

*At Bangalore only*

29-9-19 2009

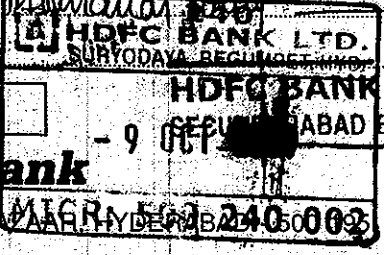
PAY *Melita & Mohi Homes*

आ धारक को OR BEARER

रुपये RUPEES *Five Lakhs five thousand only*

₹. RS. 6,05,000/-

खा. सं. A/c. No. **SB59278**



**आन्धा बैंक Andhra Bank**

*A. Susela*

सुल्तान बाजार, हैदराबाद - 500 195: MS/AB/SB/G

SULTANBAZAR, HYDERABAD 500 195

⑈827459⑈ 500011049⑈

⑈00000050500000⑈

HDFC Bank Ltd.  
SURYODAYA, HYDERABAD  
1-10-60/3, III Floor  
suryodaya  
Begumpet  
Hyderabad 500016

Date: 10-Oct-09

Dear Customer,

In accordance with the details shown below, we have debited your SAVINGS/CURRENT account 00422000011257 as under:

Instrument Amount	Cheque No.	Reason for return
525,000.00	000000056306	CHEQUE RET- FUNDS INSUFFICIENT
505,000.00	000000827459	CHEQUE RET- FUNDS INSUFFICIENT

DETAILS : Being the amount of cheque(s) deposited by you and returned unpaid (cheque(s) enclosed).

To,  
MEHTA AND MOHI HOMES  
5-4-187/3 AND 4 3RD FLOOR  
SOHAM MANSION M G ROAD  
ABOVE BANK OF BARODA  
SECUNDERABAD 500003  
INDIA +++++

THIS IS A COMPUTER GENERATED ADVICE AND DOES NOT REQUIRE A SIGNATURE.

ANDHRA BANK  
 0205: SULTAN BAZAR ANDHRA BANK MAIN  
 HYDERABAD

CHEQUE RETURN MEMO

Date: 10-10-2009

To:  
 HDFC BANK LTD  
 LAKDIKAPU  
 HYDERABAD

ACCT NO: 020510011059278

THE ENCLOSED CHEQUE/REFUND ORDER/PAY ORDER/DRAFT IS RETURNED FOR THE FOLLOWING REASON:

CODE NO.	REASON	PRES. BANK CODE	PRES. BRANCH
101	INSUFFICIENT FUND	1240	1500002

CHEQUE No. 827459 AMOUNT Rs. 5,05,000.00

DATE OF RETURN: 10-10-2009

SIGNATURE & STAMP  
 R. PURENDER REDDY-P 54  
 41, 5787 2581-11-644  
 RETURNING BANK

20-9-192009

PAY Melita & Mohd. Hossain

रुपये RUPEES

Three Lakhs Thirty Three thousand  
eighty six only

या धारक को OR BEARER

रु. RS. 3,23,586/-

खा. सं. A/c. No. SB59278

HDFC BANK LTD.  
SECUNDERABAD BR. 0042

आन्धा बैंक Andhra Bank

सुल्तान बाजार, हैदराबाद - 500 195. SULTANBAZAAR, HYDERABAD - 500 195.  
MS/AB/SB/G

A Susela

⑈827458⑈ 500011049⑈

⑈00000032358600⑈

HDFC Bank Ltd.  
SURYODAYA, HYDERABAD  
1-10-60/3, III FLOOR  
suryodaya  
Begumpet  
Hyderabad 500015

Date: 06-Oct-09

Dear Customer,

In accordance with the details shown below, we have debited your SAVINGS/CURRENT account 0042200011257 as under:

Instrument Amount	Cheque No.	Reason for return
311,000.00	000000056305	CHEQUE RET- FUNDS INSUFFICIENT
323,586.00	000000227458	CHEQUE RET- FUNDS INSUFFICIENT

DETAILS : Being the amount of cheque(s) deposited by you and returned unpaid (cheque(s) enclosed).

To,  
MELITA AND MOHD. HOSSAIN  
5-4-157/3 AND 4 BRC FLOOR  
SOHAM MANSSION 2 G ROAD  
ABOVE BANK OF BARODA  
SECUNDERABAD 500005  
INDIA +++++

THIS IS A COMPUTER GENERATED ADVICE AND DOES NOT REQUIRE A SIGNATURE.

BANK  
 SULTAN BAZAR ANDHRA BANK MAIN  
 HYDRABAD

Date: 06-10-2009

To.  
 HDFC BANK LTD  
 LAKDIKAPUL  
 HYDRABAD

ACT NO:020510011059278

THE ENCLOSED CHEQUE/REFUND ORDER/PAY ORDER/DRAFT IS RETURNED FOR THE FOLLOWING  
 INSUFFICIENT FUND

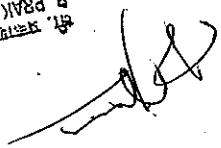
Cheque Date	20-09-2009
Clearing Zone Code	06-10-2009
Clearing Zone Date	CPCIM
CODE NO.   REASON	1 INSUFFICIENT FUND
1 PRES. BANK CODE	1240
1 PRES. BRANCH CODE	1500002

CHEQUE No. 827458 AMOUNT Rs. 3,23,586.00

DATE OF RETURN : 06-10-2009

SIGNATURE & STAMP OF  
 RETURNING BANK

श्री. प्राकश नायर-श्री 6  
 B. PRAKASH NAIR-P 6



**IN THE COURT OF THE XI ADDL. CHIEF METROPOLITAN  
MAGISTRATE AT SECUNDERABAD**

C.C. No.                      OF 2009

Between:

M/s.Mehta and Modi Homes, a partnership firm  
having their registered office at 5-4-187/3&4,  
II Floor, Soham Mansion,  
M.G.Road, Secunderabad  
rep. by his Authorised Signatory Mr.Ramacharyulu  
S/o L.Raghavendra Rao, aged 48 years,  
R/o Vanasthalipuram, Hyderabad.                      ...                      Complainant

AND

Smt.P.UMA KUMARI W/o P.Thakur Prakash  
Aged 49 years,  
R/o Plot No.71, Silver Oak Bungalows  
Phase I, Sy.Nos.35 to 39,  
Cherlapally, Hyderabad.                      ...                      ACCUSED

**COMPLAINT FILED UNDER SEC. 200 OF Cr.P.C.  
FOR THE OFFENCES COMMITTED U/s. 138 & 142 OF N.I. ACT.**

- |    |                                 |   |   |
|----|---------------------------------|---|---|
| 1. | Complainant                     | : | Mehta and Modi Homes, a partnership Firm rep. by its Authorised Signatory Mr.Ramacharyulu   |
| 2. | Name of the Accused             | : | Smt.P.Uma Kumari  |
| 3. | Date, time and place of Offence | : | Cheque No.056305 dated 20.09.2009 for Rs.3,11,000/- and Cheque No.056306 dated 29.09.2009 drawn on Mahesh Co-Op Bank, Hyderabad.<br><br>Cheques presented for Collection through HDFC Bank, Secunderabad Branch<br><br>The Cheques returned for reasons "Insufficient funds" on 06.10.2009 And 10.11.2009.<br><br>On 27.10.2009 Complainant got issued Notice of Demand for payment to the Accused address as shown in the cause title. |
| 4. | Nature of offence               | : | The Cheques were returned for the reason of "Insufficient Funds".   |
| 5. | Offence Under Section           | : | Offence U/s. 138 and 142 of N.I. Act.   |
| 6. | Penal Section                   | : | U/s. 138 of N.I. Act.   |

3. The Complainant submits that on presentation of the above said cheques, the same was dishonoured due to insufficient funds. The Complainant filed a case under N.I. Act in the court of the XI Addl. Chief Metropolitan Magistrate at Secunderabad bearing L.A.C. No.299 of 2009 U/S 138 of N.I. Act. Subsequently, the Accused came forward for a compromise and approached the Complainant and after several rounds of negotiation, a compromise was reached between the Complainant and Accused. In pursuance of the said compromise, the Complainant executed an indemnity

Total Rs.17,52,500/-

1. Cheque No.091458 dated 28.3.2009 for Rs.8,47,500/-
2. Cheque No.091459 dated 28.3.2009 for Rs.9,05,000/-

2. The Accused approached the Complainant for purchase of a Bungalow bearing Nos.256 admeasuring 3000 Sft. on a plot of land admeasuring 370 sq.yards situated at Cherlapalli Village, Chatkesar Mandal, R.R.District known as "Silver Oak" Bungalows at S.No.291 for a total sale consideration of Rs.56,50,000/- excluding VAT, Service tax, Registration charges, charges for additions and alterations, maintenance charges, interest on delayed payment etc. The Accused issued the below mentioned two cheques drawn on A.P. Mahesh Co-Op. Urban Bank Ltd towards balance sale consideration.

1. The Complainant is a Builder and Developer and they have developed one such project under the name and style of "Silver Oak" Bungalows, Phase II, situated at Survey No.291, Cherlapalli, Hyderabad - 500 051.

The Complainant Submits as follows:

**BRIEF FACTS:**

7. Name of the P. S : P.S.Ramgopalpet
8. List of Witnesses : 1. M/s.Mehta and Modi Homes  
Rep. by its Managing Partner  
Sri Soham Modi
2. The Branch Manager,  
Andhra Bank, Sultan Bazar  
Hyderabad
3. The Branch Manager,  
HDFC Bank  
Secunderabad Branch

bond dated 8<sup>th</sup> July 2009 agreeing to certain conditions imposed by the Accused. On the execution of the above said indemnity bond, the Accused has issued a letter dated 8.7.2009 agreeing to pay a sum of Rs.23,20,118/- towards full and final settlement (lumpsum) of the balance sale consideration including charges like VAT, service tax, stamp duty, registration charges and charges for additions and alterations, maintenance charges and interest on delayed payment etc. and issued four post-dated cheques towards the said balance sale consideration and other charges as follows:

S.No.	Ch.No.	Date	Rs.
1.	167363	11.07.2009	Rs.12,26,000/-
2.	056304	28.08.2009	Rs.2,58,118/-
3.	056305	20.09.2009	Rs.3,11,000/-
4.	056306	29.09.2009	Rs.5,25,000/-

All cheques drawn on Mahesh Co-Op. Bank, Hyderabad

with a promise to honour the said post-dated cheques as and when they were presented.

4. The Complainant presented the first and second cheque and they were cleared. But third and fourth cheques were not presented on its due dates at the request of the Accused i.e., cheque bearing No.056305 dt.20.09.2009 for Rs.3,11,000/- and Cheque No.056306 dt.29.09.2009 for Rs.5,25,000/- drawn on A.P.Mahesh Co.Op Bank, Khairtabad Branch, Hyderabad were presented, but to utter shock and surprise of the Complainant, the said cheques were dishonoured with a Banker's memo dt.6<sup>th</sup> October, 2009 and 10<sup>th</sup> October, 2009 respectively with an endorsement "insufficient funds". The Complainant informed the Accused about the dishonour of cheques and the Accused promised to pay the amount covered under the said cheques within a couple of days but she failed keep up her promise.

5. It is respectfully submitted that, thereafter the complainant through its Advocate, got issued a legal notice dated 27.10.2009 to the Accused demanding for payment of the said Cheques amount within 15 days from the date of receipt of the said notice and the said legal notice sent through Registered Post with Ack. Due was served on the Accused on 29.10.2009 but failed to comply with the notice.

6. It is respectfully submitted that issuing cheques without having sufficient funds in the bank account is an offence punishable under Section 138 of Negotiable Instruments Act, 1881 as amended by Act 55 of 2002. Therefore, the Accused is liable for her illegal acts and omissions which also amounts to an offence punishable U/S.420 of Indian Penal Code.

4

7. It is respectfully submitted that, by her illegal and mala fide action, the Accused has rendered herself liable to be prosecuted for the Offence committed by him under Section 138 of N.I. Act, 1881 as amended by Act 55 of 2002.

**8. CAUSE OF ACTION:**

The cause of action for the complaint arose when the Accused issued cheques dated 20.0.2009 and 29.09.2009 and on 06.10.2009 and 10.10.2009 when the cheques were returned dishonoured for the reason of "Insufficient funds" by the Banker of Accused and on 27.10.2009 when the Complainant got issued a notice and on 29.10.2009 when the Accused received the said notice but failed to comply with the notice and the cause of action is still subsisting.

**9. JURISDICTION:**

This Hon'ble court has got jurisdiction to entertain this Complainant since the Complainant's registered office is situated at Soham Mansion, M.G. Road, Secunderabad which is within the territorial jurisdiction of this Hon'ble court.

**10. LIMITATION:**

The Criminal Complaint is within time as prescribed under Law.

**11. PRAYER:**

- The Complainant prays that this Hon'ble court may be pleased
- a) to take cognizance of the offence punishable under section 138 of Negotiable Instruments Act;
  - b) Issue summons and punish the Accused as per law;
  - c) Award double the amount of cheque towards compensation under section 357 (3) of Cr.P.C. to the Complainant and
  - d) pass such other order or orders as this Hon'ble court may deem fit and proper, in the interest of justice.

SECUNDERABAD  
DATE: 18.11.2009

COMPLAINANT

COUNSEL FOR THE COMPLAINANT

**VERIFICATION**

I, Ramacharyulu S/o Sri L. Raghavendra Rao, the Authorised Signatory of the Complainant, do hereby declare and state that the facts stated in the complaint are true and correct to the best of my knowledge, belief and information. Hence verified.

SECUNDERABAD  
Date: 18-11-2009

COMPLAINANT



**LIST OF DOCUMENTS**

S.No.	Date	Description of document	
1.	20.09.2009	Cheque No.056305 for Rs.3,11,000/- drawn on Mahesh Co-Op Bank - copy	
2.	29.09.2009	Cheque No.056306 for Rs.5,25,000/- drawn on Mahesh Co-Op Bank - copy	
3.	06.10.2009	Return memo - copy	
4.	10.10.2009	Return memo - copy	
5.	27.10.2009	Legal Notice - Xerox copy	
6.	29.10.2009	Postal acknowledgement - copy	
		Authorisation letter of the Complainant firm	

The originals of all the documents will be submitted at the time of trial.

SECUNDERABAD  
DATE: 18.11.2009

COMPLAINANT

COUNSEL FOR THE COMPLAINANT

IN THE COURT OF THE XI ADDL.  
CHIEF METROPOLITAN MAGISTRATE  
AT SECUNDBERABAD  
C.C. No. OF 2009

Between:  
M/s.Mehta and Modi Homes  
Complainant  
..  
And  
Smt.P.Uma Kumari  
Accused

COMPLAINT FILED UNDER SEC. 200  
OF Cr.P.C.FOR THE OFFENCES  
COMMITTED U/s. 138 & 142 OF  
N.I. ACT.

FILED ON : 18.11.2009

FILED BY:

**Sri C.BALAGOPAL**  
Advocate

Address for Service:

Flat No.103, Harvillu Apts  
Road No.11, West Marredpally  
Secunderabad.  
Ph: 64570512 / 9246172988

COUNSEL FOR THE COMPLAINANT

भारतीय डाक



RR 50 (300026)

RLHP 4435

Counter No. 1, OF - Counter OF

To: P. UMA KUMARI,

HYDERABAD

Wt: 15 grams

Rate: 25.00, 27/10/2009, 10:51

<<Have a nice day>>

### प्राप्ति स्वीकृति / ACKNOWLEDGEMENT

रजिस्ट्री - पत्र / पार्सल प्राप्त हुआ

Received Registered Letter / Parcel /

क्रमांक / No	तारीख / Dated	का / of 200
--------------	---------------	-------------

पाने वाला का नाम पता Ms. P. Uma Kumari  
 Addressed to (Name) Plot no 71, Silver Oak Bangaloo  
Phase 1, Chandra Valley, Madhapur

वितरण डाकघर की तारीख / मोहर  
 Date Stamp of office of delivery

को / on Signature  
 हस्ताक्षर और नाम / Signature and Name

**ALAGOPAL**  
S. V. Chandramouli  
Vijayasaradhi  
S. V. Chandramouli  
Advocates

Door No. 10-2-278, Flat No. 103,  
Suresh Harivillu Apts. Road No. 11,  
West Marredpally, Secunderabad-26.  
Ph. : 64570512  
Cell : 9441782451, 9246172988

October 27, 2009

Regd Post Ack.due

To  
Smt. P. Uma Kumari  
W/o P. Thakur Prakash  
Plot No. 71, Silver Oak Bungalows Phase-I,  
Sy. No. 35 to 39  
Cherlapally,  
Hyderabad.

Under instructions from our client M/s. Mehta and Modi Homes, having their head office at 5-4-187/384, II Floor, Soham Mansion, M.G. Road, Secunderabad, represented by its Managing Partner Shri Soham Modi S/o Shri Satish Modi, we have to address you as follows:

1. Our client is a Builder and Developer and they have developed one such Project under the name and style of "Silver Oak" Bungalows, situated at Survey No. 291, Cherlapalli, Hyderabad - 500 051.

2. You have approached our client for purchase of a Bungalow bearing Nos. 256 admeasuring 3000 Sft. on a plot of land admeasuring 370 sq. yards situated at Cherlapalli Village, Ghatkesar Mandal, R.R. District known as "Silver Oak" Bungalows at S.No. 291 for a total sale consideration of Rs. 56,50,000/- excluding VAT, Service tax, Registration charges, charges for additions and alterations, maintenance charges, interest on delayed payment etc. You have issued two Cheques as follows:

1. Cheque No. 091458 dated 28.3.2009 for Rs. 8,47,500/-  
2. Cheque No. 091459 dated 28.3.2009 for Rs. 9,05,000/-

Total Rs. 17,52,500/-

both cheques drawn on A.P. Mahesh Co-Op. Urban Bank Ltd towards balance sale consideration.

3. On presentation of the above said cheques the same was dishonoured due to insufficient funds. Our client filed a case under N.I. Act in the court of the XI Addl. Chief Metropolitan Magistrate at Secunderabad bearing L.A.C. No. 299 of 2009 U/s 138 of N.I. Act. Subsequently, you came forward for a compromise and approached our client and after several rounds of negotiation, a compromise was reached between you and our client. According to the said compromise, our client executed an indemnity bond dated 8<sup>th</sup> July 2009 agreeing to certain conditions imposed by you. On the execution of the above said indemnity bond, you have issued a letter dated 8.7.2009 agreeing to pay a sum of Rs. 23,20,118/- towards full and final settlement (lumpsum) of the balance sale consideration including charges like VAT, service tax, stamp duty, registration charges and charges for additions and alterations, maintenance charges and

# MEHTA & MODI HOMES

# 5-4-187/3 & 4, II Floor, Soham Mansion, M.G. Road, Secunderabad - 500 003.

Phone : +91-40-66335551, Fax :

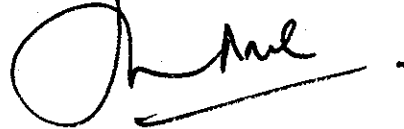
TO WHOM SOEVER IT MAY CONCERN

This is to certify that Mr. Ramacharyulu, S/o. Shri L. Raghavender Rao, legal officer for M/s, Mehta & Modi Homes a registered partnership firm having its office at 5-4-187/3&4, Soham Mansion, II floor, M.G. Road, Secunderabad. He is duly authorized to represent M/s. Mehta & Modi Homes to give an evidence and appearance in C.C. No. of 2009 to attend in The Court of the XI Addl. Chief Metropolitan Magistrate at SEcunderabad between Ms/. Mehta & Modi Homes and P. Uma Kumari.

Date:

Place:

Mehta & Modi Homes,



Soham Modi  
Managing Partner.

CH. LAKSHMI NARAYANA  
ADVOCATE

102, 120, ROAD NO: 3,  
S.R.K.PURAM,  
DILSUKH NAGAR,  
HYDERABAD.

92900-89567. 94404-76239.

DATE: 3-12-2009.

BY R.P.A.D.

To ✓  
Sri C. Bala Gopal, Advocate  
10-2-278, Flat No: 103, Suresh Harvillu Apts.  
Road No: 11, West Maredpally, Secunderabad-26.

REPLY NOTICE.

Upon instructions from my client Smt. Poondla Umakumari w/o Poondla Thakur Prakash, Aged 50 years, Occ: house wife, addressed at No: 71, Silver Oak Bungalows, Charlapally, Hyderabad -500051, I am issuing this reply notice in detail as follows: -

Ref: Earlier Reply Notice shall be a part and parcel of this reply notice.

As Admitted by you and as per the terms and conditions of the Company the third party conciliation took place in between the parties and the final derived terms and conditions were converted into a draft and signed by the parties mutually on 8-7-2009. As Bank final installment has to be received as per the practice and procedure a final completion and possession was letter issued by your client admitting the entire balance works to be completed on receipt of the bank final installment payment.

Accordingly received Rs. 12,26,000/- and also a security cheque from my client and returned after receipt of the same from A. P. Mahesh Co-operative Urban Bank Limited and acknowledged.

There after also an amount of Rs. 3,11,000/- is received by your client even though your client failed to withdraw the earlier N. I. Act case. Subsequently at the time of receiving the said amount a joint letter was issued your Client's Manager Mr. Rambabu endorsing the balance cheques will be presented accordingly and in the mean while the balance works will be finished and keep the building ready for possession. and returned with cheque.

*M. Lakshmi Narayana*

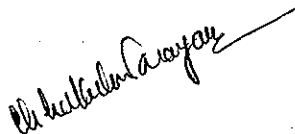
1

Having received more than Rs. 15 Lakhs after conciliation settlement have now gone back on the same and without even doing balance works as agreed demanding my client to give the money is not correct on your client's part.

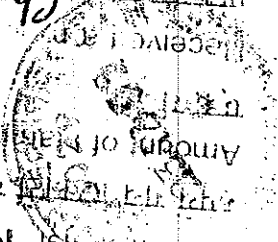
As such the same amounting to failure of the conciliation by direct negotiation continued till date and as such the same is terminated and the left out process of appointment of Arbitrator only is left out from your client's side for amicable settlement of the issues in between the parties as per the Agreement.

If your Client failed to do so the Construction Agreement given to your clients is terminated forthwith and the rest of legal action as per Arbitration & Conciliation Act, 1996 be adopted by my client's making your liable for costs and consequences by taking the possession of the building as per Law.

Hence it is hereby further demanded by my client under this reply notice to your client not to recourse to any legal action under section 138 of N. I. Act. for cheque no's: 056305 dated 20-9-09 for Rs. 3, 11, 000/- & 056306 dated 29-9-09 for Rs. 5, 25, 000/- drawn on A. P. Mahesh Co-operative Urban Bank Limited, Khairtabad Branch, Hyderabad as the same outside the purview of the Agreement and as such the said cheques were given under the conciliation by direct negotiations which was filed in view of your clients in action in discharging the terms and conditions mutually decided there under.

  
(CH. LAKSHMI NARAYANA)  
ADVOCATE.

NOT INSURED  
 Amount of Rs. 5439/-  
 Date of Receipt 10/10/20  
 Addressed to Ch. Lokesh Kumar  
 Signature of Receiver  
 No. 5439





**C. BALAGOPAL**

Ameerunnisa Begum  
K. Vijayasaradhi  
C.V. Chandramouli  
Advocates

Door No. 10-2-278, Flat No. 103,  
Suresh Harivillu Apts. Road No. 11,  
West Marredpally, Secunderabad-26.  
Ph.: 64570512  
Cell : 9441782451, 9246172988

Regd Post Ack/due

Date: 22-12-2009

To


**Shri CH. Lakshmi Narayana**  
Advocate  
102, 120, Road No.3,  
S.R.K. Puram, Dilsukhnagar  
Hyderabad.

**REJOINDER**

This is a rejoinder to your reply dated 03.12.2009 on behalf of your client Smt.P.Uma Kumari W/o P.Thakur Prakash the same has been placed in our hands for a suitable rejoinder/reply.

1. Our client denies all the adverse allegations contained in your reply. If any allegation is not specifically denied, it should not be deemed to have been admitted.
2. Your client had entered into an Agreement for purchase of a Bungalow from our client M/s.Mehta & Modi Homes. Your client had issued certain cheques which were dishonoured and our client had filed a case before XI Addl. C.M.M. at Secunderabad. Your client came forward for a compromise for which our client had agreed and accordingly it was agreed to pay a total sum of Rs.23,20,118/- towards full and final settlement and accordingly, 4 cheques were issued by your client with a understanding that the same were honoured on presentation. The first and second cheques were cleared and the third and fourth cheques i.e., Cheque bearing No.056305 dt.20.09.2009 for Rs.3,11,000/- and cheque bearing No.056306 dt.29.09.2009 for Rs.5,25,000/- drawn on Mahesh Co-Op Bank, Hyderabad were dishonoured on presentation and as such, our client was forced to once again file another Criminal Complaint U/s 138 of N.I. Act before the XI Addl. C.M.M. at Secunderabad which is coming up for your client's appearance on 30.01.2010.
3. Our client never agreed for any arbitration proceedings in fact you had approached our client for arbitration for which our client had refused as per the letter dated 08.07.2009 addressed to our client. There is no provision for any arbitration. The agreement between your client and our client does not come under Arbitration and Conciliation Act as such your client cannot hold our client responsible under the Act. The cheques were given as part payment for the full and final settlement as agreed upon between your client and our client. The construction agreement cannot be unilaterally terminated by your client.

Therefore, our client has got every right to file the complaint U/s 138 of N.I. Act.

  
(C. BALAGOPAL)  
ADVOCATE

BEFORE THE HON'BLE XI METROPOLITAN MAGISTRATE:

CITY CRIMINAL COURTS:

AT SECUNDERABAD.

L. A. C. NO: 781 OF 2009.

BETWEEN:-

M/s. Mehta & Modi Homes, Rep. by its Managing Partner

Sri Soham Modi s/o Satish Modi, Aged 38 years, Occ: Business,

Regd. Office: 5-4-187/3 & 4, Soham Mansion, M. G. Road,

Secunderabad.

AND

Smt. Poondla Umakumari w/o Poondla Thakur Prakash,

Aged 50 years, Occ: House Wife, No: 71, Silver Oak Bungalows,

Charlapally, Hyderabad - 500051. -ACCUSED.

REPLY SUBMITTED BY THE ACCUSED.

May it please your Honour,

1. The Complainant is a builder and developer and developed the project under the

name and style as " Silver Oak Bungalows " situated at Sy. No 291, Charlapally,

Hyderabad - 500 051.

2. The Accused had purchased on 10-10-2006 a bungalow bearing No: 256 in

Silver Oak venture in an area of 370 Sq. yards for construction of 3000 Sq. feet

plinth area for a total sale consideration of Rs. 56, 50,000/- (Rupees Fifty Six

Lakhs and Fifty thousand only) under payment of installment scheme on the part-

passu of progress of construction scheme excluding VAT, Registration & Stamp

duty charges, Service Tax as per the terms and conditions therein.

3. Rs. 25, 000/- towards Booking was paid by the Accused vide booking Form No:

2040 dated 10-10-2006. The Complainant has deviated from the Agreed terms in

many aspects. On 30-11-2006, an Agreement of Sale was entered into by the

parties stipulating all terms and conditions mutually agreed upon and made to

believe that the scheduled property is free from encumbrances of all nature.

4. Further in the Sale Agreement at clause 6, ~~Complainant~~ categorically declared that the said scheduled property is "Free from all Encumbrances of any nature...." In trust and confidence Accused has paid Rs.2, 00, 000 Lakhs on 06-11-06, which was collected by the Complainant hiding the fact of scheduled property being under mortgage. As the Accused is staying in I phase of the said silver Oak Bungalow venture she was shocked to see the Play-Card Boards installed by your client about the scheduled property being under mortgage after the First installment was paid. On gathering facts Accused has surprised to note that the scheduled property was mortgaged to HUDA authorities under a registered Mortgage deed executed by the Complainant on 4th of January' 2006 itself and the scheduled property was not to be sold even on mandatory obligation with the Authorities.

5. The Complainant had sent a letter to the Accused on 9-12-2006 that the plot is mortgaged with HUDA and applied for NOC for releasing the same on or before 31-01-2007 and failed to do so till date. The Accused has made payment of Rs 19, 77, 500/- on 11-12-2006 basing on letter and as per the terms in Sale Agreement. The Complainant has to pay the losses incurred for the false statements. On 23<sup>rd</sup> November' 2007 the Agreement of Construction was entered into by the parties by enclosing the proposed construction and the same was registered. The Accused had demanded the Complainant to furnish the copy of sanction of HUDA, which was not furnished and as such the same could be able to obtain by Accused with great difficulty and came to know that there are deviations to the sanction plan in the actual construction of bungalows. The same was brought to the notice of the Complainant but did not turn-ed up. It is known fact that in view of GOMS No: 86 dated 3-3-3006 the same shall not be regularized at future point of time even on payment of penal charges. The Accused had demanded for constructing the same as per the sanction plan by rectifying the registered sale deed at their cost as the

same was due to their utter negligence and intentional default having full knowledge of GOMS No: 86. Further Accused has made arrangements to seek loan from A.P. Mahesh Co-operative Urban Bank and informed the fact to the Complainant and instructing him to collect the balance payments from the Bank and the Complainant has agreed to the same and issued a letter to this effect to A.P. Mahesh Co-operative Urban Bank Vide Letter DT. 14<sup>th</sup> of May 2007 and accordingly the Original documents were submitted for simple mortgaging with Bank and payments thus received. At the time of Sale Deed Registration on 22-11-2007 the Complainant had requested Accused to issue four undated cheques to be given in their firm name with a covering letter for security purpose and captioning the same on the reverse side of the cheques. Accused endorsed on the reverse side of each cheque "The Cheques for bungalow no 256, security cheque not to be presented in the bank". Accordingly cheque no's: 091456, 57, 58 & 59 drawn on A. P. Mahesh co-operative Urban Bank, M. G. Road Branch, Secunderabad were issued for respective amounts with undertaking to obtain the regular payments as per the progress of the work completed from A.P. Mahesh Co-operative Urban Bank and to return the undated Cheques. The Complainant thus collected the two installments payments and returned the cheque no's: 091456 & 57 with good faith to Accused. It is not disputed that the payments were not given vide separate Negotiable Instruments by Accused as an amount of Rs. 41,68,100/- was already paid also. So the question of presenting the same cheque's is quite contrary to the understanding of the parties and its return on the ground of insufficient funds does not amounts to offence under Section 138 of the Negotiable Instruments Act for which the legal notice dated 6-4-2009 issued by Complainant liable to be dropped immediately. The total cost of plot inclusive of VAT, Service Tax, Misc, & Accused on 14-11-2007 paid Registration Charges separately and

under bonafide faith that the possession as per sanctioned plan will be given shortly by the Complainant. The Bank has paid two installment payments. The Bank has pointed out the lapses and the Complainant was informing both the Bank and Accused that the deviation of the Approved plan will be carried out and payments shall be collected. Further claim of the Building ready for Possession is also not correct as the building even as of date is not ready as the following works as per the Registered Construction Agreement Annexure-A are not completed till date and to be carried out:

Item	DELUX BUNGALOW
EXTERNAL PAINTING	EXTERIOR EMULSION
INTERNAL PAINTING	LUPPAM FINISH WITH OBD
SANITARY	PARRYWARE OR SIMILAR MAKE
C.P.FITTINGS	PARRYWARE OR SIMILAR MAKE
KITCHEN PLATFORM:	GRANITE SLAB (finished)
	2 FEET CERAMIC TILES DADO,
	SS SINK NOT INSTALLED

6. Without rectifying the same had sent a letter by Complainant demanding to pay the balance due of Rs.16, 54, 790/- (Rupees Sixteen Lakhs Fifty Four Thousand's and Seven Hundred and Ninety only) for plot. The same was replied on pointing out the left out works to be completed and queries hereupon to be complied under bonafide faith to the Complainant and waiting for possession of the plot. There is even difference in due amount to be received by Complainant as per the bank loan letter i.e., Rs. 17, 53, 000/- not Rs. 17, 52, 500/- as demanded.

7. As per the Contract the plots shall be delivered before January' 2009 to Accused. As per the terms an amount of Rs. 1,600/- per month per plot to be paid for every month delay to Accused by the Complainant.

8. All these acts amount to cheating with false declaration, negligence and willful default apart from deficiency of service with costs and consequences.

9. For proper adjudication of the issues as per the contract by Conciliation/Arbitration as per Arbitration & Conciliation Act, 1996 through both

the parties by mutual consent if at all accepted by both parties for speedy and effective relief

I) NOC from HUDA with releasing of mortgage so as to handover possession fully constructed as per the approved plan and construction complete in all aspects,

II) By altering the physical deviations as per sanctioned plan as there is ever treat of demolition if possible by changing the sanction plan and/or to estimate the cost for such changes and to pay to Accused if not possible at this stage,

III) To return the undated cheques given as collateral security vide no's: 091458 & 091459 for Rs. 8, 47, 500/- each drawn on A. P. Mahesh Co-operative Urban Bank, Limited, M. G. Road, Secunderabad and after completion of the above works can receive the said amounts as like as earlier amounts from A. P. Mahesh

Co operative Urban Bank Limited, M. G. Road, Secunderabad.

IV) And to pay an amount of Rs. 1,600/- from January 2009 till handing over the possession.

V) And/Or else the agreement will be cancelled and the possession will be taken there upon by approaching for interim measure under section 9 of the Arbitration & Conciliation Act, 1996 for possession and consequential remedies making the Complainant liable for costs and consequences under reply notice dated 23-4-2009 by the Accused.

10. Accordingly on 29-6-2009 the Accused entrusted the matter to the Advocate as conciliator/ Arbitrator to do all needful acts in that behalf. Basing on the same a settlement was derived and concluded on 8-7-2009 duly signed by both the parties. As the Bank final installment has to be received the same was mentioned as if the entire construction was completed and undertaken to withdraw the earlier Section 138 case no: 599 of 2009 on the file of the XI Additional Chief Metropolitan Magistrate, Secunderabad. Thereafter also as the building work could not be

commenced the Accused again stopped the payment and the case also not withdrawn. As the same was not complied the 2<sup>nd</sup> cheque payment was withhold and only after withdrawal of the case the pay order was released and the returned cheque was taken back by the Accused on the undertaking to finish the entire balance works of the building vide letter dated 17-9-2009. Keeping the final installment cheque to be presented for collection on 9-10-2009 with undertaking to complete the finish the works in the mean while. Quite contrary to the same the cheques were presented on 6-10-2009 and that too without starting the balance works having received more than Rs. 15 Lakhs in July and September' 2009 and got issued the legal notice under section 138 of the N. I. Act on 27-10-2009. Left no other alternative the Accused was forced to reply on 3-12-2009 as conciliation failed the arbitration procedure should be followed as per the Contract and the Construction agreement was cancelled by the Accused with an advise not to recourse to Section 138 case for which the Complainant had falsely filed the same quite contrary to the Contract entered into by the parties as well as Arbitration & Conciliation Act, 1996. A rejoinder was sent by the Complainant on 22-12-2009 on all false and baseless allegations. As per the agreed terms dated 17-9-2009 these cheques shall be presented on 9-10-2009 and not on 6-10-2009 and as such the same is contrary to the agreed terms under conciliation settlement.

Hence it is therefore prayed that this Hon'ble Court may be pleased to dismiss the case as the conciliation settlement entered into by the parties on 8-7-2009 & 17-9-2009 is not complied by the Complainant and as such the very Construction Agreement was terminated by the Accused on 3-12-2009 with a advise to approach the Arbitration Procedure as per the Construction Agreement Contract term No: 26 and pass necessary order/ s in the ends of justice.

(P. UMA KUMARI) Dated 26-6-2010.

BEFORE THE HON'BLE XI  
METROPOLITAN MAGISTRATE:  
CITY CRIMINAL COURTS:  
AT SECUNDERABAD.  
L. A. C. NO: 781 OF 2009.

BETWEEN:-

M/s. Mehta & Modi Homes,

Rep. by its Managing Partner

Sri Soham Modi

- COMPLAINANT.

AND

Smt. Poondla Umakumari

-ACCUSED.

REPLY SUBMITTED BY THE ACCUSED.

*Received copy*  
*[Signature]*  
*26/6*

FILED ON: 26-6-2010.

FILED BY:

CHITRAKSHMI NARAYANA

ADVOCATE.

11-12-198/102, R. NO: 3,



Doc. 7

From.  
Mrs. Uma Kumari (Bungalow No. 256),  
Mrs. A. Susheela (Bungalow No. 228)  
Hyderabad -II.

Date: 17.09.2009

Dear Sir,

With reference to our letter dated 8.7.2009 we have provided PDCs bearing no. 056304 for an amount of Rs. 2,58,118/- dated 28.8.2009 and 827457 for an amount of Rs. 1,75,000/- dated 28.8.2009 be returned to us as we have arranged payorders bearing nos. 306789 for Rs. 2,58,100/- and no. 3,06,780 for Rs. 1,75,000/- dated 14.9.09 drawn on Andhra Bank, Kalyan Nagar, Phase I, Hyderabad.

We have given PDCs to be presented on 20<sup>th</sup> September 2009 vide cheque no. 056305 for Rs. 3,11,000/- and 827458 for Rs. 3,23,586/- respectively. The same may be presented to bank on 4<sup>th</sup> October, 2009 for clearance so as to withdraw the NI Act case on 3<sup>rd</sup> October 2009 of P. Uma Kumari. The return cheque may be given upon received from court in original.

As the final installment will be released on 9.10.09, in the meanwhile you are requested to finish the entire final balance works of Bungalows Nos. 259 & 228 so as to receive the final installment as mentioned below and keep ready for occupation.

Two more PDCs dated 29.9.09 bearing nos. 056306 for Rs. 5,25,000/-, 827459 for Rs. 5,05,000/- being final installments towards full and final settlement till date be presented to bank on 09.10.2009 respectively for clearance.

The original cheque bearing no. 827460 for Rs. 3,50,000/- of A. Susheela and no. 827457 for Rs. 1,75,000/- and 056304 for Rs. 2,58,118/- dated 28.8.09 respectively be received and acknowledged in original on exchanging the same with above payorders as well as the other payorder released earlier being acknowledged herewith.

Hence this letter may be accepted for and on behalf of Mrs. Uma Kumari and Mrs. A. Susheela.

Thanking you.

Through C.H. Laxminarayana

*C.H. Laxminarayana* 17/09/09

Advocate  
for Mrs. Uma Kumari and Mrs. A. Susheela.

*Accepted to present  
by D.D.C. at the present  
bearing nos. 306789  
and 306780  
dated 14.9.09  
for Rs. 2,58,100/-  
and Rs. 1,75,000/-  
C.H. Laxminarayana  
17/9/09*

Secunderabad.

AUTHORISED OFFICER

Sd/-

(For further information contact Cell No. 9848051373)

9. The bank reserves its rights to cancel or postpone the sale without assigning any reasons.
8. The decision of the bank regarding sale of the property is final, binding and unquestionable.
7. The property will be sold on "as is where is" condition.
6. The purchaser shall be liable for payment of local taxes, duty and any other statutory dues and the stamp duty on the documents to be executed for effecting the sale, registration charges etc.
5. If the 25% of the bid amount is not paid on the same day or the balance amount is not paid within 15 days or if the successful bidder fails to adhere to the terms of sale, time or commits default in any manner, the earnest money deposited will be forfeited and the Bank will be at liberty to sell the property again without any notice.
4. The successful bidder/purchaser will have to deposit 25% of the bid amount immediately i.e., on the day of auction itself, with the Authorised Officer and the balance amount within 15 days.
3. The property would be sold to the bidder who offers highest price. However the Bank reserves its right not to accept the bid or cancel the sale without assigning any reason.
2. The reserve price is fixed at Rs 37.00 Lakhs. The persons interested in participating in the auction and purchasing the property shall deposit Rs 4,00,000=00 towards earnest money by way of cash/Demand Draft drawn in favour of The A.P Mahesh Co-Operative Urban Bank Ltd and deposit the same with the Authorised Officer before commencement of auction. The persons who have deposited the earnest money as above are alone eligible to participate in the auction.
1. The property will be auctioned on 25<sup>th</sup> January 2011 at 11.30 A.M at the premises of the property mentioned above.

There will be a public auction of house property bearing Plot No 256, SY. No 291, "Silver Oak Bungalows", Block NO 2, Old Village, Cherlapally (V), Chakresar Mandal, Ranga Reddy District, Admg 370 sy.yds, alongwith built up area of 3000 sq.ft (1200 sq.ft on GF & 1800 sq.ft. on FF & SF) belonging to Smt Uma Kumari Poondla W/o, Sri Thakur Prakash Rao Poondla.

The terms and conditions of the auction are given below for information of the prospective bidders:

### AUCTION TERMS & CONDITIONS

Ph. 23437100-103, Web: www.apmaheshbank.com E-Mail: info@apmaheshbank.com

H.O, 5-3-989, III FLOOR, SHERZA ESTATE, N.S ROAD, HYDERABAD-095.

(MULTISTATE SCHEDULED BANK)

THE AP MAHESH CO. OPERATIVE URBAN BANK LTD.



**C.BALAGOPAL**  
**Smt.Ameerunnisa Begum**  
**K. Vijaya Saradhi**  
**C.V.Chandramouli**  
Advocates

Flat No.103, Suresh Harivillu Apartments  
Road No.11, West Marredpally,  
Secunderabad – 500026.  
Ph: 64570512

Date:22-01-2011

To  
The Branch Manager  
Mahesh Co.Op. Urban Bank Ltd.,  
H.No.5-3-989, IIIrd Floor,  
NS Road, Sherza Estates,  
HYDERABAD


Dear Sir

Under instructions on behalf of our client M/s.Mehta & Modi Homes, represented by its Managing Partner Sri Soham Modi, S/o. Sri Satish Modi, with registered office at H.No.5-4-187/3&4, IIInd Floor, Soham Mansion, M.G.Road, Secunderabad, we have to address you as follows:

Our client is a promoter of the project known as Silver Oak Bungalows situated at Cherlapally (v), Ghatkesar (M), RR Dist., The project consists of Independent Houses. Smt.Uma Kumari Poondla W/o. Sri Thakur Prakash Poondla purchased from our client plot bearing No. 256, in the said project and also the house to be constructed there on. The total consideration for the said unit was agreed upon at Rs.56,50,000/- excluding VAT, Service Tax, Registration Charges, charges for additions and alternations, interest and delayed payments etc., In respect of the amount due to our client Smt. Uma Kumari issued two cheques bearing Nos. 056305 and 056306 dtd.20.9.2009 and 29.9.2009 for Rs.3,11,000/- and Rs.5,25,000/- respectively. The cheques were drawn on your bank. Our client was requested not to present the said cheques on the due dates, but our client was requested to present the same in the first week of October'2009. On presentation the said cheques were dishonoured and returned with endorsement of bank stating "INSUFFICIENT FUNDS". Our client initiated proceedings u/s.138 and 142 of NI Act. The same is pending as CC No.815/10 on the file of the Hon'ble XI Metropolitan Magistrate, Secunderabad. As an unpaid builder of the house our client has got a charge on the bungalow No.256 which you are proposing to sell by public auction.

Please intimate the general public that our client has charge over the house and that the auction will be subject our client's claim.

This is for your information and necessary action.

  
(C.BALAGOPAL)  
ADVOCATE

Taxes:Rs.2.32<<Track on www.indiapost.gov.in>>

Post:23.00 \* 22/01/2011 \* 14:31

Wt:20grams

From: C. B. A. GOPAL, SECUNDERABAD

HYDERABAD, PIN:500075

To: THE BRANCH MANAGER, WAREHOUSE DEPT. URBAN

Counter No:12, IP-Code:K 8R1

SR-PDD EN143401953ZIN

SECUNDERABAD (R) <500075>



**C.BALAGOPAL**  
**Smt.Ameerunnisa Begum**  
**K. Vijaya Saradhi**  
**C.V.Chandramouli**  
**Advocates**

Flat No.103, Suresh Harivillu Apartments  
Road No.11, West Marredpally,  
Secunderabad – 500026.  
Ph: 64570512

Date:22-01-2011

To  
The Branch Manager  
Mahesh Co.Op. Urban Bank Ltd.,  
H.No.5-3-989, IIIrd Floor,  
NS Road, Sherza Estates,  
HYDERABAD

Dear Sir

Under instructions on behalf of our client M/s.Mehta & Modi Homes, represented by its Managing Partner Sri Soham Modi, S/o. Sri Satish Modi, with registered office at H.No.5-4-187/3&4, IIIrd Floor, Soham Mansion, M.G.Road, Secunderabad, we have to address you as follows:

Our client is a promoter of the project known as Silver Oak Bungalows situated at Cherlapally (v), Ghatkesar (M), RR Dist., The project consists of Independent Houses. Smt.Uma Kumari Poondla W/o. Sri Thakur Prakash Poondla purchased from our client plot bearing No. 256, in the said project and also the house to be constructed there on. The total consideration for the said unit was agreed upon at Rs.56,50,000/- excluding VAT, Service Tax, Registration Charges, charges for additions and alternations, interest and delayed payments etc., In respect of the amount due to our client Smt. Uma Kumari issued two cheques bearing Nos. 056305 and 056306 dtd.20.9.2009 and 29.9.2009 for Rs.3,11,000/- and Rs.5,25,000/- respectively. The cheques were drawn on your bank. Our client was requested not to present the said cheques on the due dates, but our client was requested to present the same in the first week of October'2009. On presentation the said cheques were dishonoured and returned with endorsement of bank stating "INSUFFICIENT FUNDS". Our client initiated proceedings u/s.138 and 142 of NI Act. The same is pending as CC No.815/10 on the file of the Hon'ble XI Metropolitan Magistrate, Secunderabad. As an unpaid builder of the house our client has got a charge on the bungalow No.256 which you are proposing to sell by public auction.

Please intimate the general public that our client has charge over the house and that the auction will be subject our client's claim.

This is for your information and necessary action.



*C. Balagopal*

(C.BALAGOPAL)  
ADVOCATE