

C. BALAGOPAL
AMEERUNISA BEGUM
K. VIJAYA SARADHI
V. CHANDRA MOULI
P. VIKRAM KUMAR
ADVOCATES

NOT DOC NO: 4

Door No. 10-2-278, Flat No.103,
Suresh Harivillu Apartments,
Road No. 11, West Marredpally,
Secunderabad – 500 026.
Ph.: 040 – 64570512
Cell: 9441782451, 9246172988

NOTICE

Date. 15/06/2015.

1. L. Rajeshwar Rao
S/o. L. Anand Rao
2. L. Santosh Rao
S/o. L. Rajeshwar Rao
Both are residents of
H. No.1-1-364/75, Jawahar Nagar,
RTC X Roads, Hyderabad – 500 020.

Also at:
Flat No. D-2, Second Floor,
Susheel Residency,
Road No. 11, West Marredpally
Secunderabad - 500 026.

3. D. Sridhar
S/o. D. Prakash,
H. No. 6-31, Gandhi Nagar,
Siddipet, Medak Dist.

Also at:
3452, Glenprosen Ct, Sanjose,
California, CA – 95148, USA.

4. K.V. Pavan Kumar
S/o. Sanjeev Rao,
H. No. 11-1-329, Red Hills,
Hyderabad.
5. Smt. M. Renuka,
W/o. M. Ramgopal,
6. M. Ramgopal,
S/o. M. Nalakishtam,
Both are residents of
H. No. 1-4-190, Balaji Nagar,
Jagityal, Karimnagar Dist.
7. M. Krishna
S/o. M. Ramesham
H. No. 1-4-181, Balaji Nagar,
Jagityal, Karimnagar Dist.

Contd...2 ...

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8. Ritesh Kumar,
S/o. Deendayal,
H. No. 5-9-22/92,
Adarshnagar, Hyderabad - 500 063.
9. A. Chennakesh,
S/o. A. Vinod Kumar,
Plot No. 6, Asbestos Colony,
Karkhana, Secunderabad - 500 009.
10. G. Damayanti
W/o. Vaman
H. No. 1-4-242, Jawahar Road,
Jagityal, Karimnagar Dist.

Under the instructions from our clients 1) Greenwood Builders 2) Green Wood Lakeside (Hyderabad) LLP having its registered office at M. G. Road, Secunderabad, we have to address you as follows:

By an MOU dated 23.05.2013 all of you have entered into an agreement with the No.1 of our client for the development of land admeasuring 5 acres 30 guntas in survey no. 49 (P) situated at Yapral (V), Malkajgiri (M) R.R. District and for construction of residential Housing Project consisting of Apartments/Flats along with common amenities like Club House, Roads, Drains, Water & Electricity Supply, Land Scaping, Gates, Children Park, Compound Wall, Sports, & Recreational facilities in the said land.

The said MOU was also containing various other clauses & conditions to be fulfilled by you as owners and by our client as developer. Subsequently by a supplementary MOU dated 17.09.2014 the benefits under the earlier MOU was transferred in favour of the No.2 of our clients. To avoid unnecessary technical objections this notice is being issued by both of our clients.

Our clients have so far paid all of you a sum of Rs. 90,50,000/- as deposit from time to time. The said deposit is refundable to our clients. Our clients have also spent huge amounts for preparing plans and submitting the same to concerned authorities for sanction. Our clients have incurred an expenditure amounting to Rs. 23,08,188/- towards establishment of administration and construction.

Inspite of such huge investments and every effort on our clients part, the project has not been able to take off due to various reasons enumerated here under.


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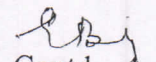
As all of you are aware, adjacent to the present land there is a huge extent belonging to the Defence Ministry, GOI. In view of the same a NOC has to be obtained from the Army Authorities namely Quarter Master General, Andhra Sub area Bollaram. This has to obtain by an application made in this behalf by all of you as owners of the land. Unfortunately inspite of several requests by our clients representative you have not come forward o apply for and obtain the NOC. Our clients have not been able to commence the construction because of the objections by the Army Authorities due to lack of NOC. This is a default on your part. Apart from the above default on your part further defaults and breaches of the terms of the agreements are as under.

You have failed to deposit the conversion fee towards NALA fees which is the subject matter of the agreement. Some of the legal representatives of the necessary parties who appear to be NRIs have refused to co-operate in signing the documents. You have also not been able to complete the transfer of land admeasuring 25guntas as per the terms of MOU. You have not cooperated in initiating the process of survey to be done by the MRO for obtaining the sanction. There are several other latches on your part which are not necessary to be enumerated at this stage, suffice it to say at the present inview of the above facts, the MOU has become impossible for performance and as such our clients hereby cancel the MOU referred to above. Our clients have been misleading regarding the clearances by you and our client had launched the project under impression that you take care of your part of the contract as per the MOU.

In view of the cancellation you are not entitled to continue to hold the deposit and are liable to return the same. Our clients are entitled to claim Rs.23,08,188/- spent by them. Inview of the above our clients call up on you jointly and severally to pay our clients an aggregate sum of Rs.1,62,13,113/- which includes the amount deposited by our clients with you and amounts spent by our clients as mentioned above together with interest @24% per annum.

All of you conspire to make our clients part with valuable consideration on false promises. It is clear from your conduct that all of you never really made any effort to fulfil the terms of MOU. You are all guilty of cheating and making our clients with all false promises therefore you are liable for punishment under section 420 of IPC.

We hereby call upon you to pay the above said amount with in 7 (seven) days from the receipt of this notice and further pay Rs.25,000/- towards the cost of this notice.


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IN THE COURT OF THE XVI ADDL. DISTRICT JUDGE: R. R. DISTRICT
AT: MALAKAJGIRI

I.A. NO. 496 OF 2015
IN
O. S. No. 634 OF 2015

Between:

Green Wood Builders & another,

...Petitioners/Plaintiffs

AND

L. Rajeshwar Rao & others

...Respondents/ Defendants.

AFFIDAVIT

I, Soham Modi S/o Sri Satish Modi, aged 46 years, occupation: Business,
R/o Secunderabad, do hereby solemnly affirm and state on oath as follows:

I am the Managing Partner of Petitioners No.1 & 2 herein and as such I
am well acquainted with the facts of the case. The averments in the plaint May
be read as part and parcel of this affidavit.

1. I submit that the Petitioners are Builders & Developers who are in
the business of construction of Villas & Flats in and around twin cities of
Hyderabad and Secunderabad. The Petitioners are registered partnership firms
both being represented by the Managing Partner.

2. I submit that the Petitioners as part of their business activities
wanted to develop a residential complex and entered into a MOU with the
Respondents.

3. I submit that the Respondents are owners of various extents of
land in survey no. 49, Yapral Village, Malakajgiri Mandal, R.R. District totally
admesuring 5 acres 30 guntas which is more fully described in the Petition
Schedule Property. The Petitioners are filing the certified copies of sale deeds by

10. Smt. G. Damayanthi w/o. Vaman, aged 54yrs,
R/o. 1-4-242, Jawhar Road, Jagityal,
Karimnagar, Telangana.

...Defendants

PETITION FILED UNDER ORDER 38 RULE 5 C.P.C.

For the reasons stated in the accompanying affidavit, it is prayed that this Hon'ble Court may be pleased to grant an order of attachment before Judgment so that the Respondents are restrained from creating any third party interest in the Petition Schedule Property, and pass such other order or orders as this Hon'ble Court may deem fit and proper under circumstances of the case.

Date:29.06.2015

COUNSEL FOR PETITIONERS

PETITION SCHEDULE PROPERTY

All that land admeasuring 5 acres 30 guntas in survey no. 49, situated at Yaprall Village, Malkajgiri Mandal, R.R. District and bounded by:

North	:	HUDA Approved lay out
South	:	Balance portion of land in Sy. 49
East	:	Water body
West	:	100 ft Wide Road

Date:29.06.2015
L.B.Nagar.

COUNSEL FOR PETITIONERS

which the Respondents had purchased the various extents of the Petition Schedule Property.

4. I submit that Respondents approached the Petitioners for developing the land and construction of Flats, as the Petitioners were in the business of development of Flats, Villas and bungalows in and around twin cites. Keeping in view the expertise of the Petitioners the Respondents agreed to give their land for development and construction of flats in Petition Schedule Property.

5. I submit that Petitioner no.1 and the Respondents entered into an MOU dated 23.05.2013 for the development of land admeasuring 5 Acers 30 guntas in Survey No.49 situated at Yapral (V), Malakajgiri (M) R.R.District and for construction of residential Housing Project consisting of Apartments/Flats along with common ammenities like Club House, Roads, Drains, Water & Electricity Supply, Land Scaping, Gates, Childeren Part, Compound Wall, Sports & Recreational facilities in the said land.

6. I submit that the said MOU was also containing various other clauses & conditions to be fulfilled by the Respondents as owners and by the Petitioners as developers. Subsequently by a supplementary MOU dated 17.09.2014 the benefit under the earlier MOU was transferred in favour of the Petitioner No.2.

7. I submit that the Petitioners have so far paid the Respondents a sum of Rs. 90, 50,000/- as security deposit from time to time. The said security deposit is refundable by the Respondents to the Petitioners, after completion of the project and handing over the share of the Respondents in the built up area. The Petitioners further submit they have spent huge amounts for preparing plans and submitting the same to the concerned authorities for

sanction and other preparatory work for commencing the project. In this regard the Petitioners have incurred an expenditure amounting to Rs. 23,43,908/- towards establishment of administration and construction. In spite of such huge investments and every effort on the Petitioners part, the project has not been able to take off due to omissions and lapses on the part of the Respondents.

8. I submit that the Defendants are aware that adjacent to the Petition Schedule Property there is a huge extent of land belonging to the Defence Ministry, GOI. In view of the same a No Objection Certificate has to be obtained from the Army Authorities namely Quarter Master General, Andhra Sub Area Bollaram. This has to be obtained by an application made in this behalf by the Respondents as owners of the land. Unfortunately in spite of several requests by the Petitioners representative the Respondents have not taken any necessary steps to apply and obtain the NOC for commencing the project. The Petitioners submit that they have not been able to commence the construction because of the objections by the Army authorities due to lack of NOC. This is a clear default on the part of Respondents.

9. The Petitioners submit that the Respondents have failed to deposit the conversion fee (Agriculture land to Non Agriculture land) which is the subject matter of the agreement. Some of the legal representatives of the necessary parties who appear to be NRIs have refused to co-operate in signing the documents. The Respondents have also not been able to complete the transfer of land admeasuring 25 guntas as per the terms of MOU. The Respondents have not cooperated in initiating the process of survey to be done by the MRO for obtaining the sanction. There are several other lapses on the part of the Respondents, which would be raised at an appropriate time by the Petitioners with the leave of this Hon'ble Court.

10. I submit that the MOU has become impossible of performance due to laches on the part of the Respondents and as such the Petitioners have no other option but to cancel the MOU. The Petitioners have been misled by the Respondents regarding the clearances to be obtained by them and the Petitioners had launched the project under the impression that the Respondents would be taking care of their part of the contract as per the MOU. The Petitioners got issued a notice through their counsel to the Respondents on 15.06.2015 calling upon the Respondents to refund the security deposit and the amounts spent by the Petitioners. The Respondents did not reply inspite of receiving the notice.

11. The Petitioners submit that in view of the cancellation of the MOU the Respondents are liable to return the security deposit of Rs. 90,50,000/- alongwith interest amounting to Rs. 1,34,55,578/- paid by the Petitioners to the Respondents. This is as per the clause no. 52 of the MOU. The Petitioners are further entitled to claim Rs. 23,81,88/- being the amount spent by them for developomental works at the Petition Schedule Property along with interest amounting to Rs. 28,96,300/- spent by them along with interest.

12. I submit that the Petitioners have filed this suit for recovery of Rs. 1,34,55,578/- being the amount of security deposit alongwith interest paid by the Petitioners to the Respondents and Rs. 28,96,300/- being the amount spent by the Petitioners alongwith interest for commencing the project, totalling to Rs. 1,63,51,878/-.

13. I submit that the Petitioners are having a strong prima facie case and the balance of convenience is in their favour and if no interim injunction is granted and also attachment before judgment as prayed for in the petition are not granted the very purpose of filing of the suit will be defeated and the Petitioners will be put to irreparable loss and hardship.

I therefore pray that this Hon'ble Court may be pleased to grant an order an attachment before Judgment so that the Respondents are restrained from creating any third party interest.

It is further prayed that the ad-interim injunction restraining the Respondents or any one claiming through them from alienating or creating any third party interest in the Petition Schedule Property or in any way creating any encumbrances on the property, pending disposal of the suit as otherwise the Petitioners would be put irreparable loss and hardship.

Sworn and signed before me
on this the day of June, 2015

DEPONENT

**PLAINT FILED UNDER SECTION 26 OF C.P.C. FOR
RECOVERY OF MONEY AND PERPETUAL INJUNCTION**

I. Description of the Plaintiffs:

The address for service of all notices, summons and process etc. on the Plaintiffs is as mentioned above and of their counsel Sri C. Balagopal, Ammerunisa Begum, C.V. Chandramouli and P. Vikram Kumar Advocates, Flat No. 103, Suresh Harivillu Apartments, Road No. 11, West Marredpally, Secunderabad.

II. Description of the Defendant:

The address for service of all notices, summons and process etc., on the Defendant is the same as mentioned in the cause title.

III. FACTS OF THE CASE:

1. The Plaintiffs submit that the Defendants are owners of various extents of land in survey no. 49, Yaprall Village, Malakajiri Mandal, R.R. District totally admeasuring 5 acres 30 guntas which is more fully described in the suit schedule property given at the foot of the plaint. The Plaintiffs are filing the certified copies of sale deeds by which the Defendants had purchased the various extents of suit schedule property.

2. The Plaintiffs submit that they were approached by the Defendants for developing the land and construction of Flats, as the Plaintiffs were in the business of development of Flats, Villas and bungalows in and around twin cities. Keeping in view the expertise of the Plaintiffs the Defendants agreed to give their land for development and construction of flats in suit schedule property.

3. The Plaintiff No.1 and the Defendants entered into an MOU dated 23.05.2013 for the development to land admeasuring 5 Acres 30 guntas in Survey No.49 situated at Yapral (V), Malakajiri (M) R.R.District and for construction of residential Housing Project consisting of Apartments/Flats along with common ammenities like Club House, Roads, Drains, Water & Electricity Supply, Land Scaping, Gates, Childeren Part, Compound Wall, Sports & Recreational facilities in the said land. The MOU is filed as document No.1.

4. The Plaintiffs submit that the said MOU was also containing various other clauses & conditions to be fulfilled by the Defendants as owners and by the Plaintiffs as developers. Subsequently by a supplementary MOU dated 17.09.2014 the benefit under the earlier MOU was transferred in favour of the Plaintiff No.2. The supplementry MOU is filed as document No. 2.

5. The Plaintiffs have so far paid the Defendants a sum of Rs. 90, 50,000/- as security deposit from time to time. The receipts issued by the Defendants for the above payments are filed herewith as documents Nos.5 to 8. The said security deposit is refundable by the Defendants to the Plaintiffs, after completion of the project and handing over the share of the Defendants in the built up area. As the Defendants had to fail to keep their part of contract as per MOU, the Plaintiffs are entitled to refund of the security deposit with interest as per Clause 52 of the MOU. The Plaintiffs further submit they have spent huge amounts for preparing plans and submitting the same to the concerned authorities for sanction and other preparatory work for commencing the project. In this regard the Plaintiffs have incurred an expenditure amounting to Rs. 23,43,908/- towards establishment of adminstration and construction. The Plaintiffs are filing records in support of the above contention. Inspite of such huge investments and every effort on the Plaintiffs part, the project has not

been able to take off due to omissions and latches on the part of the Defendants.

6. The Plaintiffs submit that the Defendants are aware that adjacent to the suit schedule property there is a huge extent of land belonging to the Defence Ministry, GOI. In view of the same a No Objection Certificate has to be obtained from the Army Authorities namely Quarter Master General, Andhra Sub Area Bollaram. This has to be obtained by an application made in this behalf by the Defendants as owners of the land. Unfortunately in spite of several requests by the Plaintiffs representative the Defendants have not taken any necessary steps to apply and obtain the NOC for commencing the project. The Plaintiffs submit that they have not been able to commence the construction because of the objections by the Army authorities due to lack of NOC. This is a clear default on the part of Defendants.

7. The Plaintiffs submit that the Defendants have failed to deposit the conversion fee (Agriculture land to Non Agriculture land) which is the subject matter of the agreement. Some of the legal representatives of the necessary parties who appear to be NRIs have refused to co-operate in signing the documents. The Defendants have also not been able to complete the transfer of land admeasuring 25 guntas as per the terms of MOU. The Defendants have not cooperated in initiating the process of survey to be done by the MRO for obtaining the sanction. There are several other latches on the part of the Defendants, which would be raised at an appropriate time by the Plaintiffs with the leave of this Hon'ble Court.

8. The Plaintiffs submit that the MOU has become impossible of performance due to latches on the part of the Defendants and as such the Plaintiffs have no other option but to cancel the MOU. The Plaintiffs have been misled by the Defendants regarding the clearances to be obtained by them and

the Plaintiffs had launched the project under the impression that the Defendants would be taking care of their part of the contract as per the MOU.

The Plaintiffs got issued a notice through their counsel to the Defendants on 15.06.2015 calling upon the Defendants to refund the security deposit and the amounts spent by the Plaintiffs. The Defendants did not reply inspite of receiving the notice.

9. The Plaintiffs submit that in view of the cancellation of the MOU the Defendants are liable to return the security deposit of Rs. 90,50,000/- alongwith interest amounting to Rs. 1,34,55,578/- paid by the Plaintiffs to the Defendants. The Plaintiffs are further entitled to claim Rs. 23,43,908/- being the amount spent by them for developomental works at the suit schedule property along with interest amounting to Rs. 29,37,044/- spent by them along with interest.

10. The Plaintiffs have filed this suit for recovery of Rs. 1,34,55,578/- being the amount of security deposit alongwith interest paid by the Plaintiffs to the Defendants and Rs. 29,37,044/- being the amount spent by the Plaintiffs alongwith interest for commencing the project, totalling to Rs. 1,63,92,622/-. The Plaintiffs are filing a statement of accounts showing the details of the claim made by the Plaintiffs and the same is marked as document no.7

11. The Plaintiffs submit that the Defendants have obtained money from the Plaintiffs on false promises and are guilty of cheating. The Plaintiffs are taking separate steps under criminal law.

The Plaintiffs are also praying for attachment and permanent injunction against the Defendants from alienating or creating any third party interest.

The Plaintiffs have not filed any suit in any court for similar cause of action.

Hence this suit.

IV. CAUSE OF ACTION:

The cause of action for the suit arose on 23.05.2013 the date on which the Defendants and the Plaintiffs have entered into MOU and on 17.09.2014 the date on which the supplementary MOU was entered upon by the Plaintiffs and the Defendants and on 15.06.2015 when the notice was given to the Defendants through the Plaintiffs counsel and on all such dates when the terms and conditions of the MOU are not fulfilled by the Defendants.

IV. JURISDICTION:

The suit schedule property is situated at Yapral Village, Malkajgiri Mandal, Ranga Reddy District which is within the territorial jurisdiction of this Hon'ble Court and hence this court has got territorial jurisdiction to try this suit and the claim is for Rs. 1,63,92,622/- and hence this Hon'ble Court having the pecuniary jurisdiction.

VI. COURT FEE:

The suit is valued for the purpose of Court fee and jurisdiction at

1. Rs. 1,34,55,578/- being the amount of the security deposit refundable by the Defendants and a court fee of Rs. 1,37,026/-.
2. Rs. 29, 37,044/- being the amount spent by the Plaintiffs a court fee of Rs. 31,826/- is paid.

A total court fee Rs. 1, 68,252/- under Section 20(2) of the A.P.C.F and S.V. Act.

3. The suit is valued notionally at Rs. 1,00,000/- for the purpose of perpetual injunction and court fee of Rs. 3,426/- is paid here with under section 26 (c) of the A.P.C.F. and S.V.Act.

The grand total court fee paid is Rs. 1,72,278/-

VII. PRAYER:

It is, therefore, prayed that this Hon'ble Court may be pleased to pass a Judgment and a Decree in favour of the Plaintiffs and against the Defendants as follows:

- a) To grant decree for return of money amounting to Rs.1,63,51,878/- along with interest from the date of filing of the suit, till date of payment.
- b) To grant Perpetual injunction against the Defendants or their agents or any person or persons claiming through them from in alienating or creating third party interest in the suit schedule property.
- c) To grant attachment before judgment of the suit schedule property.
- d) To pass such other order or orders as this Hon'ble court deems fit and proper in the interest of justice.

COUNSEL FOR PLAINTIFFS

Date:

PLAINTIFFS

SUIT SCHEDULE PROPERTY

All that land admeasuring 5 acres 30 guntas in survey no. 49, situated at Yaprall Village, Malkajgiri Mandal, R.R. District and bounded by:

North	:	HUDA Approved lay out
South	:	Balance portion of land in Sy. 49
East	:	Water body
West	:	100 ft Wide Road

PLAINTIFFS

VERIFICATION

I Soham Modi S/o. Sri Satish Modi aged 46years, R/o. Secunderabad, do hereby solemnly affirm and state an oath as follows, do hereby state that the facts mentioned above is true and correct to the best of knowledge and belief. Hence verified.

HYDERABAD

Date:

PLAINTIFF No.1

LIST OF DOCUMENTS

Sl. No.	Date	Parties	Description of Document
1.	23.05.2013	Pltf. No.1& Defts.	MOU Original
2.	17.09.2014	Pltfs. & Defts.	Supplementry MOU Original
3.	09.05.2013	Pltf. No.1 & Third party	Registration of firm (Certified Copy)
4.	15.06.2015	Pltfs. & Defts	Office copy of notice
5.	09.05.2013	Pltfs. & Defts	Cash Receipt for Rs. 20,00,000/-
6.	30.05.2012	Pltfs. & Defts	Cash Receipt for Rs. 50,00,000/-
7.	20.01.2014	Pltfs. & Defts	Cash Receipt for Rs. 20,00,000/-
8.	29.10.2014	Pltfs. & Defts	Cash Receipt for Rs. 50,000/-
9.	22.12.2006	Defd No.1 & third Parties	Sale Deed No. 7060 of 2006
10.	27.12.2006	Defd No.3 & third Parties	Sale Deed No. 7061 of 2006
11.	11.01.2008	Defds No.2 &4, third Parties	Sale Deed No. 143 of 2008
12.	27.12.2006	Defd No.5 &6, third Parties	Sale Deed No. 7059 of 2006
13.	27.12.2006	Defd No.7 & third Parties	Sale Deed No. 7058 of 2006
14.	27.12.2006	Defd No.8 & third Parties	Sale Deed No. 7063 of 2006
15.	27.12.2006	Defd No.9 & third Parties	Sale Deed No. 7062 of 2006
16.	24.06.2009	Defd No.10 & third Parties	Sale Deed No. 1369 of 2009
17.	27.12.2006	Defd No.1 & third parties	AGPA 7065 of 2006
18.	30.05.2011	Defd No.1 & third parties	AGPA 1669 of 2011
19.		Plaintiffs	Statement of expenditure of the Plaintiffs for the period 01.03.2014 to 31.05.2015.
20.	17.11.2014	Plaintiffs	Agreement between the Plaintiffs
21.			Interest calculation
22.	18.06.2015	Pltfs. & Defts	Return Covers - 2
23.		Pltfs. & Defts	Acknowledge cards - 7

Date:

PLAINTIFFS

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**IN THE COURT OF THE HON' BLE XVI ADDITIONAL DISTRICT JUDGE
RANGA REDDY DISTRICT AT: MALAKAJGIRI**

I.A.NO. 623 OF 2015
IN
O.S.NO. 634 OF 2015

Between:

L. Rajeshwar Rao & another

...Petitioner/Respondent 1 & 2

AND

Greenwood Builders & another

...Respondents/Plaintiffs

WRITTEN SUBMISSIONS ON BEHALF OF THE RESPONDENTS

The above application has been filed under section 8 of Arbitration & Conciliation Act of 1996 by the Petitioners who are Defendants Nos 1 & 2 in the main suit. It may here be mentioned that the Defendant nos. 3 to 10 are also parties to the MOU, on the basis of which the suit has been filed. They have not either been impleaded in the above application nor they have filed an independent application under section 8 of Arbitration & Conciliation Act of 1996. The anomaly is therefore that the suit is being proceeded against some of the Defendants while others are seeking the relief of reference to arbitration.

It is respectfully submitted that the petition is therefore not maintainable. In fact the Petitioners have claimed that Defendants 3 to 10 are not necessary parties to the said application. Certain well established principles under the act may be hereby referred.

1. The mere existence of an arbitration clause does not deprive the civil court from dealing with the subject matter of the agreement. The civil court does not lose jurisdiction and only limitation is a party should file an application and if the court finds all necessary ingredients then it will refer the matter to arbitration. the following passage in the book on the law of Arbitration & Conciliation by the

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late Justice R.S. Bachawat and edited by senior advocate K. K. Venu Gopal (4th addition 2005) may be referred to ***"this section is based on the principal that the right to seek arbitration is a contractual right and a contract cannot be unilaterally abrogated so as to over through the arbitration clause. Under this section the judicial authority does not restrain the Plaintiff (a party to the agreement)" from bringing an action in breach of his agreement with the Defendant (the other party to the agreement). On the other hand it is only on the Defendant exercising his right to go in for arbitration that the judicial authority makes the parties to abide by their contract and refers them to arbitration.***

2. Failure of the Defendant to exercise his right to lead to an inference of an agreed conduct of the parties to supersede or abundant the terms of agreement does vesting the judicial authority with jurisdiction to decided the dispute including matters which required arbitration. The judicial authority would then adjudicate upon the disputes. It does not enjoy sumotto power of reference to arbitration. It is therefore clear that the court does not loose jurisdiction to try a suit filed before it.

The party seeking reference to arbitration should file an application not later than when submitting its first statement on the substance of the dispute. The section 8 of present act differs substantially from section 34 of the repelled 1940 act. Under the old act an application under section 34 (corresponds to the section 8 of new act) must be filed before the filing of written statement or any other steps in the proceedings even seeking time for filing written statement was held to be a step in proceeding and

disentitling the party from seeking arbitration, but under the new act the words used are "not later than when submitting first statement in the substance of dispute". Therefore it is mandatory the application has to be filed earlier to filing the "first statement". It differs from the old act, it is not written statement. A passage from the same book at page no. 306 may be perused. **Section 8 mandates a judicial authority before whom an action is brought in a matter which is subject of arbitration agreement to refer the parties to arbitration. As per section the party is required to apply not later than when submitting first statement on the substance of dispute. For the purpose of entertaining the application it is required to be accompanied by original arbitration agreement or duly certified copy thereof.** In the present case the Defendants 1 & 2 have filed the first statement answering the averments made by the Plaintiff in their counter affidavit filed in the petition for attachment before judgment in I.A.No. 495 of 2015. As the application under section 8 has not been filed earlier to the said counter affidavit the first requirement under section 8 (1) of the act is not fulfilled.

3. The third condition necessary for an application under section 8 is contained in sub section (2) of the said section which runs as follows; **the application referred to in sub section 1 shall not be entertained unless it is accompanied by the original arbitration agreement or duly certified copy thereof.** It is mandatory under this provision that an application under section 8 (1) original arbitration agreement or a duly certified copy thereof that this condition is mandatory is obvious because it states that

the application **shall not** be entertained unless it is accompanied by the agreement.

The present application does not fulfil this mandatory provision. It is not sufficient for the petitioners to perhaps content that the Plaintiffs have filed a copy of the agreement. That on failure of compliance with this condition, the petition is not maintainable is evident from the language and also the extract quoted above.

4. In the present case since the other parties to the agreement have not chosen to file an application under section 8 of the act this petition is not maintainable as there would be an anomalous situation of some of the parties seeking arbitration proceedings and others remaining mute spectators against whom the suit may be proceeded with.

For the above reasons the petition filed by the Petitioners is not maintainable and this Hon' ble may be pleased to dismiss the same with exemplary costs.

Date: 11.04.2017.
Malkajgiri.

Counsel for Respondents/Plaintiffs

IN THE COURT OF XVI ADDITIONAL DISTRICT JUDGE,
RANGA REDDY DISTRICT, MALKAJGIRI

I.A.No. of 2015
In
O.S.No.634 of 2015

Between:

1. L Rajeshwar Rao S/o L.Anand Rao
Aged 47 years, Occ: Business,
2. L.Santhosh Rao S/o L.Rajeshwar Rao
Aged 23 years, Both R/o Flat No. D2,
Second Floor, Susheel Residency,
West Marredpally, Secunderabad-26.

Petitioners /
Respondents 1 & 2

And

1. Greenwood Builders
Rep.by its Partner Mr.Soham Modi
S/o Satish Modi, Aged: 46
- 2.Green wood lake Side (Hyderabad) LLP,
Rep by its Partner Soham Modi S/o Satish Modi
Both having office at 5-4-187/3&4, Soham Mansion,
M.G.Road, Secunderabad.
3. D.Sridhar
4. K.V.Pavan Kumar
5. Smt.M.Renuka
6. M.Ram Gopal
7. M.Krishna
8. Ritesh Kumar
9. A.Chenkesh
- 10.Smt.G.Damayanthi

(Respondent Nos. 3 to 10 are not necessary parties
To this Petition)

Respondents

PETITION FILED UNDER SECTION 8 OF THE ARBITRATION AND
CONCILIATION ACT, 1996

For the reasons stated in the accompanying Affidavit, it is prayed that the Hon'ble court may be pleased to refer the parties to Arbitration without further proceedings in the suit or to pass such other order or orders as the Hon'ble court may deem fit and proper in the circumstances of the case.

22-07-2015
MALKAJGIRI

COUNSEL FOR PETITIONERS

DECREETAL ORDER

IN THE COURT OF THE XVI ADDITIONAL DISTRICT AND SESSIONS JUDGE-CUM-XVI
ADDITIONAL METROPOLITAN SESSIONS JUDGE
RANGA REDDY DISTRICT:: AT MALKAJGIRI

PRESENT: Sri T. Venkateswara Reddy,
XVI Additional District and Sessions
Judge-Cum-XVI Additional Metropolitan
Sessions Judge, R.R. District, at Malkajgiri.

DATED THIS THE 12th DAY OF MAY, 2017

I.A. No.623 OF 2015

In

O.S. No.634 OF 2015

BETWEEN:

1. L.Rajeshwar Rao, S/o.L.Anand Rao,
aged 47 years, Occ: Business,

2. L. Santhosh Rao, S/o.L.Rajeshwar Rao,
aged 23 years,
Both R/o. Flat No.D2, Second Floor,
Susheel Residency, West Marredpally,
Secunderabad-26.

...Petitioners/ Respondents 1 & 2.

AND

1. Greenwood Builders, Rep. By its Partner Mr. Soham Modi,
S/o. Satish Modi, aged 46 years,

2. Greed Wood Lake Side (Hyderabad), LLP,
Rep. By its partner Soham Modi,
S/o. Satish Modi,

Both having office at 5-4-187/3&4, Soham Mansion,
M.G. Road, Secunderabad.

3. D.Sridhar.
4. K.V. Pavan Kumar.
5. Smt. M.Renuka.
6. M.Ram Gopal.
7. M.Krishna.
8. Ritesh Kumar.
9. A. Chenkesh.
10. Smt. G. Damayanthi.

(Respondents 3 to 10 are not necessary parties to
this petition)

... Respondents/Defendants

Claim: This Petition filed under section 8 of the arbitration and conciliation Act,
1996 to refer the parties to Arbitration without further proceedings in the suit.

Petition Presented on : 22.07.2015
Petition Numbered on : 22.07.2015
Date of Decreetal order : 12.05.2017

A Court fees of Rs.2/- paid.

This petition is coming before me on this day for final disposal in the presence of M/s. M.Sreedhara Murthy, Advocate for the Petitioner/plaintiff and Sri.C.Balagopal, advocate for the Respondents 1 and 2 and upon hearing the arguments and upon perusing the material papers on record, the matter having stood over for consideration till this day, this court doth ordered and Decreetal order as follows:

::2::

- I) That the petition of the petitioner be and the same is hereby allowed as prayed for.
- II) That the parties are directed to bear their costs involved in this petition.

Given under my hand and the seal of the court on this the 12th day of May, 2017.

T. Venkateswara Rao
XVI Additional District & Sessions
Judge-Cum-XVI Additional Metropolitan
Sessions Judge, R.R. District at Malkajgiri.

COST OF THE PETITION

		<u>For Petitioner</u>	<u>For Respondents</u>
1.	Stamp on petition	Rs. 2-00	-
2.	Stamp on vakalath	Rs. 2-00	2-00
3.	Stamp on process	Rs. 80-00	
		Rs. 83-00	2-00

T. Venkateswara Rao
XVI Additional District & Sessions
Judge-Cum-XVI Additional Metropolitan
Sessions Judge, R.R. District at Malkajgiri.

ORDER

This is the petition filed by the petitioners/defendants 1 and 2 under Section 8 of Arbitration and Conciliation Act to refer the parties to Arbitration without further proceeding with the suit.

2. The petitioner No.1 filed his affidavit in support of this petition alleging that the petitioner No.2 is the son of the petitioner No.1. The respondents 1 and 2 herein are the plaintiffs and the respondents 3 to 10 are the defendants 3 to 10 and the petitioners are the defendants 1 and 2 in the suit. The plaintiffs filed the suit on the basis of Memorandum of Understanding dated 23.5.2013 and supplementary Memorandum of Understanding dated 17.9.2014 which is in continuation of original Memorandum of Understanding. As per Clause No. 56 of the Memorandum of Understanding dated 23.5.2014 it is agreed between the parties in connection with the Memorandum of Understanding that the disputes shall be decided through arbitration of two Arbitrators one should be appointed by the owners and the other should be appointed by the Developers and that two Arbitrators appointing umpire and the proceedings will be in Hyderabad and the provisions of Arbitration by conciliation Act 1996 shall be applicable. Hence it is the obligation on the part of the petitioners to invoke the clause of Arbitration if at all they believe that any Arbitral issue to be adjudicated by the Arbitrator. This court has no jurisdiction to entertain the suit. It is just and necessary that the parties to the proceedings be referred to Arbitrator without proceeding further in the matter.

3. The respondents 1 and 2 filed the counter alleging that the petition is not maintainable. The petitioners themselves cannot claim to answer for themselves and also for respondents 3 to 10 who are the defendants in the suit. The defendants 3 to 10 in the suit have not chosen to come forward to contest the claim of the plaintiffs. In view of this and in view of various other factors it is not necessarily essential to refer the matter to Arbitration. Complicated questions of law and facts are to be determined by the Civil Court. The civil court never loses its jurisdiction. Since all the parties to the agreement have not come forward with a prayer for reference to Arbitration, the petition is liable to be dismissed.

It is mentioned in the petition that the respondents 3 to 10 are not necessary parties.

4. Heard the arguments submitted by both side counsel. Apart from submitting the oral arguments the plaintiffs filed the written arguments.

5. Now, the points that arise for determination are:

- 1) Whether the parties to the suit to be referred to Arbitrator as prayed for.
- 2) To what relief.

6. **Point No.1:**

The petitioners herein are the defendants 1 and 2, the respondents 1 and 2 herein are the plaintiffs and the respondents 3 to 10 herein are the defendants 3 to 10 in O.S. 634/2015. For the sake of convenience the parties are herein after referred to as arrayed in O.S. 634/2015.

The counsel who filed the present petition on behalf of defendants 1 and 2 has also filed vakalat for the defendants 4 to 10 in this suit. In view of this, petition cannot be rejected on the ground that all the defendants have not come forward for referring the matter to Arbitration. The suit summons are not served for the defendant No.3 as the defendant No.3 went to America.

The plaintiffs filed the suit for recovery of Rs.1,63,92,622/- from the defendants on the basis of Memorandum of Understanding dated 23.5.2013 and supplementary Memorandum of Understanding dated 17.9.2014 alleging that it is impossible to perform the Memorandum of Understanding due to laches on the part of the defendants and as such the plaintiffs have no other option but to cancel the Memorandum of Understanding. With this the plaintiffs asked in the suit for refund of security deposit and amount spent by the plaintiffs.

As seen from the plaint pleadings it is clear that the suit of the plaintiffs is based on Memorandum of Understanding entered between the plaintiffs and the defendants dated 23.5.2013 and supplementary Memorandum of Understanding dated 17.9.2014. The main contention of the plaintiff in the suit is that as per

Clause 52 of Memorandum of Understanding dated 23.5.2013 the plaintiffs are entitled for refund of security deposit.

The defendants 1 and 2 filed original Memorandum of Understandings dated 5.4.2013, 23.5.2013 and supplementary Memorandum of Understanding dated 17.9.2014. In view of this, this petition cannot be rejected on the ground that the defendants 1 and 2 have not filed Memorandum of Understanding along with this petition.

The defendants 1 and 2 relied on the following decisions in support of their contention that in view of Arbitration Clause in Memorandum of Understanding the parties are to be referred to Arbitration..

(1) The Decision of the Hon'ble Supreme Court in Hindustan Petroleum Corporation Ltd., Vs. M/s. Pinkcity Midway Petroleums reported in AIR 2003 Supreme Court 2881.

In the above decision their Lordship held that "the language of Section 8 is peremptory in nature. Therefore, in cases where there is an arbitration clause in the agreement, it is obligatory for the Court to refer the parties to arbitration in terms of their arbitration agreement and nothing remains to be decided in the original action after such an application is made except to refer the dispute to an arbitrator. Therefore, it is clear that if, as contended by a party in an agreement between the parties before the Civil Court, there is a clause for arbitration, it is mandatory for the Civil Court to refer the dispute to an arbitrator."

(2) The Decision of the Hon'ble High Court of A.P. in Loyala School rep. by its Principal, Hyderabad Vs. Megha Kumar and another reported in 2010 (1) ALT 556 (D.B.).

In the above decision their Lordship held that "it is well settled that in view of the case law noted herein above, it may be taken as well settled that every judicial authority has a mandatory duty to refer the dispute arising between the contracting parties to arbitration and to discontinue the suit or proceeding when once an application under Section 8 of the Act is filed because after making a reference to

arbitration nothing remains to be decided in original action. At that stage the Court or judicial authority is not required to decide whether the denial of obligations or mutual duties by the other party or refusal of other party to accept the obligations, disentitles from seeking arbitration. If the parties have alteraead their jural relationship allegedly due to subsequent modification of their status, even then the arbitration clause would not cease to have effect. We may also add that a Court or judicial authority should entertain an application under Section 8(1) of the Act seeking arbitration only when such application is accompanied by original agreement or a duly certified copy thereof."

(3) The Decision of the Hon'ble High Court of A.P. in Impact Metals Ltd., Medak and another Vs. MSR India Ltd., Hyderabad and others reported in 2017(2) ALD 266 (DB).

In the above decisions their Lordship held that "when the dispute raised by the plaintiffs in the suit is an Arbitral dispute the suit is not maintainable."

Coming to the present case the plaintiffs are not disputing the Memorandum of Understanding entered between the plaintiffs and the defendants dated 25.3.2013. In fact the suit of the plaintiffs is based on Clause No. ⁵⁶~~52~~ and it is mentioned in the plaint with regard to the cause of action for filing the suit as follows:

"Cause of Action":

"The cause of action for the suit arose on 23.5.2013 the date on which the defendants and the plaintiffs have entered into MOU and on 17.9.2014 the date on which the supplementary MOU was entered upon by the plaintiffs and the defendants and on 15.6.2015 when the notice was given to the defendants through the plaintiffs counsel and on all such dates when the terms and conditions of the MOU are not fulfilled by the defendants"

Clause No. 56 of Memorandum of Understanding dated 23.5.2013 is as follows:

arbitration nothing remains to be decided in original action. At that stage the Court or judicial authority is not required to decide whether the denial of obligations or mutual duties by the other party or refusal of other party to accept the obligations, disentitles from seeking arbitration. If the parties have altered their jural relationship allegedly due to subsequent modification of their status, even then the arbitration clause would not cease to have effect. We may also add that a Court or judicial authority should entertain an application under Section 8(1) of the Act seeking arbitration only when such application is accompanied by original agreement or a duly certified copy thereof."

(3) The Decision of the Hon'ble High Court of A.P. in Impact Metals Ltd., Medak and another Vs. MSR India Ltd., Hyderabad and others reported in 2017(2) ALD 266 (DB).

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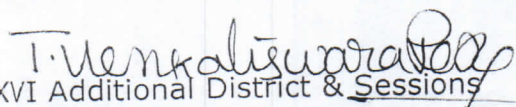
Clause No. 56 of Memorandum of Understanding dated 23.5.2013 is as follows:

7. **Point No.2:**

In view of my findings on point No.1, the petition is to be allowed.

8. In the result, the petition is allowed as prayed for. In the circumstances of the case the parties are directed to bear their costs involved in this petition.

Typed to my dictation, corrected and pronounced by me in the open Court on this the 12th day of May, 2017.


XVI Additional District & Sessions
Judge-Cum-XVI Additional Metropolitan
Sessions Judge, R.R. District at Malkajgiri.

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