



# TRANSPARENCY INTERNATIONAL - PAKISTAN

November 14, 2022

Brig Rai Asim Mustafa,  
Administrator DHA, Karachi  
DHA, Karachi

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TIP 2022/1114/1A

**Subject: Allegation of Violation of Pakistan Defence Officers Housing Authority (PDOHA) Building Control and Town Planning Regulations 2020, Public Sale Projects Chapter XX by Emaar Pakistan**

Dear Sir,

Transparency International Pakistan has received a complaint on the allegation of Violation of Pakistan Defence Officers Housing Authority (PDOHA) Building Control and Town Planning Regulations 2020, Public Sale Projects Chapter XX by Emaar Pakistan..

The complainant has made the following allegations that:

1. The ongoing project of Emaar Pakistan, namely Crescent Bay, Panorama is being governed by terms and conditions, rules and regulations which are in violation of by-laws of Pakistan Defence Officers Housing Authority (PDOHA), namely Building Control and Town Planning Regulations 2020, specially the condition that in an instance where the purchaser fails to make the Installment Payment, **M/s Emaar Pakistan is forfeiting 100% of the amount paid by the purchase (Annex-A).**
2. This condition of M/s Emaar is in violation of PDOHA Building Control & Town Planning Regulations 2020, Chapter XX; Public Sale Projects, Section 20.11.2: Payment of Installment., PDOHA Section 20.11.2 is quoted below:

**20.11.2: ".....the builder will refund the total amount paid till that time by the allottee within thirty days. However, after allotment of unit, the builder will retain 4 % of the amount paid that far, and the rest of the amount will be refunded within thirty days" Annex-A1**

3. According to PDOHA Building Control & Town Planning Regulations 2020, Chapter XX Section 20.11, 2.11.1, 2.11.2 & 2.11.3, in case of default of installments, M/s Emaar is required to follow the procedure quoted below:

**20.11 Payment of Installment: "The payment of installment will be made by the allottee strictly according to the schedule of payment. In case of failure a fifteen-day notice will be issued through registered courier service on the last given address and if the allottee fails to make payment within the above period another notice will be issued by the builder up to another thirty days. In case of further failure, a cancellation letter will be issued to the allottee and a copy of which will be endorsed to PDOHA. The builder will not rebook the cancelled unit within thirty days of receipt of copy of cancellation letter by PDOHA. Provided that builder will publish the cancellation notice in the two leading newspapers (English and Urdu) under the heading of cancellation of flat or unit"**

However, Emaar Pakistan in violation of PDOHA Regulation 2020 maintains cancellation of the booking unit within 30 days of non-payment of outstanding dues and forfeiting total installments paid which needs to be stopped by DHA Karachi.

### **Transparency International Pakistan Comments**

Transparency International Pakistan has reviewed the allegations of the complaint and prima facie, M/s Emaar Pakistan agreement signed with the buyers, appears to be in violation of Pakistan Defence



Officers Housing Authority (PDOHA), namely Building Control and Town Planning Regulations 2020.

Transparency International Pakistan in 2009 filed a Constitutional Petition No. 2184 of 2009 in Honorable High Court of Sindh on 2<sup>nd</sup> October 2009, on M/s Creek Marina (Pvt) Limited, Emaar Giga Karachi Ltd, against Defence Housing Authority, Clifton Cantt Board, KBCA, with a prayer to order that (**Annex-B**):

- The builders in DHA e.g. EMAAR Project Crescent Bay and Meinhardt Project Creek Marina and others, to charge only 4% of the installments paid by buyer in case of cancellation of the booking either by buyer or the builder and in case of delayed builder shall pay to the buyer interest at the current bank interest rate on all amount to buyer for the period of delay.
- The mandatory information as prescribed in the para 10 of the petition to be provided to DHA Karachi, by the builders, shall also be posted on the website of the project by the builder as well as on the website of DHA by DHA, for public knowledge and monitoring.
- The register be maintained by each builder showing the number of units/plots booked with name of every investor against such unit and display such register at a prominent place in their site office for inspection at all times to so eliminate multiple booking.
- Enforce the right of Citizens as contemplated under Article 9, 18, 23 & 24 and any other relief which this Honorable Court may deem fit and proper in the circumstances of the case in the larger interest of small or medium investors.

On 15.10.2011, DHA via its attorney Khalid Jawed Khan conveyed to the Chairman TI Pakistan and the Honorable High Court of Sindh that the Executive Board of the DHA has made Building Control & Town Planning Regulations 2011, in which the TI Pakistan apprehensions have been addressed (**Annex-C**).

The Honorable high Court of Sindh on 15.05.2012 passed the following order.

**Order of the High Court of Sindh**

*“It is therefore, prayed that this Honorable Court may be pleased to dispose off the pending application M.A. 2441/10 with the observation/direction to the Respondents to act strictly in accordance with the applicable laws including the Cantonment Act, 1924 (where applicable), **Building Control & Town Planning Regulations, 2011, Public Sale Project Chapter XIII.** The Respondent No. 1 may further be directed to ensure strict compliance of the Regulations 2011, by all persons including the builder developing any project within its jurisdiction in letter and spirit and the information as prescribed in the Chapter XIII of Building Control & Town Planning Regulations, 2011 to be provided to the DHA Karachi by all the builders, and shall also be posted on the website of the project by the builders as well as on the website of the DHA by the DHA, for public knowledge and monitoring”. Dated 15.05.2012 (**Annex-D**).*

Pakistan Defence Officers Housing Authority (PDOHA) revised the Building Control and Town Planning Regulations in 2020, in which PDOHA retained the provisions of Building Control & Town Planning Regulations, 2011, Public Sale Project Chapter XIII.

**Transparency International Recommendations**

Transparency International Pakistan requests the Administrator DHA Karachi to review the complaint and Emaar Pakistan agreement in light of the PDOHA Building Control & Town Planning Regulations 2011, and PDOHA Building Control & Town Planning Regulations 2020, and the Honorable High



Court of Sindh Court Order dated 15.05.2012 in the Constitution Petition No. 2184/2009 and if found correct, to take action and order M/s Emaar Pakistan and all other builders for compliance with the PDOHA Building Control & Town Planning Regulations 2020 and the Honorable High Court of Sindh Court Order dated 15.05.2012.

Transparency International Pakistan is striving for across the board application of Rule of Law, which is the only way to stop corruption, and achieve against Zero tolerance against corruption.

Regards

  
Advocate Daniyal Muzaffar,  
Trustee/Legal Advisor  
Transparency International Pakistan

Copies forwarded for the information with request to take action under their mandate to:

1. PSPM, PM House, Islamabad.
1. Administrator DHA, DHA Karachi
2. CEO, Cantonment Board Clifton, CBC Karachi
3. Director General, NAB, Karachi
4. Registrar, High Court of Sindh, Karachi
5. Chief Executive Office, Emaar Dubai, Dubai

**Note:**

This is to clarify that Transparency International Pakistan is not a complainant, it acts as a whistleblower and operate under Article 19-A, of the Constitution of Pakistan which gives the right to public to know how government is being run by public officers. Article 19-A makes the right to access of information pertaining to a public authority a fundamental right, Justice Syed Mansoor Ali Shah in his landmark judgment in case of Ataulah Malik v. Federation of Pakistan includes following order.

Right to information is another corrective tool which allows public access to the working and decision making of the public authorities. It opens the working of public administration to public scrutiny. This necessitates transparent and structured exercise of discretion by the public functionaries. Article 19-A empowers the civil society of this country to seek information from public institutions and hold them answerable. PLD 2010 Lahore 605.

and the directives of the Honorable High Court of Sindh in Constitutional Petition No. 2184 of 2009

to the Purchaser The period of delay will be calculated from the Completion Date (after counting the Eighteen months envisaged in clause 4.1 and after counting the expiry of the notice period mentioned in Clause 11.1 above) or any extension made thereof as specified by the DHA. All compensation payment (if any) shall be made on completion of the Project. The compensation as mentioned ibid shall be payable on taking over the possession of the unit.

11.3 In case the default is not remedied within the time period envisaged in the Agreement, the Vendor shall have the right to return the installments received from the Purchaser subject to any deduction as per the terms of this Agreement.

## 12. DEFAULT BY THE PURCHASER

12.1 If the Purchaser fails to pay any of the Installment Payment or other payments due under the Agreement to the Vendor, the Management Company or to any Competent Authority on its Due Date, then the Vendor may, at its sole discretion, take one or more of the following actions:

(i) impose liquidated damages at the rate of one and half percent (1.5%) per month on each outstanding Installment Payments and other payments that remain outstanding; and

(ii) In the event that this default is not cured within thirty (30) days from the due date, the Vendor shall have the right, at its option, by giving not less than thirty (30) days notice to the Purchaser, to terminate this Agreement and if the payment default has not been remedied within the said thirty (30) days notice period, this Agreement shall automatically terminate without further notice, legal proceedings or court judgment and subject to the applicable laws, all payments previously made by the Purchaser shall be absolutely forfeited by the Vendor, together with any and all rights in the Sale Unit, and shall be without prejudice to the Vendor's right to claim additional compensation under the applicable law.

12.2 In the event the Purchaser fails to give any undertaking or execute any document or take possession of the Sale Unit, then the Vendor may take the action specified under 12.1(ii) above.

**ATTESTED**

Emaar Authorized Signatory's Initials \_\_\_\_\_



Purchaser's Initials \_\_\_\_\_

12.3 Delay in payment of any two or more Installment Payments shall be treated as a default by the Purchaser and the Vendor will be entitled to take action in accordance with Clause 12.1(ii) above.

### 13. FORCE MAJEURE

13.1 "Event of Force Majeure" means an act of God including but not limited to fire, flood, earthquake, windstorm or other natural disaster; act of any sovereign authority including but not limited to war, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, nationalization, requisition, act of terrorism or destruction or damage to property by or under the order of any government or public or local authority or other Competent Authority or imposition of government sanction embargo or similar action; labour dispute including but not limited to strike, lockout or boycott; interruption or failure of utility service including but not limited to electric power, gas, water or telephone service; failure of the transportation of any personnel, equipment, machinery or material required by the Vendor for completion of the Project; breach of contract by any essential contractor or subcontractor or any other matter or cause beyond the control of the Vendor that prevents the Vendor from completing or performing its obligations under the Agreement. The Vendor shall be excused from performance under the Agreement for so long as such Event of Force Majeure exists and its effects continue.

13.2 Should an Event of Force Majeure occur that is likely to or will delay the Completion Date, the Vendor shall promptly notify the Purchaser of the event and give the Purchaser revised Completion Date or an estimate of the duration of the delay, followed by a revised Completion Date as when same can be determined. Extensions in the Completion Date on account of an Event of Force Majeure shall be in addition to any extensions pursuant to Clause 11 provided that no Event of Force Majeure shall excuse the Purchaser from making any Installment Payment on its Due Date. Should an event of Force Majeure delay the Completion Date by a period of one (1) year the Purchaser may elect to terminate the Agreement by notice to the Vendor and the Vendor shall refund all monies, without deduction, paid by the Purchaser on account of Installment Payment.

ATTESTED

Emaar Authorized Signatory's Initials



Purchaser's Initials

cancellation letter by PDOHA. Provided that builder will publish the cancellation notice in the two leading newspapers (English and Urdu) under the heading of cancellation of flat or unit.

**20.11.1** In response to the above cancellation notice, if the allottee intends to continue the booking, the builder will restore the allotment, after receipt of pending payment and charging the mark up on the prevailing bank rate for the period of delay on unpaid instalments.

**20.11.2** If no response to the PDOHA is received from the allottee during the said period, the cancellation of the unit will be confirmed automatically. In case the cancellation is made before allocation, the builder will refund the total amount paid till that time by the allottee within thirty days. However, after allotment of unit, the builder will retain 4 % of the amount paid that far, and the rest of the amount will be refunded within thirty days.

**20.11.3** In spite of failure to make payment of instalments in time, if the builder does not resort to cancellation as provided in these Regulations, the builder may or may not charge mark up at the prevailing bank rate on the unpaid instalments and the allottee will be informed accordingly.

**20.12 Loan Component:** The builder may arrange the availability of loan, if the project contains a loan component. If loan is refused or reduced due to any reason whatsoever by the loan giving agency, the allottee will pay the loan amount from his own resources. However, extra time of at least six months will be given to allottee to pay the loan component to the builder.

**20.12.1** The allottee must complete all documentation for lease and loan within one hundred and twenty days of booking as written in the agreement and the builder will issue a reminder. The repayment of the loan instalments will be made by the allottee or borrower to the loaning agency as and when it falls due as per rules of the relevant agency. The allottee or borrower will abide by the arrangements of loan, will follow rules, Regulations, orders and instructions of the loaning agency.

**20.13 Documentation and Connection and Meter Charges:** Documentation charges for sub-lease and loan, and external services connection charges for gas, electricity, sewerage and water will be paid in proportion to the unit area in accordance with the actual payment made to these agencies plus 15 % as service charges for their respective services.

**IN THE HONORABLE HIGH COURT OF SINDH AT KARACHI**  
(Extra Ordinary Jurisdiction)

**Constitutional Petition No. 2184 of 2009**

**Transparency International Pakistan ..... Petitioner**

**Versus**

**Defence Housing Authority Karachi and others ..... Respondents**

**Application for Contempt of Court U/A 204 of Constitution of Pakistan**  
**R/W U/S 3/4 of Contempt of Court Act**

Respectfully sheweth,

It is most respectfully submitted and prayed on behalf of the petitioner above named that the Honorable Court may very graciously be pleased to initiate the contempt proceedings against (1) Administrator DHA (2) Secretary DHA Karachi having office at 2-B, East Street, Phase-I DHA Karachi 75500, (3) Haji Muhammad Rafiq Giga, Director Emmar Giga International FZCO & Emmar Giga Karachi Ltd, 39/3, Hussaini Cooperative Housing Society, Almagir Road, Karachi, as they are disobeying the Orders of this Honorable Court dated 23.02.2010 and also 15.05.2012.

1. That the petitioner filed a constitutional petition No. D-2184/2009 in October 2009, and prayed for the following reliefs:

- I. *The builders in the DHA e.g. EMAAR, project Crescent Bay and Meinhardt, project Creek Marina and others, to charge only 4% of the installments paid by buyer in case of cancelation of booking either by the buyer or the builder, and in case of delay, builder shall pay the buyer interest at the current bank interest rate on all the amount to the buyer for the period of delay.*
- II. *The mandatory information as prescribed in para 10 of the petition to be provided by the builders to the DHA Karachi shall also be posted on the website of the project by the builder, as well as on the website of the DHA by the DHA, for public knowledge and monitoring.*

- III. *A register be maintained by each builder showing the number of units/plots booked with name of each investor against such units/plots, and such register*
  - IV. *to be displayed by the builder at a prominent place in their site office for the inspection, at all times, in order to eliminate multiple bookings.*
  - V. *Enforce the rights of a citizen as contemplated under Article 9, 18, 23 & 24 and any other relief which this Honorable Court may deem fit and proper in the circumstances of the case in the larger interest of small or medium investors.*
2. That the petitioner in January 2010 filed a petition under section 151 C.P. Code for the following additional prayers:
    - I. *That builder and DHA (the respondent No. 1) be ordered to strictly follow the DHA Bye-Laws, 2003, as framed by the Clifton Cantonment Board (CCB) for builders and developers in the area falling within the domain of the Cantonment Board, and the Respondent No.1 & 2 be ordered that all buildings constructed or being constructed in violation of such Cantonment Bye-laws of 2007 be demolished immediately and the investors be compensated by Respondent No.1 for pertaining such violations in connivance with builders and developers, and Creek Marina and Crescent Bay builders as well as the DHA Karachi shall be directed to obtain an NOC from the CCB, and shall sign the CCB Model Agreement under Article No. 101 with the buyers, which shall include requirements under Articles 102, 107 to 115.*
  3. That this Honorable Court was pleased to dispose of the filed petition No.2184/2009 vide order dated 23-2-2010:

*"After having heard the Petitioner, Learned Counsel for the respondents as well as Learned D.A.G., we proposed to Learned Counsel that this petition be disposed of by directing the builders to abide by the Rules and Regulations/Bye-laws of the DHA as well as that of Clifton Cantonment Board viz-a-viz the project in issue viz Crescent Bay and Creek Marina being developed by EMAAR Giga Karachi Ltd and Creek Marina (Pvt.) Limited to which they all agree. Consequently, this petition is being disposed of by directing the builders aforementioned to follow the provisions of the relevant law viz, the Defence Housing Authority Order V of 1980 and Rules framed there-under as well as the cantonments Act and the Rules and Regulations/Bye-laws of the Clifton Cantonment Board, where applicable. In*



*case of any violation of aforementioned Order, Act, Rules and Regulations etc, appropriate application for contempt may be made."*

4. Later on, the petitioner filed an application for contempt being M.A. 2441/10 against four persons including the officers of Respondent No.1 being Contemnors No.1 and No. 2. The petitioner's stand was that the bye-laws were beyond the scope of the law, hence, the Respondent No. 1 was in violation of the order dated 23-2-2010.
5. That subsequently, vide the order dated 25-5-2010, this Honorable Court was pleased to observe that the projects of Crescent Bay and Creek Marina, falling in the reclaimed area, were beyond the limits of Clifton Cantonment Board (CCB), therefore; vide order dated 16-9-2010 and 6-5-2011, the Federal Government was directed to decide the issue of extension of limits of CCB to the area where the projects are situated.
6. That it is humbly submitted that the sole grievance of the petitioner was that the builders of public sale projects in DHA e.g. EMAAR, project Crescent Bay and Meinhardt, project Creek Marina and others, to charge only 4% of the installments paid by the buyer in case of cancellation of the booking either by the buyer or the builder, and in case of delay, the builder shall pay the buyer interest at the prevailing bank interest rate on all the amount to the buyer for the delayed period, and Creek Marina and Crescent Bay builders as well as the DHA Karachi shall be directed to obtain NOC from CCB, and shall sign CCB Model Agreement under Article No. 101 with buyers, which shall include requirements under Articles 102, 107 to 115.
7. That the Respondent No. 1 informed the petitioner that in October 2011, that the Respondent No. 1 on 28 June 2011 has framed the Pakistan Defence Officers Housing Authority Building Control & Town Planning Regulations, 2011 (the Regulations, 2011) which supersedes all the earlier byelaws/regulations published by Pakistan Defence Officers Housing Authority, Karachi. ( Annex-A)
8. That as the Building Control & Town Planning Regulations, 2011, Public Sale Projects Chapter XIII satisfactorily covers the issues and matters including the crucial issue of the forfeiture of only 4% of the installments on cancellation of units booked by the general public in public sale projects, and in case of delay, the builder shall pay the interest to the buyer of the delayed period on the total paid amount at the current bank interest rate, the petitioner approached Honorable Court with following prayer

*"It is, therefore, prayed that this Honorable Court may be pleased to dispose off the pending application M.A. 2441/10 with the observation/direction to the Respondents to act strictly in accordance with the applicable laws including the Cantonment Act, 1924 (where applicable), Building Control & Town Planning Regulations, 2011, Public Sale Projects Chapter XIII. The Respondent No. 1 may further be directed to ensure strict compliance of the Regulations 2011, by all persons including the builders developing any project within its jurisdiction in letter and spirit and the information as prescribed in the Chapter XIII of Building Control & Town Planning Regulations, 2011 to be provided to the DHA Karachi by all the builders, and shall also be posted on the website of the project by the builders, as well as on the website of the DHA by the DHA, for public knowledge and monitoring. "*

9. That this Honorable Court was pleased to pass the following order on 15<sup>th</sup> May 2012. while disposing of the main petition and contempt application CMA No. 2441/10: the relevant portion of above said Order is:

*"Council for Defence Housing Authority has no objection for the grant of the prayer made in this application. Hence this application is granted as prayed and resultantly contempt application CMA No. 2441/10 stands disposed of."*

10. That on 06.09.2012 in the Civil Petition No 558-K of 2011 filed by Pakistan Defence Officers Housing Authority, Karachi, the Supreme Court of Pakistan has passed following orders, which does not allow Defence Officers Housing Authority, Karachi any power to allow construction in DHA area, as such power is only available to the Cantonment Board.

*" After having briefly heard both the learned ASCs, we have reached the conclusion that the Petitioner did not have any power to condone illegal construction in the concerned building, i.e. conversion of the basement meant for car parking as such power is only available to the Cantonment Board under Section 184 and 185 of the Confinement Act 1924".*

11. That on 05.12.2012 an Amendment Agreement ( Addendum) to LRDA was signed between DHA, EGI & EGKL, which is against the Honorable Court Order dated 15<sup>th</sup> May 2012, and is also against the Supreme Court Order dated 06.09.2012.

Notwithstanding the above mention clear orders of the Honorable Supreme Court and Honorable Sindh High Court, Administrator DHA Karachi, Secretary DHA Karachi and Haji Muhammad Rafiq Giga, Director Emmar Giga International FZCO & Emmar Giga Karachi Ltd by not abiding with the Court Orders have acted in violation of the order by signing the Amendment Agreement ( Addendum) to LRDA was signed between DHA, EGI & EGKL on 05.12.2012,

DHA without legal authority as decided by the Supreme Court on 06.09.2012, has approved the Master Plan for Construction of 52 Towers, increased the FAR to 1:5, and Emmar has been allowed illegal concessions, as DHA has not bound it protection of public as provided in DHA Building Control & Town Planning Regulations, 2011, Public Sale Projects Chapter XIII, and the Cantonment Bye Laws of 2007 as framed by Clifton Cantonment Board for Builders and Developers which requires compliances of 26 sections of CHAPTER XI, Section 93 to Section 119.

In view of the above it is humbly prayed that appropriate action according to law against the alleged contemnors may kindly be initiated, and the Amendment Agreement ( Addendum) to LRDA was signed between DHA, EGI & EGKL, signed on 05.12.2012 be declared illegal, and they may be called in person to respond this contempt application, or any other suitable order as Honorable Court may deemed appropriate in the facts and circumstances of the case.

Karachi December 2012

Petitioner

**KHALID JAWED KHAN**  
LL.B (LON), BCL (OXFORD), LL.M. (HARVARD)  
BAR-AT-LAW

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The Chairman,  
Transparency International Pakistan,  
5-C, Khayaban-e-Ittehad,  
Phase VII,  
Karachi.

**CONSTITUTION PETITION NO. 1559/09 TRANSPARENCY INTERNATIONAL  
PAKISTAN Vs K.B.C.A. AND OTHERS.**

Dear Sir,

1. We act on behalf of our client M/s. Pakistan Defence Officers Housing Authority (the Authority) with instructions to convey to you that the Executive Board of the Authority has made the Building Control & Town Planning Regulations, 2011, (the Regulations) whereby, inter alia, Regulation 120(c) has been introduced which is as follows:

'If no response to the PDOHA is received from the allottee during the said period, the cancellation of the unit shall be confirmed automatically. In case the cancellation is made before allocation, the builder shall refund the total amount paid till that time by the allottee within thirty days. However, after allotment of unit, the builder shall retain four percent of the amount paid that far, and the rest of the amount shall be refunded within thirty days.'

2. We understand that this was the fundamental concern expressed by the Transparency International Pakistan (T.P.I.) and it was for this reason that the Authority was joined as a Respondent in the title petition filed by T.P.I. In view of the above Regulation we hope that the concern expressed by the T.P.I. vis-à-vis the Authority stands redressed. Copy of the Regulations is enclosed for your reference.

Yours truly,

  
Khalid Jawed Khan.

Dated 15.10.11

**CHAPTER I**

**1. General**

- a. In exercise of the powers vested in the Executive Board under Article 23 of the Presidential Order No. 7 of 1980 and all other enabling powers in that behalf, the Executive Board hereby makes the following Regulations for regulating the additions to, or alterations in, or demolition of the existing buildings, or erection or re-erection of new buildings and town planning parameters to be followed in Pakistan Defence Officers Housing Authority (PDOHA), Karachi, which shall be deemed to have come into force with effect from 28 June 2011 vide Executive Board Meeting No 1/2011 dated 28 June 2011.
- b. These regulations supercede all the earlier byelaws / regulations published by Pakistan Defence Officers Housing Authority, Karachi.
- c. These regulations are hereby promulgated and published and will be implemented in full spirit under the title of: -

**BUILDING CONTROL & TOWN PLANNING REGULATIONS 2011  
PAKISTAN DEFENCE OFFICERS HOUSING AUTHORITY KARACHI**

**2. Application and Commencement**

- a. These shall come into force wef 28 June 2011.
- b. These regulations will apply to the entire area falling within the jurisdiction of PDOHA, Karachi.
- c. The word "regulations" will replace the word "byelaws" in all contracts/agreements/JVs etc signed by the Authority prior to this promulgation.

**3. Definitions. In these regulations, unless there is anything repugnant in the subject or context: -**

- a. **Addition:** Addition of any unit or structure to any building or structure constructed in accordance with these Regulations.
- b. **Alteration:** Any change made after the approval of building plan without affecting or violating any provision of these Regulations.
- c. **Amalgamation:** The joining of two or more adjoining plots into a single plot in accordance with these regulations.
- d. **Amenity Plot:** A plot allocated exclusively for the purpose of amenity uses, such as government offices, health, welfare, education, worship places, burial grounds, parking and recreational areas.

**CHAPTER XIII**

**PUBLIC SALE PROJECTS**

**No Objection Certificate for Public Sale Projects**

110. All commercial/multistoried buildings to be constructed for onward transfer of title in piece meal (in the form of sub lease etc) are bound to obtain NOC for sale from PDOHA in accordance with these regulations.

111. **Application for NOC.** A builder applying for NOC to PDOHA shall furnish the requisite documents and particulars in prescribed Form as appended to these regulations, duly signed by all concerned.

112. **Undertaking of the Builder or Professional.** The builders and their architect or engineer submit the undertaking alongwith the prescribed Form. The undertaking of the builder, as architect and engineer shall be on a stamp paper in accordance with format specified in Form.

113. **Determination of Price and Cost Estimate.** A builder shall submit the selling price of various units for registration purposes with details, specifications and work programme for the project as specified in Form. This price shall be quoted in all the advertisement and promotion literature published by the builder, no escalation in the cost shall be allowed except where inflation (as defined by the Ministry of Finance) is above double digit for particular year in such case excess over the double digits shall be the percentage of price increase. In this case the builder shall simply inform the PDOHA alongwith relevant inflation figure. No escalation shall be granted to the builder who has failed to complete the project in time.

114. **Fee for NOC.** A builder shall pay to PDOHA a fee for the "NO OBJECTION CERTIFICATE FOR SALE" to publish a notice on the salient features of each public sale project (name of project, address, builder, office address, architect or engineers, number of floors, number and sizes of shops, flats, offices, compulsory open spaces, date of completion, and draft agreement, etc) within seven days of issuance of "NOC for Sale."

115. **Security Deposit**

- a. The builder shall deposit cash security equivalent to one percent of the cost of construction of the project with the PDOHA to be held in a separate account which shall be recovered in advance from owner or builder before issue of approval of building plan or NOC for sale. In addition, in case of delay in completion of the project, where such delay has not been condoned as per regulation 128, deduction from the security shall be made in proportion to the extent of the delay. This amount or lesser amount shall be refunded on the successful completion of the project and after obtaining the Occupancy or Completion Certificate and the expiry of the maintenance period as enunciated in the NOC granted by the PDOHA.

- b. PDOHA shall have the right to utilize the security deposit to remedy any fault or defect in the construction of the building after receiving complaints or notice and if the builder fails to rectify the same by himself or violation of any condition of the NOC granted by the PDOHA that come to light at the time of the completion of the project or in case the builder fails to comply with any of the following, namely:-
- (1) To construct the building in accordance with the design specifications agreed with the purchaser and approved by PDOHA.
  - (2) To complete the building on time as per agreement with the purchaser.
  - (3) To provide services as per agreement with purchaser.
  - (4) To obtain Occupancy Certificate from PDOHA.
  - (5) If builder is found to be involved in any unlawful activities in the project.
  - (6) To rectify defects after occupation provided the builder is at fault.
- c. Any such defect or violation shall have to be made good by the builder at his own cost and risk and the cash security deposit, shall not absolve the builder of his responsibility to the project as per condition of NOC.
- d. This security deposit shall not, in any way prejudice the PDOHA's rights under these regulations to initiate any other proceedings or action in the event or violation of any of these regulations.
- e. The deposit shall be released to the builder after one year of obtaining Occupancy Certificate but after meeting all builder's liabilities as cleared by the PDOHA.

**116. Application Form for Allotment.** After the receipt of NOC from the PDOHA the builder shall get filled in an application form from a person intending to book a unit in the project.

**117. Execution of Sub-Lease.** A unit shall be offered for sale on cash or cash-cum-loan basis as per schedule of payment. Sub-lease shall be executed as per sale and allotment conditions, in favour of allottee, before delivering the possession of the unit. The allottee shall own the building structure of his unit and shall proportionately share the price or rent of land of the unit with other allottees of the project.

**118. Confirmation of Allotment.** The builder through an allotment letter to the allottees shall confirm the allocation of the unit, within fifteen days of booking. The allotment letter shall specify the unit number, floor, floor area of the unit, general facilities, fittings and fixtures with their make and material, the total price of the unit and details of

other charges together with the key plan of unit in line with key plan approved by the PDOHA at the time of NOC.

119. **Agreement with Allottee.** Within fifteen days of the issuance of allotment letter and before calling other installments in respect of the unit, the builder shall execute an agreement with the allottees.

120. **Payment of Installment**

- a. The payment of installment shall be made by the allottee strictly according to the schedule of payment. In case of failure a fifteen days notice shall be issued by Registered Acknowledgement Due or registered courier service on the last given address and if the allottee fails to make payment within the above period another notice shall be issued by the builder upto another thirty days. In case of further failure a cancellation letter shall be issued to the allottee and a copy of which shall be endorsed to the PDOHA. The builder shall not rebook the cancelled unit within thirty days of receipt of copy of cancellation letter by the PDOHA. Provided that builder shall publish the cancellation notice in the two leading news papers (English and Urdu) under the heading of cancellation of flat or unit.
- b. In response to the above cancellation notice, if the allottee intends to continue the booking, the builder shall restore the allotment, after receipt of pending payment and charging the markup on the prevailing bank rate for the period of delay on unpaid installment.
- c. If no response to the PDOHA is received from the allottee during the said period, the cancellation of the unit shall be confirmed automatically. In case the cancellation is made before allocation, the builder shall refund the total amount paid till that time by the allottee within thirty days. However, after allotment of unit, the builder shall retain four percent of the amount paid that far, and the rest of the amount shall be refunded within thirty days.
- d. In spite of failure to make payment of installments in time, if the builder does not resort to cancellation as provided in these regulations, the builder may or may not charge markup on the unpaid installments at the prevailing bank rate and the allottee shall be informed accordingly.

121. **Loan Component.**

- a. The builder may arrange the availability of loan, if the project contains a loan component. If the loan is refused or reduced due to any reason whatsoever by the loan giving agency, the allottee shall pay the loan amount from his own resources. However, extra time of at least six months shall be given to allottee to pay the loan component to the builder.
- b. The allottee must complete all documentation for lease and loan within one hundred and twenty days of booking as written in the agreement and the builder shall issue a reminder. The repayment of the loan installments shall



be made by the allottee or borrower to the loaning agency as an when it falls due as per rules of the relevant agency. The allottee or borrower shall abide by the arrangements of loan and will follow rules and regulations and orders and instructions of the loaning agency.

122. **Documentation and Connection and Meter Charges.** Documentation charges for sub-lease and loan, and external service connection charges for gas, electricity, sewerage and water shall be paid in proportion to the unit area in accordance with the actual payment made to these agencies plus fifteen percent as service charges for their respective services. This amount should be paid at the time of deposit of challan. In case any allottee fails to make this payment he shall pay mark up on the amount at the prevailing bank rate.

123. **Minor Changes.** The builder shall construct the building strictly according to the approved building plans. However, minor changes, if any, within the unit may be made by mutual arrangement between builder and allottee provided that these do not contravene the regulations and such changes do not effect the structural stability of the building and do not usurp the right of the other allottees.

124. **Clearance of Dues for Execution of Sub-Lease.** The sub-lease of the unit shall be executed in favour of the allottee before handing over the possession of the unit, provided the allottee has made payment of outstanding amount up to that time.

125. **Timely Completion of the Project.** The builder shall maintain steady progress of work irrespective of the situation of payment by the individual allottees and availability of loan by the loan-giving agency. The builder shall fulfil the obligation of the timely completion of the project by arranging the deficit finances from his own resources. The builder shall inform the allottees every three months regarding progress of the project.

126. **Withdrawal of Allotment.** The allottee can surrender his allotment of the unit by surrendering the original letter of allocation or allotment to the company and in this event the builder will refund to the allottee the amount deposited till that time. In case the cancellation is made before allotment the builder shall refund total amount paid by the allottee till cancellation within thirty days. However, after the allotment of unit four percent of the amount paid that far, for the unit, shall be retained by the builder and the rest of the amount shall be refunded within thirty days.

127. **Extension in Date of Completion.** Extension in date of completion shall be allowed to a builder if he produces documentary proof that more than fifty percent of his clients have defaulted in payments of two or more installments for over six months period. The builder shall also submit consent of atleast fifty percent of the allottees while applying for the extension in time.

128. **Sublet and Transfers of Allotment.** The allottee can sublet, transfer or sell his unit to any one, with prior written permission of the builder, who shall allow transfer on receipt of all outstanding dues up to that time and transfer fee at rate of half percent of total price of unit, and no transfer fees shall be charged in case the transfer is made within three months of allotment.

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129. **Physical Possession and Caretaking Charges.** The builder shall, after obtaining Occupancy Certificate from the PDOHA, which shall include the provision of electric, gas, water and sewerage services (obtained by the builder from respective civic agencies), issue intimation letters to the allottees. The allottee shall take over possession of the unit within thirty days of receipt of such letter from the builder. In case of delay, the builder shall charge per month as specified in the agreement from the allottee for caretaking of the unit in good condition.
130. **Delay in Completion and Compensation for Period of Delay.** The builder shall complete the project and hand over physical possession of the unit complete in all respect to the allottee by the time specified by the PDOHA. In case of delay in handing over possession, the builder shall pay markup to the allottee at the rate of prevailing banks rate on the total amount paid, for the period of delay calculated from the completion time specified by the PDOHA or extension made thereof.
131. **Abandonment of the Project.** If, for any reason, the project is abandoned by the builder, the builder will refund the total amount received from the purchaser with mark up at the prevailing bank rate on the same, for the whole period of retention of the money, alongwith an additional compensatory amount equal to ten percent of the amount received from the allottee up-to-date against the booked unit, within sixty days of the announcement to the effect of the abandonment of the project.
132. **Defect Liability.** The builder shall assume defect liability of the unit for a period of one year in respect of structure and six months in respect of fixture from the date of offering possession of the unit after obtaining Occupancy Certificate, and all defects shall be rectified.
133. **Sale or Transfer of the Project (Excluding Special Projects).** No builder shall sell or transfer the whole project to any one for sale, or transfer the units of the project to the general public, unless prior intimation to the PDOHA is given and No Objection from the two-third majority of the allottees is obtained. The new builder shall assume all responsibility and liabilities of the agreement made between outgoing builder and allottees after completing the transfer procedure as per Transfer Regulations of PDOHA. In addition, the new builder must get a fresh NOC from PDOHA in his favour. In case the owner/transferee fails to comply with these regulations, A/B Lease shall be determined forthwith by PDOHA.
134. **Formation of Association and Maintenance of Utilities.** The allottees would form an association to handle the affairs of the project and maintenance of the services and amenities. The rights of easement, appurtenances and other common rights shall be transferred to such association.
135. **Settlement of Disputes.** All disputes of the builder and allottee shall be referred to the PDOHA. Any appeal against the decision made by the authorized officer of the PDOHA may be filed before the Administrator PDOHA, whose decision shall be final and binding.

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**136. Instructions of PDOHA.** Besides the above regulations, the orders and instructions of the PDOHA in accordance with these regulations, issued from time to time, in this regard shall be followed strictly.

**137. Use of Amenity Spaces.** Common use or amenity spaces, recreational area, parking area in the project shall neither be converted nor mis-utilized but will be used exclusively for the benefits of the allottees of the project as per approved plan

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**C.P. No.D-2184 Of 2009**

Date	Order with signature of Judge
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For order on CMA Nos:-

1. CMA No.19188/2012 (U/A).
2. CMA No.10189/2012 (U/S 151 CPC).

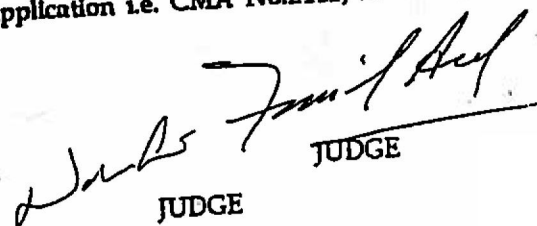
15.05.2012.

Petitioner Chairman, namely Syed Adil Gilani, present in person.  
 Mr. Khalid Javed Khan, Advocate for the Respondent (DHA).  
 Mr. Rmal Kansi, Advocate.  
 Mr. Nasimuddin Sheikh, Advocate.  
 Mr. Sheeraz Iqbal, Standing Counsel.

1. Urgency granted.
2. In this application the petitioner has prayed as under:

*It is, therefore, prayed that this Honorable Court may be pleased to dispose off the pending application M.A. 2441/10 with the observation/direction to the Respondents to act strictly in accordance with the applicable laws including the Cantonment Act, 1924 (where applicable), Building Control & Town Planning Regulations, 2011, Public Sale Projects Chapter XIII. The Respondent No.1 may further be directed to ensure strict compliance of the Regulations 2011, by all persons including the builders developing any project within its jurisdiction in letter and spirit and the information as prescribed in the Chapter XIII of Building Control & Town Planning Regulations, 2011 to be provided to the DHA Karachi by all the builders, and shall also be posted on the website of the project by the builders, as well as on the website of the DHA by the DHA, for public knowledge and monitoring.*

Counsel for Defence Housing Authority has no objection for the grant of the prayer made in this application. Hence, this application is granted as prayed and resultanty contempt application i.e. CMA No.2441/10 stands disposed of.

  
 JUDGE

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No. D-1559 / 2009

ORDER WITH THE SIGNATURE OF THE JUDGE

1. For kalcha peahi.
2. For hearing of Misc. No. 12059/2010
3. For hearing of Misc. No. 2445/2010

Chairman of the petitioner present in person  
Mr. Munawwar Malik, advocate for DHA.  
Mr. Anwar Ali Shah, advocate for KBCA  
Mr. Mohammad Asiraf Butt, advocate for Cantonment Board.  
Mr. Sher Muhammad H.K. Shaikh, A.A.G.

By consent, this petition is allowed in toto, but with a caution that any violation of order, meaning thereby that any non-compliance of the prayer/relief granted and directed into directions by this Court are violated, and/or not enforced in letter and spirit, the officers responsible for such default/violation/obedience shall expose themselves to the contempt of court proceedings.

However, Mr. Munawwar Malik, advocate at this stage, submits that though DHA also comply with the above order in letter and spirit, however, it may be clarified that question as to whether or not the Karachi Building and Planning Regulations 2002 are applicable, is yet to be decided by this Court.

Since we have not delved into the question of applicability of Regulations, such question is not required and the DHA shall comply with the order without prejudice contentation, the such regulations are not applicable to them.

*Sd/- Magbool B. Raja*

JUDGE

*Shahidul Bari*

JUDGE

