

KABC170006212025



**IN THE COURT OF LXXXV ADDL. CITY CIVIL & SESSIONS  
JUDGE, AT BENGALURU (CCH-86) (Commercial Court)**

**THIS THE 9<sup>th</sup> DAY OF MARCH 2026**

**PRESENT:**

**SRI.ARJUN. S. MALLUR. B.A.L.LL.B.,  
LXXXV ADDL. CITY CIVIL & SESSIONS JUDGE,  
BENGALURU.**

**Com.OS.No.214/2025**

**BETWEEN:**

**1. Mrs. Vijaya Subramaniyan**

W/o Late Mr. T.R.Subramaniyan,  
Aged about 61 years,  
R/At No.1094, 12-A Main Road,  
ESI Hospital, HAL 2<sup>nd</sup> Stage  
Bengaluru-560 008.

**2. Mrs. Rajeswari Venkatesh**

W/o Mr. Venkatesh Vaidyanathan,  
D/o Late Mr. T. R. Subramaniyan,  
Aged about 61 years,  
R/At No.1094, 12-A Main Road ESI Hospital  
HAL 2nd Stage Bengaluru-560 008.

**3. Mr. K Balasubramaniyan**

R/At No.19, Flat No.103  
Mantri Residency Bannerghatta Road  
Bengaluru-560 076.

Plaintiff Nos. 1 to 3 are Rep By SPA Holder:  
Mr. Venkatesh Vaidyanatha

**: PLAINTIFFS**  
**(Represented By Sri. Anirudh Suresh, Advocate)**

**AND**

**1. M/S Gaurav Housing Development Pvt Ltd**

Registered Office At No.3442,  
Service Road, RPC Layout,  
Vijayanagar  
Bangalore-560 040.

**2. Mr. Sanchit Gaurav**

Director Of M/S Gaurav Housing Development Pvt Ltd  
Holding 75% of shares in defendant No.1  
S/o Mr. Rajiv Raman Sinha,  
R/At No.1148, 13th Cross, 1st Stage  
Nagarbhavi Behind Siddayanga School  
Chandra Layout Bangalore-560 040.

Also At No.651/B Surya,  
19th Main Road, Ideal Home Township  
Bangalore-560 098.

**3. Mr. Rajiv Raman Sinha**

Director Of M/S Gaurav Housing Development Pvt Ltd.  
Holding 25% of shares in defendant No.1  
S/o Bishnu Deconarayan Sinha,  
R/at No. No.651/B Surya, 19th Main Road,  
Ideal Home Township  
Bangalore-560 098

**: DEFENDANTS**  
**(Represented by Sri. Anupam Agarwal, Advocate for D2**  
**D1 is absent, D3 abated)**

Date of Institution of the suit	12.02.2025		
Nature of the suit (suit on pronote, suit for declaration & Possession, Suit for injunction etc.)	Suit for Recovery of Money.		
Date of commencement of recording of evidence	25.07.2025		
Date on which judgment was pronounced	09.03.2026		
Total Duration	Year/s 01	Month/s 00	Day/s 25

**(ARJUN. S. MALLUR)**  
**LXXXV Addl.City Civil & Sessions Judge,**  
**Bengaluru.**

### **J U D G M E N T**

Suit for recovery of a sum of Rs.55,00,000/- (Rupees Fifty Five Lakhs Only) with interest of Rs.66,55,000/- (Rupees Sixty Six Lakhs Fifty Five Thousand Only) payable to the plaintiff Nos.1 and 2 with respect to payment of amounts towards purchase of the schedule B property and for recovery of a sum of Rs.35,00,000/- with interest of Rs.48,65,000/- payable to plaintiff No.3 with respect to the payment made towards purchase of the schedule C property in all a total sum of Rs.2,05,20,000/- with interest at 12% p.a. from date of suit till realization and also for

directing the defendant No.1 for rendition of its books and accounts and to render all documents, agreements, deeds signed with 3<sup>rd</sup> parties pursuant to the JDA dated 11.04.2012.

**2. The case of the plaintiff in brief is as under:-**

The plaintiff Nos.1 and 2 are the surviving legal heirs of deceased T. R. Subramaniyan. The plaintiff Nos.1 to 3 are represented through their SPA holder Mr.Venkatesh Vaidyanathan. The defendant No.1 is in the business of development of lands, operation of apartment hotels and residential mobile home sites. The defendant Nos.2 and 3 are the Directors and 100% share holders of defendant No.1. The SPA holder of the plaintiffs was in coordinating with the defendant with respect to purchase of schedule B and C properties. The defendant No.1 through defendant No.2 had entered into a JDA with one Mr. S.V Suresh the owner of Schedule A Property which is land bearing No.1324 measuring North South 40 ft. East West 60 ft. situated at Sy.Nos. 115/1, 116 to 121, 122/1 and 2, 124, 124/1, 3, 125 and 131/1/3 of Kundanahalli Village and Sy.Nos.39 to 43 of Chinnappanahalli Village, Krishnarajapuram and Sy.Nos. 8 and 73 of Tubaranahalli, Varthur Hobli, Bengaluru South Taluk which has been

acquired under a registered sale deed dated 26.02.1988. Pursuant to the JDA dated 11.04.2012 the owner of the schedule A property also executed a GPA in favour of defendant No.2 on the same date and on the strength of the JDA and GPA the defendant had offered to sell schedule B and C properties. Deceased T.R. Subramaniyan and the defendant entered into an unregistered agreement of sale dated 27.06.2012 towards purchase of a two bedroom apartment constructed in the schedule A property with a super built up area of 1300 sq. ft. along with 300 sq.ft. of undivided share in the schedule A property. It was agreed to purchase the said property for a total consideration of Rs.60,00,000/-. As per the terms of the agreement the defendant had to develop schedule A property and handover the schedule B apartment to the possession of the deceased Subramaniyan upon completion and register the same. Likewise plaintiff No.3 also entered into an unregistered agreement of sale dated 13.08.2012 with respect to purchase of schedule C property being constructed in schedule A property consisting of a two bedroom apartment on a super built up area of 1300 sq.ft. with 300 sq.ft of undivided share in the schedule A property and a similar term was also mentioned in the said agreement. As per the terms of the

agreement of sale deceased Subramaniyan paid a sum of Rs.55,00,000/- to the defendant by way of RTGS and cheque transfer on various dates commencing from 21.06.2012 to 13.12.2014. In response to the said payments the defendant has issued payment receipts dated 22.06.2012, 28.06.2012, 26.02.2014 and 30.06.2014 in favour of deceased Subramaniyan. Likewise the plaintiff No.3 has paid a sum of Rs.35,00,000/- on various dates through cheques and RTGS from 05.07.2012 to 10.05.2013 against which the defendant has issued receipts dated 05.07.2012 and three receipts dated 23.07.2012 for a total sum of Rs.25,00,000/-.

**(a)** After making payment of the said amount deceased Subramaniyan and plaintiff No.3 were repeatedly conversing with the defendant with regard to the development of schedule A property and also handing over possession of schedule B and C properties in terms of the agreement of sale. After repeated followups the defendant though failed to construct the apartments and handover the schedule B and C apartments sent an email dated 01.09.2015 to the SPA holder of the plaintiff stating the construction would commence by 15.09.2015 and possession of schedule B and C properties would be

handed over by March 2016. Despite the said promise no progress was made and no construction was taken. The plaintiffs through the SPA holders sent an email dated 18.04.2016 calling upon the defendant for cancellation of the unregistered agreement and seeking refund of the entire amounts. On receipt of the said email the defendant No.1 requested the plaintiff No.2 to hold talks with one Mr. Sanchit Gaurav who is the defendant No.2. On 10.05.2016 the defendant sent a request letter informing that the defendant No.1 was facing huge financial problems because of which they could not complete the project and that they would commence the project by mid of May 2016 to be completed within 8 months and also handed over a post dated cheque dated 10.11.2016 for a sum of Rs.55,00,000/- and requested deceased Subramaniyan to encash the said cheque upon failure of the defendants to complete the said project. It is submitted that the defendants did not comply with their own undertaking as per the letter dated 10.05.2016. Believing the words of the defendant the cheque of Rs.55,00,000/- was was not presented. In the meanwhile Subramanian died on 30.05.2016 and therefore the cheque remained not presented.

**(b)** It is further submitted that the SPA holder of the plaintiff was regularly following up with the defendant with respect to the project and every time the defendant would represent that the works were undergoing and the same would be completed and the apartment would be handed over which have been reflected in the whatsapp conversations and communications between 07.01.2019 to 24.07.2021. It is submitted that on 22.08.2022 the defendant No.2 informed that he would keep plaintiffs updated on the commencement of the work and in response to the whatsapp messages dated 21.11.2022 the defendant on 17.12.2022 reaffirmed that the work would commence on 15.01.2023. Again on 18.03.2023 there was another whatsapp communication stating that the construction would be starting in the first week of April 2023 and the plaintiffs would be kept updated. It is submitted that under the unregistered agreements of sale the deceased Subramaniyan has paid a sum of Rs.55,00,000/- out of total sale consideration of Rs.60,00,000/- and likewise the plaintiff No.3 has paid a sum of Rs.35,00,000/- out of the total consideration of Rs.60,00,000/-. Considering the conduct of the defendants in not complying with their undertakings plaintiff issued a legal notice dated 21.05.2024 calling upon the defendants

to execute the registered sale deeds in favour of the plaintiffs by accepting the balance sale consideration. To the said notice the defendant issued an untenable reply stating that the advance sale consideration has been forfeited. The plaintiff also instituted PIM proceedings in PIM No. 1919/2024 in which the defendants remained absent on service of notice and the same was closed as a non-starter. The plaintiff further contend that defendant Nos.2 and 3 who hold majority of the shares in the defendant No.1 are none other than father and son who have colluded with each other with an intention to dupe the money obtained from the plaintiff and have clandestinely withheld the amount and also not performed their part of contract. Whereas plaintiffs were always ready and willing to perform their part of contract. As the agreement has now become unenforceable and specific performance of the same having thus become not possible the plaintiff are entitled for refund of the earnest money with interest at 12% p.a. from the date of first refusal i.e., 23.12.2014 till filing of the suit and future interest at 12% p.a. till realization. Hence the suit.

**3.** Upon service of summons the defendant No.1 remained absent before the Court. The defendant No.2 has

appeared through the counsel but forfeited his right to file the statement of defence for having not filed the same within 120 days. The defendant No.3 was reported to be dead and suit against defendant No.3 has been abated.

**4.** The SPA holder of the plaintiffs has examined himself as PW-1 and got marked documents at Ex.P.1 to P.35. P.W.1 has been cross-examined by the defendant No.2 mainly on the point of limitation.

**5.** Heard the learned counsel appearing for plaintiff and defendant No.2. Counsel for the defendant No.2 has filed written submissions with citations. Counsel for the plaintiff has also filed memo with citations. Perused the entire material on record.

**6.** Now the points that arise for my consideration are:

- 1) Whether suit of the plaintiff is barred by limitation?
- 2) Whether the plaintiffs prove that they were ready and willing to perform their part of contract and defendant breached in performing his part of the agreement?

- 3) Whether the plaintiff would be entitled for refund of the earnest money with interest at 12% p.a. from the date of suit till realization?
- 4) What Order?

7. My answers to the above points are as under:

**Point No.1:- In the Negative**

**Point No.2:- In the Affirmative**

**Point No.3:- In the Affirmative**

**Point No.4:-** As per the final Order  
for the following;

**REASONS**

**8. Point Nos.1 to 3:-**To avoid repetition of facts and evidence and these issues being interlinked with each other, they are taken-up together for answering. Further the question of limitation being a mixed question of law and facts and as the defendant No.2 though having forfeited his right of defence has chosen to cross examine the plaintiff on the point of limitation it would be just and proper to answer the point of limitation along with the other points.

**9.** The SPA holder of the plaintiffs who has been conversing with the defendants right from the stage of inception i.e., execution of the unregistered agreement of sale and to the last communication in so far as seeking refund of the earnest money has examined himself as P.W.1 reiterating the averments made in the plaint and has got marked documents at Ex.P.1 to P.35. Ex.P.1 is the SPA dated 21.08.2024. Ex.P.2 is the Death certificate of T.R.Subramanyan. Ex.P.3 is the Legal Heirship certificate. Ex.P.4 is the Printout of Master Data of defendant No.1. Ex.P.5 is the Agreement of sale dated 27.06.2012 between T.R.Subramanyan and defendant. Ex.P.6 is the Agreement of sale dated 13.08.2012 between plaintiff No.3 and defendant. Ex.P.7 to 10 are the Payment receipts issues in favour of T.R.Subramanyan 22.06.2012, 28.06.2012, 26.02.2014 and 30.06.2014. Ex.P.11 is the Certified copy of the bank statement issued by City Union Bank for the period June 2012 and June 2013 and from 01.06.2014 to 31.12.2014. Ex.P.12 to 15 are the Payment receipts issued to plaintiff No.3 dated 05.07.2012, 23.07.2012 (3 Nos). Ex.P.16 is the Certified copy of the bank statement issued by Axis Bank for the period 01.09.2012 to 30.09.2012 and 01.05.2013 to 31.05.2013. Ex.P.17 is the Printout of the email dated 01.09.2015. Ex.P.18 is the Printout of the

emails dated 18.04.2016 and 28.04.2016. Ex.P.19 is the Letter dated 10.05.2016 issued by defendant. Ex.P.20 is the Cheque dated 10.11.2016 issued in favour of T.R.Subramanyan. Ex.P.21 is the WhatsApp communications with the defendant for the period 07.01.2019 to 24.07.2021. Ex.P.22 is the WhatsApp communication between director of defendant No.1 with SPA holder of the plaintiff. Ex.P.23 is the Office copy of the legal notice dated 21.05.2024 issued by plaintiff No.2 to defendant. Ex.P.24 is the Reply dated 01.06.2024. Ex.P.25 is the Office copy of the legal notice dated 21.05.2024 issued by plaintiff No.3 to defendant. Ex.P.26 is the Reply to the said notice dated 01.06.2024. Ex.P.27 is the Non starter report in PIM No.1919/2024. Ex.P.28 is the Printout of email communications between plaintiff and defendant and its advocate. Ex.P.29 is the Pendrive containing the audio conversation between defendant advocate and myself. Ex.P.30 is the MOA of defendant No.1 downloaded from website of MCA. Ex.P.31 is the Printout of the company details taken from website of Insta Financials. Ex.P.32 is the Certificate u/S 63(4)(C) of BSA, 2023 with respect to email communications, WhatsApp messages, Master Data, MOA, Insta Financial report and payment certificate.

**10.** As mentioned above the defendant No.2 who though forfeited his right of defence has cross examined P.W.1 and the entire cross-examination is with respect to the point of limitation. P.W.1 in the cross-examination admits the receipt of mail sent by the defendant at Ex.P.17 reply to said mail sent under Ex.P.18 and also admits the letter sent by the defendant at Ex.P.19 along with the cheque issued in favour of deceased Subramaniyan at Ex.P.20. P.W.1 further deposes that the cheque was not presented for payment as the defendant assured of giving possession of the flat. P.W.1 also deposes that there was no written communication from the defendant to Subramaniyan not to present the cheque. P.W.1 also deposes that the plaintiff Nos.1 and 2 subsequent to death of Subramaniyan did not present the cheque and also did not sought for reissue of the cheque as they waited in good faith and also deposes that an email is sent seeking repayment of the amount with reasonable interest.

**11.** With these evidence in the background it is now required to ascertain whether the claim of the plaintiff is barred by limitation and if not the plaintiff be entitled for the reliefs as sought under the suit. Before considering

evidence of the plaintiff with regard to the limitation it would be just and proper to refer to the decisions relied upon by the learned counsel for defendant No.2 as well as the plaintiff on the issue of Limitation. Both the learned counsel for the plaintiff and the defendant No.2 have submitted in their arguments that Article 54 of the Limitation Act is applicable to the prevailing facts which prescribes a period of three years for filing of three years. It is contention of the counsel for defendant No.2 that once the time begins to run as per part 1 of Article 54 of the Limitation Act suit ought to have been filed within three years from the date of cause of action. Per contra learned counsel for the plaintiff would submit that the unregistered agreement of sale did not specify the time within which the agreements were required to be performed and where time is not fixed in the contract the period for limitation has to be considered from the date on which the refusal was communicated to the plaintiff. The learned for defendant No.2 relied upon judgment of Hon'ble Apex Court reported in **(2024) 20 SCC 363 A Valliammai vs. K.P.Murali and others**, wherein at para 20 of the judgment it has been observed as under:

*Para 20: Article 54 of Part II of the Schedule to the Limitation Act, 1963 stipulates the limitation period for filing a suit for specific performance as three*

*years from the date fixed for performance, and in alternative when no date is fixed, three years from the date when the plaintiff has notice that performance has been refused. Section 9 of the Limitation Act, 1963 stipulates that once the limitation period has commenced, it continues to run, irrespective of any subsequent disability or inability to institute a suit or make an application.*

*Para 21: For determining applicability of the first or the second part, the court will have to see whether any time was fixed for performance of the agreement to sell and if so fixed, whether the suit was filed beyond the prescribed period, unless a case for extension of time or performance was pleaded or established. However, when no time is fixed for performance, the court will have to determine the date on which the plaintiff had notice of refusal on part of the defendant to perform the contract.*

He also placed reliance upon judgment of the Apex Court in ***(2004) 12 SCC 360 Food Corporation of India vs. Assam State Cooperative Marketing and Computer Federation Limited and others***, wherein it has been observed as under

*According to Section 18 of the Limitation Act, an acknowledgment of liability made in writing in respect of any right claimed by the opposite party and signed by the party against whom such right is claimed made before the expiration of the prescribed period for a suit in respect of such right has the effect of commencing a fresh period of*

*limitation from the date on which the acknowledgment was so signed. It is well-settled that to amount to an acknowledgment of liability within the meaning of Section 18 of the Limitation Act, it need not be accompanied by a promise to pay either expressly or even by implication.*

He also placed reliance upon judgment of the Apex Court in **(1990) 1 SCC 104, Ramzan vs. Smt.Hussaini**, wherein at para 6 of the judgment it is observed as under:

*Para 6: The requirement of Article 54 of the Limitation Act, 1963 is not that the actual day should necessarily be ascertained upon the face of the deed, but that the basis of the calculation which was to make it certain should be found therein.*

Judgment of the Apex Court reported in **(1999) 2 SCC 679, Sampuran Singh and others vs. Niranjana Kaur and others**, wherein it is observed as under:

*Thus, the acknowledgment, if any, has to be prior to the expiration of the prescribed period for filing the suit, in other words, if the limitation has already expired, it would not revive under this Section. It is only during subsistence of a period of limitation, if any, such document is executed, the limitation would be revived afresh from the said date of acknowledgment.*

**12.** Per contra the learned counsel for the plaintiff would rely upon the following decisions:

**1.(2024) 20 SCC 363, A. Vallimmai vs. K.P.Murali**

***and others already cited supra.***

**2. (2015) 5 SCC 223, Rathnavathi vs. Kavita Ganashamdas**, wherein at para 49 it is observed as under:

*Para 49: Mere reading of Article 54 of the Limitation Act would show that if the date is fixed for performance of the agreement, then non-compliance of the agreement on the date would give a cause of action to file suit for specific performance within three years from the date so fixed. However, when no such date is fixed, limitation of three years to file a suit for specific performance would begin when the plaintiff has noticed that the defendant has refused the performance of the agreement.*

**3. (2006) 5 SCC 340, Panchanan Dhara and others vs. Monmatha Nath Maity(Dead) thr. Lrs. And others**, wherein at para 14 and Para 16 it is observed as under:

*Para 14:A plea of limitation is a mixed question of law and fact. The question as to whether a suit for specific performance of contract will be barred by limitation or not would not only depend upon the nature of the agreement but also the conduct of the parties and also as to how they understood the terms and conditions of the agreement. It is not in dispute that the suit for specific performance of contract would be governed by Article 54 of the Limitation Act, 1964. While determining the applicability of the first or the second part of the said provision, the court will firstly see as to*

*whether any time was fixed for performance of the agreement of sale and if it was so fixed, whether the suit was filed beyond the prescribed period unless any case of extension of time for performance was pleaded and established. When, however, no time is fixed for performance of contract, the court may determine the date on which the plaintiff had notice of refusal on the part of the defendant to perform the contract and in that event the suit is required to be filed within a period of three years therefrom*

*Para 16: We have noticed hereinbefore that the courts below arrived at a finding of fact that the period of performance of the agreement has been extended. Extension of contract is not necessarily to be inferred from written document. It could be implied also. The conduct of the parties in this behalf is relevant. Once a finding of fact has been arrived at, that the time for performance of the said contract had been extended by the parties, the time to file a suit shall be deemed to start running only when the plaintiff had notice that performance had been refused.*

**13.** Coming to the case on hand for the purpose of limitation while describing the cause of action the plaintiffs state that the cause of action for the suit is a continuous cause of action which first arose on 27.06.2012 and 13.08.2012 when the unregistered agreement of sale came to be executed and it is further continued in the years 2015, 2016, 2019, 2022 and 2023 when the defendant through emails and whatsapp

communications undertook to complete the project and handover possession and also when the notice was sent on 21.05.2024 and on the date of reply notice 01.06.2024 when the defendant categorically refused specific performance contending and stating that the advance amount of Rs.55,00,000/- paid by deceased Mr. Subramanian has been forfeited. Therefore for all purposes the date of refusal in performance of the part of contract should be when the reply notice issued on 01.06.2024 wherein for the first time the defendant communicates to the plaintiff that the advance sale consideration paid under the unregistered agreement has been forfeited.

**14.**The agreement of sale dated 27.06.2012 and 13.08.2012 both unregistered have been marked as Ex.P.5 and P.6. On a careful reading of the entire agreement of sale there is no mention about any time fixed for performance of the agreement of sale in executing the registered sale deed. It only says that the defendants are liable to execute the registered sale deed with respect to schedule B and C properties and does not specify within which date the same has to be executed. Both Ex.P.5 and P.6 reflect upon the receipt of advance sale consideration

of Rs.55,00,000/- and Rs.35,00,000/- respectively from deceased Mr. Subramanian and plaintiff No.3. This is further evidenced under the payment receipts produced at Ex.P.7 to P.10 and the bank statement at Ex.P.11 to P.16. Pursuant to the agreement the first mail came to sent by the plaintiff through their PA holder on 01.09.2015 followed by the next mail on 18.04.2016. To this a reply is sent under Ex.P.19 wherein the defendant undertakes that the project would be completed in 8 months and if they failed to the cheque for Rs.55,00,000/- can be presented for encashment. Along with the said letter at Ex.P.19 a post dated cheque for Rs.55,00,000/- is issued dated 10.11.2016 for Rs.55,00,000/- in favour of deceased Mr. Subramanian. Admittedly after the letter dated 10.05.2016 Mr. Subramanian expired on 30.05.2016. Therefore prior to his death Mr. Subramanian was not in a position to present the cheque as it was a post dated cheque. During the course of evidence the plaintiff has produced transcript of the whatsapp messages dated 07.03.2119, 15.03.2019, 03.04.2019, 09.05.2019, 26.08.2020 all exchanged with PEW.1 wherein the defendant repeatedly says he would complete the project and handover possession of the schedule B and C properties. Ex.P.22 also carries series of whtasapp

communications commencing from 28.07.2022 where they say that the work will start by 10<sup>th</sup> of August 2022, the whatsapp message dated 17.12.2022 informing that the work will start by 15<sup>th</sup> of January 2022 then by 2<sup>nd</sup> May 2022 stating that work would start very soon again on 21.12.2023 stating that by mid of January the work will start and no major work is pending and that everything would be completed. This is followed by a subsequent message wherein again it is stated that construction would be started in the first week of April 2023. From these messages it can be gathered that inspite of issuing the cheque at Ex.P.20 the defendant kept promising to the plaintiff that they would commence the work on the project and the plaintiffs genuinely hoping to see light at the end of the tunnel and hoping that their hard earned money would yield results by way of possession of schedule B and C properties continued to patiently wait. After the last message in March 2023 and having desperately waited for nearly one year and noticing that there has been no response positively from the defendants the plaintiff issued the legal notice at 21.05.2024 calling upon the defendant to execute the registered sale deed. To this notice a reply is sent on 01.06.2024 by the defendant when after having all along

promised the plaintiff that the work would be commenced and they would be given possession of the schedule B and C apartments for the first time stated that the security deposit stands forfeited as project did not progress on account of failure on part of the plaintiffs to adhere to the terms of the agreement, their continuous interference, harassment of laborers, verbal abuse of the site engineers and creation of a hostile environment because of which the project has come to a standstill. This is evident from the notice and reply notices produced at Ex.P.23 to P.26. The conduct of the defendant has been stark contrast of its earlier conduct wherein repeatedly the defendant assuring the plaintiff that they would undertake the work. In fact the defendant has been playing hide and seek with the plaintiff as the messages itself clearly says that there is no clarity regarding commencement of the construction. Once the defendant says in its message dated 21.12.2023 that all wood work is ready no major work is pending and that by January middle the work would commence and again a contract message is sent on 18.03.2023 that a construction will start in 1<sup>st</sup> week of April 2023. The very conduct of the defendant clearly shows that the defendant having received the advance consideration has chosen to appropriate the same without undertake its obligations

under the unregistered agreement of sale. The reply notice has been followed up by the repeated emails dated 29.08.2024, 14.10.2024, 11.11.2024, 21.11.2024, 23.12.2024 wherein the plaintiff has repeatedly requested the defendant to refund the advance amount as they have failed to perform as per the terms of the agreement this is evident from Ex.P.28 and to all these emails there is not even a single reply on part of the defendant. Therefore from these circumstances it can be gathered that each time when there is a demand made for either execution of the sale deed as per the term of the agreement or for refund of the advance amount the defendant by its conduct of remaining silence has virtually refused to perform and therefore under these circumstances Article 47 of the Limitation Act would come into play which provides that in respect of suits where money paid upon and existing consideration which afterwards fails the period of limitation would be three years from the date of failure. Here in the present suit the advance sale consideration have been paid at the time of entering into the agreement and the execution of the registered sale deed has failed which becomes communicated to the plaintiff for the first time through the reply notice at Ex.P.24 and P.26 and therefore for the purpose of

computing limitation it shall be three years from the date of reply notice and present suit filed in 2025 is well within the period of limitation.

**15.** Coming to the facts as already mentioned above the defendant No.2 forfeited his right of defence and there has been no cross-examination of P.W.1 on the facts leading to the present suit and virtually the evidence of plaintiff and the averments made in the plaint has remained uncontroverted. The unchallenged evidence of the plaintiff on record would substantively prove that the plaintiff though was repeatedly ready to perform their part of the contract through repeated exchange of mails, whatsapp communication, it is the defendant who has repeatedly failed in performing its part of contract and thus having communicated the refusal to perform its part of contract the defendants do become liable to refund the earnest money as sought by the plaintiff.

**16.** The plaintiff are seeking a direction for the defendants to jointly and severally pay back the advance consideration with interest at 12% p.a. Defendant No.1 is a private limited company of which defendant Nos.2 and 3 are Directors and it has been reported in the course of

proceedings that defendant No.3 has died on 30.01.2018 i.e., much prior to filing of the suit and therefore suit against defendant No.3 has been abated. The defendant No.1 is presently represented by its only Director defendant No.2 and thus the defendant Nos.1 and 2 becomes jointly and severally liable to refund the earnest money.

**17.** In so far as the interest is concerned the plaintiff has calculated the interest at the rate of 12% p.a. from the date of agreement till 22.01.2025 and in so far as the advance consideration paid by deceased Mr. Subramanian the plaintiffs No.1 and 2 are claiming interest of Rs.66,55,000/- and in so far as plaintiff No.3 he is claiming interest from 10.06.2013 till 09.01.2025 of Rs.48,65,000/-. The agreement at Ex.P.5 and P.6 do not stipulate the interest required to be paid up in case of failure on performance of the agreement and towards refund of the earnest deposit. The learned counsel for the plaintiff has relied upon judgment of the Hon'ble Andrapradesh High Court in **2013 SCC OnLine AP 809 Mellacheruvu Rajeswar Rao vs. Chitluri Satyam** and judgment of Hon'ble High Court of State of Telangana and Andhrapradesh in **AIR 2018 AP 121, Andhra Pradesh**

***State Civil Supplies Corporation Ltd.,vs. Kesarimol Promod Kumar.*** I have gone through the above cited decisions wherein awarding of interest at 12% p.a. has been held to be just and reasonable. In the present case admittedly the defendant has received the amount in the year 2012 to 2014 with respect to deceased Mr. Subramanian and in the year 2012 and 2013 from plaintiff No.3. The last date of payment by Mr. Subramanian to the defendant is on 13.12.2014 for Rs.5,00,0000/- whereas the last date of plaintiff by plaintiff No.3 to the defendant is on 10.05.2013 through RTGS for Rs.5,00,000/- . Thereafter nearly for 12 years the defendant has been enjoining the monies paid by the plaintiffs and therefore considering the conduct of the defendant it would be just and proper to award the claims made by the plaintiff with interest at 12% p.a. Accordingly, for these reasons I answer **Point No.1 in the Negative and Point Nos.2 and 3 in the Affirmative.**

**18. Point No.4:-** For the aforesaid reasons, I pass the following.

**ORDER**

Suit of the plaintiff is ***decreed with costs.***

The defendant Nos.1 and 2 are jointly and severally liable to pay to the plaintiffs No.1 and 2 a sum of Rs.55,00,000/- with interest of Rs.66,55,000/- at 12% p.a. from 23.12.2014 till 22.01.2025.

The defendant Nos.1 and 2 are jointly and severally liable to pay to the plaintiffs 3 a sum of Rs.35,00,000/- with interest of Rs.48,65,000/- at 12% p.a. from 10.06.2013 till 09.01.2025.

The plaintiff Nos.1 to 3 are also entitled for future interest at the rate of 12% p.a. from the date of suit till realization.

Draw decree accordingly.

Office to send soft copy of the judgment to respective parties on their email if furnished.

[Dictated to the Stenographer Grade-III, transcribed by her, corrected and signed by me then pronounced in the Open Court, dated **this the 9<sup>th</sup> day of March 2026**]

**(ARJUN. S. MALLUR)**  
**LXXXV Addl.City Civil & Sessions Judge,**  
**Bengaluru.**

**ANNEXURE****LIST OF WITNESSES EXAMINED ON BEHALF OF  
PLAINTIFF:**

PW-1	Sri. Venkatesh Vaidyanthan
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**LIST OF DOCUMENTS EXHIBITED ON BEHALF OF THE  
PLAINTIFF**

Ex.P.1	SPA dated 21.08.2024.
Ex.P.2	Death certificate of T.R.Subramanyan.
Ex.P.3	Legal Heirship certificate.
Ex.P.4	Printout of Master Data of defendant No.1.
Ex.P.5	Agreement of sale dated 27.06.2012 between T.R.Subramanyan and defendant.
Ex.P.6	Agreement of sale dated 13.08.2012 between plaintiff No.3 and defendant.
Ex.P.7 to 10	Payment receipts issues in favour of T.R.Subramanyan 22.06.2012, 28.06.2012, 26.02.2014 and 30.06.2014.
Ex.P.11	Certified copy of the bank statement issued by City Union Bank for the period June 2012 and June 2013 and from 01.06.2014 to 31.12.2014.
Ex.P.12 to 15	Payment receipts issued to plaintiff No.3 dated 05.07.2012, 23.07.2012 (3 Nos).
Ex.P.16	Certified copy of the bank statement issued by Axis Bank for the period 01.09.2012 to 30.09.2012 and 01.05.2013 to 31.05.2013.
Ex.P.17	Printout of the email dated 01.09.2015.
Ex.P.18	Printout of the emails dated 18.04.2016 and 28.04.2016.

Ex.P.19	Letter dated 10.05.2016 issued by defendant.
Ex.P.20	Cheque dated 10.11.2016 issued in favour of T.R.Subramanyan.
Ex.P.21	WhatsApp communications with the defendant for the period 07.01.2019 to 24.07.2021.
Ex.P.22	WhatsApp communication between director of defendant No.1 with SPA holder of the plaintiff.
Ex.P.23	Office copy of the legal notice dated 21.05.2024 issued by plaintiff No.2 to defendant.
Ex.P.24	Reply dated 01.06.2024.
Ex.P.25	Office copy of the legal notice dated 21.05.2024 issued by plaintiff No.3 to defendant.
Ex.P.26	Reply to the said notice dated 01.06.2024.
Ex.P.27	Non starter report in PIM No.1919/2024.
Ex.P.28	Printout of email communications between plaintiff and defendant and its advocate.
Ex.P.29	Pendrive containing the audio conversation between defendant advocate and myself.
Ex.P.30	MOA of defendant No.1 downloaded from website of MCA.
Ex.P.31	Printout of the company details taken from website of Insta Financials.
Ex.P.32	Certificate u/S 63(4)(C) of BSA, 2023 with respect to email communications, WhatsApp messages, Master Data, MOA, Insta Financial report and payment certificate.

**LIST OF WITNESSES EXAMINED ON BEHALF OF THE  
DEFENDANT**

DW-1	Nil
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**LIST OF DOCUMENTS EXHIBITED ON BEHALF OF  
THE DEFENDANT**

**(ARJUN. S. MALLUR)  
LXXXV Addl.City Civil & Sessions Judge,  
Bengaluru.**