

BEFORE THE ARBITRAL TRIBUNAL
Comprising of
HON'BLE JUSTICE (RETD.) SRI. G. YETHIRAJULU
(Sole Arbitrator)
ARBITRAL DISPUTE NO. 10-2024
IN THE MATTER OF ARBITRATION
BETWEEN

M/S. MODI REALTY (SIDDIPET) LLP.
(CLAIMANT)

AND

Y. RAVINDER REDDY & OTHERS
(RESPONDENTS)

REJOINDER FILED BY THE CLAIMANT

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25 JANUARY 2025

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BETWEEN:

M/S. MODI REALTY (SIDDIPET) LLP.

CLAIMANT

VERSUS

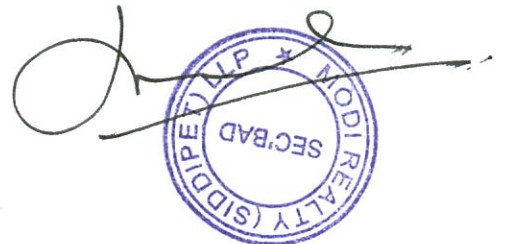
Y. RAVINDER REDDY & OTHERS

RESPONDENTS

**REJOINDER FILED BY THE CLAIMANT TO THE STATEMENT OF
DEFENCE CUM COUNTER CLAIM FILED BY THE RESPONDENTS**

MOST RESPECTFULLY SHOWETH:

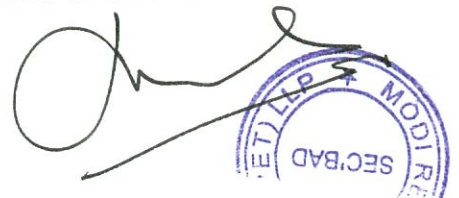
1. At the outset, the Claimant denies all the submissions set forth in the Statement of Defense cum counter claim filed by the Respondents. No part thereof may be deemed to be admitted for want of specific non-traverse. Save and otherwise specifically accepted by the Claimant or the matter of fact and records, the rest of the contents of the Statement of Defense cum Counter Claim filed by the Respondents herein are false, frivolous, wrong, baseless and denied. It is submitted that the Respondents have deliberately misrepresented and concealed the true and correct facts of the present matter before this Hon'ble Tribunal and are misleading the Hon'ble Tribunal.



2. As the averments of the Respondents in the Statement of Defense cum Counter Claim are adorned with false assertions, multiple inconsistent statements, misrepresentations etc, the Claimant seeks leave of this Hon'ble Tribunal to file its Rejoinder to the limited extent of the false averments, inconsistent statements and documents filed by the Respondents and the counter claim made by the Respondents.

PARAGRAPH - WISE REPLY TO THE CONTENTS OF THE STATEMENT OF DEFENSE CUM COUNTER CLAIM AS UNDER:

3. In reply to Paragraph 1 and 2 of the Statement of Defence cum Counter Claim ("**SOD**"), it is denied that the Claimant has suppressed and misrepresented the facts and unjustly enriched at the cost of the Respondent. The Claimant has diligently presented all the pertinent facts concerning the matter at hand which are also borne by the records. It is the Respondents who have unjustly enriched themselves at the cost of the Claimant despite there being third party claims over the Subject Property and suppressed the same from the Claimant.
4. In reply to Paragraph 3 to 5 of the SOD, it is submitted that the same are descriptive in nature and does not call for a reply. However, the Respondents are put to strict proof of the extent of the land owned by each Respondent. It is also submitted that the Claimant was informed about the death of Late Yella Bapu Reddy only on 30th January, 2020 when the Respondents entered appearance in Arb. O.P No. 108 of 2019.
5. In reply to Paragraph 6 of the SOD, it is denied that the Claimant

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has approached the Respondents with the intention to develop the Subject Property into Villas. It is Late Yella Bapu Reddy along with Respondent No. 1 to 4 who had approached the Claimant herein to develop the Subject Property knowing about their long-lasting reputation and goodwill in the market. The same has also been captured in "Recital K" of the MOU which reads as under:

"K. The Developer is in the business as real estate developers and managers and the Owners have approached the Developer for purposes of taking up the development of the Schedule Land."

6. In reply to Paragraph 7 of the SOD, it is denied that after carrying out due diligence in respect of the Subject Property, the Claimant had come up with the proposal of developing the Subject Property. It is submitted that the diligence of the Subject Property was still pending and it was expressly agreed by both the parties and captured under Clause 47(d) of the MOU that the Development Agreement will be executed after completion of due diligence, which reads as under:

"d. to provide all such documents that may be required for completing the due diligence and to verify the title of the land as requested by the Developers lawyers."

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. The aforesaid clauses clearly indicate that, due diligence of the Subject Property was to be carried out as a condition precedent before execution of the joint development agreement cum general power of attorney.

7. The contents of Paragraph 8 are denied in toto. It is denied that the



Claimant has taken the responsibility of getting the Development Agreement drafted and got the MOU drafted in the pretext of Development Agreement, and terms of the MOU was placing the Claimant on the higher footing is completely false and is denied. The MOU was drafted and executed, upon mutual discussion, deliberations and negotiation, in order to record the preliminary understanding between the parties until the preliminary obligations of the parties are complied with and the definitive joint development agreement is executed.

8. It is submitted that the Claimant and the Respondents mutually agreed that, upon obtaining the necessary permissions and sanction, the Claimant 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.

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."*



9. 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 Subject 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 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."

10. 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 parties had agreed to enter into a subsequent agreement.
11. In reply to Paragraph 9 of the SOD, it is submitted that in the year 2017, the Respondents got survey/demarcation of the Subject Property for their internal requirement i.e. for ease of bifurcation of

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the entire Subject Property amongst the Respondents and this survey was not done in furtherance of the MOU or the proposed development transaction. The deliberate attempt of the Respondents in linking the survey with the proposed development itself establishes their malafide intentions. Without prejudice the Respondent is put to strict proof of the contention raised herein that the survey was conducted in furtherance of the compliance of their obligations under the MOU.

12. Additionally, it is submitted that the Respondents have failed to fulfil other key obligations and formalities as agreed upon under the MOU, which were crucial to proceed with the project. This failure on the part of the Respondents constitutes a clear breach of the MOU and has caused significant delays and hardships to the Claimant.
13. The contents of Paragraph 10 of the SOD are denied and the Respondents are put to strict proof of the same. It is submitted that by the very own submission of the Respondents that "the landowners were awaiting for execution of proper development agreement so that the land owners can in turn get executed a Sale deed in respect of land admeasuring Ac.1-6.60 Gts from G.Kumara Swamy and P. Sidhulu" the Respondents admit that a DGPA was to be executed whereas contrarily throughout the other paragraphs of the SOD, the Respondents consistently claim that the MOU should be treated as a DGPA. The Respondents selective interpretation of the MOU to suit their narrative and their pleadings establish the malafide intentions of the Respondents.
14. In reply to Paragraph 11 of the SOD, it is denied that even after

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2 ½ years of entering into the MOU, the Claimant did not commence the project and instead started coming up with flimsy grounds against the Respondents on one pretext or the other. It is submitted that until execution of the development agreement the Claimant was under no obligation to carry out any development works. In fact, the MOU was executed with the intention of formalizing the terms of development subject to conducting due-diligence, execution of definitive agreement, nala conversions, etc., The Respondents faulted in complying with their obligations leading to termination of the MOU. It is further submitted that even after receiving the advance consideration and after having been enjoying the same for last 9 years, the Respondents are now creating a convoluted, false and fabricated version of what transpired between the parties, with the sole agenda of unjustly enriching themselves at the cost of the Claimant.

15. In reply to Paragraph 12 of the MOU, it is denied that the Claimant has terminated the MOU dated 06.10.2016 in an arbitrary and unilateral manner. It was clarified in the Claimant's notice dated 19.07.2019 that, the MOU is terminated in pursuance of Clause 48 of the MOU, which attributes to failure on part of the Respondents to perform their obligations as per the terms set out in the MOU. Furthermore, the Claimant being in the real-estate business would never pass an opportunity to make profits, rather than getting entangled in a litigation, and the said MOU was terminated only as a result of failure reasons attributed to the Respondents and the fraud played upon by the Respondents in concealing the existing disputes associated with the Property and the loss suffered by the Claimant on account of the Respondent's false promises and assurances.

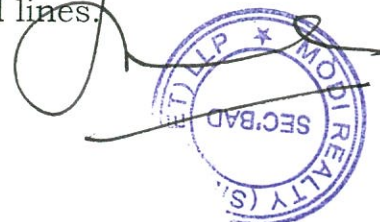


16. In so far as the contents of Paragraph 13 are, the same is borne out by record and needs no reply.
17. The contents of Paragraph 14 are denied in toto for the reasons stated in the above paragraphs. It is specifically denied that that there was any mango garden, tamarind trees, guava trees etc., in the Subject Property and the Respondents were generating revenue out of the same, the Respondents is put to strict proof of the same. The lack of proof in support of the said contentions makes it amply clear that once again the Respondents are making false, baseless allegations just to mislead this Hon'ble Tribunal. It is submitted that it is due to the failure on part of the Respondents to fulfil their obligations, the Claimant could not proceed with the Project, and it is the Claimant who suffered grave losses having spent all its time and money for a project yielding no income. It is pertinent to note that the Claimant has initiated preliminary work which could be carried out before execution of the development work on the Subject Property which is also buttressed by the Respondents very submission that the Claimant levelled the land. Furthermore, it is submitted that the alleged losses claimed by the Respondents are in no way attributable to the Claimant. The Respondents failed to extend the requisite support or cooperation necessary for the Claimant to effectively proceed with the Project. It is also worth noting that it was the Respondents who initially approached the Claimant, seeking their expertise for the development of the Subject Property which again confirms that the Respondents' always had the intention of giving the Subject Property for development. Therefore, any purported losses or delays are solely a result of the Respondents' failure to fulfill their obligations and provide the



essential assistance required for the timely commencement of the Project.

18. It is further submitted that upon the termination of the MOU, the question of not commencing the project after 8 years does not arise. The Respondents have not once challenged the termination but have only given evasive replies to the Notice dated 23.05.2019 and 19.07.2019. In fact, pursuant to cancellation of the MOU, entire transaction between the parties stood cancelled as on 23.05.2019 and since then the Respondents have been in possession, use and occupation of the Subject Property.
19. The contents of Paragraph 15 and 16 of the SOD are formal in nature and does not warrant a reply.
20. The contents of Paragraph 17 of the SOD are denied for the reasons stated in Paragraph 5 and 6 of this Rejoinder.
21. The contents of Paragraph 18 of the SOD are denied for the reasons stated in Paragraph 10 of this Rejoinder.
22. The contents of Paragraph 19 of the SOD are denied for the reasons stated in Paragraph 14 of this Rejoinder.
23. In reply to Paragraph 20 of the SOD, it is denied that the Respondents are not aware of the Letter of Intent (LOI) dated 22.07.2016 and that no such copy was handed over by the Claimant. It is submitted that the LOI was executed by Respondent No. 1 and 3 after carefully going through the contents of the LOI and that they could not have signed on dotted lines.



24. The contents of Paragraph 21 of SOD are denied in toto. It is submitted that as stated in Paragraph 14 above, the MOU was drafted and executed, upon mutual discussion and negotiation between the parties and the allegation that the Claimant was placed at a higher footing than the Respondents and that the Respondents had no bargaining power are denied. It is also denied that the Claimant has informed the Respondents that in the event a Development Agreement is entered into between the parties, then the parties have to pay huge amounts of stamp duty and that in the interest of both the parties, it is better to enter into an MOU as no stamp duty is required for execution of MOU. The MOU is only a prelude to Development cum General Power of Attorney only to capture the broad terms of arrangement of the proposed transaction of development between the Parties. It is surprising that the MOU is being given the colour of the Development Agreement, when in fact Clauses 27, 28, 44, 49 etc. of the MOU clearly provide for the clear and explicit intention of the parties entering into a definite agreement.
25. The contents of Paragraph 22 of SOD are formal in nature and do not warrant a reply.
26. In reply to Paragraph 23 and 24 of SOD, it is denied that pursuant to the execution of the MOU, the Respondents complied with all the terms of the MOU including but not limited to getting surveyed/demarcation of the Subject property and complied with all the formalities and the same is within the knowledge of the Claimant, the Respondent are put to strict proof of the same. It is specifically denied that the Claimant has failed to honour its

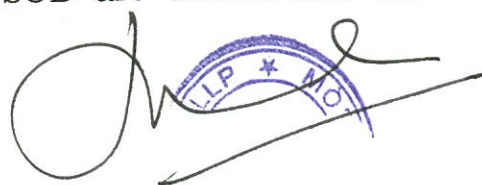
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obligations covered under the MOU as the Claimant has invested a huge sum of money in the project and the Claimant being in the real estate business would never pass away an opportunity to make profits. The Claimant always put in its best efforts to fulfil its obligations. The delay in commencement of the project and subsequent cancellation is solely attributable to the Respondents as they have failed to comply with their obligations under the MOU.

27. The contents of Paragraph 25 and 26 are denied and the Respondents are put to strict proof of the same. It is submitted that the Respondents, for the very first time, have alleged that the E-Auction Sale dated 06.06.2017 pertained to a property other than the Subject Property. Even assuming, without admitting, that this claim is true, the Respondents have failed to ever inform the Claimant that the mortgage in question was related to a different property and not the Subject Property. The Claimant pursued multiple legal remedies against the Respondents including issuing multiple notices, filing a Section 9 Application bearing AOP No. 108 of 2019 before the Hon'ble III Additional Chief Judge, City Civil Court, Hyderabad. At no point during these proceedings or in response to the notices did the Respondents make any attempt to clarify or disclose that the mortgage was related to another property. The Respondents' sudden and belated assertion not only lacks credibility but also demonstrates their deliberate intention to mislead this Hon'ble Tribunal and evade their liabilities.
28. The contents of Paragraph 27 of the SOD are denied as the Respondents have simply denied the paragraphs of the Statement of Claim without providing any valid reason.



29. The contents of Paragraph 28 of the SOD are denied for the reasons stated in the above paragraphs.
30. The contents of Paragraph 29 of the SOD are denied in toto for the reasons stated in Paragraph 17 and 18 of this Rejoinder.
31. Paragraph 30 of the SOD does not warrant a reply.
32. The contents of Paragraph 31 of the SOD are denied. It is submitted that the Claimant has rightfully terminated the MOU and got issued a legal notice dated 19.07.2019 commencing arbitration as per clause 54 of MOU as the Claimant suffered huge financial and reputational loss on account of the Respondents failure to fulfil their obligations under the MOU and since the Respondents did not show any interest in resolving the issue amicably.
33. In reply to Paragraph 32 of the SOD, it is denied that at the time of filing the vakalat also, Respondents informed about the death of Respondent No. 1. in AOP 108 of 2019 and the Claimant miserably failed to comply with the order of the court to file the process to bring the LRs on record till 16.10.2024. It is submitted that the Claimant was informed only on 30.01.2020 that Late Yella Bapu Reddy has demised and inspite of repeated requests, the Respondents have not furnished the details of the legal heirs of Late Yella Bapu Reddy. It is only on 20.09.2023 i.e. after lapse of more than three years that the Respondents filed a memo before the Hon'ble III Additional Chief Judge, City Civil Court intimating the names of the legal heirs.
34. The contents of Paragraph 33 of the SOD are denied and the



Respondents are put to strict proof of the same. The Claimant has never come forward to resolve the dispute amicably and has failed to co-operate with the Claimant.

35. The contents of Paragraph 34 of the SOD are denied as the Respondents have simply denied the paragraphs of the Statement of Claim without providing any valid reason.
36. In reply to Paragraph 35 and 36 of the SOD, it is denied that the land owners/Respondents have incurred substantial loss due to the malafide conduct of the Claimant. It is submitted that the Claimant has time and again requested the Respondents to perform their obligations under the MOU and assist and co-ordinate with the Claimant for carrying out due diligence but the Respondents have failed to do so. Furthermore, the Claimants have got to know through their known acquaintances that there were third party claims over the Subject Property and the Respondents have failed to clarify the same. In light of the foregoing, the Claimant has suffered substantial losses. Had the Claimant chosen to take up an alternative project during the time and with the resources invested in the present project, it would have successfully completed that venture and realized significant profits. The opportunity cost incurred by the Claimant due to its engagement with this project has caused immense financial and operational setbacks to the Claimant.
37. The contents of Paragraph 37 and 38 of the SOD are formal in nature and does not warrant a reply.
38. In reply to Paragraph 39 of the SOD, it is denied that the present

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arbitral proceedings is barred by law of limitation. It is submitted that, the cause of action for initiating arbitration first arose on 17.06.2019 and 09.07.2017 when the Respondents refused to refund the advance consideration which ought to be treated as the breaking point. It is submitted that the Claimant 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 Claimant initiated arbitration within 10 days of refusal of the Respondents to honour their obligations and liability under the MOU.

39. It is further submitted that, the Respondents issued their reply 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 Claimant issued a reminder notice dated 24.12.2019.
40. 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 Claimant observed the Respondent's approach to the application filed under Section 9 of the Act and realized the true intention of the Claimant in delaying the arbitral proceedings.
41. 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

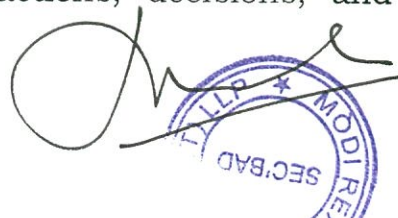


in respect of all judicial or quasi-judicial proceedings. Thus, the present arbitral proceedings is not barred by limitation and as rightly observed by this Hon'ble Tribunal in its order dated 04.09.2024 that "*the Claim petition is not barred by limitation.*"

42. The contents of Paragraph 40 are denied in toto and the Respondents are in illegal and unauthorized custody of the refundable Security deposit of the Claimant.

REPLY TO THE COUNTER CLAIM FILED ON BEHALF OF THE CLAIMANT

43. The Counter claims of the Respondents are barred by limitation.
44. In reply to Paragraph 41 of the SOD, Claim (a) with respect to the "Expenditure", it is denied that the Respondents have incurred substantial expenditure amounting to Rs.30,00,000/- (Rupees Thirty Lakhs) in relation to the activities of filling open wells and obtaining necessary survey maps and reports and they are put to strict proof of the same. The Respondents have also failed to provide any proof with respect to the expenditure incurred.
45. The contents of Paragraph 42 of the SOD, Claim (b) with respect to "Loss of Profit" is denied in toto. It is respectfully submitted that no rights accrued in favor of the Respondents, as the Memorandum of MOU was lawfully terminated. Furthermore, the Development cum General Power of Attorney (DGPA) was never executed, and therefore, no valid basis exists for the Respondents to assert any claim of loss or entitlement to profits. Any alleged losses are solely attributable to the Respondents' own actions, decisions, and

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failures, and the Claimant bears no responsibility in this regard. This claim is baseless, devoid of merit, and an attempt by the Respondents to unjustly shift the burden of their own shortcomings onto the Claimant. It is fundamental rule of equity that no person can benefit from their own wrong and the deliberate failure on part of the Respondents to come forward to comply with the terms of the MOU and created third party encumbrances establishes that the Respondents have only defaulted at every stage and tried to unjustly enrich themselves at the cost of the Claimant.

46. In reply to Paragraph 43 and 44 of the SOD, i.e Claim (c) and (d) with respect to "Damages for Loss of reputation" and " Litigation costs", it is reiterated that the losses are solely attributable to the Respondents' own actions, decisions, and failures, and the Claimant bears no responsibility in this regard.

It is therefore submitted that the defence and the claims of the Respondents are baseless, concocted, sans any merit.

In view of the above it is most humbly submitted that the reliefs sought by the Respondents be dismissed with exemplary costs and reliefs sought by the Claimant in its Statement of Claim be awarded in its favour.



CLAIMANT

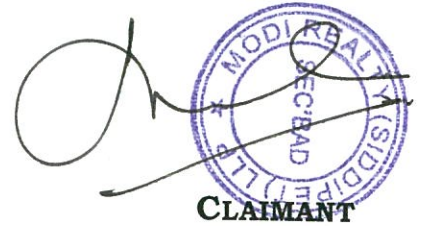
DATE: 25.01.2025

PLACE: HYDERABAD

VERIFICATION

I, Soham Modi, S/o Late Satish Modi, Aged about 52 years, R/o, 5-4-187/3 & 4, Soham Mansion, 2nd Floor, MG Road, Secunderabad-500003 being the partner of the Claimant firm herein, do hereby solemnly affirm and sincerely state that the contents of Rejoinder are true and correct, to the best of my knowledge and belief.

Hence verified on this the 25th day of January, 2025 at Hyderabad.



CLAIMANT

DATE: 25.01.2025

PLACE: HYDERABAD

COUNSEL FOR THE CLAIMANT

