

I.A.No. Of 2007

IN

O.S.No. Of 2007

Between.

Sri Vinay Agarwal

...Petitioner/Plaintiff

AND

M/s. Summit Builders

...Respondent/Defendant

AFFIDAVIT

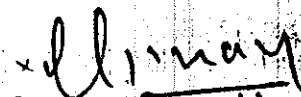
I, Vinay Agarwal, S/o. Sri Vasudev, aged 42 years, Occ . business, R/o. Flat No.403, Susheel Residency, Opp : CDR Hospital, Hyderguda, Hyderabad do hereby do hereby solemnly affirm and state on oath as follows :

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 agreement of sale dated 15-12-2005. The contents of the plaint may be read as part and parcel of this affidavit. I submit that the respondent is the owner and developer of "Silver Oak" apartments on the land forming part of survey No.290, situated at Cherlapally village, Ghatkesar mandal, 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 intended to purchase a flat therein, I approached the respondent in that regard. The respondent showed to me the brochure relating the proposed apartment and I selected flat No.401 on fourth floor measuring 725 square feet of super built up area together with proportionate undivided share of land to the extent of 36.25 square yards and a reserved two wheeler parking space bearing No.73, hereinafter referred to as the 'suit flat'.
3. I further submit that after negotiations, the sale consideration was fixed at Rs.649/- per square feet and in view of the extent of the suit flat being 725 square feet, the total sale consideration of the suit flat was arrived to at Rs.4,70,525/-. 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 water & electricity charges. I paid to the respondent a sum of Rs.10,000/- through cheque No.123098, dated 08-09-2005 drawn on M/s. IDBI Bank, under receipt No.1017, towards earnest money and part payment of sale consideration, which was encashed by the respondent in conclusion of the agreement.


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4. I also submit that the suit flat is more clearly described in the schedule of property of the given below. The terms of the contract were subsequently reduced into writing under agreement of sale entered into between the parties on 15-12-2005. I paid an additional amount of Rs.15,000/- to the respondent through cheque No.619342, dated 01-03-2006 drawn on M/s. HDFC Bank, towards further part payment of sale consideration, which was encashed by the respondent. The respondent had also informed me that they would intimate to 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.
5. I submit that I was waiting patiently for the letter of the respondent informing me about the status and progress of the complex and also about the amounts to be paid by me, 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 about the progress of the complex, I was told that that it would take some more time for the project to be completed and that they would intimate me further details later. To the utter shock and surprise of me, instead of the intimation letter, I received a letter from the respondent dated 05-05-2006 calling for payment of three installments within seven days of receipt of the notice and warned of forfeiture, if I fail to pay the installments.
6. I further submit that I sent a suitable reply dated 15-05-2006 to the letter of the respondent informing that I had not received any reminders earlier for payment as alleged in the said letter and informed the respondent that I would pay the amount in lump sum immediately on the sanction of loan, which was delayed in view of change of status of income from salaried to self employed and will also complete the payments in lump sum after sanction of housing loan. On receiving my reply, the respondent sent a cancellation notice dated 09-06-2006 to me informing that I did not adhere to the payment schedule, not paid the installments as promised and as such the agreement entered into between the parties stood cancelled and that the payments made by me were forfeited. The respondent further stated that they were at liberty to allot the said flat to any intending purchaser.
7. I also submit that after receiving the said cancellation notice, I sent a reply letter dated 23-06-2006 informing that I have already informed through my reply letter dated 15-05-2006 that there was a delay in the processing of loan and all the pending installment amounts will be paid shortly and requested to bear for some time. Apart from that I visited the office of the respondent in person and discussed with the respondent. The respondent had stated that they had issued the cancellation notice only to ascertain whether I was really interested in purchasing the flat or not. The respondent assured me that his interest in the flat would be safeguarded and I can make the payments as and when the loan is sanctioned to me.


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I submit that as per the discussions held between me and the respondent, I paid a further amount of Rs.75,000/- through cheque No.691784, dated 11-07-2006, drawn on M/s. HDFC Bank and the same was acknowledged by the respondent vide their receipt No.11-07-2006 towards part payment of the sale consideration. As the respondent was satisfied with the payments made by me, the respondent addressed a letter dated 01-08-2006 to me, asking to visit the site between 01-08-2006 and 08-08-2007 to have a look at the flat for any additions or alterations to be done to the suit flat, otherwise, the flat will be completed as per the standard specifications shown in the model flat. I suggested some changes to the flat, for that the respondent assured that he would make the necessary changes to the said flat and would intimate me the date of execution of document.

9. I further submit that I waited patiently for a response from the respondent but to my shock there was no such intimation from the respondent and when I contacted the respondent in person there was no proper response from the respondent and he avoided to meet me. Getting vexed with the attitude of the respondent and lost hope of response, I got issued a legal notice dated 19-02-2007 to the respondent through his 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 also 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 with all false and baseless allegations, taking the stand that the agreement stood cancelled. Though the respondent admitted the agreement of sale in favour of me and the receipt of part payment of sale consideration made on different dates, he alleged that he had addressed another cancellation notice dated 09-08-2006 to me, which has not been served on me at any point of time and appears to have been fabricated by the respondent.
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, under which I have paid huge amount towards part payment of sale consideration under proper receipts. 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 notice on 28-03-2007 taking the same stand, which is false. It is pertinent to mention here that the respondent has lodged a caveat before the Hon'ble Court against me, which proves the malafides on part of the respondent.


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12. I further submit that having received money towards part payment of sale consideration 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. In fact, at the time of entering into the agreement, it was agreed between the parties that the respondent will inform me about his readiness to execute and register the sale deed by receiving the balance of sale consideration after completion of the complex. I have 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 have already got sanctioned loan from the banker.
13. I submit that the respondent has 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 installments 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 my 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 have made efforts to convince the respondent and to settle the dispute amicably, but I have failed as the respondent is bent upon to cause harm to me for illegal gains and make money in an illegal manner. It would not be out of place to mention here that the respondent has gone back the promise demanding me to enhance the sale consideration, which is not legal.
15. I also submit that I have got money to pay the balance of sale consideration of Rs.4,40,525/- to the respondent as I have already got the loan sanctioned from the banker for the purpose of making payment of balance of sale consideration to the respondent in respect of the suit flat, payment of stamp duty, registration charges, etc. I have always been 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.


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I submit that my agreement of sale 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 by me to him. It would not be out of place to mention here that I have taken lot of pains in getting the housing loan sanctioned, for which I had got the site inspected and verified by a government registered valuer and submitted the valuation report to the banker, by spending good amounts.

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.401 on fourth floor in Silver Oak Apartments, forming part of Survey No.290, admeasuring 725 square feet of super built up area together with proportionate undivided share of land to the extent of 36.25 square yards and a reserved parking space for two wheeler bearing No.73, situated at Cherlapally Village, Ghatkesar Mandal, Ranga Reddy district 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
29th day of June, 2007 at Hyderabad


DEPONENT

Identified by Sri Shyam S. Agrawal, Advocate

ADVOCATE - HYDERABAD