

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. The Respondent/Petitioner invoking the arbitration clause under the Joint Development cum General Power of Attorney Agreement bearing no. 13206/2019 dated 21.12.2019, instituted A.O.P. No. 36 of 2025 before this Hon'ble Court seeking interim injunction against the Petitioner/Respondent from alienating Petition Schedule Flats in favour



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of third-party purchasers. This Hon'ble Court vide its order dated 28.03.2025 was pleased to pass an ex-parte interim status quo order in favor of the Respondent/Petitioner which affectively is restraining the Petitioner/Respondent from alienating Petition Schedule Flats and generating profits therefrom.

3. It is the Respondent/Petitioner's case that the Petitioner/Respondent failed to complete construction of Block A within the time period stipulated under Clause 38 of Joint Development cum General Power of Attorney Agreements bearing nos 13206/2019 dated 21.12.2019 ("JDA 1") and 13207/2019 dated 17.08.2019 ("JDA 2"). The Respondent/Petitioner stated that he would be put to irreparable loss and harm unless the Petitioner/Respondent is restricted from alienating Petition Schedule Flats. It is respectfully submitted that the Respondent/Petitioner has filed the main petition barred by law and with baseless accusations and unclean hands, by manipulating and concealing material facts, purely as an afterthought and a counter blast.
4. The Petitioner/Respondent has chosen to file the present application as it requires immediate vacation of the stay order dated 28.03.2025 as the firstly, the main petition is not maintainable in law or in fact, and the order dated 28.03.2025 is causing grave prejudice to the Petitioner. To this effect, the Petitioner/Respondent has also filed an application under Order VII Rule 11, C.P.C,1908 praying for the rejection of the main petition on the grounds of lack of jurisdiction, non-joinder of necessary parties and non-disclosure of cause of action.
5. It is submitted that the interim Order dated 28.03.2025 granted in favour of the Respondent/Petitioner and against the Petitioner/Respondent was granted by this Hon'ble Court as a result of false and misleading statements made by the Respondent/Petitioner before this Hon'ble Court



and the same is liable to be vacated without even looking at the merits of the matter as per the proviso of Order 39 Rule 4.

6. It is submitted that pursuant to executing the JDA 1 and 2, the Petitioner/Respondent acquired HMDA approval vide proceeding no. 12159/P4/Plg/HMDA/2008 dated 18.12.2020. Subsequently, the Petitioner/Respondent commenced construction and discharged its various obligations under the JDA 1 and 2 in good faith. However, 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 such as failure to provide indemnities and legal heir certificates timely, the title of Schedule Land C being unclear and in litigation, failure to reimburse the Petitioner/Respondent of the legal fees incurred in correcting the title of Schedule land C and other charges among others.
7. Upon being asked by the Petitioner/Respondent to remedy the breaches committed, the Respondent/Petitioner and the Co-landowners have consistently remained unresponsive. As a last resort, multiple legal notices were issued by the Petitioner/Respondent to the Respondent/Petitioner seeking compliance with their obligations under the JDA 1 and 2. However, as the matter stood thus, instead of complying with their obligations pursuant to the legal notices sent, the Respondent/Petitioner got instituted the main petition which is contrary to law and facts with unclean hands. 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. The Respondent/Petitioner's relief of interim injunction as prayed for ought not to have been granted as the



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Respondent/Petitioner cannot be permitted to unjustly enrich themselves from the wrongs committed by them. It is submitted that the Respondent/Petitioner hopelessly failed to establish a prima facie case.

8. It is respectfully submitted that the main petition is bad in law due to 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"*.
9. 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. Schedule Land A and Schedule 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.
10. 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.

11. It is respectfully submitted that the main petition is bad in law due to 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.



12. 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.
13. 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 immoveable 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.
14. In the present case, the Schedule Land C is an immoveable 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



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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.

15. 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.
16. 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.
17. 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.

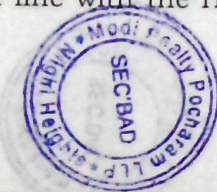


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18. It is respectfully submitted that the main petition is bad in law due to non-disclosure of cause of action. It is respectfully submitted that the Petition does not disclose a cause of action. Further, the Respondent/Petitioner's averment that the 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.

19. It is respectfully submitted that, inspite of the aforesaid glaring defects, the main Petition is liable to be rejected and the Respondent/Petitioner, by misleading this Hon'ble Court has obtained an interim order dated 28.03.2025.

20. It is thus submitted that, the Respondent/Petitioner has failed to establish a prima facie case and main petition being barred by law is liable to be rejected in limine. Without prejudice to the above, it is submitted that the balance of convenience lies in the Petitioner/Respondent's favour as the Petitioner herein has invested huge amount of money in the subject Project. It is brought to the notice of this Hon'ble Court that pursuant to the execution of JDA 1 and 2 the Petitioner/Respondent, in line with the rights vested under the JDA 1



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and 2 has acquired the HMDA approval and commenced construction on Schedule Land C. Despite the several breaches committed by the Respondent/Petitioner and Co-landowners, the Petitioner/Respondent completed the construction of Block A significantly and executed agreements of sale/sale deed in favour of third-party purchasers. Any restraining order in respect of the Petition Schedule Properties thus not only impairs the rights of the Petitioner/Respondent but also bonafide third-party purchasers who are unable to exercise their rights over their respective flats.

21. Furthermore, it is submitted that, under Clauses 6 to 8 under JDA 1 and 2 the Petitioner herein is vested with the right to secure monies by way of alienating the flats falling to their share and on account of the subsisting injunction, the Petitioner/Respondent is not being able to generate funds which are most crucial for development of Schedule Land, thereby impacting the entire project.
22. It is submitted that, Clauses 6 to 10 under JDA 1 and 2 and the Supplementary Agreement dated 15.07.2021 bearing document no. 7609/2021 specifically identify the division of constructed flats between the Respondent/Petitioner, Petitioner/Respondent and Co-landowners. Clauses 15 and 31 of the JDA 1 and 2 specifically identify the Petitioner/Respondent's right to alienate flats regardless of their status of construction in favour of third party purchasers and that no claim shall be made by the Respondent/Petitioner and Co-landowners against such alienation and against third party purchasers of flats. Therefore, Respondent/Petitioner cannot restrict the Petitioner/Respondent from alienating flats when such alienation is specifically identified and mutually agreed to by the Parties in the JDA 1 and 2 and is essential to ensure construction is ongoing.



23. The Petitioner/Respondent being engaged in the business of construction and development and having successfully constructed many projects in and around Hyderabad earned recognition, reputation and goodwill in the society. The third-party purchasers of flats have purchased the flats in Schedule Land C solely on account of trust in the Petitioner/Respondent to complete construction timely. The interim order dated 28.03.2025 preventing further alienation of flats in Schedule Land C and consequent delay in construction timelines has not only affected the goodwill and reputation of the Petitioner/Respondent but has also affected the trust and vested rights of the third-party purchasers who have purchased flats in Schedule Land C and the Co-landowners who have not been impleaded in the present petition. The consequent loss of reputation and goodwill of the Petitioner/Respondent in the society has not only adversely affected the development project in Schedule Land C, but runs the risk of affecting other development projects undertaken by the Petitioner/Respondent as well.
24. Further, all the alleged claims of the Respondent/Petitioner, if any, are purely monetary in nature. The Respondent/Petitioner has not established any of the ingredients for grant of injunction under Section 9 of the Arbitration and Conciliation Act read with Order 39 Rule 1 and 2. There is no documentary proof, let alone any pleading warranting grant of an injunction in respect of the Petition Schedule Properties when it is undisputed that the Petitioner/Respondent herein is a well established real estate developer for more than two decades.
25. In contrast, the monetary loss and loss of reputation and goodwill suffered by the Petitioner/Respondent cannot be compensated in monetary terms. Thus, the balance of convenience lies in favour of the Petitioner/Respondent.



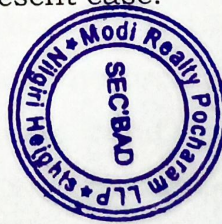
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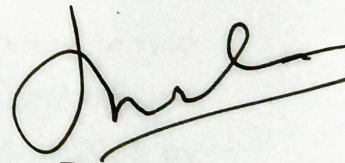
26. The present petition is made bonafide and in the interest of justice and irreparable loss and injury shall be suffered by the Petitioner/Respondent that cannot be compensated monetarily in the event the interim order dated 28.03.2025 is not vacated. It is respectfully submitted that alternate remedies apart from the interim injunction lie with the Respondent/Petitioner and no prejudice shall be caused to the Respondent/Petitioner in the event the interim order dated 28.03.2025 is vacated.

The Petitioner/Respondent seeks leave of this Hon'ble Court to file detailed counter to the main petition and also file additional documents during the course of proceedings.

PRAYER

In view of facts herein abovementioned it is most humbly prayed that this Hon'ble Court may be pleased to allow the present application and vacate the ex-parte order dated 28.03.2025 passed in A.O.P 36 of 2025 by this Hon'ble Court and pass any order/orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.




Deponent

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

Advocate/Hyderabad

**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

**PETITION FILED UNDER ORDER 39 RULE 4 R/W SECTION 151 OF
C.P.C.**

For the reasons stated in the accompanying affidavit it is therefore prayed that this Hon'ble Court may be pleased to allow the present petition and vacate the ex-parte order dated 28.03.2025 passed in A.O.P 36 of 2025 by this Hon'ble Court and pass any order/orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

Place:

Date:

Counsel for Petitioner

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

AT: HYDERABAD

I.A. No. of 2025
IN
A.O.P. No. 36 of 2025

Between:

M/s Modi Realty Pocharam LLP

Petitioner/Respondent

AND

M/s Modi Realty Pocharam LLP

Respondents/Petitioner

PETITION FILED UNDER O.39 R.4
R/W SECTION 151, C.P.C, 1908. ON
BEHALF OF THE PETITIONER

DUVVA PAVAN KUMAR
SHRADDHA GUPTA
G. NIKHITA HARI
VISHISHTA NARRA

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