

AGENDA NOTE

The VUDA Board in its Resolution No.133 dt. 31-5-2006, resolved to adopt a uniform procedure for all the layouts developed by VUDA where construction of building not taken place as follows.

1. To issue show cause notice, for cancellation of all the layouts, where in 3 years completed from the date of allotment.
2. Execution of an undertaking on an affidavit from the allottees concerned that they shall start construction of house.
3. After receipt of such undertaking 6 months time will be allowed / granted subject to evidence of furnishing of Building plans approvals either of GVMC / Municipality / Gram Panchayat / VUDA as case may be.
4. Revocation charges shall be levied @ Rs.200/- per sq. yard if any of the cancelled allottee approaches the Authority, with an undertaking that they shall commence construction of house within one year. Even after a lapse of one year time, such allotment shall be cancelled and the entire amount paid by them shall be forfeited as per the auction terms and conditions No.28 and allotment conditions No.6

Accordingly notices were issued to all the allottees in various layouts of VUDA for non compliance of the conditions of allotment who have not taken up construction of building.

Some allottees have sent replies, and some allottees furnished affidavits and approved building plans, and some allottees have received the notices but not responded and some notices were returned un-served.

In this state of affairs, the opinion of the Senior Counsel has sought about further action to be taken by VUDA in this regard. The Senior Counsel has suggested as follows.

The Standing Counsel has opined that broadly these cases can be classified in to two categories namely in which no sale deeds have been executed so far and in the cases of registered sale deeds have been executed in favour of the purchasers. As per G.O. Ms. No.113 MA dt. 24-2-84, the allottees have to obtain sale deeds from VUDA at his / her expense within 3 months from the date of full payment of the site cost and interest thereon if any on delay payments paid as finally fixed.

The Standing Counsel has informed that as per condition No.6 of the allotment conditions which is also incorporated in the sale deed is not happily worded in that it stipulates the allottee to complete the construction of a building within three years from the date of confirmation of the auction and cancellation of allotment in default. The only addition to this clause as incorporated in the sale deed is " or within such further time as may be allowed by VUDA etc.,

There is no period stipulated in the conditions of the allotment within which the allottee has to obtain a registered sale deed from VUDA with a penalty clause of cancellation of allotment in case of default.

Requiring an allottee to complete the construction of the building within three years from the date of confirmation of the auction with the penalty of cancellation of the allotment for failure to do so without a registered Sale Deed would be asking the purchaser to do the impossible for the reason that as per Section-429 clause (aa) of Municipal Corporation Act and bye-law and No.4.2(V) of the building bye-laws framed under the Municipal Corporation Act. Or person applying for permission to construct a building has to enclose an attested copy of the original Sale Deed along with other documents such as plans, etc., without which permission will not be granted by the Municipal Corporation. IN view of this legal hurdle, It is suggested that it is very much desirable to consider entering into some kind of an understanding or agreement with the G V M C to hold good for all time not to insist on submission of copies of Registered Sale Deeds with the building plans for approval and to accept copies of allotment orders in the case of allottees of plots from VUDA before any penal action is contemplated against the allottees who are yet to obtain sale deeds. Accordingly he has indicated corrections wherever necessary in both the printed copies of the sale deed for the allotted plots and auctioned plots. They may please be perused.

In addition to the above changes he has also suggested inclusion of the following two clauses in the conditions of allotment or the conditions of auction in order to make the transaction fool proof.

The changes indicated in printed sale deed forms and sale deeds prescribed for allotted plots are as follows.

In the case of allotted plots.

For	Read as
Page 2 para - 5	
1 And where as the vendor has agreed to execute the present sale deed subject to the terms and conditions herein after set forth in this indenture	1 And where as the vendor has agreed to execute the present sale deed subject to the terms and conditions <u>of allotment and those</u> herein after set forth in this indenture.
Page-3 para-4	
2 The Vendor doth hereby declare and covenant with the vendor that the vendee shall start construction within 6 months from the date of allotment and complete the building within a period of 2 years from the date of allotment or within such further time as may be allowed by the VUDA in its discretion in accordance with the rules and regulations for which the property was allotted and hereby sold under the Hg scheme and obtain a certificate	2 The Vendor doth hereby declare and covenant with the vendor that the vendee shall start construction within 6 months from the date of <u>this sale deed</u> and complete the building within a period of 2 years from the date <u>thereof</u> or within such further time as may be allowed by the VUDA in its discretion in accordance with the rules and regulations for which the property was allotted and hereby sold under the Hg. Scheme and obtain a certificate.
Page -4 para -1	
3 In the event of the vendee failing to construct a building within a period of 2 years as mentioned supra or violating any of the other terms and conditions of this sale deed, the same shall stand cancelled automatically	3 In the event of the vendee failing to construct a building within a period of 2 years as mentioned supra or violating any of the terms and <u>conditions of allotment</u> or of this sale deed, <u>the allotment</u> shall stand cancelled automatically.

31

4	Page -4 para -3	4	
	The vendee doth hereby declare and covenant with the vendor that vendee shall not sell the property hereby sold for a period of 5 years from the date of completion of construction of the building on the site.		The vendee doth hereby declare and covenant with the vendor that vendee shall not sell the property hereby sold for a period of 5 years from the date of completion of construction of the building on the site. <u>Violation of this condition results in automatic cancellation of the allotment.</u>

Change proposed by the section in the sale deed for the allotted plots

	For		Read as
1	Page - 3 para-3		
	The vendee shall be entitled to mortgage the property after obtaining the prior concurrence of the vendor in writing to raise a loan for the construction of house provided such a loan is to be obtained from his / her own employee LIC Bonefied Coop. hg. Society / Nationalized bank or any recognized agency financing house construction in that event he /she should make an application to the vendor who shall grant such permission provided the lending institution is one of the those mentioned above.		The vendee shall be entitled to mortgage the property after obtaining the prior concurrence of the vendor in writing to raise a loan for the construction of house provided such a loan is to be obtained from his / her own employee LIC Bonefied Coop. hg. Society / Nationalized bank or any recognized agency financing house construction in that event he /she should make an application to the vendor <u>within one year from the date of execution of sale deed and further subject to such terms and conditions as may be imposed by the vendor</u> who should grant such permission provided the lending institutions is one of those mentioned above

Changes indicated by the Sr. Counsel in the printed sale deed forms prescribed for the auctioned plots.

For	Read as
1 Page - 2 para -7	
And whereas the vendee has agreed to sign the present deed of sale in acknowledgement of having to abide by the terms and conditions of the sale	2 And where as the vendee has agreed to sign the present deed of sale in acknowledgement of having to abide by terms and conditions of auction and those in the sale
2 Page-3 para-4	
The vendee doth hereby declare and covenant with the vendor that the vendee shall complete the construction of building within a period of 3 years from the date of allotment of within such further time as may be allowed by the VUDA.	2 The vendee doth hereby declare and covenant with the vendor that the vendee <u>shall start construction within 6 months and complete the construction of building within a period of 3 years from the date of this sale deed</u> or within such further time as may be allowed by the VUDA.
3 Page -4 para-1	
In the event of the vendee failing to construct a building within the period of 3 years as mentioned supra or within such further time as might have been allowed by VUDA on the request of the vendee or in the event of vendee violating any of the other terms and condition of this sale deed	3 In the event of the vendee failing to construct a building within the period of 3 years as mentioned supra or within such further time as might have been allowed by VUDA on the request of the vendee or in event of vendee violating any of the other terms and conditions of <u>auction or this sale deed</u>

In addition to the above the Sr. Counsel has suggested inclusion of the following two clauses for the conditions of allotment or the conditions of auction.

1. That the allottee / auction purchaser has to obtain a registered sale deed from VUDA at his / her expense within the three months after the full payment of the price finally fixed to VUDA or such for the time as may be granted by VUDA at the request of the allottee / auction purchaser failing which the allotment shall stand cancelled without further notice and VUDA will be at liberty to re-allot / re-auction the same as the case may be.

2. The plot allotted / purchased in auction shall be delivered only on the execution of the Registered sale deed.

Further clauses to be stipulated in the allotment / Auction conditions proposed by the section.

1. The sale deed for the plot allotted shall be executed at the cost of allottee within 3 months after the full payment of the price as finally fixed and paid to the VUDA.

The last date as per the payment schedule specified by VUDA in the allotment proceedings shall be reckoned as the date for full payment of the price mentioned above and the limitation of 3 months mentioned above commence from such date stated supra. Not with standing any delay in payment by the allottee and further not with standing the permission granted by VUDA for delayed payment with necessary penalties as may be imposed in its discretion.

2. The physical delivery of possession of the plot (property being registered here)

by virtue of sale deed shall be made as soon as the above stipulation of purchased and filing the sale deed forms for the purpose of execution of sale deed by the vendor is met with. However such possession will ensured before the date of registration. It is however clarified that owing to delay beyond the stipulated 3 months period on the part of allottee (It shall be deemed to have handed over physical possession of the plot on the last date of expiry of the 3 months period are imposed (stated above) and it is further clarified that VUDA shall not be liable for any claims / damages stands indemnifies.

If is further clarified for the purposes of all statutory payments like property tax, House tax etc., the last date of payment schedule specified in these allotment proceedings shall be reckoned with and from that date onwards the allottee shall be liable to discharge all statutory obligations, payments and the like.

In case of allottees who have obtained Registered Sale Deeds from VUDA, some of the allottees furnished approved plans and also affidavits after receiving notices from VUDA. In all such cases it is advisable to send notices to inform the progress made in the construction.

In some cases it appears that allottees furnished only copies of the approved plans without submitting the required affidavits and in such cases it is suggested to give notices for submission of the required affidavits and in case they failed to respond then show cause notices may be given before taking the penal action.

In some cases it appears that replies were received by the allottees stating their inability to construct buildings since VUDA failed to provide the necessary infrastructure in the layouts. Therefore, in all such cases It is suggested to send notices to furnish approved plans and the required affidavits within the time stipulated in the said notices.

In some cases it appears that the allottees received notices but did not respond and in all such cases it is suggested that show cause notices to be sent. There are yet some other cases in which the notices appear to have been returned for some reason or other. In such cases it is suggested that fresh notices to be sent.

It is also suggested that in all cases, notices may be sent under certificate of positing to the address furnished by the allottees in their applications in view of the presumption of due service arising under law as per the Rulings of our own high Court reported in 1996 93) A L T. page-1023 & 1999 (2) A L T at page -464.

Though VUDA has reserved itself the power of cancellation of the allotments for not making the constructions within three years from the date of confirmations / allotments or for violation of any of the conditions of the allotment, cancellation of the allotment in exercise of the said power is by way of a punitive action and has to be exercised in extreme cases as a last resort.

Therefore before exercising the said power VUDA has to make it sure and completely satisfy itself that there has been violation and that the show cause notice has been served and the explanation if any by an allottee is not satisfactory and that it is a case where VUDA left with no option except to cancel the allotment. The order of cancellation has to be a speaking order and the same has to be served on the allottee before further action is taken with regard to the particular plot which is cancelled.

A Sale Deed executed at this point of time or hereafter containing a stipulation that the allottee should construct a building within three years from the date of allotment which was made nearly ten years ago looks ridiculous. Therefore in all such cases, it is suggested for inclusion of a stipulation in the sale deeds for construction of a building within a specified time form the date of registration of the sale deed with a penalty clause added to it.

In future auctions or allotments, it is suggested for inclusion of a stipulation in the conditions of allotment that the allottee should obtain a registered Sale Deed within a specified period from VUDA failing which the allotment would stand cancelled – and that possession of the site or plot would be delivered immediately after registration of the sale deed.

Similarly some of the allottees / auction purchasers are applying for issue of NOC to sell the plot allotted due to financial constrains / medical expenses etc. Previously as per VUDA Board Resolution No.366 dt. 27-3-99 it was resolved to increase the sale permission charges from Rs.35/- to 70/- per Sq. yard in Visakhapatnam Municipal Corporation limit area layouts and to increase from Rs.10/- per Sq. yard to Rs.20/- per sq. yard out of Municipal limits area layouts. It is to consider to increase the sale permission (for issue of NOC to sell the plot) charges as detailed below for the sites.

I SITES

Sl No	Description	Existing Rate Per Sq. yd.	Proposed Increase Per Sq. yard. Rs.
1	Sale permission charges per sq. yard in GVMC area layouts.	70/-	200/-
2	Sale permission charges per Sq. yard out side GVMC limits	20/-	75/-
3	Gift permission charges (within family members).	20/-	100/-
4	Revocation charges for cancelled of plots.	--	200/-

Contd... 9 page.

II HOUSES.

SI No	Description	Existing Rate Per year Rs.	Proposed Increase Per year Rs
1	Sale / gift permission charges per year in GVMC area Hg. Schemes.	3,500/-	LIG 5,000/- MIG 7,500/- HIG 10,000/-
2	Sale / gift permission charges per year in out side GVMC area Hg. Schemes.	2,500/-	LIG 4,000/- MIG 6,000/- HIG 8,000/-

The changes suggested by the senior advocate for the sale deed forms and allotment conditions are already incorporated in the sale deed forms.

The matter is therefore placed before the VUDA Board for ratification in having incorporated the changes in the sale deed forms and allotment conditions.

It is also placed before the VUDA Board for taking a decision on increase of sale permission charges as proposed above.

VUDA R.No.168 dated: 28-04-2007

Resolved to ratify the action in having incorporated the changes in the sale deed forms and allotment conditions as indicated in the Agenda note. Also approved the proposals of increasing Sale Permission Charges as proposed in the agenda note.


Chairman, VUDA