

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

R.F.A.No.629 of 2021  
Secretary, Ministry of Housing and Works and others  
**Versus**  
Akhtar Hussain and others

**Dates of Hearing:** 01.03.2022 & 27.06.2022  
**Appellants by:** Mr. Hazrat Wali Khattak, Advocate  
**Respondents by:** Raja Muhammad Khan and Ahtesham Aslam Khan,  
Advocates for respondents No.1, 5, 11, 17, 24, 25  
and 26  
Hafiz Farman Ullah, Advocate for respondents  
No.21, 22 and 24

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**MIANGUL HASSAN AURANGZEB, J:-** Through the instant regular first appeal, the appellants impugn the judgment and decree dated 23.09.2021 passed by the Court of the learned Civil Judge, Islamabad, whereby the suit for declaration etc. instituted by the respondents was decreed and the appellants were directed to handover the possession of apartments to the respondents / allottees within one month. Furthermore, the letter dated 03.06.2014 whereby a demand for the payment of further amount of Rs.8,84,000/- was made by the Pakistan Housing Authority Foundation (“P.H.A.”) from each of the respondents / allottees was declared unlawful.

2. The record shows that in the year 2008 the P.H.A., in collaboration with the Ministry of Housing and Works, launched a project called “*Housing Scheme for Low-Paid Federal Government Employees (BPS 1-16) at Islamabad*” (“the Project”) and in this regard issued a brochure (Exh.P/1) which contained *inter alia* the terms and conditions on which allotment of residential apartments could be made in buildings to be constructed in Sectors G-10/2 and G-11/3, Islamabad. The Project was a welfare measure for the benefit of low-paid Government servants on “*no-profit no-loss basis.*”

3. All the respondents were allotted D-Type apartments. It is an admitted position that the respondents had paid the entire price of the apartments as indicated in the brochure issued by the P.H.A. The respondents’ case is that work on the Project was supposed to start in the

year 2008 and the completed apartments were supposed to be handed over to the respondents within 24 months.

4. It is not disputed that the construction work on the project started in November 2008 but was subsequently halted for a long time. After the work on the Project resumed the P.H.A., vide letters dated 03.06.2014, informed the allottees that the work on the Project was in full swing and likely to be completed in the first quarter of 2015. Furthermore, the allottees were required to pay an additional cost of Rs.8,84,000/- incurred on "D" type apartments. The said amount was required to be paid in installments spreading over more than eight months.

5. Aggrieved by the said letter dated 03.06.2014, some of the respondents filed writ petitions before this Court. These petitions were dismissed vide judgment dated 03.02.2016. Intra Court appeals preferred against the said judgment were dismissed by the Division Bench of this Court vide judgment dated 03.05.2017. In the said judgment, it was observed that the parties who had filed the writ petitions could approach the Civil Court for the redressal of their grievances. Consequently, on 19.06.2017, the respondents filed a suit for declaration, permanent and mandatory injunction before the Court of the learned Civil Judge, Islamabad. In the said suit, the plaintiffs (respondents herein) prayed for a declaration to the effect that the P.H.A.'s demand of Rs.8,84,000/- as additional cost for the apartments was unjustified and that the P.H.A. was bound to give possession of the apartments complete in all respects to the respondents. Furthermore, it was prayed that an amount of Rs.25,000/- per month be paid by the P.H.A. as rent for the period during which the plaintiffs had been deprived of possession of their apartments.

6. The P.H.A. and the Ministry of Housing and Works contested the said suit by filing a written statement. From the divergent pleadings of the contesting parties, the learned Trial Court, vide order dated 06.03.2018, framed the following issues:-

- "1. *Whether the plaintiff is entitled to decree for declaration, permanent and mandatory injunction, as prayed for? OPP*
2. *Whether the suit is not maintainable in its present form, hence the suit is liable to be dismissed? OPD*
3. *Whether the plaintiff has no locus standi to file the instant suit, hence the plaint is liable to be rejected? OPD*

4. *Whether the suit is false, frivolous and vexatious, therefore, the answering defendants request for special cost u/s 35-A of C.P.C.?*  
*OPD*
5. *Relief."*

7. After recording the evidence and hearing the contesting parties, the learned Trial Court, vide judgment and decree dated 23.09.2021, partly decreed the suit by setting-aside the P.H.A.'s letters dated 03.06.2014 and directing the P.H.A. to hand over possession of the respondents' apartments within a period of one month. The learned Trial Court turned down the plaintiff's prayer for the grant of compensation until the handing over of the apartments. The said judgment and decree has been assailed by the appellants, the Ministry of Housing and Works, and the P.H.A. in the instant appeal.

8. Learned counsel for the appellants, after narrating the facts leading to the filing of the instant petition, submitted that the brochure issued by the P.H.A. had contractual force and clause 10.1 thereof explicitly provides that the cost of the apartments mentioned in the schedule were tentative in nature and that the cost of the apartments could increase due to factors beyond the control of the P.H.A.; that the terms and conditions attached with the application forms also made it clear that the cost of the apartments were tentative in nature; that allottees had agreed to pay the cost of apartments as determined and finally fixed by the P.H.A. and not to claim any compensation from the P.H.A. in case of any delay in the completion of the works; that the learned Trial Court has not given due consideration to the provisions of the brochure as well as the terms and conditions attached with the application forms; that the P.H.A. operates on no-profit and no-loss basis, and therefore the increase in the cost of the Project caused due to inflation had to be paid by the allottees / respondents; that the construction work on the Project started in November 2008 but the same was stopped due to an injunctive order dated 18.08.2011 passed by this Court in civil suit No.168/2011; that after the injunction was vacated, work on the Project resumed in 2014; that there had been inflation in the cost of construction material during the period when works on the Project were halted; that there were a total number of 368 allottees out of whom 347 allottees had paid the additional cost and taken possession of their respective apartments; that only those allottees could not be given possession of their

apartments who had not paid the additional cost; and that since the value of the apartments has appreciated many folds, the refusal on the part of the respondents to pay the additional cost is unreasonable and unjustified. Learned counsel for the appellants prayed for the appeal to be allowed and the civil suit instituted by the respondents to be dismissed.

9. On the other hand, learned counsel for the respondents submitted that the respondents are low-paid employees of the Federal Government; that the respondents cannot afford to pay additional charges amounting to Rs.8,84,000/- per apartment; that although the prices of the apartments were stated in the brochure to be tentative in nature, they could only be increased by the P.H.A. due to factors beyond its control and on the basis of the actual expenditures incurred on the completion of the apartments; that the injunctive order dated 18.08.2011 on which the appellants placed reliance did not restrain the P.H.A. from continuing with the construction works; that the said injunctive order was issued by this Court in a litigation between the contractor and the sub-contractor; that the additional cost caused due to negligence on the part of the contractor should have been recovered by the P.H.A. from the contractor instead of burdening the low-paid respondents with the additional cost; that the 24-month period within which the P.H.A. was obligated to complete the project expired in the year 2010; that beyond the said period, the P.H.A. was under an obligation to pay rent to the respondents; that the demand of Rs.8,84,000/- from each of the allottees made through the P.H.A.'s letters dated 03.06.2014 is unlawful and unreasonable; and that the impugned judgment and decree does not suffer from any legal infirmity. Learned counsel for the respondents prayed for the appeal to be dismissed.

10. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the instant appeal have been set out in sufficient detail in paragraphs 2 to 7 above and need not be recapitulated.

11. All the respondents were allottees of "D" type apartments. The estimated floor-wise price of "D" type apartments and the schedule for payment were set out in clause 11.8 of the brochure (Exh.P-1). Clause 12 of the brochure provided that construction would commence in July 2008

tentatively on approval of plans by the concerned authorities. It was also provided that the project was expected to be completed within 24 months.

12. The cost of the apartment and the manner in which the cost is to be paid is set out in clause 11.8 of the brochure. Whether the cost of the apartments mentioned in clause 11.8 of the brochure were fixed or tentative can be gauged from clauses 10.1 and 10.3 of the brochure which are reproduced herein below:-

***“10.1 The costs are tentative and are subject to variations on account of escalation in prices and unforeseen circumstances. The cost of apartment, if increases due to the factors beyond control of PHA, shall be finally determined and charged from the allottees on the basis of actual expenditures incurred on completion of the apartments which will be communicated to the allottees in due course.***

***10.3 The allottees shall be required to bear, if in case required in future, the increase in expenses on account of consultancy charges and any unforeseen expenses contingent on the execution of the scheme in the form of taxes, overheads etc., including the expenditure on account of the establishment / service charge of PHA as may finally be determined and shall be approved by the Authority.”***

**(Emphasis added)**

13. In the application forms (Exh.D.1 to Exh.D.3) submitted by the applicants / respondents for the allotment of apartments, the applicants undertook *“not to claim any compensation from Pakistan Housing Authority in case of any delay in the completion of the works and handing over of the physical possession of the apartment for any reasons.”* The applicants also committed to abide by the terms and conditions as given in the brochure which could be amended from time to time by the P.H.A. In this regard clause 21 of the application form is reproduced herein below:-

***“I have fully understood and hereby agreed to abide by the “Terms and Conditions” as given in the brochure titled “Prime Minister’s Housing Scheme for Low-paid Federal Government Employees in Islamabad” and as will be amended from time to time by the Pakistan Housing Authority.”***

14. Clause 7(a) of the terms and conditions attached with the said application form provides that to cater for escalation in prices, the P.H.A. reserves the right to make appropriate changes / adjustments in the final sale prices and design of the apartments / shops if deemed necessary, whereas clause 7(c) provides that costs are tentative and are subject to variation on account of escalation in prices and unforeseen circumstances. Furthermore, it provides that if the cost of the apartments increase due to

the factors beyond control of the P.H.A., it shall be finally determined by the P.H.A. and paid by the purchaser.

15. The allotment letters issued to the respondents by the P.H.A. provided that the apartments were being provisionally allotted on the terms and conditions already provided in the application form / brochure which had the effect of a binding agreement between the allottee and the P.H.A.

16. It cannot be disputed that the relationship between the P.H.A. and the respondents was contractual in nature and that the provisions of the brochure issued by the P.H.A. and the terms and conditions attached with the application forms are of binding contractual force on the parties. The proposition that the Court cannot alter the terms of the contract or rewrite the contract or create a new contract between the parties is well established. It is also true that the contract must be read as a whole and not be dissected. Its terms have to be construed strictly without altering the nature of the contract. Reference in this regard may be made to the law laid down in the cases of Abdul Waheed Vs. Additional District Judge (PLD 2021 Lahore 453), Pakistan Real Estate Investment and Management Company (Pvt.) Ltd. Vs. Sky Blue Builders (2021 CLD 518), Pakk U.K. Association (Pvt.) Ltd. Vs. The Hashemite Kingdom of Jordan (2017 CLC 599), and Montage Design Build Vs. The Republic of Tajikistan (2015 CLD 8).

17. Indeed clause 12 of the brochure provides that construction will commence in July 2008 tentatively on approval of the plans by the concerned authorities. Furthermore, the said clause provides that *“the project is expected to be completed within 24-month thereafter.”* This clause does not obligate the P.H.A. to commence construction in July 2008 and complete the same by July 2010. The date for the commencement of the works is explicitly stated to be tentative in nature. The construction period of 24 months is also not definite but an expression of the P.H.A.’s expectation.

18. The above referred clauses of the brochure as well the terms and conditions attached with the application forms make it clear that the cost of the apartments was tentative and subject to variation on account of escalation in prices and unforeseen circumstances. In the case of Agha Saifuddin Khan Vs. Pak Suzuki Motors Company Limited (1997 CLC 302), it

has been held that to some extent, the words “provisional” and “tentative” are synonymous, and that both these words mean something which is temporary and not final. In the case of PAEC Foundation Housing Scheme Vs. Sharf-ul-Islam (2017 MLD 1023), the Division Bench of this Court held that the cost of land expressly mentioned in the provisional allotment letter to have been tentatively determined in the year 2005 was by no means the final cost of the land for the entire housing project. In the case of Bareilly Development Authority Vs. Ajai Pal Singh (AIR 1989 SC 1076), the Bareilly Development Authority offered to register the names of intending applicants desirous of purchasing different types of houses / flats. The General Information Table given in the brochure contained information about the type of houses for the corresponding income groups, cost, initial payment to be made, rate of interest and approximate monthly installments. A note in the brochure stated that the cost shown therein was only an estimated cost and it would increase or decrease according to the rise or fall in the price at the time of completion of the houses, while another note stated that the date given in the brochure could be amended as felt necessary. Under the clauses of the brochure, the said Authority reserved discretion to change, alter or modify any of the terms and/or conditions of the allotment as and when necessary. The respondents registered their names for allotment of flats in accordance with the terms and conditions in the brochure and made the initial deposit. Subsequently, they received notices from the Authority intimating the revised cost of houses and the amount of monthly installment rates which were almost double of those initially stated in the brochure. The respondents were further informed that those who intend to buy houses on the revised price / installments must send their written acceptance by the date specified, otherwise their names would not be included in the lots to be drawn. Except a few, all other respondents gave their unequivocal and unconditional written consent. Hence their names were included in the draws and on becoming lucky in the draw, they were allotted their respective houses. Thereafter, all the respondents approached the Allahabad High Court under Article 226 of the Indian Constitution challenging the revised terms and conditions on the ground that the appellants were estopped from changing the conditions subject to which the respondents had applied for registration and

deposited the initial payment. The High Court found the action of the Authority in fixing the revised cost and installments arbitrary and unreasonable and directed the Authority to re-determine the cost of the houses and installments payable by them after hearing the parties. The Authority assailed the High Court's judgment in an appeal before the Supreme Court of India, which allowed the appeal and held as follows:-

*“Only on the basis of the written acceptance, the name of the first respondent was included in the draw and he has successful in getting the allotment of House No.37 in MIG type which fact is clearly borne out by the letter from the second respondent (Annexure 'F'). In this connection, it is worthwhile to note that the first respondent, Shri Ajay Pal Singh is the Principal of Shri Guru Govind Singh Inter College and his educational qualifications are M.A. (Econ. & Hist.), B.Sc., B.Ed., LL.B. From the above, it is clear that all the respondents who have sent their applications for registration with initial payment only after having fully understood the terms and conditions of the brochure inclusive of the Clauses 12 and 13 and Notes 1 and 2 of the General Information Table as per which the BDA has reserved its right to change, enhance or amend any of the terms and/or conditions as and when felt necessary, and also the right to relax any of the conditions at its discretion, and that the cost shown in the column 4 of the brochure was only estimated cost subject to increase or decrease according to the rise or fall in the price at the time of completion of the property. This is not only the case of the applicants of MIG scheme but also of the other applicants falling under the other categories i.e. HIG, LIG and EWS. So it cannot be said that there was a mis-statement or incorrect statement or an fraudulent concealment in the information supplied in the brochure published by the BDA on the strength of which all the applicants falling under the various categories applied and got their names registered. In such a circumstance the respondents cannot be heard to say that the BDA has arbitrarily and unreasonably changed the terms and conditions of the brochure to the prejudice of the respondents.”*

19. Similarly in the case of T.N. Housing Board Vs. Service Society (2011 (11) SCC 13), the Tamil Nadu Electricity Board had formulated a scheme for the development of land and construction of houses for its employees. The Board had also fixed the tentative price and each allottee was required to make an initial deposit of a certain amount and pay the balance in monthly installments. The Board also entered into a lease-cum-sale agreement with the allottees containing the terms and conditions of the lease and the option for sale. The terms of the said sale agreement provided *inter alia* that the Administrative Officer of the Board may at any time in his sole discretion fix the sale price and in doing so was entitled to consider details regarding development charges, cost of amenities, cost of buildings, etc. The final decision of the Administrative Officer was to be the final price of the property which was to be conclusive and binding on the allottee. The



project was delayed due to the pendency of a dispute regarding land acquisition. This delay had caused an enhancement in the price. The dispute between the Board and the allottees went up to the Hon'ble Supreme Court which held as follows:-

*“17. The High Court, we find, has not appreciated the controversy in the correct perspective nor decided the matter in issue. The finding of the learned single judge that the Board is not entitled to any increase is contrary to the terms of allotment. The letter of allotment and the lease-cum-sale agreement make it clear that the price mentioned in the letter of allotment was only tentative and final price was to be determined taking into account, the final cost of acquisition, cost of development and amenities, and cost of the building. The fact that, subsequent to the allotment of the LIG Houses and execution of lease-cum-sale agreements, the land acquisition cost increased substantially was not in dispute. Similarly, if there was any increase in the actual cost of development/construction the allottees had to bear it. The Board could not be made liable to bear the extra cost as it was operating on no-profit, no-loss basis ...”*

20. The respondents are all educated people and they were well aware right from the inception of the allotment process that the price of the apartment was tentative in nature. It is surely not the respondents' case that during the period when work on the Project was halted, there had not been any escalation in the prices of construction material, labour, etc., which resulted in an increase in the price of the apartments. The respondents did not produce any evidence to establish that during the said period there had been no escalation. In absence of such evidence, the Court cannot examine whether the P.H.A.'s demand for the additional cost of Rs.8,84,000/- is astronomical, exorbitant, or unreasonable. The Court, having no expertise or knowledge to evaluate the cost aspect, is not concerned with the correctness or otherwise of the said demand and cannot interfere.

21. The brochure issued for the Project made it abundantly clear that the prices indicated therein were illustrative, tentative and subject to revision and thus no assurance was ever given to the intending purchasers that they will be given the apartments at the price indicated in the brochure. By signing the application forms, the respondents accepted the terms and conditions in the brochure, including clauses 10.1 and 10.3 thereof. Consequently, they were put on notice that the prices quoted in the brochure were tentative and were liable to be revised. They, having applied for apartments under the Project, entered the contractual realm and

cannot now make a grievance of the revised rates. The P.H.A. has a responsibility to act fairly and reasonably while fixing the price for sale of the apartments belonging to it. However, the direction given by the learned Trial Court to the P.H.A. to give possession of apartments to the respondents without demanding the additional cost of Rs.8,84,000/- has the effect of directing the P.H.A. to sell them at a price that may result in a loss to it. Learned counsel for the respondents was unable to show that the appellant's demand for the additional cost of Rs.8,84,000/- on a "D" type apartment was something contrary to the contract between the parties and / or not envisaged by the terms and conditions of the brochure.

22. Learned Counsel for the P.H.A. submitted that possession of the apartments would be handed over to the respondent provided they first discharge their liability of paying Rs.8,84,000/- to the P.H.A. This is a magnanimous gesture on the part of the P.H.A. given the fact that the demand for the payment of the said amount was first made from the respondents in the year 2014, i.e. almost eight years ago.

23. In view of the above, the instant appeal is allowed and, consequently, the suit instituted by the respondents is dismissed with no order as to costs. The learned Trial Court had dismissed the respondents' claim for compensation for the delay in the completion of the Project. The respondents did not assail the judgment and decree of the learned Trial Court. There is nothing preventing the respondents from taking possession of the apartments allotted to them, provided they pay the additional cost of Rs.8,84,000/- and outstanding due, if any, and fulfill all other obligations under the terms and conditions set out in the brochure.

(MIANGUL HASSAN AURANGZEB)  
JUDGE

**ANNOUNCED IN AN OPEN COURT ON 25/08/2022**

(JUDGE)

*Qamar Khan\**

**APPROVED FOR REPORTING**