

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Suit No. 329 of 2020

Date: Order with signature of the Judge

1. For hearing of CMA No. 2868/2020
2. For hearing of CMA No. 2869/2020
3. For hearing of CMA No. 3781/2020
4. For hearing of CMA No. 4615/2020
5. For hearing of CMA No. 4813/2020
6. For order on CMA No. 4760/2020
7. For order on CMA No. 4827/2020
8. For order on CMA No. 4818/2020
9. For order on CMA No. 4819/2020

11.06.2020

Mr. Muhammad Nouman Jamali, Advocate for Plaintiffs No. 1 to 250.

M/s Muhammad Haseeb Jamali & Danish Rasheed Khan Advocates for Plaintiffs No. 251 to 254.

Mr. Ahmed Masood, Advocate for defendant No. 2 alongwith Mr. Khoja Altaf, Advocate.

Mr. Imdad Ali Channa, Advocate for the applicant/intervener Anwar Hussain.

Syed Sultan Ahmed, Advocate for the applicant/intervener Samreen Pasha.

Mr. Saad Siddiqui, Advocate for the applicant/intervener Dr. Mazhar Naeem.

Ms. Humaira Baig, Advocate for the applicant/intervener Fahad Ahmed.

Mr. Sattar M. Awan, Special Prosecutor NAB.

Sqn. Ldr. Qaswar PAF.

Mr. Irfan Ahmed Memon, D.A.G.

Mr. K. A. Vaswani, A.A.G.

Applications listed at Sr. No. 5 to 7 & 9, made under Order I Rule 10 CPC by the respective interveners desirous of becoming party in the instant suit are allowed with mutual consent as the matter pertains to claims of thousands of individuals and these being only a handful. Mr. Azmat Tufail, Advocate files Vakalatnama as well as another application under Order I Rule 10 CPC, which is also allowed with consent. Office to assign appropriate number to the instant application. Let amended titles be filed by assigning appropriate numbers to the newly impleaded plaintiffs. It is clarified that no

further similar Order I Rule 10 CPC applications are needed to be filed in the court for joining as claimant since claims of all affectees/allottees of general public quota are to be dealt with as per the mechanism laid down in the later part of this Order.

2. Before attending to the applications seriated as No.1-4 and 8, a brief background of the controversy at hand would be appropriate where a large number of individuals have approached this Court praying for a declaration that the Defendant No.1 in active connivance and collusion with Defendant No.2 and its partners has committed fraud, misrepresentation and breach of trust upon Plaintiffs; that the Defendants 1 to 2(b) (Maxim Properties and its partners namely Tanvir Ahmed and Bilal Tanvir) have abandoned the project named as Fazaia Housing Scheme, Karachi ("the Scheme or Project") thus committed fundamental breach of trust and confidence to the Plaintiffs and public at large towards the national institution; that the Defendants 1 to 2(b) are liable to refund all sums received from the Plaintiffs and other affectees/allottees alike, including but not limited to: Form Charges / Processing Fees / Booking Charges / Registration Fee / Installments / Certificates / Open Registration / Surcharges / Membership Dues etc. (as detailed in the plaint) at the prevailing rate of US\$ along with markup at the rate of 22% per annum from the date of receipt of amount by them, till the date of final realization; Directions be given to the Defendant No.3 (Malir Development Authority), Defendant No.5 (Sindh Building Control Authority) and Defendant No.6 (Federation of Pakistan) and any other law enforcing authority to take appropriate legal actions against Defendants 1 to 2(b) and any other person involved in the said Scheme for launching the project without approvals and permissions as required under the law and for the fraud perpetrated by them in collecting billion of rupees from the general public including the Plaintiffs for developing the subject Project and then

abandoning it; directions that Defendant Nos.1 to 2(b) to submit before this Honourable Court all documents, plans, marketing material, information, dealing, details, strategies, correspondence and accounts of all payments received from public along with details of withdrawals, utilization, expenditure etc; directions that the Nazir of the Court to inspect the site and to record progress thereon; to sell the suit land on which the said Project was to be developed or the lands which were transferred in favour of Defendant No.1 by Defendant No.2 (a and b) as mentioned in the plaint and pay the amount due to the Plaintiffs and other affectees/allottees from the proceeds thereof; pass orders attaching the suit land on which the subject Project was to be developed or the lands which were transferred in favour of Defendant No.1 by Defendant No.2 as mentioned in the plaint pending decision of the title case and appoint Nazir of the Court as Receiver of the said land; award a sum of Rupees One Billion as Damages against the Defendants 1 to 2(b) jointly and severally, to be equally divided amongst the Plaintiffs and other affectees/allottees; permanently restrain Defendant Nos. 7 to 11 from releasing any money from the bank accounts of Fazaia Housing Scheme, Karachi operated jointly or severally by the Defendants 1 to 2(b) as listed at paragraph 14 of the plaint till final disposal of the suit or till final payment of claims of the Plaintiffs and other affectees/allottees; grant injunction prohibiting the Defendants, their employees or any person acting under them or on their behalf from taking any action adverse to the rights and interests of the Plaintiffs including forfeiture of any amount paid by them to the Defendant No.1 or from developing or raising construction on the land or creating any third party rights or interest in the suit land or any part thereof, etc.

3. The story as to how general public ends up losing their hard earned monies in the hands of property developers working as dream merchants are repeated again and again under different names where

individuals having been given hopes of providing their dream homes were lead to invest in fake, groundless ponzi-like schemes, but to be successful, such schemes have to have catchy names. In this case they used name of **Fazaia** (since Baharia, Army and Fauji, the most prestigious institutions' names were already taken up and there was no fourth force, except Airport Security Force, which isn't far behind). At the cost of repeating, the cause of action accrued to the Plaintiffs/Applicants in March, 2015 when the project Fazaia Housing Scheme, Karachi was advertised and launched, where after registration forms were being sold through Project Management Office of the Scheme through various branches of Habib Bank Limited (Defendant No.7) and other agents of Defendant No.1; thereafter in October, 2015 when balloting was conducted at Project Management Office in the presence of senior officials of Defendant No.1; thereafter on various dates when payments were made by the Plaintiffs and when the Plaintiffs were induced, coerced and defrauded (as alleged by the Plaintiffs/Applicants); thereafter when consolidation, amalgamation, exchange and adjustment of land was withdrawn by the Defendant No.3 (Malir Development Authority) on 07-07-2015; thereafter when the Defendant No.1 failed to develop the Project; thereafter on 07-02-2019, 13-02-2019 and 14-02-2019 when the Defendant No.1 was served with Show Cause Notices by Defendant No.5 (Sindh Building Control Authority); thereafter on 17-02-2019 when the Project was listed amongst illegal housing schemes and societies; thereafter in April 2019 when the Plaintiffs and public at large made demonstrations with regards the Project and National Accountability Bureau ("NAB") initiated inquiry, and around November 2019 when plaintiffs approached NAB for the redressal of their grievances.

4. Now coming back to various applications being heard and decided by this Order, through CMA No. 2868/2020 dated 27.02.2020 the

Applicants have prayed that the Defendant Nos. 1 to 2(b) be restrained from taking any adverse action to the rights of the Plaintiffs in respect of amounts paid by them to the said Defendants and not to permit these defendants to withdraw any amount from the bank accounts opened and operated in respect of the Project and that the corresponding Banks be restrained from releasing any amount from these accounts to any persons. Through CMA 2869/2020, a request has been made that the concerned Banks where accounts of the Project were opened and operated thereafter, be directed to provide complete details of these accounts including details of all signatories of the accounts and full statements be handed over to the court of these accounts from their respective account-opening date(s). It seems despite notice, only Defendant No. 7 (Habib Bank Limited) has submitted a statement dated 19.03.2020 listing all accounts pertaining to the Scheme; CMA 3781/2020 is made by another affectee of the Scheme to be joined as a Plaintiff; CMA 4615/20 is moved by the Advocate of the Defendant No.1 for recalling orders passed by this Court on 05.03.2020 attaching various bank accounts of the Scheme on the grounds that on 19.05.2020 a Divisional Bench of this Court while hearing CP Nos. D-218/2019 and others has passed orders permitting refund of principal amount of the affectees within 6 months under the supervision of Chairman NAB. CMA 4818/2020 is moved by the Plaintiff for the production of bank account statements of the relevant accounts from the year 2015 or their respective date(s) of opening. However when pointed out that such prayer is already part of 2869/2020, Counsel chose to not to press this application if appropriate orders are passed in the aforementioned CMA.

5. Learned counsel for the Plaintiff drew courts attention to order dated 05.03.2020 where, to afford protection to affectees' deposits with respective Banks under the title of (i) Fazaia Karachi Collection Account, (ii)

Fazaia Karachi Overseas Account and (iii) Fazaia Karachi Bungalows Account, court ordered their attachments, which order has now been sought to be recalled through CMA 4615/20. Subsequent thereto, entire court proceedings were directed towards the order of the Divisional Bench dated 19.05.2020 in CP Nos. D-218/2019 and others which originated while Defendant Nos. 2(a) and 2(b) approached the Court under Article 199 of the Constitution for release, when they were taken into custody by NAB authorities as a part an Inquiry. A review of the said DB's Order shows that seemingly a settlement was reached between Defendant No.1 and 2 (including 2(a) and 2(b) and certain Affidavits were filed where Defendant Nos. 2(a) and (b) undertook to refund all the monies which the affectees had paid in respect of their bookings and allotments, as well as, these accused persons undertook to settle all other liabilities related to the Project under the supervision of NAB. It's worth noting from paragraph 4 of the DB's Order that NAB dissented to this arrangement and it was also against release of Defendant Nos. 2(a) and 2(b). Nonetheless while releasing the said defendants and suspending the Inquiry, Court in paragraph 10 of the said Order directed as under:-

(a) We direct the Chairman NAB to pend any inquiry/investigation into this matter whilst Maxim and the Directorate give effect to their obligations and responsibilities under their respective Affidavits/compromise agreements set out above whereby the allottees will be refunded their monies in full and all other liabilities of the Project are settled.

(b) In the event that both the parties, Maxim and the Directorate comply with their obligations/responsibilities under their respective Affidavits/settlement agreements and all the allottees are refunded all the monies which they had paid in respect of being allotted land in the Fazaia Housing Scheme, Karachi and all other liabilities of the Project are settled to the satisfaction of the Chairman NAB the Chairman NAB shall close this matter.

(c) In the event however that either Maxim or the Directorate fails to comply with their obligations/responsibilities under their respective Affidavits in respect of settlement referred to above and all the allottees are not repaid in full or all the other liabilities of the Project are not settled within 6 months of the date of this order, the Chairman NAB may revive the inquiry/investigation against the petitioners or any other persons involved in the Fazaia Housing Scheme, Karachi Project in connection with cheating the public at

large or any other offence which they may have committed Under the NAO.

(d) The Chairman NAB shall supervise and facilitate Maxim and the Directorate in giving effect to their respective Affidavits/settlement agreements with a view to safe guarding the interests of the allottees and ensuring that all the allottees are repaid in full and all other liabilities of the Project are repaid within the shortest period of time.

(e) In order to facilitate Maxim in giving effect to its Affidavits/settlement agreement within the shortest possible time the Superintendent Central Prison, Karachi is hereby **directed** to immediately release Mr. Tanvir Ahmed and Mr. Bilal Tanvir from custody so that they may fulfill their obligations/responsibilities under the Affidavit/settlement agreements signed by Mr. Tanvir Ahmed. The names of Mr. Tanvir Ahmed and Mr. Bilal Ahmed shall be placed on the ECL by the Federal Ministry of Interior with immediate effect until the Chairman NAB gives his certificate that Mr. Tanvir Ahmed and Mr. Bilal Ahmed have completed their obligations/responsibilities under Mr. Tanvir Ahmed's Affidavit/settlement agreement and all the allottees have been repaid in full and all other liabilities of the Project have been settled.

(f) In the event that further time is required to carry out the obligations/responsibilities contained in the Affidavits/settlement agreements of either Maxim or the Directorate either party or the NAB may approach this court seeking more time to complete its obligations on furnishing reasonable grounds".

6. Aforementioned paragraph appears to be an outcome of the undertaking given to the Court by Defendant Nos. 1 and 2 through the following affidavits respectively:-

"AFFIDAVIT IN SUPPORT OF APPLICATION FOR COMMENCEMENT OF REFUNDS AND FOR SETTLEMENT OF ALL LIABILITIES OF FAZAIA HOUSING SCHEME KARACHI PROJECT"

Flt Lt Numan Yousaf son of Tariq Javed, Muslim, adult, resident of Officer Mess, PAF Base Faisal, Shahre-e-Faisal, Karachi, duly authorized by Directorate of Estate Projects and empowered through Authority Letter dated 4-04-2020 to enter into and sign this Application and Affidavit, acting on behalf of Directorate of Estate Projects do hereby solemnly affirm, declare and undertake on oath as under:

WHEREAS:-

A. the Directorate of Estate Projects, AHQ, Islamabad (the "**Directorate**") entered into a Contract Agreement on 16th day of January 2015 ("**Agreement**") with M/s Maxim Properties ("**Maxim**") on basis the proposal in providing/securing lands free from any liens, encumbrances etc. for developing and establishing a housing scheme, comprising of apartments and housing units at Karachi by the name of Fazaia Housing Scheme, Karachi, (the "**Project**");

B. the Directorate being a welfare organization that provides housing facilities, plots etc. to its personnel (serving/retired), families of Shuhada, widows etc. on a non-profit basis, pursued the Project for welfare of its personnel, whereas, Maxim enjoyed the rights under the Agreement for marketing of the Project and to offer/issue apartment and housing units to the general public;

C. the Project was to be developed upon lands transferred/consolidated subject to the provisions of the Agreement (the "**Project Lands**");

D. due to confirmation of state lands within the land parcel of 370 acres designated for the Project and other issues, the Project could not proceed ahead.

E. under the Agreement, Maxim was responsible for the liabilities of the general public including provisions for their refund, whereas, Directorate was responsible for its personnel only.

F. Maxim has earlier withdrawn certain amounts as advances/profit from the Project, whereas, the Directorate has so far contributed funds to the tune of Rs. 1.298 Billion as were collected from its personnel, whereas the funds to the tune of Rs. 2.11 Billion were spend on development from the collection account of General Public;

G. due to various grounds, a complaint was filed by the Directorate against Maxim before NAB, wherein proceedings are presently ongoing and an application was given to NAB by the Directorate to freeze, sell, auction and distribute the assets of the Project among the affectees and for settlement of all liabilities of the Project;

H. without going into the merits of the case, the sole intention of the Directorate at this stage is to ensure the expeditious refund of the affectees alongwith settlement of all liabilities of the Project;

I. recently, the Directorate received representations from Maxim about its willingness to also ensure the expeditious refund of the affectees and for settlement of all liabilities of the Project.

NOW THEREFORE, the Undersigned individually and on behalf of Directorate of Estate Projects, unconditionally agrees as follows:

1. That I am the duly authorized officer of Directorate of Estate Projects and am well conversant with the facts of the case and the accompanying application is being moved under my signatures.

2. That the Directorate having already handed over rights of Project Lands, Project Assets and Bank Accounts to NAB for commencement of refund of the affectees and for settlement of all liabilities of the Project shall sign any documents, letters or statements to give effect to the refund process and settlement of liabilities of the Project and in furtherance the Directorate unconditionally and unequivocally agrees, acknowledges, understands and undertakes the following:-

- a) *Any and all rights respecting, relating to or existing over the Project Funds to the tune of approx. Rs. 13,624/- only (Rupees Thirteen Thousand Six Hundred and Twenty Four Million) maintained at the joint bank accounts, described in this Affidavit, balance of which is described in Annexure-A (the "Project Funds") in favour of the Directorate as a signatory shall stand cancelled and relinquished unconditionally.*
- b) *Any and all rights respecting, relating to or existing over the Project Assets, described in Annexure-B (the "Project Assets") in favour of the Directorate shall stand cancelled and relinquished unconditionally and that the Directorate unequivocally agrees, acknowledges and understands that it shall have no right, claim or interest over the Project Assets on any ground or condition whatsoever.*
- c) *That the Directorate unconditionally agrees for the expeditious refund of the deposited amounts in the Project Funds and shall have no objection or claim against the expeditious refund of the Project Funds to the affectees and for settlement of liabilities of the Project, carried out by NAB.*
- d) *That the Directorate shall sign documents and/or fulfill any formalities of government agencies, NAB and banks for initiation and execution of the refund process of the Project Funds and shall sign any documents, if any, for sale / auction of Project Assets and Project Lands for settlement of all liabilities of the Project.*
- e) *That Maxim unequivocally agrees, understands and acknowledges that the refund process shall be carried out by NAB and that the Directorate shall assist, cooperate and provide all the requisite data, record and information as required for the refund process and shall not interfere or object in the refund process.*
- f) *That the Directorate shall not object to any verification/audit process undertaken by NAB or any other body under its supervision, if any, in identifying the scale of liabilities, manner of distribution of funds etc, if required.*
- g) *That the Directorate shall within 30 days from the date of this Affidavit withdraw all legal action, applications, arbitration(s), writ petitions, suits and civil & criminal proceedings or any legal proceedings arising under the Agreement or related to the Agreement filed against Maxim, if any, which shall be dismissed as withdrawn. In any pending arbitrations, the Directorate will move applications to withdraw their counter claims. In all other cases in which the Directorate or Fazaia Housing Scheme Karachi is a party along with*

Maxim, the Directorate shall withdraw from all such cases and that Maxim shall give its consent to the Directorate of Fazaia Housing Scheme Karachi for withdrawing from any such case, provided that Maxim shall be entitled to continue such proceedings on its own.

- h) Upon completion of the refund(s) and settlement(s) set out above, the agreement dated 16-01-2015 between the Directorate and Maxim shall stand extinguished and thereafter, neither Directorate nor Maxim shall have any claim, complaint or right against each other or any right to institute any proceedings against the other directly or indirectly in relation to the Project.*
- i) That the refund process and settlement of liabilities of the Project shall include payments due to contractors, consultants and to third parties for any works done as per satisfaction of NAB and in covering any expenses relating to utilities bills, Government taxes, fees or other legitimate payments and dues outstanding as may be incurred for closure of the Project.*
- j) That the Directorate understands and acknowledges that it has so far contributed Rs. 1.298 billion, which was collected from its personnel for the Project and that the refund process shall also include refund to the affectees of the Directorate only to the extent of Rs. 0.75 billion by Maxim and if in case of non-payment, such amounts shall be refunded from sale/auction of Project Lands or through its own personnel sources of Maxim and that such amounts shall constitute as part of the liabilities of the Project.*
- k) That the Directorate agrees, understands and acknowledges that any shortfall in ensuring the complete refunds and meeting the liabilities of the Project would be realized from sale/auction of Project Assets and any shortfall remaining thereafter from the advance/profit or any other kind of payment earlier withdrawn by Maxim from the Project and that such amounts shall no longer be considered or deemed as earned by Maxim and if any shortfall remains thereafter, such remaining liability shall be covered from sale/auction of any part or all of Project Lands without any objection (described in Annexure-C) of this Affidavit.*

3. In case, the amounts deposited by the affectees are fully refunded and other project liabilities mentioned above are settled without any need for sale of Project Lands being kept as collateral, then the Directorate shall transfer the Project Lands to Maxim's name subject to fulfillment of all of its obligations under this Affidavit, including but not limited to payment of Rs. 750 Million in favour of Directorate, returning/utilizing the advance/profit or any other kind of payment earlier withdrawn by Maxim from the Project to

cover shortfall/remaining liabilities of the Project, etc, or file any claim against the aforesaid undertaking.

4. That the Directorate agrees and understands that this Affidavit has been executed keeping in view the best interest of the public and henceforth, the Directorate shall not challenge this Affidavit or the Application for commencement of refund or any of its part in any court or forum or move to suspend or seek any form of stay order against the refund process of public affectees and/or in settlement of all liabilities of the Project.

5. That the Directorate agrees that it shall not file any new suit, petition, claim, action, law suit or any kind of legal proceeding against Maxim in any court or forum, if the actions concerned relate to the Agreement of the Project or with respect to refund process of affectees and/or settlement of liabilities of Project.

6. That in case, any law suit, petition or legal proceeding is filed against the Project, the Directorate shall abide by the terms of this Affidavit and defend such suits and actions on basis of the provisions of this Affidavit.

7. That from the date of this Affidavit, the Directorate agrees and understands that Maxim shall no longer have any rights relating to the Project inclusive of any marketing rights and that the Maxim shall not be allowed to issue any advertisements, engage in any correspondence/communication with the affectees or market any information out in the public relating to the Project or about the contents of this Affidavit or Application.

8. That the Directorate agrees, understands and acknowledges that if for any reason, Maxim objects to the stated terms of this Affidavit and/or interferes the refund process in any way, shape or manner at any stage, then Maxim shall forfeit all and any rights/claims against the Project Lands and any works/assets over the same.

9. That the Directorate agrees and understands that Maxim shall not claim any damages, claim for lost profits or damages or reimbursements of any money on any account whatsoever from the Directorate.

10. That the Directorate agrees, understands and acknowledges that all the liabilities for purposes for refund of the general public and for settlement of all liabilities of the Project shall remain the responsibility, liability and obligation of Maxim.

11. That unless and until this Application is granted, grave prejudice and irreparable harm shall be caused.

12. That whatever has been stated above is correct and true to the best of my knowledge and belief.”

“AFFIDAVIT IN SUPPORT OF APPLICATION FOR COMMENCEMENT OF REFUNDS AND FOR SETTLEMENT OF ALL LIABILITIES OF FAZIA HOUSING SCHEME KARACHI PROJECT”

I, Mr. Tanvir Ahmed, son of Chaudry Bashir Ahmed (Late), Muslim, adult, holding CNIC No. 42301-8111930-9, resident of House No. 26-B, 8th Street, South Central Avenue, Phase II, DHA, Karachi, having been authorized and empowered through resolution of partners of M/s Maxim Properties dated 06.04.2020 (copy attached herewith) to enter into and sign this Application and Affidavit, acting in my own personal capacity and on behalf of M/s. Maxim Properties ("**Maxim**"), on basis of my own free will and without any force, coercion or undue pressure, do hereby solemnly affirm, declare and undertake on oath as under:

WHEREAS:-

A. the Directorate of Estate Projects, AHQ, Islamabad (the "**Directorate**") entered into a Contract Agreement on 16th day of January 2015 ("**Agreement**") with M/s Maxim Properties ("**Maxim**") on basis the proposal in providing/securing lands free from any liens, encumbrances etc. for developing and establishing a housing scheme, comprising of apartments and housing units at Karachi by the name of Fazaia Housing Scheme, Karachi, (the "**Project**");

B. the Directorate being a welfare organization that provides housing facilities, plots etc. to its personnel (serving/retired), families of Shuhada, widows etc. on a non-profit basis, pursued the Project for welfare of its personnel, whereas, Maxim enjoyed the rights under the Agreement for marketing of the Project and to offer/issue apartment and housing units to the general public;

C. the Project was to be developed upon lands transferred/consolidated subject to the provisions of the Agreement (the "**Project Lands**");

D. due to dispute regarding existence of state lands within the land parcel of 370 acres designated for the Project and other issues, the Project could not proceed ahead.

E. under the Agreement, Maxim was responsible for the liabilities of the general public including provisions for their refund, whereas, Directorate was responsible for its personnel only.

F. Maxim has earlier withdrawn certain amounts as advances/profit from the Project, whereas, the Directorate has so far contributed funds to the tune of Rs. 1.298 Billion as were collected from its personnel, whereas the funds to the tune of Rs. 2.11 Billion were spend on development from the collection account of General Public.

G. thousands of applications of affectees have till to date been received for claiming refund and in view of the prevailing circumstances, Maxim has agreed to execute and to ensure the expeditious refunds to all the affectees along with settlement of liabilities of the Project as per the affidavit.

NOW THEREFORE, the Undersigned individually and on behalf of M/s Maxim Properties, unequivocally agrees as follows:

1. That I am the duly authorized person of Maxim and am well conversant with the facts of the case and the accompanying application is being moved under my signatures.

2. For purposes of resolving all claims and issues arising under the Agreement and of ensuring the expeditious refund to the affectees and for settlement of all liabilities of the Project through NAB as per this Affidavit, Maxim unconditionally and unequivocally agrees, acknowledges, understands and undertakes the following as of the date of this Affidavit.

Any and all rights respecting, relating to or existing over the Project Funds to the tune of approx. Rs. 13,624/- Million only (Rupees Thirteen Thousand Six Hundred and Twenty Four Million) maintained at the joint bank accounts, described in this Affidavit, balance of which is described in **Annexure-A** (the "**Project Funds**") in favour of Maxim as a signatory shall stand cancelled and relinquished unconditionally.

A. Any and all rights respecting, relating to or existing over the Project Assets, described in Annexure-B (the "**Project Assets**") in favour of Maxim shall stand cancelled and relinquished unconditionally and that Maxim unequivocally agrees, acknowledges and understands that it shall have no right, claim or interest over the Project Assets on any ground or condition whatsoever and that Maxim may only be entitled to any rights as provided under this Affidavit based on its performance of obligations as stated hereunder:

B. That Maxim unconditionally agrees for the expeditious refund of the amounts deposited in the Project Funds and for the sale / auction of the Project / Assets for the purposes of adding the proceeds thereof to the Project Funds and shall have no objection or claim against the expeditious refund of the Project Funds to the affectees and for settlement of liabilities of the Project, carried out by NAB.

C. That Maxim shall unconditionally sign documents and/or fulfill any formalities of government agencies, NAB and banks for initiation and execution of the refund process of the Project Funds and shall sign any documents, if any, for sale / auction of Project Assets and Project Lands for settlement of all liabilities of the Project subject to provisions of this Affidavit.

D. That Maxim unequivocally agrees, understands and acknowledges that the refund process shall be carried out by NAB and that Maxim shall assist, cooperate and provide all the requisite data, record and information as required for the refund process and shall not interfere or object in the refund process.

E. That Maxim shall not object to any verification/audit process undertaken by NAB or any other body under its supervision, if any, in identifying the scale of liabilities, manner of distribution of funds etc, if required.

F. That Maxim shall within 30 days from the date of this Affidavit withdraw all legal action, applications, arbitration(s), writ petitions, suits and civil & criminal proceedings or any legal proceedings arising under the Agreement or related to the Agreement filed against the Directorate which shall be dismissed as withdrawn. In any pending arbitration, Maxim

will move applications to withdraw their claims. In all other cases in which the Directorate or Fazaia Housing Scheme Karachi is a party along with Maxim, Maxim shall give its consent and have no objection in the Directorate or Fazaia Housing Scheme Karachi withdrawing from any such case, provided that Maxim shall be entitled to continue such proceedings on its own.

G. Upon completion of the refund(s) and settlement(s) set out above, the agreement dated 16-01-2015 between the Directorate and Maxim shall stand extinguished and thereafter, neither Directorate nor Maxim shall have any claim, complaint or right against each other or any right to institute any proceedings against the other directly or indirectly in relation to the Project.

H. That the refund process and settlement of liabilities of the Project shall include payments due to contractors, consultants and to third parties for any works done as per satisfaction of NAB and in covering any expenses relating to utilities bills, Government taxes, fees or other legitimate payments and dues outstanding as may be incurred for closure of the Project.

I. That Maxim understands and acknowledges that the Directorate has so far contributed Rs. 1.298 billion, which was collected from its personnel for the Project and that the refund process shall also include refund to the affectees of the Directorate only to the extent of Rs. 0.75 billion. Maxim understands and acknowledges that in case of non-payment, such amounts shall be refunded from sale/auction of Project Lands or through its own personnel sources and that such amounts shall constitute as part of the liabilities of the Project.

*J. That Maxim agrees, understands and acknowledges that any shortfall in ensuring the complete refunds and meeting the liabilities of the Project would be realized from sale/auction of Project Assets and any shortfall remaining thereafter from the advance/profit or any other kind of payment earlier withdrawn by Maxim from the Project and that such amounts shall no longer be considered or deemed as earned and if any shortfall remains thereafter, such remaining liability shall be covered from sale/auction of any part or all of Project Lands without any objection (described in **Annexure-C**) of this Affidavit.*

3. In case, the amounts deposited by the affectees are fully refunded and other project liabilities mentioned above are settled without any need for sale of Project Lands being kept as collateral, then Maxim shall be entitled to transfer of Project Lands along with any immoveable assets permanently fastened there with in its name subject to fulfillment of all of its obligations under this Affidavit, including but not limited to payment of Rs. 750 Million in favour of Directorate, returning/utilizing the advance/profit or any other kind of payment earlier withdrawn by Maxim to the extent of shortfall, if any, and provided that Maxim does not challenge or file any claim against the aforesaid undertaking.

4. That Maxim agrees and understands that this Affidavit has been executed keeping in view the best interest of the public and henceforth, Maxim shall not challenge this Affidavit or the Application for

commencement of refund or any of its part in any court or forum or move to suspend or seek any form of stay order against the refund process of public affectees and/or in settlement of all liabilities of the Project.

5. That Maxim agrees that it shall not file any new suit, petition, claim, action, law suit or any kind of legal proceeding against the Directorate or any PAF official in any court or forum, if the actions concerned relate to the Agreement of the Project or with respect to refund process of affectees and/or settlement of liabilities of Project.

6. That Maxim shall indemnify, defend and hold harmless the Directorate and its officers, officials and personnel from any damages arising out of or related to any claims brought against the Directorate by any contractors, consultants, affectees, government agencies or third parties under the Agreement on account of any actions, claims of third parties with regard to the Agreement, and/or refund of public affectees and/or settlement of liabilities of the Project and in case any payments are made by the Directorate in settling any such liabilities, such amounts shall be reimbursed and indemnified by Maxim.

7. That in case, any law suit, petition or legal proceeding is filed against the Directorate, Maxim shall abide by the terms of this Affidavit and defend such suits and actions on basis of the provisions of this Affidavit.

8. That from the date of this Affidavit, Maxim shall no longer have any rights relating to the Project inclusive of any marketing rights. As such, Maxim agrees and acknowledges that it shall not be allowed to issue any advertisements, engage in any correspondence/communication with the affectees or market any information out in the public relating to the Project or about the contents of this Affidavit or Application.

9. That Maxim agrees, understands and acknowledges that if for any reason, Maxim objects to the stated terms of this Affidavit and/or interferes the refund process in any way, shape or manner at any stage, then Maxim shall forfeit all and any rights/claims against the Project Lands and any works/assets over the same.

10. That Maxim agrees, understands and acknowledges that it shall not claim any damages, claim for lost profits or damages or reimbursements of any money on any account whatsoever.

11. That Maxim agrees, understands and acknowledges that all the liabilities for purposes for refund of the general public and for settlement of all liabilities of the Project shall remain the responsibility, liability and obligation of Maxim as per the provisions of this Affidavit.

12. That unless and until this Application is granted, grave prejudice and irreparable harm shall be caused.

13. That whatever has been stated above is correct and true to the best of my knowledge and belief.”

7. Learned counsel for the Defendant No.1 and 2 after arguing the matter in the first half vehemently submitted a consenting proposal in the second half as per the following contents:

8. That NAB may expeditiously carry out the process of refunds of the actual amounts deposited by affectees/allottees of general public quota from the Project Funds (presently around 13.624 Billion approximately). Page 439 of file.

- (a) The Maxim shall deposit the remaining shortfall for ensuring complete refund of the actual amounts deposited by the affectees/allottees of general public quota (as determined by NAB) in the Project Funds from the funds earlier withdrawn as advance/profit from the General Public Collection Accounts of Fazaia Housing Scheme Karachi within 60-days of being notified by NAB that 80% of the Project Funds have been duly refunded to affectees/allottees of general public quota by NAB and deposit of the remaining shortfall is needed to satisfy the remaining liabilities/claims for refund. In the event of Maxim's failure to deposit the requisite funds within the prescribed period, Project Lands kept as collateral shall be sold/auctioned by NAB to realize the same.
- (b) That the sale of Project Assets be carried out by either NAB, if allowed by the Honorable Court, or by court auction through appointment of a court receiver so as to ensure that all proceeds realized from sale/auction of Project Assets or receivables of Project Assets (except of contractors/consultants/suppliers advances) be deposited in the Project Funds for clearing out the liabilities/claims of affectees/allottees of general public quota of the Project. It is prayed that the orders be issued for sale/auction of Project Assets from date of ordering for refunds of affectees/allottees of general public quota.
- (c) All other liabilities including and not restricted to any civil claim of general public, payment due to contractors, consultants and to third parties and in respect of utility bills, Government taxes, fees or other legitimate payments and dues outstanding etc. as may be incurred for closure or otherwise of the Project shall be settled/paid for by the Maxim exclusively out of its own sources.
- (d) That this affidavit shall be read to supplement the previous affidavit by way of addition only and shall not be construed as

limiting or affecting either the relinquishments or undertakings unconditionally given by Maxims earlier and as submitted before the Honorable Court (except as specifically set out hereinabove).

- (e) That in the interest of the general public, it is prayed that the provisions of the earlier Affidavit alongwith this Supplementary Affidavit be ordered for implementation by this Honorable Court.
- (f) That in case, this Honorable Court after adjudication of the instant suit upon merits, grants interest/compensation to the affectees, the judgment/order shall be binding effect upon the Defendants No.1 and 2.

9. Learned counsel for Defendant No.2 (including (a) and (b)) while reiterating his clients' unserved and unequivocal resolve to immediately refund affectees/allottees principal sums, and letting this court decide issue relating to profits, losses, damages, claims and liens etc. as per law, after lengthy arguments agreed with Court's view that, at best DB's order could be taken as a release or bail granting order in favour of the accused persons *inter se*, and the mechanism envisaged by paragraph 10 of the said order only binds the accused, as well as, that it is not a final order since it purports to pend the investigations against the accused persons (Defendant Nos.2(a) and 2(b)) for a period of six months, and if the accused persons failed to comply with the directions of paragraph 10 of that order, worst come worst, they will be re-arrested and re-investigated, leaving aside civil and criminal liabilities (other than those which could fall under NAB Ordinance), which will continue to be attracted under appropriate legal framework and the instant civil suit filed in the original jurisdiction of this Court where other than the principal sums, interest, losses, costs, lien and damages are also claimed, would needed to be adjudicated in accordance with law, including law of contract and tort. Learned DAG was however of the view that role of NAB as depicted in DB's order is of permanence in nature, and all monies and liabilities ought to be settled under NAB Ordinance. However when posed

with a question to support any provision of NAB Ordinance that such disbursements which are neither outcome of any Voluntary Return nor Plea Bargain (under Section 25 of the NAB Ordinance) could be channelized through NAB's machinery, there were no satisfactory answers. However with the valuable assistance of the learned counsel appearing for NAB, it was consented that since NAB has to reconsider its action after the lapse of 6 month's term specified to pend the inquiry, NABs to remain a part of the disbursement process and timely reports be submitted to NAB so that it could plan its action after the lapse of 6 month's term.

10. In these amenable circumstances and in the light of the Statement presented to the Court in the course of the day (taken on record), with fair census, following order is passed:-

- a. CMA 2869/2020 is allowed to the extent that Defendant Nos. 7 to 11 (Habib, Meezan, Muslim Commercial, Allied and Askari Banks) are directed to provide complete statement of all accounts opened and operated with them as detailed under para 14 of the plaint or otherwise under the names or title of (i) Fazaia Karachi Collection Account, (ii) Fazaia Karachi Overseas Account and (iii) Fazaia Karachi Bungalows Account or under any other connected entity ("the Parent Accounts") from the date(s) of respective opening of each account, detailing all credit and debit entries, current balances (inclusive of any profit incurred) along with details of the signatories of these accounts to the Official Assignee and MIT-II of this Court as well as NAB-Karachi within 7 days.
- b. Defendant No. 2 (including 2(a) and 2(b)) to provide a complete list of all allottees/affectees from general public quota along with respective details of monies paid by each of the allottee/affectee on various dates in a tabular form along with a duly signed affidavit from them to the Official Assignee and MIT-II of this Court as well as to NAB Karachi within 7 days.

- c. The Official Assignee shall forthwith open a Pak Rupee bank account in the High Court Branch of Habib Bank Limited in the name of **Affectedes of Fazaia Housing Scheme Karachi** (“the Affectedes Account”) and inform this Court and the respective Banks with the details of the said account. Once opened, all the sums lying in the Parent Accounts shall be transferred therefrom to the said Affectedes Account in operation of this order and per the undertaking given by the Defendants in this Court. Any caution, restrained, holdup or tagging by any authority, Bank or other entity to any of the Parent Accounts will be of no effect or consequence for the purposes of the above transfer, and it will be assumed that no such impediment ever existed against transfer of each and every paisa from Parent Accounts to the Affectedes Account. Any future sums credited into any of the Parent Accounts including any profits or receivables, will immediately upon realization be transferred to the Affectedes Account. Banks not to close any of the Parent Account without permission of this court, monthly statement of the Affectedes Account be submitted by HBL High Court Branch to Official Assignee and this Court through a statement.
- d. As soon as funds from the Parent Accounts land in the Affectedes Account, and the payables to the affectedes/allottees of general public quota are determined per tabulation provided by the Defendant and a shortfall is observed, Defendant No.2 (including 2(a) and 2(b)) be called by the Official Assignee to fill the gap by depositing equivalent sums in the Affectedes’ Account forthwith as per their undertakings;
- e. If the shortfall is not made good by the Defendant No.2 (including 2(a) and 2(b)) within 15 days, beside other remedies or options available to this court, process of sale of Project Assets and Project Lands to ensue through appointment of a court receiver and all proceeds realized from sale/auction of Project Assets and Lands be deposited in the Affectedes Account for clearing out the liabilities/claims of affectedes/allottees.
- f. All other liabilities including and not limited to any civil claim of general public, payment due to contractors, consultants and to

third parties, and payments which become due in respect of utility bills, Government taxes, fees, charges, levies or other legitimate payments and dues which may be incurred or become payable till complete closure of the disbursement scheme envisaged by this order shall be settled, made good and paid for by the Defendant No.2 (including 2(a) and 2(b)) out of its/their own sources immediately or within any stipulated dates set out for the respective payment(s).

- g. Official Assignee **immediately** upon opening of the Affectees Account should commence a public campaign by placing advertisements in leading local newspapers and other paper and digital media (in Urdu, English and Sindhi languages) about reimbursements of principal sums to the affectees/allottees of the general public quota in the subject Schemes. Initial cost of Rs.500,000 is hereby sanctioned for this exercise, to be deducted from the Affectees Account. Further dissemination costs may also be permitted, subject to their prior approval by this Court.
- h. As soon as a claim is received by the Official Assignee and duly authenticated from the claimants' list provided by the Defendant No.2, the said claim **must be honored in no later than 7 days** by the Official Assignee by issuing a ready to pay HBL cheque in the name of the claimant(s) or his/her duly appointed attorney after proper authentication and verification. Service Fee of Rs.2,500 per claim would be charged by the Official Assignee and deducted from the sums actually paid to every affectee/allottee.
- i. This exercise of refund of principal amounts to all the affectees/allottees of public general quota is to be completed in no later than 6 months, with monthly progress reports submitted to this Court, MIT-II and NAB Karachi by the Official Assignee, unclaimed sums to be placed in an interest bearing security/account after the lapse of 6 months and effort to reach out to the affectees/allottees who have not filed their respect claims be repeated per clause (g).

- j. In case claims of the affectees/allottees are not satisfied or delayed on account of any reason attributable to the Defendants, Official Assignee to **immediately** file a Reference in this Court with a copy to NAB-Karachi so that such a delay is **arrested** forthwith; and if after the expiry of the term of 6 months as specified in the order of the Divisional Bench dated 19.05.2020, claims of the affectees/allottees have still not been fully satisfied for any reason attributable to Defendant Nos. 1, 2, 2(a) and 2(b), the action envisaged by the said DB order should ensue independent of any contempt or other proceedings taken up by this Court;
- k. If any signatures, consents or affirmations are needed from any of the Defendants for the transfer of sums per clause (c) or for doing of any other act to further the objects of this order, the concerned individual to whom such a document is presented should **immediately** sign it to facilitate flawless operation of this order.
- l. Defendant Nos. 2(a) and 2(b) to file in this court within 15 days a statement in the light of Recital F of the Affidavit of Mr. Tanvir Ahmed (Defendant 2(a)) as to the amounts they jointly and severally withdrew from the Parent Accounts as profits, salaries and advances etc.
- m. To safeguard the interests of the affectees/allottees, Project Assets as detailed in Annexure-B (Page 265 Part-II) in the indicated sum of Rs.1090.93 Million shall be **immediately** attached and given in the custody of the Nazir of this Court, who to file his compliance report after site visits within 15 days. Appropriate signage depicting such attachment to be affixed and maintained by the Nazir for public information at the relevant premises;
- n. To further the objects of this order, Project Lands as detailed in Annexure-C (Page 281 Part-II) totaling 432 Acres 34 Ghuntas and 16.5 Square Yards be visited, marked, photographed and attached by the Nazir of this Court **immediately** with appropriate signage affixed and maintained thereon depicting such attachments and NAB to handover all title documents pertaining

to these lands and Clause (m) assets with the Nazir of this Court who to retain the same in safe custody after furnishing details of the same to this Court through a comprehensive report in no later than 21 days. All utility connections be maintained by the Official Assignee on Project Lands and infra-structure built thereon should be preserved at reasonable cost charged from Affectees Account with court's permission.

- o. This order will always be read in addition and not in contrast or isolation of the order of the Divisional Bench dated 19.05.2020, except as specifically detailed out in the foregoing;
- p. Court has been informed that there are more than 8,000 claimants and clearly billions of rupees are to be disbursed amongst these claimants, in the interest of transparency and good accounting practices, let regular audit of all the transactions conducted by the Office of the Official Assignee as an outcome of this Order be made through a highly reputable firm of chartered accountants (selected through public notice) every three months and such audit reports be filed with the Court immediately upon becoming available along with an appropriate reference from the Official Assignee.
- q. IT Branch of this Court to place full text of this order in pdf format on Sindh High Court website with a proper banner titled "Affectees of Fazaia Housing Scheme, Karachi – Payment Scheme" at a prominent place till all monies are disbursed to the affectees. Similar exercise be done on the web page of the office of Official Assignee.

11. CMAs listed at Sr.1-4 and 8 are accordingly disposed of in the above manner.

To come up on 25.06.2020, and thereafter every 15th day for the next six months at least to, *inter alia*, ensure compliance and further orders.