

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

I.C.A. No.894 of 2013

PAEC Foundation Housing Scheme and others  
**Versus**  
Sharf-ul-Islam Khan

**Date of Hearing:** 30.11.2016  
**Appellants by:** M/s Muhammad Irfan Zafar Hashmi, and  
Sohail Akram Malik, Advocates  
**Respondent by:** M/s Ahteisham-ul-Haq Butt, and Saima  
Uzma Chatta, Advocates.

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**MIANGUL HASSAN AURANGZEB J:-** Through the instant Intra Court Appeal, the appellants, Pakistan Atomic Energy Commission Foundation, etc., impugn the order dated 12.06.2013, passed by the learned Single Judge-in-Chambers, whereby Writ Petition No.4583/2010, instituted by the respondent (Sharf-ul-Islam Khan), was accepted with a direction to the appellants to allot a plot to the respondent/petitioner or alternatively to *“refund the price along with interest on the basis of the prevailing market rate”*.

2. The facts essential for the disposal of this appeal are that the respondent, who was an officer at the Pakistan Atomic Energy Commission (“P.A.E.C”), was provisionally allotted a plot measuring 10 *marlas* at the P.A.E.C Housing Project, Lahore, vide provisional allotment letter dated 14.09.2007. The plot number and its dimensions were to be communicated subsequently to the respondent. Prior to this, appellant No.1 had issued letter dated 15.07.2005 to its members, including the respondent, informing them that the tentative cost of land for appellant No.1’s housing project at Lahore was Rs.1,500,000/- per kanal. From time to time, appellant No.1 used to inform its members about the progress in appellant No.1’s housing project at Lahore.

3. It is an admitted position that the respondent is a member of appellant No.1/foundation having Membership No.3640. It is also admitted that the respondent has paid a total amount of

Rs.7,58,000/- in installments for a 10 *marla* plot in appellant No.1's housing project at Lahore.

4. It appears that appellant No.1 had asked its members, including the respondent, to pay an enhanced price for the plots since appellant No.1 had claimed to have purchased land at a price higher than initially estimated. Escalation in the prices of the construction material was also cited as one of the reasons for an enhancement in the prices of plots.

5. The respondent in its letter dated 02.01.2009 to appellant No.1, took the position that appellant No.1's demand for payment of the enhanced price for the plot was not justified. The respondent informed appellant No.1 that he had paid Rs.7,58,000/-, being the full amount for the plot measuring 10 *marlas*, which had been provisionally allotted to him. Apparently, on 22.07.2010, the respondent had applied to appellant No.1 for the refund of Rs.7,58,000/- alongwith interest. Appellant No.1 took the position that refund could be allowed after deduction of 10% of the amount paid by the respondent. Vide letter dated 09.09.2010, the respondent informed appellant No.1 that he was not going to pay the enhanced price for the plot, and that he should either be refunded the full amount paid by him alongwith interest or be handed over possession of the plot without any extra payment.

6. Vide letter dated 16.08.2010, appellant No.1 informed the respondent that as per appellant No.1's policy, the amount deposited by the respondent for the plot can be refunded after deduction of 10% of the deposited amount. Furthermore, the respondent was informed that the processing fee and membership fee were not refundable. On 04.10.2010, appellant No.1 informed the respondent that as per their records an amount of Rs.2,23,457/-, including late payment charges was outstanding against the respondent as on 31.08.2010. The respondent was asked to clear his dues immediately in order to become eligible for the allotment of a plot in the balloting which was scheduled to be held in the month of November, 2010.

7. On 23.10.2010, the respondent filed writ petition No.4583/2010 seeking a direction to appellant No.1 either to allot a plot to the respondent in accordance with appellant No.1's previous allotment plan or to refund the amount deposited by the respondent along with interest. As mentioned above, vide judgment dated 12.06.2013, the learned Single Judge-in-Chambers allowed the respondent's writ petition. The said judgment dated 12.06.2013, has been impugned in the instant Intra Court Appeal.

8. Learned counsel for the appellants submitted that a writ petition was not maintainable against appellant No.1, whose rules were non statutory; that appellant No.1 was an independent foundation having its own Board of Governors and Managing Committee; that appellant No.1 had no concern with the affairs of the State; that an alternative remedy of filing a civil suit against appellant No.1 was available to the respondent; that the learned Single Judge erred by not appreciating that the price of the land determined by appellant No.1 in its letter dated 15.07.2005 to its members was 'tentative' in nature; that the allotment letter dated 14.09.2007, issued by appellant No.1 to the respondent was 'provisional' and not final; that the respondent in its letters dated 02.01.2009 and 09.09.2010 had admitted that the cost of the land assessed by appellant No.1 in its letter dated 15.07.2005, was 'tentative'; that the respondent had also admitted that the 10 *marla* plot had been 'provisionally' allotted to him; that the increase in the price of the plots was justified due to an increase in the cost of the land and an escalation in the price of the construction material; that the respondent was aware, at all material times, that in the event of a refund, 10% of the amount deposited by the respondent was to be deducted by appellant No.1.

9. Learned counsel for appellants further submitted that since the respondent had served for a long time with the P.A.E.C., appellant No.1 was willing to return the entire amount deposited by the respondent, but interest on the said amount could not be paid to him. Learned counsel for appellant No.1 prayed for the

appeal to be allowed and for the impugned judgment dated 12.06.2013, to be set aside.

10. On the other hand, learned counsel for the respondent submitted that in reliance on the representations made by appellant No.1, the respondent had, between 2004 and 2008, paid Rs.7,58,000/- to appellant No.1 for a 10 *marla* plot in its Housing Scheme at Lahore; that as per appellant No.1's representations to its members contained in its letter dated 15.07.2005, the cost of a 10 *marla* plot was to be Rs.7,50,000/-; that the enhancement in the price of the plot was not justified and was attributable to appellant No.1's bad planning and excessive expenditures; that the respondent was not in a financial position to pay a price higher than the amount initially fixed by appellant No.1 for a 10 *marla* plot; and that since appellant No.1 had retained an amount of Rs. 7,58,000/- paid by the respondent, appellant No.1 was bound to refund the same along with interest. Learned counsel for the respondent prayed for the appeal to be dismissed.

11. We have heard the contentions of learned counsel for the contesting parties and have perused the record with their able assistance.

12. The facts leading to the filing of this appeal have been set out in sufficient detail in paragraphs 02 to 07 above, and need not be recapitulated.

13. We tend to agree with the learned counsel for appellant No.1 that the allotment letter dated 14.09.2007, issued to the respondent was provisional in nature. It is explicitly mentioned in the said letter that the 10 *marla* plot was 'provisionally' allotted to the respondent. At no material stage has a final allotment letter been issued by appellant No.1 to the respondent. As mentioned above, vide letter dated 04.10.2010, appellant No.1 had asked the respondent to clear his outstanding dues in order to become eligible for the allotment of a plot in the balloting which was scheduled to be held in the month of November, 2010. The respondent had, prior to the scheduled balloting, instituted Writ Petition No.4583/2010. The respondent in his letter dated

02.01.2009, had admitted that the 10 *marla* plot had been 'provisionally' allotted to the respondent.

14. As regards the cost of the plot, it is an admitted position that the respondent has paid Rs.7,58,000/- to appellant No.1. Indeed in appellant No.1's letter dated 15.07.2005, to its members, it had been mentioned that the tentative cost of the land was Rs.1,500,000/- per *kanal*. Therefore, the cost of a 10 *marla* plot came to Rs.7,50,000/-. This price is explicitly mentioned in the said letter to be a 'tentative cost'. It was by no means the final cost of the land for the entire housing project. The respondent, in his letter dated 09.09.2010, has also admitted that in the year 2005, the 'tentative cost' of the plot was fixed at Rs.1,500,000/- per *kanal*.

15. Had a final allotment letter been issued to the respondent or had it been represented by appellant No.1 that the price of the plot was not tentative, but final and not subject to any change/enhancement, the respondent, in such circumstances, could have insisted on possession of the plot at the fixed price.

16. The respondent along with his writ petition had brought on record the minutes of the meeting dated 22.01.2007, of the Management Committee of appellant No.1. Perusal of these minutes show that the management of appellant No.1 had decided that refund of the amount paid by the members would be allowed subject to the deduction of 10% of the amount deposited. Therefore, the respondent was well aware of appellant No.1's policy decision regarding refund to members after the said deduction. We appreciate the grace shown by the learned counsel for appellant No.1 that since the respondent had served for a long time with the P.A.E.C., no amount would be deducted by appellant No.1 when refunding the amount deposited by the respondent. In the case of Messrs Hand Tools Ltd. (SAADAT INDUSTRIES LTD.) Vs. Karachi Development Authority (1985 CLC 529), the plaintiff was allotted an industrial plot at occupancy value. Subsequently, the cost of the industrial plots was increased, and the plaintiff was asked to deposit the enhanced amount. The Hon'ble High Court of Sindh held that no

clause existed in final allotment letter issued to plaintiff, that price fixed for the suit plot was provisional or tentative and subject to final fixation by Government. The Hon'ble High Court declared the demand for the additional price as illegal. The plaintiff's suit was decreed with costs.

17. In the case at hand, a final allotment letter has never been issued in the respondent's favour. The allotment letter dated 14.09.2007 was provisional in nature. Additionally, vide letter dated 04.10.2010, the petitioner was asked to deposit the outstanding amount of Rs.2,23,457/- so as to make him eligible for participation in balloting. It is an admitted position that the respondent did not pay the said amount. The respondent wanted to hold appellant No.1 to the tentative price for a plot quoted in its letter dated 15.07.2005 to all the members of appellant No.1/foundation. This the respondent could not do because, the price for a one kanal plot quoted in appellant No.1's said letter was also 'tentative'. A provisional allotment does not invest the allottee with absolute unconditional ownership of the plot so allotted. Unless and until a final allotment letter is issued to the allottee by the competent authority upon fulfilment of all the conditions necessary for such an allotment, the allottee cannot be the absolute owner of the plot. However, an allotment of a plot would be deemed to be final unless it is expressly stated to be 'provisional' or subject to the declared terms and conditions. As per P. Ramanatha Aiyar's Advanced Law Lexicon (Volume-3), "provisional" means temporary, preliminary, tentative, taken or done by way of precaution or ad interim. At this stage, reference to the following case law would be apposite:-

- (i) In the case of Agha Saifuddin Khan Vs. Pak Suzuki Motors Company Limited (1997 CLC 302), it has been held as follows:-

*"8. The word "provisional" has been defined in the Black's Law Dictionary (VIth Edition) as temporary, preliminary, tentative, taken or done by way of precaution or ad interim. In the Ballantine's Law Dictionary (IIIrd Edition) the word "provisional" is defined as that which is merely temporary, or for the time being, for the occasion and as excluding the idea of permanence. In Stroud's Judicial Dictionary, the word*

*"provisional" agreement is defined which may not mean tentative but may mean something which is going to operate until something else happens. To some extent, the word "provisional" and "tentative" are synonymous. Both these words mean something which is temporary and not final. Whenever these words are used in any-contract, then these words have to be read with reference to the context to such agreement."*

- (ii) In the case of Ahmad Saeed Vs. Comsats Institute of Information Technology (2012 MLD 710), the respondent institute made a provisional offer for admission to the petitioner in BS (Business Administration). This offer was accepted the petitioner. Subsequently, as the petitioner was unable to obtain marks to meet the minimum eligibility criteria, his admission was cancelled. Paragraph 8 of the report is reproduced herein below:-

*"8. For the just disposal of the instant writ petition, I find it appropriate to mention the meanings of word "Provisional". According to Concise Oxford English Dictionary (11th Edition, Revised) ordinary meaning of this word is given as under---*

*(i) Arranged or existing for the present, possibly to be changed later.*

*(ii) Black's Law Dictionary (8th Edition) contains the following meanings.*

*(i) Temporary*

*(ii) Conditional*

*Legal Thesaurus by William C. Burton (Second 'Edition) suggest following words, synonymous to the word "provisional", "alterable, conditional, contingent, dependent on circumstances, in a state of uncertainty, interim, limited, subject to change, transitory, unassured, unconfirmed, unsettled.*

*The meanings of the word "provisional" make it abundantly clear that no finality was attached to the admission granted to the petitioner as same was subject to obtaining minimum 50% marks in the Intermediate Examination, which admittedly, petitioner failed to obtain. Resultantly, the Institute cancelled his admission. The learned counsel very candidly conceded to this aspect, that petitioner was unable to obtain the marks required to meet the eligibility criteria and to deaden the uncertainty about his future."*

- (iii) In the case of Iftikhar Mehmood Butt Vs. Federal Government Employees' Housing Foundation (2012 CLC 447), this Court has held that a provisional allotment of a plot does not confer any right on the allottee.

18. In view of the above, this appeal is partly allowed, and the impugned judgment dated 12.06.2013, is modified to the extent that appellant No.1 shall refund the entire amount deposited by the respondent, without any liability to pay interest on the refunded amount, and without any deductions. There shall be no order as to costs.

**(ATHAR MINALLAH)  
JUDGE**

**(MIANGUL HASSAN AURANGZEB)  
JUDGE**

**ANNOUNCED IN AN OPEN COURT ON \_\_\_\_\_/2017**

**(JUDGE)**

**(JUDGE)**

**APPROVED FOR REPORTING**

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