

o/c

**IN THE COURT OF THE XI ADDL. CHIEF METROPOLITAN MAGISTRATE
AT SECUNDERABAD**

C.C. No. OF 2011

Between:

M/s. Alpine Estates, a partnership firm
having their registered office at 5-4-187/3&4,
II Floor, Soham Mansion,
M.G.Road, Secunderabad
rep. by his Authorised Signatory Mr. Ramacharyulu
S/o L. Raghavendra Rao, aged 48 years,
R/o Domalguda, Hyderabad.

... Complainant

AND

Mr. P. Girish S/o Gunde Rao
Aged about 32 years,
R/o Flat No. 214, Block-A, Mayflower Heights,
Mallapur, Hyderabad
Also at Fullerton Financial, P.O. Box No. 73186
Dubai.

... Accused

**COMPLAINT FILED UNDER SEC. 200 OF Cr.P.C.
FOR THE OFFENCES COMMITTED U/s. 138 & 142 OF N.I. ACT.**

1. Complainant : Alpine Estates, a partnership Firm rep. by its Authorised Signatory Mr. Ramacharyulu
2. Name of the Accused : P. Girish
3. Date, time and place of Offence :
Cheque No. 834786 dated 02.12.2010 for Rs. 50,000/- drawn on ICICI Bank, Nallakunta, Hyderabad.

Cheque presented for Collection through HDFC Bank, Begumpet Hyderabad

The Cheque returned for reasons 'Funds Insufficient' on 06.12.2010.

On 15.12.2010 Complainant got issued Notice of Demand for payment to the Accused address as shown in the cause title.
4. Nature of offence : The Cheque was returned for the reason of "Funds Insufficient".
5. Offence Under Section : Offence U/s. 138 and 142 of N.I. Act.
6. Penal Section : U/s. 138 of N.I. Act.

7. Name of the P. S : P.S.Ramgopalpet
8. List of Witnesses : 1. M/s.Alpine Estates
Rep. by its Managing Partner
Sri Soham Modi
2. The Branch Manager,
ICICI Bank
Nallakunta, Hyderabad
Hyderabad
3. The Branch Manager,
HDFC Bank
Begumpet

BRIEF FACTS:

The Complainant Submits as follows:

1. The Complainant is a registered partnership firm having its office at 5-4-187/3&4, "Soham Mansion", M.G.Road, Secunderabad represented by its Managing Partner Sri Soham Modi.
2. The Complainant submits that the Accused had booked flat bearing No.A-214, in the project known as "Mayflower Heights" situated at Mallapur, R.R.District vide Booking Form bearing No.1272 dated 28.05.2008 from Complainant Company. As per the terms and conditions of Booking Form the Accused is liable to pay the amounts as per the schedule mentioned in Booking Form. If the Accused fail to pay the payments as per the schedule he is liable to pay interest for the delayed payments. The Accused was not regular in payment of the instalments as per the schedule and the Accused had delayed the payments as such taking into consideration of the delay in payments, he was liable to pay a sum of Rs.6,82,997/-. This was informed to the Accused and the Accused approached the Complainant Company and requested to waive the interest. On negotiations, the Accused had agreed to pay Rs.50,000/- in discharge of the interest for delay in payments for which the Complainant client agreed. Accordingly, the Accused issued a cheque No.834786 dated 02-12-2010 for Rs.50,000/- drawn on ICICI Bank Nallakunta, Hyderabad.

3. The Complainant submits that the said cheque was presented on 04.12.2010 for realization through its Banker HDFC Bank, Begumpet, Hyderabad. To the utter surprise and dismay of the Complainant, the said Cheque presented for realization was returned unpaid vide Cheque Return Memo dated 06-12-2010 for the reason "Funds Insufficient".

4. It is respectfully submitted that, the complainant through their Advocate, got issued a legal notice dated 15.12.2010 to the Accused demanding for payment of the said Cheque amount within 15 days from the date of receipt of the said notice and the said legal notice was sent by registered post acknowledgement due. The Accused refused to receive the said notice and "Not claimed" as per the postal endorsement, which amounts to service of notice.

5. It is respectfully submitted that issuing cheque without sufficient funds or arrangement to honour the cheque in question is an offence punishable under Section 138 of Negotiable Instruments Act, 1881 as amended by Act 55 of 2002. Therefore, the Accused is liable for his illegal acts and omissions which also amounts to an offence punishable U/S.420 of Indian Penal Code.

It is respectfully submitted that, by his illegal and malafide action, the Accused has rendered himself liable to be prosecuted for the Offence committed by him under Section 138 of N.I.Act, 1881 as amended by Act 55 of 2002.

6. CAUSE OF ACTION:

The cause of action for the complaint arose when the Accused issued cheque dated 02.12.2010 and on 4.12.2010 when the cheque was returned dishonoured for the reason of "Funds Insufficient" by the Banker of Accused and on 15.12.2010 when the Complainant got issued a notice and on 20.12.2010 when the Accused "not claimed" the said notice and on all other dates the cause of action is still subsisting.

7. JURISDICTION:

This Hon'ble court has got jurisdiction to entertain this Complainant since the Complainant's registered office is situated at Soham Mansion, M.G.Road, Secunderabad which is within the territorial jurisdiction of this Hon'ble court.

8. LIMITATION:

The Criminal Complaint is within time as prescribed under Law.

9. PRAYER:

The Complainant prays that this Hon'ble court may be pleased

- a). to take cognizance of the offence punishable under section 138 of Negotiable Instruments Act;
- b). Issue summons and punish the Accused as per law;
- c). Award double the amount of cheque towards compensation under section 357 (3) of Cr.P.C. to the Complainant and
- d). pass such other order or orders as this Hon'ble court may deem fit and proper, in the interest of justice.

SECUNDERABAD

DATE: .01.2011

COMPLAINANT

COUNSEL FOR THE COMPLAINANT

VERIFICATION

I, Ramacharyulu S/o Sri L.Raghavendra Rao, the Authorised Signatory of the Complainant, do hereby declare and state that the facts stated in the complaint are true and correct to the best of my knowledge, belief and information. Hence verified on this the _____ day of January, 2011 at Secunderabad.

SECUNDERABAD

Date: -11-2011

COMPLAINANT

LIST OF DOCUMENTS

S.No.	Date	Description of document	
1.	02.12.2010	Cheque No.834786 for Rs.50,000/- drawn on ICICI Bank, Nallakunta, Hyderabad - copy	
2.	06.12.2010	Return memo - copy	
3.	15.12.2010	Legal Notice – Xerox copy	
4.		Returned postal cover	
5.		Authorisation letter of the Complainant firm	

The originals of all the documents will be submitted at the time of trial.

SECUNDERABAD
DATE: .1.2011

COMPLAINANT

COUNSEL FOR THE COMPLAINANT

IN THE COURT OF THE XI ADDL.
CHIEF METROPOLITAN
MAGISTRATE
AT SECUNBDERABAD

C.C. No. OF 2011

Between:

M/s.Alpine Estates
.. Complainant

And

P.Girish
.. Accused

COMPLAINT FILED UNDER SEC. 200
OF Cr.P.C.FOR THE OFFENCES
COMMITTED U/s. 138 & 142 OF
N.I. ACT.

FILED ON : .1.2011

FILED BY:

Sri C.BALAGOPAL
Advocate

Address for Service:

Flat No.103, Suresh Harivillu Apts
Road No.11, West Marredpally
Secunderabad.
Ph: 64570512 / 9246172988

COUNSEL FOR THE COMPLAINANT

C.BALAGOPAL
Smt.Ameerunnisa Begum
K. Vijaya Saradhi
C.V.Chandramouli
Advocates

Flat No.103, Suresh Harivillu Apts,
Road No.11, West Marredpally,
Secunderabad - 500026.
Ph: 64570512 / 9246172988

By Regd.Post with Ack.Due

Date: 16-12-2010

To

Sri K.C.Raj Kumar S/o K.C.Raman
R/o Flat No.503, Block-A, Paramount Residency
Nagaram, Keesara Mandal
Hyderabad - 500062.

Under instructions from our client M/s.Paramount Builders, having its registered office at 5-4-187/3&4, "Soham Mansion", M.G.Road, Secunderabad, represented by its Managing Partner Sri Soham Modi, we have to address you as follows:

1. You agreed to purchase from our client flat bearing No.A-503, in the project known as "Paramount Residency" situated at Sy.No.176, Nagaram Village, Keesara Mandal, R.R.District under Booking Form bearing No.1334 dated 24.03.2009. Our client completed the construction of the flat and handed over the possession to you and you are presently residing in the said flat. At the time of handing over the possession of the above said flat, you were due to our client a sum of Rs.2,86,329/- towards balance sale consideration. You requested our client to extend loan of Rs.2,86,329/- which was agreed to by our client vide Loan Agreement dated.15.05.2010 and you agreed to repay the loan amount in 24 equal equal monthly instalments commencing form 1st Sept'10 to 1st July'12, in pursuance thereof, you issued 24 post-dated cheques in favour of our client towards the said loan. The particulars of the cheques issued by you are as follows:

Cheque No.	Date	Rs.	Drawn on
161161	01.08.2010	13,081/-	Bank of Baroda, Barkathpura
161162	01.09.2010	13,081/-	-do-
161163	01.10.2010	13,081/-	-do-
161164	01.11.2010	13,081/-	-do-
161165	01.12.2010	13,081/-	-do-
161166	01.01.2011	13,081/-	-do-
161167	01.02.2011	13,081/-	-do-
161168	01.03.2011	13,081/-	-do-
161169	01.04.2011	13,081/-	-do-
161170	01.05.2011	13,081/-	-do-
161171	01.06.2011	13,081/-	-do-
161172	01.07.2011	13,081/-	-do-
161173	01.08.2011	13,081/-	-do-
161174	01.09.2011	13,081/-	-do-
161175	01.10.2011	13,081/-	-do-
161176	01.11.2011	13,081/-	-do-
161177	01.12.2011	13,081/-	-do-
161178	01.01.2012	13,081/-	-do-
161179	01.02.2012	13,081/-	-do-
161180	01.03.2012	13,081/-	-do-
291422	01.04.2012	13,081/-	-do-
291423	01.05.2012	13,081/-	-do-
291424	01.06.2012	13,081/-	-do-
291421	01.07.2012	13,081/-	-do-

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The above cheques were received by our client subject to realisation that without prejudice to its primary claim. Out of the above said cheques, only one cheque bearing No.161161 dated 01.08.2010 was honoured on presentation. The following cheques were dishonored, the details of which are as follows:

Cheque No.	Date	Rs.	Drawn on
161162	01.09.2010	13,081/-	Bank of Baroda, Barkathpura
161163	01.10.2010	13,081/-	-do-
161164	01.11.2010	13,081/-	-do-
161165	01.12.2010	13,081/-	-do-

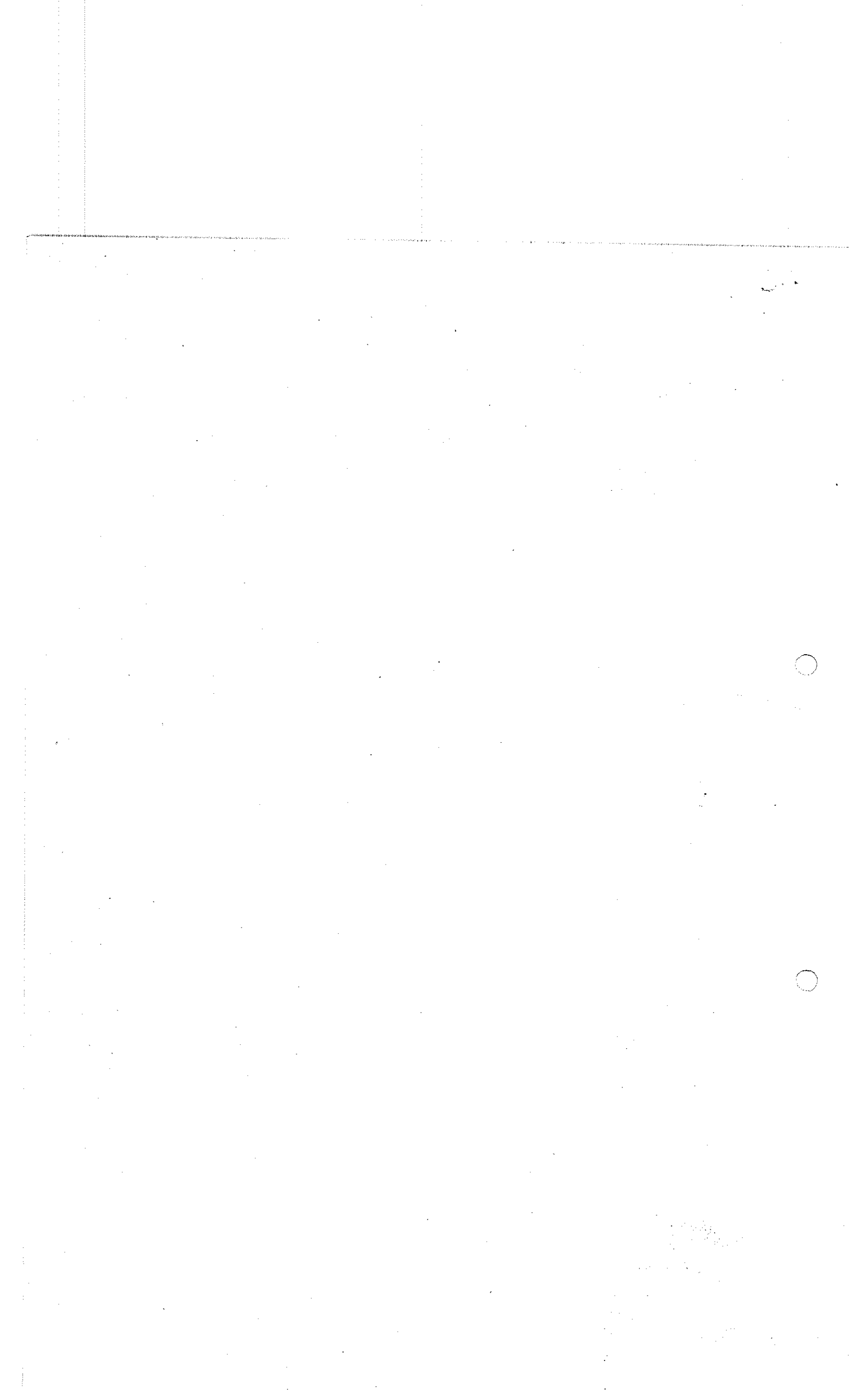
2. Our client states that the above said 4 cheques were presented for realization through its Banker HDFC Bank, Begumpet, Hyderabad. To the utter surprise and dismay of our client, the above said 4 Cheques presented for realization were returned unpaid vide Cheque Return Memo dated 02.12.2010 for the reason "Funds Insufficient". You know very well that the return of Cheques for the said reason is an offence punishable U/Sec.138 Negotiable Instruments Act and also amounts to cheating punishable U/s 420 of I.P.C. Further, you have issued the cheques knowing very well that the said cheques will be dishonoured for want of funds with dishonest intention to cause wrongful loss to our client. Thus, you have committed an offence punishable U/Sec.138 of Negotiable Instruments Act and U/s 420 of I.P.C.

Therefore, on behalf of our client, I hereby call upon you to make the payment of Rs.52,324/- (Rupees Fifty two thousand three hundred twenty four only) due to our client towards above Cheques amount within 15 days from the date of receipt of this Legal Notice, failing which, our Client will be constrained to proceed against you legally for the offences committed both civil and criminal including initiation of criminal prosecution under Section 138 of Negotiable Instruments Act and U/s 420 of I.P.C. for recovery of above said money and in that case, you will be held responsible for all the costs and consequences arising there from and also to pay Rs.2,000/- towards the cost of this legal Notice . Please further note that in view of the

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dishonour of the four cheques, you have defaulted in the payment of installments. Therefore in view of the clause 4 of the agreement, you are liable to pay entire balance amount of Rs. 2,73,248/- together with interest thereon @ 18% pa. Without prejudice to our client's right to proceed against you for prosecution u/s. 138 NI Act and Sec.420. of IPC, we hereby call upon you to pay the sum of Rs. 2,74,809/- inclusive of interest within 15days on receipt hereof. Please note that if you fail to comply with the above demands our client will make all such steps as are open to it under law both civil and criminal holding you liable for all costs and consequences thereof.

C. Balagopal
(C.BALAGOPAL)
ADVOCATE



Paramount Residency

(Owned & Developed by M/s. Paramount Builders & M/s. Bhargavi Developers)
 Sy.Nos. 176,
 Nagaram
 Keesara Mandal
 Hyderabad - 500 062.

Marketed by :



MODI

PROPERTIES &
 INVESTMENTS PVT.LTD.
 5-4-187/3 & 4, II Floor, M.G. Road,
 SECUNDERABAD - 500 003.
 Phone : 66335551 Fax : 040-27544058
 Email : info@modiproperties.com

BOOKING FORM

No. 1334

Name of Purchaser :	MR K C Rajkumar		
Name of the Father/Spouse:	MR K C Raman	Age	36
Address:	Flat 301 Block 1C - Paramount Residency Nagaram Keesara Mandal Hyderabad - 162		
Occupation :	Working for Kondrappa Gunk		
Phone	Office	Home	
	Mobile	9963294257	Email
Flat No.	A-503	Area	1075 Sft.
Parking	Scooter Parking No.	Car Parking No.	
Total Sale Consideration :	Rs. 18,95,000/-		
(in words)	Rupees. eighteen lacs Ninety five thousand		
Type of Flat	<input checked="" type="checkbox"/> Semi-deluxe <input type="checkbox"/> Deluxe		
Payment Terms	Booking Amount	Rs. 10,000	Receipt No. & Date : 24/3/09
Installment No.	Due Date	Amount	Remarks
1.	09-04-09	1,00,000/-	
2.	23-04-09	65,000/-	
3.	09-05-09	15,20,000/-	
4.			
5.	On Completion	2,00,000/-	
6.	of Depositing dues and		
7.	cost of Possession		
8.			
9.			
10.			
Payment Scheme	<input checked="" type="checkbox"/> Housing Loan		<input type="checkbox"/> Installment Scheme
Payment in favour of	<input checked="" type="checkbox"/> M/s. Paramount Builders		<input type="checkbox"/> M/s. Bhargavi Developers
Power Connection Type	<input checked="" type="checkbox"/> Single Phase		<input type="checkbox"/> Three Phase
Remarks			
	PPT No.	158	

I HEREBY DECLARE THAT I HAVE GONE THROUGH AND UNDERSTOOD THE TERMS AND CONDITIONS MENTIONED OVERLEAF AND SHALL ABIDE BY THE SAME.

Date: 24/3/09

Place: Sec. 2

Booked by : Devsankar

Signature of Purchaser: [Signature]

For Modi Properties & Investments Pvt. Ltd.

Signature: [Signature]

Name : Atsya Devsankar

Note :

M/s. Paramount Builders & M/s. Bhargavi Developers (Partnership firms) are the Joint Owners & Developers of Paramount Residency (HUDA sanction plan No.1481/P4/HUDA/2005, dt.22.08.2005). Modi Properties & Investments Pvt Ltd., are duly appointed as the sole Marketing Agents of M/s. Paramount Builders & M/s. Bhargavi Developers. All payments however shall be made directly in favour of Paramount Builders & Bhargavi Developers for their respective share of flats. The term Builder shall mean and include Modi Properties & Investments Pvt. Ltd., Paramount Builders & Bhargavi Developers

TERMS AND CONDITIONS :

- 1. NATURE OF BOOKING :**
 - 1.1 This is a provisional booking for a Flat mentioned overleaf in the project known as Paramount Residency.
 - 1.2 The provisional booking do not convey in favour of purchaser any, right, title or interest of whatsoever nature unless and until required documents such as Sale Agreement / Sale Deed / Work Order etc., are executed.
 - 1.3 The purchaser shall 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.
- 2. REGISTRATION & OTHER CHARGES :**
 - 2.1 Registration Charges, Stamp Duty and incidental expenses thereto as applicable at the time of registration shall be extra and is to be borne by the purchaser.
 - 2.2 Service Tax & VAT as applicable from time to time shall be extra and is to be borne by the purchaser.
- 3. MODE OF PAYMENT :**
 - 3.1 All payments from outstation locations are to be paid through DEMAND DRAFTS only. Demand Drafts / Local Cheques are to be made payable to PARAMOUNT BUILDERS / BHARGAVI DEVELOPERS. Cash payment shall be made only at the Head Office or Site Office. The purchaser must insist on a duly signed receipt from authorized personnel having photo identity cards
- 4. DELAYED PAYMENT :**
 - 4.1 Simple interest at the rate of 1.5% per month shall be charged on all delayed payments of installments. The rate of interest to be paid along with delayed installments is Rs. 1.50 per Rs. 100/- per month.
- 5. HOUSING LOANS :**
 - 5.1 The purchaser at his/her discretion and cost may avail housing loan from bank / financial institution. The purchaser shall endeavour to obtain necessary loan sanctions within 30 days from the date of provisional booking. The builder shall under no circumstances be held responsible for non-sanction of the loan to the purchaser for whatsoever reason. The payment of installments to the builder shall not be linked to the housing loan availed / to be availed by the purchaser.
- 6. CANCELLATION CHARGES :**
 - 6.1 In case of default mentioned in clause 1.3 above, the cancellation charges shall be Rs.5,000/-, Rs.10,000/- & Rs. 15,000/- for 1, 2 & 3 bedroom flats respectively.
 - 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 the loan. In case of such non intimation, the cancellation charges shall be Rs.5,000/-, Rs.10,000/- & Rs. 15,000/- for 1, 2 & 3 bedroom flats respectively.
 - 6.3 In case of request for cancellation in writing within 60 days of this provisional booking, the cancellation Charges shall be Rs.10,000/-, Rs.20,000/- & Rs.30,000/- for 1, 2 & 3 bedroom flats respectively.
 - 6.4 In all other cases of cancellation either of booking or agreement, the cancellation charges shall be 15% of the agreed sale consideration.
- 7. OTHER CONSEQUENCES UPON CANCELLATION**
 - 7.1 The purchaser shall re-convey and redeliver the possession of the Flat in favour of the builder at his/her cost free from all encumbrances, charges, claims, interests etc., of whatsoever nature.
- 8. ADDITIONS & ALTERATIONS :**
 - 8.1 Cost of any additions and alterations made over and above specifications mentioned in the brochure at the request of the purchaser shall be charged extra.
- 9. BROKERAGE COMMISSION :**
 - 9.1 The builder has not appointed any other agents for marketing and/or obtaining loans. No brokerage commission or any other charges shall be payable to any employee of the company.
- 10. MEMBERSHIP OF ASSOCIATION / SOCIETY :**
 - 10.1 The purchaser shall become a member of the Association / Society which shall be formed to look after the maintenance of Paramount Residency and abide by its rules.
- 11. POSSESSION :**
 - 11.1 The builder shall deliver the possession of the completed Flat to the purchaser only on payment of all dues to the builder.
- 12. OTHER TERMS & CONDITIONS :**
 - 12.1 Other Terms & Conditions mentioned in Sale Agreement / Deed and Work Order shall apply.
 - 12.2 In case, the flat is not ready for possession, the purchaser shall be entitled to the refund of the booking amount on the basis of the cancellation charges mentioned in clause 6.1 above and the outstanding installments and dues dates mentioned here.