

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

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Date of Decision: 22.05.2013

+ W.P.(C) 1745/2011

INDIAN REALTORS PRIVATE LIMITED

..... Petitioner

Through: Mr Sandeep Sethi, Sr. Adv with Mr Ajay
Kumar, Adv.

versus

DDA

..... Respondent

Through: Mr Ajay Verma, Adv for DDA

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

In an auction held on 20.10.2010 for sale of hotel plot No. 33 in Community Centre, Preet Vihar, Delhi, the petitioner submitted a bid of Rs 40,53,00,000/- which was accepted by the respondent-DDA. The respondent-DDA issued a letter, requiring it to deposit Rs 8,04,00,000/- being 20% of the bid amount. The said amount was deposited by the petitioner within the time stipulated in this regard. DDA issued allotment letter to the petitioner requiring it to deposit the balance amount of Rs 30,39,00,045/- within 90 days from the date of issue of the said letter. The aforesaid amount was also deposited by the petitioner on 11.05.2010. In the meanwhile, the petitioner having noticed that there was encroachment on the plot

in question, wrote a letter to DDA on 28.04.2010, intimating that during visit of the site, a temporary Police Post was found constructed thereon, besides some other encroachment, railings, etc. DDA was accordingly requested to shift the Police Post and remove other encroachments from the site, so as to enable the petitioner to take possession in time. This was followed by yet another letter dated 12.05.2010 where a similar request was made to DDA with a caution that any delay in handing over possession due to the said encroachment shall be on their account. One more letter dated 17.05.2010 was written by the petitioner to DDA again, requesting it to remove the aforesaid encroachment. The stamp duty required to be affixed on the Conveyance Deed to be executed in favour of the petitioner was paid by the petitioner on 10.06.2010 and the letter dated 11.06.2010 was sent to DDA, requesting it to handover possession of plot in question after removing the Police Post and other encroachments from the said plot.

2. DDA issued letter dated 02.07.2010, informing the petitioner that it was intended to handover the possession of the aforesaid plot to it on or before 11.07.2010 and accordingly it should be present at the plot site on the appointed date at 11.00 AM. However, the possession of the aforesaid plot could not be given to the petitioner since the encroachment had not been removed.

3. Being aggrieved from the failure of DDA to handover possession of the aforesaid plot to it, the petitioner filed this writ petition, seeking the following reliefs:

“(a) Issue writ, order or direction in the nature of mandamus, thereby directing the respondent to handover the possession of the allotted hotel plot bearing No. 33, admeasuring 2000 sq. mtr. situated Community Centre at Preet Vihar, Delhi, after removing all encroachments therefrom;

(b) Issue writ, order or directions in the nature of mandamus, thereby, directing the respondent to pay the interest @ 15% p.a. on the deposited amount, from the date of deposit, till the day handing over actual physical possession. Besides this the respondent may also be directed to pay damages/business losses suffered by the petitioner on account of delay in handing over possession of allotted hotel plot @ Rs 50 lacs per month.

(c) Issue writ, order or direction in the nature of certiorari for quashing the performance security clause bearing No. 3.14 from the tender document, being irrational and out of context.”

4. When this writ petition was taken up for hearing on 16.03.2011, the learned counsel for the petitioner stated that the petitioner was ready to take possession of the plot after removal of encroachment. Thereupon, DDA counsel sought time for this purpose. Ultimately, possession of the aforesaid plot came to be handed over to the petitioner only on 22.10.2012. Therefore, as far as the first relief claimed in the writ petition is concerned, it has become infructuous on account of possession of the plot having already been handed over to the petitioner.

5. Clause 3.14 of the tender document, to the extent it is relevant, reads as under:-

“3.14 Performance Security

The construction of the hotel will have to be completed and made functional within 36 months from the Date of Allotment-cum-Demand letter. The purchaser shall be required to deposit the performance security to the tune of 5% of the Bid Amount before the time of execution of the Conveyance Deed, which shall be in the nature of a bank guarantee in a approved form valid for 4 years from the date of allotment-cum-demand letter.”

The learned counsel for the petitioner submits that the condition for furnishing Performance Security was stipulated by DDA in order to opening or part opening of the hotel before Commonwealth Games which were to start in October, 2010. He further submits that no such term is found in other tenders invited by DDA for sale of such plots. In my view, there is no merit in the contention of the learned counsel for the petitioner as far as furnishing of the Performance Security is concerned. The petitioner having participated in the tender process on the basis of the terms and conditions included in the tender documents, including the requirement of furnishing Performance Security, it is not open to them to now challenge the terms requiring furnishing of Performance Security on the ground that the term was unreasonable or unnecessary. Once a person participates in the tendering process, it is not open to him to challenge the very same terms on which he participated in the process. Any such challenge must necessarily come before

participating in the process. Moreover, it cannot be accepted that the aforesaid condition was stipulated only to ensure opening or part opening of the hotel before the start of Commonwealth Games in October, 2010 since the tendering itself took place in January, 2010 and the tenderer had time of 3 years from the date of allotment for completion of the project. Therefore, in my view, the petitioner is required to furnish Performance Security in terms of clause 3.14 of the tender documents. It is true that there has been delay in handing over possession of the plot to the petitioner and the delay cannot be attributed to any lapse on the part of the petitioner, but, DDA vide letter dated 14.04.2013 has already informed the petitioner that the time for complete construction of the hotel has been extended so as to allow a period of three months from the date of delivery of possession on 22.12.2012. In view of the extension of time for completion of the project, the petitioner cannot have any delay in handing over the possession to it.

6. As far as delay in handing over is concerned, it cannot be disputed that it is DDA which was to ensure that it gives vacant possession of the plot sold by it to the petitioner within a reasonable time after the petitioner had deposited the balance amount and paid the requisite stamp duty. In fact, DDA itself sent a letter dated 02.07.2010 to the petitioner requiring it to take possession of the plot on 12.07.2010. Therefore, DDA must compensate the petitioner for any delay beyond 12.07.2010 in handing over possession of the plot to the petitioner. The learned

counsel for the respondent relies upon clause 3.2.1 of the tender document which provided that the plot was being tendered on 'as is where is basis' and it was presumed that the intending purchaser had inspected the site and familiarized himself with the prevalent conditions in all respects. In my view, this term in the tender document cannot be interpreted to mean that DDA was not required to handover possession of the plot free from encroachment to the purchaser and if the encroachment was not removed or there was any delay in removing the encroachment, it would not be liable to compensate the tenderer. This clause, in my view, would mean that the tenderer was precluded from taking any objection with respect to the location or situation of the plot which he was seeking to purchase. For instance, if a plot is of irregular size, or a high tension wire passes over it, the land is not levelled or there is a sewer line passing underneath the plot, no claim founded on such a drawback in the plot can be claimed by the tenderer. But, since DDA was selling a vacant plot and not an encroached plot, it was duty bound to handover possession free from any encroachment to the purchaser. It defies logic to even suggest that DDA was not required to remove the encroachment existing on the plot before giving possession to the purchaser. If that was the intention, DDA ought to have notified to the tenderers that there was encroachment on the plot, which it would not be responsible to remove, instead of taking shelter behind a standard term, which is found in all such tenders/auctions

held by DDA. That having not been done, it ought to have removed the encroachment either before inviting tenders or immediately after issuing demand letter to the successful tenderer.

7. For the reasons stated hereinabove, I am of the view that the respondent-DDA must compensate to petitioner for the delay in handing over the possession of the plot between 12.07.2010 to 22.10.2012. Taking a contrary view will be highly unjust and unfair to the successful tenderer, who even after paying price of the plot is not able to get its possession. This is more so, when he is required under the terms of the tender, to complete the construction in a time bound manner. In taking this view, I find support the decision of this Court in *W.P(C) No.5917/2007 Prefect Learning P. Ltd vs. DDA*, decided by this Court on 08.01.2008. In the aforesaid case, it was found that plot auctioned by DDA was being used by Delhi Jal Board and was also being used as a gas godown and as a taxi stand. The said plot was also having some jhuggi-jhopri cluster on it. When the petitioner sought removal of the encroachment, DDA gave two options to him; the first option was to seek cancellation and take refund of the earnest money with interest as per policy of DDA and the second option was to take allotment of another plot of the same dimensions. During the course of hearing, the petitioner accepted another plot offered to him by DDA, but sought interest on the amount which he had deposited with DDA. This Court was of the view that the petitioner should be paid interest

on the amount which he had deposited with DDA, so as to balance the equity and accordingly directed the petitioner to make balance payment in respect of the alternative plot which he had accepted during pendency of the writ petition, and granted interest to him at the rate of 8% per annum.

8. In these circumstances, the respondent-DDA is directed to pay simple interest to the petitioner at the rate of 8% per annum on the entire amount which it has deposited with DDA for the period from 12.12.2010 to 22.10.2012. The interest in terms of this order shall be paid by DDA within 08 weeks from today. The Performance Security shall be furnished by the petitioner within one week from today.

Writ petition stands disposed of. No order as to costs.

V.K. JAIN, J

MAY 22, 2013

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