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

Reserved on: 14.05.2013

Decided on : 21.05.2013

+ **LPA 2007/2005**

DDA

..... Appellant

Through Mr.Ajay Verma, Advocate

Versus

ALL INDIA NAVAL DRAUGHTSMAN AND Respondent

Through Mr.A.D.N.Rao and Mr.A.Venkatesh,
Advocates

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. By the present appeal, the appellant seeks to impugn the order dated 25.04.2005 passed by learned Single Judge.
2. The contention of the appellant is that DDA had floated an Expandable Housing Scheme with facility of scope for expansion. The response to the scheme from the general public was not very enthusiastic. The DDA had about 7000 expandable houses available. Hence, vide resolution dated 27.08.1996, DDA floated a new Expandable Housing Scheme where 50% of the flats were proposed to be offered to the general public while 50% were proposed to be offered to Public Sector Undertakings/Government Organizations. It is stated that as an incentive to the general public a discount was announced for the Expandable Housing Scheme to those who make payment on cash down basis. It is urged that it

was clearly stipulated in the resolution that the incentives/discount will not be provided to Public Sector Undertakings/Govt. organizations. It is further stated that the brochure which was issued, clearly indicated that only 50% of the available houses were available for individuals. The allottees who were making 100% payment before taking possession were to be given discounts of 15% per unit located in Narela, Rohini, Kondli Gharoli and 5% per unit located in Dwarka. These discounts according to the appellant/DDA were not available to the Public Sector Undertakings/Govt. organizations.

3. It is further submitted that Naval Headquarter, for providing houses to Naval Draftsmen and certain civilian employees, had approached the DDA. It is stated that as DDA could not offer flats to individual other than those who apply in the scheme for the public and hence the petitioner/respondent association was formed and got registered.

4. The association requested DDA through Naval Headquarter vide letter dated 29.04.1999 to register 104 flats. It was requested that the flats be allotted to the employees of Navy. In response, on 29.07.1999, the appellant DDA informed the respondent association that the houses could not to be allotted in the name of employees but in the name of the respondent association. Hence accordingly, 104 flats were allotted in favour of the respondent. In December 1999, the DDA issued the Demand-cum-Allotment letters to the association. The respondent society deposited the confirmation amount within a month and full payment of 77 flats was made. The DDA completed execution of the Conveyance Deed and handed over possession of 35 flats. For balance 25, though duly stamped conveyance deed was handed over the Conveyance Deed was not executed, however, possession was delivered.

5. Subsequently, it transpires that while this process was on, DDA demanded an additional sum vide letter dated 04.06.2001, 06.06.2001 and 13.06.2001 respectively for sums of Rs.22,025/-, Rs. 34,140/- for Type A flats and Rs. 48,820/- for Type B flats under the scheme.

6. The respondent association protested in as much as these demands were an extraordinary burden on the allottees and it was stated that the demands were contrary to the scheme. Various representations were made to various functionaries but no response was received. Under these circumstances, the writ in question was filed by the respondent seeking writ of certiorari for quashing of demand letters dated 4th/6th/13th June, 2001. By the impugned order, the learned Single Judge allowed the writ petition.

7. Learned counsel appearing for the appellant DDA has argued that under the said scheme, DDA had 7000 flats available, of which 50% were offered to the general public and 50% to the various Public Sector Undertakings. He relies on the resolution of DDA dated 27.08.1996 which deals with grant of incentives to the applicants for Expandable Housing Scheme. The said resolution stipulates that 50% of the 7000 expandable houses would be offered to various Public Sector Undertakings/Govt. organizations and the balance 50% to the general public by announcing Expandable Housing Scheme. He argued that a perusal of Clause 6 of the said resolution clearly shows that discount of 15%/5% was not available for the Public Sector Undertakings/Govt. organizations. He also relies on the brochure which is placed on record for Expandable Housing Scheme of 1996. He argued that the clause at page 4 of the Brochure states that the allottees, making 100% payment before taking possession, will be given discount of 5% /15% depending upon locality of the houses. He submits that

this rebate was available only to the general public as the scheme in question which is on record clearly relates to the members of the general public and it does not relate to the Public Sector Undertakings Government organization. He further argued that when the demand-cum-allotment letter was sent, an Officer of DDA by bonafide mistake wrongly calculated the amount and had given discount to the respective allottees whereas no discount was to be given. Hence he claims that DDA is entitled to recover the discount from the respondent, as a wrong calculation, was forwarded to the respondent by mistake. He further submits that the allottees who are members of the respondent association did not apply under the Public Scheme and did not have to go through the process of being selected under draw of lots, with the general public.

8. It is further argued that by mistake the conversion charges, which had to be paid by the respondent, had also not been stipulated in the demand-cum-allotment letters. Hence he submits that DDA is entitled to recover the said amounts.

9. It is argued that the fresh demands now sent to the respondent comprises of the discount of 5%/15% wrongly given to the allottees and the conversion charges also which were also wrongly not charged.

10. The learned counsel for DDA also relies on the affidavit of Vice Chairman, DDA filed before the learned Single Judge, dated 30.09.2003, where the total amount outstanding on account of rebate which was wrongly given is stated to be Rs. 29,97,110/- while the unrecovered amount on account of conversion charges is stated to be Rs. 10,67,250/- being a total of Rs. 40,64,360/-. It is argued that the impugned order erroneously allowed the writ petition and the appellant is entitled to recover the said amount.

11. The learned counsel appearing for the respondent on the other hand contends that the scheme which was floated was fully applicable to the different allottees of the respondent. Admittedly, though the demand-cum-allotment letters were issued in the name of respondent association, the appellant/DDA has executed and registered the conveyance deed in favour of the individual allottees/members of the respondent association. The ownership of these flats vests with individual allottees and not with the respondent association. Hence, it is argued that the allotment having been made in favour of the individuals, the Expandable Housing Scheme 1996 brochure, which stipulates the discounts, would be clearly applicable to the respondent. It is further argued that there is nothing on record or in any document to show the basis for charging the conversion charges. It is claimed that these charges are wholly arbitrary and illegal. The counsel hence submits that the present appeal is liable to be dismissed.

12. The learned Single Judge allowed the writ petition holding that since the Association was not a government organisation or PSU, the DDA cannot take a stand that its formation was on account of its insistence. It is further held that the allotment on cash down basis leading to acceptance of 100% amount, was from individuals, hence DDA is not entitled to recover what it claims its dues as the demand is arbitrary.

13. A perusal of the resolution passed by the respondent which is the basis for the allotment of the noted flats, shows that the facility of discount is only available to members of the general public. Relevant portion of the said Resolution reads as follows:-

“4. While this facility is being given to all applicants, it is felt that we may simultaneously approve measures by which

allottees are encouraged to payment ____ price of the flat before taking possession. When the purchase facility exists, ordinarily no one comes forward accept allotment on cash down basis. To provide an incentive to the allottees to pay cash-down by raising loans or otherwise arrangements to pay full price of the flat before possession, is proposed that following discount may be provided in the scheme.

Name of the locality	Discount to be provided
(i) Dwarka sub-City	5% on the disposal
(ii) Rohini, Nerela and Kondli Gharoli	15% on the disposal

To balance the reduced cash in-flow because proposed discount it will be necessary to change premium in area where the real value in the market of DDA flats more than what DDA is changing as per its costing from demand letters. It would be in the fitness of things to premium of 20% over the disposal cost worked out on the South Delhi SFS.

6. This discount, however, will not be provided to Public Sector Undertaking/Government Organisations ____ flats.”

14. Similarly, reference may also be made to the brochure that was issued for the Expendable Housing Scheme 1996 which as per DDA was applicable to the general public. The brochure also stipulates the discount offered to the allottees. The relevant portion reads as follows:-

“Allottees may avail loan or pay from their own resources 100% cost of the house before taking possession. An allottee making 100% payment before taking possession will be given discount as under:

S.No.	Locality	Discount
1.	Narela	15% less on disposal pri
2.	Rohini	-do-

- | | | |
|----|----------------|----------------------------|
| 3. | Kondli Gharoli | -do- |
| 4. | Dwarja | 5% less on disposal price” |

15. Admitted fact is that flats were allotted to the respondent-Association on the request of Naval Headquarter. Thereafter on the request of the Association, the sale deeds are being or have been executed in favour of the individual allottees.

16. The issue that arises is as to on what basis, the allotment was made by the appellant to the respondent and price was charged from the respondent. The brochure for the allotment issued for the general public provides a tentative disposal cost but as per DDA, this brochure does not apply to the respondent. In the resolution of DDA dated 07.08.1996, there is nothing to show the price of the flats allotted in favour of the respondent. The resolution is not a public document, though it may have been the basis on which appellant offered flats to PSU/Government Organisations. Hence the first document received by the respondent which contains the terms and conditions of allotment including the price was the Demand-cum-Allotment letters dated 09.12.1999 to 15.12.1999 which were issued to the respondent and one of the clause reads as follows:-

“I am directed to inform you that you have been declared successful for allotment of a house as per details given below. The allotment is subject to terms and conditions given herein those given in the brochure of EHS-96 as also the ‘DDA (Management and Disposal of Housing Estates) Regulations, 1968.’”

17. In view of the said stipulations in the Demand-cum-Allotment letter it

is but obvious that the contention of DDA that the terms and conditions of the brochure relating to Expendable Housing Scheme, 1996 by which 3500 houses were on offer do not apply to the respondent or to the allottees is a misconceived and erroneous contention. The Demand-cum-Allotment letter clearly stipulates that the allotment is subject to terms and conditions given in the brochure for EHS-96 i.e. brochure for Expendable Housing Scheme, 1996. Hence, in view of the said stipulations in the Demand-cum-Allotment letter, the terms and conditions in the brochure would clearly apply to the respondent/allottees also. Page 3 of the brochure which provides for discount of 15%/5% nowhere stipulates that the discount is confined only to the allottees other than PSUs/Government Organisations. The said clause of the brochure which is reproduced above provides for discount subject to the only condition that the allottee must make 100% payment before taking possession. In view of the terms and conditions of the Demand-cum-Allotment letter and the brochure for Expendable Housing Scheme, 1996, it would clearly follow that the respondent/allottees would be eligible for the discount stipulated in the Brochure. The contention of DDA to the contrary is erroneous.

18. However, for a moment even if we ignore the Brochure for Expendable Housing Scheme, 1996, even otherwise in our opinion, the appellant-DDA is not entitled to recover the sum which is sought to be recovered on account alleged erroneous application of the discount scheme to the allottees. In terms of the Demand-cum-Allotment letter, the appellant demanded the price and also gave a date of confirmation of acceptance by payment of amount demanded. The letter of allotment also states as follows:

“Automatic Cancellation of Allotment and Registration if conformation of acceptance with deposit received within 30 days 15/01/2000”

19. Hence the offer of the appellant got confirmed and a binding contract came into being when the respondent accepted the offer and made the payments in terms of the Demand-cum-Allotment letter. The acceptance was unqualified. As far as the respondent or the allottees are concerned, this Demand-cum-Allotment letter was the first document which stipulates the price payable by respondent/allottees. This price as demanded by DDA has been paid by the said respondent/allottees. The payments have been received and in most cases, Conveyance Deed has been registered. The appellant cannot now back track and seek to recover enhanced price based on some internal document/resolution which was never made public. Hence, whether the discount was payable to PSUs or government organisations or not is an issue that does not concern the respondent or the allottees in as much as there is no communication to that effect from DDA to the respondent or the allottees prior to the building contract between the parties.

20. Hence we are in agreement with the view of the learned Single Judge that the fresh demand now being raised by DDA allegedly on the ground that the discount had erroneously been given is wholly arbitrary or misconceived. DDA cannot recover the said amount from the allottees. Even in equity, we cannot permit DDA to back out from its commitment as contained in the letter of allotment and recover its dues from the employees of the Navy who may have retired long back.

21. The next demand of DDA pertains to non-payment of conversion charges by the respondent. It is claimed that as the flats are being given on the freehold basis, the respondents/allottees are liable to pay conversion charges from leasehold to freehold basis. It is contended by DDA that the demand is payable when a flat is allotted on a freehold basis. We are unable to see the basis for this demand of conversion charges raised by DDA. There is nothing on record to show as to how and on what basis, DDA is demanding the said claim. The same is nothing but grossly arbitrary. DDA cannot claim the same.

22. In view of the above we see no reason to interfere with the order of the learned Single Judge.

23. The present appeal is dismissed.

JAYANT NATH, J.

CHIEF JUSTICE

MAY 21, 2013

Raj/rb/nt