

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

+ **W.P.(C) No.8311/2005**

% **Date of Decision: 11.08.2008**

SMT. ARUN GUPTA Petitioner
Through: Mr. R.K. Saini, Advocate

versus

DELHI DEVELOPMENT AUTHORITY Respondent
Through: Ms. Sangeeta Chandra, Advocate

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

VIPIN SANGHI, J.

1. The petitioner was registered under the New Pattern Registration Scheme, 1979 for allotment of an MIG flat. She had given her residential address as N-21, North Avenue, Delhi where she was residing at that point of time. In the year 1990, she shifted her residence to Flat No.A-355, Moti Bagh-I, New Delhi and submitted a letter to the DDA informing the DDA of the change of her address. On 5.9.1998, the respondent held a draw of lots wherein Flat No.405(FST), Pocket-A, Sector-13, Dwarka was allotted to the petitioner on **hire purchase basis** and an amount of Rs.3,76,796.17 was demanded as an initial deposit which could be paid with interest upto 1.11.1999. The remaining amount had to be paid in 120 monthly instalments of

Rs.5906.01, commencing from 10.10.1999. The petitioner states that she did not receive the demand-cum-allotment letter from the respondent and learnt of the allotment in her favour through a public advertisement. She personally contacted the DDA for issuance of a demand-cum-allotment letter at the correct address. Since the time initially granted for making the initial deposit was about to get over on 30.10.1999, the petitioner requested for further time to deposit the amount and this request was acceded to by the respondent by granting her time upto 30.11.1999 with usual charges. The petitioner admittedly made payment of the amount as per the demand letter. She was required to pay an amount of Rs.3,76,796.17 whereas she deposited an amount of Rs. 3,87,000/- before 30.11.1999.

2. The case of the petitioner is that on 1.2.2000, she deposited the desired documents with the respondent. The forwarding letter placed on record states that the petitioner is enclosing three copies of possession letter duly attested, copies of bank challan, registration certificate, affidavit on non-judicial stamp paper, undertaking on non-judicial stamp paper, **photograph and specimen signatures duly attested**. In the forwarding letter, the documents attached with it were also serialised as 1 to 7 wherein serial no.6 pertained to **photograph and signature attested**. The case of the petitioner is that at the time of receipt of the said forwarding letter and the documents, the documents were checked and tick marked on the copy of the letter dated 1.2.2000 with the petitioner.

3. The next step was for the DDA to deliver possession of the flat to the petitioner. However, there was no word from the DDA in this regard. The petitioner states that she visited the office of the respondent on 3.8.2001 to pursue her case since the respondent was incommunicado and again sent a communication on 16.10.2002. In this communication, the petitioner complained that in spite of her having deposited the required amount and also submitting the required documents, possession of the flat had not been handed over to her so far, although a period of 2-1/2 years had since elapsed. She further stated that she had been visiting the office of the respondent and every time she was told that the flats were under the stage of completion, or a blank assurance was given to her that she would get the possession soon. In this communication she also demanded interest on the amount which she had deposited towards the initial deposit, since the respondent had failed to deliver possession of the flat.

4. The respondent issued a communication, apparently dated 22.10.2002 requiring the petitioner to submit three specimen signatures with photographs duly attested by a Gazetted Officer/First Class Magistrate so that the possession letter could be issued. The petitioner responded to this communication on 20.12.2002 stating that she had received the aforesaid communication only on 11.12.2002, since it had been despatched belatedly by the respondent. The petitioner has placed on record the envelope in which the said communication was sent. It shows that the letter was dispatched

only on 11.12.2002. She further stated that this was also an incidence of harassment which was first caused by changing her name from Arun Gupta to Arun Chopra and then by not giving possession of the flat so far in spite of more than 2-1/2 years having elapsed. She enclosed three specimen signatures with photographs duly attested. She further reiterated her demand for interest on the amount deposited 2-1/2 years ago and also demanded damages and compensation for harassment caused to her for such a long time. On 23.1.2003, the petitioner once again represented to the Vice Chairman, DDA. She again stated that due to the possession not being delivered, she has been put to a lot of financial constraint and had been deprived from getting rent to meet her liabilities. She sought the intervention of the Vice Chairman, DDA to ensure that possession of the flat is handed over to her at the earliest.

5. On 17.3.2003, the respondent issued a communication directing the petitioner to deposit the due monthly instalments w.e.f. May 2001 so that possession letter could be issued to her. The petitioner however held her forte by insisting that she could not be required to deposit the monthly instalments for the past period when the possession had in fact not been delivered by the respondent. The respondent then issued a communication dated 10.7.2003 requiring the petitioner to deposit 50% of the due monthly instalments w.e.f. June 2001 till date along with an undertaking to deposit the balance due monthly instalments within six months so that possession letter could be issued. The petitioner again protested against the said

demand of the respondent. The said dead lock has continued and the petitioner has approached this Court by filing the present writ petition.

6. The submission of Mr. R.K.Saini, learned counsel for the petitioner is that the respondent, rather than paying interest to the petitioner on the amount initially deposited by her on account of its failure to deliver possession of the flat to the petitioner, is requiring the petitioner to pay the hire charges even when the possession of the flat has not been delivered to the petitioner. It is argued that in a hire purchase scheme the allottee is obliged to pay the instalments only after the possession has been delivered to the allottee. The purpose of such a scheme is to enable the allottee to occupy, use and exploit the allotted flat so as to be able to conserve or harness the resources to make payment of the monthly instalments. The obligation to pay the hire charges cannot arise unless and until the respondent DDA delivers possession of the flat to the allottee. Mr. Saini has further pointed out that even according to the respondent, the basic amenities like electricity and water were not available in the locality when the respondent demanded and realized the initial deposit of Rs.3,87,000/- from the petitioner. He further submits that the petitioner had complied with all the requirements by making payment of the demanded amount and submitting all the documents on 1.2.2000. The respondent raised the question of the photographs and the attested signatures of the petitioner not being submitted, only when the petitioner demanded interest from the respondent on the deposit made by her, after a passage of about 3 years. He submits that at the

time of submission of the documents on 1.2.2000, the respondent's representative had examined the documents as submitted along with the forwarding letter and had himself tick marked the same on the forwarding letter. The further submission of Mr. Saini is that the purpose of submission of photographs and attested signatures is to ensure the identity of the allottee at the time of delivery of possession. He submits that even the specimen possession letters submitted by the petitioner in the form provided by the respondent had her photographs, as well as her duly attested signatures. The same tantamounted to compliance of the requirement to submit attested photographs and signatures of the petitioner. Therefore, merely because the respondent had desired the submission of the attested photographs and signatures in a separate form, even if one were to assume that they were not initially submitted by the petitioner, it was not enough to prevent the respondent from delivering possession of the flat to the petitioner. Mr. Saini further submits that there is absolutely no explanation given by the respondent for the long delay in raising the said aspect for nearly three years. Had the respondent pointed out, that according to them the petitioner had not submitted the attested photographs and signatures earlier, the same could easily have been submitted, as was eventually done by the petitioner on 20.12.2002.

7. Mr. Saini has relied upon various decisions of this Court in support of his submission that the respondent could not have required the petitioner to pay the hire charges since the possession had not

been delivered, and that the respondents should also pay interest on the amount deposited by the petitioner for the period when the petitioner has not been placed in possession of the flat.

8. On the other hand, learned counsel for the respondent, Ms. Sangeeta Chandra has produced the original record to show that even in the original record, the attested photographs and specimen signatures stated to have been submitted by the petitioners along with forwarding letter dated 1.2.2000 are not to be found. She submits that when the attested photographs and specimen signatures were not given, the possession could not have been delivered to the petitioner. This deficiency was made up by the petitioner only on 20.12.2002, therefore, there was no delay in offering the possession to the petitioner from the side of the respondent. She submits that the terms and conditions contained in the demand-cum-allotment letter clearly enlist the documents that the allottee is required to submit, and the attested photograph and specimen signatures are also essential documents required to be submitted by the allottee. Merely because the specimen possession letter has the attested photographs and signatures of the allottee, the same could not be treated as a substitute for the specific requirement laid down in the demand-cum-allotment letter. She also points out that the petitioner, while issuing the letter dated 20.12.2002 did not even state that the deficient documents had been submitted earlier, and that she was again submitting them for the second time. This shows that the petitioner had not submitted the attested photographs and specimen signatures

on 01.02.2002 and that the same were submitted for the first time only on 20.12.2002.

9. So far as the demand for the payment of arrears of instalments is concerned, learned counsel for the respondent submits that since the services in the concerned locality were made available in May 2001, the respondent had itself postponed the date of start of the monthly instalments from October 1999 to May 2001 and as such the petitioner was required to make payment of the arrears of instalments from June 2001 onwards. She relies on an office order dated 27.6.2002 issued by the DDA which had been framed to lay down the guidelines and policy applicable to such like cases. Clause 4 of the said policy decision states that the allottee should be required to pay 50% of the amount due on account of monthly instalments apart from penal interest as per applicable terms on overdue instalments. Ms. Chandra has also relied on a decision of this Court in WP(C) 4545/1998 titled **“Sheel Kumar Sethi vs. DDA”** decided on 12.11.2002 to submit that since the delay in non-submission of all the documents was that of the petitioner, the petitioner could not avoid the payment of the overdue instalments before possession could be delivered to her.

10. Admittedly, the petitioner deposited the amount of Rs.3,87,000/- on or before 30.11.1999 i.e. within the time granted to the petitioner. The said amount was more than what she was required to deposit at that stage. It is also the admitted position that on 01.02.2000 the petitioner deposited various documents with the DDA and the DDA in receipt of those documents endorsed its

acknowledgment on the forwarding letter dated 01.02.2000. One of the controversies raised is whether the petitioner submitted the attested photographs and specimen signatures or not. A perusal of the original record of the respondent DDA shows that the original forwarding letter dated 01.02.2000 alongwith various documents submitted by the petitioner are found on the record. Amongst the documents stated to have been enclosed alongwith the forwarding letter dated 01.02.2000, at serial No.6 “**photographs and signature attested**” is also mentioned. However, apart from the photographs and specimen signatures, which are affixed and attested on the form provided by the DDA, there are no separate documents to be found on the record produced, containing the photographs and the attested specimen signature of the petitioner. But the forwarding letter shows that each of the entries in respect of the documents attached with it has been tick marked, presumably by the person who has received the same. The possibility of the photographs and attested specimen signatures of the petitioner stated to have been submitted alongwith the said forwarding letter dated 01.02.2000 having got misplaced after their submission, but before they were placed in the file pertaining to the petitioner cannot, therefore, be ruled out. On the other hand the possibility of the said documents not being filed by the petitioner, though disclosed in the forwarding letter appears to be remote for various reasons. Firstly, from the forwarding letter itself it is evident that the petitioner was conscious of the necessity of submitting the said documents. There is no reason for the petitioner not to have

submitted the photographs and attested specimen signatures when she was aware that these documents were required to be submitted. Secondly, she had got her photographs and specimen signatures attested on the printed form provided by the DDA for taking over possession of the flat. There was no difficulty in the petitioner submitting her attested photograph and specimen signatures separately as well. Thirdly, had the attested photograph and specimen signatures not been submitted by the petitioner alongwith the forwarding letter, there is no reason why the respondent would have tick marked on the forwarding letter against serial No.6 of the list by documents submitted with the said letter, both on the original of the said forwarding letter, as also on the copy of the said letter with the petitioner. Fourthly, the respondent would have written to the petitioner, the factum of the documents not being submitted, or would have informed her about the same when she visited the respondent on 03.08.2001.

11. Pertinently, even according to the "Citizens Charter" published by the DDA, it has committed itself to provide time bound and transparent service in all transactions. The DDA has further undertaken to issue acknowledgment within 15 days and to have time bound settlement of all correspondence, and in case of any delay to give an intimation regarding the reasons for the delay, and state when a reply can be expected. The DDA in the "Citizens Charter" has also fixed the time schedule of 60 days for completion of formalities for issuance of possession letter of flats.

12. Admittedly, after the receipt of the documents by it on 01.02.2000, the respondent DDA did not take any steps whatsoever either to deliver possession of the flat to the petitioner, or to inform her that, according to them, the documents submitted by her were incomplete, inasmuch as, the attested photograph and specimen signatures were not submitted by her.

13. The submission of learned counsel for the respondent that a perusal of the letter dated 20.12.2002 sent by the petitioner shows that even according to the petitioner she had not submitted the attested photographs and specimen signatures earlier does not appear to be correct. In fact the petitioner stated in her letter dated 20.12.2002 that she was *"surprised to see your letter dated 22nd October 2002 which was sent to me only on 11th December 2002"*. She further stated that *"This is an instance to confirm what I have stated in my earlier letters regarding harassment caused to me by first changing my name from Arun Gupta to Arun Chopra and then by not giving the possession of the flat so far in spite of more than two and half years have gone."* She further stated *"This is a clear case of harassment as it took 2½ years for you to discover that my three specimen signatures with photo are required and you dispatched the letter dated 22nd October 2002 on 11th December 2002 i.e. after more than one and a half months"*. Merely because the petitioner did not make a statement that she had earlier submitted the attested photographs and specimen signatures while submitting the other documents on 01.02.2000, it cannot be inferred that it was only for the first time that the petitioner

submitted the said documents on 20.12.2002. It was not necessary that she should have made such a statement in view of what all she stated in her letter dated 20.12.2002, and the forwarding letter dated 01.02.2000. Pertinently, in their counter affidavit the respondent does not explain as to how on the forwarding letter dated 01.02.2000 all the documents stated to have been enclosed with it were tick marked, and by whom. The respondent does not even explain as to why it did not send a communication to the petitioner earlier and why the said documents were demanded from the petitioner only vide letter dated 22.10.2002 dispatched on 11.12.2002.

14. The DDA woke up from its slumber and sent its communication, which though purported to be dated 22.10.2002, was dispatched to the petitioner on or about 11.12.2002, demanding the submission of the attested photographs and specimen signatures, only after the petitioner had sent the communication dated 16.10.2002 wherein she made a grievance of her not being delivered possession of the flat for more than 2½ years despite her visits to the office of the respondent and she sought interest on the initial deposit made by her from the DDA. In view of the aforesaid discussion, I do not accept the submission of the respondent that the petitioner did not submit the attested photographs and specimen signatures on 01.02.2000.

15. Even if it were to be assumed that the petitioner had not submitted the said documents on 01.02.2000 as claimed by the respondent, the same does not explain the gross negligence on the part of the respondent DDA in sleeping over the matter for nearly 3

years. Had the respondent communicated the petitioner the so called deficiency in the documents within a reasonable time of the documents being submitted by the petitioner on 01.02.2000, the petitioner could easily have submitted the said documents as was done by her vide her communication dated 20.12.2002. Pertinently, the petitioner took less than 9 days after the receipt of the communication dated 22.10.2002 of the respondent, which she received after 11.12.2002, to submit the attested photographs and specimen signatures. Consequently, I reject the argument of the respondent that there was any delay in submission of the documents by the petitioner, or that the said delay was responsible for the failure on the part of the respondent to offer possession of the flat to the petitioner. The said ground appears to have been raised as an afterthought, just to cover up the failure of the DDA to process the case of the petitioner for delivery of possession of the flat to her. I further hold that the default in this regard was entirely that of the respondent, even if it were to be assumed that the petitioner had not submitted the attested photographs and specimen signatures alongwith forwarding letter dated 01.02.2000, since the respondent failed to notify the petitioner of the so called omission within a reasonable time, and for the first time sent a communication to this effect only in December 2002, which was responded to by the petitioner immediately on receipt.

16. Coming now to the submission of the petitioner that the attested photographs and specimen signatures were also contained in

the form supplied by the respondent, and that should have been treated as sufficient compliance by the respondent, I am of the view that since the respondent DDA, as per its procedures requires attested photographs and specimen signatures in a particular format, independent of those affixed on the printed form, the DDA may be justified in expecting the allottee to submit the same in the manner prescribed. Therefore, this submission of the petitioner cannot be accepted.

17. I now turn to the issue, whether the respondent is justified in demanding that the petitioner should first deposit 50% of the monthly instalments w.e.f. June 2001 onwards before possession of the flat is delivered to her.

18. A perusal of the demand-cum-allotment letter with block dated 30th July 1999 – 03rd August, 1999 shows that the initial deposit was required to be made between 04.08.1999 – 02.09.1999 of Rs.3,56,796.17. Thereafter, enhanced amounts could be paid which included interest, upto 01.11.1999. The monthly instalments were to commence from 10.10.1999. It, therefore, appears that the hire purchase scheme under which the allotment in question was made to the petitioner was premised on the fact that the allottee would make initial deposit, and after the date of initial deposit there was a gap of about one month before monthly instalments were to commence. During the period of about one month from the date of initial deposit to the date of commencement of the monthly instalments, the respondent was expected to process the case for delivery of

possession, provided the documents required of the allottee were submitted. Therefore, the monthly instalments were timed to commence around the same time as the possession of the flat was expected to be delivered plus/minus a couple of months. Considering the fact that there are 120 instalments to be paid, practically all the instalments, except a couple of them, were expected to be paid after delivery of possession, if one keeps in mind the time limits set out by the respondent in its own "Citizens Charter" for delivery of possession i.e. 60 days.

19. The Shorter Oxford English Dictionary defines "hire", inter alia, as "*payment under contract for the **use of something***" (emphasis supplied). "Hire Purchase System" is defined as "*by which something hired becomes the hirer's after a certain number of payments*". Though the provisions of the Hire Purchase Act 1972 are not squarely applicable, as I am concerned with a transaction relating to immovable property and not to that of goods, the same principle can be borrowed from the said Act to understand and appreciate the Hire Purchase System applicable in a case like the present. The expression "hirer" has been defined to mean "*the person who obtains and has obtained the possession of goods from a owner under a hire purchase agreement.....*". "Hire Purchase Agreement" is defined to include an agreement under which "*possession of the goods is delivered by the owner thereof to a person on condition that such person pays the agreed amount in periodical instalments.....*". Pertinently, since the flat in question was not ready for being offered to

the petitioner at the time when she made the initial deposit by the end of November, 1999 and the respondent was able to complete the construction in all respects only by May 2001, admittedly for this reason the respondent vide its communications dated 17.03.2003 and 10.07.2003 required the petitioner to deposit the monthly instalments w.e.f. May 2001, and 50% of the monthly instalments w.e.f. June 2001, respectively. Consequently, the respondent itself acknowledged while issuing these communications that the obligation to pay the hire charges by the allottee would arise only after the DDA was in a position to deliver possession of the flat to the allottee and not before that. On a consideration of the aforesaid aspects, I conclude that the obligation to pay the monthly instalments under the Hire-Purchase Scheme would substantially arise only when the respondent is in a position to deliver possession of the flat and in fact offers the flat to the allottee. However, where the allottee has not complied with the pre-requisites prescribed therefor, and that is the reason for the delay in delivery of the possession and not for any default of the DDA, the allottee would be liable to pay the arrears of instalments for the period for which he/she delayed the process of delivery of possession of the flat to him/her. This is also the ratio of the decision relied upon by the respondent in ***Sheel Kumar Sethi*** (supra). In that case, since the delay was attributable to the allottee, the Court held that the allottee could not take the benefit of the delay caused by him. The relevant extract from the said judgment reads as follows:

“There is no doubt about the proposition that if the petitioner had paid the amounts within time and submitted the documents in time, respondent was not entitled to cancel the allotment of flat. However, if an allottee delays in submission of documents but simultaneously does not pay the amount due ostensibly because of the reason that the said instalments are liable to be paid only after possession is to be handed over, such an allottee cannot avail the benefit of delaying his payment of instalment by reason of non submission of documents. In the present case the petitioner has been allotted the flat at the old cost. The instalments are also liable to be paid in terms of the original allotment. However, interest is sought to be charged on the instalment which the petitioner is liable to pay and which have been delayed. The late submission of the documents is the fault of the petitioner and that cannot be the reason to delay payment of instalments claiming that the said instalments would be paid only after the possession is handed over. In view thereof, I see no infirmity in the stand of the respondent DDA in charging interest for the delayed instalments.”

20. The question is, whether the respondent was right in insisting that the petitioner deposits the monthly instalments w.e.f. May 2001, as demanded vide communication dated 17.03.2003 or 50% of the monthly instalments w.e.f. June 2001, as demanded vide letter dated 10.07.2003 when the respondent had not offered the possession to the petitioner earlier, for no fault of the petitioner.

21. The respondent has sought to place reliance on its office order dated 27.06.2002. To my mind, this is of no avail. The office order dated 27.06.2002 read as follows:

“Various cases have come to notice where the allottees deposited the initial demanded amount in time in hire purchase cases but possession letters could not be issued to them in time and by the time those were ready few

monthly instalments became due on the allottee. DDA asked for payment of those monthly instalments first before giving the possession letter. In the process possession letters got delayed resulting into increasing penal interest on allottees causing resentment among allottees. To over-come this problem, it has been decided that:

1. Penal interest as per applicable terms on over due instalments shall be worked out taking into account two extra months following the month of calculation to allow time to make payment by allottee.
2. Amount due on account of monthly instalments in the manner mentioned above shall also be calculated.
3. Total amount payable for 1 & 2 would be worked out.
4. Once the allottee pays 50% of 1 & 2 above possession letter will be issued.
5. Balance 50% will have to be paid in monthly instalments along with remaining regular monthly instalments. In other words, balance 50% will be treated principal amount and its hire purchase instalments will be worked out on the basis of present rate of interest.

This issues with the approval of FM/VC, DDA in the file No.F.45[26]98/KG/NP.”

22. What is provided by the aforesaid office order dated 27.06.2002 is that even when the respondent DDA has failed to offer possession to the allottee under the hire purchase scheme, it would still insist not only on payment of 50% of the monthly instalments due according to the allotment letter, but also demand penal interest on the overdue instalments, which would be worked out taking into account 2 extra months following the month of calculation to allow time to make payment by the allottee.

23. In my view, the aforesaid office order of the DDA does not offer an equitable resolution of the complications arising on account of

the failure of the respondent DDA to offer possession of the flat to the allottee within time. The allottee takes a flat on hire purchase basis since he is not in a position to make payment of the full price of the flat as a lump sum. Normally, an allottee who is possessed of the requisite funds to pay the entire price of the flat allotted to him, would accept the allotment on cash down basis or would get the allotment converted to one under the cash down payment scheme, if permissible. This is so because under the hire purchase scheme the allottee has to pay the instalments which have the in-built element of interest. The purpose of granting the facility to the allottee of taking a flat under the hire purchase scheme is to provide comfort to the allottee of making payment in easy instalments, though with interest, since he may not be possessed of the entire funds to make a lump sum payment. The allottee may, by obtaining possession of the flat, by making the initial deposit either use and occupy the flat himself, and thereby save on rent on other charges that he may be incurring by residing in some other premises, or may let out the same and derive income from the flat. In either case he would augment his resources to be able to make payment of the monthly instalments under the hire purchase scheme. However, if the DDA itself fails to offer possession of the flat to the allottee, thereby depriving the allottee the right to occupy, use and exploit the allotted flat, and then demands that the allottee makes payment of 50% of the overdue instalments in a lump sum alongwith the penal interest before possession is offered, in my view, the DDA strikes on the fundamental premise of the hire purchase scheme.

Moreover, by requiring payment of 50% of the overdue instalments and penal interest thereon, the respondent DDA, in fact, seeks to take advantage of its own wrongs and failure which cannot be permitted, and is highly unjust. In (2002) V AD Delhi 290 **Prabha Arora v. DDA**, the petitioner had duly paid the amount as to when payable under the allotment-cum-demand letter. The petitioner was required to pay only the hire purchase instalments. The DDA wrongfully cancelled the allotment and hence the petitioner could not make payment in respect of the instalments. The respondent subsequently accepted their error and made allotment of flat to the petitioner. However, the respondent claimed interest on the overdue instalments @ 12% p.a. The Court rejected this claim of the respondent by holding that in the circumstances of the case the petitioner could not be burdened with interest as there was no unpaid amount when the allotment was cancelled. In the present case as well, there is no unpaid amount, since the respondent had failed to offer possession to the petitioner for no fault of hers.

24. Therefore, I am of the view that the respondent DDA was not justified in requiring the petitioner to deposit 50% of the arrears of instalments from June 2001 onwards as a pre-condition for delivery of possession of the flat to her.

25. The petitioner claims interest on the initial deposit made by her of Rs.3,87,000/- on or before 30.11.1999 for the period for which she has not been placed in possession of the allotted flat. In support of this claim, learned counsel for the petitioner has relied on various decisions

of this Court. In L.P.A. No.62/2000 decided on 10.01.2002 by a Division Bench of this Court, despite the fact that the appellant had paid all the instalments within time, the possession of the flat was offered only after about 2 years. No explanation was forthcoming as to why the possession of the flat was not given to the appellant immediately after he had made payment. In these circumstances, the Court held that the DDA was obliged to pay interest to the appellant for offering the possession of the flat almost two years after the payment of last instalment to the DDA. The Court observed that the appellant had obtained a housing loan by paying interest @ 13.5%. The court granted interest to the Appellant @ 12% on the amount deposited by the appellant for the delay caused in delivery of the possession of the flat.

26. In W.P.(C) No.711/1994 decided on 09.09.2003 by a learned Single Judge of this Court, the petitioners had deposited the entire amount towards the cost of the flat. The petitioners had sought allotment of adjacent flats being related to each other. The said request was allowed. However, the new allotments made to them were in respect of flats which had already been allotted to other persons. Representations were made by the petitioners in the year 1985. Finally, fresh allotment was made in a draw of lots held on 07.04.1992. The petitioners filed the aforesaid writ petition claiming allotment on the rates prevalent on 04.05.1998 when the petitioners agreed to change of the flats, and also sought interest on the amounts

already deposited. The Court dealt with the aforesaid aspect in the following manner: -

“The only question now to be considered in the present writ petition is the claim of interest made by the DDA on the amount deposited belatedly by the petitioners. Learned counsel for the respondent states that the interest has been charged as per policy though it is admitted that in case of petitioner No.3, there has been delay in issuing of the allotment letter itself. Despite this fact, even the said petitioner is sought to be charged penal interest for the amount deposited late.

Taking all the aforesaid facts and circumstances of the case, I am of the considered view that if interest is to be charged in respect of the petitioners taking into consideration the delay in making payments in pursuance to the allotment letter, the petitioners are entitled to interest at the same rate on the amount deposited by them. Thus, while calculating the cost to be paid by the petitioners, interest as per the policy of the DDA can be charged for delay in payment from the date of issuance of the allotment letter till date of payment but simultaneously interest shall also be paid on the amount deposited by the petitioners at the same rate.

In this behalf, learned counsel for the petitioners relied upon a judgment in Civil Writ Petition 4929/1994 Shri Vinod Sehgal v. DSIDC decided on 11.12.1998 where the Division Bench granted interest to both the parties at the same rate.”

27. Similarly, in C.W.P. No.3770/2003 “**Ratan Chand v. DDA**”, decided by a learned single Judge of this Court on 13.10.2003, interest was granted to the allottee on the amount deposited on account of delay in delivery of possession of the flat.

28. Since I am of the view that in the present case, the delays and defaults are attributable to the respondent and not to the petitioner, the petitioner is entitled to the grant of interest claimed by her on the

initial deposit of Rs.3,87,000/- made on or before 30.11.1999 upto the date that she is placed in possession of the flat allotted to her. Keeping in view the long period involved in the present case, it would be equitable to require the respondent to pay interest to the petitioner @ 8% p.a. from 01.04.2000 onwards, till the time the possession is delivered to the petitioner by the respondent. I have fixed the cut off date as 01.04.2000, keeping in view the fact that the petitioner had submitted the documents along with the forwarding letter on 01.02.2000, and even according to the respondent's own "Citizens Charter" the time limit for delivery of possession of the flat is fixed as 60 days.

29. For all the aforesaid reasons, I allow this writ petition and direct the respondent to deliver the possession of the flat in question bearing flat No.405 (FST), Pocket-A, Sector-13, Dwarka to the petitioner within 6 weeks. The obligation of the petitioner to commence payment of the monthly instalments in terms of the demand-cum-allotment letter would arise immediately upon delivery of the possession of the flat to the petitioner. The respondent is also directed to pay interest @ 8% p.a. to the petitioner on the amount of Rs.3,87,000/- from 01.04.2000 onwards till the petitioner is placed in possession of the aforesaid flat. The interest be paid within 8 weeks from today. In case the respondent does not make payment of the interest, as ordered, the petitioner shall be entitled to claim adjustment thereof in the monthly instalments to be paid by her. The

petitioner is also awarded costs of Rs.10,000/- to be paid by the respondents.

30. Petition stands disposed of.

VIPIN SANGHI, J.

August 11, 2008
aj/rsk