

**IN THE COURT OF MUSHTAQ AHMAD TARAR**  
**DISTRICT & SESSIONS JUDGE/PRESIDING OFFICER DISTRICT**  
**CONSUMER COURT GUJRAT**

RIAZ AHMAD S/O Mohammad Roshan, R/O Boht P.O KHAS, Teh & Distt. Mandi-Bahu-Din  
(Complainant)

**Vs**

GULZAR AHMAD S/O Basheer Ahmed, R/O Chak No. 39 P.O Chak No. 40, Teh & Distt. Mandi-Bahu-Din  
(Respondent)

**CLAIM FOR THE RECOVERY OF LOSS AND DAMAGES ON**  
**THE BASIS OF SUBSTANDARD CONSTRUCTION OF HOUSE**

**Order:**

The complainant Riaz Ahmad has filed this complaint against the respondent Thekedar Gulzar Ahmad with the averments that through written memo dated 10-10-2004, he entered into an agreement with the respondent for the construction of his double story house and he was responsible for providing material; that it was settled that the account will be finalized after the completion of Linter, roofs and other work; that he paid Rs. 671,000/- in weekly installments to the respondent, but the respondent did not complete the construction and due to substandard and defective construction the walls, Linter, Roofs of his house were cracked and he sustained irreparable loss; that he spent Rs.8,000,000/- on the construction of his house including labour paid to the respondent Rs. 671,000/-; that he asked the respondent to pay him the said spent amount Rs.8,000,000/- along-with damages Rs.5,000,000/- caused to him due to

defective and substandard construction of respondent but the respondent refused; that the cause of action accrued two days back when the respondent finally refused. In the complaint the complainant prayed for the recovery of Rs.8,000,000/- along with damages Rs.5,000,000/- from the respondent.

2. The respondent contested the case by filing written reply wherein he took preliminary objections about maintainability of complaint. On merits he contended; that he was contractor only for workmanship and he used to perform his work properly; that he completed the construction within 8 month; that the material was the responsibility of complainant and complainant provided substandard material and supervised all works in personal; that due to substandard material and earth quake of 2005, defects occurred in the building; that wages for repairing of said defects became Rs. 200,000/- which is still outstanding against the complainant; that on his demand of said wages, the complainant has started to harass him; that he is skilled mason having good repute and he is being harassed by the complainant just to deprive him from his wages. The respondent denied the averments of complainant and prayed for dismissal of the same.

3. The parties were asked to lead their evidence. In evidence the complainant himself appeared as PW1 and he produced Mohammad Anayat as PW2 and Mohammad Yaar as PW3 and they submitted their affidavits P1, P2, P3 respectively. In documentary evidence the complainant tendered postal receipt Ex.P4 , photocopy of legal notice as Mark A, original agreement dated 10-04-2010 Mark B, Memo for construction dated 10-10-2004 Mark C under objection of learned counsel for respondent and photographs of house in question Mark D/ 1-5. In rebuttal respondent appeared as RW1 and he produced Sajjad Ahmad as RW2. The respondent also tendered Ex.R1 to R5 as documentary evidence.

4. While concluding the case I have heard the arguments of learned counsel for parties. The learned counsel for complainant argued, that admittedly the construction of house of complainant was done by respondent; that due to substandard and defective construction done by the respondent the cracks in the walls, Linter and Roofs occurred causing huge loss of Rs. 8,000,000/- to the complainant; that the respondent has still not completed the construction and the complainant has succeeded to prove his case against respondent for the recovery of Rs 13,000,000/-; that the complaint is within time.

5. On the other side learned counsel for respondent contended that the complaint is time barred; that no valid written agreement has been brought on record by the complainant; that the cracks in the Walls, Linter and Roofs occurred due to substandard material provided by complainant and earth quake of 2005; that respondent completed construction in proper way and possession was handed over to the complainant after eight months of the contract; that the amount of wages for repairing Rs. 200,000/- is still outstanding against the complainant and he has filed the case falsely just to deprive the respondent from the said amount; that complainant has not proved any negligence of defective construction against the respondent. He placed reliance upon on 2007 YLR 1927 (Karachi)

6. I have perused the record and the evidence adduced by the parties to prove their respective versions. The learned counsel for respondent has raised objection, that the claim of complainant is time barred according to provisions of section 28(4) of the Punjab Consumer Protection Act 2005. The perusal of record reveals that during the proceedings of this case the respondent filed application for rejection of complaint on the ground of limitation and other grounds. That application of respondent was disposed of by this Court vide order dated 24-01-2011 with the observations, that the question of limitation can not be decided without recording the evidence of parties. Now the evidence of both the parties has been recorded and I would like to decide question of limitation at the first instance. According to provisions

of section 28(4) of the Punjab Consumer Protection Act 2005 "A claim of consumer shall be filed within 30 days of arising of cause of action. The first proviso provides, that consumer Court may allow the claim to be filed after 30 days if it is satisfied that there was sufficient cause for not filing the complaint within specified period. The second proviso of said section provides, that the extension shall not be allowed beyond the periods of 60 days from the expiry of warranty or guaranty period and if no period is specified, one year from the date of purchase of product or providing of services. In the present case, in the complaint and in evidence the case of complainant is that the contract of construction was given to the respondent in year 2004 and due to defective and substandard construction of respondent, Walls, Linter and Roofs were cracked and he sustained loss of Rs. 8,000,000/- spent by him in construction along-with damages of Rs.5,000,000/. Neither in the complaint nor in the evidence of the complainant and his witnesses they have mentioned any date, month or year of the alleged cracks in the Walls, Linter etc. The respondent in his written statement as well as in his evidence took the specific version that he completed the construction within eight months of the contract and cracks in building were occurred due to substandard material provided by the complainant and the earthquake in 2005. The learned counsel for complainant did not put any suggestion to the respondent, that cracks in building were occurred after 2005. The complainant in the complaint has not mentioned any date, or year of his occupation and residence in the said house. But PW3 Mohammad Yaar the own witness of complainant during cross-examination admitted that complainant is residing in the disputed house for the last about 6/7 years. He further deposed that at that time fitting of electricity and sanitary was left. The statement of PW3 supports the version of respondent, that the possession of house was taken over by the complainant in the year 2005. As the version of respondent is, that the cracks of building occurred in the year 2005 and no suggestion was given to him by the complainant side, that cracks occurred after the year 2005, therefore it is established from the record that the cracks in the building occurred in year 2005 and the cause of action if any against the respondent regarding the alleged cracks and none completion of electricity and water works was accrued in favour of

complainant in the year 2005. But complainant did not file any complaint against the respondent within time.

7. The respondent in written reply and in the evidence took the version, that the complainant got done repairing work from him and the amount of wages for repairing Rs. 200,000/- is still outstanding against the complainant. The complainant as PW1 during cross examination admitted that the respondent done the repairing work of his house. He further admitted that he has not paid any wages to the respondent for repairing work. The complainant has not mentioned the month or year of the repairing work. The respondent as RW1 during cross-examination stated that he done the repairing work of the house of complainant about two years back along-with additional work. The learned counsel for complainant did not put any suggestion to the respondent that repairing work was not done two years back and this thing shows that the repairing work was done by the respondent two years back from recording the statement of respondent which was recorded on 02-05-2011. The learned counsel for complainant did put suggestion to RW1 that some Panchayat was held between the parties prior to the repairing work which suggestion was denied by the respondent. The respondent in cross examination has clearly stated that he done the repairing work of complainant house about two years back and the complainant has not disputed this period by putting any suggestion, that repairing work was done later on. The statement of RW1 was recorded on 02-05-2011 and if calculated it is established from his statement that construction work was done in May 2009. It is the suggestion of complainant to respondent RW1 that prior to repairing work some Panchayat was held between the parties which suggestion itself shows that cause of action if any regarding the alleged substandard construction was accrued in favour of complainant prior to the repairing work which was done by respondent in May 2009. The provisions of section 28(4) of the Punjab Consumer Protection Act 2005 provide the maximum period of one year for filing the case by the consumer from the date of providing of services or the cause of action. But in the present case the complainant has filed the

claim on 13-07-2010 after the period of one year of providing the services and the arising of cause of action. The complainant has not provided any explanation or justification for this long delay in filing the case. Rather the complainant in the complaint has concealed the fact of his taking over the possession of the house and the fact of repairing got done by him from the respondent, in order to show his complaint within time . Therefore the claim of the complainant is hopelessly time barred.

8. As the complaint of complainant is barred by time and is liable to be dismissed being time barred, it is not necessary to consider contentions of parties on merits (NLR 1997 Civil 251 replied upon). Resultantly this complaint is hereby dismissed being time barred. Parties to bear their own expenses. File be consigned to record room after compilation.

Announced: 16-06-2011.

**(MUSHTAQ AHMAD TARAR)**  
*D & SJ/ Presiding Officer*  
District Consumer Court Gujrat

Certificate:-

It is certified that this order consists of **five** pages and each page has been dictated, read, corrected and signed by me.

Announced: 16-06-2011.

**(MUSHTAQ AHMAD TARAR)**  
*D & SJ/ Presiding Officer*  
District Consumer Court Gujrat