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

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Date of Decision: 11.01.2023

+ **LPA 231/2018 & CM APPL. 16141/2018, 16142/2018 & 28142/2020**

GROUP CAPT MUKESH PAUL

..... Appellant

Through: Mr. Suryakant Singla & Ms. A
Sahitya Veena, Advs.

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Ms. Monika Triapthy, SC with Mr.
Manish Vashisht & Mr. Varun
Bhatnagar, Advs.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J. (ORAL)

1. The appellant has filed the present appeal impugning an order dated 12.02.2018, passed by the learned Single Judge in Writ Petition (Civil) No. 11273 of 2016, whereby the appellant's writ petition was partly allowed.

2. The appellant had filed the said writ petition, *inter alia*, praying as under:-

“a) issue a writ of mandamus or any other appropriate writ, order or direction quashing

and setting aside the demand letter No. F.777(739)95/SFS/DW-II/05 dated 0.11.13 as illegal and void ab initio;

- b) issue a writ of mandamus or any other appropriate writ order or directing the respondent to give possession of a Flat no.169, GF, Pocket III, Sector-11, Dwarka., Delhi forthwith in compliance of orders of Hon'ble Lieutenant Governor of Delhi dated 18.03.2009;
- c) issue a further writ of mandamus or any other appropriate writ order or direction directing the respondent to compensate the petitioner by paying exemplary damages along with interest at the prevalent market rate to him for the harassment caused to him;
- d) Grant costs in favour of the Petitioner;”

3. In the month of July 1995, the appellant had applied under the VIII SFS Scheme for a flat in Dwarka. In the month of November 1995, the appellant was allotted a flat in Sector-22, Pkt/ Block-1, Dwarka at a cost of ₹7,20,000/-. The appellant claims that he was completely ignorant about the allotment of the flat at the material time; he became aware of such allotment on receipt of a letter dated 09.10.1998, from the respondent (DDA), calling upon him to apply for refund of the registration deposit of ₹50,000/-. On becoming aware of the cancellation of the allotment, the appellant requested for re-allotment of the flat, which was rejected. Thereafter, the appellant applied for refund of the registration amount along with interest but that request was also

not processed.

4. The appellant, thereafter, approached various authorities including the Hon'ble Lieutenant Governor, NCT of Delhi for redressal of his grievance. On 18.03.2009, the Hon'ble Lieutenant Governor found that there was no record with the DDA to establish that the Letter of Allotment was ever issued to the appellant. Accordingly, he ordered allotment of Category-II SFS flat in Dwarka at the then current cost to the appellant. However, no action was taken by the DDA in that regard at the material time except sending a letter dated 12.04.2009, informing the appellant of the said decision.

5. Thereafter, the DDA allotted Flat no. 13-C, Pocket 2, Sector-7, Dwarka and issued a demand letter dated 19.02.2010. It is the appellant's case that the said communication was also not received by him. Subsequently, on becoming aware of the allotment, the appellant availed of a home loan and on 12.07.2010, deposited a sum of ₹29,42,878/- along with conveyance deed charges with the DDA.

6. On 29.03.2011, the DDA issued the possession letter in respect of the said flat (Flat no. 13-C, Pocket 2, Sector-7, Dwarka). The appellant claims that the said flat was smaller than the flat originally allotted to him in the year 1995. The appellant also claims that at the time of handing over of physical possession of the flat, he found that same was not fit for human inhabitation and was in the state of disrepair. The appellant wrote several letters to the DDA for carrying out the necessary repairs; however, the appellant claims that the DDA failed to

carry out the necessary repairs. Thereafter, the appellant requested for change of accommodation as he had suffered an injury in the course of his service with the Indian Air Force and found it difficult to climb stairs.

7. Apparently, the DDA acceded to the aforesaid request and allotted a flat on the ground floor being Flat no. 169, GF, Pocket III, Sector-11, Dwarka. The DDA issued a demand letter in the month of November, 2013, levying restoration charge as well as demanding additional cost for the alternative flat amounting to ₹50,62,245/-.

8. This additional demand compounded the appellant's grievance. According to him, he had merely applied for change of allotment as the flat allotted to him earlier (Flat no. 13-C, Pocket 2, Sector-7, Dwarka) was found to be unfit for human habitation.

9. At the material time, the appellant's grievance, essentially, related to the demand of the additional cost for change in the allotment. Since the appellant did not deposit the differential amount of ₹20,99,367/-, the DDA claimed the said amount with interest at the rate of 15% per annum compounded with effect from January 30, 2014 till the date of actual payment.

10. The appellant approached this Court seeking redressal of his grievances. The learned Single Judge did not find merit in the appellant's contention that he was not required to pay the additional charges as demanded. However, the Court found that the restoration charges of ₹20,000/-, as claimed by the DDA, were not justified.

Accordingly, the learned Single Judge passed the impugned order. Aggrieved by the impugned order, the appellant has preferred the present appeal.

11. The present appeal was taken up for hearing on 31.07.2018 and this Court passed an order, *inter alia*, observing as under:-

“The appellant is a retired Air Force Officer with limited resources. If possible, the respondent would try to resolve the matter by giving some concession in view of the fact that the appellant had paid Rs.29,42,878/ on 12.07.2010. Some consideration if deemed appropriate may be given.”

12. The present appeal was taken up for hearing on 19.09.2018. One of the issues that concerned the Court on that date was whether the DDA had handed over to the appellant the flat (Flat no. 13-C, Second Floor, Sector-7, Pocket 2, Dwarka). According to the appellant, no repair was carried out in the said flat despite the appellant making repeated requests to the aforesaid effect. The Court had also noted that the controversy related to the demand of interest amounting to approximately ₹18 lakhs calculated till 30.09.2018. The petition was adjourned to enable the learned counsel for the respondent to take instruction on whether any repair was carried out. Subsequently, on 07.12.2018, the learned counsel informed the Court that repairs had been undertaken but the communications dispatched to the appellant had been returned undelivered. In the meanwhile, the appellant suffered a stroke and was indisposed for a considerable period of time and this appeal could not be effectively heard.

13. The appeal was heard on 12.07.2019 on the question of interest imposed by the DDA. However, the hearing remained inconclusive.

14. The appeal was taken up once again for hearing on 18.10.2019. On that date, the Court noted that in cases where the allottees are not in default, the DDA is required to pay simple interest to the allottee at the rate of 7% per annum. In the circumstances, the Court observed that it would be apposite if the appellant be directed to pay a simple interest at the rate of 7% per annum with effect from 01.11.2013 on the outstanding amount of ₹20,69,367/-. However, on that date, the learned counsel appearing for the appellant informed this Court that the appellant's family members had visited the subject flat and found that the it was occupied. In the circumstances, the learned counsel for the respondent took time to take instructions.

15. The order passed on 18.10.2019 reads as under:-

“1. This order is in continuation of the order dated 13.9.2019 on which date, the following orders was passed:-

1. Pursuant to the order dated 12.7.2019, Ms. Tripathy, learned counsel for the respondent/DDA states on instructions that the costs of the flat recorded in the letter dated 10.6.2013, mentioned as Rs.50,62,245/-, does not include any interest component imposed as penalty. She states that the appellant having deposited a sum of Rs.29,92,878/-, was required to deposit a further sum of Rs 20,69,367/- towards the costs of the flat for which he has defaulted and therefore, interest has been imposed on the said amount at the compounded

rate of 15% p.a. till 30.9.2018, which comes to Rs. 18.00 lacs. By the end of September, 2019, the interest of Rs. 18.00 lacs, would have mounted to a sum of Rs. 22.50 lacs (approx.).

2. We have enquired from learned counsel for the respondent/DDA to indicate the rate of interest that is payable by the respondent/DDA in cases where the allottee is not at fault. She replies on instructions that in such cases, simple interest @ 7% p.a. is payable by DDA, with the prior approval of the Competent Authority. If the interest is calculated @7% p.a. on the outstanding amount of Rs.20,69,367/-, then the interest component would be Rs. 9.00 lacs (approx).

3. Learned counsel for the appellant states that no interest is leviable on the outstanding amount as the fault lies with the respondent/DDA in failing to send letters to the appellant at his changed address. She also states that the respondent/DDA has retained a sum of Rs.29,92,878/- deposited by the appellant from July, 2010 onwards for which the appellant would also be entitled to set off of the interest demanded.

4. We have enquired from learned counsel for the appellant if she has come prepared with instructions on the interest aspect. She states that her client is bed ridden and his family members are busy attending to him, due to which they could not arrange to be present in court today.

5. At the request of learned counsel for the appellant, list on 18.10.2019."

2. Learned counsel for the appellant states on instructions

that her client is ready and willing to pay the outstanding amount of Rs.20,69,367/- to the respondent/DDA towards the disposal costs of the flat, namely, Flat No. 169, Ground Floor, Pocket-3, Category 2, Dwarka Residential Scheme, but the interest component may be curtailed since the respondent/DDA has retained a sum of Rs.29,92,878/-, that was deposited by the appellant from time to time commencing from July, 2010.

3. Having regard to the fact that in circumstances where an allottee is not at fault, the respondent/DDA pays simple interest to the allottee @ 7% p.a., it is deemed appropriate to direct the appellant to pay to the respondent/DDA, simple interest @ 7% p.a., w.e.f 01.11.2013, on the outstanding amount of Rs.20,69,367/- within four weeks from today.

4. Learned counsel for the appellant states that as her client would not be in a position to arrange the funds within four weeks, some more time be granted.

5. It is directed that 50% of the outstanding amount along with 50% of interest component payable on the outstanding amount shall be deposited by the appellant with the respondent/DDA within four weeks from today and the balance outstanding amount and the balance interest component shall be deposited within four weeks thereafter.

6. At this stage, learned counsel for the appellant states on instructions that when her client's family members had visited the subject flat recently, it had transpired that someone is residing there. She states that the respondent/DDA be directed to clarify the status of the flat that is proposed to be allotted to the appellant before any further order is passed.

7. Learned counsel for the respondent/DDA states that no officer has come from the Department today and she would need clear instructions in this regard.

8. Learned counsel for the respondent/DDA shall obtain

instructions as to whether the subject flat has already been allotted to a third party and if so the options available shall be furnished to learned counsel for the appellant within two weeks from today. Learned counsel for the appellant shall come prepared with instructions in this regard on the next date.

9. List on 22.11.2019.”

16. It was subsequently confirmed that that while submissions were being advanced before this Court on the premise that the flat (169, GF, Pocket III, Sector-11, Dwarka) allocated to the appellant was available to be handed over to the appellant, the same had, in fact, already been allotted to another person. Thereafter, the DDA undertook the exercise of allocating another flat from its inventory to the appellant. The DDA suggested a few alternate flats including Flat no. 321, G.F, Sector-19, PKT-2, Dwarka

17. On 03.11.2022, the learned counsel appearing for the appellant indicated his willingness to take possession of one of the alternative flats suggested by the DDA (Flat no. 321, G.F, Sector-19, PKT-2, Dwarka). However, the appellant was required to pay the additional consideration (over and above ₹29,42,878/-) for allotment of the subject flat. This Court was of the view that the issue regarding the additional payment be determined on the basis of the additional cost of the said flat. This was considering that the flat in question was constructed in the year 1995 and there is no dispute that the appellant was entitled to allotment of the flat way back in 1995. The order passed by this Court on 03.11.2022, reads as under:-

- “1. This matter seems to have a chequered history.
2. What is important, at present, is that the appellant has indicated via Mr Suryakant Singla, Advocate, that he is willing to take possession of the property described as Flat No.321, Ground Floor, Pocket-2, Sector-19, Dwarka [hereafter referred to as "subject flat"].
 - 2.1 This is a flat which is built under self-financing scheme [SFS], and falls in category-II.
3. It is also not in dispute, that the appellant had deposited towards allotment of flat, in the aforementioned category, Rs.29,42,878/-.
 - 3.1 This amount was deposited by, the appellant on 12.07.2010.
4. We may also note, that there is on record, an affidavit filed on behalf of the respondent/Delhi Development Authority (DBA) dated 24.03.2021.
 - 4.1 This affidavit alludes to the repairs carried out in the subject fiat, the details of which are set forth in paragraph 6 of the said affidavit.
5. To be noted, in paragraph 8 of the very same affidavit, the respondent/DBA has indicated that the glass panes would be fixed to the windows, at the time of allotment of the subject flat.
6. Given this position, Ms Manika Tripathy, who appears on behalf of the respondent/BBA, is directed to file an affidavit, as to the balance amount, if any, that the appellant will have to pay, for taking possession of the subject flat.
7. While doing so, the respondent/BBA will bear in mind, the stand taken before the Court on 19.09.2018, at which point it was indicated that the principal amount that the appellant would have to pay would be Rs.20,69,367/-.

8. Although Ms Tripathy says, that at that particular point in time, the allotment of the subject flat was not in contemplation, we would, nevertheless like the respondent/BBA, as noted above, to keep in mind, that the subject flat, according to us, at this juncture, is a part of the inventory of the respondent/DDA.

8.1 The respondent/DDA should be able to recover the cost of the subject flat, along with a certain amount of profit, having regard to the peculiar facts and circumstances of this case. Furthermore respondent/DDA would state the difference in the flat which was being offered when the principal sum payable by the appellant was indicated at the hearing held on 19.09.2018.

9. The appellant, admittedly, is a war veteran, who is disabled.

10. The affidavit, which the respondent/DDA will file, will also allude to the cost of the flat, when it was constructed, and the profit element which was factored in, while fixing the price.

11. It may also be noted, that Mr Singla says that if interest is to be charged by the respondent/DDA, then the Court should also take into account, the fact, that the appellant had deposited monies with the respondent/DDA, as noted above, as far back as in 2010.

12. This is an aspect, which we will examine, once Ms Tripathy files an affidavit in the aforementioned terms.

13. The affidavit will be filed within the next two weeks.

13.1 A copy of the same will be furnished to Mr Singla.

14. Mr Singla will have leave to file an affidavit-in-reply.

15. List the matter on 15.12.2022.”

18. In compliance with the orders passed by this Court, the DDA has

filed an affidavit indicating the additional cost payable in relation to the subject flat (Flat no.321, G.F, Sector-19, PKT-2, Dwarka).

19. The learned counsel appearing for the DDA has drawn the attention of this Court to a tabular statement setting out the computation of cost. The same is reproduced below:-

Particulars	Cost of Extra Area as per Current Cost
Plinth Area Rate (PAR) (in Rs. Per Sqm.)	34,020/-
Year of 1 st Costing	1996
Plinth Area Rate (PAR) (in Rs. Per Sqm.) after depreciation.	25,515/-
Extra Covered Area of the flat (in square meter) {A}	14.98
Extra Covered Area of Court Yard (in square meter) {B}	18.62
Total Extra Plinth Area (25% of {B} + {A} (in square meter)	19.635
Cost of Construction (in Rs.)	5,00,987/-
Add; Departmental charges @ 15%	75,148-
Sub-Total{C} (in Rs.)	5,76,135-

Add: Interest @ 10% p.a. for 18 months	86,420/-
Construction Cost {D} (in Rs.)	6,62,555/-
PDR (in Rs. Sqm)	73,084/-
Land Factor	0.85
Land Cost of Extra area of Flat (Exclusive of Court Yard) {E} (in Rs.)	9,30,579/-
Land Cost for Court Yard	1
Land Cost of Extra Area of Court Yard {F} (in Rs.)	13,60,824/-
Total Land Cost {G} (in Rs.)	22,91,403/-
Construction Cost {D} + Land Cost {G} (in Rs.)	29,53,958
Add: Surcharge @20%	5,90,792/-
Total Provisional disposal cost of differential area of Flat (in Rs.)	35,44,749/-

20. The DDA is willing to allot the said flat subject to a consolidated payment of ₹35,44,749/-. To put a quietus to the controversy, this Court had suggested to the learned counsel for the appellant to pay the additional cost as demanded by that DDA, that is, ₹35,44,749/-.

21. After some arguments, the controversy between the parties has

been narrowed down to an amount of ₹5,90,792/- being a surcharge at the rate of 20% as included in the tabular statement. The appellant is ready and willing to pay a sum of ₹29,53,958/- (₹35,44,749/- less ₹5,90,792/-) against the demand of ₹35,44,749/-.

22. On a pointed query as to the nature of the said charges, the learned counsel appearing for the DDA states on instruction that the said amount is a premium location charge. She states that the area in question (Dwarka), is now considered as a premium location and therefore, additional charges are levied in respect of the allotment of flats in the said area. She, however, concedes that the premium location tag has been accorded to Dwarka only recently in the year 2021 and no such charges were leviable on flats allotted in Dwarka at the material time, that is, in the year 1995 or even during the course of the proceedings in this appeal.

23. In this view, we find no justification for charging premium location charges from the appellant. As noted above, there is no dispute that he was entitled to allotment of the flat in Dwarka way back in the year 1995. He, on receiving intimation regarding the same, had immediately deposited ₹29,42,878/-. Even otherwise, the DDA has, keeping in view the peculiar facts of this case including that the appellant has suffered an injury in service of this nation, accepted to make the allotment on the basis of its cost, which relates to the period prior to the year 2021.

24. In view of the above, we are of the view that the subject flat be

allotted to the appellant on payment of the additional amount of ₹29,42,878/-.

25. In addition to the above, there is another issue that needs to be clarified. It is stated that that the appellant has also deposited conveyance charges. In the event the conveyance charges are not included in the amount of ₹29,42,758/- paid by the appellant, the DDA would give due credit for the same and adjust it from the amount receivable from the appellant.

26. In view of the above, the present appeal is disposed of by directing the appellant to deposit the amount of ₹29,53,958/- (₹35,44,749 minus ₹5,90,792/-) with the DDA within a period of four weeks from today.

27. The deposit would be payable by demand draft. In the event the appellant makes the said deposit within the aforesaid period, the DDA shall take steps to hand over the flat (Flat no.321, G.F, Sector-19, PKT-2, Dwarka) to the appellant or his authorized representatives and also complete all legal formalities required for conveying of flat to the appellant on the appellant paying the necessary conveyance charges.

28. The DDA shall also ensure that glass panes are duly fixed on the windows of the subject flat before the handing over of its possession to the appellant.

29. This Court is informed that Mr. Mahender Pal, Deputy Director (SFS), DDA is the concerned officer. He is directed to ensure that the

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order passed today is duly complied with. In the event the appellant faces any difficulty in completing the formalities, his representatives are at liberty to approach Mr. Mahender Pal, Deputy Director (SFS), DDA for resolving the same.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

JANUARY, 11 2023
Ch

