

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT NYANYA- ABUJA

THIS WEDNESDAY THE 30TH DAY OF OCTOBER, 2024

BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFI

SUIT NO: FCT/HC/CV/9074/23

BETWEEN:

ESTHER DANIELS INYANG.....CLAIMANT

AND

DYNAMIC JT LTD..... DEFENDANT

JUDGMENT

This judgment is on an originating summons dated 26th day of April, 2023 filed the same date with suit No. CV/4074/2023.

The claimant seeks the determination of the following question and reliefs thereto

- 1. Whether the defendant has the absolute power or right to unilaterally and incessantly alter the terms of the contract between the parties as it relates to the price of the subject matter of this suit without the consent of the claimant?**
- 2. Whether by the nature of the contract between the claimant and the defendant and the circumstance surrounding this case, the defendant has the absolute right to sell or reallocate the claimant property, the subject matter of this suit known and described as a five (5) bedroom Terrace Apartment (Block 4) AT Plot 62, Cadastral zone CO1, Karmo District Abuja FCT, without the consent of the claimant.**

The claimant seeks the following reliefs/orders

- 1. A declaration that the right of the claimant subsists on the subject matter of this suit know and described as a five (5) Bedroom Terrace Apartment (Block 4) at Plot 62, Cadastral Zone CO1, Karmo District, Abuja.**

- 2. A declaration that the Defendant does not have the right to unilaterally alter the term of the contract between it and the claimant without the consent of the claimant especially as it relates to the purchase price of the subject matter of this suit.**
- 3. A declaration that the defendant does not have the right to remove the claimant from the subject matter of this suit and reallocate it to another person without reasonable justification.**
- 4. An order of perpetual injunction by this Hon. Court restraining the defendant either by itself, its privies, agents, servants or any other person(s) acting or purporting to act on the defendant's behalf from removing the claimants from the subject matter of this suit, known and described as a five (5) Bedroom Terrance Apartment, (Block 4) of Plot 62 Cadastral Zone CO1, Karmo District Abuja FCT or interfere with the claimant's right and privileges over the subject matter of this suit.**

Attached to the originating summons is an affidavit of 17 paragraphs deposed to by ONE Esther Daniel Inyang, a business woman and in compliance with the rules of this court, the claimant counsel filed a written address in support of 5 pages wherein the written address formulated two issues distilled for determination to wit:

“Whether by virtue of the content of the provision letter of offer and the subsequent transaction between the claimant and the defendant has the absolute power to unilaterally and incessantly alter the terms of the contract as it relates to the purchase price of the subject matter of this suit without the consent of the claimant?”

Whether the defendant has the absolute right to remove the claimant from her unit (the subject matter of this suit) without the consent of the claimant.

Also attached to the process is a pre-action counseling certificate and the following documents attached thereto.

- 1. The receipt confirms the payment of 2023 Bar Practitioner fee.**
- 2. Provisional letter of offer Dynamic J.T Homes Abuja not fill by either party**
- 3. Review in properly price in respect of your property a dynamic Estate Karmo dated the 21/September, 2022 by Dynamic STC Ltd addressed to Miss Esther Daniel Inyang.**

4. Inre-Review of property price in respect of property at Dynamic Estate, Karmo Abuja dated 4-4-2023 addressed to the M. O. Dynamic JT Ltd by Mrs Esther Daniel

Upon service on the defendant, the defendant counsel filed a memorandum dated 9th June, 2023 alongside her counter affidavit of 5 pages deposed to by Mr. Tochukwu Akannam of Dynamic JT Ltd, Abuja the M.D./CEO of the defendant. Attached to the affidavit are exhibits marked as follows:

- 1. Provisional letter of offer to Dynamic JT Homes Abuja as exhibit A. offer accepted by either Daniel dated the 22//1/2029**
- 2. Review in property price in respect of your property a Dynamic Estate Karmo by Dynamic JT Ltd addressed to Miss Esther Daniel Inyang dated the 21st September, 2022 as exhibit B same received by Esther Daniel dated 22-09-2022.**
- 3. Re-allocation and change in property price by Dynamic JT Ltd addressed to Miss Esther Daniels Inyang dated March, 23 2023 as exhibit C.**
- 4. Re- Review in property price in respect of Dynamic JT Ltd Estate, Karmo Abuja by Miss Esther Daniel addressed to the M.D. Dynamic JT Ltd dated the 4/4/2023.**
- 5. Re Review in property price in respect of Property at Dynamic JT Estate Karmo Abuja by Dynamic JT Ltd addressed to Esther Daniel Inyang dated 11/4/2023 as exhibit E.**
- 6. Re-termination of the offer letter given to Esther D. Inyang at Dynamic JT Ltd Estate Plot 62 Karmo District Abuja by Dynamic JT Ltd addressed to Esther Daniel Inyang dated 19th May, 2023.**
- 7. In compliance with the rules of this court filed a written address of 7 pages where the written address gave brief facts of the case and raised two issues distilled for the court's determination to wit:**
 - i. Whether there is a valid agreement between the claimant and defendant of which the claimant acted in breach of fundamental terms thereof?**
 - ii. Whether from the totality of the evidence adduced the claimant is entitled to the claims sought.**

The claimant counsel on receipt of the defendant's counter affidavit filed a further affidavit in reply to the defendant's counter affidavit dated and filed 9th day of

June, 2023 of 5 paragraphs as same was deposed to by Esther Daniels Inyang and a reply on points of law of 4 pages dated the 4th day of September, 2023.

Before I proceed to answer all the issues attached to the clause, I will first of all review the facts leading to this suit. As stated by the claimant.

The facts are:

That sometimes in 2019, the claimant entered into a contractual agreement with the defendant with respect to a five(5) bedroom Terrace Apartment (Block) at Plot 62 Cadastral Zone CO1 Karmo District, Abuja FCT for a purchase price of Twenty Five Million (N25,000.000) only. And for the purchase price to be paid by instalment. Consequent upon the above, she was issued a provisional letter of offer from the defendant and commenced payment.

On the 21st September, 2022 the defendant through it's managing Director, Tochukwu Akannam via letter titled (Review in property price in –respect of the property of Dynamic Estate Karmo increased the purchased price of the subject matter from Twenty-Five million Naira (N25, 000,000) only to thirty Million Naira (30,000,000.00) only on grounds of increment in the prices of building materials and which the claimant accepted for the sake of peace Exhibit ANWA2.

That sometimes in March 2023 few months from the five million Naira (N5, 000,000) increment, the defendant's M.D. informed the claimant that the purchase price has been further increased by another Fifteen Million Naira (N15, 000,000) only making it the total of Forty five Million Naira (45,000,000) only that the claimant wrote a letter to the defendant dated the 4th April 2023 complaining against the increment. ANNA3. Consequent upon the claimant's letter, the defendant's M.D. informed the claimant that he fails to make full payment within thirty (30) days commencing from 11th April, 2023 her property will be offered to another person. This is despite the fact that the defendant has only developed property up to lintel level, and have so far made substantial deposit in respect of the purchase price.

I will now marry this facts with the issues formulated by both parties and the response in the counter affidavit by the defendant to enable me bring out the entitlement of both parties to the claims.

By the agreement of the parties, it seems to me that the contract between the parties in order to become binding or valid, the following basic elements are essential for the validity of the contract. The essential elements are as follows

1. Agreement
2. Contractual intention and
3. Consideration

It is trite law, that the normal test for determining whether the parties have reached an agreement is to ask whether an order has been made by one party and assisted by the other. See *Akinyemi Vs Odua Inv Co Ltd* (2012) 17 NWLR (p.209) (SC). Therefore to constitute a binding contract there must be an unmistakable and precise offer and unconditional acceptance of the terms mutually agreed by the parties thereto in other words, the parties to the agreement must be in consensus ad-idem as regards the terms and conditions freely and voluntarily agreed upon by them. Furthermore, the promise of each party must be supported by consideration. See *Best (Nig) Ltd V E. H. (Nig) Ltd* (2011) 15 NWLR (pt 1235) 95. SC.

It is equally trite, that time is said to be of the essence in a contract of an instance.

- a. **Where the parties have expressly stipulated in their contract that the time fixed for performance must be exactly complied with.**
- b. **Where the circumstance of the contract or the nature of the subject matter indicates that the fixed time must be exactly complied with. E.g the purchase of leasehold house required for immediate occupation**
- c. **Where time was not originally of the essence of the contract, but one party has been guilty of undue delay the other party may give notice requiring the contract to be performed within a reasonable time. See *FAMEHINMU V G. M. H. (Nig) Ltd* (2018) 12 NWLR (PT.1633) 197 ca.**

Now to the binding nature of the contract in this suit. On this it is in the affidavit in support of the originating summons that the claimant in the year 2019 entered into a contractual agreement with the defendant with respect to a five (5) Bedroom Terrace Apartment (Block 4) at Plot 62 Cadastral ZONE co1 Karmo District Abuja FCT for a purchase price of Twenty-Five Million Naira (N25, 000,000) Naira only and for the purchase price to be in installments.

The claimant was issued an offer letter and provisional letter of offer dated the 22nd day of January, 2019 exhibited as exhibit A and upon receipt of the offer letter, the claimant made a deposit of initial sum of N2,000,000.00 (Two Million Naira) only out of the total purchase price of N25,000,000.00 (Twenty five Million Naira) only

From the above it is clear that there is an offer and acceptance and consideration in the said contract, hence the contract becomes binding on both parties.

The crux of the matter is the increment of the purchase price from the initial amount of N25, 000,000.00 (Twenty Five Million to N30, 000,000.00 (Thirty Million Naira) only an additional (N5 million to the initial purchase price of N25, 000,000.00. this was made through a letter by the defendant's M.D. to the claimant reviewing the terms & conditions, dated the 21st day of September, 2022 annexed as exhibit B was forwarded to the claimant, the claimant in response to the said letter of increment dated 21st September, 2022 replied the defendant through a letter dated the 4th April 2023 accepting the increment however reluctantly to the said increase considering the economic realities and cost of building materials.

Furthermore, to the said first letter of increment which the claimant reluctantly accepted, the defendant wrote another letter of increment dated the 23rd March, 2023 from N30,000,000 to N45,000,000.00) Forty Five Million Naira only i.e. N15 million increment. This the claimant rejected inform the defendant to revert to their initial agreement on the chosen unit and acceptance of N5million price increase and for the defendant to deliver the unit as agreed which is Block 4 at Plot 62 Cadastral zone CO1 Karmo District Abuja FCT. This is where the crux of the matter arose in this suit.

Now to the first question for determination as to whether the defendant has the absolute power or right to unilaterally and incessantly alter the terms of the contract between the parties as it relates to the price of the subject matter of this suit without the consent of the claimant?

As said earlier, that it has been established that there was a contractual agreement between the parties in which both the claimant and the defendant are bound by it.

In the letter of offer on the obligation of vendor, it states thus:

“The vendor shall deliver to the Allottee a full completed four bedroom Terrace. Duplex with attached boys quarters 12 calendar months from the date of this offer. Provided all payments due are completed”

On the obligation of allottee. The allottee hereby covenants to make all payment as contained in this allocation letter as at when due.

Where the allottee is unable or refuses to make payments as at when due, the vendors shall serve a fourteen (14) days' notice to the allottee and at the expiration of the notice shall have the rights to remove the allotted unit. The vendor shall require the deposit made by the allottee less 10% the amount to be deducted as administrative charges after the resale of the allotted unit.

In the instant suit, the defendant by a letter of increment dated 23rd March, 2023, increased the purchase price to (45, 000,000) Forty five million an additional N15, 000,000.00 from the initial N30, 000,000.00. the said letter of increment which the defendant referred to in it's counter affidavit paragraph 12, states that the said letter was served on the claimant but the claimant refused to acknowledge same. The letter was there after served on the claimant by substituted means. The claimant who acknowledged the said letter by referring to it in paragraph 10 of the claimant affidavit in support to her originating summons. Exhibit E this letter which gave the claimant within 30days (thirty).

That as a result of the claimant failure, the defendant terminated the claimant provisional offer dated 22nd day of January, 2019 see exhibit F. the said letter which the defendant alleged that it was served on the claimant but the claimant refused to acknowledge it, the letter was thereafter served on the claimant by substituted means in accordance with the caption on the letter of offer which provides thus:

“In the event that the allottee evades service of notice by the vendor, the vendor may serve the allottee through substituted means i.e. email, courier or pasting notice at the allottee's last known address”

The question then is, has the defendant complied with the mode of service as stated above? For the defendant to say that the letter of increment was served on the claimant but refused to acknowledge same, there must be evidence of service through the means agreed by the parties in the provisional letter of offer i.e.

- a. Email**
- b. Courier**
- c. Pasting notice at the allottee last known address.**

Order 9 rule13 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) rules 2018, provides thus:

13(11)(2) the provides

“Every application to the court for substituted or other service or for the substitution of notice for service shall be supported by an affidavit setting forth the grounds upon which the application is made.

Where it appears to the court either after or without an attempt of service that for any reason prompt service cannot be conveniently effected, the court may order that service be effected either by.

- a. Delivery of the document to some adult inmate at the usual or last known place of abode or business of the person to served.**
 - i. Email or any other scientific means now known or later developed and courier service or any other means convenient to the court.**
 - ii. Provided service by email is contemplated by parties in a written agreement or subsequently agreed by counsel in the course of proceedings.**

Order 7 rule 13(1)(2)(3) provides thus:

- 1. The process server shall after serving any process promptly depose to and file an affidavit setting out the facts date, time place made of service, describing the process served and shall exhibit the acknowledge of service.**
- 2. Proof of service by email shall be evidence by an affidavit with a printout of an email notified attached thereto.**
- 3. The affidavit shall be prima facie proof of service.**

By the said provision of order 7 rule 11(sub(a) (e)(i, ii, and sub 13 (1)(2)& (3) has the defendant complied with the condition stipulated in the offer letter to presumed that the claimant has accepted or have knowledge of the said letter of increment dated the 23rd March, 2023 increasing the offer by another Naira) only the answer is capital NO . as the claim of the defendant that the claimant was served with the said letter dated the 23rd March, 2023 but refused to acknowledge same does not hold water as the defendant did not comply with the provisions of order 7 rule ii(a)iii(e) I & ii and sub 13(1)(2) and (3) of the High Court of the FCT, Abuja Civil Procedure rules 2018. Hold that the increment dated the 23rd day of March 2023 was not with the consent of the claimant on this I wish to state that, the effect of a unilateral increment of price in a contract for the of lease is that it amount to a

breach of contract such unilateral variation will be considered void and of no effect.

In view of the above, i hold that the defendant does not have the absolute right to alter the terms of the subsequent agreement of additional five million Naira (N5,000,000) only to an additional fifteen million Naira (N15,000,000.00) only without the consent and acceptance by the claimant. I hold that the first question is hereby resolved in favour of the claimant.

On the second question for determination as to whether by the nature of the contract between the claimant and the defendant and the circumstance surrounding this case, the defendant has the absolute right to sell or relocate the claimant property, the subject matter of this suit known and described as a five (5) bedroom terrace Apartment (Block 4) of Plot 62 Cadastral Zone CO1, Karmo District, Abuja FCT without the consent of the claimant.

On this it is the submission of the learned counsel to the claimant that the defendant does not have the absolute right to remove the claimant from her unit (the subject matter of this suit) without the consent of the claimant or subsequent contractual agreement between the claimant and the defendant.

Furthermore, submitted that based on the decision in the case of *Idfueko V pfzer* (2014) 58 prt1 NSCOR 601 at PP. 6727-628 where the court hold as follows:

“.... In determining the right and obligation of the parties to a contract, the court must respect the sanctity of contract made by them. Parties are bound by the terms thereof, and the court will not allow a term on which there’s no agreement to be read into it. In other words, the rights, duties and obligation of the parties must reasonably and lawfully by contractual within the ambit of the said document”

Finally submitted that, the defendant does not have the absolute right to remove the claimant from the subject matter of this suit without justification.

The defendant in its counter affidavit paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, (20) reproduced below

4. That in 2019, the Claimant approached the Defendant that she was Interested in the Defendant's Five (5) Bedroom Terrace Apartment

(Block 4) situate at Plot 62, Cadastral Zone C01, Karmo District, Abuja, FCT for the purchase sum of N25, 000,000.00 (Twenty-Five Million Naira) only to be delivered to the Claimant within 12 calendar months from the day of this offer was provided all payments due are completed. That the Claimant made Initial payment of the sum of N2, 000,000.00 (Two Million Naira) only. Thereafter, the Claimant made other installments.

- 5. That the only written binding contractual agreement between the Claimant and the Defendant was the Provisional Letter of Offer. The Claimant was issued the said Provisional Letter of Offer; the terms/conditions contained in the Provisional Letter of Offer were grossly breached by the Claimant. A copy of the Provisional Letter of Offer dated 22nd day of January, 2019 is herein attached and marked as EXHIBIT.**

- 6. Pay up the full sum within the time specified in the Provisional Letter of Offer. The Defendant incurred expenses because cost of materials has drastically gone up. The Defendant wrote the Claimant of additional increment of the sum of N5, 000,000.00 (Five Million Naira) only to N25, 000,000.00 (Twenty- Five Thousand Naira) only. Thereby bringing the total Property price/sum to N30, 000,000.00 (Thirty Million Naira) only. The review was due to current Inflation and high cost of building materials to ensure that work continues. A copy of the Defendant's letter addressed to the Claimant reviewing the property price dated 21 day of September, 2022 is herewith attached and marked as EXHIBIT B.**

- 7. The Claimant was unable to meet up with her payments as stipulated In the Provisional Letter of Offer despite given her several opportunities. The Provisional Letter of Offer stated that the vendor (Defendant) shall deliver to the Allottee (Claimant) a fully completed five bedroom Terrace Duplex with attached Boy quarters 12 calendar months from the date of this offer provided all payment due are completed. That the vendor (Defendant) shall execute a Deed of Sub- lease in favour of the**

Allottee (Claimant) clearly describing the property and assigning all rights thereto. The document shall be prepared and issued to the Allottee (Claimant) upon completion of all payment. The Provisional Letter of Offer further stated that the Allottee (Claimant) covenants to make all payments as contained in the allocation letter as at when due. That where the Allottee (Claimant) is unable or neglects to make payments as at when due, the vendor (Defendant) shall refund the deposit made by the Allottee (Claimant).

- 8. That since 22nd day of January, 2019, when the Defendant gave the Claimant the Provisional Letter of Offer till date i.e. after four (4) years, the Claimant is still unable to pay the property sum. Due to the Claimant's inability to perform or carry out her obligations/payment condition in the Provisional Letter of Offer, the Defendant to terminate the contract and reallocated the Claimant to another property. The value of the property Initially offered to Claimant has gone up due to Inflation in the country, constant high cost of building materials, etc.**
- 9. That the Provisional Letter of Offer issued to the Claimant was for the Claimant to make full payment of the Five (5) Bedroom Terrace Apartment (Block 4) situate at Plot 62, Cadastral Zone C01, Karmo District, Abuja, FCT for the purchase sum of N25, 000,000.00 (Twenty-Five Thousand Naira) only within 12 months i.e. one (1) year, this kept lingering until it became obvious that the Claimant would not be able to pay the agreed sum for the property. The value of the said property since 2019 cannot be the same in 2023 when the value became N45, 000, 000,00 (Forty-Five Million Naira) only. A copy of the said letter on change of the property sum dated 23rd March, 2023 is annexed and marked as EXHIBIT C**
- 10. That the Claimant in her letter to the Defendant dated 4th day of April, 2023, in paragraph 2 of the said letter, the Claimant said ... and having reluctantly agreed to the said increase, considering the economic realities and cost of building materials...." That the Claimant accepted fully the economic realities on ground as it relates to the subject matter.**

That in the said letter, the Claimant said her consent was not obtained before the sale to another person. That Provisional Letter of Offer never provided that the consent of the Claimant would be obtained before sale to another person. The Claimant in the above letter, stated that the Defendant should revert to the initial agreement of the property sum and the N5, 000,000.00 (Five Million Naira) Increase. A copy of the said letter is attached and marked as EXHIBIT D.

- 11. That in reaction to the Claimant's letter of 4th day of April, 2003, the Defendant wrote the Claimant thereby agreeing to revert to the initial ₦25,000,000.00 (Twenty-Five Million Naira) and additional N5, 000,000.00 (Five Million Naira) increase. The Defendant's ultimate condition for agreeing with the Claimant to revert to the initial sum of ₦30,000,000.00 (Thirty Million Naira) was that the Claimant will pay the full property sum for the Five (5) Bedroom Terrace Apartment (Block 4) situate at Plot 62, Cadastral Zone C01, Karmo District, Abuja, FCT within 30 (Thirty) days from the receipt of the Defendant's letter.**
- 12. That failure of the Claimant to make full payment after 30 days, the sale offer will lapse and the deposit sum made will be refunded and the property will be offered to another applicant without further recourse to the Claimant. The said letter was served on the Claimant but the Claimant refused to acknowledge same. The letter was therefore served on the Claimant by substituted service (means). EXHIBIT E.**
- 13. That despite given the Claimant another golden opportunity, the Claimant failed woefully as usual to complete the full sum within 30 (Thirty) days. As a result of the Claimant's failure, the Defendant terminated the Claimant's Provisional Offer dated 22nd day of January, 2019. EXHIBIT F.**
- 14. That the Provisional Letter of Offer provided that in the event that the Allottee (Claimant) evades services of notice by the Vendor (Defendant),**

the Vendor (Defendant) may serve the Allottee (Claimant) through substituted means.

15. That based on the foregoing, it is crystal clear that the Claimant will not be able to fulfill the above terms/conditions contained in the Provisional Letter of Offer. The Claimant's breach of the fundamental terms is the cause of the termination of the allocation offer. A Provisional Offer is not yet a valid or legal title until the stated required terms/conditions are fulfilled which is the full payment of the property sum.

16. That since 2019 when the Provisional Letter of Offer was given to the Claimant, the Claimant has unimpressively made staggering Installments totaling about N10,000,000.00 (Ten Million Naira) only which is not even up to 50% till date i.e. 2023 after four (4) years. The Claimant surreptitiously did not disclose the duration of the contract contained in the Provisional Letter of Offer and the Claimant also failed to state how much she has paid so far and the balance left.

(18) That the claimant came with deceit and lies that she was processing her National Housing Fund (NHF) through the Federal Housing Authority (FHA) upon which the Provisional Letter of Offer was given to her.

(20) That more Importantly, the allocation letter clearly stated that where the Allottee (Claimant) is unable or neglects to make payments as at when due, the Vendor (Defendant) shall refund the deposit made by the Allottee (Claimant) less 10% the amount to be deducted as administrative charges after the resale of the allotted unit.

The learned counsel to the defendant argued that, there is indeed a valid and binding agreement between the claimant and the defendant and that the claimant acted in breach of fundamental terms of the provisional letter of offer. On this required this court to the case of *Isiyaku V Zwingiria* (2003) 6 NWLR (PT. 817) 560 & 575 the court held that.

“If the words in an agreement is then no more can be necessary than to expound those words in their natural and ordinary sense”

Also the case of Kings PlanentInd’s Vs CPWA Ltd (2014) 2 NWLR (PT1392) 605 & 609 ca. the court held.

“When construing document in dispute between two parties the proper course is to discover the intention or contemplation of the parties and not to import into the contract ideas not potent on the face of the document. Therefore, where there is a contract regulation any arrangement between. The parties, the main duty of the court is to interpret that contract and to give effect to their wishes as expressed in contract document”

In summary submits that the claimant is not entitled to the reliefs sought from this Hon court because he who comes to equity must do equity. It is also trite that he who comes to equity must come with clean hands and submit that the hands of the claimant are not clean by instituting this case against the defendant when she knows that she has not fulfill her obligations stated in the provisional letter of offer.

I have carefully gone through the arguments of both the claimant counsel and that of the defendant, it is clear from all the submission that these issues boil down to the issue of a failed contract and a breach of the terms/conditions stipulated in the agreement between the allottee claimant and the vendor defendant.

One possibility is that, the parties may agree to execute a journal document incorporating terms on which they have previously agreed.

Such a provision does not deprive the agreement of contractual force. The grant of an option to purchase can similarly be described as a contract by which one party binds himself to enter into a further contract if the other so elects. And neither of these contracts is void for uncertainty.

Looking at the argument canvassed by the defendant, it is clear that, there was a fundamental breach on the part of the claimant, as it is clear from, the onset, that parties agreed to the purchase price of N25,000,000.00 (Twenty Five Million) naira only and subject to the claimant paying the total said sum of N25,000,000.00(Twenty Five Million within 12 calendar months from the day of the offer was provided all payments due are completed and the claimant made

initial payment of the sum of N2million. The claimant failed to pay up the full sum within the time specified in the provisional letter of offer and exhibit A.

In that offer letter it states that, payment of the sum of only N25, 000,000 only from the total sum is to be deposited in-2019 i.e within 30 clear days after the date of thus offer letter. And that the vendor shall deliver to the Allottee full completed four bedroom terrace duplex with attached boys quarters 12 calendar months from the date of this offer provided all payment due are completed.

This brings us to the second relief where the claimant claims for a declaration that the defendant does not have the right to unilaterally alter the terms of the contract between it and the claimant without the consent of the purchase price of the subject matter of this suit.

On this it is the argument of the defendant counsel in paragraphs 11 the defendant stated that, he wrote the claimant thereby agreeing to revert to the initial N25 million and additional N5 million. The defendant's ultimate condition for agreeing with the claimant to revert to the initial sum of N30 million was that the claimant will pay the full property sum for the five (50 Bedroom terrace apartment Block (4) situate at Plot 62 Cadastral Zone CO1 Karmo District Abuja FCT.

The claimant in her letter to the defendant dated 4th day of April 2023 in paragraph 2 of the said letter, the claimant said....and having reluctantly agreed to the said increase, considering the economic realities and cost of building materials....”

From the foregoing it is clear that, the consent of the claimant was sought for the increment hence he argument as to whether the defendant unilaterally increased the purchase price without the consent of the defendant does not hold.

On the reliefs that the defendant has no right to remove the claimant from the subject matter of this suit and re-allocate it to another person without reasonable justification. On this also I said yes but, the failure of the claimant to honour the agreement was his failure hence the defendant reallocating the said subject matter to another person was justified. Reason being that the vendor (defendant) as it was stated on the deeds of assignment, that the vendor shall execute a deed of sublease infavour of the allottee (claimant) clearly describing the property and assigning all rights thereto the document shall be prepared and issued to the allottee (claimant) upon completion of all payment. The provisional letter of offer further stated that the allottee (claimant) covenants to make all payments as contained in the allocation letter as at when due. That where the allottee (claimant) is unable or

refuses to make payment as at when due, the vendor (defendant) shall refund the deposit made by the allottee (claimant) this also by the allottee (claimant). This also the claimant had failed and having failed to make full payment as at when due, the defendant has the right to refuse to re-allocate to another person and to refund the deposit paid by the claimant.

The claimant in it's letter dated the 4th April 2023 stated I quote

.... Kindly revert to our initial agreement on the chosen unit and my acceptance of the N5 million price increase and deliver my unit as agreed which is block 4 at Plot 62 Cadastral zone CO1 Karmo District.

This also, the defendant agreed with the condition that the claimant made full payment as at when due. This the claimant also failed to make the full payment having agreed to revert back to the initial agreed payment of N30 million.

Therefore hold that the failure of the claimant to pay the agreed N30 million as at agreement. See the letter dated 21/9/2022 written by the defendant to the claimant. Provisional letter of offer which states thus:

“The allottee hereby covenant to make all payment a contained in this allocation letter as at when due”

Where the allottee is unable or reflect to make payment as at when due, the vendor shall refund the deposit made by the allottee”

In view of the foregoing hold that, the claimant having failed to honour the agreement given the defendant right to revoke the initial agreement and refund the sum paid by the claimant being the sum of N10, million it entitles the innocent party i.e. the defendant to treat it as repudiator and to resend the contract.

It is to be noted that all questions relating to payment of a sum of money pursuant to a contract depends on the content of the terms of the contract.

Reference to the letter of offer as stated above.

On this I am bold to state that the claimant having breached the fundamental terms of the agreement twice, for not complying with the terms of payment as at when due, cannot claim relief 3 being the declaration that the defendant does not have the right to remove the claimant from the subject matter of this suit and reallocate it to another person without reasonable justification.

If an agreement lays down a procedure for adding a thing, the procedure ought to strictly be complied with unless there are circumstances warranting it to be waived or deviated therefrom see Bahari V Yusuf (2003) 14 NWLR (pt.84) 466.

In view of the foregoing hold that, this issue is resolved in favour of the defendant.

On the 4th relief being perpetual injunction.

Perpetual injunction is a legal prohibition decided by a course of law that permanently prevents a course of action.

From the judgment on the issue stated this court has no reason to grant the order sought therein. Hence the order sought in prayer 4 is hereby refused.

In summation it is the judgment of this court, which order is set out below being the judgment of this court thus:

It is the judgment of this court that the claimant has failed woefully to place cogent reasons why this court will grant her reliefs hence all the reliefs claimed are not grantable by this court.

The entire case of the claimant is hereby dismissed. Parties are to bear their costs.

.....

Hon. Justice A. Y. Shafa

Appearance:

1. Stephen Apeh for the claimant.
2. Samson Osekhaigbe for the defendant.