KAKL310007532017

<u>IN THE COURT OF PRL. CIVIL JUDGE & JMFC, MALUR</u>

<u>PRESENT</u>

Smt. Gayatri., B.Com., LL.M., (IPR)
Prl.Civil Judge & JMFC., Malur

<u>Dated 18th day of June 2026</u>

<u>C.C. No.494/2017</u>

<u>Complainant</u> :: Sri.Arun Kumar. S,
S/o Sri.S.A.Srinivas,
Aged about 24 years,
R/at R.P.Layout, Maruthi Extension,
Malur Town, Kolar District.

[By: Sri. H.L.N., Advocate]

-V/s-

<u>Accused</u> :: Dreamz Infra India Ltd.,
R/at:#577/B, 2nd Floor, Outer Ring road,
Teachers Colony, Koramanagala,
Near Silk Board, Bengaluru-560034.
Rep. By its Director,
Disha Chowdary, aged about 40 years,

[By: Sri.N.B.S., Advocate]

J U D G M E N T

The complainant has filed complaint against the Accused Dreamz Infra India Ltd., U/Sec.200 of Cr.P.C. for offence punishable U/Sec.138 of Negotiable Instrument Act,.

2. The brief fact of the case are as under:

Complainant submits that, the Accused is running business of Realtors and Property Developers under the name and style of Dreams Infra India Ltd., the Complainant as solicited by the Accused company through advertisement approached company's corporator office on 19.03.2016 for booking a 3BHK Flat having an area of 1375 Sq.ft under project name "DREAMZ SAAKAR" situated in the 2nd floor of Horamavu locality in Bangalore.

3. The Complainant further submits that, as per the attractive scheme flouted by the Accused company, with proposed 3BHK flat was offered for a total price of Rs.30,00,000/- under said project. After getting booked proposed flat through booking Form No.22127 dated 19.03.2016. Complainant has paid 55% of flat scheme amount through RTGS, Cheque through and also swiping debit card. A cheque No.699863 dated 19.03.2016 for a some of Rs.6,00,000/- drawn on Canara Bank, Malur branch accounted vide receipt No.33636 dated

19.03.2016. A sum of Rs.20,000/- by swiping debit card of Canara Bank, Malur branch on 19.03.2016 accounted vide receipt No.33636. A sum of Rs.4,00,000/- by way of RTGS through Pragathi Gramin Bank, Malur vide No.PKGBR52016041100875289 dated 11.04.2016. A sum of Rs.6,30,000/- by way of RTGS through Pragathi Gramin Bank, Malur dated 11.04.2016.

4. The Complainant further submits that in all a sum of Rs.16,50,000/- was paid to the Accused for booking as advance amount. The Complainant due to personal reasons wanted to get the flat booked to be cancelled as per the details as mentioned in the cancellation letter dated 15.05.2016, reasons being that "domestic can't wait indefinitely and he was in need of house urgently due to change in situation".

5. The Complainant further submits that after acceptance of the cancellation letter submitted to accused company. It was acknowledged by the company agreeing to refund the advance amount after deducting a sum of Rs.400/- towards card swiping charges. In lieu of which accused company director issued a cheque for refund of Rs.12,49,600/- vide cheque bearing No.111422 dated 05.10.2016 drawn on State Bank of India, HSR Layout branch, Bangalore and also given commitment letter dated 19.09.2016 stated that the Accused will be refunding the flat cancellation amount of Rs.4,00,000/- through DD or RTGS which will be issued on 05.10.2016 onwards.

6. The Complainant further submits that, he presented Cheque on its due date after informing to the Accused Company. The Accused company has directed for presentation of cheque in the last of week of December 2016. As per the Assurance given by the Accused company, cheque was presented for its encashment to his banker SBI, Malur branch on 25.12.2016 but it was dishonored on 27.12.2016 with endorsement "funds insufficient".

7. Complainant further submits that, he got issued a legal notice to the accused on 11.01.2017. The said notice was duly served on the accused on 16.01.2017, but inspite of that the Accused company has not repaid the outstanding amount. Hence, complainant left with no other option has filed the present complaint against accused for offence punishable U/Sec. 138 of Negotiable Instrument Act, 1881.

8. Per contra, in pursuance to the complaint summons was issued to the accused and accused did not appear before court. BW was issued Accused. Accused was produced before this Court on 23.07.2021 under body warrant from Bangalore Central prision Parappana Agrahara at 3.00 PM through AHC-

594, WPC-1987, WPC-20166 of CAR police Bangalore City and was remanded to JC and subsequently was released on bail.

9. On perusal of materials available on record, this Court found it just and proper to convert this matter from summary proceedings to summons trial. Accordingly the trial was conducted by following summons trial procedure.

10. Plea was framed, read over and was explained to the accused on 14.03.2022, she denied the same and claimed to be tried. This court by relying upon the decision of Hon'ble Supreme Court in Indian Bank Association V/s Union of India and others considered the sworn statement filed by the complainant as chief examination affidavit and the documents as Ex.P.1 to 9.

11. This court by relying upon the decision of Hon'ble Supreme Court in Indian Bank Association V/s Union of India and others the recording of statement of accused U/sec.313 of Cr.P.C was dispensed with.

12. Complainant examined himself as PW.1 and produced 9 documents and got them marked as Ex.P1 to 9. After the matter was posted for cross of PW.1 by allowing the Application filed by the Accused under Sec.145(2) of N.I. Act. Accused did not appear before this Court. The NBW issued by this Court was not executed by the jurisdictional police. This Court finding no grounds and reasons to reissue NBW to Accused recalled. The NBW so issued suo-motu.

13. Heard arguments of Learned Counsel for Complainant and posted matter for Judgment.

14. The following points those arises for the consideration of this court are as under:

> **1. Whether complainant proves that accused has agreed to repay Rs.12,49,600/- through Cheque No.111422 dated 05.10.2016 and Rs.4,00,000/- by way of DD or RTGS dated 05.10.2016 drawn on State Bank of India, Sector-2 HSR Layout branch, Bangalore towards the said amount and the said cheque was returned with an endorsement "FUNDS INSUFFICIENT" on 27.12.2016 and thereby accused company committed an offence punishable U/Sec.138 of Negotiable Instrument Act ?**
>
> **2. What order?**

15. This court's findings on the above points are as under:

Point No.1: In the **Affirmative.**

Point No.2: As per the final order for the following:

REASONS

16. POINT NO.1:

In order to discharge the burden casted upon him, the complainant has examined himself as PW-1 and has produced 9 documents got them marked as Ex.P1 to P9. Ex.P1 is the original cheque bearing No.111422, Ex.P2 is the endorsement issued by the Bank, Ex.P3 is cancellation refund letter issued by Accused company, Ex.P4 is the office copy of the legal notice on dated 11.01.2017, Ex.P5 is the postal receipt, Ex.P6 is the Postal acknowledgment, Ex.P.7 and 8 are original pass book, Ex.P.9 is the Counter file.

17. Complainant has alleged that, the Accused is running business of Realtors and Property Developers under the name and style of Dreams Infra India Ltd., the Complainant as solicited by the Accused company through advertisement approached company's corporator office on 19.03.2016 for booking a 3BHK Flat having an area of 1375 Sq.ft under project name "DREAMZ SAAKAR" situated in the 2nd floor of Horamavu locality in Bangalore.

18. The Complainant further alleged that, as per the attractive scheme flouted by the Accused company, with proposed 3BHK flat was offered for a total price of Rs.30,00,000/- under said project. After getting booked proposed flat through booking Form No.22127 dated 19.03.2016. Complainant has paid 55% of flat scheme amount through RTGS, Cheque through and also swiping debit card. A cheque No.699863 dated 19.03.2016 for a some of Rs.6,00,000/- drawn on Canara Bank, Malur branch accounted vide receipt No.33636 dated 19.03.2016. A sum of Rs.20,000/- by swiping debit card of Canara Bank, Malur branch on 19.03.2016 accounted vide receipt No.33636. A sum of Rs.4,00,000/- by way of RTGS through Pragathi Gramin Bank, Malur vide No.PKGBR52016041100875289 dated 11.04.2016. A sum of Rs.6,30,000/- by way of RTGS through Pragathi Gramin Bank, Malur dated 11.04.2016.

19. The Complainant further alleged that in all a sum of Rs.16,50,000/- was paid to the Accused for booking as advance amount. The Complainant due to personal reasons wanted to get the flat booked to be cancelled as per the details as mentioned in the cancellation letter dated 15.05.2016, reasons being that “domestic can’t wait indefinitely and he was in need of house urgently due to change in situation”.

20. The Complainant further alleged that after acceptance of the cancellation letter submitted to accused company. It was acknowledged by the company agreeing to refund the advance amount after deducting a sum of Rs.400/- towards card swiping charges. In lieu of which accused company director issued a cheque for refund of Rs.12,49,600/- vide cheque bearing No.111422 dated 05.10.2016 drawn on State Bank of India, HSR Layout branch, Bangalore and also given commitment letter dated 19.09.2016 stated that the Accused will be refunding the flat cancellation amount of Rs.4,00,000/- through DD or RTGS which will be issued on 05.10.2016 onwards. With regard to said undertaking the authorized officer of the Company on 19.09.2016 has issued a letter of cancellation refund agreeing to repay the amount of Rs.16,50,000/-. In respect of total amount of refund the said company has issued a cheque i.e., Ex.P.1 for Rs.12,49,600/- and have agreed to pay balance amount of Rs.4,00,000/- by way of DD or RTGS to be issued after 05.10.2016.

21. The Complainant further alleges that, he presented Cheque on its due date after informing about the fact of presentation to the Accused company. The Accused Company has directed for presentation of cheque in the last of week of December 2016. As per the Assurance given by the Accused company, cheque was presented for its encashment to Complainant's banker SBI, Malur branch on 25.12.2016 but it was dishonored on 27.12.2016 with endorsement “funds insufficient”.

22. Complainant has alleged that, after return of said cheque, he on 11.01.2017 got issued legal notice to accused company demanding repayment of same. The said notice was duly served on the accused company on 16.01.2017. inspite of service of legal notice neither Accused company has replied to the legal notice nor has come forward to make payment to the Complainant. The copy of legal notice is available on record and is marked as Ex.P.4. Postal receipt Ex.P.5 and Postal Acknowledgment is marked as Ex.P.6.

23. In spite of sufficient time and opportunity given to accused, they after filing an application U/Sec.145(2) Negotiable Instrument Act, to cross-examine PW-1 have not come forward to do so to rebut the presumption available in favour of complainant. In spite of sufficient time and opportunity given to accused company, accused compnay did not come forward either to settle the matter nor to lead defense evidence to rebut the presumption available in favour of complainant as per Sec.139 of Negotiable Instrument Act,. In spite of appearance of accused before this court personally he has not made any attempts to report settlement as under taken by him to do so. Learned counsel for accused company subsequently did not represent Accused. This Court by relying upon the decision of Hon'ble Supreme Court of India in Indian Bank Association Vs. Union of India and others has dispensed with recording the statement of accused under Sec.313 of Cr.P.C. In spite of sufficient time and opportunity given to accused company neither they appeared before this Court nor settlement was reported. Hence this court proceeded with matter for judgment after hearing arguments of Learned counsel for Complainant. The accused company has not chosen to adduced oral or documentary evidence to disprove the contentions those taken by the complainant. As such the contentions those taken by complainant remained unchallenged and unrebutted. The very conduct of the accused company clearly shows that they admit the contentions taken by the complainant.

24. Under the Criminal jurisprudence prosecution is required to establish the guilt of accused beyond all reasonable doubt. However, the proceedings U/Sec.138 of Negotiable Instrument Act, are Quasi Criminal in nature. In these proceedings proof beyond reasonable doubt is subject to presumptions envisaged U/Sec. 118, 139 and 146 of Negotiable Instrument Act,. An offence U/Sec.138 of Negotiable Instrument Act, is committed not only as to dishonor of cheque, but it is upon the failure of the drawer of cheque to make repayment within 15 days of receipt of notice of dishonor.

25. The essential ingredients of Sec.138 of Negotiable Instrument Act, is that cheque in question must have been issued towards a legally enforceable debt or liability. If there was no legally enforceable debt, it is not enforceable. Under Sec.118 and 139 of Negotiable Instrument Act, has envisaged certain presumptions. U/Sec.118 of presumption shall be raised regarding consideration, date, transfer, endorsement and regarding the holder in case of Negotiable Instrument. Even U/Sec.139 a rebuttable presumption shall be raised that the cheque in question was issued regarding discharge of a legal enforceable debt. These presumptions are mandatory presumption that are required to be raised in case of negotiable instrument. Though, these presumptions are not conclusive but are rebuttable in nature.

25. In the present case on hand accused company has not opted to rebut the presumption so available in favour of Complainant. Hence, there is nothing to disbelieve the Complainant's case. Moreover, the proceedings with regard to offence U/Sec.138 of Negotiable Instrument Act, are summary in nature. Hence, holding accused company guilty of offence punishable U/Sec.138 of Negotiable Instrument Act, this court without further discussion proceeds to answer this point accordingly.

27. <u>POINT NO.2:</u>

In view of above discussion and the reasons stated therein this court proceeds to pass the following:

<u>ORDER</u>

Acting under Section 255(2) of Cr.P.C., accused is hereby convicted for offence U/Sec. 138 of Negotiable Instrument Act, 1881.

Accused company shall pay a fine of Rs.16,60,000/- (Rupees Sixteen Lakhs sixty Thousand only). In default accused shall undergo simple imprisonment for 1 year.

Amongst Rs.16,60,000/- (Rupees Sixteen Lakhs sixty Thousand only), out of said amount of Rs.16,50,000/- shall go to the complainant as compensation U/Sec.357 of Cr.P.C and remaining Rs.10,000/- (Rupees Ten Thousand Only) shall be defrayed as state expenses.

In case accused fails to pay the fine amount and undergo imprisonment, complainant is at liberty to take action for recovery of fine amount against the accused as per Sec. 421(1) of Cr.P.C.

The bail bond and surety bond of the accused stands cancelled.

Office to supply free copy of this judgment to accused.

[Dictated to the Stenographer, directly on the computer. Corrected by me and then pronounced in the Open Court on this the 18th day of June 2026)

Sd/-
(Gayatri)
Prl. Civil Judge & JMFC,
Malur

ANNEXURE

1. List of witnesses examined for the Complainant :

PW-1	:	Arun Kumar.S

2. List of documents exhibited for the Complainant:

Ex.P-1	:	Original cheque.
Ex.P2	:	Endorsement issued by the Bank.
Ex.P3	:	Cancellation Letter
Ex.P4	:	Office copy of the legal notice.
Ex.P5	:	Postal receipt.
Ex.P6	:	Postal acknowledgment.
Ex.P7 & 8	:	Original Pass Book

Ex.P9 : Receipt

3. List of witnesses examined for the accused: NIL

4. List of documents exhibited for the accused: NIL

Sd/-

(Gayatri)
Prl.Civil Judge & JMFC,
Malur