

IN THE COURT OF SOHAIL NASIR DISTRICT AND SESSIONS
JUDGE/JUEGE CONSUMER COURT,
RAWALPINDI

(Case No. 27 of 16.04.2010)

*Malik Khalid Mahmood son of Sher Bahadur, resident of House No. 180,
Near Waris Khan Bus Stop Muree Road Rawalpindi.*

(Claimant)

Versus

- 1. The Defence Housing Authority Phase-1 Rawalpindi through its Administrator.*
- 2. Mr. Faisal Iqbal Khan Niazi Deputy Director Town Planning, Defence Housing Defendant No. 1 Phase-1, Rawalpindi.*

(Defendants)

Present: *Malik Khalid Mahmood Advocate claimant in person
Mr. Rashid Mahmood Sindhu for both defendants*

JUDGMENT

01. By filing this claim under section 25 of The Punjab Consumer Protection Act, 2005 (hereinafter to be called the Act) Mr. Khalid Mahmood claimant had asserted that he is a lawyer by profession as well as members of District Bar Association Rawalpindi and High Court Bar Association Rawalpindi Bench Rawalpindi; initially he was the member of Lawyers Co-operative Housing Society Rawalpindi; said Society was subsequently merged into Defence Housing Authority (hereinafter to be called as DHA); claimant, then, became a member of DHA vide membership No. L/45202 (P-5) hence relations of 'Consumer' and 'Service Provider' had established between claimant and defendant No.1; On 21.08.2009 defendant No. 1 handed over the possession of plot No. 49, situated in street No. 4, Sector B-1 to the claimant and at that occasion, claimant was constrained to submit an undertaking in terms that "I want to take the possession of my above plot to construct to my house where facilities like water/electricity/gas etc. are not available and I will not claim any facility during construction work from DHA"; claimant when made the inspection of plot, he found it as uneven/unleveled consisting of sheer solid rocks giving the semblance of a mountain top and not to be utilized for the construction of residential house; around the said place, some private houses were constructed by respective owners; if claimant proceeds for construction of a house by embarking upon any clearing of the rocky top to bring it down to a certain level, there is a legitimate fear that said process will cause damage the adjoining houses; at the most this plot is atop a

mountain or cliff; it was an obligation on the part of defendants to offer possession of a residential plot after developing it, otherwise it was clearly breach of trust; claimant visited the defendant No. 1 on various occasions and narrated his agonies; defendant No.1 half-heartedly assured but did nothing; claimant send a letter to defendant No.1 seeking intervention, but of no avail; claimant again met Mr. Faisal Iqbal Niazi Deputy Director (Defendant No. 2) and also requested him for his judicious intervention, but of no success; instead of redressing the grievances of claimant, defendant No. 2 started to talk about one Ch. Nasrullah Khan former president of Lawyers Co-operative Housing Society, who had no nexus with the dispute in question; defendants were hesitant to safeguard the consumers rights under the relevant provisions of law; written reminder was also issued to defendant No.1, but of no consequences; claimant is a cardiac patient and under special cardiac treatment, who also suffered neck pain because of unjustified actions of defendants; claimant served a legal notice (P-11) in pursuance to section 28 (1) of the Act, but no reply was received; subsequently, on 31.03.2010, claimant got a letter from Secretary of DHA, directing him to deposit an amount of Rs. 3,95,000.00/- on account of development charges in four installments; cause of action accrued, when in spite of receipt of legal notice defendants did not bother to reply.

02. In prayer clause, claimant had demanded following reliefs: -

- a)** The defendants may very kindly be issued directions to level the plot and make it living/construction worthy or hand over an alternate plot forthwith.
- b)** The defendants may kindly be issued directions to pay the claimant an amount of Rs. One crore each as damages.
- c)** The defendants may kindly be issued directions to pay an amount of Rs. One Crore to the claimant on account of the compensation for the responsible of land value of property of claimant is lower than in surrounding areas.
- d)** The defendants may kindly be issued direction to take actions mentioned in Section 31 of the Punjab Consumer Protection Act, 2005.
- e)** The defendants may kindly be punished under Section 32 of the Punjab Consumer Protection Act, 2005.

03. In pursuance to notices issued by this Court, both defendants appeared and they submitted their joint written statement. The preliminary objections taken were that no relationship of 'Consumer and Service Provider' exists between the parties; this Court has no jurisdiction because

the Act deals with moveable properties, whereas plot does not fall within the definition of a 'Product' as defined by section 2 (J) of the Act. On facts it was admitted that Ex-Lawyers Co-operative Housing Society was merged into DHA and that possession was handed over to claimant on the basis of his undertaking. Most of the paragraphs of the claim were denied and about some no comments were offered. Prayer was made for dismissal of claim.

04. *Keeping in view versions of both parties, my learned predecessor, on 26.08.2010 had framed following issues: -*

- 1. Whether the claim is not maintainable in its present form, if so, its effect? OPD*
- 2. Whether this Court lacks jurisdiction to entertain the claim of the claimant? OPD*
- 3. Whether there exists relationship of the consumer and service provider between the parties? OPC*
- 4. Whether the defendants rendered defective and faulty services to the claimant, if so, its effects? OPC*
- 5. Relief*

05. *It is worth mentioning that before recording of evidence an application was filed by defendants to decide the issues Nos.1 and 2 being preliminary in nature and same was dismissed vide an order dated 31.10.2011 passed by my learned predecessor. Against said order an appeal (FAO No. 97/2011) was filed by defendants in the Honourable Lahore High Court, Rawalpindi Bench Rawalpindi which was allowed on 22.05.2012. Honourable High Court while setting aside the order of my learned predecessor had remanded the matter to this Court with direction that after recording the evidence both issues along with other would be decided.*

06. *In evidence, claimant got recorded his statement as Pw-1. In documentary evidence, he had produced following documents: -*

<i>Ex. P-1</i>	<i>Affidavit for evidence</i>
<i>Ex. P-2 to P-4</i>	<i>Photographs of plot</i>
<i>Ex. P-5</i>	<i>Original allotment letter of plot</i>
<i>Ex. P-6</i>	<i>Original receipt of Payment as charges for site plan/possession/mortgage of plot</i>
<i>Ex. P-7</i>	<i>Original receipt of Deposit of amount in Askari Commercial Bank LTD</i>

<i>Ex. P-9</i>	<i>Copy of Site plan issued by DHA</i>
<i>Ex. P-10</i>	<i>Letter of request by claimant to defendants for possession of plot</i>
<i>Ex. P-11</i>	<i>Copy of legal notice to defendants</i>
<i>Ex.P-12 to 13</i>	<i>Original Postal receipts</i>
<i>Ex. P-14</i>	<i>Photocopy of payment as charges for possession which is same as P-6</i>

07. *On the other hand defendant No. 2 appeared as Dw-1. He had produced following documents in support of the version of defendants: -*

<i>Ex. D-1</i>	<i>Original authority letter</i>
<i>Ex.D-2</i>	<i>Affidavit for evidence</i>
<i>Ex. D-3</i>	<i>Copy of undertaking by claimant</i>

08. *I have heard arguments of both sides and I have also gone through evidence produced pro and contra by the parties besides the examination of documents. My findings on issues are as under: -*

ISSUES NOs. 1 to 3

- 1.** *Whether the claim is not maintainable in its present form, if so, its effect? OPD*
- 2.** *Whether this Court lacks jurisdiction to entertain the claim of the claimant? OPD*
- 3.** *Whether there exists relationship of the consumer and service provider between the parties? OPC*

09. *As all these issues are interlinked so I proceed to decide the same together.*

10. *Mr. Rashid Mehmood Sindhu learned counsel for defendants maintains that the Act provides relief against a 'Product' which is defined by Section 2 (J) of the same, simple meaning of that is a moveable property, therefore, plot allotted to claimant is not a 'Product' hence it is beyond the jurisdiction of this Court; when it is so then no question arises for existence of relationship between parties as of a 'Consumer' and 'Services Provider'; if dispute is not covered under the Act then the claim before this Court is not maintainable. Learned counsel further argues that the meaning provided for 'Services' under section 2 (K) of the Act is somewhat different from the definition of 'Service' made by the Consumer*

Protection Act, 1986 of India (hereinafter to be called Indian Act) hence precedents from Indian jurisdiction shall not be binding on this Court.

11. On the other hand Malik Khalid Mehmood claimant contends that defendants were under obligation to provide the 'Services' of a plot to claimant where construction had and has to be possible hence when there is denial in this regard, the case is covered by the Act, therefore, this Court has got jurisdiction to entertain and to decide this dispute between the parties.

12. First of all I will like to decide the question whether plot is a 'Product' within the definition of the Act or not? Section 2 (J) says as under: -

'Product' has the same meaning as assigned to the word 'goods' in the Sale of Goods Act 1930, and includes products which have been subsequently incorporated into another product or an immovable but does not include animals or plants or natural fruits and other raw products, in their natural state, that are derived from animals or plants.

13. There is no dispute on this proposition that under the Sale of Goods Act word 'Goods' relates to only moveable property whether in its independent capacity or being attached to any immovable property. I, in these circumstances, without further discussion have no hesitation to hold that plot is not a 'Product' within the meaning of the Act.

14. Next proposition before me is that whether DHA is amenable to the Act or not. Undoubtedly DHA is a Body Corporate pursuant to Defense Housing Authority Ordinance, 2005, which is being ran/administered by its management in accordance with its By Laws as framed and registered under the provisions of Co-operative Societies Act, 1925 and Co-operative Societies Rules 1927, with the object of purchasing/selling and consolidating land by developing the same into a housing society for its members.

15. As the Act is a newly born baby in this part of the world so in spite of my best efforts I was unable to find out any case law on the above proposition from the honourable Courts of Pakistan. However, there is a judgment directly on this point from Indian jurisdiction reported as **'Lucknow Development Authority vs. M.K. Gupta AIR-1994-SC-787**. While discussing the Indian Act, it was held that the provisions thereof have to be construed in favour of 'Consumer' to achieve the purpose of enactment

as it is social benefit oriented legislation. Some important lines are reproduced as under: -

“What remains to be examined is if housing construction or building activity carried on by a private or statutory body was service within meaning of clause (o) of S. 2 of the Act as it stood prior to inclusion of the expression ‘housing construction’ in the definition of “service” by Ordinance No. 24 of 1993. As pointed out earlier the entire purpose of widening the definition is to include in it not only day to day buying and selling activity undertaken by a common man but even to such activities which are otherwise not commercial in nature yet they partake of a character in which some benefit is conferred on the consumer. Construction of a house or flat is for the benefit of person for whom it is constructed. He may do it himself or hire services of a builder or contractor. The latter being for consideration is service as defined in the Act. Similarly when a statutory authority develops land or allots a site or constructs a house for the benefit of common man it is as much service as by a builder or contractor. The one is contractual service and other statutory service. If the service is defective or it is not what was represented then it would be unfair trade practice as defined in the Act. Any defect in construction activity would be denial of comfort and service to a consumer. When possession of property is not delivered within stipulated period the delay so caused is denial of service. Such disputes or claims are not in respect of immovable property as argued but deficiency in rendering of service of particular standard, quality or grade. Such deficiencies or omissions are defined in sub-clause (ii) of clause (r) of S. 2 as unfair trade practice. If a builder of a house uses sub-standard material in construction of a building or makes false or misleading representation about the condition of the house then it is denial of the facility or benefit of which a consumer is entitled to claim value under the Act. When the contractor or builder undertakes to erect a house or flat then it is inherent in it that he shall perform his obligation as agreed to. A flat with a leaking roof, or cracking wall or sub-standard floor is denial of service. Similarly when a statutory authority undertakes to develop land and frame housing scheme, it, while performing statutory duty renders service to the society in general and individual in particular. The entire approach of the learned counsel for the development authority in emphasizing that power exercised under a Statute could not be stretched to mean service proceeded on misconception. It is incorrect understanding of the statutory functions under a social legislation. A development authority while developing the land or framing a scheme for housing discharges statutory duty the purpose and objective of which is service to the citizens. As pointed out earlier the entire purpose of

widening the definitions is to include in it not only day to day buying of goods by a common man but even to such activities which are otherwise not commercial but professional or service oriented in nature. The provisions in the Acts, namely, Lucknow Development Act, Delhi Development Act or Bangalore Development Act clearly provide for preparing plan, development of land, and framing of scheme etc. Therefore if such authority undertakes to construct building or allot houses or building sites to citizens of the State either as amenity or as benefit then it amounts to rendering of service and will be covered in the expression 'service made available to potential users'. A person who applies for allotment of a building site or for a flat constructed by the development authority or enters into an agreement with a builder or a contractor is a potential user and nature of transaction is covered in the expression 'service of any description'. It further indicates that the definition is not exhaustive. The inclusive clause succeeded in widening its scope but not exhausting the services which could be covered in earlier part. So any service except when it is free of charge or under a constraint of personal service is included in it. Since housing activity is a service it was covered in the clause as it stood before, 1993"

16. Learned counsel for defendants as mentioned earlier had referred the definition 'Service' provided by Indian Act with a view that said definition is different from the meaning of Services referred under the Act. Before I answer this argument I will like to reproduce the definition of 'Services' offered under the Act. It is as under: -

"Services" includes the provision of any kind of facilities or advice or assistance such as provision of medical, legal or engineering services but does not include.....

17. Section 2 (o) of Indian Act about the definition of 'Service' is as under: -

"Service" means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under or contract of personal service"

18. What learned counsel for defendants wants to establish is that in the definition provided under Indian Act, there is specifically mentioned

about 'House Construction' which is missing in the Act. This argument appears to be misconceived. In fact under the Indian Act, the word used 'but not limited to' is of much importance. The legislator by inserting these words has made the provision more clear that the scope of the Act is much wider than the facilities/services provided by the agencies/companies mentioned therein.

19. On the other hand, under the Act the words "any kind" has also broader meaning and there can be no second opinion that whenever there is a service or facility in any area of the life or in relation to any trade or product provided to a consumer against a consideration the matter shall fall within the ambit of the Act. By declaring so I will again refer the Lucknow Development Authority's case (ibid) where it was held that the provisions have to be construed in favour of 'Consumer' to achieve the purpose of enactment as it is social benefit oriented legislation.

20. In view of above I hold that DHA is answerable to a Consumer with regard to its services and if there is any denial to the services or facility, a Consumer has absolute right to knock the door of the Court constituted under the Act and to seek remedy as provided therein. In these circumstances this Court has the jurisdiction to entertain and to adjudicate upon the dispute between the parties.

21. Finally coming to relations of Consumer and Service Provider between the parties it too is answered in affirmative on the reason that on getting a plot Claimant had also deposited development charges of Rs.1,10,000/- hence, he had hired the services for a consideration which falls under section 2 (c) (2) of the Act and when it is so there existed and in existence relations of Consumer and Services Provider between parties. From another angle this relation is in the field. DHA had agreed to provide a plot to the claimant being a member of society and when this service came to an end by provision of a plot where construction was not possible then it was a case of defective Services.

22. All above issues, therefore, are decided in favour of claimant and against defendants.

ISSUE NO. 4

"Whether the defendants rendered defective and faulty services to the claimant, if so, its effects? OPC"

23. It is an admitted fact that claimant was a member of Lawyers Co-operative Housing Society Rawalpindi (hereinafter to be called LCHS) which

he got in 1989. He had deposited an amount of Rs.1,10,000/- as cost of plot measuring 400-yards and further Rs. 1,10,000/- as development charges. It was 16th January, 2006 when DHA and LCHS entered into an agreement for amalgamation. Uncontroversial fact was and is that in agreement DHA had accepted all responsibilities and liabilities. The relevant portion of the agreement is as under: -

“AND WHEREAS LCHS approached DHA1 and DHA1 agreed and showed its interest in taking the land with all the existing rights, liabilities attached to the extent of 591 Kanals & 14 Marlas and the assets, liabilities attached thereto on the terms and conditions as set forth in this Agreement”

24. For reference it is added that this agreement was not got exhibited by any of the parties however, its photocopy is available on record. As it is an admitted document so even if it was not formally proved I can rely on it for the purpose of just decision of the case.

25. LCHS finally merged into DHA1 with all rights and liabilities. It was 21.08.2009 when possession of plot No.49, street No.4, Sector B-1 was given to claimant on his request and he also tendered an undertaking (D-3) which was as under: -

1. That I am a owner of plot No.49, Street No.4, Sector II, DHA Islamabad.
2. That I want to take the possession of my above plot to construct to my home where facilities like water/gas/electricity etc. not available and I will not claim any facility during to construction work from DHA.
3. That the statement as mentioned above in my undertaking is true and correct to the best of my knowledge and belief and nothing has been concealed.

26. Claimant asserted that this undertaking was obtained by force. I do not give any importance to this version because claimant is not an ordinary man but is a practicing advocate having more than fifteen years standing at the relevant time. However, I can confidently say that this undertaking shall not be a barrier if claimant succeeds in his claim on the basis of other data.

27. I must mention here that when amalgamation was made, thereafter, DHA again issued an allotment letter (P-5) to claimant which was re-affirmation of his membership.

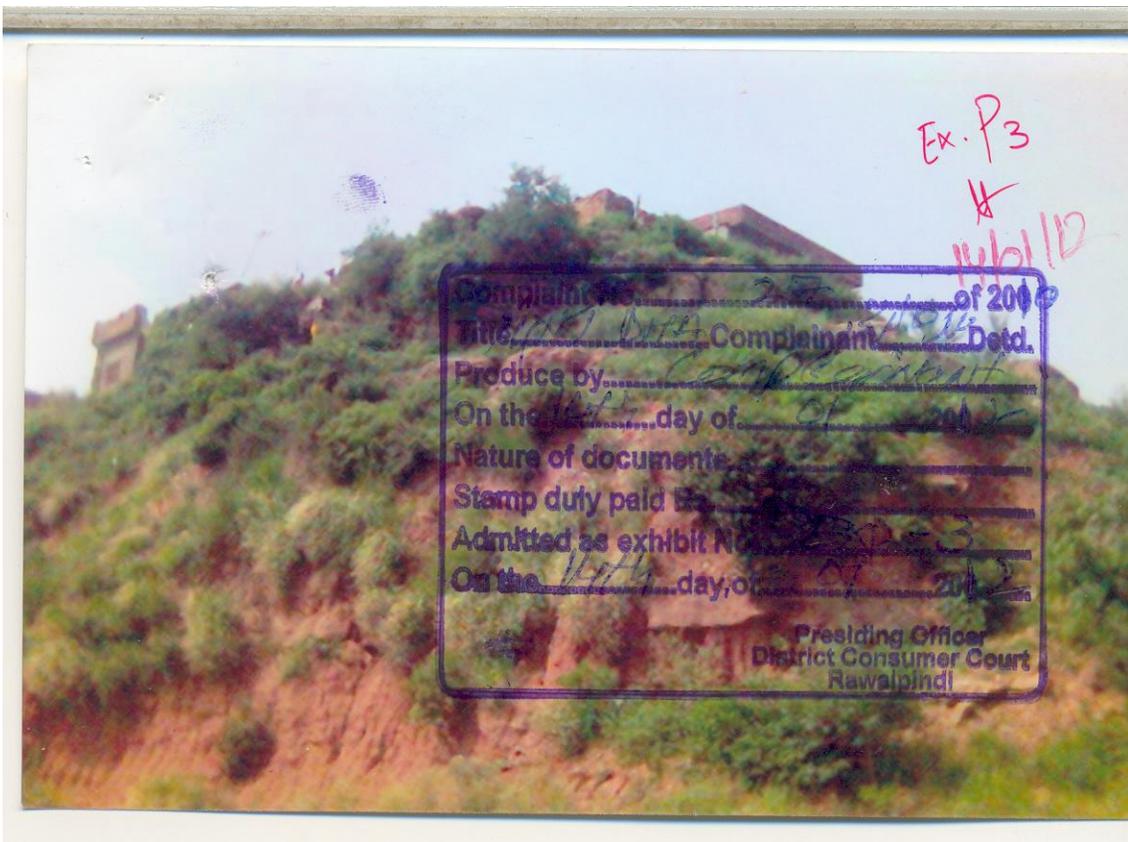
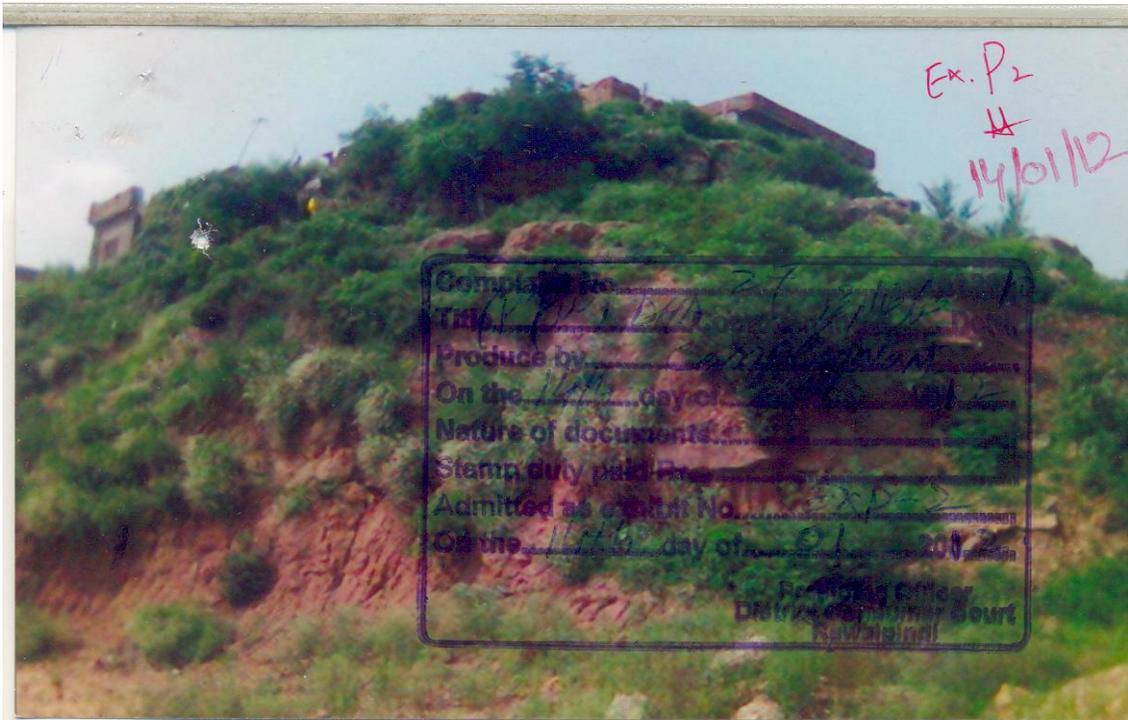
28. This is not disputed also that before taking possession of plot claimant had no knowledge of its area of existence. This is the reason that he deposited certain amount as mentioned in receipt (P-6), which was for

demarcation etc. Even condition No. 2 mentioned on the back of allotment letter (P-5) it has been provided that after clearing the dues liable to be paid against subject plot, demarcation and measurement of the plot will be carried out in the presence of allottee. Therefore, nobody can say that why before taking possession claimant did not raise a voice. It was thereafter, when claimant started to make hue and cry. What dealing was given to him and how DHA functionaries tried to redress his grievance i.e. evident from the statement of sole witness of defendants? Most relevant answers given in cross-examination made on Mr. Faisal Khan Niazi Dw-1 are as follows: -

“It is correct that at the time of deposit of the money i.e. 02.04.2007 till to-date, the basic facilities such as road, street lights, gas, water etc. have not been provided in street No. 3 & 4 and its surrounding area. It is correct that the area of aforementioned plots has been merged in DHA from the Lawyer’s Housing Society. I had also physically inspected the spot and had seen plot No. 49, street No. 4, Phase-I, Sector B-I, physically. It is correct that the soil of this plot No.49 consists of mounds of sands, huge stones, boulders and the area is in the shape of hilly area. It is correct that in its present stage of the land, no house can be constructed thereupon. It is correct that in the area taken over for merging from the lawyer’s society, majority area has already been provided all the basis facilities, by DHA. It is correct that due to this none develop land, the market value of claimant plot, is not up to the marks, in the prevailing market. It is correct that the claimant’s plot is in his possession. It is correct that as per rules, the plot provided by the DHA should be “construction worthy” plot, and only then it would be handed over to its allottees/consumers. It is correct that Lawyer’s Housing Society merged into DHA in 2006. It is also correct that since 2006, DHA has not provided basic facilities for the construction of the houses in street No. 3 & 4 and its surrounding area. It is correct that had all the facilities been provided to the claimant, even his plot would have fetched higher a price. It is correct that claimant had written several letters to DHA in order to develop his plot and its surrounding area. It is correct that the DHA had asked the claimant to pay the development charges that is why the claimant deposited the requisite amount in DHA account. It is correct that in written reply before this court, we had written that DHA is “re-engineering” of Ex-Lawyers Co-operative Housing Society (LCHS) was in progress and possession could not be delivered before completion of re-engineering” of the Lawyer’s Society. It is correct that DHA has not till yet started its re-engineering in street No. 3 & 4 and its surrounding area. It is correct that DHA acquires land through purchase and further master develops it, according to

contours of the land. It is correct that DHA had also sought from the claimant additional development charges. It is correct that the claimant has suffered mental torture by making several visits to the DHA officers”

29. I am really shocked to see that what plot was given to claimant. It is really a mountain or pieces of cliffs. This opinion can be formed even by an ordinary man if he sees admitted photographs, which through process of scanning are reproduced as under: -



30. The issue which was to be proved by claimant has been proved by the defendants themselves while bringing in witness box their sole witness.

31. DHA had taken all liabilities at the time of amalgamation. These liabilities were undoubtedly including the provisions of plots to all the members of LCHS. Dw-1 had admitted in cross-examination that as per rules the plot provided by DHA should be "construction worthy". I am unable to understand after examination of photographs (P-2 to P-4) that how the plot given to claimant was a 'construction worthy'. Services of DHA were including the provision of plot where construction of a house was possible and for doing so it was the duty of DHA first to make it construction able by leveling the same on its own responsibility and then to hand over its possession to the claimant. DHA cannot be given a blank cheque in this regard who was and is bound to observe the rules and policy with consistency. This is unfortunate that better sense never prevailed and defendants continued to contest and defend their actions which now have been proved to be of defective services.

32. Whatever has been discussed above in the light of that I hold that DHA rendered defective and faulty services to claimant and due to this reason claimant is unable till today even to place a brick for the construction of his house. Issue No. 4 is, therefore, decided in favour of claimant.

RELIEF

33. It was August-2009 when possession was handed over to claimant and right now is the beginning of September-2012. Had claimant been provided effective services by leveling the plot which had to be construction worthy by DHA, claimant might have completed his house till today? By negating his right in spite of his repeated requests and issuance of reminders the poor fellow even could not place a foundation stone.

34. In 2009 what could be the expenses for claimant for construction of a house when dollar price was about Rs.60/- which is now about Rs.90/-. What were the prices of construction material at that point of time and what are now? This is because and only because of unjustified actions and denial of services by defendants that claimant is still without a house on his plot. They cannot be allowed to play with the rights of their members as per their wishes. I will like to reproduce again some relevant lines of Lucknow Development Authority's Case (supra) which are: -

“The importance of the Act lies in promoting welfare of the society by enabling the consumer to participate directly in the market economy. It attempts to remove the helplessness of a consumer which he faces against powerful business, described as, ‘a network of rackets’ or a society in which, ‘producers have secured power’ to ‘rob the rest’ and the might of public bodies which are degenerating into store house of inaction where papers do not move from one desk to another as a matter of duty and responsibility but for extraneous consideration leaving the common man helplessness bewildered and shocked. The malady is becoming so rampant, widespread and deep that the society instead of bothering, complaining and fighting for it, is accepting it as part of life. The enactment in these unbelievable yet harsh realities appears to be a silver lining, which may in course of time succeed in checking the rot”

35. The word Damage has also been defined under section 2 (d) of the Act, which says as under: -

*“**Damage**” means all damages caused by a product or service including damage to the product itself and economic loss arising from a deficiency in or loss of use of the product or service”*

36. On the basis of above definition I can safely hold that as claimant could not start the construction of his house till today because of defective services of defendants so he had suffered an economic loss.

37. Under section 31 of the Act, there are various actions for which direction can be issued to defendants. For the purpose of this dispute the most important relief provided is under clause (d) and same is as under: -

“To do such other things as may be necessary for adequate and proper compliance with the requirement of this Act”.

38. Of course, plot is not a product so I cannot direct the defendants to hand over an alternative plot. However a legitimate direction can be issued to defendants for leveling the plot and to make it construction worthy.

39. Claimant has also demanded an amount of Rs. one Crore on account of compensation. He narrated this fact in his affidavit/examination-in-chief (P-1) but in entire cross-examination defendants did not challenge said portion. Therefore under the settled principles of law it will be presumed that defendants have accepted the plea of claimant.

40. To my mind as no details of damages have been given so to award the whole amount will not be adequate and appropriate. By taking all aspects and circumstances into consideration I deem it proper to award an amount of Rs.25,00,000/- (twenty five lac) as damages.

41. The ultimate conclusion is that claim filed by claimant is accepted. In pursuance to section 31 of the Act I issue an order to defendants directing them to take following actions: -

(a) To level the plot No. 49, Street No. 4, Sector B-I, allotted to claimant and to make it construction worthy without charging even a single penny from claimant within a period of three months from today.

(b) To pay an amount of Rs. 25,00,000/- (twenty five lac) as damages to claimant within a period of three months from today.

Announced
01.09.2012

(SOHAIL NASIR)
District & Sessions Judge/
Judge Consumer Court,
Rawalpindi.

It is certified that this judgment consists of fourteen pages. Each page has been dictated, read, corrected and signed by me.

(SOHAIL NASIR)
District & Sessions Judge/
Judge Consumer Court
Rawalpindi