



HC-KAR

NC: 2026:KHC:25826
WP No. 3571 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF JUNE, 2026

BEFORE

HON'BLE MS. JUSTICE TARA VITASTA GANJU

WRIT PETITION NO.3571 OF 2023 (GM-CPC)

BETWEEN:

1. SRI. D ARUN REDDY
PROPRIETOR: M/S RIGHT CHOICE PROPERTIES,
NO.16, 1ST FLOOR, 11TH CROSS,
HAL, BENGALURU – 560 017

ALSO AT
NO.306, 4TH FLOOR,
R C SAI NIKETHAN,
DEVARASA BEESANAHALLI
MAIN ROAD, BELLANDUR POST,
BENGALURU – 560 103

2. SMT. G NIRMALA
D/O SRI. G.SRINIVASULU REDDY
W/O D.ARUN REDDY
RESIDING AT NO.306, "R C SAINIKETHAN"
DEVARA BEESANAHALLI VILLAGE,
BELLANDUR POST, VARTHUR HOBLI,
BENGALURU EAST TALUK,
BENGALURU – 560 103

...PETITIONERS

(BY SRI. CHINTAN CHINNAPPA M., ADVOCATE)

AND:

1. LATE SRI. MUNI REDDY
NO.204, "R C SAINIKETHAN",
DEVARASA BEESANAHALLI
VILLAGE, BELLANDUR POST,
VARTHURU HOBALI,



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BENGALURU EAST TALUK
BENGALURU – 560 103
REPRESENTED BY HIS LEGAL HEIRS NAMELY
RESPONDENT NOS.1, 2, 3 AND 4

2. SMT. RUKKAMMA
W/O LATE SRI. MUNI REDDY
NO.204, "R C SAINIKETHAN",
DEVARASA BEESANAHALLI
VILLAGE, BELLANDUR POST,
VARTHURU HOBALI,
BENGALURU EAST TALUK
BENGALURU – 560 103
3. SRI. SATHISH REDDY
S/O LATE SRI. MUNI REDDY,
NO.204, "R C SAINIKETHAN",
DEVARASA BEESANAHALLI
VILLAGE, BELLANDUR POST,
VARTHUR HOBALI,
BENGALURU EAST TALUK
BENGALURU – 560 103
4. SMT. SHEELA
D/O LATE SRI. MUNI REDDY
NO.204, "R C SAINIKETHAN",
DEVARASA BEESANAHALLI
VILLAGE, BELLANDUR POST,
VARTHURU HOBALI,
BENGALURU EAST TALUK
BENGALURU – 560 103
5. SRI. MADHUKUMAR
S/O LATE SRI. MUNI REDDY,
NO.204, "R C SAINIKETHAN",
DEVARASA BEESANAHALLI
VILLAGE, BELLANDUR POST,
VARTHURU HOBALI,
BENGALURU EAST TALUK
BENGALURU – 560 103

...RESPONDENTS

(BY SRI. C V MANJUNATH, ADVOCATE FOR C/R1;
SRI. V SHIVAKUMAR, ADVOCATE FOR R2;



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VIDE ORDER DATED 17.04.2023, PETITION AGAINST R3 & R4 IS DISMISSED)

THIS WP IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE ORDER DATED 03/01/2023 PASSED BY THE LXXXIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, COMMERCIAL COURT COMPLEX AT BENGALURU IN COM A.S.NO.152/2019 REJECTING IA NO.2/2022 FILED BY THE PETITIONERS MARKED AS ANNEXURE-A.

THIS PETITION HAVING BEEN RESERVED FOR ORDERS ON **04.02.2026**, COMING ON FOR PRONOUNCEMENT THIS DAY, THROUGH VIDEO CONFERENCING, SITTING AT DHARWAD BENCH, THE ORDER WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MS. JUSTICE TARA VITASTA GANJU

CAV ORDER

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I. Preface

1. The present writ petition is filed seeking to set aside an Order dated 03.01.2023 passed by the LXXXIII Additional City Civil & Sessions Judge, Commercial Court Complex, Bengaluru in Com.A.S.No.152/2019, (hereinafter referred to as the "Impugned Order"), whereby I.A. No.2 under Section 151 of Code of Civil Procedure, 1908 (hereinafter referred to as 'the CPC') seeking return of the petition presented under Section 34 of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as the "A&C Act") was rejected, in view of the fact that the dispute constitutes a "commercial dispute" within the meaning of Section 2(1)(c) of the Commercial Courts Act, 2015 (hereinafter referred to as the "CC Act") and that it ought to be tried by the Commercial Court.

II. Brief Facts

2. Briefly, the facts are that the respondents herein claimed to be the owners of non-agricultural land which is



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immovable property bearing Old Sy.No.57/1A, New Sy.No.57/1A1 of Devarabisanahalli Village, Varthur Hobli, earlier Bangalore South Taluk, presently Bangalore East Taluk, admeasuring 7.12 guntas [hereinafter referred to as the "suit schedule property"]. Initially a Memorandum of Understanding dated 25.07.2010 (hereinafter referred to as the "MOU") was entered between the parties for the purpose of jointly developing the suit schedule property into an apartment complex. A Joint Development Agreement dated 24.03.2011 thereafter came to be executed between the landowners and the Petitioner No.1 (hereinafter referred to as the "JDA"). Subsequently, supplementary agreements were also entered into on 17.12.2011 and on 02.06.2014 between the parties.

2.1 The respondents are also referred to as the 'landowners', while the petitioners as the 'developers' for clarity.

2.2 Under the terms of the said JDA, the parties agreed upon a sharing arrangement whereby 40% of the super



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built-up area in the proposed apartment complex was to be allotted to the landowners and 60% to the developer. Simultaneously, a General Power of Attorney dated 24.03.2011 was executed by the landowners in favour of the developer authorising him to undertake acts necessary for development of the property.

2.3 Pursuant to the JDA, the developer obtained sanction of the building plan from the competent authority, and proceeded to construct a residential apartment project. The construction was undertaken initially in respect of what has been described in the record as "Block-A" and subsequently in respect of "Block-B".

2.4 After commencement and completion of construction, disputes arose between the parties. The areas of controversy included allegations on the part of the landowners that there was delay in completion of construction; that the penthouse in Block-A, which according to them formed part of their entitlement, was not delivered to them; that the developer had appropriated



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excess super built-up area beyond his agreed 60% share. In addition, it was contended that the developer had executed a registered Sale Deed dated 18.07.2013 in respect of penthouse in block A, in favour of his wife, arrayed as respondent No.4.

2.5 In view of the *inter-se* disputes, the petitioners invoked the arbitration clause contained in the JDA. CMP No.48/2017 was filed before the High Court of Karnataka seeking appointment of an arbitrator. Pursuant thereto, a Sole Arbitrator came to be appointed.

2.6 The respondents filed a claim arising out of the JDA, which was contested by the petitioners. The arbitral proceedings culminated in an Award dated 12.07.2019 (hereinafter referred to as the "Arbitral Award"), whereby the claim of the respondent was dismissed.

2.7 Being aggrieved by dismissal of their claims by the Arbitral Award, the respondent Nos. 1 to 3 filed petition under Section 34 of the A&C Act. The said petition was registered as Com. A.S. No.152/2019 before the LXXXIII



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Additional City Civil & Sessions Judge, Commercial Court Complex, Bengaluru.

2.8 The petitioners filed I.A. No.2 under Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as the "CPC") seeking return of the Section 34 petition on the ground that the dispute arising out of the JDA does not constitute a "commercial dispute" within the meaning of Section 2(1)(c) of the CC Act, 2015, and therefore the Commercial Court lacked jurisdiction to entertain the matter.

2.9 By the Impugned Order dated 03.01.2023, the Commercial Court rejected I.A. No.2, holding that the dispute arises out of a construction contract and squarely falls within Section 2(1)(c)(vi) of the CC Act, 2015. It is this order which is assailed in the present proceedings.

III. Contentions by the Petitioners:

3. The learned counsel for the petitioners contends that the Impugned Order passed by the Commercial Court rejecting I.A. No.2 is erroneous and contrary to law. The learned counsel places reliance on the judgment of the



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Supreme Court in ***Sushil Kumar Agarwal v. Meenakshi Sadhu***¹, to contend that the nature and character of the agreement must be examined to determine whether any interest in the immovable property has been created in favour of the developer, and that jurisdiction must be determined strictly in accordance with the nature of the agreement and the statutory framework. It is contended that in the present case, the agreement does not fall within the ambit of a commercial dispute.

3.1 The learned counsel for the petitioner places reliance on the judgment of the Delhi High Court in ***Vijay Kohli v. Sanjay Jethwani***², to contend that not every construction agreement or building contract would automatically fall within the definition of a commercial dispute, and the Court is required to examine the substance and nature of the agreement and the intention of the parties to determine whether the dispute falls within Section 2(1)(c) of the CC Act.

¹ (2019) 2 SCC 241

² 2025 SCC OnLine Del 8115



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3.2. In addition, the learned counsel also relies on the judgment of the High Court of Madhya Pradesh in **Hema Sharma v. New Agrawal Construction**³, to contend that merely because the agreement relates to construction of a residential building, the dispute cannot be automatically treated as a commercial dispute, and the Court must examine the nature of the transaction and the relationship between the parties.

3.3. The learned counsel further references the judgment of the High Court of Andhra Pradesh in **Blue Nile Developers Pvt. Ltd. v. Movva Chandra Sekhar**⁴ and judgments of this Court in **Sri R.J. Dayananda vs. Smt. Narasamma**⁵ and **M/s. Kiran Builders v. M. Surya Babu**⁶, to contend that disputes arising out of construction and development agreements relating to residential properties require careful examination to determine whether they fall within the statutory definition of

³ Civil Revision No.247 of 2025 v/o dt. 26.03.2025;2025:MPHC-GWL:7170

⁴ 2021 SCC OnLine AP 3964

⁵ W.P.No.28536 of 2024 dated 28.10.2024; NC:2024:KHC:43534

⁶ W.P. No.3873 of 2023 dated 04.09.2023; NC:2023:KHC:31800



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commercial dispute under Section 2(1)(c) of the CC Act and that these judgments have not taken into account the judgment of the Supreme Court in the ***Sushil Kumar Agarwal*** case.

3.4. The learned counsel for the petitioners further places reliance on the judgment of the Co-ordinate bench of this Court in ***M/s. Indraprastha Shelters Pvt. Ltd. v. South India Biblical Seminary***⁷, wherein this Court has held that where the terms of a JDA merely require the developer to construct and deliver the agreed share of built-up area to the landowner and do not disclose any commercial transaction falling within the statutory definition, the dispute arising therefrom would not qualify as a “commercial dispute” under Section 2(1)(c) of the Commercial Courts Act, 2015, and consequently the Commercial Court would have no jurisdiction. It is therefore contended that the ratio laid down in the said judgment squarely applies to the present case.

⁷ W.P. No.11783/2020 dated 15.12.2020 of Kar.HC



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3.5. On the basis of the aforesaid judgments and the statutory framework, the learned counsel for the petitioners contends that the dispute arising out of the JDA in the present case does not fall within the definition of a “commercial disputes” under Section 2(1)(c) of the CC Act and therefore the CC Act lacked jurisdiction to entertain the petition under Section 34 of the A&C Act.

3.6 It is therefore contended that the Impugned Order dated 03.01.2023 rejecting I.A. No.2 is liable to be set aside and the petition under Section 34 of the A&C Act is liable to be returned for presentation before the competent court.

IV. Contentions by the Respondents:

4. On the other hand, the learned counsel appearing for the respondents supports the Impugned Order and contends that the same does not suffer from any illegality or jurisdictional error warranting interference by this Court. It is contended that the petitioners herein had entered into a JDA dated 24.03.2011 with the respondents for construction of a multistoried residential apartment



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complex, and under the terms of the said agreement, the developer was entitled to 60% of the super built-up area and the landowners were entitled to 40% of the super built-up area.

4.1. The learned counsel submits that disputes arose between the parties on account of the developer having taken excess super built-up area beyond his entitlement under the JDA and having failed to deliver the allotted share to the landowners in accordance with the agreed ratio. It is further contended that the total super built-up area measured 21,842 sq.ft., out of which the respondents were entitled to 7,661.12 sq.ft., however only 4,910 sq.ft. was allotted to them, and the developer had taken 15,943.32 sq.ft., which was in excess of his entitlement.

4.2. It is further contended that the developer had also failed to hand over possession of the penthouse to the respondents or pay the equivalent value thereof, and therefore disputes arose between the parties, which lead to the Arbitration.



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4.3. It is contended that the Commercial Court, upon consideration of the nature of the JDA and the dispute involved, has rightly held that the dispute arises out of a construction and development agreement and falls within the definition of “commercial dispute” under Section 2(1)(c)(vi) of the CC Act. Since it is a construction and development contract entered into for the purpose of construction of residential apartments and sharing of constructed area.

4.4. Learned counsel has placed emphasis on the judgment of the High Court of Andhra Pradesh in ***Blue Nile Developers’*** case to contend that disputes arising out of construction and development agreements relating to residential projects fall within the ambit of “construction and infrastructure contracts” under Section 2(1)(c)(vi) of the CC Act, and therefore constitute commercial disputes triable by the Commercial Court. In addition, reliance is also placed on the judgment of this Court in ***Kiran Builders’*** case, to contend that agreements relating to construction and development, including JDAs, would fall within the definition



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of commercial dispute under Section 2(1)(c)(vi) of the CC Act.

4.5. The learned counsel for the respondents further places reliance on the judgment of the Bombay High Court in ***Vaijanath Dayanand Kale v. Nerkar Properties LLP***⁸, to contend that disputes arising out of development agreements and construction-related transactions involving development of immovable property fall within the ambit of commercial disputes under Section 2(1)(c) of the CC Act, and therefore the Commercial Court is competent to exercise jurisdiction over such disputes.

4.6. It is therefore contended that in view of the nature of the JDA, the statutory definition under Section 2(1)(c)(vi) of the CC Act, and the law laid down in the aforesaid judgments, the CC Act has rightly exercised jurisdiction, and the Impugned Order rejecting I.A. No.2 does not warrant interference by this Court.

⁸2020 SCC OnLine Bom 906



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WP No. 3571 of 2023**V. Issue for Consideration:**

5. In view of the rival contentions urged by the parties, the following issue arises for consideration:

"Whether the dispute arising out of the JDA dated 24.03.2011 falls within the definition of a 'commercial dispute' under Section 2(1)(c) of the CC Act, 2015, and consequently whether the Commercial Court was justified in rejecting I.A. No.2 filed by the petitioners seeking return of the petition presented under Section 34 of the A&C Act before the Commercial Court?"

VI. Analysis and Findings :

6. This Court, by its order dated 28.03.2023, directed a stay of proceedings before the learned Trial Court, which order has continued till today. This Court had also directed that the petition *qua* respondent Nos.3 and 4 stands dismissed as on 17.04.2023 in view of the fact that despite various opportunities, these respondents remained unserved.

7. In essence, it is the case of the petitioners that the agreement between the parties was exclusively for residential purposes and would not come within the definition of commercial disputes under the CC Act. The



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respondents on the other hand supports the Impugned Order and contends that the same does not suffer from any illegality or jurisdictional error warranting interference by this Court.

(a) The Statute:

8. In order to appreciate better the contentions of the parties, it is apposite in the first instance to set out the relevant extract of the CC Act. Section 2(1)(c) of the CC Act, provides for a wide range of disputes which have been recognized by the legislature as commercial disputes and which are incorporated from clause (i) to (xxii). It includes ordinary transactions of merchants and bankers to export and import of merchandise, admiralty and carriage of goods, license agreements etc. The definition of commercial disputes under this provision is thus exhaustive and detailed and covers each kind of commercial transaction and a wide range of categories. It has been contended that the transaction between the parties would come under either (vi) Construction & Infrastructure Contracts; or (vii) Agreements relating to immovable property used



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exclusively in trade or commerce or (xi) joint venture agreements as are defined under Section 2(1)(c) of the CC Act as below:

"2(1) In this Act, unless the context otherwise requires,--

(a) xxx xxx xxx

(b) xxx xxx xxx

(c): "commercial dispute" means a dispute arising out of—

xxx

xxx

xxx

(vi) construction and infrastructure contracts, including tenders;

(vii) agreements relating to immovable property used exclusively in trade or commerce;

xxx

xxx

xxx

(xi) joint venture agreements;"

xxx

xxx

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[Emphasis Supplied]

9. A commercial dispute arises when the terms or consequences of an agreement extend beyond a purely private arrangement between contracting parties and generate broader commercial activity between them. Not every dispute can automatically be classified as a commercial dispute and it is essential to examine the provisions of the agreement to see whether it aligns with



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any of the categories contained in Section 2(1)(c) of the CC Act. A key consideration is whether the parties, at the time of entering into the contract, recognized and intended for the agreement to fall within the scope of sub-clauses (i) to (xxii) of Section 2(1)(c) of the CC Act.

9.1 Section 6 of the CC Act provides that in order to be categorized as a commercial dispute under Section 2(1)(c) of the CC Act, only a commercial suit of the specified value where the subject matter exceeds Rs. 3 lakhs, would fall within the definition of a commercial dispute. In addition, Section 11 of the CC Act also provides that Commercial Court shall not entertain or decide any suit, application or proceedings relating to any commercial dispute in respect of which the jurisdiction of the civil court is either expressly or impliedly barred under any other law. Sub-section (2) of Section 10 of the CC Act provides that where the subject matter of an arbitration is a commercial dispute of a specified value, the Commercial Court exercising territorial



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jurisdiction, would hear and decide the matter. The relevant provisions of the CC Act are below:

"6. ***Jurisdiction of Commercial Court.***—The Commercial Court shall have jurisdiction to try all suits and applications **relating to a commercial dispute of a Specified Value arising out of the entire territory of the State over which it has been vested territorial jurisdiction.**

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10. ***Jurisdiction in respect of arbitration matters.***—**Where the subject-matter of an arbitration is a commercial dispute of a Specified Value** and--

(1) **If such arbitration is an international commercial arbitration,** all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that have been filed in a High Court, **shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court.**

(2) **If such arbitration is other than an international commercial arbitration,** all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that have been filed on the **original side of the High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court.**

(3) **If such arbitration is other than an international commercial arbitration,** all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that would ordinarily lie before any principal civil court of original jurisdiction in a district (not being a High Court) **shall be filed in, and heard and disposed of by the Commercial Court exercising territorial jurisdiction over such arbitration where such Commercial Court has been constituted.**



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11. Bar of jurisdiction of Commercial Courts and Commercial Divisions.—Notwithstanding anything contained in this Act, a Commercial Court or a Commercial Division shall not entertain or decide any suit, application or proceedings relating to any commercial dispute in respect of which the jurisdiction of the civil court is either expressly or impliedly barred under any other law for the time being in force.

[Emphasis Supplied]

10. As stated above, the present proceedings emanate from a petition under Section 34 of the A&C Act with respect to the challenge made by the respondents to the Arbitral Award.

11. It is no longer *res integra* that the provisions of CC Act have to be construed and interpreted in a narrow sense in order to fulfil the object of the Act. In ***Ambalal Sarabhai Enterprises Limited v. K.S. Infraspace LLP***⁹, the Supreme Court observed that the question of whether the suit falls within the scope of a 'commercial dispute', as defined under the Commercial Courts Act, cannot be dealt with in abstract. Instead, the nature of the dispute and the jurisdiction to try the same is to be reflected in the suit

⁹ (2020) 15 SCC 585



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itself, since in a civil suit, the pleadings, namely, averments in the plaint would, at the outset, be relevant to confer jurisdiction. It was further held that the very purpose for which the Commercial Courts Act has been enacted is to expedite the adjudicatory process and to place the trial of the suits relating to Commercial Dispute on a fast track. The provisions of the Act are, therefore, required to be strictly construed, as if the provisions are given a liberal interpretation, the object behind the Act will be defeated. The relevant extract of the ***Ambalal Sarabhai*** case is below:

*"8. Though such rival contentions are put forth by the learned Senior Advocate on either side, these aspects cannot be dealt with in abstract. **Instead the nature of the dispute and the jurisdiction to try the same is to be reflected in the suit itself since in a civil suit the pleadings, namely, averments in the plaint would at the outset be relevant to confer jurisdiction. Hence before adverting to the other aspects it would be necessary to carefully examine the plaint.** The plaintiff has in detail referred to the nature of the transaction between the appellant and the respondents herein. In Para 5 thereof the detail of the land bearing R.S. No. 122 corresponding to City Survey Nos. 1101 and 1100/1 having land area of 9207 sq m at Mouje Subhanpura Reg. District, Vadodara is referred. Further the schedule of the property is indicated in Para 6 and reference is made to the Memorandum of Understanding where again the reference is made to the land. It is averred therein that it would be the total responsibility of Respondent 1 herein (Defendant 2 in the suit) to change the land use as well as to pay the amount that may be*



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required for the permission. The amount to be paid as premium is referred and the right of the plaintiff to secure the mortgage deed in view of the terms of the MoU is stated. In the entire plaint there is no reference to the nature of the land or the type of use to which it was being put as on the date of the agreement to sell/sale deed/memorandum of understanding or as on the date of the suit.

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36. A perusal of the Statement of Objects and Reasons of the Commercial Courts Act, 2015 and the various amendments to the Civil Procedure Code and insertion of new rules to the Code applicable to suits of commercial disputes show that it has been enacted for the purpose of providing an early disposal of high value commercial disputes. **A purposive interpretation of the Statement of Objects and Reasons and various amendments to the Civil Procedure Code leaves no room for doubt that the provisions of the Act require to be strictly construed. If the provisions are given a liberal interpretation, the object behind constitution of Commercial Division of Courts viz., putting the matter on fast track and speedy resolution of commercial disputes, will be defeated.** If we take a closer look at the Statement of Objects and Reasons, words such as "early" and "speedy" have been incorporated and reiterated. **The object shall be fulfilled only if the provisions of the Act are interpreted in a narrow sense and not hampered by the usual procedural delays plaguing our traditional legal system.**"

[Emphasis Supplied]

(b) The Tenets of the Agreements:

12. In the context of the foregoing, it is apposite to examine the contract entered into between the parties. The petitioner and the respondent entered into a JDA on 24.03.2011 as well as two Supplementary Agreements on



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17.12.2011 and 02.06.2014 (hereinafter referred to as the 'SA'). In terms of the JDA, the respondents have stated that they required the development of the suit schedule property and have approached the petitioner/developers for such development. In terms of the recitals of the JDA, it is set out that the respondents/owners would get conversion done and obtain the necessary permission to construct residential apartments and the petitioner/ developers shall obtain the other permissions for the development of the property. In addition the JDA sets out that the agreement between the parties is for the purpose of "putting up multi-storied residential apartments". The relevant extract of the recitals of the JDA, are set out below:

"WHEREAS, the parties of the First Part are desirous of getting caused the development of the Schedule Property and in this regard have approached the Second Party, who have the necessary expertise and infrastructure and requested him to develop the Schedule Property.

WHEREAS the Owners have represented as under:-

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(e) That the owners would get the land converted from agricultural to non-agricultural residential purpose before development of the Schedule Property and after change of land from Hi-tech Zone to residential zone and conversion of the land for residential purposes, the Promoter/Developers shall obtain



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Katha and plan approval from the Bangalore Development Authority or BBMP or from any other competent authority for the development of the Schedule Property and The entire cost of Betterment charges and obtaining BBMP Katha in the name of present owner shall be borne by the Owners alone. However, the expenses incurred for conversion and plan approval shall borne by the Promoter.

Acting on the said representations, the **Promoter/Developers agreed to develop the Schedule Property by putting up one common project and by entering into joint development with owners** in respect of the Schedule Property and the Parties are desirous of reducing the terms agreed into writing;

The owners herein have agreed to develop the Schedule Property through the Promoter, after getting the Conversion Order/Official Memorandum issued from the Special Deputy Commissioner, Bangalore District, plan sanction from Bangalore Development Authority or BBMP or from any other competent authority **and katha, and other sanction / permission / consent/NOC from the various competent authorities as required** under law and after compliance of all the statutory provisions, the Promoter/Developers shall commence the development work over the Schedule Property.

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III. NOW THIS AGREEMENT WITNESSETH AS FOLLOWS

That in pursuance of the foregoing and subject to the mutual obligations undertaken by the Owners and **Promoter/Developers under this Agreement, the Owners and Promoter hereby agree to develop the Schedule Property by constructing and putting up multi-storied residential apartments subject to the terms and conditions herein contained.**"

[Emphasis Supplied]



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12.1 The JDA further sets out that the respondents/owners would get the 'land use' changed and also all sanction/permission/consents from the competent authority required in law for commencing the development work.

12.2 In addition, it is set out in the JDA that the petitioner agreed to develop the schedule property by constructing multi-storied residential apartments. The agreement also sets out that the respondents as owners, have given an authorization to the petitioner to enter upon the schedule property and carry out the work of construction. It further sets out that the costs of construction shall be shared between the petitioner and respondents in proportion of their respective shares and shall be shared 60% with the petitioner and 40% with the respondent. The agreement also sets out that the respondents would remain the owners of 40% of the suit property while the petitioners would be entitled to 60% and would be entitled to hold sale or lease or otherwise dispose of their respective shares, as is reproduced below:

"1) PERMISSION FOR DEVELOPMENT:



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1.1) The Owners are in possession and enjoyment of the Schedule Property. The Owners hereby irrevocable authorize the Promoter/Developers for the purpose of development, to enter upon the Schedule Property and develop the same, **however the authority so granted does not in any manner be construed as delivery of possession by the Owners in part performance of this agreement or any Agreement of sale under section 53-A of the Transfer of property Act or under Section 2(47) (iv) of the Income Tax Act, 1961.**

1.2) The Owners **hereby agree not to interfere or interrupt in the course of construction and development of the Schedule Property** and/or commit any act or omission having the effect of delaying or stopping the work that has to be done under this Agreement. However, the owners shall always be entitled to inspect the progress of the work and type of work, which is being done on the Schedule property.

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4. COST OF CONSTRUCTION

4.1) The entire cost of construction, including Architects fee and charges/fee if any, to be paid for Licence etc., Deposits, payments for the temporary connection of water and electricity during construction and development of the Schedule Property shall be borne by the Promoter/Developers and Owners of their respective Shares.

5. SHARING OF BUILT AREA:

5.1) In consideration of Owners agreeing to transfer an undivided 60% (Sixty Percent) share in the Schedule Property to the Promoter/Developers or their nominee/s, the Promoter/Developers agree to construct and deliver



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to the Owners, free from all encumbrances and liabilities **40% (Forty Percent) of the Super built-up area in the Building/s to be constructed in the Schedule Property (hereinafter together referred to as the "OWNERS' CONSTRUCTED AREA" for the absolute use and/or benefit and ownership of the Owners; the cost of construction of such Owners' constructed Area shall be borne by the Promoter/Developers:**

5.2) In consideration of the Promoter/Developers agreeing to deliver the Owners' constructed Area as per Para 5.1 above, the owners hereby agree to transfer/convey to the Promoter/Developers or his/its/their nominee/s, an undivided 60% (Sixty Percent) share in the Schedule property, either in one lot or in several shares through separate instruments;

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5.4) The Promoter shall be entitled to hold or to sell, lease or otherwise dispose of the remaining 60% (Sixty Percent) constructed area terrace and car parking Area with undivided 60% (Sixty Percent) share in the land comprised in the Schedule Property; constructed area terrace and car parking Area with undivided share in the Schedule property, either in one lot or in several shares through separate instruments and the Promoter shall be entitled to all income, gains, capital, appreciation and benefits of all kinds of description accruing or arising there from;

5.5) After sanction of Plan, **the Owners'/First Party and Promoter/Second Party share upon the Apartments falling to their respective shares,** by mutual discussions upon the flats to be taken to their respective share **and in that regard shall enter into a Supplemental Agreement.**

5.6) It has been specifically agreed between the Parties herein that the flat sharing ratio of 40% :60% between the First party/owners and Second party/Promoter shall be applicable only for



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sharing of flats as per sanction plan issued by the BBMP."

[Emphasis Supplied]

12.3 The transfer of 60% of the share of the property to the petitioner or to a nominee of the petitioner to the extent of 60% undivided share in the land also forms part of the JDA. In addition, the JDA also sets out the specifications for the construction in detail, which includes the type of flooring, kitchen, platform, doors, windows, paint, etc. Various other terms and conditions were also added including indemnities and an arbitration clause. The relevant extract is set out below:

"8) TRANSFER OF PROMOTER/DEVELOPERS SHARE:

8.1) The Owners shall convey/transfer Promoter's 60% (Sixty Percent) share in the land comprised in the Schedule property to the promoter or persons nominated by the promoter in terms of this agreement;

8.2) After the commencement of construction and execution of the Agreement for allocation of the Owners Constructed Area in terms of Clause 5 mentioned above, the Promoter/Developers will be entitled to enter into Agreements for sale of undivided shares in the Schedule Property to an extent of 60% (Sixty Percent) with persons intending to own units and enter into Construction Agreement with such intending Unit Holders entirely at the risk as to cost and consequences of the Promoter/Developers;



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8.3) The stamp duty, registration charges and expenses in connection with the preparation and execution of the Deed/s of conveyance and/or other **documents relating to the 60% (Sixty Percent) share in the land rights in the schedule Property agreed to be conveyed to the Promoter/Developers or Promoter's nominee/s shall be borne by the Promoter/Developers or their nominee/s;**

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23. SPECIFICATION:

1. Structure : RCC framed structure 1: 2: 3.
2. Walls : External Walls of 6" Solid Cement Concrete Blocks in 1: 6 C.M. with intermediate R.C.C. Bed and internal walls with 4" Solid Blocks.
3. Plastering : 1:5 C.M. with lime rendering smooth finish for internal and external wall with sponge finish cement plastering.
4. Flooring : Vitrified Flooring in all rooms and 4" skirting.
5. Kitchen Platform : Granite kitchen platform with stainless steel sink and 2 feet height glazed tiles above the platform.
6. Toilets : 7 feet height glazed tile and antiskid flooring, common toilet with attached toilets E.W.C. with flush tank and provision for geyser other necessary C.P. fittings for toilet.
7. Electrical work : Concealed copper wiring with Anchor Plate switches and three 15 amps power plug points and fifteen light points.
8. Doors : Main Door frame with Teak wood with O.S.T. door shutter, with outside brass fitting remaining doors with Sal Wood frames and flush door shutters.
9. Windows : Three trach Aluminum sliding windows with frame and safety grill.
10. Paints: Inside One coat of primer with two coats emulsion paints and outside one coat of primer with two



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coats Emulsion paints and Enamel paints to doors and window grills.

11. T.V. & Telephone Points : Individual TV & Telephone points in Main Hall and. Master Bed Room.

12. Compound walls & Gate : Gates shall be provided after allotment of parking depending upon convenience of parking.

13. Water : 24 hrs water deep tube well.

14. Parapet wall : 3 feet

15. Underground Sump

16. Common overhead tank.

17. Common Septic Tank

18. Common Lifts

19. Generator for Lift, common Areas and one light and fan point in main Hall and Bed Rooms."

[Emphasis Supplied]

12.4 Thus, the JDA contained detailed terms and conditions with respect to the building and construction of the suit schedule property.

13. The Supplementary Agreement dated 17.12.2011 was also similarly entered into between the petitioner and the respondents, wherein the share of flats allocated to the respondents, was set out in the following manner:

"WHEREAS the Parties herein have already entered into a Joint Development Agreement dated 24/03/2011, registered as document No.08516/2010-11, Book - I, registered before the Office of the Sub-Registrar, Varthur, Bangalore, for the development of all that piece and parcel



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of property more fully described in the Schedule hereunder and hereinafter referred to as the Schedule Property.

WHEREAS in pursuance to *clause 5.5, of the said Joint Development Agreement, the parties herein have mutually agreed to share the flats to their respective share in the project known as "R.C.SAI NIKETHAN "* in the following manner.

a) Flats allocated to the share of the Owners/First Party,

- i. Flat bearing No.201, in Second Floor, measuring about 1146 Sq.ft super built up area,
- ii. Flat bearing No.202, in Second Floor, measuring about 1167 Sq.ft super built up area,
- iii. Flat bearing No.203, in Second Floor, measuring about 1478 Sq.ft super built up area,
- iv. Flat bearing No.204, in Second Floor, measuring about 1115 Sq.ft super built up area,
- v. Flat bearing No.205, in Second Floor, measuring about 1018 Sq.ft super built up area.

The Owners shall be entitled for Five Car parking spaces in the project.

b) Flats allocated to the share of the Promoter/Builder/Second Party.

i. The entire remaining super built up areas in the Project shall be to the share of the Promoters. The Promoter shall be entitled for the remaining car parking spaces in the project.

The parties proportionate undivided share of land, i.e. undivided share, right, title and interest in the immovable property mentioned in Schedule "A" above and shall bear and pay stamp duty and registration fees to their respective share proportionately and the rest of the recitals in the Joint Development Agreement shall remain unaltered. The Promoter shall be entitled for remaining car parking space in the project."

[Emphasis Supplied]



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13.1 Similarly, the Supplementary Agreement dated 02.06.2014, though pertaining to the same project and schedule property, is comparatively more detailed and specific in nature. Unlike the earlier agreement, the subsequent agreement specifically allocates flats block-wise, floor-wise and unit-wise between the owners and the promoter/developer, including allocation of penthouse portions, super built-up area and parking spaces. The subsequent agreement therefore appears to operationalize and implement the broader sharing arrangement contemplated under the earlier Supplementary Agreement.

The relevant extract is set out below:

*"WHEREAS in pursuance to the said Joint Development Agreement, **the parties herein have mutually agreed to share the flats to their respective share in the Project known as "R.C.SAI NIKETHAN" in the following manner.***

*WHEREAS in pursuance to the said Joint Development Agreement, **the parties herein had already entered into Supplemental Agreement** dated ____/ 12/2011 for sharing of flats, and since the parties have decided to cast additional Block-B floor, the parties are entering into this Agreement to share the Block-B and pent houses to their respective share in the following manner.*

Flats allocated to the share of the Owner/First Party, Mr. MUNI REDDY and family shall be entitled for the following flats with one car parking space for each flat in the project.



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The above mentioned flats shall belong exclusively to Owner/First Party, Mr. MUNI REDDY and family

Flats allocated to the share of the Promoter/Builder/Second Party Mr.D.ARUN REDDY,

The entire remaining flats/super built up area in the Block A project shall belong to the Promoter/Builder/Second Party.

The entire remaining car parking spaces shall belong to the Promoter/Builder/Second Party in the project.,”

[Emphasis Supplied]

13.2 Thus, while the earlier agreement broadly identifies the respective shares of the owners and developer in the project, the subsequent Supplementary Agreement specifically particularizes the manner in which such shares are to be enjoyed and allotted between the parties. Both these agreements indicate that the developer was entitled to specified portions of the developed project together with corresponding rights in the property, and was not merely receiving monetary consideration for construction.

(c) The Law:

14. The emphasis of the arguments of the respondent has been placed on the judgment in the ***Blue Nile Development*** case as well as the judgment of a Coordinate



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Bench in **R.J. Dayananda** case to contend that the Courts have held that a Joint Development Agreement relating to the development of a residential layout would be a commercial dispute under Section 2(1)(c) of the CC Act.

15. The judgment in the **Blue Nile** case was in respect of a Construction Agreement entered into between the parties to complete construction and to deliver a constructed villa to one of the parties. The parties were captioned as 'builder' and 'owner' and the contract envisaged payment of a sum of Rs.240 lakhs after the works were executed with an advance to be paid as well. The agreement was with respect to a residential project on 8.07 acres of land which comprised of triplex villas and residential apartments with club, common areas and facilities. etc. The Division Bench of the Andhra Pradesh High Court in the **Blue Nile** case has while interpreting the provisions of Section 2(1)(c) of the CC Act, held the words 'construction' and 'infrastructure contracts' have to be read individually in order for the legislative intent to be followed.



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15.1 However, the Division Bench of the Andhra Pradesh High Court did not consider the judgment of the Supreme Court in the ***Sushil Kumar Agarwal*** case, which has clarified the difference between a construction contract and a collaboration agreement and has held a collaboration to mean that there is a transfer of some part of the land as well. It was held that an agreement wherein the owner of the immovable property engages someone to carry out the work of construction on the property for monetary consideration, such a contract is a pure construction contract. It has further been explained that the contractor has no interest in either the land or the construction which is carried out, is a construction contract. The relevant extract of the ***Sushil Kumar Agarwal*** case is reproduced below:

"18. When a pure construction contract is entered into, the contractor has no interest in either the land or the construction which is carried out. But in various other categories of development agreements, the developer have acquired a valuable right either in the property or in the constructed area. The terms of the agreement are crucial in determining whether any interest has been created in the land or in respect of rights in the land in favour of the



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developer and if so, the nature and extent of the rights."

[Emphasis Supplied]

16. The Supreme Court in the ***Ambalal Sarabhai*** case, has cautioned against a wide interpretation being given to the meaning to the words as set out within the CC Act and has held that the provisions of the Act are to be construed strictly and if the provisions are given a liberal interpretation, the object behind the Act would be defeated.

17. In the present case, the agreement between the parties was not a pure construction contract. It was a construction contract with an emphasis on collaboration. Interest in the land was created in favour of the promotor / builder. The owners came forth with the land and in view of the expertise of the petitioner herein, sought development of such land. All the parties were individuals. The respondents/owners provided some specification for the building. In that sense it was not a contract where a party simply handed over land to a builder and asked them to build.



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17.1 In addition, the agreement was for construction of residential apartments only. As per the SA, each of the five respondents/owners were allocated flats on the 2nd floor. While the remaining area was allocated to the share of the promoter/builder, the petitioner herein.

18. The Commercial Court examined the contentions of the parties and found that so far it concerns the contention that the agreement is a 'Joint Venture Agreement', the same cannot be sustained. The learned Commercial Court, relied on the judgment of the Supreme Court in ***Faqir Chand Gulati Vs. Uppal Agencies Pvt.Ltd. & Anr.***¹⁰ as well as a judgment of a Co-ordinate bench in the ***Indraprastha Shelters*** case to hold that where a Joint Development Agreement is entered into between the parties, in terms of which the developer had agreed to construct and develop 50% of the constructed area to the land owner, would not be a Joint Venture Agreement under Section 2(1)(c)(xi) of the C.C. Act. It was further held that

¹⁰ (2008) 10 SCC 345



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the dispute regarding the Joint Development Agreement for consideration of residential Apartments cannot be a commercial dispute under Section 2(1)(c)(vii) of the C.C. Act, as the property is not being used exclusively for trade or commerce. Thus, the learned Trial Court found that the dispute *inter se* the parties was not a commercial dispute in terms of clause 2(1)(c)(vii) or (xi) of the C.C. Act.

18.1 This aspect of the matter has not been challenged by the respondents, since they have not filed any petition challenging the Impugned Order.

19. However, the learned Commercial Court, found that the judgment in ***Indraprastha Shelter*** case would not be applicable and held that the contract would be a construction contract coming within the definition of a commercial dispute under Section 2(1)(c)(vii) of the C.C. Act. Reliance was placed on the judgment in the ***Blue Nile*** case. It was thus held by the learned Commercial Court that the JDA in the present case would not qualify under Section 2(1)(c)(vii) or (xi) but would come under construction



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contract under "construction and infrastructure Contracts" under Section 2(1)(c)(vi) of the C.C. Act. The relevant extract of the Impugned Order is set out below:

"15. On going through all these decisions, it is clear that JDA for construction of residential apartments would not come under Section 2(1)(c)(vii) or (xi). However, it would come under construction contract appearing in Section 2(1)(c)(vi). As such this court has jurisdiction to consider the present petition. Hence, there are no grounds to return the petition as prayed. Accordingly, point No. 1 is answered in the negative."

[Emphasis Supplied]

20. The Supreme Court in ***Faqir Chand Gulati*** case, examined the legal nature of a JDA and the distinction between a true joint venture and an ordinary development and construction arrangement. The Supreme Court held that a true joint venture would necessarily involve shared control over the project, participation in management, and sharing of profits and losses between the parties, whereas agreements where the developer retains dominant control over construction and merely undertakes to deliver a specified share of the constructed area to the landowner are in the nature of development/construction agreements and



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constitute only “pseudo joint ventures”. The Supreme Court held as follows:

*"29. It is, however, true that where the contract is a true joint venture the scope of which has been pointed out in paras 21 to 25 above, the position will be different. In a true joint venture agreement between the landowner and another (whether a recognised builder or fund provider), **the landowner is a true partner or co-adventurer in the venture where the landowner has a say or control in the construction and participates in the business and management of the joint venture, and has a share in the profit/loss of the venture.** In such a case, the landowner is not a consumer nor is the other co-adventurer in the joint venture, a service provider. The landowner himself is responsible for the construction as a co-adventurer in the venture. **But such true joint ventures are comparatively rare. What is more prevalent are agreements of the nature found in this case, which are a hybrid agreement for construction for consideration and sale and are pseudo joint ventures. Normally a professional builder who develops properties of others is not interested in sharing the control and management of the business or the control over the construction with the landowners.** Except assuring the landowner a certain constructed area and/or certain cash consideration, **the builder ensures absolute control in himself, only assuring the quality of construction and compliance with the requirements of** local and municipal laws, and undertaking to deliver the owners' constructed area of the building with all certificates, clearances and approvals to the landowner."*

[Emphasis Supplied]

21. Relying on the judgment in the ***Faqir Chand Gulati*** case, a Co-ordinate bench of this Court in ***Indraprastha Shelters*** case, examined whether a dispute arising out of a Joint Development Agreement constituted a “commercial



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dispute” under Section 2(1)(c) of the CC. Act. An application was filed contending that the arbitration application does not fall in the scope of a “commercial dispute” as defined under the CC Act. After examining the clauses under the agreement, it was held that a joint venture is distinguishable from a relationship of independent contractor and that the agreement between the parties does not involve any liability of the owners. The judgment in

Indraprastha Shelters case held as follows:

"13. In *Faqir Chand*, it is held that a joint venture is to be distinguished from a relationship of independent Contractor, the latter being one who, exercising an independent employment, contracts to do work according to his own methods and without being subject to the control of his employer.

14. On facts, **the covenants** contained in paragraph No.12 clearly **show that petitioner has kept SIBS indemnified against any loss, liabilities, cost or claim, action or proceedings that may arise against Owners' constructed area.** In paragraph No. 15 of the Joint Development Agreement, the obligations of petitioner are set out. **A careful reading of the Joint Development Agreement shows that, in substance, petitioner has agreed to construct Flats and deliver 50% of the constructed area with proportionate common area etc. SIBS is not responsible for any act and omission on the part of the petitioner in the course of construction of the building. Therefore, the agreement between the parties cannot be considered as a joint venture. In substance, it is a 'Development and Construction agreement'. There is no covenant in the agreement which may render one party liable for any acts or omissions of the**



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other party. *There is no active involvement of SIBS in execution of the project.*

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16. *In the case on hand, on facts, it is clear that the terms of agreement do not disclose any aspect by virtue of which the dispute between the parties can be categorized as a 'Commercial Dispute'.*

[Emphasis Supplied]

21.1 A similar view was taken by a Co-ordinate bench of the Bombay High Court in the ***Sanjay Suganchand Kasliwal vs Golden Dreams Buildcon Pvt. Ltd.***¹¹ where it was held that a development agreement creating rights in the property and in the developed area in favour of the developer cannot, merely because it involves construction activity, be mechanically treated as a simpliciter "construction contract" under Section 2(1)(c)(vi) of the CC. Act, and that the true nature of the agreement has to be determined from the rights and interests created under its terms. It was further held that a dispute related to immovable property may not by itself be a commercial

¹¹ APPEAL FROM ORDER NO. 34 OF 2023 ORDER DATED 10.11.2023
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dispute, unless the words in the statute are interpreted purposely. The relevant extract is set out below:

"20. Applying above principles to the facts pleaded in the plaint, and in terms of the MOU, the plaintiff get rights in the property of the Vendor [defendant] by paying consideration. The plaintiff has made part payment [Rs.5.6 crores] towards the property development [permissions etc.] and the balance payment is to be made post receipt of booking amount towards sale of the developed property to the prospective buyers. **On making payment of Rs.5.6 crores, the plaintiff creates right in the property.** On development, the plaintiff gets right to sell the suit property of the vendor. **The MOU dated 26.12.2009 cannot be termed as an 'construction contract'. On implementation of the MOU the vendor does not retain right in the suit property but it is transferred to the plaintiff / prospective buyers.** The Defendant / vendor get consideration amount of Rs.35 crores, the vendor receives consideration and loses right over land. **The plaintiff is not a 'contractor' engaged to carry out defendants "building construction". It is the plaintiff, who has paid the consideration and the defendant does not pay for construction work retaining control over suit property under the MOU. By no stretch of imagination, the MOU dated 26.12.2009 can be said to be a simple 'construction contract'. Since interest in land is created in the suit land in favour of the plaintiff, there is no claim in the plaint for simplicitor 'construction work' undertaken.**

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22. The trial Court has erroneously analyzed the plaint with reference to clause (vi) of Section 2 (1) (c) of the Act. **The plaint has to be analyzed from the conspectus clause (vii) of Section 2 (1) (c) of the Commercial Courts Act, 2015 to ascertain whether the dispute involves a "commercial dispute". The Supreme Court in the case of Ambalal Sarabhai Enterprises Ltd. V. K.S.Infraspac LLP and another reported in 2019 STPL 11111 SC [equivalent: [2020] 15 SCC 585] has held as para no.38 as under:**



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38. A dispute relating to immovable property per se may not be a commercial dispute. But it becomes a commercial dispute, if it falls under sub-clause (vii) of Section 2 (1) (c) of the Act viz. "the agreements relating to immovable property used exclusively in trade or commerce". The words "used exclusively in trade or commerce" are to be interpreted purposefully. The word "used" denotes "actually used" and it cannot be either "ready for use" or "likely to be used" or "to be used". It should be "actually used". Such a wide interpretation would defeat the objects of the Act and the fast tracking procedure discussed above."

[Emphasis Supplied]

21.2 A Co-ordinate bench of the Calcutta High Court in a recent judgment captioned ***Abdul Rashid v. Bidhan De Sarkar and Another***¹², has while relying on the ***Faqir Chand Gulati*** case found that in terms of the contract between the parties, the joint development where the owners were allocated 50% of the constructed area while the builders, the remaining, and the agreement did not provide for any share in the profits and both parties had control over the construction. It was held that such a development agreement is not a 'joint venture' as is

¹² 2025 SCC OnLine Cal 2048



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envisaged under Section 2(1)(c) of the CC Act. The relevant extract is set out below:

"19. It is also admitted that the premises in question are residential premises. **As per the Development Agreement, the plaintiff being the developer has agreed to allocate the owners 50% of the constructed area in the new building and the owners are entitled to get their 50% share in the newly constructed building which include tenanted portion of the existing tenants within the said owner's allocation.**

20. **The Development Agreement entered between the parties does not provide with regard to share of any profits. The agreement also does not disclose that both the parties have joint control over the construction/development and accountable to each other for their respective acts with regards to the construction of the new building.** In the agreement, it is also clarified that the Developer shall be entitled to receive, take, realize and collect and retain all monies as development and construction costs of the new building with profit thereof from the persons or parties agreeing to acquire or purchase. It is also clarified that the Developer shall not claim for payment or reimbursement of any cost and expenses incurred towards construction of owner's allocation and common facilities and amenities from the owners.

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23. In the present suit as per the Development Agreement entered between the plaintiff and the defendants being the owners of the property allowed the Developer to build, construct and erect a new building after demolishing the existing structure with the liberty to sell and transfer the flats/rooms/car parking space to the intending purchasers with respect to the developer's allocation only. There is no condition with respect to distribution of shares of profit. **It is the simple agreement between the parties that the plaintiff being the developer will construct a new building and 50% of the new building is allocated to the developer with the right to sell and 50% will remain with the owners.**



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24. Considering the above, this Court finds that the Development Agreements entered between the developer and the owners cannot be a Joint Venture agreement and thus the case of the plaintiff is not coming under the purview of any of the clauses of Section 2(1)(c) of the Commercial Courts Act, 2015."

[Emphasis Supplied]

(d) Two judgments of Karnataka High Court :

22. Two Co-ordinate benches of this Court, have, however, in the judgment in **Kiran Builders** case as well as in **R.J.Dayananda** case, after examining Joint Development Agreements, taken a different view and have distinguished the judgment of the Co-ordinate Bench of this Court in **Indraprastha Shelters** case. Relying on the judgment in **Blue Nile Developers** case, have held that a Joint Development Agreement would necessarily come under the provisions of sub-clause (vi) of Section 2(1)(c) of the CC. Act. The relevant extract of the judgment in **Kiran Builders** case is set out below:

"7. No doubt, the definition clause contained in Section 2(1) enumerates all transactions which shall be construed as commercial dispute and therefore the provision is an exhaustive definition. Amongst various categories which are provided under clause (c), at subclause (ix) Joint Venture Agreement finds place. The coordinate bench while considering the



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case of *M/s. Indraprastha Shelters (supra)* **found that the term 'Joint Venture Agreement' was considered and discussed in Faqir Chand Gulati. It is clear that the attention of the coordinate Bench was not drawn to sub-clause (vi) where the words "construction and infrastructure contracts are found. This clause has been considered by the Division Bench of the Andhra Pradesh High Court. The Andhra Pradesh High Court, having regard to the said provisions i.e., sub-clause (vi)-'construction and infrastructure contract' held that the legislature has included various types of commercial transactions in the fold of "commercial dispute" which could be decided by the commercial courts. It was noticed that the legislature has taken due care while incorporating clauses (i) to (xxii) in Section 2(1)(c) of the Act. The other part of the reasoning flowing from the decision of the Division Bench is concerned towards an argument which was advanced that the words "construction and infrastructure" being used as a single term, such contract should consist of both the activity viz., construction as well as infrastructure. For the present case, this Court need not advert to the said findings given by the Division Bench of the Andhra Pradesh High Court."**

[Emphasis Supplied]

22.1 A Co-ordinate Bench of this Court in **Dayananda** case has found that a dispute arising out of a JDA to form a layout of residential disputes would be a commercial dispute. Emphasis has been laid by the learned counsel for the petitioner on this case to submit that in similar facts where the defendant was entitled to 40% of the developed area and a joint development agreement was executed, such



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dispute would be a commercial dispute. The relevant extract of the judgment in **Dayananda's** case is set out below:

"12. A 'commercial dispute' is defined under Section 2(1)(c) of the Act, 2015 **as one arising out of a contract inter alia relating to (vi) construction and infrastructure contracts**, including tenders. Therefore, any dispute arising out of any transaction entered into between two individuals or two entities **relating to construction of infrastructure contracts is a commercial dispute**. In the case on hand, the plaintiffs and the defendant had entered into a JDA dated 25.04.2022 to develop residential sites for mutual gain on terms agreed upon between them. **Therefore, it cannot be contended that the JDA related to development of a "residential layout" and therefore, was not a commercial venture and hence, the JDA was not a commercial contract and the dispute arising therefrom was not referable to Section 2(1)(c)(vi) of the Act, 2015.** Therefore, the Commercial Court was right in construing the dispute between the plaintiffs and the defendant as a commercial dispute and was right in rejecting the application (I.A. No.4) filed by the defendant under Order VII Rule 10 read with Section 151 of CPC. The Hon'ble Apex Court in the case of **Ambalal Sarabhai Enterprises Limited** (supra) speaking through the concurring opinion of Justice R. Banumathi, held as follows:

"36. A perusal of the Statement of Objects and Reasons of the Commercial Courts Act, 2015 and the various amendments to the Civil Procedure Code and insertion of new rules to the Code applicable to suits of commercial disputes show that it has been enacted for the purpose of providing an early disposal of high value commercial disputes. A purposive interpretation of the Statement of Objects and Reasons and various amendments to the Civil Procedure Code leaves no room for doubt that the provisions of the Act require to be strictly construed. If the provisions are given a liberal interpretation, the object behind constitution of Commercial Division of Courts viz. putting the matter on fast track and speedy resolution of commercial disputes, will be defeated. If we take a closer look at the Statement of Objects and Reasons, words such as



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"early" and "speedy" have been incorporated and reiterated. **The object shall be fulfilled only if the provisions of the Act are interpreted in a narrow sense and not hampered by the usual procedural delays plaguing our traditional legal system.**"

Therefore, taking a cue from the above, it is difficult to accept the contention of the learned counsel for the defendant that the dispute which arises out of a JDA to form a layout of residential sites is not a commercial dispute and therefore, disputes arising therefrom are not commercial disputes. In that view of the matter, there is no error committed by the Commercial Court in rejecting the application (I.A. No.4) filed by the defendant under Order VII Rule 10 read with Section 151 of CPC warranting interference in this writ petition."

[Emphasis Supplied]

22.2 Both the judgments of the Co-ordinate benches however, premise themselves on the judgment in **Blue Nile Developers** case, which is passed by the Division Bench of the Andhra Pradesh High Court alone.

(e) The Contrary View:

23. This Court is respectfully unable to agree with the judgments passed by the Co-ordinate benches and the interpretation that has been given by the Co-ordinate benches to the definition of 'construction and infrastructure contracts' **Kiran Builders** case as well as in **R.J. Dayananda** case. As stated above, the Supreme Court in



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Sushil Kumar Agarwal case, while deciding an issue emanating from a Development Agreement, has distinguished between 'construction and infrastructure contracts', where an interest in the land is given to the contractor and where such interest does not exist. The issue in the ***Sushil Kumar Agarwal*** case, emanated from a development agreement executed between the parties for construction of a building on a land. The Supreme Court examined the expression "development agreement" and the various types of development agreements. In addition, it distinguished between the construction contracts where the contractor has interest in the land or the construction and where such interest does exist. It was held that the grant of rights would be based on the nature of the agreement in each case and the rights created in terms of the agreement.

The relevant extract is set out below:

"17. The expression "development agreement" has not been defined statutorily. In a sense, it is a catch-all nomenclature which is used to be describe a wide range of agreements which an owner of a property may enter into for development of immovable property. As real estate transactions have grown in complexity, the nature of these agreements has become increasingly intricate. Broadly speaking, (without



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intending to be exhaustive), **development agreements may be of various kinds:**

17.1. **An agreement may envisage that the owner of the immovable property engages someone to carry out the work of construction on the property for monetary consideration. This is a pure construction contract;**

17.2. An agreement by which the **owner or a person holding other rights** in an immovable property **grants rights to a third party to carry on development for a monetary consideration payable by the developer to the other.** In such a situation, the owner or right holder may in effect create an interest in the property in favour of the developer for a monetary consideration;

17.3. An agreement where **the owner or a person holding any other rights in an immovable property grants rights to another person to carry out development. In consideration, the developer has to hand over a part of the constructed area to the owner. The developer is entitled to deal with the balance of the constructed area.** In some situations, a society or similar other association is formed and the land is conveyed or leased to the society or association;

17.4. A development agreement may be entered into in a situation where the immovable property is occupied by tenants or other right holders. In some cases, the property may be encroached upon. The developer may take on the entire responsibility to settle with the occupants and to thereafter carry out construction; and

17.5. An owner may negotiate with a developer to develop a plot of land which is occupied by slum dwellers and which has been declared as a slum. Alternately, there may be old and dilapidated buildings which are occupied by a number of occupants or tenants. The developer may undertake to rehabilitate the occupants or, as the case may be, the slum dwellers and thereafter share the saleable constructed area with the owner.

18. When a pure construction contract is entered into, the contractor has no interest in either the land or the construction which is carried out. But in various other categories of development agreements, the developer may have acquired a



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valuable right either in the property or in the constructed area. The terms of the agreement are crucial in determining whether any interest has been created in the land or in respect of rights in the land in favour of the developer and if so, the nature and extent of the rights.

19. **In a construction contract, the contractor has no interest in either the land or the construction carried out on the land. But, in other species of development agreements, the developer may have acquired a valuable right either in the property or the constructed area.** There are various incidents of ownership in respect of an immovable property. Primarily, ownership imports the right of exclusive possession and the enjoyment of the thing owned. The owner in possession of the thing has the right to exclude all others from its possession and enjoyment. **The right to ownership of a property carries with it the right to its enjoyment, right to its access and to other beneficial enjoyments incidental to it.** (B. Gangadhar v. B.G. Rajalingam [B. Gangadhar v. B.G. Rajalingam, (1995) 5 SCC 238, para 6] .) **Ownership denotes the relationship between a person and an object forming the subject-matter of the ownership.** It consists of a complex of rights, all of which are rights in rem, being good against the world and not merely against specific persons. There are various rights or incidents of ownership all of which need not necessarily be present in every case. They may include a right to possess, use and enjoy the thing owned; and a right to consume, destroy or alienate it. (Swadesh Ranjan Sinha v. Haradeb Banerjee [Swadesh Ranjan Sinha v. Haradeb Banerjee, (1991) 4 SCC 572] .) **An essential incident of ownership of land is the right to exploit the development, potential to construct and to deal with the constructed area.** In some situations, under a development agreement, **an owner may part with such rights to a developer. This in essence is a parting of some of the incidents of ownership of the immovable property.** There could be situations where pursuant to the grant of such rights, the developer has incurred a substantial investment, altered the state of the property and even created third-party rights in the property or the construction to be carried out. There could be situations where it is the developer who by his efforts has rendered a property developable by taking steps in



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law. In development agreements of this nature, where an interest is created in the land or in the development in favour of the developer, it may be difficult to hold that the agreement is not capable of being specifically performed. For example, the developer may have evicted or settled with occupants, got land which was agricultural converted into non-agricultural use, carried out a partial development of the property and pursuant to the rights conferred under the agreement, created third-party rights in favour of flat purchasers in the proposed building. In such a situation, if for no fault of the developer, the owner seeks to resile from the agreement and terminates the development agreement, it may be difficult to hold that the developer is not entitled to enforce his rights. This of course is dependent on the terms of the agreement in each case. There cannot be a uniform formula for determining whether an agreement granting development rights can be specifically enforced and it would depend on the nature of the agreement in each case and the rights created under it."

[Emphasis Supplied]

24. This Court, while sitting at the Delhi High Court, in the **Vijay Kohli** case, while relying on the judgment in **Sushil Kumar Agarwal** case, has held that not every construction agreement or building contract would automatically fall within the definition of a 'commercial dispute' and that the Court is required to examine the substance and nature of the agreement and the intention of the parties to determine whether the dispute is a 'commercial dispute' as defined under the CC Act. It was further held that where the words in a statute are clear and unambiguous only a literal



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interpretation may be given since the words used by the legislature have to be regarded as deliberately being used, in the following manner:

*"11. The commercial dispute is defined in Section 2(c)(vii) of the CC Act as a dispute which is arising out of an agreement relating to immovable property exclusively used in trade or commerce. **The words that are used by the Legislature in this sub-Section must be regarded as having been used deliberately, and thus, the intention that where there are contracts or agreements relating to immovable property which are being used only in trade and commerce, disputes arising out of such agreements and contracts are to be included as commercial disputes. The emphasis has been laid on the words "exclusively in trade or commerce" thus keeping out of its ambit transactions which are other than trade and commerce.***

12. Section 2(1)(c)(vi) includes commercial disputes relating to **"construction and infrastructure contracts, including tenders"**. Relying on Section 2(1)(c)(vi) of the CC Act, the Respondent was contended that the Agreement is a commercial dispute.

12.1 Both terms "construction" and "infrastructure" are defined separately. To gain a clearer understanding of these terms, it is apposite to refer to the definitions of the term "construction" and "infrastructure,". Black's Law Dictionary³ [Black's Law Dictionary, Eight Edition] defines the terms "construction" and "infrastructure" in the manner set out below:

Black's Law Dictionary

Construction 1. The act of building by combining or arranging parts or elements; the thing so built [(2020) 15 SCC 585] The act or process of interpreting or explaining the sense or intention of a writing (usu. A constitution, statute, or instrument); the ascertainment of a document's meaning in accordance with Judicial standards.



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Infrastructure. *The underlying framework of a system; esp., public services and facilities (such as high-ways, schools, bridges, sewers, and water systems) needed to support commerce as well as economic and residential development."*

12.2 The Oxford Advanced Learners Dictionary [Oxford Advanced Learners Dictionary Fifth Edition] and Merriam Webster Dictionary [Webster New Collegiate Dictionary] also defines these two terms in the following manner:

"OXFORD ADVANCED LEARNERS DICTIONARIES:

Construction-

- (1) *The action or manner of constructing*
- (2) *a thing constructed*
- (3) *a sense in which words, statements, etc. are to be understood*
- (4) *the way in which words are put together to form a phrase,*
clause or sentence:

Infrastructure-

The basic structures and facilities necessary for a country or an organisation to function efficiently, for example buildings, transport and water and energy resources and administrative systems.

Merriam Webster Dictionary:

Construction-

- (1) *The arrangement and connection of words or groups of words in a sentence : syntactical arrangement*
- (2) *The process, art, or manner of constructing; also: a thing constructed*
- (3) *The act or result of construing, interpreting, or explaining*
- (4) *A sculptural creation that is put together out of separate pieces of often disparate materials*

Infrastructure-



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(1) The underlying foundation or basic framework (as of a system or organisation)

(2) The permanent installations required for military purposes.”

12.3 Thus, what can be construed from the above is that construction is an activity while infrastructure is the outcome of that activity. The term construction would essentially mean building while infrastructure would relate to creating public facilities needed to support commerce.

13. It is settled law that where wordings of a statute are **absolutely clear and unambiguous, only a literal interpretation** may be given. In the case of *B. Premanand v. Mohan Koikal*⁶ [(2011) 4 SCC 266], the Supreme Court has discussed the principles of interpretation of statutory interpretation. The relevant extract of the **B. Premanand** case is below:

“9. It may be mentioned in this connection that the first and foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation. The other rules of interpretation e.g. the mischief rule, purposive interpretation, etc. can only be resorted to when the plain words of a statute are ambiguous or lead to no intelligible results or if read literally would nullify the very object of the statute. **Where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other than the literal rule, vide** *Swedish Match AB v. SEBI* [(2004) 11 SCC 641 : AIR 2004 SC 4219].”

[Emphasis Supplied]

13.1 In the case of *Gopal Krishan v. Daulat Ram* [(2025) 2 SCC 804], the Supreme Court while relying on Justice G.P. Singh's, *Principles of Statutory Interpretation* has held that the **word “or” is normally disjunctive while the word “and” is normally conjunctive and the ordinary, grammatical meaning displayed by the words of the statute should be given effect to unless the same leads to ambiguity, uncertainty or absurdity. The relevant extract is below:**

“21. In the considered view of this Court, the learned Single Judge fell in error in arriving at such a finding for



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the words used in the section, which already stands extracted earlier, read — "or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a...". That being the case, there is no reason why the "or" employed herein, should be read as "and". **After all, it is well-settled that one should not read "and" as "or" or vice-versa unless one is obliged to do so by discernible legislative intent. Justice G.P. Singh's treatise, Principles of Statutory Interpretation tells us that the word "or" is normally disjunctive while the word "and" is normally conjunctive. Further, it is equally wellsettled as a proposition of law that the ordinary, grammatical meaning displayed by the words of the statute should be given effect to unless the same leads to ambiguity, uncertainty or absurdity. None of these requirements, to read a word is which is normally disjunctive, as conjunctive herein, are present.**

[Emphasis Supplied]

24.1 This Court further in the **Vijay Kohli** case has held that the words 'construction and infrastructure contracts' must be interpreted as unified phrase and not two distinct terms. It is apposite to set out the relevant extract below:

"14. The expression "and" generally has a cumulative effect which requires the fulfilment of all the conditions that it joins together. The term "and" is considered as a conjunction that connects words or phrases which expresses the idea that the later has to be added to or taken along with the first. Black's Law Dictionary⁸ [Black's Law Dictionary, Sixth Edition] defines the term "and" in the following manner:

Black's Law Dictionary

And. A conjunction connecting words or phrases expressing the idea that the latter is to be added to or taken along with the first. Added to; together with;



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joined with; as well as; including. Sometimes construed as "or." *Land & Lake Ass'n v. Conklin*, 182 A.D. 546 : 170 NYS 427, **428**.

It expresses a general relation or connection, a participation or accompaniment in sequence, having no inherent meaning standing alone but deriving force from what comes before and after. **In its conjunctive sense the word is used to conjoin words, clauses, or sentences, expressing the relation of addition or connection, and signifying that something is to follow in addition to that which proceeds and its use implies that the connected elements must be grammatically co-ordinate, as where the elements preceding and succeeding the use of the words refer to the same subject matter. While it is said that there is no exact synonym of the word in English, it has been defined to mean "along with", "also", "and also", "as well as", "besides", "together with".** *Oliver v. Oliver*, 286 Ky. 6 : 149 S.W. 2d 540, 542.

14.1. The words of Section 2(1)(c)(vi) of the CC Act are absolutely clear and ambiguous [sic: unambiguous] and as "Construction AND Infrastructure". In view of the settled law, Section 2(1)(c)(vi) of the CC Act has to be interpreted strictly in the terms as provided by the legislature.

15. In addition, to give purposeful interpretation to the object of the CC Act, the expression "construction and infrastructure contracts" must be interpreted as one unified phrase and not as two distinct terms, namely construction contracts and infrastructure contracts. A construction and infrastructure contract must inherently possess a commercial nature - right from the conceptualisation of the project, through its execution, and culminating in a commercially viable outcome, one that holds tangible market value and is expected to yield profit."

XXX

XXX

XXX

17. As discussed above, a perusal of the Agreement shows that the intention of the parties while entering into the Agreement was for mere completion of construction of the suit property,



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which was being used for residential purposes. The Agreement does not contain any provision granting the right of sale to the contractor. There is no element of trade and commerce contained therein. Admittedly the suit property is a residential property and not a commercial property and there is no involvement in any commercial activity qua the suit property.

18. Thus, the Agreement as entered between the parties can be termed as a pure building contract agreement where construction of a building needs to be completed and nothing else. The Agreement lacks any infrastructure component.

19. A reading of the pleadings and the Agreement makes it evident that the **Agreement in question is a private arrangement for competition of construction of the suit property. As such, it does not fall within the scope of a "commercial dispute" as defined under Section 2 (1)(c)(vi) of the Act.**

[Emphasis Supplied]

25. A Co-ordinate bench of the Madhya Pradesh High Court has also taken a similar view in ***Smt. Hema Sharma*** case as follows:

"19. The counsel for applicant has placed reliance upon the judgment rendered by Hon'ble High Court of Andhara Pradesh in the case of Blue Nile Developers Pvt. Ltd. vs. Movva Chandra Sekhar reported in 2021 SCC Online AP 3964. It was a case where action was initiated by respondent therein for recovery of certain sum of money on the ground that an excess amount was paid to the petitioner therein with respect to the construction of the villa as described in plaint schedule. **The Hon'ble Andhra Pradesh High Court, while giving wide interpretation to the definition of commercial dispute, interpreted the term 'construction and infrastructure contracts' as distinct and independent to each other. In other words, both the terms were bifurcated into construction contracts and infrastructure contracts separately.** In view of discussion made by me in preceding paragraphs, **I am in**



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respectful disagreement with the view taken by Hon'ble Andhra Pradesh High Court. The view taken by the Andhra Pradesh High Court is not in consonance with the law laid down by Apex Court in the case of Ambalal Sarabhai (supra) wherein it has been held that the provisions of the Act have to be strictly construed and should be interpreted in narrow sense in order to give purposive interpretation to the statement of objects and reasons. I am in respectful disagreement with another judgment cited by the learned counsel for applicant passed by Delhi Court in the case of Raj Kumar Gupta & another vs. Jagannath Bajaj & others reported in 2022 SCC Online Delhi 2995 since the same is based upon judgment of Andhra Pradesh High Court in the case of Blue Nile Developers (supra).

20. In view of the aforesaid discussion, the subject matter of suit does not fall within the ambit of 'commercial dispute' as defined under Section 2(1)(c)(vi) of the Act of 2015. The order passed by learned Trial Court is upheld though on different grounds. The revision petition thus fails and dismissed."

[Emphasis Supplied]

VII. Conclusion:

26. Upon careful consideration of the submissions advanced, the property in dispute, which was developed pursuant to the JDA, cannot be said to be immovable property used exclusively in trade or commerce within the meaning of Section 2(1)(c)(vii) of the CC Act. The dispute pertains to development and allocation of residential apartments. Both parties are individuals and share the re-developed flats and area as re-constructed. There is no



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material to indicate that the property was actually used for trade or commerce. Consequently, Section 2(1)(c)(vii) of the CC Act would not be attracted to the facts of the present case.

27. The JDA in question also does not satisfy the requirements of a true joint venture within the meaning of Section 2(1)(c)(xi) of the CC Act either. There is no provision in the agreement rendering one party liable for the acts or omissions of the other; nor does the material on record disclose joint control, shared management, or active participation by both parties in the development activity. The developer appears to have undertaken the project independently in terms of the contractual arrangement based on specifications given by the owners. Accordingly, the agreement cannot be construed as a joint venture agreement so as to attract Section 2(1)(c)(xi) of the CC Act.

28. In so far as concerns the provision of Section 2(1)(c)(vi) of the CC Act, there appear to be two conflicting



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views on the interpretation to be given to the term "construction and infrastructure contracts".

29. The two questions that arise for consideration would thus be:

(i) Whether the Joint Development Agreements for construction of flats/floors for residential purposes where one or more party is an individual, without involving any commercial dispute of any nature, can be referred to as 'construction and infrastructure contracts' in terms of the provisions of Section 2(1)(c)(vi) of the CC Act?

(ii) Whether the provisions of Section 2(1)(c)(vi) of the CC Act have to be interpreted as one uniform phrase "construction and infrastructure contracts" or as two words "construction" and "infrastructure" contracts separately?

30. In view of the conflicting decision between the Co-ordinate benches of this Court, the Registry is directed to place the matter before the Hon'ble the Chief Justice, to refer the matter to a larger bench to examine the issues set out above.



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31. This writ petition is disposed of in the aforesaid terms.

All pending applications stand closed.

**Sd/-
(TARA VITASTA GANJU)
JUDGE**

KS/JJ