

AGREEMENT FORM BETWEEN OWNER AND A BUILDER FOR  
CONSTRUCTION OF THE BUILDING

THIS AGREEMENT made at ..... on this ..... day of .....2000, between Shri..... S/o ..... resident of ..... (hereinafter called 'the owner' which expression shall unless repugnant to the context or meaning thereof, be deemed to include his heirs, legal representatives, executors and administrators) of the ONE PART and M/s ABC Builders & Contractors, a partnership firm registered under Partnership Act, 1932 and having its registered office at ..... (hereinafter referred to as 'the builders' which expression shall unless repugnant to the context or meaning thereof, be deemed to include every partner for the time being of the said firm, the survivor or survivors or the legal representatives, executors or administrators of the last survivor of the OTHER PART.

WHEREAS the first party is the owner of the plot of land admeasuring ..... sq. meters bearing plot No. .... city survey No. .... Khasra No. .... situate, lying and being at ..... Tahsil and District ..... (hereinafter referred to as the "said plot of land") and is desirous of getting a house constructed on the said plot of land.

AND WHEREAS the first party has appointed Shri ..... as the architect and the said architect has prepared the plans, drawings and elevations of the said intended house and the specification of the works to be done and of the materials.

AND WHEREAS the second party is a big contractor and is having vast experience in construction of big buildings and has agreed to construct the house on the said plot of land.

NOW IT IS AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. The builders will construct the building on the said plot of land in conformity with the plans, drawings, specifications and elevations as prepared by the architect which has been annexed hereto and marked as Annexure A, with the material of best quality and in the most substantial and workman like manner and to the satisfaction of the architect.
2. The builders hereby undertake to commence the construction within fifteen days of execution of these presents and complete the construction on or before the expiry of ..... months from the date of execution of these presents in accordance with the plans duly approved and sanctioned by the

Municipal Corporation of ..... and specifications and conditions as are set out in Annexure A hereunder written.

3. If the builders fail to complete the said work within the period as stipulated in the foregoing provision, the builders shall, at the option of the owner but without prejudice to the other rights under law of the owner and other provisions herein, pay liquidated damages calculated at the rate of Rs..... per day (but subject to a maximum of 2% of the total contract amount payable by the owner under this agreement) for the period between the said stipulated time for completion of the works. The builders hereby specifically agree and authorise the owner to deduct such liquidated damages, if any, from any installment of payment becoming due and payable to the builders in terms of this agreement.
  
4. The owner will pay to the builders a sum of Rs..... out of which the owner shall pay to the builders weekly such sum as may be sufficient to defray the expenses incurred by the builders in respect of materials used in the works, checked and certified by the architect, Rs ..... on the certificate by the architect that the work upto first floor has been completed, the further sum of Rs ..... on the certificate by the architect that the work upto second floor has been completed and the balance shall be paid on the certificate by the architect that the said works have been completed in all respects according to

the agreement and the builders have at their own expenses removed and cleared all scaffolding, fencing, unused materials and rubbish from the premises and made and prepared the bungalow fit for use and habitation and immediate occupation. However, a sum equivalent to 5 per cent of the total contract amount payable by the owner under this agreement shall be retained by the owner as retention money, which shall be paid after a period of 12 months from the date of handing over the said bungalow complete in all respects and fit for occupation. The builders hereby agree and undertake to rectify all such defects as may be found or detected during the period of 12 months. If the builders fail to rectify the defects pointed out or decline to cure such defects as pointed by the owner within fifteen days from the date of reporting to the builders, the owner shall be entitled to have such defects cured by such other agencies as it may deem fit at the entire cost and risk of the builders and utilise the retention money; Provided further that in the event of the said retention money being inadequate to meet such costs, charges and expenses incurred by the owner for curing the defects in the construction, the builders shall within 7 days of a demand in writing made by the owner make good the defect, failing which the builders shall be liable to pay the same together with the interest at 15% per annum.

5. The owner shall allow free ingress to and egress from the premises to the builder's servants, employees, sub-contractors and all other persons, who are

necessary in connection with the carrying out of the works under the agreement.

6. The builders shall indemnify the owner in respect of all claims, damages or expenses payable in consequence to any injury to any employee, workman, nominee, invitee while in or upon the said premises. The builders shall also be responsible for any damage to buildings, whether immediately adjacent or otherwise and any damage to roads, streets, foot-paths, bridges or ways as well as all damages caused to the buildings, and work forming the subject to this contract by frost, rain, wind or other inclemency of weather.
  
7. If the builders abandon the contract or fail to commence the work or suspend the progress of the work for 14 days without any lawful excuse under these conditions, or fail to proceed with the works with such due diligence and fail to make such due progress as would enable d the works to be completed within the time agreed upon or fail to remove materials from the site or to pull down and replace work for seven days after receiving from the architect written notice that the said materials or the works were defective and rejected by the said architect or neglect or fail persistently to observe and perform all or any of the acts, materials or things required by this contract to be observed and performed by the owner for seven days after written notice shall have given to the builders requiring them to observe or perform the same and the architect

certifies in writing to the owner to the said effect, then and in any of the said cases the owner may, notwithstanding any previous waiver, after giving seven days notice through the said architect in writing to the builders terminate the licence in favour of the builders and in so far as it relates to the completion of the remaining construction work, but without thereby affecting the powers of the architect, or the obligations and liabilities of the builders, the whole of which shall continue in force as fully as if this Agreement had not been so determined. And the owner by his servants or agents may enter upon and take possession of the work, tools, scaffolding, sheds, machinery, power, utensils and materials lying upon the premises or in the adjoining lands or roads and use the same as its own property or may employ the same by means of its own servants and workmen in carrying on and completing the work or by employing any other contractor or other person to complete the works and the builders shall not in any way interrupt or do any act, matter or thing to prevent or hinder such other contractor or other person or persons employed for completing and finishing the works or using the material and plant for the works.

8. When the said works are terminated in the manner as stipulated in the foregoing provision, the architect shall give a notice in writing to the builders to remove their surplus materials and plant, and should the builders fail to do so within a period of seven days, after receipt thereof by them, the owner may

sell the same by public auction and give credit to the builders for the net amount realised. The architect shall thereafter ascertain and certify in writing, what (if any thing) shall be due or payable to or by the owner, for the value of the said building and materials so taken possession of by the owner and the expense or loss which the owner shall have been put to in procuring the work to be completed and the amount, if any, owing to the builders and the amount which shall be so certified shall thereupon be paid by the owner to the builders or by the builders to the owner, as the case may be, and the certificate of the architect shall be final and conclusive between the parties.

9. The builders shall be bound to appoint an engineer competent to receive instructions from the architect from time to time, on behalf of the builders at all reasonable hours and all directions given to him by the architect shall be deemed to have been given to the builders.

10. The owner or his representatives shall be entitled to inspect the progress of the construction work and materials used for the construction and they shall be entitled to point out to the architect any defects in the construction work, quality of workmanship or materials used when such defective work is in progress or being executed or such material is brought on site. If the architect will be satisfied about the objections raised, the said architect shall certify the same in writing and direct the builders to rectify at their own cost the defect in

the said construction work or remove such defective materials and the same shall be rectified or removed by the builders as directed.

11. All disputes or differences relating to the specifications, designs, drawings and as to quality of workmanship or material used in the work or as to any other question arising out of or relating to the contract, design, drawings, specifications, orders or otherwise in connection with the agreement or the carrying out of the works, whether during the progress of the work or after the completion or abandonment thereof shall be referred to the sole arbitration of two arbitrators, one to be appointed by each party. The arbitrators shall appoint an umpire before entering upon the reference. The parties would cooperate and lead evidence, etc. with the arbitrators and if one of the parties does not cooperate or remains absent at the reference, the arbitrators or the umpire would be at liberty to proceed with the reference ex-parte. The arbitrators or the umpire shall keep record of the oral evidence adduced by the parties and submit the same to the court at the time of filing of the award, along with documentary evidence produced before them or him by the parties or their witnesses. The proceeding of the arbitrators or the umpire shall be recorded in English and a carbon copy whereof shall be furnished to each party. The arbitrators or umpire shall be entitled to appoint stenographer, for recording proceedings of the arbitration, consult an expert, after previous notice to the parties to the reference, the cost whereof shall be borne equally

by the parties. The fees of the arbitrator appointed by a party shall be borne by the party, so appointing and the fees of the umpire and the other arbitration expenses shall be borne equally by the parties. The arbitrators shall make their award, with reasons for the decision, within six months from the date of entering upon the reference. If the arbitrators have allowed their time to expire without making an award or have delivered to any party or to the umpire a notice in writing stating that they cannot agree, the umpire shall forthwith enter on the reference. The umpire shall make his award within four months of entering on the reference or within such extended time, as the parties may agree. The award of the arbitrators, or umpire, as the case may be, shall be final, conclusive and binding on the parties and shall not be challenged on any ground except collusion, fraud or an error apparent on the face of the award. This reference to arbitration shall be deemed to be a reference within the meaning of the Arbitration and Conciliation Act, 1996 or any statutory modification thereof. No action can be taken under this agreement for the enforcement of any right without resorting to arbitration under this clause.

12. This agreement shall be executed in duplicate, the original shall be retained by the owner and the duplicate by the builders.

IN WITNESS WHEREOF the parties have signed these presents and a duplicate thereof, the day and year first hereinabove written.

Signed and delivered by ..... the owner

Signed and delivered by M/s ABC Builders and Contractors,  
the builders, by its partners

WITNESSES;

1.

2.