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IN THE HIGH COURT OF DELHI AT NEW DELHI

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**Judgment reserved on: 12.07.2022
Judgment pronounced on: 31.10.2022**

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W.P.(C) 7084/2021

COL. A. K ARORA

..... Petitioner

Through: Ms. Sonia A. Menon, Mr. Nishchint
Rawat and Mr. Ankit Kumar,
Advocates.

versus

DELHI DEVELOPMENT AUTHORITY & ANR. Respondents

Through: Mr. Sudhir Nandrajog, Senior
Advocate along with Ms. Prabhsahay
Kaur, Standing Counsel for DDA.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

SACHIN DATTA, J.

W.P.(C) 7084/2021 and C.M. Appl. No. 22374/2021 (for stay)

1. The present petition has been filed by the petitioner under Article 226 of the Constitution of India, seeking the following reliefs:-

“a) Issue a writ/order or direction quashing the order dated 08.06.2021 passed by Mr. S. K. Meena, Director (Residential Land) DDA;

b) Direct the Respondents to restore the allotment of the plot bearing no. 31, Block E2, Sector-7 Rohini-110085 to the Petitioner”

2. The factual background in the context of which the present petition has been filed is summarized hereunder:-

(i) An auction was conducted by the respondents/DDA on 24.04.2019, for allotment of residential plot bearing no. 31, Block E2, Sector-7, Rohini, Delhi-110085, measuring 99.71 sq. mtrs., (hereinafter referred to as the subject plot) on “as is where basis” for the year 2018-2019. The auction purchaser/petitioner’s bid of Rs.2,00,37,677/- was accepted by the respondents on 19.06.2019, being the H1 bidder, which was approximately thrice the reserve price of Rs. 69,87,677/-, and the Letter of Intent (hereinafter referred to as ‘LOI’) dated 19.06.2019 was issued by the DDA.

(ii) To participate in the aforesaid auction, the auction purchaser/petitioner had paid an amount of Rs. 3,49,384/- on 21.04.2019, as first stage Earnest Money Deposit (hereinafter referred to as ‘EMD’)/ auction EMD i.e., 5% of reserve price. Thereafter, the petitioner remitted the processing fees of Rs.2,24,622/- on 21.06.2019, and an amount of Rs. 46,60,094/- on 27.06.2019, towards 20% EMD (second stage) in terms of the LOI.

(iii) After receiving the aforementioned amount i.e., the 25% of the bid premium/ 25% EMD, the respondents issued a demand-cum-allotment letter (hereinafter referred to as ‘demand letter’) dated 04.09.2019 to the petitioner for payment of the remaining balance

amount of Rs. 1,50,28,358/- to the respondents/DDA, within a period of 90 days from the date of issuance of the said demand letter, as per Clause 2.4.4 of the 'Document for E-Auction (2018-2019) of Residential Properties on 'as is where is basis'' (hereinafter referred to as the 'E-Auction Document').

(iv) A Co-ordinate Bench of this Court vide order dated 08.11.2019, passed in W.P.(C) 11775/2019 titled as **Naharpur Yuva Shakti RWA v. Union of India and Ors.**, directed the DDA to maintain *status quo* with regard to some plots of land in Sector-7, Rohini, which included the subject plot of the petitioner.

(v) The petitioner, unaware of the aforesaid interim order dated 08.11.2019 passed by this Court, sent a representation dated 21.11.2019 to the DDA requesting for an extension of time for payment of the balance 75% EMD demanded by DDA vide the aforesaid demand letter dated 04.09.2019.

(vi) Even though the DDA was in no position to hand over possession of the subject plot to the petitioner, in view of the aforesaid interim order dated 08.11.2019, the DDA did not inform the same to the petitioner.

(vii) The DDA sent a letter dated 02.12.2019 to the petitioner approving extension of time for payment of the balance amount (hereinafter referred to as the 'extension letter') and calling upon the petitioner to pay interest on the said amount at the rate of 10% per annum. The petitioner deposited Rs. 50,28,358/- in terms of the

aforesaid extension letter on 02.12.2019 i.e., on the same date of receiving the aforesaid extension letter, and paid the balance EMD alongwith interest i.e., Rs. 68,00,000/- and Rs. 34,21,700/- on 06.02.2020 and 27.02.2020 respectively.

(viii) After making final payment towards the subject plot, on 03.03.2020, the petitioner submitted all the requisite documents for handing over of the possession of the subject plot; and it was only then that the petitioner was informed by the DDA that vide the aforesaid interim order dated 08.11.2019, passed by this Court, the DDA was bound to maintain *status quo* with regard to the some plots in Rohini. It is notable that the possession of the subject plot was to be handed over to the petitioner within a period of 30 days from the date of acknowledging the receipt of the required documents as per Clause 13 of Section II of Chapter III of the 'E-Auction Document'.

(ix) The petitioner made first representation to DDA on 31.03.2020, after it came to know about the said interim order dated 08.11.2019. Through the aforesaid representation to the Vice Chairman, DDA, the petitioner sought refund of 75% of the amount paid towards the subject plot till the vacation of the stay order granted by this Court, and to maintain a lien over the subject plot against the balance amount of 25% paid for the said plot. The petitioner clearly stated in the aforesaid representation that due to the interim order, and the situation prevalent on account of the Covid-19 pandemic, there was uncertainty as to when the possession of the subject plot will be handed over to

the petitioner. The petitioner also proposed that he was even willing to accept possession of an alternate plot equal or smaller in size than the subject plot. The petitioner sent three subsequent reminders to DDA on 20.04.2020, 24.04.2020 and 27.05.2020 respectively. The petitioner vide representation dated 27.05.2020, sent a copy of a blank cheque, his PAN card and his Aadhar card to the DDA to process the refund of 75% EMD since the DDA had failed to handover the possession of the subject plot due to the subsistence of the said interim order. It was only on 23.06.2020, that DDA sent an e-mail to the petitioner informing him that his representation has been “put up for necessary action”.

(x) The DDA, on 11.08.2020, refunded an amount of Rs.2,00,37,677/- i.e., the 100% EMD towards the subject plot, but failed to refund the interest of Rs. 2,21,700/- charged on late payment of 75% EMD, and the process fee of Rs.2,24,622/-. Thereafter, till 21.11.2020, the petitioner repeatedly requested the DDA not to cancel his allotment, and even requested for permission to deposit 25% amount within 7 days to maintain a lien.

(xi) The petitioner filed a petition, being W.P.(C) 1970/2021 before this Court, praying to restore the allotment and place a lien on the subject plot; or to allot an alternative plot of similar/smaller size in the same area; or refund the amount with 10% interest as charged by the DDA on late payments. This Court vide order dated 15.02.2021, passed in W.P.(C) 1970/2021, directed the DDA to treat the aforesaid

petition of the petitioner as a representation, and hold a meeting with the petitioner on 24.02.2021 at 11 am. The DDA was also directed to pass appropriate orders within a period of two weeks thereafter, and the decision was to be communicated to the petitioner. As per the aforesaid directions of this Court, the DDA held a meeting with the petitioner on 24.02.2021, on the said date various options and possibilities are stated to have been discussed between the parties. The petitioner again made a representation dated 01.03.2021 to the DDA in reference to the aforementioned meeting, and evinced interest to pay 5% of the EMD in order to maintain his lien in the subject plot till the vacation of the said stay granted by this Court vide interim order dated 08.11.2019.

(xii) The aforesaid interim order dated 08.11.2019, directing the DDA to maintain *status quo* on the 21 plots in Rohini, including the subject plot, was vacated by this Court vide order dated 16.03.2021, passed in W.P.(C) 11775/2021 titled ***Naharpur Yuva Shakti RWA*** (supra).

(xiii) Thereafter, the petitioner made a representation dated 19.03.2021 to the DDA, requesting that its representation be decided as directed by this Court vide order dated 15.02.2021, passed in W.P.(C) 1970/2021. The petitioner also expressed its willingness to pay the full amount towards the subject plot.

(xiv) The petitioner again made a representation dated 04.04.2021 to the DDA, requesting a decision on his representation as per the directions of this Court in W.P.(C) 1970/2021.

(xv) The petitioner filed a contempt petition, being CONT.CAS(C) 391/2021, alleging non-compliance with the order dated 15.02.2021, passed in W.P.(C) 1970/2021. It was during the hearing of the said contempt petition that the petitioner was informed by the DDA that it has decided to refund the money of the petitioner, along with the due interest. This Court in the aforesaid contempt petition, vide order dated 02.06.2021, directed DDA to supply a copy of the decision to the petitioner through an e-mail, within a week from the date of passing of the aforesaid order, and granted liberty to the petitioner to pursue his other remedies in accordance with law. Cost of Rs.10,000/- was also imposed on the DDA for non-compliance of the order dated 15.02.2021, passed in W.P.(C) 1970/2021.

(xvi) Finally, the DDA passed the impugned speaking order dated 08.06.2021, denying the petitioner any lien on the subject plot, since the said plot had already been withdrawn from the e-auction, and also refusing to allocate an alternative plot of the same area to the petitioner. The DDA further stated in the said speaking order that the decision with regard to the payment of interest on delayed payment by the respondents to the petitioner, is under consideration and the same will be released at the earliest. The DDA, thereafter refunded an

amount of Rs.10,04,819/- towards interest plus TDS of Rs. 87,025/- on 06.12.2021 to the petitioner.

(xvii) Hence, being aggrieved by the aforesaid order dated 08.06.2021, the instant petition came to be filed before this Court.

(xviii) Vide interim order dated 18.8.2021 passed in these proceedings, it was ordered as under:

“3. Issue notice. The learned Standing Counsel named above accepts notice on behalf of the respondents.

4. The petitioner is the auction purchaser of plot of land bearing no. 31, Block E2, Sector-7, Rohini-110085. All monies, as demanded by the Delhi Development Authority ('DDA'), i.e. initial amount of 5% earnest money, 20% bid premium (including balance of 5% reserve price) as indicated through LOI, the remaining 75% were paid to the DDA way back in 2020. However, the possession was not handed over. The petitioner approached the court through W.P.(C) No. 1970/2021. The DDA informed the petitioner that the allotment has been cancelled because it was subject to a stay order. Subsequently, the stay order was vacated and the DDA was directed to look into the matter. Insofar as the petitioner is concerned, he had paid all the monies in terms of the auction. He seeks possession of the land.

5. Without prior intimation to the petitioner, DDA has refunded the petitioner the principal amount on the ground that: of the three reliefs sought by the petitioner, one relief was for return of the monies. The learned Standing Counsel for the DDA submits that this issue has been dealt with in the speaking order dated 08.06.2021. The relevant paragraphs of which are as under:

“ ...

6. In the month of January 2020, the office came to know that High Court in the matter of Naharpur Yuva Shakti

RWA Vs Union of India &Ors(WP(C) 11775 2019), has directed to maintain status quo with regards to some properties of Rohini, Sector 7. Pockets E1 & F2.

7. The petitioner's plot also came under the abovementioned litigation.

8. Possession of the plot could not be handed over.

9. The petitioner vide email 31.3.20, 24.4.20 and finally on 27.5.20 requested for refund of 75% of payment pending possession of residential plot No 31, Block E-2, Sector-7, Rohini, Delhi owing to stay order of Hon'ble High Court.

10. A proposal was put up in this regard for seeking orders on the request of the petitioner for refund of 75% premium, and repayment of the same once the stay gets vacated.

11. And whereas after deliberation, it was decided to refund full amount with no future lien of the petitioner on the plot, since there is no such policy to allow refund in r/o 75% of the payment and repayment of the same once stay gets vacated. Accordingly the prayer of the petitioner to retain the lien of the petitioner on the Residential Plot size 99.71 Sqm allotted to him bearing No. 31. Block E2, Sector 7, Rohini-110085 pending adjudication of the Naharpur Yuva Shakti RWA Vs UOI bearing WP(C) 11775/2019 is replied in negative.

...

15 Whereas the principle amount has been refunded and the plot withdrawn from e-auction, the request of the petitioner to allot an alternate plot to the Petitioner in the same area is not feasible and hence cannot be accepted. The request is accordingly turned down.

16. Whereas the last request of the petitioner to refund the money along with interest @10% per annum in terms of the subject brochure, as the Respondent levies in case of payments, it is stated that interest is payable on the

principle amount as per applicable rate as contained in the e-auction document and the same is under process.

...

6. *However, the learned counsel for the petitioner submits that the first two reliefs sought in the writ petition were (i) the land for which all the monies had been paid, be handed over to the petitioner, (ii) if the first property was not available then an alternate land be given to the petitioner. It is contended that only in the event of the first 2 reliefs were not being available, the monies be returned, of course, along with interest, etc., as maybe payable thereon.*

7. *The petitioner is mystified that the principal amount was returned without addressing the first 2 reliefs sought in the writ petition. It is not as if the rerun of the monies would negate the first two reliefs or that they would be deemed to have been given up by the petitioner. The petitioner contends that DDA's action is arbitrary. Therefore, its impugned order dated 08.06.2021 be stayed.*

8. *The DDA contends that in terms of the petitioner's e-mail dated 19.03.2021, the monies have been returned. However, on perusal of the said document, it is evident that the petitioner was ready and willing to pay the remaining amounts and had stated inter alia as under:*

"...

3. The Hon'ble High Court of Delhi has since vacated the stay granted in writ filed vide number WP(c) 11775/2019 on 16th March, 2021. Factoring in the same in your awaited response, the management of land in question rests with DDA now. Therefore I wish to state that I am agreeable to make full payment and take over the said plot No 31, Pocket E 2, Sector 7, Rohini being HI Bidder.

..."

9. *The Court is, prima facie, of the view that the petitioner's contention is of substance and that the first relief which is still sought should have been considered. It was not open to the*

DDA to ignore the first two substantive reliefs sought. In any case, the refund of principal amount would be the inevitable corollary to the non-grant of the first two reliefs. But the first two reliefs ought to be considered.

10. In view of the above, the impugned order dated 08.06.2021 shall be stayed till further orders. No 3rd-party rights shall be created in it till further orders.

11. The petitioner is ready and willing to deposit the refunded amount in to the DDA's account and/or in this Court so that his readiness and willingness be proven. Let the monies refunded by the DDA be deposited by the petitioner with the Registrar General of this Court within two weeks, the same shall be kept in recurring interest-bearing FDR.

12. It will be open to the DDA to move an application for deposit of the said monies in its own account.

13. Reply and Rejoinder, if any, be filed in 4 weeks each, successively.

14. List on 21.01.2022.”

(xix) In LPA 443/2021 filed against the aforesaid order dated 18.08.2021, the Division Bench of this Court passed the following order dated 18.04.2022:-

“1. The appellant/DDA has assailed the interim order dated 18.08.2021 passed by the learned Single judge in CM No. 22374/2021 in W.P.(C) 7084/2021.

2. By the Impugned Order, the learned Single Judge has stayed the order dated 08.06.2021 passed by the appellant herein and impugned in the writ petition by the respondent/writ petitioner till further orders and directed that no third-party rights shall be created by the appellant in the plot in question.

3. *A determination of this appeal would practically tantamount to deciding the dispute between the parties on merits. Since the writ petition is still pending consideration, we are not inclined to go that way.*

4. *We dispose of this appeal with a direction to both the parties not to seek adjournment in the writ petition on the next date of hearing, so that the same can be heard and disposed of without any delay. We are informed that the writ petition is now listed before the learned Single Judge on 27.05.2022. We request the learned Single Judge to take up the writ petition on the said date.*

5. *We have not expressed any opinion one way or the other on the merits of the case of either party.*

6. *The appeal is disposed of with the above direction.”*

CONTENTIONS OF THE PARTIES

3. In the context of the aforementioned facts, it is the contention of the petitioner that the actions of the DDA are wholly arbitrary. The petitioner has emphasized the depreciable conduct on the part of the DDA in demanding 100% payment from the petitioner despite the fact that the subject plot, with regard to which said demand letter had been issued to the petitioner was within the sweep of the said interim order dated 08.11.2019, passed in W.P.(C) No. 11775/2019, whereby DDA was directed to maintain *status quo* on the plots of land in Sector – 7, Rohini. It was contended that despite becoming aware of the aforesaid stay order, the petitioner confined its request for refund of only 75% of the amount, since it was interested in

taking possession of the subject plot once the impediment created by the interim order was removed. It is further contended that once the petitioner's bid was accepted and the demand letter was issued to the petitioner, and the petitioner having made payment in terms thereof, it was not open for the DDA to invoke Clauses 1.9 and 2.6 of the 'E-Auction Document', for the purpose of cancellation/annulment of the bidding process without assigning any reason. It is emphasized that once the interim order was vacated on 16.03.2021, there was no impediment in handing over possession of the subject plot to the petitioner after taking full payment for which the petitioner expressed his readiness and willingness vide representation dated 19.03.2021.

4. On the contrary, it is the contention of learned senior counsel appearing for the DDA that the refund that was made to the petitioner was in terms of the representations dated 31.03.2020, 20.04.2020 and 27.05.2020, addressed by the petitioner, whereby the petitioner sought 75% refund along with interest and simultaneously also sought a lien in respect of the subject plot. It has been contended on behalf of the DDA that the petitioner's stand was shifting from time to time, inasmuch as, at one stage the petitioner sought refund of 75% of the amount whereas, vide e-mail dated 01.03.2021, the petitioner expressed his willingness to deposit only 5% of the EMD for the subject plot, for the purpose of maintaining its lien on the same. Then again, vide e-mail dated 19.03.2021, the petitioner stated that he was agreeable to make full payment and take over the subject plot being the H-1 bidder.

5. The learned senior counsel for the DDA placed reliance on judgment of the Supreme Court in ***Mehboob-ur-Rehman v. Ahsanul Ghani***, (2019) 19 SCC 415, wherein the Supreme Court observed that the continuous readiness and willingness to perform the contract is the threshold requirement to seek the relief of specific performance. The relevant paragraph relied upon by the DDA is reproduced hereunder:

“19. So far as the proposition for amendment of the plaint is concerned, we are unable to find any illegality on the part of the first appellate court and the High Court in rejecting the prayer belatedly made by the plaintiff. As noticed, the averment and proof on readiness and willingness to perform his part of the contract has been the threshold requirement for a plaintiff who seeks the relief of specific performance. The principle that the requirement of such averment had not been a matter of form, applied equally to the proposition for amendment at the late stage whereby, the plaintiff only attempted to somehow improve upon the form of the plaint and insert only the phraseology of his readiness and willingness. In such a suit for specific performance, the Court would be, and had always been, looking at the substance of the matter if the plaintiff, by his conduct, has established that he is unquestionably standing with the contract and is not wanting in preparedness as also willingness to perform everything required of him before he could be granted a relief whereby, the performance of other part of the contract could be enjoined upon the defendant. In the present case, the appellant-plaintiff had failed to aver and prove his readiness and willingness to perform his part of the contract. The trial court made a rather assumptive observation that he had proved such readiness and willingness. Thereafter, the plaintiff sought leave to amend the plaint only when the ground to that effect was taken in the first appeal by the defendant. In the facts and circumstances of the present case, in our view, it was too late in the day for the plaintiff to fill up such a lacuna in his case only at the appellate stage. In other words, the late attempt

to improve upon the pleadings of the plaint at the appellate stage was only an exercise in futility in the present case.”

6. Reliance has also been placed on ***Pukhraj D. Jain & Ors. v. G. Gopalakrishna***, (2004) 7 SCC 251, wherein the Supreme Court has observed that there should be willingness to perform the terms of the contract on the part of the plaintiff, which should not only be supported by the averments in the plaint but the surrounding circumstances should also indicate the readiness to complete the contract. The Supreme Court observed as follows:

“6. Section 16(c) of the Specific Relief Act lays down that specific performance of a contract cannot be enforced in favour of a person who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant. Explanation (ii) to this sub-section provides that the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction. The requirement of this provision is that the plaintiff must aver that he has always been ready and willing to perform the essential terms of the contract. Therefore, not only should there be such an averment in the plaint but the surrounding circumstances must also indicate that the readiness and willingness continue from the date of the contract till the hearing of the suit. It is well settled that equitable remedy of specific performance cannot be had on the basis of pleadings which do not contain averments of readiness and willingness of the plaintiff to perform his contract in terms of Forms 47 and 48 CPC. Here Respondent 1 himself sent a legal notice rescinding the contract and thereafter filed OS No. 801 of 1977 on 7-11-1977 claiming refund of the advance paid by him. In fact the suit for recovery of the amount was decreed by the trial court

on 24-7-1985 but he himself preferred a revision against the decree wherein an order of rejection of the plaint was passed by the High Court. In such circumstances, it is absolutely apparent that Respondent 1 was not ready and willing to perform his part of the contract and in view of the mandate of Section 16 of the Specific Relief Act, no decree for specific performance could be passed in his favour. The trial court, therefore, rightly held that the suit filed by Respondent 1 was not maintainable.”

7. On the basis of the aforesaid, it is contended that the petitioner was not continuously ready and willing to take possession of the subject plot. On the contrary, the petitioner amended his offer multiple times, and the DDA was not bound to accept the revised offers of the petitioner. It is further submitted that the petitioner cannot be permitted to approbate and reprobate; and having exercised his option to seek a refund, he cannot be allowed to retract from the same, in accordance to the principle of “doctrine of election”.

8. The learned senior counsel for the DDA referred to a judgment of the Supreme Court in ***R.N. Gosain v. Yashpal Dhir***, AIR 1993 SC 352, wherein it was noted that the ‘Doctrine of Election’ means that a person cannot claim a transaction to be valid to obtain a benefit out of it, and later claim the same transaction to be void to obtain some other advantage. It was observed by the Supreme Court as under:

“10. Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that “a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the

footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage”. [See: Verschures Creameries Ltd. v. Hull and Netherlands Steamship Co. Ltd. [(1921) 2 KB 608, 612 (CA)], Scrutton, L.J.] According to Halsbury's Laws of England, 4th Edn., Vol. 16, “after taking an advantage under an order (for example for the payment of costs) a party may be precluded from saying that it is invalid and asking to set it aside”. (para 1508)”

Reliance has also been placed by the DDA on the judgment of the Supreme Court in ***State of Punjab & Ors. v. Dhanjit Singh Sandhu***, (2014) 15 SCC 144, wherein the Court observed as under:

“21. In the facts of the instant case, we have no doubt in our mind in holding that the ratio decided in Tehal Singh case [Tehal Singh v. State of Punjab, Civil Writ Petition No. 13648 of 1998, decided on 4-5-1999 (P&H)] will not apply in the instant case. In our considered opinion defaulting allottees of valuable plots cannot be allowed to approbate and reprobate by first agreeing to abide by terms and conditions of allotment and later seeking to deny their liability as per the agreed terms.”

ANALYSIS AND CONCLUSION

9. Having considered the rival contentions of the parties, I find force in the contentions raised on behalf of the petitioner. The reasons are enumerated hereunder.

10. Admittedly, prior to receipt of 100% payment from the petitioner/bidder, the respondents/DDA never informed the petitioner about the *status quo* order dated 08.11.2019 passed in W.P.(C) 11775/2019 titled as ***Naharpur Yuva Shakti RWA*** (supra). Further, the DDA vide letter dated 02.12.2019, addressed to the petitioner, approved extension of time for

payment of balance 75% amount, and called upon the petitioner to pay interest on the said amount. This communication was sent by the DDA after the interim order had been passed on 08.11.2019. It was most improper on the part of the DDA to keep the petitioner in the dark about the said interim order dated 08.11.2019 passed by this Court.

11. Importantly, in terms of Clause 13 of Section II of Chapter III of the ‘E-Auction Document’, it is provided as under:-

*“13. After making the payment of balance 75% of amount and intimating thereof, the highest bidder is required to appear before the Deputy Director (LA) Residential in person or through an authorized representative along with the RTGS receipt in support of payment of balance 75% amount, terms and conditions of auction duly typed on a non-judicial stamp paper worth Rs. 10/- signed by auction purchaser(s). 5 recent passport size photographs of individual or combined, as the case may be, the Conveyance deed papers duly E-stamped, an affidavit, an undertaking and any other documents as indicated in the demand letter. **On submission of all documents and subject to verification of the payment made by the auction purchaser, the possession letter will be issued within 30 days and the same can also be collected in person by the auction purchaser.** The possession letter so issued will carry the date on which the physical possession of the plot will be handed over to the auction purchaser at site. In case, the purchaser fails to turn up at site on the date and time fixed for handing over possession, the next date of possession will be fixed only on payment of Rs. 1000/- P.M. on account of penalty for not taking over the possession by the purchaser. The possession, however, must be taken within 3 months from the date fixed for the same and in case, possession is not taken in 3 months, then the allotment shall stand cancelled and the earnest money shall stand forfeited without any notice.”*

[emphasis supplied]

12. From the aforesaid, it is evident that upon making payment of the balance 75% amount, on submission of all requisite documents and subject to verification of payment made by the auction purchaser/petitioner, the DDA was obliged to issue the possession letter to the petitioner. Clearly, in view of the interim order dated 08.11.2019, the DDA was in no position to issue the possession letter, yet, it proceeded to accept 75% payment from the petitioner, and even charged interest for the delay that had been occasioned.

13. In light of the aforesaid Clause 13 of Section II of Chapter III of the 'E-Auction Document', the DDA was not entitled to demand 75% payment when it was in no position to hand over the possession of the subject plot to the petitioner. The said demand letter was issued on 04.09.2019, i.e., prior to the date on which this Court passed the interim stay order dated 08.11.2019. As such, upon passing of the said interim order, it was incumbent on the part of the DDA to not only inform the petitioner about the factum of the said interim order, but also to ensure that the due date of payment for the balance 75% amount, was in sync with the obligations of the DDA itself under the aforesaid auction conditions. This, admittedly, was not done by the respondents/DDA.

14. Although, during the course of the arguments, learned senior counsel appearing for the DDA contended that the petitioner has been shifting its stand, and therefore, the petitioner could not be said to have demonstrated continuous readiness and willingness; a perusal of the representations made by the petitioner leave no manner of doubt that at no stage did the petitioner withdraw his offer and/or express his unwillingness to take the plot in

question at the agreed upon price. In this regard, it is noticed that vide representation dated 31.03.2020, it was specifically sought by the petitioner as under:-

“5.In view of facts and circumstances above, I request DDA for the following options:

(a) Option 1. Refund 75% of my total paid amount (Demand Letter amount) with interest and maintain allotment of my Plot against balance 25% then held with you. As and when your office is in a position to handover the allotted plot, based on vacation of the ‘stay order’ from the court, the balance count of 75% may be demanded to be paid within 30 days by me and plot be handed over as per procedure.

(b) Option 2. An alternate plot of same/similar size and at same rate in a society of my choice at Rohini may be allotted to facilitate my early resettlement on retirement as such I do not have any place to stay in Delhi post retirement.”

Even on subsequent occasions, the stand of the petitioner was consistent with the above request.

15. In the facts and circumstances of the case, it cannot be said that there was any lack of readiness or willingness on the part of the petitioner. The petitioner’s repeated requests/ representations to the DDA seeking that DDA should not insist on retaining 100% payment when it was not in a position to hand over possession of the subject plot, cannot be said to be unreasonable or construed as evincing any lack of readiness or willingness on the part of the petitioner.

16. Despite the fact that the petitioner never at any stage sought 100% refund, the DDA, on its own accord proceeded to refund an amount of Rs.2,00,37,777/- without even issuing any order in terms of Clause 1.9 of the 'E-Auction Document', annulling the bidding process. As mentioned, the petitioner was desirous that 75% payment should be taken from him only when the DDA was in a position to hand over the possession of the subject plot. Such a request was eminently reasonable and in line with Clause 13 of Section II of Chapter III of the 'E-Auction Document' as noticed herein above.

17. It is also noticeable that vide order dated 15.02.2021, passed by this Court in W.P.(C) 1970/2021 filed by the petitioner, in which one of the prayers sought by the petitioner was for restoration of allotment in respect of the subject plot, this Court had specifically directed that the said writ petition would be treated as petitioner's representation, and decision should be taken thereon. Thereafter, the petitioner is stated to have been heard on 24.02.2021, and appropriate orders were to be passed within two weeks thereafter, in terms of the said order dated 15.02.2021 passed by this Court. The DDA, however, did not comply with the said directions and did not pass any order within the time granted by this Court. In the meantime, on 16.03.2021, there was a material change in the circumstances, inasmuch as, the interim order dated 08.11.2019 was vacated. No hearing was granted to the petitioner after this material change in circumstances. Further, the petitioner had sent a representation dated 19.03.2021, whereby he offered to immediately make full payment in respect of the subject plot. A perusal of

the speaking order that came to be passed on 08.06.2021, discloses that the material change in circumstances and the petitioner's communication dated 19.03.2021, whereby the petitioner sought to make full payment for the entire subject plot, was not even taken into consideration.

18. The respondents/DDA cannot be permitted to take advantage of its own lapse in not even informing the petitioner about the factum of the interim order dated 08.11.2019. It would be wholly unreasonable and arbitrary for the DDA to insist that an auction purchaser must make 100% payment even when the DDA was in no position to issue the possession letter in favour of the said auction purchaser. Also, once the impediment created as a result of the interim order dated 08.11.2019 was removed on 16.03.2021 upon vacation of the interim order; there was no reason why the DDA should not have concluded the transaction with the petitioner by demanding the remaining payment.

19. It is true that normally this Court would be circumspect in interfering with a contractual matter, and it is only when the decision-making process is clearly vitiated on account of arbitrariness and irrationality, that this Court would be constrained to interfere. In the case of **Jagdish Mandal v. State of Orissa & Ors.**, (2007) 14 SCC 517, it was observed by the Supreme Court as under:-

“22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made “lawfully” and not to check whether choice or decision is “sound”.....Therefore, a court before interfering in tender or

contractual matters in exercise of power of judicial review, should pose to itself the following questions:

(i) *Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;*

OR

Whether the process adopted or decision made is so arbitrary and irrational that the court can say: “the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached”;

(ii) *Whether public interest is affected.*

If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action.”

20. In the case of ***Rishi Kiran Logistics Private Limited v. Board of Trustees of Kandla Port Trust & Ors.***, (2015) 13 SCC 233, the Supreme Court has observed that “Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision-making process itself.”

21. In the present case, as is evident from the above narration, the manner in which the respondents have proceeded with the decision-making process is palpably unreasonable and arbitrary; the DDA has not adhered to the terms of the ‘E-Auction Document’ as explained hereinabove. As such, this

is a fit case warranting exercise of jurisdiction under Article 226 of the Constitution of India.

22. In the light of the above, the impugned communication/ order dated 8.6.2021 is set aside; DDA is directed to restore the allotment of the subject plot bearing no. 31, Block E2, Sector-7, Rohini-110085, and to complete the allotment process thereof. The amount deposited by the petitioner with the Registrar General of this Court in terms of the interim order dated 18.08.2021, be released to the respondents/ DDA, along with accrued interest. Upon receipt of the said amount, the respondents/DDA may proceed with concluding the allotment process, subject to compliance with all relevant formalities as per the tender conditions, and hand over possession of the subject plot to the petitioner.

23. The petition is allowed in the aforesaid terms. All pending applications stand disposed of.

OCTOBER 31, 2022

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SACHIN DATTA, J.