Draft

BEFORE THE HON'BLE DISTRICT CONSUMER FORUM – II

AT: HYDERABAD

CC NO. 557 OF 2015

Between:

Salem Padmanabam Srinivas Prasad ... Complainant

AND

M/s. Modi Properties and Investments Pvt. Ltd., & another .... Opposite Parties

EVIDENCE AFFIDAVIT OF OPPOSITE PARTIES

I, L.Ramacharyulu S/o. Sri L.Raghavendra Rao aged 54 years r/o. M.G. Road, Secunderabad, do here by solomnly affirm and state on oath as follows:

I am the legal officer of the Opposite Party Company and as such well aware of the facts deposed hereunder.

1. I submit that Opposite Party No. 1 has been wrongly referred to as M/s. Modi Properties & Investments Pvt. Ltd., sister concern of M/s. Nilgiri Estates represented by its Managing Director in the Complaint. Opposite Party no. 2 has been wrongly referred to as M/s. Paramount Avenue, sister concern of M/s. Modi Properties & Investments Pvt. Ltd., represented by its Managing Director in the Complaint.

2. I submit that M/s. Nilgiri Estates, a registered partnership firm is developing a housing project known as Nilgiri Estate situated at Rampally Village, Keesara Mandal, RR District, consisting of 79 villas along with appurtenent amenities.

3. I submit that M/s. Paramount Estates, a registered partnership firm is developing a housing project known as Paramount Avenue situated at Nagaram Vilalge, Keesara Mandal, RR District, consisting of 208 flats along with apprutinent amenities. There is no firm or entity by the name 'Paramount Avenue'.

4. I submit that M/s. Modi Properties & Investments Pvt. Ltd., is a private limited company which is a holding company and is not directly connected with either ownership or development of the projects known as Nilgiri Estates or Paramount Avenues.

5. I submit that M/s. Modi Properties & Investments Pvt. Ltd., is not concerned with any direct transaction that the complainant has with either M/s. Paramount Estate or M/s. Nilgiri Estates.

6. I submit that the Complainant has wrongly shown M/s. Modi Properties & Investments Pvt. Ltd., as the Opposite Parties being rep. by their Managing Director. The Opposite parties are partnership firms represented by its Partners. This fact has been clearly mentioned in the reply notice given by the Opposite parties 1 & 2.

7. I submit that M/s. Modi Properties and Investments Pvt. Ltd., is only a holding company and it is neither the owner or developer of any of the projects that are referred in the Complaint. The individual projects developed are owned and developed by seperate firms having different partners and constitution. The accounting procedures are different and unconnected to any other firm of the holding company. The issues raised by the Complainant pertain to two separate and independent firms which are unconnected in their operations i.e., Paramount Estates and Nilgiri Estates. The issues raised by the Complainant pertaining to the individual firms have to be separately addressed to the respective firms. As such the Opposite parties got issued two separate reply notices on behalf of the individual firms.

8. I submit that the correct name of OP No.1 is M/s. Nilgiri Estates, a registered partnership firm and the name shown by the Complainant is that of the project under taken by this OP NO.1. The Opposite parties are two different firms and the Complainant had entered into two different transactions with each of the Opposite party. As such, the Opposite parties filed separate written statements. The Complainant has wrongly shown the Opposite Parties being rep. by their sister concern M/s. Modi Properties & Investments Pvt. Ltd., represented by its Managing Director. The Opposite parties are partnership firms represented by their respective Partners. This fact has been clearly mentioned in the reply notice given by the Opposite party.

9. I submit that it is not true that the Opposite parties are sister concerns of Modi Properties and Investments Pvt. Ltd., it is only a holding company of the Opposite parties. It is not true to say that the Complainant has booked the villa based only on the brochures of the Opposite parties. It was a decision taken by the Complainant based on all the facts.

10. I submit that opposite party no. 1 is in no way connected with the transaction of the complainant with opposite party no. 2.

11. I submit that this Opposite party does not have personal knowledge of the complainants trails for obtaining bank loan for the villa. It is not true that the complainant informed to Mr.Krishna Prasad, not to present the cheque or expressed his intention to cancel the booking.

12. I submit that that the Complainant had issued a cheque for Rs. 25,000/- but it is not true to say that he had given instructions to the staff of the Opposite party not to present the cheque.

~~13 I submit that there is no deficiency of service on the part of this Opposite party. The legal notice given by the Complaintant has been suitably replied.~~

13 ~~14~~ I submit that the Opposite party us had shown any indifferent attitude to the Complainant and the cancellation by the Complainant was purely due to his inability to meet the financial commitments towards the payment of installments. There has been no deception or unfair trade practice on the part of the opposite ~~party~~. us

14 15. I submit that it is not true that the legal notice did. 11.9.2015 was replied with false and baseless allegations but it clearly spelt out the facts pertaining to the transaction between the complainant and opposite parties.

15 16. I submit that the payment of any compensation much less Rs.5 lakhs does not arise nor the cost of Rs.10,000/-.

16 17. I submit that the Opposite Party gave a suitable reply bringing out all the facts pertaining to the transactions between the Complainant and Opposite Parties. I further submit that this is not a fit case to be filed before this Hon'ble Forum as there is no deficiency of service or any unfair trade practice on the part of the Opposite Party.

17 18. I submit that the Complainant had made a provisional booking for Plot No.8, in the project developed by this Opposite Party at Rampally Village, Keesara Mandal on 30.3.2015. He had paid booking amount of Rs.25,000/-. It is true ~~that this Opposite Party~~ OP no 1 had presented the cheque on 02.4.2015 and the same was dishonored, by the Complainant's banker. The presentation of cheque before due date was purely by oversight on the part of ~~this Opposite Party~~ OP no 1 and was not in any way intended to bring down the reputation of the Complainant. The Opposite Party gives utmost importance to ~~it's~~ them client's satisfaction and not create any sort of problems for ~~its~~ them clients. The Opposite Party had informed to the complainant regarding the return of the cheque and the complainant had

stated that the OP can re-present the same, accordingly as per the instructions of the Complainant, OP had re-presented the same as ~~per~~ and the instructions ~~of the complainant and the same~~ was honoured by the complainant. This clearly shows that the complainant was very much interested in continuing the deal to purchase the villa from the ~~OP's~~ project.

The terms and conditions with regard to nature of booking and cancellation charges mentioned in the Provisional Booking Form are extracted and reproduced below.

1. Nature of booking: ...

1.1 This is a provisional booking for a villa mentioned overleaf in the project known as "Nilgiri Estates".

1.2 The Provisional booking do not convey in favour of purchaser any right, title or interest of what so ever nature unless and until requried documents such as sale aggrement/sale deed / construction contract etc., are executed.

1.3 The purchaser shall execute the required document within a period of 15 days from the date of booking alongwith payment of the 1st installment mentioned overleaf. Incase the purchaser fails to do so then the provisional booking shall stands cancelled and the builder shall be entitled to deduct cancellation charges as mentioned herein.

6. Cancellation charges:

6.1 In case of default mentioned in the clause 1.3 above the cancellation charges shall be Rs.25,000/-

6.2 In case of failure of the purchaser to obtain housing loan within 30 days of the provisioanl booking, the cancellation charges will be NIL provided necessary intimation to this effect is given to the builder in writing alongwith necessary proof of non sanction of the loan. In case of such non intimation the cancellation chrges shall be Rs.25,000/-.

6.3 In case of request for cancellation in writing within 60 days of this provisional booking the cancellation charges shall be Rs.50,000/-.

6.4 In all other cases of cancellation either of booking or agreement the cancellation charges shall be 15% of the agreed sale consideration.

19. I submit that the complainant never came forward to execute the agreement of sale as per the terms of the booking and pay the first installment of Rs. 2 lakhs which was due on 14.04.2015. The Complainant is wrongly linking transacation

of ~~with this~~ OP 1 and ~~to that~~ of OP No.2. The Cheque given to this OP No.1 was dishonoured on 2.4.2015 but subsequently the Complainant has paid an amount of Rs.1 lakh on 16.4.2015 to OP2. This clearly shows that the transaction with OP2 is not at all linked with this OP. The Complainant has now taken a lame excuse that the OP No.1's action has affected his credibility with the bankers. The Complainant was unable to meet the financial commitments for both the transctions and trying to shift the blame to the Opposite Parties.

20. I submit that the booking form clearly mentions the schedule of the payments to be made by the complainant starting from 14.4.2015. The complainant has failed to make the first installment of Rs.2,00,000/- due on 14.4.2015 and the OP sent a reminder notice on 11.5.2015 and there was no response from the complainant. The OP waited for almost more than two months till 30.7.2015 and issued a cancellation notice dtd.30.7.2015. The apparent reason for the cancellation of the booking is the complainant's failure to pay the installments, which were due on 14.4.2015 and 14.05.2015 totalling to Rs.5,00,000/- lakhs. As the booking has been cancelled as referred above the OP No.1 has got the right to allot this villa to any other prospective customer.

21. I submit that surprisingly on 11.9.2015 the complainant has sent a notice to this OP trying to confuse the issue at hand by linking transactions related to OP1 +2 ~~with this OP.~~ It is very clear that the complainant failed to perform his part of the contract by making further payments and executing an agreement of sale. Thus OP No.1 is fully entitled to cancel the provisional booking of the complainant and forfeit the booking amount of Rs. 25,000/- paid by the complainant. At no point of time the complainant has come forward to make further payments nor has he sent any correspondence to this OP with regard to the provisional booking. The complainant has filed a false complaint for illegal gains.

22. I submit that the Complainant has booked a flat at a project of this Opposite party no.2 and paid a sum of Rs. 2,00,000/- and started persuing for a housing loan, he also wanted to book a villa at the Project of Opposite party no.1.

23. I submit that it is true that a tripartite agreement dtd. 5.8.2015 was entered for obtaining the housing loan. This Opposite Party No.1 does not have any personal knowledge regarding the effecting of the banking record of the complainant. It is not true to say that the complainant cancelled the bookings because of the indifferent attitude of the opposite parties but because of the complainant failure to meet the financial commitments.

24. I submit that there is not deficiency of service on the part of the Opposite parties. The legal notice given by the Complaint has been suitably replied.

25. I submit that the payment of any compensation much less Rs.5 lakhs does not arise nor the cost of Rs.10,000/-. The question of refunding of Rs.2 lakhs does not arise as the complainant wants to cancel the booking after more than 60 days from the date of the agreement. The clause No.12 (c) of the said agreement clearly mentions that any cancellation after 60 days of the agreement a cancelation charge equivalent to 15% of the total sale consideration has to be paid by the Complainant.

26. I submit that the Opposite Party gave a suitable reply bringing out all the facts pertaining to the transactions between the Complainant and Opposite Party. This is not a fit case to be filed before this Hon'ble Forum as there is no deficiency of service or any unfair trade practice. The question of refund of Rs.2 lakhs does not arise.

27. I submit that the It is true that the Complainant had made a provisional booking of flat No. 405 in the venture of the OP No: 2 ~~Opposite Party~~ known as Paramount Avenue at Nagaram Village, Keesara Mandal, RR District., by signing booking form dated 08.01.2015. The terms of the booking was clearly mentioned in the booking from and the operative portion of the terms and conditions of the booking pertaining to this case are given below:

1. Nature of booking: ...

1.1 This is a provisional booking for a villa mentioned overleaf in the project known as "Paramount Aveue".

1.2 The Provisional booking do not convey in favour of purchaser any right, title or interest of what so ever nature unless and until requried documents such as sale aggrement/sale deed / construction contract etc., are executed.

1.3 The purchaser shall execute the required document within a period of 15 days from the date of booking alongwith payment of the 1st installment mentioned overleaf. Incase the purchaser fails to do so then the provisional booking shall stands cancelled and the buileder shall be entitled to deduct cancellation charges as mentioned herein.

5. Housing Loans: ...

5.1 The purchaser at his/her discretion and cost may avail housing loan from a bank/financial institution. The purchaser shall endeavour to obtain necessary loan sanctions within 30 days from the date of provisional booking. The builder shall under no circumstances be held responsible for non sanction of the loan to the purchaser for what so ever reason. The payment of *installments to the builder shall not be linked to the housing loan availed / tobe availed by the purchaser.*

6. Cancellation charges:

6.1 In case of default mentioned in the clause 1.3 above the cancellation charges shall be Rs.25,000/-

6.2 In case of failure of the purchaser to obtain housing loan within 30 days of the provisioanl booking, the cancellation charges will be NIL provided necessary intimation to this effect is given to the builder in writing alongwith necessary proof of non sanction of the loan. In case of such non intimation the cancellation chrges shall be Rs.25,000/-.

6.3 In case of request for cancellation in writing within 60 days of this provisional booking the cancellation charges shall be Rs.50,000/-.

6.4 In all other cases of cancellation either of booking or agreement the cancellation charges shall be 15% of the agreed sale consideration.

Thereafter the complainant has entered into an agreement of sale with opposite party no. 2 and paid a sum of Rs.2,00,000/- towards the part sale consideration. The relevant terms and conditions of agreement of sale pertaining to this case which were already contained in the booking form are given below.

8 That the vendee at his discretion and cost may avail housing loan from bank/financial institutions. The Vendee shall endeavour to obtain necessary loan sanctioned within 30 days from the date of provisional booking. The Vendor shall under no circumstances be held responsible for non sanction of the loan to the vandee for whatsoever reason. The payment of installments to the vendor by the vendee shall not be linked with housing loan availed / tobe availed by the vendee.

10.That in the event the vendee is arranging/ has arranged finance under housing finance scheme/ or any other scheme for the purchase of scheduled flat and payment of sale consideraiton under this agreement it shall be the sole responsibility of the vendee for timely payments from such financier to the vendor. Any default in payment by such financier to the vendor shall be deemed to be the default by the vendee and the consequence as regards default in payment as contained under this agreement shall become operative.

12. *That in case of delay in payment of installments for more than one month from the due date the vendor shall at his discretion be entitled to cancell this agreement and the vendor shall be entitled to forfeit the following amounts towards cancellation charges as under:*

a. *In case of failure of the vendee to obtain housing loan within 30 days of this agreement, the cancellation charges will be NIL provided necessary intimation to this effect is given to the vendor in writing alongwith necessary proof of non sanction of the loan. In case of such non intimation the cancellation chrges shall be Rs.25,000/-.*

b. *In case of request for cancellation in writing within 60 days of this agreement the cancellation charges shall be Rs.50,000/-.*

c. *In all other cases of cancellation either of booking or agreement the cancellation charges shall be 15% of the agreed total sale consideration.*

28. I submit that the the first installment of Rs. 2 lakhs itself is paid in parts well after its due date of 23.01.2015 as given under. Even today only Rs. 1.75 lakhs out of the said Rs. 2 lakhs of the first installment has been paid as follows.

Cheque no. 446261, dated 23.1.2015 Amount of Rs.75,000/-

Cheque no. 846074, dated 16.4.2015 Amount of Rs. 1 lakh.

Both the cheques were drawn on HDFC Bank, SD Road,Secunderabad.

29. I submit that the Cheque given to OP No.1 was dishonoured on 2.4.2015 but subsequently the Complainant has paid an amount of Rs.1 lakh on 16.4.2015 to ~~this~~ OP 2. This clearly shows that the transaction with ~~this~~ OP No: 2 OP is not at all linked with OP No1. The Complainant has now taken a lame excuse that the OP No.1's action has affected his credibility with the bankers. The Complainant was unable to meet the financial commitments for both the transctions and trying to shift the blame to the Opposite Parties.

30. I submit that ~~the this~~ OP No2 after patiently waiting for over 6 months for the complainant to perform his part of the agreement issued a reminder notice dated 27.07.2015 for the payment of balance amount of the first installment of Rs. 25,000/-. The notice was duly received by the complainant on 01.08.2015. In response to the notice the complainant has sent an email to this OP dated 02.08.2015 stating that his loan has been enhanced to Rs. 16 lakhs and his intention to pay additional amounts. The Complainant has also stated that he was 'very eager' to move into the new house and has requested ~~this~~ OP No2 to bear with him for the delay in making payments. It may be noted that even after a

period of 4 months after the incident of inadvertently presenting cheque ~~of~~ by OP1 the complainant was very eager to complete the transaction.

31. I submit that OP2 is no way connected with any default in presentation of the cheque by OP1. The complainant cannot penalize or accuse OP2 of deficiency in service for any alleged default of OP1. Any default by OP1 cannot be grounds for filing this complaint against OP2.

32. I submit that the complainant on several occasions has requested OP2 for extending the due date of installments as he was arranging the necessary funds. The complainant has also acknowledged that there is a delay in making payments from his end. Emails dated 09.03.2015 and 16.05.2015 by the complainant to OP2 and reminder notice dated 24.02.2015 by OP2 to the complainant are testimony to the same.

33. I submit that even though OP2 was very lenient towards the complainant and had made several requests for the complainant to pay the balance amounts, the complainant unilaterally decided to cancel the booking and refund the amount paid to OP2 vide letter dated 14.08.2015. Strangely in the said letter the complainant states that the reason for cancellation of the booking made with OP2 is for default in presentation of cheque by OP1.

34. I submit that it is not true to say that the OP.No: 2 ~~Opposite Party~~ had shown any indifferent attitude and the cancelation of the booking of flat No.405 Paramount Avenue, Nagaram by the complainant is without any basis. The refund of the amount paid by the Complainant is not possible as per the terms and conditions of the Agreement of Sale entered into between the Complainant and OP.2 The clause no. 4 of the said agreement clearly states the installments to be paid by the Complainant. As per the said agreement the 1st installment was due and payable on 22.1.2015 but the Complainant had paid only an amount of Rs.75,000/- on that date and further an amount of Rs.1,00,000/- on 15.4.2015. As such the Complainant is still due and payable an amount of Rs.25,000/- towards the 1st installment. As per the clause No.12(c) of the Agreement of Sale, if the Complainant has to cancel the booking at this stage he has to pay a cancelation charges equivalent to 15% of the sale consideration i.e., Rs.23,03,000/- which would be equivalent to Rs.3,45,450/- and after deducting Rs.2,00,000/- already paid by the Complainant, he would still have to pay an amount of Rs.1,45,450/- to the OP.

35. I submit that the Complainant has clearly admitted that he has been sanctioned housing loan by HDFC Bank for Rs.16,00,000/- which is clear in the TRIPARTITE AGREEMENT dtd. 5.8.2015 between the Complainant, OP and HDFC Bank. This goes to show that the Complainant's credit rating has not at all been affected as claimed by the Complainant.

36. I submit that there is no deficiency of service on part of the ~~OP~~ OPs and there is no loss to the complainant much less Rs.5,00,000/- as claimed by the Complainant.

It is therefore prayed that this complaint should be dismissed with costs as there is no deficiency of service on the part of the OP/s.

Sworn and signed before me on this
4th day of May 2016 at Secunderabad.

DEPONENT

Advocate/Secunderabad

The Opposite Parties ~~is relyng~~ are relaying on the following documents in support of ~~it's~~ their case.

S. No.	Date	Description of document	
(Nilgiri Estates, Rampally)			
1.	30.3.2015	Booking form No. 1052	– Office copy
2.	03.4.2015	Letter addressed by the OP to the Complainant	---Office Copy
3.	11.5.2015	Reminder Notice	--- Office Copy
4.	09.7.2015	Cancellation Notice	— Office copy
5.	30.07.2015	Cancellation Notice with Ack Due	---Office Copy
(Paramount Avenue)			
6.	08.1.2015	Booking form No. 1052	– Office copy
7.	16.2.2015	Letter addressed by the Bank To the Complainant	--- Photostat Copy
8.	24.2.2015	Reminder for payment along with Postal acknowledgement	--- Office Copy
9.	09.3.2015	E mail addressed by the Complainant	--- Office Copy
10.	16.5.2015	E mail addressed by the Complainant	--- Office Copy
11.	02.8.2015	E mail addressed by the Complainant	--- Office Copy
12	27.7.2015	Reminder Notice along with Postal acknowledgement	--- Office Copy

Secunderabad

Date: 04.05.2016

DEPONENT

BEFORETHE HON'BLE DISTRICT
CONSUMER FORUM – II
AT: HYDERABAD

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EVIDENCE AFFIDAVIT OF
OPPOSITE PARTIES

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