

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

+ **W.P.(C) 6897/2007**

DARSHANA RANI Petitioner
Through Son of the petitioner, in person.

versus

D.D.A Respondent
Through Mr.C.Mohan Rao, Adv.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

ORDER

% **13.03.2008**

1. The petitioner Ms.Darshana Rani had submitted a tender for allotment of shop bearing No.G-7, Block No.B-IV, Ground Floor, LSC at Lawrence Road in February, 2004. Along with the tender form, she had deposited Rs.98,750/- towards earnest money.

2. Bid of the petitioner to purchase of said shop for Rs.3,95,000/- was accepted and a demand letter dated 15th April, 2004 was issued to the petitioner to deposit balance amount of Rs.2,96,250/- on or before 14th May, 2004. The demand letter specifically states that if payment was not made by 14.5.2004, the petitioner would be liable to pay 15% compound interest with compounding being done on the last day of the accounting year. The demand letter further states that no regularization of allotment is permissible on payment beyond 180 days. In case entire payment with interest is not made within 180 days, the allotment shall stand cancelled. The petitioner was also required to calculate interest for a period upto

180 days and deposit the same within the said period. The relevant clauses of the demand cum allotment letter are as under :-

“The interest shall be chargeable @ 15% compounded and compounding shall be done on the last day of the accounting year of the DDA.

- 1) xxxxxxxxxx
- 2) xxxxxxxxxx
- 3) No regularization of allotment is possible beyond 180 days delay in payment. If the complete payment with interest is not made within this period, the allotment shall stand cancelled automatically and no refund will be applicable in such cases.

In case of delay upto 180 days, you may compute the interest on your own as per above guidelines and make the payments by using one set of the attached challans. Kindly note that separate code should be indicated for principle nad interest in the challan.

Following documents are enclosed which will be required by you for the making payments / taking possession of the unit.”

3. The petitioner has paid the following payments :-

<i>“DATE</i>	<i>AMOUNT</i>	<i>DELAY</i>
18.06.2004	1,00,000/-	35 days
19.06.2004	20,000/-	36 days
19.06.2004	50,000/-	36 days
21.06.2004	25,000/-	38 days
10.11.2004	50,000/-	180 days”

4. Thus the petitioner has made total payment of Rs.2,45,000/- within the aforesaid period of 180 days. The petitioner had not made full payment within 180 days in terms of demand cum allotment letter. The petitioner also did not pay interest in terms of the said demand cum allotment letter. The petitioner made

another payment of Rs.51,250/- on 15.2.2005. This payment was after delay of 277 days from the date of issue of the allotment letter. The respondent/DDA in these circumstances has refused to make allotment of the aforesaid shop and has cancelled the allotment made to the petitioner.

5. By order dated 5.1.2008, learned counsel for the DDA was asked to take instructions whether delay beyond 180 days can be condoned or regularized and whether there are any instances where delay beyond 180 days has been condoned. Counter affidavit has been filed by DDA on these respects. It is stated that there is one case in which DDA had condoned delay of 380 days and the Vice-Chairman had taken the said decision on 28.11.2000. It is further stated in the affidavit that in no other case, DDA has condoned delay in payment of the principal amount beyond 180 days but delay in payment of interest beyond the said period can be condoned. It is stated that this is universally followed and therefore, the tender terms are specific and clear.

6. It is pointed out that a similar issue had arisen before this Court in the case of Har Charan Singh Vs. DDA in WP(C) No.32/2006 , which was decided on 22nd August, 2006. The learned Single Judge of this Court noted the terms and conditions of the tender, which are similar to the terms in the present case and the writ petition was dismissed holding that delay beyond 180 days cannot be condoned. Reference was also made to another judgment of this Court in Prem Rani (Smt) & Ors. Vs. Delhi Development Authority 2005 II AD (Delhi) 376, where in it was observed as under:-

- “11. The Conditions governing the terms of auction are categorical; although they have no statutory force; they bind the participants as well as the DDA (the latter more so, in view of the fact that it is a State agency required to adhere to its own names). It is well-settled that non-statutory policies, guidelines and conditions evolved for the functioning of State agencies bind such agencies; they can ignore such conditions only at the peril of violation of Article 14 **Raman Dayaraman Shetty Vs. Union of India; West Bengal State Electricity Board Vs. Patel Engineering; and Netai Bag Vs. State of West Bengal**;. The DDA was, therefore, bound to give effect to the terms and conditions governing the auction.
12. In at least two judgments of the Supreme Court it has been held that in the absence of any authority to waive conditions of an auction to the terms governing an auction, where such conditions have not been complied with or have been violated, there is no valid or sanction of tenders (see **State of M.P. Vs. Firm Goberdhan Dass Kailash Nath**, 1973(1) SCC 668 and **Lakhanpal Vs. State of Orissa**, 1976 (4) SCC 660) the matter can be looked at from another perspective. The terms and conditions of auction as indeed no rule, empower DDA to waive the criteria and the stipulations that governing the auctions. In such a case if the DDA were to in fact waive any condition, such action would be open to attack on the ground of arbitrariness.”

7. In these circumstances, it was held that delay beyond 180 days cannot be condoned. The Court also noted that the petitioner therein had purchased a shop, which was purely a commercial venture and therefore, such cases cannot be compared to allotment of residential plots/flats. The Court opined that DDA has to function within the parameters prescribed by law and the policies prescribed for their conduct. Contention of the petitioner therein that in some other cases, DDA

may have accepted the amount beyond 180 days was rejected holding that Article 14 creates an obligation to grant equal treatment but the same does not amount to a mandate to indulge in transgression of policies.

8. In these circumstances, I do not think I can grant any relief to the petitioner except directing the DDA to refund the amount payable as per the contract with interest @ 12% per annum. I may note here that even in the case of Harcharan Singh (supra), DDA was directed to refund the amount with interest @ 10% per annum. I have granted interest @12% in the present case as the amount has remained with DDA since 2004 and DDA should not have retained the said amount and should have refund of the same immediately in view of their policy. DDA itself charges 15% compound interest. The refund will be issued to the petitioner within four weeks from today. In case the payment is not made within four weeks, DDA will be liable to pay interest @15% p.a. with effect from 1st May, 2008 till payment.

With the above directions, the writ petition is disposed of.

SANJIV KHANNA, J.

MARCH 13, 2008
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