

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

+ **LPA 250/2008**

SHRI SATPAL & ANR.

..... Appellants
Through: Ms. Richa Kapoor,
Advocate

Versus

DELHI DEVELOPMENT
AUTHORITY

..... Respondent
Through: Mr. Ajay Verma with Mr.
Amit Mehra, Advocates

Reserved on : 11th August, 2009

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Date of Decision : 26th August, 2009

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE MANMOHAN

1. Whether the Reporters of local papers may be allowed to see the judgment? No.
2. To be referred to the Reporter or not? No.
3. Whether the judgment should be reported in the Digest? No.

J U D G M E N T

MANMOHAN, J

CM 7487/2008

For reasons stated in the CM, application is allowed.

Accordingly, application stands disposed of.

LPA 250/2008

1. Present Letters Patent appeal has been filed challenging the order dated 2nd April, 2008 whereby appellants-petitioners' writ petition was dismissed on the ground that in view of the specific terms and

conditions of Narela Housing Scheme – 2004, respondent-DDA was justified in refusing to condone the delay of about 18 months on the part of appellants-petitioners in making payment of balance amount. Learned Single Judge further upheld the cancellation of appellants-petitioners' allotment as legal and valid. The relevant extract of the impugned order dated 2nd April, 2008 is reproduced hereinbelow for ready reference:-

“6. DDA has framed various policies and guidelines depending upon the scheme. Under several schemes, initial registration was made in 1979-81 but allotment could not be made because DDA was not able to construct flats within reasonable time. In view of factual background, DDA has framed schemes/ guidelines for condonation of delay and extension of time to make payment. As far as Narela Housing Scheme is concerned, it was one time scheme. A particular number of flats were available for disposal. Applications were invited and allotments were made. Others were refunded the registration amounts. Clause 16 of the said scheme stipulates as under:-

“16. PERIOD FOR PAYMENT

Allottee is liable to make the payment within 90 days from the date of issue of demand letter without interest. Thereafter, the allottee is liable to deposit the amount in not more than next 90 days along with interest @ 15% p.a. compounded as on 31st March. If the payment is not made within 180 days from the date of demand letter, allotment of the flat will be automatically cancelled. No show cause notice / intimation will be given by the DDA for cancellation. No time extension for payment beyond the date of automatic cancellation would be given in this scheme. Also no restoration is allowed, repeat no restoration is allowed once the flat is automatically cancelled due to non payment. Allottees should submit the required papers to DDA (on their own) for refund if they fail to deposit the demanded amount within 180 days. The

amount deposited will be refunded without interest and after deduction of cancellation charges as mentioned in para 13. If the allottee fails to submit required documents within 180 days from the date of automatic cancellation, the amount deposited by allottee shall be forfeited.”

7. It is made clear in the said clause that no extension of time beyond 180 days was permissible. It has been emphasized in the said clause that there shall be no restoration after 180 days and there would be an automatic cancellation and the registration amount deposited by the allottee shall be forfeited. In the present case, the period of 180 days expired on 22.12.2004. In fact, DDA went out for way to issue letter permitting the petitioner to mortgage the flat within 2 days after request was made by the petitioner on 18.12.2004. The payments were made in May, 2006 after almost 1 ½ years or 18 months from the date last payment was to be made. In view of the specific terms and conditions of the scheme, which was one time scheme and as the registration was valid only for the said scheme and for a particular number of flats, I do not find any merit in the present writ petition and the same is dismissed.”

2. Ms. Richa Kapoor, learned counsel for appellants-petitioners contended that respondent-DDA had arbitrarily adopted a policy of pick and choose inasmuch as in similarly situated cases, respondent-DDA had accepted payments much after appellants-petitioners had tendered payment. In this connection, she relied upon the following four cases:-

- i) Suman Malhotra who was allotted a flat vide Application No. 1124 File No. M-339 (985) 2004/NHS04/NA who deposited the amount of Rs. 557922/- as late as on 27-10-2006;
- ii) Ranjana Goel who was allotted a flat vide Application No. 1721 File No. M-339 (729) 2004/NHS04/NA who deposited the amount of Rs. 566796/- on 09-02-2005;

- iii) Sneh Chaudhary who was allotted a flat vide Application No. 3827 File No. M-339 (2199) 2004/NHS04/NA who deposited the amount of Rs. 575945/- on 30-12-2005; and
- (iv) Bimla who was allotted a flat vide Application No. 3223 File No. M-339 (2201) 2004/NHS04/NA who deposited the amount of Rs. 540875/- on 09-12-2005.
3. Learned counsel for appellants-petitioners also referred to the case of Mrs. Geeta Sharma who had deposited the balance amount after 22nd December, 2004.
4. Mr. Ajay Verma, learned counsel for respondent-DDA vehemently denied the allegation that respondent-DDA had acted arbitrarily. Mr. Verma referred to the counter-affidavit filed by respondent-DDA before this Court. The relevant portions of respondent-DDA's counter-affidavit are reproduced hereinbelow for ready reference:-

<i>M-339 (985)/2004/NHS-04/NA</i>	<i>Smt. Suman Malhotra was allotted a flat No. 17, Ground Floor, Sector A-10, Pkt. 2, Group-2, Narela through the computerized draw held on 19.5.04. The Demand-cum-allotment letter was issued to her on 31.7.06 to make the payment before the last date i.e. 27.1.07. She deposited the cost of flat i.e. Rs. 5,57,922/- vide challan No. 575181 dated 26.10.2006 i.e. in time. The possession letter was issued to her on 18.1.07 and she took over the possession of the</i>
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	<i>flat on 13.3.07. Thereafter, the conveyance deed was executed on 25.5.07.</i>
<i>M-339 (729)/2004/NHS-04/NA</i>	<i>Smt. Ranjana Goel was allotted a flat No. 400, Second Floor, Sector A-9, Pkt. 1, Group-3, Narela through the computerized draw held on 19.5.04. The Demand-cum-allotment letter was issued to her on 16.11.04 to make the payment before the last date i.e. 15.5.05. She deposited the cost of flat i.e. Rs. 5,66,796/- vide challan No. 10179 dated 9.2.05 i.e. in time. The possession letter was issued to her on 20.5.05 and she took over the possession of the flat on 12.8.05. Thereafter, the conveyance deed was executed on 27.1.06.</i>
<i>M-339 (2199)/2004/NHS-04/NA</i>	<i>Smt. Sneha Chaudhary was allotted a flat No. 28, Third Floor, Sector A-10, Pkt. 2, Group-2, Narela through the computerized draw held on 19.5.04. The Demand-cum-allotment letter was issued to her on 8.9.05 to make the payment before the last date i.e. 7.3.06. She deposited the cost of flat i.e. Rs. 575945/- vide challan No. 55369 dated 28.12.05 i.e. in time. The possession letter was issued to her on 8.9.06 and she took over the possession of the flat on 1.12.06. Thereafter, the conveyance deed was executed on 27.4.07.</i>
<i>M-339 (2201)/2004/NHS-04/NA</i>	<i>Smt. Bimla was allotted a flat No. 563, Second Floor, Sector A-10, Pkt. 6, Group-1, Narela through the computerized draw held on 19.5.04. The Demand-cum-allotment letter was issued to her</i>

	on 8.9.05 to make the payment before the last date i.e. 7.3.06. She deposited the cost of flat i.e. Rs. 5,40,875/- vide challan No. 062801 dated 7.12.05 i.e. in time. The possession letter was issued to her on 28.11.05 and she took over the possession of the flat on 13.1.06. Thereafter, the conveyance deed was executed on 20.1.06.
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- a) *“Smt. Geeta Sharma has been allotted Type A flat no. 200 Section A-6, Pkt. A-7 Narela under the NHS-2004 in the draw held on 19.5.2004 and accordingly she was issued demand-cum-allotment letter block end dated 23.6.2004 with last date of payment without interest up to 21.9.2004 and with interest up to 20.12.2004 after this date the flat shall automatically cancelled.*
- b) *In this case, referred to, is totally different from the present case as in this case due to reduction in the area of the flat, the cost of the flat was reduced by the DDA and hence the revised demand-cum-allotment letter with the revised payment schedule was issued to her. The revised demand letter dated 11.10.2004 was issued to her. Thereafter, the allottee has requested for mortgage permission on the same day dated 2.12.04. Despite this she failed to deposit the payment and adhere to the terms and conditions of the demand letter. And the Competent Authority did not accede to her requests for extension of time. Hence, the flat was cancelled by the DDA. The flat no. 200 was under TYPE A category but the flat in question in this petition is of MIG category.*
- c) *Accordingly, she moved this Court, which Court vide its Orders dated 20.12.2005 allowed her to pay the revised demands within 15 days, and on the demand being cleared DDA was directed not to cancel the allotment.*
- d) *The allottee deposited the demanded amount as per the Court directions and the Hon’ble Court passed further orders dated 8.2.2006.”*

5. In rejoinder, learned counsel for appellants-petitioners pressed her plea of discrimination and arbitrariness only qua the cases of Mrs. Sneh Chaudhary, Mrs. Bimla and Mrs. Geeta Sharma.

6. As far as the case of Mrs. Geeta Sharma is concerned, it is apparent that respondent-DDA had accepted the payment after due date only in compliance with the order passed by a learned Single Judge of this Court. It is pertinent to mention that this Court had passed the order in the case of Mrs. Geeta Sharma only because respondent-DDA had failed to file a counter-affidavit within the stipulated time. Consequently, we are of the view that the said case offers no assistance to the appellants-petitioners.

7. As far as cases of Mrs. Sneh Chaudhary and Mrs. Bimla are concerned, we have perused the original files of respondent-DDA with regards to the said allottees. A perusal of said two files reveals that there was a mismatch in the floors of the flats that were allotted and that were drawn during the draw. As respondent-DDA realised that change of floors was detrimental to Mrs. Sneh Chaudhary and Mrs. Bimla and their grievance was legitimate, a proposal was mooted to allot them alternative MIG flats on the same floor. It was only in December, 2004 that the Competent Authority accepted the aforesaid suggestion and rectified the bona fide mistake that had crept in while issuing the demand-cum-allotment letters. It was only thereafter fresh demand-cum-allotment letters were issued and Mrs. Sneh Chaudhary and Mrs. Bimla paid the balance amount within the stipulated time. In our

opinion, as there was a mismatch of the floors and allottees paid in accordance with fresh demand-cum-allotment letters, appellants-petitioners cannot rely on the aforesaid two cases. Accordingly, present appeal being devoid of merits is dismissed but with no order as to costs. Interim orders stand vacated accordingly.

MANMOHAN, J

CHIEF JUSTICE

AUGUST 26, 2009

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