

O.S.No. *1549* OF 2007

Between :

Sri Vinay Agarwal
S/o. Sri Vasudev, aged 42 years
Occ : business, R/o. Flat No.403
Susheel Residency, Opp. CDR Hospital
Hyderguda, Hyderabad - 500 029.

...Plaintiff

AND

M/s. Summit Builders
represented by its partner Sri Soham Modi
S/o. Sri Satish Modi, aged 37 years. Occ : business
having office at 5-4-187/3. III Floor
M.G. Road, Secunderabad - 500 003.

...Defendant

SUIT FOR SPECIFIC PERFORMANCE OF THE AGREEMENT OF SALE

PLAINT PRESENTED UNDER SECTION 26, ORDER VII RULE 1 OF CIVIL PROCEDURE
CODE, 1908

1. The description of the plaintiff is the same as given in the above cause title and his address for the purpose of service of all notices, etc. is that of the counsel M/s. SHYAM S.AGRAWAL, L.Praveen Kumar, L. Pradhan Kumar, K. Sashirekha, and Naresh Singh, advocates, having office at # 101, R.K.Residency, lane beside Minerva Cpftee Shop, 3-6-237/1, Street No.15, Himayatnagar, Hyderabad - 500 029, Phone : 91-40-2322-2700.
2. The description and the address of the defendant for the purpose of service of all summons, notices, etc., are the same as mentioned in the above cause title.
3. The plaintiff submits that the defendant 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 defendant advertised for the same. As the plaintiff was interested in the venture taken up by the defendant and intended to purchase a flat therein, the plaintiff approached the defendant in that regard. The defendant showed to the plaintiff the brochure relating the proposed apartment and the plaintiff selected flat No.401 on fourth floor 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 two wheeler parking space bearing No.73, hereinafter referred to as the 'suit flat'.

Vinay
PLAINTIFF

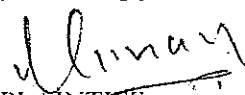
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4. The plaintiff further submits that after negotiations, the sale consideration was fixed at Rs.649/- per square feet and in view of the extent of the suit flat being 725 square feet, the total sale consideration of the suit flat was arrived to at Rs.4,70,525/-. Apart from the sale consideration, the plaintiff 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. The plaintiff paid to the defendant 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 defendant in conclusion of the agreement.

5. The plaintiff also submits that the suit flat is more clearly described in the schedule of property of the plaint given below. The terms of contract were subsequently reduced into writing under a formal agreement of sale entered into between the parties on 15-12-2005. The plaintiff paid additional sum of Rs.15,000/- to the defendant through cheque No.619352, dated 01-03-2006 drawn on M/s. HDFC Bank, towards further part payment of sale consideration, which was encashed by the defendant. The defendant had also informed the plaintiff that they would intimate to the plaintiff the progress of construction of the complex and accordingly would also inform the plaintiff about the payment of balance of sale consideration to be made by him.

6. The plaintiff submits that he was waiting patiently for the letter of the defendant informing him about the status and progress of the complex and also about the amounts to be paid by him, but he did not receive any correspondence or communication from the defendant as told by the defendant. When the plaintiff visited the office of the defendant enquiring about the progress of the complex, he was told that that it would take some more time for the project to be completed and that they would intimate him further details later. To the utter shock and surprise of the plaintiff, instead of the intimation letter, he received a letter from the defendant dated 05-05-2006 calling for payment of three installments within seven days of receipt of the notice and warned of forfeiture, if the plaintiff fails to pay the installments.

7. The plaintiff further submits that he sent a suitable reply dated 15-05-2006 to the letter of the defendant informing that he had not received any reminders earlier for payment as alleged in the said letter and informed the defendant that the plaintiff 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 the reply of the plaintiff, the defendant sent a cancellation notice dated 09-06-2006 to the plaintiff informing that the plaintiff 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 the plaintiff were forfeited. The defendant further stated that they were at liberty to allot the said flat to any intending purchaser.


PLAINTIFF

8. The plaintiff also submits that after receiving the said cancellation notice, the plaintiff sent a reply letter dated 23-06-2006 informing that he has already informed through his 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 the plaintiff visited the office of the defendant in person and discussed with the defendant. The defendant had stated that they had issued the cancellation notice only to ascertain whether the plaintiff was really interested in purchasing the flat or not. The defendant assured the plaintiff that his interest in the flat would be safeguarded and the plaintiff can make the payment as and when the loan is sanctioned to the plaintiff.
9. The plaintiff submits that as per the discussions held between him and the defendant, the plaintiff 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 defendant vide their receipt No.11-07-2006 towards part payment of the sale consideration. As the defendant was satisfied with the payments made by the plaintiff, the defendant addressed a letter dated 01-08-2006 to the plaintiff, 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. The plaintiff suggested some changes to the flat, for that the defendant assured that he would make the necessary changes to the said flat and would intimate the plaintiff the date of execution of document.
10. The plaintiff further submits that the plaintiff waited patiently for a response from the defendant but to the shock of the plaintiff there was no such intimation from the defendant and when the plaintiff contacted the defendant in person there was no proper response from the defendant and he avoided to meet the plaintiff. Getting vexed with the attitude of the defendant and lost hope of response, the plaintiff got issued a legal notice dated 19-02-2007 to the defendant through his advocate calling upon the defendant 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.
11. The plaintiff also submits that the notice was served on the defendant on 22-02-2007 as is evident from the postal acknowledgement. The defendant addressed a reply dated 22-02-2007 with all false and baseless allegations, taking the stand that the agreement stood cancelled. Though the defendant admitted the agreement of sale in favour of the plaintiff 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 the plaintiff.


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12. The plaintiff submits that he has not received any such cancellation notice from the defendant 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 the plaintiff has paid huge amount towards part payment of sale consideration under proper receipts. The plaintiff got issued a rejoinder notice on 12-03-2007 denying receipt of any cancellation notice and made it clear that the defendant cannot terminate the agreement unilaterally. The defendant got issued a reply notice on 28-03-2007 taking the same stand, which is false. It is pertinent to mention here that the defendant has lodged a caveat before the Hon'ble Court against the plaintiff, which proves the malafides on part of the defendant.

13. The plaintiff further submits 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 defendant in not coming forward to fulfill his part of the contract prompted the plaintiff to suspect the bonafides on part of the defendant. In fact, at the time of entering into the agreement, it was agreed between the parties that the defendant will inform the plaintiff about his readiness to execute and register the sale deed by receiving the balance of sale consideration after completion of the complex. The plaintiff has always been ready and willing to perform his part of the contract of making payment of balance of sale consideration and in fact on the promises of the defendant, the plaintiff has already got sanctioned loan from the banker.

14. The plaintiff submits that the defendant has gone back his promises and failed to discharge the duty and burden cast upon him under the agreement. In fact the plaintiff is required to pay the loan instalments to the banker as the same has already been sanctioned. As stated above, the defendant has entered into the agreement by receiving money towards part payment of sale consideration from the plaintiff. Having agreed to sell the property to the plaintiff, having received the part payment of sale consideration, the defendant 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 defendant is bound to sell the property to the plaintiff by executing and registering the sale deed in his favour and he cannot part with it in favour of third party.

15. The plaintiff further submits that he has got every right to purchase the suit flat and get the sale deed executed and registered in his favour. Hence, the plaintiff is left with no other option but to approach this Hon'ble court for specific performance of the agreement of sale. The plaintiff has made efforts to convince the defendant and to settle the dispute amicably, but he has failed as the defendant is bent upon to cause harm to the plaintiff for illegal gains and make money in illegal manner. It would not be out of place to mention here that the defendant has gone back the promise demanding the plaintiff to enhance the sale consideration, which is not legal.


PLAINTIFF

16. The plaintiff also submits that he has got money to pay the balance of sale consideration of Rs.4,40,525/- to the defendant as he has already got the loan sanctioned from the banker for the purpose of making payment of balance of sale consideration to the defendant in respect of the suit flat, payment of stamp duty, registration charges, etc. The plaintiff has always been ready and willing to perform his part of the contract. The plaintiff is ready to pay the balance of sale consideration and get the sale deed executed and registered in his favour. In a very illegal and highhanded manner, after entering to agreement of sale with the plaintiff and after receiving part of sale consideration, the defendant is trying to sell the suit flat to third parties, in order to cause harm to the plaintiff, which is not permissible in law.
17. The plaintiff submits that the agreement of the plaintiff is subsisting and it still holds good. From the facts of the case, it is very clear that the intention of the defendant in refusing to execute and register the sale deed in favour of the plaintiff is illegal and against all the morals also. The law of equity favours for sale of the property by the defendant to the plaintiff alone and the defendant has no exclusive and unilateral right to cancel or terminate the contract and forfeit the amount of part payment made by the plaintiff to him. It would not be out of place to mention here that the plaintiff has taken lot of pains in getting the housing loan sanctioned, for which he had got the site inspected and verified by a government registered valuer and submitted the valuation report to the banker, by spending good amounts.
18. The cause of action for the present suit initially arose on 08-09-2005 when the defendant offered to sell the suit flat to the plaintiff, entered into an agreement for sale with the plaintiff, received part payment of sale consideration. It also arose on the dates when the parties exchanged letters, on 11-07-2006 when the defendant received further payment from the plaintiff, on the dates when the plaintiff demanded and requested the defendant to execute and register the sale deed, but the defendant failed.
19. The cause of action further arose when the plaintiff got sanctioned loan from the banker for payment of balance of sale consideration to the defendant, on 19-02-2007 when the plaintiff got issued the legal notice to the defendant calling upon to execute and register the sale deed, on 22-02-2007 when the defendant replied with false allegations, on 12-03-2007 when the plaintiff got issued a rejoinder notice making the legal position clear to the defendant that he has to perform his part of contract and on 28-03-2007 when the defendant got issued a reply through advocate refusing to execute and register the sale deed. The cause of action is continuing.
20. This Hon'ble court has got jurisdiction to entertain the suit as the suit property is situated at Cherlapally village, Ghatkesar Mandal, Ranga Reddy district and the cause of action arose within the territorial jurisdiction of this Hon'ble court.


PLAINTIFF

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This Hon'ble court has also got pecuniary jurisdiction.

21. The plaintiff has not filed any other case in this regard and no suit or other proceedings are pending between the parties to the present suit before any other court. The suit is being filed within a period of three years from the date of refusal of the defendant to execute and register the sale deed in favour of the plaintiff and therefore the same is within the period prescribed by law and is not barred by limitation.
22. The plaintiff values the relief of specific performance of the agreement of sale for the purpose of court fee and jurisdiction at Rs.4,40,525/- under section 39 of the Andhra Pradesh Court fees and Suits Valuation Act and the proper court fee is Rs. /-. The relief of perpetual injunction is valued notionally at Rs.5,000/- under section 26 (c) and pays the proper Court fee is Rs. /-. Thus the total court fee of Rs. /- is paid under Article 1 (b) & (c) of Schedule I of the A.P.Court Fees and Suit Valuation Act, which is sufficient.
23. The plaintiff therefore prays that this Hon'ble court may pleased to pass judgment and decree
- i. Directing the defendant to execute and register the sale deed in favour of the plaintiff or his nominee/s by receiving the balance of sale consideration of Rs.4,40,525/- 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 and on failure of the defendant to come forward to execute and register the sale deed, this Hon'ble court may be pleased to execute and register the sale deed in favour of the plaintiff or his nominee/s, on behalf of the defendant.
 - ii. Consequently pass a decree for perpetual injunction restraining the defendant from transferring, alienating, creating any third party interest or charge of the suit flat in favour of the third parties or parting with possession in respect of 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.


PLAINTIFF

- iii. Award the costs of the suit and grant such further relief or reliefs as this Hon'ble court may deem fit and proper in the circumstances of the case.

COUNSEL FOR THE PLAINTIFF


PLAINTIFF

Hyderabad
-06-2007.

SCHEDULE OF THE PROPERTY

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 .73. situated at Cherlapally Village, Ghatkesar Mandal, Ranga Reddy district and bounded by :

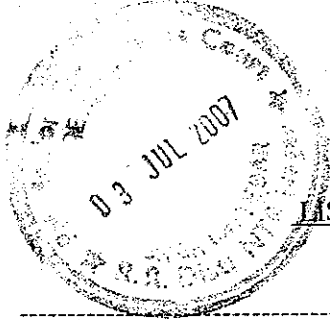
NORTH	:	Open to sky
SOUTH	:	Flat No.402
EAST	:	Open to sky
WEST	:	6 feet wide corridor


PLAINTIFF

VERIFICATION

I, Vinay Agarwal, S/o. Sri Vasudev, aged 42 years, Occ : business, R/o. Flat No.403, Susheel sidency, Opp : CDR Hospital, Hyderguda, Hyderabad do hereby declare that the contents of the above plaint and the schedule of property are true to the best of my knowledge, information, belief and legal advice, which I believe to be true and hence verify the same as true and correct on this the day of June, 2007 at Hyderabad.


PLAINTIFF



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LIST OF DOCUMENTS FILED BY THE PLAINTIFF

S.No.	DATE	DESCRIPTION OF THE DOCUMENT
1.	08-09-2005	Original receipt issued by the defendant for Rs.10,000/-
2.	15-12-2005	Copy of agreement of sale between the plaintiff and defendant.
3.		Original pricing and payment terms of defendant.
4.	03-03-2006	Original receipt issued by the defendant for Rs.15,000/-.
5.	05-05-2006	Original reminder notice issued by defendant.
6.	15-05-2006	Reply to the reminder notice of the defendant with acknowledgment.
7.	09-06-2006	Original cancellation notice issued by defendant.
8.	23-06-2007	Reply to the cancellation notice of the defendant with acknowledgment.
9.	11-07-2006	Original receipt issued by the defendant for Rs.75,000/-.
10.	01-08-2006	Original letter addressed by the defendant.
11.		Plan of the Flat.
12.	19-02-2007	Office copy of legal notice issued to defendant.
13.	22-02-2007	Reply notice of the defendant.
14.	12-03-2007	Office copy of legal notice.
15.	28-03-2007	Original reply notice of the defendant.
16.	24-05-2007	Letter addressed to the Post Office by wife of the plaintiff.
17.	-05-2007	Caveat filed by the defendant.

Hyderabad
-06-2007.


PLAINTIFF