

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

“W.P No.611 of 2020”

Talat Faruq Lone
Versus
The Chairman, PHAF Foundation and another

Petitioner By: In person.
Respondents By: Mr. Muhammad Nazir Jawad, Advocate.
Date of Hearing: 03.08.2020

Ghulam Azam Qambrani, J: Through this petition, the petitioner has invoked the jurisdiction of this Court filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 with the following prayer:-

“It is therefore, respectfully prayed that instant writ petition and impugned letter No.PHA/ISL/POR/Cat-III/345/2020/345 dated 0.1.2020 may kindly be declared null and void and same is not approved by the competent authority. Further the respondents may also be directed to issue provisional allotment and possession letter to the petitioner of the House No540, lane No.14, Category III, PHAF, Officers Residencia Islamabad with immediate effect, in the interest of justice and fair play.

Any other relief which this Hon’ble Court deems fit and proper may also be awarded.”

2. Briefly stated facts of the petition are that the petitioner was allotted House No.540, Lane No.14, Category-III, PHAF, Officers Residencia, Islamabad, on 08.01.2020 the petitioner received a letter. No.PHA/ISL/POR/Cat-III/345/2020/345 issued by the office of respondent No.2 demanding an amount of Rs.1,786,959/- as outstanding dues. Upon receiving the above said letter, the petitioner approached respondent No.2 stating that nothing is outstanding against the petitioner, as the petitioner has already paid

an amount of Rs.1,870,972/- in response to letter dated 07.08.2019 through pay order dated 16.08.2019, but respondent No.2 did not pay any heed to his request, thereafter, he approached respondent No.1 for redressal of his grievance who also turned deaf ears to his request, hence the instant writ petition.

3. The petitioner has contended that the impugned letter has been issued without approval of the competent authority and is a result of misreading and non-reading of the material available on record, that the impugned notice has been issued without considering that nothing is outstanding against the petitioner as all the dues, charges had already been paid by him.

4. Conversely, learned counsel for respondents has opposed the contentions of the petitioner and has contended that on 07.08.2019, final cancellation/ show cause notice was issued to the petitioner to clear the outstanding dues against the house situated at Kurri Road project whereby last opportunity was offered to him to make payments of the outstanding dues amounting to Rs.1,870,972/- towards house No.540, Lane No.13 Cat-III, PHAF Officers Residencia Project Islamabad, before 24.08.2019. Further submitted that the petitioner is legally bound to honour the terms and conditions of allotment as per clause 20 of Application Form, wherein it is clearly mentioned that the petitioner will abide by the terms and conditions as will be finalized by the Pakistan Housing Authority, under Prime Minister's Housing Programme for Federal Government Officers and as will be amended from time to time by Pakistan Housing Authority. Next contended that factual controversy is involved in the matter, which cannot be resolved by this Court under its Constitutional Jurisdiction; that the petitioner has paid an amount of Rs.41,00,000/- on 16.08.2019, but the petitioner failed to pay the remaining amount of Rs.85,00,000/-, as such the petitioner was issued show cause notice that he is liable to pay penalty at the rate of 2% per month of the instalment amount. It has been further contended that the petitioner has initially deposited 15% of the total cost as down payment at the time of allotment and as per schedule

balance payment was to be paid in sixteen quarterly instalments from April 2012 till October 2017 but the petitioner did not deposit the instalment as per schedule and no instalment was received from the petitioner, till 2019, therefore, he is liable to pay delay payment charges as provided in the brochure of the scheme.

5. I have heard the arguments of learned counsel for the parties and have perused the material available on record.

6. Perusal of the record reveals that there is a contractual dispute between the parties and factual controversies are involved in the instant matter which cannot be resolved by this Court in exercise of its constitutional jurisdiction. Reliance in this regard is placed upon the cases reported as "Col. Shah Sadiq Vs. Muhammad Ashiq and others" (2006 SCMR 276) and "Muhammad Saleem Bhatti Vs. Syed Safdar Ali Rizvi and 2 others" (2006 SCMR 1957). The petitioner has deposited 15% of the total cost as down payment at the time of allotment of House No.540, Lane No.14, Category-III, PHAF, Officers Residencia, Islamabad, and as per schedule balance payment was to be made in sixteen quarterly instalments from April 2012 till October 2017. The PHAF imposes a surcharge called "*Delay payment Charges*" in order to ensure the timely payment of allotments by the allottees as provided in the terms and conditions of allotment as well as in the brochure in the scheme. The relevant clause 11 of the brochure is reproduced for ready reference:-

"In case of any deviation from the payment schedule, the allottee will be liable to penalty @ 2% per month of the instalment amount."

The petitioner was legally bound to honour the terms and conditions of the allotment, the relevant clause 20 of Application Form is reproduced hereunder:-

"20 I have fully understood and hereby agree to abide by the "Terms and Conditions" as will be finalized by the Pakistan Housing Authority under "Prime Minister's House Programme for Federal Government Officers and as will be amended from time to time by

Pakistan Housing Authority. I hereby undertake/acknowledge that:-

- a. To pay the cost of housing unit/ land/ development charges as determined and finally fixed by PHA.*
- b. To clear all dues of the housing unit*
- c. Not to claim any compensation from Pakistan Housing Authority in case of any delay in the completion of the works and handing over of the physical possession of the house for any reasons."*

On 24.07.2019 a notice of demand/ last opportunity was published in the Daily "Express" whereby seventeen defaulter allottees were instructed to pay full outstanding dues and produce necessary evidence to this effect on or before 24.08.2019, failing which their allotment shall stand cancelled and deposited amount shall be refunded after making necessary deductions as per terms and conditions of allotment but the petitioner failed to abide by the terms and conditions of the allotment. On 08.01.2020, the petitioner was issued notice with the clear understanding to clear the outstanding dues amounting to Rs.17,86,595/- at the earliest to avoid any inconvenience and that on 08.05.2020, a notice was issued to the petitioner to clear the outstanding additional cost on or before 31st May, 2020 but the petitioner failed to deposit the said amount. There were certain provisions which were implicit in the agreement of allotment of House No. 540, Lane No.14, Category-III, PHAF, Officers Residencia, Islamabad. It is not disputed that F.G.E.H.F. is a non-profit making organization whose object is to provide housing to shelter-less employees of the Federal Government. The construction of the housing scheme was not to be carried out by F.G.E.H.F. with funds from its own coffers, but with the amounts paid in accordance with the agreed schedule by the allottees. The allottees who default in making payments in accordance with the agreed schedule cannot expect F.G.E.H.F. to abide by the deadline of two years for the completion of the project. On the same analogy, the delay in the construction caused by the default in the payment of instalments by the allottees did not entitle such allottees to any

compensation. A default in the payment of instalments by the allottees certainly comes within the meaning of a "delay for some unavoidable/unforeseen circumstances" and therefore an allottee who is a defaulter would not be entitled to any compensation. In terms of the provisions of the brochure, F.G.E.H.F. would also be justified in imposing a surcharge on the delay in the payment of the additional amount in instalments.

7. In the case of Pak Gulf Construction Private Limited Vs. Abdul Hamid Baig (2019 MLD 1178), it has been held as under:-

"A purchaser cannot stop making payments in accordance with the agreed schedule for payments and expect a developer/seller to complete the construction and hand over possession of the purchased units by an agreed date. A developer/seller's obligation to hand over possession of the completed Units by an agreed date is pre-conditioned on timely payments of the sale price being made by the purchaser."

8. In the case of "Agha Saifuddin Khan Vs. Pak Suzuki Motors Company Limited" (1997 CLC 302), it has been held that:-

"The words "provisional" and "tentative" are synonymous and mean something which is temporary and not final. Thus, the costs of the apartments given in the brochure and the allotment letters were not final but tentative in nature and were subject to variations. The allottees were bound by the terms and conditions in the brochure which made an increase in the costs of the apartments permissible."

All these questions have been dealt with by the Hon'ble Division Bench of this Court in its judgment dated 03.05.2017, passed in ICA No.55/2016 titled "Akhtar Hussain and others Vs. Federation through Secretary, Ministry of Housing and Works and others" wherein questions relating to late surcharge payment as well as delay in the completion of the apartment by the PHAF have already been adjudicated. The relevant portion of the said judgment is reproduced hereunder for ready reference:-

"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 shall decide the cases uninfluenced by the observations made herein."

7. The cost of the house allotted to the petitioner was tentative and was subject to variation on account of escalation in prices and unforeseen circumstances. Further the respondents reserved the right to ask for payment of escalated prices from the allottees, which facts were brought into the knowledge of the petitioner prior to allotment of the above said house and the petitioner accepted the terms and conditions of the allotment.

8. In view of what has been disused above, there is no illegality in the impugned letter No.PHA/ISL/POR/Cat-III/345/2020/345 dated 08.01.2020 calling for interference by this Court in exercise of this constitutional jurisdiction. Resultantly, the instant petition, having no force is hereby **dismissed**.

~~RAWAT~~
Ghulam Azam Qambrani
Judge

Announced in open Court on this 06th day of August, 2020.

Judge