

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

Date of Decision: 31.10.2014

+ LPA No.571 of 2014
CM Nos.14305, 14306, 14307 & 14308 of 2014

DELHI DEVELOPMENT AUTHORITY Appellant
Through: Mr. Ajay Verma, Sr. Standing Counsel,
DDA with Mr. Sanjeev Sabharwal, Standing
Counsel, DDA and Mr. Amit Mehra, Adv.

versus

RAJIV GUPTA Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J.(Oral)

1. This Letters Patent Appeal impugns a judgment dated 23.8.2013 passed by the learned Single Judge in WP (C) No.1415/2013 whereby the appellant/DDA has been directed to allot Flat No.108, Second Floor, Pocket-2, Sector-23, Rohini, Delhi (**hereinafter referred to as Flat No. 108**) and in the event of the said flat not being available, an alternate flat in the same locality be allotted to the petitioner (respondent herein) within eight (8) weeks thereof. To balance the equities, the respondent herein had been directed to pay the DDA, the cost of the flat along with simple interest @ 7

per cent per annum from 27.4.2006 i.e., the date when the DDA filed its affidavit before the District Consumer Redressal-II Qutub Delhi Forum (hereinafter referred to as 'District Forum').

2. The facts of the case are that the respondent had applied for allotment of an MIG flat under New Pattern Registration Scheme, 1979 on 3.10.1979. He was declared successful in a computerised draw of lots held on 29.11.2002 and Flat No. 74, Ground Floor, Pocket-2, Sector-8, Rohini, Delhi (**hereinafter referred to as Flat No. 74**) was allotted to him. However, subsequently Flat No.108 was allotted to him through a Demand-cum-Allotment letter dated 30.04.2003 which further stated that Flat No. 74 had been wrongly allotted to him and in the event the amount asked for Flat No. 108 was not deposited by the stipulated date, the registration would automatically stand cancelled. The respondent insisted upon being allotted Flat No. 74 but the DDA failed to intimate any reason for the change. Hence, the respondent sought redressal before the District Forum where the DDA contended that the allotment of Flat No.74 was a mistake and the inadvertent error had been rectified within three (3) months by the DDA by allotting the alternate flat bearing No.108. The Forum found the DDA deficient

in services and awarded an amount of Rs.15,000/- to the petitioner towards compensation and costs. It also held that the DDA was unjustified in allotting Flat No. 74, which was not in existence and it owed a duty to the respondent (complainant therein) as an allottee of a flat in the draw held on 29.11.2002. Thereafter, the respondent sent the letter of acceptance for the subsequent allotment of Flat No.108 and sought intimation about the amount due and payable by him. The DDA, however, intimated the respondent that he was not entitled to any flat because the Forum had only directed payment of costs and no other relief,

3. Before the learned Single Judge, the DDA had contended that allotment of the alternate Flat No.108 had been cancelled since the respondent had failed to pay the requisite amount within the stipulated period as demanded in their letter of 30.4.2003. After hearing the learned counsel for the parties, the learned Single Judge was of the view that to accept the DDA's argument that the Forum had awarded only costs and no other relief to the respondent would be placing a premium on DDA's negligence. The learned Single Judge was further of the view that the Forum clearly held the DDA to be deficient in services and awarded costs

too but never held that the allotment of Flat No.108, in favour of the respondent stood cancelled. Furthermore, the learned Single Judge was of the view that prior to 27.4.2006, the DDA never intimated the respondent as to why it had changed the allotment from Flat No.74 to Flat No.108. Consequently, it was held that the respondent was justified in not accepting Flat No.108 earlier. Therefore, in the facts & circumstances of the case, it was held that automatic cancellation of Flat No.108 would neither come into operation nor would the respondent lose his right to allotment of an alternate flat. In these circumstances, the DDA was directed to allot the flat as aforesaid.

4. The said judgment of the learned Single Judge has been impugned on the ground that the respondent did not adhere to the terms & conditions contained in the letter dated 30.04.2003 for almost a decade and the NPRS, 1979 under which the respondent was allotted a flat was withdrawn after due publication in leading newspapers. It is submitted that, therefore no allotment could subsist in favour of the respondent as by his own default in not complying with the Demand-cum-Allotment letter, the respondent had waived his right to such allotment. The learned counsel for the

appellant relies upon a judgment of this Court in LPA No.277/2013 titled ***Delhi Development Authority v. Sunil Kumar Jain*** decided on 11.3.2014, in which the allottee had filed a writ petition after six (6) years of closure of the NPRS. It is further contended that the learned Single Judge erred in interpreting the order of the Forum because it could not have recorded that the complainant/respondent was not entitled to flat No.108 since such a prayer was never made before the Forum.

5. From the narration of facts and submissions of the learned counsel for the appellant, it is evident that this is a case where the DDA had consistently from 29.11.2002 i.e., the date of allotment till 27.4.2006 failed to intimate the reason as to why Flat No.74 was not available. The respondent had insisted upon and sought allotment of Flat No.74, which was shown to be allotted to him through the results of the Draw of lots displayed on the Notice Board of the DDA. Since the respondent's representation was never decided by the DDA, he was forced to approach the Forum. The Forum found DDA guilty of deficiency in services. However, since Flat No. 74 was non-existent, the Forum could not grant the respondent's prayer for allotment of the said flat. Quite clearly, the

respondent's right to allotment of Flat No. 108 was not interfered with by the order of the Forum. Instead, as the DDA was found to be deficient in service, an amount of Rs. 15,000 was directed to be paid to the respondent as costs and compensation. Therefore, the DDA ought to have allotted an alternate flat. Since flat No.108 had already been offered, therefore, the respondent opted for it and was ready to pay the monies for it.

6. It is not the case of the appellant that the respondent was not willing to pay the monies for Flat No. 108 which was allotted to him. In fact, the respondent had all along been pursuing the matter with the DDA. He had to knock the doors of the District Forum because of lack of an appropriate response from the DDA. The respondent had applied for a flat way back in 1979 and after 35 years, he is surely entitled to allotment of a flat.
7. This Court is of the view that the respondent did not lose his right for allotment of a flat under the NPRS, 1979. The reasoning of the learned Single Judge is unexceptionable. The appeal is without any merit and has caused further undue delay in the allotment of a flat as directed vide impugned judgment. The appeal is accordingly

dismissed with costs of Rs.25,000/- to be paid to the Delhi High
Court Staff Welfare Fund within eight (8) weeks from today.

NAJMI WAZIRI, J.

OCTOBER 31, 2014
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KAILASH GAMBHIR, J.