

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

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Date of Decision: 09.05.2013

+ W.P.(C) 7163/2009

PARWATI

..... Petitioner

Through: Mr. V.P. Katiyar with Mr. Neeraj Pandey,
Advts.

versus

D.D.A. & ANR.

..... Respondent

Through: Ms. Manika Tripathi Pandey, Adv. for DDA

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

Late Shri Suraj Pal Verma, husband of the petitioner got himself registered for allotment of a residential flat with DDA under its New Pattern Registration Scheme-1979 (NPRS-79). Late Shri Suraj Pal Verma died on 12.8.1988. In a draw of lot held on 14.3.1990, a residential flat bearing number 67D, Type-II, Pocket-A-3, GRP 1&2, Ist Floor, Kondli Gharoli, New Delhi came to be allotted in the name of late Shri. Suraj Pal Verma, husband of the petitioner. A demand-cum-allotment letter bearing block date 24.4.1990/3.5.1990 was issued by DDA requiring the allottee to deposit a sum of rs.25,997.37 on or before 2.6.1990. The aforesaid amount along with interest stipulated in the demand-cum-allotment letter could be deposited latest by 1.8.1990, whereafter the allotment was to get automatically

cancelled. The amount demanded by DDA was deposited by Shri Shiv Kumar, son of the petitioner on 14.7.1990. Since the allotment stood in the name of her husband and not in her name, the petitioner applied to DDA on 18.7.1990 for mutation in her name and furnished documents such as death certificate and third copy of the challan of deposit of Rs.26,452.32. She also furnished the requisite documents for mutation vide letter dated 25.10.1990. The case of DDA in the counter affidavit is that the complete documents came to be submitted by the petitioner only by 25.4.1994, though the counter affidavit does not disclose what were the deficient documents which were submitted on 25.4.1994. The registration came to be transferred in the name of the petitioner and her minor son Pradeep vide allotment letter dated 13.12.1994. Vide subsequent letter dated 23.1.1995 and 15.7.1996, DDA asked the petitioner to deposit a sum of Rs.200/- towards fees for late intimation of death of her husband. The said amount was deposited by her on 16.7.1996. Vide letter dated 6.12.1996, the DDA asked the petitioner to appear in its office along with requisite documents and challan. Thereupon, it was decided to allot another LIG Flat to her at the cost prevailing at that time and DDA also allowed 10% interest on the amount which she had deposited. Pursuant to the said decision, an LIG Flat No.33, Sector-1, Pocket-12, Ground Floor, Rohini came to be allotted to the petitioner in a draw of lot held on 17.2.1998 and a demand-cum-allotment letter dated 7.9.1998/11.9.1998 was sent to the her, requiring her to deposit the revised cost of the flat within the time stipulated in the said letter. The petitioner appeared before the Vice-Chairman of DDA on 9.8.2000 and represented for allotment at the old cost. The petitioner thereafter made various payments as detailed in paragraphs 3 and 4 of the counter affidavit filed by DDA. Vide letter dated 2.8.2000, she was required by DDA to deposit the balance amount of Rs.24,493.94 along with interest amounting to Rs.13,678.50. The petitioner again represented to the Vice-Chairman of DDA to waive the penalty for late payment of

the confirmation amount as well as the initial amount and the monthly instalments. Her request was acceded to and a revised demand letter was issued to her requiring her to deposit the balance amount of Rs.14666/- The amount of monthly instalments was also revised to Rs.2,896.03 per month with effect from 10.8.2001. There was also an increase in the ground rent. Since the petitioner failed to deposit the balance amount as per revised demand letter, a show cause notice was issued to her, but there was no response to the said notice. The allotment was, therefore, cancelled and a cancellation letter was sent to the petitioner on 20.9.2004. The flat which had been allotted to her was allotted to the next waiting list registrant. The petitioner again represented to Vice-Chairman of DDA for possession of the flat which had been allotted to her in Rohini. Taking a sympathetic view, the allotment was restored and another flat bearing number 90, Sector-20, Pocket-14, Ground Floor, Rohini was allotted to the petitioner in a draw of lot held on 21.9.2007 and a demand-cum-allotment letter was accordingly issued to her requiring her to deposit the cost of the flat as per the schedule mentioned therein. Being aggrieved from the act of DDA in demanding the revised cost of the flat, the petitioner is before this Court by way of this writ petition. The revised cost of flat indicated in the demand-cum-allotment letter dated 29.8.2008/4.9.2008 was Rs.11,49,576/-.

2. The counter affidavit filed by DDA gives no indication as to what happened to the allotment made to the petitioner vide allotment letter dated 24.4.1990/3.5.1990. However, since the case of DDA is that later another flat bearing number 33, Sector-1, Pocket-12, Ground Floor, Rohini came to be allotted to the petitioner in a draw of lot held on 17.2.1998, the inference which could be drawn is that the allotment made vide letter dated 24.4.1990/3.5.1990 was treated as cancelled. Since there is no dispute that the amount demanded by DDA vide allotment letter dated 24.4.1990/3.5.1990 was deposited well within the time stipulated in the said letter, there was no ground for DDA to treat the said allotment

as cancelled. The learned counsel appearing for DDA submits that the requisite documents were completed by the petitioner only by 25.4.1994 though the documents also ought to have been deposited within the time stipulated in the demand-cum-allotment letter. In my view, there is no merit in the contention. If an allottee delays in submission of documents, no loss is caused to DDA on account of such delay. It is the allottee alone who suffers since handing over possession of the flat is delayed on account of non-submission of the requisite documents.

3. This issue came up for consideration before the Division Bench of this Court in *Asha N. Madnani v. D.D.A 1997 1 AD (Delhi) 385*. In that case, the allotment made to the petitioner before this Court was cancelled for non submissions of relevant documents by him within the prescribed period of 90 days.

After cancelling the first allotment made to the petitioner, DDA issued a second letter of allotment to him whereby another flat was allotted to him at a higher cost thereby requiring the petitioner to pay an additional amount of Rs.2,10,699.46/-. The petitioner filed a writ petition seeking quashing of second allotment letter and direction to DDA to allot a flat to him at the address which was fixed in the original allotment. Allowing the writ petition, this Court inter alia held as under:-

“The respondent-DDA has not lost anything by such a technical default on the part of the petitioner inasmuch as price was fully received by the DDA. Merely for the technical deficiency in supplying the documents, the petitioner cannot be made to suffer by paying an additional amount of more than Rs. 2 lacks.

(10) A distinction has to be drawn between the consequence flowing from the default in payment by the

allottee in accordance with the terms and conditions of allotment and a default merely in furnishing proof of payments and filing of the documents within the prescribed period. The letter of allotment provides for automatic cancellation of the allotment in both the cases. In the case of default in payment of installments automatic cancellation of allotment has to be sustained because of the consequences flowing therefrom.

10.1.Each allotment is part of a composite scheme. By default in payment the working of the scheme is disturbed and the DDA has to rearrange its financial affairs. An allottee defaulting in payment must give way to an aspirant waiting for an allotment and willing to make payment.

10.2.In case of a mere default in filing of the documents (having no material bearing or eligibility or qualification for allotment) and proof of payments within the prescribed period the considerations are different. Even the respondent-DDA is aware of the payment having been made. It is merely a question of convenience that allottee is required to furnish proof of payment so that collective information as to payments is available at one place and the Dda is not required to scan its records time and again in respect of each allottee. Having made the payments - all and in time - it is primarily the allottee who suffers by his failure to furnish the documents and proof of payments. Execution of lease and delivery of possession to the allottee would be delayed inspite of his having parted with money and the flat lying ready for delivery of possession. Situation may be different if third party interest or any other similar factor has intervened which would render it inequitable or impossible to accommodate the allottee on his original allotment.

10.3. Therefore, the term as to payment as per schedule must be held to be mandatory while the term as to submission of all the relevant documents alongwith proof of payment within the prescribed period should be held to be-directory.

(11) For the foregoing reasons, the petition is allowed. The additional demand raised by the respondent is quashed. The respondent is directed to allot the flat described in the letter of allotment dated 22.9.92 (Annexure-K) at the same disposal cost at which she was previously allotted a similar flat vide letter of allotment dated 23/27.4.90 (Annexure-C).”

4. Since the act of DDA in treating the allotment made vide allotment letter 24.4.1990/3.5.1990 was wholly illegal and uncalled for, it had no justification in law to charge higher price from the petitioner while allotting another flat to her unless there was a difference in the cost of the flat in Kondli Gharoli and the cost of the flat in Rohini, but, DDA cannot charge the cost of the flat prevalent on the date on which the subsequent allotment came to be made to the petitioner.

5. Vide demand-cum-allotment letter 24.4.1990/3.5.1990, the allottee was also required to deposit the monthly installment of Rs.1,250.12 per month commencing from 10.7.1990. Probably this amount has not been deposited though the petitioner has deposited much more than the amount she was required to deposit in terms of demand-cum-allotment letter dated 24.4.1990/3.5.1990. The learned counsel for the petitioner states that the total amount deposited by the petitioner with DDA till date is Rs.1,76,272/-. The learned counsel for the respondent-DDA states that she is not sure whether this amount is Rs.1,76,272/- or 1,56,272/-. However, the demand-cum-allotment letter dated 24.4.1990/3.5.1990 did not provide for automatic cancellation of the allotment in case of non-payment of the monthly installments

though it did provide for automatic cancellation in the event of non-payment of the initial amount demanded by DDA.

6. For the reasons stated hereinabove, the impugned demand-cum-allotment letter is hereby quashed and DDA is directed to allot one LIG Flat to the petitioner by holding a mini draw for this purpose within a period of eight weeks from today. The petitioner will be required to pay such price of the flat which would be allotted to her in the mini draw, as was chargeable on 3.5.1990, which was the date of issue of initial allotment letter. The petitioner shall also be required to deposit the arrears of monthly installment, if any, in terms of the letter dated 24.4.1990/3.5.1990 along with interest on the arrears at the rate prescribed by DDA for delayed payment of monthly installment. DDA shall calculate the amount, if any, payable by the petitioner towards arrears of monthly installments and interest on such arrears and demand the same from the petitioner, along with allotment letter which it is required to issue in terms of this order. The possession of the flat shall be handed over to the petitioner within four weeks of her completing the necessary formalities in this regard. It is made clear that possession of the flat shall be handed over personally to the petitioner, after DDA verifies her identity.

The petition stands disposed of accordingly.

V.K. JAIN, J

MAY 09, 2013/rd