

SUBJECT NO. 109 ;

RC NO. 1415/95-92,

SUBJECT :- Representation of A.P. Real Estate Developers' Association, North Andhra Region
Visakhapatnam.

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AGENDA NOTE :

The Secretary, Andhra Pradesh Real Estate Developers Association, North Andhra Region, Visakhapatnam has represented for favourable consideration on the following items :

1. WAIVAL (DELETION) OF LAYOUT CONDITION TO PROVIDE OVER HEAD TANK.

"The V.U.D.A. is demanding a provision of overhead tank for issuance of B.L.P. We submit that construction of overhead tank at the initial stage may not be feasible. Because we ourselves are not aware when the beneficiaries will come and take possession of the plots and start construction of their residential houses. It may take considerable time may be 10 years for the beneficiaries to complete their houses and start living there. In the circumstances construction of overhead tank is absolutely unnecessary and redundant. Moreover, it may also escalate the overhead costs for the plots and consequently the beneficiaries. So we request you not to insist on the construction of the overhead tanks. Further all the present layouts are almost in the rural areas outside the city limits. And there is plenty availability of water in the layouts and the beneficiaries may get amply full supply of water with their individual wells for the supply of water rather than from the overhead tank".

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2. TO EXTEND THE VALIDITY OF TIME FOR B.L.P. FROM ONE YEAR TO THREE YEARS.

"The time for validity of B.L.P. could be extended for three years instead of the present one year to enable the promoter to consider providing necessary infrastructural facilities to the beneficiaries. We are quite sure that you are aware of the difficulties of the promoter in getting the electrical connection for the beneficiaries from A.P.S.E.B. It has got its own formalities and procedures for compliance by the Promoter. This will take much time. Hence, we request you to extend the validity period by three years".

• DISPENSATION OF FURNISHING OF G.P.As. FOR B.L.P. APPROVAL.

"We are facing another difficulty in obtaining G.P.As. and furnishing them to Authority for processing the files before issuance of B.L.P. It is a difficult proposition for the Promoter to obtain G.P.As. from the owner at that stage. We feel that this requirement is not necessary and it may kindly be dispensed with. You are quite aware that since the insistence of G.P.As. not even a single application for layout is submitted to the Authority. This itself proves the difficulty that a Promoter faces in obtaining G.P.As."

DISPENSATION OF PRODUCTION OF N.O.S. FROM REVENUE FOR USING OF GOVERNMENT LANDS FOR B.L.P. APPROVAL.

"Another problem we are facing in that when we submitting application for issuance of B.L.Ps. for the land for layout, there is a possibility that at time some pieces of land belonging to Government may be there. In such a case, Authority is not processing the files. It is a very small and negligible matter. The B.L.Ps. are being delayed for that reason. Although it is not helping the Authorities in any way, but it is pulling us to loss in view of the delay that is

issuance of B.L.P. that may be clearly demarcated in the layout Plan with a direction to the Promoter not to utilise that land for his own purpose or it may be allowed for the common communal purpose for the benefit of the beneficiaries and issue B.L.P. If it is a large extent of land belonging to the Government, the Authority can give us time to obtain necessary approval/permission from the Revenue Department pending issuance of B.L.P."

In this connection, the remarks are given below item-wise

REGARDING ITEM NO.1 : WAIVAL OF CONDITION TO PROVIDE OVERHEAD TANK.

The V.U.D.A. Board in its Resolution No.644, dated 03.07.1994 has taken a policy decision that the Overhead tank to the Distribution lines shall be enforceable for the layout which exceeds Ac.10.00 in extent. The Hyderabad Urban Development Authority was addressed about the implementation of the above condition. The Hyderabad Urban Development Authority replied since there is no public water supply system in out skirts of the city individual water supply to be provided. It was suggested that the provision of Overhead tank pipe distribution may be desirable in the large layout area, but however, on enquiry they are not enforcing the water tank in their distribution lines in the Out-skirts of the city. Any modification needs to be approved by the Visakhapatnam Urban Development Authority Board since decision was taken by the Board. Hence, decision may be taken on the above representation.

REGARDING ITEM NO.2 : TO EXTEND THE VALIDITY OF TIME FOR B.L.P FROM ONE YEAR TO THREE YEARS.

At present, V.U.D.A. is giving one year time to complete the infrastructure development and B.L.P. conditions. Two

renewals are being given with the payment of 50% of development charges as per the V.U.D.A. Resolution. In respect of levy of renewal charges on account of enhanced development charges vide G.C.Ms.No.51, M.A., dated 05.02.1996.

The request of the Association to allow three years time for development of B.L.P. is too longer period. The purchasers would be in the problem besides non-serious developer would enter into layout business. Hence, the request of the Association may not be deserve any consideration.

The policy of renewal charges may be revised as proposed below :

Sl. No.	Details.	Old dev. charges.	50% dev. charges renewal fee being collected.	New dev. charges as per G.C. Ms.No.51, M.A., dt/5.2.96. new rate.	Proposed 20% dev. charges on renewal fee at
		Rs. per Sq.Mts.	Rs. per Sq.Mt.	Rs. per Sq.Mt.	Rs. per
1)	Within Mpl. limits.	2/-	1/-	10/-	2/-
2)	Outside the Mpl.limits.	1/-	0.50	5/-	1/-

First renewal for extending time limit of six months may be given on collection of 20% development charges in new rate paid at the time of B.L.P. approval. The second renewals may be given another 6 months of detailed examination and on the merits of the case by levying 20% development charges on new rate. Two renewals will be permitted after that no renewal is considered and the layout owner has to apply a fresh for consideration of the layout.

REGARDING ITEM NO.3 : FURNISHING OF GENERAL POWER OF ATTORNEYS.

The necessity of submitting registered G.P.As - at the time of renewal of B.L.P. - the opinion of the

the unregistered G.P.A. can be accepted provided such G.P.A. should charge with stamp duty of 5% of the market value of the property as per Article 42 of Schedule IA of Indian Stamp Act of Power of Attorney. The registered G.P.A. or unregistered G.P.A. with stamp duty may be continued to be enforced.

REGARDING ITEM NO.4 : PRODUCTION OF N.O.C. FROM REVENUE DEPARTMENT FOR USING THE GOVERNMENT LANDS.

The layout owner has to furnish the "No Objection Certificate" from the revenue department for formation of roads etc. on Government lands of any land involved in the layout. It is also not possible to approve and release the B.L.P. without insisting the permission from the Revenue Department of any piece of Government land involved in the layout. The Mandal Revenue Officer & Collector requested V.U.D.A. not to approve any layout of Government land involves in the proposed layout and also requested to insist the layout owner to furnish the No Objection Certificate from the Revenue Department. Hence, it is also not possible to release the B.L.P. without insisting the permission from revenue department at any Government lands involved in the layout.

In view of the above, the Subject is placed before the V.U.D.A. Board to take a policy decision on the following items:

1. Decision waiver of condition to provide overhead tank.
2. To extend the validity of time for B.L.P. from 1 year to 3 years.
3. Furnishing of General Power of Attorney and approve the revised renewal charges.
4. Whether to insist to furnish No Objection Certificate for the Government land involved in the proposed layout at B.L.P. approval stage itself.

To
The Vice Chairman
Urban Development Authority
Visakhapatnam

Dear Sir,

Sub:- Planning & Representation of certain
Real Estate Developers. - Opinion - Regarding.

Ref:- Your letter in Rc.No.1419/95-G2 dated

In the letter under reference it is mentioned
that the A.P. Real Estate Developers Association, North
Region, Visakhapatnam, submitted representation to
VUDA requesting VUDA not to insist on registered GPAs
at the time of releasing Block Layout Plans. It appears
that they made a further request for a provision to pay
the deficit charges of development payable as per G.O.
Ms.No. 51 MA dated 5-2-96 in instalments.

2. My opinion is called for on the above mentioned
2 aspects. In the first instance I will take up the
aspect relating to the General Power of Attorney.

I. General Power of Attorney.

3. In this context it is necessary, in the first place,
to understand what is meant by 'Power of Attorney' in
legal parlance. Section 2(21) of the Indian Stamp Act
defines 'Power of Attorney' as follows :

'Power of Attorney' includes any instrument empowering
a specified person to act for and in the name of the
person executing it.

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4. From the above definition as well as the general sense in which 'The Power of Attorney' is understood, it is clear that a Power of Attorney is nothing but an authorisation given by one or more persons to one or more persons authorising to do something on their behalf. The person who authorises another to do something, on his behalf is generally known as the 'Principal' or 'Donor'. The person who is authorised is called 'the Agent', or 'Attorney' or 'Donee'.

5. Therefore when somebody purports to act on behalf of another person he should have been authorised to do so by means of an appropriate written authorisation. Such written authorisation is 'the Power of Attorney'.

6. I would like to draw your attention to the fact that there is an Act called 'the Powers of Attorney Act, 1882' which deals with the Powers of the Attorney. Prior to the enactment of this particular Act, the Power of Attorney holder, when executing an instrument pursuant to the Power was required to sign in his Principal's name. As is made clear in the statement of objects and reasons that necessitated the passing of this Act it is stated that the object of the Act is to render it legal for such Power of Attorney holder to execute in and with their own names. Section 2 of the said Act, which is extracted hereunder is only a reflection of this object.

"S.2. EXECUTION UNDER POWER-OF-ATTORNEY.

The donee of a Power-Of-Attorney may, if he thinks fit, execute or do any instrument or thing in and with his own name and signature, and his own seal, where seal is required, by the authority of the donor of the Power, and every instrument and thing so executed and done, shall be as effectual in law as if it had been executed or done by the donee of the power in the name, and with the signature and seal, of the donor thereof.'

7. Thus it is clear that the Agent, who is authorised by the Principal to do some act on behalf of the Principal, is entitled to execute or do any instrument or thing in his own name and signature and the Principal is bound by such an act of his agent as if the Principal himself has done it.

8. Now the question is as to how to take it for granted that the Power of Attorney purported to be executed by the Principal is a genuine one or a fake document. Unless it is authenticated in an appropriate manner, it is difficult to readily believe its genuineness. It is only in this context the question as to what type of authentication is required by Law arises.

9. The particular doubt which you expressed is as to whether an un-registered General Power of Attorney can be entertained or not. First of all, in order to determine whether any particular document is required to be registered compulsorily, it is to be seen whether the Registration Act requires that particular document to be registered. Section 17 of the Registration Act enumerates the documents of which registration is compulsory. I may mention that a Power of Attorney does not fall in any of the types of documents that are dealt with by Section 17 of the Registration Act. So a Power of Attorney is not normally required to be registered. In this context I may also mention that in the case between Syed Abdul Khadar Vs. Ramireddy and others reported in AIR ¹⁹⁷³ Supreme Court 553, the Supreme Court had occasion to observe that 'the G.P.A. is not a compulsorily registrable document' (Paragraph 14 of the Judgment). Therefore, registration of GPAs is only optional at the choice of the parties

but not compulsory. Of-course Section 33 of the Registration Act mandates compulsory Registration of Power of Attorney, but such mandatory requirement is not applicable to such Power of Attorney which are under consideration for my opinion.

10. Then the question that naturally arises is that as to how to presume the genuineness of the document unless it is authenticated in some manner or the other. In this context it is to be stated that as per Section 85 of the Indian Evidence Act which is extracted hereunder, a Power of Attorney executed before and authenticated by a Notary Public, or any Court, Judge, Magistrate, Indian Consul or Vice Consul or representative of the Central Government shall be presumed to be proper and genuine :..

'Section 85 of the Indian Evidence Act'

'The Court shall presume that every document purporting to be a Power of Attorney, and to have been executed before, and authenticated by, a notary public, or any Court, Judge, Magistrate, Indian Consul or Vice-Consul, or representative of the Central Government, was so executed and authenticated.'

11. Thus it can be seen that a Power of Attorney which is executed before, and authenticated by a Notary Public or any other officer designated above has to be treated as proper and genuine Power of Attorney. Section 7 of the Powers of Attorney Act also reiterates the same legal position.

12. Thus it is very clear that even in the absence of registration of the GPA, the Power of Attorney holder is empowered to act for and on behalf of the Principal by virtue of Power of Attorney provided the Power of Attorney is authenticated by a Notary Public or any other specified authority as mentioned above.

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13. It is, therefore, my considered ^{opinion} that even unregistered GPAs whereunder the land owners empower the agent to submit layout application to VUDA, secure Block Layout Plan and develop the land can certainly be considered by VUDA without insisting on Registration of GPA, provided such GPAs are authenticated by a Notary Public or any other Authority like a Judge, Magistrate, Indian Consul or Vice Consul or representative of the Central Government. In such cases there is no need to insist upon production of a registered GPA.

14. But such GPA should invariably be a properly stamped document. In this context it is highly essential to clearly understand the distinction between the aspect relating to 'Registration' and the aspect relating to 'Stamp Duty'. How much of stamp duty is required in connection with a particular document is one aspect, whether the same document requires compulsory registration or not, is an altogether separate aspect. One may not be confused for the other. As per the Article 42(g) of Schedule-I-A of the Indian Stamp(A.P.Amendment) Act, Power of Attorney, when given for construction or development of or sale or transfer of any immovable property, requires to be charged with stamp duty of 5% of the market value of the property. Therefore, such GPAs which contain power in favour of the agent enabling him to develop the land, must have been charged with Stamp Duty equivalent to 5% of the market value of the property which is sought to be developed.

15. It is also necessary to mention that while accepting un-registered GPAs

application submitted by GPA holders representing the land owners, it is highly essential to examine whether such GPAs are valid or not from the angle of 'Stamp Duty'.

II. Permission to pay the deficit 'Development Charges' in Instalments.

16. The rates of development charges payable in respect of the lands sought to be developed for residential, industrial or commercial purposes have been enhanced by the Government in G.O.MS. No. 51, MA dated 5-2-96. The hike has been applied even to layout applications pending as on the date of the said G.O. Consequently these applicants who have already paid development charges to VUDA before the G.O. came into force at the old rates at the time of submitting layout application are required to pay the difference between the development charges of the old rates and development charges at the new rates. It appears that such of these applicants who have already paid development charges at the old rates before the G.O. came into force and whose applications were still pending by the time the G.O. came into force are now requesting VUDA to permit them to pay the difference in instalments. My opinion is requisitioned on that aspect also.

17. In this context I may mention that whether to favourably consider such a request or not is a policy matter. So far as policy matters are concerned, a legal counsel will not have much say.

18. I may point out that since the hike is substantial and is nearly 150% over and above the old rates, it naturally throws a heavy burden on the developers. Especially when they have

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proposed the venture and planned their finances taking into consideration the development charges at the rate prevailing as on the date of submission of the respective layout application and have paid the development charges to VUDA on the basis of those rates, it naturally creates hardship for them if they are compelled to make up the difference between the old rates and the new rates. Hence the cases of those applicants who have already paid the development charges fully at the rates prevailing on the date of submission of their applications and whose applications could not be finally accepted by the time the development charges are enhanced, deserve favourable consideration.

19. I may also point out that even if the Block Layout Plan is sanctioned subject to the condition that the deficit charges of development should be paid in instalments well before completion of development, the VUDA is not going to incur any loss. Just like the other conditions of development that are required to be fulfilled by the applicant, the condition with regard to payment of the deficit charges of development will be one of the conditions of Block Layout Plan. It is only after all the conditions of development are complied with to the satisfaction of the concerned officers of VUDA, a final Layout Plan will be released. Till such time the land will not acquire the real status of house site. Therefore, if the party fails to pay the deficit charges of development after taking the BLP, he will be the loser. But in order to protect

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the interests of the people who are interested, or motivated to purchase the sites in the layout on the strength of the Black Layout Plan, it is necessary to make a clear endorsement on the BLP itself that the applicant is still under the obligation of paying the development charges to VUDA.

20. In this connection I would like to draw your kind attention, the case of Sri K. Modi Naidu who applied for sanction of BLP in respect of Ac.8-73 cts in S.No. 325/1, 2 and 3 of Sathivanipalem, hamlet of Narava, Pendurthi Mandal in whose case permission was granted for payment of the deficit amount of development charges in instalments. Please refer to my letter dated 2-6-96 along with which I sent the draft Guarantee Bond to VUDA. The points and precautionary measures which I have indicated in my letter dated 2-6-96 may please be followed in all such similar cases and post-dated cheques etc., including guarantee bond may be obtained from the concerned parties on the lines which I have suggested in that case.

I am herewith returning the file.

Yours faithfully,


 (B.A. RAJA RAO)
 ADVOCATE

VUDA RESOLUTION No.109, dated 28-3-98.

Resolved to consider the representation of A.P. Real Estate Developer's Association, North Andhra Region, Visakhapatnam on two aspects as follows.

1. Resolved to waive the condition to provide over Head Tanks in layout of more than 10 Acs.
2. Resolved to extend the time for validity of B.L.P. from one year to two years and also renewal charges as proposed.

K. Gopala
CHAIRMAN.