

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDERABAD

MONDAY, THE FOURTEENTH DAY OF DECEMBER
TWO THOUSAND AND NINE

PRESENT:

THE HON'BLE SRI JUSTICE L. NARASIMHA REDDY
W.P.M.P NO: 34496 of 2009

IN

W.P.NO: 26502 of 2009

Between:

- 1 M/s. Mehta & Modi Homes, Rep by its Authorised Signatory, Soham Modi, S/o. Satish Modi, Aged about 36 years, Having its Office at 5-4-187/3 & 4 III Floor, Soham Mansion, MG Road, Secunderabad.
- 2 Ms. Hetal K. Parish, D/o. Mr. Krishna Kanth S. Parikh, R/o. 5-4-187/3 & 4, III Floor, Soham Mansion, MG Road, Secunderabad.
- 3 Pravesh B. Parikh, S/o. Bharath S. Parikh, R/o. 5-4-187/3 & 4, III Floor, Soham Mansion, MG Road, Secunderabad.
- 4 Piyush J Parikh, S/o. Jagadish S. Parikh, R/o. 5-4-187/3 & 4, III Floor, Soham Mansion, MG Road, Secunderabad.

..... Petitioners

Petitioners in WP.No : 26502 of 2009
on the file of High Court)

AND

- 1 Hyderabad Metropolitan Development Authority, Rep by its Commissioner, GHMC Buildings, III Floor, West Marredpally, Secunderabad.
- 2 The Director (Planning), Hyderabad Metropolitan Development Authority, Secunderabad.

..... Respondents
(Respondents in -do-)

Counsel for the Petitioner:

SRI PRABHAKAR PERI
SRI M.SURENDER RAO
SC FOR HMDA

Counsel for the Respondents:

Petition under Section 151 of C.P.C praying that in the circumstances stated in the affidavit filed in W.P., the High Court may be pleased to direct the first respondent to release the draft layout in respect of application of the petitioners dated 26-2-2007 for permission for development of land under Revised Group Housing Scheme in Survey No. 31,40 (P), 41 (P), 42, 44,45, and 55 of Chengicherla Village, Ghatkesar Mandal, Ranga Reddy District, without insisting upon the purchase of the National Savings Certificates of an amount of Rs. 3,00,000/- pending WP.No.26502 of 2009 on the file of the High Court.

The Court while directing issue of notice to the Respondents herein to show cause as to why this application should not be compiled with, made the following order. (The receipt of this order will be deemed to be the receipt of notice in the case).

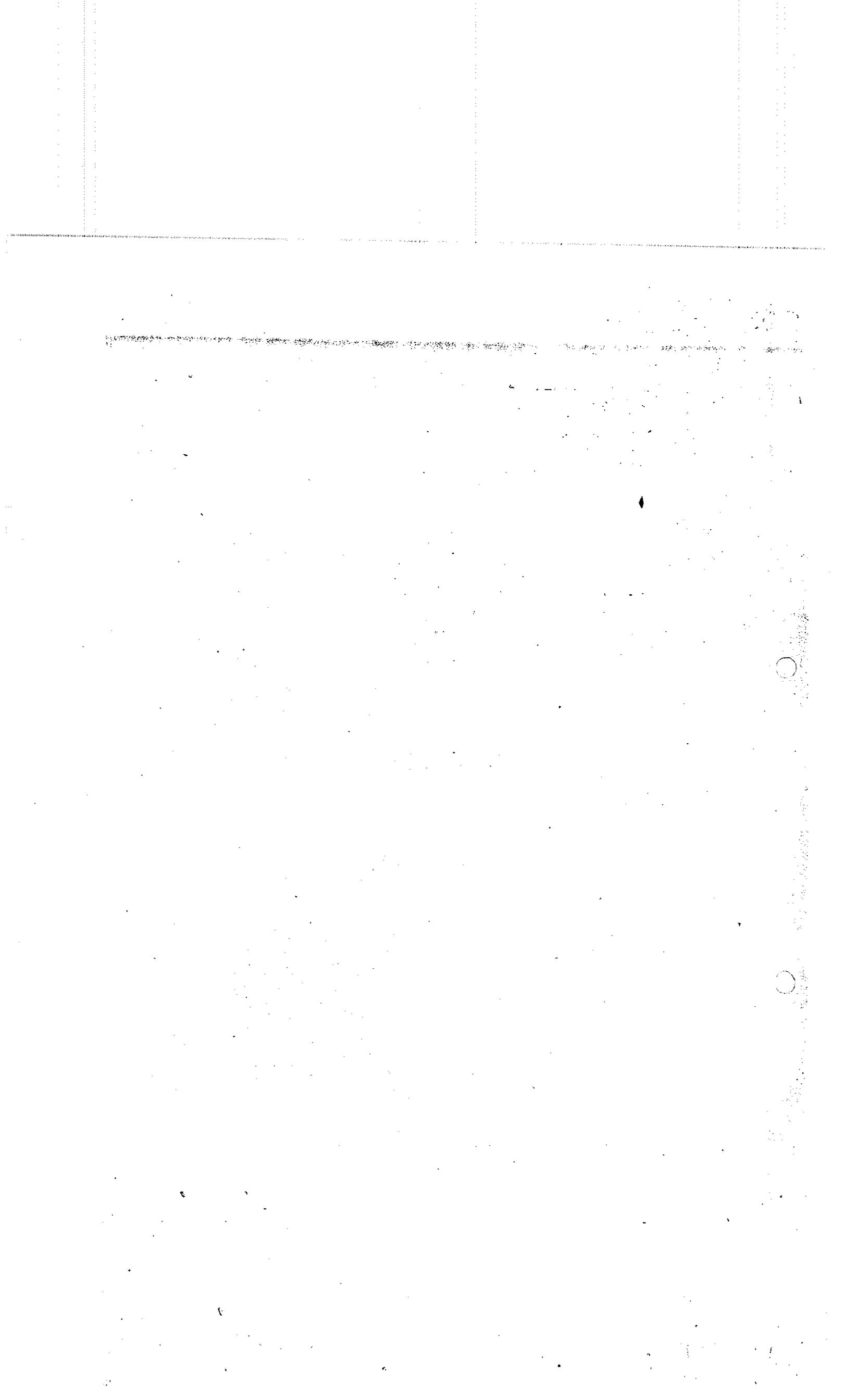
ORDER:

There shall be interim direction to the respondents to process the application of the petitioners, without insisting on purchase of National Savings Certificates. The petitioners shall however be under obligation to comply with the other condition.

Sd/- M. SURYANARAYANA MURTHY
Asst. Registrar

// TRUE COPY //

for ASSISTANT REGISTRAR



To

..2..

1. The Commissioner, Hyderabad Metropolitan Development Authority, GHMC Buildings, III Floor, West Marredpally, Secunderabad.
2. The Director (Planning), Hyderabad Metropolitan Development Authority, Secunderabad. (1 & 2 BY RPAD)
3. One CC to Sri P. Prabhakar, Advocate (OPUC)
4. One CC to Sri M. Surender Rao, Advocate (OPUC)
5. One spare copy.

RV

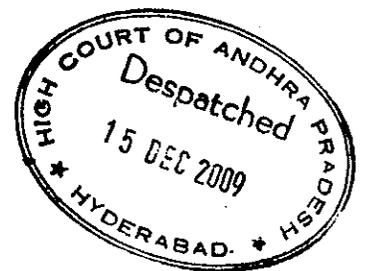
HIGH COURT

LNRJ

Dated 14.12.2009

ORDER
WPMP.No.34496 of 2009
IN
WP.No.26502 of 2009

Interim direction



3

MEMORANDUM OF WRIT PETITION
(UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA)

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH,
AT: HYDERABAD

(SPECIAL ORIGINAL JURISDICTION)

W.P. NO. OF 2009

BETWEEN: -

- 1. M/s.Mehta & Modi Homes, rep. by its
Authorised Signatory, Soham Modi,
S/o. Satish Modi, aged about 36 years,
Having its Office at 5-4-187/3 & 4, III Floor,
Soham Mansion, MG Road, Secunderabad
- 2. Ms. Hetal K. Parish, D/o. Mr. Krishna Kanth S Parikh,
Aged about 40 years, R/o. 5-4-187/3 & 4, III Floor,
Soham Mansion, MG. Road, Secunderabad
- 3. Pravesh B. Parikh, S/o. Bharat S Parikh,
Aged about 36 years, R/o. 5-4-187/3 & 4, III Floor,
Soham Mansion, MG. Road, Secunderabad
- 4. Piyush J Parikh, S/o. Jagadish S. Parikh,
Aged about 34 years, R/o. 5-4-187/3 & 4, III Floor,
Soham Mansion, MG. Road, Secunderabad

... PETITIONERS

AND

- 1. Hyderabad Metropolitan Development Authority,
Rep.by its Commissioner, GHMC Buildings,
III Floor, West Marredpally, Secunderabad.
- 2. The Director (Planning),
Hyderabad Metropolitan Development Authority,
Secunderabad.

....RESPONDENTS

The address for service of all notices and other processes on the
above named petitioner is that of his counsel M/S. PERI PRABHAKAR,
ADVOCATES,(6390) # 5-9-1111/1, 1ST floor, King Koti, Hyderabad-29.

4

For the reasons stated in the accompanying affidavit, the petitioner herein prays that this Hon'ble Court may be pleased to issue Writ of Mandamus or any other appropriate writ or order or direction declaring the action of the first respondent in demanding purchase of National Savings Certificates for Rs.3,00,000/- before release of the draft layout and submitting the same for release of the draft layout in respect of the petitioners' application dated 26.02.2007 for permission for development of land under Group Housing Scheme in survey Nos. 31, 40(P), 41(P), 42, 44, 45 and 55 of Chengicherla Village, Ghatkesar Mandal, Ranga Reddy District, as arbitrary, illegal and contrary to the Building Rules and consequently direct the first respondent to release and draft layout in respect of the application of the petitioners, dated 26.02.2007 for development of land in survey Nos.31, 40(P), 41(P), 42, 44, 45 and 55 of Chengicherla Village, Ghatkesar Mandal, Ranga Reddy District without insisting on compulsory purchase of National Savings Certificates and grant such other relief as this Hon'ble Court deems fit and proper in the circumstances of the case.

Hyderabad.
Dt.2 -12-2009


COUNSEL FOR THE PETITIONER



DISTRICT : RANGA REDDY

HIGH COURT :: HYDERABAD

W.P. NO.

OF 2009

WRIT PETITION

FILED BY :-

M/S. PERI PRABHAKAR (6390)
COUNSEL FOR THE PETITIONER

6

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT
HYDERABAD

W. P.NO. OF 2009

BETWEEN:-

1. M/s.Mehta & Modi Homes, rep. by its
Authorised Signatory, Soham Modi,
S/o. Satish Modi, aged about 36 years,
Having its Office at 5-4-187/3 & 4, III Floor,
Soham Mansion, MG Road, Secunderabad
2. Ms. Hetal K. Parish, D/o. Mr. Krishna Kanth S Parikh,
Aged about 40 years, R/o. 5-4-187/3 & 4, III Floor,
Soham Mansion, MG. Road, Secunderabad
3. Pravesh B. Parikh, S/o. Bharat S Parikh,
Aged about 36 years, R/o. 5-4-187/3 & 4, III Floor,
Soham Mansion, MG. Road, Secunderabad
4. Piyush J Parikh, S/o. Jagadish S. Parikh,
Aged about 34 years, R/o. 5-4-187/3 & 4, III Floor,
Soham Mansion, MG. Road, Secunderabad

... PETITIONERS

AND

1. Hyderabad Metropolitan Development Authority,
Rep.by its Commissioner, GHMC Buildings,
III Floor, West Marredpally, Secunderabad.
2. The Director (Planning),
Hyderabad Metropolitan Development Authority,
Secunderabad.

....RESPONDENTS

AFFIDAVIT FILED BY THE PETITIONER

I, Soham Modi, S/o Satish Modi, Aged about 40 years, Occupation:
Business, R/o Secunderabad, do hereby solemnly affirm and state on oath
as follows:-

(7)

1. I am the Managing Partners of the 1st Petitioner herein and as such I am well acquainted with the facts of the case. I am deposing to this affidavit on behalf of other petitioners also.

2. I submit that the petitioner is a firm carrying on the business of development of properties by constructing apartment complexes and group housing schemes. In the pursuit of its stated business objective, the petitioner has applied for permission for development of land under the revised group housing layout in survey Nos.31, 40(P), 41(P), 42, 44, 45 and 55 of Chengicherla Village, Ghatkesar Mandal, Ranga Reddy District for residential purposes. Initially petitioners have made an application dated 26.02.2007. After correspondence and submission of required papers, the first respondent has issued letter No.2698/MP2/Plg/HMDA/2007, dated 04.08.2009, requiring the petitioners to pay the following amounts.

Amount Rs.

a	Development Charges: (Under Section 45(1) of HMDA Act, 2008) and G.O.Ms.No.439, M.A, Dt.13.06.2007 @ Rs.45/- per sq.mtrs. (11329.02 sq.mtrs)	8,49,690-00
b	Processing Charges for layout area @ Rs.2/- per sq.mtrs (11329.02 sq.mtrs)	22,659-00
c	D.C.for built up area @ Rs.100/- per sq.mtrs (4944.00 sq.mtrs x 100)	4,94,400-00
d	Commercial built up area @ Rs.125/- per sq.mtrs (376.35 sq.mtrs x 125/-)	47,044-00
e	Processing for total built up area @ Rs.5/- per sq.mtrs. (5320.35 sq.mtrs x 5/-)	26,602-00
f	Balance open area @ Rs.100/- per sq.mtrs (4635.100/-)	4,63,580-00
g	Publication Charges	5,000-00

3. The petitioners were also required to execute and register a mortgage deed in respect of plot Nos.393 and 394 to an extent of 357 square meters. The petitioners are prepared and willing to comply with all the conditions imposed by the first respondent including the payment of all the amounts which are demanded except for one condition which is imposed in the letter i.e., purchase of National Savings Certificate for an amount of Rs.3,00,000/- and submitting the copies of the same to the respondent.

4. I submit that it appears the first respondent has received a D.O.Letter No.358/A1/SS/2008, dated 23.06.2008 from the Director, Small Savings and State Lotteries requiring the first respondent to mobilise Rs.50 crores by way of National Savings Certificates and pursuant to the said D.O. letter, the second respondent has issued O.O.No.15920/P8/Policy/HMDA/2008, dated 30.11.2008 directing that for approval of each layout Rs.3,00,000/- in National Savings Certificate has to be purchased by each developer in his own name/his partner's name and submit photocopies of the same to the first respondent before approval of draft/final layout.

5. I submit that the State has issued G.O.Ms.No.86, Municipal Administration and Urban Development (M) Department, dated 03.03.2006, in its rule making power under Section 585 of the HMC Act, 1955, which governs the construction and development of properties and necessary fees etc., to be paid. Under the said Rules or any other Rules in vogue, there is no requirement that the petitioners should purchase National Savings Certificates as a pre-condition for approval of layouts.

(9)

I submit that the action of the first respondent in demanding National Savings Certificate for Rs.3,00,000/- for release of the draft layout is totally arbitrary and illegal. I submit that the second respondent has no power to issue any orders directing the purchase of National Savings Certificate by developers and contractors. In the absence of any such power under the Building Rules or the Revised Building Rules, the action of the first respondent is highly arbitrary and illegal and nothing short of extortion and as such the petitioners are constrained to file the present writ petition.

6. The petitioners have no other alternate remedy except to approach this Hon'ble Court under Article 226 of the Constitution of India. The petitioners have not approached any Court for the same relief, which is sought for in this writ petition.

It is necessary that this Hon'ble Court may be pleased to direct the first respondent to release the draft layout in respect of application of the petitioners dated 26.02.2007 for permission for development of land under Revised Group Housing Scheme in survey No.31, 40(P), 41(P), 42, 44, 45 and 55 of Chengicherla Village, Ghatkesar Mandal, Ranga Reddy District, without insisting upon the purchase of the National Savings Certificates to an amount of Rs.3,00,000/-, pending disposal of the writ petition.

It is, therefore, prayed that this Hon'ble Court may be pleased to issue Writ of Mandamus or any other appropriate writ or order or direction declaring the action of the first respondent in demanding purchase of National Savings Certificates for Rs.3,00,000/- before release of the draft layout and submitting the same for release of the draft layout in respect of

10

the petitioners' application dated 26.02.2007 for permission for development of land under Group Housing Scheme in survey Nos. 31, 40(P), 41(P), 42, 44, 45 and 55 of Chengicherla Village, Ghatkesar Mandal, Ranga Reddy District, as arbitrary, illegal and contrary to the Building Rules and consequently direct the first respondent to release and draft layout in respect of the application of the petitioners, dated 26.02.2007 for development of land in survey Nos.31, 40(P), 41(P), 42, 44, 45 and 55 of Chengicherla Village, Ghatkesar Mandal, Ranga Reddy District without insisting on compulsory purchase of National Savings Certificates and grant such other relief as this Hon'ble Court deems fit and proper in the circumstances of the case.

DEPONENT

Sworn and Signed before me on this the
day of 2nd day of December, 2009 at Hyderabad

(ADVOCATE HYDERABAD)

VERIFICATION STATEMENT

I, Soham Modi, S/o Satish Modi, Aged about 40 years, Occupation: Business, R/o Secunderabad, do hereby state that the facts mentioned in paragraphs are true and correct to the best of my knowledge and belief. Hence, verified to be true and correct on this the 2nd day of December, 2009 at Hyderabad.

ADVOCATE

DEPONENT





HYDERABAD METROPOLITAN DEVELOPMENT AUTHORITY
(G.H.M.C. Building) 3rd Floor,
West Marredpally, Secunderabad – 500 026.

PLANNING DEPARTMENT [Dev.Control]

Letter.No.2698/MP2/Plg/HMDA/2007

Dated: 04-08-2009

To
Sri.Soham Modi,
M/s.Mehta & Modi Homes & others,
5-4-187/3-4, IInd Floor,
Soham Mansion, M.G.Road,
SECUNDERABAD - 5000 03.

Sir,

Sub:- HMDA - Plg. (DC) - Application for Permission for development of Land under Revised Group Housing Layout in Sy.No.31, 40(P), 41(P), 42, 44, 45 and 55 of Chengicherla (V), Ghatkesar (M), R.R.District-for residential purposes - Intimation of Development Charges, Processing Charges & other Miscellaneous charges Demarcation of Plots fencing of Mortgaged Plots & Submission of E.C, - Affidavit - Mortgaged Deed & after Mortgage plots - Submission of E.C. - Reg.

- Ref:-1. Your application dated. 26-2-2007.
2. This office letter even No. dt.25-3-2008 draft layout.
3. Your application dated. 2-4-2008.

* * *

With reference to your application 3rd cited, it is to state that, your proposal for construction of Housing Units (Detached) has been examined under the provisions of Section-19 of HMDA Act 2008. In this regard, you are requested to comply the following.

The following charges are to be remitted through separate challans in favour of Metropolitan Commissioner, HMDA at Cash Collection Counter, I.O.B., Extension Counter, HMDA premises, Secunderabad.

Contd.....2/-

	Amount Rs.
a. DEVELOPMENT CHARGES: (Under Section 45 (1) of HMDA Act, 2008) and G.O.Ms.No.439, M.A, Dt.13-6-2007 @ Rs.45/- per sq.mtrs, (11329.02 sq.mtrs.).	8,49,690=00
b. Processing Charges for layout area @ Rs.2/- per sq.mtrs., (11329.02 sq.mtrs.)	22,659=00
c. D.C for built up area @ Rs.100/- per sq.mtrs. (4944.00 sq.mtrs. x 100/-)	4,94,400=00
d. Commercial built up area @ Rs.125/- per sq.mtrs. (376.35 sq.mtrs. x 125/-)	47,044=00
e. Processing for total built up area @ Rs.5/- per sqmtrs. (5320.35 sq.mtrs. x 5/-)	26,602=00
f. Balance open area @ Rs.100/- per sq.mtrs. (4635.100/-)	4,63,580=00
g. Publication Charges	5,000=00
Total	19,08,975=00

(Rupees: Nineteen Lakhs eight thousand nine hundred and seventy five only)

Further you are requested to pay the above D.C. after payment of D.C. The receipt of challan to be produced in the HMDA Office within one month with the following procedure:

1. You are advised to demarcate block of plots and open spaces on the ground as per the plan submitted / enclosed. If there is any difference in the land area you have to approach HMDA for further clarification. If layout area is tallying with the approved layout plan then you have to proceed with fencing the Mortgaged plots.
2. You are requested to fence the area to be mortgaged with barbed wire and to display a board indicating the particulars of **Plot.No.393 and 394 to an extent of 357 sq.mtrs., i.e. 5% of units** that have to be / have been mortgaged to HMDA and also area not fore sale. A photograph of this has to be submitted to HMDA.
3. You are requested to obtain and produce the certificate of Encumbrance on property one day prior to mortgage and one day after the mortgage from the Sub-Registrar, indicating that the area under mortgage is not sold to any other persons and vests with the developers only.

4. A copy of unsigned layout plan is enclosed while showing plots to be mortgaged.
5. Further you are advised to comply with the following:
 - i. INDEMINITY BOND -- On Rs.100/- (Rs. One hundred only)
Non-Judicial stamp paper as per format enclosed.
 - ii. DEED OF MORTGAGE -- On Rs.100/- (Rs. One hundred only)
BY CONDITIONAL SALE Non-Judicial stamp paper in the enclosed
(Under Article-48 of Schedule format duly registered by the Registration
1-A of Indian Stamps Act). Department Mortgaging 5% units
Plot.No.393 and 394 to an extent of 357
sq.mtrs., favour of HMDA, as per the plan
annexed to this letter.

Further you are advised to indicate the date of execution of Mortgage Deed, so as to depute the concerned JPO to the Sub-Registrar Office.

In view of the above, you are requested to complete the above 1 to 3 items and payment of fees and charges as indicated above. Your compliance should reach the undersigned within one month from the date of receipt of this letter failing which action will be taken to close this file.

Subject to the Following Conditions:

1. The applicant has filed W.P.No.3893 of 2009 in the Hon'ble High Court regarding NOC for Non-Agriculture Purpose High Court has issued orders dt.27-2-2009 for release of the draft layout applicant shall comply court orders.
2. To submit the National Savings Certificate to an amount of Rs.3,00,000/- before release of the draft layout by HMDA.
3. To demarcate the roads and open spaces etc as on the ground.
4. To mortgage the 5% of land as shown in the layout and to fence and display the board to the mortgage plots after confirmation as on the ground.
5. Draft Layout is considered basing on the affidavit submitted by the applicant with reference to RDO Certificate.

Yours faithfully,
Sd/-
Metropolitan Commissioner

//t.c.f.b.o//


Divl. Admn. Officer (Plg).

