

IN THE COURT OF THE HON'BLE PRINCIPAL SENIOR CIVIL JUDGE
R.R. DISTRICT: AT: L.B. NAGAR

I.A.No. 1361 of 2007

IN

O.S.No. 994 of 2007

BETWEEN :

VINAY AGARWAL

... PETITIONER/PLAINTIFF

AND

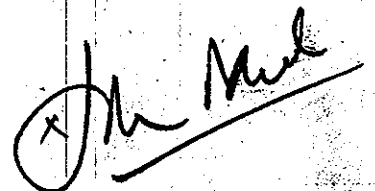
MODI VENTURES

... RESPONDENT /DEFENDANT

COUNTER AFFIDAVIT ON BEHALF OF THE RESPONDENT

I, Soham Modi, S/o. Satish Modi, Aged 37 years, R/o. Secunderabad do hereby solemnly affirm and state as follows:

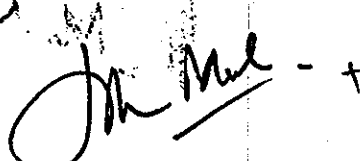
1. I am the Petitioner of the Respondent's Firm and as such I am well acquainted with the facts of the case.
2. I have read the affidavit filed by the petitioner in support of his application for injunction. I deny the adverse allegations made therein as false and baseless. The Petitioner has deliberately suppressed the facts pertaining to the transaction.
3. With regard to the allegations in para No.2, I reserve the right to answer the allegations in the plaint when a written statement is filed on behalf of the respondent. It is true that the respondent is the owner and developer of an Apartment block named as GULMOHAR GARDENS. It is also true that the Petitioner approached the



Respondent for purchasing a Flat in the said Apartments but the Petitioner had only booked a Flat as per Booking Form supplied to the Respondent. The Petitioner has deliberately omitted to mention the said booking form. The said booking is only tentative and not the final contract.

4. With regard to the allegations in para 3 it is not true, that the total cost of the flat was fixed at Rs.5,99,250/- (Rupees Five Lakhs Ninety Nine Thousand Two Hundred and Fifty only). The total cost of the flat was fixed at Rs.6,70,000/-. The Petitioner did not pay the amount to the Respondent as alleged but paid only a sum of Rs.10,000/- by way of a cheque. It is submitted that the payment does not amount to a conclusion of any agreement. The facts regarding the agreement are stated in subsequent paragraphs.

5. With regard to the allegations in para 4 the petitioner has deliberately omitted to mention about the execution of the booking form and the terms contained therein. It is denied that the respondent had informed the petitioner that they would inform about the progress of the construction of the complex or that accordingly the respondent we would inform him about the payment of balance of consideration to be made by him at the time of execution and registration of sale deed as alleged.

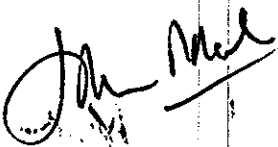


6. With regard to the allegations in para 5 it is pertinent to note that the petitioner did not make any effort to find out about the progress of the complex or about the amounts to be paid by him. In fact all these aspects were covered by the booking order form, which was only a proposal but not a final contract. It is surprising that the petitioner now alleges that he did not receive any correspondence or communication from the respondent. In fact the petitioner never visited the office of the respondent to enquire into the matter. It is also denied that he was ever told that it would take some more time for the project to be built or that he would be intimated about the details. It is denied that the letter dated 08.06.2006 addressed by the respondent was not according to facts.
7. With regard to the allegations in para 6, it is true that the Petitioner addressed a letter dated 22.06.2006 but it is denied that he had not received any reminders or intimations from the respondents at any point of time for execution of the sale agreement as alleged. It is true that the petitioner replied to the said letter but it was containing false and baseless allegations. There was never any assurance regarding the suit flat as alleged.
8. With regard to the allegations in para 7 of the affidavit it is denied that the petitioner was waiting patiently for a letter of the respondent informing him about the status and progress of the complex or about the amounts to be paid by him or that he did not receive any communication from the respondent as alleged. It is

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denied that when the petitioner visited the office of the respondent enquiring into the matter he was told that it would take some more time for the project to be completed or that they would intimate me further details later. It is true that the respondent had issued a letter dated 08.06.2006 setting out the facts and also of the cancellation agreement.

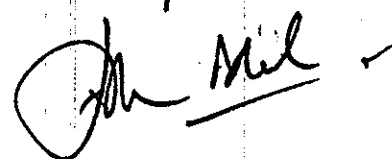
9. With regard to the allegations in para 8 it is surprising that the petitioner should now allege that there was any illegal activity but the further allegations in the letter dated 22.06.2006 no reminders or intimations from the respondent at any point of time was received is incorrect. The other allegations in para 7 are denied that the respondent sent their representative to the petitioner to demand payment of some more amount. It is admitted that a cheque for Rs.25,000/- was issued. It is denied that it was the respondent who sent their representative to the petitioner's house to collect the cheque giving assurance that his interest will be safeguarded or he would not be troubled any more. It is denied that a letter was issued only to threaten the petitioner without causing any harm.
10. With regard to the allegations in para 8 it is denied that respondents ever made any representation to the petitioner regarding the progress of construction. It is also denied for want of knowledge that the petitioner had applied a housing loan from ICICI Bank Ltd., under Application No. 777-6252602 or that the bank had sanctioned the loan of the petitioner to a tune of Rs.8,45,056/- under sanction letter



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dated 18-01-2007. It is denied that the petitioner informed the respondent about the sanction of the loan or was expecting the respondent to come forward for execution of a registered sale deed in respect of the suit flat.

11. With regard to the allegation in para 9, I deny that the petitioner was waiting patiently for any correspondence to be received from the respondent. It is denied that the petitioner visited office of the respondent on several occasions or was making request in that regard or that there was no proper response from the respondent. It is true a notice dated 19.02.2000 was issued but a true and proper reply was given thereto.
12. With regard to the allegations in para 10, they need not be answered in detail now and I reserve my right to answer them, in the main suit.
13. With regard to the allegations in para 11, it is denied that the notice of cancellation issued by us would not amount to cancellation.
14. With regard to the allegations in para 12, I am advised that I need not answer them at this stage.
15. With regard to the allegations in para 13, I deny that the respondent had gone back on its promises or failed to discharge the duty and burden cast upon me under the alleged agreement. I am not aware as to the agreement between the petitioner and his bankers. I submit

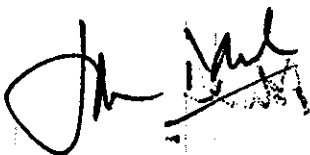
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that there is no concluded agreement between the petitioner and the respondent . I would respectfully submit that there is no contract subsisting between the petitioner and the respondent.

16. With regard to the allegations in para 14, I emphatically deny that the petitioner has any right to purchase the suit flat or get a sale deed executed and registered in his favour.

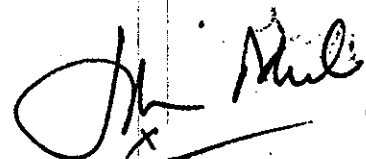
17. With regard to the allegations in para 15, I deny for want of knowledge that the petitioner has got money to pay balance of consideration or that he was always ready willing to perform his part of the contract. I deny that the petitioner is ready to pay the balance of sale consideration or get sale deed executed or registered in his favour. It is denied that the respondent has entered into any valid agreement with the petitioner or that the respondent received part of sale consideration or that the respondent is trying to sell the suit flat to third parties. In order to harm the petitioner.

18. With regard to the allegations in para 16, I deny that there is an concluded agreement much less subsisting or still holding good between the petitioner and the respondent. It is denied that the denial of execution and registration of sale deed in favour of the petitioner by the respondent is illegal. It is denied that the law of equity is in the sale of the property by the respondent to the petitioner alone or that the petitioner has any existing rights in the



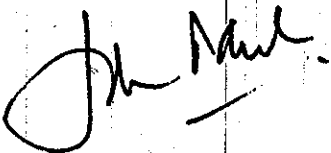
property. The other allegations in the said para are argumentative and are not valid.

19. With regard to the allegations in para 17, I deny that the petitioner has got a prima facie case in view of the alleged agreement of sale or that he has paid money towards part payment of sale consideration. It is denied that the balance of convenience is in the favour of the petitioner or that granting an order of injunction to the petitioner or that the respondent had been indulging in unethical activities to cause harm to the petitioner or to deprive him of his alleged legitimate rights. It is denied that there is any illegal act of selling the property and if that the petitioner would suffer irreparable loss and injury.
20. With regard to the allegations in para 18, is totally denied and therefore the petitioner is not entitled to any of the relieves prayed.
21. I respectfully submit the petitioner approached the respondent for booking for himself a flat bearing No.506, in the complex known as Gulmohar Gardens, being developed by the respondent in association with M/s. Sri Sai Builders. The Petitioner was fully aware of the status of the project and the terms and conditions applicable for obtaining a flat. The petitioner was also fully aware that he had to sign, which he did, a booking form which was a provisional booking and he did not gain any rights in respect of property. The petitioner signed the booking form on 13.04.2006 but issued a cheque for the first payment



on 14.04.2006. The booking form contains the details of the further payments to be made by the petitioner for completing the transaction. The booking form also has the terms and conditions on the reverse which form part of the agreement under the booking form. The terms under the agreement make it clear that the booking form is only provisional and an agreement had to be executed. The respondent has gone through all the terms and conditions contained in the booking form and it is not now open to him to say that he is unaware of the terms. It should also be mentioned that booking under the booking form is only provisional and only an agreement is executed by the petitioner in favour of the respondent. It would not be by the contract.

22. It is, therefore, denied that a transaction was completed under an oral agreement as alleged in paragraph No. 1 of the affidavit.
23. The booking form clearly stipulates the formalities to be completed in respect of the property including the schedule of payment. The petitioner, cannot therefore claim that he was ignorant as to the schedule of payments. After initial payment of Rs. 10,000/- the petitioner did not make any further payment until the letter addressed by the respondent. Even thereafter he has not complied with the requirements for completion of a valid contract. Therefore, the respondent addressed a letter to the petitioner canceling the agreement and informing him of this development. Strangely the petitioner had issued a letter containing false and baseless



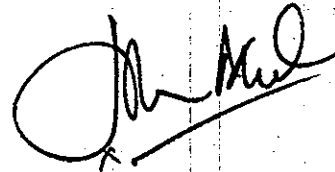
allegations. Thereafter the correspondence between the parties is self-revealing. f

24. It is submitted that the petitioner cannot seek the equitable reliefs of specific performance and as he has relied on false averments suppressing all facts and not performing his obligation under the contract. It is submitted that the petitioner has approached this Hon'ble Court with false allegations and suppressing his laches.

25. It is therefore submitted that the petitioner is not entitled to the equitable relief of injunction.

Place: L.B. NAGAR

Date: .05.2007



DEPONENT

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Filed on: -05-2007

Filed By: C. BALA GOPAL
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