

IN THE COURT OF THE HONBLE SENIOR CIVIL JUDGE: RANGA REDDY DIST.  
AT: L.B. NAGAR

I.A.No. 1166 of 2007  
In

O.S.No. 1223 of 2007

**BETWEEN:**

Sri. G. Bala Krishna .. Petitioner / Plaintiff

And

M/s. Summit Builders .. Respondents / Defendants

**COUNTER AFFIDAVIT ON BEHALF OF THE RESPONDENT**

I, SOHAM MODI, S/o. Satish Modi, aged 37 years, R/o. 5-4-187/3 & 4, MG Road, Secunderabad, do hereby solemnly affirm and state on oath as follows:

1. I submit I am the partner of the Respondent Firm and as such, well aware of the facts deposed herein. I have read the affidavit filed by the petitioner in support of his application for grant of an injunction. I deny all the adverse allegations contained therein. The petitioner has come forward with false and baseless allegations.
2. In reply to para no. 1, it is formal and does not call for any reply.
3. In reply to para no. 2, it is true as far as the description and other details of the Flat No. 213, Silver Oak Apartments, but it is not true to say that there was any oral agreement dated 31-08-2006. I submit that our firm

does not have the practice of entering into any oral agreements. It is true that the petitioner has paid a sum of Rs.60,000/- but it is not true to say that it was agreed that the balance amount would be paid at the time of registration. The facts pertaining thereto are enumerated in subsequent paragraphs.

4. In reply to para no.3, it is not true to say that the respondent has promised to execute the sale deed whenever the petitioner makes payment after the completion of the Flat. It is true to say that on 31-08-2006 on the date of the booking by the petitioner the cost was indicated as Rs.7,25,000/- and it is true that the petitioner has paid an amount of Rs.10,000/- towards booking. I submit at the time of booking the petitioner was informed about the payment schedule before any formal agreement is executed by the respondent. It is only as a part of this payment schedule the petitioner has paid Rs.50,000/- on 17.10.2006 but it is not true to say that the respondent was in dire financial need for completing the project. In fact it is not true to say that the petitioner did not sign the agreement dated 18.10.2006. I submit that the agreement of sale dated 18-10-2006 in favour of the petitioner has been signed by one G. CHANDRA KALA. It is also not true to say that the respondent has informed the petitioner that he can use the agreement of sale as collateral.

5. In reply to para no.4, it is not true to say that the petitioner is ready and

willing to perform his part of the contract and it is also not true to say that that the notice dated 12.03.2007 issued by the petitioner's counsel was not replied. In fact a reply was sent by the respondent's counsel on 31-03-2007 vide registered post. This respondent denies that any D.D. was prepared by the petitioner.

6. In reply to para no.5, the allegations in the para are denied in toto.
7. With regard to para no.6, it is not true to say that the petitioner has paid the consideration as per schedule.
8. With regard to para no.7, the petitioner does not have any right to restrain the respondent from disposing of the property as he has not done his part of the agreement.
9. With regard to para no.8, the petitioner does not have any prime facie case nor is the balance of convenience in his favour.
10. I further submit that the petitioner herein has booked a Flat on 18.09.2006 and a booking form was given to him, acknowledging his booking which is the procedure followed by the respondent. The said booking form clearly spells out the payment schedule to be followed by the purchaser of the flat. The same was also explained orally by the petitioner's employees at the time of booking.

11. I submit that the petitioner agreed for the installments to be paid. According to the said scheme he was to pay an amount of Rs.50,000/- on 30.09.2006 but the petitioner paid that amount on 17.10.2006 which is one day before the execution of the agreement of sale. He was supposed to pay a further installments of Rs.2,21,666/- on 16.10.2006, Rs. 2,21,666/- on 15.11.2006 and again Rs.2,21,668 on 31.12.2006. The petitioner never bothered to adhere to the payment schedule as agreed upon. In fact the respondent had sent reminders on 10.11.2006, 16.11.2006 asking the petitioner to finalize the payments and come forward for the execution of the sale agreement.
12. I submit the sale agreement was executed in favour of the petitioner but signed by one G. CHANDRA KALA for the reasons best known to the petitioner. Whatever may be the case the petitioner is bound by the terms of the agreement? I further submit that the respondent after reminding the petitioner several times regarding the installment payment issued a cancellation notice dated 29-11-2006.
13. I submit that the petitioner never approached the respondent on 22.04.2007 or any other date for the execution of sale deed much less with a D.D. The petitioner does not mention the value of the D.D but simply gives a D.D. number which he says is from the same bank where he has obtained loan. There is no mention of the Bank name.

14. I submit that the respondent is a leading building firm in the twin cities and have been in business for quite long time and have developed various projects and sold number of Flats but there as never been any complaints from the customers. The petitioner is blatantly lying about the use of filthy language or threatening to kill by the respondent. The petitioner has never been ready to perform the terms of the contract. The petitioner has come forward with false pleas regarding the alleged financial stringency of the respondent. Further, even according to the petitioner he refused to agree to the terms of the agreement and has not signed. In view of the said averment, it is clear that there is no binding contract. Hence the petitioner is not entitled to the equitable relief of injunction or much less the relief of specific performance of this alleged agreement.

15. I further submit as the petitioner has found that the properties values have gone up in and around Hyderabad wants to take advantage of the same and as come up with the suit for unlawful gain. The petitioner has never shown any interest for performing his part of the contract.

It is, therefore, prayed that this application be dismissed with heavy costs.

Sworn and signed his name  
before me on the day of June, 2007  
At: L.B. Nagar.

DEPONENT.

ADVOCATE / L. B. NAGAR

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OF THE RESPONDENT**

Filed on: 25.06.2007

Filed by: C.BALA GOPAL  
Counsel for Plaintiff

201, Al-Kauser Apartment,  
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