

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

+ **W.P(C) No.7959/2009**

% **Date of Decision: 07.09.2009**

Sh.Vinod Kumar Petitioner

Through Mr.N.Kinra, Advocate.

Versus

Delhi Development Authority Respondent

Through Ms.Manisha Tyagi, Advocate.

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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Despite various opportunities given to the respondent, the counter affidavit has not been filed. Consequently, the right of the respondent to file the counter affidavit is closed.

The learned counsel for the respondent/DDA, however, on instructions states that the appropriate committee is considering the case of the petitioner for allotment of a MIG Flat and in terms of policy

dated 25th February, 2005, as the intimation of draw of flats held on 30th July, 2003 was sent at the wrong address, the petitioner shall be entitled for allotment of a flat at the rates prevalent on 30th July, 2003 and as the petitioner has approached within four years of the draw of lots which took place on 30th July, 2003, the interest shall also be not charged from the petitioner and the policy of wrong address shall be applicable to the petitioner.

The petitioner has sought a writ of mandamus or direction to the respondent to allot any MIG flat lying vacant in Shalimar Bagh according to change of address and cost policy dated 25th February, 2005.

The plea of the petitioner is that the petitioner booked a MIG flat under the NPRS 1979 and his registration No. was 39937.

The petitioner's plea is that he had intimated the change of address to the respondent by registered post dated 25th September, 1990 from Parkash Navin Market, Lal Imli Chauraha, Shahjanpur, U.P to 24, Kali Dass Road, Dehradun. The petitioner is alleged to have again reaffirmed the change of address on 6th April, 1993 which communication was sent to DDA and was duly received and an endorsement dated 6th April, 1993 was made bearing diary No.651.

According to the petitioner a draw of lots of MIG flat took place on 30th July, 2003 and flat No.352, IIIrd floor, Pocket A, Sector-D, Shalimar Bagh, Delhi was allotted to the petitioner, however, the intimation of the same had been sent at the wrong address.

The petitioner has asserted that he came to know about the allotment of flat on 30th July, 2003 much later, however, the allotment had been cancelled on account of not complying with the terms of the allotment letter. The petitioner has contended that since the demand-cum-allotment letter was not received by the petitioner, he could not have complied with that and the respondent was duty bound to send the demand cum allotment letter at the correct address, as the correct address had already been sent by the petitioner to the respondent.

The petitioner has pleaded that he wrote a letter to Deputy Director (Housing) on 15th June, 2006 asking about the status of the allotment, then all this information about the allotment of flat on 30th July, 2003 and its cancellation was revealed to him. The subsequent representations made by the petitioner have remained unanswered and ultimately the petitioner filed an application under the Right to Information Act, 2005 on 13th April, 2007. The learned counsel for the petitioner has relied on the policy of the respondent dated 25th

February, 2005 contemplating that if the intimation regarding allotment of a flat in the draw of lots is sent at the wrong address and the registrant approaches the Delhi Development Authority for allotment of a flat, he would be entitled to get the flat allotted at the rate at which the flat was allotted which is cancelled on account of sending the demand cum allotment letter at the wrong address. The policy also contemplates that in case the registrant for the flat approaches the DDA within four years, he is not liable to pay any interest, however, if the registrant approaches DDA after four years then such a registrant has to pay 12% simple interest w.e.f. from the date of original allotment till the date of issue fresh demand-cum-allotment letter.

Since the petitioner had been allotted flat in draw of flats held on 30th July, 2003, the intimation of which was sent at the wrong address and thereafter the flat is not given to the petitioner according to their own policy, the petitioner has filed the present petition.

The counter affidavit to the petition has not been filed despite various opportunities and consequently the right of the respondent to file the counter affidavit has been closed and the averments made by the petitioner are deemed to be admitted.

This is not disputed that the petitioner is a registrant of MIG flat under the NPRS 1979 scheme and his priority matured on 30th July, 2003 when the draw of lots took place. This is also not disputed in the facts and circumstances that the intimation about the draw of lots held on 30th July, 2003 was sent at the wrong address.

The petitioner had approached the respondent DDA on 15th June, 2006 first time making the grievance about sending the intimation about the draw of lots and allotment of a flat to him which is within four years of 30th July, 2003 when the draw of flats took place.

Consequently, the petitioner is covered under the policy of the DDA dated 25th February, 2005 and he would be entitled for allotment of a flat at the rates at which flat was drawn in his favor on 30th July, 2003 and demand cum allotment letter was issued to him. According to the policy, since the petitioner had approached the DDA within four years of draw, he would also be not liable to pay the interest on the consideration payable by him for allotment of flat.

Therefore, the writ petition is allowed. The respondent is directed to allot the flat No.352, , IIIrd floor, Pocket A, Sector D, Shalimar Bagh, Delhi in case the said flat after cancellation has not been allotted by

DDA to any other allottee and the same is lying vacant. In that case the respondent would issue demand cum allotment letter of said flat demanding the consideration at the rates which were demanded on 30th July, 2003 within four weeks and on receipt of demand cum allotment letter, the consideration for the flat will be paid by the petitioner within time which will be given by the respondent and on payment of consideration of the flat, within four weeks on completion of formalities, the possession of the said flat will be given to the petitioner. In case the said flat is already allotted by DDA to some other allottee after cancellation, the DDA shall include the name of the petitioner in the mini draw which shall be held by DDA within three months. The intimation regarding the allotment of the flat in the mini draw shall be given to the petitioner within four weeks after the draw of flats. On petitioner depositing the demand raised by the respondent for the allotment of the flat within time given by the respondent, the respondent shall complete the formalities for handing over the possession within two weeks and thereafter hand over the possession to the petitioner within four weeks thereafter. The respondent shall claim the cost of the flat at the rates equivalent to the cost which was demanded on allotment of flat on 30th July, 2003 when the initial draw of flat in favour of petitioner had taken place. The respondent shall not be entitled to claim any interest on the cost of the flat. With these

directions, the writ petition is allowed and the parties are left to bear their own cost.

September 07th, 2009
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ANIL KUMAR, J.