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Date of Filing : 26-10-2015
Date of Order: 15-12-2016

**BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL
FORUM -II, HYDERABAD**

Present

Sri T.Simhachalam, B.Com.,B.L.,
Smt. P.Kasthuri, B.Com., LL.M.,

... President
... Member

Thursday, the 15th day of December, 2016

Consumer Case No.557 of 2015

Between :

S.P.S.Prasad (Salem Padmanabham Srinivas Prasad)
S/o.Late Sri Padmanabham
Aged about : 49 years, Occ:Employee,
R/o.Flat F-2, Sai Enclave,
Besides Krupa Complex,
Safilguda, Hyderabad



.....Complainant

And

1. M/s. Modi Properties and Investments Pvt.Ltd.,
Sister Concern of "Nilgiri Estates",
Rep. by its Managing Director
Off: 5-4-187/3&4, II floor, M.G.Road,
Secunderabad - 500 003
2. M/s Paramount Avenue,
Sister Concern of "Nilgiri Estates",
Rep. by its Managing Director
Off: 5-4-187/3&4, II floor, M.G.Road,
Secunderabad - 500 003

.....Opposite parties

Counsel for the Complainant : M/s.K.B.Ramanna Dora

Counsel for the opposite parties : Sri C.Balagopal

ORDER

(By Smt. P. Kasthuri, Hon'ble Member on behalf of the bench)

The above complaint is filed on behalf of the complainant under Section 12 of C.P. Act of 1986 requesting this Forum to direct the opposite parties for the following reliefs:

1. To refund the balance amount of Rs.2,00,000/- paid by the complainant along with interest @ 24% P.A from the date of payment till realization on Rs.2,00,000/- from opposite party No.2



2. To pay the amount of Rs.5,00,000/- towards the damages for the mental agony sustained by the complainant due to acts of the opposite party No.1&2
3. To pay costs of Rs.10,000/-

The case of the complainant in brief : The contention of the complainant is that the opposite parties are engaged in the real estate business in and around Hyderabad floating ventures under the name and style of Nilgiri Estates and Paramount Avenues. The said ventures are sister concerns of Modi Properties, & Investments Pvt Ltd., The opposite parties to enable the public to purchase its flats and villas etc., in their ventures have given wide publicity and appointed agent for marketing its business. The complainant impressed upon the brochures, deeds & words of opposite parties booked a flat in Paramount Avenue, Nagaram and paid a sum of Rs.2,00,000/- and started persuing for housing loan from the nationalized bank during which the complainant also got attracted to the villas floated by opposite parties in Nilgiri Estates at Rampally, Keesara Mandal and booked a flat vide booking no.1052 dated 30.03.2015 and issued a cheque for Rs.25,000/- dated 03.04.2015 having impressed by the opposite parties words and deeds. The complainant realizing that it is difficult to obtain loan for the said villa, he informed the employee of opposite parties Mr.Krishna Prasad not to present the cheque and expressed his intentions not to book in the said venture. But, the opposite parties without following the instructions of complainant and without his knowledge and consent presented the cheque and allowed the complainant to have his cheque dishonored and affect his financial credibility in the public and financial institution in particular. The complainant further submits that though he entered into a triparty agreement on 05.08.2015 for pursuing of housing loan, due to the dishonor of his specific instructions by the opposite parties in presenting the cheque, his banking tract record got affected. The complainant got vexed with the indifferent attitude of the opposite parties, he requested for cancellation of the bookings in the opposite parties ventures and demanded for refund of the amount by letter dated 14.08.2015. But the opposite parties inspite of the repeated requests, did not heed to the demand made by the complainant. The complainant also informed and cancelled the flat no.405 at Paramount Avenues, Nagaram.

The complainant with a found hope of having villa and also a flat at the opposite parties venture have contributed his hard earned earnings with the opposite parties and vexed with the indifferent attitude had informed about the cancellation of the said booking and demanded for refund of amounts. The complainant alleges that the opposite parties has deceived the complainant with

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false promises and its actions in presenting the cheque is deliberate, mischievous and amounts to deficiency in service. Hence the complaint.

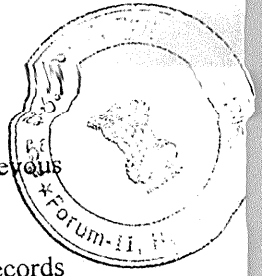
Version of opposite party no.1: The complainant has failed to bring on records the necessary parties. The opposite party no.1 is a holding company of opposite party no.2 and also M/s.Nilgiri Estates. It is wrongly referred that opposite party no.1 i.e., M/s.Modi Properties & Investments Pvt Ltd., as a sister concern of M/s.Nilgiri Estates. 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.

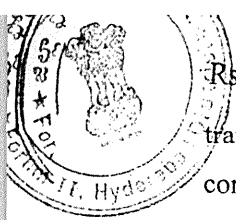
M/s.Nilgiri Estates, a registered partnership firm is developing a housing project known as Nilgiri Estate situated at Rampally Village, Keesara Mandal, RR District, consisting of 79 Villas along with appurtenant amenities. M/s.Paramount Estates, a registered partnership firm is developing a housing project known as Paramount Avenue situated at Nagaram Village, Keesara Mandal, R.R.District, consisting of 208 flats along with appurtenant amenities. There is no firm or entity by the name "Paramount Avenue".

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. 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.

There is no cause of action against the opposite party no.1 namely M/s.Modi Properties & Investments Pvt Ltd., 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/-. The opposite party No.1 admitted that they presented the cheque on 02.4.2015 and the same was dishonored by the complainant's banker. The presentation of cheque was purely by oversight on their part and never intended to bring down the reputation of the complainant.

The complainant is wrongly linking transaction with this opposite party to that of opposite party no.2. The cheque given to this opposite part was dishonoured on 2.4.2015 but subsequently the complainant has paid an amount of





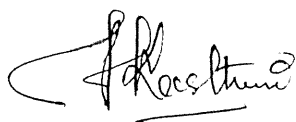
Rs.1.00 Lakh on 16.4.2015 to opposite party no.2. This clearly shows that the transaction with opposite party no.2 is not at all linked with them. The complainant has taken a lame excuse that the opposite party no.1's action has affected his credibility with the banker. The complainant was unable to meet the financial commitments for both the transactions and trying to shift the blame to them.

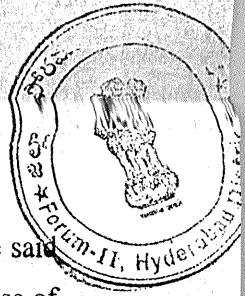
It is very clear that the complainant failed to perform his part of the contract by making further payments and executing an agreement of sale. For which they are fully entitled to cancel the provisional booking of the complainant and forfeit the booking amount of Rs.25,000/- paid by the complainant. At no point of time the complainant has come forward to make further payments nor has sent any correspondence to this opposite party with regard to the provisional booking. The complainant has filed a false complaint for illegal gains. Hence prayed to dismiss the complaint against them.

Version of opposite party no.2: The opposite party no.2 contended that the name of opposite party no.2 is wrongly shown in the cause title by the complainant. The correct name of this opposite party is Paramount Estates and the name shown by the complainant is that of the project under taken by the opposite party no.2. The opposite parties are two different firm 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.

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 they got issued two separate reply notices on behalf of the individual firms.

The opposite party No.2 also contended that the complainant has booked a Villa in their project and paid a sum of Rs.2,00,000/- and started pursuing for a housing loan and tripartite agreement dt.5-8-2015 was entered for obtaining the housing loan later the complainant also booked a Villa at the project of the


K. Kesava Kumar



opposite party No.1 thereafter, the complainant cancelled the booking of the said Villa not 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 opposite parties. There is no deficiency of service on the part of the opposite party. There has been no deception or any unfair trade practice on the part of the opposite party.

The question of refunding of Rs.2.00 Lakhs does not arise as the complainant wants to cancel the booking after more than 60 days from the date of 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.

The total sale consideration is Rs.23,03,000/- and 15% of the total consideration 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 opposite party.

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 dated 5.08.2015 between the complainant, opposite party and HDFC Bank. This goes to show that the complainant's credit rating has not at all been affected as claimed by the complainant.

Hence, there is no deficiency of service on part of the opposite parties and there is no loss to the complainant much less Rs.5,00,000/- as claimed by the complainant and prayed to dismiss the complaint against them without costs.

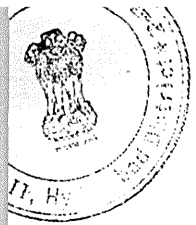
Evidence Affidavit, Written arguments of Complainant filed and got marked Exhibits No.A1 to A8.

Evidence Affidavit, Written arguments of opposite party filed and got marked Exs.B1 to B12

Points for consideration are:

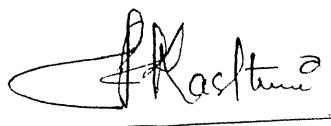
1. Whether there was deficiency of service on the part of the Opposite parties as complained in the complaint?
2. Whether the Complainant is entitled to reliefs as prayed for?
3. To what relief?

Points No.1 & 2: Ex.B1 is the booking form filed by opposite party No.1 i.e., Mody properties on behalf of Nilgiri Estates. Ex.B2 is the booking form filed by opposite party No.2 i.e., the Paramount Avenue. The said booking forms filed by opposite parties No 1&2 shows that the Mody properties i.e. the opposite party



No.1 is commonly represented for both the ventures i.e., Nilgiri Estates and Paramount Avenue. For both the ventures, the head office is shown as that of opposite party No.1. Therefore, it gives an impression that the opposite party No.1 is the controlling authority for both the ventures.

Complainant's contention is that he got attracted to the publicity given by the opposite parties and booked a flat in Paramount Avenue i.e., with the opposite party No.2 by paying a sum of Rs.2,00,000/- and later got attracted to the publicity given by opposite parties for the sale of Villas at Rampally, Keesara Mandal, R.R.District, he also booked a Villa No.8 in Nilgiri Estate and issued a cheque to them for a sum of Rs.25,000/- and clearly instructed them to not to present the cheque unless he gives his consent, but the opposite party No.1 has presented the cheque even before the due date with which the cheque got dishonoured and the reputation of the complainant has gone down and could not secure the loan. The opposite party No.1 though denied that it is no way connected with any dealings with either the Nilgiri Estates or with the Paramount Avenue, it has strongly contested the case on behalf of Nilgiri Estates and admitted that the cheque for Rs.25,000/- was presented before the due date by oversight. Ex.A1 dated 3-4-2015 is the cheque issued by the complainant for Rs.25,000/- in favour of Nilgiri Estate and the same was returned with cheque returned memo dated 2nd April 2015. Ex.A8 is the reply letter dt.23-09-2015 issued by the opposite party *in which the opposite party No.1 admitted that the cheque was presented before the due date due to over sight.* From the said document, it is clearly established that there is negligence on the part of the opposite party No.1 in presenting the cheque even before the due date. As per Ex.B11 dated 2-8-2011, it shows that the complainant was initially sanctioned with the loan of Rs. 13,00,000/- and later enhanced to Rs.16,00,000/- and still was short of some more money for executing the sale deed and was making arrangements for securing the loan for payment of balance sale consideration. It is at this juncture that due to the dishonor of the cheque, the complainant got aggrieved with the behavior of the opposite party No.1 and requested for cancellation of Villa No.8 in Nilgiri Estate and further also requested for the refund of a sum of Rs.2,00,000/- paid towards the booking of flat in Paramount Avenue i.e, opposite party No.2 for having given an impression under Ex.A1 and A2 that the opposite party No.1 is the controlling authority for both the ventures. However, since the complainant has paid a sum of Rs.2,00,000/- towards the booking of flat in Paramount Avenue and that the Paramount Avenue is shown as the separate party i.e, as the opposite party No.2 in the complaint, we direct the opposite party No.2 to pay to the complainant a





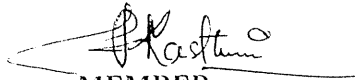
sum of Rs.2,00,000/- along with interest @ 9% P.A from the date of payments till realization. Claim against opposite party No.1 is dismissed. Point no.1 and 2 are answered accordingly.

Point No.3: In the result, the complaint of the Complainant is partly allowed directing the opposite party No.2

1. To pay to the complainant a sum of Rs.2,00,000/- paid towards the booking of Flat along with interest @9% P.A from the date of payments till realization
2. To pay a sum of Rs.2,000/- towards costs
3. Claim against opposite party No.1 is dismissed
4. Rest of the claim is dismissed

Time for compliance : 40 days from the date of this order

Dictated to Steno, transcribed and typed by her, corrected and pronounced by us on this the 15th day of December, 2016.


MEMBER


PRESIDENT

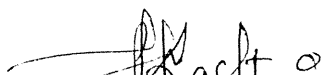
APPENDIX OF EVIDENCE

Exhibits marked on behalf of the Complainant:

- Ex.A1 is copy of cheque dated 03-04-2015
- Ex.A2 is copy of return memo dated 02-04-2015
- Ex.A3 is cancellation notice dated 30-07-2015
- Ex.A4 is letter of the complainant dated 14-08-2015
- Ex.A5 is agreement of sale dated 27-01-2015
- Ex.A6 is copy of Tripartite agreement dated 05-08-2015
- Ex.A7 is legal notice dated 11-09-2015 along with acknowledgment
- Ex.A8 is reply notices dated 23-09-2015

Exhibits marked on behalf of the opposite party:

- Ex.B1 is booking form
- Ex.B2 is letter dt.03-04-2015 addressed to complainant
- Ex.B3 is reminder notice to the complainant dt.11-05-2015 along with postal receipt
- Ex.B4 is cancellation notice dt.09-07-2015
- Ex.B5 is cancellation notice dt.30-07-2015 addressed to the complainant along with acknowledgement
- Ex.B6 is booking form dt.08-01-2015
- Ex.B7 is letter dt.16-02-2015 addressed by the Bank to the complainant
- Ex.B8 is reminder for payment along with postal acknowledgment dt.24-02-2015
- Ex.B9 is Email addressed by the complainant dt.09-03-2015
- Ex.B10 is Email addressed by the complainant dt.16-05-2015
- Ex.B11 is Email addressed by the complainant dt.02-08-2015
- Ex.B12 is reminder notice along with postal acknowledgment dt.27-07-2015







Dis no-8
2-1-17

GOVERNMENT OF ANDHRA PRADESH
DISTRICT CONSUMER FORUM-II
HYDERABAD

Order Pronounced on *15-12-16*
Order Made Executory on *22-1-17*
Order Delivered to the Complainant on *22-1-17*
Order Delivered to the Opposed party on *2-1-17*

R. Kelley
SHERISTADAR *02/01/2017*
District Consumer Forum-II
(Under Consumer Protection Act, 1986)
Hyderabad.