

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

I.A.No. 1361 OF 2007

IN

O.S.No. 994 OF 2007

Between:

Sri Vinay Agarwal

...Petitioner/Plaintiff

AND

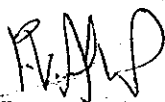
M/s. Modi Ventures

...Respondent/Defendant

AFFIDAVIT

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 do hereby solemnly affirm and state on oath as follows :

1. I am the petitioner herein and as such I am well acquainted with the facts of the case.
2. I submit that I have filed the above suit against the respondent for specific performance of the oral agreement of sale dated 14-03-2006. The contents of the plaint may be read as part and parcel of this affidavit. The respondent 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 respondent advertised for the same. As I was interested in the venture taken up by the respondent and I intended to purchase a flat therein, accordingly I approached the respondent in that regard. The respondent gave me the brochure relating the proposed apartment and I selected the flat No.506 on fifth floor in C block, hereinafter referred to as the 'suit flat'.
3. I further submit 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, I 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. Accordingly I paid the amount to the respondent 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.




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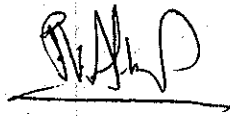
4. I also submit that on receiving such payment, the respondent issued a receipt dated 14-03-2006 to me stating that the said amount was received towards booking amount of Flat No.C-506 in "Gulmohar Gardens" apartment, in survey Nos.93 to 95, situated at Mallapur, Ranga Reddy district, admeasuring 750 square feet together with undivided share of land, which is more clearly described in the below mentioned schedule of property. The respondent had also informed me that they would intimate me the progress of construction of the complex and accordingly would also inform me about the payment of balance of sale consideration to be made by me to them at the time of execution and registration of the sale deed.
5. I submit that I was waiting patiently for the letter of the respondent to inform me about the status and progress of the complex and about the amounts to be paid by him, but I did not receive any correspondence or communication from the respondent as told by the respondent. When I visited the office of the respondent enquiring into the matter, I was told that it would take some more time for the project to be completed and that they would intimate me further details later. To my utter shock and surprise, instead of the intimation letter, I received a letter from the respondent dated 08-06-2006 alleging that my agreement was only a provisional booking and that despite repeated reminders I did not come forward to execute a sale agreement and to make further payments.
6. I further submit that immediately I approached the respondent questioning about their illegal activity and had also addressed a letter dated 22-06-2006 making it clear that I have not received any reminders and intimations from the respondent at any point of time requesting for execution of the sale agreement. On receiving the same the respondent stated that they had issued the said letter only to ascertain as to whether I was still interested in purchasing the suit flat and asked me to ignore it. The respondent had given me assurance that the suit flat would be transferred only in my name and that the same would not be sold to any third party. In fact, the respondent knows me for quite a long time and has business dealings also with me.
7. I also submit that in pursuance of the assurances given, the respondent sent his representative to me demanding payment of some more amount and accordingly I issued to the respondent the cheque No.691785, dated 11-07-2006, for Rs.25,000/-, drawn on M/s. HDFC Bank Ltd., Himayatnagar branch, Hyderabad towards further part payment, which was duly acknowledged by the respondent. It is pertinent to mention here that it was the respondent who sent his representative to my house to collect the cheque giving assurance that my interest would be safe guarded and that I would not be troubled anymore. Thus it is clear that the respondent had issued the letter only to threaten me and without having any intention of causing harm to me.

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8. I submit that thereafter the respondent informed me that the construction work of the flat is almost complete and asked me to make necessary arrangements for obtaining bank loan. Accordingly, I applied for housing loan with M/s. ICICI Bank Ltd., vide application No.777-6252602 and the banker had sanctioned loan to me to a tune of Rs.8,45,056/- vide sanction letter dated 18-01-2007. I informed to the respondent about the sanction of the loan and was expecting the respondent to come forward for execution and registration of the sale deed in respect of the suit flat.
9. I further submit that I was waiting patiently for the correspondence to be received from the respondent but there was no response. I visited the office of the respondent on several occasions making requests in that regard, but there was no proper response from the respondent. Having lost hope that there would be any response from the respondent, I got issued a legal notice dated 19-02-2007 to the respondent through my advocate calling upon the respondent 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.
10. I submit that the notice was served on the respondent on 22-02-2007 as is evident from the postal acknowledgement. The respondent 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 respondent admitted the agreement of sale in my favour and the receipt of part payment of sale consideration, he alleged that he had addressed me another cancellation notice dated 09-08-2006.
11. I submit that I have not received any such cancellation notice from the respondent 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 I made good amount towards part payment of sale consideration under proper receipt. I got issued a rejoinder notice on 12-03-2007 denying receipt of any cancellation notice and made it clear that the respondent cannot terminate the agreement unilaterally. The respondent got issued a reply through advocate on 28-03-2007 taking the same stand, which is false.
12. I further submit 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 respondent in not coming forward to fulfill his part of the contract prompted me to suspect the bonafides on part of the respondent.

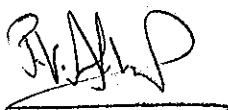


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In fact, at the time of entering into the agreement, it was agreed between the parties that the respondent would inform me about his readiness to execute and register the sale deed by receiving the balance of sale consideration after completion of the complex. In fact, I was always been ready and willing to perform my part of the contract of making payment of balance of sale consideration and in fact on the promises of the respondent, I had already got sanctioned loan from the banker.

13. I submit that the respondent had gone back his promises and failed to discharge the duty and burden cast upon him under the agreement. In fact I am required to pay the loan instalments to the banker as the same has already been sanctioned. As stated above, the respondent has entered into the agreement by receiving money towards part payment of sale consideration from me. Having agreed to sell the property to me, having received the part payment of sale consideration, the respondent 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 respondent is bound to sell the property to me by executing and registering the sale deed in his favour and he cannot part with it in favour of third party.
14. I further submit that I have got every right to purchase the suit flat and get the sale deed executed and registered in my favour. Hence, I am left with no other option but to approach this Hon'ble court for specific performance of the agreement of sale. I made efforts to convince the respondent and to settle the dispute amicably, but he has failed as the respondent is bent upon to cause harm to me for illegal gains and make money in illegal manner. It would not be out of place to mention here that the respondent had gone back the promise demanding me to enhance the sale consideration, which is not legal.
15. I submit that I have got money to pay the balance of sale consideration to the respondent as I had already got the loan sanctioned from the banker. I was always ready and willing to perform my part of the contract. I am ready to pay the balance of sale consideration and get the sale deed executed and registered in my favour. In a very illegal and highhanded manner, after entering to agreement of sale with me and after receiving part of sale consideration, the respondent is trying to sell the suit flat to third parties, in order to cause harm to me, which is not permissible in law.
16. I submit that my agreement is subsisting and it still holds good. From the facts of the case, it is very clear that the intention of the respondent in refusing to execute and register the sale deed in my favour is illegal and against all the morals also. The law of equity favours for sale of the property by the respondent to me alone and the respondent has no exclusive and unilateral right to cancel or terminate the contract and forfeit the amount of part payment made me to him.




DEPONENT

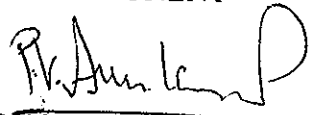
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17. I submit that I have got prima facie case in my favour in view of my holding the agreement of sale and having paid money towards part payment of sale consideration. The balance of convenience is also in favour of granting an order of injunction to me as the respondent has been indulging in unethical activities to cause harm to me and to deprive me of my legitimate rights. In the event of the respondent succeeding in his illegal acts of selling the suit property to third parties I would suffer irreparable loss and injury, which cannot be compensated by any other means. As such, there is every necessity that this Hon'ble court passes an order restraining the respondents from doing so. If an order of injunction is not passed, the acts of the respondents would not only lead to multiplicity of proceedings but also would cause heavy loss and hardship to several persons. The third party purchasing the property will also be subjected to sufferance.
18. I therefore pray that the Hon'ble court may be pleased to pass an order of temporary injunction restraining the respondent from transferring, alienating, or parting with possession or creating any third party interest or charge 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 of the property of the petition in favour of the third parties in the interest of justice and pass such other order or orders as this Hon'ble court deems fit and proper in the circumstances of the case.

Sworn and signed before me on this the
22nd day of April, 2007 at Hyderabad

Identified by Sri Shyam S. Agrawal, Advocate


DEPONENT


ADVOCATE - HYDERABAD