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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment dated on: 10.05.2010

+ W.P.(C) 3901/2008

NITIN KATARIA

..... Petitioner

Through : Mr. N. Kinra, Adv.

versus

D.D.A.

..... Respondent

Through : Mr. Ajay Verma, Adv.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

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

G.S.SISTANI, J. (ORAL)

1. Rule. With the consent of counsel for the parties, writ petition is set down for final hearing and disposal.
2. Brief facts of the case, as set out in the present petition, are that the petitioner had booked a MIG flat in the year 2006. Petitioner was allotted a flat bearing no.18, Block M-2, Pocket 4, Sector A-9, Narela, vide letter dated 5.3.2007. As per the demand-cum-allotment letter, a copy of which has been placed on record, petitioner was to deposit a sum of Rs.11,68,737/- by 31.3.2007 and thereafter a sum of Rs.12,11,964/- with interest upto 1.9.2007. On 3.9.2007, petitioner received a letter from the SBI that the challans had not been cleared due to shortfall in the amount. The petitioner is stated to have cleared the shortfall in the sum of Rs. 5500/- on 25.10.2007. The

petitioner was, in the meanwhile, asked by the DDA to obtain a certificate of clearance from the Bank to show that petitioner had deposited the full payment of Rs.12,12,000/-. Petitioner obtained the necessary certificate from the bank on 16.11.2007 and submitted the same to the DDA.

3. The case of the petitioner is that the amounts were deposited by him from time to time by means of demand drafts, which were issued by the State Bank of India in favour of the Delhi Development Authority on the following dates:

<u>Sl. No.</u>	<u>Challan No.</u>	<u>Date</u>	<u>Amount</u>
1.	11051	31.8.2007	1,80,000/-
2.	98823	31.8.2007	35,000/-
3.	82684	31.8.2007	1,96,000/-
4.	82683	31.8.2007	1,47,000/-
5.	82685	31.8.2007	1,96,000/-
6.	82687	31.8.2007	1,96,000/-
7.	116203	1.9.2007	2,62,000/-
Total			12,12,000/-

4. The grievance of the petitioner is that DDA has failed to condone the delay and hand over possession of the flat for which the entire amount stands paid in the year 2007.
5. Mr.Kinra submits that two bank drafts in the sum of Rs.1,96,000/-, each, dated 31.8.2007 were, in fact, short by Rs.5,500/-. Counsel further submits that this error occurred inadvertently, which is

evident from the fact that the correct amount was filled up in the challan, a photocopy of which has been placed on record at pages 17 and 18 of the paper book. The error was not noticed by the State Bank of India when the amount was deposited and the challans were duly stamped by the bank. Mr.Kinra submits that while all other bank drafts were credited to the account of the DDA these two bank drafts were kept in Suspense Account by the bank. DDA thereafter addressed a communication to the State Bank of India seeking a clarification whether all bank drafts were received on 31.8.2007 and, if not, the actual date of deposit of additional bank drafts and the reasons for abnormal delay in credit. The State Bank of India issued a clarification to the DDA vide letter dated 27.11.2009, relevant portion of which has been reproduced in the counter affidavit and, which reads as under:

“challan No.82685 and 82687 for Rs.1,96,000/- each were deposited on 31.8.07 but with less amount of Rs.1500/- and Rs.4000/- respectively. On receipt of challans on the same of advice to deposit writing on 3.9.07 but deposited on 25.10.07 with D. Draft of balance amount. Hence total amount of challan under question were sent to DDA on 27.10.07.” (sic)

6. Admittedly, the petitioner made up the deficiency and the bank credited the amount in the account of the DDA on 25.10.2007. Thus, according to the DDA, there was a delay of 57 days in receipt of Rs.3,68,000/- as the Bank had not bothered to credit in the account of the DDA, although the amount was in their possession, though short by only Rs.5500/-. While counsel for the petitioner contends that the shortfall was of only Rs.5500/- and for this bona fide

mistake the flat allotted by the DDA to the petitioner cannot be cancelled.

7. It is the case of the DDA that there was a shortfall of Rs.3,92,000/- which was received by the DDA only on 25.10.2007.
8. Counsel for the petitioner submits that taking into consideration the peculiar facts of this case and the bona fide mistake of the petitioner as also the bank, it was a fit case for the DDA to have applied its policy dated 1.6.2000 and should have condoned the delay in receiving the payment, more particularly, when the petitioner had deposited the entire payment with the Bank except Rs.5500/-.
9. Counsel for the respondent submits that the policy dated 1.6.2000 would not be applicable to the facts of this case, firstly, on the ground that the policy pertains to the year 2000 and the petitioner had applied in the Scheme of 2006 and, secondly, on the ground that the policy was formulated to condone delay in cases where problems were faced by the concerned allottees in making the payment.
10. I have heard counsel for the parties and also perused the pleadings and documents filed along with the petitioner. The basic facts are not in dispute that petitioner made an application to the DDA for allotment of A MIG flat in the year 2006. As per the demand-cum-allotment letter issued to the petitioner by the DDA, the last date for making the entire payment with interest in the sum of Rs.12,11,964/- was upto 1.9.2007. The petitioner deposited various

bank drafts with the State Bank of India, as is evident from the challans, copies of which have been placed on record. As per the challans, the petitioner had deposited the entire sum of Rs.12,11,964/-, however, on close scrutiny after receipt of the payment and after stamping the challan the Bank noticed that two bank drafts totaling Rs.1,96,000/-, each were short by Rs.1500/- and Rs.4000/- respectively. Thus the bank did not credit two bank drafts in the account of the DDA without any plausible reason. The bank did not credit two bank drafts in the account of the DDA and kept this amount in a suspense account with the result that DDA received the amount after 1.9.2007 and only on 25.10.2007 when the matter was cleared and the short fall was made up by the petitioner. Counsel for the petitioner has placed reliance on the certificate issued by the State Bank of India dated 16.11.2007 wherein the Bank has given the details, in the form of a chart, as to when the challan was deposited and when, in fact, the amount was credited in the account of the DDA. The chart is reproduced below:

Challan Received on	Challan No.	Credited on your a/c Received on	CHIEF MANAGER Amount	–
31-8-07	82684	6.9.07	19,6000/-	
31-8-07	82683	6.9.07	1,47,000/-	
31-8-07	98823	6.9.07	35,000/-	
1-9-07	116203	6.9.07	2,62,000/-	
31-8-07	11051	6.9.07	1,80,000/-	
31-8-07	82687	27.10.07	1,96,000/-	
31-8-07	82685	27.10.07	1,96,000/-	
			12,12,000/-	

11. A careful reading of the certificate issued by the Bank would show that the amount deposited on 31.8.07 was credited to the account of the DDA on 6.9.2007, however, with regard to two bank drafts the amount was credited in October, 2007. No doubt there is a delay of 57 days in crediting the amount in the account of the DDA but the shortfall on the part of the petitioner is only of Rs.5500/- and not of Rs.3,62,000/-, as stated by the DDA. Petitioner has given instances in various cases where DDA has condoned the delay in making the payment. Having regard to the peculiar facts of this case where the petitioner deposited the entire amount with the bank within the time allowed except Rs.5500/- by mistake which was neither noticed by the petitioner nor the bank while accepting the money, in fact, the bank has stamped the challans in acceptance of receipt of the money, I am of the view that this is a fit case for condonation of delay in making the payment. Taking into consideration the policy of the DDA, which has been formulated keeping in view the hardship being faced by some of the allottees, which shows that in genuine and deserving cases the DDA has the discretion to condon the delay Accordingly, delay is condoned. Order of cancellation is quashed. Petitioner will pay the interest @ 12% on Rs.5500/- for 57 days. Plot will be handed over to the petitioner within a period of three months from the date of receipt of copy of this order and upon completion of all formalities being completed meanwhile.

May 10, 2010
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G.S. SISTANI, J.