



Arb.O.P(Com.Div) No.628 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	06.12.2023
Pronounced On	28.03.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.) No.628 of 2022
and
A.No.5131 of 2022

M/s.Sidharth Foundations and Housing Limited,
Represented by Director Mr.Pravin K.M.Jain
and Executive Director Praneeth P.K.Jain,
City Towers, 8th Floor,
#117, Sir Thiyagaraya High Road,
Pondy Bazaar,
Chennai – 600 017.

... Petitioner

Vs.

K.V.Sathyanarayanan

... Respondent

Prayer : Original Petition is filed under Section 34(2)(b)(ii) read with (2A) of the Arbitration and Conciliation Act, 1996, praying to set aside the Award dated 12.09.2022 passed by the Sole Arbitrator in its entirety and direct the Respondent to pay the cost and grant further reliefs.

For Petitioner

: Mr.M.K.Kabir

Senior Counsel for Mrs.M.K.Padma

For Respondent

: Mr.P.H.Aravindh Pandian

Senior Counsel for Mr.C.V.Shailandhran



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ORDER

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This Original Petition has been filed under Sub-Section 2(b)(ii) to Section 34 read with Section (2A) to Section 34 of the Arbitration and Conciliation Act, 1996 by the unsuccessful respondent before the Arbitral Tribunal (the petitioner herein).

2. The respondent herein was the claimant before the Arbitral Tribunal. The respondent/claimant had raised the following five different claims before the learned Arbitrator as detailed below:-

“ CLAIM NO.1 :-

The claimant submits that the Joint Development Agreement dated 22.11.2012 entered into between the claimant and respondent along with the Memorandum of Understanding dated 22.11.2012 and the Addendum No.1 to Agreement of Construction dated 23.11.2012 and all other ancillary covenants and agreements between the parties be declared as null and void.

The claimant submits that it has clearly established that respondent's repeated failure in performing the obligations as agreed in the JDA dated 22.11.2012 and ancillary agreements. The claimant was forced by the respondent to invoke clause 6.8 of the JDA and even on the date of the cancellation of the general power of attorney on 19.03.2018, the respondent had not secured the required approvals and statutory provisions mandated for commencing the project. Hence, the claimant has clearly followed all the clauses as agreed in the JDA and



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the failure of the respondent caused great loss and hardship to the claimant, forcing him to invoke clause 6.8 of the JDA.

CLAIM NO.2 :-

The respondent's refusal to adhere to the 70:30 revenue sharing arrangement as agreed in clause 2.3 [a] and [b] of the Joint Development Agreement and demanding a higher share of revenues after a prolonged period of over 5 years was in bad faith and constituted a default and also a breach of the terms of said JDA, for which the respondent is liable to make good all losses and damages suffered by the claimant, as per clause 11 of the JDA.

CLAIM NO.3 :-

The claimant submits that as per clause 5.1 of the JDA, the claimant is entitled to penalties for the non-performance by the respondent. The respondent's period of default is thus calculated from the agreed date for completion i.e., 22.05.2016, until the date of revocation of the Power of Attorney – 19.03.2018, which comes to a duration of 21 months and 25 days (rounded to 22 months). The claimant accordingly submits that the following penalty calculation payable by the respondent as per the terms of the JDA:-

S.No	Description	Quantum
1.	Total Built up Area of Property	1,02,328 sq.ft.
2	Owner's Share of Revenue: 70% of 1,02,328 sq.ft.	71,630 sq.ft.
3.	Minimum Basic Price Assured per Clause 3.1	Rs.11,000/- per sq.ft.



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S.No	Description	Quantum
4.	Default Period	22 months/1.8 years
5.	Penalty for Delay	15% of annual receivables

Based on the above table, the respondent's penalties are calculated as follows:-

15% of 71,630 sq.ft. * 11,000/- * per annum
for 22 months/1.8 years = Rs.21,27,41,000/-

The claimant is thus entitled to receive a sum of Rupees Twenty One Crores, Twenty Seven Lakhs, Forty One Thousand One Hundred Only as penalty as per the terms of the JDA between the parties, not including interest.

The claimant further states that as per clause 7.1 of the JDA, he is entitled to an amount of Rs.10,00,000/- (Rupees Ten Lakhs only) for every month of delay post the expiry of 15 months from the date of signing the JDA till the date of approval. This period comes to a total of 48 months and 24 days (rounded to 49 months), or:

Rs.10,00,000/- * 49 months =
Rs.4,90,00,000/-.

The claimant is thus also entitled to receive a sum of Rupees Four Crores and Ninety Lakhs Only as penalty as per the clause 7.1 of the JDA between the parties.

Hence, the claimant is entitled for penalties



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under clauses 5.1 and 7.1 as calculated above and thus entitled to receive a penalty of:
Rs.21,28,41,100/- (+) Rs.4,90,00,000/- =
Rs.26,17,41,100/- or Rupees Twenty Six Crores, Seventeen Lakhs, Forty One Thousand One Hundred Only, not including interest.

CLAIM NO.4:

The claimant submits that the JDA specifies the percentage of interest payable in case of default/breach. In clause 5.1 of the JDA, the interest rate is fixed at 15% per annum. The claimant thus states that the respondent is liable to pay interest at 15% as per the JDA for breach of contract and non-performance of its obligations. The claimant submits that the amount of interest be calculated from the respective due dates of the claims till the date of filing of this claim statement.

CLAIM NO.5:

The claimant submits that he and his family have been subjected to undue stress, monetary losses and physical threats due to the respondent's repeated delays, breach of the JDA, continued failure of performance, careless attitude and lack of diligence discharging their obligations under the JDA. The claimant respectfully reiterates that the respondent has neither initiated any construction nor undertaken any development or alteration at the property whatsoever, and that the property remained as vacant and undeveloped at the time of cancelling/revoking the Power of Attorney as it did at the time of the parties signing the JDA. The claimant further submits that it was due to extreme laxity/carelessness, willful inaction and/or breach



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of the terms of the JDA by the respondent that the present arbitral proceedings came to be initiated. In light of the above facts and circumstances, the claimant states that the respondent is liable to pay the interest pendente lite as determined and fixed by this Hon'ble Tribunal.”

3. The petitioner made a counter claim before the learned Arbitrator for refund of security deposit and for damages as detailed below on the following amounts paid to the respondent/claimant:-

“ i. Refund of Security Deposit :-

a. The respondent has submitted that in terms of Clause 4 of the JDA, a sum of Rs.6,75,00,000/- was to be paid as Interest Free Adjustable Security Deposit. The respondent paid a sum of Rs.3,00,00,000/- on 22.11.2012 and the balance amount of Rs.3,75,00,000/- was paid on 6.12.2012 to 8.12.2012 which was a refundable Security Deposit and hence the claimant ought to have returned the same on 19.03.2018 when the claimant revoked the power of attorney and cancelled the Agreement. The Claimant was liable to return the same together with interest at 18% p.a.

b. After such remittance, the claimant purchased an extent of 6.55 grounds and 8.55 grounds from the original owners. The said amount is retained by the claimant till date. In the claim statement, the claimant has contended that the said sum is deductible from the total damages claimed under Claim No.9A and 9B. The claim for damages based on the presumed date of completion as May 2016 and also the



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commencement of levy of penalty from March 2014 onwards.

c. As stated supra, the sale price fixed for selling a residential apartment was Rs.11,000/- per sq.ft. However, the patta for the said land was obtained by the claimant only on 31.01.2014. It was only thereafter that the claimant realized that a portion of the land was taken over by the Highways Department. The planning permission for construction could be applied only on 30.09.2014 CMDA by its letter dated 17.12.2014 called upon the respondent to comply with the requirements noted and thereafter by letter dated 21.09.2015. In the meanwhile, the original plan to construct residential apartments was changed and the claimant decided to embark upon constructing a commercial complex. Therefore, the Respondent had no option but to redesign the entire plans and submit the revised plan to CMDA on 17.06.2016. CMDA by its letter dated 19.08.2016 called upon the respondent to submit a fresh planning permission and also called upon the respondent by its letter dated 01.03.2017 to submit documents including a fresh general power of attorney as the same has to be forwarded to the Government for recommended the change in user. The claimant revoked the earlier power of attorney dated 03.04.2013 and executed a fresh power of attorney on 06.03.2017. The claimant having changed the original scope cannot now turn around and contend that the delay is attributable to the respondent and claim damages thereon. The sustainability of the said claim for damages is subject to proof that the delay was caused by the respondent.



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ii. Damages :-

a. Amounts expended for preparation of original plans and for approval.

The original plan contemplated construction of residential complex in the said property. The respondent had to engage the services of an architect, structural engineer and staff for preparing the plans, specifications and details for submission to the CMDA for grant of planning permission. The said plans have also to be submitted to other agencies including the Corporation of Chennai and CMWSSB. On such being submitted the said plan to CMDA, the respondent changed the plan from residential to commercial. Consequently, fresh plans had to be prepared and the entire specifications and details also underwent significant change. These plans to be submitted to the CMDA and for grant of approval by the Government. The fact that in compliance to the letter dated 01.03.2017 issued by CMDA, the claimant executed a fresh power of attorney on 06.03.2017 would go to show that the claimant, apart from mooted the change, complied with the said request by CMDA.

b. The prolongation of the original period contemplated under the JDA was due to the aforesaid fact and the respondent had to maintain the services of the professionals and it staff to ensure that the planning permission could be secured for the proposed project. The cost impact sustained by the respondent due to the time impact not only in relation to preparation of the revised plans for the commercial complex but also the maintenance of the team for the preparation of the said plans,



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specifications and details has to be compensated by the claimant.”

4. In all, the counter claim of the petitioner, was under the following heads :-

Sl.No	Description	Amounts
1.	Interest on Security Deposit	Rs.20,06,14,623/-
2.	Security Deposit	Rs. 6,75,00,000/-
3.	Hand Loan	Rs. 25,00,000/-
4.	Interest on Hand Loan	Rs. 37,50,000/-
5.	Salary	Rs. 34,99,408/-
6.	Rent and EB	Rs. 87,73,722/-
7.	Architect and other charges	Rs. 90,66,446/-
8.	Project Loss	Rs.24,71,00,000/-
	Total	Rs.54,28,04,199/-

5. By the impugned Arbitral Award dated 12.09.2022, the Arbitral Tribunal has ordered the petitioner/developer to hand over the property to the respondent/claimant. The Arbitral Tribunal has ordered as follows in the impugned Arbitral Award:

“(A) The claimant is entitled to receive from the respondent a total sum of Rs.9,12,70,533/- (Rupees nine crores twelve lakhs seventy thousand five hundred and thirty three) towards his claim made under clause 5.1 and 7.1 of JDA.

(B) The respondent is entitled to a sum of Rs.21,92,778/- (Rupees twenty one lakhs



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ninety two thousand seven hundred and seventy eight) towards construction of compound Wall and Bore Well.

- (C) Thus, the claimant, after adjusting the security deposit amount and the amount awarded to the respondent under clause (B) supra, is awarded a total sum of Rs.2,15,77,760/- (Rupees two crores fifteen lakhs seventy seven thousand seven hundred and sixty)
- (D) The claimant is entitled to interest at the rate of 12% on the amount so awarded from the date of passing the award till the date of realisation.
- (E) Except to the amount awarded to the claimant in clause (c) above, the claimant is not entitled to any other sum made in the claim statement.
- (F) Except to the amount awarded to the respondent towards counter claim as awarded supra under clause (B), the respondent is not entitled to any other sum as claimed in the counter claim.
- (G) Since this Tribunal has found the payment of money by both the parties as awarded supra, the cost of Arbitral Proceedings shall be borne by the respective parties on their own.
- (H) The respondent shall hand over the property to the claimant forthwith as such.
- (I) The respondent shall pay the amount awarded herein to the claimant within four weeks from the date of receipt of this Award.
- (J) The claimant is entitled to interest @ 12% per annum on the said sum of Rs.2,15,77,760/- (Rupees two crores fifteen lakhs seventy seven thousand seven hundred and sixty) pendente lite.”

6. The impugned Arbitral Award dated 12.09.2022 came to be passed by



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the Arbitral Tribunal, pursuant to an order dated 23.02.2021 passed in O.P.No.72 of 2020 and A.No.441 of 2020 and O.P.No.67 of 2021. On 23.02.2021, this Court had appointed Hon'ble Mr.Justice K.Ravichandrababu (Retd.) a Former Judge of this Court as the Sole Arbitrator to adjudicate the dispute between the parties herein under Joint Development Agreement dated 22.11.2012.

7. The brief facts of the case are that the respondent/claimant is the owner of the property measuring an extent of 15.30 grounds in T.S.Nos.2/16, 2/17, 2/18 and 2/19 in Block No.10, Old T.S.No.2/4 part, 2/5 part, 2/6 part, R.S.Nos.186/2 part and 187/2 part in Arumbakkam Village, Egmore-Nungambakkam Taluk on Poonamallee High Road situated within the Sub-Registration District of Kodambakkam and Registration District of Chennai Central. The said land belonged to its previous owners Mrs.A.Shyamala and her husband Mr.T.A.S.Ambi @ Gnanasundaram.

8. The respondent/claimant herein had earlier filed C.S.No.424 of 1995 and C.S.No.426 of 1995 against Mrs.A.Shyamala and her husband



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Mr.T.A.S.Ambi @ Gnanasundaram for specific performance as an Agreement Holder. The respondent/claimant had earlier purportedly entered into a Sale Agreements dated 04.01.1990 with Mr.T.A.S.Ambi @ Gnanasundaram and his wife Mrs.A.Shyamala, the defendants in the respective Civil Suits for the above mentioned property measuring an extent of 15.30 grounds.

9. Since Sale Deeds were not executed by Mr.T.A.S.Ambi @ Gnanasundaram and his wife Mrs.A.Shyamala, the respondent/claimant filed C.S.No.424 of 1995 and C.S.No.426 of 1995 for specific performance and for injunction.

10. These Civil Suits were partly decreed and partly dismissed by the learned Single Judge of this Court on 16.03.2001. However, the owners were directed to not to interfere with the respondent/claimant's possession over the suit schedule property.

11. Aggrieved by the same, the respondent/claimant filed O.S.A.No.92 of 2002 and O.S.A.No.93 of 2002 against the Judgment and



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Decree dated 16.03.2001 in C.S.No.424 of 1995 and C.S.No.426 of 1995.

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Both the husband and wife namely Mr.T.A.S.Ambi @ Gnanasundaram and Mrs.A.Shyamala had also filed O.S.A.No.290 of 2002 and O.S.A.No.291 of 2002 before the Hon'ble Division Bench of this Court against the Judgment and Decree dated 16.03.2001 in C.S.No.424 of 1995 and C.S.No.426 of 1995. The dispute between the parties to the Suits in the above O.S.As were amicably settled.

12. A Memo of Compromise dated 11.04.2008 was signed between them on 11.04.2008 which was recorded as a decree in O.S.A.Nos.92 and 93 of 2002 on the same day. Pursuant to the above Compromise Decree, it was decided that the land measuring an extent of 15.30 grounds in T.S.Nos.2/16, 2/17, 2/18 and 2/19 in Block No.10, Old T.S.No.2/4 part, 2/5 part, 2/6 part, R.S.Nos.186/2 part and 187/2 part in Arumbakkam Village, Egmore-Nungambakkam Taluk on Poonamallee High Road situated within the Sub-Registration District of Kodambakkam and Registration District of Chennai Central be conveyed to the respondent/claimant subject to fulfillment of terms and conditions laid therein. A decree to that effect was passed on the same day i.e., on



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11.04.2008.

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13. Pursuant to the aforesaid Memo of Compromise dated 11.04.2008, the original owners namely Mr.T.A.S.Ambi @ Gnanasundaram and Mrs.A.Shyamala executed Power of Attorney in favour of the respondent/claimant on 30.06.2011 and conveyed the subject land measuring an extent of 15.30 grounds in T.S.Nos.2/16, 2/17, 2/18 and 2/19 in Block No.10, Old T.S.No.2/4 part, 2/5 part, 2/6 part, R.S.Nos.186/2 part and 187/2 part in Arumbakkam Village, Egmore-Nungambakkam Taluk on Poonamallee High Road situated within the Sub-Registration District of Kodambakkam and Registration District of Chennai Central to the respondent/claimant.

14. It is, in this background, Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012 was signed between the petitioner/developer and the respondent/claimant for developing the above lands for putting up a residential complex and measuring a built up area specified therein. Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012 contemplated sharing of the receivables from the overall salable area from



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the residential complex proposed to be constructed.

15. The share of the petitioner/developer and the respondent/owner as per the Schedule in Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012 was as follows:-

Respondent/Owner	Petitioner/Developer
Schedule – B	Schedule – C
70% share in the receivables from the overall saleable area to be construed on the Schedule 'A' property along with proportionate undivided share of land.	30% share in the receivables from the overall saleable area to be construed on the Schedule A property along with proportionate undivided share of land.

16. The dispute between the parties herein had arisen primarily on account of the alleged violation of obligations under the Joint Development Agreement dated 22.11.2012 by the petitioner/developer. When Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012 was signed, the respondent/claimant was not still owner of the aforesaid extent of 15.30 grounds of land as the respondent/claimant had not still paid the sale consideration to the Original land owners namely Mr.T.A.S.Ambi @ Gnanasundaram and Mrs.Shyamala, the defendants in C.S.No.424 of 1995 and C.S.No.426 of 1995.



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17. The petitioner/developer appears to have advanced an amount of Rs.6,75,00,000/- to the respondent/claimant under Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012 as Interest Free Adjustable Security Deposit (IFASD).

18. Out of the aforesaid sum of Rs.6,75,00,000/- as Interest Free Adjustable Security Deposit (IFASD) paid to the respondent/claimant, the respondent/claimant utilized a part for settling the sale consideration payable to the vendors/original land owners namely Mr.T.A.S.Ambi @ Gnanasundaram and Mr.Shyamala and part towards registration of the Sale Deeds in favour of himself as Power of Attorney of former (the vendors/original land owners)-Ex.R1 to execute the two Separate Sale Deeds in his favour on the strength of the aforesaid Power of Attorney dated 30.06.2011.

19. The details of the aforesaid amount of Rs.6,75,00,000/- paid to the respondent/claimant by the petitioner/developer as Interest Free



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Adjustable Security Deposit (IFASD) are set out in Clause 4.1 of Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012. Clause 4.1 of Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012 reads as under:-

“4. Adjustable Security Deposit:

4.1. An Interest Free Adjustable Security Deposit of Rs.6,75,00,000/- (Rupees Six Crores and Seventy Five Lakhs only) shall be paid by the Developer to the Land Owner by virtue of this Joint Development Agreement. The said amount of Rs.6,75,00,000/- (Rupees Six Crores and Seventy Five Lakhs only) is being paid in the following manner:-

- (a) An advance sum of Rs.3,00,00,000/- (Rupees Three Crores only) paid today on signing this Agreement for Joint Development vide
- (i) Demand Draft No.995365 dated 22.11.2012 issued in favour of The Sub Registrar, Kodambakkam drawn on Kotak Mahindra Bank Ltd., Teynampet Branch for Rs.60,37,200/- towards meeting the Stamp Duty Charges for registration of aforesaid Sale Deed dated 22.11.2012,
- (ii) Demand Draft No.995366 dated 22.11.2012 issued in favour of The Sub Registrar, Kodambakkam drawn on Kotak Mahindra Bank Ltd., Teynampet Branch for Rs.8,64,600/- towards meeting the Registration Charges for registration of aforesaid



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Sale Deed dated 22.11.2012 and
iii) Manager's Cheque No.000089 dated
22.11.2012 issued in favour of
Mr.K.V.Sathyanarayanan drawn on
HDFC Bank Ltd., Anna Salai
Branch for Rs.2,30,98,200/-.

(b) The balance sum of Rs.3,75,00,000/- (Rupees Three Crores and Seventy Five Lakhs only) payable on the fifteenth day (i.e.on 06.12.2012) from signing Agreement for Joint Development vide

(i) Cheque No.289960 dated 06.12.2012 issued in favour of Mr.K.V.Sathyanarayanan drawn on HDFC Bank Ltd., Anna Salai Branch for Rs.1,25,00,000/-,

(ii) Cheque No.289962 dated 08.12.2012 issued in favour of Mr.K.V.Sthyanarayanan drawn on HDFC Bank Ltd., Anna Salai Branch, for Rs.1,25,00,000/- and

(iii) Cheque No.289962 dated 08.12.2012 issued in favour of Mr.K.V.Sathyanarayanan drawn on HDFC Bank Ltd., Anna Salai Branch, for Rs.1,25,00,000/-.

Thus, a total amount of Rs.6,75,00,000/- (Rupees Six Crores and Seventy Five Lakhs only) is paid as Adjustable Interest Free Security Deposit (AIFSD) to the land owner, the receipt of which the land owner doth hereby admit and acknowledge.

4.2. It is agreed between the parties herein that the Developer shall be entitled to adjust the refundable interest free security deposit of Rs.6,75,00,000/- (Rupees Six Crores and Seventy Five Lakhs Only) from the land owner's share of receivables only from



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the sale of the last remaining 8,000 sq.ft. of the total super built up area of the project.”

20. Pursuant to the aforesaid payment of Rs.6,75,00,000/- towards Interest Free Adjustable Security Deposit (IFASD), two Sale Deeds were executed by the respondent/claimant as Power of Attorney holder of the vendors/original land owners in his own favour vide Ex.R3-Deed of sale for 6.55 grounds on 22.11.2012 and vide Ex.R7-Deed of sale for 8.55 grounds on 09.01.2013.

21. Ex.R3 Sale Deed dated 22.11.2012, an extent of 6.55 grounds was conveyed by the respondent/claimant in his own favour on the strength of the aforesaid Power of Attorney-Ex.R1 dated 30.06.2011.

22. Ex.R7 Sale Deed dated 09.01.2023 was executed under similar fashion by the respondent/claimant as a Power of Attorney Holder in his own favour on 09.01.2013 for the balance extent of 8.55 grounds of land.

23. The petitioner/developer was to build a residential complex and



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allot 70% of the built up area to the respondent/claimant as the owner of the property and retain 30% towards its consideration for undertaking the development under Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012.

24. Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012 contemplated certain timelines for construction under Clause 5. They read as under:-

“5. Time for Completion:

5.1. The land owner herein agree that the proposed completion of the entire Project as contemplated in this Agreement on the entirety of the Schedule A property shall be completed within 2 years from the date of Approval subject to a grace period of additional 3 months from the date of the CMDA/Corporation or any such delegated planning authorities as the case may be sanctioning their approval with respect to the proposed contemplated development on the Schedule A property. In case of delay in completion of project by the developer in stipulated time of 27 months (inclusive of grace period), the developer shall pay interest of 15% per annum on the balance receivables found due to the land owner's portion. Such interest shall be paid to the owner on monthly basis.



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- 5.2. However, in case of natural calamities like floods, famine, earthquake, war riot, etc, suitable extension of time will be permitted.
- 5.3. Delay in obtaining service connections from the concerned authorities and/or electricity power, completion certificate shall not be construed as delay in the completion of the Project as contemplated above in case the Developer has completed the projects in all respects regarding construction.”

25. In the light of the execution of Ex.R3 and Ex.R7 Sale Deeds dated 22.11.2012 and 09.01.2013 respectively, Ex.C7/Ex.R8-General Power of Attorney dated 03.04.2013 were executed in favour of the Director of the petitioner/developer by the respondent/claimant. As per the Clause 6.5 of Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012, the respondent/claimant undertook to execute the Power of Attorney. Thus, Ex.C7/Ex.R8-General Power of Attorney dated 03.04.2013 were executed in favour of the Director of the petitioner/developer by the respondent/claimant.

26. In furtherance of the aforesaid arrangement Ex.C4/Ex.R2-Joint



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Development Agreement dated 22.11.2012, the petitioner/developer filed Ex.C10/Ex.R10-Application for Planning Permission/Application for Construction of a residential complex before the Chennai Metropolitan Development Authority (CMDA) on 30.09.2014.

27. As per Clause 7.1 of Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012, the petitioner/developer was required to get building plan approval within a period of one year from the date of signing of Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012 with a grace period of 3 months. Clause 7 of Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012 deals with the petitioner/developer's obligations. It reads as under:-

“7. Developer's Obligations:

7.1. The Developer herein agrees to get the building plan sanction for construction of the proposed building in Schedule 'A' land without a period of 1 year from the date of this Joint Development Agreement with a grace period of 3 months. In the event of any delay to obtain building plan sanction by the actions of the Developer and not due to bureaucratic reasons within the agreed period, then the Developer is liable to pay a penalty of



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Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012 and complete the construction by 21.02.2015 (24 + 3 months) i.e., 27 months from 22.11.2012.

29. In this connection, the respondent/claimant has also sent Ex.R12 dated 03.02.2015 letter to the Highways Department for clarification on account of the acquisition of land by the Highways Department. During the interregnum, the applications/letters submitted by the petitioner/developer before the Chennai Metropolitan Development Authority (CMDA) was sent back by the Chennai Metropolitan Development Authority (CMDA) vide Ex.C12/Ex.R18 dated 21.09.2015, in response to which, the petitioner/developer sent a revised and corrected application/letters with the Chennai Metropolitan Development Authority (CMDA) vide Ex.C13/Ex.R19 on 06.10.2015. Thus, it is evident that the time line that was contemplated under Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012 could not maintained due to intervening events. The obligations of the respondent/claimant the land owner as per Clause 6 of Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012 reads as under :-



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“6. Obligations of the Land Owner:

- 6.1. The land owner and the Developer agree to keep all original title deeds, revenue documents and other records in a bank locker, which shall be jointly operated by both the parties and the land owner agrees to hand over the same to the Bank while mortgaging by deposit of title deeds and subsequently to the registered Society/Association of Flat Owners.
- 6.2. These documents of title shall be retained by the Developer herein, until completion of the entire proposed building complex to enable the prospective nominee/purchasers of the Developer to peruse the same. The Developer shall acknowledge the receipt of the said original documents at the time of receiving the same.
- 6.3. **The land owner further agrees to hand over vacant peaceful possession of the Schedule -A property immediately on receiving approvals for construction.**
- 6.4. The land owner herein agree that up to the date of handing over vacant possession of the Schedule “A” property to the Developer in accordance with the terms agreed to above, the land owner shall pay the property tax, Urban land tax, Vacant land tax and all other public charges, any other pending dues in respect of taxes etc and if any taxes found to be due after the signing of this joint development agreement by the respective department authorities or CMDA/Corporation/planning authorities/local body the same shall be paid by the land owner directly and the Developer shall produce to the land owner such necessary demand raised by authorities.



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- 6.5. **The land owner herein agree that on the day of signing this Agreement for Joint Development they shall simultaneously execute and register a Power of Attorney in favour of the Developer, empowering the developer to get plan sanction for construction of the proposed building complex from CMDA or any competent authority, to get service connections such as water, sewerage, Electricity etc., to gift necessary lands for road widening purpose and open space reservation area in favour of appropriate authorities/bodies for entire A schedule land, together with power to execute and register the sale deed or deeds in respect of the 30% undivided share in the Schedule "A" land. The land owner hereby confirm and undertake to execute and register a power of attorney in favour of the Developer to deal with and sell the land owner's 70% undivided share in the Schedule "A" property immediately on receipt of Demand Letter for development charges from CMDA by the developer, which shall be issued at the final stage of getting building plan approval. The developer hereby undertakes to produce the said letter to the land owner immediately on receipt of the same to enable the land owner to execute and register the Power of Attorney as aforesaid.**
- 6.6. It is further agreed and understood between the Parties herein that under the said Powers of Attorney the Developer shall have the right to raise project loans/funds by creating mortgages, hypothecation, pledges and



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charges, after obtaining plan approval from CMDA or any competent authority, from any Financial Institution and banks on the security of the land described in Schedule C as executed under the relevant Power of Attorney without making the land owner personally responsible/liable for the repayment of the same.

- 6.7. The Developer further agree to execute the necessary Indemnity Deed to safeguard the Land Owner from any claims arising there from on account of the contemplated borrowing by the Developer as mentioned above. Further, the Developer shall use any such loan taken by them only for the purpose of development of the Schedule A property as contemplated hereunder and cannot be used elsewhere.
- 6.8. The Land Owner further agree not to revoke the above mentioned Powers of Attorney to be executed and registered in favour of the developer and this Agreement for Joint Development until the completion of the project. **However, the Land Owner shall give the option to cancel the powers of attorney and this Joint Development Agreement in the 2 circumstances mentioned below-**

- (a) The Developer does not get Approvals or does not start the construction within 21 months from the date of signing this Joint Development Agreement.
- (b) The Developer does not complete the project within 56 months from the date of signing this Joint



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Development Agreement.

In both of the above circumstances, the Developer shall be liable to pay the penalty charges as mentioned in this Agreement and in that event of termination of this Joint Development Agreement, the adjustable security deposit mentioned in Clause No.4.1 shall be repaid without interest immediately to the Developer on the day of revocation of powers of attorney.

- 6.9. The responsibility of obtaining service connections and Building plan sanction shall be met by the Developer only.
- 6.10. So long as the Developer proceeds as per the terms of this Agreement for Joint Development, the Land Owner or anybody claiming through them shall not disturb or hinder the Developer and/or their nominee/s.
- 6.11. The land owner assure and confirm that he shall not create any charge or encumbrance over the Schedule A property without the written consent of the developer, in any manner whatsoever which will be detrimental to the interest of the Developer and/or their nominee/s until all the transactions as contemplated in this Agreement for Joint Development are fully and effectively completed.
- 6.12. The land owner agree to extend full co-operation to the Developer by signing necessary papers like applications, constructions plans, letters, affidavits, indemnity, declaration, etc, and any other relevant documents for the purpose of getting sanction for (a) construction Plan, (b) Water and Sewerage connections if available, (c) Electricity Service Connections for the proposed Residential Building Complex (d)



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Temporary electricity supply for construction purpose etc. The Land Owner shall bear the cost incurred towards handling and resolving any issues related to the title of the Schedule “A” property which is raised by CMDA or planning authorities or any other competent authorities.

- 6.13. In any event, if the Developer is not able to obtain building sanction approvals for the schedule A property from concerned authorities due to defect in title for which Approval is denied, then the Parties herein mutually agree to cancel this agreement and the land owner agree to refund the said security deposit without interest to the Developer simultaneous to cancellation of this agreement.
- 6.14. The Developer shall bear the costs including and limited to Development charges of Approvals, plan sanction from CMDA or any such delegated planning authorities, Marketing and Construction, Cost of Consultants (for example, Architect, Structural) whereas any costs arising by reason of any title issues in land, if arise shall be borne by the Land Owner. It is specifically agreed that the Owner shall at no point of time be liable to contribute any money for or towards the construction of the Building or any part thereof. The Owner shall also not be liable to pay any further money to the Developer on account of any escalation in the cost of construction or for Approvals of the Building. Both parties mutually agree that the OSR charges will be shared by them proportionately in the ratio of 70% by the Land Owner and 30% by the developer.”



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30. Meanwhile, a portion of the land was acquired by the Highways Department as a result of which, the Project under Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012 got delayed. The Chennai Metropolitan Development Authority (CMDA) by Ex.C11/Ex.R11-Letter dated 17.12.2014, also specifically called for a clarification regarding the patta for T.S.No.2/21 (T.S.No.2/19 shown in the eastern side of T.S.No.2/18 in the patta, whereas patta for the T.S.No.2/21 to be furnished).

31. During the interregnum, the parties decided to abandon the project for construction of a residential complex under Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012 for construction of a commercial complex. After the petitioner/developer's proposal was sent, it was revised four times. The petitioner/developer furnished a building plan revising the proposal entirely from residential use to commercial use warranting fresh No Objection Certificate from Police (Traffic) and DF&RS. The Building Planning Permission Application that was filed was returned unapproved with a request to the petitioner/developer to submit a fresh Planning Permission Application in Chennai Metropolitan



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Development Authority (CMDA). Thus, a fresh plan was submitted by the petitioner/developer on 26.09.2014.

32. Thereafter, a revised plan was submitted on 17.06.2016 by changing the use of land from proposed construction of a residential complex to a commercial complex. Therefore, by Ex.C14/Ex.R21-Communication/Letter dated 19.08.2016, the Chennai Metropolitan Development Authority (CMDA) asked the petitioner/developer to submit a fresh plan for construction of a commercial complex.

33. The Government has also closed the application filed by the respondent/claimant with the Chennai Metropolitan Development Authority (CMDA) vide Ex.C15/Ex.R.22 on 26.09.2016 by its communication-Ex.C.21/Ex.R.29 dated 09.06.2017 bearing Reference Letter (Ms)No.102.

34. Since several problems arose between them, it led to revocation of Ex.C7/Ex.R8-General Power of Attorney dated 03.04.2013, revocation of Ex.C19/Ex.R27-Deed of Revocation Power of Attorney dated 06.05.2015 with execution of a fresh Power of Attorney by the



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respondent/claimant in favour of the petitioner/developer vide Ex.C20/Ex.R28 dated 06.03.2017 for the purpose of construction of commercial or residential complex.

35. For construction of commercial building/complex on the said land, Ex.C20/Ex.R28-Power of Attorney dated 06.03.2017 was executed afresh. The petitioner/developer was required to maintain proper accounts regarding cash transactions, if any, and submit the principal amount whenever it was required. Ex.C20/Ex.R28-Power of Attorney dated 06.03.2017 did not effect any transfer or ownership of the “Schedule A Property”. No property was conveyed and no consideration has been given. It merely substituted the early Power of Attorney.

36. The petitioner/developer was asked to obtain a fresh Power of Attorney from the respondent/claimant. This was also communicated by the Chennai Metropolitan Development Authority (CMDA) by its communication-Ex.C22/Ex.R.30 dated 09.10.2017 bearing Reference Letter No.C3(N)/14829/2017.



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37. While the above development was in progress, the respondent/claimant revoked Ex.C20/Ex.R28 Power of Attorney dated 06.03.2017 registered as Doc.No.816/2017 that was given earlier the Ex.C25/Ex.R.31 Deed of Cancellation of Power of Attorney dated 19.03.2018 which was registered as Doc.No.1017/2018. Thereafter, a notice was dispatched by the respondent/claimant to the petitioner/developer on 20.03.2018.

38. It is in this background, the petitioner/developer sent Ex.C26/Ex.R32 Reply dated 26.03.2018 to the respondent/claimant. In Ex.C26/Ex.R32 Reply dated 26.03.2018, the petitioner/developer stated that Deed of Revocation of Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012 was illegal, bad in law and was done with an ulterior motive by the respondent/claimant. Hence, the petitioner/developer asked the respondent/claimant to tender an unconditional apology and to issue a fresh Power of Attorney within one week from the date of receipt of the said letter in favour of the petitioner/developer.

39. The petitioner/developer also called upon the respondent/claimant



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to re-work the ratio to be shared between them after changing the construction of a residential development/complex to a commercial development/complex at the behest of the respondent's son namely S.Srinivas. A reference was made to the e-mails exchanged between the Structural Engineer, the petitioner/developer and the respondent's son S.Srinivas in Ex.R25 series between 16.02.2017 and 28.02.2017.

40. It is the specific case of the petitioner/developer that Ex.C7/Ex.R8 General Power of Attorney executed earlier on 03.04.2013 and substituted by Ex.C20/Ex.R.28-fresh Power of Attorney dated 06.03.2017 were coupled with interest and therefore, Ex.C20/Ex.R.28-fresh Power of Attorney dated 06.03.2017 could not be unilaterally cancelled by the respondent/claimant as was done by execution of Ex.C25/Ex.R.31- Deed of Cancellation of Power of Attorney dated 19.03.2018 cancelling the revised/fresh Power of Attorney-Ex.C20/Ex.R28 dated 06.03.2017.

41. It is submitted that the Arbitral Tribunal has committed an error in passing the impugned Arbitral Award dated 12.09.2022. It is therefore submitted that the aforesaid Arbitral Award dated 12.09.2022 passed by



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the learned Arbitrator is liable to be set aside under Section 34 of the Arbitration and Conciliation Act, 1996.

42. The learned Senior Counsel for the respondent/claimant would submit that the grounds raised by the petitioner in this case do not encompass valid and permitted grounds for challenge in terms of Section 34 of the Arbitration and Conciliation Act, 1996. It is submitted that the Arbitral Tribunal had rendered its findings by taking note of the evidence, the factual matrix of the case and the provisions of law to conclude that the respondent/claimant was right in cancelling the Power of Attorney and it was valid. It is submitted that the Arbitral Tribunal had analyzed the evidence on record which include the Ex.R26 Communication dated 01.03.2017 of the Chennai Metropolitan Development Authority (CMDA) as also the revised plan submitted before the Chennai Metropolitan Development Authority (CMDA) and concluded that the delay is attributable only on the part of the petitioner. It is submitted that the Arbitral Tribunal also concluded that the delay had occurred due to the fact that the petitioner/developer did not remit the charges to the Chennai Metropolitan Development Authority (CMDA) towards development



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charges which is explicit from the communication of the Chennai Metropolitan Development Authority (CMDA). Thus, it was categorically held by the Arbitral Tribunal that the initial delay is on the part of the petitioner in relation to applying for the planning permit and remittance of the development charges thereof. Thus, the various grounds of challenge raised in the present petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, has already been examined and considered by the Arbitral Tribunal in the Award dated 12.09.2022. While so, the present petition filed by the petitioner seeking to re-appreciate the factual findings rendered by the Arbitral Tribunal is not sustainable and therefore, the petition has to be dismissed.

43. In other words, the project has to be completed by 21.07.2017. As per Clause 6.8(a), the respondent/claimant was entitled to cancel Ex.C7/Ex.R8-General Power of Attorney dated 03.04.2013, if the petitioner does not get approval or does not start the construction within 21 months from the date of signing of Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012.



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44. As far as construction is concerned, construction had to be commenced within 21 months from the date of Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012. Thus, the construction should have commenced by 21.08.2014, if there were no delay in processing to plan on account of bureaucratic reasons.

45. I have considered the arguments advanced by the learned Senior Counsel for the petitioner and the learned Senior Counsel for the respondent.

46. By the impugned Arbitral Award, the Arbitral Tribunal has awarded a sum of **Rs.9,12,70,533/-** to the respondent/claimant as against a total claim for a sum of **Rs.26,17,41,100/-** in Claim No.3 of the respondent/claimant.

47. The Arbitral Tribunal has also awarded a sum of **Rs.21,92,778/-** to the petitioner/developer for construction of Compound Wall and Bore Well. After adjusting the aforesaid sum of **Rs.21,92,778/-** out of Interest Free Adjustable Security Deposit (IFASD) of **Rs.6,75,00,000/-** paid to the



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respondent/claimant by the petitioner/developer, a sum of **Rs.2,15,77,760/-** has been awarded by the Arbitral Tribunal to the respondent/claimant. Apart from the above, the Arbitral Tribunal has also awarded interest from the date of Arbitral Award till the date of realization.

48. By the impugned Arbitral Award, the Arbitral Tribunal has thus allowed part of the counter claim of the petitioner/developer for refund of **Rs.6,75,00,000/-** being the Interest Free Adjustable Security Deposit (IFASD) paid in terms of Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012 and interest thereon at 18% per annum amounting to sum of **Rs.20,06,14,623/-**.

49. By the impugned Arbitral Award dated 12.09.2022, the Arbitral Tribunal has concluded that the respondent/claimant was the owner of the property, based on certain findings and has rejected the contentions of the petitioner/developer on the date of Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012. The petitioner/developer states that the sale was not complete and therefore the finding arrived is legally flawed due to several reasons.



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50. The Arbitral Tribunal has at the same time determined that time is not the essence of the contract in the facts and circumstances of the case. Despite a fixed time limit is in the Joint Development Agreement for project completion, the Arbitral Tribunal concluded that in view of the change from Residential to Commercial rendered the stipulated regarding time limit insignificant.

51. The Arbitral Tribunal states that the delay between 22.11.2012 and 13.05.2015, totaled 30 months and made the time stipulation in Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012 redundant. Thus, time was not the essence of the contract.

52. Additionally, Clause 5.1 of Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012 sets a two-year completion period with a grace period of three months.

53. The contention of the petitioner/claimant is that the date of purchase of land by the respondent/claimant was left blank in Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012. It is the



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contention of the petitioner/developer that Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012 indicates that the petitioner/developer had not paid the stamp duty and registration charges for sale of land in his favour from its previous owners. Therefore, the petitioner/developer states that the sale was not complete and the finding arrived is legally flawed due to several reasons.

54. Two Sale Deeds that were executed by the respondent/claimant (in his own favour as the Power of Attorney Holder of the previous owner) only, after the petitioner/developer paid a sum of **Rs.6,75,00,000/-** as Interest Free Adjustable Security Deposit (IFASD) to the respondent/claimant pursuant to Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012.

55. It is therefore the case of the petitioner/developer that the High Court's decree in O.S.A.Nos.92 and 93 of 2003 itself *ipso facto* did not confer a valid title over the land as no Sale Deed for transfer of title was executed pursuant to the Compromise Decree where Ex.C4/Ex.R2-Joint



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Development Agreement dated 22.11.2012 was signed.

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56. The Stamp papers for the deeds were allegedly purchased on different dates than stated by the Arbitral Tribunal, raising doubts about the accuracy of the findings.

57. The Arbitral Tribunal notes that the respondent/claimant land owner agreed to change the project type and thus revoked the Power of Attorney-Ex.C19/Ex.R27 on 06.03.2017.

58. Consequently, the Arbitral Tribunal holds that the period from **22.11.2012** to **06.03.2017** cannot be solely attributed to the petitioner/developer and therefore the time was not essential as the period contemplated under relevant clauses restarts only after **06.03.2017**.

59. It is therefore submitted that the Arbitral Tribunal's finding that the petitioner/developer caused a delay and is liable for the damages from **06.03.2017** to **19.03.2018** is flawed and suffers from patent illegality.



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60. Apart from the above, the other claims of the petitioner/developer have also been rejected. The dispute before the Arbitral Tribunal had arisen on account of interpretation of Ex.C4/Ex.R2 of the Joint Development Agreement dated 22.11.2012.

61. Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012, Ex.C5/Ex.R4-Memorandum of Understanding dated 22.11.2012 was followed by Addendum No.1 to the Agreement of Construction-Ex.C6/Ex.R5 dated 23.11.2012. The petitioner/developer was entitled to monetize 30% of the built up area in its favour while, the respondent/claimant owner of the land was entitled to monetize 70% of the built up area.

62. The Memorandum of Understanding-Ex.C5/R4 dated 22.11.2012 acknowledges advance paid by the petitioner/developer to the respondent/claimant was refundable emphasizing that in case the respondent/claimant land owner did not possess a clear title as on **22.11.2012**, the said Interest Free Adjustable Security Deposit (IFASD) was refundable. Consequently, it was argued that the conclusion and



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finding as far as Issue No.1 by the Arbitral Tribunal is legally flawed.

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63. The first Sale Deed-Ex.R3 was executed on 22.11.2012 in favour of the respondent/claimant. The second Sale Deed-Ex.R7 was executed on 09.01.2013. The Deputy Tahsildar and Surveyor, Aminjikarai Taluk, Chennai issued Field Map and Patta for the land only on 13.05.2015.

64. The arrangement in Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012 was sought to be re-negotiated at the stage when the Chennai Metropolitan Development Authority (CMDA) had already agreed to accept proposal for construction of a “commercial complex” vide Ex.C22/Ex.R30-Letter dated 09.10.2017 after the petitioner/developer had furnished a revised/fresh General Power of Attorney vide Ex.C20/Ex.R28 dated 06.03.2017 for construction of a “commercial complex”.

65. By Ex.C22/Ex.R30 Letter-dated 09.10.2017, the petitioner/developer was required to pay a sum of **Rs.1,70,20,500/-** to the Chennai Metropolitan Development Authority (CMDA) within a period of sixty days from the date of issuance of the said Letter to the Chennai Metropolitan Development Authority (CMDA). It is, at that stage, the



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petitioner/developer demanded a re-negotiation for allocating 40% of the built up area to the petitioner/developer and 60% to the respondent/claimant owner instead of 30% and 70% ratio agreed earlier in Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012.

66. Since the demand of the petitioner/developer was not accepted by the respondent/claimant/owner, the respondent/claimant/owner proceeded to cancel Ex.C20/Ex.R28- Power of Attorney dated 06.03.2017 vide Ex.C25/Ex.R31-dated 19.03.2018 Deed of Cancellation of Power of Attorney.

67. It is, in this background, private complaints were lodged by the Manager of the petitioner/developer before the Inspector of Police, Arumbakkam Police Station, Chennai vide Ex.R36 dated 18.02.2017 against the respondent/claimant, which was acknowledged by the Commissioner of Police vide Ex.R37 dated 22.02.2019.

68. A Complaint was also lodged before the Assistant Commissioner of Police, Anna Nagar, Chennai vide Ex.R38 dated 11.03.2019, after



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Ex.R39 dated 30.09.2017 resolution was passed by the petitioner/developer to barricade the entire property with barbed wire vide Ex.R40-Contract for construction of Compound Wall by giving contract to M/s.M.S.M.Mathias Civil Work.

69. As per Clause 6.8 of Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012, the respondent/claimant was entitled to cancel Ex.C7/Ex.R8-General Power of Attorney dated 03.04.2013 and Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012 under the following two circumstances:

“6.8. The land owner further agree not to revoke the above mentioned Powers of Attorney to be executed and registered in favour of the developer and this Agreement for Joint Development until the completion of the project. **However, the land owner shall give the option to cancel the powers of attorney and this Joint Development Agreement in the 2 circumstances mentioned below-**

- (a) The Developer does not get Approvals or does not start the construction within 21 months from the date of signing this Joint Development Agreement.
- (b) The Developer does not complete the project within 56 months from the date of signing this Joint Development Agreement.



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In both of the above circumstances, the Developer shall be liable to pay the penalty charges as mentioned in this Agreement and in that event of termination of this Joint Development Agreement, the adjustable security deposit mentioned in Clause No.4.1 shall be repaid without interest immediately to the Developer on the day of revocation of powers of attorney.”

70. The petitioner, as a developer, had to obtain an approval within twelve months from the date of Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012 or within the grace period of three months thereafter.

71. In the event of any delay to obtain the building plan sanction, the petitioner/developer was liable to pay penalty of Rs.10,00,000/- per Month till the date of approval except where the delay was on account of bureaucratic reasons.

72. As far as commencement of construction and completion of construction are concerned, Clause 5.1 and Clause 6.8(b) of Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012, the completion of construction was to be within the period of two years from the date of approval of the project or within three months of grace period.



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73. As per Clause 5.1 of the Ex.C4/Ex.R2 of the Joint Development Agreement dated 22.11.2012, the construction was to be completed within a period of 27 months inclusive of three months grace period.

74. As per Clause 5.1 of Ex.C4/Ex.R2 of the Joint Development Agreement dated 22.11.2012, in case of delay in completing the project (construction of residential/commercial complex) by the petitioner/developer within a stipulated period of 27 months from the date of building planning approval, the petitioner/developer was to pay interest at 15% Per Annum on the balance receivables found due to the respondent/claimant/land owner's portion payable on monthly basis.

75. Clause 5.1 of Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012 signed between the petitioner/developer and the respondent/claimant has dealt with the timelines to be maintained by the petitioner/developer.

76. As per Clause 5.1 of the Joint Development Agreement dated



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22.11.2012, the development of the property was to be completed within a period of two years from the date of approval of the CMDA/Corporation subject to a grace period of three months or any such delegated planning authorities as the case may be sanctioning their approval with respect to the proposed contemplated development on the Schedule A property.

77. The petitioner/developer was required to obtain planning permission within a period of twelve months from the date of Joint Development Agreement or within the date of grace period of three months. In all, the permission was to be obtained by the petitioner/developer within a period of fifteen months inclusive of the grace period.

78. Certain exceptions have been provided in Clauses 5.2 and 5.3 of Ex.C4/Ex.R2 of the Joint Development Agreement dated 22.11.2012. They read as under:-

“5. Time for Completion:

5.2 However, in case of natural calamities like flood, famine, earthquake, war, riot etc. suitable extension of time will be permitted.

5.3 Delay in obtaining service connections from the concerned authorities and/or electricity power, completion certificate shall not be construed as delay in the



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completion of the project as contemplated above in case the developer has completed the projects in all respects regarding construction.”

79. Clause 6.8 of Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012 enjoins the respondent/claimant to not to revoke Ex.C7/Ex.R8 General Power of Attorney dated 03.04.2013 until completion of the project. As per Clause 6.8(b), the developer limited should complete the project by 56 months from Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012.

80. Clause 6.8 of Ex.C4/Ex.R2 of the Joint Development Agreement dated 22.11.2022, the respondent/claimant/land owner has agreed not to revoke the Power of Attorney that was to be executed in favour of the petitioner/developer until the completion of the project.

81. As mentioned above, different timelines were prescribed for getting approval to put up a construction of “**residential complex**” over the Schedule A property. Clause 6.8 and Clause 7.1 of Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012 dealt with the above.



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82. As per Clause 7.1 of the Joint Development Agreement dated 22.11.2012, the petitioner/developer was required to obtain building planning sanction/permission for construction of the Schedule A Property within a period of one year from the date of said Joint Development Agreement dated 22.11.2012 with a grace period of three months.

83. Clause 11 of Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012 explicitly states that if one party breaches the Agreement, the other party is entitled to specific performance and damages. However, in this case, the respondent/claimant land owner did not seek to enforce the Agreement. Instead, the respondent/claimant requested a declaration to nullify the Joint Development Agreement dated 22.11.2012 and related documents.

84. Thus, in all, the petitioner/developer was given a period of fifteen months to obtain building planning sanction/permission for construction of the proposed building Schedule A land/property.



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85. The only exception to the aforesaid period of fifteen months inclusive of three months grace period that was provided was where, there was a delay in obtaining building permission for development due to bureaucratic reasons. In case there was no bureaucratic reason for the delay in obtaining permission, the petitioner/developer was required to pay penalty of **Rs.10,00,000/-** Per Month till the date of approval.

86. The said power was executed in favour of the petitioner/developer by the respondent/claimant on 03.04.2013 vide Ex.C7/Ex.R8-General Power of Attorney, after the second parcel of the land was transferred by the owners in favour of the respondent/claimant vide Ex.R7-Sale Deed dated 09.01.2013 for the balance of 8.55 grounds of land, after Ex.R3-Sale Deed was executed for 6.55 grounds of land on 22.11.2012 and after Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012 was signed between the petitioner/developer and the respondent/claimant.

87. Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012 also contemplated an obligation on the part of the respondent/claimant to



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hand over peaceful possession of the property immediately after receiving approval for construction.

88. In other words, Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012 contemplates a period of 15 months (12+3 months) from the statutory authorities for getting building plan approval/permission. In case of any delay, the petitioner/developer was liable to pay compensation to the respondent/claimant land owner by way of penalty (liquidation damages of Rs.10,00,000/- Per Month till the date of approval).

89. In all, the construction has to be completed within a period of 56 months from the date of sanctioning of Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012. Thus, the construction work of residential complex has to be completed by 21.07.2017.

90. Following timelines in Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012 indicates the same.



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<i>Sl. No.</i>	<i>Completion of project commencing from 22.11.2022</i>	<i>Expiry date of project</i>
1.	12 months (Approval)	21.11.2013
2.	15 months (12 + 3 months) (Approval)	21.02.2014
3.	21 months (Approval)	21.08.2014
4.	24 months (Completion of construction)	21.11.2014
5.	27 months (Completion of construction)	21.02.2015
6.	56 months (Completion of construction)	21.07.2017

91. Application filed on 30.09.2014 before the Chennai Metropolitan Development Authority (CMDA) by the petitioner/developer was acknowledged by the Chennai Metropolitan Development Authority (CMDA) vide Ex.C10/Ex.R9-Acknowledgment dated 30.09.2014.

92. The Chennai Metropolitan Development Authority (CMDA) was to process the application filed on 30.09.2014 for putting up the residential complex would have been prepared strictly in accordance with the terms and conditions of Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012.



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93. However, after the aforesaid application dated 30.09.2014, the respondent/claimant vide Ex.R14 dated 20.02.2015 has requested the Tahsildar, Aminjikarai Taluk, Chennai, to fix the boundaries and to mark the land extent and agreed to pay the necessary charges. Similar such correspondences have been exchanged between the respondent/claimant with the Highways Department also again from time to time.

94. The Chennai Metropolitan Development Authority (CMDA) by its communication vide Ex.C12/Ex.R18 dated 21.09.2015 thus called upon the petitioner/developer to furnish further details of building plan and particulars, pursuant to which, the petitioner/developer has also submitted a revised plan for the residential complex vide Covering Letter-Ex.C13/Ex.R19 dated **06.10.2015** in place of plan submitted on 30.09.2014.

95. It is noticed that the timelines specified in Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012 could not be maintained either by the petitioner/developer and/or by the respondent/claimant as the first parcel of land measuring an extent of 6.55 grounds was transferred to the respondent/claimant only on 22.11.2012 vide Ex.R3 First Sale Deed dated



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22.11.2012 and the balance extent of 8.55 grounds was transferred only on 09.01.2013 vide Ex.R7 Second Sale Deed.

96. It is only, thereafter, a General power of Attorney-Ex.C7/Ex.R8 dated 03.04.2013 was executed in favour of the petitioner/developer herein by the respondent/claimant. However, the General Power of Attorney indicates that there were deficiency informations furnished to the Chennai Metropolitan Development Authority (CMDA) after Ex.C10/Ex.R10-Application for planning permission for putting up the residential complex was filed on 30.09.2014.

97. Further, owing to re-classification of part of the land by the Highways Department, Ex.C10/Ex.R10-Application dated 30.09.2014 filed by the petitioner/developer for planning approval/permission vide Ex.R12 dated 03.02.2015 has solicited informations from the Public Information Office, Highways Department regarding the extent of land acquired from the land owners which is the subject matter of Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012.



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98. As a consequence of cancellation of Power of Attorney, the petitioner/developer was also liable to pay the penalty charges under the Joint Development Agreement and in the event of termination of Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012, the amount paid by the petitioner/developer towards Interest Free Adjustable Security Deposit (IFASD) of Rs.6,75,00,000/- was to be repaid immediately on the date of revocation of power.

99. The Arbitral Tribunal while dealing with Issue No.2 has concluded that since Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012 was never cancelled, and the respondent/claimant land owner did not dispute its execution or claim misrepresentation or mistake, the respondent/claimant land owner was estopped from seeking a declaration.

100. According to the Arbitral Tribunal, as Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012 was still valid, the only relief available to the respondent/claimant was under Clause 11, which is to file a suit for specific performance based on the Agreement's covenants in Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012. The Arbitral Tribunal has concluded that even if there is a disagreement on the



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share ratio, it did not give the respondent/claimant land owner the right to revoke the Power of Attorney instead, the respondent/claimant land owner has the right to enforce the contract according to the agreed-upon share ratio.

101. Ex.C25/Ex.R31-Deed of Cancellation of Power of Attorney dated 19.03.2018 hindered the project's progress. The Arbitral Tribunal failed to consider that the agreed terms and conditions between the parties under Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012 were given a go by. There was novation of agreement between the parties under Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012. This amounts to non-application of mind making the impugned Award susceptible to patent illegality.

102. The fact remains that the respondent/claimant has revoked Ex.C7/Ex.R8-General Power of Attorney dated 03.04.2013 vide Ex.C25/Ex.R31-Cancellation of Power of Attorney dated 19.03.2018. This was at the stage when the initial arrangement for construction of a “**residential complex**” measuring an extent of 102328 sq.ft in



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Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012 was given up and a fresh alternate arrangement was under discussion for putting up a commercial complex in terms of an oral arrangement made between the parties hereto. The petitioner/developer reneged its obligation under Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012.

103. The petitioner/developer appears to have asked the respondent/claimant to come for a re-negotiation of the shares in the proposed built up area in the commercial complex as mentioned elsewhere.

104. As per Section 62 of the Indian Contract Act, 1872, if the parties to a contract agree to substitute the old contract with a new contract for it, or agree to rescind it or alter it, the original contract need not be performed. Thus, the arrangement in Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012, Ex.C5/Ex.R4-Memorandum of Understanding dated 22.11.2012 followed by Addendum No.1 to the Agreement of Construction-Ex.C6/Ex.R5 dated 23.11.2012 was not required to be performed by either of the parties.



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105. In this case, admittedly, both the parties have agreed to substitute the existing contract in Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012, the Memorandum of Understanding Ex.C5/Ex.R4 dated 22.11.2012 and Ex.C6/Ex.R5 Addendum No.1 to the Agreement of Construction dated 23.11.2012.

106. They deviated from the proposed construction of “**residential complex**” to “**commercial complex**” in the year 2018 as is evident from Ex.R20-E-mails exchanged by the parties between 26.07.2015 and 08.06.2016 and Ex.C14/Ex.R21-Letter dated 19.08.2016 from the Chennai Metropolitan Development Authority (CMDA) issued to the petitioner/developer and Ex.C15/Ex.R.22-Acknowledgement dated 26.09.2016 of CMDA to the petitioner/developer and Ex.C16/Ex.R23-Payment Receipt dated 21.11.2016 from CMDA and a revised application for putting up a commercial complex (Letter from CMDA for approval) vide Ex.C17/Ex.R24 dated 03.02.2017.

107. Ex.R25-Email correspondence exchanged between the parties dated 16.02.2017 to 28.02.2017 and a further Letter from CMDA to the



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petitioner/developer vide Ex.C18/Ex.R26 dated 01.03.2017 confirms the same.

108. It is, in this background, Ex.C19/Ex.R27-Deed of revocation of Power of Attorney dated 06.03.2017 was executed and thereby revoked Ex.C7/Ex.R8-General Power of Attorney dated 03.04.2013. This led to cancellation of Ex.C20/Ex.R28-Fresh General Power of Attorney dated 06.03.2017 vide Ex.C25/Ex.R31-Deed of Cancellation of Power of Attorney dated 19.03.2018 leading to stand-off between the petitioner/developer and the respondent/claimant resulting in termination of the Contract/Joint Development Agreement between them.

109. The fact remains that the Contract in Joint Development Agreement in Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012 along with Ex.C5/Ex.R4-Memorandum of Understanding dated 22.11.2012, Ex.C6/Ex.R5-Addendum No.1 to the Agreement of Construction dated 23.11.2012, the General Power of Attorney that was executed by the respondent/claimant in favour of the petitioner/developer vide Ex.C7/Ex.R8 dated 03.04.2013 was altered.



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110. This aspect ought to have been examined by the Arbitral Tribunal from the prism of Section 62 of the Indian Contract Act, 1872 as the obligation under the above mentioned Joint Development Agreement, documents stood rescinded and the parties were not obliged to perform their mutual obligations under the aforesaid Joint Development Agreement, which stood novated.

111. If the parties wanted to arrive at a fresh settlement or continue with the arrangement under the old Agreement, they should have signed a fresh Agreement delineating the mutual rights and obligations of each of the parties.

112. As per the decision of the Hon'ble Supreme Court in **“Ssangyong Engineering and Construction Co. Ltd. Vs. National Highway Authority of India”**, (2019) 15 SCC 131, an Award can be set aside on the ground of patent illegality under Section 34(2-A) of the Arbitration And Conciliation Act, 1996 where the illegality in the Award goes to the root of the matter. It is further held that finding of erroneous



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application of law by an Arbitral Tribunal or the re-appreciation of evidence by the Court under Section 34(2-A) of the Arbitration and Conciliation Act, 1996 is not available.

113. Since the parties have agreed for substitution of the existing contract with a new contract and therefore Ex.C19/Ex.R27-Deed of revocation of Power of Attorney dated 06.03.2017 revoking Ex.C7/Ex.R8-General Power of Attorney dated 03.04.2013 was executed and substituted with Ex.C20/Ex.R28-Fresh General Power of Attorney dated 06.03.2017, the Arbitral Tribunal ought to have examined.

114. Since this aspect was not examined by the Arbitral Tribunal, which has to go to the root of the issue, the impugned Arbitral Award be set aside as a patently illegal Arbitral Award.

115. That apart, even if Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012 was not rescinded as was argued by either of the Counsels, the only remedy prescribed under Ex.C4/Ex.R2-Joint



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Development Agreement dated 22.11.2012 for the petitioner/developer was to vacate the premises under Ex.C4/Ex.R2-Joint Development Agreement dated 22.11.2012 and file a suit for specific performance as one of the party was in default and was liable to make good to the other party for all the losses and the damages suffered on account of defaults in terms of Clause 11 of the aforesaid Joint Development Agreement dated 22.11.2012, which reads as under:-

“11. Remedy for Breach of Arrangement:

In the event that one of the parties hereto commits breach of any of the terms of this Agreement, then the other party shall be entitled to specific performance of this Agreement and the party in default shall also be liable to make good to the other all losses and damages suffered on account of the default.”

116. The Arbitral Tribunal has ignored this vital aspect. Instead, the Arbitral Tribunal has proceeded to partly allow the claim of the respondent/claimant.

117. Since the impugned Arbitral Award suffers from patent illegality, it is liable to be set aside. Accordingly, it is set aside. This Original Petition, is thus, allowed leaving the parties to bear their own costs.



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118. Since the impugned Arbitral Award is hereby set aside, the parties are free to approach the Arbitral Tribunal for passing a fresh Arbitral Award in the light of the above observations. The time spent in this proceeding shall stand excluded for the purpose of computation of limitation. Connected Application is closed.

28.03.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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C.SARAVANAN, J.

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