

BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL FORUM-I
HYDERABAD

C.D. O.P. No. 587 of 2009

Between:

E.P.Anand Kumar
H.No.21-133, 3rd cross
Uttam Nagar, Malkajgiri
Hyderabad - 500047.

... Complainant

And

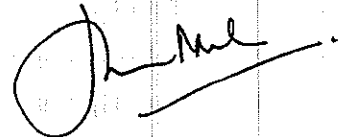
Soham Modi
Managing Partner M/s.MODI VENTURES & Sri Sai Builders
Mr.Soham Modi, 5-4-187/3 & 4
"Soham Mansion" II floor, M.G.Road,
Secunderabad.

... Opposite Party

COUNTER AFFIDAVIT FILED BY THE OPPOSITE PARTY

I, Soham Modi S/o Sri Satish Modi, aged 36 years, occupation: Managing Partner M/s.MODI VENTURES & Sri Sai Builders R/o 5-4-187/3 & 4 "Soham Mansion" II floor, M.G.Road, Secunderabad.

1. I am the Managing Partner of the Opp.Party and as such I am acquainted with the facts deposed hereunder.
2. I submit the complaint is not maintainable either in law or on facts and as such is liable to be dismissed in limini.
3. I deny all the adverse allegations contained in the complaint and the allegations which are not specifically admitted herein are deemed to have been denied.
4. I submit that para No.1 & 2 being formal does not call for any reply.
5. In reply to para No.3 of the complaint, this Opposite Party not aware that the Complainant found the banner of publicity of the Opp. Party at Mallapur, Hyderabad but it is true that the Complainant contacted one Mr.Karunakar Reddy, Field Executive of the Opp. Party but it is absolutely false to say that the Field Officer contacted the Complainant through phone 4 or 5 times and informed him that the venture bookings are going to be ~~End~~ shortly and the present rates are going to be hiked and the requested the Complainant for early booking without giving him time to think about the venture.



6. In reply to para No.4 of the complaint, it is denied that the explanation of the benefits informed by the Opp. Party's field executive, the Complainant booked a semi-deluxe flat and paid an amount of Rs.25,000/- or that the Field Officer also informed the Complainant orally that if not satisfied it can be cancelled within a month and take refund of the booking amount. The contention of the Complainant in the said para that there is no proper plan about when the flat is going to be handed over to the customers due to which the Complainant cancelled the booking and informed to the executive orally within one month of the booking amount paid to the Opposite Party is false and baseless.

7. In reply to para No.5 of the complaint that this Opposite Party failed to give terms and conditions before booking or that the ^{Complainant} came to know about the terms and conditions after booking of the flat is false and baseless. The further contention that the Opposite Party never issued any paper except the booking form and now saying that the booking fee not refundable is false and baseless, concocted for the purpose of filing this complaint.

8. In reply to para 6 of the complaint, it is true that the Complainant has taken up the matter to the notice of the Alternative Consumer Disputes Redressal, Department of Consumer Affairs, Food and Civil Supplies, Somajiguda, Hyderabad to settle the matter under non-legal measures. It is also true Mr.G.Rambabu, Manager, Customer Relation of the Opposite Party has attended on behalf of this Respondent and filed a counter stating that as per the terms and conditions held on the reverse of the booking form the refund of the booking amount does not arise. The contention of the Complainant that the above said firm negotiated this Opposite Party to refund the booking amount after deducting the administrative charge of 2% from the paid amount is false and hence denied. In fact, after filing of the counter and after going through the counter, the above said forum has directed the Complainant to approach the Consumer Forum.

9. In reply to para No.7 of the complaint, this Opposite Party denies that the motto of this Opposite Party is to earn the money with false promises with cheating activities are all false and hence denied and this Opposite Party reserves its right to file a suit for damages against the Complainant for making defamatory allegations against the Opposite Party. The further contention of the Opposite Party that at the time of booking, there is no land at all to the Opposite Party and after collecting the amounts from the



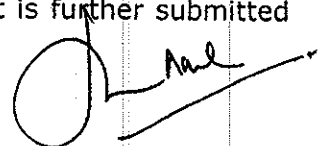
customers, this Opposite Party has started the work at venture but not before booking of the flats by the consumers is false and baseless and the Complainant is put to strict proof of the same.

10. In reply to para No.8 of the Complaint, this Opposite Party respectfully submits in fact this Opposite Party purchased the land involved in the above said venture in the year 2007 vide document No.4000/2007 and the sanction for construction was also obtained much prior to the booking of the flat by the Complainant which clearly establishes that the contention of the Complainant the entire work started after booking from the customers is false and baseless and concocted for the purpose of filing the complaint.

11. In reply to para Nos.9 to 11 of the complaint, this Opposite Party respectfully submits that the Complainant is not entitled for any relief prayed in the complaint due to the fact that he has approached the Hon'ble Court by suppressing the facts and with all false and baseless allegations and there is no deficiency in providing services by the Opposite Party.

12. This Opposite Party respectfully submits that the Complainant booked a Flat G-306 in the project being undertaken by the Opposite Party to purchase a flat for a total consideration of Rs.21,14,000/- exclusive of registration, VAT and Sales Tax charges. The Complainant had signed and admitted the terms of the payment for the flat under Booking form dated 28.03.2009 by and under the said Agreement, the Complainant has undertaken to pay the entire amount in instalments necessary from 12.04.2009 to 31.12.2010. On the said date of signing the booking form, the Complainant has made a initial payment of Rs.25,000/-. It is respectfully submitted that by virtue of the signing of the booking form there has been a concluded contract to pay the sale consideration in instalments specified in the said form. On the reverse of the said form, the terms and conditions have been specified. In breach of the terms in respect of the instalments to be paid would incur the liability as specified in the booking form. Once a flat is booked under the Booking form, it cannot be transferred to any other purchaser.

13. This Opposite Party submits that after 2 months of the booking of the said flat, the Complainant has sent a letter requesting for cancellation of the booking of the above flat and for refund of the amount on the ground he has purchased another house at Malkajgiri and paid an amount of Rs.5 lakhs. The Complainant also reiterated the same in his mail, on his request, the booking was cancelled vide notice dated 25.09.2009. It is further submitted



that on the above said ground only the Complainant approached the Alternative Consumer Disputes Redressal Cell, Civil Supplies Bhavan and the same was dismissed asking the Complainant approach the District Consumer forum. It is pertinent to mention here the averments made in the complaint before the ACDRC and the present complaint is totally different and he has taken different stands in both the complaints, hence, on this ground the complaint is liable to be dismissed.

14. This Opposite Party submits that it is astonishing to note that a person who is claiming that he paid the initial amount of Rs.25,000/- alleged to be equivalent to his salary of 2 months was immediately able to pay a sum of Rs.5 lakhs for purchase of property near Gopi Nagar, Malkajgiri. It is therefore, clear that the complainant has been indulging in speculative investment.

15. This Opposite Party respectfully submitted that in view of the terms of the booking form, since there is no deficiency in service as far as the Opposite Party is concerned, the Complainant is not entitled to claim refund of the amount. In view of the terms of the agreement which was not breached by the Opposite Party but only by the Complainant, the Opposite Party is entitled to forfeit the amount. It is therefore clear that this dispute does not fall within the four corners of the Consumer Protection Act, 1986.

I, therefore, pray that this Hon'ble Forum may be pleased to dismiss the complaint with exemplary costs.

Sworn and signed before me
on this the 18th day of September, 2009
at Hyderabad.



Deponent

Advocate / Hyderabad

BEFORE THE DISTRICT CONSUMER
DISPUTES REDRESSAL FORUM-I
HYDERABAD

C.D. O.P. No. 587 of 2009

Between:

E.P.Anand Kumar
... Complainant

And

Soham Modi
... Opposite Party

COUNTER AFFIDAVIT FILED BY
THE OPPOSITE PARTY

COUNTER FILED BY THE
OPPOSITE PARTY

Filed on: 18.09.2009

Filed by:

Sri C.BALAGOPAL
Advocate

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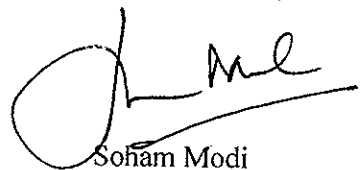
TO WHOM SOEVER IT MAY CONCERN

This is to certify that Mr. Ramacharyulu, S/o. Shri L.Raghavender Rao, legal officer for M/s. Modi Ventures, a registered partnership firm having its office at 5-4-187/3&4, Soham Mansion, II floor, M.G. Road, Secunderabad. He is duly authorized to represent M/s. Modi Ventures in C.C. No. 587 of 2009 in the to attend in the District Consumer Disputes Reddressal Forum -I, Hyderabad between M/s. Modi Ventures and E.P.Anand Kumar.

Date:

Place:

Modi Ventures,



Soham Modi
Managing Partner.