

MODI VENTURES

5-4-187/3 & 4, III Floor, M.G. Road, SECUNDERABAD - 500 003.
☎ 55335551 (4 Lines), Fax: 040 - 27544058
E-mail : info@modiproperties.com Website : www.modiproperties.com

Date: 08.06.2006

To,
Mr. Vinay Agarwal,
401, Susheel Residency,
Opp CDR Hospital,
Hyderguda,
Hyderabad.

CANCELLATION NOTICE

Dear Sir,

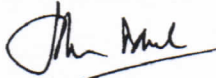
You have made a provisional booking for Flat No. 506 in Block 'C' in our project known as Gulmohar Gardens at Survey No. 93 to 95, Mallapur, Hyderabad vide booking form no. 123 dated 13th March 2006.

You have paid a sum of Rs. 10,000/- on 13th March 2006 towards the booking amount.

Despite repeated reminders you have not come forward to execute a Sale Agreement and make further payments. . In view of the above, please note that your provisional booking stands cancelled and the payments made by you are hereby forfeited. Hereafter we will be at liberty to allot the said flat to any intending purchaser.

Thank You.

Yours sincerely,



SOHAM MODI,
Partner.

O.S.No. 1549 OF 2007

Between :

Sri Vinay Agarwal
S/o. Sri Vasudev, aged 42 years
Occ : business, R/o. Flat No.403
Susheel Residency, Opp. CDR Hospital
Hyderguda, Hyderabad - 500 029.

...Plaintiff

AND

M/s. Summit Builders
represented by its partner Sri Soham Modi
S/o. Sri Satish Modi, aged 37 years, Occ : business
having office at 5-4-187/3, III Floor
M.G. Road, Secunderabad - 500 003.

2) Smt. Subhashini Gada
u/o Sri Shrinani Mogallapalle
aged 30 years, R/o. Sri Salyanarayana Murthy Gaddala
H.No. 6-10-30/A, Rajasthree Peddapuram
East Godavari Dist - 583437
...Defendants
(Defendant No. 2 Impleaded as per order dt 19-3-2010
passed in IA No. 755/2008)

SUIT FOR SPECIFIC PERFORMANCE OF THE AGREEMENT OF SALE

PLAINT PRESENTED UNDER SECTION 26, ORDER VII RULE 1 OF CIVIL PROCEDURE
CODE 1908

1. The description of the plaintiff is the same as given in the above cause title and his address for the purpose of service of all notices, etc. is that of the counsel M/s. SHYAM S. AGRAWAL, L. Praveen Kumar, L. Pradhan Kumar, K. Sashirekha, and Naresh Singh, advocates, having office at # 101, R.K. Residency, lane beside Minerva Coffee Shop, 3-6-237/1, Street No.15, Himayatnagar, Hyderabad - 500 029, Phone : 91-40-2322-2700.

(Inserted as per order dated 27-9-2012 in IA No. 1533/2012)

2. The description and the address of the defendant^{No.1} for the purpose of service of all summons, notices, etc., are the same as mentioned in the above cause title.

3. The plaintiff submits that the defendant^{No.1} is the owner and developer of "Silver Oak" apartments on the land forming part of survey No.290, situated at Cherlapally village, Ghatkesar mandal, Ranga Reddy district. For the purpose of selling the flats to prospective purchasers, the defendant^{No.1} advertised for the same. As the plaintiff was interested in the venture taken up by the defendant^{No.1} and intended to purchase a flat therein, the plaintiff approached the defendant^{No.1} in that regard. The defendant^{No.1} showed to the plaintiff the brochure relating the proposed apartment and the plaintiff selected flat No.401 on fourth floor admeasuring 725 square feet of super built up area together with proportionate undivided share of land to the extent of 36.25 square yards and a reserved two wheeler parking space bearing No.73, hereinafter referred to as the 'suit flat'.



Vinay
PLAINTIFF

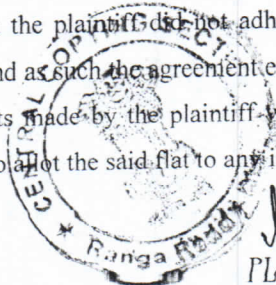
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4. The plaintiff further submits that after negotiations, the sale consideration was fixed at Rs.649/- per square feet and in view of the extent of the suit flat being 725 square feet, the total sale consideration of the suit flat was arrived to at Rs.4,70,525/-. Apart from the sale consideration, the plaintiff 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 water & electricity charges. The plaintiff paid to the defendant^{No-1} a sum of Rs.10,000/- through cheque No.123098, dated 08-09-2005 drawn on M/s. IDBI Bank, under receipt No.1017, towards earnest money and part payment of sale consideration, which was encashed by the defendant in conclusion of the agreement.

5. The plaintiff also submits that the suit flat is more clearly described in the schedule of property of the plaint given below. The terms of contract were subsequently reduced into writing under a formal agreement of sale entered into between the parties on 15-12-2005. The plaintiff paid additional sum of Rs.15,000/- to the defendant^{No-1} through cheque No.619352, dated 01-03-2006 drawn on M/s. HDFC Bank, towards further part payment of sale consideration, which was encashed by the defendant^{No-1}. The defendant^{No-1} had also informed the plaintiff that they would intimate to the plaintiff the progress of construction of the complex and accordingly would also inform the plaintiff about the payment of balance of sale consideration to be made by him.

6. The plaintiff submits that he was waiting patiently for the letter of the defendant^{No-1} informing him about the status and progress of the complex and also about the amounts to be paid by him, but he did not receive any correspondence or communication from the defendant^{No-1} as told by the defendant^{No-1}. When the plaintiff visited the office of the defendant^{No-1} enquiring about the progress of the complex, he was told that that it would take some more time for the project to be completed and that they would intimate him further details later. To the utter shock and surprise of the plaintiff, instead of the intimation letter, he received a letter from the defendant^{No-1} dated 05-05-2006 calling for payment of three installments within seven days of receipt of the notice and warned of forfeiture, if the plaintiff fails to pay the installments.

7. The plaintiff further submits that he sent a suitable reply dated 15-05-2006 to the letter of the defendant^{No-1} informing that he had not received any reminders earlier for payment as alleged in the said letter and informed the defendant^{No-1} that the plaintiff would pay the amount in lump sum immediately on the sanction of loan, which was delayed in view of change of status of income from salaried to self employed and will also complete the payments in lump sum after sanction of housing loan. On receiving the reply of the plaintiff, the defendant^{No-1} sent a cancellation notice dated 09-06-2006 to the plaintiff informing that the plaintiff did not adhere to the payment schedule, not paid the installments as promised and as such the agreement entered into between the parties stood cancelled and that the payments made by the plaintiff were forfeited. The defendant^{No-1} further stated that they were at liberty to allot the said flat to any intending purchaser.



[Signature]
PLAINTIFF

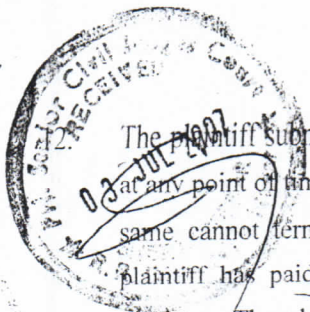
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8. The plaintiff also submits that after receiving the said cancellation notice, the plaintiff sent a reply letter dated 23-06-2006 informing that he has already informed through his reply letter dated 15-05-2006 that there was a delay in the processing of loan and all the pending installment amounts will be paid shortly and requested to bear for some time. Apart from that the plaintiff visited the office of the defendant^{No.1} in person and discussed with the defendant^{No.1}. The defendant^{No.1} had stated that they had issued the cancellation notice only to ascertain whether the plaintiff was really interested in purchasing the flat or not. The defendant^{No.1} assured the plaintiff that his interest in the flat would be safeguarded and the plaintiff can make the payment as and when the loan is sanctioned to the plaintiff.
9. The plaintiff submits that as per the discussions held between him and the defendant^{No.1} the plaintiff paid a further amount of Rs.75,000/- through cheque No.691784, dated 11-07-2006, drawn on M/s. HDFC Bank and the same was acknowledged by the defendant^{No.1} vide their receipt No.11-07-2006 towards part payment of the sale consideration. As the defendant^{No.1} was satisfied with the payments made by the plaintiff, the defendant^{No.1} addressed a letter dated 01-08-2006 to the plaintiff, asking to visit the site between 01-08-2006 and 08-08-2007 to have a look at the flat for any additions or alterations to be done to the suit flat, otherwise, the flat will be completed as per the standard specifications shown in the model flat. The plaintiff suggested some changes to the flat, for that the defendant^{No.1} assured that he would make the necessary changes to the said flat and would intimate the plaintiff the date of execution of document.
10. The plaintiff further submits that the plaintiff waited patiently for a response from the defendant^{No.1} but to the shock of the plaintiff there was no such intimation from the defendant^{No.1} and when the plaintiff contacted the defendant^{No.1} in person there was no proper response from the defendant^{No.1} and he avoided to meet the plaintiff. Getting vexed with the attitude of the defendant^{No.1} and lost hope of response, the plaintiff got issued a legal notice dated 19-02-2007 to the defendant^{No.1} through his 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.
11. The plaintiff also submits that the notice was served on the defendant^{No.1} on 22-02-2007 as is evident from the postal acknowledgement. The defendant^{No.1} addressed a reply dated 22-02-2007, with all false and baseless allegations, taking the stand that the agreement stood cancelled. Though the defendant^{No.1} admitted the agreement of sale in favour of the plaintiff and the receipt of part payment of sale consideration made on different dates, he alleged that he had addressed another cancellation notice dated 09-08-2006 to the plaintiff.



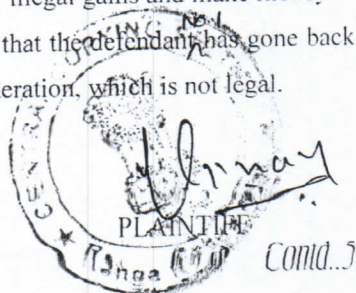
[Signature]
PLAINTIFF

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The plaintiff submits that he has not received any such cancellation notice from the defendant 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 sale between the parties, under which the plaintiff has paid huge amount towards part payment of sale consideration under proper receipts. The plaintiff got issued a rejoinder notice on 12-03-2007 denying receipt of any cancellation notice and made it clear that the defendant cannot terminate the agreement unilaterally. The defendant^{No. 1} got issued a reply notice on 28-03-2007 taking the same stand, which is false. It is pertinent to mention here that the defendant^{No. 1} has lodged a caveat before the Hon'ble Court against the plaintiff, which proves the malafides on part of the defendant^{No. 1}.

13. The plaintiff further submits that having received money towards part payment of sale consideration and having agreed to execute and register the sale deed, the attitude and behavior of the defendant^{No. 1} in not coming forward to fulfill his part of the contract prompted the plaintiff 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 the plaintiff about his readiness to execute and register the sale deed by receiving the balance of sale consideration after completion of the complex. The plaintiff 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} the plaintiff has already got sanctioned loan from the banker.
14. The plaintiff submits that the defendant^{No. 1} has gone back his promises and failed to discharge his duty and burden cast upon him under the agreement. In fact the plaintiff is required to pay the loan instalments to the banker as the same has already been sanctioned. As stated above, the defendant has entered into the agreement by receiving money towards part payment of sale consideration from the plaintiff. Having agreed to sell the property to the plaintiff, 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 to the plaintiff by executing and registering the sale deed in his favour and he cannot part with it in favour of third party.
15. The plaintiff further submits that he has got every right to purchase the suit flat and get the sale deed executed and registered in his favour. Hence, the plaintiff is left with no other option but to approach this Hon'ble court for specific performance of the agreement of sale. The plaintiff has made efforts to convince the defendant^{No. 1} and to settle the dispute amicably, but he has failed as the defendant^{No. 1} is bent upon to cause harm to the plaintiff for illegal gains and make money in illegal manner. It would not be out of place to mention here that the defendant^{No. 1} has gone back the promise demanding the plaintiff to enhance the sale consideration, which is not legal.



Comd...

16. The plaintiff also submits that he has got money to pay the balance of sale consideration Rs.4,40,525/- to the defendant^{No.1} as he has already got the loan sanctioned from the banker 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. The plaintiff has always been ready and willing to perform his part of the contract. The plaintiff is ready to pay the balance of sale consideration and get the sale deed executed and registered in his favour. In a very illegal and highhanded manner, after entering to agreement of sale with the plaintiff 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 the plaintiff, which is not permissible in law.

17. The plaintiff submits that the agreement of the plaintiff 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 favour of the plaintiff is illegal and against all the morals also. The law of equity favours for sale of the property by the defendant^{No.1} to the plaintiff 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 the plaintiff to him. It would not be out of place to mention here that the plaintiff has taken lot of pains in getting the housing loan sanctioned, for which he had got the site inspected and verified by a government registered valuer and submitted the valuation report to the banker by spending good amounts.

17-A. "The plaintiff submits that he has learnt that the defendant No.1 along with builder M/s. Sri Sai Builders sold the schedule property to the defendant No.2 under the sale deed dated 31-01-2007 registered as document No.1804/2007 of the Office of the Sub-Registrar, Uppal, Ranga Reddy district. However, in view of agreement between the plaintiff and the defendant No.1 being prior to the sale deed and it being in subsistence, the sale deed in favour of the defendant No.2 is illegal and liable to be cancelled".

(Para No.17-A, inserted as per order dated 27-09-2012, in I.A. 153/2012)

18. The cause of action further arose when the plaintiff got sanctioned loan from the banker for payment of balance of sale consideration to the defendant^{No.1} on 19-02-2007 when the plaintiff got issued the legal notice to the defendant^{No.1} calling upon to execute and register the sale deed, on 22-02-2007 when the defendant^{No.1} replied with false allegations, on 12-03-2007 when the plaintiff got issued a rejoinder notice making the legal position clear to the defendant^{No.1} that he has to perform his part of contract and on 28-03-2007 when the defendant^{No.1} got issued a reply through advocate refusing to execute and register the sale deed. The cause of action is continuing.

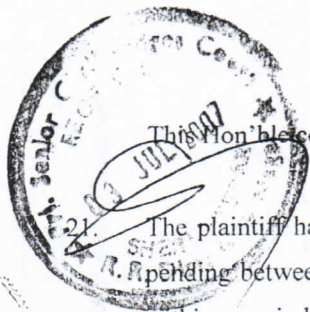
20. This Hon'ble court has got jurisdiction to entertain the suit as the suit property is situated at Cherlapally village, Ghatkesar Mandal, Ranga Reddy district and the cause of action arose within the territorial jurisdiction of this Hon'ble court.



[Signature]
PLAINTIFF

Contd..6

(Para No.17-A, inserted as per order dated 27-09-2012 in I.A. No. 153/2012)



This Hon'ble court has also got pecuniary jurisdiction.

The plaintiff has not filed any other case in this regard and no suit or other proceedings are pending between the parties to the present suit before any other court. The suit is being filed within a period of three years from the date of refusal of the defendant ^{No.1} to execute and register the sale deed in favour of the plaintiff and therefore the same is within the period prescribed by law and is not barred by limitation.

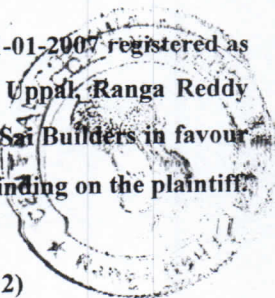
22. The plaintiff values the relief of specific performance of the agreement of sale for the purpose of court fee and jurisdiction at Rs. 4,40,525/- under section 39 of the Andhra Pradesh Court fees and Suits Valuation Act and the proper court fee is Rs. ~~7926~~ ⁷⁹²⁶ /-. The relief of perpetual injunction is valued notionally at Rs. 5,000/- under section 26 (c) and pays the proper Court fee is Rs. 44 /-. Thus the total court fee of Rs. ~~8,337~~ ^{8,337} /- is paid under Article 1 (b) & (c) of Schedule I of the A.P. Court Fees and Suit Valuation Act, which is sufficient.

23. The plaintiff therefore prays that this Hon'ble court may pleased to pass judgment and decree

i. Directing the defendant to execute and register the sale deed in favour of the plaintiff or his nominee/s by receiving the balance of sale consideration of Rs. 4,40,525/- in respect of all that the Flat No.401 on fourth floor in Silver Oak Apartments, forming part of Survey No. 290, admeasuring 725 square feet of super built up area together with proportionate undivided share of land to the extent of 36.25 square yards and a reserved parking space for two wheeler bearing No.73 situated at Cherlapally Village, Ghatkesar Mandal, Ranga Reddy district, as given in the schedule and on failure of the defendant to come forward to execute and register the sale deed, this Hon'ble court may be pleased to execute and register the sale deed in favour of the plaintiff or his nominee/s, on behalf of the defendant.

ii. Consequently pass a decree for perpetual injunction restraining the defendant 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.401 on fourth floor in Silver Oak Apartments, forming part of Survey No. 290, admeasuring 725 square feet of super built up area together with proportionate undivided share of land to the extent of 36.25 square yards and a reserved parking space for two wheeler bearing No.73 situated at Cherlapally Village, Ghatkesar Mandal, Ranga Reddy district as given in the schedule.

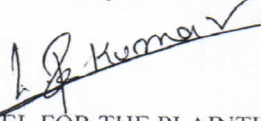
ii(a). "consequently pass a decree, canceling the sale deed dated 31-01-2007 registered as document No.1804/2007 of the office of the Sub-Registrar, Uppal, Ranga Reddy district, executed by the defendant No.1 along with M/s. Sri Sai Builders in favour of the defendant No.2, declaring it as null and void and not binding on the plaintiff."

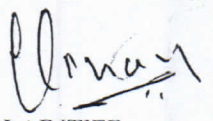


(Para No. 23-ii (a) inserted as per order dated 27-09-2012, in I.A. 1533/2012)

Para No. 23-ii(a) inserted
as per order dated
27-9-2012 in
I.A. No. 1533/2012

- iii. 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.


COUNSEL FOR THE PLAINTIFF

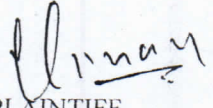

PLAINTIFF

Hyderabad
2-07-2007.

SCHEDULE OF THE PROPERTY

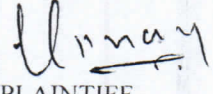
All that the Flat No.401 on fourth floor in Silver Oak Apartments, forming part of Survey No.290, admeasuring 725 square feet of super built up area together with proportionate undivided share of land to the extent of 36.25 square yards and a reserved parking space for two wheeler bearing No.73, situated at Cherlapally Village, Ghatkesar Mandal, Ranga Reddy district and bounded by :

NORTH	:	Open to sky
SOUTH	:	Flat No.402
EAST	:	Open to sky
WEST	:	6 feet wide corridor


PLAINTIFF

VERIFICATION

I, Vinay Agarwal, S/o. Sri Vasudev, aged 42 years, Occ : business, R/o. Flat No.403, Susheel Residency, Opp : CDR Hospital, Hyderguda, Hyderabad do hereby declare that the contents of the above plaint and the schedule of property are true to the best of my knowledge, information, belief and legal advice, which I believe to be true and hence verify the same as true and correct on this the 2nd day of July 2007 at Hyderabad.


PLAINTIFF

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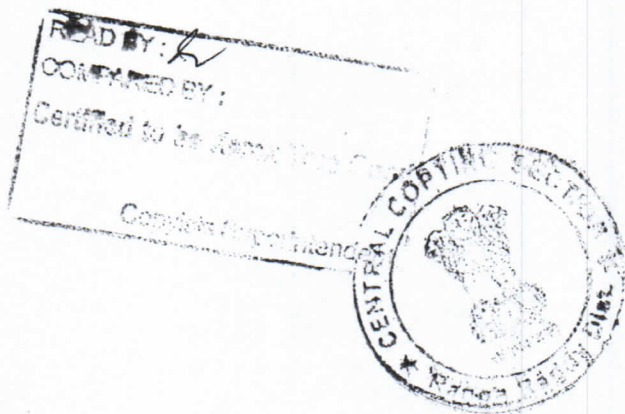
- 8 -

LIST OF DOCUMENTS FILED BY THE PLAINTIFF

S.No.	DATE	DESCRIPTION OF THE DOCUMENT
1.	08-09-2005	Original receipt issued by the defendant for Rs.10,000/-
2.	15-12-2005	Copy of agreement of sale between the plaintiff and defendant.
3.		Original pricing and payment terms of defendant.
4.	03-03-2006	Original receipt issued by the defendant for Rs.15,000/-.
5.	05-05-2006	Original reminder notice issued by defendant.
6.	15-05-2006	Reply to the reminder notice of the defendant with acknowledgment.
7.	09-06-2006	Original cancellation notice issued by defendant.
8.	23-06-2006	Reply to the cancellation notice of the defendant with acknowledgment.
9.	11-07-2006	Original receipt issued by the defendant for Rs.75,000/-.
10.	01-08-2006	Original letter addressed by the defendant.
11.		Plan of the Flat.
12.	19-02-2007	Office copy of legal notice issued to defendant.
13.	22-02-2007	Reply notice of the defendant.
14.	12-03-2007	Office copy of legal notice.
15.	28-03-2007	Original reply notice of the defendant.
16.	24-05-2007	Letter addressed to the Post Office by wife of the plaintiff.
17.	-05-2007	Caveat filed by the defendant. No 781/07

[Signature]
PLAINTIFF

Hyderabad
02-07-2007.



9

IN THE COURT OF THE HON'BLE PRINCIPAL SENIOR CIVIL JUDGE
R.R. DISTRICT: AT: L.B. NAGAR

O.S.No. 1549 of 2007

Between :
VINAY AGARWAL

... PLAINTIFF

AND

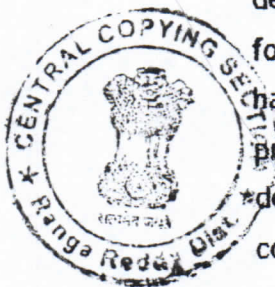
SUMMIT BUILDERS

... DEFENDANT

DEFENDANT

WRITTEN STATEMENT ON BEHALF OF THE ~~RESPONDENT~~

1. The defendant denies all the adverse allegations contained in the plaint and it should not be deemed to have admitted any allegation which is not specifically denied herein.
2. The paras No.1 & 2 are formal and do not require any reply.
3. With regard to the allegations in para No.3, it is true that the defendant is the owner and developer of an Apartment block named as SILVER OAK. It is also true that the Plaintiff approached the Defendant for purchasing a Flat in the said venture but the Plaintiff had only booked a Flat as per Booking Form supplied to the Respondent. It is true that the plaintiff proposed to purchase Flat No.401, admeasuring 725 square feet with proportionate undivided share of land admeasuring 36.25 square yards. The Plaintiff has deliberately omitted to mention the said booking form. The said booking is only tentative and not the final contract.
4. With regard to the allegations in para 4, it is not true that the total cost of the flat was fixed at Rs.4,70,525/- (Rupees Four Lakhs Seventy Thousand Five Hundred and Twenty Five only). The total cost of the flat was fixed at Rs.5,40,525/-. The Plaintiff did not pay the amount to the Defendant as alleged but paid only a sum of Rs.10,000/- by way of a cheque. It is submitted that the payment does not amount to a conclusion of any agreement.
5. With regard to the allegations in para No.5 the plaintiff has deliberately omitted to mention about the execution of the booking form and the terms contained therein. It is denied that the defendant had informed the plaintiff that it would update the plaintiff about the progress of the construction of the complex or that accordingly the defendant would inform him about the payment of balance of consideration to be made by him at the time of execution and registration of sale deed as alleged.
6. With regard to the allegations in para 6, it is pertinent to note that the plaintiff did not make any effort to find out about the progress of



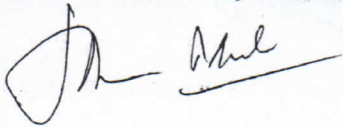
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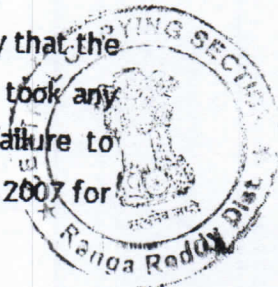
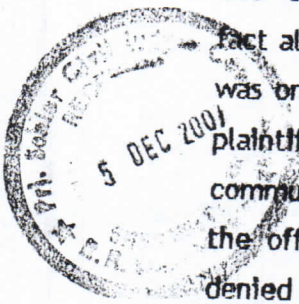
the complex or about the ²

amounts to be paid by him. In

fact all these aspects were covered by the booking order form, which was only a proposal but not a final contract. It is surprising that the plaintiff now alleges that he did not receive any correspondence or communication from the respondent. In fact the plaintiff never visited the office of the defendant to enquire into the matter. It is also denied that he was ever told that it would take some more time for the project to be completed or that he would be intimated about the details. It is denied that the letter dated 05.05.2006 addressed by the defendant was not according to facts.

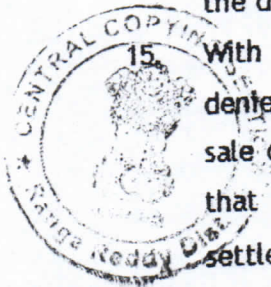
7. With regard to the allegations in para 7, it is true that the Plaintiff addressed a letter dated 15.05.2006 but it is denied that he had not received any reminders or intimations from the defendant at any point of time for execution of the sale agreement as alleged. It is true that the plaintiff replied to the said letter but it was containing false and baseless allegations. There was never any assurance regarding the suit flat as alleged.
8. With regard to the allegations in para 8 of the plaint, it is submitted that a cancellation letter was issued when there was no reply for the reminders sent earlier. It is not true to say that the plaintiff visited the office of the defendant and discussed with the officials of the defendant. It is denied that the defendant had issued the cancellation letter only to ascertain the interest of the plaintiff in purchasing the flat. It is utterly false to say that there was an assurance from the defendant regarding safeguarding the interest of the plaintiff or that he can make payments as and when he receives his loan amount.
9. With regard to the allegations in para 9, it is true that the plaintiff had paid an amount of Rs.75,000/- on 11.07.2006 and further promised to keep up the payment schedule. In good faith this defendant accepted the payment but the plaintiff defaulted in making further payments as promised by him.
10. With regard to the allegation in para 10, it is not true to say that the defendant avoided to meet the plaintiff or that the plaintiff took any steps for making payments. It is true that inspite of his failure to make payments, the plaintiff got issued a notice dated 19.02.2007 for which a suitable reply was given by the defendant.





63

11. With regard to the allegations³ in para 11, it is true that the notice was served on the defendant and the same was received on 22.02.2007 to which the defendant gave a suitable reply on the same day but it is not true to say that it contained false and baseless allegations. It is true that the defendant admitted regarding the part payment and also the agreement of sale executed in favour of the plaintiff. The cancellation letter dated 09.08.2006 was addressed by the defendant to the plaintiff as the plaintiff failed to keep up his promise for making payments as per schedule.
12. With regard to the allegations in para 12, it is not true to say that the cancellation notice issued by the defendant cannot terminate the agreement. It is false to say that the caveat was lodged before this Hon'ble Court with a mala fide intention. It was only to protect the rights of the defendant.
13. With regard to the allegations in para 13, it is not true to say that the defendant after receiving the part payment there was any change in the attitude or the behaviour of the defendant in executing and registering a sale deed. In fact, it was the plaintiff who has failed to keep up his part of the agreement i.e. payment of installments as agreed upon at the time of booking and also subsequently when he assured to make payments. It is, therefore, submitted that the plaintiff was never ready and willing to perform his part of the contract.
14. With regard to the allegations in para 14, the defendant denies that it has gone back on its promises or failed to discharge its duty and burden cast upon it under the alleged agreement. This defendant is not aware of the agreement between the plaintiff and his bankers. The defendant submits that there is no concluded agreement between the plaintiff and the defendant. The defendant further respectfully submits that there is no contract subsisting between the plaintiff and the defendant.
15. With regard to the allegations in para 15, the defendant emphatically denies that the plaintiff has any right to purchase the suit flat or get a sale deed executed and registered in his favour. It is not true to say that the plaintiff had made efforts to convince the defendant and settle the dispute amicably. It is, further, denied that the defendant is bent upon causing harm to the plaintiff for illegal gains. The



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defendant has never gone back on its promise nor demanded for any enhancement in the sale consideration.

16. With regard to the allegations in para 16, the defendant denies for want of knowledge that the plaintiff has got money to pay balance of consideration or that he was always ready and willing to perform his part of the contract. The defendant denies that the plaintiff is ready to pay the balance of sale consideration or get sale deed executed or registered in his favour. It is denied that the defendant has entered into any valid agreement with the plaintiff or that the defendant received part of sale consideration or that the defendant is trying to sell the suit flat to third parties. In order to harm the plaintiff.
17. With regard to the allegations in para 17, the defendant denies that there is a concluded agreement much less subsisting or still holding good between the plaintiff and the defendant. It is denied that the denial of execution and registration of sale deed in favour of the plaintiff by the defendant is illegal. It is denied that the law of equity is in the sale of the property by the defendant to the plaintiff alone or that the plaintiff has any existing rights in the property. The other allegations in the said para are argumentative and are not valid.
18. With regard to the allegations in para 18 & 19, the defendant submits that there is no subsisting cause of action and as such the plaintiff is not entitled to any reliefs.
19. The defendant respectfully submits that the plaintiff approached the defendant for booking for himself a flat bearing No.401, in the complex known as SILVER OAK APARTMENTS, admeasuring 725 square feet, situated at Cherlapally village, Ghatkesar Mandal, R.R. Dist. being developed by the defendant. The Plaintiff was fully aware of the status of the project and the terms and conditions applicable for obtaining a flat. The plaintiff was also fully aware that he had to sign, which he did, a booking form which was a provisional booking and he did not gain any rights in respect of the property. The plaintiff signed the booking form on 10.09.2005 and issued a cheque for the first payment of Rs.10,000/- (rupees Ten Thousand only). The booking form contains the details of the further payments to be made by the plaintiff for completing the transaction. The booking form also has the terms and conditions on the reverse which form part of the agreement under the booking form. The terms under the agreement make it clear

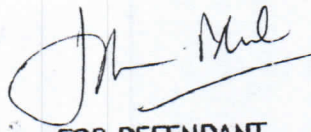
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that the booking form is only provisional and an agreement had to be executed. The respondent has gone through all the terms and conditions contained in the booking form and it is not now open to him to say that he is unaware of the terms. It should also be mentioned that booking under the booking form is only provisional.

20. It is, therefore, denied that a transaction was completed under an oral agreement as alleged by the plaintiff. It is pertinent to mention here that this defendant does not have the practice of entering into any oral agreements.
21. The booking form clearly stipulates the formalities to be completed in respect of the property including the schedule of payment. The plaintiff, cannot therefore claim that he was ignorant as to the schedule of payments. After initial payment of Rs.10,000/- the plaintiff did not make any further payment until the letter addressed by the defendant. Even thereafter he has not complied with the requirements for completion of a valid contract. Therefore, the defendant addressed a letter to the plaintiff canceling the agreement and informing him of this development. Strangely, the plaintiff had issued a letter containing false and baseless allegations. Thereafter the correspondence between the parties is self-revealing.
22. It is submitted that the plaintiff cannot seek the equitable reliefs of specific performance as he has relied on false averments suppressing all facts and not performing his obligation under the contract. It is submitted that the plaintiff has approached this Hon'ble Court with false allegations and suppressing his laches.
23. It is therefore submitted that the plaintiff is not entitled for the relief of specific performance much less that of execution of sale deed and its registration in his favour.
24. Therefore, this defendant submits that the suit which is based on false averments be dismissed with exemplary costs.

Place: L.B. NAGAR
Date: 05.12.2007



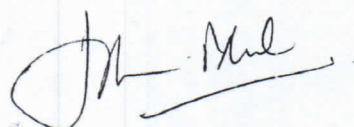

FOR DEFENDANT

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Place: L.B. NAGAR
Date: 05.12.2007




FOR DEFENDANT

IN THE COURT OF VII ADDITIONAL SENIOR CIVIL JUDGE ::
RANGA REDDY DISTRICT AT L. B. NAGAR.

PRESENT: SMT.B. PUSHPALATHA
VII ADDL SENIOR CIVIL JUDGE
RANGA REDDY DISTRICT.

Dated this the 16th Day of April, 2019

OS No.994 of 2007

BETWEEN:-

Vinay Agarwal, S/o. Vasudev,
Aged about 52yrs, R/o. Flat no. 403,
Sushil Residency, Hyderguda,
Hyderabad.

.....Plaintiff

AND

1. Modi Ventures, rep.by its partner
Represented by its Partner,
Sri. Sohan Modi, S/o. Satish Modi,
Aged about 47yrs, Office at # 5-4-187/3,
MG Road, Secunderabad – 500 003.

2. Vinod Yadlapati, S/o. Y.S.N.Sarma,
Aged about 31yrs, R/o. 12-11-1371,
Bhovdanagar, Secunderabad – 500 061.

..... Defendants

This suit is coming for final hearing before me in the presence of M/s.Shyam S.Agarwal, Advocate for the Plaintiff and Sri.C.Bal Gopal, Advocate for Defendant no.1, Defendant no.2 remained exparte and upon hearing the arguments and upon perusal of the record and the matter having stood over for consideration till this day, this Court delivered the following:

J U D G M E N T

1. This is a suit filed by the plaintiff against defendants no.1 and 2 for specific performance of contract.

2. The brief averments of plaint are that the defendant is the owner and developer of Gulmohar Gardens apartments situated in Sy.nos. 93 to 95 at Mallapur, R.R.District and on noticing the advertisement the plaintiff approached the defendant and selected flat no. C-506 in Gulmohar Gardens, admeasuring 750sq.ft (hereinafter called as suit schedule property) with undivided share of land. After negotiations, the consideration was fixed at Rs. 5,99,250/- apart from Rs. 50,000/- towards charges for amenities, Rs.



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5,000/- towards parking and Rs. 15,000/- towards electricity charges and plaintiff paid a sum of Rs. 10,000/- under receipt no. 114 through cheque no. 819353 dt. 14.03.2006, drawn on M/s.HDFC Bank towards earnest money and part payment of consideration which was encashed by the defendant. The defendant informed that he would intimate the plaintiff about progress of construction of complex. The plaintiff has been waiting for the letter of the defendant informing the status and progress of the complex and about amounts to be paid by him, but did not receive any correspondence. But on 08.06.2006, the plaintiff received letter alleging that the agreement was only a provisional booking and despite repeated reminders the plaintiff has not come forward to execute a sale agreement and to make further payments. That when the plaintiff addressed a letter dt. 22.06.2006 stating that he has not received any reminders and intimations from the defendant, the defendant stated that they have issued said letter only to ascertain whether the plaintiff is interested in purchasing the suit schedule property. Thereafter the plaintiff has issued cheque no. 691785 dt. 11.07.2006 for Rs.25,000/- drawn on M/s. HDFC Bank Ltd., Himayathnagar Branch towards further part payment and the same was acknowledged by the defendant. At the intimation of defendant about completion of construction, the plaintiff applied for housing loan with M/s. ICICI Bank Ltd., and was sanctioned loan to a tune of Rs. 8,45,056/- vide sanction letter dt. 18.01.2007 and informed the defendant to come forward for execution of registration. But there was no response from the defendant and hence, on 19.02.2007, the plaintiff got issued legal notice to the defendant calling to execute registered sale deed in respect of suit schedule property. On receipt of said legal notice, the defendant got issued reply notice dt. 22.02.2007 stating that as per the terms of booking, the purchaser was required to execute an agreement within thirty days and failure of the same would result in cancellation of the alleged provisional booking. The plaintiff further submits that, he has not received any cancellation notice from the defendant at any point of time and the plaintiff has got issued rejoinder notice on 12.03.2007 denying receipt of cancellation notice and made it clear that the defendant cannot terminate the agreement unilaterally. The defendant got issued reply through advocate on 28.03.2007



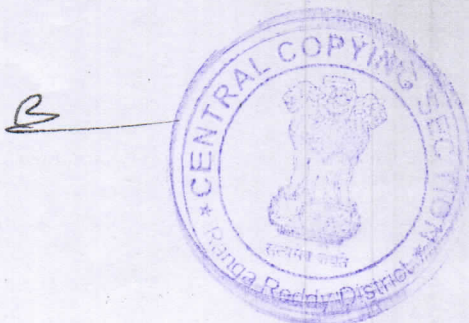
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taking the same stand which is false. The defendant having received money towards part payment of construction, is not ready to execute registered sale deed. The plaintiff further submits that he is ready to pay the balance sale consideration of Rs. 6,34,250/-, but the defendant is not ready to perform his part of contract. Hence the plaintiff is constrained to file this suit.

3. Defendant filed written statement denying the averments made in the plaint and contended that the plaintiff being fully aware of the terms and conditions for obtaining flat, approached the defendant for booking suit schedule property and had signed the booking form on 13.04.2006 which was a provisional booking and did not gain any rights in respect of the suit schedule property but issued cheque for the first payment on 14.04.2006. The booking form makes it clear that the booking form is only provisional and an agreement had to be executed and it is not a concluded contract. The booking form clearly stipulates the formalities to be completed in respect of the property including the schedule of property. The plaintiff cannot claim that he was ignorant as to the schedule payments and after initial payment of Rs. 10,000/- the plaintiff did not make any further payment until the letter addressed by the defendant. Even thereafter he has not complied with the requirements for completion of a valid contract, therefore, the defendant addressed a letter to the plaintiff canceling the agreement and informing him of this development. But the plaintiff had issued a letter containing false and baseless allegations. Thereafter, the correspondence between the parties is self revealing. The defendant further submits that the plaintiff cannot seek the equitable reliefs of specific performance as he has relied on false averments suppressing all facts and not performing his obligation under the contract and the plaintiff has approached this court with unclean hands. At last prayed to dismiss the suit.

4. Basing on the above pleadings, following issues are settled for trial.

1. Whether the defendant executed any sale agreement in favour of the plaintiff?
2. Whether the plaintiff is always ready and willing to perform his part of contract?



3. Whether the plaintiff is entitled for specific performance as prayed for?
4. To what relief?
5. Heard both sides. Perused the record.
6. Following points are not disputed:
 1. There is no dispute with regard to payment of Rs.10,000/- by way of Ex.A1 receipt no. 114.
 2. There is no dispute with regard to the booking done by plaintiff with the defendant company in booking form on 13.04.2006.
 3. There is no dispute that the plaintiff issued cheque for an amount of Rs. 25,000/- as in Ex.A4 towards booking of flat no. 506, C-Block.
 4. There is no dispute that there was exchange of notices by both the parties.
7. It is well settled law that undisputed points need not be proved.
8. **ISSUES no.1 to 3:** The counsel for the plaintiff vehemently argued and submitted that the plaintiff has entered into an agreement with the defendant i.e., Modi Ventures and that the plaintiff is ready and willing to perform his part of contract. He further submitted that he has also made part payment of Rs. 25,000/- vide Ex.A4 and Rs.10,000/- vide receipt under Ex.A1 and prayed to allow the suit and direct the defendants to register the flat no. 506, C-Block i.e., suit schedule property.
9. On the other hand the counsel for defendant contended that there is no such contract between the plaintiff and defendants and that the amount paid by the plaintiff under Ex.A1 and A4 was only towards booking of the flat no. 506 for total consideration of Rs. 6,70,000/- and that as per the booking order the plaintiff is supposed to pay the remaining consideration as per the schedule fixed by the defendant which is written on the backside of the booking form. Since there is no valid contract between the plaintiff



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and the defendant, the plaintiff cannot claim right and seeking for relief of specific performance.

10. On perusing the entire material along with the documents under Ex.A1 to A11, this court, upon considering the oral evidence and the authorities submitted by the defendant counsel, it goes to show that though the plaintiff has stated that he entered into an agreement with the defendant i.e., Modi Ventures and booked a flat no. 506 i.e., suit schedule property. Since it is not disputed that the plaintiff has agreed to purchased flat no. 506 from the defendant company and also paid Rs.10,000/- vide receipt under Ex.A1. It is also not disputed as per the booking order.

11. It is further stated by PW1 that the defendants have issued a letter canceling the booking made by PW1 under Ex.A2 dt. 08.06.2006. Thereafter, the plaintiff has issued legal notice to the defendant company question regarding the cancellation of his booking. Wherein the defendant company has also given a reply letter stating that his booking was cancelled for not executing an agreement of sale within thirty days as per the terms of booking clause – 1 which resulted in the cancellation of provisional booking. It is also seen from the evidence of PW1 who has categorically admitted in his cross examination that he has not sent the booking form. Since the defendant did not ask him to sign and also did not made payments and also to make the payment as per the schedule of the booking. Further, PW1 has categorically admitted in the cross examination that he has not entered into sale agreement of the defendant but denied that he did not pay Rs. 25,000/- towards part of the sale consideration for booking of flat with the defendant company. The defendant no.1 examined the representative of the defendant company who was cross examined as DW1 has categorically stated that the plaintiff has submitted that the total consideration of flat no. 506 for sale consideration of Rs. 5,99,250/-. Whereas, the actual sale consideration was Rs. 6,70,000/-. The DW1 has categorically submitted in his cross examination that the plaintiff did not agree or come forward to express his readiness to execute registered sale deed within 30 days as per the booking clause no.1, as such, the booking of plaintiff was cancelled.



12. Admittedly, as per the documents available on record, there is no document filed by the plaintiff showing that there was an agreement between the plaintiff and defendant company towards sale of flat no. 506 i.e., suit schedule property. But the plaintiff has submitted in paragraph no. 13 of Ex.A5 that he has entered into an agreement of sale which cannot be considered in the absence of any such document before court. Secondly, the plaintiff has contended that he has made part payment towards the sale consideration. As per the evidence of PW1 and DW1, it is evident that the plaintiff has entered into a booking of flat no. 506, Gulmohar Gardens and made payment under cheque and receipt Ex.A4 towards booking chages, but not part of the sale consideration.

13. Even as per the terms and conditions of the booking done by the defendant company it is seen that the schedule has to be followed while making remaining part of consideration. The plaintiff has made a provisional booking in form nos. 123 dt. 13.03.2006 and made payment of Rs. 10,000/- and Rs. 25,000/-. Subsequently, the plaintiff failed to enter into an agreement within thirty days which resulted in the cancellation of the provisional booking as per Ex.A2 cancellation letter. Further, as per the terms of booking, the plaintiff is supposed to make payment for an amount of Rs.50,000/- on or before 12.04.2006 and Rs. 2,03,333/- before 01.07.20056 and Rs. 2,03,333/- before 01.10.2006 and Rs. 2,00,334/- before 31.12.2006. But the plaintiff failed to establish. Therefore oral evidence as well as documentary evidence for making payment in accordance to the schedule. Except that the amount paid while booking.

14. It is further contended by PW1 that he has obtained bank loan and the canction letter was also issued by ICICI bank on 18.01.2007. It is pertinent to mention here that said sanction was subsequent to cancellation letter.

15. The counsel for the defendant has submitted a bunch of authorities as follows:

1. Vijay Bahadur And Champalal Vs. Surendra Kumar reported in AIR MP 117
2. Syed Dastagir Vs. T.R. Gopalakrishna Setty reported in AIR 1999 SC 3029



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3. Phuljhari Devi Vs. Mithai Lal and others reported in AIR 1971 Allahabad 494

4. Her Highness Maharani Shantidevi P Gaikwad Vs. Savjibhai Haribhai Patel and others reported in AIR 2001 SC 1462

16. According to said citations, it is opined that when the plaintiff aver and prove that he has performed or always ready and willing to perform the essential terms of the contract which are to be performed by him and expresses his readiness and willingness to perform the contract and agreed to its true contract has no right to seek relief of specific performance.

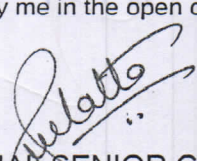
17. In the instant case, in the entire pleadings and the evidence PW1, nowhere specifically expressed his readiness and willingness to perform his part of the contract. Further the provisions as per the Sec. 34 of Specific relief act shows no agreement between the parties and the plaintiff fails to establish his readiness and willingness to perform the contract the plaintiff cannot seek the relief of specific performance as a right.

18. In view of the above discussion, this court is of the opinion that the plaintiff has not established the contract between him and defendant no.1 and this court holds that the plaintiff is not entitled for the relief of specific performance of contract. Issues no.1 to 3 are answered accordingly.

19. **ISSUE no.4:** In view of the findings and discussion given in issues no.1 to 3, this court holds that the plaintiff is not entitled for consequential relief of permanent injunction as prayed for.

20. In the result, this suit is dismissed without costs.

Dictated to stenographer-II, corrected and pronounced by me in the open court on this the 16th day of April 2019.


VII ADDITIONAL SENIOR CIVIL JUDGE
RANGA REDDY DISTRICT

