

* **HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on: 31st January, 2011

% Judgment Pronounced on: April 20, 2011

+ **LPA No. 772/2010**

M.S. SETHI

..... Appellant
Through: Mr.Jagjit Singh, Adv.

Versus

DELHI STATE INDUSTRIAL & INFRASTRUCTURE
DEVELOPMENT CORPORATION LTD. Respondents
Through: Ms.Anusuya Salwan with
Ms.Renuka Arora, Advs.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

- | | |
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| 1. Whether reporters of the local papers 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 the Digest? | Yes |

DIPAK MISRA, CJ

The present intra-Court appeal is directed against the order dated 13th August, 2010 passed by the learned Single Judge in WP (C) No. 3773/2007.

2. Sans unnecessary details, the facts which are essential to be adumbrated are that the Delhi State Industrial and Infrastructure Development Corporation Ltd. (DSIIDC), the respondent herein, floated a scheme in September, 2003 for allotment of flats to the successful allottees of plots under relocation scheme for the employees known as 'Rajiv Gandhi Housing Project Self Finance Cost Effective Workers Housing Scheme' (for short 'the Scheme'). The applications were invited from both bona fide

industrial workers and industrial owners. The respondent had constructed 3164 flats/houses (1500 type-I and 1664 type-II) under the said project. The respondent received 1036 applications out of which 931 applicants were found to be eligible and were allotted one unit each per eligible applicant. As the response was poor and 2233 flats had remained unallotted, applications were again invited in the second phase in September, 2004 as per the brochure. As set forth, the appellant submitted an application for allotment of 5 flats and deposited Rs.1 lakh on 28th September, 2004 with the respondent along with other requisite documents, as stipulated in the brochure. In the second phase, 2040 applications were received and at the first instance one flat was allotted to each worker found eligible and the industrial plot allottees of general category. In this manner, 1867 allotments were effected. The appellant was allotted one flat under the said Scheme on 8th March, 2006. In the order of allotment, the installment, total amount payable and due date of payment of installment were stipulated. After granting allotment of one flat, no further allotment of flats were made and the security amount was not refunded. When the appellant visited the office of the respondent, the concerned authorities intimated him that his application in respect of other four flats was pending consideration. It may be noted here that 337 flats remained unallotted and 700 applications were received for allotment of more than one flat. It was not possible to allot these 337 flats to 700 applicants. As per the case of the respondent a policy decision was taken not to allot more than one flat to these 700 applicants. These 337 flats were included in the second Rajiv Gandhi Housing Scheme

launched by the respondent in 2007. This time applications were invited from industrial workers in any industrial complex of Delhi and employees of group C and D including temporary/daily wages/work charge in any of the public sector undertakings or under Government of NCT of Delhi. Owners of industrial plots were not eligible. The respondent received 11,000 applications under the second Rajiv Gandhi Housing Scheme launched in 2007. As per this scheme only one flat could be allotted to each eligible applicant.

3. As pleaded, both the advertisements clearly spell out that both the schemes were introduced for employees for the purposes of their welfare. Despite the said Schemes being introduced and the amount that was paid by the appellant for the four flats, the same have not been allotted despite the money lying in deposit with the respondent. The appellant made several representations last one being 12th April, 2007. The appellant claims priority of allotment in respect of the second Scheme and, accordingly, invoked the writ jurisdiction. While issuing notice, the writ court on 18th May, 2007 had directed that four flats should be reserved in the Self Finance Cost Effective Workers Housing Scheme. It was contended before the learned Single Judge that the petitioner has a right to allotment of five flats and the same having been denied to him, his legal right for allotment has been infringed.

4. The said stand was resisted by the respondent stating, inter alia, that the language of the Scheme would vividly show that there was clear stipulation that first preference would be given to bona fide industrial

workers of the allottee entrepreneurs of Bawana Industrial Area and unallotted houses, if any, shall be considered for allotment to bona fide industrial workers of allottee entrepreneurs under the Relocation Scheme of Narela Industrial Complex. Further the applications received were far in excess than the available flats and after fulfilling the demand of the reserved category applicants, the remaining flats were given to industrial workers. As a policy decision, it was decided that only one flat would be allotted to one applicant. Consistent with this uniform policy, the appellant was allotted only one flat in 2006 although he had applied for five flats. The Scheme announced in the year 2007 was exclusively for industrial workers and, therefore, the claim of the appellant for allotment of remaining four flats could not be considered under the said Scheme.

5. The learned Single Judge appreciating the rivalized submissions raised at the Bar came to hold that the Scheme was essentially to provide houses to industrial workers and, therefore, an allottee of industrial plot could not, as a matter of right, demand that he should be allotted five flats he had applied for. The learned Single Judge further opined that the classification between allottee of an industrial plots and industrial workers for the purpose of allotment of flats under the Scheme is based on intelligible differentia and, therefore, not arbitrary. The policy decision taken to allot an applicant only one flat was applied uniformly and, therefore, cannot be regarded as arbitrary exercise of power. In this background, he declined to issue mandamus to the respondent to allot four more flats.

6. We have heard Mr.Jagjit Singh, learned counsel for the appellant and Ms.Anusuya Salwan, learned counsel for the respondent.

7. It is submitted by Mr.Singh that the learned Single Judge has failed to appreciate that there exists a bilateral contractual relationship between the appellant and the respondent and hence, the parties are governed and controlled by the terms and conditions laid down therein and as the respondent received the payment for five flats it is obligatory on its part to allot five flats. It is further contended that when 337 flats were available with the respondent, it was incumbent on its part to allot four flats as the balance registration amount had remained with the respondent, a statutory body and in the absence of any cogent reason or decision not to allot the same, a writ of mandamus should have been issued to allot the flats. It is submitted that as per the second Scheme, allotments are on cash-down basis and the appellant is ready and willing to abide and comply with the terms and conditions, which are incorporated in the second Scheme and, therefore, he should be given balance four flats. It is urged that the stand of the respondent in the counter affidavit that it had taken a decision to allot one flat to one entrepreneur was not given any kind of publicity and nothing was ever communicated and, therefore, there is a concluded contract between the parties, which has to prevail and the respondent cannot be permitted to wriggle out of the same. Learned counsel would vehemently contend that the hand-written office note pertaining to decision to allot one flat each, lacks genuineness and, in any case, it cannot override the contract entered into with the appellant. The last plank of submission of learned counsel for

the appellant is that in any case the appellant is entitled to the refund of the amount lying with the respondent with exemplary interest and costs.

8. Ms. Anusuya Salwan, learned counsel appearing for the respondent, combating the aforesaid submissions, propounded that the first Scheme was floated in September, 2003 with a view to provide functional and economical residence to the workers in Bawana and the applications were called from bona fide industrial workers or industry owners, who had been allotted plot at Narela or Bawana Industrial Area under the Relocation Scheme. The respondent received 1036 applications out of which 931 applicants were found eligible and, accordingly, 100% allotment was made to them and a condition was stipulated that only one unit would be allotted to one applicant. It is canvassed that in the second phase in September, 2004 the brochure clearly postulated that the applicant should either be a bona fide allottee or industrial worker in DSIIDC, Bawana and Narela Industrial Area under Relocation Scheme or any worker with the Government of NCT of Delhi or its PSU. The Scheme stipulated that upto five dwelling units would be allotted to an allottee under Relocation Scheme through a single application form and one unit to an industrial worker of an allottee under Relocation. In the second Scheme, 2040 applications were received and after scrutiny of all the applications, in the first instance, one flat was allotted to each worker found eligible and the industrial plot allottees of general category were found eligible for allotment. Only in reserved category, allotment was made upto five dwelling units to one applicant due to lesser number of applications as compared to flats available for reserved

category. Learned counsel would contend that more than one house has been allotted only in the reserved category allottees as a class and a decision was taken that allottees in general category would not be allotted more than one flat. It is urged that number of applications received for more than one flat were about 700 in all and the total number of flats were far less to accommodate all applicants and after allotment 337 flats remained unallotted and the said flats have been included in Rajiv Gandhi Housing Scheme launched in 2007. The earnest money deposited by the allottees of plots under Relocation Scheme who applied for grant of one flat have been adjusted against the cost of allotted flat and the excess amount was refunded on request. Learned counsel would contend that the appellant will be refunded the amount as per the Scheme but no request has been received from the appellant for the refund of the amount. It has also been argued by her that the possession of the flat allotted to the appellant is in the capacity of an allottee of an industrial plot under the Relocation Scheme. It is argued that the object of the Scheme is to provide affordable and subsidized flats to the industrial worker and hence, allotment of more than one flat to the industrialist, would be contrary to the fundamental objective of the Scheme.

9. To appreciate the submissions raised at the Bar, it is necessary to refer to the Scheme that was initially floated. The purpose of the scheme reads as follows: -

“SCHEME

With view to provide functional and economical residence to workers in Bawana an area of 23.55 acres,

has been earmarked for residential pocket in sector-3 of Bawana industrial complex. 3164 dwelling units are proposed to be constructed under this scheme. There are two types of units Type I and Type II having an area of 31.60 sq. mt. & 37.73 sq. mt. respectively. Approximately 2128 dwelling units are left for allotment as detailed below. The applicant should either be a bonafide allottee or industrial worker in DSIDC Bawana and Narela Industrial Area under Re-location Scheme or any worker with Govt. of NCT of Delhi or its PSUs. In all the categories the applicant should be a bonafide resident of NCT of Delhi.”

Clause 3 of the Scheme reads as follows: -

“3. **FLATS ON OFFER:**

The following categories of dwelling units available under the Scheme:

S.No.	Type of Units (Approx.)	Nos. of Units	No. of Stories	Total Covered Area of each unit (Sq. mtr.) (Approx.)	Total cost of one unit in Rs. In Lacs.
1.	Type-I	1635 (Approx.)	Three	31.60	1.70
2.	Type-II	493 (Approx.)	Four	37.73	2.00

Accommodation (Type-I)

Living Room	2.7m X 4.5m	approx. 9’ X 15’
Multi Purpose Room	2.1m X 3.47m	approx. 7’ X 11’
Bath Room	1.2m X 1.2m	approx. 4’ X 4’
W.C.	0.9m X 1.2m	approx. 3’ X 4’
Verandah/Balcony	2.93m X 1m	approx.9’-9” X 3’-3”

Accommodation (Type-II)

Living Room	2.7m X 4.5m	approx. 9’ X 15’
Bed Room	2.86m X 2.4m	approx. 9-9” X 8’
Kitchen	2.1m X 1.5m	approx. 7’ X 5’
Bathroom	1.2m X 1.2m	approx. 4’ X 4’
W.C.	0.9m X 1.2m	approx. 3’ X 4’
Verandah/Balcony	2.7m X 1m	approx.9’ X 3’-3”

Note: The sizes given above can deviate slightly.”

The eligibility and mode of allotment, which occurs in clause 5 of the Scheme, is as follows: -

“5. ELIGIBILITY AND MODE OF ALLOTMENT:

- a) The applicant must be a citizen of India & resident of NCT of Delhi and should have attained the age of 18 years on the date of application.
- b) The applicant should either be a bonafide allottee or industrial worker in DSIDC Bawana and Narela Industrial Area under Re-location Scheme or any worker with the Govt. of NCT of Delhi or its PSUs.
- c) The allotment is proposed to be made by draw of lots among eligible applicants.
- d) The decision of DSIDC regarding allotment of dwelling units shall be final and binding on the applicants.
- e) Upto five dwelling units will be allotted to an allottee under Re-location scheme through a single application form and one unit to indl. worker of an allottee under Re-location. However, the scheme shall be simultaneously extended to the industrial workers, allottee entrepreneurs of other Indl. Areas developed, under the Relocation Scheme”. Applications received will be considered in accordance with the following priority:
 - (i) **First preference:** Allotment of houses will be given to the bonafide industrial workers of the allottee entrepreneurs of Bawana Industrial Area. Unallotted houses, if any, shall be considered for allotment to bonafide industrial workers of allottee entrepreneurs under the re-location scheme of Narela Industrial Complex.
 - (ii) In case adequate number of applications from the industrial workers are not received, the remaining houses will be allotted to the allottee entrepreneurs

for residential use by their workers who may book upto 5 flats for their workers. Here again allotment of houses shall be given to the allottees of Bawana Industrial Area first. However, if there still remain some unallotted houses, the same will be offered to the allottees of Narela Industrial Complex under the relocation scheme and thereafter, the scheme shall be extended to other categories of entrepreneurs for the left over unallotted houses. In case some houses still remain unallotted, DSIDC may, in those circumstance consider allotting them to the workers of GNCTD & its PSUs. Applicants shall have no right for allotment of the category of flat applied for. Allotment shall be subject to availability of flats. If No. of applicants are more than the No. of flats in the particular category then allotment shall be through draw of lots and remaining applicants shall be considered for available other category.”

[Emphasis supplied]

Clause 7 deals with documents required from Scheduled Caste and Scheduled Tribe. Clause 10 deals with the procedure for submission of application. Clause 12 deals with the mode of payment.

10. As set forth by the respondent, only 931 applicants were eligible and 100% allotment was made to them. Because of inadequate response, the respondent thought it appropriate to get into the second phase in September, 2004 and, accordingly, issued the brochure for the second Scheme.

11. The 2007 Scheme in clause 4 laid down the eligibility criteria, which reads as follows: -

“4. **Eligibility**

- a) Applicant must be a citizen of India.

- b) Resident of NCT of Delhi and should have attained the age 18 years as on 1.1.2007.
- c) Applicant should be an industrial worker in any Industrial Complex of Delhi.
- d) Applicant should be Group 'C' & 'D' employee including temporary / on daily wages / work charge in any of the PSUs under GNCTD.
- e) Widows of bonafide industrial workers on relocation Industrial Complexes.
- f) Persons who have already availed benefit of any subsidized housing under any Government Scheme (including slum relocation) shall not be eligible for allotment of flat under this Scheme.”

12. Clause 5 deals with mode of allotment and it reads as follows: -

“5. Mode of allotment.

- a) Persons concern, who have secured allotment in 1st “Rajiv Gandhi-Cost Effective Workers Housing Scheme”, launched by DSIIDC in Sept 2003 & again in Sept 2004 are not eligible to apply in the present scheme.
- b) Allotment is proposed to be made by Draw of Lots among eligible applicants.
- c) Decision of DSIIDC regarding allotment shall be final and binding on the applicants.
- d) Applicant can apply for only one category of flat.
- e) Applicants shall have no right for allotment of the category of flat applied for. Allotment shall be subject to availability of flats. If number of applicants are more than the number of flats in a particular category, then allotment shall be made through draw of lots and remaining applicants shall be considered for other available category of flats.
- f) In the event, allotment is not made in the applied category, the application may be considered for lower category flat, if available.

- g) If at any time it is detected that the applicant has made more than one application, under the scheme, then all such applications shall be rejected/cancelled including allotment if already made and the registration amount forfeited.”

13. Clause 6 deals with preference of allotment, which reads as follows: -

“6. Preference of Allotment

- a) Allotment shall be given as per category of dwelling units kept reserve to the applicants found eligible under reserve categories mentioned in clause 7.
- b) Allotment shall be given as per category of dwelling units available to the industrial workers of the Allottee Entrepreneurs under R.L. in Bawana, Narela, Badli, Patparganj and Jhilmil Complex.
- c) Unallotted dwelling units shall be considered for allotment as per category of units to the industrial workers of other Industrial Complexes in Delhi.
- d) In case some dwelling units still remain unallotted under above three categories, the same shall be allotted to workers of PSUs of GNCTD.”

14. Clause 8 stipulates outright purchase ready, which reads as follows: -

“8. Outright Purchase Ready

“337 Flats at Bawana, as mentioned in Column 1 & 2 of the table at S.No. 2 (Flats on Offer) at page 2 are ready for immediate allotment. These are being offered to eligible applicants on the **Cash Down Basis**. Those applying under this category would be required to deposit the full cost of the flat within 30 days of demand notice.”

15. Thus, the question that emanates for consideration is whether the appellant on the basis of his application is entitled to get five flats. Be it noted, the appellant has been allotted a flat vide allotment letter dated 8th March, 2006 (Annexure P-5). In the said letter of allotment, it has been mentioned that in reference to his application bearing No. 5523 for allotment of XX residential flat/flats of Type I and 5 Type II, he has been declared provisionally successful for allocation of 1 flat of Type I at Bawana Industrial Complex under the 'Self-Finance Cost Effective Workers Housing Scheme', subject to certain conditions.

16. The core issue is whether the Corporation was duty bound to provide five flats to the appellant. As is discernible from the material brought on record, the first Scheme was floated in the year 2003. As the response was low, the second phase Rajiv Gandhi Housing Scheme was floated. Both the Schemes are integral part with the purpose of providing flats under the Self-Finance Cost Effective Workers Housing Scheme. The purpose of the Scheme was basically to provide accommodation to industrial workers. A person having an industrial plot could also apply for flats for their industrial workers. As is evident, the applications were invited from a bona fide allottee or an industrial worker. Clause 5(e) stipulated that upto five dwelling units to be allotted to an allottee under Relocation Scheme through a single application form and one unit to industrial worker of an allottee under Relocation. It was also stipulated in the said clause that the Scheme shall be simultaneously extended to the industrial workers, allottee entrepreneurs of other industrial areas developed under the Relocation

Scheme and the applications shall be considered in accordance with priority. The first preference was to be given to the bona fide industrial worker and the allottee entrepreneurs of Bawana Industrial Area. Unallotted houses, if any, shall be considered for allotment to bona fide industrial workers, allottee entrepreneurs under the Relocation Scheme of Narela Industrial Complex. Thus, the preference was given to the workers in Bawana and Narela Industrial Complexes. The second clause of preference clearly lays stipulation that in case adequate number of application forms are not received, the remaining houses will be allotted to the allottee entrepreneurs for residential houses for their workers who may book upto five flats for their workers. There was also a rider that the same shall be given to the allottees of Bawana Industrial Area first. The allotment was subject to availability of flats. As contended by the respondent, in the first instance, total number of applications received were 1036 and, therefore, the second phase was undertaken. In the second or 2007 Scheme, the eligibility criteria and mode of allotment become slightly different and broader but excluded entrepreneurs. The applicant included Group 'C' and 'D' employee including temporary/ daily wagers / work charge in any of the PSUs under the Government of NCT of Delhi.

17. Thus, there is necessity to appreciate the fundamental purpose of the Rajiv Gandhi Housing Project Self Finance Cost Effective Workers Housing Scheme, 2004. It was issued by Delhi State Industrial Development Corporation Limited to provide functional and economical residence to workers in Bawana and an area of 23.55 acres was earmarked for residential

pocket in sector-3 of Bawana industrial complex. 3164 dwelling units were proposed to be constructed under the said scheme. There were two types of units, Type I and Type II having an area of 31.60 sq. mt. & 37.73 sq. mt. respectively. Approximately 2128 dwelling units are left for allotment. Any applicant either is to be a bona fide allottee or industrial worker in DSIDC Bawana and Narela Industrial Area under Re-location Scheme or any worker with Govt. of NCT of Delhi or its PSUs. In all the categories, the applicant should be a bona fide resident of NCT of Delhi.

18. The basic purpose of the 2nd Rajiv Gandhi Housing Project Self Finance Cost Effective Workers Housing Scheme, 2007 by Delhi State Industrial Development Corporation Limited is to provide industrial workers quality residence at affordable price. DSIIDC has earmarked an area of 23.55 acres of residential pocket in Sector – 3 of Bawana Industrial Complex where 3164 dwelling units have already been constructed under this scheme.

19. The purpose of the said Schemes being to provide functional and economical residence to bona fide allottee or industrial worker in DSIIDC Bawana and Narela Industrial Area under Re-location Scheme or any worker with Govt. of NCT of Delhi or its PSUs. In view of the fact that the appellant is not running his industry either at his old place of business or at new relocated place, allotment of more than one flat would be contrary to the fundamental objectives of the Schemes.

20. Learned counsel for the appellant has invited our attention to the decision in *Delhi Development Authority and another v. Joint Action*

Committee, Allottee of SFS Flats and others, (2008) 2 SCC 672. He has drawn inspiration from what is stated in paragraphs 60, 61, 62 and 66. They read as follows: -

“60. It was, on the other hand, DDA who having accepted the offer of the allottee by restoring the allotment, in our opinion, is estopped and precluded from raising a plea as regards application of office order dated 16.8.1996. It may be noticed that even contents of those letters were not disclosed to the allottee.

Was it a Restoration Scheme?

61. The office orders, on the basis whereof the purported impugned policy had been taken, do not refer to the Scheme as a restoration scheme. The resolutions do not say so. Had it been so, DDA would have issued a fresh notification or at least made its stand clear to the allottees either by way of public notice or by informing each of such defaulters individually. Had such conditions for the purpose of restoration being made known, the allottees would have accepted it or rejected it. Evidently, it is a part of the original Scheme. It is not a new one.

62. It is well-known principle of law that a person would be bound by the terms of the contract subject of course to its validity. A contract in certain situations may also be avoided. With a view to make novation of a contract binding and in particular some of the terms and conditions thereof, the offeree must be made known thereabout. A party to the contract cannot at a later stage, while the contract was being performed, impose terms and conditions which were not part of the offer and which were based upon unilateral issuance of office orders, but not communicated to the other party to the contract and which were not even the subject-matter of a public notice. Apart from the fact that the parties rightly or wrongly proceeded on the basis that the demand by way of 5th instalment was a part of the original Scheme, DDA in its counter-affidavit either before the High Court or before us did not raise any contra plea. Submissions of Mr. Jaitley in this behalf could have been taken into consideration only if they were pleaded in the counter affidavit filed by DDA before the High Court.

66. The stand taken by DDA itself is that the relationship between the parties arises out of the contract. The terms and conditions therefor were, therefore, required to be complied with by both the parties. Terms and conditions of the contract can indisputably be altered or modified. They cannot, however, be done unilaterally unless there exists any provision either in contract itself or in law. Novation of contract in terms of Section 60 of the Contract Act must precede the contract making process. The parties thereto must be ad idem so far as the terms and conditions are concerned. If DDA, a contracting party, intended to alter or modify the terms of contract, it was obligatory on its part to bring the same to the notice of the allottee. Having not done so, it, relying on or on the basis of the purported office orders which is not backed by any statute, new terms of contract could (sic note be) thrust upon the other party to the contract. The said purported policy is, therefore, not beyond the pale of judicial review. In fact, being in the realm of contract, it cannot be stated to be a policy decision as such.”

21. Relying on the same, it is proposed by Mr. Jagjit Singh that once there is concluded contract, it could not have been unilaterally altered by the DDA.

22. Ms. Anusuya Salwan, learned counsel for the respondent has submitted that a policy decision was taken to allot cost effective flats to the industrial workers and there was no mala fide action on the part of the respondent. That apart, it is also her submission that the appellant has stopped industrial activities. Learned counsel has commended us to the decision in *Jasbir Singh Chhabra and others v. State of Punjab and others*, (2010) 4 SCC 192 wherein their Lordships have stated thus:

“35. It must always be remembered that in a democratic polity like ours, the functions of the Government are carried out by different individuals at different levels.

The issues and policy matters which are required to be decided by the Government are dealt with by several functionaries some of whom may record notings on the files favouring a particular person or group of persons. Someone may suggest a particular line of action, which may not be conducive to public interest and others may suggest adoption of a different mode in larger public interest. However, the final decision is required to be taken by the designated authority keeping in view the larger public interest. The notings recorded in the files cannot be made basis for recording a finding that the ultimate decision taken by the Government is tainted by mala fides or is influenced by extraneous considerations. The Court is duty-bound to carefully take note of the same.....”

23. Thus, on one hand learned counsel for the appellant would vehemently contend that there was a concluded contract and on the other, the learned counsel for the respondent would submit that there was a change in the policy, regard being had to the obtaining factual scenario and the response it got. In our considered opinion, there was no concluded contract and there is no malice in the change of policy decision. It is worth noting we have perused the file as allegations were made that there was manipulation, but we have not found so.

24. In view of the aforesaid, the only opinion that can be arrived at is that the appellant did not have a fructified right to get five flats. The stipulations in the first scheme were merely an enabling one. Regard being had to the outcome of the scheme, a second phase of the scheme was floated. A distinction has been drawn between the industrial unit and an industrial worker but the inherent facet is that the flats were to be given to industrial workers. If an industrial owner does not have his unit, he cannot claim as a

matter of right under a particular scheme that he should be given five flats. The further claim that he can be granted flats under the cash payment basis is also not allowable as that will be running counter to the scheme. That apart, the scheme has been uniformly applicable. Wherever the respondent has found that more flats have been allotted, they have been cancelled and a statement has been made by the learned counsel for the respondent that where more than one flat has been granted beyond the scheme of things, the same shall be cancelled. The allegation that there has been interpolation in the record is also not correct. The same is factually erroneous. A deliberate uniform policy was adopted regard being had to provide accommodation to the needy workers. Therefore, we perceive no error in the view expressed by the learned Single Judge.

25. Presently, we shall proceed to deal with the issue of grant of interest. The appellant was allotted one flat of type-I category in 8.3.2006 in the draw of lots. The cost of the flat was Rs.1,70,000/-. Rs.17,000/- was adjusted from the registration amount or earnest money deposited of Rs. 1,00,000/- by the appellant. The balance Rs.1,53,000/- was paid as under :

• Vide receipt No.53318 dated 29.5.2006	- Rs.25,500/-
• Vide receipt No.16576 dated 5.3.2007	- Rs.42,500/-
• Vide receipt No.171292 dated 3.5.2007	- Rs.76,500/-
• Vide receipt No.171598 dated 14.6.2007	- Rs.8,500/-
Total	- Rs.1,53,000/-

26. Rs.1,00,000/- was deposited by the appellant on 29.9.2004. He became entitled to refund of Rs.83,000/- on 8.3.2006, when he was allotted one flat. As per the brochure the appellant is also entitled to simple interest for the period beyond 90 days from the date of publication of the list of selected candidates. Clause 11 of the brochure reads:-

“11. REGISTRATION DEPOSIT:

Persons, wishing to register under “Self Financing Worker Housing Scheme” are required to pay following amount as ‘registration deposit’ at the time of registration.

- a) Type – I Rs. 17,000/-
- b) Type –II Rs. 20,000/-

“Registration Deposit of unsuccessful applicants shall be refunded within 3 months from the date of publication of list of successful applicants for allotment. In case Registration Deposit is refunded after 3 months from the date of publication of list of successful applicants for allotment a simple interest @ 5% p a for such delayed period i.e. period beyond 90 days from the date of publication of list of selected candidates shall be payable.””

27. The contention of the respondent is that the appellant is entitled to interest at the rate of 5% for the period after 90 days on Rs.83,000/-. Other defences raised by the respondent are that no request for refund was received and the matter was subjudice, therefore refund was not made.

28. The three contentions raised by the respondent do not merit acceptance. The appellant had applied for five dwelling units as he was entitled to apply for upto five dwelling units and had deposited Rs.1,00,000/-

on 29.9.2004. After allotment of one flat, he became entitled to refund of Rs.83,000/- on 8.3.2006. It may be noted that the time gap between deposit by 29.3.2004 and 8.3.2006 is substantial. There is no explanation forthcoming for this delay. The decision not to allot more than one flat was an internal policy decision. The decision was not published or informed to the appellant and other applicants. It was the duty and responsibility of the respondent to publish the said policy decision and inform the applicants including the appellant. The respondent cannot shirk away and avoid their responsibility, by stating that the appellant should have asked for refund and it is not their duty to refund. The brochure or the scheme never envisaged that the applicants like the appellant herein were required to apply for refund of the earnest money. The refund was automatic and suo moto. The applicants like the appellant did not deposit the money with the respondent as a banker. The respondent had no cause or reason to retain the money with them. It is not the case of the respondent that this amount could be utilized for any other scheme. Commercial rates of interest we all know are higher. The respondent, in case of default as per the brochure were entitled to interest @ 12%. In these circumstances, we feel that the respondent cannot rely upon the clause that they are liable to pay 5% interest for period of 90 days from the date when the list was published. It was the responsibility and duty of the respondent as a State to refund the amount suo moto or inform the appellant in case any formalities were required to be completed by him. There is no explanation for this default and lapse. The stand of the respondent is contrary to principle of good and responsible governance and

has to be rejected. The respondent will be accordingly pay interest at the rate of 10% per annum at Rs.83,000/- w.e.f. 1st July, 2006 onwards till payment is made.

29. Resultantly, the appeal is allowed in part without any order as to costs.

CHIEF JUSTICE

APRIL 20, 2011
kapil/pk

SANJIV KHANNA, J