

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 SUBMISSION OF OPPOSITE PARTY NO.2

(Paramount Avenue)

The Opposite party No.2 submits as follows:

1. This Opposite Party submits that the name 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. As such, the Opposite parties are filing separate written statements. 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.

2. The 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 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 separate reply notices on behalf of the individual firms.

3. With regard to para no.1 of the complaint 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. The other averments in the para are true and hence not denied, but it is not true to say that the

Ashwini

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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.

4. With regard to para no.2 of the complaint it is true 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 wanted to book a villa at the Project of Opposite party no.1.

5. With regard to para no.3 & 4 of the complaint the averments therein don't pertain to this Opposite party and hence denied.

6. With regard to para no.5 it is true that 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 and hence denied. 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.

8. With regard to para no.6 the averments there in are all false and baseless, hence denied and there is not deficiency of service on the part of the Opposite party. The legal notice given by the Complaint has been suitably replied.

9. With regard to para no.7 the Opposite party denies that it 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 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.

10. With regard to para No.8 it is not true to say that the legal notice dtd. 11.9.2015 was replied with false and baseless allegations but it was clearly spellout the facts pertaining to the transaction between the complainant and Opposite party.

11. With regard to para No.9 it is denied that there is any deficiency of service or unfair trade practice by the Opposite Party.

12. With regard to para No.10 the averments therein are not true and hence denied and 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 cancellation charge equivalent to 15% of the total sale consideration has to be paid by the Complainant.

13. With regard to para No.11 the Opposite Party submits that it 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.

14. With regard to para No.12 the allegations there in are all false and baseless and hence denied in toto. The question of refund of Rs.2 lakhs does not arise as explained in the above paragraph.

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

The Opposite Party submits as follows:

It is true that 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 given below:

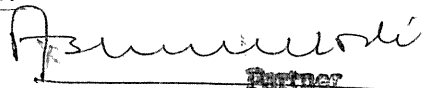
1. Nature of booking: ...

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

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 required documents such as sale agreement/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.*

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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 /to be 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 vendee for whatsoever reason. The payment of installments to the vendor by the vendee shall not be linked with housing loan availed /to be availed by the vendee.

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[Signature]
Partner

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 consideration 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 cancel 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 along with necessary proof of non sanction of the loan. In case of such non intimation the cancellation charges 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.

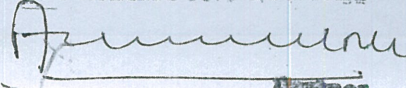
Cheque no. 446261, dated 23.1.2015 Amount of Rs.75,000/-

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 No.1. 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 transactions and trying to shift the blame to the Opposite Parties.

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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. 16 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

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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.

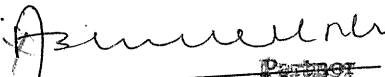
The Complainant has clearly admitted that he has been sanctioned housing loan by HDFC Bank for Rs.16,00,000/- which is clear in the TRIPARTITE AGREEMENT dtd. 5.8.2015 between the Complainant, OP and HDFC Bank. This goes to show that the Complainant's credit rating has not at all been affected as claimed 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: 04.01.2016


Partner
OPPOSITE PARTY No. 2

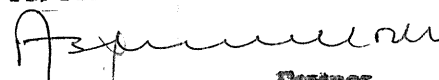
The Opposite Party is relying on the following documents in support of it's case.

S. No.	Date	Description of document
1.	08.1.2015	Booking form No. 1052 – Office copy
2.	16.2.2015	Letter addressed by the Bank To the Complainant --- Photostat Copy
3.	24.2.2015	Reminder for payment along with Postal acknowledgement --- Office Copy
4.	09.3.2015	E mail addressed by the Complainant --- Office Copy
5.	16.5.2015	E mail addressed by the Complainant --- Office Copy
6.	02.8.2015	E mail addressed by the Complainant --- Office Copy
7.	27.7.2015	Reminder Notice along with Postal acknowledgement --- Office Copy

Secunderabad

Date: 04.01.2016

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WRITTEN SUBMISSION OF

OPPOSITE PARTY NO.2

(Paramount Avenue)

Filed on: 04.01.2016

Filed by:

Shri C. BALAGOPAL

Advocate

Flat No.103, Suresh Harivillu Apts

Road No.11, West Marredpally,

Secunderabad – 26.

Ph: 9441782451

**COUNSEL FOR OPPOSITE
PARTIES**