

7

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 4620/2008

%

Judgment Delivered on: 05.02.2010

RAJESH SHARMA

..... Petitioner

Through: Mr.N. Kinra, Advocate

versus

DDA

..... Respondent

Through: Mr.M.K. Singh, Advocate

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. In this case petitioner booked an MIG flat vide registration No.40969 under the DDA-6 Scheme. On 19.01.2007 petitioner was allotted a flat vide block date 19.01.2007 file No.M/353 (103)2007/DDA-06/RO. Petitioner was allotted flat No.42, Sector-24, Pocket-4, 3rd floor, Rohini, Delhi. The demand letter was issued to the petitioner at the initial cost of Rs.17,37,651/-. Copy of the demand letter has been placed on record. As per the allotment letter, petitioner was to pay Rs.17,37,651/- between 20.01.2007 to 31.03.2007. The petitioner is stated to have deposited the amount within the time allowed on 19.04.2007. On the same day the petitioner also deposited all the required documents and an acknowledgment was received on the same date. The petitioner was called upon to deposit necessary stamp duty charges for preparing the conveyance deed. The petitioner is stated to have deposited Rs.1,51,065/- towards the stamp duty charges on 15.06.2007. The petitioner thereafter made repeated requests to the DDA to hand over the possession of the flat to him. The petitioner is stated to have sent a representation on

18.09.2007 as well. Petitioner also made a representation to the Prime Minister's Office, but to no effect.

2. Counsel for petitioner submits that petitioner had obtained a loan from UCO Bank and according to the terms and conditions of the loan, the flat in question was to be mortgaged in favour of the Bank. It is contended that even the senior Manager of the bank addressed a letter to the DDA on 05.05.2008, copy of which has been placed on record. By means of this letter, Manager of the Bank had drawn the attention of the Commissioner (Housing), DDA that the bank has sanctioned loan in the sum of Rs.15.0 lacs on 30.03.2007 in favour of the petitioner. The loan was disbursed with an undertaking that an equitable mortgage in favour of the bank would be created as soon as the conveyance deed of the property is received from the DDA. The Manager also requested the DDA to immediately hand over the possession of the flat to the petitioner, to enable the allottee to create the equitable mortgage in favour of the bank. All efforts of the petitioner to seek possession of the flat for which entire payment of Rs.17,37,651/- was paid by 19.01.2007, which fell on deaf ears. The petitioner has thus approached this Court by filing the present petition and has prayed as under:

“(a) A Writ of Certiorari calling for records of the case for perusal.

(b) A Writ of Mandamus commanding the Respondent to hand over the possession of the flat no.42, Sector-24, Pocket-4, third floor at Rohini.

(c) And to pay the interest on the loan as the cost paid to DDA AS BEING PAID TO BANK BY THE PETITIONER 12% ON Rs.1737651.00/- with effect from 19.4.2007.”

3. As per prayer (b), the petitioner has sought direction to the DDA to pay interest @12% on the amount which was deposited with the DDA on 19.04.2007.
4. Counter affidavit has been filed by the DDA. Neither the allotment nor the deposit of the amount on 19.04.2007 has not been denied. It has also not been denied that the petitioner had submitted stamp

duty charges for the conveyance deed as well. Reasons stated in the counter affidavit for not handing over the flat in question were that some defects were found in the flat at Sector -24, Pocket-4, Rohini, Delhi, due to which DDA was unable to hand over the possession. During the pendency of this writ petition the Court was informed that the repair work would be completed latest by December, 2008. Even after filing of the counter affidavit, the DDA did not hand over possession of the flat by 31.12.2008.

5. Admittedly possession of the flat has been handed over on 23.01.2010 to the petitioner. Counsel for petitioner has strongly urged before this Court that the DDA should be directed to pay interest @ 12% per annum, as the petitioner had taken a loan from the UCO Bank and is paying interest to the bank at the same rate. Counsel for petitioner has drawn attention of the Court to the representation dated 05.05.2008 addressed by the Manager of the UCO, Bank to the DDA evidencing that the bank had sanctioned a housing loan in the sum of Rs.15.0 lacs to the petitioner. The petitioner has also filed a certificate from the UCO Bank dated 16.09.2007 to show that a housing loan in the sum of Rs.15.0 was disbursed to the petitioner @ 8.75% per annum and monthly EMI was fixed at Rs.15,000/- As per the certificate petitioner had paid Rs.3,75,545/- as interest between the period 18.04.2007 to 31.08.2008. The counter affidavit has not addressed the issue raised by the petitioner for payment of interest. Counsel for petitioner submits that the demand/ allotment letter itself would show that in case the amount was not paid within the check period, DDA would charge interest, on the same analogy petitioner prays for interest.

6. In the case of Rattan **Chand Vs. Delhi Development Authority** [C.W.P.No.3770/2003 decided on 13.10.2003], it has been held:

“15. The petitioner has been unreasonably deprived of possession of the flat on account of the conduct of the respondent in not communicating the interest and thereafter

calculating the interest incorrectly. Once the respondent itself is seeking recovery of interest, there can be no reason why the petitioner should not be compensated for being deprived of the possession due to delays and illegal demands of the respondent. In fact, the interest has been charged by the respondent at much higher rates. The documents show that HBA has been released to the petitioner against 13.5% p.a. rate of interest. It is stated that the GPF Account from where the petitioner had withdrawn the amount, now carries interest @ 12% p.a.. Thus the substantive amount has been withdrawn against 13.5% interest and for the balance amount, the petitioner has been deprived of enjoyment of the interest on the amount withdrawn from the GPF Account.

16. I am, thus, of the considered view that taking all the facts into consideration, the petitioner should be held entitled to interest @ 13% p.a. from 01.09.1999 till date on the amounts deposited by the petitioner, i.e. Rs.6,07,238/- (Rs.3,00,000/- on 9.01.1998 : Rs.2,25,000/- on 20.7.1998 : and Rs.82,238/- on 17.8.1998). The date of 01.9.1999 has been taken as the relevant date since the respondent should have handed over possession of the flat to the petitioner within a reasonable period of time, which would be about two months and the last document was submitted by the petitioner on 18.6.1999. The amount due from the petitioner towards interest and service charges should be adjusted from the amount due to the petitioner. The amount be accordingly refunded within a maximum period of two months from today."

7. In this case, the petitioner had made the entire payment to the DDA as far back as on 15.04.2007, however, possession of the flat was handed over to him only on 23.01.2010 for reasons purely attributable to the DDA. Repair of the flat should have been carried out by the DDA before accepting the cost. Petitioner has placed sufficient material on record, to show that he had applied for loan from the UCO Bank for which he had to pay interest to the bank. Petitioner has been deprived of possession of the flat and also burdened with payment of interest to the bank. It would be a fit case where the DDA should be directed to pay interest on the amount deposited by the petitioner from the date of making the last payment to DDA, excluding the period of three months, which may be considered as reasonable time taken by the DDA to process the

case of the petitioner, upto date of handing over possession @ 7.5% per annum.

- 8.** Petition stands disposed of, in above terms.

February 05, 2010
'ssn'

G.S. SISTANI, J.