

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 29/2007

MADAN MOHAN GOEL

..... Petitioner

Through Mr. S.K. Rungta, Advocate.

versus

D.D.A.

..... Respondent

Through Mr. C.Mohan Rao, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

ORDER

% 13.02.2008

1. The petitioner was registered under the 9th Self Finance Scheme, 1996. Under the said Scheme, 6000 flats were offered for allotment to persons registered under the Scheme.

2. In 1996, the petitioner was allocated a flat at Shalimar Bagh. The estimated cost of the flat was Rs.8,80,000/- which was to be paid in five installments. The first installment of Rs.2,20,000/- was payable on or before 30th April,

1997, the second installment of Rs.1,76,000/- was payable on or before 30th October, 1997, the third installment of Rs.2,20,000/- was payable on or before 30th April, 1998 and the fourth installment of Rs.1,76,000/- was payable on or before 30th October, 1998. The fifth installment along with actual cost was payable at the time of issue of allotment letter. The allocation letter itself envisaged and specifically stipulated that in case of default in payment of installments, the allocation shall be automatically cancelled.

3. The petitioner paid the installments in the following manner :

<i>Installment</i>	<i>Amount demanded (Rs.)</i>	<i>Due Date</i>	<i>Paid On</i>	<i>Amount deposited (Rs.)</i>
FIRST	2,20,000.00	30.04.1997	26.07.1997	1,70,100.00
SECOND	1,76,000.00	30.10.1997	27.07.1998	1,20,000.00
THIRD	2,20,000.00	30.04.1998	27.01.1998	1,76,000.00
			28.07.1998	50,000.00
FOURTH	1,76,000.00	30.10.1998	Not Paid	

4. Thus there was delay in payment in first three installments and the fourth installment was never paid. Learned counsel for the petitioner submits that there was delay in construction by the DDA and therefore the petitioner did not make the payment of the fourth installment. It is further stated that DDA

also has a restoration policy and in some cases restoration has been allowed though no installment was paid in the said cases.

5. I have examined the contentions raised by the petitioner but I do not find any merit in the same. Admittedly, the petitioner never wrote any letter to the respondent-DDA from 1997-98 onwards requesting for extension of time to make the payment or explained the reasons and cause for failure to make payment in time. In fact, the first letter written by the petitioner, after 1998, was on 5th September, 2006. The petitioner kept quiet during this period of eight years from 1998-2006. The petitioner has approached this Court by filing the present Writ Petition on 2nd January, 2007, after nearly nine years from the date when the fourth installment was payable. There is unexplained delay in approaching the Court, in addition to unexplained delay of the petitioner from 1998 till 2006 when the petitioner did not correspond or even write a single letter. DDA has a policy for condonation of delay but reasons and justifications for the delay have to be spelt out and only if an applicant satisfies conditions of the policy that delay can be condoned. Delay cannot be condoned in each and every case. Each case has to be examined on its own merits. In the present case, no letter was addressed by the petitioner asking for condonation of delay from 1998 till 2006. I may also note here that as per the Scheme itself, in case of delay in construction, interest is payable to the allottees for

the amount deposited by them after a period of 30 months. The stand taken by the petitioner that there was delay in construction and therefore he did not make payment of the installments appears to be an afterthought and does not justify his default from 1998 till 2006. In these circumstances, I do not find any merit in the present Writ Petition. Prayer for allotment of a flat in terms of the said Scheme is therefore rejected.

6. There is another aspect of the matter. The petitioner has paid Rs.5,16,100/- on different dates to the respondent-DDA. In case the petitioner had not deposited the fourth installment and the allocation was cancelled, it was the duty of the respondent-DDA to refund the said amount and not retain the money paid by the petitioner. The respondent-DDA has not pointed out in their counter affidavit steps taken for refund of the amount deposited by the petitioner and whether any letter was written in this regard to the petitioner. Petitioner is, therefore, entitled to interest on the amount which has been retained by the DDA, deposited on different dates in 1996-1998 till today. My attention has been drawn to the Scheme itself which envisages payment of interest @ 7% p.a. on the amount deposited by a registrant. The said Scheme also envisages payment of interest @ 12% p.a. and 18% p.a. by the registrants to DDA in case of delay/default in payment. There is a huge disparity between the interest which the DDA pays to the registrants due to

delay in construction and the interest payable by the registrants to DDA in case of belated payments. However, I need not go into this aspect in the present case as the question involved is limited to the rate of interest which the DDA should pay for failure to refund the money after automatic cancellation in 1998. As stated above, the stand taken by the DDA is that there was automatic cancellation for failure to pay the fourth installment in 1998 itself. Thereafter, it was the responsibility of the DDA to refund the money to the petitioner. Accordingly, it is directed that till the date of cancellation, in terms of the said Scheme, DDA will pay interest @ 7% p.a. and from the date of automatic cancellation, DDA will pay interest @ 12% p.a. on the amount deposited by the petitioner till payment is made. To ensure that payment is not misappropriated, the petitioner will furnish details of his bank account within 15 days and DDA will pay the principal amount and interest, subject to deduction of tax at source within four weeks.

Writ Petition is accordingly disposed of.

SANJIV KHANNA, J.

FEBRUARY 13, 2008

P/VKR