



Date of Filing: 19-11-2009
Date of Order: 15-02-2010

**BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL FORUM-I
AT HYDERABAD**

Present

**SRI M.VIJAYA BHASKARA REDDY, PRESIDENT
SMT LAKSHMI MAKENA, MEMBER
DR.R.PURUSHOTHAMA REDDY, MEMBER**

ON THIS THE 15th DAY OF FEBRUARY, 2010

Consumer Case No. 587/2010 9

Between:-

**Mr.E.P.Anand Kumar.
H.No.21-133, 3rd Cross,
Uttam Nagar, Malkajgiri,
Hyderabad - 500 047.**

.. Complainant

A n d

**Soham Modi,
Managing Partner, M/s. Modi Ventures & Sri Sai Builders,
Mr. Soham Modi, 5-4-187/3& 4,
"Sohan Mansion" II floor, M.G. Road,
Secunderabad.**

.. Opposite party

This case coming on this for final hearing before this Forum in the presence of complainant (Party in person), and Mr.C.Bala Gopal advocate for the opposite party having stood over till this date for consideration, this Forum pronounced the following:-

ORDER

(per Hon'ble Member, Dr. R.Purushothama Reddy on behalf of bench)

1. This is a consumer complaint filed under section 12 of C.P. Act, 1986 seeking a direction to the opposite parties to return the booking amount of Rs.25,000/- with interest @ 18% p.a. from the date of payment till the date of realization, pay Rs.50,000/- compensation for causing mental agony and suffering and costs of Rs.3,000/-.
2. The complainant's case in brief is that the complainant attracted by the publicity of the opposite party booked a semi deluxe flat by paying Rs.25,000/- on and was assured by the field executive that if not satisfied he could cancel the booking within one month and take the



refund of booking amount. After learning that there was no proper plan and time schedule for handing over of the flat the complainant cancelled the booking by informing the field executive orally within one month. The complainant contended that the opposite party did not reveal the terms and conditions before booking and the terms and conditions printed on the back side of the booking form were known to him after booking of the flat and the opposite party's refusal to refund the booking fee amounts to unfair trade practice. The complainant had approached the alternate consumer dispute redressal cell to negotiate for refund of the booking amount by deducting 2% towards administrative charges, which was not acceptable to opposite party. Further the complainant stated that the opposite party did not possess land at the time of booking and after collecting the amount from the customers only they started the work in the venture which is not a fair transaction and the terms and conditions of booking are arbitrary and against the law of natural justice. The complainant stated that he paid Rs.25,000/- by taking loan and was subjected to mental agony and financial loss. Hence the complaint.

3. The opposite party in the counter denied the allegations and contended that opposite party No.1 purchased the land for the said venture in the year 2007 vide document No.4000/2007 and the sanction for construction was also obtained much prior to the booking of the flat by the complainant. The complainant had booked a flat in G-306, in the project undertaken by the opposite party for a total consideration of Rs.21,14,000/- by making initial payment of Rs.25,000/- on 28-3-2009 and under took to pay the entire amount in installments from 12-4-2009 to 31-12-2010/ As the complainant signed the booking form, the terms and conditions specified on the reverse of the booking form are binding on



him. Opposite party further contended that the complainant had sent cancellation letter after 2 months of the booking and requested for refund of the booking amount, stating that he purchased another house at Malkajgiri and paid an amount of Rs 5,00,000/- as advance. Consequently booking was cancelled vide notice dated 25-9-2009. Alternative Consumer dispute redressal cell had dismissed the complainant's complaint advising him to approach the Consumer Forum, and the complainant has taken different stands in both the complaints. Further in view of the terms and conditions of the booking form there is no deficiency in service on the part of opposite party.

4. The points that arise for consideration are:-

- (i) Whether there is any deficiency of service on the part of the opposite party? if so, whether the complainant is entitled for any relief?
- (ii) To what relief?

5. The complainant filed evidence affidavit written arguments and relied on exhibits A1 to A4. The opposite party filed counter, evidence affidavit, written arguments and relied on Exhibits B1 to B9. Both sides advanced oral arguments.

6. Point No.(B):- It is an admitted fact that the complainant booked a flat G-306 in Gul Mohar Gardens venture of the opposite party by paying Rs.25,000/- as booking amount on 28-3-2009. Exhibit A2 is the booking form No.2028 on per which, the complainant undertook to pay the balance amount of sale consideration in installments besides registration charges etc. between 12-4-2009 and 31-12-2010. The opposite party filed exhibits B4, B5, B6, B7 and B8 to show that they purchased land and obtained the technical approval from Hyderabad Urban Development



Authority for construction of the said venture much earlier than booking of the flat by the complainant.

Exhibit 8 is the letter dated 20-5-2009 by the complainant nearly 7 weeks after booking of the flat stating that he paid advance of Rs.5 lakhs and concluded an agreement to purchase a different flat in Malkajgiri and requested for cancellation of his booking of flat G-306 and refund his deposit amount of Rs.235,000/- at the earliest.

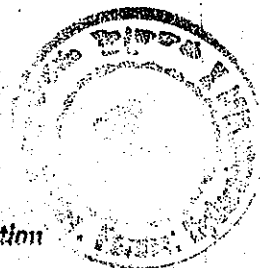
Exhibit B1 is the cancellation notice dated 21-5-2009 issued by the opposite party informing him that his provisional booking stood cancelled and the payment made by him was forfeited as he did not make further payments despite repeated reminders. However, no demand or reminder letter is filed on behalf of the opposite party.

The complainant averred that he was assured orally by the opposite party's executive that he could cancel his booking within month and get refund of booking amount and that he had informed the executive orally to cancel the booking within one month. No credence or weightage need be attached to that contention as not supported by any evidence.

Before deciding the issue it is pertinent to peruse the terms and conditions inscribed on the reverse of the booking form, i.e. exhibit A2, relevant clauses read as

Terms & conditions:

1. Nature of booking
- 1.3. The purchaser execute the required documents within a period of 30 days from the date of booking along with payment of the 1st installment mentioned overleaf. In case the purchaser fails to do so then this provisional booking shall stand cancelled and the builder shall be entitled to deduct cancellation charges as mentioned herein.



6. Cancellation charges:

- 6.1 In case of default mentioned in clause 1.3 above, the cancellation charges shall be Rs.25,000/-.
- 6.2 In case of failure of the purchaser to obtain housing loan within 30 days of the provisional booking, the cancellation charges will be nil provided necessary intimation to this effect is given to the builder in writing along with necessary proof of non-sanction of loan. In case of non-intimation, the cancellation charges shall be Rs.25,000/-.
- 6.3 In case of request for cancellation in writing within 60 days of the provisional booking the cancellation charges shall be Rs.50,000/-.
- 6.4 In all other cases of cancellation either of booking or agreement the cancellation charges shall be 15% of the agreed sale consideration.

From the fore-going it is clear that the complainant requested for cancellation of booking within 60 days from the date of booking the flat in which clause 6.3 should apply. The opposite party contended that as the complainant signed on the booking form, the terms and conditions printed overleaf are binding and he is not entitled for any refund of his booking amount. The complainant averred that he was not aware of the conditions which he termed as arbitrary. But his contention of ignorance of the terms of the booking is not sustainable. As per clause 6.3 he had to be covered by the cancellation charges of Rs.50,000/-. But in the instance case the complainant paid only Rs.25,000/- towards booking amount. A close look at the terms of cancellation charges discloses that these conditions should apply where the booking amount is much more, as the terms and conditions did not prescribe total forfeiture of deposit amount. No doubt, the action of the opposite party in forfeiting the entire booking amount of the complainant is arbitrary though he has cited different reasons for cancellation in different fora. But we are of the opinion that forfeiture of entire amount on technical grounds is not proper. After all the opposite party would not lose much, whereas the loss to the complainant is huge. So, we are of the opinion that the complainant is entitled for refund of at least some portion of the booking amount as the opposite party also must have been involved in spending some amount in reserving the flat canceling it etc.



The ends of Justice would be met if we order refund of Rs.15,000/- to the complainant.

Point No. II:- In the result the complainant is partly allowed. The opposite party is directed to refund Rs.15,000/- (Rupees Fifteen thousand only) to the complainant within one month. If the amount ordered is not refunded within the time given, the complainant is entitled to collect the amount with interest @ 12% per annum from the date of filing of the complaint till the date of payment. No order as to costs.

Dictated to the stenographer transcribed and typed by her.
Pronounced by us on this the 15th day of February, 2010.

I have gone through the observations and concur with the ultimate finding of the learned member.

sdl-
MEMBER
sdl-
MEMBER
sdl-
PRESIDENT

**APPENDIX OF EVIDENCE
WITNESSES EXAMINED**

-VII-

Documents marked on behalf of the complainant:-

- Ex-A-1- Receipt, dt.28-3-2009.
- Ex-A-2- Booking Form, dt.28-3-2009
- Ex-A-3- Cancellation notice, dt.21-5-2009
- Ex-A-4- Complaint in State Consumer information Centre, dt.16-6-2009.

Documents marked on behalf of the Opposite party:-

- Ex-B-1- Cancellation notice dt.21-5-2009
- Ex-B-2- E-mail letter for refund of booking, dt.13-6-2009
- Ex-B-3- Certificate to whomsoever it may concern, dt.9-11-2009
- Ex-B-4- Sale Deed, dt.10-7-2003
- Ex-B-5- Sale Deed dt.5-2-2004.
- Ex-B-6- Joint development agreement, dt.20-10-2005.
- Ex-B-7- Agreement of sale cum General power of attorney, dt.20-10-2005
- Ex-B-8- Approved plan
- Ex-B-9- Letter to opposite party, dt.20-5-2009.

sdl-
MEMBER

sdl-
MEMBER

sdl-
PRESIDENT

ca 587/09
 DISTRICT
 RAWALPINDI
 15/2/2010
 3/3/2010
 3/3/2010
 3/3/2010

[Handwritten signature]
 3/3/2010

MODI VENTURES

Head Office : 5-4-187 / 3 & 4, II floor, M.G.Road, Secunderabad – 500 003

Date: 08.03.2010

To,
The President,
District Consumer Disputes Redressal Forum-I,
Chandra Vihar,
Hyderabad.

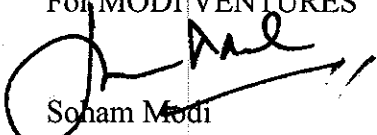
Dear Sir,

Sub: Refund of money of sum of Rs.15000/- reg
Ref: Consumer case no.587/2009.

As per the Hon'ble court of District Consumer Disputes Redressal Forum-I, order dated 15.02.2010, in the consumer case No. 587/2009, we are enclosing herewith DD No. 154664 Dated 08.03.2010 in favour of E.P.Anand Kumar drawn on HDFC Bank towards refund of Booking amount.

Thanking You,
Yours Faithfully

For MODI VENTURES


Soham Modi
(Partner)

Encl:Banker's Cheque for Rs.15000/-

cc to Mr. Anand Kumar, we request you to collect the ^{alone DD} ~~cheque~~ from
the Hon'ble Court.

In the Court of Dist. Commr

Deputy Federal Police - I

CC No. 587/09

SR No. 830/9.3.10

Between

E.P. Anand Kumar

Complainant

and

Madri Venkatesh

Opposite Party

Memo filed file with opp. Party -

It is hereby submitted that the opp. Party
is hereby paying a DD No. 154664
for Rs. 15000/- dt. 8-3-2010 in favor of
E.P. Anand Kumar the Complainant drawn on
HDFC Bank, Hyderabad ~~branch~~ in compliance
of the order passed in above CC. ~~no.~~ of order
dated 15.2.2010. Hence it is ~~prayed~~ prayed
full satisfaction may be recorded and the
CC may be closed.

Date - 9/3/2010

Compl. *[Signature]*
for opp. Party

In the Court of Dist

Consumer Dispute Redress Panel - I

CC NO. 587 / 2009

Between

E.P. Anand Kumar

Respondent -

&

Medivastha

Opp. Party

Men

Memo filed by
the opposite party

I

SR NO. 830 / 9.3.10

Filed on

9/3/2010

Filed by

C. Balagopal

Counsel for Opp Party

West Bangalore

Secured.



We understand your world

A/C PAYEE ONLY
NOT NEGOTIABLE
PAY

EP ANAND KUMAR

MANAGER'S CHEQUE

Ref. No: 004212063747

VALID FOR SIX MONTHS FROM THE DATE OF ISSUE

DATE 08/03/2010

OR ORDER

FIFTEEN THOUSAND ONLY.

RUPEES

Rs.

*15,000.00

For. HDFC BANK LTD.

HDFC BANK LTD.

HYDERABAD - SECUNDERABAD

SECUNDERABAD - 500 003

Handwritten signature of Ep Anand Kumar

AUTHORISED SIGNATORIES

⑈ 154664⑈ 500240003⑈ 999991⑈ 12

9206

PK

Secular eForms (P) Ltd Chennai (01-10)



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**BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL FORUM-I
AT HYDERABAD**

Present

**SRI M.VIJAYA BHASKARA REDDY, PRESIDENT
SMT LAKSHMI MAKENA, MEMBER
DR. R. PURUSHOTHAMA REDDY, MEMBER**

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And

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Managing Partner, M/s. Modi Ventures & Sri Sai Builders,

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(per Hon'ble Member, Dr. R. Purushothama Reddy on behalf of bench)

1. This is a consumer complaint filed under section 12 of C.P. Act, 1986 seeking a direction to the opposite parties to return the booking amount of Rs. 25,000/- with interest @ 18% p.a. from the date of payment till the date of realization, pay Rs. 50,000/- compensation for causing mental agony and suffering and costs of Rs. 3,000/-.

2. The complainant's case in brief is that the complainant attracted by the publicity of the opposite party booked a semi deluxe flat by paying Rs. 25,000/- on and was assured by the field executive that if not satisfied he could cancel the booking within one month and take the



refund of booking amount. After learning that there was no proper plan and time schedule for handing over of the flat the complainant cancelled the booking by informing the field executive orally within one month. The complainant contended that the opposite party did not reveal the terms and conditions before booking and the terms and conditions printed on the back side of the booking form were known to him after booking of the flat and the opposite party's refusal to refund the booking fee amounts to unfair trade practice. The complainant had approached the alternate consumer dispute redressal cell to negotiate for refund of the booking amount by deducting 2% towards administrative charges, which was not acceptable to opposite party. Further the complainant stated that the opposite party did not possess land at the time of booking and after collecting the amount from the customers only they started the work in the venture which is not a fair transaction and the terms and conditions of booking are arbitrary and against the law of natural justice. The complainant stated that he paid Rs.25,000/- by taking loan and was subjected to mental agony and financial loss. Hence the complaint.

3. The opposite party in the counter denied the allegations and contended that opposite party No.1 purchased the land for the said venture in the year 2007 vide document No.4000/2007 and the sanction for construction was also obtained much prior to the booking of the flat by the complainant. The complainant had booked a flat in G-306, in the project undertaken by the opposite party for a total consideration of Rs.21,14,000/- by making initial payment of Rs.25,000/- on 28-3-2009 and under took to pay the entire amount in installments from 12-4-2009 to 31-12-2010/ As the complainant signed the booking form, the terms and conditions specified on the reverse of the booking form are binding on



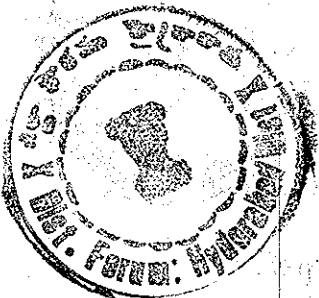
him. Opposite party further contended that the complainant had sent cancellation letter after 2 months of the booking and requested for refund of the booking amount, stating that he purchased another house at Malkajgiri and paid an amount of Rs.5,00,000/- as advance. Consequently booking was cancelled vide notice dated 25-9-2009. Alternative Consumer dispute redressal cell had dismissed the complainant's complaint advising him to approach the Consumer Forum, and the complainant has taken different stands in both the complaints. Further in view of the terms and conditions of the booking form there is no deficiency in service on the part of opposite party.

4. The points that arise for consideration are:-

- (i) Whether there is any deficiency of service on the part of the opposite party? if so, whether the complainant is entitled for any relief?
- (ii) To what relief?

5. The complainant filed evidence affidavit written arguments and relied on exhibits A1 to A4. The opposite party filed counter, evidence affidavit, written arguments and relied on Exhibits B1 to B9. Both sides advanced oral arguments.

6. Point No.(I):- It is an admitted fact that the complainant booked a flat G-306 in Gul Mohar Gardens venture of the opposite party by paying Rs.25,000/- as booking amount on 28-3-2009. Exhibit A2 is the booking form No.2028 as per which, the complainant undertook to pay the balance amount of sale consideration in installments besides registration charges etc. between 12-4-2009 and 31-12-2010. The opposite party filed exhibits B4, B5, B6, B7 and B8 to show that they purchased land and obtained the technical approval from Hyderabad Urban Development



Authority for construction of the said venture much earlier than booking of the flat by the complainant.

Exhibit 8 is the letter dated 20-5-2009 by the complainant nearly 7 weeks after booking of the flat stating that he paid advance of Rs.5 lakhs and concluded an agreement to purchase a different flat in Malkajgiri and requested for cancellation of his booking of flat G-306 and refund his deposit amount of Rs.235,000/- at the earliest.

Exhibit B1 is the cancellation notice dated 21-5-2009 issued by the opposite party informing him that his provisional booking stood cancelled and the payment made by him was forfeited as he did not make further payments despite repeated reminders. However, no demand or reminder letter is filed on behalf of the opposite party.

The complainant averred that he was assured orally by the opposite party's executive that he could cancel his booking within month and get refund of booking amount and that he had informed the executive orally to cancel the booking within one month. No credence or weightage need be attached to that contention as not supported by any evidence.

Before deciding the issue it is pertinent to peruse the terms and conditions inscribed on the reverse of the booking form, i.e. exhibit A2, relevant clauses read as:

Terms & conditions:

1. Nature of booking
- 1.3. The purchaser execute the required documents within a period of 30 days from the date of booking along with payment of the 1st instalment mentioned overleaf. In case the purchaser fails to do so then this provisional booking shall stand cancelled and the builder shall be entitled to deduct cancellation charges as mentioned herein.



6. Cancellation charges:

- 6.1 In case of default mentioned in clause 1.3 above, the cancellation charges shall be Rs.25,000/-
- 6.2 In case of failure of the purchaser to obtain housing loan within 30 days of the provisional booking, the cancellation charges will be nil provided necessary intimation to this effect is given to the builder in writing along with necessary proof of non-sanction of loan. In case of non-intimation, the cancellation charges shall be Rs.25,000/-
- 6.3 In case of request for cancellation in writing within 60 days of the provisional booking the cancellation charges shall be Rs.50,000/-
- 6.4 In all other cases of cancellation either of booking or agreement the cancellation charges shall be 15% of the agreed sale consideration

From the fore-going it is clear that the complainant requested for cancellation of booking within 60 days from the date of booking the flat in which clause 6.3 should apply. The opposite party contended that as the complainant signed on the booking form, the terms and conditions printed overleaf are binding and he is not entitled for any refund of his booking amount. The complainant averred that he was not aware of the conditions which he termed as arbitrary. But his contention of ignorance of the terms of the booking is not sustainable. As per clause 6.3 he had to be covered by the cancellation charges of Rs.50,000/-. But in the instance case the complainant paid only Rs.25,000/- towards booking amount. A close look at the terms of cancellation charges discloses that these conditions should apply where the booking amount is much more, as the terms and conditions did not prescribe total forfeiture of deposit amount. No doubt, the action of the opposite party in forfeiting the entire booking amount of the complainant is arbitrary though he has cited different reasons for cancellation in different fora. But we are of the opinion that forfeiture of entire amount on technical grounds is not proper. After all the opposite party would not loose much, whereas the loss to the complainant is huge. So, we are of the opinion that the complainant is entitled for refund of at lease some portion of the booking amount as the opposite party also must have been involved in spending some amount in reserving the flat canceling it etc.



The ends of Justice would be met if we order refund of Rs.15,000/- to the complainant.

Point No.II:- In the result, the complainant is partly allowed. The opposite party is directed to refund Rs.15,000/- (Rupees Fifteen thousand only) to the complainant within one month. If the amount ordered is not refunded within the time given, the complainant is entitled to collect the amount with interest @ 12% per annum from the date of filing of the complaint till the date of payment. No order as to costs.

Dictated to the stenographer transcribed and typed by her.
Pronounced by us on this the 15th day of February, 2010.

sdl-
MEMBER
sdl-
MEMBER

I have gone through the observations and concur with the ultimate finding of the learned member.

sdl-
PRESIDENT

**APPENDIX OF EVIDENCE
WITNESSES EXAMINED**

-III-

Documents marked on behalf of the complainant:-

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- Ex.A-4- Complaint in State Consumer information Centre, dt.16-6-2009.

Documents marked on behalf of the Opposite party:-

- Ex-B-1- Cancellation notice dt.21-5-2009
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- Ex-B-9- Letter to opposite party, dt.20-5-2009.

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MEMBER

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PRESIDENT

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DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, HYDERABAD

Order No. 1512/2010

Order No. 3/3/2010

Order No. 3/3/2010

Order No. 3/3/2010

3/3/2010

BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL FORUM-I
HYDERABAD

C.D. O.P. No. 587 of 2009

Between:

E.P.Anand Kumar
H.No.21-133, 3rd cross
Uttam Nagar, Malkajgiri
Hyderabad - 500047.

... Complainant

And

Soham Modi
Managing Partner M/s.MODI VENTURES & Sri Sai Builders
Mr.Soham Modi, 5-4-187/3 & 4
"Soham Mansion" II floor, M.G.Road,
Secunderabad.

... Opposite Party

EVIDENCE AFFIDAVIT FILED ON BEHALF OF OPPOSITE PARTY

I, Mr.Ramacharyulu S/o L.Raghavendra Rao, aged 48 years, occ: employee, R/o Vanasthalipuram, Hyderabad, do hereby solemnly affirm and state on oath as follows:

1. I am presently working as Law Officer in the Opposite Party Company and Authorised Signatory and as such I am well acquainted with the facts deposed hereunder.
2. I submit the complaint is not maintainable either in law or on facts and as such is liable to be dismissed in limini.
3. I submit that this Opposite Party not aware that the Complainant found the banner of publicity of the Opp. Party at Mallapur, Hyderabad but it is true that the Complainant contacted one Mr.Karunakar Reddy, Field Executive of the Opp. Party but it is absolutely false to say that the Field Officer contacted the Complainant through phone 4 or 5 times and informed him that the venture bookings are going to be end shortly and the present rates are going to be hiked and the requested the Complainant for early booking without giving him time to think about the venture.
6. I submit that it is incorrect to say that on the explanation of the benefits informed by the Opp. Party's field executive, the Complainant booked a semi-deluxe flat and paid an amount of Rs.25,000/- or that the Field Officer also informed the Complainant orally that if not satisfied it can be cancelled within a month and take refund of the booking amount. The

contention of the Complainant in the that there is no proper plan about when the flat is going to be handed over to the customers due to which the Complainant cancelled the booking and informed to the executive orally within one month of the booking amount paid to the Opposite Party is false and concocted for the purpose of filing the present case.

7. I submit the contention of the complainant that this Opposite Party failed to give terms and conditions before booking or that the Complainant came to know about the terms and conditions after booking of the flat is false and baseless. The further contention that the Opposite Party never issued any paper except the booking form and now saying that the booking fee not refundable is false and baseless and concocted for the purpose of filing this complaint.

8. I submit that, it is true that the Complainant has taken up the matter to the notice of the Alternative Consumer Disputes Redressal, Department of Consumer Affairs, Food and Civil Supplies, Somajiguda, Hyderabad to settle the matter under non-legal measures. It is also true Mr.G.Rambabu, Manager, Customer Relation of the Opposite Party has attended on behalf of this Respondent and filed a counter stating that as per the terms and conditions held on the reverse of the booking form the refund of the booking amount does not arise. The contention of the Complainant that the above said firm negotiated this Opposite Party to refund the booking amount after deducting the administrative charge of 2% from the paid amount is false and hence denied. In fact, after filing of the counter and after going through the counter, the above said forum has directed the Complainant to approach the Consumer Forum.

9. I submit that this Opposite Party denies that the motto of this Opposite Party is to earn the money with false promises with cheating activities and this Opposite Party reserves its right to file a suit for damages against the Complainant for making defamatory allegations against the Opposite Party. The further contention of the Complainant that at the time of booking, there is no land at all to the Opposite Party and after collecting the amounts from the customers, this Opposite Party has started the work at venture but not before booking of the flats by the consumers is false and baseless and invented for the purpose of filing this complaint.

10. I submit that, this Opposite Party respectfully submits in fact this Opposite Party purchased the land involved in the above said venture in the year 2007 vide document No.4000/2007 and the sanction for construction

was also obtained much prior to the booking of the flat by the Complainant which clearly establishes that the contention of the Complainant the entire work started after booking from the customers is false and baseless and concocted for the purpose of filing the complaint.

11. I submit that the Complainant is not entitled for any relief prayed in the complaint due to the fact that he has approached the Hon'ble Court by suppressing the facts and with all false and baseless allegations and there is no deficiency in providing services by the Opposite Party.
12. I submit that the Complainant booked a Flat G-306 in the project being undertaken by the Opposite Party to purchase a flat for a total consideration of Rs.21,14,000/- exclusive of registration, VAT and Sales Tax charges. The Complainant had signed and admitted the terms of the payment for the flat under Booking form dated 28.03.2009 by and under the said Agreement, the Complainant has undertaken to pay the entire amount in instalments necessary from 12.04.2009 to 31.12.2010. On the said date of signing the booking form, the Complainant has made a initial payment of Rs.25,000/-. It is respectfully submitted that by virtue of the signing of the booking form there has been a concluded contract to pay the sale consideration in instalments specified in the said form. On the reverse of the said form, the terms and conditions have been specified. In breach of the terms in respect of the instalments to be paid would incur the liability as specified in the booking form. Once a flat is booked under the Booking form, it cannot be transferred to any other purchaser.
13. I submit that after 2 months of the booking of the said flat, the Complainant has sent a letter requesting for cancellation of the booking of the above flat and for refund of the amount on the ground he has purchased another house at Malkajgiri and paid an amount of Rs.5 lakhs. The Complainant also reiterated the same in his mail, on his request, the booking was cancelled vide notice dated 25.09.2009. It is further submitted that on the above said ground only the Complainant approached the Alternative Consumer Disputes Redressal Cell, Civil Supplies Bhavan and the same was dismissed asking the Complainant approach the District Consumer forum. It is pertinent to mention here the averments made in the complaint before the ACDRC and the present complaint is totally different and he has taken different stands in both the complaints, hence, on this ground the complaint is liable to be dismissed.

14. I submit that it is astonishing to note that a person who is claiming that he paid the initial amount of Rs.25,000/- alleged to be equivalent to his salary of 2 months was immediately able to pay a sum of Rs.5 lakhs for purchase of property near Gopi Nagar, Malkajgiri. It is therefore, clear that the complainant has been indulging in speculative investment.

15. I respectfully submit that in view of the terms of the booking form, since there is no deficiency in service as far as the Opposite Party is concerned, the Complainant is not entitled to claim refund of the amount. In view of the terms of the agreement which was not breached by the Opposite Party but only by the Complainant, the Opposite Party is entitled to forfeit the amount. It is therefore clear that this dispute does not fall within the four corners of the Consumer Protection Act, 1986.

16. The complainant is relying on the following documents in support of his case and the same may be marked as exhibits.

- 1) Cancellation notice dated 21.5.2009
- 2) Email of complainant dated 26.5.2009
- 3) Authorisation letter dt.
- 4) Sale Deed in favour of Sri Sai Builders dated (with nos)
- 5) Development Agreement in favour of Modi Ventures dt.
- 6) G.P.A.
- 7) Sanction plan.

I, therefore, pray that this Hon'ble Forum may be pleased to dismiss the complaint with exemplary costs.

Sworn and signed before me
on this the 19th day of November, 2009
at Hyderabad.

Deponent

Advocate / Hyderabad

MODI VENTURES

5-4-187/3 & 4, II Floor, M.G. Road, Secunderabad - 500 003.
☎ : 66335551 (4 Lines) Fax : 040-27544058
E-mail : info@modiproperties.com Website : www.modiproperties.com

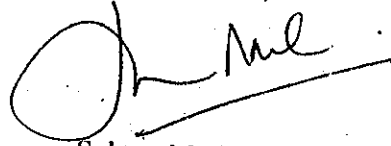
TO WHOM SOEVER IT MAY CONCERN

This is to certify that Mr. Ramacharyulu, S/o. Shri L. Raghavender Rao, legal officer for M/s. Modi Ventures, 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. Modi Ventues to give an evidence and appearance in C.C. No. 587 of 2009 to attend in the District Consumer Redressal Forum - I, Hyderabad between M/s. Ms/. Mpodj Ventures and E.P. Anand Kumar.

Date: 9/11/2009

Place: Hyderabad.

Modi Ventures,



Soham Modi
Managing Partner.

be cancelled within a month and take refund of the booking amount. The



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Refund of booking amount Rs 25,000/-

☆ easwer prasad show details May 26 ↩ Reply

KIND ATTENTION

SOHAM MODI, MANAGING DIRECTOR,

sir,

I submit that, I am booked with a great hope G 306 flat at Gulmohargardens and paid Rs25000/- on 28/03/2009 and also received provisional booking letter from company. As the project completed by 20 months. Mean while searched for read occupation flat, unexpectedly I got second sale, 2nd floor flat near goplnager Malkajgiri. Sale agreement done and paid Rs 5,00,000/- on 19/05/2009.

I came to your office and given letter for cancellation of booking to sri. Rambabu CR dept. and arrange to send booking amount 25,000/- and originals receipt also handed over.

Today I received cancellation letter and astonished that the booking amount forfeited. Sir, My age is 53 years, till today I am unable purchase a flat in Hyd because of hiking prices. It is my two months salary amount which was saved. I am facing other problems in addition to flat.

Hence, It is humbly requested that, amount 25,000/- may please refunded at the earliest, as it is saving amount kept with great difficulty since 4 years for flat purpose.

Thanking you

with regards,

anand kumar E.P
9908800830

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field officer also informed the complainant orally that if not satisfied it can be cancelled within a month and take refund of the booking amount. The

10

The Managing Director

MODI VENTURES

S-4-187/3 & 4, 4 Floor, (M) G ROAD

21/05/09
90556
SN

SECOND AD

Sir

Sub Gulmohar Gardens - Booked Flat
for G 306 in G Block - Cancellation
Req -

I have booked a flat G 306 at Gulmohar
Gardens near Mallapur one month back.

Recently I cancelled agreement (aka Flat
near ^{HPM 18-133} ~~HPM~~ ²¹⁻¹³³ Vignapur, Malleshwari and gave
an advance amount Rs 5,00,000/-.

So I want to cancel the mallapur
flat G 306 and my deposit amount 25,000/-
may please be returned at the earliest.

Thanking you Sir

Dr. 20/10/09

M.M. 9908800830

Yours faithfully

[Signature]

(E.P. ANAND KUMAR)
21-133, Vignapur
Malleshwari

Original Booked
for G 306 cancelled.
21/10/09

field officer also informed the complainant orally that if not satisfied it can
be cancelled within a month and take refund of the booking amount. The

MODI VENTURES

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

☎ : 66335551 (4 Lines) Fàx : 040-27544058

E-mail : info@modiproperties.com Website : www.modiproperties.com

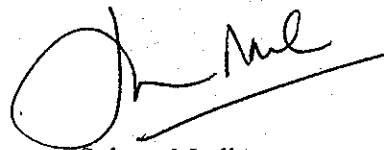
TO WHOM SOEVER IT MAY CONCERN

This is to certify that Mr. Ramacharyulu, S/o. Shri L. Raghavender Rao, legal officer for M/s. Modi Ventures, 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. Modi Ventures to give an evidence and appearance in C.C. No. 587 of 2009 to attend in the District Consumer Redressal Forum – I, Hyderabad between M/s. Ms/. Mpmodi Ventures and E.P. Anand Kumar.

Date:

Place:

Modi Ventures,



Soham Modi
Managing Partner.

From: easwer prasad
To: cr@modiproperties.com
Sent: Saturday, May 30, 2009 11:13 AM
Subject: refund of booking amount

show details

KIND ATTENTION

SOHAM MODI, MANAGING DIRECTOR,

sir,

I submit that, I am booked with a great hope G 306 flat at Gulmohargardens and paid Rs25000/- on 28/03/2009 and also received provisional booking letter from company. As the project completed by 20 months . Mean while searched for read occupation flat , unexpectedly I got second sale, 2nd floor flat near gopnager Malkajgiri. Sale agrement done and paid Rs 5,00,000/- on 19/05/2009. I came to your office and given letter for cancellation of booking to sri. Rambabu CR dept. and arrange to send booking amount 25,000/- and original receipt also handed over.

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Hence , It is humbly requested that, amount 25,000/- may please refunded at the earliest ,as it is saving amount kept with great difficulty since 4 years for flat purpose.

Thanking you

with regards,

Anand Kumar E.P.
9908800830

BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL FORUM-I
HYDERABAD

C.D. O.P. No. 587 of 2009

Between:

E.P.Anand Kumar
H.No.21-133, 3rd cross
Uttam Nagar, Malkajgiri
Hyderabad - 500047.

... Complainant

And

Soham Modi
Managing Partner M/s.MODI VENTURES & Sri Sai Builders
Mr.Soham Modi, 5-4-187/3 & 4
"Soham Mansion" II floor, M.G.Road,
Secunderabad.

... Opposite Party

EVIDENCE AFFIDAVIT FILED ON BEHALF OF OPPOSITE PARTY

I, Mr.Ramacharyulu S/o L.Raghavendra Rao, aged 48 years, occ: employee,
R/o Vanasthalipuram, Hyderabad, do hereby solemnly affirm and state on
oath as follows:

1. I am presently working as Law Officer in the Opposite Party Company and Authorised Signatory and as such I am well acquainted with the facts deposed hereunder.
2. I submit the complaint is not maintainable either in law or on facts and as such is liable to be dismissed in limini.
3. I submit that this Opposite Party not aware that the Complainant found the banner of publicity of the Opp. Party at Mallapur, Hyderabad but it is true that the Complainant contacted one Mr.Karunakar Reddy, Field Executive of the Opp. Party but it is absolutely false to say that the Field Officer contacted the Complainant through phone 4 or 5 times and informed him that the venture bookings are going to be end shortly and the present rates are going to be hiked and the requested the Complainant for early booking without giving him time to think about the venture.
6. I submit that it is incorrect to say that on the explanation of the benefits informed by the Opp. Party's field executive, the Complainant booked a semi-deluxe flat and paid an amount of Rs.25,000/- or that the Field Officer also informed the Complainant orally that if not satisfied it can be cancelled within a month and take refund of the booking amount. The

contention of the Complainant in the that there is no proper plan about when the flat is going to be handed over to the customers due to which the Complainant cancelled the booking and informed to the executive orally within one month of the booking amount paid to the Opposite Party is false and concocted for the purpose of filing the present case.

7. I submit the contention of the complainant that this Opposite Party failed to give terms and conditions before booking or that the Complainant came to know about the terms and conditions after booking of the flat is false and baseless. The further contention that the Opposite Party never issued any paper except the booking form and now saying that the booking fee not refundable is false and baseless and concocted for the purpose of filing this complaint.

8. I submit that, it is true that the Complainant has taken up the matter to the notice of the Alternative Consumer Disputes Redressal, Department of Consumer Affairs, Food and Civil Supplies, Somajiguda, Hyderabad to settle the matter under non-legal measures. It is also true Mr.G.Rambabu, Manager, Customer Relation of the Opposite Party has attended on behalf of this Respondent and filed a counter stating that as per the terms and conditions held on the reverse of the booking form the refund of the booking amount does not arise. The contention of the Complainant that the above said firm negotiated this Opposite Party to refund the booking amount after deducting the administrative charge of 2% from the paid amount is false and hence denied. In fact, after filing of the counter and after going through the counter, the above said forum has directed the Complainant to approach the Consumer Forum.

9. I submit that this Opposite Party denies that the motto of this Opposite Party is to earn the money with false promises with cheating activities and this Opposite Party reserves its right to file a suit for damages against the Complainant for making defamatory allegations against the Opposite Party. The further contention of the Complainant that at the time of booking, there is no land at all to the Opposite Party and after collecting the amounts from the customers, this Opposite Party has started the work at venture but not before booking of the flats by the consumers is false and baseless and invented for the purpose of filing this complaint.

10. I submit that, this Opposite Party respectfully submits in fact this Opposite Party purchased the land involved in the above said venture in the year 2007 vide document No.4000/2007 and the sanction for construction

was also obtained much prior to the booking of the flat by the Complainant which clearly establishes that the contention of the Complainant the entire work started after booking from the customers is false and baseless and concocted for the purpose of filing the complaint.

11. I submit that the Complainant is not entitled for any relief prayed in the complaint due to the fact that he has approached the Hon'ble Court by suppressing the facts and with all false and baseless allegations and there is no deficiency in providing services by the Opposite Party.

12. I submit that the Complainant booked a Flat G-306 in the project being undertaken by the Opposite Party to purchase a flat for a total consideration of Rs.21,14,000/- exclusive of registration, VAT and Sales Tax charges. The Complainant had signed and admitted the terms of the payment for the flat under Booking form dated 28.03.2009 by and under the said Agreement, the Complainant has undertaken to pay the entire amount in instalments necessary from 12.04.2009 to 31.12.2010. On the said date of signing the booking form, the Complainant has made a initial payment of Rs.25,000/-. It is respectfully submitted that by virtue of the signing of the booking form there has been a concluded contract to pay the sale consideration in instalments specified in the said form. On the reverse of the said form, the terms and conditions have been specified. In breach of the terms in respect of the instalments to be paid would incur the liability as specified in the booking form. Once a flat is booked under the Booking form, it cannot be transferred to any other purchaser.

13. I submit that after 2 months of the booking of the said flat, the Complainant has sent a letter requesting for cancellation of the booking of the above flat and for refund of the amount on the ground he has purchased another house at Malkajgiri and paid an amount of Rs.5 lakhs. The Complainant also reiterated the same in his mail, on his request, the booking was cancelled vide notice dated 25.09.2009. It is further submitted that on the above said ground only the Complainant approached the Alternative Consumer Disputes Redressal Cell, Civil Supplies Bhavan and the same was dismissed asking the Complainant approach the District Consumer forum. It is pertinent to mention here the averments made in the complaint before the ACDRC and the present complaint is totally different and he has taken different stands in both the complaints, hence, on this ground the complaint is liable to be dismissed.

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15. I respectfully submit that in view of the terms of the booking form, since there is no deficiency in service as far as the Opposite Party is concerned, the Complainant is not entitled to claim refund of the amount. In view of the terms of the agreement which was not breached by the Opposite Party but only by the Complainant, the Opposite Party is entitled to forfeit the amount. It is therefore clear that this dispute does not fall within the four corners of the Consumer Protection Act, 1986.

16. The complainant is relying on the following documents in support of his case and the same may be marked as exhibits.

1. Booking Form dated 28.3.2009
2. Cancellation notice dated 21.5.2009
3. Email of complainant dated 26.5.2009
4. Copy of complaint before the A.C.D.R.C. dt.16.6.2009
5. Authorisation letter dt.
6. Sale Deed in favour of Sri Sai Builders dated
7. Development Agreement in favour of Modi Ventures dt.

I, therefore, pray that this Hon'ble Forum may be pleased to dismiss the complaint with exemplary costs.

Sworn and signed before me
on this the day of November, 2009
at Hyderabad.

Deponent

Advocate / Hyderabad

BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL FOURM-I
HYDERABAD.

Consumer Dispute Case No. 587/2009

E.P.Anand Kumar
S/o Chinnaiah aged about 52 years
Prof. Govt. Employee,
R/o 21-133, 3rd cross, Uttamnagar,
Malkajgiri,
Hyderabad-500 047

..... Complainant

Vs.
Soham Modi,
Managing Partner,
Modi Ventures & Sri Sai Builders,
5-4-187/3&4 2nd Floor, M.G.Road,
Secunderabad-500 003

..... Opposite Parties

To
Hon'ble President and Members
District Consumer Forum-I
Hyderabad

EVIDENCE AFFIDAVIT FILED BY COMPLAINANT

I, E.P.Anand Kumar S/o Chinnaiah, aged about 52 years, Prof. Govt. Employee, R/o 21-133, 3rd cross, Uttamnagar, Malkajgiri, Hyderabad-500 047 solemnly affirm and state on oath the following:-

1. That the O.P is doing business with title of Investments Pvt. Ltd., (Owned & Developed by Modi Ventures & Sri Sai Builders and the O.P. used to gather the customer through Telephone calls and brochures placing at the business places where the maximum public available
2. The Complainant while going at the road a publicity banner was found at Mallapur, Hyderabad and contacted the person who available at the banner, where on Mr.Karunakar Reddy stated to be a field Executive of the O.P orally explained about the venture. I left that day, the Field Executive has rang up for 4 to 5 times stating the venture bookings are going to be end shortly and the present rates are going to be hike and requested for early booking without giving me think about the venture.
3. The aggressive explanation of the benefits informed by the Respondent field executive for which by exposing the complainant, the complainant booked a semi deluxe flat and paid an amount of Rs.25,000/- The Field Executive also informed me orally that if not satisfied it can be cancelled within a month and take the refund of the booking amount. After making an enquiry it is revealed that there is no proper plan about when the Flat is going to be hand over to the customers, due to which I made cancellation same was informed to the Field Executive Orally within the one month of my booking amount paid to the Respondent.
4. The O.P failed to give any terms and conditions before booking, the terms and conditions known after booking of the Flat which were printed back side of the Booking Form, the O.P never issued any paper except the booking form, now saying that the booking fee not refundable which is a Unfair Trade Practice.
5. It is clear evidence that the Respondent motto to earn the money with false promises and with cheating activates which are illegal and against to the Consumer Protection Act 1986. At the time of bookings there is no land at all to the Respondent, after collecting the amounts from the consumer only he has started the work at venture but not before booking the flats by the consumers,



6. It is submitted that as per the fair transactions is concerned the Respondent must have the clear title land at his end and come to the market to book the orders, but the present transactions are quite against to the legality transactions, which are unfair trade practice also because the Respondents establishment maintaining with consumer money only. It is clear evidence and stated to be that there is no fair transactions appears in the acts of the Respondent, the terms and conditions prepared by Respondent himself by arbitrarily which are no fair and far way from the natural justice.
7. The complainant has lost precious time and lost the expenditure spent on for rounding to the Respondents Office. The Complainant paid an amount of Rs.25,000/- by taking loan from the out side. It is a large amount to ordinary employee, without any service taking or forfeiting in the name of company is inhuman thing. The Opposite parties inflicted enormous amount of mental agony, loss of precious time and financial loss of the complainant.
8. It is submitted that no claim can have by the O.P without providing any service to the complainant as per the consumer protection act, no lose is accrued by the O.P., in booking and canceling the plot to the complainant, more over the O.P gain profit on the amount deposited by the complainant as interest, the canceling the plot, the O.P. gain enhanced price from the other consumer whom he has adjusted, therefore, the O.P always gained profits only on the amount deposited by the Complainant.
9. The Complainant also failed to resolve the customer grievance being a reputed organization as a Service Provider, it amounts to deficiency of service as defined under Section 2(1)(g) of the Consumer Protection Act.

In view of the above submissions the complainant sincerely pray the Hon'ble Forum to direct the O.P, to return the booking amount of Rs. 25,000/- with an interest of 18% p.a from the date of payment made to the Respondent
Pay sum of Rs.50,000/- for creating the creating mental agony and lose of precious time and expenditure and pay a sum of the Rs.,3,000/- towards petition cost.

The above facts are true and correct to the best of my knowledge.


Deponent

BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL FOURM-I
HYDERABAD.

Consumer Dispute Case No.587/2009

E.P.Anand Kumar
S/o Chinnaiah aged about 52 years
Prof: Govt. Employee,
R/o 21-133, 3rd cross, Uttamnagar,
Malkajgiri,
Hyderabad-500 047

Vs.

Soham Modi,
Managing Partner,
Modi Ventures & Sri Sai Builders,
5-4-187/3&4 2nd Floor, M.G.Road,
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..... Complainant

..... Opposite Parties

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Hon'ble President and Members
District Consumer Forum-I
Hyderabad

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E.P. Anand Kumar

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