JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

REGULAR FIRST APPEAL NO. 488 OF 2024

MATRACON, PAKISTAN (PVT) LIMITED, ETC.

VS

MUHAMMAD NAVEED AKHTAR MALIK.

Appellants by	**:**	**Raja Abid Hussain Janjua, Advocate.**
Respondent by	**:**	**Respondent along with Mr. Usama Mehboob, Advocate.**
Date of hearing	**:**	**30.04.2025**

MUHAMMAD AZAM KHAN, J.

1. Through the instant Appeal u/s 96 Code of Civil Procedure **("CPC")**, Appellants/Defendants have assailed the Judgment and Decree dated 22.06.2024 **("Impugned Judgment and Decree")** passed by the learned Civil Judge 1st Class, Court No.23, Islamabad-West **("Trial Court")** whereby the Suit filed by the Respondent/Plaintiff for recovery of Rs. 4,807,000/- along with prevailing bank profit rate and compensation/damages of Rs.35 million **("Suit")** has been partially decreed.

2. The brief facts of the case in hand are that the Respondent/Plaintiff filed the suit for recovery of Rs.4,807,000/- along with prevailing bank profit rate and compensation/damages of Rs.35 million, contending therein that he purchased one plot bearing membership No.1434 (500 Sq. yard) and three other plots under membership Nos. 2972, 2892, 2893 (250 Sq. yards each) from the Appellants/Defendants in Rawat Zone V, Islamabad, announced by the Appellants/Defendants with the name of Morgah City Islamabad in 2005. The Respondent/Plaintiff paid a total of Rs.4,807,000/- in respect of the abovementioned plots. At the time of purchase of plots, a commitment was made by the Appellants/Defendants that the possession of plots in question would be handed over to the Respondent/Plaintiff in the year 2006, positively, but Appellants/Defendants failed to give possession of the plots in question to the Respondent/Plaintiff. The Respondent/Plaintiff visited the Appellants/Defendants' office many times and wrote a number of letters, but Appellants/Defendants did not

pay heed to the genuine request of the Respondent/Plaintiff. Respondent/plaintiff also served **a** legal notice to the Appellants/Defendants but they paid no heed. Hence, the Respondent/Plaintiff filed the Suit before the learned Trial Court for recovery of Rs.48,07,000/- along with prevailing bank profit rate and compensation/damages of Rs.35 million. On receipt of summons/notice from the learned Trial Court, the Appellants/Defendants appeared before the court and submitted a written statement through which the contentions of the respondent were strongly contested. From the divergent pleadings of the parties, vide Order dated 30.05.2022, issues were framed by the learned Trial Court. In evidence, the Respondent/Plaintiff appeared in the witness box as PW-1 and got recorded his evidence, wherein he reiterated the same facts as stated in the plaint. He also produced documents Ex.P-1/1 to Ex.P-1/15 in support of his version. Imtiaz Hussain, Assistant Manager, Estate and Co-ordination of Appellants/Defendants, appeared as DW-1, got recorded his evidence, and produced documents as Ex.D1 and Ex.D2. After recording of evidence and hearing arguments of the learned counsel for the parties, vide the impugned Judgment and Decree, the Respondent/Plaintiff's Suit was partially decreed against the Appellant, in terms that: -

> *"For what has been discussed above, the instant suit stands partially decreed as to the effect that plaintiff is entitled to recovery amount of Rs.35,40,000/- and also entitled to recover Rs.15,00,000/- (as damages) from defendants."*

Being aggrieved of the Impugned Judgment and Decree, the Appellants/Defendants have filed the instant Appeal.

3. The learned counsel for the Appellants/Defendants argued that the impugned Judgment and Decree is illegal, unlawful, and factually wrong, therefore, the same is liable to be set aside; that the Impugned Judgment and Decree is a result of non-reading and misreading of the evidence and not properly evaluating all the attending circumstances of the case, hence, the impugned judgment and decree is not tenable in the eyes of law and is, therefore, liable to be set aside; that the learned Trial Court could not appreciate the vital fact that after the decision of the august Supreme Court of Pakistan dated 26.06.2012, the Appellants/Defendants were open to refund the deposited amount to their members and almost all people were receiving their amount without any problem, but the present Respondent/Plaintiff himself avoided to appear before the office of the Appellants/Defendants for the refund of the amount; that the Respondent/Plaintiff is solely responsible for the delay and not the

Appellants/Defendants, therefore, he was not entitled to any damages; that the Respondent/Plaintiff has failed to establish any damages caused to him by the Appellants/Defendants; that the Respondent/Plaintiff failed to provide any evidence for the damages claimed by him, yet the learned trial court awarded him damages of Rs.15,00,000/- which is against the law and facts of the case, hence, the impugned judgment and decree is not sustainable in the eyes of law; that the learned trial court not only erred in law but also erred in evaluating the facts and circumstances of the case, hence, the impugned judgment and decree is liable to be set aside; that the learned trial court ignored all the settled principles of law as well as the relevant facts of the case while passing the impugned judgment and decree and based its judgment on hypothesis, therefore, the impugned judgment is liable to be set aside. Lastly, the learned counsel prayed that the present Appeal be allowed, the Impugned Judgment and Decree be set aside and the suit filed by the Respondent/Plaintiff may kindly be dismissed.

4. On the other hand, the learned counsel for the Respondent/Plaintiff argued that the Appellants/Defendants' counsel has failed to point out any illegality in the Impugned Judgment and Decree and the learned Trial Court has rightly decreed the Respondent/Plaintiff's Suit, based on correct appreciation of evidence and proper application of judicial mind; that the learned Trial Court passed the Impugned Judgment and Decree keeping in view the facts and evidence available on record. In the end, the learned counsel prayed for the dismissal of the instant Appeal.

5. I have heard the learned counsel for the parties and have also perused the record with their able assistance.

6. Respondent/Plaintiff purchased four plots in the year 2005, from the Appellant's company which was a housing project with the name of "Morgah City Islamabad" with a commitment that they would hand over the possession of the plot in the year 2006 but the Appellant failed to do so. The Respondent/Plaintiff paid initial amount and some installments, thus he paid a total sum of Rs.3,518,000/- as determined by the learned trial court while deciding the suit between the parties. In the year 2012, the august Supreme Court directed the Appellants/Defendants in the following manner: *"Learned counsel for the petitioner stated that the Company Matracon Pvt Ltd. has agreed either to give plots or return the money received from the litigants/claimants within 15 days."* The Respondent/Plaintiff claimed that he

has not been paid his deposited money till date, however, he claimed that he sent a letter to the appellant on 20.04.2016 to return his amount and after that also sent two legal notices. The appellant produced DW-1 in rebuttal who admitted that after the decision of the august Supreme Court they have not sent any written notice to the allottees to receive their amount in compliance with the orders of the apex Court of Pakistan.

7. It was incumbent upon the Appellants/Defendants to notify all allottees about the decision of the august Supreme Court of Pakistan and to refund the deposited amounts; however, the witnesses who appeared on behalf of the Appellants/Defendants before the learned Trial Court unequivocally admitted that they had failed to do so. The Respondent/Plaintiff's amount is deposited with the Appellants/Defendants since 2005 and the Respondent/Plaintiff is entitled to the damages as claimed by the Respondent/Plaintiff in the suit. The value of the money depreciated during those years till today and thus justifies the damages decreed by the learned Trial Court. Hence, I find no justification to interfere with the Impugned Judgment and Decree passed by the learned Trial Court, which appears to be just, fair, and in accordance with law. Resultantly, the instant Regular First Appeal stands dismissed for being devoid of merit. There shall be no order as to costs.

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the open Court on this _____ day of May 2025.

JUDGE

Sajid/--