

IN THE HON'BLE HIGH COURT FOR THE STATE OF TELANGANA
 AT: HYDERABAD
 ARB. APPL. NO. 189 OF 2025

BETWEEN:

Mr. Sriramoju Sambeshwar Rao and 21 others

PETITIONERS

AND

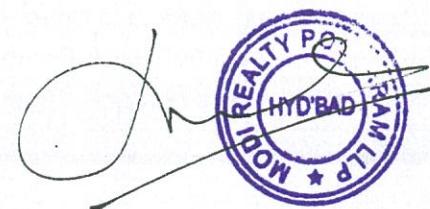
M/s. Modi Realty Pocharam LLP.

RESPONDENT

COUNTER AFFIDAVIT FILED ON BEHALF OF RESPONDENT

I, Mr. Soham Modi, S/o. Late. Satish Modi, aged about 54 years, R/o Plot No. 280, Jubilee Hills, Hyderabad, the authorized representative of the Respondent herein, do hereby solemnly affirm and state on oath as under –

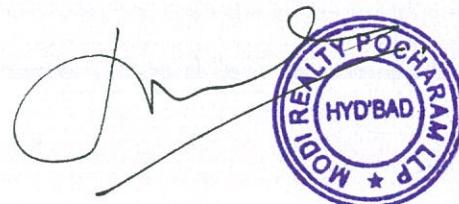
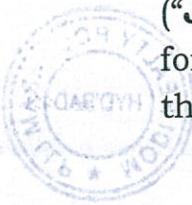
1. I am the Designated Partner and the authorized signatory of the Respondent and well conversant with the facts of the present case and hereby competent to depose this affidavit on behalf of the Respondent as hereunder.
2. At the outset, the Respondent denies all the allegations contained in the Petition filed by the Petitioner in its entirety and nothing contained herein may be deemed to have been admitted for reasons of non – traverse.
3. It is submitted that the above petition is filed with unclean hands, contrary to law, not bonafide, by suppressing material and true facts and as purely an afterthought.
4. Before advertizing to the para wise reply to the allegations contained in the above petition, it would be relevant to provide this Hon'ble Court with a brief background of the facts concerning the present case.



BRIEF FACTS:

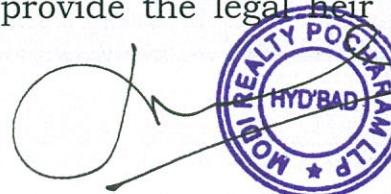
Execution of JDA 1 and JDA 2:

5. The Respondent is in the business of real estate construction and development. The Petitioner No. 1 is the absolute owner of land admeasuring Ac.0.31.50 Gnts in Sy.27, Pocharam Village, Ghatkesar Mandal, Medchal District ("**Schedule Land A**") by way of a sale deed bearing No 12620/2006 dated 09.09.2006. The Petitioners are the joint owners of Ac.1.28 Gnts in Sy.27, Pocharam Village, Ghatkesar Mandal, Medchal District ("**Schedule Land B**") (Hereinafter Schedule Land A and B together shall be referred to as "**Schedule Land C**").
6. The Petitioners were desirous of developing Schedule Land A and B i.e. Schedule Land C admeasuring Ac. 2-19.50 Gts., into a single residential housing project. Consequently, the Petitioners executed two development agreements cum general power of attorneys 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 Land C. Gharonda accordingly commenced work at the site, however, due to reasons best known to them, the development agreements bearing Nos. 21762/06 and 6531/07 dated 02.12.2006- were subsequently cancelled.
7. The Petitioners, still desirous of developing Schedule Land A and B into a residential housing project approached the Respondent. In furtherance thereof, a Memorandum of Understanding dated 24.05.2018 ("MOU") was executed between the Petitioner No.1 and the Respondent. Based solely on the representations of the Petitioners regarding the clear title of Schedule Land C and compliance of 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 and the Petitioner No.1 ("**JDA 1**") and a JDA bearing no. 13207/2019 dated 17.08.2019 for Schedule Land B was executed between the Respondent and the Petitioners ("**JDA 2**")



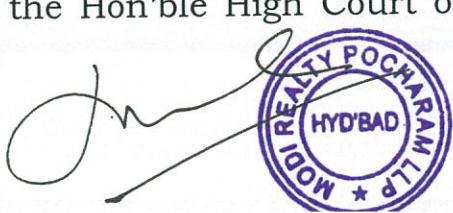
Difficulties faced by the Respondent on account of actions of Petitioner and other Co-lanowners:

8. Pursuant to the execution of the JDA's 1 and 2, the Respondent received approval from the Hyderabad Metropolitan Development Authority ("HMDA") bearing no. 12159/P4/Plg/HMDA/2008 dated 18.12.2020 as per Clause 38 of JDA 1 and 2 and commenced construction. However, the Petitioners have time and again defaulted in discharging their obligations under multiple clauses of the JDA 1 and 2 and have consistently remained unreachable which directly and ultimately impaired the Respondent in completing construction of Schedule Land C as per the timelines specified in Clause 38 of JDA 1 and 2 despite the Respondent's best efforts.
9. Under Clause 52 of the MOU and JDA 1 and 2, the Petitioners were to provide two general indemnities, indemnifying the Respondent from claims of Gharonda and purchasers of flats from Gharonda; and under Clause 46 (a) of the MOU the Petitioners were obligated to provide the legal heir certificates of Late Mukku Venkata Rama Prasad to the Respondent before the execution of the JDA 1 and 2. However, despite multiple reminders to comply with the aforementioned Clauses, the Petitioners remained in breach of the Clauses 46 and 52 of MOU and 52 of the JDA 1 and 2. As a last resort, the Respondent sent two legal notices dated 23.03.2024 to the Petitioner No.1 requesting compliance with the aforementioned Clauses.
10. The Petitioner No.1 finally responded to the Respondent's persistent efforts in the reply legal notice dated 14.05.2024 wherein the Petitioner No.1 provided clarifications and information regarding the legal heir certificates. The Respondents were able to procure the legal heir certificates only pursuant to the information provided in the reply legal notice dated 14.05.2024. Banks require legal heir certificates to establish clear title of Schedule Land C in order to issue and process loans. The Petitioners failure to provide the legal heir



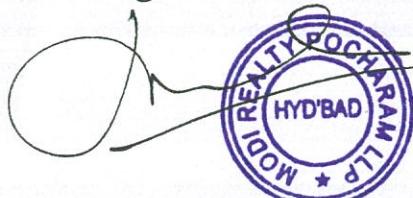
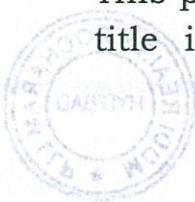
certificate till 2024 directly resulted in banks rejecting loans to the Respondent due to unclear title of Schedule Land C which caused grave financial duress to the Respondent and frustrated the timelines of construction.

11. Under Clauses 18, 22, 26, 28, 52 and 54 of the JDA 1 and 2, the Petitioners were obligated to ensure the title of Schedule Land C is and remains free from any defects; indemnify the Respondent against any breach of the JDA 1 and 2 by the Petitioners; indemnify against any claims from Gharonda and purchasers of flats from Gharonda; authorize the Respondent to correct the title and re-imburse the Respondent for any monies incurred in correcting the title. Upon approaching the Sub Registrar's Office, Narapally to register conveyance deeds for flats in Schedule Land C in favor of third-party purchasers, the Respondent was shocked to learn that the Schedule Land C was registered under the list of 'Prohibited Properties' pursuant to an order dated 21.08.2015 directing attachment of the Schedule Land C in a case bearing no AOP. 1611/2015 filed against Gharonda by purchasers of flats from Gharonda.
12. The Respondent learned that multiple cases bearing the following nos. O.P. 1583/2016, O.P. 1593/2016 and O.P. 1594/2016 were also instituted by purchasers of flats from Gharonda against Gharonda. To this effect, the Respondents also received a memo bearing no. 262/2022 dated 12.10.2022 from the Sub Registrar's Office Narapally, refusing to delete the Schedule Land C from the Prohibited Properties Registry. The Petitioners not only failed to ensure that the Schedule Land C stands free from encumbrances as on the date of executing JDA 1 and 2 as per Clause 18 of JDA 1 and 2, they also intentionally suppressed the material fact of Schedule Land C being listed in the 'Prohibited Properties Registry' from the Respondent.
13. The Respondents immediately sought clarification from the Petitioners, however the latter remained unresponsive. Despite the malafide conduct of the Petitioners, the Respondent in good faith, pursuant to Clause 28 of JDA 1 and 2, filed a case bearing No. W.P. 143/2023 before the Hon'ble High Court of



Telangana through its legal counsel to challenge the memo bearing no. 262/2022 dated 12.10.2022 in order to correct the title of Schedule Land C. The Hon'ble High Court in its order dated 10.01.2023 allowed the W.P. 143/2023 in favour of the Respondent. The Respondent incurred legal expenses of Rs. 10,00,000/- in connection with W.P. 143/2023 towards correcting the title and consequently requested the Petitioners pursuant to Clause 22 of the JDA 1 and 2 to reimburse the legal expenses incurred by the Respondent. Upon the Petitioners' continued unresponsiveness, the Respondent issued a legal notice dated 27.02.2024 enumerating the aforementioned facts and case details, attached the Order dated 10.01.2023 in W.P. 143/2023 and requested re-imbursement of the legal expenses incurred.

14. The Petitioner No.1 issued a reply notice dated 14.05.2024 denying any knowledge of the aforementioned cases filed by the purchasers of flats from Gharonda and W.P. 143/2023 filed by the Respondent and stated that the Petitioner has no obligation to re-imburse the Respondent of the legal fees incurred contrary to the Petitioners' obligations under the MOU and JDA. The Petitioners thus stand in breach of their obligations under JDA 1 and 2 as under Clause 28 the Respondent is obligated to take necessary legal action to protect the title of the Schedule Land C and is entitled to the re-imbursement of costs incurred. Further Clause 52 indemnifies the Respondent against all claims made by the purchasers of flats from Gharonda regardless of the Petitioner's knowledge of the same.
15. Moreover, the Petitioner No.1's denial to re-imburse the Respondent for the legal fees incurred citing lack of knowledge of the aforementioned cases is obsolete as the veracity of the aforementioned cases can be verified digitally with ease by any reasonable man from the information provided in various correspondences and in the legal notice dated 27.02.2024. The prohibition on the Schedule Land C was only lifted in January 2023 i.e. approximately four years after the execution of JDA. This prohibition on Schedule Land C and the resultant unclear title impaired the Respondent from resuming construction,

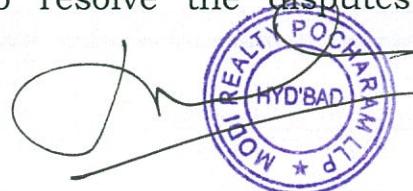


procure bank loans and alienate flats in the Schedule Land C in favour of third-party purchasers. In addition to not receiving bank loans and consideration for alienation of flats, the Petitioners' failure to re-imburse the Respondent for the legal fees incurred imposed grave financial duress upon the Respondent which affected the financial viability of the development project and consequently delayed the timelines of construction.

16. Further, Mr. Samala Narsimha Reddy instituted a case bearing no. W.P.No. 20561/2022 before the Hon'ble High Court of Telangana alleging that the nala constructed on the Schedule Land C to aid construction therein is encroaching upon the petitioner there-in's property i.e. Sy no. 28 and 29 of Pocharam Village. To that effect, the Respondent received notice from the Hon'ble High Court and was impleaded as Accused No.4. Subsequently, on 06.03.2023 the Respondent received a notice under Section 91/160 C.R.P.C from the Police Station, Ghatkesar and a case bearing Crime No. 131/2023 was registered.
17. Consequently, the Respondent appeared before the Police Station and appointed Senior Counsel Mr. Peri Prabhakar to defend the case and incurred legal expenses of Rs. 5,00,000/- as of February 2024. The W.P.No. 20561/2022 is currently pending adjudication. Pursuant to Clauses 22 and 26 under JDA, 1 and 2, the Respondent requested the Petitioners for reimbursement of Rs. 5,00,000/-. Upon the Petitioners unresponsiveness, the Respondent issued a legal notice dated 28.02.2024 enumerating the aforementioned facts and case details and requested re-imbursement of Rs. 5,00,000/-. The Petitioner No.1 in their reply notice dated 14.05.2024, once again denying any knowledge and nexus rejected their liability to reimburse the Respondent for legal fees incurred under the JDA 1 and 2. As explained in the preceding paragraph, the Petitioner No.1's denial of re-imbursing the Respondent is in bad faith and in breach of Clauses 18, 22, 26, 28 , and 54 of the JDA.



18. Pursuant to the legal notices sent to the Petitioner No.1, instead of complying with their obligations under the JDA 1 and 2 to ensure timely construction of the Schedule Land C, the Petitioner No.1 through his legal counsel got issued a legal notice dated 11.09.2024 to the Respondent demanding payment of Rs.69,37,280/- towards penalty for delayed construction timelines under Clause 38 purely as an afterthought and as a counter-blast. The Respondent issued a reply notice dated 12.11.2024 re-iterating the aforementioned facts and that the construction of Schedule Land C is directly dependent on the Petitioners fulfilling their obligations under the JDA 1 and 2 and once again requested re-imbursement of the costs incurred by the Respondent pursuant to discharging their obligations under the JDA. The averments of the Respondent in legal notice dated 12.11.2024 remains unanswered till date.
19. Under Clause 22 of the JDA 1 and 2, the Petitioners were obligated to pay the tax on the nala constructed in Schedule Land C. However, upon the Petitioners' failure to pay the said tax despite multiple reminders, the Respondent in good faith paid the nala tax charges to ensure timely construction of the Schedule Land C and is awaiting reimbursement of the charges so incurred till date. In light of the title of Schedule Land C being unclear, the Petitioners' consistent unresponsiveness, defaults under the JDA and failure to re-imburse legal fees and charges incurred by the Respondent pursuant to the JDA and the ongoing legal cases which threaten the continuance of development of Schedule Land C, the financial viability and timelines of construction under Clause 38 of JDA 1 and 2 were severely frustrated.
20. Furthermore, there exist ongoing disputes regarding the road enclosing the northern side of the Schedule Land C with the relevant authorities and the owners of neighboring property. 5 ft out of 30 ft road has been encroached upon by the owner of neighboring property which gravely hinders receiving 'No Object Certificate' from the relevant authorities. The Respondent is using all the necessary measures to resolve the disputes

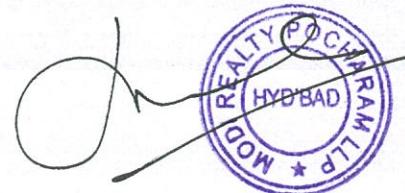


pertaining to the Nala, however, to the Respondent's dismay the Petitioners despite being aware of the same have rendered no support in its resolution.

21. In light of the aforementioned reasons which are beyond the control of the Respondent and the Petitioners willful breach of JDA 1 and 2 and failure to cure them despite multiple reminders directly resulted in the Respondent's inability to adhere to the construction timelines envisaged under Clause 38 of the JDA 1 and 2. It is respectfully submitted that the caption petition is instituted by the Petitioners on basis of half-baked facts, imaginary disputes and, as an afterthought and counterblast, with unclean hands, by suppressing material facts solely to escape the Petitioners liability to re-imburse the Respondent for fees and charges incurred under the JDA 1 and 2.

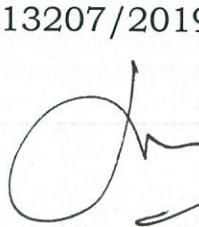
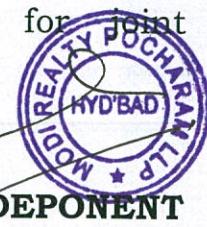
Section 11 Application filed by the Petitioner in respect of JDA 1:

22. The Petitioner No.1 has filed another petition bearing no. Arb. Appl. 171 of 2025 under Section 11 of the Arbitration & Conciliation Act, 1996 against the Respondent herein before this Hon'ble Court. Arb. Appl. 171 of 2025 and the caption petition are mirror petitions having the same cause of action, reliefs, parties and arise out of the same agreements i.e. JDA 1 and 2.
23. It is most humbly submitted that, in view of the above, the disputes, between the Petitioner and the Respondent not only arise out of Joint Development Agreement cum General power of Attorney No. 13207/2019 but also Joint Development Agreement cum General Power of Attorney No. 13206/2019. Further, by virtue of Clause 53 in JDA 1 and JDA 2, the entire Project is a common joint Project, and the disputes arising thereof must be jointly adjudicated. In view thereof, the Respondent herein consents to appointment of a 'Sole Arbitrator' by this Hon'ble Court for adjudication of all the



disputes between the Parties to the JDA 1 and JDA 2 including but not limited to the breach of obligations of the Petitioners

24. It is thus most humbly prayed that this Hon'ble Court may kindly be pleased to appoint a 'Sole Arbitrator' for adjudication of all the disputes between the parties under (i) Joint Development Agreement cum General power of Attorney No. 13206/2019 and (ii) Joint Development Agreement cum General power of Attorney No. 13207/2019 for joint adjudication of all the disputes.

MODI REALTY POCHARAM LLP * HYD'BAD
DEPONENT

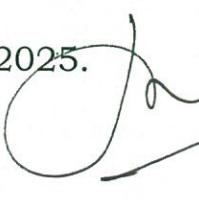
Sworn and signed before me on this
the ____ day of November 2025

ADVOCATE :: HYDERABAD

VERIFICATION

I, Mr. Soham Modi, S/o. Late. Satish Modi, aged about 54 years, R/o Plot No. 280, Jubilee Hills, Hyderabad, the authorized representative of the Respondent herein i.e. M/s. Modi Realty Pocharam LLP, a company incorporated under Companies Act, 1956 and having its registered office at 5-4-187/3 & 4, verify that the contents of the above affidavit are true and correct to the best of my knowledge and belief.

Hence verified on this _____ day of November, 2025.




MODI REALTY POCHARAM LLP * HYD'BAD
DEPONENT

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RESPONDENT

COUNTER AFFIDAVIT FILED ON
BEHALF OF RESPONDENT

Filed on:

Filed by:

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