

IN THE COURT OF MIRZA JAWAD A: BAIG,  
DISTRICT & SESSIONS JUDGE,  
PRESIDING OFFICER, DISTRICT CONSUMER COURT,  
DERA GHAZI KHAN,

(PHONE: PTCL: 0642474100. FAX: 0642470496).

Mohammad Riaz        versus        Sheikh Ijaz Estate Agency & 3 others

Complaint/ Case No:	2083 / 04 / 12.
Date of Institution:	03-01-2012.
Date of Decision:	24-03-2012.

COMPLAINT ABOUT FAULTY SERVICES

ORDER:

The Claimant is represented jointly by Saleem Raza Khan Kakar Advocate while defendants are represented jointly by Jameel Hussain Nutkani Advocate & Mohammad Ali Malik Advocate & Mrs. Ruqiya Ramzan Advocate.

1. The case is at the stage of the decision while arguments have previously been heard and file has been perused in the light of the arguments as such I proceed to determine the objections of the defendants and assertions of the claimant by discussion in the following paragraphs.

2. Briefly stated the grievance of the claimant is to the effect that the defendants have attracted him to apply for allotment of a plot of land by bait advertisement about the housing scheme namely 'Khyaban-i-Umar; that said scheme is not approved by the government; that the land of the alleged scheme is not in the name of the defendants; that the claimant has paid certain installments towards payment of sale price; that the defendants have refused to hand over the possession of the plot and also refused to transfer the same in the name of the claimant; that legal notices have not been responded by the defendants. The claimant has requested for recovery of Rs.10,00,000/- as damages & Rs.50,000/- as counsel fee and any other admissible relief which may be granted.

3. The defendants have filed ancillary joint application to challenge the jurisdiction of this court in addition to their joint written statement to the effect that the claimant has no cause of action; that the claimant has not paid any installments after the date mentioned in the written statement despite issuance of reminders; that the defendants are prepared to give the possession on payment of remaining installments; that this court has no jurisdiction to adjudicate the disputes relating to sale and purchase of land; that the complaint be dismissed with special costs.

4. The ancillary application of the defendants has been contested by the claimant by filing his written statement on the ground that bait advertisement is within the jurisdiction of this court with request for dismissal of the application with costs.

5. As far as the request about grant of damages is concerned, it is observed that it is settled law that the manufacturer or service provider is not liable for any damages except a return of the consideration or a part thereof and the costs, specifically where the consumer has not suffered any damages from the product or provision of service except lack of utility / benefit.

6. It is pertinent to note that the grant of damages is curtailed even under Contract Act, 1872 in which it is provided in S.73 to 75 that the damages should be proportionate to the loss and not excessive by mentioning that such compensation for loss or damage caused by breach of contract is not to be given for any remote and indirect loss or damage sustained by reason of the breach. It is an embargo placed by the general law of contracts upon the powers of the courts about grant of damages.

7. It is also observed that further embargo on the quantum of damages to be awarded by the consumers courts has been placed by the law provided in S. 4, 10, 13 & 15 of PCP Act by declaring that the manufacturer or service provider shall be liable to a consumer for damages proximately caused by anticipated use of the product or provision of services that have caused damage but he shall not be liable for any damages except a return of the consideration or a part thereof and the costs in such cases where the consumer has not suffered any damages from the provision of service except lack of benefit or loss of utility.

8. Since there is no explanation in the present complaint about any other damage except the loss of utility or lack of benefit as such I find that the claimant is not entitled to recover the damages or compensation or counsel fee or litigation charges through this court under the law of consumers and he would have to go to the learned civil court for recovery of such damages.

9. It is observed on the basis of perusal of S.21 and 22 of PCP Act 2005 that the plot of land cannot be treated as the product for the purpose of the Consumer Act as such the complaint cannot be filed in the Consumer Court about all disputes relating to the breach of contracts and agreements about sale and purchase of plot of land including bait advertisement because specific law is available on the subject by the name of Specific Relief Act and civil suit is liable to be filed by the aggrieved person if he is disappointed from the agreement.

10. As far as the allegation of bait advertisement relating to the providing of the services is concerned, I find that such complaint can be lodged only by such aggrieved person who has become the owner of the disputed plot after completion of all the installments and full payment on the basis of the allotment of the plot so as to complain that the services advertised should be provided or damages should be paid in case of non providing the services.

11. In my view, such complaint is to be treated as premature which is filed by such person on the ground of non providing of the advertised or promised services who has not yet got the allotment of the disputed plot in his favour. The present complaint is therefore liable to be returned on both scores being not about the product and premature to the extent of the services.

12. In the present case, the claimant is at the stage of the payment of remaining installments and his membership has not matured into ownership and it is possible that he might have been only under impression of the collapse of the disputed scheme which might not have been actually abortive and such dispute is proper to be settled only by the civil court.

13. I am of the view that even if the claimant is no more interested to get the plot and only wants to recover the amount paid in furtherance of the agreement to sell but he would have to file the suit for specific performance of the agreement through the civil court to get the money back along with damages.

14. Meanwhile the defendants are advised to co-operative with the claimant for amicable settlement so as to avoid further litigation between the parties if the scheme is still operative and if they plan to complete the scheme and if the claimant wants to continue with the scheme on payment of remaining installments.

15. The contention of learned counsel for the claimant is to the effect that relief is being given by entertaining such cases by the Redressal Commissions of India under Indian Consumer Act. I am of the view that this court is to follow the law of Punjab Province of Pakistan and not of neighboring country of India. The rulings being cited by learned counsel for the claimant out of the commentary book of PCP Act, 2005 about jurisdiction of the consumer forums are therefore not applicable to this court.

16. In accordance with above discussion, the application of the defendants is partly accepted to the extent of return of the complaint instead of dismissal of the complaint while the complaint of the claimant is hereby disposed off by way of return for the filing of civil suit if so required to be filed by the claimant.

17. *Parties are left to bear their own costs.*

18. *The file of this complaint is to be consigned to the record room duly page marked with proper index and after due completion and made available for issuance of attested copies and kept under safe custody till the period fixed for destruction in accordance with the Rules & Orders of Honourable Lahore High Court.*