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C.S.No.212 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2023

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

C.S.No.212 of 2022

M/s.Srinidhi Constructions
Represented by its partners,
M.S.Ravindra Babu & E.Sunil Kumar,
Having Office at Plot No.138,
6th Main Road, 'B' Block,
Thanikachalam Nagar,
Chennai - 600 110.

...

Plaintiff

versus

1.M.Ravanan @ M.Ravi Vannan
2.R.Vishwajith Dev
3.R.Shyam Surender
4.R.Devanand

...

Defendants

PRAYER: Civil Suit filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 of Code of Civil Procedure, praying for a judgment and decree against the defendants :-

- (a) to direct the defendants to pay a sum of Rs.90,00,000/- (Rupees Ninety Lakhs), jointly and severally, towards refundable advance paid by the plaintiff;



- (b) to direct the defendants to pay a sum of Rs.81,00,000/- (Rupees Eighty One Lakhs) to the plaintiff, jointly and severally, towards compensation for failing to handover the front portion of the subject property;
- (c) to direct the defendants to pay an interest at the rate of 12% per annum on the aggregate sum of Rs.1,71,00,000/- (Rupees One Crore Seventy One Lakhs Only), jointly and severally, from the date of filing of this suit till the date of decree and thereafter at the same rate till the date of realisation; and
- (d) to direct the defendants to pay costs of the suit.

For Plaintiff : M/s.R.V.Gayatri

For Defendants : *Ex parte*

JUDGMENT

This Civil Suit has been filed for recovery of the suit amount with interest.

2. Heard the learned counsel for the plaintiff and perused the materials available on record.

The case of the plaintiff in brief:-

3. The suit property measuring an extent of 3350 sq.ft. was jointly owned by the plaintiff and the defendants. The said property originally belonged to the first defendant and his deceased wife Rajeswari. An extent



of 2400 sq.ft. in the said property was purchased by the first defendant by virtue of a registered sale deed dated 03.09.1986. The remaining 950 sq.ft. which is situated at the front side was inherited by the first defendant's wife from her mother through a Will dated 25.12.1986.

3.1. The defendants 2 to 4 are the sons of the first defendant. The defendants approached the plaintiff's firm, who are in the business of flat promotion, to develop and promote the subject property into an apartment complex. The plaintiff along with the first defendant and his wife entered into a Joint Venture Agreement on 28.12.2016. Subsequently they had also executed a General Power of Attorney on 15.02.2017 in favour of the plaintiff.

3.2. As per the Joint Venture Agreement, the proposed apartment complex is agreed to be divided in the ratio of 45:55 between the plaintiff on the one part and the first defendant and his wife Rajeswari on the other part. The plaintiff had paid a total sum of Rs.90,00,000/- towards advance, which is refundable after handing over 55% share of the defendants in the



proposed apartment complex. The plaintiff paid the said sum of Rs.90,00,000/- to the first defendant and his wife through various cheques on various dates. The agreement was with the understanding that the subject property includes the front portion which is facing the road.

3.3. After obtaining all permission and sanctions from the necessary authorities, the plaintiff finished erecting the structure of the building in November 2018 in the rear portion measuring 2400 sq.ft. Before they could commence construction in the front portion which belongs to the first defendant's wife Rajeswari, she unfortunately passed away on 12.12.2018 leaving behind the defendants as her legal heirs in respect of 950 sq.ft. which belongs to her.

3.4. The first defendant had executed a Power of Attorney on 28.05.2019 in favour of the plaintiff. The plaintiff spent money to get the legal heirship certificate of the deceased Rajeswari. Thereafter the rear portion was developed into residential flats and as agreed between the plaintiff and the first defendant that 55% share namely 2 flats in the first



floor are ready to be occupied by him. In view of the powers given by the first defendant and his wife, the plaintiff sold two flats and the proportional undivided share in the land, constituting their 45% share in the rear portion of the subject property.

3.5. In spite of several requests and demands made by the plaintiff, the defendants did not come forward to hand over the possession of the front portion or even to refund the advance amount of Rs.90,00,000/- received by them. But the defendants issued a legal notice to the plaintiff on 16.09.2020 by suppressing all material facts and the plaintiff has also sent a reply notice on 05.10.2020 by stating that the defendants have committed breach of trust and caused monetary loss to him. The plaintiff has charge of on the entire subject matter for the amount due to be paid to him. He is entitled to 45% share for the future construction in the front portion of the subject property measuring 950 sq.ft. and the cost of the same would come to Rs.81,00,000/- and hence the plaintiff has filed the suit for recovery of Rs.90,00,000/- towards refundable advance paid by him and Rs.81,00,000/-



towards compensation due to the failure on the part of the defendants to hand over the front portion for development and construction.

4. During the course of the trial, on the side of the plaintiff, one witness has been examined as P.W.1 and Ex.P.1 to Ex.P.10 were marked. The defendants remained *ex parte*.

5. The fact that the subject property belonged to the first defendant and his deceased wife Rajeswari is not disputed. There is a Joint Venture Agreement between the plaintiff and the first defendant and his deceased wife to develop and promote the suit property. The said Agreement has been marked as Ex.P.1. From the property particulars shown in Ex.P.1, it is seen that the Agreement includes both the front portion and the rear portion of the land which totally measures 3350 sq.ft. So the project is meant for the entire 3350 sq.ft. of land and it was agreed between the parties that after the construction was put up, 55% of the flats will be handed over to the first defendant and his wife and the remaining 45% of the flats would be taken by the developer who is the plaintiff herein.



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6. The first defendant and his wife has also executed a General Power of Attorney dated 15.02.2017 in favour of the plaintiff which is marked as Ex.P.2. So during the pendency of the project the wife of the first defendant died. Subsequently, the first defendant had executed another Power of Attorney in favour of the plaintiff on 28.05.2019 which is marked as Ex.P.3.

7. The grievance of the plaintiff is that the first defendant had taken a different stand after the project was completed on the rear portion and he refused to hand over the possession of the front portion to put up further construction as agreed already. As per the Agreement, the defendants have to return the advance amount of Rs.90,00,000/- to the plaintiff after the completion of the rear block.

8. According to the plaintiff, the above amount agreed to be paid is inclusive of the front portion also which measures 950 sq.ft. It is further submitted that the refusal on the part of the defendants to hand over 950 sq.ft. on the front side has caused loss to the plaintiff and hence they are



liable to pay 45% which is equivalent to 2 flats. Hence the plaintiff has filed the suit for refunding the advance amount of Rs.90,00,000/- along with the costs of two flats which would be the share of the plaintiff in the front portion.

9. The defendants had sent a legal notice on 16.09.2020 which is marked as Ex.P.4. In the said notice, the defendants have claimed damages of Rs.65,00,000/- from the plaintiff by stating that the defendants were forced to occupy rental house from January 2017 onwards. But the plaintiff omitted to complete the construction and caused loss. The plaintiff has issued a reply notice on 05.10.2020 which is available as Ex.P.5. In the said reply notice, the plaintiff has stated that the breach was committed by the defendants in not handing over the remaining 950 sq.ft. in the front side.

10. The plaintiff has also sent a rejoinder notice Ex.P6 on 02.01.2021 consequent to his earlier notice Ex.P.5 and claimed the suit amount due to him. The said notice was received by the defendants and they had also sent a reply notice Ex.P.7 and denied the claim made by the



plaintiff. In the reply notice, it is stated by the defendants that the plaintiff has sold away 2 flats without the consent of the defendants. It is further stated that as per the Agreement, the plaintiff ought to have completed the construction within 15 months from the date of the Agreement but it was not done by him.

11. Despite a strong reply notice has been sent on 18.10.2021, the defendants did not come forward to contest the suit and disprove the claim of the plaintiff. However the plaintiff has proved through the Joint Venture Agreement that the undertaking was in respect of the suit schedule property which is inclusive of front portion as well. The plaintiff has attributed the death of the first defendant's wife due to covid-19 pandemic as the reasons for the delay in completing the project and it is further stated that it was also accepted by the first defendant.

12. Even though the Joint Venture Agreement has been entered into between the plaintiff and the first defendant and his wife on 28.12.2016, the first defendant executed a second Power of Attorney on



28.05.2019. So the above act of the first defendant would show that he himself has ratified the delay for the reasons stated by the plaintiff. Since the evidence available on record remains unchallenged, the plaintiff is entitled to the relief as claimed for.

13. In the result, the suit in C.S.No.212 of 2022 is **decreed** and the defendants are jointly and severally liable to pay to the plaintiff a sum of Rs.90,00,000/- (Rupees Ninety Lakhs only) towards refundable advance paid by the plaintiff and Rs.81,00,000/- (Rupees Eighty One Lakhs only) towards compensation due to the failure on the part of the defendants to hand over the front portion of the subject property along with interest at the rate of 12% per annum on the aggregate sum of Rs.1,71,00,000/- (Rupees One Crore Seventy One Lakhs Only) from the date of the plaint till the date of realisation. Time for payment one month. No costs.

25.08.2023

Speaking order / Non Speaking order

Index : Yes / No

Neutral Citation : Yes / No

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**Witnesses examined on the side of plaintiff:-**

P.W.1	M.S.Ravindra Babu
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List of documents marked on the side of plaintiff:-

Ex.P1	Original Agreement for Joint Venture Development dated 28.12.2016
Ex.P2	Original General Power of Attorney dated 15.02.2017
Ex.P3	Original General Power of Attorney dated 28.05.2019
Ex.P4	Received copy of the legal notice dated 16.09.2020
Ex.P5	Office copy of the reply notice dated 05.10.2020 with postal receipt
Ex.P6	Office copy of the legal notice dated 02.01.2021
Ex.P7	Received copy of the reply notice dated 18.10.2021
Ex.P8	Printout of the certificate of acknowledgment of registration dated 06.04.2022
Ex.P9	Computer generated certified copy of the sale deed dated 26.02.2020
Ex.P10	Computer generated certified copy of the sale deed dated 06.06.2019

25.08.2023

Speaking order / Non-speaking order

Index : Yes / No

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To

- 1.The Sub-Assistant Registrar,
Original Side,
High Court of Madras.
- 2.The Record Keeper,
Original Side Records Section,
High Court of Madras.



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R.N.MANJULA, J.

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