

- 18 -

DATED: 13.12.2022 PW1 PRESENT AND OATH IS ADMINISTERED.

FURTHER CROSS EXAMINATION BY SRI RKT ADVOCATE FOR DEFENDANT NO. 1(a) 2 AND 4 :

It is true that properties in schedule B of plaint in AC No. 87/2017 filed by D4 have been described which are the subject matter of the MOU. It is true that in EX P5 , defendant No. 4 had agreed to pay Rs. 40 lakhs to relegal after the sale of 8000 Sq.ft of built up area mentioned in the said exhibit. Witness volunteers that it was sale of his share of built up area and Ex P5 was entered into for marketing of his share. It is true that as per EX P5 , D4 had agreed to identify and nominate the purchasers and I had agreed to execute the sale the in favour of the said purchasers. It is true that after the execution of EX P5 myself and D4 had given a letter jointly to relegal on 23.06.2015 which is now marked as EX D.4 , which is the certify copy. It is true that as per the supplementary agreement (EX P3) Flat No. 104 and 204 went to the share of developer. It is true that as per the joint development agreement the entire responsibility for the payment to relegal was on me. It is true that as per the document as shown to me certified copy of sale deed dated 27.06.2015 which is now marked as EX D5, after selling the

- 19 -

flat No. 104 by the developer he has made payment of Rs. 30 lakhs to relegar. Witness volunteers that he is not signatory to EX D5 and also as per certified copy of Sale Deed dated 06.07.2015 which is now marked as EX D6 after sale of Flat No. 204 developer as made payment of Rs. 40 lakhs to relegar. Witness volunteers that he is not signatory to EX D6.

Q : D4 though he had no obligations for repayment of amount to relegar in order to get the NOC , he has pay Rs. 70 lakhs to the relegar after selling his share of flat No. 104 and 204?

Ans : D4 had not taken my permission to repayment as stated above and as per the MOU I had told him to market my share of flat.

It is false to suggest that after execution of MOU, I was under financial necessity , hence myself and D4 had reallocated the sharing pattern. It is false to suggest that after the re allocation Flat No. 103, 202 and 402 came to my share and Flat No. 002, 301, 304, 404 went to the share of D4. It is true that as per the sharing agreement flat No. 103 went to the share of D4. Now I see the copy of the Sale Deed dated 13.04.2016 wherein I have sold Flat No. 103 which is now marked as EX D7. Witness volunteers that flat

- 20 -

No. 103 was in exchange to my flat No. 203, which the developer (D4) had sold to my daughter. Approximately on 2nd or 3rd April 2016 the above said exchange was made, it was a oral exchange. On 06.07.2015 Flat No. 203 was sold by D4 to my daughter and I am a witness to the said transactions. Witness volunteers that he has signed as the witness to the said document, as D4 was a need of funds for completing the project.

It is true that in clause No. 9 of EX D7 there is a reference of exchange of flats between myself and D4. It is true that EX P28 dated 01.04.2016 in the 2nd page there is statement pertaining to the exchange of flats. It is false to suggest that flat No. 402 came to my share as a exchange with D4 and flat No. 402 is a subject matter of MOU. It is false to suggest that as per the exchange between myself and D4 flat No. 202 came to my share. The document now shown to me is the certified copy of Sale Deed 06.07.2015 wherein flat No. 202 was purchased my son-in-law Heranjal Shreyas Udayashankar which was in the share of D4 and which is now marked as EX D8, my wife has signed as a General Power of Attorney of the purchaser to the said document. At the time of execution of EX D8 my son-in-law in USA. My wife co-ordinated with D4 for the execution of EX D8 on the

- 21 -

information given my son-in-law. It is true that in EX D8 in clause 2 (I) it is stated sum of Rs. 80 lakhs was paid to relegal for repayment. It is true that initially flat No. 203 had come to my share , I exchanged that with flat No. 103 with D4 as he was having financial necessity for completing his project. I have no document to show that flat No. 203 was given to D4 on his request , it was a oral exchange. It is true that flat No. 203 was purchased by my daughter , which I now see the certified copy of dated 06.07.2015 , which is now marked as EX D9. My wife had co-ordinate for the execution of the said sale deed as a General Power of Attorney, as my daughter was in USA.

It is true that as per EX D9 , Rs. 40 lakhs was repay to relegal as per 2 (i) . It is true that both my daughter and son-in-law at the time of execution of EX D8 and EX D9 had taken loan from LIC – HFL. As told by my daughter and son-in-law they have paid the stamp duties pertaining to EX D8 and D9, I have not seen the document pertaining to the above statement. It is false to suggest that as I had to repay my loan in relegal , I had requested D4 to execute EX D8 and D9 in favour of my Son-in-law and my daughter respectively to enable them to obtained loan from LIC-HFL. It is false to suggest that D4 has utilized the sale consideration amount of EX D8 and D9 for repayment of my loan in relegal and for

- 22 -

payment of stamp duty and registration charges and has handed over the balance amount to me. I have signed as a witness to EX D8 and D9, because without handing over my share D4 could not EX D8 and D9. The statement stated above are not mentioned in EX D8 and D9. It is true that I have filed the suit questioning all the sale deeds except execution of EX D8 and D9. I have also questioned the sale Deeds pertaining to the Flats, which went to the share of D4.

Q : I had not executed the Sale Deed though purchases were identified and nominated by developer as per MOU?

Ans : No written or oral communication was given to me by D4, hence I did not execute the Sale Deed.

D4 has sent Email dated 16.02.2016 which I now identify the copy of the said Email and which is marked as EX D10. It is true that in the 1st para there is a statement pertaining to Execution of Sale Deeds with respect to 6821 Sq.ft built up area. Witness volunteers that the said built up area was pertaining to his share.

- 23 -

Further Cross Examination : adjourned at
request.

(Typed to my dictation in the open
court.)

R O I & A C

(SUNITHA S G)
C/C III ACCJ, BANGALORE.

- 24 -

DATED: 16.02.2023 PW1 PRESENT AND OATH IS ADMINISTERED.

FURTHER CROSS EXAMINATION BY SRI. RKT ADVOCATE FOR DEFENDANT 1, 2 AND 4 :

It is false to suggest that D4 after completing the construction on March 2015 has handed over your share of Apartments. I occupied three plats of my share from Defendant No. 4 on April 2016.

Q : As per EX P 1 developer has got right to sell his share of Apartments and you are entitled to your share of the Apartments?

Ans : Developer gets the rights to sell his share of the Apartment after giving me possession of my share of Apartments.

It is false to suggest that the schedule B property Flat No. 304 came to the share of the developer as per Reallocation.

Q : D4 being the absolute owner of B

- 25 -

schedule property had executed sale Deed in favour of D3?

Ans : D4 had no right to sell the schedule B property, as it was my share.

At present D3 are in occupation B schedule property. It is false to suggest that they are the owners of the B schedule property. Flat No. 304, 002, 404, 301 . It is false to suggest that I have no rights of the B schedule properties stated above. I had not executed General Power of Attorney in favour of D4. I had executed General Power of Attorney in favour of Ramanlal. It is true that in EX P1 in clause 16(3) it is stated that The owner has today executed a General Power of Attorney in favour fo the nominee of the Developer to enable the Developer to proceed with obtaining of licenses and sanctioned plans and consents in regard to the buildings to be constructed on the schedule property and authorizing the Developer to represent the owner before the BDA, BBMP, BESCO, BWSSB, Fire Force Authorities and other statutory authorities. The Owner shall execute further power

- 26 -

of attorney, authorizing, Developer or its representatives to enter into Agreements of Sale. Further to execute sale deeds conveying the Developer's undivided share of right, title and interest in the schedule properties, proportionate to the Developer's share of built up area, which shall be after the owner is placed in possession of Owner's share of built up area as stated in Clause No. 11 and to receive payments in Developer name and such power of Attorney shall not be revoked till completion of the entire project or thereafter and shall consent for sale of the build up area failing to the share of the Developer. However, the owner is entitled to sell and execute Sale Deed in respect of the built up portion failing to the share of the owner subject to clause 12.1.

It is true in clause 4 of EX P2 it is stated whereas in terms of the said JDA, the Developer is obliged and has undertaken to develop the schedule property at its cost and has also undertaken to carry out all and every act which are needed to be done and caused to be done for development of the

- 27 -

schedule property and it may not be possible for me, to be always available to co.operate with the developer so also to effectively carryout acts, which needs to be carried on by me for such development and I have therefore, to enable the developer to effectively develop the schedule property and also dispose of the Developer's share in the Schedule property together with the proportionate undivided share, right, title and interest, it has become necessary for me to appoint either the developer or someone on behalf of the developer for that purpose and accordingly I have hereby, nominated , constituted and appointed Sri. Ramanlal M.Sha, Director of M/S Rajarajeshwari Buildcon Pvt. Ltd., as my lawful attorney in my name and on my behalf, to do or cause to be done all such of acts, deeds or things, hereunder written.

Witness volunteers that he had exclusively given General Power of Attorney in favour of Raman Lal as a person and not as a developer. Now the document is shown to me is the notarized copy of the award in A.C No. 87/2017 it is said that the

- 28 -

General Power of Attorney was executed in favour of the developer and not in favour of individual. Witness volunteers that the award has been wrongly passed and appeal is pending. The document is marked as EX D11. The AS 241/19 challenging the EX D11 has been dismissed and appeal has been filed challenging the same.

On 17.02.2016 after writing letter to Ramanlal , I revoked the General Power of Attorney. Now I see the certified copy of the revocation letter dated 17.02.2016 , which is now marked as EX D12. It is true RRBC company had filed Arbitration case No. 87/2017 questioning the revocation of the General Power of Attorney along with other relief. I have filed an appeal on the Award passed in the above case which has stated that I had no authority to revoke the General Power of Attorney and also that D4 has authority to execute the Sale Deed and Sale Agreement in terms of MOU. I do not know whether for the Flat No. 101, 302, 303 developer – D4 has executed Sale Agreement to the purchasers.

- 29 -

It is false to suggest that the advance sale consideration of the above said sale agreement have been remitted to my loan account with the religare. Total amount of Rs. 1,90,00,000/- have been paid by D4 to my loan account with religare. I do not know whether in my cross examination in AC 87/2017 it is deposed that D4 has paid more than Rs. 3,00,00,000/- to my loan account with religare. It is true that it was my duty to repay my entire loan amount with the religare. In AC 87/2017 there is a direction that I have to repay the balance loan amount to the religare. It is false to suggest that I have no right over the B schedule property and I have filed the false suit to harrass D4.

CROSS EXAMINATION BY SMT K.P.
ADVOCATE FOR DEFENDANT NO. 5.

I have completed my SSLC. Earlier I used to do FMCG distribution business. I have read the contents of W/S filed by D5, but at present I do not remember. At the time of filing of the suit I knew the D5 was the govt. servant. The subject matter of

- 30 -

the suit is between the private parties. I have filed the suit against D5 as he has not followed the legal principles. I have not given any representations stating the legal faults of Defendant No. 5. It is false to suggest that unnecessarily D5 has been made a party to the suit. It is false to suggest that by making D5 has a party, I have caused loss to the govt. exchquel. It is false to suggest that the lies no cause of action against D5. Witness volunteers that D5 is the signatory of the documents.

Re examination : nil.

(Typed to my dictation in the open court.)

R O I & A C

(SUNITHA S G)
C/C III ACCJ, BANGALORE.