

BEFORE THE TELANGANA STATE CONSUMER DISPUTES REDRESSAL
COMMISSION: AT HYDERABAD



F.A.No. 63 OF 2017 AGAINST C.C.NO.557 OF 2015 DISTRICT CONSUMER
FORUM-II HYDERABAD

Between

M/s Paramount Avenue
Sister Concern of " Niligiri Estates"
Rep. by its Managing Director,
Off: 5-4-187/3 & 4, II Floor
MG Road, Secunderabad-500003
(wrongly mentioned)

The Correct one is
M/s Paramount Estates, a partnership firm
Rep. by its Managing Partner
Off: 5-4-187/3&4, II Floor,
M.G.Road, Secunderabad-500032

Appellant/opposite party no.2

AND

1. SPS Prasad (Salem Padmanabam Srinivas Prasad)
S/o late Sri Padmanabham, aged about 49 yrs
Occ: Employee r/o Flat F-2, Sai Enclave
Besides Krupa Complex, Safilguda,
Hyderabad

Respondent/complainant

2. M/s Modi Properties and Investments Pvt Ltd.,
Sister Concern of " Niligiri Estates"
Rep. by its Managing Director
Off: 5-4-187/3&4, II Floor,
MG Road, Secunderabad-500032
(R2/Op1 not necessary party)

Respondent/opposite party no.1

Counsel for the Appellant	M/s Manne Hari Babu
Counsel for the Respondent No.1	M/s KB Ramanna Dora

QUORUM :

HON'BLE SRI JUSTICE B.N.RAO NALLA, PRESIDENT
&
SRI PATIL VITHAL RAO, MEMBER

TUESDAY THE FIFTH DAY OF JUNE
TWO THOUSAND EIGHTEEN

Oral Order : (per Hon'ble Sri Justice B.N.Rao Nalla, Hon'ble President)

This is an appeal filed by the opposite party no.2 aggrieved by the orders of District Consumer Forum, dated 22.03.2017 made in CC No.86 of 2011 wherein it allowed the complaint directing the opposite party no.2 to pay Rs.2,00,000/- towards the booking of flat with interest @ 9% per annum from the date of payments till realization together with costs of Rs.2,000/-. The complaint against the opposite party no.1 is dismissed.

2. For the sake of convenience, the parties are referred to as arrayed in the complaint.

3. The case of the complainant, in brief, 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 have given wide publicity and appointed agent for marketing its business. The complainant impressed upon by 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 pursuing 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 Villa vide booking no.1052 dated 30.03.2015 and issued a cheque for Rs.25,000/- dated 03.04.2015. 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 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. Hence the complaint praying to direct the opposite parties 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 together with damages of Rs.5,00,000/- and costs of Rs.5,00,000/-.

4. The opposite party no.1 resisted the case contending that 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 party 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. Hence, the opposite party no.1 prayed for dismissal of the complaint.

5. The opposite party no.2 also resisted the case contending 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.25,000/- 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



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. 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 its part and prayed for dismissal of the complaint.

6. In proof of his case the complainant filed his evidence affidavit and got marked Exs.A1 to A8. While on behalf of the opposite parties, the Legal Officer of the opposite party no.1 filed his evidence affidavit and further evidence affidavit and got marked Exs.B1 to B12.

7. The District Forum after considering the material available on record, allowed the complaint bearing CC No.557 of 2015 by orders dated 15.12.2016 as stated in paragraph No.1, supra.

8. Aggrieved by the said decision, the opposite party no.2 preferred the appeal contending that the Dist. Forum did not appreciate the facts in correct perspective. The District Forum ought to have considered the contractual terms between the parties which are binding on them. The complainant has cancelled the booking with the opposite party no.1 due to lack of funds. The District Forum failed to note that M/s Modi Properties & Investments Pvt Ltd., M/s Nilgiri Estates and M/s Paramount Estates are different entities and are represented by their respective authorized persons. As per the terms of the contract the complainant has to pay the installments within the stipulated time but he failed to pay the same as such he was a defaulter ^{and B.I.} is not entitled to any relief. Hence, the opposite party no.2 prayed to allow the appeal by setting aside the order of the District Forum.

9. Counsel for the appellant present. No representation for respondent. Both parties have filed their respective written arguments.

10. The point that arises for consideration is whether the impugned orders as passed by the District Forum suffer from any error or irregularity or whether they are liable to be set aside, modified or interfered with, in any manner? To what relief?



11. The main contention of the opposite party no.2 is that as per the cancellation letter dated 30.07.2015 Nilagiri Estates is a registered partnership firm which is an independent institution and Nilagiri Estates and Paramount Independent institutions are different which is an artificial entity has a right to sue and to be sued in the name of such artificial person. The complainant has not impleaded the Nilagiri Estates which is a proper party to the proceedings.

12. As rightly stated by the Ld. District Forum that on the top of the Booking Form Ex.B1 both the names of Nilagiri Estate and Modi Properties & Investments Pvt Ltd., are printed likewise on Ex.B6 both names of Paramount Avenue and Modi Properties & Investments Pvt Ltd., are printed and on Ex.B1 at the bottom it was printed as For M/s Modi Properties and Investments Pvt Ltd., and on Ex.B6 it was printed for Paramount Avenue. In the said booking forms 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. It means, that both Nilgiri Estates and Paramount Avenue owned by one Management. They were working in two fields but the overall Management is one. Therefore, the contention of the opposite party no.2 that Nilgiri Estates and Paramount independent institutions are different which is an artificial entity has a right to sue and to be sued in the name of such artificial person is unsustainable for the reason as stated above.

13. The next contention of the opposite party no.2 is that the complainant himself cancelled the booking of the Villa because of failure to meet the financial commitments. To prove its contention the opposite party no.2 filed

Exs.B9 to B11 which show that the complainant was sanctioned loan of Rs.16,00,000/- but the balance sale consideration amounts he could not adjust in time due to delay in sanction of his PF loan amount etc., and sought time for payment of the balance sale consideration. Though the opposite parties issued reminders for the payment of balance amounts but the complainant instead of paying the same cancelled the booking and sought refund of the amount paid by him on the ground that the opposite party no.2 presented the cheque issued to it for booking of Villa in the venture of the opposite parties despite his instructions not to present the same in the bank. It is not the case of the complainant that the opposite parties despite payment of installments cancelled the booking of flat and allotted to third party it is the complainant who failed to pay the amounts in time and moreover he himself opted for cancellation of the booking of the flat.

14. The next question, which falls for consideration, is, as to what amount, the complainant was entitled to after cancellation. Clause 6 of the Booking Form is as follows:

6. CANCELLATION CHARGES

- 6.1 In case of default mentioned in 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 provisional booking, the cancellation charges will be NIL provided necessary intimation to this effect is given to the builder 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/-.
- 6.3 In case of request for cancellation in writing within 60 days of this provisional booking, the cancellation charges shall be 50,000/-.
- 6.4 In all other case of cancellation either of booking or agreement, the cancellation charges shall be 15% of the agreed sale consideration.



15. It is on record that the complainant only paid an amount of Rs.2,00,000/- on 30.03.2015 and did not pay anything thereafter. Later, the complainant vide its letter dated 14.08.2015 cancelled the booking of flat no.405 at Paramount Avenue and sought for refund of the amount of rs.2,00,000/- for the reason that the opposite party no.1 unilaterally issued cancellation notice dated 30.07.2015 with regard to booking of Villa though there is a fault on the side of the opposite party no.1 for dishonor of the cheque. After cancellation of the booking of flat the opposite parties did not pay any amount towards booking amount on the ground that as per clause 6.4 of the Booking Form 15% of the amount on total sale consideration will be deducted and remaining will be paid to the complainant. But as the complainant only paid Rs.2,00,000/- and the total sale consideration of the flat was Rs.23,00,000/- after deducting 15% from the total sale consideration it would be Rs.3,45,450/- and after deduction of Rs.2,00,000/- already paid the complainant still has to pay an amount of Rs.1,45,450/- to the opposite party no.2.

16. In DLF Ltd. Vs. Bhagwanti Narula, Revision Petition No.3860 of 2014 decided by Hon'ble National Commission on 06.01.2015, it was held that in the absence of evidence of actual loss, forfeiture of any amount exceeding 10% of the sale price cannot be said to be a reasonable amount. The aforesaid observation of Hon'ble National Commission was recorded taking note of decision of Hon'ble Supreme Court of India in Maula Bux Vs. Union of India, 1969 (2) SCC 544 and Shree Hanuman Cotton Mills & Ors. Vs. Tata Air Craft Ltd., 1969 (3) SCC 522 and Satish Batra Vs. Sudhir Rawal, (2013) 1 SCC 345.

17. In DLF Universal Limited Vs. Nirmala Devi Gupta, Revision Petition No.3861 of 2014 decided on 26.08.2015, the Hon'ble National Consumer Disputes Redressal Commission, New Delhi, in Paras 10 and 11 of its order, held that the Revision Petitioner was not entitled to charge interest as non-refundable amount on the subsequent installments in the wake of cancellation of plot. Paras 10 and 11 of the order read as under:-

"10. We have now to consider whether the forfeiture amount mentioned in the letter of cancellation under the head "earnest money" and "non-refundable advance" was justified or not. It has been stated in the said letter that a sum of Rs.15,57,781.25ps. was being forfeited as earnest money. In the plot-buyers' agreement, however, this amount has been shown as Rs.14,85,747/-. It is to be seen, however, whether the OP DLF was within its rights to treat 15% of the total price as earnest money of the plot. In a case recently decided by this Bench in "DLF Limited vs. Bhagwanti Narula," RP No. 3860 of 2014, decided on 06.01.2015, we have taken the view that an amount exceeding 10% of the total price of the property cannot be forfeited by the seller as earnest money being unreasonable, unless the OP can show that it had suffered loss to the extent the amount was forfeited by it. Applying the same principle in the present case as well, it is held that the OP DLF was competent to forfeit only 10% of the total amount of the plot in question as earnest money. Since the total value of the plot including Preferential Location Charges (PLC), is Rs.99,04,986.10ps. as already indicated, 10% of the earnest money comes out to be Rs.9,90,500/-

11. In so far as interest on delayed payments, stated to be non-refundable amount in the agreement is concerned, the OP deducted a sum of Rs.3,65,479.25ps in the cancellation letter. It is observed in this regard that the complainant made payments of a sum of Rs.12 lakh at the time of initial booking and then made two further payments in the last week of June 2011. Since no further payments were made, as per the terms and conditions of the allotment as contained in Para 65 of the plot-buyers' agreement, the OP was well within its rights to initiate the process of cancellation of the plot after the first default in making payment of an instalment. In its own wisdom, if it decided not to do so immediately, it is not entitled to charge interest as non-refundable amount on the subsequent instalments in the wake of cancellation of plot. The letter of cancellation dated 23.05.2012 makes it clear that the plot-buyers' agreement if executed, stood cancelled and the allottee shall not have any lien or right on the said property. It is held, therefore, that the OP cannot deduct a sum of Rs.3,65,479.25ps as non-refundable amount from the money deposited by the complainant."

Further, recently the Hon'ble National Commission in case titled Shri Harjinder S. Kang Vs. M/s Emaar MGF Land Ltd., Consumer Complaint No.482 of 2014 decided on 04.07.2016, in Paras 13 and 14, held as under :-

"13. The case of the opposite party is that as per Clause 2(f) of the Buyers' Agreement, extracted hereinabove, 15% of the total sale price constitutes the Earnest Money which they were entitled to forfeit. However, it has been held by this Commission in DLF Ltd., Vs. Bhagwanti Narula, Revision Petition No.3860 of 2014, decided on 06.1.2015, that an amount exceeding 10% of the total price of the property cannot be forfeited as Earnest Money unless the opposite party



can show that it has suffered loss to the extent of the amount actually forfeited by it. Applying the principle laid down in the above referred decision of this Commission, the opposite party could have forfeited only a sum of Rs.12,77,475/- from the amount paid to it by the complainant. The balance amount of Rs.71,97,275/- (84,74,750/- - 12,77,475/-) was required to be refunded to the complainant, which the opposite party has failed to do.

In the event of the failure of the allottee to make the timely payment of the sale consideration, the agreement could be terminated after a delay of more than thirty days from the due date. In the present case, the default on the part of the complainant occurred for the first time on 26.4.2013 since the instalment payable on that date was not paid in full. Therefore, the agreement could have been terminated on 26.5.2013. The opposite party however, failed to do so and continued to utilize the entire amount, which the complainant had paid to it from time to time. The opposite party therefore, must compensate the complainant by paying compensation by way of interest on the balance amount of Rs.71,97,275/- with effect from 26.5.2013."

18. As the opposite party no.1 admitted that it presented the cheque on 02.04.2015 despite clear instructions from the complainant and the cheque was dishonoured. May be the complainant due to the said reason had cancelled the booking of flat and sought for refund of the amount. On the admission of the opposite party no.1 that it presented the cheque in the bank, there is some deficiency in service on the part of the opposite party no.1 also along with opposite party no.2 and hence they are liable to refund the same.

19. As the aforesaid judgments clearly lay down that not more than 10% of the earnest money can be forfeited. The Opposite Parties have not adduced any evidence that they suffered loss beyond 10% of the sale consideration. Hence, we are of the considered opinion that both the opposite parties are liable to refund the booking amount after deducting/forfeiting 10% of the total sale consideration of the unit, in question, the Opposite Parties were required to refund the balance amount i.e. (Rs.2,00,000/- minus (-) Rs.20,000/-) = Rs.1,80,000/- along with interest w.e.f. 14.08.2015 i.e., from the date of request for cancellation of the flat by the complainant. It is, therefore, held that the opposite parties could forfeit an amount to the extent of 10% i.e., Rs.20,000/-

out of the deposited amount of Rs.2,00,000/-. As such, the complainant was entitled to the refund of an amount of Rs.1,80,000/- with interest @ 9% per annum. By not refunding the refundable amount to the complainant, the Opposite Parties were deficient in rendering service and indulged into unfair trade practices.

In the result the appeal is allowed in part modifying the order of the district Forum and directed the opposite parties no.1 and 2 jointly and severally to refund Rs.1,80,000/- with interest @ 9% per annum from 14.08.2015 till payment together with costs of Rs.5,000/-. Time for compliance four weeks.

Sd/- President

Sd/- Member

//CERTIFIED TRUE COPY//

Case No.

FA 63/17

Date of Disposal:

5/6/18

Free copy of order delivered to

Complainant/Appellant/Respondent

by hand or dispatched on:

29/6/18

Dis 1466

CC To,

1. The President, District Forum,
2. Petitioners, 3. Respondents



Beny 20/06/2018
 DESIGNATED OFFICER
 Designated Officer-cum-
 Asst. Registrar
 Telangana State Consumer
 Disputes Redressal Commission,
 Hyderabad

