

BEFORE THE ARBITRAL TRIBUNAL

Comprising of

HON'BLE JUSTICE (RETD.) SRI. G. YETHIRAJULU
(Sole Arbitrator)

I.A No. OF 2024

IN

ARBITRAL DISPUTE NO. 10-2024

IN THE MATTER OF ARBITRATION

BETWEEN:

Y. RAVINDER REDDY AND OTHERS

PETITIONERS/RESPONDENTS

AND

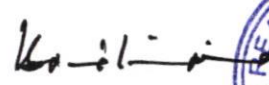
M/s. MODI REALTY (SIDDIPET) LLP.

RESPONDENT/CLAIMANT

COUNTER AFFIDAVIT FILED ON BEHALF OF THE RESPONDENT

I, Sitarmanjaneyulu Burri, S/o Koteswar Rao Burri, Aged about 56 years, R/o, 6-107/1, Plot No.1, Sri Venkateshwara Colony, near Grampanchayati, Injapur, Hayatnagar, Ranga Reddy, Telangana - 501510, the General Manager and the Authorized Representative of the Respondent company herein, do hereby solemnly affirm and declare as follows:

1. I am the authorized representative of Respondent herein and as such well acquainted with the facts of the case and able to depose hereunder.




2. I have gone through the contents of the Petition filed by the Petitioner under Section 16 of the Arbitration and Conciliation Act (**Act**) and at the outset, the answering Respondent denies all the submissions, allegations and averments made by the Petitioner in the petition as false and baseless and devoid of merit in fact and in law. No allegation or averment made against the Respondent may be considered as true or admitted by the Respondent for reasons of non-traverse.
3. It is most humbly submitted that the instant Application is filed on basis of erroneous and misleading interpretation of the applicable law and the facts and hence merits no consideration. The Petitioner has resorted to false narration of facts and have not approached this Hon'ble Tribunal with clean hands, evidently to only protract the present proceedings with the aim of evading their liability.
4. The instant application is filed challenging the jurisdiction of this Hon'ble Tribunal on two grounds, which are that the LOI and MOU are not sufficiently stamped and that the appointment of the Ld. Arbitrator was barred by limitation and the Respondent's objections to the said grounds are submitted as under:
 - A. **The Letter of Intent dated 22.07.2016 and Memorandum of Understanding date 06.10.2016 is not sufficiently stamped:**




- a) It is submitted that the Arbitration is not invoked under the Letter of Intent dated 22.07.2016 but under the Memorandum of Understanding dated 06.10.2016 (**MOU**).
- b) The MOU dated 06.10.2016, as the name suggests was executed between the Parties to capture the broad terms of arrangement of the proposed transaction of development until the formal agreement is executed and registered between the Parties. Thus, evidently, the MOU is only a prelude to Development cum General Power of Attorney. According to various legal precedents and statutory provisions, agreements that are preliminary in nature, such as MoUs, do not require to be stamped unless they create or transfer any rights, obligations, or interests that are immediately enforceable. Since the MOU in question does not by itself create enforceable rights or obligations but merely outlines the intention of the parties, it is not a compulsorily registerable document and hence is not adequately stamped.
- c) It is submitted that the Petitioner and Respondent mutually agreed that, upon obtaining the necessary permissions and sanction, the Petitioner shall execute a General Power of Attorney or a General Power of Attorney cum Joint Development Agreement or a General Power of Attorney cum Agreement of Sale in favour of the Respondent as also outlined in Clause 28 of the MOU dated 06.10.2016.

6/11/16



Clause 28 of the MOU reads as under:

28. *"That on obtaining the necessary sanctions and permissions (or on receipt of demand for payment of fees and charges) from DTCP/Urban Development Authority/Local Municipality and other appropriate authorities, the Owners shall execute a General Power of Attorney or a General Power of Attorney cum Joint Development Agreement or a General Power of Attorney cum Agreement of sale in favour of the Developer or their nominees, for the Villas/Plots falling to the share of the Developer, so as to enable the Developer to sell their share of the Villas/Plots to any intending purchaser, without any further reference to the Owners. The cost of such registration and execution of General Power of Attorney or a General Power of Attorney cum Joint Development Agreement or a General Power of Attorney cum Agreement of sale shall be borne by the Developer."*

- d) Further at Clause 27 of the MOU, it is contemplated that on obtaining the necessary sanctions and permissions the parties shall enter into a Supplementary Agreement or add an Annexure to General Power of Attorney or a General Power of Attorney cum Joint Development Agreement or a General Power of Attorney cum Agreement of Sale specifying the villas/plots proposed to be developed on the Schedule Property.

Clause 27 of the MOU reads as under:

"That on obtaining the necessary sanctions and permissions (or on receipt of demand for payment of fees and charges) from DTCP/Urban Development Authority/Local Municipality and other appropriate authorities, the parties shall enter into a Supplementary Agreement or add an Annexure to the General Power of Attorney General

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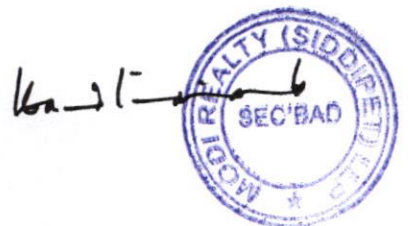


Power of Attorney cum Joint Development Agreement/General Power of Attorney cum Agreement of sale mentioned below to clearly specify the Villas/Plots proposed to be developed/constructed on the Schedule Land together with Common Amenities to be distributed between them in terms of this understanding.”

- e) It is further submitted that, apart from Clause 27 and 28, which provide for the clear and explicit intention of entering into definitive agreement, a conjoint reading of the MOU also clearly establishes that the MOU was only a prelude as the parties had agreed to enter into a subsequent agreement. The Recitals, Clause 44, 49 etc., also establishes that even the total extent of land which was to be given on development was to be determined upon completion of due-diligence.
- f) It is therefore submitted that the aforementioned clauses clearly establishes that the MOU dated 06.10.2016 is merely a preliminary document and the parties had an intention to enter into a subsequent agreement and hence the LOI or the MOU does not warrant registration or stamping as alleged by the Petitioners.

B. The Appointment of Arbitrator is barred by law of limitation:

- a) It is submitted that the issue with regards to limitation has been raised by the Petitioner in bad faith, as an afterthought and belatedly. At the outset it is submitted that challenging



the jurisdiction of this Hon'ble Tribunal on the issue of limitation of filing the Section 11 application is beyond the scope of Section 16 of the Act.

- b) It is relevant to note that the Petitioner herein failed to address this dispute before the Hon'ble High Court for the state of Telangana in the Section 11 application. Now, in an attempt to obstruct the process, the Petitioner is unreasonably raising this issue in an untimely manner. This not only reflects the Petitioner's malafide intentions but also constitutes a deliberate and strategic attempt to manipulate the proceedings to their advantage.
- c) Be that as it may, even assuming that the said issue can be agitated by the Petitioner, it is submitted that the said issue has no legs to stand. It is submitted that, the cause of action for initiating arbitration first arose on 17.06.2019 and 09.07.2017 (*Annexure C9*) when the Respondents refused to refund the advance consideration which ought to be treated as the breaking point. It is submitted that the Respondent immediately thereafter, invoked arbitration and issued the notice for commencement of Arbitration on 19.07.2019 nominating Retd. Justice C.V Ramulu as the arbitrator which is the end point of limitation for purposes of the main dispute, as such, the Respondents initiated arbitration within 10 days of refusal of the Petitioner to honour their obligations and liability under the MOU.



- d) On the issue pertaining to initiation of proceedings under Section 11 of the Act. It is submitted that, the Petitioners issued their to the notice of commencement of arbitration on 14.08.2019 refusing to participate in the arbitral proceedings. Upon receipt of the said reply dated 14.08.2019, the answering Respondent issued a reminder notice dated 24.12.2019.
- e) While the matter stood thus, the entire world was hit by the rigours of the global pandemic i.e. Covid-19 and hence the Section 11 application was filed on the earliest possible occasion, after the answering Respondent observed the Petitioner's approach to the application filed under Section 9 of the Act and realized the true intention of the Petitioner in delaying the arbitral proceedings.
- f) It is submitted that the Hon'ble Supreme Court, by order dated 10.01.2022 in Suo Motu Writ Petition (C) No. 3 Of 2020 has made it amply clear that, on account of Covid-19, the period from 15.03.2020 till 28.02.2022 shall stand excluded for purposes of computation of limitation under any and all general or special laws in respect of all judicial or quasi-judicial proceedings.
- g) Thus, the Section 11 application is not barred by limitation.

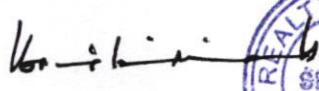
Paragraph wise Reply:

5. In reply to Para 1, the contents stated are a mere description of the Petitioner and does not require a specific reply.

K. S. I. S.



6. In reply to Para 2, it is submitted that the grounds on which the relief sought by the Petitioner under Section 16 of the Act are misleading, unsustainable and specifically denied for the reasons set out above in paragraphs 4A and 4B.
7. In reply to Para 3, it is humbly submitted that objection of the Petitioner in respect of insufficient stamp duty was left open for this Hon'ble Tribunal. However, no objections in respect of Section 11 being barred by limitation were raised before the Hon'ble High Court.
8. In reply to Para 4, it is denied that the Respondent had approached the Petitioners for development of the Schedule Property. It is submitted that it was the Petitioners who intended to develop the Schedule Property and, lacking the necessary expertise to undertake a housing project independently, approached the Respondent for the purpose of development the Schedule Property.
9. In reply to Para 5, it is submitted that the MOU was entered between the Petitioners and Respondent only to outline the broad understanding of the terms of development of the Schedule Property. The answering Respondent takes strong objection to the repeated reference to the MOU as a Development Agreement. It is denied that the Respondent was placed at a higher footing than the Petitioners and that the Petitioners had no bargaining power at all. It is submitted that the Petitioners are misleading this Hon'ble Tribunal and clearly speaking against the record. In reality it was the Petitioners who were engaged in multiple rounds




of negotiations with the Respondent, during which they actively influenced the terms of the understanding. Their contentions are a deceptive tactic to avoid their obligations and responsibilities as agreed upon in the MOU. The Petitioners' attempts to cast themselves in a disadvantageous light are both unfounded and an unfair distortion of the facts. Even otherwise, in absence of any proof, the allegations leveled by the Petitioner herein against the Respondents are mere conjectures and surmises and unsustainable in law.

10. In reply to Para 6, it is humbly submitted that the contents of the same are denied as false, concocted and gross misrepresentation of the facts. The answering Respondent is an reputed builder and has been in the real estate industry for over three decades and is very well aware of the legal implications of execution of such material documents. The answering Respondent has never indulged in such untoward act as alleged by the Petitioner not have there been any antecedents of such attempt at flouting the law and the answering Respondent reserves its right to initiate legal proceedings against the Petitioner for defamation. It is relevant to point out once again that, Clause 27 and 28 of the MOU clearly establishes the fact that there will be a subsequent definitive agreement. Clause 44 also establishes the said intention of the Parties as it was specifically agreed that a portion of the deposit amount will be paid at the time of execution of the definitive agreement. Clause 44 stipulates as follows:



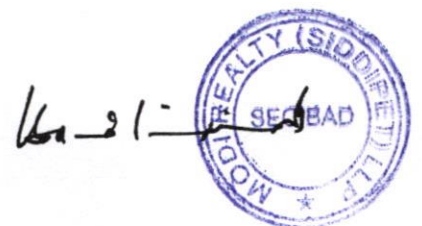
44. "The Owners have requested the Developer to deposit an amount of Rs. 90 Lakhs / (Rupees Ninety Lakhs only) as security deposit towards performance guarantee for fulfilling its obligations under this Memorandum of Understanding. The Developer has paid Rs. 50 Lakhs (Rupees Fifty Lakhs only) as per details given below to the Owners as on this date. Rs. 20 lakhs shall be paid by the Developer to the Owners on obtaining sanction or permit for construction (or on receipt of demand for payment of fees and charges) **and at the time of execution of General Power of Attorney/ General Power of Attorney cum Joint Development Agreement / General Power of Attorney cum Agreement of sale in favour of the Developer.** The balance security deposit of Rs. 20 lakhs shall be paid by the Developer to the Owners on commencement of work. The Security deposit shall be refunded to the Developer only after completion of all Villas and within 45 days of intimation by the Developer to the Owners for refund of the same. Further, the Security deposit shall become refundable upon cancellation of this understanding as given under. The Developer in order to ensure the refund of the Security deposit towards the performance guarantee shall handover the last 5 Villas agreed to be developed/ constructed falling to the share of the Owners only after refund of the said security deposit."

11. In reply to Paras 7 and 8, it is humbly submitted that as per Clause 47 of the MOU, to enable the Respondent to commence the development of the Project on the Subject Property, the Petitioners were obligated, inter alia to assist the Respondent to conduct Panchnama and the survey of the Subject Property through the MRO office, irrigation department and other government bodies demarcating the exact area of land forming the Subject Property, to determine the land affected in the proposed 50 wide road on



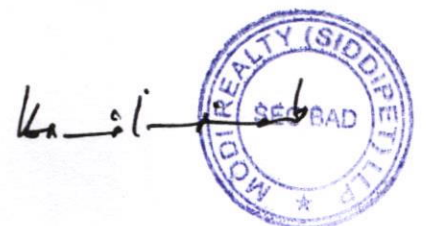
eastern side, land affected in FTL/buffer zone/ NALA on the northern side and land affected in proposed 40 road on south and western side, and the Petitioners were obligated to assist and co-ordinate with the Respondent for carrying out due diligence. In spite of repeated reminders, the Petitioners never came forward to comply with their obligations under Clause 47 of the MOU, Additionally, contrary to the Petitioners' assurance of there being a clear title to the Schedule Property, the Respondent also got to know there are third party claims over the Schedule property when the Respondent came across an e-auction notice issued by Vijaya Bank dated 06.06.2017. Thereby in these circumstances, the Respondent was unable to execute a subsequent agreement and commence development.

12. In reply to Para 9, it is submitted that due to the aforementioned actions of the Petitioners in not complying with their obligations under Clause 47 of the MOU and the Schedule Property not having a clear marketable title, the Respondent was constrained to issue a Notice of Termination of the MOU dated 06.10.2016 and refund of security deposit of Rs. 50,00,000 on 23.05.2019.
13. In reply to Para 10, it is submitted that the Petitioners only gave evasive replies to the Petitioner's letter dated 23.05.2019 in their letters dated 17.06.2019 and 08.07.2019. It is submitted that on account of false representations and existence of third party claims, that the Petitioners deliberately did not comply with Clause 47 of MOU to prevent general public from knowing about the proposed development transaction of the Respondent.



14. In reply to Para 11, the averments mentioned herein are false, baseless and concocted. The allegations leveled against the Respondent/ Claimant of not commencing the project even after 8 years had caused great loss and hardship to the Petitioners are vehemently denied for what of knowledge and lack of privity. It is submitted that the MOU was terminated by the Respondent as early as 23.05.2019 and the possession of the Subject Property since then has been with the Petitioners. The Petitioners, to cover-up their deliberate and malafide acts are only attempting to attribute dirt to the answering Respondent on bald and flimsy grounds, which are not just incorrect but also inadmissible. It is submitted that it was, infact the Petitioner who has kept the Respondent hanging because of third party claims over the Schedule Property and is now making these frivolous allegations only to wiggle out and cover its responsibilities arising out of the MOU.

15. In reply to Paras 12 and 13, it is denied that the MOU dated 06.10.2016 is in the nature of construction agreement and the Petitioner is put to strict proof of the same. It is submitted that the parties entered into the MOU only for the purposes of obtaining necessary permissions and having clear title of the Schedule Property for the purposes of development. It was also mutually agreed by the Petitioners and the Respondent that there shall be a separate agreement for development/construction following the completion of due diligence. Clause 49 of the MOU provides for cancellation of MOU by the Petitioner in the instance



where the Respondent fails to obtain permission and there is no reference to competition or construction or any obligation towards development.

Clause 49 of the MOU reads as under:

49. "Owners and Developer have mutually agreed that this understanding can be unilaterally cancelled by the Owner in case of the following event:

a. Failure to obtain sanction/building permit within the time specified herein. In such an event the Owners shall refund the security deposit within 30 days of such a cancellation to the Developers and in case of failure to do so the Developer shall be entitled to recover the same with interest @ 18% per annum"

16. The Petitioner's assertion that the MOU serves as a construction agreement is therefore unfounded and misleading, as the MOU's purpose and terms clearly indicate otherwise.
17. In reply to Para 14 to 18, it is submitted that the MOU is a valid legal agreement which does not require registration or payment of stamp duty like a Construction Agreement, Development Agreement, Sale Deed etc. As a result therefore, there is no occasion for the Respondent herein to pay any deficit stamp duty as the MOU, having been executed on a stamp paper of Rs. 100/- is adequately stamped.
18. In reply to Para 19 of the Petition, the Respondent places reliance on the submissions made herein above in paragraph 16 of this Counter Affidavit.

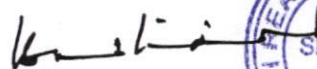
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19. In reply to Para 20 of the Petition, the Respondent places reliance on the submissions made herein above in paragraph 4B of this Counter Affidavit.
20. In reply to Paras 21 and 22, it is denied that Covid-19 extension order passed by the Supreme court would not come in aid and such limitation would also expire on 30.05.2022. It is submitted that limitation period for the Section 11 Application itself without the Covid-19 exemption would end on 14.08.2022 and since the period from 15.03.2020 till 28.02.2022 stood excluded for the purposes of limitation, the Section 11 application is very well within the period of limitation. The 90 days period post the Covid-19 extension is only applicable to cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022

Thus, under the aforesaid facts of this petition, it is most humbly submitted that the Petitioner is not entitled to the reliefs as sought and the above Section 16 Petition may kindly be dismissed with exemplary costs and this Hon'ble Court may kindly pass such other orders or order as this Hon'ble Court may deem fit in the interest of justice, equity and good conscious.

Sworn and signed before me on this
the day of August 2024



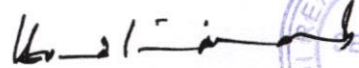
DEPONENT

ADVOCATE : HYDERABAD

VERIFICATION

I, Sitarmanjaneyulu Burri, S/o Koteswar Rao Burri, Aged about 56 years, R/o, 6-107/1, Plot No.1, Sri Venkateshwara Colony, near Grampanchayati, Injapur, Hayatnagar, Ranga Reddy, Telangana - 501510, the General Manager and the Authorized Representative of the Respondent company herein, do hereby solemnly affirm and sincerely state that the contents of the above affidavit are true and correct, to the best of my knowledge and belief.

Hence verified on this the _____ day of August, 2024 at Hyderabad



COUNSEL FOR RESPONDENT

DEPONENT