

Contract Strategy in Construction Industry with Case Study of Residential Project Contracts

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ABSTRACT

There are large number of large scale construction activities going on in and around the cities. A well scrutinized model in every little fields of construction has been created and utilized in a large scale construction project and day to day updating of such model/template is done based on current scenario. So let us spare some time for improvements needed in a small scale construction project. Drafting contracts/agreements is a vital part of any project. My initial work is to identify every major and minor difficulties faced in every phase of a real time construction project. Later an attempt is to be made in creating a template for all sorts of agreement papers involved in the project that dilutes the problems identified to a maximum extent.

Keywords: Residential Projects, Contract Agreements, Agreement Clauses

1. INTRODUCTION

Law means a ‘set of rules’ which governs our behaviors and relating in a civilized society. So there is no need of Law in a uncivilized society. One should know the law to which he is subject because ignorance of law is no excuse. Important terms of contract law are offer, acceptance, promise, promisor, promisee, consideration, agreement, void agreement, voidable contract, etc. Application of these contract laws are mandatory incase of any agreements drafted between two or more people involved. Drafting agreements involved in a construction industry in a vital task since even a small construction project involves a huge sum of money and hence a word of mouth is never acceptable even within close mates. The types of agreements involved in a construction project are joint venture agreement, construction agreement, sales deed, lease deed, etc. In this modern world where competitions have become high, we face new problems in construction especially in small scale construction where small mistakes could result in cost hike and profit reduction.

2. OBJECTIVE

There are two main objectives of the research paper. At first the aim was to go to the field and find out real time problems that could be rectified or minimized by bringing a change or adding a clause

in any of the agreements. Second objective will be creating a model for all types of agreements mentioned above keeping all the above mentioned real time problems underwent in a small scale construction. The objectives mentioned are to be achieved by considering a residential project as a case study for my research.

3. BASICS OF CONTRACT LAW

Offer + acceptance = Promise
 +
 consideration
 =
 Agreement
 +
 enforceability By Law
 =
 Contract

'All Contracts are Agreements, but all Agreements are not Contracts'

Table1: Difference between Contract and Agreement

Distinction between Contract & Agreement On Basis Of	Contract	Agreement
1. Definition 2. Enforceability 3. Interrelationship 4. Scope 5. Validity 6. Legal Obligation	An agreement enforceable by law. Every contract is enforceable A contract includes an agreement. The scope of a contract is limited, as it includes only commercial agreements. Only legal agreements are called contracts. Every contract contains a legal obligation.	Every promise or every set of promises forming consideration for each other is an agreements. Every promise is not enforceable. An agreement does not include a contract. Its scope is relatively wider, as it includes both social agreement and commercial agreements. An agreement may be both legal and illegal. It is not necessary for every agreement to have legal obligation.

4. CASE STUDY

For my research I have taken a case study of residential project. I got an opportunity to do an internship in a residential project located at Thoraipakkam. I hereby give some basic details of the project.

Project Details:

Project Type:	Residential, Joint Venture
Location:	Thoraipakkam
Project Name:	Samriddi
Builders:	AR Estates & Investments (info@arestates.net)
Project Value:	20 crores

Problems faced

The project is a gated community consisting of 45 apartments and as mentioned earlier it is located in Thoraipakkam which is situated in the famous Old Mahabalipuram Road(OMR). Plots in OMR suffer heavy water problems. Located close to the sea the bore water could not be used in these places. Hence water is bought for every basic needs. To avoid this problem the promoters wanted to install a Sewage Treatment Plant. For pleasing atmosphere and healthy environment a big area surrounding the buildings have been planted with plants which will be watered with treated water from STP. Also the water for flush tanks in toilets was planned to be provided from the STP. The problem started when the STP required minimum 25 occupants to run. Hence the promoters were forced to maintain the plants with water bought at their own cost. The other problems were similar to this due to lack of minimum number of occupants other facilities such as gym, swimming pool and gen set had to be maintained by the promoters.

Figure1: Site Photos



Cost details:

Water for Plants:	two lorries of water for a week(Rs.2400)
Diesel for gen set:	50 litres a day(Rs.2700)
Gym maintenance:	Rs.1500 for a week
Swimming Pool:	Rs.2000 for a week

5. RESULTS

The above mentioned problems are the results of minor mistakes in agreement that are not foreseen. If the agreements have been made in such a manner that these costs are bared by the occupants initially, such a problem would not have happened.

Figure2: Lease Agreement Model created by me

<p style="text-align: center;">RESIDENTIAL HOUSE LEASE AGREEMENT</p> <p>This Residential House Lease Agreement ("Lease") is made and effective this [Date] day and between [Landlord] ("Landlord") and [Tenant One] and [Tenant Two] ("Tenant," "hereinafter one or more"). This Lease creates joint and several liability in the case of multiple Tenants.</p> <p>1. PREMISES</p> <p>Landlord hereby rents to Tenant and Tenant accepts in its present condition the house at following address: (Complete Address of House) ("House").</p> <p>2. TERM</p> <p>The term of this Lease shall start on [Move In Date] and end on [Lease End Date]. In the event that Landlord is unable to provide the House on the exact start date, then Landlord shall provide the House as soon as possible, and Tenant's obligation to pay rent shall cease during such period. Tenant shall not be entitled to any other remedy for any delay in providing the House.</p> <p>3. RENT</p> <p>Tenant agrees to pay, without demand, to Landlord in rent for the House the sum of [Monthly Rental Amount] per month in advance on the first day of each calendar month, at [Address for Rent Payments], or at such other place as Landlord may designate. Landlord may improve the present charge of [Taxes Pay Charge] per day for any amount that is more than five (5) days late. Rent will be provided if the term does not start on the first day of the month or for any other partial month of the term.</p> <p>4. SECURITY DEPOSIT</p> <p>Upon execution of this Lease, Tenant deposits with Landlord [Security Deposit Amount], as security for the performance by Tenant of the terms of this Lease to be returned to Tenant, (With or Without Interest), following the full and final performance by Tenant of this Lease. In the event of damage to the House caused by Tenant or Tenant's family, agent or visitors, Landlord may use funds from the deposit to repair, but is not limited to this fund and Tenant remains liable.</p> <p>5. QUIET ENJOYMENT</p> <p>Landlord agrees that if Tenant timely pays the rent and performs the other obligations in this Lease, Landlord will not interfere with Tenant's peaceful use and enjoyment of the House.</p> <p>6. USE OF PREMISES</p> <p>A. The House shall be used and occupied by Tenant exclusively as a private single-family residence, whether the House or any part of the House or land shall be used at any time during the term of this Lease for the purpose of buying or any business, profession, or trade or any kind, or for any purpose other than as a private single-family residence.</p> <p style="text-align: center;">- 1 -</p>	<p>B. Tenant shall comply with all the health and sanitary laws, ordinances, rules, and orders of appropriate governmental authorities and home associations, if any, with respect to the House.</p> <p>7. NUMBER OF OCCUPANTS</p> <p>Tenant agrees that the House shall be occupied by no more than [Total Number of Occupants] persons, including no more than [Maximum Number of Children] under the age of eighteen (18) years, without the prior written consent of Landlord.</p> <p>8. CONDITION OF PREMISES</p> <p>A. Tenant agrees that Tenant has examined the House, including the grounds and all buildings and improvements, and that they are, at the time of this Lease, in good order, good repair, safe, clean, and reasonable condition.</p> <p>B. Landlord and Tenant agree that a copy of the "Joint Inspection," the original of which is maintained by Landlord and a copy provided to Tenant, attached hereto herein reflects the condition of the House at the commencement of Tenant's occupancy.</p> <p>9. ASSIGNMENT AND SUBLETTING</p> <p>A. Tenant shall not assign this Lease, or sublet or grant any concession or license to use the House or any part of the House without Landlord's prior written consent.</p> <p>B. Any assignment, subletting, concession, or license without the prior written consent of Landlord, or an assignment or subletting in violation of law, shall be void and, at Landlord's option, terminate this Lease.</p> <p>10. ALTERATIONS AND IMPROVEMENTS</p> <p>A. Tenant shall make no alterations to the House or construct any building or make other improvements without the prior written consent of Landlord.</p> <p>B. All alterations, changes, and improvements built, constructed, or placed on or around the House by Tenant, with the exception of fixtures properly removable without damage to the House and movable personal property, shall, unless otherwise provided by written agreement between Landlord and Tenant, be the property of Landlord and remain at the expiration or earlier termination of this Lease.</p> <p>11. DAMAGE TO PREMISES</p> <p>If the House, or any part of the House, shall be partially damaged by fire or other casualty not due to Tenant's negligence or willful act, or that of Tenant's family, agent, or visitor, there shall be a determination of cost corresponding with the time delay which, and the extent to which the House is untenantable. If Landlord shall decide not to rebuild or repair, the term of this Lease shall end and the rent shall be prorated up to the time of the damage.</p> <p>12. DANGEROUS MATERIALS</p> <p style="text-align: center;">- 2 -</p>	<p>Tenant shall not keep or have on or around the House any article or thing of a dangerous, inflammable, or explosive character that might unreasonably increase the danger of fire on or around the House or that might be considered hazardous.</p> <p>13. UTILITIES</p> <p>Tenant shall be responsible for arranging and paying for all utility services required on the premises, except Landlord will provide [Service Provided by Landlord]. Tenant shall not default on any obligation to a utility provider for utility services at the House.</p> <p>14. MAINTENANCE AND REPAIRS</p> <p>A. Tenant will, at Tenant's sole expense, keep and maintain the House and improvements in good and sanitary condition and repair during the term of this Lease. In particular, Tenant shall keep the fixtures in the House in good order and repair, keep the furnace clean, and keep the water free from dirt and debris. Tenant shall, at Tenant's sole expense, make all required repairs to the plumbing, range, oven heating apparatus, electric and gas fixtures, other mechanical devices and systems, floor, ceiling and walls whenever damage to such items shall have resulted from Tenant's misuse, waste, or neglect, or that of the Tenant's family, agent, or visitor.</p> <p>B. Tenant agrees that no signs shall be placed or painting done on or about the House by Tenant without the prior written consent of Landlord.</p> <p>15. ANIMALS</p> <p>Tenant shall keep no domestic or other animals in or about the House without the prior written consent of Landlord.</p> <p>16. RIGHT OF INSPECTION</p> <p>Landlord and Landlord's agents shall have the right at all reasonable times during the term of this Lease and any renewal of this Lease to enter the House for the purpose of inspecting the premises and/or making any repairs to the premises or other items as required under this Lease.</p> <p>17. DISPLAY OF SIGNS</p> <p>During the last thirty (30) days of this Lease, Landlord or Landlord's agent may display "For Sale" or "For Rent" or "Lease" or similar signs on or about the House and signs to show the House to prospective purchasers or tenants.</p> <p>18. HOLOVER BY TENANT</p> <p style="text-align: center;">- 3 -</p>
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Figure3: Sale deed Model

<p>as aforesaid the receipt of which has been duly acknowledged by the SELLER, who acquit the purchaser from making any further payment towards sale consideration, the SELLER, as hereinafter provided, DOES HEREBY GRANT, CONVEY, TRANSFER, BY WAY OF SALE AND ASSIGNMENT unto and in favour of the purchaser of the schedule property and every part thereof together with the right, title and interest therein, with all the benefits, advantages, concessions, licenses, benefactions, necessary rights, appurtenances, claims, demands, privileges, appurtenances or any other things liable in the search belonging to or appurtenant thereto or attached to or necessary to be regarded to belong to the Schedule property TO HOLD, TO POSSESS AND TO ENJOY the same forever free from all encumbrances, charges, all kinds of mortgage, agreement to sell, court litigation and any other statutory charges.</p> <p>Whereas the SELLER hereby declares and consents with the purchaser that he is the sole and absolute owner of the schedule property and has a clear, legally valid and marketable title thereto and therefore, an absolute right to sell and convey the same to the purchaser as terms of this deed; The SELLER further declares that he has not done any act, deed, or thing so as to curtail, restrict or prejudice his right to convey or part with from selling the Schedule property as terms of this deed.</p> <p>Whereas the PURCHASER having duly paid the entire sale consideration as detailed below, has requested the SELLER to execute the Sale deed in his favour and the SELLER has duly agreed thereto.</p> <p>NOW THEREFORE THIS DEED OF ABSOLUTE SALE WITNESSETH AS HEREUNTO:</p> <p>1. The SELLER hereby confirms that the PURCHASER has paid the entire sale consideration in under:</p> <p>a. Amount paid by Cheque No. _____ For _____ or in Cash on dated, _____</p> <p>b. Remaining amount paid by Cheque or D.D. or Pay order before Sub-Signing at the time of Execution of this Sale deed _____ For _____ _____ Total _____ For _____ (Rupees, _____ only)</p> <p>Whereas the SELLER hereby further declares that the schedule property is free from all encumbrances, lien, charge, mortgage, lease, court or other attachments, in-pendens, acquisition and requisition proceedings, minor's claims or any other</p>

6. CONCLUSION

Thus I conclude telling that it is a vital role of every small scale construction firm to give importance to this contract strategy and keep updating the model then and there. Thus my paper is been drafted with contract agreement models that are very important for a firm.

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