

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

+ W.P.(C) 17480/2006

ISHTIYAQ HUSSAIN Petitioner
Through Mr. Arun Kumar Singh, Advocate.

versus

VICE CHAIRMAN, D.D.A. Respondent
Through Mr. Yeeshu Jain, Advocate for DDA.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

% **ORDER**
07.04.2008

1. The petitioner had applied for allotment of a flat under Narela Housing Scheme- 2004. The original brochure has been produced before me. The scheme was open from 23rd February, 2004 to 31st March, 2004 and was for allotment of about 3500 flats, which were ready for occupation. The allotment was to take place on the basis of draw of lots and unsuccessful registrants were to be refunded the registration amount deposited by them. It was also specifically stipulated that a separate waiting list of 25% of the flats will be maintained for a period of six months.
2. It is the case of the petitioner that he was allotted a flat under the said scheme but he did not receive demand-cum-allotment letter. It is further

stated that he came to know about the said allotment only on 26th April, 2006, when he received show cause notice why his allotment should not be cancelled. The petitioner replied to the said show cause notice but he was informed that his allotment stands cancelled. In these circumstances, the petitioner has filed the present writ petition in this Court.

3. It is the case of respondent-DDA that demand-cum-allotment letter was sent to the petitioner by speed post and the said letter was duly served as the acknowledgement card was received back, without the original letter. Learned counsel for the petitioner points out that the acknowledgement card does not bear the signature of the petitioner. However, he does not dispute the address mentioned on the acknowledgement card. Normal presumption under Section 27 of the General Clauses Act and Section 114 of the Evidence Act is that the allotment letter was received by the petitioner. There are no circumstances to doubt the averment made by the respondent-DDA in their counter affidavit that original letter envelop containing demand-cum-allotment letter was sent to the petitioner by speed post and the acknowledgement card without the envelop was received back. Presumption, therefore, is that the petitioner was duly served and had received the demand-cum-allotment letter.

4. I have also examined the brochure relating to Narela House Scheme-2004. In Clause 8 of the said brochure it is mentioned that every effort would be made by DDA to conduct draw of lots in the month of April-May, 2004 and the result of the draw of lots would be displayed at Vikas Sadan, on the website of DDA and will be also published in leading newspapers. Another clause in the said brochure states that a separate waiting list of 25% of the flats will be declared in the order of priority but this waiting list would be valid only for six months. The registrants who were not successful in the draw of lots will be refunded the registration money. Another condition stipulated in the brochure was that unsuccessful applicants would be refunded the registration amount without interest.

5. It is difficult to believe that the petitioner would have remained quiet and not asked for the refund of the registration amount of Rs.30,000/- from 31st March, 2004 till 26th April, 2006, specially when the scheme itself envisaged that the draw of lots was likely to be held in the month of April-May, 2004. The draw of lots was in fact held on 31st August, 2004. Conduct of the petitioner is a clear indicator that the petitioner had received demand-cum-allotment letter but had failed to make payment.

6. Clause 12.5 of the brochure reads as under:-

“Applicants not getting refund within one month from holding the draw are advised to contact the nodal

branch of the bank in which application was deposited. DDA will not pay any interest in case of postal delay or applicant not available at given address or in case of incomplete address.”

7. Under Clause 16 of the brochure it was also specified that the allottee will be liable to make payment within ninety days and maximum period for making payment was 180 days. The said clause stipulates that if an allottee fails to submit required document and does not make payment within 180 days, there would be automatic cancellation and the amount deposited by the allottee shall be forfeited. Automatic cancellation has taken place and the petitioner has no claim. DDA has acted in terms of the scheme, which is a binding contract between the petitioner and the DDA. The terms and conditions of scheme itself are not subject matter of challenge before this Court.

8. In view of the above, I do not find any merit in the present writ petition and the same is dismissed.

SANJIV KHANNA, J.

APRIL 07, 2008
VKR