



## **DECISION**

Complaint No. :

POS/3408/KE/185/2022

Name and Address  
of the Complainant :

Mrs. Raheela Khatoon, Flat No. B-39, Faraz View,  
Block-13, Gulistan-e-Jauhar, Karachi.

Name of the Agency  
Complained against :

Sindh Building Control Authority - SBCA

Name & Designation of  
Investigation Officer :

Syed Farrukh Habib  
Director, Regional Office, Karachi (East)

Subject :-

**COMPLAINT AGAINST INORDINATE  
DELAY IN HANDING OVER PHYSICAL  
POSSESSION OF HOUSE NO. R-47/1,  
FALAK NAZ DREAM VILLAS BY THE  
BUILDER.**

### **THE COMPLAINT**

Mst. Raheela Khatoon in her complaint dated 22.06.2022 stated that she had booked a unit bearing No. R-471, on 12.06.2009 in the project namely Falak Naz Dream Villas, Memon Goth, District Malir. The builder was required to complete construction and handover physical possession of villa in 2014. The complainant stated that she paid her dues in installments upto 2015-16, however, when she visited the site it was observed that builder had even failed to lay plinth. She got perplexed and approached the builder, who assured her that construction would be started soon. However, despite passage of considerable period, the builder failed to adhere to his commitment of handing over physical possession of the booked unit. Complainant stated that she also approached SBCA in this regard but to no avail. She, therefore, solicited intervention of this institution in the matter.

### **PROCEEDINGS**

2. After admission of complaint by condoning delay under Section 10 of the Establishment of the Office of Ombudsman for the Province of Sindh Act, 1991, (amended up to date), as well as receiving mandatory Affidavit on Form "A" and other relevant documents, report was called from the Agency. In response, the Assistant Director (PSA&C), SBCA under letter dated 29.09.2022 forwarded builders' comments dated 22.09.2022 stating that due to non-payment of the remaining dues, the Bungalow No. R-47/1, booked by complainant was cancelled on 01.03.2016, and company was ready to refund the amount deposited by the complainant. The builder, Agency informed had offered that the allottee may be sent to the their office along with original file, to process refund case as per agreed terms and conditions.

3. The complainant in her rejoinder dated 20.12.2022 refuted the Agency's builder's claim and reiterated her earlier stand as mentioned in the original memo of complaint.

4. In order to investigate the complaint the investigating officer heard the case on 22.03.2023, 03.08.2023, 28.09.2023, 23.11.2023, 29.01.2024 and 20.02.2024. During the course of hearing it transpired that total cost of plot was shown to be Rs. 13,95,000/- plus Rs. 2,00,000/- (for extra charges on account of corner / west open / park facing) in addition to an expected loan of Rs. 18,50,000/-. The total sum as per booking brochure was Rs. 34,45,000/-. The complainant had paid Rs. 13,85,000/- i.e. the amount shown on the booking sheet. The complainant informed that builder in gross violation of terms and condition and agreed payment schedule, first sent a 3 days' Notice on 01.11.2014 and then a 24 hour Notice on 01.12.2014 demanding immediate payment of Rs. 22,14,500/- and threatened to forfeit the amount already deposited by the complainant, if the balance amount so demanded was not paid within 24 hours.

5. Subsequently, the builder issued a cancellation Notice on 01.03.2016, on account of non-payment of dues as demanded, despite having received monthly installments on 20.03.2015, 29.08.2015 and 29.09.2015. The complainant stated that such an arbitrary act of builder was agitated before the SBCA, but in vain. During the course of Investigation, the Investigating Officer also shared such action of builder with the Director (PSA&C) SBCA, asking him to explain under what law builder was authorized to act in such manner. He was also asked to furnish the original NOC issued to the builder at the time of launching the Project along with the terms and conditions set therein as well as the revised NOC of the same project with altered name issued in 2018. However, the Agency failed to furnish any of these NOC's.

6. The Agency was asked to get the project site visited in order to determine the current status of development. The Agency was also asked to examine the original file of the project to verify as to what extent builder has abided by the terms and conditions set in the original NOC accorded by SBCA at the start of project and check violations thereof. However, the Agency could only present the development status furnished by the builder. The Agency issued a final show cause notice on 14.12.2023 to the builder for alleged violations and sought reply in seven days from the builder, clearly reminding builder consequences of non-compliance, however, the builder failed to furnish any satisfactory reply to the Agency and insisted that allottee had failed to pay the balance amount for said bungalow.

7. According to the builder M/s. Al-Tameer Properties, the total amount paid by the allottee was Rs. 1,380,500/- as against an unapproved total sale price of Rs. 5,495,000/- calculated arbitrarily by the builder without approval of SBCA and due to such default the allotment of said bungalow was cancelled. The Agency instead of initiating action, as outlined in its Final Show Cause Notice dated 14.12.2023, contentedly reported that the Builder was ready to refund the deposited amount of allottee according to the terms and conditions, and desired that allottee need to appear along with original file in their office for refund process.

FINDING

8. I have examined the case file and perused correspondence, reports and rejoinders etc., and observe that:
- i. The complainant on 12.06.2009 booked a Unit No. R-47/1 in Falak Naz Dream Villas, Memon Goth, Malir on agreed cost of Rs. 13,95,000/= with additional cost of Rs. 200,000/= for Corner or West open along with expected bank loan of Rs. 1,850,000/=. The complainant has paid an amount of 1,385,000/= already to builder. The builder, as per ToRs of booking was required to deliver the physical possession of the booked unit to allottee in 2014. However, until 2015-16, the builder reportedly didn't even lay the plinth. The builder, however, assured the complainant for early completion of the project but sent a three (03) day Notice on 01.11.2014, demanding immediate deposit of Rs. 2,214,000. Another 24 hours' Notice followed on 01.12.2014 with the threat that failure to respond would result in the forfeiture of amounts and finally cancelled the booked unit on 01.03.2016.
  - ii. The Agency failed to show cause the builder upon such cancellation of complainant's duly allotted bungalow without approval of Authority and without observing due process as per provisions of Section 5-1. 11.1, 5-1. 11.2, 5-1. 11.3, of KB&TP Regulation 2002. On the contrary it opted to toe the builders line, offering to refund the allottee's dues "*as per builder's terms and conditions*" instead of enforcing provisions of KBTP Regulation 2002 governing such refunds. The Agency's such blatant disregard of rules tends to suggest that it is in cahoots with the builder.
  - iii. Given the circumstances, it appears to be a clear-cut case of *dereliction of duties* by the agency, with its multiple systemic failures to act as per law. The approval of the project is contingent upon compliance with various conditions and requirements, including adherence to specified completion timeline. As per Section 5-1.16 of Karachi Building Town Planning Regulations-2002 "*the builder shall require to maintain steady progress of work irrespective of the situation of the payment by the individual allottees and availability of the loan by the loan giving agency*".
  - iv. The SBCO, 1979 and the Karachi Building Town Planning Regulations-2002 empowers the Agency to take action on violation. Section 7-A provides that the agency in case of violations of certain provisions by the builders may take action including sealing of the building or ejection of the occupants. Section 9 deals with granting of license subject to adherence and compliance of the terms and conditions of *Regulatory Body* as stipulated in the said law.

- v. The builder has clearly failed to abide by the terms and conditions of the NOC given for the project and complete the project as per agreed schedule as well as failed to hand over possession to the allottee(s). The Agency despite being authorized under SBCO 1979 and Karachi Building Town Planning Regulation – 2002, failed to assert and act as Principal Regulatory body and take action against the builder for violations, thus guilty of gross mal-administration. Its gross negligence is manifested in the careless manner it allowed extension in NOC and change of name of project to the builder, who failed to complete project and hand over possession to the Allottees even by the second extended deadline i.e. 31.12.2020, without ascertaining the failure of builder in abiding by the terms and conditions of the NOC.

### **DECISION**

9. In view of the above and in exercise of powers conferred upon me vide section 11 of the Establishment of the Office of Ombudsman for the Province of Sindh Act, 1991 (as amended up to date) I direct the Director General, Sindh Building Control Authority to enquire into this blatant dereliction of duties by officers responsible to enforce and implement the provisions of SBCO 1979 and KBTR 2002. He is further required to order initiation of action as stipulated in the Final Show Cause Notice issued by the Authority on 14.12.2023 and declare the action by builder of cancellation of complainant's unit as null and void and order him to restore its allotment and ensure its peaceful possession, to the allottee as per actual terms and conditions and cost, as agreed at the time of booking.
10. Compliance report of the same need be furnished in 120 days.

*Given under my hand and seal of the office*



- **Sd \-**

(Muhammad Sohail Rajput)  
Sitara-e-Imtiaz. PAS  
Ombudsman Sindh

Karachi, dated 09 - 12 - 2024