

Judgment Sheet

**IN THE HIGH COURT OF SINDH AT KARACHI**

Suit No. 822 of 2010

Present :

Mr. Justice Nadeem Akhtar

Date of hearing : 19.12.2012.

Plaintiff : Muhammad Idrees, through  
Mr. Farooque Hashim Advocate.

Defendant : Muhammad Ashraf called absent.

**JUDGMENT**

**Nadeem Akhtar, J.-** This suit for specific performance, recovery of monthly rent and permanent injunction has been filed by the plaintiff against the defendant in respect of two flats ; namely, flat Nos. 3 and 4 both situated on the first floor of

the building known as "Jawed Homes" constructed on Plot No. 3-F, 17/8, Nazimabad No.3, Karachi.

2. It is the case of the plaintiff that the defendant, who is a builder, agreed to sell both the aforementioned flats to him in consideration of Rs.2,400,000.00 each and executed two separate agreements of sale dated 10.06.2007 (Exhibits No.PW-1/4 and PW-1/5) in favour of the plaintiff. As per the terms and conditions of the agreements, the plaintiff was required to pay to the defendant an advance amount of Rs.1,200,000.00 for each flat, being 50% of the agreed sale consideration. The said 50% payment was duly made by the plaintiff on 10.06.2007 and 01.07.2007 in respect of flat No.3 vide receipts / Exhibits No.PW-1/7 and 1/8, respectively, and on 19.06.2007 and 09.07.2007 in respect of flat No.4 vide receipts / Exhibits No.PW-1/9 and 1/10, respectively. It was further agreed that out of the balance 50% amount, 25% was to be paid by the plaintiff at the time of completion of the structure of the building / project, and the remaining 25% at the time of execution and registration of the sale deeds / sub-lease deeds in his favour, and delivery of the physical possession of the flats along with the original title documents thereof. It was also agreed that the defendant shall be liable to pay monthly rent to the plaintiff, in case the possession of the flats was not handed over by him to the plaintiff on the agreed date.

3. It is also the case of the plaintiff that under the terms and conditions of the agreements, the defendant was obliged to complete the entire project and to handover the physical and vacant possession of both the flats to the plaintiff along with connections of all utilities etc. within a period of seven to eight (07 to 08) months, that is, in January / February 2008. The plaintiff has alleged that he repeatedly requested the defendant to complete his part of the contract by delivering vacant and physical possession of both the flats to him and also by transferring the title thereof in his favour, but the defendant did not honour his promise and failed to complete the project. As such, the defendant was

constrained to send two legal notices through his counsel to the defendant, calling upon him to complete the sale in his favour, and to pay the agreed rent to him in respect of both the flats for the period commencing from February 2008. The legal notices sent to the defendant by the plaintiff's counsel through TCS were returned undelivered. The legal notices dated 31.01.2009 and 27.04.2010 and the undelivered / returned envelopes, have been produced by the plaintiff as Exhibits PW-1/13 to 1/18.

4. Summons issued to the defendant initially through bailiff were returned unserved. Thereafter, summons were repeated through bailiff and were also published in the Urdu daily '*Nawa-e-Waqt*' of 24.12.2010. However, the defendant failed to appear and did not file his written statement. Accordingly, vide order dated 24.01.2011, the service on the defendant was held good and the Suit was ordered to be proceeded ex-parte against him.

5. At the time of filing of the Suit, the plaintiff also filed an injunction application bearing CMA No.5429/2010, praying that the defendant be restrained from selling, transferring or alienating the flats in question, and / or from delivering the possession thereof to any third party. Vide order dated 19.07.2012, this application was allowed as prayed, subject to the deposit of the balance sale consideration of Rs.2,400,000.00 for both the flats by the plaintiff with the Nazir in two equal installments of Rs.1,200,000.00 each ; the first one within one month from the date of the said order, and the second one within three months from the date of the said order. In compliance of the said order, the plaintiff deposited the entire balance sale consideration with the Nazir of this Court.

6. The plaintiff examined himself, and produced the originals of both the agreements, the layout plan, the receipts of payments made by him to the defendant, the receipts of the amounts deposited by him with the Nazir, the

receipt issued by the real estate agent in respect of the commission paid by him, the undelivered envelopes containing legal notices issued by him, and the office copies of the two legal notices issued by him. The plaintiff was not cross examined by or on behalf of the defendant as the defendant was absent when the examination in chief of the plaintiff was recorded. As such, the cross examination of the plaintiff was marked 'Nil', and his side was closed. Thereafter, the matter was fixed for final disposal as the defendant had already been declared *ex parte*.

7. The contents of the plaint and those of the affidavit in *ex parte* proof were reiterated by the plaintiff in his examination-in-chief, which remained unrebutted. The documents produced by the plaintiff clearly show that there were agreements in respect of the flats in question between him and the defendant, and that the plaintiff performed his agreed part of the contract by paying 50% of the agreed sale consideration to the defendant as per the terms and conditions of the agreements, and by depositing the remaining 50% with the Nazir in pursuance of the order passed by this Court. Thus, the entire agreed sale consideration has been paid by the plaintiff. In the agreements, the defendant specifically undertook to handover vacant and physical possession of both the flats to the plaintiff within a period of seven to eight (07 to 08) months, that is, in January / February 2008. By not completing the project and by not handing over the possession of the flats to the plaintiff within the agreed period, the defendant committed a breach of the agreements, and the averments and allegations by the plaintiff in this behalf stand proved in the absence of any denial or rebuttal by the defendant.

8. The agreements (Exhibits PW-1/4 and 1/5) show that, though no amount was specifically mentioned, but the defendant had made an endorsement therein in his own handwriting that in case of his failure in handing over the flats on the date agreed in the agreements, the plaintiff would be entitled to receive monthly rent from him. The plaintiff has claimed rent from the defendant at the

rate of Rs.20,000.00 per month with effect from 10.02.2008 for both the flats, which appears to be just and reasonable in the prevailing circumstances. There is no denial or rebuttal by the defendant regarding his promise to pay rent to the plaintiff, or about the rate and period of rent claimed by the plaintiff.

9. In view of the averments made by the plaintiff in the plaint, the original documents / evidence produced by him as well as in view of the breach committed by the defendant, the plaintiff has successfully proved his case. I do not see any reason for disbelieving the plaintiff especially when the case set up by him and the evidence produced by him have remained unchallenged / unrebutted. Therefore, the plaintiff is entitled to the reliefs sought by him in this Suit against the defendant.

Foregoing are the reasons for the short order announced by me on 19.12.2012, whereby this Suit was decreed with costs against the defendant as prayed by the plaintiff.

**J U D G E**

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\*Suit 822-2010-SP-Farooq Hashim/Judgment Single/Court Work/Desktop/ARK\*