G.L.NARSIMHA RAO
Advocate

H.No.3-4-778, BARKATPURA,
HYDERABAD -500 027.
Cell:9848994240 .

28

By Hand — 46/-

BY REGD. POST WITH ACK. DUE

Date: 13-08-2015.

To

Modi & Modi Constructions Rep. by its Partner Soham Modi,
H.No.5-4-187/3 & 4, 2nd Floor,
MG Road, Secunderabad-500003.

Sub: To handed over the villa as per the orders in C.C.No.137 of 2014 Dated 24-07-2015 on the file of District Consumer Disputes Readdressal Forum, R.R. District – Reg.

***

Under the instructions of my clients 1) Mrs. Angadi Vijaya Laxmi, W/o Bhaskara Rao, Age 56 years, Occ:House Wife, 2) Angadi Mahesh, S/o Bhaskara Rao, Both are R/o 1-24-253//1, Flat No.32, Sri Sainagar, Lotugunta, Alwal, Secunderabad-500015, do hereby issue this notice upon the following brief facts.

1. My clients states that you are as a Builder/Developer offered them to purchase a Villa No.46 in Sy.No. 134, 135 & 136, with free registration situated at Rampally village of Keesar Mandal and the same was registered but so far it was not handed over to my clients. They have approached the Hon'ble District Consumer Forum for their grievance. They have purchased the villa by spending huge amounts but you are not handed over the same and they constrained to paying rents Rs.25,000/- per month and facing mental agony. Anyhow, the Hon'ble Consumer Forum passed its orders and you are well aware about the financiar who financed to my clients and they have retained amounts Rs.3,30,000/- for want of production of occupancy certificate. After showing the occupancy certificate, immediately they will release the said amounts to you. Remaining things will be settled in the suit pending between you and my clients. My clients reserved their rights to approach Hon'ble State Forum regarding remaining prayers for mental agony and compensation etc.

Therefore, you are, hereby called upon by this notice to complete the entire works and handover the building to my clients immediately duly issuing occupancy certificate. My clients will instruct their financiar i.e. LIC Housing Finance to release remaining amount of Rs.3,30,000/- in favour of you in compliance of orders in C.C. No.137 of 2014 to avoid any further delay in this regard.

GLN Rao
G.L.NARSIMHARAO
Advocate

Investments Pvt. Ltd. SEC'BAD

Recd 13/8/15 (Ramachari)

...losed herewith for ready reference.

-26-

14

BEFORE THE HON'BLE DISTRICT CONSUMER REDRESSAL FORUM
R.R. DISTRICT, AT L.B.NAGAR

C.C.No. 137 OF 2014

BETWEEN:

1) Mrs. Angadi Vijaya Laxmi, W/o Bhaskar,
Age 56 years, Occ:House Wife.

2) Angadi Mahesh Kumar, S/o Bhaskar, Age:33 years,
Both are R/o 1-24-253/1, Flat No.32, Sri Sainagar,
Lotugunta, Alwal, Secunderabad-500015.

..Complainants

AND

Modi & Modi Constructions,
Rep. by its Partner Soham Modi,
H.No.5-4-187/3 & 4, 2nd Floor,
MG Road, Secunderabad-500003

...Opposite Party

COMPLAINT FILED U/S.12 OF CONSUMER PROTECTION ACT, 1986

1. DESCRIPTION OF COMPLAINANT:

The description and the address of Complainants are as shown in the Cause Title above. The address of the Complainants for the purpose of service of all notices, summons, process is that of her Counsel M/s G.L.Narasimha Rao, Advocate, B.002, Prasad Enclave, Barkatpura, Hyderabad.

2. DESCRIPTION OF THE OPPOSITE PARTY:

The description and address of the Opposite Party for the purpose of service of all notices, summons, and processes is as shown in the Cause Title above.

3. The Complainants submit that the opposite party herein is Builder and Developer who used to purchasing the land and constructing the buildings/houses/villas/apartments and they have developed villas at Sy.No.128, 129, 132-136, situated at Rampally revenue village, Keesara Mandal, R.R. District under the name & style 'Nilgiri Homes'.

4. It is submitted that after knowing the same through publicity made by the opposite party, the complainants and the husband of 1st complainant and father of 2nd complainant by name A. Bhaskar herein went to the site and chosen to purchase independent Villa No.46 which was Skelton condition (only RCC ceiling was completed).

5. It is submitted that with the conversation by the complainants along with A.Bhaskar and opposite party herein agreed to purchase the above said villa No.46 and the opposite party agreed to sell the same after completing the entire construction and hand over the same to the complainants and the span of payment of Rs.39,00,000/- lakhs has been fixed for a period of 9 months time. The same was accepted by the complainants and Rs.25,000/- has been paid by the complainants to the opposite party on 2nd Feb.2013 as booking advance by way of cheque No.315818 dated 20-02-2013 belongs to A. Bhaskar(Husband of petitioner No.1 and father of Petitioner No.2). The above amounts fixed and span of time is occurred as on oral agreement. Except the receipt as well as booking, there is no any written agreement tock place on that day.

6. It is submitted by the complainants and the complainants has been paid Rs.2,00,000/- on 16-02-2013 as 1st installment vide cheque No.315822 belongs to A. Bhaskar(Husband of petitioner No.1 and father of Petitioner No.2) and Rs.5,00,000/- on 26-02-2013 as 2nd installment vide cheque No.024420 belongs to Mahesh Kumar. As such, the complainants paid Rs.7,25,000/- and on 25-02-2014 the opposite party called the complainants and entered agreement for fulfillment of written formalities between both parties. The opposite party represented by one Mr. Krishna Prasad on behalf of opposite party in hurried manner he was not shown the span of time by misleading the complainants the opposite party obtained the signature of the complainants on the agreement and pressurized for the bulky amounts of Rs.14,75,000/- at a time of in terms of shorter duration agreement. Immediately, after knowing the same, the complainants through their family elder A. Bhaskar, submitted a representation on 09-05-2014 with a proposal payment schedule in terms of 9 months opted plan and the same was received by the opposite party (represented Mr.Venkat Reddy and acknowledged the same). But there is no any replied received by the complainants and the complainants visited the office of the opposite party in the last week of May,2013 for their reply / answer either to execute their acceptance or to return back the amount of Rs.7,25,000/-already paid by the complainants. But there is no any response from the side of opposite party. That means it is deemed to admitted and accepted the span of 9 months time by the opposite party.

7. It is submitted that as the complainants applied for a housing loan and the LIC Housing Loan Financial Institution accorded Rs.22,00,000/- as Housing loan and the complainants have to be paid & fulfill the balance amount Rs.17,00,000/- as margin money for getting loan sanction. Therefore, there has

been a shortfall of Rs.9,75,000/-. (Rs.17,00,000/- - 7,25,000/- = 9.75,000/-). For the short fall of the above said amount, the opposite party came forward to finance as hand loan with a view to honour their short term duration agreement as per terms and conditions therein as the head of the family of the complainants represented his grievance through the letter dated 09-05-2013 as stated supra. Accordingly, the complainants applied in writing as formality of the opposite party in support of un-dated cheque for Rs.9.75 lakhs as desired on 20-08-2013.

8. It is humbly submitted that the opposite party came forwarded to assist financial assistance because of their business promotion and reduced the 9 months span period to 4 months time, instead of paying entire short fall amount of Rs.9,75,000/-. The opposite party intentionally paid Rs.2,43,750/- as installments in a rotation manner duly obtained pre-undated cheques from the complaints' father and the complainant No.2. The details and modus operandi of the opposite party rotation is as below.

Amount	Date of credit to A.Bhaskar's account by M/s Modi	Date of debit from Bhaskar account to AV Mahesh Kumar A/C	Date of Credit to AV Mahesh Kumar A/C from A Bhaskar	Date of debit to M/s Modi account from Mahesh Kumar A/C
243750	17-Sep-13	21-Sep-13	21-Sep-13	24-Sep-13
243750	28-Sep-13	10-Oct-13	10-Oct-13	17-Oct-13
243750	21-Oct-13	25-Oct-13	25-Oct-13	31-Oct-13
243750	08-Nov-13	13-Nov-13	13-Nov-13	18-Nov-13
975000				

9. It is humbly submitted that from the above statement, it may be seen that the opposite party has paid an amount of Rs.9,75,000/- to the complainants in four (4) instalments by means of rotating Rs.2,43,750/- in 4 transactions in the span of 6 months (from May 2013 to Nov.2013) <u>thus resulted expiry of Housing loan validity and one cheque bounce issue.</u> The same as stated above discloses the attitude of the opposite party in providing financial assistance. He was made Rs.2,43,750/- as Rs.9.75,000/- as such the opposite party was intentionally delayed 6 months. It is only made by them for not dropping the sale proposals by the complainants. But not else.

10. It is submitted that had the opposite party not encouraged for fulfillment of shortfall amount of Rs.9,75,000/- and sticked on to complainants proposal payment schedule of 9th May 2013, the said problem might not be arose and the complainants made their efforts for their own. But the opposite party neither

16. The Complainant submits that the Complaint is filed within the stipulated period of two years limitation from the date of cause of action, which is still continuing.

It is, therefore, prayed that this Hon'ble Forum may be pleased to direct the Opposite Parties:

To direct the Opposite Party:

(a) to handed over the villa No.46 situated in Sy.No.128,129,130 to 136, Rampally village, Keesara mandal. R.R. District with immediate effect after completion of entire works along with occupation certificate.

(b) to direct the Opposite Party to pay a sum of Rs.25,000/- (RupeesTwenty Five thousands only) p.m. towards damages since October 2013 and

(c) to direct the Opposite Party to pay Rs.5,00,000/- for each complainant for creating mental agony and harassment caused by the opposite party even after receiving huge amounts.

(c) to award costs of this Complaint, and

(c) to pass such other relief or reliefs as this Hon'ble Forum deems fit and proper in the interest of justice.

2. Mahesh Kumar

Date: 26-05-2014
L.B.NAGAR

A. Vijaya Lakshmi Complainants

VERIFICATION

I, Mrs. Angadi Vijaya Laxmi, W/o Bhaskar and A. Mahesh Kumar, S/o Bhaskar, do hereby declare that the facts stated supra are true to the best of my knowledge, information and belief. Hence verified on 26-05-2014 at L.B.NAGAR.

A. Vijaya Lakshmi Mahesh Kumar

Date: 26-05-2014
L.B.NAGAR

Complainant

disposed the application dated 09-05-2013 nor he responded financial assistance with bonafied stipulated time.

11. It is submitted that on 20th November 2013 immediately after completion fulfillment of margin money as per above rotation manner, the opposite party forcedly and registered the villa on the complainants name though the villa was not made ready to occupy and it was in Skelton condition and got released the below mentioned amounts directly from the Housing loan financier without any intimation to the complainants.

1.	27th Nov. 2013	Rs.12,48,000/-
2.	27th Nov.2013	Rs. 6,22,000/-
3.	Total	Rs.18,70,000/- (Rupees eithteen lakhs seventy

thousands only) got released from the financier (i.e. LIC Housing) without any intimation to the complainants. And remaining Rs.3,30,000/- retained with the financier awaiting the occupation letter from the opposite party to release those amounts.

12. It is submitted that even after 09-05-2013 correspondence was made by the complainants to the opposite party through e-mails right from December 2013 to till 09-02-2014, the opposite party did not respond properly and intimated as the complainants have due Rs.14,20,690/- duly adding the service tax Rs.1,15,690/- without producing any receipt. And further he mentioned that interest on delayed payments was not reflected in the statement as well as charges of extra specifications not included in the above statement. The said cryptic reply of the opposite party was shocked to the complainants. In fact, the complainants are dues only Rs.3.30,000/- which was retained with financier (LIC Housing) awaiting the letter of opposite party. In the case Rs.9.75,000/- which was not reimbursed by the father / husband of the complainants which is amounts kept in his bank awaiting for relaxation of said interest on delayed payments ready to pay and kept in the bank i.e. A.P. Vardhaman Mahila Cooperated Urban Bank Limited, Lothugunta Branch, vide A/c No.2291 since 16th Feb.2014. But so far, the opposite party not comforward to finalise by relaxing the imposition of interest amount and producing the service tax payment receipts to attend by the complainants.

13. It is humbly submitted by the complainants the tactics played by the opposite party for only the drag on the matter to avoid the physical possession of the Villa No.46 to the complainants as as on today the villa was not completed by the opposite party with one pretext or other. In fact, it has to be completed

by October 2013 and did not complete even today itself. And it leads the mental agony to the complainants even after paying the entire amounts and the complainants attending the installments to the financier since December 2013 but so far the opposite party not handed over the villa No.46 in Nilgiri Homes, by completing the same and handed over to the complainants along with Occupation letter. For that the complainants are entitled to a tune of Rs.25,000/- p.m. i.e. from October 2013 to handing over the possession of villa No.46 to the complainants and Rs.5,00,000/- as a mental agony caused by the opposite party for the harassment by way of sending notices for undue interest and delay in not handing over the said villa.

14. It is submitted that the complainants issued a statutory notice to the opposite party on 12-03-2014 for handing over the villa No.46. Otherwise, demanding damages and mental agony and the opposite party replied on 10-04-2014 with false allegations. Again the complainants issued another notice on 21-04-2014 for that there is no further reply from the opposite party.

Hence, this Complainant.

14. The cause of action arose on 20-02-2013, 16-02-2013 and 26-02-2013 (but wrongly mentioned as 26-06-2013) when the Complainant approached to Opposite Party for purchase the Villa No.46 and paid amount on Rs.7,25,000/- later on 27-11-2013 for Rs.18,70,000/- paid by the financier and remaining Rs.9,75,000/- paid by the complainants, on 24-09-2013 to 18-11-2013 and remaining amounts Rs.3,30,000/- retained with the financier (LIC Housing) awaiting for occupation letter by the opposite party. And the cause of action is still continuing. The opposite party send a notice to the father of complainant by depositing the cheque which was kept for security and without intimation and issued 138 N.I. Act Notice for harassing and complainants and family members even though there is elobarate correspondence by the complainants to the Opposite party to clear the payments. But there is no any positive respondent for amicable receiving the payments and handing over the villa to the complainants and issued notice on 12-03-2014 and on 21-04-2014. Hence the Complaint is filed within time.

15. The Complainant though residing at H.No.1-24-253/1, Srisainagar Colony, Lothugunta, Alwal, R.R. District and the property which involved in the present complaint situated in Rampally village of Keesara Mandal, R.R. District is within the territorial Jurisdiction of this Hon'ble Forum to entertain this Complaint.

-32-A (20)

IN THE COURT OF THE DISTRICT CONSUMER FOURM, RR DISTRICT
AT : L B NAGAR

C.C. No: 137 OF 2014

Between:

Smt.A. Vijaya Lakshmi & another ... COMPLAINANTS

And

Modi & Modi Constructions, ... Opposite Party

WRITTEN SUBMISSIONS OF THE OPPOSITE PARTY

The Opposite party humbly sbumit as follows:

The Opposite Party denies all adverse submissions made in the complaint and if any submission not specifically denied should not be deemed to have been admitted by the opposite party.

With regard to para 1 and 2 the same are formal and do not call for any reply.

With regard to para 3 the submissions therein are true and hence not denied.

With regard to para No.4 it is true that the complainants went to the site and chose to purcahse Villa No. 46 which was in the initial state of construction at that point of time.

With regard to para No.5 it is true that the opposite party agreed to sell Villa No.46 after completing the construction and hand over the same to the complainants on receipt of complete sale consideration of Rs.39 lakhs as per the schedule mentioned in clause 3 of the agreement of sale. It is true that the complainants paid a booking advance of Rs.25,000/- on 2nd February'2013 by way of Cheque dtd. 20th February'2013. It is not true to say that the total amount payable and also the time frame for delivery was agreed upon orally between the complainant and the opposite party. It is pertinenet to mention here that the Opposite Party does not have practice of agreeing or finalising monetory transactions orally. The Opposite party and the complainant No.2 had entered in to an agreement of sale on 25th February'2013, ie. Within five days of receipt of the booking advance. All the terms and conditions incluidng payments to be made by the complainants are clearely enumarated in the said agreement of sale.

For MODI & MODI CONSTRUCTIONS

(24) 33-B

With regard to para No.6 it is true that the complainants paid an amount of Rs.2 lakhs on 16th February'2013 as 1st installment through a cheque but it is not true to say that Rs.5 lakhs was paid on 26th February'2013. In fact the above Rs.5 lakhs was paid on 26th June'2013. It is not true to say that the complainants have paid Rs.7,25,000/- as on the date of the agreement of sale ie., 25.2.2013 but wrongly mentioned as 25.2.2014 in the complaint. It is true that Mr. Krishna Prasad, Manager- Cuistomer Relations was coordinating with the compainants but it is not true to say that the complainants were mislead by him and obtained signature of the complainants. The agreement was signed only by complainant No.2 and not both the complainants. The payment schedule was already agreed upon at the time of booking and the same has been mentioned at clause No.3 of the agreement. The complainant No.2 who has signed the agreement has been breifed about the payment scheule and moreover the copy of the agreement of sale is with the complainant. It is not true to say that the complainants were pressuried for the bulky amounts of Rs.14, 75,000/- it was only as per the agreement. It is true that a proposal on 09/05/2014 was given on behalf of the complainants regarding payment of payment schedule with in 9 months but the same was not accepted by the opposite party, as it was against the terms of agreed agreement.

With regard to para no.7 the opposite party does not have any personal knowledge regarding the transcation of the complinant with the LIC Housing Loan financial institution and hence the same is denied. The other facts in the said para regarding handloan is true.

With regard to para no,8 the averments therein are true.

With regard to para no.9 it is true that 9,75,000/- was paid to the complainant in four instalments but all the other averments are false and hence denied.

With regard to para no.10 the averments therein are false and hence denied.

With regard to para no.11 it is not true to say that the opposite party forcebily registred villa on the complainants name though the villa was not ready. It is not true to say that the opposite party got released the loan amount from LIC Housing Finance without the complainant knowledge.

For MODI & MODI CONSTRUCTIONS

Partner

31-C

(324)

With regard to para no.12 it is not true to say that the opposite party did not respond between December 2013 and 09/02/2014. The dues of Rs.14,20,690/- is incusive of interest on late payments of installments, the Service Tax of Rs.1,15,690/- is payable to the Govt. authorities and no separate receipt is given for the same. The opposite party pays the service tax to the Govt. authorities on a monthly basis based on all the transactions done in the month. All the other allegation in the para are denied.

With regard to para no.13 it is not true to say that the opposite party is playing any tactics to avoid giving phisical possession on Villa No.46. In fact the Villa is completed in all respects and but for sanitory fittings which is done just before handing over the possession to avoid damages to the fittings. The opposite party does not unnessarily delay handing over possession. It has always been the endavour of this Opposite Party to complete the villas and handover possession within time subject to settlement of all dues by it's customers. The Opposite Party has always been requesting the complainants to settle the dues at the earliest and take over possession.

The Opposite Party has filed suit for recovery of dues from the complaintants which is numberd as OS. No. 98 of 2014 on the file of the Ist Addl. Chief Judge, Secunderabad.

With regard to para No.14 there is no cause of action for filing this complaint.

The Opposite Party submits as follows:

The Opposite Party had developed a project named as NILGIRI HOMES at Rampally Village, Keesara Mandal, R R Dist. The said project consists of Independent Villas. The Complainants approached the Opposite Party for purchase of Villa No.46 in the said venture for a total consideration of Rs. 39 lacs. The Opposite Party informed the Complainants that the villa chosen by them is in an advanced stage of construction and if the dues are paid within four months, they would be able to complete and handover the possession of the villa. The Complainants were satisfied about the progess of the project at that point of time and agreed to all the terms and conditions as specified by the Opposite Party. On such agreement having been reached, the Opposite Party had executed a regd. sale deed bearing No. 8452 of 2013 for the land admeasuring 125 sq yards on 16/11/2013 at SRO, Keesara, RR dist. On the same day the Complainants also executed an agreement of construction in favour of the Opposite Party which clearly spells out the terms of payment,

For MODI & MODI CONSTRUCTIONS

(23) -38-D

period of completion and interest on late payments besides the other terms and conditions. The Complainants have abnormaly delayed in the payment of the instalments. The Opposite Party has received an amount of Rs.35,70,000/- till date. The Complainants have to further pay an amount of Rs.11,23,523/- to the Opposite Party towards full and final settlement of the cost of the villa alongwith interest. The breakup of the amout of Rs.11,23,523/- is as follows:

Service Tax	Rs. 2,15,420.00
Interest on delayed payments	Rs. 4,87,177.00
Court Fee and legal expenses	Rs. 50,926.00
Corpus Fund	Rs. 40,000.00
TOTAL	Rs. 7,92,523.00

The above amount has not been taken in to consideration by the complainants and they have only taken the differnce of amount calimed by this Opposite Party ie., Rs.11,23,523.00/- less Rs.7,92,523.00/- which comes to Rs.3,30,000/-. The above payments are all according to the agreement of construction executed by the complainants infavour of the Opposite party. As per Clause 11 of agreement of sale it is very clear that the complainants are responsible for payment of Sales Tax, VAT and Service Tax. The Opposite Parties as a sales promotions had waived the payment of VAT by the complainant but not the Service Tax amounting to Rs.2,15,420/-. The said agreement of sale is filed by the complainants. With regard to the payment of interest on delayed payments it is very clearly mentioned at clause 4 of the said agrement. As per the clause 23 of the agreement of sale it is clear that the compainats shall pay a sum of Rs.40,000/- as corpus fund for a Rowhouse. The unit purchsed by the complainants is a rowhouse the thus they are liable to pay the above corpus fund. The complainants have conveinently ignored the above amount and wrongly claiming that they are liable to pay only Rs.3,30,000/-. In fact the interest is calculated till the date when the complete dues are settled.

The Opposite Party submits that the villa is ready in all aspects and it will be in a position to handover the possession to the Complainants after they clear all the dues as specifed above. In support of this contention the opposite party is filing the photographs of the Villa No.46 to show the completion.

Partner

-38-C

The Opposite Party had got issued a notice dated18/04/2014 through its Counsel to the Complainants calling upon the Complainants to make the payment of Rs. 20,48,497/- within 7 days from the date of receipt of the notice and take possession of the villa. The Complainants received the notice.

The Opposite Party submits that there is no defeciancy of service on the part of the Opposite party and infact the complainants have been informed by the Opposite party from time to time to take possession of the villa after settling all the dues payable by the complainants. Hence this Hon'ble forum should dismiss the complaint as filed by the complainants.

For MODI & MODI CONSTRUCTIONS

OPPOSITE PARTY Partner

HYDERABAD
Date: 28/08/2014

LIST OF DOCUMENTS
1. Photographs with CD
2. Accounts Statement

BEFORE THE HON'BLE DISTRICT CONSUMER REDRESSAL FORUM
R.R. DISTRICT, AT L.B.NAGAR

C.C.No. 137 OF 2014

BETWEEN:

1) Mrs. Angadi Vijaya Laxmi, W/o Bhaskar,
Age 56 years, Occ:House Wife.

2) Angadi Mahesh Kumar, S/o Bhaskar, Age:33 years,
Both are R/o 1-24-253/1, Flat No.32, Sri Sainagar,
Lotugunta, Alwal, Secunderabad-500015. ...Complainants

AND

Modi & Modi Constructions,
Rep. by its Partner Soham Modi,
H.No.5-4-187/3 & 4, 2nd Floor,
MG Road, Secunderabad-500003. ...Opposite Party

WRITTEN ARGUMENTS OF COMPLAINANTS

May it be pleased your Honour,

This written arguments humbly submitting on behalf of complainants.

1. It is submitted that the complainants (Mother and son) have purchased the villa No.46 situated in 128,129, 130-136, situated in Rampally village, keesara Mandal, called as Nilgiri Homes for the amount of Rs.39,00,000/- But so far the O.P. did not handed over the villa by completing the entire works (till date the villa was not handed over) and creating mental agony and harassment and caused damages to the complainants.

2. It is submitted submit that the opposite party herein is Builder and Developer who used to purchasing the land and constructing the buildings/houses/villas/apartments and they have developed villas at Sy.No.128, 129, 132-36, situated at Rampally revenue village, Keesara Mandal, R.R. District under the name & style 'Nilgiri Homes'.

3. It is submitted that after knowing the same through publicity made by the opposite part, the PW-1 along with her husband who is father of 2nd complainant byname A. Bhaskar herein went to the site and chosen to purchase

independent Villa No.46 which was Skelton condition (only RCC ceiling was completed).

4. It is submitted that with the conversation by the complainants along with A.Bhaskar and opposite party herein agreed to purchase the above said villa No.46 and the opposite party agreed to sell the same after completing the entire construction and hand over the same to the complainants and the span of payment of Rs.39,00,000/- lakhs has been fixed for a period of 9 months time. The same was accepted by the complainants and Rs.25,000/- has been paid by them to the opposite party on 2nd Feb.2013 as booking advance by way of cheque No.315818 dated 20-02-2013 belongs to A. Bhaskar(Husband of petitioner No.1 and father of Petitioner No.2). The above amounts fixed and span of time is occurred as on oral agreement. Except the receipt as well as booking, there is no any written agreement took place on that day.

5. It is submitted that the complainants were paid Rs.2,00,000/- on 16-02-2013 as 1st installment vide cheque No.315822 belongs to A. Bhaskar(Husband of petitioner No.1 and father of Petitioner No.2) and Rs.5,00,000/- on 26-06-2013 as 2nd installment vide cheque No.024420 belongs to Mahesh Kumar(2nd respondent). As such, the complainants paid Rs.7,25,000/-. And on 25-02-2014 the opposite party called the complainants and entered agreement for fulfillment of written formalities between both parties. The opposite party represented by one Mr. Krishna Prasad on behalf of opposite party in hurried manner he was not shown the span of time by misleading the complainants and the opposite party obtained the signature of the complainants on the agreement and pressurized for the bulky amounts of Rs.14,75,000/- at a time in terms of shorter duration agreement. Immediately, after knowing the same, the complainants through their family elder A. Bhaskar, submitted a representation on 09-05-2014 with a proposal payment schedule in terms of 9 months opted plan and the same was received by the opposite party (represented Mr.Venkat Reddy and acknowledged the same). But there is no any reply received by the complainants and the complainants visited the office of the opposite party in the last week of May,2013 for their reply / answer either to execute their acceptance or to return back the amount of Rs.7,25,000/-already paid by the complainants. But there is no any response from the side of opposite party. That means it is deemed to admitted and accepted the span of 9 months time by the opposite party.

6. It is submitted that the complainants applied for a housing loan and the LIC Housing Loan Financial Institution accorded Rs.22,00,000/- as Housing loan and the complainants have to be paid & fulfill the balance amount Rs.17,00,000/- as margin money for getting loan sanction. Therefore, there has been a shortfall of Rs.9,75,000/-. (Rs.17,00,000/- - 7,25,000/- (already paid)= 9.75,000/-). For the short fall of the above said amount, the opposite party came forward to finance as hand loan with a view to honour the complainants short term duration agreement as per terms and conditions therein as the head of the family of the complainants represented his grievance through the letter dated 09-05-2013 as stated supra. Accordingly, the complainants have applied in writing as formality of the opposite party in support of un-dated cheque for Rs.9.75 lakhs as desired on 20-08-2013.

7. It is submitted that the opposite party came forwarded to assist financial assistance because of their business promotion and reduced the 9 months span period to 4 months time, instead of paying entire short fall amount of Rs.9,75,000/-. The opposite party intentionally paid Rs.2,43,750/- as installments in a rotation manner duly obtained pre-undated cheques from the complainants. The details and modus operandi of the opposite party rotation is as below.

Amount	Date of credit to A.Bhaskar's account by M/s Modi	Date of debit from Bhaskar account to AV Mahesh Kumar A/C	Date of Credit to AV Mahesh Kumar A/C from A Bhaskar	Date of debit to M/s Modi account from Mahesh Kumar A/C
243750	17-Sep-13	21-Sep-13	21-Sep-13	24-Sep-13
243750	28-Sep-13	10-Oct-13	10-Oct-13	17-Oct-13
243750	21-Oct-13	25-Oct-13	25-Oct-13	31-Oct-13
243750	08-Nov-13	13-Nov-13	13-Nov-13	18-Nov-13
975000				

8. It is submitted that from the above statement, it may be seen that the opposite party has paid an amount of Rs.9,75,000/- to the complainants in four (4) installments by means of rotating Rs.2,43,750/- in 4 transactions in the span of 6 months (from May 2013 to Nov.2013) thus resulted expiry of Housing loan validity and one cheque bounce issue. The same as stated above discloses the attitude of the opposite party in providing financial assistance. He was made Rs.2,43,750/- as Rs.9.75,000/- as such the opposite party was intentionally delayed 6 months. It is only made by them for not dropping the sale proposals ... complainants but not else.

9. It is submitted that had the opposite party not encouraged for fulfillment of shortfall amount of Rs.9,75,000/- and sticked on complainants' proposal payment schedule of 9th May 2013, the said problem might not be arose and the complainants made their efforts for their own. But the opposite party neither disposed the application dated 09-05-2013 nor he responded financial assistance with bonafied stipulated time.

10. It is submitted that on 20th November 2013 immediately after completion fulfillment of margin money as per above rotation manner, the opposite party forcedly and registered the villa on complainants name though the villa was not made ready to occupy and it was in Skelton condition and got released the below mentioned amounts directly from the Housing loan financier without any intimation to the complainants.

1.	27th Nov. 2013	Rs.12,48,000/-
2.	27th Nov.2013	Rs. 6,22,000/-
3.	Total	Rs.18,70,000/- (Rupees eithteen lakhs seventy

thousands only) got released from the financier (i.e. LIC Housing) without any intimation to the complainants. And remaining Rs.3,30,000/- retained with the financier awaiting the occupation letter from the opposite party to release those amounts.

11. It is submitted that even after 09-05-2013 correspondence was made by the complainants side, the opposite party through e-mails right from December 2013 to till 09-02-2014, the opposite party did not respond properly and intimated the complainants that they are due Rs.14,20,690/- duly adding the service tax Rs.1,15,690/- without producing any receipt. And further he mentioned that interest on delayed payments was not reflected in the statement as well as charges of extra specifications not included in the above statement. The said cryptic reply of the opposite party was shocked to the complainants. In fact, the complainants dues are only Rs.3.30,000/- which was retained with financier (LIC Housing) awaiting the occupancy letter of opposite party. **(Till today, the O.P. neither handed over the physical possession nor given a occupancy certificate because of that the Housing Financier i.e. LIC Finance Housing not releasing Rs.3,30,000/- even collecting instaiments + interest to that amount.)** Then only the Financier will come and inspect the physical occupation of the complainants and release that amounts. In case Rs.9,75,000/- which was not reimbursed by the complainants or the father / husband of the complainants which is amounts kept in his bank

awaiting for release of said interest on delayed payments ready to pay and kept in the bank i.e. A.P. Vardhaman Mahila Cooperated Urban Bank Limited, Lothugunta Branch, vide A/c No.2291 since 16th Feb.2014 **(the said amount was already paid on 9-6-2014 vide cheque No.064939.** The said document of cheque may be received as additional material paper along with intimation letter of O.P.No.2 may be marked as Document No.18 & 19). But so far, the opposite party not come forward to finalize by relaxing the imposition of interest amount, legal expenses, service Tax etc., and producing the service tax payment receipts to attend by the complainants.

12. It is submitted submit that the tactics played by the opposite party for only the drag on the matter to avoid the physical possession of the Villa No.46 to the complainants as on today the villa was not completed by the opposite party with one pretext or other. In fact, it has to be completed by October 2013 and did not complete even today itself. And it leads the mental agony to the complainants even after paying the entire amounts and the complainants are attending the installments to the financier since December 2013 but so far the opposite party not handed over the villa No.46 in Nilgiri Homes, by completing the same and handed over to the complainants along with Occupation letter. For that the complainants are entitled to a tune of Rs.25,000/- p.m. i.e. from October 2013 to handing over the possession of villa No.46 to the complainants and Rs.5,00,000/- as a mental agony caused by the opposite party for the harassment by way of sending notices for undue interest and delay in not handing over the said villa.

13. It is submitted that the complainants are issued a statutory notice to the opposite party on 12-03-2014 for handing over the villa No.46. Otherwise, demanding damages and mental agony and the opposite party replied on 10-04-2014 with false allegations. Again the complainants have issued another notice on 21-04-2014 for that there is no further reply from the opposite party.

14. It is submitted that after filing of present complaint as a counter blast case, the opposite party filed a suit vide O.S.No.98 of 2014 on the file of I Addl.Chief Judge, Secunderabad and creating mental agony without handing over the said Villa to the complainants even today. If the O.P. gave occupancy certificate to the complainants, the Financier will release the remaining amount ... which is retaining with the Financier for final check up. The O.P.

complainants. The documents filed the below for which were marked on behalf of the complainants clearly shows that they are bonafied.

Exhibits	Date	Parties to the document	Description
P-1	20-02-2013	Complainants and O.P.	Cash receipt Rs.25,000/- issued by the O.p.
P-2	16-02-2013	Complainants and O.P.	Cash receipt Rs.2,00,000/- issued by the O.p.
P-3	20-02-2013 /26-06-2013	Complainants and O.P.	Cash receipt Rs.5,00,000/- issued by the O.p.
P-4	25-02-2013	Complainants and O.P.	Agreement of sale by the O.P.
P-5	09-05-2013	Head of the Complainants and O.P.	Letter given to the O.P. for seeking 9 months time
P-6	14-12-2013	Complaint to O.P.	e-mail correspondence
P-7	28-12-2013	Complaint to O.P.	Reply by/op
P-8	29-12-2013	Complaint to o.p.	e-mail correspondence
P-9	02-01-2014	Complaint to o.p.	Reply / op
P-10	10-01-2014	Complaint to o.p.	e-mail correspondence
P-11	15-01-2014	Complaint to o.p.	Reply by op
P-12	05-02-2014	Complaint to o.p.	e-mail correspondence
P-13	08-02-2014	Complaint to o.p.	Reply / o.p.
P-14	09-02-2014	Complaint to o.p.	e-mail correspondence
P-15	12-03-2014	Notice to the o.p.	Legal notice to the o.p. by the complainants' counsel
P-16	10-04-2014	O.P.'s counsel reply	Reply notice by the op's counsel to the complainant's counsel
P-17	21-04-2014	2nd notice to o.p.	Legal notice to the o.p. by the complainants' counsel

15. It is submitted that when the opposite party failed to build and handed over to the complainants, the O.P. ceased his rights to claim interest on dues and also the O.P. filed O.S. 98 of 2014 against the complainants seeking an amount of Rs.20,48,.497/- (not excluded the amounts Rs.9,75,000/- as rotating mere Rs.2,43,750/- paid since 24-9-2013 to 18-11-2013. Thus the O.P. ceased to claim service charges and VAT if any. The plaint of O.S. 98 of 2014 may be taken as additional document No.20.

16. It is submitted that the opposite party submitted account statement along with written statement in page No.2. That admittedly Rs.9,75,000/- was paid in 4 installments but the same was suppressed in the suit filed and Rs. 20,48,497/-claimed including Rs.9,75,000/- and interest therein, thus the claiming of service tax herein for that amount Rs.2,64,170/- (mentioned in account statement) does not arise. The adding of registration charges Rs.98,900/- which was waived i.e. a precondition to free registration in favour of the complainants by the O.P. and court fee and legal expenses of Rs.50,926/- will not liable by the complainants. The carpus fund Rs.40,000/- will pay by the complainant at the time of physically handed over the villa.

17. It is submitted that in the account statement, the O.P. claiming interest Rs.4,87,177/- does not aroused because of that the O.P. did not completed the villa and handed over the same to the complainants. In fact, the incompletion of villa as agreed by the O.P. in written submission page 3 bottom paragraph *"the opposite party informed the complainants that the villa chosen is in advanced stage of construction and the dues are paid within 4 months they would be able to complete and handover the possession of the villa".* Thereby, the mode of O.P. itself is shows that he was not completed until the payments cleared by the complainants. In fact, the complainants last installment paid Rs.9,75,000/- on 9-6-2014. The remaining amounts Rs.3,30,000/- is retained with Housing Financier for want of Occupation Certificate which the O.P. did not complete the villa and not handed over to the complainants for want of that the banker did not released the said amounts to the O.P.

18. It is submitted that in the written submission page 2 and unnumbered para 2 stated that *"with regard to para No.7, the O.P. does not have any personal knowledge regarding the transaction of the complainant with the LIC HOUSING loan financial institution and hence the same is denied."* It is clearly clinches the attitude of the O.P. that he filed the written submission on 28-8-2014 before this Hon'ble Court /Forum by saying as a layman even he taken amounts from the financier on 27-11-2013 Rs.12,48,000/- and Rs.6,22,000/- totally Rsd.18,70,000/- retained Rs.3,30,000/- out of sanctioned loan Rs.22,00,000/-. Thereby, the contention and intention of the O.P. shows

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19. Therefore, the complainants are entitled to seek handed over the villa No.46 immediately from the O.P. along with occupation certificate.

20. The complainants are entitled Rs.25,000/- p.m. towards damages/rents since October 2013. Thus total an amount of Rs.5,45,000/-(3 months – 2013 + 12 months in 2014 + 6 months in 2015) and entitled till handed over the villa along with compensation of Rs.5,00,000/- for mental agony and harassment. By consider this written argument and pass award as prayed for.

Counsel for the complainants

Date::23-06-2015

L.B.Nagar.

-40- (23)

IN THE COURT OF THE DISTRICT CONSUMER FOURM, RR DISTRICT
AT: L B NAGAR

C.C. No: 137 OF 2014

Between:

Smt. A. Vijaya Lakshmi & another ... Complainants

And

Modi & Modi Constructions, ... Opposite Party

WRITTEN ARGUMENTS FILED BY THE OPPOSITE PARTY

May it please to your honour,

The complaint has filed by the complainants are not based on facts thus the same has to be dismissed.

1. It is true that the complainants went to the site and chose to purcahse Villa No. 46 which was in the initial stage of construction at that point of time.

2. The OP had agreed to sell Villa No.46 after completing the construction and hand over the same to the complainants on receipt of complete sale consideration of Rs.39 lakhs as per the schedule mentioned in clause 3 of the agreement of sale. The complainants paid a booking advance of Rs.25, 000/- on 2nd February' 2013 by way of Cheque dtd. 20th February'2013. It is not true that the total amount payable and also the time frame for delivery was agreed upon orally between the complainant and the opposite party. It is pertinenet to mention here that the Opposite Party does not have practice of agreeing or finalising monetory transactions and other terms and conditions orally. The Opposite party and the complainant No.2 had entered in to an agreement of sale on 25th February' 2013, ie. Within five days of receipt of the booking advance. All the terms and conditions incluidng payments to be made

by the complainants are clearely enumarated in the said agreement of sale, which is marked ex – P4.

3. The complainants paid an amount of Rs.2 lakhs on 16th February' 2013 as 1st installment through a cheque but it is not true to say that Rs.5 lakhs was paid on 26th February' 2013. In fact, the above Rs.5 lakhs was paid on 26th June'2013. It is not true to say that the complainants have paid Rs.7,25,000/- as on the date of the agreement of sale ie., 25.2.2013 but wrongly mentioned as 25.2.2014 in the complaint. It is true that Mr. Krishna Prasad, Manager- Customer Relations was coordinating with the complainants but it is not true to say that the complainants were mislead by him and obtained signature of the complainants. The agreement was signed only by complainant No.2 and not both the complainants. The payment schedule was already agreed upon at the time of booking and the same has been mentioned at clause No.3 of the agreement. The complainant No.2 who has signed the agreement has been briefed about the payment scheule and moreover the copy of the agreement of sale is with the complainant. It is not true to say that the complainants were pressuried for the bulky amounts of Rs.14, 75,000/- it was only as per the agreement. It is true that a proposal on 09/05/2014 was given on behalf of the complainants regarding payment schedule with in 9 months but the same was not accepted by the opposite party, as it was against the terms of agreement.

4. Tthe opposite party does not have any personal knowledge regarding the transcation of the complainant with the LIC Housing Loan financial institution and hence the same is denied. The other facts regarding the hand loan is true. The amount of Rs. 9, 75,000/- was paid to the complainant in four instalments.

5. The opposite party did not forcebily registred villa on the

-U2- (88)

get released the loan amount from LIC Housing Finance without the complainant's knowledge.

5. It is not true that the opposite party did not respond between December 2013 and 09/02/2014. The dues of Rs.14,20,690/- is inclusive of interest on late payments of installments, the Service Tax of Rs.1,15,690/- which is payable to the Govt. authorities and no separate receipt is given for the same. The opposite party pays the service tax to the Govt. authorities on a monthly basis based on all the transactions done in the month.

6. Tt is not true that the opposite party is playing any tactics to avoid giving physical possession on Villa No.46. In fact the Villa is completed in all respects and but for sanitory fittings which is done just before handing over the possession to avoid damages to the fittings. The opposite party does not unnessarily delay handing over possession. It has always been the endavour of this Opposite Party to complete the villas and handover possession within time subject to settlement of all dues by it's customers. The Opposite Party has always been requesting the complainants to settle the dues at the earliest and take over possession. The Opposite pary has filed a complection certificate dated 05.05.2013 by a qualified engineer regarding the complection of Villa no.46 in all respects. A certificate from charted accounted of the Opposite party regarding the amount received by the Opposite party and the balance receivable by the Opposite party is also filed.

7. The Opposite Party has filed a suit for recovery of dues from the complaintants which is numberd as OS. No. 98 of 2014 on the file of the Ist Addl. Chief Judge, Secunderabad, which is pending before the Hon'ble Court.

The Opposite Party had developed a project named as NILGIRI HOMES at Rampally Village, Keesara Mandal, R. R Dist. The said project consists of ... the Opposite Party for purchase of Villa No.46 in the said venture for a total consideration of Rs. 39 lacs. The Opposite Party informed the Complainants that the villa chosen by them is in an advanced stage of construction and if the dues are paid within four months, they would be able to complete and handover the possession of the villa. The Complainants were satisfied about the progess of the project at that point of time and agreed to all the terms and conditions as specified by the Opposite Party. On such agreement having been reached, the Opposite Party had executed a regd. sale deed bearing No. 8452 of 2013 for the land admeasuring 125 sq yards on 16/11/2013 at SRO, Keesara, RR dist. On the same day, the Complainants also executed an agreement of construction in favour of the Opposite Party, which clearly spells out the terms of payment, period of completion and interest on late payments besides the other terms and conditions. The Complainants have abnormaly delayed in the payment of the instalments. The Opposite Party has received an amount of Rs.35,70,000/- till date. The Complainants have to further pay an amount of Rs.11,28,870/- to the Opposite Party towards full and final settlement of the cost of the villa alongwith interest. The breakup of the amout of Rs.11,28,870/- is as follows:

Service Tax	Rs. 2,15,420.00
Interest on delayed payments upto on 05.04.2014	Rs. 4,87,177.00
Court Fee and legal expenses	Rs. 50,926.00
Corpus Fund	Rs. 40,000.00
Electricity and Other Misc Charges	Rs. 5,347.00
TOTAL	**Rs. 7,98,870.00**

I submit the above amount has not been taken in to consideration by the complainants and they have only taken the differnce of amount calimed by this Opposite Party ie., Rs.11,28,870.00/- less Rs.7,98,870.00/- which comes to Rs.3,30,000/-. The above payments are all according to the agreement of construction executed by the complainants' infavour of the Opposite party. As per Clause 11 of agreement of sale, it is very clear that the complainants are ... Service Tax. The Opposite tu- 37

Parties as a sales promotions had waived the payment of VAT by the complainant but not the Service Tax amounting to Rs.2,15,420/-. The said agreement of sale is filed by the complainants. With regard to the payment of interest on delayed payments, it is very clearly mentioned at clause 4 of the said agrement. As per the clause 23 of the agreement of sale it is clear that the compainats shall pay a sum of Rs.40,000/- as corpus fund for a Rowhouse. The unit purchsed by the complainants is a rowhouse the thus they are liable to pay the above corpus fund. The complainants have conveinently ignored the above amount and wrongly claiming that they are liable to pay only Rs.3,30,000/-. In fact, the interest is calculated till the date when the complete dues are settled.

The villa is ready in all aspects and the opposite party will be in a position to handover the possession to the Complainants after they clear all the dues as specifed above.

The Opposite Party had got issued a notice dated18/04/2014 through its Counsel to the Complainants calling upon the Complainants to make the payment of Rs. 20,48,497/- within 7 days from the date of receipt of the notice and take possession of the villa. The Complainants received the notice.

There is no defeciancy of service on the part of the Opposite party and infact the complainants have been informed by the Opposite party from time to time to take possession of the villa after settling all the dues payable by the complainants. Hence, this Hon'ble forum may be pleased to dismiss the complaint as filed by the complainants.

The Opposite party is relaying on the following documents in support of its case.

Counsel for Opposite Party

Date: 08.07.2015