

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Constitutional Petition No. D-3299 of 2022

Date	Order with signature of Judge
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1. For hearing of Misc. No.14641/2022
2. For hearing of main case.

30.10.2024

Mr. Arsalan Wahid, Advocate for the petitioner.
Mr. Jawad Dero, AAG for respondent No.1.
Mr. Iqbal Khurram, Advocate for the respondents No.2 & 3.

Through instant Constitutional Petition, the petitioner, inter alia, seeks following relief:

- a. Direct the respondents to accept the remaining payment i.e. Rs.50,000/- without revising the schedule for the petitioner's flat since the petitioner has never been a defaulter and has paid about 83% of the entire cost/payment of the flat by 2006;*
- b. Direct the respondents to complete the project and give immediate possession of the subject flat No.F-211, Block-F, Shah Latif Town, Scheme 25-A, Malir Development Authority, Karachi after completion, since the said project was to be completed by 2006;*
- c. Direct the respondents to compensate the petitioner in lieu of the mesne profit and / or rent for the subject flat at the KIBOR rate, since the respondents have failed to give timely possession of the subject flat to the petitioner;*
- d. Permanently and pending disposal of the main petition, while restraining the respondent from cancelling the allotment order issued on 23.01.1998 in favour of the petitioner, and from issuing fresh schedule of rate for the remaining payment i.e. Rs.50,000/- in respect of the flat of the petitioner and further restrain them from taking any coercive action, which may be against the right and lawful interest of the petitioner in respect of the subject flat i.e. flat No. F-211, Block-F, Shah Latif Town, Scheme 25-A, Malir Development Authority, Karachi.*

Learned counsel for the petitioner contends that the petitioner was issued an Allotment Order by respondents No. 2 & 3 in respect of Flat No. F-211, Block-F, Shah Latif Town, Scheme 25-A, Malir Development Authority, Karachi, through computerized balloting, with a promise to provide timely possession of the flat; that the petitioner has paid

approximately 83% of the total cost of the subject flat; that respondent No.3, vide letter dated 02.02.2022, required the petitioner to sign and return a consent form, attached to the said letter, if he wished to retain the flat and was willing to pay the balance amount as per the revised current cost; that the petitioner strongly objected to the contents of this letter, resisting the offer made and, inter alia, demanding that rent for the booked flat be paid to him from 01.01.2005, as the project was supposed to be completed by 2004; that despite this, no satisfactory response was given by respondent No. 3; that since the petitioner has already paid 83% of the total cost of Rs.300,000 from 1998 to 2005, according to the schedule, he does not fall within the category of defaulters and, therefore, revising the rate schedule by the respondents is unwarranted and unlawful; and that since the respondents are acting with malafide intent and ulterior motives to deprive the petitioner of his rightful flat, hence the instant petition has been filed.

Heard and perused the record.

It is an admitted position that there was a contract between the petitioner and the respondents in respect of the subject flat. It is a settled principle of law that contractual obligations cannot be adjudicated through a Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. In this respect reliance can be placed on the decision in the case of *Pakcom Limited & Others Vs. Federation of Pakistan & Others (PLD 2011 SC 44)*, wherein the Supreme Court of Pakistan, while examining the issue of enforcement of contractual obligations, has held that “*the contractual rights, commitments, undertakings and obligations have to be enforced through courts of ordinary jurisdiction which should not be interfered with by the High Court while exercising its Constitutional jurisdiction especially in those matters arising out of a contractual obligations*”. In the said decision it was further held by the Apex Court that

“In such like eventualities the normal remedy to law being a suit for enforcement of contractual rights and obligations would be availed instead of invocation of Article 199 of the Constitution merely for the purpose of enforcing contractual obligations”.

In view of the above, this petition, being not maintainable, is dismissed, along with the listed application, leaving the petitioner at liberty to approach the relevant forum under usual mode of proceedings, if so advised and permissible under the law.

JUDGE

JUDGE

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