2023:DHC:5649-DB

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

% *Date of Decision: 02.08.2023*

+ **LPA 722/2022 & APPL. 54617/2022 & CM APPL. 54618/2022**

DELHI DEVELOPMENT AUTHORITY & ANR. ..... Appellants

Through: Ms. Kritika Gupta, Adv.

versus

JATINDER KUMAR WADHWA & ANR. ..... Respondents

Through: Mr. Anand Varma & Ms. Adyasha Nanda, Advs.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

1. Delhi Development Authority (hereafter '**DDA**') has filed the present appeal impugning a judgement dated 19.07.2022 (hereafter '**the impugned judgment**') passed by the learned Single Judge whereby the action of DDA in cancelling the sale of the industrial property (Plot No.86, Block-C, admeasuring 100 sq. mtrs. situated in Mangolpur Industrial Area, Phase-I, hereafter '**the property**') was set aside. DDA contends that the respondents have not complied with the terms and conditions of the auction and therefore, the Earnest Money Deposit (EMD) paid by the respondents is required to be forfeited.

2. DDA assails the impugned judgment, essentially, on two grounds. First, that the learned Single Judge had disregarded the terms of the auction; and second, that the learned Single Judge had referred to the decision of the Supreme Court in ***R.K. Saxena v. Delhi Development Authority: (2001) 4 SCC 137***, which is inapplicable to the facts of the present case.

2.1 The controversy in this appeal arises in the context of the terms and conditions of the notice inviting tender for sale of the property issued by DDA on 27.09.2020. The terms and conditions of the auction as set out in the said notice, required the prospective bidders to deposit 5% of the bid amount before participating in the e-auction; 20% of the bid amount within seven days from the issuance of the Letter of Intent (hereafter '**the LOI**') by the competent authority accepting the bid; and the balance 75% of the bid amount within a period of 90 days from the issuance of the demand letter. Clause 9 and 10 in Chapter II of the terms and conditions as set out in the LOI are relevant and the same are set out below:-

> "9. The demand-cum-allotment letter would be issued to the successful bidder through the BHOOMI Portal after receipt of second stage EMD payment and other requisite documents and verification of second stage EMD. The highest bidder is required to make payment of balance 75% bid amount, as demanded vide said demand letter referred to above, within 90 days from date of issuance of demand letter (without interest/within 270 days from the date of issuance of demand letter (subject to payment of interest on the balance amount @ 10.00% p.a. during the extended period) through payment tab provided in BHOOMI Portal failing which the bid will automatically stand cancelled without any further notice. No extension of time will be granted for payment of 75% of bid amount for period after 270 days from the date of issuance

of demand-cum-allotment letter.

Note: The successful bidder may pay the cost of the plot by availing loan facility from financial institutions for which the DDA offer NOC/mortgage permission.

10. In case, the highest bidder fails to deposit the balance 75% amount within the stipulated period, as mentioned in the demand letter, the bid shall automatically stand cancelled and the Earnest Money shall stand forfeited without any further notice. In that eventuality, the Competent Authority shall be competent to re-auction the Industrial plot."

3. In the present case, the respondents complied with the condition of depositing 5% of the bid amount at the time of obtaining the bid documents. They also deposited the balance 25% on 23.11.2020 which was within the stipulated period. Thus, undisputedly, the condition of deposit of the EMD was duly satisfied.

4. On 10.03.2021, DDA issued a letter informing the respondents that the balance amount of ₹1,35,84,100/- (Rupees One Crore Thirty five Lakhs Eighty four Thousand and One Hundred only) was due and payable by the respondents. The said letter also indicated the time frame as stipulated on the "back side of the letter", which has been reproduced in the impugned judgment. The tabular statement indicating the time frame for making payments and further conditions are set out below:-

Amount payable (75% Bid Amount + interest)/stipulated time frame		
P+0% interest	If paid within 1-90 days from demand letter issuance date	13,584,100.00

P + interest of 0.5 month @ 10% p.a.	If paid within 91-105 days from demand letter issuance date	13,640,700.00
P + interest of 1 month @ 10% p.a.	If paid within 106-120 days from demand letter issuance date	13,697,301.00
P + interest of 1.5 month @ 10% p.a.	If paid within 121-135 days from demand letter issuance date	13,753,901.00
P + interest of 2 month @ 10% p.a.	If paid within 136-150 days from demand letter issuance date	13,810,502.00
P + interest of 2.5 month @ 10% p.a.	If paid within 151-165 days from demand letter issuance date	13,867,102.00
P + interest of 3 month @ 10% p.a.	If paid within 166-180 days from demand letter issuance date	13,923,703.00
P + interest of 3.5 month @ 10% p.a.	If paid within 181-195 days from demand letter issuance date	13,980,303.00
P + interest of 4 month @ 10% p.a.	If paid within 196-210 days from demand letter issuance date	14,036,903.00
P + interest of 4.5 month @ 10% p.a.	If paid within 211-225 days from demand letter issuance date	14,093,504.00
P + interest of 5 month @ 10% p.a.	If paid within 226-240 days from demand letter issuance date	14,150,104.00
P + interest of 5.5 month @ 10% p.a.	If paid within 241-255 days from demand letter issuance date	14,206,705.00
P + interest of 6 month @ 10% p.a.	If paid within 256-270 days from demand letter issuance date	14,263,305.00

Please Note:

> a) If the premium is paid in part, the pro-rata interest vis-à-vis the principal amount would be payable and the bidder may calculate the interest accordingly.
>
> b) This demand letter is subject to verification by Account Department of 25% of bid amount paid earlier by you within stipulated period as per terms & conditions of tender document.
>
> c) No extension of time shall be granted for payment of demanded amount for period beyond 270 days from date of issuance of demand cum allotment letter under any circumstances. (Date of issuance is included in 270 days granted). In case the payment of balance premium along with interest (if any) is not received within the stipulated period as indicted above, the bid shall automatically stand cancelled and the entire EMD (25% of premium) shall automatically stand forfeited without any notice. In that case, DDA shall be at liberty to re-auction the plot."

5. It is apparent from the above that in terms of the said letter, the respondents were entitled to pay the balance amount of ₹1,35,84,100/- without interest within a period of 90 days and further interest as stated, if the payments were made beyond the period of 90 days but within the stipulated period of 270 days. It is DDA's case that the said conditions are contrary to terms and conditions of the tender and therefore, were required to be ignored. However, as things transpired, DDA did not take any precipitate action on the expiry of the period of 90 days from the issuance of the LOI. In the meanwhile, the respondents paid a sum of ₹50 lacs on 17.06.2021. The balance amount of ₹85,84,100/- was paid on 08.07.2021, which was beyond the period of 90 days but within the period of 270 days from the said letter.

6. The controversy in the present case relates to the delay in the payment of interest. According to the learned counsel for DDA, the

interest was also required to be paid within the period of 270 days from the issuance of said letter and the said period expired on 04.12.2021. Admittedly, the respondents did not pay the interest on the payments made beyond the period of 90 days of the letter of demand but within the period of 270 days of the said letter.

7. It is the respondents' case that the date of payment fell during the period when the pandemic was raging, and banks and other institutions had, across the board, agreed to waive interest on the amounts due. However, according to DDA, the interest was payable.

8. On 11.01.2022, DDA addressed an email to the respondents calling upon the respondents to deposit a sum of ₹1,28,135/- on account of interest on the delayed payment of the premium in order that further steps may be taken. This was followed by another email dated 13.01.2022 clarifying that the time period for depositing the interest on the delayed premium would count from the date of the previous email, that is from, 11.01.2022. The aforesaid two emails sent by DDA are extracted below:-

> Communication dated 11th January, 2022.
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> "On Tue, Jan 11, 2022 at 6:00 PM Land Sales Branch Industry <assttdirlsbi@gmail.com> wrote:
>
> Sir,
>
> You are requested to deposit Rs. 1,28,135/- on a/c of interest on delay payment of premium so that further action in the matter may be taken."
>
> Communication dated 13th January, 2022.

"On Thu, Jan 13, 2022 at 4:12 PM Land Sales Branch Industry <assttdirlsbi@gmail.com> wrote:

Sir,

It is to inform you that the time period to deposit Rs.1,28,135/- on a/c of interest on delay payment of premium will be count from the previous Email date (i.e 11.01.2022)

On Tue, Jan 11, 2022 at 6:00 PM Land Sales Branch Industry <assttdirlsbi@gmail.com> wrote:

Sir,

You are requested to deposit Rs. 1,28,135/- on a/c of interest on delay payment of premium so that further action in the matter may be taken."

9. The respondents by an email dated 24.01.2022 requested for a clarification about the category of type of payment required to be filled in the said challan which was up for depositing the interest for the delay in payment of the premium. Since no response was received to the said communication, the respondents proceeded to deposit an amount of ₹1,28,135/- on 09.02.2022.

10. However, DDA proceeded to cancel the auction sale in favour of the respondents by a letter dated 17.05.2022. DDA referred to the demand letter dated 10.03.2021, which specified that the payments were required to be made within the maximum period of 270 days from the date of issuance of the said letter. According to DDA, since the respondents had failed to pay the interest amount within the said stipulated period of 270 days, the auction in their favour was required

to be cancelled and the EMD of 25% of the bid amount stood forfeited automatically.

11. DDA's stand before the learned Single Judge was not consistent. Whilst, on one hand, DDA claimed that extension of time could not be granted in terms of the tender conditions, as no application for extension was made by the respondents; on the other hand, it also contended that the payment could be made within a period of 270 days, albeit with interest.

12. Before this Court, the learned counsel for DDA has rested the case on the ground that the sale is liable to be cancelled as the payment of interest was made beyond the period of 270 days from the letter of demand.

13. The learned Single Judge has proceeded on the basis that since by an email dated 11.01.2022, DDA called upon the respondents to pay the interest; it is implicit that the sale of the property was not cancelled. The issuance of the email dated 11.01.2022 calling upon the respondents to pay an interest after the period of 270 days had expired, militates against DDA's stand that the sale was cancelled and the EMD stood forfeited. The learned Single Judge also noted that, Clause 10 of the tender conditions did contemplate extension of the period for depositing the balance payment of 75%.

14. Considering the aforesaid facts, the learned Single Judge allowed the respondents' petition and annulled the letter of cancellation of the auction.

15. The learned counsel for the appellant contended that the learned Single Judge had observed that the payment of interest as demanded by

the email dated 11.01.2022 could be paid within a period of 30 days. She points out that the said emails did not mention the period of 30 days and contends that the learned Single Judge had erred in proceeding on that basis.

16. We are not persuaded to accept that there has been any delay on the part of the respondents to pay the interest in compliance with the email dated 11.01.2022. As noted above, the respondents had enquired as to the category under which the payment of interest was required to be classified, for the purposes of depositing the same. Since the respondents did not receive any response, they proceeded to make the payment with interest on 09.02.2022. The time taken to deposit the interest was less than thirty days and, we do not think that the time taken is unreasonable. The observations made by the learned single judge must be construed in the said context.

17. It is also relevant to note that the respondents had within the period of 270 days sent an email dated 24.09.2021 informing DDA as to the details of complete payment made in respect of the property. In response to the same, DDA had, by a communication dated 28.09.2021, called upon the respondents to submit an affidavit and an undertaking in the format enclosed so that the possession letter may be issued.

18. The respondents had in compliance with the said letter, furnished the undertaking and identification slip for the property under the cover of its communication dated 30.09.2021. Admittedly, DDA did not issue further communications within the said period of 270 days.

19. Given the facts and circumstances, we find no infirmity with the decision of the learned Single Judge in holding that the respondents

have discharged the consideration payable for the property and the time period for making the said payments stood extended in terms of the email dated 11.01.2022. The fact that the period of 30 days has been referred to by the learned Single Judge, in our view, makes no difference to the reasons that has persuaded the learned Single Judge to allow the present petition.

20. The contention that the learned Single Judge has erred in relying on the decision in the case of ***R.K. Saxena v. Delhi Development Authority*** (*supra*) is also unmerited.

21. It is also noticed that there is a delay of 106 days in filing the present appeal. We are of the view that reasons explaining the said delay are also unsubstantial.

22. In view of the above, we find no ground to interfere with the judgement passed by the learned Single Judge. The appeal is, accordingly, dismissed.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

AUGUST 2, 2023
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