

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

Reserved on: October 11, 2012

Pronounced on: November 02, 2012

+ **W.P.(C) 427/2011**

SUNIL GUPTA Petitioner

Through: Ms. Richa Kapoor &
Ms. Medha Sachdev, Advocates

versus

DELHI DEVELOPMENT AUTHORITY Respondent

Through: Ms. Renuka Arora, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

1. Under the Ninth Self Financing Housing Scheme floated by Delhi Development Authority in the year 1996, a draw of lots was held on 31st December, 1996, in which petitioner was allotted a ground floor flat in Sector/Pocket VI-S-3, Dwarka, Delhi. In this writ petition, quashing of demand-cum-allotment letter of 13th December, 2010 is sought with directions to respondent - DDA to hand over possession of Ground Floor Flat No.381 in Pocket I, Sector 12, Dwarka, Delhi.

2. Petitioner claims that third copy of challan of 23rd June, 1997 (Annexure P-5) showing deposit of 90% of cost of the flat was dispatched to DDA by UPC on 26th August, 1997, whereas respondent

- DDA asserts that it had not received it, leading to automatic cancellation of the allotment. Not much said by either side as to what had happened from August, 1997 till November, 2000 when respondent vide its letter of 10th November, 2000 had informed petitioner about allotment of a second floor flat in a computerized draw held on 23rd October, 2000.

3. Although petitioner claims to have written letters to Delhi Development Authority seeking possession of the flat allotted in the year 1997 but no such communication is on record. In response to petitioner's communication of 20th November, 2000 respondent had disclosed vide its letter of 26th September, 2001 (Annexure P-10) that since third copy of challan showing paying of 90% of the cost of the flat was not furnished, so it was presumed that payment had not been made, which resulted in automatic cancellation of the allotment of the year 1997. However, upon payment of restoration charges, allotment of second floor flat was made to petitioner at the old cost of flat plus interest which was challenged by petitioner by filing a complaint before State Consumer Redressal Commission in the year 2003 and in August, 2007, petitioner had withdrawn the said complaint on account of inordinate delay and had filed a writ petition which was disposed of vide order of 9th February, 2010, directing respondent to hand over a flat to petitioner within six weeks on receipt of balance payment. According to petitioner, balance payment of ₹69,000/- was made to respondent on 26th February, 2010 but respondent did not comply with the order of 9th February, 2010, which led to filing of contempt petition.

4. In pursuance to order of 24th January, 2011 respondent had reviewed its demand and had issued revised demand letter of 20th May, 2011 (Annexure R-1) requiring petitioner to pay ₹11,29,930/- towards cost of excess area and proportionate old cost of ₹5,34,000/- alongwith interest of ₹2,22,597/- towards late payment of fourth installment. In response to CM No.11453/2011, respondent had offered one of the two ground floor flats of Category II, in Sector 11, Dwarka, Delhi.

5. With much vehemence, it was contended by petitioner's counsel that no interest for the delay in payment can be charged and under no circumstances, respondent can impose current cost for excess area in the flat now offered because delay is entirely attributable to respondent, who ought to be called upon to pay interest @ 7% per annum on the amount so deposited by petitioner and allotment of flat now offered ought to be at the old cost without insisting upon payment for the excess area.

6. Counsel for respondent relies upon respondent's short affidavit of 23rd May, 2011 to justify the revised demand letter of 20th May, 2011 requiring petitioner to pay ₹13,18,417/- towards proposed allotment of a flat out of two ground floor flats reserved for allotment, i.e., Flat No.169 Sector 11, Pocket 3, Category II, Dwarka, Delhi or Flat No.131, Sector 11, Pocket I, Category II, Dwarka, Delhi.

7. Submissions advanced have been considered and record of this case is perused and thereupon, it transpires that though petitioner claims to have sent third copy of challan of 23rd June, 1997 (Annexure P-5) indicating deposit of 90% of the cost of flat by UPC on 26th

August, 1997, but respondent maintains that it had not been received which had led to automatic cancellation of the flat allotted to petitioner. To say the least, mere denial of receiving third copy of challan by UPC post by respondent is not sufficient, as respondent could have very well produced its bank statement or the record to show that payment made by demand draft of 21st June, 1997 through Andhra Bank was not encashed. Having not done so, respondent - DDA cannot legitimately charge proportionate old cost of ₹5,34,000/- as there is UPC receipt of 26th August, 1997 (Annexure P-6) regarding sending of third copy of challan, evidencing payment of ₹5,71,100/-. Pertinently the above said payment was made by way of demand draft.

8. Aforesaid view is being taken as in *Bharti Rani Singh vs. Rajinder Singh Bedi*, 67 (1997) DLT 296, it has been held that when letter is sent *under postal certificate*, presumption arises under Section 114 of the Indian Evidence Act, but such presumption is rebuttable. In *V.K. Jain vs. Sharad Jagtiani*, (2007) 145 PLR 29, it has been ruled that if dispatch is by UPC with correct address written on it, then presumption of service arises.

9. As already noted above, respondent has failed to rebut the presumption of service of UPC post, whereby third copy of challan was sent to respondent. Therefore, respondent cannot charge proportionate old cost of ₹5,34,000/- and interest of ₹2,22,597/- towards the late payment as well as token penalty of ₹2,500/-.

10. Regarding revised demand of 20th May, 2011 in respect of cost of excess area to the tune of ₹11,29,930/-, petitioner cannot lay a meaningful challenge to it because petitioner had remain silent from

November, 2000 till the year 2003 when he had approached *State Consumer Redressal Commission* and had *suo motu* withdrawn its complaint in August, 2007. During this period, flats of an area as applied for by the petitioner were available but now they are not available and so, the only choice with petitioner is either to take the one out of two ground floor flats in Sector 11, Dwarka, Delhi, offered for allotment which are having area in excess than of the flat which was initially allotted to petitioner in the year 1997 or to leave it and obtain the refund of the amount deposited with interest @ 7% per annum from the date of deposit i.e., July, 1997 till September, 2001 when respondent had informed petitioner about non-receipt of third copy of challan and automatic cancellation of allotment. However, petitioner cannot claim interest from October, 2001 till August, 2007 because petitioner had filed complaint before *State Consumer Redressal Commission* in the year 2003 and the same was unconditionally withdrawn by petitioner in August, 2007. The reason for denial of interest for the aforesaid period is that petitioner has not taken effective legal remedy in respect of allotment of second floor flat in draw of lots in October, 2000.

11. Since petitioner had filed writ petition in August, 2007 and thereafter had been actively pursuing the legal remedy therefore, petitioner can claim interest @ 7% per annum on the amount deposited with respondent from August, 2007 till its realisation, provided petitioner seeks refund of amount deposited from respondent within two weeks from today.

12. Accordingly, this writ petition is disposed of with direction to

respondent to make available one of the two ground floor flats offered for allotment by respondent, provided petitioner makes the payment for the excess area within two weeks from today. In the eventuality of petitioner seeking refund of amount deposited within two weeks, respondent is directed to refund the deposited amount with interest @ 7% per annum for the period as indicated above.

(SUNIL GAUR)
Judge

November 02, 2012
pkb