

IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
APPELLATE SIDE

WP.No. OF 2022

AGAINST

No. OF 2022

On the file of the Court of _____

M/s. Kadakia & Modi Housing

Rep. by its Managing Partner Soham Modi

.Appellant/
Petitioner

V E R S U S

Hyderabad Metropolitan Development Authority,
Represented by its Secretary

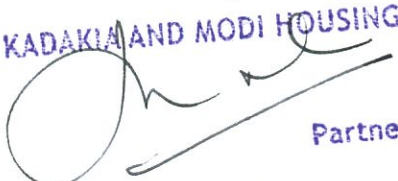
..Respondent

I/WeM/s. Kadakia & Modi Housing, Rep. by its Managing Partner
Soham Modi, R/o. H. No.5-4-187/3 & 4, 2nd Floor, Soham Mansion,
M.G. Road, Secunderabad, Telangana. Appellant/Respondent in
the above application do hereby appoint and retain

PERI PRABHAKAR (6390)

ADVOCATE

Advocate/s of the High Court to appear for ME/US in
the above APPEAL/PETITION and to conduct and prosecute
(or defend) the same and all proceedings that may be taken
in respect of any application connected with the same or
any decree or order passed therein including all applications for
return of documents or the receipt of any money that may be payable
to ME/US in the said Appeal/ Petition and also to appear in all
applications under Clause XV of the Letters patent and in all
applications for review and for leave to the Supreme Court of India
and in all applications for review of Judgment.

For KADAKIA AND MODI HOUSING

Partner

I certify that the contents of this Vakalat were read out and
explained in (.....) in my presence to the executants
of executants who appeared perfectly to understand the same and
made his /her/their signatures or mark in my presence.

Executed before me thisday of2022

Advocate, Hyderabad

S.R. No.

_____ District

**IN THE HIGH COURT FOR THE
STATE TELANGANA AT
HYDERABAD**

APPELLATE SIDE

No. _____ of 2021

AGAINST

No. _____ of 2021

VAKALAT

ACCEPTED

M/s. Kadakia & Modi Housing

..Appellant

Hyderabad Metropolitan Development
Authority

..Respondent

**PERI PRABHAKAR (6390)
ADVOCATE**

Advocate for Appellant Petitioner

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IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

W.P.NO. OF 2022

BETWEEN:

M/s. Kadakia & Modi Housing
Rep. by its Managing Partner Soham Modi,
R/o. H. No.5-4-187/3 & 4, 2nd Floor, Soham Mansion,
M.G. Road, Secunderabad, Telangana State – 500003.
.... Petitioner

AND

Hyderabad Metropolitan Development Authority,
Represented by its Secretary,
Swarna Jayanthi Commercial Complex,
Ameerpet, Hyderabad-500038.
.... Respondent.

AFFIDAVIT

I, Soham Modi, S/o Late Satish Modi, aged 50 years,
Occupation: Business, R/o. H. No.5-4-187/3 & 4, 2nd Floor,
Soham Mansion, M.G. Road, Secunderabad, Telangana State,
do hereby solemnly affirm and state on oath as follows.

1. I am the Managing Partner of the Petitioner Firm and as such I am well acquainted with the facts of the Case.

For KADAKIA AND MODI HOUSING

Partner

2. I submit that the petitioner is challenging the action of the Respondent in issuing the proceedings in File No.660/MP2/HMDA/ PLG/2008, dated 22.07.2022 whereby the petitioner was required to apply for revalidation of their layout stating that the same has expired on 10.05.2021 for want of completion of Developmental works and to remove shuttle court in the area which is reserved for Tot lot and submit revised plan duly showing 100-0" road affected as per MOP-2031, inspite of the fact that entire development was completed as per requirement and there was no pending work and the layout could have been finalized and "Occupancy Certificate" could have been issued as arbitrary, illegal, unsustainable and liable to be set aside.

3. I submit that the erstwhile HUDA had accepted the application of the petitioner for development of residential layout in the land in Survey No.1139 of Shamirpet Village and Mandal, Ranga Reddy District to an extent of 21112.00 Sq. Meters equivalent to Ac.5-8.6 Gts. It is submitted that this approval was granted on 12.05.2008 and the petitioner

For KADAKIA AND MODERN HOUSING



Partner

was to complete the development within a period of 3(three) years from the said date. However, as the petitioner could not complete the same due to poor Real Estate Conditions, upon application and payment of requisite fees the said Group Housing Scheme earlier was revalidated for a further period of three years from 11.05.2011 to 11.05.2014. It is further submitted that thereafter by a letter dated 29.10.2015 the Petitioners have made an application for extension of time and also for revision of the type of design of some of the unsold units and there after the Respondent had extended the time U/s. 21 of HMDA Act, 2008 from 12.05.2014 to 11.05.2017 on payment of Rs. R.3,79,558/- towards the revalidation charges. The petitioners have made the said payment.

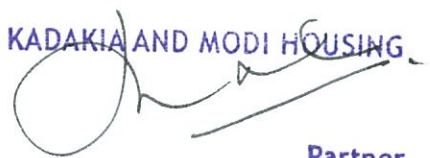
4. It is further submitted that by a letter dated 27.04.2017 the petitioners have requested for further extension of time from 12.05.2017 to 11.05.2020 and expressed their willingness to pay necessary fees. It is further submitted that the said application was accepted and time was granted

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up to 11.05.2020 for completion of the project by letter dated 29.06.2017. It is further submitted that thereafter it appears that the some of the owners of the Villas in the project have made a complaint to the Respondent stating that there are certain works which are still pending and they have also filed W.P. No.14594 of 2020 in this Hon'ble Court seeking appropriate direction to the Respondent. This Hon'ble Court while disposing of the said writ petition at the admission stage without issuing any notice to the petitioner had passed orders directing the Respondents to consider the representation submitted by the said complainant in accordance with law and pass necessary orders on merits. Pursuant to the said orders on the ground of conducting enquiry into the said notice the Respondent was delaying issuance of final layout and "Occupancy Certificate" in respect of the Group Housing Scheme of the petitioner and postponing the issue at the instance of a few purchasers who were creating hurdles in the issuance of the final layout and "Occupancy Certificate" for extraneous considerations and

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Partner

obvious reasons. It is submitted that the said persons have floated a parallel association different from the association of which all the residents are members and they were trying to mislead the Respondent regarding the facts and the Respondent on the other hand did not look into the representations in the correct perspective and kept on postponing the matter without issuing the final layout and Occupancy Certificate inspite of the fact that the entire project was completed much before the time granted or at least within the time permissible as per the Covid-19 norms issued by the Government. It is submitted that, ultimately by a letter dated 06.03.2021 the petitioner has requested for issuance of final layout and "Occupancy Certificate" clearly stating that all the grievances of the so-called purchasers are addressed and the construction is complete in all respects. Inspite of this notice again on 16.03.2021 the Respondent had fixed a date for hearing of the complaint of the so-called purchasers on 17.04.2021 by a notice dated 16.03.2021.

For KADAKIA AND MODI HOUSING

Partner

5. Thereafter the petitioner issued a letter dated 24.03.2021 clearly informing that the entire work is completed in respect of the layout giving the details of completion as required under law and also requesting the Respondent to inspect the site, release the final layout and release Occupancy Certificates at the earliest. The petitioners further requested in the same letter to release 4(four) mortgaged Villas i.e. Villa No.23, 24 & 25. It is submitted that inspite of the clear letter the Respondent instead of conducting inspection again the Respondent fixed the so called hearing on 29.05.2021 by a notice dated 22.04.2021. Immediately on 28.04.2021 the petitioner has addressed another letter to the Respondent clearly intimating that all the works are completed and requesting for issuing of the "Occupancy Certificate". It is submitted that inspite of the position the Respondent has issued a notice dated 19.06.2021 fixing the date for hearing on the complaint of the so-called purchasers on 03.07.2021. It is submitted that

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Partner

on 03.07.2021 the petitioner had issued a letter to the Respondent clearly stating that very few of the purchasers of the Villas who were having their own personal interest and with the intention of blackmailing and extracting money from the petitioner were making false complaints inspite of compliance of the requirements as per law and that they have also floated parallel association which is totally illegal and requested to dismiss their false claims. However, inspite of this letter again the Respondent had issued a notice dated 04.08.2021 fixing the date of hearing on 07.08.2021. Thereafter the petitioner had received a communication dated 18.08.2021 requesting the petitioner to submit the following:

“In this regard, you are informed to submit the following:

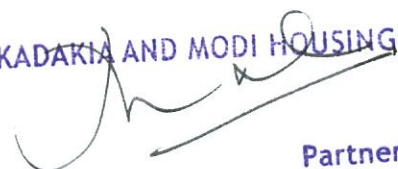
1. *To provide internal source of underground water supply pipe lines to each plot.*
2. *To provide septic tank with underground connection of drainage lines to each plot with provision of manholes.*

For KADAKIA AND MODI HOUSING
Partner

In this regard, you are informed to comply all the above for taking further necessary action in the matter.”

6. It is submitted that again another notice was issued on the same date fixing the date of hearing on the so-called complaint on 28.08.2021. it is submitted that thereafter again another notice was issued on 03.09.2021 fixing the date of hearing on 18.09.2021 and a subsequent notice on 20.09.2021 fixing the date of hearing on 25.09.2021. It is further submitted that on 24.09.2021 the petitioner had received a notice from the Respondent with the following contents: -

“In this regard, you are directed to remove the shuttle court developed in the mandatory open spaces (Tot lot area), submit the photographs in proof of the same within ‘7’ days and also to complete the developmental works as per the HMDA norms and you are also informed to file an application for revalidation, since the said approval is expired on dt.10.05.2021.”

For KADAKIA AND MODI HOUSING

Partner

The notice is as abstract as vague as it could have been because the shuttle court which was directed to be removed was removed long back and the other developmental works were in total conformity of the HMDA norms even as per the communications addressed by the petitioner in March, 2021. There is no description of the work which was incomplete or not up to quality in the said notice. The Respondent deliberately dragged on the matter for no reason at all or at least for reasons not disclosed to the petitioner and ultimately the Respondent had issued a proceeding in File No.660/MP2/HUDA/PLG/ 2008 dated 27.01.2022 stating that;

- *Drainage lines with manholes are completed but the septic tank with drainage lines are not connected and not connected with each plot.*
- *Internal source of water supply lines not provided to each plot.*

It is further mentioned in the said notice as follows: -

“In view of the above circumstances, the applicant is informed to apply for revalidation since the proposal is

For KADAKIA AND MODI HOUSING
Partner

expired on 10.05.2021 and to complete developmental works as per present HMDA norms and to remove the shuttle court in the area which is reserved for Tot-lot.”

7. It is submitted that the said communication is totally arbitrary, illegal and unsustainable in view of the fact that both the works which are referred to have already been completed and the Respondent has made a false recording. Apart from this fact it is submitted that when the entire work was completed by March, 2021 itself and the petitioner had addressed a letter dated 24.03.2021 and again reminder letter dated 28.04.2021 asking for release of final layout as well Occupancy Certificate the Respondent delayed the entire matter and ultimately required the petitioner to apply for revalidation since the proposal has expired on 10.05.2021 and further directing the petitioner to complete development works as per present HMDA norms and to remove the shuttle court etc. is totally illegal, highhanded and smacks of arbitrariness and lack of application of mind.

For KADAKIA AND MODI HOUSING

Partner

8. It is submitted that the Petitioner had filed W.P.No. 22186 of 2022 in this hon'ble court questioning the inaction of the respondent in issuing "Final Layout" and "Occupancy Certificate" inspite of completion of the works within the extended time and informing the same. This Hon'ble court was pleased to pass orders dated 28-04-2022 directing the respondent to consider the representations of the Petitioner dated 24-03-2021 and pass orders. However, the respondent has passed orders dated 22-07-2022 reiterating its earlier stand and requiring the petitioner to obtain revalidation of the proposal on the ground that the proposal has lapsed by 21-05-2021. I submit that the order dated 22-07-2022 is clearly illegal and unsustainable as the requirements mentioned therein were completed long back and intimated to the respondent even before 10-05 2021. In so far as the requirement of showing the 100-0" road affected I submit that the same is totally illegal and unsustainable as the project is complete and if the petitioner is now to show a 100-0" road it would amount to removing major portion of

For KADAKIA AND MODI HUGHES
Partner

the construction already made. Further I submit that the building permit was obtained in the year 2007/08 as per the then existing master plan. The master plan was revised in 2013 and as per the revised master plan the existing 40' road was increased to 100' road. The application for renewal was made in 2016. It is well established that changes in bye-laws and master plan that may come into effect after building permit is issued cannot be enforced on the permits already issued. This issue was discussed and after accepting the said position only renewal was granted in 2017 without imposing any such condition. The action of the respondent in requiring the Petitioner to apply afresh for revalidation after complying with the 100-0" road is clearly illegal in the face of the earlier unconditional renewal in 2017. Thus, the petitioner is constrained to file the present writ petition.

9. The petitioner has got no other equally efficacious alternative remedy except involving the extra-ordinary original jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India.

For KADAKIA AND MODI HOUSING

Partner

10. The petitioner has not filed any other Writ Petition or proceedings for the same relief which is claimed in the present Writ Petition.

11. It is necessary that the Hon'ble Court may be pleased to suspend the proceedings in File No.660/MP2/HMDA/PLG/2008, dated 22.07.2022 pending disposal of the Writ Petition.

12. It is necessary that this Hon'ble Court may be pleased to direct the Respondent to issue "final layout plans" and "Occupancy Certificate" to the petitioner in respect of the Group Housing Layout sanctioned in Survey No.1139 of Shamirpet Village and Mandal, Ranga Reddy District to an extent of 21112.00 Sq. Meters or Ac5-8.6 Gts., pending disposal of the writ petition.

13. It is therefore prayed that the Hon'ble Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ or order or direction declaring the action of

For KADAKIA AND MODI HOUSING



Partner

the respondent in issuing Proceedings in File No.660/MP2/HMDA/PLG/2008, dated 22.07.2022 as arbitrary, illegal and unsustainable and set aside the same and consequently direct the Respondent to issue "Final Layout Plans" and "Occupancy Certificate" to the Petitioner in respect of the Group Housing Layout sanctioned in Survey No.1139 of Shamirpet Village and Mandal, Ranga Reddy District to an extent of 21112.00 Sq. Meters Or Ac5-8.6 Gts., and pass such other order or orders in the interest of justice.

For KADAKIA AND MODI HOUSING



Partner

Sworn and signed before me on this
the 2nd day of September 2022 at Hyderabad.

DEPONENT

Advocate, Hyderabad

VERIFICATION

I, Soham Modi, S/o Late Satish Modi, Aged 50 years, Occupation: Business, R/o. H.No.5-4-187/3 & 4, 2nd Floor, Soham Mansion, M.G. Road, Secunderabad, Telangana State, do hereby truly and sincerely declare that that the contents of the paragraphs 1 to 9 are true and correct to the best of my knowledge, information and belief and the contents of paragraphs 10 to 12 are believed to be true as per legal advice and hence verified on this the 2nd day of September 2022 at Hyderabad.

For KADAKIA AND MODI HOUSING

Partner

DEPONENT

COUNSEL FOR PETITIONER

