

## Importance of Contract in Multi Storied Building Construction

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**Abstract:** India is surging ahead in industrialisation and is considered to be the Safe Country for investment by Multi National Companies. From agrarian economy, our country has galloped forward to Industrial Economy. The policy of the Government is to promote Road Development and Port Development which are quite essential to ensure overall industrial development. This eventually gave a fillip to construction sector which is in the leap, like never before.

The ambience of boom leads to increased job opportunities in various sectors, particularly industrial. The salary structure of the industry is also fair enough to enable people have a reasonable amount of money as disposable income.

The movement of people from rural areas to urban areas for employment purposes and also the prohibitive rental charges in the cities necessitates construction of residential apartments. The sufficient availability of apartments enables people to prefer owning a flat with a fixed EMI for a long period of time rather than paying rent, which is sure to increase once in two years.

The availability of institutional finance plays a pivotal role in the case of both the builders as also the prospective purchasers.

All the above give a positive impact on the construction sector which steadily grows into both cities and outskirts of same.

**Keywords:** Construction Contract, Lump Sum Contract, Unit Price Contract, Labour Contract, Supply Chain Management Contract

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### Methodology

Personal visit to the sites. Observation and Discussion. Perusal of Contracts.

Contours	Details
No. of sites visited	2
No. of floors in each	3 and 5
Statutory Compliance	Yes in both
Round the clock security, Power Back up and Covered Car Park	In both
Gym, ATM, Function Hall	In the Second
Use of construction machineries	Nominal in first and substantial in second

### What is the Need for the Contract?

The builders are normally classified into two- Small and Big.

The Small Builders, generally, confine themselves to a maximum of three floors. Predominantly, they do the whole activities with their own capital and labour. They are known for undertaking small projects and they will take up the next project only when the previous one is either completed or nearing completion.

Their fund and labour being limited, they will not take up simultaneous projects in different places.

They use to be purchasing materials from local sources and some of them are dealers themselves in the construction products.

As such, they do not go in for any Construction Contracts.

The need for Contracts arises only for Big Builders.

The Big Builders are known for their mega projects at different places, concurrently taking place. Their basic concern will be continuous supply of capital to the project and all other activities would be carried out through contracts by group of outsourced personnel.

In this way, they are able to carry on their activities in a bother free manner. Apart from ensuring uninterrupted finance to the project, they oversee all the projects for timely completion.

They have the minimum number of qualified personnel at their permanent payroll who are entrusted with specific responsibilities and collective accountability. It is a perfect streamlined system with the activities going on in a military discipline. This is actually the reason for their roaring success in the field.

It is to be noted that all these are possible only through safely entered into Contracts. Hence, the Contracts gain paramount importance in the construction of multi storied buildings.

A Construction Contract is a legally binding document entered into between the Owner (Builder) and the Contractors for execution of a defined construction project.

### **Different Kinds of Contracts**

The Contracts, particularly in Construction Projects, are of different types. The important ones are classified as under.

Lump Sum Contract

Unit Price Contract

Labour Contract

Supply Chain Management Contract

### **What a Smart Builder should do?**

In the present day situation, there are a number of qualified contractors in the field having specialisation in various spheres of construction activities. It is a fact that a reputed and reliable contractor is always in great demand. It is for the builder to choose the right contractor for his project.

Further, the rates of reliable contractors are fairly higher than that of others. Perhaps, quality comes first and price aspect relegates. Products are also available in comparable quality but with differing prices.

Some contractors, in order to clinch the deal, quote 'very nominal' rates in their bid. This only tacitly means that, if the contract is won, the quality of the products used in construction, will be of 'fair quality' only.

Goes without saying that no contractor will use substandard quality. The contractor is, as per clauses contained in the agreement, responsible for the sturdiness of his construction for a minimum period of time. In case of any quality lapse observed during that period, the contractor is to ensure satisfactory 'rebuild' of the work, at no extra cost.

This is a safeguarding clause in the agreement. Neither the builder nor the contractor would like to be forced under this clause.

The builder would always insist upon superb quality of the products used and also the services rendered by the contractor during the project execution. If any issue is brought under this clause, it badly speaks of the contractor for the shoddy quality of the job. The reputation of the contractor is just gone with that and his survival will become a question. Hence, all the contractors would show utmost care in the goods and services being provided by them.

Similarly, if a case is brought in under this by the builder, his name will also go off in the construction industry. He would be mistaken for his ignorance in the business acumen. The prospective buyers would think twice before finalising any deal with that builder.

Hence, this clause is a Protective clause from the point of view of both the builder and the contractor.

### **Lump Sum Contract**

Lump Sum Contract is also known as Fixed Price Contract. As the very term sounds, the contract is frozen for a specific sum, till the completion of the project. Price escalation is not permitted during the currency of the contract.

The bidder should be extremely careful in quoting for such contracts. He must have a thorough feel of the market for the next one year, at least. He should also have in mind the supply and demand in the industry. This should be given greater attention.

What the 'Supply' means here is that the number of contractors in the field, for the present and also the number of people who would enter the business (possible threats) during the contractual period. His contracting procedure should give a sufficient consideration to this aspect.

The 'Demand' speaks of the number of projects/contractors at that point of time and also the possible upcoming ones during the currency of the contract. If the demand is more, he can choose his strategy suiting more to his comfort and on the other side, if the demand is less, he has to quote the rates with the sole objective of obtaining the contract.

The Builder is also expected to have the same level of knowledge, if not more, so that he chooses the right contractor at the right price.

In the Lump Sum Contract, both the Builder and also the Contractor are expected to maintain dignity in their dealings throughout the period of the contract.

The interpretation of the text and clauses of the contract assumes greater significance. What is stated should be slated into action. What is mentioned should be honoured by both the parties in true spirit. It should get transformed more in spirit than merely on letter.

The mutual trust in respecting the contract and executing the same is very important. There should be a policy of give and take. This equally applies to both.

Neither the Builder nor the Contractor should have fault finding approach. Such an attitude will only mar the contract and lead to litigation. Who wins or loses the case is immaterial. It tarnishes the image of both.

Both of them will incur disdainful look from the people.

Implying or applying the clauses is a totally different thing. All these will arise only on the face of an issue. It is better for both not to give place for any issue at all.

The fineness of Lump Sum Contract is that it gives “full cover” to both. But, when used, the image of both gets torn off.

Both the parties must have mutual trust and respect.

The crux of the Lump Sum Contract is that if the contractor has not completed the project within the timeliness, he will have to incur the penalty. It also further says that if he has finished ahead of scheduled completion date, he is eligible for reward from the builder.

In this context, it is worthwhile noting that “fully agree what’s been agreed. You can foul up a hard won agreement, if something goes wrong in interpreting that agreement”.

(Source: Page no. 112, Book Name: Negotiating Secrets. Author: David Brown. Copyright @ Harper Collins Publishers 2010. Collins – A Division of Harper Collins Publishers. 77 – 85, Fulham Palace Road, London W68JB. ISBN: 978 – 0 – 00 – 732807 – 9) [1]

### **Unit Price Contract**

The Builder gives the full information about the project – right from the number of floors to quality of the items to be used for each and everything.

In other words, the builder decides the whole construction from the basement to roof, but only wants to ascertain the cost of construction from the contractor to enable finalise the deal.

The Contractor, in his anxiety to swing the deal, should not quote lesser price which will erode his profit or result in loss or higher price which will summarily reject his deal on price consideration. He must exert great care in quoting against such contracts.

In fact, this contract is ideally suited to the builder and also the contractor. The builder is of the safe opinion that his payments to contractor are only against the expenses incurred by him and not a single unit more.

While the Contractor gets his bills settled from the builder, he gets ‘volume discount’ from his suppliers. This is like a “privy purse” from his suppliers. In fact, big contractors enjoy excellent volume discount from their vendors which amounts to a whooping sum, depending on the volume of business transaction.

The contractor has to spend his money first and get it settled by the builder subsequently. It is something like reimbursing the purchase claim.

Big Contractors do not worry much about Unit Price Contract as they get “trade discount” and “volume discount” from their suppliers.

A wise builder, though would attach concern on price, will not harp on price alone in choosing the contractor. The experience and reputation of the contractor are also equally important in finalising the deal.

An experienced contractor is a treasure trove to the builder. He is literally bother free and would entrust the responsibility wholeheartedly to the contractor. In multi storied building construction, what essentially matters is quality and price comes only next.

It is also a fact that nowadays, the purchasers are not attaching any great importance to price. The reason is, of course, prices are comparable from all builders with only marginal difference which is worth ignoring.

Their decision of purchase of an apartment is fixed on quality and only quality.

Turning down an experienced contractor, just on price difference alone, is imprudent. No builder is supposed to do this.

Here, it is worth noting that “an over emphasis on price will make negotiations much more difficult to resolve and can result in impasse. Negotiators need to remember that there is almost always more to a negotiation than just price and they need to pay attention to both tangible and intangible factors”

(Source: Page no. 482, Book name: Negotiation – Sixth Edition. Authors: Roy J Lewicki, Bruce Barry and David M Saunders. Published by: McGraw – Hill/Irwin, a business unit of the McGraw – Hill Companies, Inc, 1221, Avenue of the Americas, New York, NY 10020. Copy right 2010, 2006, 2003, 1999, 1994 and 1985. ISBN 13: 978 – 0 – 07 – 3381 20 – 6 and ISBN 10: 0 – 07 – 338120 – 9) [2]

### **Labour Contract**

While small builders have a group of people always at their disposal, they do not worry about labour contract. Moreover, their volume of business is also small and they have the liberty of halting the operation till

such time they are fully geared up again to continue the project (normally, the halts occur due to financial constrictions). They manage with their own money and the flats would be sold only when they are fully ready.

This is not so with large builders. Their projects are always time bound. They are answerable to both customers and also the authorities for any delay that might occur. Penalty and legal actions are looming large on their head, always.

A widely seen fact with all big builders is that they have only very minimum and essential people in their permanent payroll and others are just hired (like bought out items).

Having more people in permanent payroll is only an unwanted liability to the builder. Hence, they totally avoid this.

Labour Contract is ideally suitable for large scale builders who do big projects (normally with more than 5 floors) and at different places, concurrently going on.

They chalk out their requirement of personnel, skill wise for all the projects. There are number of Labour Contractors in the field possessing dedicated labour force with them. Any number of personnel can be drawn from them.

Normally, the contract period is for One Year. The rates of personnel, category wise, are discussed, fixed and frozen throughout the contractual period.

The important feature of the contract is that while more number of personnel can also be pressed into service at the agreed rates, reduction of personnel, during the currency of the contract, is not allowed.

This is to ensure assured business to the Labour Contractor who in turn commits job to his personnel.

Normally, the occurrence of litigation in this type of contract is due to sudden drop of requirement of labour at the site due to reasons of the builder.

While professionals only chalk out the requirements of labour, get it approved by the Builder and contract established, it is inevitable that jerks take place often ending in conflicts.

One thing is to be clearly understood by both the contractor and the builder.

For a labour contractor, getting a reliable builder is an onerous task, though there is always a great demand. A good builder is an assured and bother free business to the contractor. The contractor should only be flexible in making amends to retain the contract and proceed with the same, amicably.

The Labour Contractor must be more favourable towards conflict settlement and should be always forward for any appeasement, in retaining the contract.

It is the foresight of wise labour contractor that inflexibility will only lead to unpleasantness and making bends and amends will always take him through to success. Normally, the labour contractors will come forward to any patch up with the builders, in order to maintain their business relationships with them.

Even at the face of conflicts created by builders, they are experts in either surmounting the same or even surrendering to builders so as to be safe in the business loop. Continuous business is their sole aim and they would strive for achieving the same at any cost.

Here, on conflict resolution, it is ideal to note that “identification of compatible interests is a valuable conflict resolution strategy. Sometimes it involves compromise, sometimes refocussing on a larger, overarching, shared goal. A successful search can convert a potentially negative altercation into a co-operative venture”

(Source: Page no. 149, Book name: Becoming a Skilled Negotiator. Author: Kathleen Reardon. Copyright @ 2005 John Wiley & Sons, Inc. Published by: John Wiley & Sons Inc, 111, River Street, Hoboken, NJ 07030 – 5774. Printed in the United States of America. ISBN: 0471 – 42969 -4.) [3]

### **Supply Chain Management Contract**

Big Builders are always having Supply Chain Management in their profession. Their volume of business necessitates committed deliveries from suppliers exactly as per the schedule passed on to them.

Almost, all the big builders have more than one source for any supplies. However good the supplier may be, dependence on a single source is always risky.

If any delays occur due to reasons genuinely beyond the hands of the supplier, he cannot be penalised (for circumstances coming under the Force Majeure clause) as the contract gives him the cushion, legally.

In this case, the builder only has to bear the brunt of the same. This is the reason that all big builders have more than one source in their Supply Chain Management system.

Selection of the Supplier is of crucial importance to the builder. No doubt, a number of suppliers are there in the market. All of them may also have almost same experience in the business and with comparable quality and prices.

The question is dependability. How dependable the supplier is, especially at the time of strains and straits? This point is only given greater attention and consideration by the builders in anchoring their choice on the suppliers.

The supplier should also have the willingness to collaborate with the builder in furthering the business of both. In other words, it is not just supplying the materials as per order and leaving it at that. That is the attitude of a Trader and not Vendor.

Vendor selection is always decided by the Builders themselves, assisted by the team of experts.

Considering the time bound schedule of execution, it is only necessary that SCM is a Must. A wrong selection will only cause devastation.

Three “M”s are considered to be vital for construction – Money, Men and Materials. For a hassle free and timely material delivery, a dependable Supply Chain Management Contract should be established.

Assessment of Vendors is absolutely essential before deciding on SCM.

In this context, it is to be noted that “Incomplete risk assessment of the vendor could expose an organisation to vulnerabilities. A Vendor is a business partner and hence you must gather adequate knowledge about the vendor and its past dealings before deciding to engage in the business relationship”.

(Source: Page no. 108, Book Name: The Outsourcing Handbook – How to implement a Successful Outsourcing Process. Authors: Mark J Power, Kevin C Desouza and Carlo Bonifazi. First South Asian edition 2007, reprinted 2008. Copyright @ Mark John Power, Kevin Clyde Desouza and Carlo Bonifazi. Published by: Kogan Page Limited, 120 Pentonville Road, London N19JN, United Kingdom. Kogan Page India, 4737/23, Ansari Road, Daryaganj, New Delhi, India. ISBN 10: 0 – 7494 – 4905 – 5 and ISBN 13: 978 – 0 – 7494 – 4905 -6)

[4]

### **Conclusion**

It was noted that all the reputed builders have various Contracts in their business operation. They concentrate mainly on fund flow to projects and on undertaking various projects at different locations at a time, to reap the benefits of economies of scale.

They have only the most minimum number of persons in their permanent payroll. Site personnel are always hired through Labour Contract.

There are, of course, issues with Suppliers and Contractors. All these are ironed out amicably and they do not prefer to move to Court for any issue, though contractually covered for the same. They are quite aware that even winning a case against a supplier or contractor will only bring a bad name to both of them, assaulting their reputation.

Equally true is that the Suppliers are also opting for out court settlement of any issue, going by the name and fame of the builders. They are also fully conscious that they cannot wage a legal battle against them and cannot afford either. This is the real reason for their passivity.

### **Recommendations**

It is a foregone conclusion that no supplier or vendor is willing to take up any issue in court, though they are entitled for the same, contractually. If they do so, it will only spread wrong signals about them to the construction community. They are interested in supplies and orders.

Nowadays, no supplier is content enough in just receiving the orders and executing the same, confining themselves to a mere vendor. They are more interested in teaming up with builders for augmenting their business wealth.

They are particular to have a long list of satisfied clientele. This is the proof of their soundness in business. Their commitment is towards mutual growth and prosperity. The real fact is that they are prepared to go a mile extra in satisfying their builders.

Plainly speaking, contract is only a legal paper forcing both parties to be bound by the same. But, actually what adds value to a contract is adhering to the same in all earnestness and abide by the same.

Respect to the Contract comes out by not having any conflicts at all. There may be business dissensions but they have to be sorted out amongst themselves without escalating to any level. If an issue goes to Court, sure that the name of both parties gets sullied.

Leaving aside the contractual clauses and provisions, great care should be shown in not having any issue at all. If anything surfaces, such things should be ironed out then and there. Both the builder and also the contractor should be honest and earnest in resolving the issues giving respect to each other.

In this regard, it is quite relevant to note that “both parties need to take something away from a negotiation, otherwise, one party will leave feeling aggrieved and a lasting resolution is unlikely to have been achieved. In other words, in order to win, we may have to lose a little”.

(Source: Page No. 47, Book Name: Conflict Management. Author: Baden Eunson. Copyright @Baden Eunson, 2007. Published by: First Published in 2007 by John Wiley & Sons, Australia, Ltd., 42, McDougall Street, Milton Qld 4064. ISBN: 97807 314 06517 and 07314 06516)

[5]