FORM No. 2 SUMMONS FOR SETTLEMENT OF ISSUES

(Order V Rules 3 & 5)

IN THE COURT OF THE III Addl. Senior civil Judge

AT L.B. Nagar

O.S. No. 994 2007 of

Between : Vinay Agarwal Plaintiff

AND

Modi Ventures & another Defendant

To Vinod Yadlapati

R/o. Flat 506 - C-Block 5th Floor

Gulmohar Gardens Apts, Mallapur, R.R.Dist

Whereas the _____

has instituted as suit against you for _____

you are hereby summoned to appear in this court in person or by a pleader duly instructed and able to answer all material questions relating to the suit or who shall be accomplained by some person able to answer all such questions on the 6 day of 10 2010 at 10-30 O'clocks in the forenoon to answer the claim, and further you are hereby directed to file within 30 days of Service of this Summon a written statement of your defence and to produce on the said day all documents in your possession or power upon which you base your defence.

TAKE notice that in default of your appearance and to file your written statement within 30 days the suit will be heard and determined in your absence.

GIVEN under my hand seal of this court this 3 day of 9 2010

JUDGE

CITY CIVIL COURT

NOTICE : 1. Should you appeared your witness will not attend on their own accord you can have summons from this court to compel the attendance of any witness and production of any document that you have [illegible] upon the witness to produce on applying to the court and an depositing the necessary expenses.

2. If you admit the claim you should pay the money into court together with cost of the suit to avoid execution of the decree, which may be against your person or property or both.

IN THE COURT OF THE HON'BLE III ADDL. SENIOR CIVIL JUDGE RANGA REDDY DISTRICT COURTS ; AT L.B.NAGAR ; HYDERABAD

O.S.No. 994 OF 2007

Between :

Sri Vinay Agarwal
S/o. Sri Vasudev, aged 42 years
Occ : business, R/o. Flat No.403
Susheel Residency, Opp. CDR Hospital
Hyderguda, Hyderabad – 500 029.

...Plaintiff

AND

1. M/s. Modi Ventures
represented by its partner Sri Soham Modi
S/o. Sri Satish Modi, aged 37 years, Occ : business
having office at 5-4-187/3, III Floor
M.G. Road, Secunderabad – 500 003.

2. Sri Vinod Yadlapati, S/o. Sri Y.S.N. Sarma
aged 31 years, R/o.12-11-1371, Bhoudanagar
Secunderabad – 500 061.

...Defendants

(defendant No.2 added as per orders dated 01-06-2010 in IA.No.41/2008

SUIT FOR SPECIFIC PERFORMANCE

AMENDED PLAINT PRESENTED UNDER SECTION 26, ORDER VII RULE 1 OF CIVIL PROCEDURE CODE, 1908

1. The description of the plaintiff is the same as given in the above cause title and his address for the purpose of service of all notices, etc. is that of the counsel M/s. SHYAM S.AGRAWAL, L.Praveen Kumar, L. Pradhan Kumar, K. Sashirekha, and Naresh Singh, advocates, having office at # 101, R.K.Residency, lane beside Minerva Coffee Shop, 3-6-237/1, Street No.15, Himayatnagar, Hyderabad - 500 029, Phone : 91-40-2322-2700.

2. The description and the address of the defendant for the purpose of service of all summons, notices, etc., are the same as mentioned in the above cause title.

3. The plaintiff submits that the defendant is the owner and developer of "Gulmohar Gardens" apartments in the land forming part of survey Nos.93 to 95, situated at Mallapur, Ranga Reddy district. For the purpose of selling the flats to prospective purchasers, the defendant advertised for the same. As the plaintiff was interested in the venture taken up by the defendant and intended to purchase a flat therein, the plaintiff approached the defendant in that regard. The defendant showed to the plaintiff the brochure relating the proposed apartment and the plaintiff selected the flat No.506 on fifth floor in C block, hereinafter referred to as the 'suit flat'.

PLAINTIFF

Contd..2

4. The plaintiff further submits that after negotiations the sale consideration was fixed at Rs.799/- per square feet and in view of the extent of the suit flat being 750 square feet, the total sale consideration of the suit flat was arrived to at Rs.5,99,250/-. Apart from the sale consideration, the plaintiff was asked to pay a sum of Rs.50,000/- towards the charges for the amenities, Rs.5,000/- towards parking and Rs.15,000/- towards electricity charges. The plaintiff paid to the defendant under receipt No.114, a sum of Rs.10,000/-, through cheque No.819353, dated 14-03-2006 drawn on M/s. HDFC Bank, towards earnest money and part payment of sale consideration, which was encashed by the defendant in conclusion of the agreement.

5. The plaintiff also submits that on receiving such payment, the defendant issued a receipt dated 14-03-2006 to the plaintiff stating that the said amount was received towards booking amount of Flat No.C-506 in "Gulmohar Gardens" apartment, in survey Nos.93 to 95, situated at Mallapur, Ranga Reddy district, admeasuring 750 square feet together with undivided share of land, which is more clearly described in the schedule of property of the plaint given below. The defendant had also informed the plaintiff that they would intimate to the plaintiff the progress of construction of the complex and accordingly would also inform the plaintiff about the payment of balance of sale consideration to be made by the plaintiff.

6. The plaintiff submits that he was waiting patiently for the letter of the defendant to inform him about the status and progress of the complex and about the amounts to be paid by him, but he did not receive any correspondence or communication from the defendant as told by the defendant. 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 and that they would intimate him further details later. To the utter shock and surprise of the plaintiff, instead of the intimation letter, he received a letter from the defendant dated 08-06-2006 alleging that his agreement was only a provisional booking and that despite repeated reminders the plaintiff did not come forward to execute a sale agreement and to make further payments.

7. The plaintiff further submits that immediately he approached the defendant questioning about their illegal activity and had also addressed a letter dated 22-06-2006 making it clear that he had not received any reminders and intimations from the defendant at any point of time requesting for execution of the sale agreement. On receiving the same the defendant stated that they had issued the said letter only to ascertain as to whether the plaintiff was still interested in purchasing the suit flat and asked the plaintiff to ignore it. The defendant had given assurance3 to the plaintiff that the suit flat would not be sold to any third party.

8. The plaintiff also submits that in pursuance of the assurances given, the defendant sent his representative to the plaintiff demanding payment of some more amount.

PLAINTIFF

Contd..3

the plaintiff issued to the defendant the cheque No.691785, dated 11-07-2006, for Rs.1,00,000/- drawn on M/s. HDFC Bank Ltd., Himayatnagar branch, Hyderabad towards further part payment, which was duly acknowledged by the defendant. It is pertinent to mention here that it was the defendant who sent his representative to the house of the plaintiff to collect the cheque giving assurance that the interest of the plaintiff would be safe guarded.

9. The plaintiff submits that thereafter the defendant informed the plaintiff that the construction work of the flat is almost complete and asked the plaintiff to make necessary arrangements for obtaining bank loan. Accordingly, the plaintiff applied for housing loan with M/s. ICICI Bank Ltd., vide application No.777-6252602 and the banker had sanctioned loan to the plaintiff to a tune of Rs.8,45,056/- vide sanction letter dated 18-01-2007. The plaintiff had informed to the defendant about the sanction of the loan and was expecting the defendant to come forward for execution and registration of the sale deed in respect of the suit flat.

10. The plaintiff further submits he was waiting patiently for the correspondence to be received from the defendant but there was no response. The plaintiff visited the office of the defendant on several occasions making requests in that regard, but there was no proper response from the defendant. Having lost hope that there would be any response from the defendant, the plaintiff got issued a legal notice dated 19-02-2007 to the defendant through his advocate calling upon the defendant to execute and register the sale deed in respect of the suit flat by receiving the balance amount of sale consideration at the time of registration of sale deed on any day, within 15 days from the receipt of the legal notice.

11. The plaintiff also submits that the notice was served on the defendant on 22-02-2007 as is evident from the postal acknowledgement. The defendant addressed a reply dated 22-02-2007 stating that as per the alleged terms of booking, the purchaser was required to execute an agreement within 30 days and failure of the same would result in cancellation of the alleged provisional booking. Though the defendant admitted the agreement of sale in favour of the plaintiff and the receipt of part payment of sale consideration, he alleged that he had addressed another cancellation notice dated 09-08-2006 to the plaintiff.

12. The plaintiff submits that he has not received any such cancellation notice from the defendant at any point of time except the one as stated above. In fact even if any such notice is given, the same cannot terminate the valid agreement of sale between the parties, which the plaintiff has made good amount towards part payment of sale consideration under proper receipt. The plaintiff got issued a rejoinder notice on 12-03-2007 denying receipt of any cancellation notice and made it clear that the defendant cannot terminate the agreement unilaterally. The defendant got issued a reply through advocate on 28-03-2007 taking the same stand, which is false.

PLAINTIFF

Contd..4

13. The plaintiff further submits that having received money towards part payment of sale consideration and having agreed to execute and register the sale deed, the attitude and behavior of the defendant in not coming forward to fulfill his part of the contract prompted the plaintiff to suspect the bonafides on part of the defendant. In fact, at the time of entering into the agreement, it was agreed between the parties that the defendant will inform the plaintiff about his readiness to execute and register the sale deed by receiving the balance of sale consideration after completion of the complex. The plaintiff has always been ready and willing to perform his part of the contract of making payment of balance of sale consideration and in fact on the promises of the defendant, the plaintiff has already got sanctioned loan from the banker.

14. The plaintiff submits that the defendant has gone back his promises and failed to discharge the duty and burden cast upon him under the agreement. In fact the plaintiff is required to pay the loan instalments to the banker as the same has already been sanctioned. As stated above, the defendant has entered into the agreement by receiving money towards part payment of sale consideration from the plaintiff. Having agreed to sell the property to the plaintiff, having received the part payment of sale consideration, the defendant cannot go back the transaction nor does he have the right to terminate the same. As per the provisions of Law governing the contracts and properties, the defendant is bound to sell the property to the plaintiff by executing and registering the sale deed in his favour and he cannot part with it in favour of third party.

15. The plaintiff further submits that he has got every right to purchase the suit flat and get the sale deed executed and registered in his favour. Hence, the plaintiff is left with no other option but to approach this Hon'ble court for specific performance of the agreement of sale. The plaintiff has made efforts to convince the defendant and to settle the dispute amicably, but he has failed as the defendant is bent upon to cause harm to the plaintiff for illegal gains and make money in illegal manner. It would not be out of place to mention here that the defendant has gone back the promise demanding the plaintiff to enhance the sale consideration, which is not legal.

16. The plaintiff also submits that he has got money to pay the balance of sale consideration of Rs.6,34,250/- to the defendant as he has already got the loan sanctioned from the banker for a sum of Rs.8,45,050/- for the purpose of making payment of balance of sale consideration to the defendant in respect of the suit flat, payment of stamp duty, registration charges, etc. The plaintiff has always been ready and willing to perform his part of the contract. The plaintiff is ready to pay the balance of sale consideration and get the sale deed executed and registered in his favour. In a very illegal and highhanded manner, after entering to agreement of sale with the plaintiff and after receiving part of sale consideration, the defendant is trying to sell the suit flat to third parties, in order to cause harm to the plaintiff, which is not permissible in law.

PLAINTIFF

Contd..5

17. The plaintiff submits that the agreement of the plaintiff is subsisting and it still holds good. From the facts of the case, it is very clear that the intention of the defendant in refusing to execute and register the sale deed in favour of the plaintiff is illegal and against all the morals also. The law of equity favours for sale of the property by the defendant to the plaintiff alone and the defendant has no exclusive and unilateral right to cancel or terminate the contract and forfeit the amount of part payment made by the plaintiff to him.

18. The cause of action for the present suit initially arose on 14-03-2006 when the defendant offered to sell the suit flat to the plaintiff, entered into an agreement for sale with the plaintiff, received part payment of sale consideration. It also arose on the dates when the parties exchanged letters, on 11-07-2006 when the defendant received further payment from the plaintiff, on the dates when the plaintiff demanded and requested the defendant to execute and register the sale deed, but the defendant failed.

19. The cause of action further arose when the plaintiff got sanctioned loan from the banker for payment of balance of sale consideration to the defendant, on 19-02-2007 when the plaintiff got issued the legal notice to the defendant calling upon to execute and register the sale deed, on 22-02-2007 when the defendant replied with false allegations, on 12-03-2007 when the plaintiff got issued a rejoinder notice making the legal position clear to the defendant that he has to perform his part of contract and on 28-03-2007 when the defendant got issued a reply through advocate refusing to execute and register the sale deed. The cause of action is continuing.

20. This Hon'ble court has got jurisdiction to entertain the suit as the suit property is situated at Mallapur village of Ranga Reddy district and the cause of action arose within the territorial jurisdiction of this Hon'ble court. This Hon'ble court has also got pecuniary jurisdiction.

21. The plaintiff has not filed any other case in this regard and no suit or other proceedings are pending between the parties to the present suit before any other court. The suit is being filed within a period of three years from the date of refusal of the defendant to execute and register the sale deed in favour of the plaintiff and therefore the same is within the period prescribed by law and is not barred by limitation.

22. The plaintiff values the relief of specific performance of the agreement of sale for the purpose of court fee and jurisdiction at Rs.6,69,250/- under section 39 of the Andhra Pradesh Court fees and Suits Valuation Act and the proper court fee is Rs. /-. The relief of perpetual injunction is valued notionally at Rs.5,000/- under section 26 (c) and pays the proper Court fee is Rs. /-. Thus the total court fee of Rs. /- is paid under Article 1 (b) & (c) of Schedule I of the A.P.Court Fees and Suit Valuation Act, which is sufficient.

PLAINTIFF

Contd..6

23. The plaintiff therefore prays that this Hon'ble court may pleased to pass judgment and decree

i. Directing the defendant to execute and register the sale deed in favour of the plaintiff or his nominee/s by receiving the balance of sale consideration of Rs.6,34,250/- in respect of all that the Flat No.C-506 on fifth floor in "Gulmohar Gardens" Apartment, forming part of land in survey Nos.93 to 95, situated at Mallapur, Ranga Reddy district, admeasuring 750 square feet together with proportionate undivided share of land, as given in the schedule and on failure of the defendant to come forward to execute and register the sale deed, this Hon'ble court may be pleased to execute and register the sale deed in favour of the plaintiff or his nominee/s, on behalf of the defendant.

ii. Consequently pass a decree for perpetual injunction restraining the defendant from transferring, alienating, creating any third party interest or charge of the suit flat in favour of the third parties or parting with possession in respect of the Flat No.C-506 on fifth floor in "Gulmohar Gardens" Apartment, forming part of land in survey Nos.93 to 95, situated at Mallapur, Ranga Reddy district, admeasuring 750 square feet together with proportionate undivided share of land, as given in the schedule.

iii. Award the costs of the suit and grant such further relief or reliefs as this Hon'ble court may deem fit and proper in the circumstances of the case.

COUNSEL FOR THE PLAINTIFF

PLAINTIFF

Hyderabad
23-04-2007.

SCHEDULE OF THE PROPERTY

All that the Flat No.C-506 on fifth floor in "Gulmohar Gardens" Apartment, forming part of land in survey Nos.93 to 95, situated at Mallapur, Ranga Reddy district, admeasuring 750 square feet together with proportionate undivided share of land and bounded by :

NORTH	:	6 feet wide corridor
SOUTH	:	Open to sky
EAST	:	Corridor and Open to sky
WEST	:	Flat No.507

PLAINTIFF

Contd..7

VERIFICATION

I, Vinay Agarwal, S/o. Sri Vasudev, aged 42 years, Occ : business, R/o. Flat No.403, Susheel Residency, Opp : CDR Hospital, Hyderguda, Hyderabad do hereby declare that the contents of the above plaint and the schedule of property are true to the best of my knowledge, information, belief and legal advice, which I believe to be true and hence verify the same as true and correct on this the 22nd day of April, 2007 at Hyderabad.

PLAINTIFF

LIST OF DOCUMENTS FILED BY THE PLAINTIFF

S.No.	DATE	DESCRIPTION OF THE DOCUMENT
1.	14-03-2006	Receipt issued by the defendant
2.	08-06-2006	Letter addressed by the defendant
3.	22-06-2006	Reply letter addressed by the plaintiff
4.	11-07-2006	copy of cheque No.691785 with endorsement of receipt
5.	18-01-2007	Loan sanction letter
6.	19-02-2007	Office copy of legal notice
7.	22-02-2007	Reply letter of the defendant
8.	12-03-2007	Office copy of rejoinder notice
9.	28-03-2007	Reply notice of the defendant
10.	12-03-2007	Encumbrance certificates (2)
11.		Brochure of typical floor plan of the suit flat

Hyderabad
23-04-2007.

PLAINTIFF

IN THE COURT OF THE III ADDL SENIOR CIVIL JUDGE ; RANGA REDDY DISTRICT COURTS ; AT L.B.NAGAR ; HYDERABAD

O.S.No. 994 OF 2007

Between :

Sri Vinay Agarwal ...Plaintiff

AND

M/s. Modi Ventures and another ...Defendants

SUIT FOR SPECIFIC PERFORMANCE

AMENDED PLAINT PRESENTED UNDER SECTION 26, ORDER VII RULE 1 OF CIVIL PROCEDURE CODE, 1908.

Filed on : 23-04-2007/23-06-2010

Filed by :

M/s.SHYAM S.AGRAWAL
L.Praveen Kumar
L.Pradhan Kumar
K.Shashirekha
Naresh Singh

COUNSEL FOR THE PLAINTIFF