

**IN THE HIGH COURT OF SINDH, KARACHI**  
**II<sup>nd</sup> Appeal No. 57 of 2023**

---

Date Order with signature of Judge

---

**Appellant:** M/s. Sami Builders of Shaz  
Residency, Through Mr. Ali Ahmad  
Turabi, Advocate.

**Respondent No.1:** Syed Bilal Hasan,  
Through Mr. Khalid Pervaiz Cheema,  
Advocate.

**Date of hearing:** 17.10.2023  
**Date of Order:** 17.10.2023

**ORDER**

**Muhammad Junaid Ghaffar, J:** Through this 2<sup>nd</sup> Appeal, the Appellant has impugned judgment dated 28.01.2023 passed by the District Judge, Malir, Karachi in Civil Appeal No. 157 of 2022, whereby, while dismissing the Appeal, the judgment dated 10.10.2022 passed by Senior Civil Judge-I, Malir, Karachi in First Class Suit No. 278 of 2021 has been maintained, through which Suit of the present respondent was decreed.

2. Heard Counsel for the parties and perused the record. It appears that the respondent herein had filed a Suit for Declaration, Possession, Recovery and Injunction seeking the following reliefs:-

“Under the circumstances, this Hon’ble Court may be pleased to pass Judgment & Decree in favour of the Plaintiff and against the Defendants as follows:-

- i. To declare that the Plaintiff has purchased the suit property i.e. Apartment bearing its No. 508, 5<sup>th</sup> Floor, Block-A, Type B-1, situated at Plot No. A, Sector 15-A, Scheme No.33, Karachi from the Defendant No.1, sale consideration in 23,40,000/- (including documentation charges i.e. Rs.60,000) and possession has not been handed over to the Plaintiff after expiry of (3) years front booking.
- ii. To declare that the Defendant is demanding illegal money i.e. Rs.10,00,000/- in account of documentation charges which is against the SBCA Law, and further declare that the Defendant No 2 is under obligation to take necessary action against Defendant No.1 which action has not been taken yet.
- iii. To Declare that the Plaintiff is facing financial losses, agony, mental torture from the hands of Defendant No 1, since May-2017, hence Defendant No.1 is liable to pay Damage / losses per month to the Plaintiff from May 2017 for sum of Rs.50,000/- per month with increase of 10% per year till handing over the possession of suit property.

- iv. To declare that the Defendant No.1 is charging excess money from Allottees, hence he refunds the same to the Allottees.
- v. To restrain the Defendant No. 1, or any other person(s) acting on his behalf from cancellation of allotment of suit property without due course of law and further he may be restrain to not demand excess charges in different tactics from the Allottees through permanent injunction.
- vi. Granting cost of the suit, Advocate professional fee Rs.100,000/-.
- vii. Any other relief(s) which this Hon'ble Court may deem fit & proper under the circumstances of the case.”

3. According to Respondent No.1, the property in question was booked with the Appellant pursuant to some contract / agreement; whereas, primary grievance was in respect of the demand of documentation charges amounting to Rs.10,00,000/ (One Million). The Courts below have accepted the claim of Respondent that such charges are to be paid on actual basis. While confronted with concurrent findings of the two Courts below to this effect, learned Counsel for the Appellant has contended that the learned Trial Court as well as the Appellate Court had failed to appreciate that insofar as the application of Clause 5-1.13 of Karachi Building and Town Planning Regulations, 2002 is concerned, the amendment carried out and published in Gazette on 28.03.2013 would not be applicable in the instant case as the agreement was entered into between the parties on 13.10.2012, and would be governed by the un-amended clause. He has further objected to the relief granted in Clause “d” of the Judgment and Decree as according to him, the demand of documentation charges to the tune of Rs.10,00,000/- was fully justified. Again while confronted to such justification, Counsel submits that a plethora of documents was filed in the trial Court which has not been considered by the two Courts below. However, on perusal of the written statement as well as cross-examination of Appellants witness (Farrukh Naeem Qurashi) it appears to be an admitted position that no such documents were ever produced or brought on record. It would be advantageous to refer to the relevant portion of his cross-examination which reads as under: -

“.....The project namely Shaz residency was launched in the year 2012 and construction of the project was started in the year 2013 but I do not recall the month of the start of the construction. The project was to be completed within four

years of the start of the construction. It is incorrect to suggest that the project namely Shaz Residency is not completed today. It is correct to suggest that I have not submitted any documentary proof of completion of the construction of the Shaz residency in the shape of the completion certified issued by SBCA with my written statement nor same is produce by me in evidence. I voluntarily state completion plan/certificate was obtained by defendant No.1 from SBCA in the year 2019. It is correct to suggest that I have not produced photographs of the building to prove that construction of the shaz residency is complete. It is correct to suggest that I have not produced fresh permission certificate issued by the SBCA in complete the project in evidence as mentioned in para No.5 of my written statement. **It is correct to suggest that breakup of the documentation charges was not mentioned in the notices dated;1-5-2019, 1-6-2019 & 3-4-2019. It is correct to suggest that breakup of the documentation charges in respect of the units booked is not mentioned in written statement, affidavit in evidence and any other documents.....”**

From perusal of the aforesaid response to the questions put to him, it is clear that the attorney / witness has admitted that no documents whatsoever, were produced either with the written statement or with the affidavit-in-evidence. In that case the argument of the Appellants Counsel that all documents were produced before the trial Court cannot be looked into at this stage. This is a second Appeal having a very limited scope, whereas, there are concurrent findings of the two Court’s below against the present Appellant.

4. The argument that since the Agreement has been entered into before clause 5-1.13 of KB&TPR was gazetted on 28.03.2013; hence not applicable is not of much of relevance as the trial Court in its decree has only asked the Appellant to prepare a fresh bill of documentation charges on actual basis with supporting receipts. Even in the earlier provision which according to the Appellant was applicable it was provided that documentation charges would be on actual basis. As noted that insofar as the claim of Rs1.0 Million is concerned, it has not been proved in any manner with supporting material; hence, cannot be recovered from the Respondent.

5. In view of such position, there appears to be no justification to interfere in the orders passed by the Courts below. Accordingly, this second Appeal being misconceived, is hereby dismissed.

**J U D G E**

Ayaz