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O.S.A.(CAD) No.34 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2025

CORAM:

THE HONOURABLE DR. JUSTICE **G.JAYACHANDRAN**

and

THE HONOURABLE MR. JUSTICE **MUMMINENI SUDHEER KUMAR**

O.S.A.(CAD) No.34 of 2022

and

C.M.P.No.3648 of 2022

1.Jeyam Constructions
Rep by its Proprietrix,
Mrs.E.Jayanthi
No.36/99, Karneeswarar Koil Street,
Mylapore, Chennai 600 004.

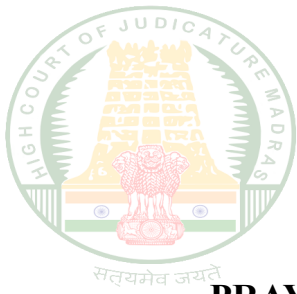
2.E.Jayanthi
W/o. R.Ellangovan
No.36/99, Karneeswarar Koil Street,
Mylapore,
Chennai 600 004.

.. Appellants

Vs.

1.M.Velu
2.V.Jayashree
3.J.Rifaya Parveen
4.S.Guganathan
5.M.A.Ahamed Uduman
6.Mohammed Gayasuddin
Rep by his Power Agent
A.Mohammed Adam

.. Respondents



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PRAYER: Original Side Appeal is filed under Order XXXVI Rule (1) of the Original Side Rule read with Clause 15 of the Letters Patent Appeal read with Section 37 of Arbitration and Conciliation Act, 1996 and 13(1) of Commercial Courts Act, praying to set aside the Judgment and Decree dated 10.08.2021 made in O.P.No. 197 of 2021 on the file of the Original Side of this Honble Court.

For Appellants : Mr.K.Gowthamkumar

For Respondents : Mr.S.R.Sundar

JUDGMENT

The 2nd appellant herein, being the sole proprietor of the property developed into flats, had sold the same to the respondents. However, there were deviations and violations of the approved building plan. Hence, the dispute has been referred to the arbitration and an award was passed by the sole Arbitrator on 21.12.2019.

2. Being aggrieved by the said award, the appellant filed O.P.No.197 of 2021. Some of the purchasers have filed O.P.No.226 of 2021. The learned Single Judge of this Court, by a common order dated 10.08.2021, dismissed both Original Petitions.



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3. Aggrieved by the dismissal, the promoter of the property, who is the petitioner in O.P.No.197 of 2021, has preferred an appeal under Section 37 of the Arbitration and Conciliation Act, 1996, read with Clause 15 of the Letters Patent. The said O.S.A(CAD) No.34 of 2024 is pending adjudication before the Division Bench of this Court.

4. It is reported that the 5th respondent, Mr.M.A.Ahamed Uduman, who is one of the purchasers of the Flat No.S3, on the second floor of Jeyam Apartments, has sold the property and has no interest in the litigation. The remaining respondents have entered into a Joint Compromise Memo, wherein they have set out the terms of settlement with the intent to give quietus to the litigation. All parties in O.S.A(CAD) No.34 of 2022 are present in person, except M.A.Ahamed Uduman, who has filed a memo stating that he has no interest in the matter and may be given up.

5. As far as the 6th respondent is concerned, he is represented through his power agent, who is present before this Court. The parties



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have signed the Memorandum of Settlement on 24.09.2025, duly attested

by their respective counsel. The terms of settlement are as follows:-

“1. The Appellants shall through their sources identify purchasers to buy the Flat Nos. F1, F2, F3 and S4 (belonging the respondents 1. Mr.M.VELU; 2.Mrs.V.JAYASHREE; 3.Mrs.J.RIFAYAPARVEEN;4.Mr.S.GUGANATH AN, 6.?.?.?.????MED GAYAZUDDIN Rep. By its Power Agent Mr. Mohammed Adam) in the building.

2. The consideration to be paid to the respective owners of the above mentioned flats shall be Rs.15,000/- (Rupees Fifteen Thousand only) per square feet.

3. Even though the claim was in respect of five flats, one of the original respondents has since sold the flat and abandoned his claim and the present MOS is in respect of the four remaining flat owners alone. The appellants have no claim against the said respondent who has sold the property and the said respondent has also given up claim concerning the proceedings between the parties.

4. In the event the consideration offered by such identified purchasers falls short of the said rate, the Appellants shall pay the differential amount to the respondents so that the respondents receive not less than Rs.15,000/- per square feet in respect of their



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flats within the agreed period of six months from the date of MOS.

5. The Respondents undertake that the flats will be discharged of any mortgage prior to execution of the sale deeds. The Respondents further warrant that the flats are free from any encumbrance, claim, or third-party rights, save for such mortgage which shall be cleared prior to registration.

6. The appellants /buyers shall pay sizeable advance which amount shall be utilised to discharge the mortgage or in the alternative the prospective buyers as identified by the Appellants will take over the mortgage prior to the sale and adjust the outstanding dues from the Sale consideration. In the event of any undisclosed encumbrance, the Respondents alone shall be responsible for clearing the same, and the Appellants shall not bear any liability.

7. The Flats are sold on an "as is where is" basis and all responsibility for construction, approvals, title, or related claims shall rest with the Appellants, who shall indemnify both the Respondents and the purchasers in case of any claims regarding the construction or alleged deviation or other claims relating to the building. The Appellants are willing to sign the sale deeds as confirming parties, if so desired by the purchasers.



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8. *All claims arising out of the selling of flats from the prospective buyers shall rest on the appellants and the respondents are not liable for any claim arising thereof on any account since the building was developed and sold by the Appellants. The Appellants also agree to indemnify the respondents on account of any claim from any quarters arising out of sale of the property to the prospective purchasers.*

9. *The entire process of sale, including execution and registration of sale deeds, shall be completed within six months from the date of this MOS. It is expressly agreed that the sale cannot be done simultaneously and the sale would happen one after the other but all the four sale deeds shall be executed within six months.*

10. *If the appellants are unable to secure purchasers within this period, the Appellants themselves shall purchase the flats from the respondents at the rate of Rs.15,000/- per square feet.*

11. *In default of such purchase, the Appellants shall pay the amounts to the Respondents as prescribed in the Arbitral award dated 21.12.2019 to such unsold flat owners and abide by the terms of the award. In lieu of the said undertaking the Appellants are jointly depositing the post-dated cheques all dated 23.03.2026, drawn on Bank of India, Santhome Branch, as security in favour of the Respondents namely (I.M.VELU or (for himself*



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and his wife Mrs.V.JAYASHREE) (No.084509),
2. Mrs.J.RIFAYAPARVEEN (084510),
3.Mr.S.GUGANATHAN (084511) and 4.
Mr.M.A.MOHAMMED GAYAZUDDIN
(084512) each amounting to Rs.11 lakhs) in the
joint custody of both the Counsels of the
Appellants and the Respondents. In the event of
the sale could not be fructified and the
Appellants are not honour the payment within
the period of six months as agreed hereunder,
the Respondents are entitled to deposit the
cheques.

12. The Respondents agree to enter into
Agreement to sell with such identified
purchasers upon intimation from the
Appellants. On execution of each Agreement to
Sell, the Respondents shall be paid such
amount as is being paid by the purchaser
directly ie., amounts apart from the loan
amount. The prospective buyers are also
entitled to pay the mortgaged amount out of the
sale consideration and adjust the same. Each
Agreement to sell shall stipulate that the
purchaser shall obtain bank sanction, if
required, within three months thereafter, and
the sale deed shall be registered within three
months from the date of such sanction. In all
cases, the registration of sale deeds shall be
completed within the overall six months period
fixed herein.

13. In the event of any failure to enter
into a Sale Deed after the execution of
Agreement to Sell, the Respondents shall return
the money that they received at the time of



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Agreement to Sell forthwith. The time shall be essence and spirit of this MOS.

14. The Respondents shall extend full cooperation in the sale process, including execution of documents, furnishing signatures, providing vacant possession at the time of registration, and not creating any obstruction, delay or encumbrance.

15. The Respondents shall hand over vacant and peaceful possession of the respective flats F1, F2, F3 & S4 at the time of registration.

16. In the event any purchaser identified by the Appellants defaults in completing the transaction, such default shall not be construed as a failure on the part of the Appellants, provided that the Appellants secure another purchaser or exercise the buyout obligation within the overall six-month period or the appellants purchase the property from the respondents as agreed.

17. The original title deeds of the flats as handed over by the Appellant shall be handed over to the learned counsel for the Appellants and respondents jointly, for inspection by prospective purchasers. The Respondents confirm that certain parent title deeds are not in their possession. Prospective purchasers, together with their bankers or technical representatives, may inspect the flats upon prior notice. Except for the Appellants and such purchasers, no other persons shall be



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permitted access. The Appellants are not entitled to carry-out any building related activity such as construction and giving representation to the authorities concerning the building till the tenure of this MOS. In the event of the selling of Flats within the stipulated period of Six months could not go through or if there is a breach on the part of the Appellant the Title Deeds of the flats will be handed over to Respondents concerning the respective Flats.

18. The Respondents shall withdraw all pending proceedings only upon full receipt of consideration at Rs.15,000/- per square feet and execution and the registration of the sale of the flats. Specifically, the parties agree that O.S.No.2207 of 2021 pending on the file of the II Additional City Civil Court, Chennai, between the same parties, shall also only be withdrawn as part of this settlement, upon completion of the transaction. Till such time, the proceedings shall be kept pending but adjourned for settlement, and upon completion of sale, they shall be withdrawn. The respondents shall also withdraw the Review Petition No.141 of 2019 against W.P.No.27869 of 2016.

19. The Appellants shall ensure mutation of revenue and tax records into the names of the purchasers and provide proof thereof. The Respondents confirm that property and water taxes are paid up to date.

20. Both parties agree to desist from making defamatory or scurrilous statements



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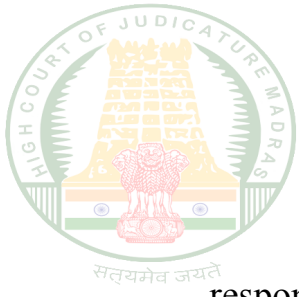
against each other and undertake not to initiate any fresh cases, criminal complaints, or legal notices except for enforcement of this MOS during the tenure of the MOU. Any breach shall entitle the aggrieved party to damages and such other reliefs as are available in law.

21. Upon completion of the transactions contemplated herein, the Respondents confirm that they have no further claims of any nature against the Appellants, including claims relating to construction, damages, compensation, or otherwise. This MOS shall operate as a full and final settlement between the parties.

22. Both parties agree that upon completion of the transactions contemplated herein, they release each other from all past, present, and future claims, suits, proceedings, or demands, save and except enforcement of this MOS.

23. This MOS shall be filed before this Hon'ble Court in O.S.A. (CAD) No.34 of 2022, and the parties respectfully pray that the same be recorded as a compromise decree."

6. Since the parties have arrived at a settlement and want to withdraw the appeal in terms of settlement, this Original Side Appeal stands disposed of in accordance with the terms of settlement as against



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respondents 1, 2, 3, 4 and 6 and is dismissed as against the 5th respondent. Consequently, the connected Civil Miscellaneous Petition is closed. No costs.

[Dr.G.J., J.] & [M.S.K., J.]
06.10.2025

Index : Yes/No
Internet : Yes/No
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Dr.G.JAYACHANDRAN., J.
and
MUMMINENI SUDHEER KUMAR., J.

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