

IN THE COURT OF THE HON'BLE II ADDL. SENIOR CIVIL JUDGE
RANGA REDDY DISTRICT COURT AT L.B. NAGAR

O.S.No. 1223 of 2007

BETWEEN:

Sri G.Bala Krishna ... Plaintiff

And

M/s. Summit Builders ... Defendant

AFFIDAVIT IN LIEU OF CHIEF EXAMINATION OF DW1
Mr.KANAKA RAO

I, Kanaka Rao S/o Subba Rao aged 54 years, R/o M.G. Road Secunderabad, do hereby solemnly affirm and state on oath as follows:

1. I am the General Manager of the Defendant Company and as such I am well aware of the facts deposed hereunder.
2. I submit that the defendant is a leading building firm in the Twin Cities and have been in business for quite longtime. I further submit that the defendant has developed many projects and sold number of flats but there as never been any complaints from the customers.
3. I submit that the plaintiff herein has booked a Fiat on 31-08-2006 and a Booking form was given to him acknowledging his booking which is a procedure followed by the defendant company. The said booking form was signed by the plaintiff and the same is marked as exhibit B1. The said booking form clearly spells out the payment schedule to be followed by the plaintiff. The same was also explained orally by the defendant's employees at the time of booking. It is not true as stated by PW1, that he has signed on a blank booking Form.
4. I submit that the plaintiff agreed for the installments to be paid. As per the schedule the plaintiff was to pay an amount of Rs. 50,000 on 30-09-2006 but he paid that amount on 17-10-2006, a delay of 17days, which is just one day before the execution of the agreement of sale. I further submit that the plaintiff was to pay 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 plaintiff never bothered to adhere to the payment schedule as agreed upon. I submit that the defendant had sent



reminders on 10-11-2006, 16-11-2006 asking the plaintiff to finalise the payments and come forward for the execution of the sale agreement.

5. I submit that the sale agreement dtd. 18.10.2006 was executed in favour of the plaintiff but signed by one G.Chandrakala for the reasons best know to the plaintiff. Whatever may be the case the plaintiff is bound by the terms of the agreement. I further submit that the defendant company after reminding the plaintiff several times regarding the installments issued a cancellation notice dated 29-11-2006. There was no reply from the plaintiff nor he took any steps for arranging payments at this stage also.

6. I submit that the plaintiff never approached the defendant company for execution of sale deed on 22-04-2007 much less with a D.D. I further submit the plaintiff simply gives a D.D. number without mentioning the value nor the name of the bank from where it was obtained.

7. I submit that the plaintiff has not paid the consideration as per the agreed payment schedule and also the plaintiff doesn't have any right to restrain the defendant from disposing off the property as the plaintiff has miserably failed to perform his part of the agreement.

8. I submit the Plaintiff was never ready and willing to perform his part of the contract and it is also not true to say that the notice dated 12.03.2007 issued by the plaintiff's counsel was not replied. The reply was sent by the defendant's counsel on 31-03-2007 under registered post. A office copy of the reply is filed here with. I further submit that defendant company doesn't have any knowledge of the D.D. alleged to have been prepared by the plaintiff

9. I submit that as the plaintiff has found that the property values have gone up in and around Hyderabad he wants to take undue advantage and also gain unlawfully. As a result he has come up with this suite with all falls please. The plaintiff has never shown any interest for performing his part of the contract. The plaintiff is blatantly lying about the use of filthy language or threatening to kill by the defendant representatives.

10. I submit that it is not true to say that there was only an oral agreement dated 31.08.2006 as alleged by Plaintiff. I submit that the defendant Company doesn't have the practice of entering into any Oral



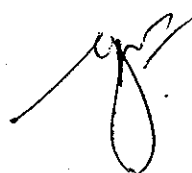
Agreements. It is true that the plaintiff has paid a sum of Rs.50,000/- but it is not true to say that the defendant had agreed for paying the balance amount by the plaintiff at the time of Registration. This contention is concocted by the plaintiff for the purpose of filing the suit.

11. I submit that on 31-08-2006 the date of booking by the plaintiff he paid a booking amount of Rs. 10,000. It was also informed to the plaintiff that the cost of the Flat would be Rs.7,25,000/- exclusive of registration and other charges. The plaintiff was also informed at the time of booking about the payment schedule before any formal agreement was executed by the defendant. I submit that as a part of the payment schedule the plaintiff had paid Rs.50,000/- on 17.10.2006 but it is incorrect to say that the defendant company was in dire financial need for completing the project. I further submit that it is not true to say that the plaintiff has not signed the agreement of sale dated 18-10-2006 In fact the agreement of sale dated 18-10-2006 in favour of the plaintiff has been signed by one G. Chandrakala. The defendant is not aware of any such person. The Plaintiff in his cross examination has said that he does not know , G.Chandrakala which is false. It is also not true that the defendant has informed the plaintiff that he can use the agreement of sale as collateral.

I submit as the plaintiff failed to perform his part of contract and has failed to pay the cost of the Suit Schedule Property as per the schedule agreed upon, hence he is not entitled for any reliefs prayed for in the suit and the suit is liable to be dismissed.

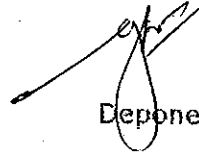
12. I am relying upon the following documents:

Sl.No	Date	Description
1.	20-09-2006	Letter addressed by defendant to the plaintiff
2	10-11-2006	Reminder noticed with postal receipt and acknowledgement
3	16-11-2006	Reminder noticed with postal receipt and acknowledgement.
4	29-11-2006	Cancellation notice with postal receipt and acknowledgement
5.	22-02-2007	Cancellation notice with postal receipt and acknowledgement.
6	18-10-2006	Agreement of sale.



- 7 15-10-2006 Reminder notice with postal receipt and acknowledgement.
- 8 29-03-2007 Reply given on behalf of the defendant.

Sworn and signed before me
on this the day of February, 2009



Deponent

Advocate / L.B.Nagar

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EXAMINATION OF DW1,
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Filed on: .02.2009

Filed by:

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