

भारतीय गैर न्यायिक

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RUPEES

Rs.10

INDIA NON JUDICIAL

पश्चिम बंगाल पश्चिम बंगाल WEST BENGAL

32AA 267606

AGREEMENT FOR EXCHANGE

1. **Date :** 12<sup>th</sup> December' 2009
2. **Nature of Documents :** Agreement for Exchange.
3. **Parties :** Collectively the following and shall include their respective heirs, executors, administrators, legal representatives/successors-in-interest and/or assigns :
  - 3.1 **Owner :** SRI BIRENDRA NATH PATHAK, alias B.N. PATHAK, son of Late Sevanath Pathak aged about 73 years by faith Hindu, by Occupation Business, residing at 53, Dr. Lal Mohan Bhattacharjee Road, Kolkata -700014.
  - 3.2 **Builder :** M/s. Castle Projects (P) Limited, company registered under the Companies Act, 1956 having its registered office at 2-8, Shantiniketan Building, Kolkata- 700 017 of the **Other Part.**

4. **Said Property** : ALL THAT immovable properties containing piece and parcels of land lying and situated in Mouza Gobindpur, J.L. No.9, R.S. No.72 Pargana Balia, P.S. Maheshtala, Dist. - South 24 Parganas, S.R.O. Alipore, now Behala, under Maheshtala Municipality in R.S. Khatian Nos.111, 215 & 110, R.S. Dag No.288(Part) measuring 6 Cottahs 11 Chittacks 33 Sq.ft., R.S. Dag No.289(Part) measuring 2 Cottahs 7 Chittaks 29 Sq.ft., R.S. Dag No.329(Part) measuring 16 Cottahs 2 Chittaks 20 Sq.ft. (and the building constructed over a part of the said land in R.S. Dag Nos.288 (Part) and 289 (Part) having a built up area of 1400 Sq.ft. and all the katcha and pucca structures over the land TOTAL MEASURING 25 COTTAHS 5 CHITTAKS 37 SQ.FT. AND DELINEATED IN THE MAP OR PLAN AS LOT A ANNEXED HERETO AND ENCLOSED WITH RED COLOUR BORDERS, butted and bounded On the North by Budge Budge Trank Road, On the East by part of R.S. Dag Nos. 289, 287, 329 and land of Bimal Dasgupta, On the South by part of R.S. Dag No. 329 and On the west by R.S. Dag No. 290.

5. **New Building** : The Building to be constructed at the Said Property by the Builder in accordance and in conformity with the Building Plan sanctioned by the Maheshtala Municipality. The Building should be minimum five storied (i.e Ground + four floors), with provision for elevator.

6. **Subject Matter** : Exchange of an undivided 74% share in the land comprised in Scheduled Property (the "**Said Property**") for 26% of the building ( the "**New Building**") to be constructed by the Builder at the Said Property at its own cost and for its own behalf.

7. **Background** :

7.1 **Representations** : The Owner have represented to the Builder that he is the absolute Owner of the Said Property, which has a marketable title. The Said Property is under their possession and is free from all encumbrances, liens, dispendents, charges and attachments and they have not entered into any Agreement or arrangement with any other person in respect of the Said Property.

2/11/2011



7.2 **Agreement** : The Builder has agreed to construct the Building at the Said Property and upon completion of its construction transfer 26% of its constructed area in the New Building to the Owner in exchange for undivided 74% of Ownership of the land comprised in the Said Property as discussed herein below.

8. **Now it is agreed and declared :**

8.1 **Exchange** : The Owner shall permit the Builder construct the Building at its own costs, to its own account and on its own behalf in the manner envisaged hereunder. After completion of the New Building in all respects, the Owner will transfer 74% (Seventy four percentage) (the "**Builder's Allocation**") undivided share, interest and/or Ownership of the Land comprised in the Said Property to the Builder and/or its nominees in such parts and/or portions as the Builder may desire in exchange of the Builder transferring to the Owner and/or their nominees 26% (Twenty six percentage) (the "**Owner' Allocation**") of the total saleable constructed space in the New Building in such parts or portions that can be separately and exclusively used and enjoyed ( the "**Units**") together with all other rights of the Building appurtenant to the Owner' Allocation.

8.2 **License** : At any time hereafter, the Builder will be entitled to enter upon the Said Property for the purpose of survey and preparation of the plans for the New Building (the "**Plans**") and other developments thereon. After the plans are sanctioned the Owner will permit the Builder to take possession of the Said Property to construct the Building and do all works related thereto after demolishing and removing all the existing building structures and/or constructions thereon.

8.3 **Tenant** : The Owner have represented to the Builder that there are no tenants tenant in the said property and the Owner is fully in possession of the said property.

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8.4 **Deposits & Transfer** : The Builder Shall pay a sum of Rs. 11,00,000/- (Eleven lacs only) to the Owner which the Owner shall refund to the Builder without interest before handing over of Owner's Allocation to him by the Developer in the new Building.

8.5 **Construction** : Upon sanction of the Building Plans, the Owner shall hand over possession of the Said Property to the Builder and the Builder shall commence construction of the Building as soon as it is able to do so, for that purpose the Builder shall do all acts, deeds, matters and things as be required including installation of utilities and facilities thereon which will, inter-alia, include the following:

8.5.1 **Appoint** : Engaging and employing suitable architects, engineers and other professionals for preparation of the Plan and for the Construction.

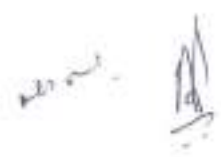
8.5.2 **Demolishing** : Demolishing the existing structures at the Said Property, if any, and utilising the proceeds from the sale of the salvage for the construction.

8.5.3 **Sanctioning** : After having the Plan prepared by a reputed architect, having the same sanctioned by the Sanctioning Authority as also have it modified from time to time, if necessary, in such manner so as to avail the maximum constructed area in the New Building.

8.5.4 **Other Clearances** : Obtaining all other necessary clearances, including those of the Pollution Control Board, for executing the Project, if required.

8.5.5 **Conversion** : Having the nature of use of the Said Property converted, if so required and/or necessary, for the Construction.

8.5.6 **Construct** : Construct the New Building and complete the same in all respect in strict conformity with the Plan and the Specifications using quality materials as are used in the buildings constructed and/or being constructed in the vicinity where the Said Property is situate and make it tenantable in all respects within 24



(Twenty four) months (the '**Completion Date**') from the date of obtaining the last of the permissions and/or sanctions required for commencement of the Construction subject to Force Majeure as defined in Clause 8.24 and reasons beyond the control of the Builder, or the Builder is able to commence construction, whichever is later.

8.5.7 **Utilities** : Obtaining all utilities for the Construction as also those that will be required by the ultimate users of the Building.

8.5.8 **Building Materials** : Purchasing various good quality materials for the Construction.

8.5.9 **Occupancy Certificate** : Obtaining Occupancy Certificate from the Sanctioning Authority and all other certificates and permissions required to commence occupation of the Building.

8.6 **Power and authorities** : The Owner hereby grant an irrevocable Registered General power of attorney to the Builder with all sufficient powers required and/or necessary for obtaining permission and sanction from different authorities in connection with the Construction of the New Building. The Owner shall also grant such other or further Registered General powers to the Builder and/or their representatives for transferring the Builder's Allocation in the New Building to its nominees. It is categorically understood that the Builder shall be entitled to enter into Agreement for sale and transfer and/or lease in respect of Builders' Allocation for which no further consent of the Owner shall be required expressly agreed and understood that if at any time the Developer shall require the consent of the Owner, the Owner shall sign and execute such Agreement paper, Conveyance Deed and/or any other document as may be necessary or be required at the cost of the Builder.

8.7 **Modifications** : The Builder shall not make any major alteration or modification of the Plan so as to materially affect the Owner' Allocation without consent of the Owner.

*[Handwritten signature]*

8.8 **Extras** : The Owner shall have to pay separately for the Owner Allocation the amounts as determined by the Builder for extra points on the Generator, if required and Sinking Fund, etc.

8.9 **No Assignment** : The Builder will not transfer and/or assign its rights, benefits, duties and obligations under this Agreement without the prior written consent of the Owner.

8.10 **Hindrances** : None of the Parties shall do any act, deed or thing whereby the Construction is obstructed or delayed.

8.11 **Execution** : Both the Parties shall sign and execute all papers and documents as also do all such acts, deeds, matters and things as be necessary to enable the other to fulfill all its obligations as well as exercising all its rights and becoming fully entitled to all the benefits hereunder and for that purpose admit registration of the necessary document before the concerned Registrar.

8.12 **Maintenance Association** : The Builder shall form an association or company of the persons who will be purchasing (the 'Co-Owner') such portions of the Building that will be separately and exclusively enjoyed and occupied and frame a scheme for the management, administration and enjoyment of the common portions of the New Building and its maintenance. All the Co-Owner will compulsorily be made members and for this purpose, the Owner and the Builder for the portions of the New Building in their respective share after the Exchange which will remain in their respective Ownership will be deemed to be the Co-Owner.

8.13 **Title Deeds** : The Owner shall hand over the Title Deeds related to the Said Property to the Builder who shall hand over the same to the Maintenance Association after its formation. The Builder shall cause to be produced the Title Deeds as and when necessary by any of the Parties at the cost and expenses of the Party requiring the production.

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8.14 **Encumbrances** : The Owner shall not in any manner, deal with, charge, encumber or induct any person in occupation of the Said Property or in any portion thereof or enter into any agreement relating thereto until the completion of the Construction.

8.15 **Rates and Taxes and utilities** : All rates, taxes and outgoings in respect of the Said Property shall be borne and paid in the manner following :

8.15.1 By the Owner up to Date of handing over possession of the Said Property to the Builder.

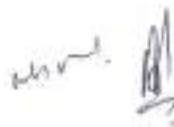
8.15.2 By the Builder during the Construction.

8.15.3 After the Completion Date, proportionately by the Co-Owners.

8.16 **Grievances** : The Builder shall give due weightage and consideration to all reasonable grievances of the Owner regarding the Construction and rectify and remedy the same in the best possible manner.

8.17 **Loans** : The Builder shall be entitled to obtain loans and/or finance for the Construction by virtue of this Agreement or otherwise for which the Owner shall render all co-operation and assistance including pledging of the Title Deeds of the Said Property provided however that the above in no way shall prejudicially affect the right, title and/or interest of the Owner in respect of the Owner Allocation in any manner whatsoever.

8.18 **Documentation** : The Advocates Mr. Bhudev Mitra (the Advocate) has drafted and drawn this document and shall draft and draw all documents related to the Project concerning both the Owner' and the Builder's Allocations. Drafts of all such documents including but not restricted to Agreements for sale, Sale deeds and other transfer documents, to be executed in favour of the Purchasers of the units in the Building shall contain the same terms and conditions including payment of fees of the Advocates, one-half whereof is to be payable at the time of entering into the Agreement of Sale and the balance half at the time of



receiving possession of the Units. It shall be applicable only towards the flats sold by the Owner out of their allocation in the New Building.

8.19 **Default of the Builder :** Subject to Force Majeure and reasons beyond the control of the Builder, if the Builder fails to construct, complete and finish the Buildings within the Completion Date or such extended time as be mutually agreed then the Owner shall be entitled to approach the proper legal forum for specific performance. If because of any willful act on the part of the Builder the construction and completion of the Building is delayed, then and in the event, the Builder shall be liable to pay damages to the Owner, which shall be determined by the proper Court.

8.20 **Default of the Owner :** In the event the Owner fail and/or neglect to perform any of their obligations under this Agreement, then the Builder shall be entitled to refer the matter to the proper legal forum for specific performance.

8.21 **Accidents :** The Builder shall solely be liable and responsible for any accidents to workmen or otherwise, breakdowns or any other loss and damage that may arise or be caused at the time of construction of the Building and the Owner shall have no liability therefor.

8.22 **Indemnity of the Builder :** At all times from the Possession Date till the Completion Date the Builder will keep the Owner, saved, harmless and indemnified in respect of all actions, proceedings, fines, penalties or other consequences arising due to any non-compliance or violation of any kind or nature, whether statutory or contractual.

8.23 **Indemnity of the Owner :** The Owner shall indemnify and keep the Builder, saved, harmless and indemnified in respect of all incorrect Representations, actions, proceedings, fines, penalties or other consequences arising due to any non-compliance or violation of any kind or nature, whether statutory or contractual, prior to the Possession Date.

*Handwritten signature*



8.24 **Force Majeure** : Force Majeure shall mean any act of God including, but not limited to flood, earthquake, riot, war, storm, tempest, civil commotion, strike, labour unrest or any political or communal unrest. Neither of the Parties shall be regarded to have committed any breach of the terms herein if it is prevented from discharging any of its obligations due to any condition amounting to Force Majeure or circumstances beyond its control.

8.25 **Breach of Contract** : In case of breach of the provisions herein, the Party in breach shall be entitled to specific performance of this agreement as also be liable to pay such damages as determined by the Court and none of the Parties shall be entitled to terminate this Agreement without the consent of the other in writing.

8.26 **Not Partnership** : This Agreement will not be deemed to be or treated as a partnership of the Parties under the Partnership Act, 1932.

8.27 **Not Works Contract** : It has been expressly agreed that the proposed building on the said land would be constructed by the builder at its own cost and expenses and for all practical purposes would be the property of the builder till the proposed exchange is executed by way of execution of deed of exchange or deed of conveyances as the case may be excepting the Owner' Allocation. As the construction is carried out by the builder on its own behalf with its own resources and finance, this agreement will not deemed to be or treated as an agreement for Works Contract.

8.28 **NOTICE** : All notice to be served hereunder by either of the parties to the other shall be deemed to have been served on the day of month the same has been delivered for dispatch to the postal authority by registered post with acknowledgement due at the last known address of the parties hereto.

8.29 **JURISDICTION** : Court at Kolkata alone shall have jurisdiction to entertain and try all actions, suits and proceedings arising out of these presents excluding the jurisdiction of all other court.



**SCHEDULE - A**

**(Said Property)**

ALL THAT immovable properties containing piece and parcels of land lying and situated in Mouza Gobindpur, J.L. No.9, R.S. No.72 Pargana Balia, P.S. Maheshtala, Dist. - South 24 Parganas, S.R.O. Alipore, now Behala, under Maheshtola Municipality in R.S. Khatian Nos.111, 215 & 110, R.S. Dag No.288 (Part) measuring 6 Cottahs 11 Chittacks 33 Sq.ft., R.S. Dag No.289 (Part) measuring 2 Cottahs 7 Chittaks 29 Sq.ft., R.S. Dag No.329 (Part) measuring 16 Cottahs 2 Chittaks 20 Sq.ft. and the building constructed over a part of the said land in R.S. Dag Nos.288 (Part) and 289 (Part) having a built up area of 1400 Sq.ft. and all the katcha and pucca structures over the land TOTAL MEASURING 25 COTTAHS 5 CHITAKS 37 SQ.FT. AND DELINEATED IN THE MAP OR PLAN AS LOT A ANNEXED HERETO AND ENCLOSED WITH RED COLOUR BORDERS, butted and bounded

On the North by Budge Budge Trank Road,

On the East by part of R.S. Dag Nos. 289, 287, 329 and  
land of Bimal Dasgupta,

On the South by part of R.S. Dag No. 329 and

On the west by R.S. Dag No. 290.

9. **Execution : In witness whereof** the Parties have executed these presents at Kolkata on the Date.

**Signed, executed and delivered** by  
the **Owner** in the presence of:

Preeti Pathak.  
53, Middle Rd.  
KOLKATA-14.

*A.N. Pathak*  
(*Arindra Nath Pathak*)

**Signed, executed and delivered** by  
the **Builder** in the presence of:

for Castle Projects Pvt Ltd  
NAGH Gnl.  
Director

*AKS*

ARUN KR. SHAW

**MEMO OF CONSIDERATION**

RECEIVED from Castle Projects (P) Ltd, the abovenamed BUILDER a sum of Rs. 11,00,000/- (Rupees Eleven lakhs) only as and by way of money payable under these presents by Account Payee Cheque as follows :

1. Cheque No 650877 dt 12.12.09 drawn on Citij Bank N.A., Kolkata

favouring Birendra Nath Pathak ..... 11,00,000.00

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11,00,000.00  
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(Rupees Eleven lacs only)

**WITNESSESS :**

1. Preeti Pathak.  
53, Middle Rd.  
KOLKATA-14.

*B. N. Pathak*  
(Birendra Nath Pathak)

**SIGNATURE OF THE OWNER  
(Birendra Nath Pathak)**