JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

F.A.O.No.44/2012
Federal Government Employees Housing Foundation
Versus
Javaid Iqbal and others

Date of Hearing: 03.10.2019
Appellant by: Raja Niaz Ahmad Rathore, Advocate
Respondents by: Mr. Fiaz Ahmed Jandran, Advocate

MIANGUL HASSAN AURANGZEB, J:- Through the instant appeal under Section 39 of the Arbitration Act, 1940 ("the 1940 Act") the appellant, Federal Government Employees Housing Foundation ("F.G.E.H.F."), impugns the judgment and decree dated 14.06.2012 passed by this Court, whereby objections filed by the appellant against the arbitration award dated 14.06.2010 were dismissed and the said award was made a Rule of Court. The said judgment and decree was passed when this Court had the power to exercise civil original jurisdiction.

2. The facts essential for the disposal of the instant appeal are that F.G.E.H.F., in April 2005, launched Phase-V of a Housing Scheme for Low Paid Federal Government Employees in Sector G-11, Islamabad. Under this scheme, three categories of apartments could be allotted to employees in income groups ranging from BPS-1 to BPS-16. In this regard, F.G.E.H.F. issued a brochure setting out the terms and conditions on which the allotments could be made. The tentative costs of the apartments under the scheme and the schedule for payment was given in annexure-I to the said brochure.

3. Clause 6.2 of the brochure provided that the cost of the apartments given in the brochure were tentative and were subject to variations on account of escalation in prices and unforeseen circumstances. It was also provided that the cost of the apartments shall be finally determined and charged from the allottees on the basis of actual expenditures incurred on the completion of the housing scheme. Clause 8 of the brochure provided that the payment of installments within the specified time

limit shall be the responsibility of the allottee, and that a grace period of one month shall be allowed for payment of a particular installment on a case to case basis. Furthermore, it was provided that if an allottee fails to pay the dues within the grace period, he was to pay a surcharge at the rate of 2% per month for the period of the default, including the grace period. Clause 8.2 of the brochure provided that if the allottee fails to pay the dues three months beyond the grace period, the allotment of the apartment shall stand cancelled and the amount paid by him shall be refunded, after deducting 5% of the amount paid, within four months of the cancellation of the allotment. Clause 11 of the brochure provided that F.G.E.H.F. shall endeavor to complete the work and hand over physical possession of the apartments to the allottees within a period of two years. It was also provided that in case of any delay due to some unavoidable/unforeseen circumstances, the allottees shall not be entitled to claim any compensation from F.G.E.H.F. Clause 14 of the brochure provided for the disputes between the allottees and F.G.E.H.F. to be resolved through arbitration. The said clause is reproduced herein below:-

> ***"14. ARBITRATION***
> ***All disputes between the Housing Foundation and the allottees/applicants shall be referred to the Executive Committee for arbitration and the decision of the committee shall be final and binding on both the parties."***

4. It is an admitted position that F.G.E.H.F. could not complete the apartments within a period of two years. On 17.10.2008, F.G.E.H.F. issued letters to allottees calling upon them to pay 20% additional amount for 'C' type apartments; 15% additional amount for 'D' type apartments; and 10% additional amount for 'E' type apartments. This demand was raised pursuant to a decision dated 16.08.2008, taken by the Executive Committee of F.G.E.H.F. due to escalation in the cost of materials required for construction.

5. Aggrieved by the said demand and F.G.E.H.F.'s failure to hand over possession of the apartments within a period of two years, a number of allottees filed writ petitions before the Hon'ble High Court. These writ petitions were disposed of vide order dated 28.01.2010. Perusal of the said order shows that the

contesting parties before the Hon'ble High Court had given their consent to refer the subject matter of the writ petitions to arbitration. Accordingly, the Hon'ble High Court referred the matter to arbitration and Mr. Justice (Retd.) Farrukh Latif was appointed as the sole arbitrator.

6. The forty-one claimants, in their statement of claim filed before the learned sole arbitrator, had prayed for a mandatory injunction restraining F.G.E.H.F. from claiming the enhanced cost for the apartments pursuant to its letter dated 17.10.2008. Furthermore, the claimants had sought a direction to F.G.E.H.F. to hand over possession of the constructed apartments without further delay and not to change the style of construction. F.G.E.H.F. contested the said claim by filing a written reply. After the framing of issues and recording of evidence, the learned sole Arbitrator rendered the arbitration award on 14.06.2010. F.G.E.H.F. filed objections to the said award under Section 30 of the 1940 Act. The respondents contested these objections by filing a written reply. As mentioned above, vide the impugned judgment and decree dated 14.06.2012, the said objections were dismissed and the award was made a Rule of Court. The said judgment and decree has been assailed by the appellant in the instant appeal.

7. Learned counsel for the appellant, after narrating the facts leading to the filing of the instant appeal, submitted that the calculations made by the learned sole Arbitrator at page-21 of the award are incorrect; that the learned sole Arbitrator could not have made the construction cost incurred by the Pakistan Housing Authority (“P.H.A.”) for its housing project as the bench mark for determining whether F.G.E.H.F.’s demand for additional cost due to escalation was reasonable or not; that the learned sole Arbitrator could not have made a comparison between the housing schemes launched by P.H.A. and F.G.E.H.F. since the said schemes had different dimensions and costs; that the learned sole Arbitrator erred by not appreciating that the developed land for P.H.A.’s housing project was provided by the Capital Development Authority (“C.D.A.”) free of cost whereas F.G.E.H.F.

had to acquire/purchase land for raising construction thereon; that F.G.E.H.F. had to incur a cost of Rs.35,88,49,459/- on development of the site; that F.G.E.H.F. had to incur a further amount of Rs.7,80,20,118/- on the provision of utility services; that if the cost of the land and expenses incurred for the provision of utility services are included, the per square foot charge would be far more than the amount being charged from the respondents; that the learned sole Arbitrator erred by holding that the final cost should not exceed the cost of the housing project which was launched by the P.H.A. which was Rs.1,806.5/- per square foot; that the learned sole Arbitrator erred by holding that escalation in the prices of building materials after 2005 had not been proved by F.G.E.H.F.; that the private respondents, in their statement of claim, had admitted that between 2005 and 2007, the prices of building materials had escalated; that the learned sole Arbitrator erred by holding that the costs of the apartments could not have been increased beyond the cost of the construction material between 2005 and 2007; that clause 6 of the brochure had clearly provided that the costs of the apartments given in annexure-I were *"tentative";* that clause 6.2 of the brochure also provided that the costs of the apartments were tentative and were subject to variations on account of escalation in prices and unforeseen circumstances; that it was also provided that the costs of the apartments shall be finally determined and charged from the allottees on the basis of actual expenditures incurred on the completion of the apartments; that the brochure also provided that the actual expenditure was to be communicated to the allottees; and that clause 6.5 of the brochure provided that the allottees shall be required to bear the 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 expenditures on account of establishment/service charges of F.G.E.H.F. as may be finally determined and approved by the Executive Committee.

8. Learned counsel for the appellant further submitted that the learned sole Arbitrator had no rational basis for holding that the

delay in the construction was caused due to F.G.E.H.F.'s inefficiency and negligence; that the delay in the completion of the project was caused due to the late handing over of possession of the land as well as the restriction on the plying of heavy vehicles in Islamabad during the daytime; that due to the earthquake in October 2005, the entire project had to be re-designed in order to make the structure earthquake proof; that an allottee who defaults in making timely payments of the installments could not expect F.G.E.H.F. to hand over possession of the apartments within the fixed period; that the compensation determined for the allottees due to the delay in the construction is arbitrary and has no rational basis; that the allottees could not have been held entitled to compensation after the sole Arbitrator had held that only about 10% of the allottees of the apartments had made their payments as per the agreed schedule; that the learned sole Arbitrator had also granted compensation to those allottees who had committed default in the payment of installments; that the learned sole Arbitrator could not have held that provision of shelves, *almirahs* and kitchen cabinets were necessary in the accommodation when there was no such provision in the brochure; that the learned sole Arbitrator erred by holding that the increase in the costs of the apartments indicated in F.G.E.H.F.'s letter dated 17.10.2008 was unjust, illegal and arbitrary and not liable to be paid by the respondents; that while holding so, the learned sole Arbitrator erred by not appreciating that the respondents had committed a default in making payments of installments in accordance with the agreed schedule; that F.G.E.H.F.'s object is to provide homes to shelter less employees of the Federal Government and operates on a no profit/no loss basis and therefore the cost of construction of the apartments was to be provided by the allottees; that F.G.E.H.F.'s schemes are self-financed and no funds from the national exchequer are involved; and that there are glaring errors apparent on the surface of the award which render the same invalid. Learned counsel for the appellant prayed for the appeal to be allowed and

for the impugned judgment and decree dated 14.06.2012 to be set-aside.

9. On the other hand, learned counsel for the respondents submitted that no appeal had been filed by F.G.E.H.F. against the rejection of its objections to the award; that a Court while hearing objections to the award does not have powers of the Appellate Court and cannot undertake re-appraisal of the evidence; that the arbitration award can be set-aside only if there is an error on the face of the award; that since there are concurrent findings in the form of the arbitration award and the impugned judgment, this Court ought not to interfere with the same; that F.G.E.H.F. participated in the arbitration proceedings and also produced its witnesses; that the Arbitrator had relied on documentary evidence while rendering his award; that the issues were framed with the consent of the parties and F.G.E.H.F. did not object to any of the issues; that the Arbitrator is the final Judge of law and facts and in the instant case, the arbitration award does not suffer from any legal infirmity; that an award cannot be set-aside on the ground that the Arbitrator had wrongly interpreted the terms of the agreement; that the learned Judge-in-Chambers had passed a well-reasoned judgment while making the award as a Rule of Court; and that the respondents have been in litigation with F.G.E.H.F. for more than a decade and deserved the benefits under the impugned judgment and decree.

10. Learned counsel for the respondents further submitted that it was not disputed that possession of the apartments was not handed over to the respondents within a period of two years from 2005; that default in the payment of installments was no ground for not handing over possession of the apartments within a period of two years; that at best, the default in the payment of installments entitled F.G.E.H.F. to impose surcharge at the rate of 2% on the allottees; that if the allottee did not pay the dues within three months beyond the grace period, F.G.E.H.F. was entitled to cancel the allotment; that F.G.E.H.F. did not cancel the allotment of any of the respondents despite the default in the payment of installments; that for one of the allottees, F.G.E.H.F. waived the

surcharge which was liable to be paid; that the additional charges imposed on the allottees under the pretext of escalation had no factual basis; that F.G.E.H.F. did not come-up with any evidence to prove that there had been an escalation in the cost of construction material between 2005 and 2007; that the escalation in the cost of construction material beyond 2007 could not be taken into consideration since F.G.E.H.F. was under an obligation to give possession of the apartments to the allottees by 2007; that only the delay due to unavoidable/unforeseen circumstances could result in the non-payment of compensation to the allottees; that if the apartments were handed over to the allottees within the agreed period, the allottees would not have suffered any loss; and that F.G.E.H.F. did not give any evidence as to the actual expenditure incurred on the completion of the apartments. Learned counsel for the respondents prayed for the appeal to be dismissed.

11. We 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 6 above and need not be recapitulated.

12. The terms and conditions in the brochure issued by F.G.E.H.F. with respect to Phase-V of a Housing Scheme for Low Paid Federal Government Employees constitutes the agreement between F.G.E.H.F. and the allottees. It was pursuant to clause 14 in the brochure that the dispute between F.G.E.H.F. and the respondents was referred to arbitration.

13. As mentioned above, clause 6 of the brochure provided that the tentative cost of the apartments and the schedule of payments are given in annexure-I to the brochure. According to annexure-I, 10% of the cost had to be paid by the allottee along with the application whereas 5% was to be paid on the allotment. The remaining payments were payable in seven quarterly installments and 10% was to be paid on possession. In annexure-I, the cost of 'C' type apartments was Rs.18,00,000/-; the cost of 'D' type apartments was Rs.14,50,000/-; and the cost of 'E' type

apartments was Rs.12,00,000/-. 40% of the costs of the apartments was to be paid by the allottees whereas 60% of the cost could be paid through a loan arranged by the allottees on their own through banks/financial institutions within three months of the issuance of the allotment letter.

14. Now, it is an admitted position that the respondents defaulted in making payments of quarterly installments as required in clause c.1 of annexure-I. Mr. Zafar Abbas, Director, Law, F.G.E.H.F. appeared in the arbitration proceedings as RW.1 and deposed *inter-alia* that about 90% of the allottees were defaulters and were not making payments in time, therefore it was decided to impose 2% surcharge on the outstanding dues. Furthermore, Kashif Ahmad Noor, Director (Finance) F.G.E.H.F. appeared as RW.2 and deposed that the position of the outstanding dues was that two respondents could not obtain a loan and therefore could not make timely payments. He also deposed that the default position of the remaining 29 respondents was given in Exh.R/28, according to which only 7 respondents had cleared their principal amount and the default of 5 respondents ranged between Rs.4,40,000/- to Rs.8,37,500/-. Muhammad Aslam (PW.2), in his cross-examination, admitted his default in the payment of installments for his apartment. Muhammad Bakhsh Sheikh (PW.4), in his cross-examination, also admitted his default.

15. The learned sole Arbitrator did not make much of the said default on the respondents' part in making payments of the installments. In the award, he held that under clause 11 of the brochure, the non-payment or the late payment of the allottees was not a ground or an excuse for the delay in the completion of the housing scheme within the prescribed time, and that clause 11 of the brochure provided that delay in the payment of the installments entitled F.G.E.H.F. to impose a surcharge. This finding, in my view, is neither rational nor lawful. There are certain provisions which are implicit in the agreement. It is not disputed that F.G.E.H.F. is a non-profit making organization whose object is to provide housing to shelter-less employees of the Federal Government. The construction of the housing scheme was not to

be carried out by F.G.E.H.F. with funds from its own coffers, but with the amounts paid in accordance with the agreed schedule by the allottees. The allottees who default in making payments in accordance with the agreed schedule cannot expect F.G.E.H.F. to abide by the deadline of two years for the completion of the project. On the same analogy, the delay in the construction caused by the default in the payment of installments by the allottees did not entitle such allottees to any compensation. A default in the payment of installments by the allottees certainly comes within the meaning of a *"delay for some unavoidable/unforeseen circumstances"* and therefore an allottee who is a defaulter would not be entitled to any compensation. By not appreciating this, the learned sole Arbitrator has *"misconducted"* himself as is generally understood in the arbitration parlance.

16. In the case of Pak Gulf Construction Private Limited Vs. Abdul Hamid Baig (2019 MLD 1178), this Court had the occasion to hold as follows:-

> ***"29. ... A purchaser cannot stop making payments in accordance with the agreed schedule for payments and expect a developer/seller to complete the construction and hand over possession of the purchased units by an agreed date. A developer/seller's obligation to hand over possession of the completed Units by an agreed date is pre-conditioned on timely payments of the sale price being made by the purchaser.***
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> ***30. I am of the view that respondent No.1 could have claimed compensation from appellant No.1 in terms of clause 7.2 of the said agreements provided he strictly adhered to the agreed payment schedule. Respondent No.1 would have been well within his rights to have claimed compensation from appellant No.1 due to the latter's failure to have completed and handed over possession of Units No.306 and 101 to respondent No.1 by the agreed completion date of 31.12.2010 provided respondent No.1 had committed no default in making timely payments of the sale price in accordance with the agreed schedule. Failure on respondent No.1's part in adhering to the agreed payment schedule, in my view, disentitled him from claiming compensation due to the delay on appellant No.1's part in completing the said units by the agreed completion date, i.e. 31.12.2010."***

17. For some odd reason, the learned sole Arbitrator has also expressed in the award that the estimated costs mentioned in the brochure were also excessive. This observation was quite unnecessary as the estimated cost in the brochure was not in dispute between the parties. As regards the escalated costs

demanded by F.G.E.H.F. from the allottees, the learned sole Arbitrator has termed them as *"highly excessive."* In holding so, the learned sole Arbitrator has relied on the costs incurred by other organizations establishing housing projects. It is the actual costs of the apartments which was to be charged from the allottees and certainly not the costs incurred by the other organizations or contractors in constructing or establishing other housing schemes.

18. The learned sole Arbitrator has heavily relied on the costs incurred by P.H.A. (for its housing scheme of constructed apartments for low paid Federal Government employees in Sectors G-10/2 and G-11/3, Islamabad, launched in July, 2008) while determining that the escalated cost demanded by F.G.E.H.F. was *"highly excessive."* In doing so, the learned sole Arbitrator has compared oranges with apples. Each housing scheme has its own peculiar features and dimensions and the costs incurred by all housing schemes cannot be identical. The learned sole arbitrator has not taken into consideration the crucial fact that for P.H.A.'s housing project, the fully developed land with provision for the essential utilities was provided by C.D.A. whereas in F.G.E.H.F.'s housing scheme, the land had to be purchased by F.G.E.H.F. with the funds collected from the allottees. The essential utilities were also to be arranged by F.G.E.H.F. with the funds collected from the allottees. The determination by the learned sole Arbitrator as to the escalated costs being demanded by F.G.E.H.F. to be *"highly excessive"* on the basis of the costs incurred on the housing scheme by P.H.A. is not just erroneous, but perverse.

19. There were a number of objections taken by F.G.E.H.F. in its application under Section 30 of the 1940 Act. However, the learned Judge-in-Chambers has dealt with just the question of whether the costs of construction determined by F.G.E.H.F. were excessive as compared to the market rates.

20. Clause 6 of the brochure provided *inter-alia* that the *"tentative cost"* of the apartments is given in annexure-I. Furthermore, in clause 6.2 of the brochure, it is explicitly provided

that the *"costs are tentative and are subject to variations on account of escalation in prices and unforeseen circumstances."* The appellant's stance was that the unavoidable circumstances which caused a delay in the completion of project were: (i) late / non-payment of installments by the petitioners; (ii) late handing over of the site to the contractors; (iii) earthquake incident; (iv) terrorist events; (v) denial of entry of heavy vehicles in Islamabad city during daytime; (vi) load shedding; (vii) abnormal escalation in prices; and (viii) economic instability.

21. In the case of Agha Saifuddin Khan Vs. Pak Suzuki Motors Company Limited (1997 CLC 302), it was held that the words *"provisional"* and *"tentative"* are synonymous and mean something which is temporary and not final. Thus, the costs of the apartments given in the brochure and the allotment letters were not final but tentative in nature and were subject to variations. The allottees were bound by the terms and conditions in the brochure which made an increase in the costs of the apartments permissible.

22. While granting relief to the respondents, the learned sole Arbitrator has held that F.G.E.H.F. is not entitled to claim and the respondents are not liable to pay the increase in the cost demanded by F.G.E.H.F. vide letter dated 17.10.2008. In determining the rights and liabilities of the parties to the dispute, the learned sole Arbitrator is to give credence to the terms and conditions of the agreement containing the arbitration clause. Clause 6.2 of the brochure also provided that the costs of the apartments shall be finally determined and charged from the allottees on the basis of *"actual expenditure"* incurred on completion of the apartments which was to be communicated to the allottees in due course. In fulfillment of its obligation under clause 6.2 of the brochure, F.G.E.H.F., vide letter dated 17.10.2008, communicated the enhanced costs of the apartments to the allottees. Since the allottees were to be charged the actual costs of the apartments, if there was to be any amount left with F.G.E.H.F. after the completion of the project, the same could have been proportionately distributed amongst the allottees. This

is because F.G.E.H.F. is not a profit making organization and cannot retain any amount paid by the allottees after the completion of the project.

23. The learned sole Arbitrator has held that in determining the final costs under clause 6.2 of the brochure, F.G.E.H.F. shall keep in view the construction costs of 2005 to 2007 and the final costs should not exceed the costs of the housing project which was launched by P.H.A. in 2008, i.e. Rs.1806.5/- per square foot. The learned sole Arbitrator has restricted F.G.E.H.F.'s authority to increase the costs of the apartments due to escalation only between 2005 and 2007. Furthermore, it was held that the respondents were not liable to pay the increase in the cost of construction after 2007 since the delay was due to the inefficiency of F.G.E.H.F. In the award, the learned sole Arbitrator has noted that no evidence was led by the appellant to show that there was an escalation in the cost of construction material between 2005 and 2007. The learned sole Arbitrator has not given any consideration to escalation in the costs of construction material beyond 2007. This is because he had held that F.G.E.H.F. was bound to complete the project within a period of two years from 2005.

24. The learned sole Arbitrator had also held the respondents entitled to compensation at the rates given in the award from January 2008 till the receipt of intimation from F.G.E.H.F. of the costs finally determined by it under clause 6.2 of the brochure. The terms of the brochure require F.G.E.H.F. to *"endeavour"* to complete the project in two years and do not impose an absolute obligation on F.G.E.H.F. to complete the apartments within a period of two years. The terms in the brochure also do not provide for compensation or liquidated damages to be paid to the allottees if the apartments are not completed in two years. The learned sole Arbitrator did not find the delayed handing over of a portion of the land by C.D.A. to F.G.E.H.F.; the restriction on the plying of heavy vehicles during the daytime imposed by the District Magistrate of Islamabad; the change in the building plan that was necessitated by the earthquake of 2005; and default in the payment of

installments by the allottees, to be circumstances/events justifying the delay in the construction. We have already held that the default on the respondent's part in paying the installments was "*unavoidable/unforeseen circumstances"* which justified the delay in the completion of the project. Hence, the delay in the completion of the project was also attributable to the defaulting respondents, and therefore they were not entitled to compensation for the delay. Since the delay beyond 2007 was not entirely attributable to F.G.E.H.F., the escalation beyond 2007 ought to have been taken into consideration by the learned sole arbitrator. It is known to all that the abnormal escalation in petroleum prices in and after 2008 resulted in the escalation of transportation charges as well as the costs of construction material. To disregard escalation in prices after 2007 altogether is not just erroneous but also unrealistic. The learned sole Arbitrator has in effect held that F.G.E.H.F. is to provide constructed apartments to the allottees at the tentative rates determined in the year 2005. This, with due respect, we find to be untenable.

25. Clause 6.1 and annexure-I of the brochure places obligation to arrange a loan from a bank or a financial institution within a period of three months from the issuance of the allotment letter on the allottee and not F.G.E.H.F. The said provisions further stipulate that F.G.E.H.F. is to act as a facilitator in the completion of the formalities. In the award, there is no reference to any document whereby any allottee had requested F.G.E.H.F. to facilitate the grant of loan. The learned sole Arbitrator appears to have given credence to the statement of Muhammad Aslam (PW.2) that F.G.E.H.F.'s staff had not cooperated with him and had treated him like a beggar. Exh.R-27 shows that P.W.2's loan was approved but he did not collect the same. The learned sole Arbitrator did not appreciate that the terms and conditions of the brochure did not absolve the allottees from making payments of installments if they were unable to arrange a loan for themselves.

26. The brochure also contained the proposed layout plan for the three categories of the apartments. This was only a *"proposed",* layout plan and by no means a *"final"* one. A revision

in this layout plan was necessitated due to the advice of the Engineering Consultant/NESPAK. The learned sole Arbitrator held that F.G.E.H.F. could not unilaterally change the layout plan without consulting the allottees. There is no document on the record to show that the respondents had voiced their grievances against the change or the revision in the layout plan when such revision took place. Despite this, the learned sole Arbitrator has held that F.G.E.H.F. is liable to undo the construction of the apartments made according to the changed layout plan at its own costs and reconstruct them in accordance with the proposed layout plan in the brochure. If this is to be implemented, a sizeable portion of the construction will have to be demolished resulting in not just a delay in the completion of the project, but also an exorbitant rise in its price. It would also make the completion of the project out of sight.

27. The learned sole Arbitrator had held that the respondents who had paid the escalated costs and surcharge on that cost, whether under protest or otherwise, are entitled to its refund. Furthermore, it was held that F.G.E.H.F. is liable to refund such amounts or adjust the same in the costs which shall be finally determined by it on the completion of the apartments under clause 6.2 of the brochure. Since we have held that the delay in the completion of the project was also attributable to the respondents/allottees who had defaulted in paying the installments, and that the learned sole arbitrator ought to have taken the escalation beyond 2007 into consideration while determining whether F.G.E.H.F. was justified in raising a demand for an additional amount from the allottees, his finding that the demand of the additional amount was unjustified or that it should be refunded is held to be without any legal basis. In terms of the provisions of the brochure, F.G.E.H.F. would also be justified in imposing a surcharge on the delay in the payment of the additional amount in installments. The mere fact that the surcharge was waived by F.G.E.H.F. for one of the allottees would not nullify the provision regarding the imposition of a surcharge in the brochure.

The impugned judgment and decree has not dealt with any of the crucial aspects of the case discussed above.

It is well settled that the Court, for the purpose of making the award rule of the Court, was not required to act mechanically as if it had to affix its stamp of approval on the award without applying its mind and determining its legality, maintainability and the question of its executability, even if no objections were filed. Reference in this regard may be made to the law laid down in the cases of Haji Abdul Rashid Arif Vs. Aziz Rehman (2010 CLC 1014) and National Logistic Cell (NLC) through General Manager Administration (2010 YLR 1448). In the case of Rashida Begum Vs. Chaudhry Muhammad Anwar (PLD 2003 Lahore 522), it was held that the Court, while considering whether an award should be made a Rule of the Court, is not supposed to remain dormant and play the role of a post office by affixing the judicial stamp on the award.

28. By reason of the above, we do not find the impugned judgment and decree dated 14.06.2012 as well as the arbitration award dated 14.06.2010 to be sustainable. Consequently, the instant appeal is allowed and the said judgment and decree as well as the arbitration award are set-aside.

(CHIEF JUSTICE) (MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2019

(CHIEF JUSTICE) (JUDGE)

APPROVED FOR REPORTING

*Qamar Khan**