

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

O.S.No. 1549 of 2007

Between :

VINAY AGARWAL

... PLAINTIFF

AND

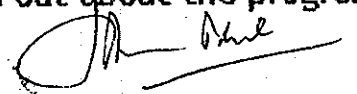
SUMMIT BUILDERS

... DEFENDANT

DEFENDANT

WRITTEN STATEMENT ON BEHALF OF THE ~~RESPONDENT~~

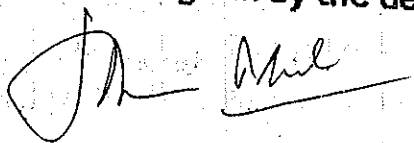
1. The defendant denies all the adverse allegations contained in the plaint and it should not be deemed to have admitted any allegation which is not specifically denied herein.
2. The paras No.1 & 2 are formal and do not require any reply.
3. With regard to the allegations in para No.3, it is true that the defendant is the owner and developer of an Apartment block named as SILVER OAK. It is also true that the Plaintiff approached the Defendant for purchasing a Flat in the said venture but the Plaintiff had only booked a Flat as per Booking Form supplied to the Respondent. It is true that the plaintiff proposed to purchase Flat No.401, admeasuring 725 square feet with proportionate undivided share of land admeasuring 36.25 square yards. The Plaintiff 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 4, it is not true that the total cost of the flat was fixed at Rs.4,70,525/- (Rupees Four Lakhs Seventy Thousand Five Hundred and Twenty Five only). The total cost of the flat was fixed at Rs.5,40,525/-. 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 the payment does not amount to a conclusion of any agreement.
5. With regard to the allegations in para No.5 the plaintiff has deliberately omitted to mention about the execution of the booking form and the terms contained therein. It is denied that the defendant had informed the plaintiff that it would update the plaintiff 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, it is pertinent to note that the plaintiff did not make any effort to find out about the progress of



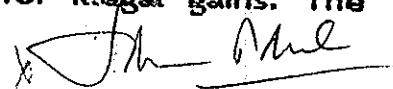
2

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 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 05.05.2006 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 15.05.2006 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 submitted that a cancellation letter was issued when there was no reply for the reminders sent earlier. It is not true to say that the plaintiff visited the office of the defendant and discussed with the officials of the defendant. It is denied that the defendant had issued the cancellation letter only to ascertain the interest of the plaintiff in purchasing the flat. It is utterly false to say that there was an assurance from the defendant regarding safeguarding the interest of the plaintiff or that he can make payments as and when he receives his loan amount.
9. With regard to the allegations in para 9, it is true that the plaintiff had paid an amount of Rs.75,000/- on 11.07.2006 and further promised to keep up the payment schedule. In good faith this defendant accepted the payment but the plaintiff defaulted in making further payments as promised by him.
10. With regard to the allegation in para 10, it is not true to say that the defendant avoided to meet the plaintiff or that the plaintiff took any steps for making payments. It is true that inspite of his failure to make payments, the plaintiff got issued a notice dated 19.02.2007 for which a suitable reply was given by the defendant.

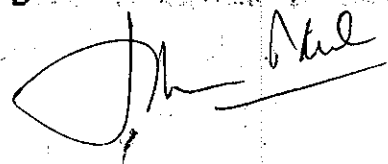


11. With regard to the allegations in para 11, it is true that the notice was served on the defendant and the same was received on 22.02.2007 to which the defendant gave a suitable reply on the same day but it is not true to say that it contained false and baseless allegations. It is true that the defendant admitted regarding the part payment and also the agreement of sale executed in favour of the plaintiff. The cancellation letter dated 09.08.2006 was addressed by the defendant to the plaintiff as the plaintiff failed to keep up his promise for making payments as per schedule.
12. With regard to the allegations in para 12, it is not true to say that the cancellation notice issued by the defendant cannot terminate the agreement. It is false to say that the caveat was lodged before this Hon'ble Court with a malafide intention. It was only to protect the rights of the defendant.
13. With regard to the allegations in para 13, it is not true to say that the defendant after receiving the part payment there was any change in the attitude or the behaviour of the defendant in executing and registering a sale deed. In fact, it was the plaintiff who has failed to keep up his part of the agreement i.e. payment of installments as agreed upon at the time of booking and also subsequently when he assured to make payments. It is, therefore, submitted that the plaintiff was never ready and willing to perform his part of the contract.
14. With regard to the allegations in para 14, the defendant denies that it has gone back on its promises or failed to discharge its duty and burden cast upon it under the alleged agreement. This defendant is not aware of the agreement between the plaintiff and his bankers. The defendant submits that there is no concluded agreement between the plaintiff and the defendant. The defendant further respectfully submits that there is no contract subsisting between the plaintiff and the defendant.
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. It is not true to say that the plaintiff had made efforts to convince the defendant and settle the dispute amicably. It is, further, denied that the defendant is bent upon causing harm to the plaintiff for illegal gains. The



defendant has never gone back on its promise nor demanded for any enhancement in the sale consideration.

16. With regard to the allegations in para 16, the defendant denies for want of knowledge that the plaintiff has got money to pay balance of consideration or that he was always ready and 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 a 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 valid.
18. With regard to the allegations in para 18 & 19, the defendant submits that there is no subsisting cause of action and as such the plaintiff is not entitled to any reliefs.
19. The defendant respectfully submits that the plaintiff approached the defendant for booking for himself a flat bearing No.401, in the complex known as SILVER OAK APARTMENTS, admeasuring 725 square feet, situated at Cherlapally village, Ghatkesar Mandal, R.R. Dist. being developed by the defendant. 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 property. The plaintiff signed the booking form on 10.09.2005 and issued a cheque for the first payment of Rs.10,000/- (rupees Ten Thousand only). 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 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.
20. It is, therefore, denied that a transaction was completed under an oral agreement as alleged by the plaintiff. It is pertinent to mention here that this defendant does not have the practice of entering into any oral agreements.
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 canceling 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 for the relief of specific performance much less that of execution of sale deed and its registration in his favour.
24. Therefore, this defendant submits that the suit which is based on false averments be dismissed with exemplary costs.

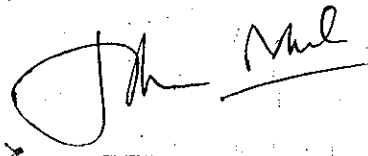
Place: L.B. NAGAR  
Date: 05.12.2007

  
FOR DEFENDANT

**VERIFICATION**

I, Soham Modi, S/o. Satish Modi, Aged 37 years, Occ: Business, R/o. Secunderabad, hereby state that the above averments are true to the best of my knowledge. Hence verified.

Place: L.B. NAGAR  
Date: 05.12.2007



DEFENDANT

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

O.S.No. 1549 of 2007

BETWEEN :

VINAY AGARWAL

... PLAINTIFF

AND

SUMMIT BUILDERS

... DEFENDANT

WRITTEN STATEMENT  
OF THE DEFENDANT

Filed on: 05-12-2007

Filed By:

C. BALA GOPAL

Counsel for Defendant

-----  
103, Harivillu Apartments,  
West Marredpally,  
Secunderabad-26.