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IN THE COURT OF THE HON'BLE I ADDITIONAL CHIEF JUDGE:
CITY CIVIL COURTS:
AT SECUNDERABAD.

O.S.NO: 122 OF 2012.

BETWEEN:-

M/s. Mehta & Modi Homes, Rep. by its Managing Partner
Sri Soham Modi s/o Satish Modi, Aged 33 years, Occ: Business,
Regd. Office: 5-4-187/3 & 4, Soham Mansion, M. G. Road,
Secunderabad.

- PLAINTIFF.

A N D

Smt. A. Susheela w/o Sudhakar,
Aged 58 years, Occ: House wife,
r/o 304, Maha Lakshmi Towers, Shivbagh,
Ameerpet, Hyderabad.

-DEFENDANT.

WRITTEN STATEMENT FILED UNDER ORDER VIII OF CIVIL
PROCEDURE CODE.

1. The allegations in the Plaint are not true and correct and the Plaintiff is put to strict proof all such allegations which are not specifically admitted hereunder. The suit is not maintainable either on Law or on facts and the suit is liable to be returned and rejected in limine.
2. As regards the allegations at Para 1 the Plaintiff is a builder and developer and developed the project under the name and style as " Silver Oak Bungalows " situated at Sy. No 291, Charlapally, Hyderabad – 500 051 is not disputed.
3. The Defendant had purchased on 28-11-2006 a bungalow bearing No: 228 in Silver Oak venture in an area of 318 Sq. yards for construction of 2098 Sq. feet plinth area for a total sale consideration of Rs. 48, 00, 000/- (Rupees Forty Eight Lakh's only) under payment of quarterly installment scheme on the pari-passu of progress of construction scheme excluding VAT, Registration & Stamp duty charges, Service Tax as per the terms and conditions therein. Not for Rs. 46, 00, 000/- as falsely alleged by the Plaintiff at Para 2 of the Plaint.
4. Rs. 25, 000/- towards Booking was paid by Defendant vide booking Form No: 2040 dated 10-10-2006. The Plaintiff has deviated from the Agreed terms in

many aspects. On 28-11-2006, an Agreement of Sale was entered into by the parties stipulating all terms and conditions mutually agreed upon and made to believe that the scheduled property is free from encumbrances of all nature.

5. Further in the Sale Agreement at clause 6, Plaintiff categorically declared that the said scheduled property is "Free from all Encumbrances of any nature...."

6. The Defendant demanded the Plaintiff to furnish the copy of sanction of HUDA, which was not furnished and as such the same could be able to obtain by the Defendant with great difficulty and came to know that there are deviations to the sanction plan in the actual construction of bungalows. The same was brought to the notice of the Plaintiff but did not turn-ed up. It is known fact that in view of GOMS No: 86 dated 3-3-3006 the same shall not be regularized at future point of time even on payment of penal charges. The Defendant had demanded for constructing the same as per the sanction plan by rectifying the registered sale deed at the cost of Plaintiff as the same was due to their utter negligence and intentional default having full knowledge of GOMS No: 86. Further Defendant had made arrangements to seek loan from Andhra Bank, Sultan Bazar, Hyderabad and informed the fact to the Plaintiff and instructing him to collect the balance payments from the Bank and the Plaintiff has agreed to the same and issued a letter to this effect to Andhra Bank and accordingly the Original documents were submitted for simple mortgaging with Bank and payments thus received. At the time of Sale Deed Registration during January'2007 the Plaintiff had requested Defendant to issue undated cheque bearing no: 827455 drawn on Andhra Bank, Sultan bazaar, Hyderabad for Rs. 7, 88, 000/- (Rupees Seven Lakhs Eighty Eight Thousands only) to be given in their firm name with a covering letter for security purpose and captioning the same on the reverse side of the cheques. Defendant had endorsed on the reverse side of each cheque " The Cheque for bungalow no 228, security cheque not to be presented in the bank".

7. It is not disputed that the payments were not given vide separate Negotiable Instruments by Defendant and only an amount of Rs. 6, 95, 000/- (Rupees Six Lakhs Ninty Five Thousands only) has to be paid within seven days of completing the construction by me. So the question of presenting the same cheque's is quite contrary to the understanding of the parties and its return on the ground of insufficient funds does not amounts to offence under Section 138 of the Negotiable Instruments Act for which the legal notice during April' 2009 issued by Plaintiff was wrong. The total cost of plot inclusive of VAT, Service Tax, Misc, & Accused paid Registration Charges separately in 2007-08 and under bonafide faith that the possession as per sanctioned plan will be given shortly by the Plaintiff. The Bank has pointed out the lapses and the Plaiatiff was informing both the Bank and Defendant that the deviation of the Approved plan will be carried out and payments shall be collected. Further claim of the Building ready for Possession is also not correct as the building even as of date is not ready as the following works as per the Registered Construction Agreement Annexure-A are not completed till date and to be carried out:

Item	DELUX BUNGALOW
EXTERNAL PAINTING	EXTERIOR EMULSION
INTERNAL PAINTING	LUPPAM FINISH WITH OBD
SANITARY	PARRYWARE OR SIMILAR MAKE
C.P FITTINGS	PARRYWARE OR SIMILAR MAKE
KITCHEN PLATFORM:	GRANITE SLAB (finished)
	2 FEET CERAMIC TILES DADO,
	SS SINK NOT INSTALLED

8. Without rectifying the same had sent a letter by Plaintiff demanding to pay the balance due of Rs.7, 88, 000/- (Rupees Seven Lakhs Eighty Eight Thousand only) for plot. The same was replied pointing out the left out works to be completed and queries hereupon to be complied under bonafide faith to the Plaintiff and waiting for possession of the plot. There is even difference in due amount to be received by Plaintiff as demanded Rs. 7, 88, 000/- instead of Rs. 6, 95,000/- .

9. As per the Contract the plots shall be delivered before January' 2009 to the Defendant. As per the terms an amount of Rs. 1,600/- per month per plot to be paid for every month delay to the Defendant me by the Plaintiff.
10. All these acts amount to cheating with false declaration, negligence and willful default apart from deficiency of service with costs and consequences.
11. For proper adjudication of the issues as per the contract by Conciliation/Arbitration as per Arbitration & Conciliation Act, 1996 through both the parties by mutual consent if at all accepted by both parties for speedy and effective relief:-
 - I) NOC from HUDA with releasing of mortgage so as to handover possession fully constructed as per the approved plan and construction complete in all aspects,
 - II) By altering the physical deviations as per sanctioned plan as there is ever treat of demolition if possible by changing the sanction plan and/or to estimate the cost for such changes and to pay to me if not possible at this stage,
 - III) To do completion of the above works can receive the said amounts as like as earlier amounts from me.
 - IV) And to pay an amount of Rs. 1,600/- from January' 2009 till handing over the possession.
 - V) And/Or else the agreement will be cancelled and the possession will be taken there upon by approaching for interim measure under section 9 of the Arbitration & Conciliation Act, 1996 for possession and consequential remedies making the Plaintiff liable for costs and consequences under reply notice dated 23-4-2009 by Defendant.
12. Accordingly on 29-6-2009 Defendant entrusted the matter to the Advocate as conciliator/ Arbitrator to do all needful acts in that behalf. Basing on the same a settlement was derived and concluded on 8-7-2009 duly signed by both the parties. As the Bank final installment has to be received the same was mentioned as if the

entire construction was completed and undertaken to withdraw the earlier Section 138 case no: 216 of 2009 on the file of the XI Additional Chief Metropolitan Magistrate, Secunderabad. Thereafter also as the building work could not be commenced Defendant again stopped the payment and the case also not withdrawn. As the same was not complied the 2nd cheque payment was withhold and only after withdrawal of the case the pay order was released and the returned cheque was taken back by Defendant on the undertaking to finish the entire balance works of the building vide letter dated 17-9-2009. Keeping the final installment cheque to be presented for collection on 9-10-2009 with undertaking to complete and finish the works in the mean while. Quite contrary to the same the cheques were presented on 6-10-2009 and that too without starting the balance works having received more than Rs. 5.25 Lakhs in July and September' 2009 and got issued the legal notice under section 138 of the N. I. Act on 27-10-2009. Left no other alternative Defendant was forced to reply on 3-12-2009 as conciliation failed the arbitration procedure should be followed as per the Contract and the Construction agreement was cancelled by Defendant with an advise not to recourse to Section 138 case for which the Plaintiff had falsely filed the same quite contrary to the Contract entered into by the parties as well as Arbitration & Conciliation Act, 1996. From 3-12-2009 the Agreement had been terminated by Defendant and the same is not in force. If at all any grievance by the Plaintiff the Registered Construction Agreement shall be challenged before the Court from that date. The suit also barred by Limitation as the Plaintiff failed to complete the work under 3-11-2008 Agreement and could not complete till date despite lapse of more than six years.

Registered Construction Agreement dated 3-11-2008 Clause No: 26:

26. In case of any dispute between the parties, the matter shall be resolved by arbitration under the provisions of Arbitration & Conciliation Act. 1996. The

place of Arbitration shall be at Secunderabad and the proceedings shall be in English. The place of legal jurisdiction shall be at Secunderabad.

13. A rejoinder was sent by the Plaintiff on 22-12-2009 on all false and baseless allegations. As per the agreed terms dated 17-9-2009 these cheques shall be presented on 9-10-2009 and not on 6-10-2009 and as such the same is contrary to the agreed terms under conciliation settlement. New C. C. No: 87 of 2011 (old C. C. No: 815 of 2010) was dismissed on 19-4-2012 by the Learned XII Special Magistrate at Secunderabad and an Criminal Appeal was filed and the same was also dismissed on 25-6-2013 by the Hon'ble VII Metropolitan & Sessions Judge, Nampally, Hyderabad stating that the building was not completed and kept ready for occupation and as such the same is not legally enforceable debt. All the Original/Certified Copy of the documents are field before the said court and the Defendant undertake either to call for records or take beck and file at the time of trial.
14. Indemnity Bond was given only for the deviations for damages by the Plaintiff in a stereo typed manner to the others who demanded for the same to avoid the present liability and to escape the deviations in the construction of the building.
15. The amount is not due amount as falsely claimed by the Plaintiff and as per the Construction Agreement dated 3-11-2008 there is abnormal delay and the Defendant paying the EMI to Andhra Bank regularly without enjoying the physical possession of the Bungalow. As the Construction Agreement itself was cancelled and the building was not completed till date the question of paying the amount as well as interest shall not arise as declared by the Criminal Court in N. I. Act cases the same is not legally enforceable debt and as per the said Agreement the resolution of dispute shall be by Arbitration & Conciliation Act, 1996 only for which a IA SR No: 152of 2013 filed by the Defendant is still pending for

adjudication. The Plaintiff also preferred Revision against the N. I. Act case before the Hon'ble High Court of A. P. at Hyderabad.

Hence it is therefore prayed that this Hon'ble Court may be pleased to dismiss the suit with costs and/or return/reject the plaint as lack of jurisdiction to entertain the suit in view of Arbitration Clause in the Construction Agreement dated 3-11-2008 cancelled by Defendant as Plaintiff is not entitled the said amount as the same is not legally enforceable debt pass necessary order or orders in the interest of justice.

Date:

COUNSEL FOR THE DEFENDANT.

DEFENDANT.

VERIFICATION.

I, Smt. A. Susheela w/o Sudhakar, Aged 57 years, Occ: House wife, r/o 304, Maha Lakshmi Towers, Shivbagh, Ameerpet, Hyderabad have verified the facts stated above at Para's 1 to 3 and found the same true to the best of my knowledge, belief and information. Hence verified.

DEFENDANT .

Tlcu P.H.
cor

IN THE COURT OF THE HONOURABLE
I ADDITIONAL CHIEF JUDGE:

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O.S.NO: 122 OF 2012.

BETWEEN:

Mehta & Modi Homes Ltd.,

- PLAINTIFF.

A N D

A. SUAHEELA.

-DEFENDANT.

WRITTEN STATEMENT FILED BY
DEFENDANT UNDER ORDER VIII OF
CIVIL PROCEDURE CODE.

FILED ON:

FILED BY:

CH. LAKSHMI NARAYANA

MD. HABIB.

ADVOCATE'S

11-13-690/1/502,

ROAD NO: 4/G,

GREEN HILLS COLONY,
HYDERABAD .