

IN THE COURT OF THE III ADDL. SENIOR CIVIL JUDGE, RANGA
REDDY DISTRICT COURTS, AT: L.B.NAGAR.

O.S.NO. 994 OF 2007

Between:

Sri Vinay Agarval

...Plaintiff

AND

M/S Modi Ventures and another

... Defendants

CHIEF EXAMINATION AFFIDAVIT OF PW-1

I, Sri Vinay Agarval, S/O. Sri Vasudev, aged 42 years, Occ: Business, R/O. Flat No. 403, Susheel Residency, Opp: CDR Hospital, Hyderguda, Hyderabad - 500029, do hereby solemnly and sincerely affirm and sincerely state on oath as follows:

1. I am the deponent herein and plaintiff in the above suit and as such well acquainted with the facts of the case.
2. I humbly submit that, the defendant No.1 is the owner and developer of "Gulmohar Gardens" apartments in the land forming part of survey Nos. 93 to 95, situated at Mallapur, Ranga Reddy District. For the purpose of selling the flats to prospective purchasers, the Defendant No. 1 advertised for the same. As the I was interested in the venture taken up by the

Defendant No.1 and intended to purchase a flat therein, I approached the Defendant No.1 in that regard. The Defendant No. 1 showed to me the brochure relating the proposed apartments and I selected the flat No. 506 on fifth floor in C block hereinafter referred to as the 'suit flat'.

3. I humbly further submits that, after negotiations the sale consideration was fixed at Rs. 799/- per square feet and in view of the extent of the suit flat being 750 Sq. feet, the total sale consideration of the suit flat was arrived to at Rs. 5,99,250/-. Apart from the sale consideration I was asked to pay a sum of Rs. 50,000/- towards the charges for the amenities, Rs. 5,000/- towards parking and Rs. 15,000/- towards electricity charges. I paid to the Defendant No.1 under receipt No. 114, a sum of Rs. 10,000/- through cheque No. 819353, dated 14-03-2006 drawn on M/S HDFC Bank, towards earnest money and part payment of sale consideration, which was encashed by the Defendant No.1 in conclusion of the agreement.

4. I humbly submit that, on receiving such payment the Defendant issued a receipt dated 14-03-2006 to me stating that the said amount was received towards booking amount of flat No. C-506 in "Gulmohar Gardens" apartment in survey Nos. 93 to 95, situated at Mallapur, Ranga Reddy District, admeasuring 750 Sq. feet together with undivided share of land which is more clearly described in the schedule of property of plaint given below. The Defendant No.1 had also informed me that they would intimate to me the progress of construction of the complex and accordingly would also inform me about the payment of balance of sale consideration to be made by me.

5. I humbly submit that, I was waiting patiently for the letter of the defendant No.1 to inform me about the status and progress of the complex and about the amount to be paid by me, but I did not receive any correspondents or communication from the defendant No. 1 as told by the Defendant No.1. When me visited the office of the Defendant No.1 enquiring into the matter, I was told that it would take some more time for the project to be completed and that they would intimate me further details later. To the utter shock and surprise of me instead of the intimation letter, I received a letter from the Defendant No.1 dated 08-06-2006 alleging that his agreement was only a provisional booking and that despite repeated reminders I did not come forward to execute a sale agreement and to make further payments.

6. I humbly submit that, immediately I approached the Defendant No.1 questioning about their illegal activity and had also addressed a letter dated 22-06-2006 making it clear that I had not received any reminders and intimation from the Defendant No.1 at any point of time requesting for execution of the sale agreement. On receiving the same the Defendant No.1 stated that they had issued the said letter only to ascertain as to whether I was still interested in purchasing the suit flat and asked me to ignore it. The Defendant No.1 had given assurance to me that the suit flat would not be sold to any third party.

7. I humbly submit that, in pursuance of the assurance given, the Defendant No.1 sent his representative to me demanding payment of some more amount. Accordingly I issued to the Defendant No.1 the cheque No.

691785, dated 11-07-2006, for Rs. 25,000/- drawn on M/S HDFC Bank Ltd. Himayath Nagar branch, Hyderabad towards further part payment , which was duly acknowledged by the Defendant No.1. It is pertinent to mention here that it was the Defendant No.1 who sent his representative to my house to collect the cheque giving assurance that my interest would be safe guarded.

8. I humbly submit that, thereafter the Defendant No.1 informed me that the construction work of the flat is almost complete and asked me to make necessary arrangements for obtaining bank loan. Accordingly, I applied for housing loan with M/S HDFC Bank Ltd., vide application No. 777-6252602 and the banker had sanctioned loan to me to tune of Rs. 8,45,056/- vide sanction letter dated 18-01-2007. I had informed to the Defendant No.1 about the sanction of the loan and was expecting the Defendant No.1 to come forward for execution and registration of the sale deed in respect of the suit flat.

9. I humbly submit that. I was waiting patiently for the correspondence to be received from the Defendant No.1, but there was no response. I visited the office of the Defendant NO.1 on several occasions making requests in that regard, but there was no proper response from the Defendant No.1. Having lost hope that there would be any response from the Defendant No.1, I got issued a legal notice dated 19-02-2007, to the Defendant No.1 through my advocate calling upon the Defendant No.1 to execute and register the sale deed in respect of the suit flat by receiving the balance

amount of sale consideration at the time of registration of sale deed on any day, within 15 days from the receipt of the legal notice.

10. I humbly submits that, the notice was served on the Defendant No.1 on 22-02-2007, as is evident from the postal acknowledgement. The Defendant addressed a reply dated 22-02-2007 stating that as per the alleged terms of booking the purchaser was required to execute an agreement within 30 days and failure of the same would result in cancellation of the alleged provisional booking. Though the Defendant No.1 admitted the agreement of sale in favor of Me and the receipt of part payment of sale consideration, he alleged that he had addressed another cancellation notice dated 09-08-2006 to me.

11. I humbly submit that, I had not received any such cancellation notice from the Defendant No.1 at any point of time except the one as stated above. In fact even if any such notice is given, the same cannot terminate the valid agreement of the sale between the parties, which I has made good amount towards part payment of sale consideration under proper receipt. I got issued a rejoinder notice on 12-03-2007 denying receipt of any cancellation notice and made it clear that the Defendant No.1 cannot terminate the agreement unilaterally. The Defendant No.1 got issued a reply through advocate on 28-03-2007 taking the same stand, which is false.

12. I humbly submit that, having received money towards part payment of sale consideration and having agreed to execute and register the sale

deed, the attitude and behaviour of the Defendant No.1 in not coming forward to fulfill his part of the contract prompted I to suspect the bonafides on part of the Defendant No.1. In fact, at the time of entering into the agreement, it was agreed between the parties that the Defendant No.1 will inform me about his readiness to execute and register the sale deed by receiving the balance of sale consideration after completion of the complex. I has always been ready and willing to perform his part of the contract of making payment of balance of sale consideration and in fact on the promises of the Defendant NO.1, I has already got sanctioned loan from the banker.

13. I humbly submit that, the Defendant No.1 has gone back his promises and failed to discharge the duty and burden cast upon him under the agreement. In fact, I required to pay the loan installments to the banker as the same has already been sanctioned. As stated above the Defendant No.1 has entered into the agreement by receiving money towards part payment of sale consideration from me. Having agreed to sell the property to me having received the part payment of sale consideration, the Defendant No.1 cannot go back the transaction nor does he have the right to terminate the same. As per the provisions of Law governing the contracts and properties, the Defendant No.1 is bound to sell the property by me by executing and registering the sale deed in his favour and he cannot part with it in favour of third party.

14. I humbly submit that, I has got every right to purchase the suit flat and get the sale deed executed and registered in my favour. Hence, I is left with no other option but to approach this Hon'ble Court for specific

performance of the agreement of sale. I has made efforts to convince the Defendant No.1 and to settle the dispute amicably, but I has failed as the Defendant No.1 is bent upon to cause harm to me for illegal gains and make money in illegal manner. It would not be out of place to mention here that the Defendant has gone back the promise demanding me to enhance the sale consideration, which is not legal.

15. I humbly submit that, I has got money to pay the balance of sale consideration of Rs.6,34m250/- to the Defendant No.1 as I already got the loan sanctioned from the banker for a sum of Rs. 8,45,056/- for the purpose of making payment of balance of sale consideration to the Defendant No. 1 in respect of the suit flat payment of stamp duty, registration charges, etc. I has always been ready and willing to perform my part of contract. I am ready to pay the balance of sale consideration and get the sale deed executed and registered in my favour. In a very illegal and highhanded manner, after entering to agreement of sale with me and after receiving part of sale consideration, the Defendant No. 1 is trying to sell the suit flat to third parties, in order to cause harm to me, which is not permissible in law.

16. I humbly submit that, my agreement is subsisting and it still holds good. From the facts of the case, it is very clear that the intention of the Defendant NO.1 in refusing to execute and register the sale deed in my favour is illegal and against all the morals also. The law of equity favours for sale of the property by the Defendant No.1 to me alone and the Defendant No.1 has no exclusive and unilateral right to cancel or terminate the contract and forfeit the amount of part payment made by me to him.

I have filed the following Documents which may be marked as Exhibits
on my behalf.

SL.No.	Date	Parties to the document	Description
1	14-03-2006	Plaintiff/ Defendant NO.1	Receipt issued by the Defendant No.1
2	08-06-2006	Plaintiff/ Defendant NO.1	Letter addressed by the Defendant NO.1
3	22-06-2006	Plaintiff/ Defendant NO.1	Reply letter addressed by the Plaintiff
4	11-07-2006	Plaintiff/ Defendant NO.1	Copy of Cheque No. 691785 with endorsement of receipt
5	18-01-2007	Plaintiff	Loan sanction letter
6	19-02-2007	Plaintiff/ Defendant NO.1	Office copy of legal notice
7	22-02-2007	Plaintiff/ Defendant NO.1	Reply letter of Defendant No.1
8	12-03-2007	Plaintiff/ Defendant NO.1	Office copy rejoinder notice
9	28-03-2007	Plaintiff/ Defendant NO.1	Reply notice of Defendant No.1
10	12-03-2007	Plaintiff/ Defendant NO.1	Encumbrance Certificates (2)
11		Plaintiff/ Defendant NO.1	Brochure of typical floor plan of the suit flat.

Therefore, I pray that this Hon'ble Court may please to pass judgment and decree in my favour as prayed below:

- (A) Directing the Defendant NO.1 to execute the sale deed in my favour or his nominees by receiving the balance of sale consideration of Rs. 6,34,250/- in respect of all the Flat NO. C-506 on fifth floor in "Gulmohar Gardens" Apartment, forming part of land to survey No's. 93 to 95, situated at Mllapur, Ranga Reddy District, admeasuring 750 Sq. feet's together with proportionate undivided share of land as given in the schedule and on failure of the Defendant No.1 to come forward to execute and register the sale deed, this Hon'ble Court may please to execute and register the sale deed in favour of me or in my nominees on behalf of the Defendant NO.1.
- (B) Consequently pass a decree for perpetual injunction restraining the Defendants from transferring alienating, creating any third party interest or charge of the suit flat in favour of the third parties or parting with possession in respect of the Flat No. C-506 on fifth floor in "Gulmohar Gardens" Apartment, forming part of land to survey No's. 93 to 95, situated at Mllapur, Ranga Reddy District, admeasuring 750 Sq. feet's together with proportionate undivided share of land as given in the schedule.

(C) Award the costs of the suit and grant such further relief or reliefs as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Sworn and signed before me
on this the day of August, 2016
at Hyderabad

DEPONENT

ADVOCATE

You have earlier entered into
agreement with Summit Builders.
a Sister Concern -

You are well aware

Did you check up on the
project status:

- 1) NO Concluded Contract.
2) After obtaining the loan
did you approach the Deft to
carry out your part of the
Contract.
23) Total cost agreed was
Rs 6,70,000 & not Rs 5,99,250/-
24) NO effort by you to find
out about the project progress.
25) NO assurance given by the
Def. reg. sale of flat to you.
26) your looking was Speculative.
27) As you could not find a
Subsequent purchaser, you did not
go ahead with the deal.

As you are in the business of
buying & selling Flat for a sale.
Earlier how many transactions
with the D-1.
Any letter addressed to the D-1
reg. your readiness & willingness.

- ① You have deliberately not filed Booking form?
- ② You have signed a Booking form.
- ③ Booking form gives the payment schedule.
- ④ There is no valid agreement of Sale —
- ⑤ Part Payment → not true.
- ⑥ Have you filed any agreement?
- ⑦ You have gone through the booking form before signing and are well versed with the terms & conditions re: Payment Schedule.
- ⑧ Transaction not completed
- ⑨ You had booked another flat in the ~~same~~ group company of the Defendant.
- ⑩ Your Qualifications — Profession.
- ⑪ you did not stick to the payment schedule — no question of execution of Sale Deed.
- ⑫ Payment made — not part payment
- ⑬ only nominal booking amt.
- ⑭ no timely payment cannot claim any specific performance
- ⑮ no cause of action to file the suit.
- ⑯ You have suppressed the booking form. Booking form signed on 13/4/06.
- ⑰ Agreement had to be executed.
- ⑱ You know all the terms & conditions.
- ⑲ Booking only provisional
- ⑳ no valid contract
- ㉑ speculative suit

**IN THE COURT OF THE III
ADDL. SENIOR CIVIL JUDGE,
RANGA REDDY DISTRICT
COURTS, AT: L.B.NAGAR.**

O.S.NO. 994 OF 2007

Between:

Sri Vinay Agarwal

...Plaintiff

AND

M/S Modi Ventures and another

... Defendants

**CHIEF EXAMINATION
AFFIDAVIT OF PW-1**

Filed on:

Filed By:

M./S **A.M RAO,
K. NAVEEN KUMAR,
V.KIRAN KUMAR,**

Attorneys

#101,102, Paras Chambers,
Opp: Hyderabad Stock Exchange,
Himayath Nagar, Hyderabad -29

Counsels for Plaintiff.

Amr Reddy 9246 505771
95480 57764

**IN THE COURT OF THE III ADDL. SENIOR CIVIL JUDGE, RANGA
REDDY DISTRICT COURTS, AT: L.B.NAGAR.**

I.A. NO. OF 2016

IN

O.S.NO. 994 OF 2007

Between:

Sri Vinay Agarwal

...Plaintiff

AND

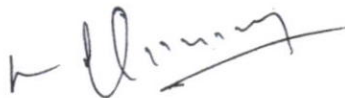
M/S Modi Ventures and another

... Defendants

AFFIDAVIT

I, Sri Vinay Agarwal, S/O. Sri Vasudev, aged 42 years, Occ: Business, R/O. Glat No. 403, Susheel Residency, Opp: CDR Hospital, Hyderguda, Hyderabad - 500029, do hereby solemnly and sincerely affirm and sincerely state on oath as follows:

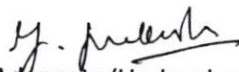
1. I am the Petitioner herein and plaintiff in the above suit and as such well acquainted with the facts of the case.
2. I humbly submit that, I have filed the above suit for Specific Performance against the Defendant/Respondent herein. That, at the time of filing of suit I could not get Original Documents from the concerned authorities in-time and some documents are misplaced, could not traced at the time of filing of above suit, and I have filed only Xerox copies. I further submit that, now I traced out the original documents and obtained CC copies of few documents. The non filing of the above said original documents is



neither willful nor wanton due to aforesaid fact. In these circumstances, it is just and necessary in the interest of justice that the Hon'ble Court may be pleased to receive the documents mentioned in list annexed to the petition and be made part of record. The said documents are genuine and substantiate the facts submitted in the Petition to prove the case set up by the Petitioner. In case the documents are not received in evidence I will be put to irreparable loss and injury.

Sworn and signed before me
On this the 15th day of November, 2016
At Hyderabad


DEPONENT


Advocate/Hyderabad