

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 ARGUMENTS OF OPPOSITE PARTY NO.1

(Modi Properties and Inv. Pvt. Ltd.,)

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 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 appurtenant amenities. 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 appurtenant amenities. There is no firm or entity by the name 'Paramount Avenue'.
- 3 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.
- 4 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.
- 5 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.

- 6 This Opposite party submits 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 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 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.
- 7 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 1 & 2.
- 8 It is clear from the above submissions there is no cause of action against the OP No.1 namely M/s. Modi Properties & Investments Pvt. Ltd.
- 9 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 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 by this Opposite Party and was not in any way intended to bring down the reputation of the Complainant. The Opposite Party gives utmost importance to it's client's satisfaction and not create any sort of problems for its 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 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.
10. The terms and conditions with regard to nature of booking and cancellation charges mentioned in the Provisional Booking Form are extracted and

reproduced below. The OP is also filing the office copy of the Provisional Booking Form :

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 requiried 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.*

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 c ncellation 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.*

11. 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 with this OP to that of OP No.2. The Cheque given to this OP was dishonoured on 2.4.2015 but subsequently the Complainant has paid an amount of Rs.1 lakhs 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 enable to meet the

financial commitments for both the transactions and trying to shift the blame to the Opposite Parties.

12. 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 a copy of which is filed along with this written statement 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 has got the right to allot this villa to any other prospective customer.
13. 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 OP2 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. This OP 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.
- 10 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. Therefore the complaint against the OP No.1 is fit case for dismissal.

Secunderabad

Date: 20.09.2016

COUNSEL FOR OP No.1

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OPPOSITE PARTY NO.1
(Modi Properties and Inv. Pvt. Ltd.,)

Filed on: 20.09.2016

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