

OFFICE OF THE FEDERAL OMBUDSPERSON

FOR PROTECTION AGAINST HARASSMENT OF WOMEN

AT THE WORKPLACE, ISLAMABAD

FORM OF ORDER SHEET

Complaint No. FOH-HQR/0000311/2022

Date of Institution: 03.08.2022

Serial No. of Order of Proceedings	Date of order of Proceedings	THE ENFORCEMENT OF WOMEN'S PROPERTY RIGHTS ACT, 2020 Order of other proceedings with Signature of Federal Ombudsperson QURATUL AIN ZAFAR VS ARSALAN HAMEED & OTHERS
1	2	3
47	25.10.2023	<p>Subject: Final Order on the Complaint filed under the Enforcement of Women's Property Rights Act, 2020</p> <p><u>Factual Background</u></p> <p>1. The facts of the case are that Quratul Ain Zafar (“Complainant”), became co-owner of Plot No.923, Street 23, Block-C, measuring 30*60, situated at Gulberg Residencia Phase-III, Islamabad (“suit property”), a project of IB Employees Cooperative Housing Society (“Respondent No.3”), vide provisional allotment letter dated 02.05.2019. She thereafter entered into a sale agreement on 15.02.2022 with Arsalan Hameed (“Respondent No.1”) in respect of the suit property against a sale consideration of Rs.8,500,000/-. Of this amount Rs.4,000,000/- was paid in cash to the Complainant while the remaining sum of Rs.4,500,000/- was paid in the form of a post-dated cheque No.00133529. The transaction had to be completed by 15.04.2022. In order to secure the interest of each party to the transaction the Respondent No.1 handed over the file of Apartment No.206, 2nd Floor, situated at Yaseen Arcade, D-Markaz, Gulberg Islamabad (“guarantee property”) to the Complainant as a guarantee against the balance consideration whereas the Complainant executed a General Power of Attorney in favour of Mr. Raja Mansoor Ishtiaq (“Respondent No.2”), the nominee of Respondent No.1, on 14.02.2021 which granted Respondent No.2, <i>inter alia</i>, the power to sell, hire, lease etc. the suit</p>

property. Ultimately, the suit property was transferred in the name of Mr. Chaudhary Habib Ahmed Chohan by Respondent No.2 vide sale agreement dated 06.04.2022 and to this effect a provisional allotment letter was issued in the former's favour on 14.04.2022 by Respondent No.3. On 30.04.2022 the Complainant's husband presented the cheque for encashment but the same was returned by the bank due to insufficient funds being present in Respondent No.1's account. The Complainant then tried to approach Respondent No.1 and Respondent No.3 for redressal of her grievance, namely, the payment of balance consideration and the transfer of possession of the guarantee property to the Complainant. However, all these efforts of the Complainant were in vain. Therefore, she filed the instant complaint before this forum under Section 4 of the Enforcement of Women's Property Rights Act, 2020 ("**Act**") praying, *inter alia*, that the Respondent No.1 pay her the outstanding amount of Rs.4,500,000/- and that Respondent No.3 be directed to not transfer the possession of suit property to any other person.

2. During the proceedings of the case, Respondent No.3 objected to the complaint filed by the Complainant on the grounds that she was no longer the owner of the suit property and that the case was not one of dispossession but of breach of contract for which the law provided a separate remedy. In the meanwhile Respondent No.1 and Respondent No.2 were proceeded ex-parte as they failed to appear before this forum, however, on 10.08.2023 it transpired that Respondent No.1 was being held in Adiala Jail. He was accordingly summoned. Before this forum he made an oral statement in which he accepted his liability to the Complainant and agreed for the guarantee property to be transferred in her name by Respondent No.3 to clear her dues. Subsequent to this statement of Respondent No.1, the legal advisor of Respondent No.3 agreed to transfer the guarantee property in the name of the Complainant if this forum so ordered.

3. I have heard the arguments of the parties and have also perused the attached record.

Determination by Ombudsperson

4. It is clear from the provisions of the Act that for this forum to take action on the complaint of a woman who is aggrieved by the deprivation of her property, whether movable or immovable, two conditions must be satisfied by her, namely:

- i. The property must be situated in Islamabad Capital Territory (refer Section 1(2) of the Act); and
- ii. The woman must be deprived of either the ownership and/or the possession of her property by any means (refer Section 4(1) of the Act).

In the present case there is no dispute by either side that both the guarantee property and the disputed property are situated within the boundaries of Islamabad Capital Territory. Accordingly, condition (i) is satisfied. Further, prior to the transfer of the suit property in the name of Mr. Chaudhary Habib Ahmed Chohan it is on record that the same was co-owned by the Complainant and Respondent No.1 has also acknowledged that although he received the suit property from the Complainant he has not paid her the balance sum of Rs.4,500,000/-. In this result, it is clear that the Complainant has been deprived of the ownership and possession of her property thereby fulfilling condition (ii).

In the case of **Mohsin Ali Khan Vs. Federal Ombudsman Secretariat for Protection against Harassment of Women at the Workplace,**

Islamabad (2022 CLC 1955) the Islamabad High Court has observed:

“20. ...(d) Any woman can file a complaint under Enforcement of Women's Property Rights Act, 2020 who owns any property in Islamabad Capital Territory by way of registered sale deed, mutation, allotment letter, provisional allotment letter or through any other legal instrument, through which a property rights are conveyed to her with specific details and description, which has been taken over by force or by way of fraud or through any other mode and mean against the legal rights of a woman, the Ombudsman shall have the jurisdiction to restore the rights of such a complainant/woman by exercising her authority in joint collaboration with Deputy Commissioner of Islamabad Capital Territory and other state agencies by treating the same as a complaint.”

(emphasis supplied)

5. I have already noted in para 1 above that the Complainant became owner of the suit property vide provisional allotment letter dated 02.05.2019 and the Respondent No.1 has also admitted the factum of purchasing the suit property from her. Therefore, there is merit in the Complainant's stance that she has been deprived of the ownership and possession of her property through unlawful means.

Conclusion

6. In light of the foregoing discussion I allow the complaint filed by the Complainant. Accordingly, invoking my power under Section 5 of the Act I direct Respondent No.3 to confer title and possession of the guarantee property on the Complainant by the next date of hearing.

7. Matter to come up for submission of compliance report by Respondent No.3 on **14.11.2023**.

FEDERAL OMBUDSPERSON