

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved on: 08th December, 2010
 Judgment Pronounced on: 13th December, 2010

+ **CS(OS) No. 897/2000**

**MAYURDWAJ COOPERATIVE GROUP
HOUSING SOCIETY LTD.**

..... Plaintiff

- versus -

DELHI DEVELOPMENT AUTHORITY

.....Defendants

Advocates who appeared in this case:

For the Plaintiff:	Mr. Rajesh Baneti and Mr.Hari Mohan, Advocates.
For the Defendant:	Mr. Deepak Khadaria and Ms. Sangeeta Chandra, Advs.

CORAM:-

HON'BLE MR JUSTICE V.K. JAIN

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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? | YES |
| 3. Whether the judgment should be reported
in Digest? | YES |

V.K. JAIN, J

This is a suit for recovery of Rs 61,42,790/-. The plaintiff, which is a society registered under the Delhi Co-operative Society Act, 1973, was allotted 5 acres of land by defendant-DDA, in the year 1982 at 60, Patparganj, Delhi-110092. This land, according to the plaintiff, was sufficient

for construction of only 300 flats, whereas the membership of the plaintiff-society, being 462, the defendant was required to allot land measuring 7.66 acres to it. Later, the defendant relaxed the ceiling of 5 acres and offered additional land to the plaintiff for the remaining 160 members and asked it to deposit Rs 11,87,119.80/- towards cost of the additional land. The plaintiff made payment of Rs 6,82,689.65/- vide its letter dated 01.12.1990 and asked the defendant to allot the additional land to it. The defendant, however, did not allot additional land for the remaining 160 members of the plaintiff-society which resulted in increased in the cost of construction of the flats and construction of 300 flats at Patparganj could not be completed within time.

The defendant vide its letter dated 21st April, 1997 directed the plaintiff to deposit Rs 39,88,824.38/- for granting extension of time for construction of flats. The aforesaid amount was deposited by the plaintiff under protest, on 25th April, 1997. It is further alleged that despite legal notices dated 03rd January, 1997 and 03rd July, 1998, calling upon it to hand over possession of additional land and refund the aforesaid amount of Rs

39,88,824.38/-, the defendant failed to refund the said amount. The plaintiff, therefore, has claimed the aforesaid amount of Rs 39,88,824.38/- alongwith interest therein at the rate of 18% per annum from the date of deposit till filing of the suit which comes to Rs 21,53,964.62/-, thus making a total claim of Rs 61,42,790/-.

2. The defendant has contested the suit and has taken a preliminary objection that the suit is not maintainable for want of notice under Section 53-B Delhi Development Act. It is also alleged that the suit is barred by limitation since it ought to have been instituted within six months from the date on which the cause of action arose. It has taken another preliminary objection that since there is an arbitration clause contained in Perpetual Lease Deed, executed in favour of the plaintiff-society, the suit is not maintainable and the matter is required to be referred for arbitration. On merits, it is alleged that in the application dated 31st August, 1981, submitted by one Dr. K. Kumar, the plaintiff had claimed membership of 460 persons, whereas in the subsequent application submitted through Shri Govind G. Mishra, the plaintiff claimed membership of 220 persons. Taking into consideration, the membership

strength as 220, the plaintiff-society was offered land measuring 3.666 acres vide letter dated 02nd February, 1982 and asked to pay Rs 4,80,072.50/- as 25% premium of land. The plaintiff-society, however, represented that it had 460 members and requested for allotment of land measuring 7.666 acres and also deposited Rs 8,53,800/- on 03rd March, 1982. After considering the matter, the plaintiff-society was informed that only 5 acres of land was available in Patparganj. On receipt of further representation from the plaintiff-society, it was decided to allot land measuring 7.666 acres instead of 5 acres, subject to payment of Rs 11,87,119.80/- towards cost of additional land, but, the society failed to deposit the cost of additional land. Since the society had paid Rs 25,28,300/- towards premium, it was decided to allot land measuring 5 acres to it, possession of that land was handed over to it on 02nd June, 1983 and the lease deed was executed on 20th November, 1986.

3. As regards the additional land, it is alleged in the written statement that the plaintiff-society paid Rs 3,00,000/- on 11th March, 1983, Rs 3,68,250/- on 30th April, 1983 and Rs 11,87,119/- on 21st June, 1983 and

interest, amounting to Rs 6,82,689.68 on 11th February, 1991. The additional land was later allotted to the society, possession was handed over to it on 06th October, 1999 and lease deed was executed on 01st September, 2000. It is further alleged that allotment of additional land is an issue altogether different from non-construction on the allotted land.

4. The following issues were framed on the pleadings of the parties:-

- i. Whether present suit is barred for want of proper legal notice under Section 53-B of the Delhi Development Act?
- ii. Whether notice under Section 53-B of the Delhi Development Act had been served on the defendant?
- iii. Whether the present suit is barred by time?
- iv. Whether there is an arbitration agreement between the parties, if so what would be its effect?
- v. Whether plaintiff is entitled to claim the amount as alleged in the plaint?
- vi. Whether plaintiff is entitled to claim the interest, if so at what rate?
- vii. Relief?

Issue Nos.1 & 2

5. Section 53-B of Delhi Development Act, to the extent it is relevant, provides that no suit shall be instituted against the Authority, or any member thereof, or any of its officers or other employees, or any person acting under the directions of the Authority or any member or any officer or other employee of the Authority 'in respect of any act done or purporting to have been done in pursuance of this Act or any rule or regulation made there under' until the expiration of two months after notice in writing has been, in the case of the Authority, left at its office, and in any other case, delivered to, or left at the office or place of abode of, the person to be sued and unless such notice states explicitly the cause of action, the nature of relief sought, the amount of compensation claimed and the name and place of residence of the intending plaintiff and unless the plaint contains a statement that such notice has been so left or delivered.

6. A bare perusal of the aforesaid provision would show that it applies only to a suit instituted against the defendant or any of its members/officers/employees in respect of any act done or purporting to have been done in

pursuance of Delhi Development Act or any rule or regulation made thereunder. While raising demand of composition fee, pursuant to an application made by the plaintiff for extension of time for completing the construction on the land allotted to it, the defendant was not exercising any of the powers conferred upon it by Delhi Development Act or any Rules or Regulations framed under the Act. The stipulation for completing the construction within two years was contained in clause II (4) of the lease deed which provided that the lessee shall within a period of two years from 02nd June, 1983 and after obtaining sanction of the building plan, erect and complete the Group Housing Complex for not less than 60 dwelling units to an acre on the residential plot subject matter of the lease deed. A perusal of the lease deed would show that the lease was granted by President of India to the plaintiff-society, through Delhi Development Authority. It is the President of India and not Delhi Development Authority who was the lessor of the land, leased out to the plaintiff-society. On failure of the defendant to complete construction within two years from 02nd June, 1983, the lessor, i.e., President of India became entitled to determine the lease. Therefore, the

breach of the lease deed by the lessee-society, by not completing construction of a Group Housing Complex within two years from 02nd June, 1983, was condoned on payment of composition fee amounting to Rs.39,88,824.38/- by the lessor, i.e., President of India, though the power of the lessor may have been exercised by Delhi Development Authority. Therefore, while demanding composition fee for granting extension of time for completion of construction on the land allotted to the plaintiff-society, the defendant was only exercising the power of the lessor and was not doing an act in pursuant of Delhi Development Act or any rule and regulation made thereunder. If that is so, the provisions of Section 53-B(1) of Delhi Development Act, would not apply to the present suit, though the case of the plaintiff is that it had served a notice on 03rd September, 1988 upon the defendant before filing this suit.

7. In **Durga Chand Kaushish Vs. Union of India and Anr.** *ILR 1971 II Delhi 350*, a Division Bench of this Court, while dealing with a suit for refund of an amount which was recovered from the plaintiff as arrears of rent, held that since the defendant was not authorized to collect what was not legally due under the lease deed, the collection of the

excess amount was not an act failing within the scope of the Delhi Development Act and there could not be any reduction of any period of limitation in respect of it. It was further held that the period of limitation, therefore, was three years which was available to the plaintiff under the Limitation Act.

In **Lucky Star Estates (India) Pvt. Ltd. Vs. The Delhi Development Authority through Vice-Chairman, 113 (2004) DLT 802 (DB)**, there was delay by the defendant-DDA in return of the earnest money deposited by the appellant whose bid had been rejected after about 1 year 4 months. The appellant later filed a suit for recovery of interest on the amount which it had deposited as earnest money. It was held by a Division Bench of this Court that auction of Nazul land was an action done under a contract and was not required by Delhi Development Act. It was further held that delay in rejecting the bid in refund of the bid amount was not an act purported to have been done under Delhi Development Act or rules and regulations framed thereunder.

8. The learned counsel for the defendant has referred to the decisions in **DCM vs. DDA 1998 III AD (Delhi) 952, Mirajuddin vs. DDA 109 (2004) DLT 26, Prinda Punchi vs.**

MCD & Ors. 2005 IV AD (Delhi) 639 in support of his contention that service of notice under Section 53-B of Delhi Development Act was a pre-requisite for filing the suit.

In the case of **DCM** (supra), the plaintiff had sought a decree for declaration that it was the absolute owner and in rightful possession of the suit property and the defendant had no right, title or interest therein, the plaintiff having been allotted the same in exchange of its land acquired by the Delhi Improvement Trust. In the case of **Mirajuddin** (supra), the trial Court had returned a finding that notice under Section 53-B of the Delhi Development Act was mandatory in the facts of the case. The first appellate Court had upheld the finding of the trial Court in this regard. The Court found that the suit though styled as a suit for injunction was in reality for possession or title and, therefore, could not come within the exception permitting the maintainability of the suit without serving a notice under Section 53-B of the Delhi Development Act. In the case of **Prinda Punchi** (supra), the Court, on comparison of the provisions contained in Section 80(2) of the Code of Civil Procedure with the provisions of Section 53-B of the Delhi Development Act noticed that despite being aware of the

provisions contained in sub-section 2 of Section 80 of the Code of Civil Procedure, the legislature while enacting the Delhi Development Act did not incorporate any exception as was provided in sub-Section 2 of Section 80 CPC and, therefore, held that it would not be proper to include and add such provision into the provision of Section 53-B of the Delhi Development Act. The suit, in this case, was also for declaration that the suit premises was free from any acquisition proceedings and the plaintiff were the sole and absolute owner thereof. Therefore, these judgments are of no help to the defendant.

9. Assuming that while recovering the Composition Fee, the defendant was acting in exercise of its statutory powers under the Delhi Development Act or any Rule or Regulation made thereunder, in the case before this Court, there is compliance of the requirement of Section 53B(1) of the Delhi Development Act. Ex.PW-1/9 is the notice sent by the plaintiff to the defendant through its counsel Mr Daljit Singh Adel. Vide this notice, the defendant was informed that the demand of Rs 39,88,824.38/-, which was raised against the plaintiff-society for granting extension of time for construction of flats, was illegal and arbitrary and that the

aforesaid amount had been deposited under protest. The defendant was also informed that the plaintiff-society was claiming refund of the aforesaid amount which it had deposited on 25th April, 1997. The defendant was called upon to refund the aforesaid amount to the plaintiff alongwith interest thereon at the rate of 18% per annum. The aforesaid notice gives the name and complete address of the plaintiff-society. It also states the cause of action which led to the filing of this suit. It was alleged in this notice that the delay in construction of flat was caused because land was not allotted by DDA for remaining 160 members and that there was no justification for asking for deposit of the aforesaid amount. Since the defendant was called upon to refund the aforesaid amount of Rs 39,88,824.38/- alongwith interest thereon at the rate of 18% per annum, the notice also disclosed the relief which the plaintiff was seeking from the plaintiff. The notice, therefore, meets all the requirements of Section 53-B of Delhi Development Act. It has been expressly alleged in the plaint that the notice dated 03rd September, 1998 was sent by the plaintiff to the defendant, calling it upon to refund the aforesaid amount of Rs 39,88,824.38/-, deposited with it by the plaintiff-society.

Mere omission to refer to Section 53-B of the Delhi Development Act in the notice would be of no consequence, when the notice otherwise meets the statutory requirement. This is not the case of the defendant in the written statement that the notice dated 03rd September, 1998 was never served on it. The legal notice dated 03rd September, 1998 has been pleaded in para 9 of the plaint and there is no denial of receipt of notice in para 9 of the written statement. Ex.PW-1/10 is the postal receipt, whereby this notice was sent to the defendant on 03rd September, 1998 and Ex.PW-1/11 is the A.D. card showing receipt of the aforesaid notice by defendant the defendant on 07th September, 1998. The plaint also contains necessary averment with regard to the issue of notice. The plaintiff, therefore, has complied with the requirement of Section 53-B of Delhi Development Act.

Issue No. 3

10. It is alleged in the written statement that in view of the provision contained in Section 53-B (2) of Delhi Development Act, the suit ought to have been filed within six months from the date on which the cause of action arose. Sub-section (2) of Section 53-B of Delhi Development

Act provides that no suit such as is described in sub-section (1) shall, unless it is a suit for recovery of immovable property or for a declaration of title thereto, be instituted after the expiry of six months from the date on which the cause of action arises. While deciding issue No. 1, I have taken a view that the defendant, while demanding composition fee from the plaintiff-society for extending the time for completion of construction of a Group Housing Complex on the land allotted to it, was exercising the power of President of India and was not acting under Delhi Development Act or any Rule or Regulation made thereunder. Therefore, sub-section (2) of the aforesaid provision does not apply to the present suit. The issue is decided against the defendant.

Issue No. 4

11. Ex. DW-1/4 is the lease deed, executed in favour of the plaintiff-society. Clause VIII of the lease deed, to the extent it is relevant, reads as under:

“In the event of any question, dispute or difference, arising under these presents, or in connection therewith (except as to any matters the decision of which is specially provided by these presents) the same shall be referred to the sole arbitration of the Authority or any other

person appointed by it. It will be no objection that the arbitrator is a servant of the Authority and that he has to deal with the matters to which the Lease relates or that in the course of his duties as a servant of the Authority he has expressed views on all or any of the matters in dispute or difference. The award of the arbitrator shall be final and binding on the parties.

The arbitrator may, with the consent of the parties, enlarge the time, from time to time, for making and publishing the award.

Subject as aforesaid, the Arbitration Act, 1940, and the Rules thereunder and any modifications thereof for the time being in force shall be deemed to apply to the arbitration proceedings under this Clause.”

11. Section 8 of the Arbitration and Conciliation Act, 1996, to the extent it is relevant, provides that a judicial authority before which an action is brought in a matter, which is subject matter of an arbitration agreement, shall, if a party so applies, not later than that when submitting his first statement on the substance of the dispute, refer the parties to arbitration. It further requires that the application for referring the parties to arbitration shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.

Except Section 8, there is no other provision in the Arbitration and Conciliation Act, 1996 that in a pending suit, the dispute is required to be referred to the arbitrator. If no application for referring the parties to arbitration is filed, there would be no occasion for the Court to refer the matter for arbitration and in that case, it cannot be said that the Court would have no jurisdiction to adjudicate the suit on merits. Mere existence of an arbitration agreement does not by itself take away the jurisdiction of the Court to adjudicate upon the lis between the parties to an arbitration agreement. The Court is only required to refer the matter for arbitration if requisite application in this regard is filed along with the arbitration agreement or a certified copy thereof, before submitting first statement on the substance of the dispute. This view also finds support from the decision of the Supreme Court in ***Sukanya Holding Pvt. Ltd. v. Jayesh H. Pandya and another***, (2003) 5 SCC 531. It was not sufficient for the defendant to plead an arbitration agreement in the written statement filed by it. The defendant ought to have filed an appropriate application for referring the matter for arbitration. That, however, was not done by the defendant at any point of time. Therefore,

assuming that the dispute between the parties is covered by the arbitration clause contained in the lease deed, the jurisdiction of this Court to adjudicate in the matter is not ousted when the defendant has chosen not to apply to the Court for referring the parties to the arbitration.

The learned counsel for the defendant has referred to the decisions of this Court in ***M/s Chand Chits & Finance (P) Ltd. v. M/s Super Advertisers and others***, AIR 1992 Delhi 85, ***Marketing Services v. Indian Farmers Fertilizers Corpn. Ltd.***, 92 (2001) DLT 411 and ***Sharad Dogra v. Sahara Airlines Ltd. & Others 2007 (8) AD(D) 20***. None of these judgments lay down a proposition of law which may even suggest that mere existence of an arbitration clause would oust the jurisdiction of civil Court even if no party applies to the Court under Section 8 of the Arbitration and Conciliation Act, 1996 for referring the parties to the arbitration.

Issue No. 5

12. The plaintiff has produced its Secretary Mr P.S. Yadav in the witness box, whereas the defendant has examined its Dy. Director (GH).

As noticed earlier under clause (II) (4) of the lease

deed, the plaintiff was required to obtain sanction to the building plan and erect a Group Housing Complex on the land allotted to it within two years from 02nd June, 1983. Admittedly, the plaintiff-society did not complete construction on the land measuring 5 acres allotted to it, within two years from 02nd June, 1983. Vide its notice dated 03rd January, 1997 sent to the defendant, which is Ex.PW-1/8, the plaintiff-society admitted that there was delay in construction of the flats as the defendant failed to allot additional land to the plaintiff-society for the left over 160 members and there was delay in handing over the possession of land measuring 1.07 hectares. Ex.PW-1/12 is the letter dated 29th April, 1992 written by the plaintiff to the defendant, seeking extension of time up to 1st June, 1997 for construction of building. PW1 has admitted in his cross-examination that the plaintiff had 2-3 times sought extension of time for completing construction on the land in Patparganj. He has also stated that the plaintiff had applied for forms C & D in June, 1997. Thus, there was delay of about 12 years in completing construction of flats on the land measuring 5 acres, allotted to the society in Patparganj.

It is thus not in dispute that there was delay in completing the construction on the land measuring 5 acres allotted to the plaintiff-society. The case of the plaintiff, as set out in the plaint, is that since the plaintiff-society had 460 members and the land measuring 5 acres allotted to it at Patparganj was sufficient for construction of only 300 flats, it had requested DDA to allot additional land so that it could accommodate the remaining 160 members and had also deposited a sum of Rs 6,82,689/- with it on 1st December, 1990. It is also alleged that the failure of the defendant to allot additional land resulted in a lot of legal problems and increase in cost of construction, and since the delay in allotment of additional land was attributable to defendant-DDA, it was not justified in asking for composition fee while extending time for completion of construction on 5 acres of land allotted to the plaintiff-society in Patparganj. The case of the defendant, however, is that there was no connection between construction of flats on the land allotted to the plaintiff-society at Patparganj and allotment of additional land to it for the remaining 160 members.

13. In my view, the plaintiff-society was not justified in

delaying construction on land measuring 5 acres allotted to it at Patparganj. There was absolutely no linkage between construction of dwelling units on the allotted land and allotment of additional land for the remaining 160 members of the society. The plaintiff-society could have and ought to have raised construction on the allotted land within the time stipulated in the lease deed in this regard and it could not have delayed construction thereon merely because DDA was yet to allot additional land to it for the remaining 160 members. This is not the case of the plaintiff-society that it was not possible to raise construction on the land allotted to it at Patparganj. This is plaintiff's own case that the land, measuring 5 acres, allotted to it, was sufficient for construction of 300 flats. PW 1 has admitted that there was no encroachment on the land in Patparganj. The plaintiff-society, therefore, could have completed construction of 300 dwelling units on that land without waiting for allotment of additional land by DDA. If the plaintiff-society had 460 members and the land allotted to it was sufficient to accommodate 300 members, it could have allotted 300 flats to be constructed on the land at Patparganj to 300 senior most members or it could have chosen 300 out of its 460

members by draw of lots or in some other manner as it might deemed appropriate for this purpose. But, it was not justified in delaying construction on the land that had been allotted to it merely because DDA was yet to allot additional land for construction of flats for the remaining 160 members.

14. The case of the defendant is that the delay in allotment of additional land to the plaintiff-society was occasioned due to non-payment of the amount of Rs 11,87,119.80 demanded by it towards the cost of additional land. It is not in dispute that the premium for allotment of additional land was demanded by DDA, vide its letter dated 11th October, 1982. The payment was to be made within 30 days from the date of the letter, as is evident from the notice Ex.DW-1/1 signed by DDA to the plaintiff-society on 03rd February, 1983. No amount was paid by the plaintiff-society to the defendant towards premium for additional land within the time stipulated in the letter dated 11th October, 1982. Admittedly, payment of Rs 3 lac was made on 11th March, 1983, Rs 3,68,250/- on 30th April, 1983 and Rs 11,87,119/- on 21st June, 1983. This is plaintiff's own case in para 4 of the plaint that the cost of the additional

land alongwith late payment was deposited by it vide letter dated 01st December, 1990 though PW 1 has admitted that interest was deposited on 11th February, 1991.

Obviously, DDA did not allot additional land to the plaintiff-society soon after the premium for the additional land had been deposited alongwith interest and the possession was handed over to the plaintiff-society on 06th October, 1999 though at the same rate of Rs 10 per square metre, at which the land was allotted to it, in Patparganj. The case of the DDA in this regard, as disclosed in para 4 of the affidavit of Shri K.G. Kashyap, Dy. Director (GH), is that at that time, no plot was available in that locality and, therefore, steps were taken to allot another plot to the plaintiff-society in the adjoining area. The Screening Committee of the DDA had approved the allotment of additional land to the plaintiff-society in Viswas Nagar on 05th May, 1992, but the possession could not be handed over due to various reasons.

The plaintiff has objected to para 4 of the affidavit of Shri K.G. Kashyap on the ground that it was beyond the pleadings. Learned counsel for the plaintiff has referred to the decision of the Supreme Court in **Ram Sarup Gupta**

(dead) by L.Rs. v. Bishun Narain Inter College and others, AIR 1987 SC 1242 where the Supreme Court held that in the absence of pleadings, evidence, if any, produced by the parties, cannot be considered and no party should be permitted to travel beyond its pleadings. It was further held that all necessary and material facts should be pleaded by the party in support of the case set up by it, though the pleadings should receive a liberal construction and it is not desirable to place undue emphasis on form. It was further held that whenever the question about lack of pleading is raised, the Court must find out whether in substance the parties knew the case and the issues upon which they went to trial. Once it is found that inspite of deficiency in the pleadings, the parties knew the case and they proceeded to trial on those issues by producing evidence, in that event it would not be open to a party to raise the question of absence of pleadings. He has also referred to the decision of this Court in **Prakash Rattan Lal v. Mankey Ram**, 166 (2010) DLT 629 where this Court reiterated the settled legal proposition that the parties can lead evidence limited to their pleadings and cannot travel beyond that.

There is no quarrel with the proposition of law that

all material facts need to be pleaded and the parties cannot be allowed to travel beyond their pleadings. It is also correct that non-availability of another plot in the locality has not been specifically pleaded in the written statement. But, even if para 4 of the affidavit is excluded from consideration, that would make no difference to the merits of the case for the simple reason that there was no linkage between construction on the land measuring 5 acres allotted to the plaintiff-society at Patparganj and allotment of additional land to it at Geeta Colony. This is not a suit for damages on account of delay in allotment of additional land to the plaintiff-society nor is this a suit for payment of interest on the amount paid as premium for additional rent on the ground that there was no delay on the part of the DDA in allotting additional land to the plaintiff-society, despite receipt of entire land premium from it alongwith requisite interest. This is a suit for refund of the composition fee which DDA has recovered from the plaintiff-society while extending the time for completion of construction on 5 acres of land allotted to it at Patparganj. Since construction on the land measuring 5 acres at Patparganj was not, in any manner, dependent on allotment

of additional land to the plaintiff-society and there was no hindrance such as encroachment on the land at Patparganj, there was no justification for the plaintiff-society not completing construction within the time stipulated in this regard in the lease deed. The lessor, therefore, was very much entitled to recover composition fee while acceding to the request of the plaintiff-society, made vide letter dated Ex.PW-1/12 dated 29th April, 1997, for extension of time.

Learned counsel for the plaintiff has referred to the decision of this Court in ***Vardan Co-operative Group Housing Society Ltd. v. Delhi Development Authority***, 129 (2006) DLT 278. In that case, unauthorized construction was found to exist on the land allotted to the petitioner society. It was held by this Court that it was for the DDA to ensure that the site was unencumbered and no Court injunction was in force, qua the land. Since the DDA had failed to get the site freed from encumbrance, the society could not make progress in construction. It was, in these circumstances, that this Court directed refund of the excess amount which the DDA had recovered from the petitioner- society towards composition fee. However, in the case before this Court, the land allotted to the plaintiff

society in Patparganj was free from any encroachment and encumbrances and, therefore, there was no obstacle in completion of construction of 300 flats on that land within the time stipulated in the lease deed in this regard. Since the plaintiff society failed to complete the construction within the stipulated period, the defendant was very much justified in insisting upon payment of composition fee as per its policy while granting extension of time for completing the construction. The issue is decided against the plaintiff and in favour of defendant.

Issue No. 6 and 7

15. In view of my findings on issue No. 5, the plaintiff is not entitled to any amount from the defendant.

ORDER

In view of my findings on the issues, the suit is hereby dismissed, without any order as to costs. Decree sheet be prepared accordingly.

(V.K. JAIN)
JUDGE

DECEMBER 13, 2010
BG