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

+ LPA 112/2016 & CM Nos.5949-5952/2016

DELHI DEVELOPMENT AUTHORITY Appellant

Through: Ms.Shobhana Takiar with Mr.Udayan
Khandelwal, Advs.

versus

M P NAURIYAL

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER

% **26.07.2016**

We have heard learned counsel for the appellant.

2. We had enquired from the counsel for the appellant-Delhi Development Authority whether the respondent-M.P. Nauriyal was ever communicated the cancellation charges and asked to deposit and pay the charges. Counsel for the appellant has fairly accepted that the respondent was never informed and asked to deposit cancellation charges. Once this factual position is accepted then the appeal has to fail for the impugned order dated 10.03.2015 allowing the W.P.(C) No. 8045/2012 filed by M P Nauriyal- the respondent is correct and justified.

3. The respondent had applied for and was registered under the New Pattern Registration Scheme, 1979 for allotment of a Lower Income Group flat (LIG flat). He was allotted an LIG Flat No. 81C, First Floor, GRP-IV, Type-I, Pocket-A2, Kondli Gharoli and a demand-cum-allotment letter with block dates 03.03.1993-10.03.1993 was issued. The respondent did not accept the said allotment and by his letter dated 08.04.1993 had sought cancellation, which request was accepted. By letter dated 20.05.1993, the

appellant informed the respondent that he would be notified the cancellation charges at an appropriate time. As recorded above, the appellant thereafter never informed and asked the respondent to pay cancellation charges.

4. As per the scheme, the respondent's registration remained valid and he was entitled for tail end allotment.

5. The respondent, on change of address had, vide letter dated 10.09.2002, communicated his new address to the appellant-DDA. The new address was duly recorded in the records of the appellant and the respondent was informed vide letter dated 21.11.2002. This affirms that the registration was still valid and had continued.

6. The appellant had failed and did not include the name of the respondent in the tail-end draw of lots held in February, 2008. Even at that time, the appellant did not ask the respondent to pay the cancellation charges. This was a gross error and mistake made by the appellant authority, which continued to retain and keep the registration fee/amount deposited by the respondent.

7. The appellant subsequently issued public notice dated 22.11.2012 for closure of the aforesaid scheme. In response, the respondent had written a letter stating that he had not been allotted a flat though the scheme was being closed. Initially, the respondent did ask for refund of the registration amount, but subsequently he had asserted and insisted upon allotment of an LIG flat. It is an admitted case of the appellant that they have not repaid the registration amount to the respondent.

8. We fail to understand how the appellant can raise a grievance of delay and laches against the respondent. It is in fact the respondent who is aggrieved on that said account, for there has been inordinate delay on the

part of the appellant in allotting an LIG flat. The contention of the appellant that cancellation charges have not been paid is farcical and farfetched. The appellant has not written any letter quantifying the cancellation charges and asking the respondent to pay the amount. It was the obligation and duty of the appellant to compute/determine the cancellation charges and demand payment. Only if the amount was quantified and communicated could it be urged that the respondent was at fault. The respondent, we observe, as per the writ petition had deposited Rs. 300/- on 26.5.1993 towards cancellation charges. The respondent has not denied or challenged that he has to pay cancellation charges. The same have to be computed as per the policy applicable to those who had sought and were granted cancellation in April, 1993.

9. Learned counsel for the appellant submits that it is possible that the respondent himself is no longer interested and a property dealer is pursuing his case for ulterior motives and gains. The said aspect is not a subject matter of the impugned order or the counter affidavit. It will be open to the appellant to ascertain the true and correct facts and in case they have evidence to show that there is some illegality or that a third party interest has been created, they can take action as per law. The impugned order and writ petition have not dealt with the said question/issue.

10. The appeal is dismissed with the aforesaid observations. The pending applications also stand disposed of.

SANJIV KHANNA, J

SUNITA GUPTA, J

JULY 26, 2016/gm