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

+ LPA 427/2018

DELHI DEVELOPMENT AUTHORITY Appellant

Through: Mr. Arjun Pant, Advocate

versus

NARINDER SINGH BROCA Respondent

Through: Mr. Sandeep Aggarwal, Senior
Advocate with Mr. Rajesh Pathak,
Advocate

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

% **06.08.2018**

CM No.31239/2018

Allowed, subject to all just exceptions.

The application is disposed of.

CAV No.706/2018

As the respondent is represented and would be heard, caveat is accordingly disposed of.

CM Nos.31237/2018 & 31240/2018

Learned Senior Counsel for the respondent, who is present on caveat, states that he has no objection if delay in filing and refilling the appeal are condoned.

Applications are allowed and delay is condoned.

LPA No.427/2018 & CM No.31238/2018

This Letters Patent appeal by the Delhi Development Authority impugns the order dated 31.1.2018 passed by the learned Single Judge in WP(C) No.5963/2017 filed by Narinder Singh Broca, the respondent in this appeal.

2. On 18.3.1981, Narinder Singh Broca had deposited Rs.5000/- and was enrolled for allotment of plot under the Rohini Residential Scheme-1981. Allotments under the said Scheme were delayed beyond imagination and the allotment of the respondent did not mature for three decades.

3. In the meantime, on retirement, the respondent shifted to Panchkula, Haryana. By letter dated 14.7.2011 the respondent took care and caution to inform the appellant of his new address, 1019, Sector 2, Panchkula, Haryana. Photocopy of this letter, enclosed at page 51 of the appeal paper-book, has endorsement with diary no. etc., by the Receiving Clerk of the appellant.

4. Narinder Singh Broca simultaneously made an application dated 14.7.2011 under the Right to Information Act, 2005 to ascertain details and information on possible date of allotment etc. By communication dated 06.09.2011, the Deputy Director LSB (Rohini) had informed Narinder Singh Broca to wait as his assigned priority no. 18605 had not matured. This letter/communication from the appellant was addressed to Narinder Singh Broca at the new address.

5. In spite of intimation as to the new address, the appellant had posted the demand-cum-allotment letter dated 27.11.2014 at the old address, which letter could not be served and was received back.

Same mistake was repeated when the second demand-cum-allotment letter dated 28.1.2015 was not sent to the Panchkula address. This demand-cum-allotment letter was not served and too was received back.

6. It is obvious and clear that the appellant were at fault as they had not sent the demand cum allotment letters at the new address, which had been notified and was available. Information under the Right to Information Act vide letter dated 06.09.2011 had been furnished by the appellant to the respondent at the Panchkula address. The appellant had failed to check their records and rectify their mistake even after the demand cum allotment letters were received back unserved.

7. The respondent, pursuant to the general public advertisement issued by the appellant in the last week of March, 2016 had ascertained details from the website of the appellant and learnt that his allotment had matured. Further, the two demand cum allotment letters had been not been issued at the notified new address.

8. Correspondence followed with protests by the respondent highlighting lapses on the part of the appellant. Appellant did not budge and by letter dated 26.05.2016, the respondent was called upon to immediately pay the entire amount with interest in terms of the demand cum allotment letter dated 28.1.2015. Request for issue of fresh/new demand cum allotment letter was rejected. The respondent had then requested for re-scheduling of the demand and being a retired government servant who was ineligible for bank loan, had requested for joint allotment with his daughter. The appellant did not

agree and the respondent was told to ask for restoration of allotment and also pay restoration charges with full interest in terms of demand cum allotment letter dated 25.01.2015, even if the said letter posted at the wrong address and was never served. The appellant charge interest @ 12.5% per annum for the first month and 15% per annum for the subsequent period.

9. Hapless and aggrieved, the respondent had filed Writ Petition (C) No. 2314/2017 praying for various reliefs including issue of fresh demand-cum-allotment letter for the plot in question.

10. In the meanwhile, the appellant had decided to extend the date of payment of demand in such cases till 31st July, 2017. The respondent in order to avoid adverse consequences decided to pay the demand and withdrew the writ petition with liberty to file another petition if aggrieved by the decision of the appellant in charging or calculating interest for delay in payment. The respondent thereupon had deposited Rs.13,80,000/- with the appellant by way of bank transfer on 27.3.2017.

11. After about three months, the appellant vide letter dated 21.6.2017 informed the respondent that he has to pay a further sum of Rs.3,62,578/- as restoration charges and interest. Respondent visited the office of the appellant and raised his grievance in the public meeting held on 3.7.2017 stating that demand-cum-allotment letter dated 28.1.2015 was served on him with letter dated 26.5.2016. Hence, interest should not be charged from him for the period prior to 26.5.2016. The appellant refused to accept the request not to charge interest.

12. In aforesaid circumstances, the respondent had to once again approach the Court by way of Writ Petition (C) No. 5963/2017, which has been partly allowed by the impugned order directing that the respondent would be liable to pay interest effective from 26.5.2016 and not for the prior period. As during the pendency of the writ petition, the respondent had also deposited interest amount as demanded, the impugned order directs that excess interest paid, if any, should be refunded within a period of eight weeks from 31.1.2018 and on any delay thereafter, the appellant would be liable to pay interest @ 9% per annum till payment.

13. It is obvious to us that the respondent, who is a retiree, should not be asked to pay interest for the period prior to 26.05.2016, as the appellant was at fault and negligent in posting the demand cum allotment letters at the wrong address. The respondent cannot be penalised by being asked to pay interest for the prior period before the demand cum allotment letter was served. The respondent has suffered due to delay in allotment, and should be compensated and not compelled to pay interest when he was not at fault.

14. We may note that the appellant, in the counter-affidavit, have vaguely averred and submitted that the respondent had not submitted ID proof of his new address. The said plea is bogus and unacceptable. The respondent had vide letter dated 14.7.2011, informed the appellant his new address. Necessary correction should have been made by the appellant in their record. In case any clarification or document was required, the dealing clerk should have informed the respondent or the appellant should have written a letter, asking for

compliance or documents. Moreover, the appellant themselves had responded to the RTI query at the new address. Thus, the new address was very much available and known to the appellant.

15. The appeal has no merit and is dismissed. Pending application is also dismissed.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

AUGUST 06, 2018

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