

IN THE HIGH COURT OF SINDH AT KARACHI

Execution No. 39 of 2013

Decree Holder : Pak-Kuwait Investment Company Limited, through Mr. Ijaz Ahmed Zahid, Advocate.

Judgment Debtor : First Dawood Investment Bank, through Mr. Abdul Qayum Abbasi, Advocate.

Dates of hearing : 26.04.19, 24.09.19, 11.10.19, 24.10.19, 29.11.19 and 19.12.19

ORDER

YOUSUF ALI SAYEED, J – The present proceeding seeks execution of the decree drawn up on 05.11.2010 (the “**Decree**”) in Suit Number B-32 of 2009 filed before this Court, in exercise of its jurisdiction as a ‘banking court’ under the Financial Institutions (Recovery of Finances) Ordinance, 2001.

2. The Decree arose from the grant of an Application filed under Order 23 Rule 3 CPC read with Section 151 CPC, bearing CMA No. 11231/10 (the “**Compromise Application**”) filed pursuant to a Settlement Agreement dated 20.10.2010 (the “**Settlement Agreement**”) entered into between the Decree Holder (the “**DH**”) and the Judgment Debtor (the “**JD**”), whereby the former agreed to accept the total sum of Rs.156,694,110/- in satisfaction of its claims against the JD, through adjustment of a sum of Rs.121,372,500/- as against Office Nos. 601, 603 and 604 (the “**Subject Offices**”) in Tricon Corporate Centre, situated at Jail Road, Gulberg, Lahore (the “**Building**”), to be transferred in the name of the DH, and payment of the balance to be made in the manner prescribed (the “**Settlement**”).

3. The Decree, as drawn up, *inter alia*, encapsulates the following terms:

“(i) The plaintiff has agreed to purchase the Offices No.601, 603 and 604 from the Defendant (being the legal owner of the said property) at 6th Floor of the Building known as TRICON CORPORATE CENTER, a project of Tricon Developers Ltd situated at 73 Jail road, Gulberg, Lahore, measuring total area of 16.183 sq. ft @ 7,500/- per sq. ft for a partial adjustment of Rs.121,372,500/- (Rupees one hundred twenty one million three hundred seventy two thousand five hundred only). It is hereby agreed between the parties that all the expenses, charges, fees, duties, taxes etc incidental to the transfer of the said offices shall be borne by the Defendant.

(ii) The Defendant has made full and final payment to “TRICON DEVELOPERS” for the said offices including the sum of Rs.2.400/- Million as additional charges for HVAC & Ducting. The defendant will also bear all the expenses for the transfer of the said offices in the name of the plaintiff.

It has been agreed between the parties that the defendant shall provide to the plaintiff a letter executed by Tricon Developers Ltd in favour of the plaintiff authorizing the plaintiff to utilize the parking space for twenty four (24) vehicles allocated to the Defendant at the Tricon Corporate Center.

(iii) The defendant at the time of filing of this application has delivered to the plaintiff a Cheque No.10148703 dated September 01, 2010 for Rs.10,00,000/- (Rupees ten million only) drawn on Oman International Bank S.A.O.G Karachi, being an upfront payment to the plaintiff.

(iv) That the remaining amount of PKR25,321,610/= (Pak rupees twenty five million six hundred ten only) shall be payable by the Defendant to the Plaintiff in seventeen (17) monthly installments i.e. 16 monthly installments at the rate of PRK1,500,000/- (Pak Rupees one million five hundred thousand only) per month and 17th installment for PRK1,321,610/- (Pak Rupees one million three hundred twenty one thousand six hundred ten only) for which the defendant has delivered the following 17 postdated cheques, all drawn at Oman International Bank S.A.O.G Karachi to the plaintiff:

...”

[Sic]

4. Apparently, the payments envisaged under clause (iv) of the Decree were made, however as regards clauses (i) and (ii) thereof, a letter was addressed to the JD on behalf of the DH on 18.10.2012, alleging that certain acts remained to be performed thereunder. That letter reads as follows:

“Mr. Muhammad Rizwan-ul-Haque
SEVP-Head Merchant Banking
First Dawood Investment Bank Ltd.
1500-A, Saima Trade Towers,
I.I Chundrigar Road,
Karachi.

Dear Sir,

Suit No. B-32/2009 - Pak Kuwait vs First Dawood Inv. Bank Ltd.

We refer to the settlement arrived at between Pakistan Kuwait Investment Co. (Pvt.) Ltd and First Dawood Investment Bank Ltd in the Suit No.B-32/2009.

The Hon’ble Sindh High Court, vide its judgment dated 5th November 2010, ordered to the following effects. Copy of the judgment is attached for reference.

“(i) The plaintiff has agreed to purchase the Offices No.601, 603 and 604 from the Defendant (being the legal owner of the said property) at 6th Floor of the Building known as TRICON CORPORATE CENTER, a project of Tricon Developers Ltd situated at 73 Jail road, Gulberg, Lahore, measuring total area of 16.183 sq. ft @ 7,500/- per sq. ft for a partial adjustment of Rs.121,372,500/-. It is hereby agreed between the parties that **all the expenses, charges, fees, duties, taxes etc incidental to the transfer of the said offices shall be borne by the Defendant.**

(ii) **The Defendant has made full and final payment** to “TRICON DEVELOPERS” for the said offices including the sum of Rs.2.400/- Million as additional charges for HVAC & Ducting. **The defendant will also bear all the expenses for the transfer of the said offices in the name of the plaintiff.”**

It may be noted that Tricon Developers has started the process of transfer the property in the names of the respective allottees. We request you to facilitate and complete the process of registration in the name of Pak Kuwait in accordance with agreed terms and Compromise Decree dated November 05, 2010.

Kindly complete the process of registration after making the necessary expenses.”

5. The aforementioned letter of the DH was replied to by the JD through its letter dated 24.10.2012, disavowing further liability on its part under the Decree in the following terms:

“Mr. Inam Rajput
Head of Credit Administration
Pakistan Kuwait Investment Company (Private) Limited
4th Floor, Block-C, Finance and Trade Center,
Shahra-e-Faisal,
Karachi.

SUB: FULL AND FINAL SETTLEMENT OF UNSECURED
MONEY MARKET LINE AMOUNTING TO RS.150 MILLION.

Reference to clause ii of your letter Ref # PKIC/CAD/FDIB/Tricon dated October 18, 2012 on subject. We would like to inform you that as per the order of the High Court of Sindh at Karachi dated 05.11.2010, FDIBL has made a full and final payment to Tricon (for offices # 601, 602, 604) including:

- i) Full and Final Payment to TRICON DEVELOPERS for the said offices including the sum of Rs.2.4 Million as additional charges for HVAC & Ducting (Annexure I).
- ii) Subsequent to the Court Order of 05.11.2010, FDIBL, as per the agreement arranged for the ‘TRANSFER’ of the offices # 601, 602, 604 in the name of Pakistan Kuwait Investment Company (Private) Limited on November 08, 2010. (Annexure II).
- iii) A letter executed by Tricon Developers Ltd in favour of the plaintiff authorizing the plaintiff to utilize the parking space for twenty four (24) vehicles allocated to the Pakistan Kuwait Investment Company (Private) Limited. (Annexure III)

In view of the above, we wish to reiterate that the matter is long settled & closed in our books of accounts and you may also update accordingly.

We hope the above clarification is to your satisfaction.”

6. It is in this backdrop that the instant proceeding came to be instituted by the DH, with it being claimed that as per paragraph (i) and (ii) of the Decree the JD was required to complete the process of registration and transfer of the Subject Offices and bear all expenses, charges, fees, duties, taxes etc., incidental to the transfer, and it being sought that the Nazir be appointed to ensure and undertake the registration of the sale/conveyance deed in favour of the DH in respect of the Subject Offices and direct the Judgment Debtor to pay all expenses, charges, fees, duties, taxes, etc., incidental to the transfer thereof. Needless to say, such claim was met by objections setting out a reiteration of the JD's stance that the Decree already stood satisfied.

7. However, as it then transpired, during the course of the proceedings, permission was elicited from the Court by the DH to procure the transfer of the Subject Offices whilst provisionally bearing the costs, subject to future determination of whether the liability for the expense so incurred was to be borne by the JD. The Order of 20.11.2014 made in that vein accordingly reads as follows:

“Learned counsel for the J.D seeks time to verify how much amount, if any, her client is liable to pay to the Plaintiff towards expenses in executing transfer deed in terms of the judgment and decree. Pending this issue learned counsel for the D.H wants to bear all these expenses from his own pocket and get the documents executed in terms of judgment and decree. Learned counsel for the J.D obviously has no answer, therefore, request of the D.H is accepted he may get the documents executed in terms of the decree and the issue in respect of the expenses whether it is liability on the J.D or not and to what extent is to be decided later on.

The decree may be satisfied at the expenses of Decree Holder.”

8. The DH then apparently proceeded to procure the sought after transfer of the Subject Offices, as reflected by the Order of 13.04.2017, which states that:

“Learned counsel for the decree holder states that the subject property has been transferred and registered in the name of the decree holder in pursuance of the order dated 20.11.2014 and all the charges and expenses of the transfer and registration have been paid by the decree holder in pursuance of the said order. He further states that he has already filed a statement on 22.03.2016 alongwith supporting documents disclosing details of all the amounts incurred by the decree holder for the purposes of transfer and registration of the subject property in its name. Learned counsel for the judgment debtor claims copies of the said statement and the annexures thereto. Learned counsel for the decree holder undertakes to do the needful within seven (07) days.

Judgment debtor is directed to file a statement before the next date with advance copy to the learned counsel for the decree holder, clearly stating therein whether compliance of clause 1 of the consent decree has been made or not by the judgment debtor by paying all expenses, charges, fee duties taxes, etc incidental to the transfer of the subject property in the name of the decree holder.

By consent, adjourned to 27.04.2017.”

9. It is in this reoriented framework that the proceeding has since been continued, with the DH seeking recompense for the cost/expense borne in transfer of the Subject Offices, which, as per a Statement presented on 22.03.2016 along with certain supporting documents, has been shown to be Rs. 33,476,700/-, tabulated as follows:

A	1st Upcharge @ Rs.1,000/- per sft	Date	Amount
	Payment through Cheque No.7293883	November 27, 2014	15,050,190.00
	Payment through Cheque No.0589432	December 31, 2014	1,132,810.00
B	2nd Upcharge @ Rs.500/- per sft		
	Payment through Cheque No.7293975	December 31, 2014	8,091,500.00
C	Registration Charges		
	Stamp Duty @ 3% through Cheque No.7294087, 7294124 & 7294125	February 12, 2015 & February 19, 2015	3,641,300.00
	Withholding Tax @ 1% through Cheque No.7294093, 7294094 & 7294095	February 12, 2015	1,213,725.00
	CVT @ 2% through Cheque No.7294096, 7294097 & 7294098	February 12, 2015	2,427,450.00
	Corporate Tax/ TMA Gulberg Lahore @ 1% through Cheque No.7294299, 7294300 & 7294301	April 10, 2015	1,213,725.00
D	Registration Fee and Charges etc, Cheque	February 12, 2015	6,000.00
	Misc. and other expenses Cheque No.7294102	February 12, 2015	550,000.00
	Professional Fees, Cheque No.7294102	February 12, 2015	150,000.00
TOTAL			33,476,700.00

10. As per the Statement, the claim of the DH apparently proceeds under two heads, being that of (i) what is termed an 'Upcharge', amounting to Rs.24,274,500/-, and (ii) the conveyancing costs in terms of the applicable stamp duty, registration charges, applicable taxes and other expenses, aggregating to Rs.9,202,200/-.

11. Explaining the connotation of the term 'Upcharge', learned counsel for the DH submitted that this represented a further claim by the developer of the Building, namely Tricon Developers ("**Tricon**"), on the ground of escalation in the construction cost. He invited attention to a letter dated 01.10.2014 addressed by Tricon to the DH in that regard in the following terms:

"Mr. Inam Rajput
Head of Credit Admn.
Pak Kuwait Investment Co. Pvt. Limited
4th Floor Block C Finance & Trade Centre
Shahrah-e-Faisal,
Karachi

Dear Mr. Inam Rajput:

REVISED RATES OF UP CHARGE PAYMENT OF OFFICES IN TRICON CORPORATE CENTRE.

Please refer to our previous e-mails, letters and your visit on site regarding above noted subject.

The up charge payment has been revised to Rs.1,500/- sq.ft owing to the cost escalation of building materials, local and imported.

The management committee of Tricon Corporate Centre has approved the total up charge @ Rs.1,500/- sq.ft for timely completion of project. The copy of letter No. SAS/TTC/Design/14-8 dated August 20, 2014 of SAS Engineers is enclosed.

The detail of outstanding up charge is as follows:

Office No.	Area Sq. Ft	Rate/Sq.Ft	Total Rs.
601, 603 and 604	16,183	1,500	24,274,500

You are again requested to please immediately release the payment of Rs.24.2745 million so that the project is complete within stipulated time.

Please note that the property will be transferred after the payment of all dues.

Regards.

Sincerely,

Muhammad Nouman Mian
General Manager Finance"

12. Learned counsel for the DH also drew attention to the cited letter dated 20.08.2014, addressed by SAS Engineer to the Chief Executive of Tricon, worded as follows:

“Mr. Asif Kamal
Chief Executive
Tricon Developers Limited
Lahore

Sub: Tricon Corporate Center
Completion of Building

Dear Sir,

Kindly refer to our various meeting for the above mentioned subject matter and after detailed working, we should like to inform you that to complete the building in all respect and to have all individual offices operational i.e. Civil, Electrical, HVAC, Plumbing, and Fire Fighting etc. on additional amount of Rs.1500/sqft is required, Offices that do not pay this up charge will not have their equipment installed and will not become operational.

This up charge amount has been communicated to the Buyers committee and has been approved. You are requested to collect this amount from all buyers to achieve complete close of the project.

Thanking you,

Yours truly

Sohail Aslam
SAS Engineer.”

13. He pointed out that the Settlement Agreement contained various representations and warranties from the side of the JD, including a provision stipulating that:

“d. It shall make out a valid, subsisting and marketable title of the Offices, free from all encumbrances, taxes, dues, duties, burdens, disputes, claims and liens of any nature whatsoever and FDIB shall indemnify the PKIC against all lawful losses suffered by the PKIC, due to any lawful defect in the title of FDIB to the Offices.”

14. He submitted that payment of the Upcharge was a precondition imposed by Tricon for transfer of the Subject Offices, and argued that in terms of the Decree, as viewed in light of the Settlement Agreement, the JD was obliged to bear that burden along with the conveyancing costs. He submitted that the dispute as to the Upcharge was a matter to have been resolved by the JD as the DH did not have an independent relationship with Tricon.

15. It was submitted that as the Building had still been under construction when the Settlement Agreement was executed, Tricon had not started executing sale deeds in favour of the allottees at the time, but was only recording the transfer of allotments. It was submitted that Tricon subsequently commenced executing sale deeds in and around 2012, hence the DH addressed its letter dated 13.10.2012 to the JD, seeking to procure execution of sale deeds in its favour, but was rebuffed, with the JD signifying its refusal vide its letter dated 24.10.2012. It was argued that as per Clause 2.1(a) of the Settlement Agreement, as encapsulated the Compromise Application and accordingly reflected in the Decree, the Subject Offices had been “purchased” by the DH from the JD, hence, in addition to the terms set out therein, the rights and obligations of the JD, as a seller, and the DH, as a purchaser, were also governed by Section 55 of the Transfer of Property Act, 1882 (the “**TPA**”). Attention was drawn specifically to Clause (d) and (g) of sub-section (1) and to sub-section (2), with reliance being placed in that on the judgments in the cases reported as *Azizuddin vs. Seth Sugnichand* PLD 1959 Kar 168, *Haji Oosman Haji Ismail vs. Haroon Saleh Mahomed and Others* AIR 1923 Bombay 148, *Neni Kavur Bai vs. P. Ranganatham* AIR 1946 Madras 244 and *Ratanlal Acharatlal Shet vs. Nanabhai Miyabhai* AIR 1956 Bombay 175.

16. Conversely, learned counsel for the JD denied the existence of such liability and submitted that all obligations of the JD arising from the Decree stood discharged in full, hence no amount was payable in that regard, whether as claimed or otherwise. He pointed out that an objection to that effect had been taken at the outset, and whilst elaborating on this aspect, pointed out that at the time of execution of the Settlement Agreement and as on as on the date of filing of the Compromise Application and the date of the Decree, the JD only possessed Allotment Letters issued by Tricon in respect of each of the Subject Offices, *mutatis mutandis*, in the following form:

“ALLOTMENT LETTER

Office No.601.

We are pleased to allot you an office space at 6th Floor covered area measuring about 5,760 sqft in **Tricon Corporate Center** situated at 73 Jail Road, Lahore in the name of:

First Dawood Investment Bank Limited or its nominee.

The allotment of the office is in accordance with the Standard Terms/ Conditions.

Given on this 2nd Day of July, 2010

Yours Faithfully,

On behalf of Tricon Developers.”

17. He pointed out further that towards satisfying the Decree, the JD had approached Tricon for procuring the transfer of the Subject Offices in favour of the DH in its records, addressing a letter dated 05.11.2010 in the following terms:

“Mr. Asif Kamal
TRICON Developers Ltd
8-K, Main Boulevard, Gulberg II
Lahore

**Re: Transfer of Allotments of Office # 601, 603 & 604
AND PARKING FACILITY.**

Dear Sir,

Reference to our settlement Agreement dated July 02, 2010 on account of which ‘Allotment Letters’ for Office No.601, 603 & 604 were issued in favor of First Dawood Investment Bank Ltd.(FDIB).

As per clause # 1.(i) of the aforesaid ‘Settlement Agreement’ between Newage, FDIB & Mr. Asif Kamal says that “*Ownership rights of Mr. Asif Kamal (AK) in the abovesaid offices are being transferred in favor of FDIBL or any of its nominee*”.

In view of the above, you are now requested to transfer the aforementioned offices 601, 603 & 604 alongwith the designated ‘Parking Facility’ in favor of our following nominee:

**Pakistan Kuwait Investment Company Ltd (PKIC)
4TH Floor, FTC Building
Block-C, Shakra-e-Faisal
Karachi**

Please note that after the above transfer, the ownership will automatically stands transferred from FDIBL to Pak Kuwait Investment Company.

Regards,

Abdul Samad Khan
CEO”

18. Thereafter, Tricon had apparently proceeded to issue Allotment Letters in like terms in the name of the DH, stating as follows:

“ALLOTMENT LETTER

Office No.601.

We are pleased to allot you an office space at 6th Floor covered area measuring about 5,760 sqft in **Tricon Corporate Center** situated at 73 Jail Road, Lahore in the name of:

**Pakistan Kuwait Investment Company Ltd (PKIC)
4th Floor, FTC Building Block-C, Shakra-e-Faisal,
Karachi.**

The allotment of the office is in accordance with the Standard Terms/ Conditions.

Given on this 8th November 2010

Yours Faithfully,

On behalf of Tricon Developers.”

19. Learned counsel pointed out further that prior to the Settlement Agreement, the JD had also obtained a confirmation from Tricon in terms of its letter dated 10.08.2010, to the effect that all dues in relation to the Subject Offices had been cleared and that Tricon would thereafter have no objection to the same being transferred in the name of a third party. He submitted that the process then initiated by the JD in pursuance of the Settlement towards satisfaction of the Decree proceeded on the strength of that confirmation, which reads as follows:

“Mr. Abdus Samad Khan
Chief Executive Officer
First Dawood Investment Bank Ltd.
1500-A, Saima Trade Towers,
I.I Chundrigar Road,
Karachi.

Re: Full and Final Payment for Office Nos.601, 603 & 604 at Tricon Corporate Center, 73 Jail Road, Lahore.

Reference to subject, we hereby confirm that all payment with respect to aforementioned offices total measuring 16183 sqft, have been received with all charges inclusive of additional charges for HVAC & ducting from ‘First Dawood Investment Bank Ltd.’ (FDIBL) and there is nothing outstanding against ‘FDIBL’ or its nominee.

Further, as discussed ‘Tricon’ will have ‘No Objection’, if ‘FDIBL’ would want to transfer the aforesaid offices in the name of a third party.

Thank you

Yours sincerely,

For an on behalf of Tricon Developers”

20. He contended that in terms of the Decree it was the allotment rights of the Subject Offices that were to be transferred in favour of the DH by the JD at its own expense, which obligation stood fulfilled upon issuance by Tricon of the Allotment Letters dated 08.11.2010 in favour of the DH. Furthermore, as to the Upcharge, it was submitted that there was no such demand in the field as on the date of the Settlement Agreement, hence the same was not in the contemplation of the parties and was not the subject of the Compromise Application or part of the Decree, it being averred that the liability on that account was a matter that had been addressed and settled by Tricon and the DH as between themselves and the burden thereof could not be placed on the JD.

21. It was further submitted that what had been sought by the DH vide the proceedings went beyond the scope of the Decree, and even if a breach of the Settlement Agreement had arisen, as alleged, the same gave rise to a fresh cause of action for institution of a suit and the approach to the Court for execution of the Decree was not maintainable. It was argued that the relief sought by the DH was beyond the terms of the Decree, as the same did not envisage payment of any future charges, as were presently being claimed under the head of an Upcharge, nor required the JD to transfer the Subject Offices by way of a conveyance through execution and registration of a sale deed, hence the charges being claimed for the cost/expense incurred in that exercise, and that too, after a period of more than 4 years from the date of the Decree, were not the liability of the JD, it being emphasised that the Subject Offices were no longer in the name of the JD after 08.11.2010, when the Allotment letters had been issued by Tricon in the name of the DH.

22. It was submitted that although the Decree was a product of the Settlement Agreement, its terms could not be broadened or supplemented by the Court, and the mode and mechanism of transfer of the Subject Offices had to be understood from a plain reading of the Decree, without extraneous provisions being read in so as to cater to any perceived ambiguities sought to be addressed for the benefit of the DH, whether with reference to the Settlement Agreement or otherwise.
23. Having heard the arguments advanced and examined the Decree in light of the material placed on record, it is apparent that the main thrust of the case advanced by the DH is that in terms of the Decree the JD was required to ultimately execute a conveyance in the form of a sale deed so as to thereby transfer the Subject Offices to the DH, and while doing so, was liable for the stamp duty, registration charges and all other costs/expenses. The argument raised by the DH in support of this contention is that as per the Settlement Agreement the relationship between the DH and the JD for purpose of the Settlement was that of a 'buyer' and 'seller', which, as per the DH, was in turn reflected in the Compromise Application and incorporated in the Decree, hence the JD was required to execute a conveyance towards satisfaction of the Decree when the same is examined from the standpoint of the rights and liabilities generally governing such a relationship in terms of Section 55 of the TPA. On this basis, it is contended that the JD remains liable to now reimburse the DH in that regard, including the Upcharge.

24. That being so, it merits consideration that the particular provisions of Section 55 the TPA relied upon by the DH read as follows:

55. Rights and liabilities of buyer and seller. In the absence of a contract to the contrary, the buyer and the seller of immovable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following, or such of them as are applicable to the property sold:-

(1) The seller is bound:-

(a).....

(b).....

(c).....

(d) on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place;

(e).....

(f).....

(g) to pay all public charges and rent accrued due in respect of the property up to the date of the sale, the interest on all incumbrances on such property due on such date, and except where the property is sold subject to incumbrances, to discharge all incumbrances on the property then existing.

(2) The seller shall be deemed to contract with the buyer that the interest which the seller professes to transfer to the buyer subsists and that he has power to transfer the same:

...”

25. In that context, it falls to be considered that the status of the JD in relation to the Subject Offices was that of an allottee, hence it lacked the capacity to execute a conveyance in respect of the Subject Offices at the time of the Settlement Agreement or the Decree, and would only have been able to do so had the Subject Offices already

been conveyed in its name vide a sale deed executed by Tricon. Although the JD has been regarded by the DH as being a 'seller' for the purpose of the proposition advanced with reference to Section 5 of the TPA, it can be seen that subsequent to the Decree (i.e. 05.11.2010), the JD addressed Tricon vide its letter dated 05.11.2010 seeking the transfer of ownership rights of the Subject Offices in the name of the DH as its designated nominee, and in pursuance of that request the Allotment letters dated 08.11.2010 were issued by Tricon in the name of the DH accordingly. As such, as per the structure of the arrangement put in place as between the DH and JD, the Subject Offices stood transferred in the records of Tricon, with the DH stepping into the shoes of the JD and assuming the mantle of the allottee. That the transfer of allotment rights took place with the acquiescence of the DH is apparent from the execution application itself, which states inter alia that:

- “4. Pursuant to the decree, the allotment of the aforesaid offices was re-allocated in the name of the Decree Holder and the Decree Holder was also authorized to use 24 parking spaces.
5. The Project was not complete at the time of decree and the transfer of the aforesaid offices to the Decree Holder by way of a registered conveyance deed was to be completed upon completion of the Project.
6. When the developer of the Project commenced process of transfer of property to the allottees, the Decree Holder vide letter dated October 18, 2012 (copy attached as **Annex A**) requested the Judgment Debtor to complete the process of registration of transfer of property in the name of the Decree Holder.
7. To the utter shock and surprise of the Decree Holder, the Judgment Debtor refused to abide by the terms of the decree. A copy of Judgment Debtor's letter dated October 24, 2012 is attached as **Annex B.**”

26. As such, the nature of the Settlement obviates the application of Section 55 of the TPA being brought to bear inter se the DH and the JD, since the conveyances in this case were not to have been executed by the JD at all, and have, as is apparent, been executed in due course by Tricon in favour of the party in whose name the allotments had already been transferred, namely the DH. Accordingly, the interpretation put forward by the DH that the JD remained under obligation to execute sale deeds by virtue of Section 55 and to bear the costs of the transfer appears to be fallacious and it would serve no useful purpose to unnecessarily burden this judgment with a discussion of the cited case law on the subject. If the Settlement was intended in the understanding of the DH to have required the JD to complete the process of registration and transfer of the Subject Offices through execution of a conveyance, due care ought to have been taken to ensure that the Settlement Agreement specified accordingly, with the Compromise Application being prepared appropriately so as to ensure that such an obligation was then encapsulated in the Decree. Suffice it to say that the transfer of allotments indicates otherwise - there being nothing on record to indicate that any objection was raised by the DH even at the time of such transfer that such a methodology was not in consonance with the scheme of the Decree and that the JD was called upon to instead firstly procure a conveyance from Tricon in its favour as a precursor to an onward conveyance in favour of the DH.

27. With particular reference to the Upcharge, it also merits consideration that the first correspondence apparently exchanged as between the DH and JD following the transfer of the allotments of the Subject Offices was the letter written by the DH on 18.10.2012, over 2 years after

the transfer. When queried as to whether any prior correspondence took place between the DH and JD during the intervening period, learned counsel for the DH merely stated that verbal communications had remained underway, whereas counsel for the JD refuted that contention. Be that as it may, if the letter dated 18.10.2012 is examined, it is apparent that the same makes no mention of the Upcharge, and it is noteworthy from that perspective that the letter dated 20.08.2014, addressed to the Chief Executive of Tricon by SAS Engineer and the letter dated 01.10.2014 addressed by Tricon to the DH on the basis of the information received from the Engineer were obviously not even in the field as on 18.10.2012, when the demand for compliance was made by the DH or even when this proceeding was commenced (i.e. on 20.06.2013).

28. The contention that the DH did not have any relationship or nexus with Tricon and the claim to the Upcharge was a matter that could only therefore have been taken up by the JD is also misplaced, since the DH had already been recognised by Tricon as the allottee of the Subject Offices by that time. Furthermore, prior to execution of the Settlement Agreement, the JD had obtained a confirmation from Tricon in terms of its letter dated 10.08.2010, to the effect that all dues in relation to the Subject Offices had been cleared and that Tricon would thereafter have no objection to the same being transferred in the name of a third party. Indeed, the importance of this confirmation is emphasised by the fact that it was specifically incorporated as a part of the Decree.

29. In view of the foregoing, this execution proceeding appears to be misconceived and stands dismissed accordingly.

JUDGE

Karachi
Dated _____