

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

Pronounced on: 17th December, 2013

+ **W.P.(C) 7602/2010**

V.P. SUNITA

..... Petitioner

Through: Ms. Richa Kapoor, Adv. with
Ms. Karuna Chhatwal, Adv.

versus

DDA

..... Respondent

Through: Ms. Manika Tripathy Pandey, Adv.

CORAM:

HON'BLE MR. JUSTICE G.P. MITTAL

J U D G M E N T

G.P. MITTAL, J.

1. By virtue of this writ petition under Article 226 of the Constitution of India, the Petitioner seeks restoration of allotment and handing over the possession of the MIG Flat No.239, (Ground Floor), Sector 14, Pocket B, Phase-2, Dwarka, New Delhi as the entire payment of the flat has already been made to the DDA.
2. On 29.12.1989, the Petitioner applied for allotment of an MIG flat under the Ambedkar Awas Yojna being a member of Scheduled Caste category. She paid a sum of `12,200/- as registration and processing fee and was allotted Registration No.9335 and Priority No.5881. On 31.12.2002, the Petitioner was declared successful in the draw of lots and was allotted the flat mentioned earlier. As per the demand-cum-allotment letter (DAL) dated 24-31.03.2003 mailed at the Petitioner's local address, she was required to make payment of `5,50,279/- upto 30.05.2003. The Petitioner

was further given the option to pay the amount with interest, *i.e.* `5,70,632/- by 28.08.2003. Since the Petitioner had applied for allotment under the hire purchase scheme, the balance cost of the flat was payable by the Petitioner in 120 monthly instalments of `6810/- per month commencing from 10.07.2003.

3. According to the Petitioner, she was away to America on account of illness of her father for a few months. On her return from America, she got the letter after a delay of three months. On 04.12.2003, the Petitioner made a payment of `3 lacs. The Petitioner further made a payment of `2 lacs on 05.02.2004 after a delay of eight months. It is claimed that a letter dated 26.07.2004 was written by the DDA asking for verification of the Petitioner's case. By letters dated 18.05.2004 and 26.07.2004, the Petitioner was requested to appear in person along with relevant record for verification of the documents. Although the DDA claims that the Petitioner failed to appear, Petitioner avers to the contrary. The Petitioner thereafter made further payment of `70,000/- with a delay of 418 days.
4. The Petitioner then applied for conversion of the flat from hire purchase scheme to cash down basis. A sum of `6,50,000/- as demanded by the DDA was duly paid. By a letter dated 15.09.2005, the DDA asked the Petitioner to make the balance payment of `1373/- which was also made by the Petitioner on 19.10.2005. Although the Petitioner's case was being processed for restoration of the allotment, however, by a letter dated 11.07.2006 (Annexure R-2), the request for restoration of the allotment was cancelled in spite of the fact that the Petitioner had paid the restoration charges as demanded by the DDA. The Petitioner then made

a representation to the Vice Chairman and to the Lt. Governor of Delhi in the capacity of the Chairman, DDA. However, the same were also rejected, hence the writ petition.

5. The defence raised by the DDA is plain and simple. It is stated that since the Petitioner failed to make the payment in terms of the demand-cum-allotment letter, the allotment stood cancelled automatically on failure to make the payment. It is stated that as per the policy of the DDA dated 31.01.1999, 01.06.2000 and 30.06.2005, restoration of allotment is permissible if the delay in payment is less than three years. It is stated that since the Petitioner's case is not covered under the policy, the delay was not condoned.
6. It is the admitted case of the parties that as per the terms of the allotment letter, payment of `5,70,632/- (inclusive of interest for delayed payment) was required to be made by the Petitioner by 28.08.2003. It is also borne out that the payment of `5,70,000/- was made by 19.10.2004 in three parts starting with payment of `3 lacs on 04.12.2003. It is also borne out from the record that the Petitioner's case for conversion from hire purchase to cash down payment was processed (though not formally allowed) and the Petitioner was informed to make the balance payment of ` 6,50,000/- which was duly made. The Petitioner was further informed to make the payment of `1373/- which was also made as demanded.
7. The defence of the DDA is that an allottee cannot be permitted to make the payment as per his/her whims and fancies. Reliance is also placed on a judgment passed by a learned Single Judge of this Court in *Pitamber Dutt v. DDA & Anr., W.P.(C) No.3184/2012*, decided on 14.08.2012.

8. I am not inclined to agree with the submissions made by the DDA. *Pitamber Dutt* is not attracted to the facts of the instant case. In the instant case, even if all the three payments made by the Petitioner are considered to be delayed and the last date is considered as 19.10.2004, there was a delay of only one year and two months in making the payment. The payment of instalments was not made as the Petitioner had made a request for conversion of the allotment from hire purchase to cash down payment, which admittedly was being processed by the DDA and the amount as demanded including interest was deposited by the Petitioner. The Petitioner has drawn attention of the Court to a number of cases where delay of even upto three years has been condoned by the DDA. The DDA in the counter affidavit has not given any defence as to why the case of the Petitioner could not be similarly considered. I would extract para 11 and ground G of the writ petition hereunder:-

“11. During all these while, when the Petitioner’s representatives were visiting the office of the Respondent’s office, they were being informed that the case of the Petitioner was being processed for regularization of the delay and that the Accounts Wing of the Respondent has confirmed the receipts of the above payments, in all totalling `12,21,375/-. The details of payments are given herein below:-

<i>S.No.</i>	<i>Challan No.</i>	<i>Date</i>	<i>Amount</i>
<i>1.</i>	<i>62212</i>	<i>4.12.03</i>	<i>3,00,000</i>
<i>2.</i>	<i>193498</i>	<i>5.2.04</i>	<i>2,00,000</i>
<i>3.</i>	<i>46256</i>	<i>19.10.04</i>	<i>70,000</i>
<i>4.</i>	<i>32180</i>	<i>12.5.05</i>	<i>1,87,500</i>
<i>5.</i>	<i>32181</i>	<i>12.5.05</i>	<i>1,93,500</i>
<i>6.</i>	<i>32178</i>	<i>12.5.05</i>	<i>81,000</i>
<i>7.</i>	<i>32179</i>	<i>12.5.05</i>	<i>1,88,000</i>

8.	96650	19.10.05	1,375
		Total	12,21,375

G. Because in fact, as a matter of routine, senior officials of the Respondent, condone the delay in genuine cases and the Petitioner's case is one such, where the delay in payment ought to be condoned by the Respondent. There have been a large number of cases, where the delay of more than even four years has been condoned by the Respondent. To cite few examples, the Petitioner is giving below details of cases, where the delay of few years in making payment has been condoned and restoration has been allowed on old cost + interest/restoration charges.

Sl. No.	Date of Draw/ allotment	Name of the allottee	Flat Particulars	Delay in payment – Number of years/ months	Date of Execution of Conveyance Deed
1.	31.5.02	Bimla Devi w/o Late Sh. M.R. Gover	251, Sector 17, Pocket E, Phase 2, Dwarka	3 yrs.	31.5.05
2.	22.12.01	Asha Bhushan / Asha Gautam	187, Sector 13, Pocket B, Dwarka, Phase 2	2 yrs. 8 months	14.6.04
3.	22.12.01	Suresh Humdraj Prithyani	209, Sector 13, Pocket B, Phase 2, Dwarka	2 yrs. 2 months	--
4.	30.5.03	Surinder Bhatia	271, Sector 17, Pocket E, Phase 2, Dwarka	2 yrs. 10 months	28.3.05

9. It cannot be said that the Petitioner was making the payment on her own whims and fancy. When the Petitioner made a request to convert her allotment from hire purchase to cash down, the DDA asked her to make

the lump sum payment of `6,50,000/-. The DDA itself admits that it is permissible to condone the delay upto three years. In the instant case, even if the last payment of `70,000/- is considered to have been made on 19.10.2004, there was a delay of just one year and two months in making the payment of `5,70,000/- from the last date 28.08.2003 as mentioned in DAL. In the instant case, the ground for delay given by the Petitioner is that she was out of country to attend to her ailing father.

10. The policy laid down by letter dated 03.06.2005 placed on record by the Petitioner reveals that the Vice Chairman of the DDA was competent to condone the delay in making the payment upto three years in deserving cases. The relevant portion of the Resolution dated 03.06.2005 is extracted hereunder:-

*“DELHI DEVELOPMENT AUTHORITY
HOUSING DEPTT.*

Item No.29/2005

Sub: Policy for Restoration of cancelled DDA flats.

Ref. File No.F2(10)2001/N&C/

The Authority vide its resolution No.46/2001 (Appendix-A) has 65 to 66) resolved as under:

- (i) These decisions shall apply only to the future cases of restoration where DDA is at fault.*
- (ii) Commissioner (H) shall be competent to approve restoration for delay in payment upto one year.*
- (iii) No restoration shall be normally allowed where delays are beyond one year. However, the Vice-Chairman, DDA shall be competent to approve restorations for delays upto 3 years, in deserving cases.*
- (iv) Restoration beyond three years can be permitted only in extremely deserving cases by the Vice-Chairman with the prior approval of Chairman.”*

11. Thus, it would be seen that the Vice Chairman was competent to condone the delay even beyond three years with the approval of the Chairman in deserving cases. It is not the case of the DDA that the Petitioner's case was not found to be deserving. Thus, the act of the DDA in declining to condone the delay in making the payment is arbitrary and cannot be sustained.
12. A learned Single Judge of this Court in *Mohd. Sultan v. DDA, W.P.(C) No.13290/2009*, decided on 11.01.2011 considered the condonation of delay as per the policy in existence in the year 2003 and observed that the Petitioner was denied condonation of delay in making the payment without any genuine reason and held that the discretion should have been exercised in his favour. Paras 10 to 12 of this order are extracted hereunder:-

“10. In terms of the policy of the DDA, in case of a delay beyond 180 days and upto 270 days (inclusive of the 180 days), the Principal Commissioner would have the powers to condone the delay. Where the delay was up to 360 days (inclusive of the 270 days) the case can be regularized by the Vice Chairman. This regularization would be done on payment of restoration charges and penal interest @ 15% per annum. If the delay is beyond one year, the power to condone the delay lies with the Lieutenant Governor subject to the case being an “extremely deserving” one.

11. In the present case, the DDA was bound to consider whether the grounds adduced by the Petitioner for not being able to make the payment of instalments in time were genuine and whether the discretion could be exercised in his favour. Apart from stating that the Petitioner should be put to strict proof of the averments regarding his financial difficulties on account of the prolonged illness of his family members, the DDA is not in a position to assert that such claim by the Petitioner is false. The only factor that appears to have weighed

with the DDA is that despite granting an extension of 180 days for making payment, the Petitioner did not pay the second instalment within the extended time. Therefore, the allotment was cancelled. This Court finds that the DDA really did not consider whether the delay in the present case should be condoned in terms of its policy. It is not as if the DDA has never condoned a delay of over 500 days in making payment of instalments. Some of the instances are reflected in the notings on files, copies of which have been placed as Annexure P-18 of the paper book. Certain other instances have been noticed by the Division Bench of this Court in its order dated 11th August 2008 in Raj Kumar Sharma v. Delhi Development Authority. In para 9 of the said order, it was observed as under:

“9. We have given our anxious consideration to the arguments made at the Bar and we have also gone through the records including various policies of the DDA regarding restoration and condonation of the delay. In the present case, the Appellant had waited for the allotment for over 24 years and when he was allotted the demised flat in the year 2003, he was not in a financial position to make payment due to illness of his mother. The Appellant has cited in paragraph 17 of the writ petition cases of allottees Bimla Devi, Asha Bhushan, Suresh Humdraj Prithyani and Surinder Bhatia etc. in which cases DDA has condoned delay of over four years whereas in the case of the Appellant the delay in payment was only for a year. The Appellant has also furnished three specific examples where in the case of Satya Pal and Rita Pura delay of five years and six years respectively was regularized after approval of Lt. Governor. In the third case of one Manju Jain, the DDA had restored allotment after about 17 long years. Our attention was also drawn to the judgment of this Court in Pran Nath Thukral v. Delhi Development Authority [Writ Petition (Civil) No. 19783 of 2005] decided on 5th October 2005, wherein it is observed as under:

“Would it be just and fair to do so considering the fact that DDA has monopoly status over land in Delhi. These registrants have stood as honest citizens and have awaited a plot in an authorized colony. Many of their counterparts have chosen the softer route.

Those who have abided by law must be entitled to a compassionate consideration.

It is expected that the Vice Chairman and the Chairman, DDA would have a relook on the Rohini Residential Scheme and in particular in relation to the time-frame within which allottees have to make the necessary payments. While reconsidering the matter, it should be kept in mind that the executive has the power to condone the delay on charging reasonable interest.”

12. This Court is of the considered view that the Petitioner’s case also ought to have been considered by the DDA in light of its policy. Two members of his family expired during the period in question after prolonged illness for which considerable expenditure had been incurred. It cannot be said that this was not a genuine reason. Discretion should be exercised in his favour. In view of the hardship explained by the Petitioner, and the delay in making the payments ought to have been condoned.”

13. The Petitioner has given four specific instances in ground ‘G’ of the writ petition which have been extracted earlier in Para 8 of this judgment where the delay of more than two years and in one case of three years was condoned. The DDA is completely silent about the same in the counter affidavit which would show that the delay in those cases was condoned. Since this Court has already observed above that there was a delay of just one year and two months in making the part payment of the initial amount of `5,70,632/- (inclusive of interest), the Petitioner was entitled to favourable consideration in view of the policy formulated by the DDA. Otherwise also, the action of the DDA was discriminatory and arbitrary in view of the instances referred to earlier.

14. The writ petition therefore, has to succeed. Since the full payment in respect of Flat No. 239, (Ground Floor), Sector 14, Pocket B, Phase-2, Dwarka, New Delhi has been made by the Petitioner, she is entitled to the allotment and the possession thereof immediately. Consequently, this Court issues a writ of *mandamus* directing the Respondent DDA to forthwith restore the allotment and handover the possession of Flat No. 239, (Ground Floor), Sector 14, Pocket B, Phase-2, Dwarka, New Delhi to the Petitioner within a period of eight weeks from today. In case this flat has already been allotted to some other person, the DDA is directed to allot and deliver possession of another flat with similar area on the ground floor in Sector 14, Dwarka, New Delhi within a period of 12 weeks from today.
15. The writ petition stands disposed of in above terms.
16. Pending applications, if any, also stand disposed of.

(G.P. MITTAL)
JUDGE

DECEMBER 17, 2013

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