

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

+ W.P.(C) 16626/2006

SUMIT ANAND

..... Petitioner

Through Mr.Pramod Ahuja, Adv.

versus

D.D.A.

..... Respondent

Through Mr.Ajay Verma, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE SANJIV KHANNA**

**ORDER**

%

**13.03.2008**

1. Flat No.38-C, Masjid Moth-1, New Delhi was originally allotted on leasehold basis by DDA to one Mr.V.K.Sawhney. Mr.V.K.Sawhney without seeking prior permission from DDA contrary to the terms of allotment had mortgaged the said flat with Union Bank of India and Canara Bank for loans taken by M/s Aspeq Compressors Pvt. Ltd. As there was defaults, the said Banks had initiated proceedings before DRT, Delhi and flat in question was sold pursuant to the decree passed. The petitioner Mr.Sumit Anand has purchased the flat for Rs.26,20,000/- in a public auction held by DRT, Delhi on 12.4.2005.

2. The petitioner after purchasing the flat on 16.9.2005 filed an application with DDA for conversion of leasehold rights of the flat into freehold. Thereupon, the DDA asked the petitioner to pay 50% unearned increase of Rs.4,92,000/- as per terms of allotment. The petitioner disputes and states that he is not liable to pay unearned increase claimed by the DDA and has filed the present writ petition. It is a case of the petitioner that as he has purchased the property in an auction held by DRT, no unearned increase is payable.

3. It is not possible to agree with the contention of the petitioner. Allotment of the flat in favour of Mr.V.K.Sawhney was subject to certain terms and conditions. Mr.V.K.Sawhney was not an absolute owner but had leasehold rights. Clause 16 of the Terms of Allotment reads as under :

“16. The allottee shall not be entitled to transfer, mortgage or otherwise part with the possession of the whole or any part of the flat without the previous consent of the Authority in writing and the Authority shall be entitled to refuse the permission in its absolute discretion.

Provided that in the event of a transfer being made without obtaining previous consent of the Authority in writing, such transfer shall not be recognized by the Authority and it shall be opened to the Authority to cancel the allotment and resume the flats.

Provided further, that in the event of the consent being given, the Authority may impose such terms and conditions as it may think fit and the Authority shall be entitled to claim & recover a portion of the unearned increase in the value of the land (i.e.

difference between the premium paid and the market value of the land prevailing on the day of transfer) at the time of the sale, transfer assignment or parting with the title, the amount to be received being 50% of the unearned increase. The decision of the Authority in respect of the market value of the land shall be final & binding.

Provided further that the Authority have the pre-emptive right to purchase the property from the allottee after paying the price paid for the flat (less depreciation) and 50% of the unearned increase in the cost of land.”

4. Thus, one of the terms and conditions of allotment was that in case of sale/transfer of flat, 50% of Unearned Increase would be payable to the DDA. Even if it is presumed that there was valid mortgage of the property by Mr.V.K.Sawhney in favour of Union Bank of India and Canara Bank, 50% unearned increase would be payable on third party transfers and sales. Even when permission to mortgage of flat is granted by DDA one of the standard clauses incorporated in the permission is that 50% unearned increase shall be the first charge on the property and the decision of DDA in respect of the market value of the land shall be final and binding on all parties concerned. DRT has not re-written the terms of allotment between Mr.V.K.Sawhney and DDA. What was transferred /sold in the public auction was the leasehold rights in the flat subject to terms and conditions of contract and the allotment letter. Accordingly, if as per the contract or the allotment letter, 50% unearned increase is payable, the same has to be paid to DDA. Sale is a transfer, whether sale is made in a auction held by DRT or a private sale between two

parties. The petitioner is therefore, bound by the terms and conditions of the contract and the allotment letter on the basis of which the property was allotted to Mr.V.K.Sawhney. He has stepped into the shoes of Mr.V.K.Sawhney on the same terms and conditions.

5. The petitioner is not covered by the conversion scheme formulated by DDA for converting the leasehold rights in the flat into freehold. Under the scheme, certain benefits have been given in cases of third party transfers in specific cases where conditions of scheme are satisfied. The brochure incorporating the scheme of conversion from leasehold to freehold stipulates terms and conditions on which original allottee can apply for conversion. Clause 13 of the brochure permits third party transferees to apply for conversion subject to certain conditions being satisfied. Clause 13 reads as under :

“13. The conversion shall also be allowed in the cases where lessee/sub-lessee/allottee has parted with the possession of the property, provided that :

- a) Application for conversion is made by a person holding power of attorney from lessee/sub-lessee/allottee to alienate (sell/transfer) the property.
- b) Proof is given of possession of the property in favour of the person in whose name conversion is being sought.
- c) Where there are successive power of attorneys, conversion will be allowed after verifying the factum of possession provided that the linkage of original lessee/sub-lessee/ allottee with the last power of attorney is established and attested copies of power of attorneys are submitted.

In such cases, a surcharge of 33-1/3% on the conversion fee would be payable over and above the normal conversion charges applicable for a regular lessee (no unearned increase will be recoverable)."

6. The conversion scheme does not cover third party transfers made pursuant to auctions held by DRT. The petitioner is not covered by the scheme under which certain rebates have been granted and provision of waiver of unearned increase has been made. The petitioner has not challenged the scheme in the present writ petition. This Court, therefore, is to only examine whether the case of the petitioner is strictly covered under the scheme. The petitioner does not have any power of attorney. As the transfer in the present case is not covered by the scheme, therefore, the petitioner will be liable to pay unearned increase as is normally payable under Rules and not under the scheme.

7. The petitioner has already deposited Rs.4,92,000/- with DDA and his property has already been converted into freehold and a conveyance deed dated 24.7.2007 has been executed in favour of the petitioner.

In view of the above, I do not find any merit in the present writ petition and the same is accordingly dismissed. However, it is clarified that the conversion already granted and made by the DDA in favour of the petitioner will stand.

**SANJIV KHANNA,J**

**MARCH 13, 2008**

RN / vld