

CH.LAKSHMI NARAYANA
ADVOCATE

102, 120, ROAD NO: 3,
S.R.K.PURAM,
DILSUKH NAGAR,
HYDERABAD.
92900-89567. 94404-76239.

DATE: 23-4-2009.

BY R.P.A.D.

To
Sri C. Bala Gopal, Advocate
10-2-278, Flat No: 103, Suresh Harivllu Appts.
Road No: 11, West Maredpally, Secunderabad- 26.

REPLY NOTICE.

Upon instructions from my client Smt. Poondla Umakumari w/o Poondla Thakur Prakash, Aged 50 years, Occ: house wife, addressed at No: 71, Silver Oak Bungalows, Charlapally, Hyderabad -500051, I am issuing this reply notice in detail as follows: -

1. Your client is a builder and developer and the developed the project under the name and style as " Silver Oak Bungalows " situated at Sy. No 291, Charlapalli, Hyderabad - 500 051.
2. It is true that my client had purchased on 10-10-2006 a bungalow bearing No: 256 in Silver Oak venture in an area of 370 Sq. yards for construction of 3000 Sq. feet plinth area for a total sale consideration of Rs. 56,50,000/- (Rupees Fifty six Lakh's and Fifty thousand only) under payment of installment scheme on the pari-papassu of progress of construction scheme excluding VAT, Registration & Stamp duty charges, Service Tax as per the terms and conditions therein, as mentioned in your Legal Notice. It seems that the said notice was issued through you without even placing the offer letter copy as could be noted from the 1.12 terms and conditions the said offer form is a provisional booking and the same does not confer any right, title or interest etc. Further in the said Booking Form my client clearly indicated at the Remarks column-"Construction and other amenities as per the Broacher provided with and paid a sum of Rs. 25, 000/- towards Booking. Your client has deviated from the Agreed terms in many aspects. On 30-11-2006, an Agreement of Sale was entered into with my client stipulating all terms and conditions mutually agreed upon and made to believe that the scheduled property is free from encumbrances of all nature. Further in the Sale Agreement at clause 6, your client categorically declared

Ch. Lakshmi Narayan
1

that the said scheduled property is "Free from all Encumbrances of any nature....". In trust and confidence my client has paid Rs.2, 00, 000 Lakh's on 06-11-06, which was collected by your client hiding the fact of scheduled property being under mortgage. As my client is staying in I phase of the said silver Oak Bungalow venture he was shocked to see the Play-Card Boards installed by your client about the scheduled property being under mortgage after the First installment was paid. On gathering facts my client has surprised to note that the scheduled property was mortgaged to HUDA authorities under a registered Mortgage deed executed by your client on 4th of January' 2006 itself and the scheduled property was not to be sold even on mandatory obligation with the Authorities.

3. Your client had sent a letter to my client on 9-12-2006 that the plot is mortgaged with HUDA and applied for NOC for releasing the same on or before 31-01-2007 and failed to do so till date. My client has made payment of Rs 19, 77, 500/- On 11-12-2006 basing on your letter and as per the terms in Sale Agreement. Your client has to pay the losses incurred for the false statements. On 23rd November' 2007 the Agreement of Construction was entered into by the parties by enclosing the proposed construction and the same was registered. My client had demanded your client to furnish the copy of sanction of HUDA, which was not furnished. Your client has not provided the Approved Plan copy and as such the same could be able to obtain by my client with great difficulty and came to know that there are deviations to the sanction plan in the actual construction of bungalows. The same was brought to the notice of your client but they did not turned up. It is known fact that in view of GOMS No: 86 dated 3-3-2006 the same shall not be regularized at future point of time even on payment of penal charges. My client had demanded for constructing the same as per the sanction plan by rectifying the registered sale deed at their cost as the same was due to their utter negligence and intentional default having full knowledge of GOMS No: 86. Further My client has made arrangements to seek loan from A.P. Mahesh Co-operative Urban Bank and informed the fact to your client and instructing him to collect the balance a payments from the Bank and your client has agreed to the same and issued a letter to this effect to A.P. Mahesh Cooperative Urban Bank Vide your client Letter dt. 14th of May' 2007 and accordingly the Original documents were submitted for simple mortgaging with Bank and payments thus received. At the time of Sale Deed Registration dated 22-11-2007 your client had requested my client to issue four undated cheques to be given in their firm name with a covering letter for security purpose and captioning the same on the reverse side of the

Ch. Babbar Narayan

cheques. My client endorsed on the reverse side of each cheque " The Cheques for bungalow no 256, security cheque not to be presented in the bank". Accordingly cheque no's: 091456, 57, 58 & 59 drawn on A. P. Mahesh co-operative Urban Bank, M. G. Road Branch, Secunderabad were issued for respective amounts with undertaking to obtain the regular payments as per the progress of the work completed from A.P. Mahesh Co-operative Urban Bank and return the undated Cheques. Your client thus collected the two installments payments and returned the cheques no 091456 & 57 with good faith to my client. It is not disputed that the payments were not given vide separate Negotiable Instruments by my client as an amount of Rs. 41,68,100/- is already paid as per your notice also. So the question of presenting the same cheques is quite contrary to the understanding of the parties and its return on the ground of insufficient funds does not amount to offence under Section 138 of the Negotiable Instruments Act for which the legal notice issued by liable to be dropped immediately. The total cost of plot inclusive of VAT, Service Tax, Misc, & my client on 14-11-2007 paid Registration Charges separately and under bonafide faith that the possession as per sanctioned plan will be given shortly by your client. The Bank has paid two installment payments. The Bank has pointed out the lapses and your client was informing both the Bank and my client that the deviation of the Approved plan will be carried out and payments shall be collected. Further your claim of the Building ready for Possession is also not correct as the building even as of date is not ready as the following works as per the Registered Construction Agreement Annexure-A are not completed till date and to be carried out:

Item	DELUX BUNGALOW
EXTERNAL PAINTING	EXTERIOR EMULSION
INTERNAL PAINTING	LUPPAM FINISH WITH OBD
SANITARY	PARRYWARE OR SIMILAR MAKE
C.P FITTINGS	PARRYWARE OR SIMILAR MAKE
KITCHEN PLATFORM:	GRANITE SLAB (finished)
	2 FEET CERAMIC TILES DADO,
	SS SINK NOT INSTALLED

4. Without rectifying the same had sent a letter by you client demanding to pay the balance due of Rs. 16, 54, 790/- (Rupees Sixteen Lakh's Fifty Four Thousand's and Seven Hundred and Ninety only) for plot. The same was replied on pointing out the left out works to be completed and queries

Ch. hakeem sahyas

possession of the plot. There is even difference in due amount to be received by your client as per the bank loan letter i.e., Rs. 17, 53, 000/- not Rs. 17, 52, 500/- as demanded under your notice.

5. As per the Contract the plots shall be delivered before January' 2009 to my client. As per the terms an amount of Rs. 1,600/- per month per plot to be paid for every month delay to my client by our client. An amount of Rs. 6, 400/- to be paid by your client till date to my client.

All these acts amount to cheating with false declaration, negligence and willful default apart from deficiency of service for which my client wants to take all civil/criminal legal actions as the same is also fraud and cheating punishable under Indian Penal Code before appropriate forums making your client liable for costs and consequences.

Hence it is hereby demanded by my client under this reply notice to your client not to recourse to any legal action under section 138 of N. I. Act.

It is advising your client to do the following acts for proper adjudication of the issues as per the contract by Conciliation/Arbitration as per Arbitration & Conciliation Act, 1996 through both of us on behalf of our clients my mutual consent if at all accepted by both parties' for speedy and effective relief

- I) NOC from HUDA with releasing of mortgage so as to handover possession fully constructed as per the approved plan and construction complete in all aspects,
- II) By altering the physical deviations as per sanctioned plan as there is ever^y treat of demolition if possible by changing the sanction plan and/or to estimate the cost for such changes and to pay to my client if not possible at this stage,
- III) To return the undated cheques given as collateral security vide no's: 091458 & 091459 for Rs. 8, 47, 500/- each drawn on A. P. Mahesh Co-operative Urban Bank, Limited, M. G. Road, Secunderabad and after completion of the above works you client can receive the said amounts as like as earlier amounts from A. P. Mahesh Co operative Urban Bank Limited, M. G. Road, Secunderabad.
- IV) And to pay an amount of Rs. 1,600/- from January' 2009 till handing over the possession for each plot.

Ch. Mahesh Narayan

V) And to pay an amount of Rs. 5, 000/- towards the costs of this ^{p.}rely
notice charges,

And/Or else the agreement will be cancelled and the possession will be
taken there upon by approaching for interim measure under section 9 of the
Arbitration & Conciliation Act, 1996 for possession and consequential
remedies making you liable for costs and consequences to be recovered from
your client.

Ch. Lakshmi Narayana

(CH. LAKSHMI NARAYANA)
ADVOCATE.

