

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

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Date of Decision: 22.05.2013

+ W.P.(C) No.151/2010

OM PRAKASH SAPRA

..... Petitioner

Through: Ms.Richa Kapoor, Advocate

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Mr.Ajay Verma, Advocate

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

1. The petitioner got himself registered under Sixth Self Financing Housing Registration Scheme – 1985 of DDA for allotment of a Category-II flat. On the turn of the petitioner maturing, a Category-II SFS Flat on the ground floor in Block-7, Dwarka came to be allotted to the petitioner in the draw of lots held on 6.12.1991. A Demand-cum-Allocation Letter bearing block dates 26.12.1991 – 31.12.1991 was issued to the petitioner, requiring him to pay 90% of the estimated cost of the flat in four half yearly instalments by 31st July, 1993. The petitioner deposited three installments within the time stipulated in the Allocation Letter

whereas the fourth installment was deposited late. Subsequently, on a representation made by the petitioner, the Restoration Committee of DDA in its meeting held on 27th October, 1999, condoned the delay in making payment in respect of the aforesaid flat and restored the allotment. A second flat bearing Flat No.31A, Ground Floor, Category-II, Sector-7, Pocket-2 of Dwarka came to be allotted to the petitioner in the draw of lots held on 24th December, 1999. A Demand-cum-Allotment Letter dated 22nd March, 2000 was issued to the petitioner requiring him to deposit the amount mentioned therein on or before 19th July, 2000. According to DDA, the aforesaid letter was duly dispatched to the petitioner and was not received back unserved. Instead of making deposit in terms of the said letter, the petitioner, vide his letter dated 17th April, 2000, informed DDA that since he had already requested, vide his letter dated 10th January, 2000, to cancel the aforesaid allotment and a fresh allotment was sought in Sector-7, Pocket-1 or Sector-6, Pocket-1 on the ground floor, the demand may be reconsidered. This letter written by the petitioner is a clear indication that the Demand Letter dated 22nd March, 2000 had been received by him though he referred to the said letter as challan in his letter dated 17th April, 2000.

2. During processing of the file, it was discovered by DDA officials that Flat No.31A, Ground Floor, Category II, Sector-7, Pocket-2, Dwarka had, in fact been allotted to one Shri Rakesh Kumar, before it came to be allotted to the petitioner.

Accordingly, with the approval of Commissioner (Housing) of DDA, it was decided to allot Flat No.19A, Ground Floor, Category-II in Sector-7, Pocket-2 of Dwarka to the petitioner and an intimation in this regard was sent to him on 10th November, 2000.

3. Mr.Ajay Verma learned counsel for the respondent/DDA states that a perusal of the DDA file which is available with him shows that since the delay in making payment in terms of the first Demand-cum-Allotment Letter dated 26th December, 1991, 31st December, 1991 being more than four years could have been condoned only by the Lt. Governor. I, however, find no merit in the contention. Firstly, there is no material on record to show that such a delay could have been condoned only by the Chairman of DDA. Secondly, the allottee is not expected to know the internal delegation of powers in DDA, thirdly admittedly no administrative action was taken by DDA against the person who condoned the delay beyond his competence and fourthly the decision to condone the delay was never recalled by DDA.

4. Since Flat No. 31A, Ground Floor in Sector-7, Pocket 2 had been allotted to one Rakesh Kumar, before it came to be allotted to the petitioner, it was a mistake on the part of DDA to have issued a Demand Letter dated 22nd March, 2000 in respect of the said flat for the simple reason that even if the petitioner was to deposit money in terms of the said letter, that would have made no difference

because DDA was not in a position to hand over possession of said flat to the petitioner, the same having already been allotted to Shri Rakesh Kumar. Therefore, it would be unjust and unreasonable to penalize the petitioner for not making payment of the fifth instalment in respect of a flat which had already been allotted to another person and possession of which could not have been delivered to the petitioner.

5. In any case, since DDA acceding to the request of the petitioner, took a decision to allot another Flat bearing No. 19A, Ground Floor in Sector-7, Pocket-2 of Dwarka to him and an intimation in this regard was also sent to the petitioner on 10th November, 2000, there is no reason why DDA should not honour the commitment made to the petitioner in this regard. In my view since DDA had no justification to issue the Demand Letter dated 22nd March, 2000 as Flat No.31A, Ground Floor in Sector-7, Pocket-2 of Dwarka had already been allotted to Shri Rakesh Kumar, non-payment of the fifth and final demand in terms of the said letter cannot be a ground for DDA to not honouring the decision taken by it to allot Flat No.19A, Ground Floor, Category-2 in Sector-7, Pocket-II of Dwarka to the petitioner.

6. For the reasons stated hereinabove, DDA is directed to issue a Demand-cum-Allotment Letter to the petitioner in respect of Flat No.19A, Ground Floor, Category-II in Sector-7, Pocket-2 of Dwarka, in case the aforesaid flat is still

available for allotment to the petitioner. DDA shall be entitled to charge the price of the aforesaid flat, as prevailing on 10th November, 2000, along with interest, on the balance amount payable by the petitioner for the aforesaid flat @ 12% p.a.(simple). In case the aforesaid flat is not available for allotment to the petitioner, DDA shall allot some other Category-II SFS Flat to the petitioner by holding a mini draw within eight weeks and will charge the price, as was prevailing on 10th November, 2000, in respect of flat along with interest on the balance amount payable by the petitioner at the 12% p.a. (simple).

The Demand-cum-Allotment Letter, in terms of the order shall be issued by DDA within eight weeks, after verifying the identity and address of the petitioner. The petitioner will make the balance payment from his personal account, which should have been opened prior to 22.05.2013, and this will be confirmed by DDA before issuing possession letter to the petitioner. The writ petition stands disposed of. No order as to costs.

V.K. JAIN, J

MAY 22, 2013

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