

## **Ideal Contract for Multi Storey Building Construction**

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**Abstract:** *The Construction Industry, which is the major source of employment opportunities to people of all walks of life, next only to agriculture, is now fully poised for full swing growth, after the jerk of demonetisation. The Builders too, who were initially showing resentment to RERA, are now fully satisfied with it, as it is only conditioning them for transparency in their activities.*

*The Government's initiative of "House For All" gives a great impetus to construction industry.*

*The increased income levels of people, reasonable job opportunities in urban areas and the galloping apartment costs make people to own an apartment for dwelling. House rent in the city is turning prohibitive and working class now prefers to own an apartment instead of paying rent. The differential cost (between Rent and EMI) also works out reasonably inducing them to buy the apartments.*

*Construction activities are seen in full measure, particularly in cities and outskirts of same.*

*Multi Storey Buildings are the common sights in the City, nowadays.*

*Owning a house is not possible to all whereas an apartment.*

*All the above contribute to the fillip in construction activities which are started with a renewed vigour now.*

**Key Words:** *Turn Key Contract, Labour Contract, Quality Standards, Timely Completion*

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### **I. Introduction**

Any structure with three floors and above is called a Multi Storey Building. This is commonly the perception in the field. Going by this, almost, all the buildings under construction in the City and the outskirts can be called Multi Storey Building.

The increased need for dwelling place is the main cause for this. Large scale movement of people from rural areas to urban areas for employment purposes, the widespread employment opportunities in the city, higher disposable income to people due to good wages/salary being received by them are some of the important reasons for this.

### **II. Methodology**

Personal visit to the sites. Observation and Discussion.

<b>Contours</b>	<b>Details</b>
No. of sites visited	2
No. of floors in each	4 & 6
Statutory/RERA compliance	100%
Personnel strength	75 – 100 nos.
Female employees	10% approximately
Migrated workers	A group of 20 persons (approx.) in the second site.
Facilities offered	Covered Car Park, Round the clock security, Uninterrupted power supply, GYM. Community Hall (in the second site)

### **Main Observation**

Unlike before, female employees do not prefer to come for the construction jobs now. The main reason for this is they easily get jobs in companies and small firms in the house keeping areas. The job is comfortable and the fringe benefits they get are also good there.

Migrated workers find good employment opportunities in construction sector.

### **Classification of Construction Contracts**

The Construction Contracts can be simply classified into two. Turn Key Contract and Labour/Material Contract.

### **Turn Key Contract**

In the Turn Key Contract, the Contractor, with whom the Agreement is entered into by the Owner, will take care of everything in the construction.

The whole construction activities right from getting plan approval to completion of the project will be his responsibility

He is fully endowed with Consultant, Structural Engineer, people of various skills (Mason, Carpenter, Plumber, Electrician and a host of others).

The Owner has to just pump in the money as and when demanded by the Contractor for completion of the project as promised by him.

### **Whom is this ideal for?**

The Turn Key Project is ideal for Land Owners who possess money but lack all other things. They are happy with possession of land at their hands. Capital is also not a problem. The thing is that they do not want to brave the risk of construction themselves – may be due to inexperience or other reasons.

For such people, the best option is Turn Key Project. They should scout around in the market and make the best choice of the Project Contractor.

There is good number of Turn Key Project Contractors with whom the responsibility can be entrusted with. In the field, actually, many projects come to a halt midway due to paucity of funds. More the days it is halted, more will be the complication in completion. Even big builders are no exception to this.

Turn Key Project is most suited for people with capital at their hand but unwilling to get involved in the physical construction, facing all the difficulties themselves.

### **The Contractor is Responsible for Everything**

The main advantage in this is the Contractor is totally responsible for the project. The entire work is his - from submitting documents for approval, obtaining RERA clearance, organising men and materials for speedy construction.

The Client or Owner is free from all the bother of construction. His only concern is to make available the money to the contractor as and when demanded by him. In fact, while entering into Agreement itself, the requirement of money in various stages is clearly spelt out in the Contract Agreement so that the Owner/Client is able to get himself geared up for capital availability for hassle free construction.

Thus, the Owner could be cool throughout the project.

This is ideal for people who are comfortable in capital but are new to construction area.

### **Main Disadvantages**

As the contractor is handling everything till completion of the project, the owner is simply a money lender to the contractor with no access to any data or quality of materials/productivity of labour.

There are always chances in this Turn Key Contracts that the Contractor would charge exorbitant rates to the Client whereas what he would be paying to suppliers would be much less. The client has no say in the matter.

All the benefits of bulk purchase and supply chain management would accrue to only the contractor. He, over and above the fixed percentage of profit, gets additional sums of money also by way of effective subcontracting etc.,

The client may be free from the bother of construction whereas all the benefits will only go to the contractor.

### **Important Aspects to be looked into in Turn Key Project Agreement**

The client should not exhibit his undue anxiety to the contractor. This is more like making an object surrender. The impression of the Contractor about the Owner will get diminished. Besides, the Client is expected to have basic knowledge about construction. He should catch up with the demands and expectations of the Contractor. This is very essential for smooth execution of the contract.

The Contractor should have excellent track record. This is quite vital from the point of view of the Client. An experienced contractor is an asset to the owner. He would not fritter away money or dissipate time, as both are disastrous to the owner.

While the responsibility rests with the Contractor, it does not prevent the Owner from knowing the sources of his procurement. The client has every right to demand that the materials and other things required for construction are bought only from reputed sources and should conform to the excellent quality standards.

New Contractors, in their anxiety to clinch the deal, may quote very attractive (cheap) rates, but the Client should not fall a prey to them. Even if they are sound enough otherwise, their lack of experience in construction is only a minus point.

In this regard, it is always preferable to go in for an experienced person in the field, giving due considerations to the rates.

However experienced the contractor is, the Client should have, in his own interest, periodic meetings with the contractor to get to know of the progress in construction.

Capital inflow to the project should not be a concern either to the contractor or to the client. The client should be sufficiently backed up for pumping money without break. If the construction is halted due to whatever be the reason, it will have a telling effect in the quality of the work.

A project, halted for some time for some reasons and started subsequently will definitely have varying quality standards in the execution. This is inevitable. Hence, sufficient care should be taken to ensure continuous and smooth progress of the activities.

Both the Client and also the Contractor should have equal responsibility in this.

The Client should satisfy himself with the soundness of construction of the contractor by physically seeing the other construction completed by the Contractor.

More importantly, the following three things are to be seen and if possible, verified, in the own interest of the Client.

- Cost of Construction
- Quality of Construction
- Timely completion of the projects

**Costs:** Many contractors will have a clause that owing to circumstances beyond their hands, if situations warrant, there may be hike in rates.

Some contractors will abide by the clause that throughout the construction, their rates will be maintained fixed. Possibly, the rates indicated will be quite exorbitant.

**Quality:** Quality will be the main aspect of the agreement. Some Contractors will clearly specify the brands of materials that will be used in the construction. Some other contractors will cleverly say that in the unlikely event of unavailability of the specified materials, equivalents will be used. The Client has every right to know the equivalents that would be used in the construction.

The Site Engineer of the second site made an off the record remark that as human bodies are prone to allergy, in construction sites too, in the event of different/equivalent materials used, the effects of same will definitely be there, but in the long run.

While technically, it can be argued that different brands of same grade and composition materials can be used as a perfect substitute, the compatibility issue will definitely be there, in varying qualities, in the long run.

Hence, the Client has every right to demand that only a particular brand should be used till completion of the projects. No compromise should be made in this regard.

**Timely Completion:** Timely completion of the projects is always an issue, even with major builders. The peculiarity of construction industry is that the major things which are perceived to be threats will turn out to be negligible and whereas the small things which are normally ignored as nothing will turn out to be a stumbling block.

The Client has every right to know the delivery history of the contractor, of the various projects completed by him. If he has a good track record, it shows his commitment in business. On the other hand, if he is found to be lagging behind in completion dates, it only warns about the poor capacity of the Contractor. Such Contractors should not be used at all.

Since the Builder is answerable to his prospective buyers who have made booking, he should be extremely careful in this regard.

The client should enter into Agreement with the Contractor only after he is fully satisfied about the contractor on his capacity to complete the project as per the Builder's requirements.

There should never be any place for misunderstanding or mistrust between the client and the contractor. If anything creeps up, such things are to be ironed out then and there. Proceeding with misunderstanding will only hamper the construction.

As such, the credentials of the contractor are to be thoroughly and satisfactorily verified and the client should be fully convinced of same. This is quite essential before entering into any formal agreement.

While the Client is expected to be fully aware of the Contractor and his capabilities before formally joining hands with him, he should also be keeping the fact in mind that the association must go quietly and comfortably till the project completion. In fact, it must also go beyond that in the sense that the Client should be satisfied enough to retain the same contractor for his future endeavours as well.

Careful selection of the Contractor is the first and foremost one in the Turnkey Contract. A reliable and understandable contractor is a great asset to the Builder.

The Builder or the Client, must be having all the required qualities of a Negotiator in identifying, selecting and formally entering into Agreement with the successful contractor. More than the Contractors, who are sought after by many in the field today, the Client must be earnest enough in selecting the right Contractor.

For practical purposes, the Client only should be more amicable with the Contractor for the work to go through hassle free till completion of the project.

It is worth noting the following.

“The best Negotiators do not aim to maim, destroy or belittle the other side because they realise that the relationship between themselves and the other persons will usually be a long term one. .... They do not emphasise the aspects that divide them – instead, they focus on the common aspects that bring them together. Their lynchpin is co-operation, not competition”.

**Source: Pages 6 – 7. Book Name: Making Negotiations Happen – a simple and effective guide to successful negotiating. Author: Laurie Dicker, Business + Publishing, Unit 715, Vinko Place, Warriewood, NSW 2102, Australia. Copyright Business and Professional Publishing. First South Asian edition 2006, reprinted 2008. ISBN: 1 875889 50 7. Printed and bound at Chennai Micro Print (P) Ltd, Export Division, 100% EOU, 130, Nelson Manickam Road, Aminjikarai, Chennai 600 029, India.)**

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#### **Owner Controlled Labour Contract/Material Contract**

While the Turn Key Project is preferred only by the “First Comers” in the field (due to their apprehensions in the field of construction, lack of experience, fear of facing problems and their inability to maintain business contacts with material suppliers, contractors, government officials and others), the established and experienced builders always prefer to have the control with themselves but would like to have the least of the bother in construction.

By virtue of their experience and also financial soundness, they always concentrate only on bother free construction and would like to refrain from spending time and energy on routines and bother areas.

They enjoy enormous advantages and comforts in this.

- Decision of construction fully rests with them.
- Planning, Designing and Execution are totally under their control.
- They enter into Labour Contract with reputed agencies. They get skilled labour personnel as per their requirement. They need to only honour the contractual obligations. They are absolutely free from the bother of retaining people in their permanent payroll.
- As the whole responsibility is with the Contractor only, the Builders, by paying the money to the Agency, get people of different skills as per the requirements of various stages in construction.
- They are able to devote their time in the site and progress with the execution as per the plan.
- They ensure that the site is maintained in perfect condition for bother free working of people by complying with legal and safety aspects. If, in spite of this, any untoward incidents take place, the Labour Contractor is to only handle the same with workers. This is such a cumbersome and long drawn out process.
- This is the reason that majority of big builders have only very minimum staff strength in their permanent payroll and the rest of the personnel are hired through Agencies. The Builders are actually free from the bother of HR issues.

#### **Supply Chain Management**

In the Owner Controlled Contracts, the Builder directly gets into Material Contract with the Suppliers.

All the major builders have Rate Contract with the Suppliers by freezing the rates for the financial year. Since their off take is assured and in volumes, suppliers are also happy in freezing the contract. From their point of view, they are assured of off takes at the agreed prices.

Better planning is possible for both the Builder and also the Supplier. It is a “Win Win Situation” to both.

### **What are the benefits of Supply Chain Management?**

The prices of construction materials are always on the increase. With the growing demand, it attracts many suppliers to enter this business. With more suppliers offering more of comparable brands, the builders are enjoying the advantage of making the best selection of materials at the fair price.

Since the price advantage should not be a one time affair and should be there throughout the year, all large builders are specific in having material contract and also with more than one source.

If the supply becomes erratic or the supplier is unable to deliver enhanced order quantities, the situation will not suffer as the other supplier is always ready to take up the extra requirement.

The large builders rate the suppliers on the basis of their capacity, quality and timely delivery. Under any circumstances, the Builder is not affected. And this is the reason they would like to have more than one supplier in their base.

### **Framing the Contract Agreement**

The success of the project completion is determined greatly by the clauses and sub clauses of the Agreement. A wise builder is always alert in thorough understanding of what is expressly meant in the agreement and what is to be tacitly understood in the same.

In fact, everything should be specified in unambiguous terms. The framing of Agreement is done by Specialists who are well versed with all legal aspects of same. It should also be borne in mind that the Client also is backed up by his legal experts in the interpretation of the agreement.

There are incidents where litigation took place in understanding and executing some of the clauses.

Construction would have been over but formal handing over to the Client would come to a deadlock. The Builder cannot do anything, unless and otherwise the litigation is fully resolved. The contractor and also the builder, both would be in trouble.

Hence, utmost care should be taken, especially by the Client in understanding what is explicit and agreeing to what is implicit.

It is relevant to note "The complete Negotiator is the complete Communicator. A Negotiator has to be aware not only of what is being said but also of what is unsaid".

**(Source: Pages 91 – 92. Book Name: Conflict Management. Author: Baden Eunson, first published in 2007 by John Wiley & Sons, Australia Ltd, 42, McDougall Street, Milton Qld 4064, Copy right Baden Eunson 2007. ISBN: 97807 314 06517) [ 2 ]**

### **Contract is a Shield but Precautions should be in the Field**

Construction sites are always associated with risks. Utmost care should be taken in ensuring all safety precautions at the site. While the labour contractor is responsible for supply of labour to the site, it is the responsibility of the builder to ensure that the site is totally compliant with safety aspects for construction.

In the event of any major injuries or occurrence of an untoward incident, the problems arise in interpretation and explanation of the clauses of agreement and who should bear the brunt of the accident.

Risk Management is always a bone of contention between the Builder and the Contractor, when an unpleasant thing occurs. Both are only trying to wriggle out of the issue. Even major builders are no exception to this.

It is always advisable that the risk management issue is thoroughly discussed and expressed in the contract. Some builders refuse to accept many clauses in this and the same way, many contractors stoutly refute the charges, blaming only the builder.

Neither should show hurry in disowning the charges or shifting the blame on the other. While each and everything cannot be brought under the clauses of agreement, (which is not possible either), the builder and also the contractor must be reasonable in this regard.

This will work out in practice only when they mutually believe and respect each other. Risk Management issue is very vital in construction sites.

In this regard, it is worthwhile noting that "if you jump into the Risk Management conversation as if you are certain about everything and know what must be done, you are likely to do more damage than good. An effective risk management conversation is an exploration about what might go wrong and what you could

do by working together, to prevent it or to mitigate its impact"

**(Source: Pages 92 – 95. Name of the Book: The Point of the Deal. Authors: Danny Ertel and Mark Gordon. Published by: Harvard Business School Press, Boston, Massachusetts. Copy right 2007 Vantage Partners, LLC. ISBN: 13: 978 – 1 – 4221 – 0233 – 6 and ISBN: 10: 1 – 4221 – 0233 – 5)**

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### **III. Conclusion**

The second site had all the safety aspects fully adhered to. The observation revealed that the workers had their own careless behaviour until they are reprimanded by the Site Engineer/In Charge. Hard Hat, though provided to all personnel, was worn only by a few and majority of helmets were simply piled up (in the first site.). In fact, for that matter, even the Site In Charge was wearing only occasionally. Discipline is a must in construction sites and it must be ensured.

### **IV. Recommendation**

For the people who venture in to construction business, for the first time, it is advisable to go through Turn Key Projects.

For established builders, goes without saying, Labour Contract and Materials Contract are ideal. The Supply Chain Management has its own benefits and vigorously following that will contribute to tremendous cost savings to the builder.

Before entering into Contracts, always look carefully in to the past history of the contractors. They must have excellent track record. They should not have got into any litigation with the builders. Normally, when a Contractor, however big and reputed he is, got into any court issues, his name is tarnished in the field. Hence, extreme care should be shown in choosing the contractors.

Construction, once started, should not be halted under any circumstances. If any break is given due to capital, materials or labour, then it will only add to concomitant delays and will disrupt further activities and will ultimately bring a standstill. As such, this is to be avoided, at any cost.

The construction industry is in the revival now with bright opportunities for the future. A wise builder is sure to flourish.