

SUBJECT NO. 09

Sub: Engg – VUDA – Integrated Housing Project in Sy.No.33/P of Madhurawada and L.P.No.103/89 of Rushikonda layout in an extent of Ac-50.00 Cts., by M/s Radiant Developers Pvt. Ltd., Hyderabad – Representation of Developers for invocation of Arbitration clause as per the Development Agreement cum GPA concluded on 26.08.2005 –Opinion of Addl. Solicitor General Supreme Court of India obtained as per the directions of VUDA Board – Panel of Justices suggested by Government for Selection of Sole Arbitrator to resolve the dispute - Draft subject placed before VUDA Board for perusal and to take a decision – Reg.

- Ref: 1. VUDA Board Resolution No. 11/2013 Dt. 14-12-2013.
2. Letter No.16515/H2/2010, Dt.9-4-2014 of Principal Secretary to Government MA & UD Department received on 17-4-2014.
3. Letter of M/s. Radiant Developers Pvt., Ltd., Dt.11-4-2014 received on 17-4-2014

Agenda Note:

It is to submit that on perusal of the status of the said project as on date, VUDA Board vide Resolution No.11/2013, Dated.14-12-2013 resolved that *"the Vice Chairman, VUDA is directed to pursue the matter with the AG of the Hon'ble High Court and get the opinion at the earliest. It is also directed to get the opinion of Additional Solicitor General or Solicitor General for speedier process"*.

Since the necessary legal opinion is not forth coming at the required pace and the matter is pending for a long time and in accordance with the directions of VUDA Board Resolution, the opinion of Addl. Solicitor General, Supreme Court of India was sought for.

In this connection, Sri L.Nageswarao, Additional Solicitor General, Supreme Court of India was requested through Sri Ananga Bhattacharya, Advocate on record for VUDA at Supreme Court on 28-02-2014 through e-mail. In response, Sri L. Nageswara Ao, Addl. Solicitor General has furnished the opinion on the above subject through Advocate on record for VUDA on 12-03-2014. Copy of the opinion enclosed herewith for kind perusal.

The final conclusion and extract of the opinion furnished by Addl. Solicitor General, Supreme Court of India is – **"it would not be advisable to terminate the contract on the ground on which the opinion is sought for Termination of the contract as per Clause 12.1 can be resorted to which is likely to be a subject matter of a dispute in Arbitration VUDA might have to**

defend the decision of termination by warding off the challenge on the ground that there was no delay on its part to perform its obligations under the contract”.

While furnishing the opinion, Sri Ananga Bhattacharya, Advocate on record for VUDA, Supreme Court of India, New Delhi has communicated the memo of fee for the opinion of Addl. Solicitor General as Rs.2.20 Lakhs towards reading and preparing note for obtaining opinion and holding conference with Addl. Solicitor General and to be payable to Sri Ananga bhattacharya is of Rs.0.75 Lakhs. Thus, the total fee to be paid for obtaining the opinion comes to Rs.2.95 (2.20+0.75) Lakhs.

The Vice-Chairman, VUDA accorded sanction for Rs.2.95 Lakhs towards fee for the opinion obtained and permitted to make payment to the said advocates.

Further, the opinion received from Additional Solicitor General, Supreme Court of India was submitted to the Principal Secretary, Government, MA & UD Department for favour of kind perusal and to issue necessary directions for taking further action in this regard.

Later, Government after careful consideration of the subject, suggested the following names for selection of Sole Arbitrator for the resolution of dispute between VUDA and the Radiant Developers Pvt., Ltd., Hyderabad vide Letter No.16515/H2/2010, Dt.9-4-2014 Doc.No.1586 of Principal Secretary to Government MA & UD Department.

1. Sri Justice V. Eswariah.
2. Sri Justice C.V. Ramulu
3. Sri Justice Vaman Rao

The Vice-Chairman, VUDA was requested to communicate the same to the Developer for selection of Arbitrator for further necessary action in the matter. Copy of letter was communicated to the Director, Radiant Developers Pvt., Ltd., Hyderabad.

Immediately, Director, Radiant Developers Pvt., Ltd., requested Vice-Chairman, VUDA that they are agreeable for the appointment of Hon'ble Justice Vaman Rao as Sole Arbitrator for the resolution of dispute between Radiant Developers Pvt., Ltd., and VUDA and to appoint the sole Arbitrator as selected from the recommended panel by Government to enable the commencement of Arbitration proceedings vide their letter Dt. 11-4-2014.

At this juncture, since VUDA has its right to select the best one among the three justice from the panel suggested by the Government, the opinion was sought from Advocate Sri P. Rajasekhar, Standing Counsel at Hyderabad to indicate the name of justice to defend the interests of VUDA from the said panel. In response, Sri P.Rajasekhar, Standing Counsel, Hyderabad opined that Justice Sri C.V. Ramulu is preferable. Accordingly, M/s. Radiant Developers Pvt., Ltd., Hyderabad were informed and the reply is awaited.

Moreover as per the Clause – 25 and 25.2 of Development Agreement cum Power of Attorney entered

In case the parties cannot decide upon a sole arbitrator within 30 (thirty) days of notice of initiation of efforts in this regard, then and in such event, each Party shall nominate one arbitrator and the two arbitrators shall appoint the presiding arbitrator and the said 3 arbitrators shall from the arbitral tribunal. The seat of arbitration shall be Visakhapatnam only. The arbitrator / arbitrators so appointed shall be entitled to give interim awards / directions regarding the Disputes and shall further be entitled to avoid all rules relating to procedure and evidence as are expressly avoidable under the law. The arbitration shall otherwise be carried out in terms of and in accordance with the Arbitration and Conciliation Act, 1996 with modifications made from time to time. The interim / final award of the arbitral tribunal shall be binding on the Parties.

As per the above, the appointment of sole arbitrator has to be finalized in case M/s. Radiant Developers Pvt., Ltd., differs from the justice selected and indicated by VUDA.

Hence, the matter is placed before VUDA Board for kind perusal of the action taken including payment of the fees to Advocates to obtain opinion from Additional Solicitor General & ratification of the same.

VISAKHAPATNAM URBAN DEVELOPMENT AUTHORITY

From
Vice-Chairman,
Urban Development Authority,
Visakhapatnam

To,
Mr. Mahavir Agarwall, ✓
Radiant Developers Pvt. Ltd.
Plot No.1023, Inrhythm Building,
First Floor, Gurukul Society,
Near Meridian School,
Khanamet, Madhapur,
Hyderabad -500 081
Ph: 040-67297440 /441
Fax : 040-67297442

Rc.No. 9744/03/PMU/VUDA, Dt.29-04-2014.

Sir,

Sub: Engg - VUDA - Integrated Housing Project in Sy.No.33/P of Madhurawada and L.P.No.103/89 of Rushikonda layout in an extent of Ac-50.00 Cts., by M/s Radiant Developers Pvt. Ltd., Hyderabad- Appointment of Sole Arbitrator - Acceptance - Reg.

- Ref: 1. Letter No.16515/H2/2010, Dt.9-4-2014 of Principal Secretary to Government MA & UD Dept.,
2. Letter of M/s. Radiant Developers Pvt., Ltd., Dt.11-4-2014 received on Government MA & UD Department received on 17-4-2014.
3. T/O.Lr. Rc.No. 9744/03/PMU/VUDA, Dt.19-04-2014

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In modification to this office letter in the reference 3rd cited above, it is to inform that VUDA hereby accepts for the appointment of Hon'ble Justice Vaman Rao as Sole Arbitrator as selected by you from the panel suggested by the Government vide letter in the reference 1st cited above to initiate the process of arbitration between VUDA and M/s. Radiant Developers Pvt., Ltd.

In view of the above, necessary action may be taken at your end to commence the Arbitration proceedings as early as possible.

Yours faithfully,


VICE CHAIRMAN

Copy submitted to Prl. Secretary to Government
MA & UD Dept., for favour of information.

Copy to Chief Engineer, VUDA for information
and necessary action.

Sl. No.	Subject No.	Subject	Resolutions
8	7	Works – Engg. – VUDA – Proposal for construction of a Modern Auditorium (VUDA Samskruthika Pranganam) in Sector-7 of MVP Colony VUDA, Visakhapatnam – Foundation stone laid by the then Minister for Infrastructure, Investments and Ports, GoAP, Hyderabad - Draft subject placed before VUDA Board for perusal and approval - Reg.	Ratified the action taken towards eliciting the design from the architects and foundation laying; Obtain permission from Government and proceed with the work.
9	8	Works – Engg. – VUDA – Development and Widening of Master Plan Roads in Madhurawada area Bakkannapalem and Nagarapalem Villages – Draft subject placed before VUDA Board for Perusal - Reg.	Agreed for taking up the two Master Plan Roads subject to MCC provisions.
10	9	Engg – VUDA – Integrated Housing Project in Sy.No.33/P of Madhurawada and L.P.No.103/89 of Rushikonda layout in an extent of Ac-50.00 Cts., by M/s Radiant Developers Pvt. Ltd., Hyderabad – Representation of Developers for invocation of Arbitration clause as per the Development Agreement cum GPA concluded on 26.08.2005 –Opinion of Addl. Solicitor General Supreme Court of India obtained as per the directions of VUDA Board – Panel of Justices suggested by Government for Selection of Sole Arbitrator to resolve the dispute - Draft subject placed before VUDA Board for perusal and to take a decision – Reg.	Agenda item and the annexure thereon are perused and ratified the action taken. It is instructed to put up proper plea of VUDA before arbitrator by engaging good counsels and professionals.