



BEFORE THE  
COMPETITION COMMISSION OF PAKISTAN

IN THE MATTER OF  
SHOW CAUSE NOTICE ISSUED TO

M/S MIR HASSAN BUILDERS & DEVELOPERS (PVT.) LIMITED  
ON COMPLAINT FILED BY  
M/S MEHER DEVELOPERS & CONSTRUCTION (PVT.) LIMITED  
(Anchor City)

(F. NO: 316/MEHER DEVELOPER/COMP/OFT/CCP/2018)

Date(s) of hearing: 25-07-2019  
07-08-2019

Commission:

Dr. Muhammad Saleem  
Member

Dr. Shahzad Ansari  
Member

Ms. Shaista Bano  
Member

M. Jaleel

Dr. Shahzad Ansari

Ms. Shaista Bano

Present:

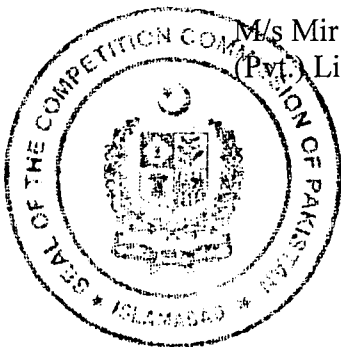
Mr. Noman A. Farooqi  
Director General (Legal)

M/s Meher Developers & Constructions  
(Pvt.) Limited

Lt. Cdr (Rtd) Muhammad Rizwan Wilayat  
Chief Executive Officer

M/s Mir Hassan Builders & Developers  
(Pvt.) Limited

Nemo



## ORDER

1. This order shall dispose of the proceedings initiated under Section 30 of the Competition Act, 2010 (the 'Act') *vide* Show Cause Notice No. 13/2019 dated 09<sup>th</sup> July 2019 (the 'SCN') issued to M/s Mir Hassan Builders & Developers (Private) Ltd, trading as Anchor City Gwadar (SMC-Private) Limited (the '**Respondent**'). The SCN was issued to the Respondent pursuant to the Enquiry Report dated 06<sup>th</sup> February 2019 (the '**Enquiry Report**').
2. The main issue under consideration in the matter is whether the use of words '**Anchor Town**' and symbol of '**Anchor**' used by the Respondent for the marketing & promotion of its real estate business, amounts to deceptive marketing practices through the distribution of false or misleading information to consumers, fraudulent use of M/s Meher Developers & Construction (Private) Limited's (hereinafter the '**Complainant**') trademark and/or is capable of harming the business interests of the competitors, within the meaning and scope of Section 10 of the Act.

## FACTUAL BACKGROUND

### **A. COMPLAINT, ENQUIRY, SHOW CAUSE NOTICES, REPLIES:**

3. The Competition Commission of Pakistan (the '**Commission**') received a complaint against the Respondent on 03<sup>rd</sup> May 2018 for violation of Section 10 of the Act. It was alleged in the Complaint that the Respondent has commenced its housing/real estate development business by adopting a trade /service mark '**Anchor City, Gwadar**' and the symbol of 'device of **Anchor**', deceptively similar to that of the Complainant's registered trade/service mark. As per the complaint, such practice of the Respondent is intended to confuse/deceive the prospective investors and the public at large and thus may harm the business interest of the Complainant.

4. The Commission initiated an enquiry under Section 37(2) of the Act in the matter which was concluded *vide* Enquiry Report dated 06<sup>th</sup> February 2019 (hereinafter the '**ER**' or '**Enquiry Report**'). The Enquiry Report concluded as follows:

6.27. *It is also important to mention here that the Complainant was registered with the Securities and Exchange Commission of Pakistan*



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(SECP) since 12th March, 2015 with the name of M/s Meher Developers and Constructions (Pvt) Ltd. The Complainant also got registration for trademark with the IPO on 24th March, 2015 as "Anchor Town" with the logo containing device of Anchor. The Respondent got registered with the SECP on February, 2017, as M/s Mir Hassan Builder and Developers (Pvt) Ltd. However, the Respondent, on 9th November, 2017, registered another company with the name of Anchor City Gwadar (SMC-Private) Limited and started advertising its project as "Anchor City Gwadar" without obtaining the trademark from the relevant authority.

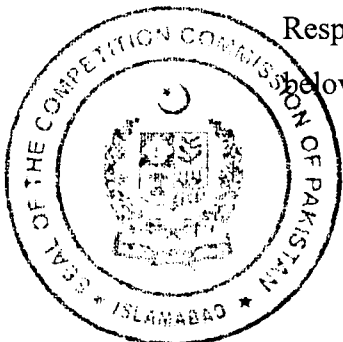
6.28 The Registration of another company by the Respondent namely, Anchor City Gwadar (SMC-Private) Limited, soon after the trademark registration of the Complainant's trademark shows the Respondent's intentions to attain goodwill associated with the trademark 'Anchor' and the 'Device of Anchor' used by the Complainant. Therefore, it can be safely concluded that the act of the Respondent is not only capable of harming the business interest of the Complainant but also intends to mislead the consumers about the character, properties and place of production or services.

6.29 In view of the above, it can easily be established that the Respondent, by fraudulently using the registered trademark, has enjoyed the goodwill and reputation associated with it. Therefore, the Respondent has, prima facie, entered into deceptive marketing practices in terms of Section 10(1) of the Act in general and Section 10(2) (a) & (b) in particular."

5. Based on the findings of the Enquiry Report, proceedings were initiated against the Respondent under Section 30 of the Act. The relevant parts of the SCN are reproduced

below:

4. **WHEREAS**, in terms of the Enquiry Report in general and paragraphs 2.1 to 2.13, it has been alleged that usage of



*Complainant's trade/service mark containing the word 'Anchor' and 'Device of Anchor' has the ability to deceive purchaser/investors of property and ability to harm the Complainant's business and, prima facie constitutes violation of Section 10(1) of the Act; and*

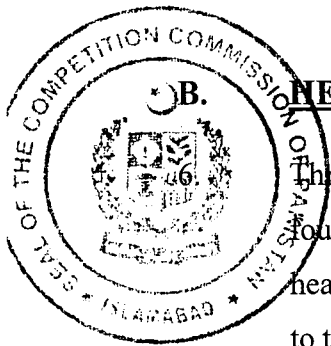
5. **WHEREAS**, *in terms of the Enquiry Report in general and paragraph 6.28 in particular, it appears that the Undertaking fraudulently and without any authorization express or implied, used the Complainant's registered trademark and firm name, without any consent or authorization, which is in prima facie constitutes violation of Section 10 of the Act;(*

6. **WHEREAS**, *in terms of the Enquiry Report in general and paragraph 6.29 in particular, it appears that the Undertaking's conduct of infringing upon the rights of the Complainant's registered trademark, without any authorization, is capable of harming the business interests of the Complainant, is prima facie violation of Section 10(1) in terms of Section 10(2)(a) & (b) of the Act; and*

7. **WHEREAS**, *the Commission is mandated under the Act to ensure free competition in all spheres of commercial and economic activity, to enhance economic efficiency and to protect consumers from anti-competitive practices including deceptive marketing practices.*

#### **HEARINGS IN THE PROCEEDINGS:**

Through the aforesaid SCN, the Respondent was asked to file a written reply within fourteen (14) days from the date of receipt of SCN and to avail the opportunity of hearing on 25<sup>th</sup> July 2019. The Respondent vide email dated 23<sup>rd</sup> July 2019 addressed to the Registrar of the Commission filed Authority in favour of Mr. Hassan Ali son of Syed Zill-e-Hasnain to appear before the Commission on the date of hearing. However, no written reply was filed by them, despite reminders.

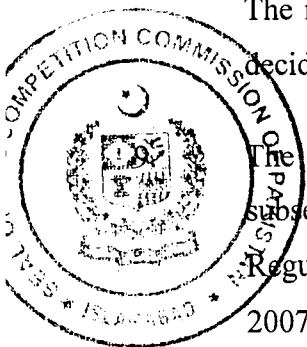


*[Handwritten signature]*

7. On 25<sup>th</sup> July 2019, Lt. Commander (Rtd.) Rizwan Wilayat appeared on behalf of the Complainant and Mr. Hassan Ali and Mr. Munir Ahmed appeared on behalf of the Respondent. During the hearing Mr. Rizwan Wilayat reiterated the contents of the complaint and highlighted the violations made by the Respondent which are duly reflected in the Enquiry Report. Mr. Hassan Ali appearing on behalf of the Respondent submitted that the proceedings under the Trade Marks Ordinance, 2001 ('TMO') are pending adjudication before the Honorable Sindh High Court at Karachi and hence, the Commission cannot proceed in the matter. He was asked whether the Commission is a party to the pending proceedings, to which he told that the Commission is not a party to the proceedings. He was further asked about any injunctive order issued by the Honorable Sindh High Court on the instant proceedings. He replied that no stay order had been issued by the Honorable Sindh High Court at Karachi. The Respondent requested the Bench to adjourn the hearing for a next date. The Bench conceding the request of the Respondent adjourned the hearing till 7<sup>th</sup> August 2019, with clear directions that in case no reply is filed or no one appear before the Bench on behalf of the Respondent at the next hearing, it would be constrained to proceed *ex-parte* and conclude the matter based on the evidence and material available on the record.

8. On the next date of hearing i.e. 7<sup>th</sup> August 2019 the Lt. Commander (Rtd.) Rizwan Wilayat appeared on behalf of the Complainant however, no one appeared on behalf of the Respondent. The Bench inquired from the Registrar regarding the availability of the Respondent. The Registrar briefed that the representatives of the Respondent were informed during the last hearing about the next date and a notice in this regard was also served, which was duly received by them. The Registrar further informed the Bench that the authorized representative of the Respondent was also contacted over the telephone and was conveyed about the date of hearing, however, he refused to appear before the Bench and instead, asked that the Bench may proceed in his absence. The representative of the Complainant requested the Bench to proceed *ex-parte* to decide the matter.

The Director General (Legal) in attendance apprised the Bench that proviso to subsection (2) of Section 30 of the Act read with clause (e) of sub-regulation (2) of Regulation 26 of the Competition Commission (General Enforcement) Regulations, 2007 empowers the Bench to proceed *ex-parte* where the undertaking concerned is



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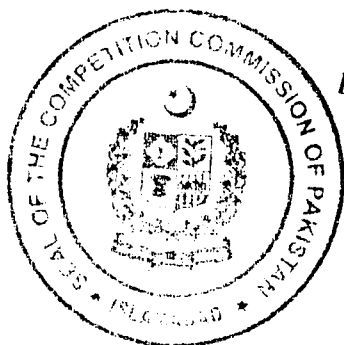
not availing the opportunity of hearing. The Director General (Legal) placed reliance on the Order dated 29<sup>th</sup> December 2017 passed by the Commission in the matter of Show Cause Notice issued to Ms/ Vision Developers (Pvt.) Limited, reported as 2018 CLD 350 where an ex-parte order was passed by the Commission. We are cognizant of the fact that the notices issued to the Respondent have been duly served. Further, on the last date of hearing, the authorized representatives of the Respondent were clearly communicated that in case of non-appearance the Bench may proceed ex-parte. The representative of the Complainant made detailed submissions with reference to the contents of the Complaint and the conclusions of the Enquiry Report, after hearing the Complainant in detail, hearing in the matter was concluded.

10. Considering that the conduct of the Respondent, is aimed at delaying the proceedings in the instant matter, without any plausible explanation and reasons, on 07<sup>th</sup> August 2019 the Bench decided to proceed *ex-parte* in accordance with proviso to subsection (2) of Section 30 of the Act read with clause (e) of sub-regulation (2) of Regulation 26 of the Competition Commission (General Enforcement) Regulations, 2007.

### ANALYSIS & DECISION

11. Based on the allegations leveled in the Complaint, findings of the Enquiry Report and the SCN issued to the Respondent, following issues have been identified for deliberation:

- i. *Whether the Commission can proceed in the matter where proceedings under Trade Marks Ordinance, 2001 are pending before any tribunal or court of law?*
- ii. *Whether the Respondent has resorted to the deceptive marketing practices in violation of Section 10 of the Act? Which would include a sequential determination of the following:*
  - a. *Whether 'Anchor Town' and the symbol of device of Anchor is the registered trademark of the Complainant;*
  - b. *Whether the trade mark of the complainant is being used by the Respondent for marketing and promotion of its real estate development business.*



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*c. If yes, whether the use of the Anchor name and symbol of device of anchor by the Respondent constitutes a deceptive marketing practice in terms of Section 10 of the Act.*

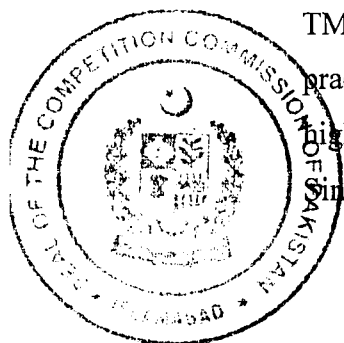
12. Since no one appeared on behalf of the Respondent and we had decided to proceed *ex-parte*, therefore, we shall now examine the aforementioned issues in light of the material available on record.

**Whether the Commission can proceed in the matter where proceedings under Trade Marks Ordinance, 2001 are pending before any tribunal or court?**

13. We deem it appropriate to underline the exclusive nature of the prohibitions provided under the Act and the exclusive jurisdiction and powers of the Commission in this regard. The Act was enacted by the Parliament entrusting the Commission with the exclusive statutory mandate **“to provide for free competition in all spheres of commercial and economic activity, to enhance economic efficiency and to protect consumers from anti-competitive practices”** (emphasis added). Further, under Section 28 (1)(a) of the Act, the Commission is mandated to initiate proceedings in accordance with the provisions of the Act and to make Orders in cases of contraventions thereof. We also deem appropriate to refer to the provisions of *non-obstante* clause of Section 59 of the Act. For ease of reference the provision in its relevant part is reproduced herein below:

***“59. Act to override other laws. — The provisions of this Act shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force.”***

14. Bare perusal of the aforesaid reproduced Section 59 of the Act makes it abundantly clear that the provisions and applicability of the Act has been given an overriding effect over all other conflicting laws in force. Furthermore, the proceedings pending before the Honourable Sindh High Court under the TMO pertains to the violation of TMO, whereas the proceedings before us are the proceedings for deceptive marketing practices, which are distinct in nature and are not conflicting. It is also relevant to highlight that the Commission is not a party to the proceedings before Honourable Sindh High Court in Suit No. (S) 2165/2017 titled Meher Gul Rizwan vs. Anchor City



Gwadar and others. Further, no stay or injunctive order is issued in the matter *vis-à-vis* the proceedings of the Commission. Hence, we are constrained to hold that the instant proceedings shall continue for the purposes of the violation of the Act.

**Whether the Respondent has resorted to deceptive marketing practices in violation of Section 10 of the Act?**

15. The main issue at hand is whether the use of the words ‘Anchor’ and the symbol of device of ‘Anchor’ by the Respondent in marketing its real estate development business is deceptive in terms of Section 10 of the Act. In the instant matter, as deliberated upon in paras above, the Respondent has not filed any written reply to the SCN and has also refused to avail the opportunity of hearing under Section 30 of the Act. However, in line with the dictum of the August Supreme Court of Pakistan in the case **Rehmat Ali vs. Additional District Judge, Multan and others, reported as 1999 SCMR 900**, wherein it was observed by the August Court that “*decrees granted against the absentees, without consideration of available record or application of mind vis-à-vis the evidence available on the record have always been looked upon with disfavour by the superior courts*”, we deem it appropriate to carry out the analysis of the evidence available on the record in order to reach a just conclusion.
16. We now proceed to make a sequential determination of whether there was any violation of Section 10 of the Act by the Respondent.

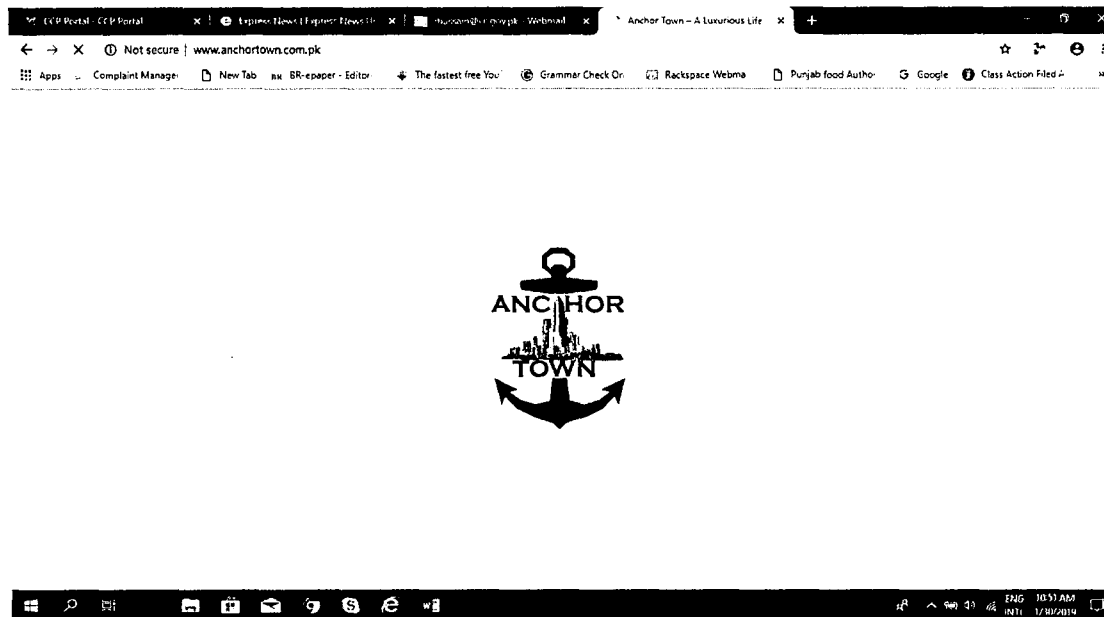
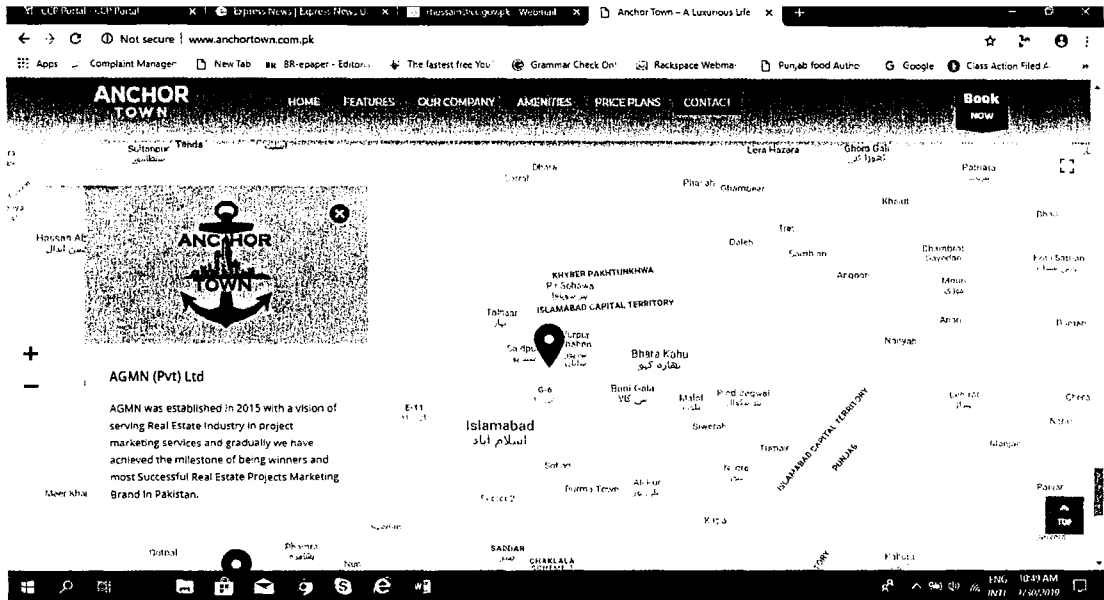
***Whether ‘Anchor Town’ and the symbol of device of Anchor is the registered trademark of the Complainant***

17. The Complainant is a real estate developer that markets its project under the name and trade mark of ‘Anchor Town’ and has submitted documentary evidence confirming that ‘*Anchor Town*’ with a symbol of device of Anchor has been registered with the trademarks registry under Class 37 of the Fourth Schedule of Trade Mark Rules, 2004 in Pakistan in category of construction & developer. Certain images of the Anchor Town Marks used by the Complainant on its website are reproduced below:



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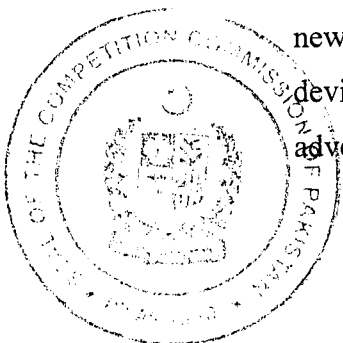




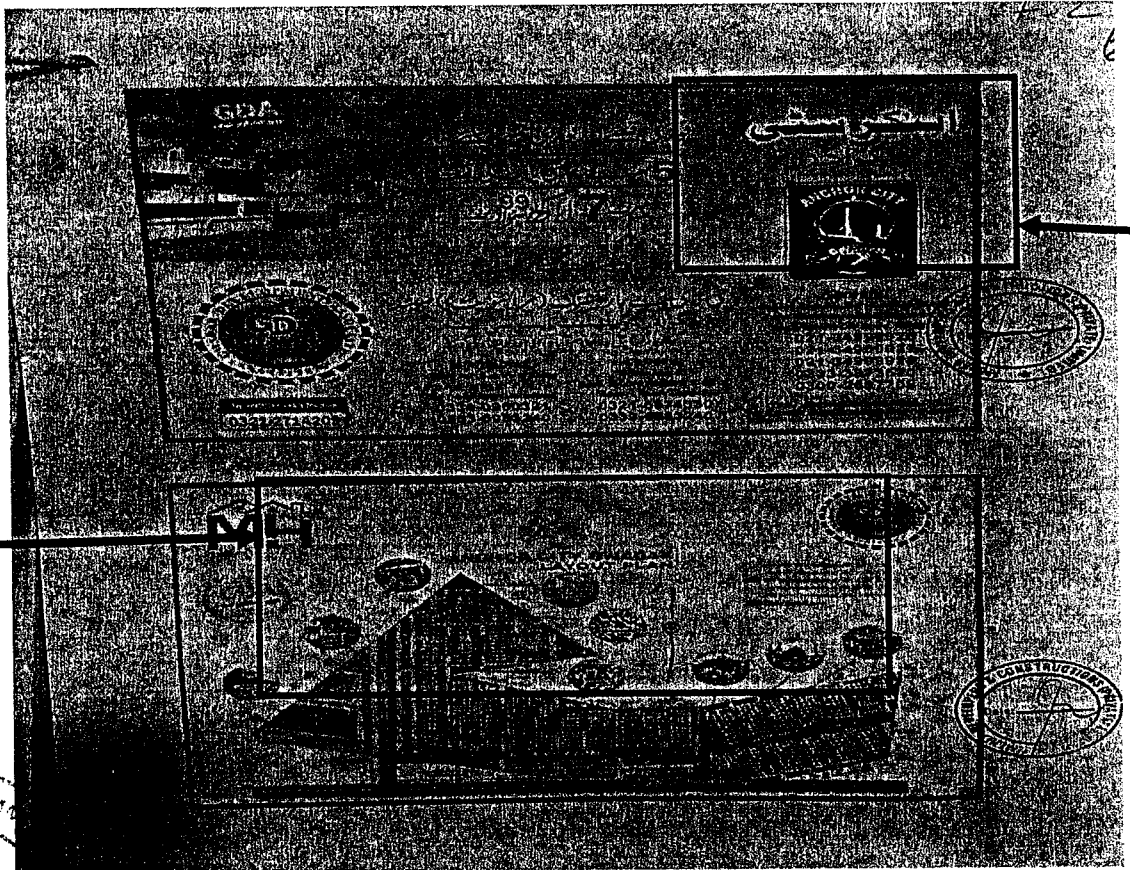
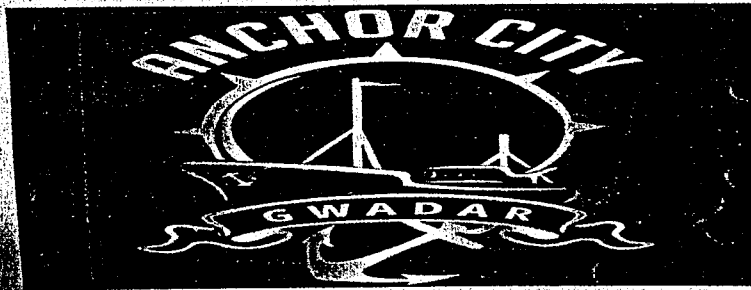
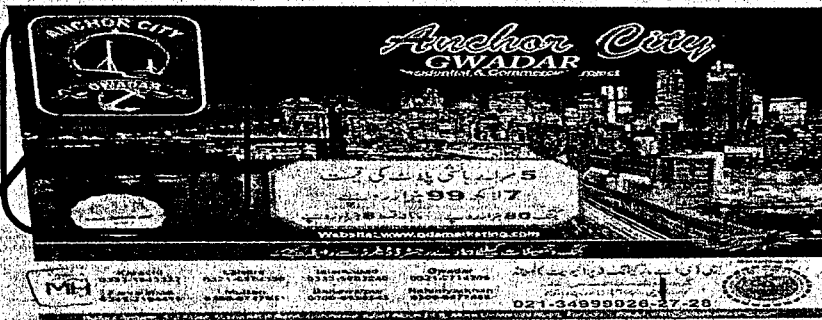
18. Based on the foregoing it is evident that Anchor Town and the symbol of device of Anchor is the registered trade mark of the Complainant.

**Whether this mark is being used by the Respondent for marketing and promotion of its real estate business/housing society**

19. The Complainant has submitted marketing material of the Respondent including newspaper advertisement(s) wherein it has used the trade mark Anchor and symbol of device of anchor for marketing of its project, Anchor City Gwadar. The said advertisements are reproduced herein below for the ease of reference:



A handwritten signature in black ink, appearing to be 'S. A. J.', is written at the bottom of the page.



*Handwritten signature or initials*

**Anchor City**  
**Qwadar**

**160 فٹ چوڑے روڈ پر**

\* گوادری سب سے بڑے سکون اور پریم لوکیشن \* مین کوئٹل ہائی وے اور زبرہ پوائنٹ سے 3 منٹ کی ڈرائیو پر

انڈیا گراؤنگ اور ٹیکسٹائل کا جدید پراجیکٹ	پہلے آئے، پہلے بانیے
سیورج کا بہترین نظام	200 اور 100 400 اور 200، 125
پینے کے صاف پانی کی مسلسل فراہمی	گڑے گڑے مٹی پائس گڑے گڑے مٹی پائس
سہولت اسکول اور لائبریری کی تعمیر	کے ہائی کلاسٹ کی قیمت
پارک، پلے لینڈ اور کمرشل پلاٹس	<b>99 ہزار روپے</b>
	<b>80 ہزار - ماہانہ قسط 8 ہزار</b>

بیک شپس

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0322-032203574330

ٹی ڈی ایس مارکیٹنگ (پرائیویٹ) لمیٹڈ  
سیورج اور ٹیکسٹائل

**Anchor City**  
**Qwadar**

**160 فٹ چوڑے روڈ پر**

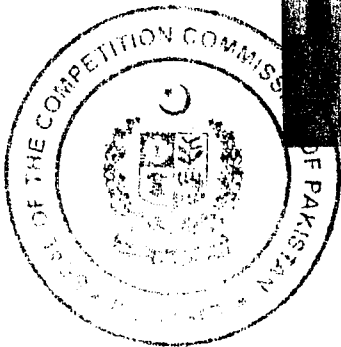
\* گوادری سب سے بڑے سکون اور پریم لوکیشن \* مین کوئٹل ہائی وے اور زبرہ پوائنٹ سے 3 منٹ کی ڈرائیو پر

انڈیا گراؤنگ اور ٹیکسٹائل کا جدید پراجیکٹ	پہلے آئے، پہلے بانیے
سیورج کا بہترین نظام	200 اور 100 400 اور 200، 125
پینے کے صاف پانی کی مسلسل فراہمی	گڑے گڑے مٹی پائس گڑے گڑے مٹی پائس
سہولت اسکول اور لائبریری کی تعمیر	کے ہائی کلاسٹ کی قیمت
پارک، پلے لینڈ اور کمرشل پلاٹس	<b>99 ہزار روپے</b>
	<b>80 ہزار - ماہانہ قسط 8 ہزار</b>

بیک شپس

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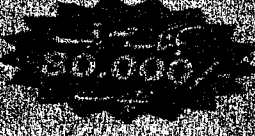
ٹی ڈی ایس مارکیٹنگ (پرائیویٹ) لمیٹڈ  
سیورج اور ٹیکسٹائل



*Handwritten signature or initials*

Anchor City  
ISLAMABAD

5 | 8 | 16 | 400 | 200 | 125  
4 | 8 | 100 | 200


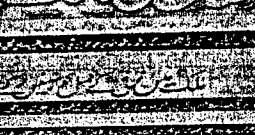




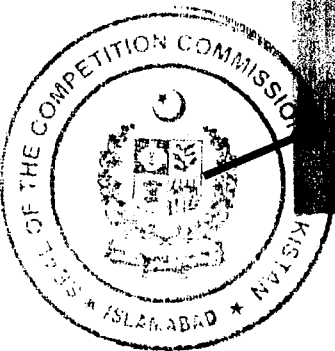





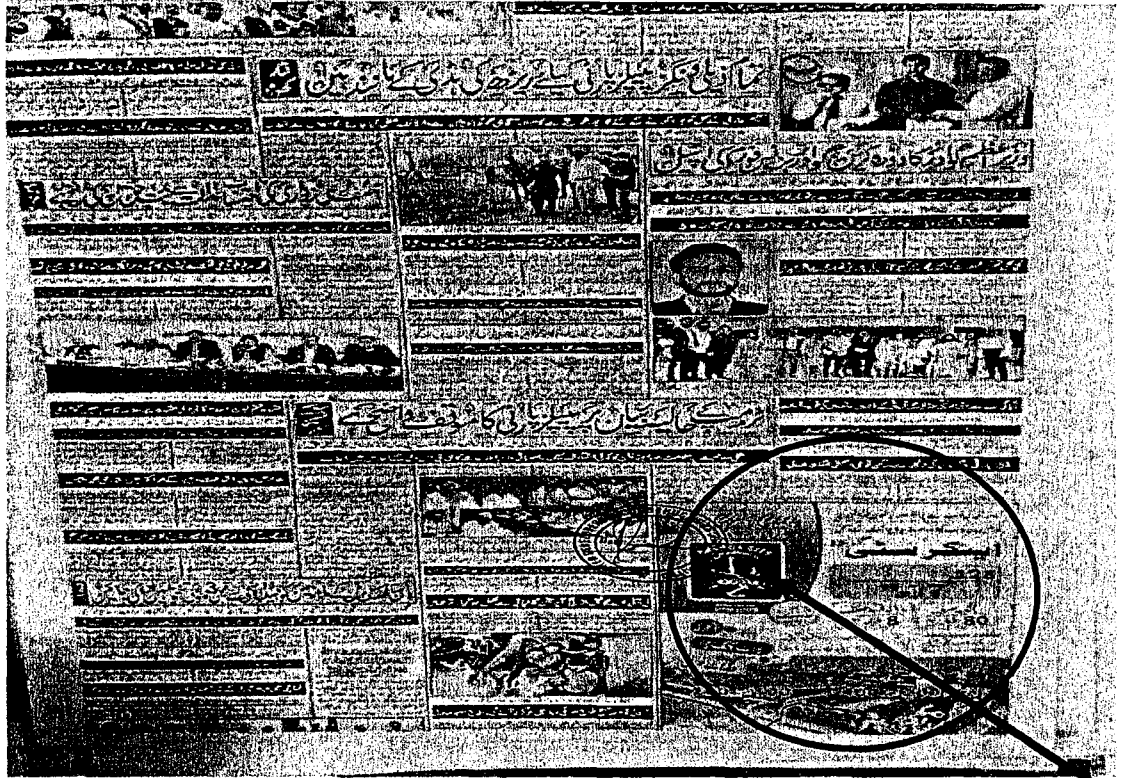


Anchor City  
ISLAMABAD

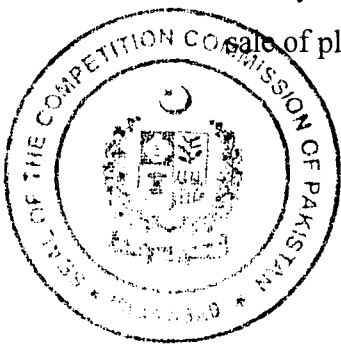
5 | 8 | 16 | 400 | 200 | 125  
4 | 8 | 100 | 200

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20. As per Enquiry Report, the Enquiry Committee also undertook an independent exercise to verify the contents of the allegations levelled against the Respondent and the contents of the Respondent's website and other promotional materials such as brochures were placed on record before the Bench. The screenshot as on 09<sup>th</sup> May 2018 available on the website of the Respondent is reproduced herein below which clearly depict the words 'Anchor City' accompanied by the symbol of anchor for the sale of plots in Gwadar:





Visit our project on **zameen.com** Pakistan's No.1 Property Website. Anchor City Gwadar. Rs 10 Lakh to 56 Lakh. Anchor City Gwadar Zero Point, Gwadar. If you are looking to Invest in Gwadar's real estate market, Anchor City Gwadar is a lucrative opportunity you don't want to miss out on..... more.

Plot Features: Electricity, Water, Road, Sewerage, Gas, etc.

Anchor City Gwadar. 160 فٹ چورس روڈ پر. انٹر سٹی گوار میں اور سب سے زیادہ مستحق کے لیے خصوصی رہائشی بلاک. انٹر سٹی گوار میں پلاٹ کی خریداری اب ہوئی آسان. Bank Alfalah.

Plot Size	Price
400' x 200'	100,000,000
200' x 100'	40,000,000
150' x 125'	150,000,000
125' x 125'	125,000,000
90' x 90'	90,000,000

Payment Schedule of Anchor City Gwadar

Sl. No.	Particulars	Amount
1	Down Payment	21,000,000
2	Installment 1	10,000,000
3	Installment 2	10,000,000
4	Installment 3	10,000,000
5	Installment 4	10,000,000
6	Installment 5	10,000,000
7	Installment 6	10,000,000
8	Installment 7	10,000,000
9	Installment 8	10,000,000
10	Installment 9	10,000,000
11	Installment 10	10,000,000
12	Installment 11	10,000,000
13	Installment 12	10,000,000
14	Installment 13	10,000,000
15	Installment 14	10,000,000
16	Installment 15	10,000,000
17	Installment 16	10,000,000
18	Installment 17	10,000,000
19	Installment 18	10,000,000
20	Installment 19	10,000,000
21	Installment 20	10,000,000
22	Interest	1,000,000
23	Contingency	1,000,000
24	Total	210,000,000



The material placed before the Bench makes it profusely evident that the Respondent has used the name 'Anchor' and the symbol of the device of anchor for marketing and promotion of its real estate project namely, Anchor City Gwadar. The Complainant has categorically stated in front of this Bench that it has not given any

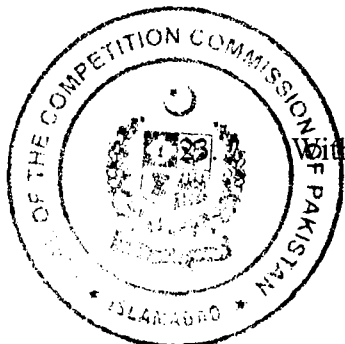
authority to anyone to use its Trade/Service Mark or to sell its project. Furthermore, the Respondent has failed to produce any documentary evidence showing authorization for the use of the same. Therefore, from a perusal of the foregoing evidence it is clear that the Respondent is using the trademark and trade name 'Anchor' of the Complainant without due authorization from the latter. The Complainant has produced the trademarks registration certificate, whereas the Respondent has not produced any document in its support which justify the use of the Complainant's trademark and trade name. It is clear from the above evidence that the Respondent is blatantly using the Complainant's registered trade/service mark '**Anchor**' with combination of word 'City' and '*device of the Anchor*' without obtaining due authorization from the Complainant.

***Whether the use of the Anchor name and symbol of device of anchor by the Respondent constitutes a deceptive marketing practice in terms of Section 10 of the Act.***

22. It has been established in paras above, that 'Anchor' name and mark has been duly registered by the Complainant and that the Respondent is using these for the marketing of its housing scheme without due authorization. We now proceed to determine whether this constitutes a deceptive marketing practice in terms of Section 10 of the Act. At this point we refer to earlier orders of the Commission pertaining to analysis of infringement(s) under Section 10 of the Act. **In the matter of China Mobile Pak Limited and Pakistan Telecom Mobile Limited** reported as **2010 CLD 1478**, the Commission has observed that in determining whether an advertisement or marketing material (and the advertised claims) amount to deceptive marketing practices, the Commission shall:

*"...evaluate complete advertisement and make an opinion regarding deception [...] on the basis of net general impression conveyed by them and not an isolated script".*

With regard to "consumers," the Commission has held that:



*[Handwritten signature]*



*“the term ‘consumer’ under Section 10 of the [Ordinance] is to be construed as an ‘ordinary consumer’ but need not be necessarily be restricted to the end consumer of the goods or services”*

24. False and misleading information has been interpreted by the Commission to include:

*False information: “oral or written statements or representations that are (a) contrary to the truth or fact and not in accordance with reality or actuality; (b) usually implied either conscious wrong or culpable negligence; (c) has a striker and stronger connotation, and (d) is not readily open to interpretation...”*

*Misleading information: “may essentially include oral or written statement or representation that are: (a) capable of giving wrong impression or idea, (b) likely to lead into error of conduct, thought or judgement (c) tends to misinform or misguide owing to vagueness or any omission, (d) may or may not be deliberate or conscious, and (e) in contrast to false information, it has less erroneous connotation and is somewhat open to interpretation as the circumstances and conduct of a party may be treated as relevant to a certain extent”.*

25. Furthermore, while evaluating the ‘net general impression’ or dominant message, the Commission also delineates and examines express and implied claims contained in an advertisement or promotional campaign while holding the advertiser liable for both. The advertiser is liable for all such claim if they are false and/or misleading or lack a reasonable basis for the same. Neither proof of intent to disseminate a deceptive claim, not evidence that consumers have actually been misled is required for an act or omission to constitute violations under Section 10 of the Act.

To put the matter in context it is important to understand that both the Complainant and Respondent are in the business of real estate development in Pakistan. Anchor Town marketed by the Complainant is located in Islamabad whereas Anchor City, Gwadar marketed by the Respondent is located in Gwadar. Bare perusal of the website and marketing materials of the Respondent, highlighted and referred above in comparison to the trademark of the Complainant, it is clear that the Respondent is

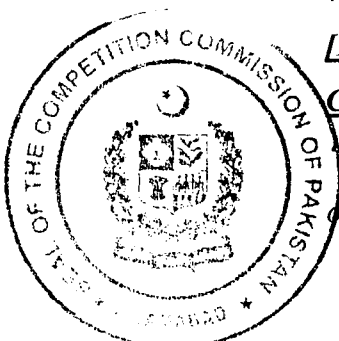


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using the word '*Anchor*' and the symbol of the '*Device of Anchor*' which are the essential part of the trade mark of the Complainant . Use of these words and symbols can easily deceive an ordinary consumer /investor and he/she can assume that the projects in Islamabad and Gwadar are of the same company or at least of the same group. It is to be emphasized that the companies are operating in the same sector/line of business i.e. housing and real estate development schemes, therefore, both companies target the same set of prospective customers/investors so chances of deception and resultant harm to the competitor are multiplied. Had it been in different business sectors, the benefit of the doubt could have been given to the Respondent. There are clear chances that the Respondent have enjoyed free riding/positive spillovers on the goodwill, value of trade mark, reputation and marketing/advertisement efforts of the Complainant, for which latter has invested a substantial amount of resources. We cite the Commission's earlier orders **In the matter of Show Cause Notice issued for violation of DHL Trademark reported as 2013 CLD 1014**, wherein *vis-à-vis* the goodwill and the value of trademark has been acknowledged in the following words:

*...[i]t is important to recognize that part of any business's identity is the goodwill it has established with consumers, while part of a product's identity is the reputation it has earned for quality and value. In a larger sense, trademarks promote initiative and enterprise worldwide by rewarding the owners of trademarks with recognition and financial profit. Trademark protection also hinders the efforts of unfair competitors, such as counterfeiters, to use similar distinctive signs to market inferior or different products or services. This enables people with skill and enterprise to produce and market goods and services in fair conditions, thereby facilitating international trade.*

48. We also would like to refer to the judgments of **Hoffmann-La Roche [1978] E.C.R. 1139**, para.7, and **Philips Electronics NV v Remington Consumer Products Ltd [2002] ECR I-0000**; wherein it was held that *the essential function of a trademark is to guarantee the identity of origin of the marked goods or services to the consumer or end user by*

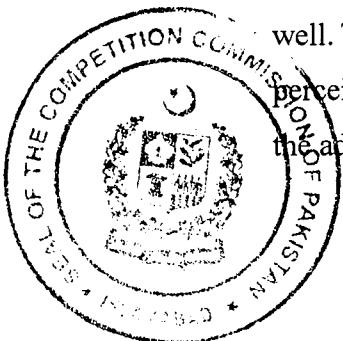


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*enabling him, without any possibility of confusion, to distinguish the goods or services from others which have another origin. For the trade mark to be able to fulfil its essential role in the system of undistorted competition, it must offer a guarantee that all the goods or services bearing it have been manufactured or supplied under the control of a single undertaking which is responsible for their quality". It is also pertinent to high light that in the judgments of Arsenal Football Club v. Matthew Reed [2003] RPC 9 and Loendersloot [1997] E.C.R. I-6227 it was observed that "for that guarantee of origin, which constitutes the essential function of a trade mark, to be ensured, the proprietor must be protected against competitors wishing to take unfair advantage of the status and reputation of the trade mark by selling products illegally bearing it."*

27. The Bench also observes that this goodwill and trust for investors is especially important in sectors such as real estate where large amounts of money and savings are invested by consumers/investors. Pakistan's burgeoning real estate sector has witnessed numerous cases where investors in housing schemes have been defrauded by unscrupulous elements and the Commission in its **Opinion on the Real Estate Sector** has strongly recommended various measures for protection of investors from such fraudulent and deceptive schemes.

28. In the instant matter the Respondent has justified its use of the words 'Anchor' and device of '*Anchor*' by observing that the same is used by various other undertakings in relation to various trades hence, the Respondent also used the same. We observe that this defence is not tenable since the undertakings referred by the respondent, do not operate in the same sector. We also note that the schemes advertised by both the companies are geographically apart, however, this fact does not make the violation less severe, for the reason that the housing schemes located in Gwadar, typically attract investors from various developed cities including Islamabad and abroad as well. Therefore, there are chances that an investor/consumer located in Islamabad may perceive that Anchor City Gwadar is another project of Anchor Town Islamabad, as the advertisement material of both schemes bear similar trade mark and name.



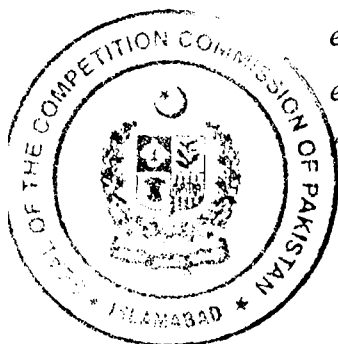
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29. While reviewing the marketing material of the Respondent available on the record and duly acknowledged in the Enquiry Report as evidence against the Respondent, we are of the considered opinion that the Respondent is misleading consumers by using a trade name that is deceptively similar to the Complainant's registered trademark and symbol. Accordingly, we are constrained to hold that the Respondent has resorted to deceptive marketing practices in violation of Section 10 of the Act in relation to its advertising and marketing campaign vis-a-vis its real estate project in Gwadar, as discussed above.
30. We have no doubt in holding that the marketing campaign of the Respondent for promotion of its real estate business has potential of creating unfairly, a positive/material perception on the part of actual or potential consumers in favour of the Respondent, which, in turn, is capable of harming the image, goodwill, sales and other business interests of another undertaking(s), specifically, the Complainant, in violation of Section 10 of the Act.

### **REMEDIES AND PENALTIES**

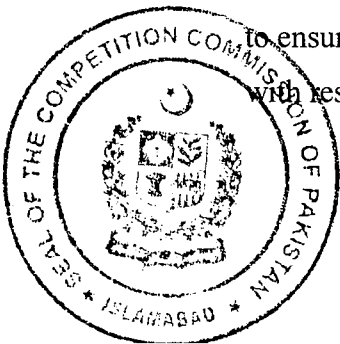
31. For the reasons discussed above and in line with our mandate to protect the consumers from anti-competitive behavior, including deceptive marketing practices, we hereby hold the subject conduct of the Respondent clearly in violation of Section 10(1) of the Act.
32. In deciding the quantum of penalty, we have taken into account the aspect of seriousness of the violation and all other relevant factors, including, the conduct of the Respondent. However, we deem it appropriate to refer to one of earlier Orders **In the matter of Show Cause Notice issued to M/s Vision Developers** reported as **2018 CLD 350**, wherein it was held as follows:

*"The importance of responsible and accurate advertising in relation to real estate should not, in any circumstance, be undermined. The real estate market plays a very vital role in the development of any country's economy as a number of other associated sectors have close links with this sector. At the same time, the degree of regulation remains inadequate to the extent that bogus housing schemes and deceptive*



*marketing practices continue to harm growth in this sector, ultimately causing a loss to the overall sustainability of Pakistan's economy. The Commission, at the outset, also bears in mind the specific circumstances of consumers that often fall victim to misleading claims in relation to real estate investments they may make. For the majority of the population in this country, it almost takes a lifetime of savings or obtaining credit or loans from banks to make an investment such as the acquisition of a plot to secure a more stable future. Such a transactional decision is a much more complicated and difficult one as against buying a household or shelved product from a supermarket. Therefore, we cannot stress enough, the higher burden placed on undertakings which operate in the real estate market, in relation to the accuracy of any claims or representations that they make in the course of their marketing campaigns."*


33. Further, we also cannot ignore the fact that the Respondent despite given an opportunity did not file any reply and also refused to attend the hearing when contacted by the Office of Registrar which tantamount to deliberately obstructing the proceedings of the Commission, therefore, in the circumstances we deem it appropriate to impose a penalty of Rs. 50,000,000/- (Rupees Fifty Million Only) on the Respondent for violating the provisions of Section 10 of the Act.
34. The Respondent is also directed to inform public-at-large, through appropriate clarifications in two Urdu and two English dailies that their real estate project is in no way related to that of the Complainant. The Respondent is also reprimanded to ensure responsible behavior in future with respect to the marketing of its business and is also directed to discontinue the use of trademark of the Complainant with immediate effect and not to use it in future without due authorization. The Respondent is also directed to file within sixty (60) days from the date of this Order, the Compliance Report along with the newspaper clipping as directed above with the Registrar of the Commission, to ensure future compliance and not to contravene provisions of Section 10 of the Act with respect to the subject matter, along with the penalty.

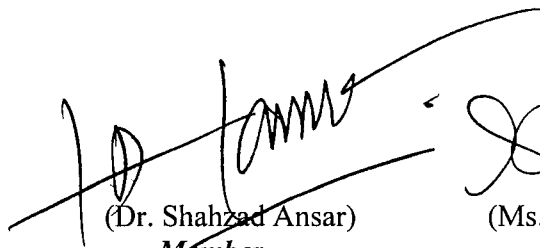


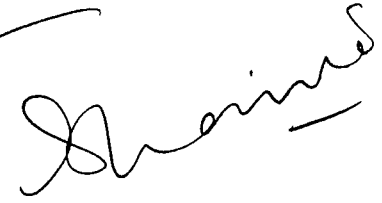
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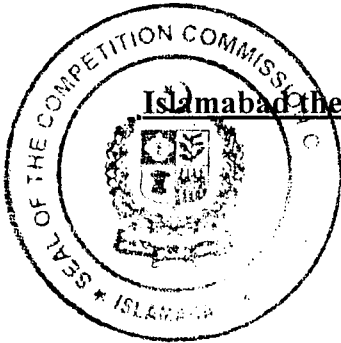
35. The Respondent is forewarned that in case of non-compliance of any of the above directions, the Respondent is liable to a further penalty of Rs. 250,000/- (Rupees Two Hundred and Fifty Thousand Only) per day from the date of issuance of the Show Cause Notice in addition of initiation of criminal proceedings against the management of the Respondent under sub-section (5) of Section 38 of the Act before the Court of competent jurisdiction.

36. In terms of the above, the Show Cause Notice No. 13/2019 dated 09<sup>th</sup> July 2019 is hereby disposed of.

  
(Dr. Muhammad Saleem)  
*Member*

  
(Dr. Shahzad Ansar)  
*Member*

  
(Ms. Shaista Bano)  
*Member*



Islamabad the 22<sup>nd</sup> day of November 2019