JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD

CASE NO. : C.R. NO.13-2018
Umer Parwez
Vs.
M/s Oasis Developers, Islamabad etc.
CASE NO. : C.R. NO.14-2018
Umer Parwez
Vs.
M/s Oasis Developers, Islamabad etc.
CASE NO. : C.R. NO.15-2018
Umer Parwez
Vs.
M/s Oasis Developers, Islamabad etc.
CASE NO. : C.R. NO.16-2018
Umer Parwez
Vs.
M/s Oasis Developers, Islamabad etc.
CASE NO. : C.R. NO.17-2018
Umer Parwez
Vs.
M/s Oasis Developers, Islamabad etc.

Petitioner by : Mr. Sher Afzal Khan Marwat, Advocate
Respondents by : Mr. Junaid Jahangir, Advocate
Date of hearing : 22.10.2020

AAMER FAROOQ J. This judgment shall decide instant Civil Revision as well as C.R. No.14-2018, C.R. No.15-2018, C.R. No.16-2018 & C.R. No.17-2018, as common questions of law and facts are involved.

2. The petitioner entered into agreements to sell for purchase of apartments in the Project under the name and style 'Elysium Towers" situated at Plot No.5, Blue Area, F-8/G-8 (Opposite Centaurus Mall), Islamabad. In this behalf, referred Plot was owned by respondent No.1 being a Partnership Concern with respondents No.2 to 7 as its

partners. The agreements to sell were entered with respect to Apartment Nos.405, 1004, 1005, 1104 & 1105 respectively for consideration in the sum of Rs.78,32,750/-, Rs.90,69,500/-, Rs.1,65,38,500/-, Rs.1,50,35,000/- & Rs.82,45,000/- respectively. The payment was payable in 18-installments in accordance with schedule as provided in the allotment letters dated 28.02.2014. In this behalf, first installment was to be paid on 20.09.2014 and the last on 20.12.2018. It seems that controversy arose between the parties due to some family disputes between the petitioner and respondents No.2 & 5; moreover, the petitioner, being apprehensive that Project would not be completed in time in 2016, served notice to respondents and eventually, stopped making payment of installments on the ground that since construction has not yet started, it is impossible that same would be completed in 2018. After stoppage of payment of installments, respondents issued letter dated 22.06.2016 for payment of surcharge as envisaged in terms of installments. The petitioner challenged the referred action of respondents by way of Civil Suits against the respondents seeking declaration and injunction; along with the suit, application for interim relief, was also filed. During the pendency of referred suit, respondents cancelled the allotments in favour of petitioner vide letter dated 02.08.2016. The petitioner amended the suit and also sought declaration that impugned cancellation letters are illegal. It seems that amended application for interim relief was also filed, in which, objection was taken by the respondents that same is without permission of the court, however, learned trial court, vide order dated 21.11.2017, allowed the application and restrained respondents from further alienating apartments, subject to payment of balance

consideration amount/installment. Appeal was preferred by the respondents, which was allowed vide the impugned order dated 23.01.2018, hence Civil Revisions.

3. Learned counsel for the petitioner *inter alia* contended that respondents are in breach of their obligation inasmuch as they were supposed to hand over possession of apartments at the time of payment of final installment, which they have failed to do so. It was contended that failure, on part of respondents, is due to the fact that no approval of building plan was obtained from CDA; that the petitioner has all along followed the installment plan and payment was stopped only because respondents had breached their obligation; that in case, respondents further alienate properties, there would be multiplicity of litigation; that jurisdiction has been exercised by learned appellate court with material irregularity.

4. Learned counsel for the respondents *inter alia* contended that instant petitions have become infructuous inasmuch as apartments, in question, were immediately put for sale after cancellation and agreements have been entered into; that the case of the petitioner is different as pleaded in the civil revisions. It was submitted that suits filed by the petitioner were not for specific performance of agreements but rather for declaration in order to conceal his obligation. It was further contended that suits are defective and not maintainable as well. In support of his contentions, learned counsel placed reliance on cases reported as 'Mst. Rehana Bashir Vs. Mst. Badar Jehan and 6 others' (PLD 2006 Lahore 283), 'Malik Muhammad Hayat Khan Vs. Subedar Yar Muhammad Khan' (PLD 1996 Supreme Court 612), 'Mauj Ali Vs. Ghulam Sarwar and another' (2007 CLC 1565), 'Zafar Ahmad Vs. Mst. Hajran Bibi' (PLD 1986 Lahore 399), 'Karachi Shipyard and

Engineering Works Limited and 5-others Vs. Muhammad Shakir Sheikh' (1993 CLC 330), 'Mst. Kulsoom (Fatma) Vs. Wazir Ali and 13-others' (1991 MLD 1810), 'Muhammad Yousaf Vs. Munawar Hussain and 5-others' (2000 SCMR 204), 'Muhammad Ilyas Vs. Muhammad Waseem and 3-others' (2017 YLR 1448) and 'Iqbal Ahmed Vs. Col. Abdul Kabir' (2005 YLR 1916).

5. Arguments advanced by learned counsel for the parties have been heard and the documents, placed on record, examined with their able assistance.

6. The factual aspect of the controversy has been mentioned in the preceding paragraphs, therefore, need not be reiterated.

7. The petitioner is aggrieved of dismissal of his application for interim relief.

8. The grievance of the petitioner is that since respondents breached their obligation to timely handover the possession of apartments, hence he stopped making payment of installments, on which, allotment of apartments was cancelled. In this behalf, the terms of allotment are pertinent as provided in letters dated 28.02.2014. For the purposes of present controversy, clauses 3, 4 & 5 of allotment letter are relevant and are as follows: -

> *"3. The allottee shall strictly abide by the schedule of payment as agreed upon in the agreement, failing which the firm shall recover a penalty of PKR 100 per day for every PKR 100,000/- (Rupees one hundred thousands only) paid late. For example an installment of PKR 500,000/- is being delayed for 10 days, in this case a penalty of PKR 5000/- (500x10) will be charged. In case of non-payment of two consecutive installments, whether formally demanded or not, the firm will have the right to cancel the booking/allotment and refund the*

payments made by the allotee after deducing 10% of the total price of the apartment (as establishment charges) and amount secured as delayed payment charges. However such re-imbursements shall be made as and when the said is rebooked/sold to the new buyer.

4. *The possession of the apartment shall be delivered on or before 20.12.2018. However, in case of failure to deliver the possession within due date then the Firm shall be given a grace period of six months to do the same.*
5. *If the Firm does not deliver the physical possession of the same apartment till expiry of the grace period then the firm will pay the allottee the compensation of the said apartment as PKR 20,000 (Rupees twenty thousand only) per month, however if the delay caused id due to natural calamity, political unrest or any environmental issue then the firm will not be held responsible for delay caused by the above:*

The above clauses clearly show that purchaser has to abide by the payment plan and in case of default, penalty would ensue. Likewise, in case of failure on part of owners to hand over the vacant possession on or before 20.12.2018, the allottee is entitled to a compensation @ Rs.20,000/- per month. Nowhere, it is provided in the terms of allotment that in case of failure to deliver the possession on or before the due date, the allottee is not to make the payment. The parties have agreed to settle the matter by way of monetary compensation in case of default either by the allottee or the owner. Moreover, under clause 3 ibid, non-payment of installments as per schedule of payment entitles the owner to cancel the allotment.

9. The petitioner has proceeded in the matter in a callous way. The suit is for declaration and not for specific performance and even principle prayers made in the original suits in respect of declaration are regarding 'payment/non-

payment of surcharge'. The prayer regarding cancellation of allotment was added subsequently. Though learned counsel for the respondents, in written submissions, has mentioned in an evasive manner but it seems that apartments have been put up for sale and agreements have been entered into hence prayer sought has become infructuous. Even-otherwise, principle of *lis pendens* would be applicable in case the prayer against cancellation is allowed.

10. The learned appellate court committed no jurisdictional error while accepting appeal of the respondents warranting interference.

11. In view of above, above mentioned Civil Revisions are without merit and are accordingly dismissed.

(AAMER FAROOQ)
JUDGE

Announced in Open Court on 20.01.2021

JUDGE

Zawar