

Arb. O.P. (Com. Div.) No.336 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2025

CORAM

THE HON'BLE Mr. JUSTICE ABDUL QUDDHOSE

Arb. O.P. (Com. Div.) No. 336 of 2025

1.M/s. South Moon Developers Private Limited,
Represented by its Director Mr. Irshad Ali,
No.1, V-Block, Lotus Colony,
2nd Street, Nandanam, Chennai – 600 035.

2.M/s. Safeway Developers (OPC) Private Ltd.,
Represented by its authorised signatory Mr. Irshad Ali,
No.1, V-Block, Lotus Colony,
2nd Street, Nandanam,
Chennai – 600 035.

3.Mr. Irshad Ali

4.Mrs. Annie Williams

... Petitioners

(Petitioners 3 & 4 are impleaded as per order
dated 06.08.2025 in A.No.3687 of 2025)

Vs.

1.M/s. Centwin Housing Pvt. Ltd.,
Represented by its D. Sujai Anand
No.4, 10th Street, Nandanam Extension,
Nandanam, Chennai – 600 035.

2.Rayaanya Realty Pvt. Ltd.,
Represented by Mrs. Jansi Reddy,
No.2, 2nd B Main Road,
R.H.C.S. Layout, Annapoorneswari Nagar,
Bangalore – 560 091.

... Respondents



Arb. O.P. (Com. Div.) No.336 of 2025

Prayer : Arbitration Original Petition (Commercial Division) has been filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 seeking for the following relief:-

a) Appoint a Sole Arbitrator under Section 11(5) of the Arbitration and Conciliation Act, 1996 to adjudicate the dispute raised between the petitioners and the respondents in terms of the Joint Development Agreement dated 31.01.2022 and as Memorandum of Understanding dated 27.11.2023.

For Petitioners : Mr. S.R. Rajagopal, Senior Counsel
for Mr. Aditya Sarangarajan and
Mr. A. Sarangan

For Respondents : Mr.P.V. Balasubramaniam,
Senior Counsel
for Mr. J. Lenin, for R1
Mr. K.P. Sanjeev Kumar, for R2

ORDER

Arb.O.P.(Com.Div.) No. 336 of 2025 has been filed under Section 11 of the Arbitration and Conciliation Act, seeking for appointment of an Arbitrator by this Court.

2. There seems to be a dispute between the petitioners and the respondents arising out of the following contracts: -

a) Joint Development Agreement dated 31.01.2022.

b) Memorandum of Understanding dated 27.11.2023.



WEB COPY

3. The petitioners are the land owners of the property which is the subject matter of aforementioned agreements. The petitioners claim that the first respondent is the developer and the second respondent is a third party to the Joint Development Agreement dated 31.01.2022 entered into between the petitioners and the first respondent. Both the aforesaid contracts contains an Arbitration Clause. The Arbitration Clause contained in the Joint Development Agreement dated 31.01.2022, is reproduced hereunder: -

“36. All disputes, differences, claims and questions whatsoever which may arise between the parties hereto may be referred to arbitration in accordance with and subject to the provisions of the Arbitration and Conciliation Act, 1996, if the parties desire so. The Arbitration proceedings shall be held at Chennai and courts in Chennai alone shall have the jurisdiction.”

4. The Arbitration Clause contained in the Memorandum of Understanding dated 27.11.2023, is reproduced hereunder: -

“7. In the event of failure of mediation, all the disputes arising under and related to this MoU shall promptly be submitted by the parties to arbitration in India before a sole arbitrator in accordance with the Arbitration



WEB COPY

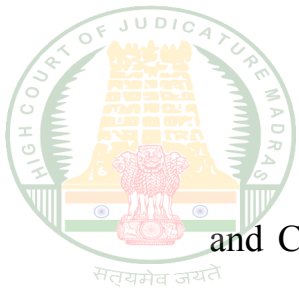


Arb. O.P. (Com. Div.) No.336 of 2025

and Conciliation Act 1996 or any amendment thereto. The Arbitrator may assess costs, including legal fees, in such manner as the arbitrator deems fair and equitable. The award of the arbitrator shall be final and binding upon the disputing parties and judgment upon the award may be entered in any court of competent jurisdiction. The seat / venue of the Arbitration shall be Chennai and shall be proceeded under the Madras High Court Arbitration Proceedings Rules, 2017.”

5. The petitioners have invoked arbitration in accordance with Arbitration Clause contained in both the contracts by issuing notice to the respondents to comply with the requirements of Section 21 of Arbitration and Conciliation Act, 1996. The first respondent was the first party to initiate arbitration in accordance with the Arbitration Clause contained in the Joint Development Agreement dated 31.01.2022 and had sent notice to the petitioners dated 15.05.2025 to comply with the requirements of Section 21 of the Arbitration and Conciliation Act, 1996.

6. The petitioners are also willing to go for arbitration in accordance with the Arbitration Clause contained in both the contracts. Therefore, they have filed this petition under Section 11 of the Arbitration



Arb. O.P. (Com. Div.) No.336 of 2025

and Conciliation Act, 1996 seeking for appointment of an Arbitrator to adjudicate the dispute arising out of the aforesaid contracts.

7. The Counter affidavit has been filed by the first respondent in this petition. The 2nd respondent has not filed their counter till date.

8. Learned Senior Counsel appearing for the first respondent has reiterated the contents of the counter affidavit filed by the first respondent before this Court and would submit that:

a) Even though there exists an Arbitration Clause in both the contracts, which are the subject matter of the dispute raised by the petitioners through this petition, the said Arbitration Clause is separable. The disputes arising out of both the contracts are different and the relief claimed by the petitioners in respect of both the contracts are different and there will be no conflict of awards when the Arbitrator passes the final awards.



WEB COPY 9. Learned Senior Counsel appearing for the first respondent would

submit that the dispute, that arises out of the Joint Development Agreement dated 31.01.2022, is only between the first respondent and petitioners. The second respondent is no way connected to the dispute arising out of the Joint Development Agreement dated 31.01.2022. He would also submit that, even though it is a tripartite agreement and the first respondent is also party to the same, the said agreement is not interlinked with the Joint Development Agreement dated 31.01.2022. He would also submit that the Memorandum of Understanding dated 27.11.2023 has already been terminated by the first respondent on 21.06.2025. Therefore, he would submit that there must be separate arbitral reference for the Joint Development Agreement dated 31.01.2022 and for the Memorandum of Understanding dated 27.11.2023. He would also submit that Section 21 notice pertaining to the disputes arising out of the Memorandum of Understanding dated 27.11.2023 was sent by second respondent, to the first respondent dated 27.06.2025. Therefore, he would submit that the second respondent themselves have admitted that they have no say with regard to the outcome of the disputes to be adjudicated by the Arbitrator insofar as the Joint Development Agreement dated



31.01.2022 is concerned.

WEB COPY

10. Learned Senior Counsel for the first respondent would further submit that through the reply sent by the second respondent to the termination notice sent by the first respondent, the second respondent has nominated its Arbitrator in respect of the Memorandum of Understanding dated 27.11.2023 alone and they never sought for a comprehensive arbitration for both the contracts.

11. However, the learned Senior Counsel appearing for the petitioners would submit that both the contracts namely the Joint Development Agreement dated 31.01.2022 as well the Memorandum of Understanding dated 27.11.2023 have to be adjudicated by the very same Arbitrator, since both the contracts are interlinked and it is a composite transaction. In support of his contention, he drew the attention of this Court to the various Clauses contained in the Memorandum of Understanding dated 27.11.2023, which has been signed by the petitioners, first respondent and the second respondent. Relying upon the said Clauses, he would submit that both the contracts are interlinked and any dispute arising out of the same will have to be adjudicated by the



very same Arbitrator, since the arbitral reference is a composite reference.

He would further submit that the Memorandum of Understanding dated 27.11.2023 is mutually dependent on the terms and conditions of the Joint Development Agreement dated 31.01.2022.

12. In support of his contention, the learned Senior Counsel for the petitioners drew the attention of this Court to the judgment of the Hon'ble Supreme Court in *Chloro Controls India Private Limited vs. Severn Trent Water Purification INC. And Others* reported in (2013) 1 SCC 641 and in particular, he referred to paragraph No.76 of the said judgment. Relying upon the same, he would submit that in case of composite transactions and multiple agreements, when the agreements are so intrinsically intermingled or interdependent, the principle of composite reference has to be applied. Therefore, he would submit that the dispute arising out of both the contracts has to be adjudicated by the very same Arbitrator, as arbitral reference will be a composite reference as the subject matter of both the contracts arise out of the very same subject matter.

13. Learned counsel for the second respondent supports the stand taken by the petitioners and he also seeks for composite reference, as he



would reiterate the contention of the petitioners that both the contracts are interlinked.

14. On the other hand, the learned Senior Counsel appearing for the first respondent, in support of his contentions drew the attention of this Court to the following authorities: -

a) ***Tamilnadu Road Sector Project II, Highways Department vs. IRCON International Ltd., and Sumber Mitra Jaya & Another.***

b) ***Tamilnadu Road Sector Project II. Highways Department vs. IRCON International Ltd., and Sumber Mitra Jaya & Another.***

c) ***Duro Felgura S.A. vs. Gangavaram Port Limited reported in (2017) 9 SCC 729.***

d) ***M/s. AKR Events Vs. M/s. JSB Film Studios.***

15. In particular, the learned Senior Counsel appearing for the first respondent drew the attention of this Court to paragraph Nos.38, 42 and 60 of ***Duro Felgura's case*** (referred supra) rendered by the Hon'ble Supreme Court and would submit that when there are different arbitral agreements, Arbitral Tribunal will have to be constituted for each of the arbitral agreements.



Discussion: -

16. The following are the undisputed facts:

a) The first respondent is a party to both the contracts, which are the subject matter of this petition filed under Section 11 of the Arbitration and Conciliation Act, 1996.

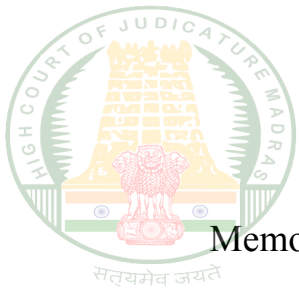
b) In the Memorandum of Understanding dated 27.11.2023, there is a reference to the Joint Development Agreement dated 31.01.2022, which the petitioners claim is the mother agreement.

c) The property involved in both the agreements are one and the same.

d) Under the Joint Development Agreement dated 31.01.2022, the first respondent, who is the developer, has agreed to develop the layout comprising of 8,00,000 square feet for the land owners who are the petitioners.

e) Memorandum of Understanding has been entered into between the first respondent and the second respondent and the petitioners are also signatories to the same, being the land owners.

17. The second respondent claims that he is the purchaser under the



WEB COPY

Memorandum of Understanding dated 27.11.2023, whereas the same has been disputed by the first respondent, who claims that the second respondent was appointed only as a marketing agent. The first respondent has already terminated the Memorandum of Understanding dated 27.11.2023 entered into with the second respondent. The second respondent also contends that the termination of the contract by the first respondent is not in accordance with the terms and conditions of the contract and is bad in law.

18. In the decision rendered in ***Cox and Kings Limited Vs. SAP India Private Limited and Another***, reported in ***(2022) 8 SCC 1***, while dealing with the scope of enquiry under Section 11 of the Arbitration and Conciliation Act, the Hon'ble Supreme Court has held that the referral Court should not enter into complexities of the facts involved and should leave it for the arbitral tribunal to decide.

19. In ***SBI General Insurance Company Ltd., vs. Krish Spinning*** reported in ***(2024) SCC Online SC1754***, it was held that the domain of the referral court under Section 11 of the Arbitration and Conciliation Act is very limited. The word “examination” found in Section 11(6-A) of the Arbitration and Conciliation Act, has a very narrow scope in terms of



WEB COPY

Section 11(6-A) and is limited to the requirement of formal validity. As held in the aforesaid decision, the use of the term examination under Section 11(6-A) of the Act was distinguished from the use of the term “rule” under Section 16 and therefore, the scope of enquiry under Section 11(6-A) is limited to the prima facie scrutiny of the existence of an Arbitration Agreement and does not include a contested or laborious enquiry, which is left for the arbitral tribunal to rule under Section 16. It is also made clear in SBI General Insurance Company's case, that the prima facie view on existence of the arbitration agreement taken by the referral court does not bind either the arbitral tribunal or the court enforcing the arbitral award.

20. In the case on hand, the only dispute raised by the first respondent, more particularly, the first and second respondents in this petition is that the arbitration cannot be referred to a single arbitrator in respect of the dispute arising out of both the contracts namely the Joint Development Agreement dated 31.01.2022 and the Memorandum of Understanding dated 27.11.2023. However, the first respondent admits the existence of the Arbitration Clause in both the contracts.



WEB COPY

21. As seen from the Memorandum of Understanding dated 27.11.2023, there is a reference to the Joint Development Agreement dated 31.01.2022. The Memorandum of Understanding dated 27.11.2023 is a tripartite agreement which has been signed by the petitioners, first respondent and the second respondent. The reference made to the Joint Development Agreement dated 31.01.2022, in the Memorandum of Understanding dated 27.11.2023, is reproduced hereunder: -

“C. The PARTIES OF THE FIRST PART have decided to develop the Schedule Property by forming layouts / plots on joint venture basis and have entered into a Joint Development Agreement dated 31.01.2022 with the PARTY OF THE SECOND PART to that effect and as per the said Joint Development Agreement, the PARTIES OF THE FIRST PART and the PARTY OF THE SECOND PART have agreed to share the plots to be developed in the Schedule Property in the ratio of 50:50.

D. The PARTIES OF THE FIRST PART and the PARTY OF THE SECOND PART have decided to sell the developed plots measuring approximately 8,00,000 Sq.Ft (Eight Lakhs Square Feet) after the development of Schedule Property as layout / plots to the PARTY OF THE THIRD PART or their nominees on certain terms and conditions and after mutual discussions, both the parties agreed on the terms and conditions as reduced hereunder.”



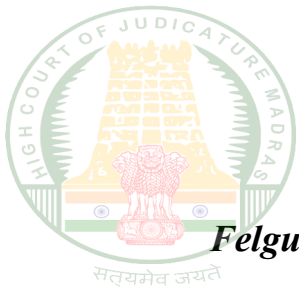
WEB COPY 22. On a prima facie consideration, this Court finds that the Joint Development Agreement dated 31.01.2022 and the Memorandum of Understanding dated 27.11.2023 are interlinked. The Joint Development Agreement dated 31.01.2022 entered into between the petitioners and the first respondent pertains to development of the property. The Memorandum of Understanding dated 27.11.2023 pertains to the sale and marketing of developed plots, which is the subject matter of the Joint Development Agreement dated 31.01.2022.

23. On a prima facie consideration, this Court finds that there cannot be two separate arbitral references for each of the contracts, as the outcome of the dispute in one of the contracts is dependent upon the outcome of the dispute in the other. Though the learned Senior Counsel appearing for the first respondent would vehemently oppose a composite arbitral reference in respect of both the contracts by the very same Arbitrator, the said objections cannot be adjudicated in this petition filed under Section 11 of the Arbitration and Conciliation Act, 1996, since this Court is only having a limited scrutiny, as held by the Hon'ble Supreme Court in its recent decisions in *Cox and Kings Limited* and *SBI General Insurance Company's* case (cited supra).



WEB COPY 24. This Court is also of the considered view that, no prejudice will be caused to the first respondent if a composite arbitral reference is made in respect of the disputes arising out of both the contracts namely, Joint Development Agreement dated 31.01.2022 as well as Memorandum of Understanding dated 27.11.2023. The object of the arbitration is to adjudicate the disputes expeditiously. If separate arbitral reference is made in respect of each of the contracts, this Court is of the considered view that there will be no finality of the arbitral proceedings. It is also to be noted that the first respondent is a party to both the contracts, namely, the Joint Development Agreement dated 31.01.2022 as well as Memorandum of Understanding dated 27.11.2023.

25. Learned Senior Counsel appearing for the first respondent drew the attention of this Court to various authorities and in particular, he referred to a decision of the Hon'ble Supreme Court in the case of ***Duro Felgura S.A. vs. Gangavaram Port Limited*** reported in **(2017) 9 SCC 729**, in support of his contention that since each of the agreements contains a separate Arbitration Clause, there cannot be a composite arbitral reference for both the contracts. However, the facts in ***Duro***



WEB.COM

Felgura's case, referred to supra, are different from the facts involved in the case on hand. In **Duro Felgura's** case, it was a dispute involving 5 different packages as well as the Corporate Guarantee having separate arbitration clauses which should not depend upon the terms and conditions of the Original Package No.4 TD nor on the Memorandum of Understanding.

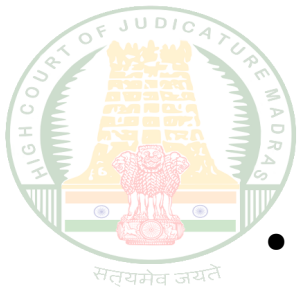
26. However, in the instant case, on a *prima facie* consideration, this Court finds that the Memorandum of Understanding dated 27.11.2023 is interlinked to the Joint Development Agreement dated 31.01.2022, as there is a specific reference to the Joint Development Agreement dated 31.01.2022 in the Memorandum of Understanding dated 27.11.2023. It is also to be noted that the second respondent claims that they have agreed to purchase developed plots from the first respondent and the petitioners, though the same has been disputed by the first respondent who claims that they were appointed only as agents to market the plots. Therefore, the judgment of **Duro Felgura's** case referred to supra is distinguishable on facts from the case on hand and therefore, the ratio laid down by the Hon'ble Supreme Court in the aforesaid judgment has no applicability to the facts of the instant case.



WEB COPY 27. The other decisions relied upon by the learned Senior Counsel appearing for the first respondent, referred to supra, are also distinguishable on facts from the instant case. As observed earlier, this Court has got only a limited scrutiny being a referral court under Section 11 of the Arbitration and Conciliation Act, 1996. Once there exists an arbitration Clause in the contracts which are the subject matter of the dispute between the parties and once this Court on a prima facie consideration finds that both the contracts are interlinked, necessarily this Court will have to appoint an Arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996 in respect of both the contracts.

28. Accordingly, this Court appoints **Hon'ble Mr. JUSTICE V.Gangapurwala, Former Chief Justice of the Madras High Court, residing at Durga Mata Mandira Samor, House No.2-2-278, Govardhanagiri, Kharakuwa, Aurangabad – 431 001 (Mobile No. 9545111995)** as the Sole Arbitrator to adjudicate the dispute between the parties arising out of:

- a) Joint Development Agreement dated 31.01.2022
- b) Memorandum of Understanding dated 27.11.2023



Arb. O.P. (Com. Div.) No.336 of 2025

WEB COPY

- The Arbitrator shall be paid his remuneration / fees in accordance with the 4th Schedule of the Arbitration and Conciliation Act, 1996 or as per the mutual consent of both the parties;
- Both the parties shall equally share the arbitrator's fees;
- The Arbitrator shall conduct the arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and shall complete the arbitration within the specified time as prescribed under the said Act.



WEB COPY

29. Liberty is granted to the first respondent to file an application under Section 16 of the Arbitration and Conciliation Act to raise the very same objections that they have been raised before this Court with respect to the two contracts namely, a) Joint Development Agreement dated 31.01.2022 b) Memorandum of Understanding dated 27.11.2023.

30. Since the applicant is having the benefit of an order of interim injunction in O.A. Nos. 775 and 776 of 2025, and the pleadings are complete in the said applications, the said applications shall be treated as applications filed under Section 17 of the Arbitration and Conciliation Act, 1996 for the Arbitrator to decide. The Arbitrator shall decide the Section 9 applications first, as expeditiously as possible, and only thereafter, decide any application if at all filed by any of the parties under Section 16 of the Arbitration and Conciliation Act, 1996. The interim order granted in O.A.Nos.775 and 776 of 2025 shall stand extended, till the disposal of those applications by the Arbitrator which are now treated as Section 17 applications to be decided by the Arbitrator.

31. It is made clear that, any observation made by this Court in this order, is only a *prima facie* observation and the issue regarding possession is left open for the Arbitrator to decide.



WEB COPY



Arb. O.P. (Com. Div.) No.336 of 2025

ABDUL QUDDHOSE, J.

AT

32. Both the parties are directed to file copies of the pleadings filed in the Section 9 applications before the Arbitrator, to enable the Arbitrator to adjudicate the Section 9 applications which are now directed to be treated as applications filed under Section 17 of the Arbitration and Conciliation Act, 1996

33. With the aforesaid direction, this Arbitration Original Petition is disposed of. No costs.

19.08.2025

Index: Yes/ No

Neutral citation : Yes / No

AT

Arb. O.P. (Com. Div.) No.336 of 2025