

**IN THE COURT OF MR. ABDUL HAFEEZ
DISTRICT AND SESSIONS JUDGE / PRESIDING OFFICER
DISTRICT CONSUMER COURT, RAWALPINDI**

(Case No. 26 of 02.10.2018)

Muhammad Arshad son of Umar Din, resident of House No. NE -4464, street No. 1 Mohallah Chah Sultan, Chaklala Road, Rawalpindi.

(Complainant)

Versus

Al-Falah Enterprises through Chief Executive Officer having its office at Main Adiyala Road near shah pur Syedan, Rawalpindi.

(Defendants)

**CLAIM FOR RECOVERY OF RS. 1426260/- (PAID AMOUNT)
AND RECOVERY OF RUPEES ONE MILLION IN LIFE OF
COMPENSATION AND RUPEES ONE MILLION AGAINST
MENTAL TORTURE AND AGONY.**

EX-PARTE ORDER
10-10-2019.

Briefly stated facts of the case are that the complainant is a law abiding citizen of Pakistan therefore, his right are guaranteed / protected under the constitution of Islamic Republic of Pakistan 1973;- that the respondent is running a profitable business under the name and style of Al-Falah enterprises with two projects i.e. Green villas and Kohe-e-Noor city in Rawalpindi whereby announced the commercial as well as housing projects and advertised the said projects in general public and claimed to be a reliable housing projects including, Parks, Schools, Lake Playing Area, Mosque etc;- that the general public got entitled allured and fascinated from

their imaginary pictorial views development plans and thereby vigorously invested in their projects in the said account the claimant also planned to book and purchased 04 commercial plots in January 2013 in both the projects i.e. Green villas and Koh-e-Noor city satiated at Mouza Gorakhpur, Adiyala Road, Rawalpindi, details of which are as follows:-

- 1) Green villas plot size 25 X50 Plot No. 105 phase 111 types, commercial the total amount of plot is Rs. 1300000/- in which claimant paid Rs. 396000/-
- 2) Green villas plot size 25X50 plot No. 106 in phase 111, type commercial the total amount of plot is Rs. 1400000/- in which claimant paid Rs. 401000/-
- 3) Green villas plot size 25X50 Plot No. 21 phase IV, type commercial the total amount of plot is Rs. 1400000/- in which claimant paid Rs. 401000/-
- 4) Kohe-e-Noor City plot size 25X50 plot No. 213 phase Iv, type commercial the total amount of plot is Rs. 874500/- in which claimant paid Rs. 228260/- (copies of receipts / details of payment are attached herewith for the kind perusal of this Honourable court.)

that as per above referred details of payment the claimant had paid an amount of Rs. 1426260/- to the respondent since

January 2013 as per settled terms and conditions the respondent was bound to deliver the possession within 04 years after booking but the respondent neither delivered possession of plots nor started any development work in the projects. It is pertinent to mention here that the respondent has committed to handover the possession of the plots in the month of June, 2017:- that the month of June 2017 when the claimant contacted the respondent and asked to deliver the possession of plots and development work of the project upon which the respondent lingered on the matter on one pretext or the other. Thereafter, the claimant many times requested the respondent to handover the possession of plots;-that since June, 2017 the claimant time and again asked the respondent to handover the possession of plots but the respondent did not respond to the genuine requests of claimant and finally in the month of November, 2017 refused to do the needful and started using harsh language and refused point blank to fulfill his commitments;- that above said overt acts of the respondent is illegal, unlawful, amounting to criminal breach of trust and failure in providing service in respect of development of villas / plots and these handover to the claimant, therefore, due to such breach of trust, non-fulfillment of contract and faulty services the claimant has sustained huge loss in terms of

money as well as suffered mental agony, torture, and tension;- that due to act and deeds of respondent the name, the claimant also faced huge embarrassment in the eyes of his relatives and in laws whom he had told about the purchase / booking of plots and in this way the claimant company suffered huge financial loss which the claimant deserves to be compensated;- that although, the damages can never be come substitute of agony and mental torture of the claimant which he had suffered due to respondent's acts, however if, it is awarded promptly it can lesser the travails and burden of the claimant;- that the respondent is liable to pay the actual received amount of Rs. 1426260/- and Rupees two million as damages to the claimant for recklessly and deliberately damaging the claimant;-that the plaintiff time and again requested the respondent for the payment of Rs. 1426260/- as actual amount and damages of Rupees two million but the respondent did not proceeded to the requests of the claimant. Upon which the claimant served a legal notice dated 11-12-2017 to the respondent through TCS but the same remained un-served due to the respondent's cunning behavior hence this claim;- that the cause of action firstly accrued when the claimant purchased/ booked the said plots from the respondent and lastly upon refusal to do the needful, and the

same is continuing day by day;- that the cause of accrued at Rawalpindi and the parties are also residing within territorial jurisdiction of this Honourable Court, hence this Honourable Court vests jurisdiction to entertain and adjudicate upon the matter;- that prescribed court fee has been affixed on the claim. Lastly it is prayed that the claim in hand may kindly be accepted and the grievance of the claimant may be redressed by directing the respondent to pay the received amount of Rs. 1426260/- and rupees two millions as damages caused due to faulty services as well as mental torture and agony to the claimant. Any other relief which this Honourable Court deems fit and proper may also be awarded to the claimant.

2. On the contrary defendant filed his written statement wherein he took various preliminary objections that the instant claim has been filed malafidely in order to damage the reputation of the in the vicinity and the respondent is not the sole proprietor of said Al-Falah enterprises;- that the claim is not maintainable in its present form, because without impleading the person by name, the claim cannot be claimed by the claimant;- that according to the terms and condition of the Al- Falah Enterprises no such possession be delivered to the claimant on the payment of 50% amount of total consideration,

hence the instant claim is liable to be rejected on this sole ground;- that the claim in hand is barred and is not sustainable in the eye of law, because the claimant has not paid the installments hence their allotment are being cancelled by the Al-Falah Enterprises and in terms and conditions settled between the parties, no claim be filed in this regard;- that the claimant has got no cause of action to bring the instant claim against the respondent;- that the claim be rejected under order 7 rule 11 CPC, that the claimant has not annexed the original documents, where he commits that on the payment of 50% installments, the claimant can claim possession of the plot and has suppressed the material fact from this Honourable court and hence the claim of the claimant is liable to be rejected;- that no such claim can be claimed under Punjab Consumer Project Act 2005 against the societies, hence this Honourable court lacks jurisdiction to entertain this claim. On facts defendant replied para No. 01 needs no reply, para No. 02 is incorrect as stated. In fact the respondent along with three partners developed the society with the name and style mentioned in this para for the welfare of the people; para No. 3 is incorrect in its given expressions. The claimant only booked 04 plots, which are not commercial one. As per terms and condition of the society the possession be delivered after

payment of 50% amount, hence is not entitled for the possession of plots in question and after nonpayment of the installments. The allotment being cancelled according the rules;- para No. 4 is incorrect as stated, hence denied. No such terms and conditions were signed by the respondent. The possession will be delivered within period of 04 years, the terms and conditions were settled between the parties that soon after getting /acquiring the land, the respondent will hand over the possession of the plots in question to the claimant after development work in the project but till now the acquiring of land is in process and the claimant filed this claim just to harass and blackmail the respondent because their allotment is cancelled and to get back his payment, which he deposited before the enterprise and by lingering his lame excuse the claimant filed the instant petition; para No. 5 is incorrect, hence denied. Detailed reply has been given in preceding paras. Para No. 6 is incorrect, hence denied. No such meeting was ever held between the parties. Neither any harsh language is being used by the respondent towards the claimant;- para No. 7 is incorrect, hence vehemently denied. The claimant just to prolong his schedule of payment concocted this story in the claim. Para No.8 is incorrect, hence denied. No such embracement in the eye of claimant's relatives, neither any

huge financial suffered by the claimant. The claimant is not entitled to receive amount of Rs. 1426260/- along with 2 million as damages from the respondent because the claimant is going to violate the terms and conditions of settled agreement No notice was ever delivered issued to the respondent and is a result of fake assertion to the respondent. the claimant has no cause to bring the instant claim against the defendant therefore, complaint may be dismissed. Counsel the defendant put copy of application form of allotment of plot no. 106 Mark –DA,

3. In order to prove the case against the defendant Mr. Muhammad Arshad Complainant himself appeared as PW-1, he submitted his statement on affidavit Exh-PA, land price installments receipts Exh-PB/1-18, Exh-PC/1-19, Ex-PD/1-18, Exh-PE/1-18. Map of society Mark-PA, copy of legal notice Mark-PB, TCS courier receipt Exh-PF, TCS envelope Exh-PG, counsel for the defendant put copy of application form allotment of Plot No.106 Mark-DA.

4. On the other hand defendant filed his statement on affidavit but did not appear for cross examination and thereafter, counsel for the defendant produced documents i.e. copy of receipts regarding the payment schedule phase-3 commercial Mark-DA/1, and Mark-DB, copy of notice for

clearance of outstanding installments dated 05-01-2015 Mark-DC, copy of letter dated 06-08-2016, regarding cancellation of plots / allotment Mark-DD, and closed the evidence and case was fixed for arguments. On 11-06-2019 partly arguments were heard and local commission was appointed to inspect the society and submit his report. On 22-04-2019 report was submitted. On 14-05-2019 defendant filed objections on the report of local commission. Complainant filed the reply to the objections at this local commission was summoned.

Mr. Sadeed Minhas, advocate was examined as CW-1, he submitted his report (Exh-CW-1/A/1-78) after taking many adjournments counsel for the defendant did not appear in the court to cross examine local commission having no option ex-parte proceeding order was passed against the defendant and case was fixed arguments for 7-10-2019, 8-10-2019 and 09-10-2019.

5. Ex-parte arguments heard, record perused.

6. The contention of the learned counsel for the complainant is that after allured and fascinated from defendant's imaginary pictorial views development plans and thereby vigorously invested in his projects, complainant booked 04 commercial plots in January 2013 in both the projects i.e. Green villas and Koh-e-Noor city satiated at Mouza

Gorakhpur, Adiyala Road, Rawalpindi, details of which are as follows:-

- 1) Green villas plot size 25 X50 Plot No. 105 phase 111 types, commercial the total amount of plot is Rs. 1300000/- in which claimant paid Rs. 396000/-
- 2) Green villas plot size 25X50 plot No. 106 in phase 111, type commercial the total amount of plot is Rs. 1400000/- in which claimant paid Rs. 401000/-
- 3) Green villas plot size 25X50 Plot No. 21 phase IV, type commercial the total amount of plot is Rs. 1400000/- in which claimant paid Rs. 401000/-
- 4) Kohe-e-Noor City plot size 25X50 plot No. 213 phase Iv, type commercial the total amount of plot is Rs. 874500/- in which claimant paid Rs. 228260/- (copies of receipts / details of payment are attached herewith for the kind perusal of this Honourable court.)

He further contended that complainant had paid of Rs. 1426260/- to the defendant respondent since January 2013 as per settled terms and conditions the defendant was bound to deliver the possession within 04 years after booking but the respondent neither delivered possession of plots nor started any development work in the projects, rather lingered on the

matter on one pretext or the other. His further contention is that since June, 2017 complainant time and again contacted with defendant to handover the possession of plots but defendant did not respond to the genuine requests of complainant and finally in the month of November, 2017 refused to do the needful and started using harsh language and refused point blank to fulfill his commitments and the said overt acts of the defendant are illegal, unlawful, amounting to criminal breach of trust and failure in providing service in respect of development of plots and handover to the complainant, the complainant also faced huge embarrassment in the eyes of his relatives and in laws whom he had told about the purchase / booking of plots. He further contended that the damages can never be come substitute of agony and mental torture of the claimant which he had suffered due to respondent's acts, however if, it is awarded promptly it can lesser the travails and burden of the claimant. Further contended that for the redressal of his grievances complainant thereafter served a legal notice but the same remained un-served due to the defendant's cunning behavior, having no option complainant knocked the door of the court for the redressal of his grievances. Although defendant filed the written statement but thereafter, the defendant did not enter in the witness box to

face the cross examination and lastly his counsel produced some illegal documents Mark- DA/1, and Mark- DB, payments schedules and in document mark –DC. The defendant has admitted he sold fake commercial plots to the complainant, and complainant should pay installments otherwise, allotment shall be cancelled some is the Mark DD. He further contended that to check the status of society development claimed by the defendant court appointed a local commission, the local commission submitted his report that no development work has been done. On the report defendant filed objections, but thereafter, did not appear in the court to cross examine the CW-1/ local commission at this court proceeded ex-parte against the defendant. The learned counsel for the complainant further contended that the court has jurisdiction to decide the complaint in this respect, he relied on PLD 2014 Lahore 24, AIR 2009 Sc. 1188 AIR 2012 SC 2369. He further contended that defendant did not development work nor he denies that he will not do the work, so it is a case of recurring cause of action, and is within limitation period, he has failed to prove, that he developed the plots but complainant did not pay remaining amount, he has admitted, he did not acquire the land so far so, the complainant has successfully proved his case against the defendant, complaint may kindly be

accepted and defendant be directed to pay amount of Rs. 1426260/- and rupees two millions as damages and he also be punished under section 32 of PCPA, 2005 in the interest of justice and any other relief, which this Hon'ble court may deems fit also be granted to the complainant.

8. The evidence shows that the complainant himself appeared as PW-1, he submitted his statement on affidavit and in it he reiterated the facts mentioned in the complaint. His statement and document shows that complainant booked 04 commercial plots in January 2013 in both the projects in installments in Green villas and Koh-e-Noor city satiated at Mouza Gorakhpur, Adiyala Road, Rawalpindi, details of which are as follows:-

- 1) Green villas plot size 25 X50 Plot No. 105 phase 111 types, commercial the total amount of plot is Rs. 1300000/- in which claimant paid Rs. 396000/-
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To prove this fact that he paid the said amounts he produced receipts Exh-PB/1-18 Exh-PC / 1-19, Exh-PD / 1-19, Exh-E/1-18 which shows that he paid the price of said plots in the shape of installments the total where of is Rs. 1426260. The last receipt is dated 18-05-2014. The evidence shows that despite receiving the said amounts of plots, the defendant did not hand over the possession of said 4-plots to the complainant and continued linger on the matter, neither he did the needful, nor he denied to do needful, having no option the complainant issued legal notice dated 11.12.2017, but same remained un-served regarding the delivery of said legal notice, the complainant produced TCS courier receipt (Exh-PF),and undelivered TCS envelope Exh-PG, lastly he instituted the instant complaint. The perusal of the written statement filed by the defendant shows that he admitted that claimant booked four plots which are not commercial however, he further replied that as per term and conditions of the society the possession was to be delivered upon payment of 50% amount hence, he is not entitled to the possession of the plots and after non payment of installments the allotment was being cancelled. In

para no 04 defendant replied that no such terms and conditions were signed by the respondent the possession will be delivered within period of four years the terms and conditions were settled between the parties that soon after getting / acquiring the land the respondent will handover the possession of the plots to the claimant after development work in the project but till now the acquiring of the land is in process and claimant filed this claim just to harass and blackmail the respondent because their allotment is cancelled and to get his payment which he deposited before the enterprises and by lingering his lame excuse, the claimant filed the instant petition, In para no. 10 defendant replied that claimant is not liable to receive the amount of the Rs. 1426260/- along with two millions as damages because the claimant is going to violate the terms and conditions of the settled agreement, the perusal of the evidence shows that defendant submitted his statement on affidavit but there after he did not enter into witness box to get exhibit his affidavit and to face to cross examination at this his counsel produced documents Mark DA/1 to mark DD mark DA/1 and mark-DB these are photocopies of payment schedule, he has also produced notice mark DC, dated 05-01-2015, it shows that in it, defendant has given notice to the complainant to pay the outstanding amount/ installments

within 10 days otherwise, the defendant has right to take legal action and cancel the plots , he has also produced information letter dated 06-08-2016, showing that the defendant informed through this letter to the complainant that he has failed to pay outstanding dues so, allotment of his plots has been cancelled. The perusal of the evidence shows that the defendant did not produce any postal receipt of courier receipt to prove that the defendant delivered said Mark -DC and Mark -DD, to the complainant, the perusal of the record shows that prior to appointment of local commission the stance of the learned counsel for the defendant in the arguments was that the complainant did not pay the dues the society had been fully developed due to said reason the allotment was cancelled. On the other hand the contentions of the learned counsel for the complainant was that defendant in written statement has stated that land is being acquired, and prior to completion of this process, claimant filed the claim further is that even thereafter, no progress has been done at the spot at this local commission was appointed who submitted his report Exh-CW1/A,/1-78, wherein he reported that there is no chance of development in further five years at the spot. The perusal of the record shows that the defendant filed the objections on the report of the local commission but thereafter

neither the defendant nor his counsel appeared before the court and consequently the defendant was proceeded ex-parte since there is no evidence on record to rebut the evidence of the complainant and report of the local commission moreover, in written statement the defendant himself has admitted that till now the acquiring of the land is in process therefore, in the view of above said it can be safely concluded that despite receiving huge amount from the complainant by the defendant, the defendant did not purchase the land nor developed the plots/ land, consequently I find no force in the defense version of defendant and it is held, that the complainant has successfully proved that defendant provided defective services to the complainant, and despite receiving the above said amount did not handover the possession of the plots to the complainant.

The next contention of the learned counsel for the complainant is that in an earlier case titled Malik Khalid Mehmood VERSUS DHA, Islamabad the predecessor of this court accepted the claim of the complainant of said case against the defendants of said case, who did not develop the plot of the complainant, the said order passed by the predecessor of this court was challenged before the Hon'ble Lahore High court, Rawalpindi Bench, Rawalpindi and Hon'ble

Lahore High Court was pleased to dismiss the appeal of the defendants which is reported as Defense Housing Authority, Islamabad VERSUS Malik Khalid Mehmood PLJ 2014 Lahore 24. He further in this respect relied upon Sujit Kumar Banerjee VERSUS M/S Ramesh Veraan and others, AIR 2009 Supreme Court, M/S Narine construction Pvt. Ltd. etc V.S Union of India and others AIR 2012 Supreme Court 2369 in this respect as well. I have gone through the case law produced by the learned counsel for the complainant DHA, Islamabad VERSUS Malik Khalid Mehmood PLJ 2014 Lahore 24, wherein it is held that, "housing construction and building activity carried by Pvt. person or statutory body was service within the meaning and definition of section 2(k) of Punjab Consumer Protection Act, 2005---- consumer having paid developing charges was entitled to piece of land which was construction worthy where foundation of building can be laid without further substantial charges and land escaping---- No option to hold that Presiding Officer of Consumer Protection rightly directed DHA to level and to make it construction worthy free of cost, section 31(e) of The Punjab Consumer Protection Act, 2005 empowers consumer court to order to DHA to pay reasonable compensation to the consumer for any loss suffered due to the negligence of the defendants. Due to the negligence of DHA

and developing leveling and making plot construction worthy consumer had been unable to construct his house, though he had given possession and pay entire amount. "I have also gone through AIR 2009 Supreme Court 1188 wherein it is held that "agreement between land owner and builder for construction of building in delivery of aggrieved constructed area / not joint venture agreement / land owner is consumer and builder is service provider a complaint filed by land owner is maintainable". I have also gone through the AIR 2012 Supreme Court 2369, wherein there was dispute of activity of offering plots for sale with assurance of development of infrastructure lay out approved etc, wherein it is held that activity carried on constitute service / company carrying of such activity as service provider / any deficiency would defect in such service would make it maintainable before the competent consumer forum at instance of consumer". The above said case law produced by learned counsel for the complainant fully proves that the court has the jurisdiction to entertain this claim against the defendant and decide it in accordance with law, therefore, in view of the above said it is concluded that the this court has been jurisdiction to entertain and try this complaint,

The next contention of the learned counsel for the complainant is that complaint has been filed with limitation

period, as defendant did not acquire nor develop the plots the complainant paid last installment in May 2014, when he saw that there is no land at this spot he contacted with the defendant and asked the defendant about the land where on the plots shall be developed, the defendant started delaying the matter, at per commitment of the defendant the complainant contacted with the defendant in June 2017, about the delivery of the possession at this defendant again sought time, having no option in November 2017, the complainant delivered the legal notice to the defendant, the defendant did not give the written reply and again sought the time, at this on 19-02-2018, the complainant filed the instant complaint and the defendant filed the written statement, and in it, took plea. "The terms and conditions were settled between the parties that soon after getting / acquiring the land the respondent will handover the possession of the plots in question to the claimant after development work in the project but till now the acquiring of the land is in process and claimant filed is claim, just to harass and blackmail the defendant" he further contended that no plots cancellation letter was received by the complainant, still land has not been acquired by the defendant so in absence of any such land/ plots, there arises no question of limitation in filling of the claim because the

defendant will never acquire nor he will develop the land/ plot it is case of recurring cause of action complaint has been filed within limitation period, since in this case defendant did not complete the process of acquiring of land nor, he has develop the land nor he refuses to developed it therefore, there is a force in the contention of learned counsel for the complainant that it is a case of recurring cause of action, fill the defendant acquires, the land and develop, its plots therefore, the same is hereby accepted, consequently the complaint is hereby accepted as under.

The perusal of the evidence shows that defendant has received Rs. 14,26,260/- from complainant regarding the partly sale consideration of four commercial plots uptill May 2014, the said amount is still in his use, he did not do any development work nor handed over the possession of the plots, so much so, he did not acquire the land he did not produce any title document of any land purchased by him for said society, had he acquired the land and developed the plots , the complainant would have construct his shops etc on these plots, and he would have been in position to utilize these or rent it out and would have earned money from these construction, but defendant did not develop it, nor he give any cut date in this respect, therefore, to compensate the

complainant U/S 31(e) of PCPA 2005, he is liable to pay the present market value of the said plots which would have been not less than twice value of said plots/ land today. Admittedly the complainant has paid Rs. 1426260/- to the defendant so the claim of the complainant is partly accepted to the extent of present market value of such like plots equal to twice of Rs. 1426260/- which come to Rs.2852520/- and defendant is directed to pay Rs. 2852520/- within 30 days of the passing of this order .

The perusal of the complaint further shows that complainant has demanded Rs. 2000000/- towards damages caused due to faulty services as well as mental torture and agony. The perusal of the evidence shows that the complainant did not produce any medical evidence therefore his claim regarding the mental torture and agony, being unproved is hereby denied whereas towards the faulty services the court has compensated complainant by awarding him twice of the amount which he paid to the defendant so said claim already being considered above is hereby dismissed.

The perusal of the complaint shows that the complainant has demanded any other relief which this court deem fit, I have gone through section 31(g) of PCPA 2005, it authorizes the court to direct to defendant to pay actual costs including lawyer's fee incurred on the legal proceedings, The perusal of the evidence shows for redressal of his grievance, the complainant delivered legal notice to the defendant and thereafter, instituted the

complaint and had been appearing in the court from more than, one year definitely on the said process he had spent same amount therefore, in view of the above said the defendant is directed to pay Rs. 30000/- toward the actual costs including lawyer's fee incurred on legal proceeding.

9. The Upshot of the above said discussion is that the complaint of the complainant is hereby ex-parte partly accepted and partly rejected and defendant is directed to pay Rs. 2852520/- equal to the double of paid amount of the present market price of the plots and Rs. 30000/- towards the actual costs including the lawyer's fee incurred on the legal proceeding total RS. 2882520/- within 30 days of passing of this order otherwise, he shall be proceeded under Section 32 (2) of PCPA 2005. File be consigned to the record room.

Announced:
10.10.2019

ABDUL HAFEEZ
District & Sessions Judge /
Presiding Officer
District Consumer Court
Rawalpindi

It is certified that this order consists upon 23- pages. Each page has been dictated, read, corrected and signed by me.

District & Sessions Judge /
Presiding Officer
District Consumer Court
Rawalpindi.