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

WRITTEN ARGEMENTS OF OPPOSITE PARTY NO.2

(Paramount Avenue)

May it please your honour:

1 The consumer complaint as filed by the complainant is not at maintainable under law. The Complainant has not established any consumer grievances against the Opposite Parties as envisaged U/s. 2c of THE CONSUMER PROTECTION ACT 1986. The complainant has failed to bring on records the necessary parties. The OP No.1 is a holding company of OP No.2 and also of M/s. Nilgiri Estates. It is wrongly referred that Opposite Party No. 1 M/s. Modi Properties & Investments Pvt. Ltd., as a sister concern of M/s. Nilgiri Estates represented by its Managing Director in the Complainant. Opposite Party no. 2 has been referred to as M/s. Paramount Avenue, sister concern of M/s. Modi Properties & Investments Pvt. Ltd., represented by its Managing Director in the Complainant.

2. The name of OP No.2 is wrongly shown in the cause title by the Complainant. The correct name of this OP is Paramount Estates and the name shown by the Complainant is that of the project under taken by the OP NO.2. The Opposite parties are two different firms and the Complainant had entered into two different transactions with each of the Opposite party. The Complainant has wrongly shown the Opposite Party no. 2 as the sister concern of M/s. Modi Properties & Investments Pvt. Ltd., rep. 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.

3. 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 separate 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 pertains to two separate and independent firms which are unconnected in their operations i.e., Paramount Avenue 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 seprate reply notices on behalf of the individual firms.

4. It is not true to say 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 that the Complainant has booked the Flat based only on the brochures of the Opposite party. It was a decision taken by the Complainant based on all the facts.

5. 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 wanted to book a villa at the Project of Opposite party no.1.

6. A tripartite agreement dtd. 5.8.2015 was entered for obtaining the housing loan. This Opposite Party 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. The complainant is trying to shift the burden of his failure to keep up the financial commitments on to the OP. The complainant is well aware of his financial commitment as he has entered into a written contract which clearly mentions above the payment schedule to be made by the complainant from time to time, in which he miserably failed and now he has filed this false consumer complaint before this Hon'ble Forum. There is no deficiency of service on the part of the Opposite party. The legal notice given by the Complaint has been suitably replied.

7. The Opposite party has not 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 the installments as agreed upon. There has been no deception on the part of the opposite party nor any unfair trade practice on the part of the Opposite party.

8. The legal notice dtd. 11.9.2015 was replied with the true facts pertaining to the transaction between the complainant and Opposite party. There is no deficiency of service or unfair trade practice by the Opposite Party.

9. 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.

10. 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. There is no cause of action for filing this complaint before this Hon'ble Forum.

11. The Complainant had made a provisional booking of flat No. 405 in the venture of the 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 form and the operative portion of the terms and conditions of the booking pertaining to this case are extracted 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.*

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.

The Cheque given to OP No.1 was dishonoured on 2.4.2015 but subsequently the Complainant has paid an amount of Rs.1 lakhs on 16.4.2015 to this OP. This clearly shows that the transaction with this 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 enable to meet the financial commitments for both the transactions and trying to shift the blame to the Opposite Parties.

This OP 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 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. 6 lakhs and his intention to pay additional amounts. Complainant has also stated that he was 'very eager' to move into the new house and has requested this OP 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 OP1 the complainant was very eager to complete the transaction.

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.

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.

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.

It is not true to say that the 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. 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.

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.

There is *no deficiency* of service on part of the OP 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.

Place: Secunderabad

Date: 20.09.2016

COUNSEL FOR OPPOSITE PARTY No. 2

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(Paramount Avenue)

Filed on: 20.09.2016

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