which is entirely unfounded.

25. As far as the allegation of suppression of the collection is concerned, the learned Senior counsel would submit a comprehensive revenue report as on 31.01.2023, which was submitted to Binny, would

shows that there has been no suppression of revenue collection, which was collected from the customers by the SPR.

26. As far as the allegation with regard to the offering of the Binny's share of project as security for the loan is concerned, the learned Senior counsel would contend that after entering into JDA and the payment of IFRSD of Rs.250 crores, there was an Income Tax attachment over the project land and SPR had to borrow money from the financial institutions on the strength of said books of accounts. The Binny had pledged their receivables from the project as security for the said loan in addition to the securities offered by the SPR. Further due to the financial crisis in the market during post COVID-19 period, the Binny agreed to join hands with SPR as co-borrower of the loan from the LIC housing Limited. Binny is a listed company and necessary resolutions were passed by the Board of Directors for availing these loans and to pledge the receivables from the project as security thereon. Hence, the Binny had voluntarily agreed to be a party to the said loans and to pledge the receivables as security thereon and hence, there is no merits in the allegations made by the Binny.

27. The learned Senior counsel would also submit that as far as the allegations of default in outstanding loans of SPR is concerned, the SPR has been substantially repaying the loans, which were availed from the financial institutions and LIC Housing Limited and thereby, the outstanding dues of the said loans has been reduced. Therefore, there is no truth on the allegations made by the Binny against the SPR.

28. As far as the transparency aspect is concerned, the learned Senior counsel appearing for SPR would submit that the SPR is always transparent in disclosing all the informations to the respondent and even though the SPR is obligated only to furnish MIS to Binny as per the JDA, when differences arose between the parties, SPR has furnished the CRM data, customer details and several other data, which were required by Binny from time to time. Therefore, the question of non-transparency on the part of the SPR in disclosing informations to Binny does not arose.

29. Further, it was submitted by the learned Senior counsel for the

applicant that the SPR has prepared a comprehensive revenue report as on 31.01.2023 and sent the same to Binny vide e-mail. As per the report, a sum of Rs.330 crores in excess was payable by Binny to SPR and that is the reason why the Binny has refused to see the said e-mail. He also contended that after the perusal of the said report, if any reconciliation was required, the applicant would have considered the said report and the parties would have reconciled the revenue receipts. However, it is a failure on the part of the respondent to react for the comprehensive revenue report sent by the applicant as on 31.01.2023. As stated above, having failed on the duty of the respondent, now they are putting the blame on the applicant, as if the applicant had failed to share the revenue and other informations, which is also contrary to the facts.

30. The learned Senior counsel would contend that there is no truth in the allegation that the applicant has been selling the constructed area without entering into Sale Price Strategy. In fact, the sale, which was conducted by the SPR till March, 2023, was based on the Sale Price Strategy and the same was discussed, finalized and signed by both the

parties i.e., the Sale Price Strategy for the period from January 2023 to March 2023 was signed by SPR and Binny and the same is available on records. Hence, there is no truth in this allegations.

31. With regard to the allegation of payment of IFRSD by mortgaging the project land is concerned, the learned Senior counsel would submit that the value of the project land in the year 2015, i.e., at the time of execution of first JDA, was to the tune of Rs.1,000 Crores and as per the industries standard, IFRSD payable to Binny would be only 10% of the share. However, the Binny demanded that they need Rs.250 Crores as IFRSD, which worked out to almost 25% of the value of the property. The SPR had paid a substantial portion of IFRSD to Binny. The Clause 16 of JDA empowers Binny to raise loans from the banks, financial institutions and other means on the security of the project plan for the purpose of making payment of the balance IFRDS and other purpose relating to the projects. Hence, the learned Senior counsel would contend that the Binny cannot have any grievance on the same.

32. Mr.P.S.Raman, learned Senior counsel, who is appearing for one of the applicants, would submit that the entire project is for the development of the integrated township in 60.89 acres of land, which consist of the shopping malls, houses, schools and hospitals and this is the only project in South India, which will have the highest housing apartment.

33. He would further submit that the guideline value for the entire 60.89 acres would be around a sum of Rs.715 Crores. Already the applicant has paid a substantial amount to the respondent and the amount paid by the applicant to the respondent is much more than the entitlement in terms of the Revenue Share Agreement. He would further contend that the GPOA cannot be altered at any cost, because, it is irrevocable GPOA and it is also reiterated in the arguments of the Mr.Aryama Sundaram, learned Senior counsel appearing for the SPR that the agreement cannot be terminated at any cost before the completion of the project.

34. He would further submit that as contended by the respondent, if

the GPOA is canceled, the entire project will become standstill and all the men, material and other money spent on the project will become totally waste and it will be a real blow for economy and only keeping this in mind, the parties have agreed to the Irrevocable GPOA. Further, he would submit that the GPOA has to be read along with the JDA. A conjoint reading of the GPOA and JDA would make it clear that the respondent cannot stall the project, since if there is any financial misdeed on the part of the parties to the agreement, the same have to be resorted by virtue of Alternate Dispute Resolution and until the completion of project in entirety, the question of termination does not arise. Further, he would contend that the interim injunction already granted by this Court cannot be vacated. In support of his contention, he referred to the judgment in ***Civil Appeal No.179 of 2017 [Nabha Power Limited (NPL) vs. Punjab State Power Corporation Limited (PSPCL) and another***.

35. Both Mr.Aryama Sundaram and Mr.P.S.Raman, learned Senior counsel appearing for the applicants would contend that since the respondent made the allegation of financial misdeed, a Chartered

Accountant may be appointed. According to the respondent, the issues are only pertaining to a period after 01.03.2022 till date. Even the applicant had sent the comprehensive revenue report on 31.01.2023 and it is for the respondent to respond. However, without responding to the same, the respondent is directly going for cancellation the GPOA, which is contrary to the provisions of the agreed terms and conditions of the JDA and GPOA. Therefore, he would contend that any Chartered Accountant may be appointed as decided by this Hon'ble Court and the scope is also provided in the written submission to scrutinize the books of accounts with regard to the sale transaction made by the applicant and sharing of the revenues by the applicant with the respondent and with regard to the pricing issues as raised by the respondent and all other issues that the respondent had raised in the present application.

36. Heard the learned Senior counsel appearing for the applicant and the respondent and perused the materials available on records.

37. The central dispute in the present applications is with regard to

the alleged attempt made by the applicant for the purpose of cancellation of the Irrevocable GPOA executed by the respondent in favour of the applicant dated 22.02.2018. According to the respondent, since the applicant had not acted as per the terms of JDA and GPOA, both dated 22.02.2018, certainly as a principal, the respondent is empowered to cancel the GPOA executed by them.

38. Let me examine the JDA with respect to the rights, powers and the other privileges entrusted by the respondent to and in favour of the applicant. The Clauses 2.1, 2.2 and 2.3 of the JDA states as follows:

"2. AGREEMENT AND GRANT OF DEVELOPMENT RIGHTS.

2.1 With effect from the Execution Date, the JDA and any and all other earlier agreements or understandings, written or otherwise, entered into by any of the Parties in relation to the matters contained herein, shall be superseded in their entirety and amended and restated by this Agreement. Notwithstanding the same, the Parties hereby acknowledge and ratify all actions undertaken by the Parties pursuant to the JDA dated June 26, 2015 and the General Power of Attomey dated June 29, 2015 executed by the Owner in favour of the Developer, pursuant to *the JDA.*

2.2 That in pursuance of the foregoing and subject to the obligations undertaken by each Party hereto and in consideration of the benefits accruing to each Party as provided herein, the Owner hereby irrevocably grants the Developer the exclusive right to develop the Schedule Property and the Developer has agreed to develop the Schedule Property on the terms and conditions contained herein below and/or such terms and conditions as may be agreed from time to time.

2.3 This Agreement shall always mean and include the Annexure(s) hereto and all other agreements, amendments, deeds and other documents including Business Plan pertaining to the development viz. the plans, drawings and sketches drawn up for development of the Schedule Property executed between the Parties hereto subsequently, including the registered general power of attorney to be executed by the Owner in favor of the Developer for the purpose of this Project. It is agreed that all such Annexures and agreements/deeds shall be co-terminus to each other and shall run concurrently to this Agreement and until this Agreement is terminated or is otherwise determined in the manner provided hereinafter, all other executed documents shall be together subsisting and enforceable."

39. A reading of the above Clauses would show that the owner has

irrevocably grants the developer to execute the right to develop the schedule property and the developer also agreed to develop the schedule property under the terms and conditions contained therein.

40. In Clause 2.3 of JDA, it was specifically agreed that all the annexures and agreement deeds shall be co-terminus to each other and shall be read concurrently to the JDA and until the JDA terminated or otherwise determined in the manner provided hereinafter all other executed documents shall be together subsisting and enforceable. Therefore, the GPOA cannot be looked into independently and it has to be read along with the JDA. If we read the JDA and GPOA, it would be clear that as long as the JDA subsists, the Power of Attorney would subsist.

41. Clause 4.2 of JDA deals with the sharing and distribution of the revenue in the ratio of 40:60 i.e., 40% of the revenue to the Binny and 60% of the revenue to the SPR.

42. Clauses 10(xviii) and 10(xx) would provide as follows:

"10. OWNER'S REPRESENTATIONS, WARRANTIES AND COVENANTS

(i) to (xvii)...........

(xviii) The Owner shall not do any acts, deeds, matters and things which shall adversely affect its title to the Schedule Property.

(xix).............

(xx) The Owner shall not make or authorise any communication to any statutory authority whereby the development of the Project in hindered or obstructed in any manner or is against this Agreement or shall prejudicially affect the rights of the Parties in the Project."

43. A reading of the above clauses would show that the owner shall not do any act in these matters, which shall adversely affect its title to the schedule property and also not to make any communication to any Statutory authorities, whereby the development of the Project in hindered or obstructed. Therefore, the owner is not supposed to write any communication or to do any action, which will prejudicially affect the rights of the parties, particularly development of the project.

44. Clause 14.1 of JDA reads as follows:

"14.1 COMPLETION OF CONSTRUCTION

The Owner, shall not revoke the permission and authorization given herein to the Developer to enter the Schedule Property and develop the same until the Completion of the entire Project, as the Developer will be incurring substantial expenditure for development of the Project. In case of any dispute between the Parties, the Owner shall not be entitled to interfere or restrain or obstruct the Developer from undertaking the construction or development therein whilst both Parties work to resolve the dispute/ disagreement"

45. The above Clause makes it crystal clear that if there is any dispute between the parties, the owner shall not be entitled to interfere or restrain or obstruct the developer from undertaking the constructions of development therein, while both parties works to resolve the dispute. Therefore, the right of interfering or restraining from development of the project by the applicant either in the form of canceling the agreement or in the form of canceling GPOA has been restricted by the above said Clause and the ultimate aim of the parties was not to stall the project and let the project to go on until the completion of the work and the parties shall resolve all the issues amicably or by virtue of Alternate Dispute Resolution. Since the parties have agreed

for this mode of resolution, they are not supposed to resort any other modes to stall the project, which is against the agreed terms, and which would not only against the interest of the parties but also the interest of the public at large including the public financial institutions and the general public, who are all involved in this project, including the 3rd party agencies, vendors and workers. As stated earlier, all the annexure and deeds shall be co-terminus to each other and shall be read concurrently with this agreement.

46. Clause 12 of JDA deals with the Sale Price Strategy. The sale price has to be determined in accordance with the said Clause. It was addressed by the parties that the Sale Price Strategy has been approved by the parties for the quarter from 01.01.2023 to 31.03.2023 and therefore, the sale prices have been fixed with consent of both the parties at every quarters. Under these circumstances, the respondent had made allegation with regard to the sale made by the applicant.

47. The sale prices have been fixed by the parties and based on the market condition only the prices have been fixed and also it is not that the

prices were fixed 2 years back, but at every quarter, they have been fixing the prices. When such being the case, considering the material facts and aspects of sale prices on the part of the applicant, it only appears to be a mere allegation without any substances. When the respondent themselves has agreed for certain prices, now making allegations of selling flats by the applicant under the assumption of the higher price is unacceptable. For these reasons alone, the respondent is seeking a forensic audit up to 31.03.2023. The remarks made by the Auditor in the balance sheet with regard to the revenue sharing will ultimately prove that the same is up to the satisfaction of the respondent and only from the year starting on 01.04.2022 to till date, respondent is not in agreement with the transaction of the applicant and that too, the applicant has sent the MIS information and comprehensive report as on 31.01.2023 and it is only for the respondent to provide any responses. If the respondent would have seen those mails, there is a chance for him to raise all the issues and resolve the same. Even for the period of 01.01.2023 to 31.03.2023, the Sale Price Strategy has been approved by the respondent/Binni. In spite of all those things, the respondent has made the allegations against the applicant only on the suspicious and without any real material facts. Hence, it is not proper for any Court to order for forensic audit, that too, when the present form of agreement has been worked very well among the parties up to 31.03.2022.

48. It appears that the present issue has been raised due to certain misunderstanding between the parties and the same can be resolved amicably between the parties. In terms of the agreement, the parties has irrevocably agreed not to disturb or restrain or interfere the development of Constructions in any manner until the completion of the project, which includes the termination. Therefore, until the completion of the project, the owner cannot interfere with the development of the project. Further with regard to the payment details, the respondent had stated that they have paid about a sum of Rs.320 Crores in the manner stated below:

S.No	Particulars of payments made from the project	As per Binny
A	Towards Revenue Share during the period 2016 to 2023	224.30
B	Miscellaneous amounts paid to Binny towards need based requirement either out of SPR's funds or via raising funds through NBFCs (including interest paid to NBFCs for funds raised) paid during the period 2016 to 2023	95.71
C	**Total direct payments =A+B**	**320.01**

S.No	Particulars of payments made from the project	As per Binny
D	Security Deposits paid in advance as per JDA paid in FY 2015-16	It is Refundable Security Deposit
E	Interest incurred by SPR Group on excess payments made to Binny during the period 2016 to 2023 (paid to Piramal Finance @ 24% p.a. and other NBFCs @ 18% p.a.)	-Nil-
F	**Total =C=D+E**	**320.01**

49. On the other hand, with regard to the payment, the applicant stated that they have paid about a sum of Rs.882 crores in the manner stated below:

S.No	Particulars of payments made to respondent from project	Rs. (Crore)
A	Towards revenue share during the period 2016 to 2023	228
B	Miscellaneous amounts paid to Binny towards need based requirement either out of SPR's funds or via raising funds through NBFCs (including interest paid to NBFCs for funds raised) paid during the period 2016 to 2023	133
C	**Total direct payments = A+B**	**361**
D	Security Deposit paid in advance as per JDA paid in FY 2015-16	250
E	**Sub-Total of Actual amounts paid = C+D**	**611**
F	Interest incurred by SPR Group on excess payments made to Binny during the period 2016 to 2023 (Paid to Piramal Finance @ 24% p.a.and other NBFCs @ 18% p.a.)	201
G	Sub-total = C+D+E	70812
H	Binny Loans due as on date from NBFC takin in	70

S.No	Particulars of payments made to respondent from project	Rs. (Crore)
	SPR books	
I	**Grand Total = G+H**	**882**

50. All these issues can be resolved amicably between the parties and as contended by the applicant, at any cost, the project should go on. The consequences of vacating the interim injunction would be very severe. If the interim injunction is vacated and GPOA is revoked, the interest of the 3000 home buyers would be affected and RERA will come into picture and more than Rs.600 crore investment of financial institutions also will get into problem and the interest of 1000 students, who are studying in the school, will also be get affected and the livelihood of more than 1700 labours and the third party contractors and 300 vendors would come to stand still due to the action of the respondent and the same is also contrary to the provisions of the JDA and also GPOA as agreed by between the parties on 22.02.2018. Therefore, this Court is inclined to make the interim injunction absolute for the interest of the justice and for the reasons that the interest of the public as well as applicant would be prejudicially affected, if the interim injunction already granted by this Court is vacated.

51. Further, the learned Senior counsel for the applicant referred to Section 202 of the Contract Act, which reads as follows:

> ***"202.Termination of agency, where agent has an interest in subject-matter****.—Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest."*

52. By referring the above Section of the Contract Act, the respondent contend that in the present case, the GPOA is revocable. It is a contract of the agencies without interest. Therefore, certainly the GPOA can be revocable as law laid down by the Hon'ble Apex Court in ***Suraj Lamp*** case which was referred supra in this order. According to the respondent, the Binni's case is that the GPOA was granted not for any considerations or remuneration and therefore according to them, it does not grant any interest to the SPR. The JDA clearly provides that all agreements and annexures had to be read jointly. If we read this JDA and the GPOA together, it is crystal clear that as per the terms of GPOA, SPR is having interest in the property and that is the case of both applicant and respondent before this Court. When such being the case, invoking Section 202 of the Contract Act and making an attempt to cancel the power of attorney is not acceptable and the said act of the respondent is also not in accordance with law.

53. Further, Section 214 of the Contract Act was also referred by the learned Senior counsel appearing for the respondent to support his contention, which reads as follows:

> ***"214.Agent's duty to communicate with principal***.—*It is the duty of an agent, in cases of difficulty, to use all reasonable diligence in communicating with his principal, and in seeking to obtain his instructions."*

54. By referring the said Section, he would contend that it is the duty of the agent to communicate with principal. The case was projected by the respondent before this Court as if the agent has not communicated to the principal in terms of the said Section. However, the latest communication of the applicant with regard to the comprehensive report on the sales as on 31.01.2023 would prove that the communication has been made by the agent and the other documents before this Court would also ultimately prove that there are communications on the part of the agent to the principal. Therefore the issue is pertaining only with regard to the accounts and other sale price transactions. For these reasons, I do not find any case for the respondent to vacate the interim injunction as prayed for.

55. Therefore, the applicant had made out a *prima facie* case and the balance of convenience is also in favour of the applicant. If the interim order

already granted by this Court is vacated, not only the interest of the applicant will get prejudicially affected but also the interest of the other stakeholders will also get affected. Therefore, this Court is inclined to make absolute the interim injunction already granted by this Court on 22.02.2023.

56. Accordingly, the interim injunction already granted by this Court on 22.02.2023 is made absolute.

57. Since this Court had arrived at a conclusion that the present dispute between the parties is only with regard to the alleged financial misdeeds as stated above, this Court is inclined to appoint a Chartered Accountant to scrutinize the book of accounts on the following aspects:

Scope of Audit:

a) Arrive at total revenue share payable to landowner for the review period;

b) Determine the amount of total revenue share paid by developer to landowner and any other payments paid by the developer on behalf of the landowner during the review period;

c) Summarize the total balance payable/ receivable by the respective party in accordance with the terms of JDA and relevant documents executed in pursuance thereof between the Parties.

58. Accordingly, R.Subramanian and Company LLP, Chennai, Empanelment No.MD0068, is appointed as the Charttered Accountant. The Chartered Accountant is directed to scrutinize on the above aspects and file a report within 4 weeks. The remuneration of the Chartered Accountant shall be borne by both the parties equally.

59. Since the interim injunction is made absolute, the applications in Arb.Appln.Nos.113 to 115 of 2023 are dismissed and O.A.Nos.127 to 129 of 2023 is ordered as prayed for.

60. As far as the other applications are concerned, the same will be considered after filing of the report of the Chartered Accountant appointed by this Court.

12.06.2023

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<u>KRISHNAN RAMASAMY, J.</u>

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**<u>Arb.Appln.Nos.113 to 115 of 2023,
172 to 179 of 2023, 227 to 230 of 2023
and O.A.Nos.127 to 129 and 259 of 2023</u>**

12.06.2023