

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

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Date of Decision: 01.05.2013

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W.P.(C) 14036/2009

LOVE DEV

..... Petitioner

Through: Mr. R.K. Saini with Ms. Minal Sehgal, Advs.

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Mr. S.C. Jha, Adv.for Mrs. Madhu Sharan,
Adv.

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

The petitioner before this Court got registered with DDA under its New Pattern Registration Scheme, 1979 (NPRS-79) for allotment of an MIG flat. On the turn of the petitioner maturing, a flat bearing number 153(GF), Pocket 4, Sector 10, Group-1, Narela came to be allotted to him on hire-purchase basis. However, before the allotment letter in respect of the above referred flat could be issued to be petitioner. The following endorsement was made by DDA on the allotment-cum-demand letter:

“ Already allotted vide File No.32/72/90-PV”.

The learned counsel for the respondent states that on scrutiny of the DDA file he finds that misunderstanding was that the petitioner had already been allotted a flat though in fact no flat had actually been allotted to him. However, the learned

counsel for the petitioner states that as per his information, the aforesaid flat had been allotted by DDA to one Mr. E.W. Browne vide File No.32/72/90-PL. Be that as it may, the fact remains that the allotment-cum-demand letter in respect of the aforesaid flat was not issued to the petitioner and, therefore, he could not get benefit of the allotment made to him.

2. Since no fresh allotment was forthcoming to the petitioner, a writ petition was filed by him before this Court which culminated in the order dated 6.4.1996 passed by a Division Bench of this Court in **LPA No.5 of 2009** titled **Love Dev Vs. DDA**. The Division Bench disposed of the LPA filed by the petitioner with the following observations:

“Learned counsel appearing for the DDA stated that the case of the appellant has been re-examined and a decision has been taken to allot a flat to the appellant as per the charges prevailing in 1994 and as per the policy. He says that the allotment shall be made within a period of eight weeks from today.

In view of the statement made by the learned counsel for the respondent, nothing survives in this appeal. The appeal stands disposed of.”

3. In compliance of the aforesaid order dated 6.4.2009, the respondent-DDA issued a fresh demand-cum-allotment letter to the petitioner in respect of Flat No.105 (GF), Group-I, Pocket-4, Sector-A-9, Narela. Though the price of the flat sought to be charged from the petitioner vide demand-cum-allotment dated 11.4.1994-17.4.1994 was Rs.4,90,300/-, the price sought to be charged by way of

new demand-cum-allotment letter dated 27.10.2009-3.11.2009 was Rs.10,97,127.50. According to DDA, the aforesaid amount of Rs.10,97,127.50 has been arrived at by adding simple interest @ 7% per annum on the price sought to be charged vide allotment letter dated 11.4.1994-17.4.1994.

4. Therefore, the issue which arises for consideration in this petition is as to whether DDA was entitled to charge simple interest @ 7% per annum from the petitioner or not. The learned counsel for the petitioner contends that since no allotment of flat was made to the petitioner no fault can be attributed to the petitioner and there can be no justification for charging any interest on the price as prevalent in the year 1994. Mr. Saini further submits that though it can be said that the petitioner utilized the money which he would have paid to DDA in the year 1994, had the allotment letter been issued to him at that time, it is also equally true that the petitioner on making payment to DDA would have got possession of the flat and, therefore, would have been able to use the flat for his personal use. In nutshell, according to the learned counsel for the petitioner, though the petitioner got advantage in the form of interest which he earned/could have earned on the amount which he would have paid to DDA in the year 1994, he also lost in equal terms by not being able to utilize the flat for a period of about 16 years.

5. In my view, the only question which needs to be considered is as to whether the order passed by the Division Bench on 6.4.2009 permitted the DDA to charge interest on the price prevalent in the year 1994 or not. A perusal of the aforesaid order would show that the appeal was disposed of by accepting the statement made by the learned counsel for the DDA whereby DDA was to allot a flat on the charges prevalent in the year 1994 and "*as per the policy*". Therefore, the question would be whether DDA had any policy at that time to charge interest even in those cases where no fault could be attributed to the allottee. The respondent have placed

on record a circular dated 12.4.2005 issued by Director (LC) of DDA. The aforesaid circular to the extent it is relevant reads as under:

“In pursuance of the decision taken by the Authority during the meeting held on 22.11.2004 vide Agenda Item No.69/2004, Hon’ble L.G. is pleased to order to charge simple interest at the rate of 7% p.a. in the cases where allottee is not at fault instead of the following rates:

1. Interest at the rate of 5% p.a. previously approved by the Authority vide Agenda Item No.52/2004 dated 24.8.2004 relating to Rohini Residential Scheme in Lands Wing.
2. Interest at the rate of 7% p.a. at compound rates prevalent in Housing Wing.

The decision as regards charging simple interest at the rate of 7% p.a. in cases where allottee is not at fault will be applicable both in Housing Wing as well as in Lands Wing. Cases already finalized shall not be re-opened.”

6. It would thus be seen from the above referred circular that a decision was taken by the Lt. Governor of Delhi that DDA would be charging simple interest @ 7% per annum in respect of the cases of allotment of flats under its Rohini Residential Scheme as well as in the case of allotments made by its Housing Wing. The residential plots are allotted by Land Wing whereas the residential flats allotted by Housing Wing. Therefore, the decision taken by the Lt. Governor applies both, to the plots as well as to the flats, and in terms of the said decision of Lt. Governor, the DDA is charging simple interest @ 7% per annum even in those cases where the allottee was not at fault.

7. Considering that the order passed by Division Bench of this Court on 6.4.2009 envisaged allotment to the petitioner at the charges in the year 1994, as per the policy of DDA, I cannot go into the question as to whether the policy decision taken by Lt. Governor to charge simple interest @ 7% per annum even in the cases where the allottee was not at fault is justified or not. The order passed by

the Division Bench having become final, the petitioner was entitled to allotment of a flat only in terms of the said order. Therefore, in my view, since the policy approved by the Lt. Governor and notified vide circular dated 12.4.2005 envisaged charging of interest @ 7% per annum even in the cases of allotment of flats, where the allottee was not at fault and the said circular was prevalent when the order dated 6.4.2009 came to be passed by the Division Bench of this Court, the petitioner has no option but to pay interest as per the policy of DDA prevalent at the relevant time.

8. In terms of an interim order dated 21.12.2009, the cancellation of MIG Flat No.105 (GF), Group-I, Pocket-4, Sector A-9, Narela was stayed by this Court, subject to the petitioner paying Rs.4,19,300/- within a period of four weeks from the date of the said order. The learned counsel for the petitioner states that the petitioner did make the payment of Rs.4,19,300/- within the time stipulated in the said order. It is, therefore, directed that in the event of the petitioner depositing the balance amount in terms of the allotment letter dated 27.10.2009 DDA shall handover possession of Flat No.105 (GF), Group-I, Pocket-4, Sector-A-9, Narela to the petitioner within a period of six weeks from the date of deposit of the balance amount which shall be deposited within a period of four weeks from today. The formalities, if any, shall be completed by the petitioner within a period of eight weeks from today. The respondent shall intimate the petitioner within four weeks as to what are the formalities, if any, required to be completed by him, to obtain possession of the aforesaid flat.

The writ petition stands disposed of in terms of this order. There shall be no orders as to costs.

V.K. JAIN, J

MAY 01, 2013/rd