IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **23.06.2025**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

C.S. No.81 of 2021

Tmt.Binu Christeena
W/o. Thiru Peter Arivarasan,
No.3/421, Pandian Salai,
Neelankarai, Chennai-115. ... Plaintiff

vs.

1. M.A.R.Juherniza,
New D.No.226, Old D.No.171,
Ramakrishna Mutt Salai,
Mandaveli, Chennai-28.

2. Mrs.A.J.Manaraseena
D/o. Late A.Jalal
New D.No.226, Old D.No.171
Ramakrishna Mutt Salai,
Mandaveli, Chennai - 600 028.

3. Mrs.A.Thameemnisa
D/o. Late Jalal, D.No.14/8,
Appavu Gramani 1st Street,
Mandaveli, Chennai 28.

4.Mrs.A.J.Shahar Banu
D/o Late A.Jalal,
D.No.51A, Salaiar Street,
Mandaveli, Chennai 28.

5. Mrs.A.J.Noornisa
D/o Late A.Jalal
New D.No.80/2, Old D.No.7/1,
Lalitha Nagar, 1st St.,
Mylapore, Chennai 04.

6. Mr.J.Khaja Moideen
S/o Late A.Jalal,
New D.No.226, Old D.No.171,
Ramakrisha Mutt Salai
Mandaveli, Chennai 28.

7. Mrs. A.J.Shabina Parveen
D/o Late A.Jalal
New D No.226, Old D.No.171,
Ramakrishna Mutt Salai
Mandaveli, Chennai 28.

8.Thiru.A.Pradeep
S/o A.Asokan
Door No.1, Vannianpathi Street,
R.A.Puram, Chennai 600 028. ... Defendants

PRAYER: Plaint filed under Order IV Rule 1 of the Original Side Rules Read With Order VII Rule 1 of the C.P.C., prays for the Judgment and Decree in favour of the plaintiff and against defendants 1 to 8, as follows:

(a) directing defendants 1 to 8 to pay a sum of Rs.2,39,18,494/- with subsequent interest at the very same rate of 18% per annum on the suit amount of Rs.1,31,00,000/- from the date of the plaint to till the date of realisation;

b) For costs of the suit.

For Plaintiff	:	Mr.R.Palaniandavan
For D8	:	Dr.S.S.Swaminathan
D1 to D7	:	No appearance

JUDGMENT

The suit was filed for recovery of a sum of Rs.2,39,18,494/- from defendants 1 to 8 with interest at 18% per annum on Rs.1,31,00,000/- from the date of plaint till the date of realisation.

2. In the plaint, the plaintiff states that she entered into sale agreement dated 25.07.2016 with the 8th defendant acting as agent of defendants 1 to 7. Pursuant thereto, the plaintiff states that an aggregate sum of Rs.2,56,00,000/- was paid to the 8th defendant from and out of the total sale consideration of Rs.6,67,86,458/-. Thereafter, it is also stated that the plaintiff constructed houses/villas on the property and received an aggregate

advance of Rs.2,60,00,000/- from two buyers. Since the 8th defendant did not come forward to execute the sale deed and instead suggested that a joint venture agreement be entered into, the plaintiff states that joint venture agreement dated 25.10.2017 was executed. On the date of execution thereof, it is stated that a further sum of Rs.44 lakhs was paid, thereby aggregating to a sum of Rs.3 crores.

3. By further asserting that the 8th defendant refused to register documents in favour of buyers of villas, which were allotted to the plaintiff's share, it is stated that the plaintiff was constrained to lodge a police complaint. In course of hearing of Crl.O.P.No.682 of 2019, the plaintiff states that the 8th defendant paid a sum of Rs.1,25,00,000/- to the plaintiff and a sum of Rs.2,38,00,000/- to the plaintiff's buyers. According to the plaintiff, a sum of Rs.2,16,00,000/- had been incurred as costs for developing the property pursuant to the agreement of sale and joint venture agreement. After giving credit to amounts received from the 8th defendant, the plaintiff computed the principal suit claim of Rs.1,31,00,000/- and the aggregate claim of Rs.2,39,18,494/-.

4. In spite of service of suit summons, defendants 1 to 7 did not contest the suit. The 8th defendant, however, entered appearance and filed a written statement. In the written statement of the 8th defendant, the execution of the sale agreement and joint venture agreement as an agent of defendants 1-7 are admitted. It is also stated that the power of attorney remains in force. As regards payments pursuant to the said agreements, the 8th defendant has set out details thereof in paragraph 18 of the written statement. In effect, the receipt of the aggregate sum of Rs.2,56,00,000/- is admitted therein and it is stated that three cheques, each dated 10.06.2017, for sums of Rs.10 lakhs, Rs.20 lakhs and Rs.20 lakhs were dishonoured. According to the 8th defendant, the plaintiff only paid the sum of Rs.2,56,00,000/- and not the sum of Rs.3 crores as stated in the plaint.

5. The agreed position between the plaintiff and the 8th defendant is that the plaintiff put the 8th defendant in possession of the immovable property forming the subject of the sale agreement and joint venture agreement and that it was agreed between them that, consequently, further obligations under the joint venture agreement would not survive.

6. Upon considering the pleadings and documents, issues were framed on 24.04.2024. Although ten issues were framed, in view of the developments recorded above, only the following five issues retain relevance:

"1. Whether the defendants 1 to 8 are liable to pay a sum of Rs.2,39,18,494/- with subsequent interest at the rate of 18% per annum for the principal amount of Rs.1,31,00,000/- from the date of the plaint till the date of realisation ?

6. Whether the plaintiff paid a sum of Rupees Three Crores to the defendants in respect of the Sale Agreement dated 25.07.2016 and Joint Venture agreement dated 25.10.2017 ?

7.Whether the plaintiff is entitled to claim Rs.2,16,00,000/- towards construction, Approval, Marketing & Labour ?

8. Whether the plaintiff is entitled to the suit claim even after payment of Rs.2,38,00,000/- to the prospective purchasers of the Villa ?

10. To what other reliefs?"

7. The plaintiff adduced oral evidence by examining her husband, Peter Arivarasan, as P.W.1. In course of the examination in chief of P.W.1, 15 documents were exhibited as Exs.P1 to P15. P.W.1 was cross-examined by learned counsel for the 8th defendant. In course of cross-examination, five documents were exhibited as Exs.D1 to D5. The 8th defendant did not lead oral evidence. Significantly, the 8th defendant did not file an affidavit of admission/denial in respect of documents filed and exhibited by the plaintiff.

Counsel and their contentions

8. Oral arguments on behalf of the plaintiff were advanced by Mr.R.Palaniandavan and on behalf of the 8th defendant by Dr.S.S.Swaminathan.

9. Learned counsel for the plaintiff referred to the Sale Agreement dated 25.07.2016 (Ex.P2), Developing Power cum Memorandum of Understanding dated 25.07.2016 (Ex.P3) and receipts dated 12.09.2016 & 07.04.2017. He pointed out that these documents contain acknowledgements for the receipt of an aggregate sum of Rs.2 crores. By referring to the joint

venture agreement dated 25.10.2017 (Ex.P6), learned counsel submits that said document contains an acknowledgement of the receipt of the aggregate sum of Rs.3 crores by the 8th defendant from the plaintiff. By referring to paragraph X of the plaint, learned counsel submits that it is pleaded therein that the plaintiff paid a further sum of Rs.44 lakhs on 25.10.2017, i.e. the date of execution of the joint venture agreement. Thus, learned counsel submitted that the plaintiff had paid an aggregate sum of Rs.3 crores to the 8th defendant.

10. In addition, he submits that the plaintiff had incurred expenditure of Rs.2,16,00,000/- in developing the property. Hence, he submits that the total amount due from the 8th defendant is Rs.5,16,00,000/-. He also submits that the amount paid by the 8th defendant to third party buyers of villas constructed by the plaintiff were given credit to while arriving at the principal suit claim of Rs.1,31,00,000/-. By referring to questions and answers 30 & 31 during cross-examination of P.W.1 on 03.07.2024, learned counsel submits that P.W.1 explained that three cheques for Rs.50 lakhs were issued because the 8th defendant had asked for an excess amount for

personal needs. He also pointed out that P.W.1 stated that cash payment was made on 25.10.2017 in lieu of the three dishonoured cheques.

11. In response, learned counsel for the 8th defendant referred to Exs.P2, P4 and P5 to point out that these documents provide particulars of the mode of payment of amounts specified therein. He also referred to Ex.D1, which is the original sale agreement (copy of which was exhibited as Ex.P2). He points out that subsequent payments in February 2017 of an aggregate sum of Rs.56 lakhs are reflected therein under the signature of the 8th defendant. Therefore, he submits that only Rs.2,56,00,000/- was paid by the plaintiff to the 8th defendant and not Rs.3 crores.

12. By referring to the plaint, learned counsel submits that the three cheques for the aggregate sum of Rs.50 lakhs were not referred to therein. He also points out that paragraph X of the plaint does not mention that the amount of Rs.44 lakhs was paid in cash. By referring to the cross-examination of P.W.1, particularly questions 14 to 23 and the answers thereto, learned counsel submits that P.W.1 admitted that the total payments

acknowledged under Ex.D1, Ex.P4 and Ex.P5 aggregate to a sum of Rs.2,56,00,000/-. By further referring to questions 29 to 33 and the answers thereto, learned counsel submits that the plaintiff's assertion that a sum of Rs.44 lakhs was paid in cash is belied by the answers of P.W.1 inasmuch as P.W.1 admits that no action was taken to get back the dishonoured cheques. Thus, he contends that the conduct of the plaintiff does not support the assertion that a sum of Rs.44 lakhs was paid in cash. By also referring to the answers to questions 42 & 68, learned counsel submits that P.W.1 provided the unacceptable and unbelievable answer that details of payments were provided in the sale agreement and receipts only when more than one mode of payment was involved. Therefore, learned counsel submits that the 8th defendant is not liable for the suit claim with interest thereon.

13. By way of a brief rejoinder, learned counsel for the plaintiff submits that the 8th defendant has not disputed Ex.P6 and, in fact, admitted the same. By also pointing out that no affidavit of admission/denial was filed in response thereto, learned counsel submits that not only the signatures but even the contents of Ex.P6 stand admitted. As a result, learned counsel

submits that any oral evidence to disprove Ex.P6 is inadmissible. As regards the plaintiff's decision not to call for a return of the dishonoured cheques in spite of paying the sum of Rs.44 lakhs in cash, learned counsel submits that the 8th defendant did not issue notice under Section 138 of the Negotiable Instruments Act, 1881 (the NI Act) or take any other measures in relation to the dishonoured cheques.

Discussion, analysis and conclusion:

<u>Issue No.6:</u>

14. This issue relates to whether the plaintiff paid a sum of Rs.3 crores to the defendants under sale agreement dated 25.07.2016 and joint venture agreement dated 25.10.2017. The record shows that Ex.P6, which is the joint venture agreement, was exhibited without objections and without denial on the part of the 8th defendant. The said agreement records, in relevant part, as under:

> *" 1. நம்மில் 1வது பார்ட்டி மேற்படி 2வது பார்ட்டியிடமிருந்து அட்வான்ஸாக ரூ.3,00,00,000/– (ரூபாய் மூன்று கோடி மட்டும்) ஐ பெற்றுக்கொண்டுள்ளார். அதில் ரூ.1,00,00,000/–Free Money- யாகவும், மீதமுள்ள ரூ.2,00,00,000/– Refund அட்வான்ஸ் ஆகவும், இதை*

> *கட்டிடம் முடியும்போது பணமாகவோ அல்லது அதற்குரிய (B3 or A2) வீடாகவோ 1வது பார்ட்டி 2வது பார்ட்டியிடம் கொடுக்க வேண்டும்."*

Ex.P6 clearly bears the signature of the 8th defendant and the plaintiff has signed as the Proprietrix of Dream Asset Promoters.

15. In the plaint, at paragraph X, while referring to the joint venture agreement, the plaintiff pleaded, in relevant part, as under:

> *"X. .. .. Accordingly, the plaintiff entered into a Joint Venture Agreement on 25-10-2017, with all the defendants for the very same property for which sale agreement was entered into already. On the day of entering into the Joint Venture Agreement, i.e. on 25-10-2017, the plaintiff paid further sum of Rs.44,00,000/- (Rupees forty four lakhs only) and thus, a total sum of Rs.3,00,00,000/- (Rupees Three crores only) to the defendants. "*

In the written statement at paragraph 18, the 8th defendant has recorded details of payments received from the plaintiff. In the table at paragraph 18, payments received under serial nos.1 to 13 thereof are admitted and aggregate to a sum of Rs.2,56,00,000/-. Therefore, the only disputed question in this regard is with regard to the payment of the additional claim of Rs.44 lakhs by the plaintiff.

16. In the proof affidavit of Peter Arivarasan, reference was made to the joint venture agreement and to the receipt by the 8th defendant of an aggregate sum of Rs.3 crores as advance. P.W.1 was cross-examined with regard to this issue by learned counsel for the 8th defendant. The relevant questions and answers are set out below:

> *"Q29: Whether the Cheques under Ex.D3 to Ex.D5 were dishonoured?*
> *A: Yes.*
>
> *Q30: Whether the difference amount mentioned in the Joint Venture Agreement and the payment made under Ex.D1, Ex.P4 and Ex.P5 is in lieu of the dishonoured Cheques?*
> *A: Yes. They were seeking excess amount for personal needs and for that the round of the amount and issued 3 Cheques for total sum of Rs.50 Lakhs.*
> *Q31: When have you made the cash payment in lieu of 3 Cheques?*

A: Payment was made on 25.10.2017 when Joint Venture Agreement was executed.

Q32: Whether you have demanded the 8th defendant to return the dishonoured Cheques? If so how?
A: I have demanded orally at the time of execution of Joint Venture Agreement and he has not returned.

Q33: Have you taken any action in writing or other modes to get back the dishonoured Cheques?
A: No. I have not taken.

Q42: Is it the practice to mention about the details of the mode of payment in respect of the payments made under Ex.D1, Ex.P4 and Ex.P5?

A: The details of the mode of payment have been given only upto the issuance of receipts. Witness adds: the details of mode of payment is stated only when both cash and Cheques are involved.

Q68: (Ex.P6 is shown to the witness) Whether the details of payment and mode of payment are mentioned in Ex.P6?

A: No. It is not necessary to mention for single mode payment. The total amount received by them is mentioned.

Q81: I put it to you that you have not made any cash payment on the date of joint Venture.
A: I deny. I made a payment of Rs.44 Lakhs.

Q82: I put it to you that you have computed the amount of Rs.3 Crores by including the value of the bounced Cheques.
A: Yes.

As is noticeable from the above answers, P.W.1 states that cash payment of Rs.44 lakhs was made on 25.10.2017 when the joint venture agreement was executed. Paragraph X of the plaint also refers to the payment of Rs.44 lakhs on 25.10.2017, albeit the mode of payment is not referred to therein. In the answer to question 33, P.W.1 has admitted that no action was taken for return of the dishonoured cheques. Learned counsel for the plaintiff explains such inaction on the ground that the 8th defendant did not initiate proceedings under Section 138 of the NI Act or for any other relief in respect thereof.

17. According to learned counsel for the 8th defendant, the fact that details of the mode of payment were specified in Exs.P2, P4 and P5, whereas they are not mentioned in Ex.P6 would lead to the inference that a sum of Rs.44 lakhs was not paid. Two significant aspects should be borne in mind while assessing the evidence in this regard. The first being that Ex.P6 is an admitted document, including in relation to the contents thereof. The second aspect is that this document was executed on 25.10.2017. The suit was presented sometime in February 2021. During the 3 ½ year interregnum between the execution of Ex.P6 and the presentation of the suit, the agreed position is that there is no communication from the 8th defendant to the plaintiff denying receipt of the sum of Rs.44 lakhs. Therefore, Issue no.6 is decided in favour of the plaintiff and against the 8th defendant.

Issue No.7:

18. This issue relates to whether the plaintiff is entitled to Rs.2,16,00,000/- towards construction, approval, marketing & labour.

Although the plaintiff exhibited 15 documents through P.W.1, none of these documents deal with the alleged expenditure of a sum of Rs.2,16,00,000/- towards construction and related activities. Even the proof affidavit of P.W.1 does not contain particulars of such expenditure by way of even a break-up. Importantly, no supporting documents were exhibited. In light of the failure of the plaintiff to adduce evidence in support of the claim of Rs.2,16,00,000/-, the only reasonable conclusion is that the claim of Rs.2,16,00,000/- has not been proved. As regards such expenditure, at paragraph 18 of the written statement, the 8th defendant has admitted that a sum of Rs.1,25,00,000/- was incurred as expenditure by the plaintiff and that this amount was reimbursed by the 8th defendant. Issue No.7 stands disposed of by holding that this claim is proved by admission only to the extent of Rs.1,25,00,000/-.

Issue Nos.1, 8 and 10:

19. These issues relate to whether defendants 1 to 8 are liable to pay an aggregate sum of Rs.2,39,18,494/- with interest at 18% per annum on the

principal sum of Rs.1,31,00,000/- and whether the plaintiff is entitled to the suit claim in respect of the payment of Rs.2,38,00,000/- to the prospective purchasers of villas from the plaintiff.

20. The agreed position is that the plaintiff had received an aggregate sum of Rs.2,60,00,000/- from the prospective purchasers of villas and that the 8th defendant discharged the plaintiff's liability to these third party buyers by paying a sum of Rs.2,38,00,000/- towards the same. While disposing of Issue no.7, it was recorded that the plaintiff had not proved that she had incurred expenditure of Rs.2,16,00,000/- towards construction cost. Therefore, the computation of the suit claim at paragraph XVII of the plaint is incorrect. In other words, in order to discharge liability towards the sum of Rs.3 crores received from the plaintiff, the 8th defendant paid a sum of Rs.1,25,00,000/- directly to the plaintiff. A further aggregate sum of Rs.2,38,00,000/- was paid by the 8th defendant to discharge the plaintiff's debt of Rs.2,60,00,000 to third party buyers of villas from the plaintiff.

21. Once credit is given for the above payments by the 8th defendant, a total sum of Rs.3,85,00,000/- (Rs.2,60,00,000 + Rs.1,25,00,000) has been paid towards a total liability of Rs.4,25,00,000/-(Rs.3,00,00,000 +

Rs.1,25,00,000), and only a sum of Rs.40 lakhs remains to be paid by the 8th defendant to the plaintiff. Since the said amount was paid on 25.10.2017, the plaintiff is entitled to interest thereon from the said date. By taking into account interest rates prevailing at the relevant point of time and the fact that it is a commercial transaction, the said amount shall carry interest at the rate of 12% per annum from 25.10.2017.

22. As the partial successful party, the plaintiff is entitled to costs. A sum of Rs.2,42,710/- was paid as Court fees. Since the plaintiff only succeeded partly, the plaintiff shall be entitled to Rs.1,50,000/- towards Court fees and, in addition, a sum of Rs.1,50,000/- towards lawyer's fees and other expenses.

23. In conclusion, the suit is decreed by directing the 8th defendant to pay the plaintiff a sum of Rs.40 lakhs with interest thereon at 12% per annum from 25.10.2017. In addition, the 8th defendant is directed to pay an aggregate sum of Rs.3,00,000/- (Rupees Three lakhs only) as costs to the plaintiff towards Court fees, lawyer's fees and other expenses.

23.06.2025

Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No

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Plaintiff's witness:

P.W.1 : Peter Arivarasan

Documents exhibited by the plaintiff:

Exhibits	***Documents***
Ex.P1	The photocopy of the power of attorney executed by defendants 1 to 7 in favour of the 8th defendant dated 19.08.2011. (The learned counsel for the defendant has objected that original not produced and not compared with original)
Ex.P2	The photocopy of the sale agreement dated 25.07.2016. (The learned counsel for the defendant has objected that original not produced and not compared with original)
Ex.P3	The photocopy of the Developing power cum Memorandum of Understanding dated 25.07.2016. (The learned counsel for the defendant has objected that original not produced and not compared with original)
Ex.P4	The photocopy of the receipt issued for Rs.1,00,00,000/- dated 12.09.2016. (The learned counsel for the defendant has objected that original not produced and not compared with

Exhibits	***Documents***
	original)
Ex.P5	The photocopy of the receipt issued for Rs.1 ,00,00,000/- dated 07.04.2017. (The learned counsel for the defendant has objected that original not produced and not compared with original)
Ex.P6	The photocopy of the Joint Venture Agreement dated 25.10.2017. (The learned counsel for the defendant has objected that original not produced and not compared with original)
Ex.P7	The photocopy of the copy of the F.I.R No.376 of 2018 dated 05.09.2018. (The learned counsel for the defendant has objected that original not produced and not compared with original)
Ex.P8	The photocopy of the order in Crl. M.P. No.22050/2018 dated 21.12.2018.
Ex.P9	The photocopy of the order in Crl. M.P. No.140/2019 dated 04.01.2019.
Ex.P10	The photocopy of the order in Crl. O.P.No.682/2019 dated 17.06.2017.
Ex.P11	The photocopy of the order in Crl.O.P.No.682/2019 dated 09.08.2019.
Ex.P12	The photocopy of the order in Crl.O.P.No.682/2019 dated 30.08.2019.
Ex.P13	The photocopy of the order in Crl. O.P. No.682/2019 dated 13.09.2019.
Ex.P14	The photocopy of the order in Crl. O.P. No.25668/2019 dated 03.10.2019.
Ex.P15	The office copy of the notice sent by the plaintiff to the defendant dated 23.01.2020 along with postal receipts, acknowledgment and returned covers.

Documents exhibited by the defendant through P.W.1:

Exhibits	*Documents*
Ex.D1	Sale agreement dated 25.07.2016
Ex.D2	Developing Power cum Memorandum of Understanding dated 25.07.2016
Ex.D3	Cheque No.206788 drawn on Axis Bank, dated 10.06.2027, for a sum of Rs.20 lakhs
Ex.D4	Cheque No.206789 drawn on Axis Bank, dated 10.06.2017, for a sum of Rs.20 lakhs
Ex.D5	Cheque No.206790 drawn on Axis Bank, dated 10.06.2017 for a sum of Rs.10 lakhs

23.06.2025

SENTHILKUMAR RAMAMOORTHY,J

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