

IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

W. P. NO. 23117 OF 2020

Between:

1. M/s. Silver Oak Realty,
(formerly known as M/s. Mehta & Modi Homes),
rep. by its Managing Partner, Soham Modi,
S/o. Late Satish Modi, having its office at 5-4-187/3 & 4,
II Floor, Soham Mansion,
M.G.Road, Secunderabad.

....Petitioner.

And

1. State of Telangana
Rep by its Principal Secretary,
Municipal Administration and Urban Development,
Secretariat, DTCP Building, Red Hills, Hyderabad.
2. Greater Hyderabad Municipal Corporation,
Rep. by its Commissioner, Tank Bund Road,
Hyderabad.
3. Chief City Planner,
Office of the Commissioner- Greater Hyderabad
Municipal Corporation, Hyderabad.
4. Hyderabad Metro Development Authority(HMDA),
Rep. by its Metropolitan Commissioner,
7th Floor, Swarna Jayanthi Complex, Ameerpet, Hyderabad.

... Respondents.

AFFIDAVIT

I, Soham Modi, S/o. Late Satish Modi, aged about 50 years Occ: Business,
R/o. II 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 well
acquainted with the facts of the case.

For SILVER OAK REALTY

Partner

2. I submit that initially the petitioner firm and certain other people i.e. Hetal K, Parikh, Pravesh B. Parikh, Piyush J. Parikh have acquired title to land admeasuring Ac.8-37½ Guntas forming part of Sy. Nos.31, 40, 41, 42, 44, 45 and 55 of Cherlapally Village, Kapra Mandal, Medchal-Malkajgiri District, Telangana under valid and genuine documents. I submit that subsequently the petitioner firm has acquired rights to develop the entire land under a joint development agreement in its favour dated 6334/07 dated 10.05.2007. I further submit that the petitioner firm has applied for development of Group Housing Scheme (Gated Community) Residential / Commercial layout in Sy. Nos. 31, 40, 41, 42, 44, 45 and 55, China Cherlapally Village, Ghatkesar Mandal, Ranga Reddy District to an extent of 43,257.50 Sq. Yards and have obtained lay-out cum group housing permission to the extent of an area of 29167.44 Sq. Yards. It is submitted that the application was dated 26.02.2007 and the further letter was dated 20.11.2007. The said application was approved to an extent of Ac.6.03 guntas in L.P.No.07/MP2/Plg/H/2008, dated 23.12.2007 and 25.03.2008. It is submitted that the same was communicated to the petitioner under letter no.2698/MP2/Plg/H/2007. Consequent upon the issuance of the said permission the 2nd Respondent GHMC has issued a proceeding no.BA/G1/561/2008-09, dated 22.04.2008. This permission was in respect of 68 Bungalows and One Commercial Building. The details of the building permits obtained are as under:

- a) Permit obtained for 68 bungalows along with one commercial building from HMDA vide its Proceedings No.2698/MP2/Plg/HMDA/2007, dated 25.03.2008 and the same has

For SILVER OAK REALTY

Partner

been forwarded to GHMC, Kapra Circle for release and GHMC, Kapra Circle has collected their fee and charges and released building permit vide their Proceedings No.BA/G1/561/2008-09 dated 22.04.2008. **(Copies of HMDA & GHMC Kapra Proceedings are enclosed as Annexure-I & II).** As per G.O.Ms. No.86, dt: 03.03.2006 we have mortgaged 5% of total number of units (i.e. 4 plots) bearing Nos.314 to 317 in favour of HMDA vide mortgage deed No.12773/2007, dt: 17.11.2007 registered at S.R.O., Uppal. I submit that, to release the above layout-cum-group housing building permit the 4th Respondent required the Petitioners to submit NALA conversion proceedings. As such the Petitioners filed W.P.No.2286 of 2008 and sought for a direction to 4th Respondent to release the sanction plans without submission of NALA conversion proceedings and the Hon'ble High Court was pleased to pass orders directing to release the sanctioned plans without insisting NALA conversion proceedings.**(Copy of Hon'ble High Court Order is enclosed herein as Annexure-III).**

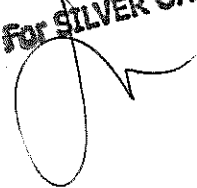
b) I submit that thereafter construction permission was obtained for 35 bungalows along with two commercial buildings from 4th Respondent vide its file No.2698/MP2/Plg/HMDA/2007, dated 09.02.2010 and the same has been forwarded to Respondent No.2 for release and Respondent No.2 has collected their fee and charges and released building permit vide their proceedings in File No.B/303/CCP/TPS/GHMC/2010, and Permit No.16/44 dated 28.06.2010. **(Copy of GHMC Proceedings are enclosed as**

For SILVER OAK Resd.
Partner

Annexure-IV). In this layout also we have mortgaged 5% of total number of units i.e. 2 plots bearing Nos.393 & 394 to HMDA vide mortgage deed no.603 of 2010 dated 19 .01.2010 in favour of HMDA. The petitioners have also mortgaged 2 units bearing Plot nos.387 & 388 in favour of Commissioner, GHMC through a notarized mortgage affidavit.

3. I further submit that when the first application was made the then Hyderabad Urban Development Authority was in existence and the original sanction was granted by the then HUDA. It is submitted that at that point of time also the area fell under the jurisdiction of the 2nd Respondent and as such the second permit was issued by the 2nd Respondent only. At that point of time the relevant papers were forwarded after technical sanction by the then HUDA i.e. HMDA as on today to the 2nd Respondent and the GHMC has accorded sanction.

4. I further submit that when the petitioners were required to submit NALA conversion proceedings to release the layout-cum-group housing building permit the petitioners had filed W.P.No.3893 of 2009 (WPMP No.5064 of 2009) and sought for direction to 4th Respondent to release the sanction plans without submission of NALA conversion proceedings and the Hon'ble High Court has given direction to 4th Respondent to release the sanctioned plans without insisting NALA conversion proceedings. **(Copy of Hon'ble High Court Order is enclosed herein as Annexure-V).**

For SILVER OAK REALTY

Partner

5. It is further submitted that, apart from the NALA conversion proceedings the 4th Respondent required the petitioner to submit National Savings Certificate for Rs.3,00,000/- (Rupees Three Lakhs only). As such we have approached the Hon'ble High Court and filed W.P.No.26502 of 2009 (WPMP No.34496 of 2009) and got interim direction from the court to release the sanction plans without insisting on National Savings Certificates, **(Copy of Hon'ble High Court Order is enclosed herein as Annexure-VI).**

It is submitted that as construction is complete the petitioners have withdrawn this case **(Copy of the order is enclosed herein as Annexure-VII).**

6. It is submitted that we have completed the construction of 97 bungalows along with 3(three) commercial buildings (balance 6 nos. construction were not completed as they are under mortgage to GHMC/HMDA and we have submitted application for Occupancy Certificate (Manual Application) to 2nd Respondent on 01.09.2015. **(Copy enclosed as Annexure-VIII).** It is submitted that the area now falls within the jurisdiction of GHMC and as such the 4th Respondent HMDA has no jurisdiction over the area for issuing permit or Occupancy Certificate etc. It is submitted that originally building permission was issued showing the Nala that passing through the site is 9 meters. It is submitted that the Irrigation Department has unilaterally increased the Nala to 10 Meters after several years from the date of granting of construction permission in the year 2007. It is submitted that inspite of the said fact a width of 10 meters for Nala and 2 meters on other side for buffer zone was left by the Petitioner while

For SILVER OAK REALTY
Partner

constructing Gated Community Housing Complex and the same is being maintained as on today also.

7. It is submitted that the 2nd Respondent rejected the Occupancy Certificate application vide its letter No.39189/01/09/2015/HO, dated 26.10.2018 on the ground that we have not commenced construction of 6 (six) mortgaged bungalows bearing Nos.387, 388, 393, 394, 314 & 315.. **(Copy enclosed as Annexure-IX).**

8. It is submitted that as per Respondent No.2 letter dated 26.10.2018 the petitioner has completed the balance six (6) villas and submitted a fresh application for Occupancy Certificate (Manual application) on 01.09.2016 with a request to release mortgaged bungalows. **(copy enclosed as Annexure-X).**

9. It is submitted that some local residents of Cherlapally area had complained to Respondent No.2 that we had encroached the nala which is passing through our site. In this connection Respondent No.2 had sought a report from the Tahsildar, Ghatkesar Mandal and Kapra Mandal vide their letter Nos.19/TPS/KC-1/EZ/GHMC/2016, dated 01.10.2016 & 06.10.2016 and letter no.19/TPS/HO/GHMC/2016/HO/1562 dated 07.11.2016. **(Copy enclosed as Annexure-XI & XII).**

10. It is submitted that, thereafter the Tahsildar, Kapra Mandal has given its report to Respondent No.2 vide report no. B/502/2017 dated 28.06.2017 clearly stating that there is no encroachment into the nala, but it has been pointed out a small portion of land was effected in the 2 mtrs buffer zone on

For SILVER OAK REALTY

Partner

either side of the nala. This total correspondence between GHMC, Irrigation and Tahsildar done through internal (i.e. e-office) only. **(Copy enclosed as Annexure-XIII).**

11. It is submitted that, as suggested by Irrigation Department we have provided in our site 9 mtrs nala and 2 mtrs buffer strip on both sides of the nala as shown in the sanction plan issued by GHMC/HMDA. **(Copy of the plan showing nala width is enclosed herein as Annexure-XIV).**

12. It is submitted that, we have requested Respondent No.2 to process our Occupancy Certificate file and release of mortgaged plots/bungalows vide our letters dated 27.09.2017 and 30.12.2017 (manual letters), but there is no response from GHMC. **(Copies of letters enclosed as Annexure-XV & XVI).**

13. It is submitted that, subsequently the petitioners submitted Occupancy Certificate application through online as per the procedure through DPMS file No.1/C1/18050/2018-OC, dated 29.09.2018. **(Copy of online application enclosed as Annexure-XVII).** It is submitted that, thereafter in response to our online application for Occupancy Certificate, Respondent No.2 issued a shortfall letter file vide its letter No.1/C1/18050/2018-OC, dated 31.10.2018 asking us to submit the status of Court cases details as mentioned in the sanctioned plan accorded and NOC from the Irrigation Department as there is a Nala flowing through the site. **(Copy enclosed as Annexure-XVIII).** The objections are as follows:

For SILVER OAK REALTY
Partner

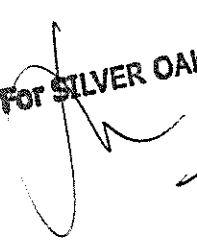
Sl.No.	Documents Name	Remarks
1	Other Document if any	

Sl.No.	Remarks
1	The applicant may be informed to submit the status of Court Cases details as mentioned in the sanctioned plan accorded and NOC from the Irrigation Department as there is a Nala flowing through the site.
2	The applicant may be informed to submit the status of Court Cases details as mentioned in the sanctioned plan accorded and NOC from the Irrigation Department as there is a Nala flowing through the site.

It is submitted that, we have responded to the above shortfall letter by letter dated 31.10.2019 (**Copy enclosed as Annexure-XIX**) duly stating that the Hon'ble High Court had disposed of the two cases in respect of NALA conversion proceedings by common orders passed in WP No.26688 of 2007 and batch, dated 28.04.2010. (**Copies of High Court Orders are enclosed herein as Annexure-XX**). We have also stated, based on Hon'ble High Court Orders we have paid the NALA Conversion charges and got RDO NOC (i.e. NALA conversion proceedings), Keesara Division Proceedings No.B2/993/2017 dated 26.10.2019 and the same have been submitted to GHMC i.e. Respondent No.2. (**Copy of NALA conversion proceedings are enclosed herein as Annexure-XXI**).

14. It is submitted that on 24.12.2019 GHMC has issued a second shortfall letter bearing No.1/C1/18050/2018-OC, dated 24.12.2019 with the following objections. (**Copy enclosed as Annexure-XXII**).

Sr.No.	Documents Name	Remarks
1	Copy of the completed Building Plan showing the changes if any to Approved Building Plan along with a statement of deviations.	

FOR SILVER OAK REALTY

 Partner

Sr.No.	Remarks
1	To submit the NOC from the Irrigation Department as there is a Nala flowing through the site.
2	To submit the NOC from the Irrigation Department as there is a Nala flowing through the site.

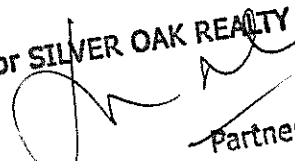
It is submitted that, we have replied to Respondent No.2 on 25.01.2020 to their second shortfall letter dated 24.12.2019 clearly stating that the construction is completed in all respects and that there are no changes made to the approved building plan and the construction is made in accordance with the approved building plan without any deviation and requested for release of the Occupancy Certificate. **(Copy enclosed as Annexure-XXIII).**

15. It is submitted that, on 07.04.2020 Respondent No.2 has issued third shortfall letter bearing No.1/C1/18050/2018-OC, dated 07.04.2020 **(Copy enclosed as Annexure-XXIV). The objections are as follows:**

Sl.No.	Documents Name	Remarks
1	Copy of the completed Building Plan showing the changes if any to Approved Building Plan along with a statement of deviations.	

Sl.No.	Remarks
1	The applicant may be informed to submit the status of Court Cases Details as mentioned in the sanctioned plan.
2	To submit the NOC from the Irrigation Department as there is a Nala flowing through the site.

It is submitted that we have replied to Respondent No.2 on the same day to their third shortfall letter dated 07.04.2020 and submitted the particulars of the court cases filed and the orders passed by the Hon'ble High Court and the subsequent payment of the Nala conversion fees and obtaining of the proceedings from the RDO, Keesara Division and further submitted about the

For SILVER OAK REALTY

 Partner

writ petition filed regarding the demand of National Savings Certificate worth Rs.3000/- and the orders passed by the Hon'ble High Court and subsequent completion of the construction and the fact that the HMDA thereafter did not insist for such certificate from any party and as such the demand itself becoming irrelevant. It was also clearly mentioned in the said explanation that the NOC from the Irrigation Department is not at all required as the same has been clarified by the Irrigation Department itself by communication to the GHMC which is inter-departmental correspondence and not marked to the petitioner(Copy enclosed as Annexure-XXV).

16. Again the Respondent No.2 has issued fourth shortfall letter bearing No.1/C1/18050/2018-OC, dated 29.04.2020 asking the petitioners to submit the ground position drawing of the individual buildings. (Copy enclosed as Annexure-XXVI).

Sr. No.	Documents name	Remarks
1	Copy of the completed Building Plan Showing the changes if any to Approved Building Plan along with statement of deviations .	
Sr.No. 1	Remarks: 1. The applicant may be informed to submit the ground position drawing of the individual buildings.	

For SILVER OAK REALTY
Partner

It is submitted that; we have replied to Respondent No.2 on 16.05.2020 to their fourth shortfall letter dated 29.04.2020.(Copy enclosed as Annexure-XXVII) in detail giving the ground position, drawings of the individual buildings of the Gated Community Layout Cum Group Housing and submitted all the particulars of the buildings constructed as required by the 2nd Respondent and further requested for the Occupancy Certificate.

17. It is submitted that once again Respondent No.2 issued fifth shortfall letter bearing No.1/C1/18050/2018-OC,dated 28.07.2020 asking us to submit NOC from the Respondent No.4 with regard to the conditions mentioned in sanctioned plan with respect of Court Cases etc.(Copy enclosed as Annexure-XXVIII). The objections are as follows:

Sl.No.	Documents Name	Remarks
1	Copy of the completed Building Plan showing the changes if any to Approved Building Plan along with a statement of deviations.	

Sl.No.	Remarks
1	1. To submit the NOC from the HMDA with regard to the conditions mentioned in Sanctioned Plan with respect of Court Cases etc.

18. It is submitted that apart from the shortfall letter, Respondent No.2 wrote a letter to Respondent No.4 asking them to give remarks in respect of three Court Cases. (Copy enclosed as Annexure-XXIX). The matter is pending with Respondent No.4 in giving remarks to Respondent No.2 in respect of three court cases.

20. It is submitted that as per G.O.Ms.No.168, A.P. Building Rules, 2012 Rule 26 provides for issuance of Occupancy Certificate and as per Rule 26(b)

For SILVER OAK REALTY

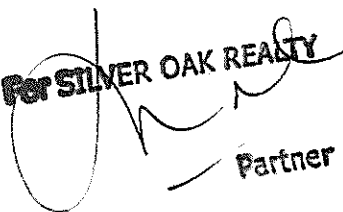
 Partner

the owner shall submit a notice of completion through the Architect and Licensed Builder / Developer along with prescribed documents. The Rule 26 reads as follows:

Rule 26: OCCUPANCY CERTIFICATE:

- (a) Occupancy Certificate shall be mandatory for all buildings. No person shall occupy or allow any other persons to occupy any building or part of a building for any purpose unless such building has been granted an Occupancy Certificate by the Sanctioning Authority. Partial Occupancy Certificate may be considered by the Sanctioning Authority on merits i.e. flats / units or area within a complex which have fulfilled all the requirements in addition to basic facilities like lifts water supply, sanitation, drainage, roads, common lighting etc. However, in respect of individual buildings in plots up to 100Sq.m with height up to 7m obtaining Occupancy Certificate is optional.
- (b) The owner shall submit a notice of completion through the registered architect and licensed builder / developer along with prescribed documents and plans to the Sanctioning Authority. The Sanctioning Authority or the person authorized, on receipt of such notice of completion shall undertake inspection with regard to the following aspects:
 - (i) *No. of Floors.
 - (ii) External setbacks.
 - (iii) Usage of the building.
 - (iv) Parking space provision.
 - (v) Abutting road width.

*The total height of the building may vary to a maximum of 1m with no change in the permitted number of floors subject to compliance of fire service norms.

For SILVER OAK REALTY

Partner

- (c) The Sanctioning Authority shall communicate the approval or refusal of the Occupancy Certificate within 15 days or may issue the same after levying and collecting compounding fee, if any. If the authority fails to issue the Occupancy Certificate within the above stipulated period the responsibility shall be fixed with the concerned officer who fails to process the file.
- (d) The Sanctioning Authority is empowered to compound the offence in relation to setbacks violations (other than the front setback) in respect of non-high-rise buildings only up to 10%, duly recording thereon the violations in writing. The rate of Compounding fee shall be equivalent to one hundred percent of the value of the land as fixed by the Registration Department at the time of compounding for the violated portion and the Government may revise this rate from time to time. Compounding of such violation shall not be considered for buildings constructed without obtaining any sanctioned plan.
- (e)
- (f)
- (g)
- (h)
- (i)

That being the case, without addressing the issues or without conducting any inspection the 2nd Respondent is deliberately delaying the matter by posing unnecessary and irrelevant queries and requiring the petitioner to submit answers to unnecessary and irrelevant questions. The scope of the Rule and jurisdiction of the 2nd Respondent for issuing Occupancy Certificate is clearly defined and the criteria are fixed. It is submitted that the procedure has to be followed by the 2nd Respondent and the same does not take more than a few days for verifying the construction on site and issuing the Occupancy

For SILVER OAK REALTY

Partner

Certificate. That being the case the shortfall letters issued by the 2nd Respondent are totally outside the scope of Rule 26 and liable to be ignored / set aside. It is submitted that the parks and open space within the site were handed over to the GHMC / HMDA long back.

21. It is submitted that the 2nd Respondent has written a letter to the 4th Respondent dated 19/21st August, 2020 informing all the particulars and requested for remarks from the 4th Respondent regarding issue of the Occupancy Certificate. It is submitted that, the petitioner has also submitted a letter to Respondent No.4 giving clarifications of three court cases against Respondent No.2 letter dated 24.09.2020 duly giving clarification in respect of three Court Cases and requested to send remarks to Respondent No.2 at the earliest in our Occupancy Certificate file. All the particulars of the project were mentioned in the said letter in detail. **(Copy enclosed as Annexure-XXX)**. Unless and until Respondent No.4 gives clarification to Respondent No.2 in respect of three Court Cases, Respondent No.2 the Occupancy Certificate will not be released as per the communication of the 2nd Respondent.

22. I submit that there is absolutely no requirement of any such clarification or go ahead from the 4th Respondent. I submit that this action of the Respondents 2 and 3 in requiring clarifications about 3 (three) court cases from the 4th Respondent herein is totally unnecessary, highhanded, and illegal amounting to Red Tape. I submit that the construction made and completed by the Petitioners is without any deviations and adhering to all the required norms and standards. That being the case the stand of the 2nd Respondent is

For SILVER OAK REALTY

Partner

totally unreasonable, highhanded, and illegal. Thus, we are constrained to file the present writ petition.

23. The Petitioners have got no other equally efficacious alternative remedy except to invoke the extraordinary jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India.

24. The Petitioners have not filed any other writ petition or proceedings for the same relief which is claimed in the present writ petition.

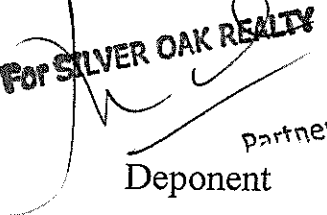
25. It is necessary that the Hon'ble Court be pleased to direct the respondents 2 and 3 to issue "Occupancy Certificate" in respect of Layout-cum-gated community group housing building complex constructed by the Petitioners under Proceedings No. 2698/MP2/Plg/HMDA/2007, dated 25.03.2008 and Building Permit vide Proceedings No.BA/G1/561/2008-09, dated 22.04.2008 and File No.2698/MP2/Plg/HMDA/2007, dated 09.02.2010 and Building Permit Proceedings No.B/303/CCP/TPS/GHMC /2010, dated 28.06.2010 without reference to 4th Respondent or without reference to or insisting on any clarifications from the 4th Respondent disposal of the writ petition.

26. 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 the Respondents 2 and 3 in not issuing **Occupancy Certificate** to the petitioners and insisting upon clarifications from the 4th Respondent by letter dated 28.07.2020 as arbitrary and illegal and set aside the shortfall letter Application No. 1/C1/18050/2018-OC dated 28-07-2020


SILVER OAK REALTY
Partner

and consequently direct the Respondents 2 and 3 to issue Occupancy Certificate in respect of Layout-cum-gated community group housing building complex constructed by the Petitioners under Proceedings No. 2698/MP2/Plg/ HMDA/2007, dated 25.03.2008 and Building Permit vide Proceedings No.BA/G1/561/2008-09, dated 22.04.2008 and File No.2698/MP2/Plg/ HMDA/2007, dated 09.02.2010 and Building Permit Proceedings No.B/303/CCP/TPS/GHMC /2010, dated 28.06.2010 without insisting on the clarifications from the 4th Respondent by letter dated 28.07.2020 and without reference to the 4th Respondent and pass such other order or orders in the interest of justice.

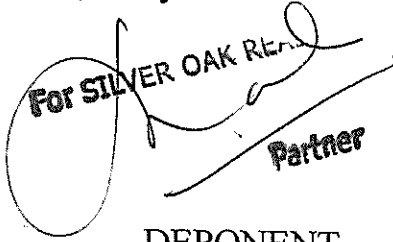
Sworn and signed before me on
this the day of December 2020
at Hyderabad.

For SILVER OAK REALTY

Partner
Deponent

Advocate/Hyderabad

VERIFICATION

I, Soham Modi, S/o. Late Satish Modi, aged about 50 Years, Occ: Business, R/o. II Floor, Soham Mansion, MG Road, Secunderabad, Telangana State, do hereby verify and declare that the contents of paragraphs 1 to 22 are true and correct to the best of my knowledge, information and belief and paragraphs 23 to 26 are believed to be true and correct as per legal advice and hence verified on this the day December, 2020, at Hyderabad

For SILVER OAK REALTY

Partner
DEPONENT

COUNSEL FOR PETITIONER

IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT:HYDERABAD

W.P.No. 23117 of 2020

Between:

M/s Silver Oak Realty

Formally known as M/s Mehta & Modi Homes

..Petitioner

AND

The State of Telangana Rep by its Principal Secretary
& 3 Others

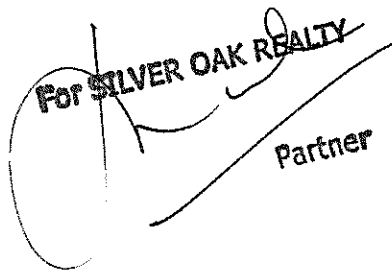
..Respondents

I/We M/s Silver oak Realty Rep by its Managing Director Soham
Modi S/o Late Satish Modi, having its office at 5-4-187/3&4 3rd
floor, Soham Mansion, MG Road Secunderabad

do hereby appoint and retain

PERI PRABHAKAR (6390)
Advocate

Advocate/s to appear for me / us in the above Case and to conduct and prosecute and defend the same and all proceedings that may be taken in respect of any applications for execution or any Award or Order passed therein. I/We empower my/our Advocate/s to appear in all miscellaneous proceeding in the above case/matter till all Award or Order are fully satisfied or adjusted to compromise and obtain the return of documents and draw any moneys that might be payable to me/us in the said suit or of matter and notice I/We do further empower my/our Advocates to accept on my /our behalf, service of all or any appeals or petitions filed in any Court of Appeal reference or Revision with regard to said suit or matter before the disposal of the same in this Honourable Court.


For SILVER OAK REALTY
Partner

Certified that the executant herein is well acquainted with English, read this Vakalatnama. the contents of the Vakalatnama were read over and explain in English/Hindi to the executant as he /she/they being unacquainted with English who appeared perfectly to understand same and signed /put his / her/their name or mark in my presence.

Executed before me this day December 2020.

Advocate, Hyderabad.