



MIAMC
HYDERABAD

GNLU Legal Services Committee

in collaboration with

International Arbitration & Mediation Center, Hyderabad

4TH GNLU ANNUAL LEGAL SERVICES FORUM 2023

REVOLUTIONISING LEGAL AID

5TH GALSF MEDIATION COMPETITION PRELIMINARY ROUNDS PROBLEM



**VIRTUAL
COMPETITION**



**10 - 11
FEBRUARY**



'FOXY' VILLAS and The HAKIMI BAYS

1. Mr. Indraverma Hakimi was a landless laborer who, with great effort and survival skills, managed to keep his family together after the great famine in his region in 1980. He was a father of four children: Bheem, Oggy, Chutki, and Indumati. Bheem was an adopted child, but among the four of them, he was the most dedicated and intelligent, as per Mr. Indraverma. Considering their financial condition and the already prevalent hardships in the household, Indraverma understood that only 1 out of the four children could be provided with formal education. Oggy, being the eldest biological child, was the favorite of his mother, Tuntun. Upon much insistence from Tuntun, Indraverma worked tirelessly and somehow arranged for the formal education of both Oggy and Bheem.

2. Both completed their intermediate education in the same year, but now Mr. Indraverma found himself in deteriorating health. His health was worsening day by day, and the family savings were getting exhausted quite steadily. This was when Mr. Indraverma realized that some affirmative steps had to be taken and he decided to send Bheem off for higher education to the city of Dholakpur.

3. Dholakpur was home to some of the most pioneering educational institutions of the time and students all across the country used to come there to study. Bheem, an able and intelligent man now, decided to pursue his education in management and got himself enrolled in the BBA-MBA integrated program by cracking one of the most difficult entrance exams for the same.

4. On the other hand, Oggy started developing feelings of hatred against both Indraverma and Bheem. Things took an even bad turn when, after the death of Tuntun, Oggy left the house and decided to give up on the name his father had given him, and thus came to be known as Kalia.

5. Kalia, who had never really been an excellent student, somehow found his way in civil engineering and after completing his education in the same, started working for a local contractor. The contractor working under the firm Laddu developer acknowledged Bala's extreme dedication and thus appointed him as an on-site manager in the firm.

6. Years passed by, and now Mr. Bheem Hakimi is an up-and-coming Investment Banker and has been recently promoted to a Senior Position in the team of Mrs. Horrid Henry, who is a Senior Partner of Dora and Dora LLP and is primarily engaged in Project Finance practice. Dora and Dora LLP is a globally renowned law firm headquartered in Vadgamabad, the capital of the Khyber province of the Republic of Zalimpur.

7. Mr. Hakimi has recently married Ms. Jasuben Patel, an engineer at Dependence Defence Ltd, one of the world's leading aerospace and defense manufacturers. They have been actively looking forward to shifting out of their flats in the crowded city of Vadgamabad and buying a villa in Sector 17A of Volte, a satellite city that was only 10 km away from Mr. Hakimi's office in Vadgamabad.

8. They started the search for a residence that would cater to their needs and thus contacted the Royal Estate Agency to help them in their venture. Royal Estate Agency is one of the pioneering Real Estate Agencies in the province of Khyber. While the buyer's agents were looking for such deals, upon a conversation with an agent of a call center of Volte, they contacted White Villas Estate Agency who are the sellers' (Kirmada Developers Pvt. Ltd.) (hereinafter "*Kirmada*") Agents for the project "*Fauxy Villas*".

9. Mr. and Mrs. Hakimi were impressed by the offering made by Kirmada which not only included a possession-ready Villa on a plot of 200 sq yards but facilities such as a gated society, Clubhouse amenities like a Sauna, Swimming Pool, Gymnasium, Tennis Court, Squash Court, Library, Conference Halls, etc.

10. One of the most incentivizing aspects of "*Fauxy Villas*" for the Hakimi family was their offering of a gated society and an apparently sophisticated crowd, which would in a way cater to the security concerns of Mrs. Jasuben as she was working in a Defence Sector company and was also a pioneering name in most of the labor unions of the Republic of Zalimpur owing to her family background and her father being an ex-Minister of Labour in the country.

11. Being impressed by the offering made by Kirmada, Mr. and Mrs. Hakimi decided to schedule an appointment with Mr. Dandvat Pranam, a sales representative of Kirmada who was tasked with orienting potential residents of the different types of Villas that the '*Fauxy Villas*' project was offering and also the common amenities offered in the project. They had a fruitful discussion and subsequently decided to buy a Class-A Luxury Villa.

12. Mr. Hakimi found the offer very lucrative and communicated his intention to finalize the terms. Accordingly, Mr. Pranam communicated to them that the price for a Class-A Luxury Villa in the 'Fauxy Villas' project would be INR 99,00,000/- (ninety-nine lacs)_out of which 60% had to be paid within ten days of signing the Agreement to Sell with Kirmada and the rest of the amount had to be tendered within 180 days thereafter. Accordingly, Mr. Hakimi proceeded to execute an Agreement to Sell with Kirmada on 10.01.2023 and tendered INR 59,40,000/- (fifty-nine lakhs forty thousand) through bank transfer on that very same day.

13. Kirmada immediately issued a letter acknowledging the receipt of the amount paid by Mr. Hakimi and made arrangements to help their new residents shift into their new home in Sector 17A. Mr. and Mrs. Hakimi shifted into their villa addressed at 419, Sector 17A, Volte on 01.02.2023.

14. However, as fate would have it, a month after he paid the first installment of the flat, Mr. Hakimi met with a serious road accident and was severely injured. He suffered multiple fractures and nerve injuries which resulted in his body being paralyzed. All the responsibility of the household fell on Mrs. Hakimi, and she was looking after all the unpaid instalments and EMIs of the various purchases that the couple had made.

15. Meanwhile, Mrs. Hakimi was perturbed to find that the quality of construction of their villa was not as per the terms offered and assured by Mr. Pranam. As time progressed, she became increasingly dissatisfied with the quality of the construction including problems such as water seepage, furnishings, overcrowding of shared amenities, security concerns etc.

16. There arose problems in multiple segments like the quality of material that was used for the construction of the roads, the compromise in security as contrary to what was earlier promised, there was no sign of the 8 feet wall being built around the society.

17. Gradually, the couple started finding even more discomforts and inconveniences across their way like marble flooring being used in place of the promised vitrified flooring, roads being

constructed of bitumen instead of concrete. They were also astonished to find that the equipment which are integral to a modular kitchen were not present and even stainless-steel sinks were not used in the kitchen.

18. That apart, they were also aggrieved by the fact that the Clubhouse, which was meant to be exclusively for residents of the 'Fauxy Villa' and the same was also promised by Mr. Pranam was being allowed by Kirmada to be accessed by residents of another society which was also developed by them. However, the fact that Kirmada had even failed to construct 8 feet wall around the society was the last straw after which Mr. and Mrs. were constrained to file a complaint under section 47 read with section 49 of the Consumer Protection Act, 2019 on 08.08.2023 before the Hon'ble State Consumer Disputes Redressal Commission, Khyber.

19. The demands of the Hakimi Couple included but were not limited to:-

A) Restricting everyone except the members of the Fauxy Villa housing society from accessing the Common Clubhouse Facility, keeping a strict check on the entry of outsiders in the society.

B) Do reasonable construction and renovation in order to bring the living standards in "Fauxy Villas" at par with the promises that were earlier made.

C) Further they also demanded Kirmada to provide them with compensation amounting to INR 10,00,000/- (Ten lacs) for the defective goods and deficient services offered by Kirmada.

20. In reply, Kirmada contended that Mrs. Hakimi was not a party to the agreement and therefore, does not have any right to file the present complaint. They also opined that the Claims for substandard construction of the villa are baseless because the purchasers are not entitled to make any claims on the basis of the promises made in view of Clause 5 of the Agreement to Sell dated 10.01.2023.

21. They also stated that the purchasers cannot seek any reliefs for the common amenities because Such reliefs can only be claimed in the event wherein all the residents collectively decide to put a complaint and the construction of bitumen roads is in accordance with the Agreement to Sell and

is using bitumen because it is the most suitable material for construction of such internal roads in the scheme.

22. As far as the Clubhouse and its enjoyment was considered, Kirmada stated that the purchasers did not have any unfettered and exclusive right to use the Clubhouse.

23. The Hon'ble State Consumer Disputes Redressal vide order dated 09.08.2023 was pleased to admit the complaint filed by Mr. and Mrs. Hakimi and their case was registered as Complaint Case No. 587 of 2023. Accordingly, Kirmada Pvt. Ltd. entered its appearance before the Hon'ble State Consumer Disputes Redressal Commission through its counsel and filed their Reply to the complaint filed in CC No. 587 of 2023 praying for the dismissal of the complaint. Kirmada contended Consumer Complaint is not maintainable in view of the arbitration clause in the Agreement to Sell dated 10.01.2023.

24. The Hon'ble State Consumer Disputes Redressal Commission heard the parties at length on 09.01.2024 that there exists a possibility of a settlement which may be arrived at between the parties. In view of the same, the Hon'ble Commission referred them to mediation under section 37 of the Consumer Protection Act, 2019. Both parties agreed to enter into mediation in accordance with the procedure stipulated under Chapter V of the Consumer Protection Act 2019. Accordingly, Mr. Keechak Kharbanda and Mr. Takeshi Castle have been appointed as mediators in the present matter wherein, Kirmada Developers Pvt. Ltd. are assisted by their counsel Adv. Mangal Daku and the Hakimi family are assisted by their family friend and lawyer Adv. Tamraj Pilvish.

The proceedings are scheduled in virtual mode with technical assistance of the Legal Services Committee of the Gujarat National Law University on the 10th and 11th of February 2024.

N.B.

*The laws of Zalimpur are *pari materia* to the laws of India.

**The laws of Khyber are *pari materia* to the laws of the State of Maharashtra.

*** Requesting Party – Mr. and Mrs. Hakimi; Responding Party – Kirmada Developers Pvt. Ltd.

AGREEMENT TO SALE

THIS SALE DEED HAS BEEN MADE ON THE 10TH OF JANUARY 2023 BETWEEN THE PARTIES AS FOLLOWS:

M/S KIRMADA DEVELOPERS PVT. LTD., a company registered under the Companies Act of 1956 having its registered office at 781-242, Cheepit Avenue, Koak Road, Volte, Khyber through its **Director, Shri. Baburao Kirmada**, who is authorized vide resolution of the Board of Directors dated 4th January 2023 hereinafter referred to as the **SELLER**, which expression shall include its directors, successors-in-interest and legal representatives

AND

SHRI BHEEM HAKIMI s/o INDRAVERMA HAKIMI, aged **39 years**, an investment banker by profession and residing at 106/8, Citrus Apartments, Highway Plaza, Vadgamabad, Khyber hereinafter being referred as the **BUYER**, which expression shall include his heirs, successors-in-interest and legal representatives.

WHEREAS

MR. HARRY NOHARA s/o Late Shri HIMAYOTO, aged **55 years**, a doctor by profession and residing at Chichenpura village were the **ORIGINAL KAHTEDARS** of the land situated at Sector 17A, Volte (hereinafter referred to as "The total land"). The Registered Sale Deed was executed by and between **MR. HARRY NOHARA** and **KIRMADA DEVELOPERS PVT. LTD** on **31st March, 2011** for the purchase of **50.14 HECTARE LAND** at **Sector 17A, Volte.**

THE SELLERS HEREBY AGREE TO SELL AND PURCHASER HEREBY AGREES TO BUY ON TERMS AND CONDITION MENTIONED IN THIS AGREEMENT. THE TERMS AND CONDITIONS ARE HEREINAFTER MENTIONED AS FOLLOWS:

1. **The SELLER** shall construct a scheme known as **'FAUXY VILLAS'** over the total land.
2. **The SELLER** has obtained a building permit and other statutory permits/NOCs from appropriate authorities for all units of the scheme.
3. **The SELLER** proposes to develop the Total Land in accordance with the permit for construction /development
4. **The BUYER** has applied for allotment of **VILLA NO. 419** in the above said **'FAUXY VILLAS'** and the **SELLER** has agreed to allot to the **PURCHASER** villa in the said Scheme
5. All other agreements and/or arrangements or letters, assurance written, oral or implied herein, sales brochures, news-papers, advertisement etc. before made and which are in any way contradictory to or inconsistent with this agreement shall have no effect.
6. **The SELLER** hereby agrees to sell **VILLA NO.419** to the **BUYER** for a total consideration of **INR 99,00,000/- (NINETY NINE LACS ONLY)**
7. **The SELLER** covenants with the **BUYER** that the construction of the villa and the common amenities shall be completed **WITHIN 30 DAYS** from the date of signing.
8. The **CLUBHOUSE** which is measuring about **7,000 SFT** is proposed to be constructed. Other amenities and facilities proposed to be provided are – swimming pool, roads, landscape gardens, childrens park, lawns for banquet, generator for backup, compound wall, security kiosk, overhead tanks, sumps, etc.
9. The **BUYER** has specifically agreed to pay **INR 50,000/-(RUPEES FIFTY THOUSAND ONLY)** as **ONE-TIME PAYMENT** towards the lifetime membership of the club. **THE MEMBERSHIP TO THE CLUB SHALL BE COMPULSORY FOR ALL THE PURCHASERS.** Further this amount shall be towards the establishment of the structural facilities of the club and shall neither be transferable nor refundable to any of the purchasers being the members of the club facility.

10. The **BUYER** shall not be allowed to alter any portion of the villa that may change its external appearance without due authorization from the **SELLER** for an initial period of about **5 YEARS FROM DATE OF HANDING OVER POSSESSION** of the completed villa or till the **END OF YEAR 2028, WHICHEVER IS LATER.**

11. In case any dispute or difference arises in relation to the interpretation of any of the terms and conditions of this agreement, or with regard to the quality of construction or payment of the instalments, etc. then the same shall be referred for **ARBITRATION** under a **SOLE ARBITRATOR.** Such arbitration shall take place in accordance with the provisions of the **ARBITRATION AND CONCILIATION ACT, 1996. THE DECISION OF THE SOLE ARBITRATOR SHALL BE FINAL AND BINDING ON THE PARTIES TO THIS AGREEMENT.**

NON-DISPARAGEMENT CLAUSE

THE BUYER WILL NOT AT ANY TIME, SAYING OR IN WRITING,

1. Disparage the Developer, or
2. Make any statement or publication which does, or is likely to, bring the Developers into disrepute, or
3. Make any statement or publication which does, or is likely to, otherwise adversely affect the Developers' reputation or
4. Take any steps that would or may likely disparage or discourage any person from engaging with the Developers.

IN WITNESS WHEREOF THIS PARTIES HERETO HAVE EXECUTED AND DELIVERED THIS AGREEMENT ON THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN

SIGNATURE OF THE WITNESSES

Witness 1:

Mr. Garry Oswald

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Witness 2:

Ms. Lightening McQueen

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SIGNATURE OF THE SELLER

Mr. Baburao Kirmada

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SIGNATURE OF THE BUYER

Mr. Bheem Hakimi

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