

JUDGMENT SHEET.
ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT.

W.P No. 1896/2019

Syed Zafar Ali Shah Vs. Federation of Pakistan etc.

Petitioner by: In person.

Respondents by: Ch. Abdul Rehman Nasir, Advocate for PHAF.
Barrister Muhammad Mumtaz Ali, AAG.

W.P No. 1909/2019

Dr. Shaukat Hameed Vs. Federation of Pakistan etc.

Petitioner by: Syed Zafar Ali Shah, Advocate

Respondents by: Mr. Muhammad Nazir Jawad, Advocate for PHAF.
Barrister Muhammad Mumtaz Ali, AAG.

Date of Decision: 17.01.2020.

MOHSIN AKHTAR KAYANI, J. By way of this common judgment, I intend to decide captioned writ petitions having similar question of law and facts.

2. Through the W.P No.1896/2019, petitioner (Syed Zafar Ali Shah, Advocate) claims to be the allottee of Executive Apartment No. GF-04, Block No. 01-B, Wafaqi Colony, Lahore, measuring 16.08 S.q.ft., comprising of 03 Bed Rooms, 03 Baths, Lounge, Dinning, Kitchen, Store, Balcony including dedicated covered Car Parking for each apartment vide allotment letter No.PHA/ISL/ASC/2010/11814 dated 19.09.2010. Petitioner further contends that as per the terms of the application form (scheme launched by respondents/Pakistan Housing Authority), he has paid the entire due amount through different pay orders, despite clearance of all amount, the possession was not delivered rather delayed payment of Rs. 1,940,441.00 were claimed without any legal basis, especially, when the delay has been caused by the respondents/Pakistan Housing Authority, who has failed to complete the construction within the timeframe notified in the terms of scheme.

3. Through the W.P No.1909/2019, petitioner (Dr. Shaukat Hameed Kiyani), claimed to be the allottee of Executive Apartment No. 03, Block No. 01, Ground Floor, vide allotment letter dated PHA/ASC/2010/12375 dated 12.11.2010, measuring 16.9 S.q, Wafaqi Colony, Lahore, measuring 16.09 S.q.ft., comprising of 03 Bed Rooms, 03 Baths, Lounge, Dinning, Kitchen, Store, Balcony including dedicated covered Car Parking for each apartment vide allotment letter No.PHA/ISL/ASC/2010/11814 dated 19.09.2010. He further contends that he has paid Rs. 21,15000/- with additional cost of Rs. 15,000/- for documentation charges within the prescribed time, but the respondents Authority has claimed an additional account of Rs. 778,139/- as delayed payment charges from the petitioner, despite the fact that the delay is not attributed to the petitioner.

4. Conversely, learned counsel for the respondents No. 2 & 3 contends that the building has been completed and notice regarding of non-taking over the possession of the apartment was given to the petitioners to take over the possession of apartment after the payment of delayed charges already imposed upon the petitioners as the petitioners have failed to pay the due amount within the notified schedule dates referred in the letter dated 08.12.2010, which provides the payment on the basis of 12 installments with its last date notified as 10.10.2013. He further contends that the petitioners are defaulter in payment. Learned counsel for the respondents have heavily placed a reliance upon the schedule appended with the para-wise comments, wherein late payment surcharge were calculated on the basis of clause 15 of the application form, wherein 02% delayed payment charges per month on each installment were calculated. It has lastly been contended that all these questions have been dealt by the Hon'ble Division Bench of this Court in **I.C.A No. 55/2016 and others (Akhtar Hussain and others Vs. Federation through Secretary Ministry of Housing and Works and**

others) vide judgment dated 03.05.2017, therefore, these writ petitions are not competent being contractual disputes between the parties.

5. Keeping in view the above, this Court is bound by the mandate settled in **I.C.A No. 55/2016 and others (Akhtar Hussain and others Vs. Federation through Secretary Ministry of Housing and Works and others)** vide judgment dated 03.05.2017, in which questions relating to late surcharge payment as well as delay in the completion of the apartment by PHAF have already been adjudicated. The relevant extract of the said judgment is hereby reproduced:-

"The appellants have disputed the position taken by respondent No.2 that the project had been delayed on account of stay orders issued by the Courts, or that the delay beyond respondent No.2's control. This factual controversy cannot be resolved in the constitution jurisdiction of this Court. If the material etc, they ought to take their grievance before a Court of plenary jurisdiction. Indeed, the relationship between the appellants and respondent No.2 is entrenched in a contract to hand over a constructed apartment in return for a certain price. Intricate and controversial issues regarding the cause of the delay in the construction; the quantum of escalation in the price of construction material etc, are involved in this case. Therefore, this is yet another reason why the appellants may, if so advised, invoke the jurisdiction of the learned Civil Court. In view of the above, we do not find any merit in these appeals, which are dismissed with no order as to costs. Before parting with this judgment, we may observe that should any of the appellants agitate their grievances (which are the subject matter of these appeals) before the Court of plenary jurisdiction, the said Court shall decide the cases uninfluenced by the observations made herein."

6. For what has been discussed above, both the writ petitions stand **dismissed** and the petitioners are directed to approach the Court of plenary jurisdiction for resolution of dispute qua their claim against PHAF regarding calculation of late payment surcharge or non-provision of other facilities ^{by} PHAF.

(MOHSIN AKHTAR KAKHANI)
JUDGE

RAMZAN