

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

O.S.No. 994 of 2007

BETWEEN :

VINAY AGARWAL

... PLAINTIFF

AND

MODI VENTURES

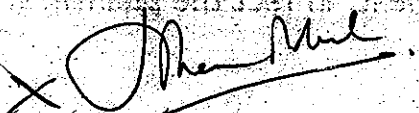
... DEFENDANT

WRITTEN STATEMENT FILED BY DEFENDANT

The Defendant humbly states as follows:

1. The defendant denies all the adverse allegations contained in the plaint except those specifically admitted and those not specifically denied should not be deemed to have been admitted. The suit as filed by the plaintiff is not maintainable both in law and on facts and the same is liable to be dismissed with exemplary costs.
2. With regard to para No. 1 & 2 of the plaint the same are formal and do not call for any reply.
3. With regard to the allegations in para No.3 of the plaint it is true that the defendant is the owner and developer of an Apartment Block named GULMOHAR GARDENTS, situated at Mallapur, R.R. Dist., It is also true that the plaintiff approached the defendant to purchase a flat in the said apartment. But the plaintiff had only booked a flat as per the booking form supplied by the defendant. The plaintiff had deliberately omitted to mention the booking form. The said booking is tentative and not the final contract.

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4. With regard to allegations in para 4 of the plaint it is not true that the total cost of the flat was fixed at Rs. Rs.5,99,250/- (Rupees Five Lakhs Ninety Nine Thousand Two Hundred and Fifty only). The total cost of the flat was agreed to be Rs.6,70,000/-. The Plaintiff did not pay the amount to the defendant as alleged but paid only a sum of Rs.10,000/- by way of a cheque. It is submitted that this 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 5 of the plaint the plaintiff has deliberately omitted to mention about the execution of the booking form and the terms and conditions contained therein. It is denied that the defendant had told the plaintiff that they would inform about the progress of the construction of the complex or that accordingly the defendant 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 6 of the plaint, it is pertinent to note that the plaintiff 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 plaintiff now alleges that he did not receive any correspondence or communication from the respondent. In fact the plaintiff never visited

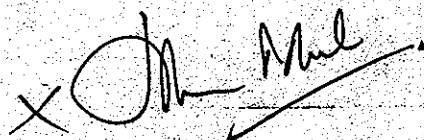
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It is true that the defendant had issued a letter dated 08.06.2006 setting out the facts and also the cancellation of the agreement.

9. With regard to the allegations in para 9 it is denied that the defendant ever made any representation to the plaintiff regarding the progress of construction. It is also denied for want of knowledge that the plaintiff had applied a housing loan from ICICI Bank Ltd., under Application No. 777-6252602 or that the bank had sanctioned the loan of the plaintiff to a tune of Rs. 8,45,056/- under sanction letter dated 18-01-2007. It is denied that the plaintiff informed the defendant about the sanction of the loan or was expecting the defendant to come forward for execution of a registered sale deed in respect of the suit flat.

10. With regard to the allegation in para 10, the defendant denies that the plaintiff was waiting patiently for any correspondence to be received from the defendant. It is denied that the plaintiff visited office of the defendant on several occasions or was making request in that regard or that there was no proper response from the defendant. It is true a notice dated 19.02.2007 was issued but a true and proper reply was given thereto.

11. With regard to the allegations in para 11, it is true that this defendant received the notice dated 22.02.2007 from the plaintiff. It is also true that this defendant gave a suitable reply but it is false to say that this

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the office of the defendant 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 completed or that he would be intimated about the details. It is denied that the letter dated 08.06.2006 addressed by the defendant was not according to facts.

7. With regard to the allegations in para 7, it is true that the Plaintiff addressed a letter dated 22.06.2006 but it is denied that he had not received any reminders or intimations from the defendant at any point of time for execution of the sale agreement as alleged. It is true that the plaintiff 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 8 of the plaint, it is surprising that the plaintiff should now allege that the defendant sent his representative to the plaintiff to demand some more amount. It is true that a cheque for Rs. 25,000/- was issued. It is denied that the plaintiff who was waiting patiently for a letter of the defendant 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 defendant as alleged. It is denied that when the plaintiff visited the office of the defendant 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 him further details later.



defendant had admitted regarding the execution of sale in favour of the plaintiff. There was no execution of agreement of sale as the plaintiff had failed to stick to the payment terms as agreed upon at the time of booking. The amount that is received is only a nominal booking amount and it is not a part payment of sale consideration as alleged by the plaintiff.

12. With regard to the allegations in para 12, it is not true to say that the plaintiff has not received any cancellation notice. The notice was given as the plaintiff failed to stick to the payment terms. The question of canceling a valid agreement does not arise as there is no agreement in the first instance. The so called rejoinder notice dated 12.03.2007 has been suitably replied and as the plaintiff has failed to make the payments his booking was cancelled and not any agreement as alleged by the plaintiff.

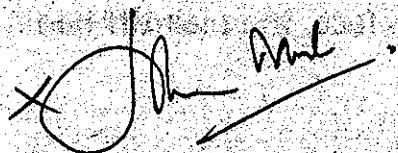
13. With regard to the allegations in para 13, It is emphatically denied that, there was any agreement executed by the defendant as alleged by the plaintiff. When the plaintiff has failed to make the payments as per schedule, the question of the defendant agreeing to execute and register a sale deed in favour of the defendant does not arise at all. It is not true to say that, the defendant had agreed to inform the plaintiff about the defendant's readiness to execute and register a sale deed. It is not true to say that the plaintiff was ready and willing to perform his part of contract. In fact, the plaintiff had failed to pay



the installments on time, which forced the defendant to cancel the booking. The defendant denies for want of knowledge the allegation that the plaintiff had been sanctioned loan from his banker.

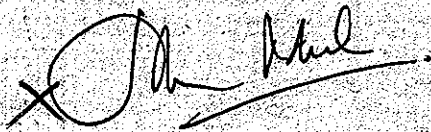
14. With regard to the allegations in para 14, the defendant emphatically denies again and again that there was any agreement and much less there was a failure on the part of the defendant to discharge his duty under the alleged agreement. The payments of loan installments to the banker is denied by the defendant for want of knowledge. The defendant has not received any part payment of sale consideration as alleged by the plaintiff. It was only a nominal booking amount. The plaintiff having utterly failed in keeping up his part of the contract i.e. making timely payments can not now demand the defendant to keep up his promise of selling the property to him. This defendant has got every right to dispose off the property developed by him as he deems fit and proper to any third party as the plaintiff has failed to do his part of the contract.

15. With regard to the allegations in para 15, the defendant emphatically denies that the plaintiff has any right to purchase the suit flat or get a sale deed executed and registered in his favour. The plaintiff has not approached this court with clean hands. The plaintiff having failed to keep up his part of the contract has no right to ask for specific performance of an non-existing agreement of sale. The plaintiff has



19. With regard to the allegations in para 19, the defendant denies that for want of knowledge regarding the sanctioning of loan to the plaintiff by his banker. The averments regarding exchange of notices between the plaintiff and the defendant are true but it is not correct to say that defendant has taken false pleas in reply.

20. The Defendant respectfully submits the plaintiff approached the defendant for booking for himself a flat bearing No.506, in the complex known as Gulmohar Gardens, being developed by the defendant in association with M/s. Sri Sai Builders. The Plaintiff was fully aware of the status of the project and the terms and conditions applicable for obtaining a flat. The plaintiff 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 the suit/schedule property. The plaintiff 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 plaintiff for completing the transaction. The booking form also has the terms and conditions on the reverse which form part of the conditions under the booking form. The terms under the booking form make it clear that the booking form is only provisional and an agreement had to be executed. The defendant 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

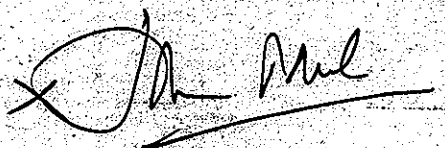


suppressed facts. It is not true to say that the defendant wants to make any illegal gains.

16. With regard to the allegations in para 16, the defendant denies that the plaintiff has got money to pay balance of consideration or that he was always ready willing to perform his part of the contract. The defendant denies that the plaintiff is ready to pay the balance of sale consideration or get sale deed executed or registered in his favour. It is denied that the defendant has entered into any valid agreement with the plaintiff or that the defendant received part of sale consideration or that the defendant is trying to sell the suit flat to third parties in order to harm the plaintiff.

17. With regard to the allegations in para 17, the defendant denies that there is any concluded agreement much less subsisting or still holding good between the plaintiff and the defendant. It is denied that the denial of execution and registration of sale deed in favour of the plaintiff by the defendant is illegal. It is denied that the law of equity is in the sale of the property by the defendant to the plaintiff alone or that the plaintiff has any existing rights in the property. The other allegations in the said para are argumentative and are not tenable.

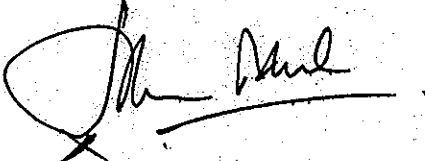
18. With regard to the allegations in para 18, the defendant denies that there is any agreement of sale existing or that the plaintiff has paid any part payment. There is no cause of action for filing the suit.



no only an agreement is executed by the plaintiff in favour of the defendant. It would not be a concluded contract.

21. The booking form clearly stipulates the formalities to be completed in respect of the property including the schedule of payment. The plaintiff, cannot therefore claim that he was ignorant as to the schedule of payments. After initial payment of Rs.10,000/- the plaintiff did not make any further payment until the letter addressed by the defendant. Even thereafter he has not complied with the requirements for completion of a valid contract. Therefore, the defendant addressed a letter to the plaintiff cancelling the agreement and informing him of this development. Strangely the plaintiff had issued a letter containing false and baseless allegations. Thereafter the correspondence between the parties is self-revealing.
22. It is submitted that the plaintiff cannot seek the equitable reliefs of specific performance as he has relied on false averments suppressing all facts and not performing his obligation under the contract. It is submitted that the plaintiff has approached this Hon'ble Court with false allegations and suppressing his laches.
23. It is therefore submitted that the plaintiff is not entitled to the relief specific performance and it is therefore prayed that this suit should be dismissed with heavy costs.

Place: L.B. NAGAR
Date: 29.10.2007



DEFENDANT

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**WRITTEN STATEMENT FILED BY
DEFENDANT**

Filed on: 29.10.2007

Filed by: C. BALA GOPAL
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