

**IN THE COURT OF HON'BLE III ADDITIONAL CHIEF JUDGE,
CITY CIVIL COURT, AT: HYDERABAD**

ARB OP NO. 36 OF 2025

Between:

Mr.Sriramoju Sambeshwar Rao

...PLAINTIFF

And

M/s Modi Realty Pocharam LLP

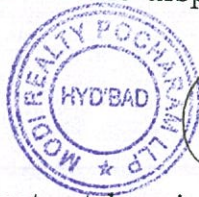
...DEFENDANT

I/We M/s Modi Realty Pocharam LLP Rep by its designated Partner Mr.Soham Modi S/o Late Sri Sathish Modi, Age 52 years, R/o: H.No.5-4-187/3&4, M.G.Road Secunderabad do hereby appoint

**DUVVA PAVAN KUMAR
SHRADDHA GUPTA**

Advocates

Advocate/s to appear for me / us in the above suit / Appeal / Petition / Case and to conduct and prosecute and defend the same and all proceedings that may be taken in respect of any applications for execution or any Decree or Order passed therein. I/We empower my/our Advocate/s to appear in all miscellaneous proceeding in the above suit/matter till all Decree or Order are fully satisfied or adjusted to compromise and obtain the return of documents and draw any moneys that might be payable to me/us in the said suit or of matter and notice I/We do further empower my/our Advocates to accept on my /our behalf, service of all or any appeals or petitions filed in any Court of Appeal reference or Revision with regard to said suit or matter before the disposal of the same in this Honourable Court.



Verified that the executant herein is well acquainted with English, read this Vakalatnama. The contents of the Vakalatnama were read over and explain in Hindi/Telugu to the executant as he /she/they are being unacquainted with English who appeared perfectly to understand same and signed /put his / her/their name or mark in my presence

Executed before me this _____ day of April 2025.

Advocate.

IN THE COURT OF HON'BLE III
ADDITIONAL CHIEF JUDGE,
CITY CIVIL COURT,
AT: SECUDERABAD

ARB OP NO. 36 OF 2025

Between:

Mr.Sriramoju Sambeshwar Rao

..PLAINTIFF

And

M/s Modi Realty Pocharam LLP

..DEFENDANT

VAKALATNAMA
ACCEPTED

Filed on: 04.04.2025

Filed by:

DUVVA PAVAN KUMAR
SHRADDHA GUPTA
ADVOCATES

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COUNSEL FOR THE DEFENDANT

**IN THE HON'BLE COURT OF THE III ADDITIONAL CHIEF JUDGE: CITY
CIVIL COURT, HYDERABAD.**

I.A. NO. OF. 2025

IN

A.O.P. NO. 36 OF 2025

Between:

M/s. Modi Realty Pocharam LLP

Petitioner/Respondent

And

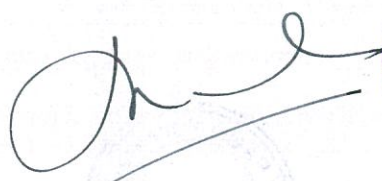
Mr. Sriramoju Sambeshwar Rao

Respondent/Petitioner

AFFIDAVIT

I, Mr. Soham Modi, S/o Late Satish Modi R/o Plot No.280, Jubilee Hills, Hyderabad, the authorized signatory of M/s. Modi Realty Pocharam LLP, a partnership registered under the Limited Liability Partnership Act, 2008, having its registered office at 5-4-187/3 & 4, II floor, Soham Mansion, MG Road, Secunderabad- 500003, do hereby solemnly affirm and sincerely state the following:

1. I am the authorized signatory of the Petitioner herein and the Respondent in the main petition and am well conversant with the facts stated hereunder and hereby competent to depose this affidavit on behalf of the Petitioner herein.




2. At the very outset, it is most respectfully submitted that the instant petition filed by the Respondent/Petitioner is not maintainable either in law or on facts, is filed as an afterthought being completely misconceived, baseless and bereft of any merit and is liable to be dismissed in *limine*.
3. The Respondent/Petitioner filed the above AOP 36 of 2025 under Section 9 of the Arbitration and Conciliation Act, 1996 seeking interim relief of non-alienation of constructed flats in favour of third-party purchasers by the Petitioner/Respondent. The Respondent/Petitioner invoked the arbitration clause under the Joint Development cum General Power of Attorney Agreement bearing no. 13206/2019 dated 21.12.2019.
4. It is submitted that the petition filed by the Respondent/Petitioner is liable to be rejected under Order 7 Rule 11 of the Code of Civil Procedure 1908 on the ground of being barred by law due to non-joinder of necessary parties, lack of jurisdiction, and non-disclosure of cause of action. The Petitioner/Respondent seeks leave of this Hon'ble Court to file additional documents during the course of proceedings. Before advancing to the grounds, brief facts pertaining to the Petitioner/Respondent is provided as hereunder.

BRIEF FACTS:

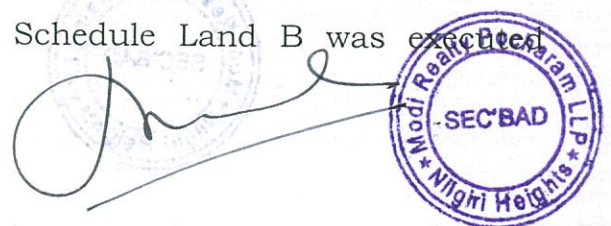
5. The Petitioner/Respondent is in the business of construction and development of real estate projects. The Respondent/Petitioner is the absolute owner of Ac.0.31.50 Gnts in Sy.27, Pocharam Village, Ghatkesar Mandal, Medchal District ("**Schedule Land A**") having purchase the same by way of sale deeds bearing No 12620/2006 dated 09.09.2006. The Respondent/Petitioner along with other landowners ("**Co-landowners**") are also the absolute owners of adjacent land parcel



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of Ac.1.28 Gnts in Sy.27, Pocharam Village, Ghatkesar Mandal, Medchal District ("**Schedule Land B**") by way of sale deeds bearing No.12451/2006 dated 07.08.2006. (Hereinafter Schedule Land A and B together shall be referred to as "**Schedule Land C**")

6. In the year 2006, the Respondent/Petitioner and the Co-landowners were desirous of jointly developing Schedule Lands A and B into a residential housing project. Consequently, the Respondent/Petitioner and the Co-Landowners executed two development agreements cum general power of attorney bearing document Nos. 21762/06 and 6531/07 dated 02.12.2006 and 18.06.2007 respectively with Gharonda Builders and Developer Ltd ("**Gharonda**") to develop the Schedule Lands A and B. Gharonda accordingly commenced work at the site and alienated flats in favour of third-party purchasers. However, due to internal differences between the Respondent/Petitioner, Co-landowners and Gharonda, the development agreements bearing Nos. 21762/06 and 6531/07 dated 02.12.2006- were subsequently cancelled.
7. The Respondent/Petitioner along with the Co-landowners, still desirous of developing Schedule Land A and B i.e. Schedule Land C into a single residential housing project approached the Petitioner/Respondent. Subsequently two Memorandum of Understandings dated 24.05.2018 ("MOU") were executed between the Petitioner/Respondent and Respondent/Petitioner and between the Co-landowners, Petitioner/Respondent and Respondent/Petitioner. Solely based on the representations of the Respondent/Petitioner and the Co-landowners that the title of Schedule Land C is clear and that they would comply with their obligations, two Joint Development cum General Power of Attorney Agreements bearing no 13206/2019 dated 21.12.2019 for Schedule Land A was executed between the Respondent/Petitioner and and the Respondent/Petitioner ("**JDA 1**") and a JDA bearing no. 13207/2019 dated 17.08.2019 for Schedule Land B was executed



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between the Petitioner/Respondent and Respondent/Petitioner and the Co-landowners ("**JDA 2**").

8. Pursuant to the execution of the JDA's 1 and 2, on account of non-cooperation Respondent/Petitioner, while the Petitioner/Respondent applied for HMDA approvals in 2008, the approval vide proceeding no. 12159/P4/Plg/HMDA/2008 dated 18.12.2020. As a result, therefore, the construction could commence only thereafter as per Clause 38 of JDA 1 and 2. It is submitted that the Respondent/Petitioner and the Co-landowners have time and again defaulted in discharging their obligations under multiple Clauses of the JDA 1 and 2 impacting the construction activity. Upon being asked by the Petitioner/Respondent to remedy the breaches committed, the Respondent/Petitioner and the Co-landowners have consistently remained unresponsive. The several breaches of the Clauses of JDA 1 and 2 committed by the Respondent/Petitioner and the Co-landowners directly and ultimately impaired the Petitioner/Respondent in completing construction of Schedule Land C as per the timelines specified in Clause 38 of JDA 1 and 2 despite the Petitioner/Respondent's best efforts.
9. Upon the Respondent/Petitioner and Co-landowners breaching multiple Clauses of the JDA 1 and 2 and their failure to remedy the same despite repeated requests and reminders, the Petitioner/Respondent issued the following notices:
 - 9.1 Legal notice dated 23.03.2024 issued to the Respondent/Petitioner seeking indemnities under Clause 52 of the MOU and JDA 1 and 2 and legal heir certificate under Clause 46 (a) of the MOU. The Respondent/Petitioner got issued a reply legal notice dated 14.05.2024 wherein the Respondent/Petitioner provided clarification and information regarding the legal heir certificates.

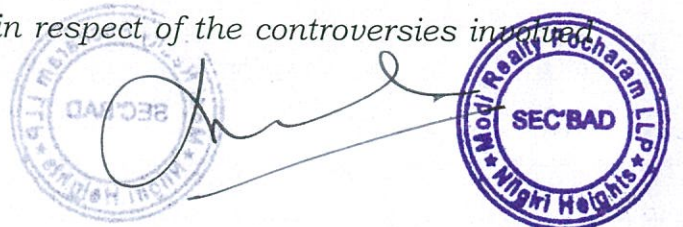


- 9.2 Legal notice dated 27.02.2024 and 28.02.2024 seeking reimbursement of legal expenses incurred in correcting the title of Schedule Land C pursuant to Clause 26 of JDA 1 and 2. The Respondent/Petitioner issued two reply legal notices dated 14.05.2024 denying their obligation to reimburse the Petitioner/Respondent.
- 9.3 The Respondent/Petitioner issued a Legal Notice dated 11.09.2024 to the Petitioner/Respondent demanding payment of Rs. 69,37,280/- towards penalty for delayed construction timelines under Clause 38 of JDA 1 and 2 purely as an afterthought and as a counter-blast. The Petitioner/Respondent issued a reply notice dated 12.11.2024 re-iterating the aforementioned facts and sought the Respondent/Petitioner's compliance with their obligations under the JDA 1 and 2 .
10. As the matter stood thus, the Respondent/Petitioner instead of complying with their obligations under the JDA 1 and 2, filed AOP 36 of 2025 before this Hon'ble Court as an afterthought and counterblast, completely contrary to law and facts, devoid of any merits, with unclean hands and by suppressing material facts.

GROUND FOR REJECTION:

11. Non-Joinder of Necessary Parties:

It is a well settled position of law supported by a catena of judgements that a petition that fails to implead 'necessary parties' is barred by law and is liable to be dismissed in limine. The Hon'ble Supreme Court in Moreskar Yadarao V Vyankatesh Sitaram [(2022) SCC OnLine SC 1307] (paras 18 and 20) recognized and upheld the 2-pronged test to determine 'necessary parties' to be one wherein "...there must be right to some relief against such party in respect of the controversies involved

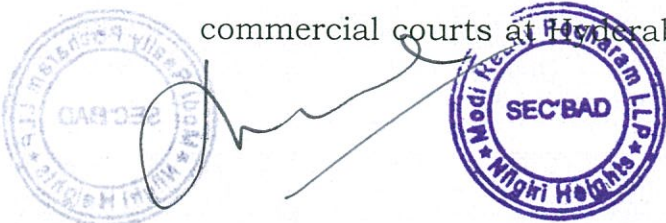


in the proceedings. The second one is that no effective decree can be passed in the absence of such a party”.

12. Taking the above as precedence, it is submitted that the present petition is bad for non-joinder of necessary parties. Admittedly, the development of Schedule C Property is being undertaken in respect of two different land parcels i.e. Land A and Land B. The Respondent/Petitioner is the joint owner of entire Schedule Land C along with Co-owners is the owner. The same is substantiated by the Co-landowners being parties to the MOU and JDA 2. It is evident from the bare perusal of the MOU, JDA 1 and 2 and pursuant to Clauses 19 and 53 of the JDA 1 and 2 that Schedule Land C is an amalgamation of Schedule Land A owned solely by the Respondent/Petitioner and Schedule Land B collectively owned by the Co-landowners and the Respondent/Petitioner.
13. Thus, the construction of Schedule Land A and Petition Schedule Flats cannot be differentiated or singled out from Schedule Land C as the same is envisaged as one development project for the construction of a residential complex named 'Nilgiri Heights' pursuant to Clauses 19 and 53 of the JDA 1 and 2. Pursuantly, as the Co-landowners have vested rights in the development of Schedule Land C, an affective degree could not be made in their absence as the relief as prayed for by the Respondent/Petitioner were to be granted the Co-landowners rights will be adversely affected. Therefore, the Co-landowners are 'necessary parties' and the failure to implead the Co-landowners as parties to the present petition makes the present petition untenable in law due to non-joinder of parties and is liable to be dismissed in limine.

14. Lack of Jurisdiction:

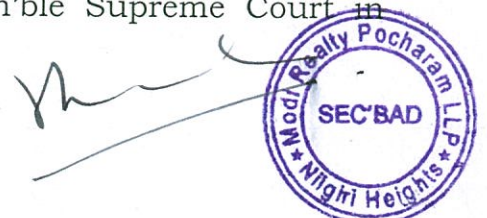
It is submitted that the appropriate jurisdiction vests with the commercial courts at Hyderabad as the dispute in the present case is



a 'commercial dispute' under Section 2(1)(C)(vi) and (vii) of The Commercial Courts Act, 2015. Section 2(1)(C)(vi) states that a 'commercial dispute' means a dispute arising out of "*construction and infrastructure contracts, including tenders.*" The Hon'ble High Court of Telangana in Legend Estates Private Limited V Poulomi Estates Private Limited [(2024) SCC OnLine TS 690](paras 9 and 13) opined that the nature of a contract must be ascertained from the intention of the parties through a perusal of the terms of the contract in light of the surrounding circumstances. The Supreme Court relying on clauses of the contract between the parties therein identified the petitioner therein's role of construction, consideration for construction, construction specifications and the division of constructed flats between the petitioner and respondents therein and held the impugned development agreement to be a construction contract under Section 2(1)(C)(vi). Further, the Supreme Court while holding the definition of 'construction contracts' under Section 2(1)(C)(vi) to be exhaustive held that it includes contracts pertaining to the construction of residential projects.

15. Taking the above as precedent, in the present petition a bare perusal of the MOU, JDA 1 and 2 would establish the intention of the Parties hereto to be that of a 'construction contract' under Section 2(1)(C)(vi). The recitals and Clauses 1 to 9, 23, and 26 of the JDA 1 and 2 identify the purpose of the JDA 1 and 2 to be construction of a residential project in Schedule Land C and the Petitioner/Respondent's obligation to construct a residential project on Schedule Land C, consideration receivable for the construction, construction specifications and the division of the constructed flats between the Respondent/Petitioner, co-landowners and the Petitioner/Respondent.

16. Further, Section 2(1)(C)(vii) states that a commercial dispute means a dispute arising out of "*agreements relating to immovable property used exclusively in trade and commerce.*" The Hon'ble Supreme Court in



Ambalal Sarabhai Enterprises Limited V K.S. Infraspace LLP and another [(2020) 15 SCC 585][para 37] held that for Section 2(1)(C)(vii) to subsist, the impugned instrument must refer to an immovable property that is 'actually used' as opposed to merely or likely to be used in trade or commerce at the time of entering into the agreement and the same must be determined from the intention of the parties by perusing the terms of the impugned agreement therein.

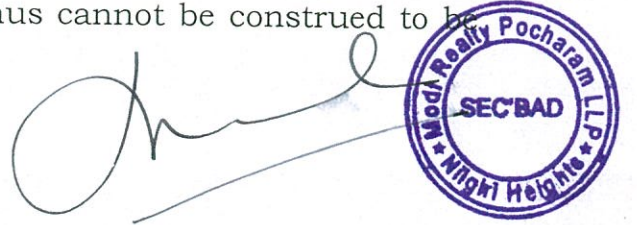
17. In the present case, the Schedule Land C is an immovable property which was 'actually' being used exclusively towards trade and commerce under Section 2(1)(C)(vii). The intention of the parties to use the Schedule Land C exclusively in trade and commerce is evident from a bare perusal of the JDA 1 and 2. The recitals and Clauses 2 to 5 of JDA 1 and 2 establish the purpose of the JDA 1 and 2 to be construction of a residential project on Schedule Land C. Further, Clauses 9,10, and Annexure 1 of JDA 1 and 2 provides the division of constructed flats between the Respondent/Petitioner, Co-landowners and Petitioner/Respondent and Clauses 15 and 31 of JDA 1 and 2 provides the right to alienate the constructed flats in favour of third party purchasers under Clauses 15 and 31 of JDA 1 and 2.
18. The Petitioner/Respondent being engaged in the business of construction and development undertook the impugned development of residential project in the due course of business with the intention to generate profits from the alienation of constructed flats in the Schedule Land C. Moreover, the Schedule Land C was in 'actual use' at the time of executing the MOU and JDA 1 and 2 as Gharonda had already commenced construction in Schedule Land C and had executed Sale Deeds for constructed flats in favour of third party purchasers. The same is evident from the recital 'f' of MOU, JDA 1 and 2 and Clauses 54 and 55 of the MOU.




19. Further, under Section 2(1)(i) the specified value of the commercial dispute shall mean the value of the subject matter determined in accordance with Section 12. Section 12 (c) states that the value of the immovable property must be above Rs.1,00,00,000/- for the jurisdiction of the Commercial Courts to be attracted. The market value of the Schedule Land C is above Rs. Rs.1,00,00,000/- and the same is evident from the valuation of Schedule Land A being Rs. 11434500/- as per the stamp duty paid for JDA 1 and Rs. 24684000/- for the Schedule Land B as per the stamp duty paid under JDA 2.
20. The Section 2 (1)(c)(vi) read with Section 2 (1)(c)(vii) and Section 12 establishes that the present case is a 'commercial dispute' and the appropriate jurisdiction to adjudicate this commercial dispute are the Commercial Courts of Hyderabad.

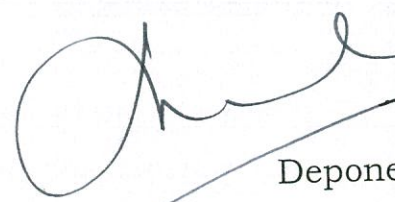
21. **Non-disclosure of Cause of Action**

It is respectfully submitted that the Petition does not disclose a cause of action. Further, the Respondent/Petitioner's averment that the cause of action initially arose on 17.12.2022 is incorrect as under Clause 38, construction of Block A was to be completed within 18 + 6 months from the date of HMDA approval dated 18.12.2020 i.e. on 18.06.2023. Further, the Respondent/Petitioners averment that the cause of action subsequently arose on the dates of the legal notices issued is incorrect as the relief sought for in the legal notices is compliance of the Respondent/Petitioners and Co-landowner's obligations under the JDA 1 and 2 and the Respondent/Petitioner seeking damages from the Petitioner/Respondent as opposed to the relief of interim injunction against alienation of flats by the Petitioner/Respondent in favour of third-party purchasers sought for in the present petition. The relief sought for in the legal notices issued is unconnected with the relief sought for in the present petition and thus cannot be construed to be part of the same cause of action.



22. In view of the aforesaid it is most humbly submitted that this Hon'ble Court does not have jurisdiction to entertain the present matter as the exclusive jurisdiction vests with commercial courts. Further, the instant petition is barred by law due to non-joinder of necessary parties and failure to disclose any cause of action against the Petitioner/Respondent and is hence liable to be rejected as per Order 7 Rule 11 of the Code of Civil Procedure, 1908.

In view of the above, it is most humbly submitted that this Hon'ble Court may be pleased to reject the petition filed by the Respondent/Petitioner on the grounds stated above and pass such other order or orders as this Hon'ble Court may deem fit in the interest of justice.


Deponent

Sworn and signed before me on this
the ___ day of _____

Advocate/Hyderabad

