

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

% *Judgment Reserved on: December 05, 2012*
Judgment delivered on: December 19, 2012

+ RFA(OS) No.49/2011

MAYURDWAJ CO-OP HOUSING SOCIETY LTD Appellant
Represented by: Mr.Rajesh Banati, Advocate with
Mr.Hari Mohan, Advocate

versus

DELHI DEVELOPMENT AUTHORITY Respondent
Represented by: Ms.Shobhana Takiar, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The present appeal is directed against the judgment and decree dated 13th December, 2010 passed by the learned Single Judge whereby the suit of the appellant (hereinafter referred to as the "Plaintiff") for recovery of ₹61,42,790/- was dismissed in favour of the respondent (hereinafter referred to as the "Defendant").
2. A suit was filed by the plaintiff for refund of composition fee which was paid to the DDA by the plaintiff on 25th April, 1997 vide challan produced before this Court and exhibited as Ex.PW-1/14 against the demand letter dated 21st April, 1997 (Ex.PW-1/13).
3. The case of the plaintiff is that in the year 1982 the plaintiff was allotted 5 acres of land at 60, Patparganj, Delhi-110 092 for construction of flats for its members. It is also the case of the plaintiff that the defendant was to allot 7.66 acres of land for 460 members. The plaintiff started

construction with the assurance from the defendant that the additional land would be allotted in due course of time for the remaining 160 members. It is alleged by the plaintiff that vide letter dated 3rd March, 1982 the plaintiff also deposited an amount of ₹8,53,800/- vide challan Nos.17594 and 17595 towards 25% payment for cost of land for 460 members. The plaintiff thereafter sent a letter dated 14th March, 1983 whereby it was informed to the defendant that an amount of ₹3,00,000/- was deposited with the defendant on 28th February, 1983 and by letter dated 2nd May, 1983 it was informed that a further sum of ₹3,68,250/- was deposited on 30th April, 1983 (in all an amount of ₹6,68,250/-). The said letters dated 14th March, 1983 and 2nd May, 1983 along with postal receipt were exhibited as Ex.PW-1/4 to Ex.PW-1/7. The land of 5 acres which was allotted to the plaintiff was only sufficient for construction of 300 flats. After some time, the defendant relaxed ceiling and offered additional land to the plaintiff in order to accommodate the remaining 160 members and the defendant asked the plaintiff to deposit ₹11,87,119.80 paise towards cost of additional land vide letter dated 11th October, 1982. The plaintiff however deposited the cost of land along with late payment of ₹6,82,689/- on 1st December, 1990. Thereafter, various remainders were issued. The construction of 300 flats could not be completed within time due to the said fact that the cost of construction in the meanwhile increased considerably.

By legal notice dated 3rd January, 1997 (Ex.PW-1/8) the defendant was called upon to hand over the vacant possession of the additional land. However, the defendant vide letter dated 21st April, 1997 (Ex.PW-1/13) asked the plaintiff to deposit ₹39,88,824.38 paise for granting extension of time for construction of flats. The said amount was deposited by the

plaintiff under protest on 25th April, 1997 vide challan No.000024 dated 25th April, 1997 which is Ex.PW-1/14. The defendant thereafter issued a notice dated 3rd September, 1998 whereby the defendant was called upon to hand over the vacant possession of the land and also to refund the above said amount of ₹39,88,824.38 paise which was deposited with the defendant. The said notice dated 3rd September, 1998, AD receipts and cards are exhibited as Ex.PW-1/9 to Ex.PW-1/11. It is also the case of the plaintiff that the delay in construction of flats by the plaintiff was solely caused because of the reasons that the additional land was not allotted by the defendant for remaining 160 members despite making the payment of the costs of the land in the year 1990.

4. The defendant/DDA denied the case of the plaintiff. The case of the defendant is that the plaintiff had applied for allotment of land vide application dated 16th March, 1981 submitted by one Dr.K.Kumar and another application was submitted vide application No.501 dated 31st August, 1981 by one Sh.Govind G.Mishra. In the first application, the membership of the plaintiff was shown 460 and in the other application, the membership was shown 220. Taking into consideration the membership strength of 220, the plaintiff was offered land measuring 3.66 acre vide letter dated 2nd February, 1982. Plaintiff thereafter represented that it had 460 members and requested for allotment of land measuring 7.666 acres. On its representation, it was informed to the plaintiff by letter dated 27th August, 1982 that only 5 acres of land can be allotted in Patparganj, Delhi. On further representation made by the plaintiff, the defendant/DDA vide letter dated 11th October, 1982 had informed that the DDA can allot the land measuring 7.666 acres, instead of 5 acres subject to the payment of cost of the additional land but the plaintiff failed to deposit the said amount. Show

cause notices dated 3rd February, 1983 and 19th April, 1983 (Ex.DW-1/1 and Ex.DW-1/2) were issued as to why the offer of the land made to the plaintiff should not be withdrawn.

As the plaintiff had deposited a sum of ₹25,28,300/- towards the premium, it was decided to allot the land measuring 5 acres only. The possession of the land was also handed over to the plaintiff on 2nd June, 1983 (Ex.DW-1/3) and the lease deed (Ex.DW-1/4) was also executed on 20th November, 1986.

The plaintiff was required to deposit the cost of additional land amounting to ₹11,87,119/- by 9th November, 1982, however, the plaintiff deposited amount along with upto date interest by 11th February, 1991 when no plot was available in that locality for allotment. Steps were initiated to allot another plot in the adjoining area. The Screening Committee in its meeting held on 5th May, 1992 approved the allotment of 1.07 hectares land in Vishwas Nagar area but the possession of the land could not be handed over to the plaintiff due to various reasons. It was handed over to the plaintiff in October, 1997. It was alleged that composition fees was changed for granting the extension upto 1st June, 1997 as there was no hindrance from any quarter with the plaintiff in completion of construction on the plot of 5 acres, possession of which was delivered on 2nd June, 1982.

No reasons were assigned by the plaintiff as to why the construction on the plot of 5 acres could not be carried out, thus the composition fee was imposed on the plaintiff upto 1st June, 1999 as per the Policy and guidelines of the defendant/DDA despite extension which was granted up to 1st June, 1997. The details of calculations were provided to plaintiff which are also mentioned in the affidavit of DW-1.

5. From the pleadings, the following issues were framed:-

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

6. Issues No.1 to 4 were decided in favour of the plaintiff by the learned Single Judge. Even no arguments were addressed by the defendant on these issues before us.

7. On issues No.5 & 6, after recording evidence of the parties, the learned Single Judge in his judgment held that since the construction on the land measuring 5 acres at Patparganj was not in any manner dependent on the allotment of the additional land to the plaintiff, such as encroachment on the land at Patparganj, there was no justification for the plaintiff in not completing the construction within the time stipulated as per the lease deed. The defendant/DDA was, therefore, entitled to recover the composition fee while acceding to the request of the plaintiff made in its letter dated 29th April, 1992 (Ex.PW-1/12) for extension of time.

8. The argument of the plaintiff is that as the plaintiff had 460 members and land measuring 5 acres allotted to it at Patparganj was sufficient for construction of only 300 flats and inspite of requests made by the plaintiff to

the DDA to allot additional land in order to accommodate the remaining 160 members, though the plaintiff had also deposited a sum of ₹6,82,689/- on 1st December, 1990, it was failure on the part of the defendant/DDA to allot the additional land resulting in a lot of legal problems and increase in the cost of construction. Therefore, the said delay in allotment of additional land has to be attributable to the defendant/DDA and thus, it was not justified to demand the composition fee while extending the time for completion of construction on 5 acres of land allotted to the plaintiff at Patparganj.

9. The submissions of the defendant/DDA are that the delay in allotment of additional land to the plaintiff was occurred due to non-payment of the amount of ₹11,87,119.80/- demanded from the plaintiff towards the cost of additional land. Though, it is not in dispute that the premium of allotment of additional land was demanded by the DDA vide its letter dated 11th October, 1982 and the payment was to be made within 30 days from the date of letters as appears from the notice Ex.DW-1/1 sent by the DDA to the plaintiff on 3rd February, 1983, however, no amount was paid by the plaintiff to the defendant towards the premium for additional land within the time stipulated in the letter dated 11th October, 1982. The payment of ₹3 lac was made on 11th March, 1983, ₹3,68,250/- on 30th April, 1983 and ₹11,87,119/- on 21st June, 1983. Even as per paragraph 4 of the plaint, it was admitted by the plaintiff that the cost of additional land along with the late payment was deposited by it vide letter dated 1st December, 1990, though PW-1 in his testimony has stated that the interest was deposited on 11th February, 1991. It is also submitted by the defendant that there was no connection between the construction of flats on the land allotted to the plaintiff at Patparganj and allotment of additional land for the remaining 160 members.

10. It is the admitted position that the defendant/DDA did not allot the

additional land to the plaintiff soon after the payment was made in the year 1990-91 along with interest and the possession was handed over to the plaintiff on 6th October, 1999 (although at the same rate of ₹10/- per Sq.Metre, at which the land was allotted to the plaintiff at Patparganj). The explanation of delay was given by the defendant/DDA in paragraph 4 of the affidavit of Sh.K.G.Kashyap, Dy.Director (GH) that at that time, no plot was available in that locality and, therefore, steps were taken to allot another plot to the plaintiff in the adjoining area. The Screening Committee of the DDA had approved the allotment of additional land to the plaintiff in Vishwas Nagar on 5th May, 1992 but according to the defendant, the possession could not be handed over due to various reasons.

11. We must mention here that the present case is not a suit for damages on account of delay in allotment of additional land to the plaintiff nor the suit was for payment of interest on the amount paid as premium for additional land on the ground that there was no delay on account of allotting additional land by the DDA to the plaintiff despite of receipt of entire land premium from the plaintiff along with interest. Rather, it appears to us from entire case that the plaintiff wants to link its claim between the construction of dwelling units on the allotted land at Patparganj and allotment of the additional land for the remaining 160 members of the plaintiff which were allotted in October, 1999 though the payment was made alongwith interest in the year 1990 and 1991.

12. Under Clause (II) (4) of the lease deed, the plaintiff was required to obtain sanction to the building plan within 2 years from 2nd June, 1983. Admittedly, the plaintiff did not complete construction on the land measuring 5 acres allotted to it, within 2 years from 2nd June, 1983. By notice dated 3rd January, 1997 (Ex.PW-1/8) sent to the defendant by the

plaintiff, the plaintiff admitted that there was a delay in construction of the flats as the defendant failed to allot additional land to the plaintiff for the remaining 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 asking extension of time up to 1st June, 1997 for construction of building. PW-1 also admitted in his cross-examination that the plaintiff had 2-3 times sought extension of time for completing construction on the land at Patparganj.

13. We agree with views taken by the learned Single Judge that the plaintiff ought to have raised construction on the allotted land within the time stipulated in the lease deed in this regard and would not have delayed construction thereon just because the defendant/DDA was yet to allot additional land for the remaining 160 members. It is not the case of the plaintiff that it was not done because of any encroachment on the land or not possible to raise the construction on the land due to certain other reasons, as it was plaintiff's own case that the land allotted at Patparganj was sufficient for construction of 300 flats. PW-1 in his statement admitted that there was no encroachment on the land at Patparganj. Thus, there is hardly any justification given by the plaintiff in delaying the construction on said land. Merely stating that it was only because of DDA did not allot the additional land for construction of flats for the remaining 160 members does not help the case of the plaintiff, particularly, when the amount of additional land was not deposited in time. It was only in the year 1997 by letter dated 3rd January, 1997 (Ex.PW-1/8), it was communicated to the DDA that due to non-allotting of additional land for 160 members, the plaintiff is facing various legal problems and even if any penalty is imposed for delayed construction, DDA would be responsible for cost and consequences,

otherwise the plaintiff will claim damages, interest and margin of escalation of price. The said notice was issued by the plaintiff after the expiry of 15 years. We feel that the same was issued as the plaintiff during this period failed to complete the construction and it was merely an excuse for non-allotting the additional land in time.

14. We agree with the finding of the learned Single Judge that as the plaintiff failed to complete the construction within the stipulated time, the defendant/DDA was justified in insisting upon payment of composition fee as per its Policy while granting extension of time to complete the construction.

15. Learned counsel for the plaintiff has referred to the decision of this Court reported as 129 (2006) DLT 278, Vardan Co-operative Group Housing Society Ltd. vs. Delhi Development Authority. In the referred case, there was an unauthorized construction 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. Under those circumstances, it was directed by the Court to refund the excess amount which the DDA had recovered from the petitioner-society towards composition fee. However, in the present case, the land allotted to the plaintiff in Patparganj was free from any encroachment and encumbrances and there was no hindrance of any manner in completion of construction of 300 flats on that land within the time stipulated in the lease deed. Thus, the facts in the present case are materially different and the decision relied upon does not help the case of the plaintiff.

16. For the reasons stated above, we do not find any force in the argument

of the plaintiff. Therefore, we are not inclined to interfere with the judgment and decree of the learned Single Judge. There is no merit in the appeal. The same is dismissed with no order as to costs.

(MANMOHAN SINGH)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

DECEMBER 19, 2012/ka