

BUILDING AGREEMENT BETWEEN THE OWNERS AND THE CONTRACTOR

ON FEE PLUS COST OF LABOUR AND MATERIALS

THIS AGREEMENT made at..... on this day of 2000, between ABC Ltd., a company incorporated under the Companies Act, 1956 and having its registered office at (hereinafter called the "owners", which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and assigns) of the ONE PART and XYZ Co. Ltd., a company incorporated under the Companies Act, 1956, and having its registered office at..... (hereinafter called the "Contractors", which expression shall unless repugnant to the context or meaning thereof, be deemed to include its successors and assigns) of the OTHER PART.

WHEREAS the owners are absolutely seized and possessed of the plot of land or otherwise well and sufficiently entitled to the plot of land bearing No..... City Survey No. Khasra No. Tehsil and District, which land, is more particularly described in the First Schedule hereunder written and referred to as "the said land".

AND WHEREAS the owners are desirous of constructing flats for its executives to as per site plans prepared by the architects and approved by the Municipal Corporation of true

copies whereof are annexed hereto, and marked as Annexure A for the purpose of reference.

AND WHEREAS the contractors have offered to construct the said flats according to the said plan (hereinafter referred to as the said works) on the fee plus cost system and on the terms and conditions mentioned hereafter.

NOW IT IS AGREED BETWEEN THE PARTIES AS UNDER:

1. That the contractors agree to construct the flats in accordance with the site plans annexed hereto and marked as Annexure A, strictly in accordance with the specifications and conditions of contract set out in Second and Third Schedules hereunder written; provided that the owners shall be entitled to require such changes or alterations in the said plans, as they may deem necessary to suit their requirements and the contractors agree to undertake to get the said alterations or changes approved by the Municipal Corporation of and execute the said alterations or changes.
2. The contractors will abide by the directions of Architects, during the progress of the said works and will complete the said works agreed to be done on or before the expiry of months from the date of execution of these presents. The contractors undertake that they will execute the said

works in the best and soundest way and in the most economical manner keeping the interest of the owners in view.

3. The owners agree to pay to the contractors the remuneration of Rs. and shall reimburse them the expenses incurred by them in connection with the completion of the said works such costs to include the following items:

- (i) Material for construction such as cement, steel, lime, wood, plumbing materials, etc.
- (ii) Wages paid to the workmen labour and employees employed for the execution of the works.
- (iii) Salaries of artisans, overseers and engineers employed for the execution of the works.
- (iv) Expenses incurred by staff, overseers and engineers for travelling, transporting and hotel bills in discharge of duties in connection with the construction.
- (v) Obtaining of permission and approvals from all the authorities concerned for the construction, supply of power, drainage and other services for the said works.
- (vi) Cost of tools not owned by the workmen, canvas and plank, etc., consumed or rendered unfit during the execution of the said work.

(vii) Other incidental expenses relating to the execution of the said works.

The cost of the above items shall not be higher than the market rates paid in the locality of the work. The cost reimbursable to the contractors shall not include the salary of the regular employees of the contractors or interest on capital employed by the contractors for the execution of the said work.

4. The contractors shall keep full and regular account of all materials brought on the site, consumed and balance lying on the site. The said account books shall be open to inspection to the owners or their representatives at all reasonable times, who shall be entitled to take the copy of any document, register, correspondence or account maintained by the contractors.
5. The contractors shall submit a bill on 10th of each month to the architect showing in detail the moneys paid by them on account of the cost of the work during the previous month for which they have to be reimbursed under the agreement, with original receipted bills and original rolls for labour checked and certified by the contractor's Chartered Accountants.
6. The architect will certify the reasonableness of each bill supported by the vouchers of expenses and the certificate of architect as to the reasonableness or otherwise shall be final on the contractors. If the architect

certifies that any bill submitted by the contractors is on higher side, then he (the architect) shall certify the market rate of the items of the said bill, (which shall be based on quotations from three reputed dealers) and the owners shall make payment of that bill in terms of the architect's certificate.

7. The owners will pay the amount of each bill within a period of 15 days from the date of receipt of the bill duly certified by the architect, in their office.
8. The contractors shall be responsible for injury to persons, animals or things and for all structural damages to the property which may arise from the operation or neglect of the contractors or their employees, nominees, sub-contractors or their employees, whether such injury or damages arises from carelessness, accident or any other cause whatsoever in any way connected with the carrying out of construction pursuant to these presents.
9. The contractors shall indemnify and keep the owners harmless against any claims, demands, actions or proceedings that may be made or adopted against the owners or that may be suffered by the owners by reason of anything done by the contractors pursuant to any work done by them in execution of the said works.

10. The contractors shall during the execution of the said works insure them against destruction or damage by fire, earthquake, flood, cyclone, etc., to its full insurable value and keep insured until the possession of the buildings complete in all respects and fit for occupation is handed over to the owners.

11. If the contractors fail to commence the work or without any lawful excuse under these conditions suspend the progress of the works for fourteen days after receiving from the architect the notice to proceed or persistently or repeatedly refuse or fail to supply properly skilled workmen to proper material or persistently disregard the- regulations, instructions or directions of the local or other authority or violate the terms of this agreement or fail to proceed the works with such due diligence and fail to make such due progress as would enable the works to be completed within the time agreed upon and the architect has certified that sufficient causes exist to justify the termination of the contract, then the owners may terminate the contract after giving the contractors seven days notice of their intention to do so. On such termination, the owners or their servants may enter upon and take possession of the works and tools, scaffolding, sheds and other materials lying upon the premises and use the same as their own property or may employ the same by means of its own servants and workmen in carrying on and completing the works or by employing any other contractor or other person or persons to complete the works and the contractors shall not in any way interrupt or do

any act, matter or thing to prevent or hinder such other contractors or other person or persons employed for completing and finishing the said works or using the materials and plant for the said works.

In case of termination of the contract, the architect shall thereafter ascertain and certify in writing under his hand what shall be due or payable to or by the owners, for the value of the said plant and materials so taken possession of the owners and the expense or loss which the owners shall have been put to in procuring the said works to be completed and the amount, if any, owing to the contractors and the amount which shall be so certified shall thereupon be paid by the owners to the contractors or by the contractors to the owners, as the case may be, and the certificate of the architect shall be final and conclusive between the parties.

12. In case any dispute or difference should arise between the parties, whether in respect of quality of material used by the contractors, or work done or in respect of delay in completion of work or any other matter arising out of or in connection with agreement or the carrying out of works, shall be referred to and settled by the architect, who shall state his decision in writing. If any party is dissatisfied with the decision of the architect, either party (the owners or the contractors) may give a written notice to the other party through the architect that the matters in dispute be referred to the arbitration and final decision of

an arbitrator to be agreed upon and appointed by both the parties or in case of disagreement as to the appointment of a single arbitrator to the appointment of two arbitrators, one to be appointed by each party which arbitrators shall before taking upon themselves the burden of reference appoint an umpire. The submission shall be deemed to be a submission to arbitration within the meaning of the Arbitration and Conciliation Act, 1996 or any statutory modification thereof. The award of the arbitrator or arbitrators, as the case may be, shall be final and binding on the parties. The fees of the arbitrator appointed by a party shall be paid by the party so appointing and the fees of the umpire and other arbitration expenses shall be borne half and half by the parties. The owners and the contractors hereby also agree that arbitration under this clause shall be, a condition precedent to any right of action under the contract.

13. This agreement shall be executed in duplicate. The original shall be retained by the owners and the duplicate by the contractors.

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

Signed and delivered by ABC Co Ltd., the within named
owners by its Managing Director Mr.

Signed and delivered by XYZ Co. Ltd., the within named
contractors by its Managing Director Mr.....

WITNESSES;

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