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

+ **W.P.(C) 6450/2024 & CM APPL. 26869/2024**

KANIKA SINGHAL & ORS.

..... Petitioners

Through: Mr. Dhanesh Relan, Ms. Sonia A
Menon and Ms. Vanita Chauhan,
Advocates

versus

DELHI DEVELOPMENT AUTHORITY & ANR. Respondents

Through: Mr. Arun Birbal and Mr. Sanjay
Singh, Advocates for DDA

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Date of Decision: 07th May, 2024.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ: (ORAL)

CM APPL. 26870-71/2024 (for exemption)

1. Allowed, subject to all just exception.
2. Accordingly, the present applications stand disposed of.

W.P.(C) 6450/2024 & CM APPL. 26869/2023

1. Present petition, filed under Article 226 of the Constitution of India, seeks quashing and striking down of the Notification dated 16th November, 2020, issued by the Respondent No.2 i.e., Ministry of Housing and Urban Affairs, UOI and the consequent amendment carried out in Chapter 4; Clause 4.4.3B(v) of the Master Plan of Delhi, 2021 ('MPD'). The Petitioners further seek direction to the Respondents to revise the costing of the flats



strictly in terms of the earlier notification dated 23rd September, 2013 issued by Ministry of Urban Development (Delhi Division).

Brief Facts

2. The Respondent No.1 came up with a residential scheme titled as 'Diwali Special Housing Scheme, 2023' ('Scheme of 2023') on 19th November, 2023 and as per the said scheme certain number¹ of flats were auctioned under the Economically Weaker Section ('EWS') category.
3. The Scheme of 2023 included 728 flats in the Group Housing constructed in Sector-19B, Dwarka, Phase-II. The Petitioners herein fell under the EWS category and accordingly applied for the allotment of the flats under the said Scheme in the Group Housing constructed in Sector-19B, Dwarka, Phase-II, on a 'First Come First Serve' basis.
4. The tentative disposal price of each EWS flat in Sector-19B, Dwarka, Phase-II, was disclosed in the brochure of the Scheme of 2023 as Rs. 26 lakhs. The Petitioners were declared successful and were allotted flats located in the said project. The Petitioners were thereafter, issued demand/allotment letter wherein, illustratively, Petitioner No. 1 herein received a final demand letter dated 10th February, 2024, for a sum of Rs. 25,28,675/- (i.e., Rs. 25.28 lakhs approximately).
5. This petition has been filed by 21 Petitioners who are similarly placed and have been allotted EWS flats in the Group Housing constructed in Sector-19B, Dwarka, Phase-II impugning the demand/allotment letter for the final demand of Rs. 25.28 lakhs.

¹ Total 7,436 EWS flats



Arguments of the counsel for the parties

6. Learned counsel for the Petitioners states that Petitioners herein are aggrieved with the cost component of Rs. 5,90,063/- towards land cost included in the aforesaid demand letter.

6.1. He states that the allottees of EWS flats are liable to pay only the cost of construction. He states that this become evident from a perusal of the unamended Clause 4.4.3B(v) of the MPD as it stood on 23rd September, 2013, wherein it is directed that the EWS flats are to be purchased by DDA from the Developing Entity ('DE') as per CPWD cost index.

6.2. He states that Respondent No. 1 has relied upon the amended Clause 4.4.3B(v) of the MPD as it stood on 16th November, 2020 to contend that Respondent No. 1 is entitled to sell EWS flats at the rates fixed as per DDA policy. He states DDA is relying upon costing done as per the office order dated 04th February, 2002, which is contrary to unamended Clause 4.4.3B(v). He relies upon the proceedings initiated by some other group of allottees under the Scheme of 2023, in W.P.(C) 5708/2024, which is pending before the learned Single Judge.

6.3. He states that Clause 4.4.3B(v) of the MPD was amended by Respondent No. 1 without following the provisions of Section 11A of the Delhi Development Act, 1957 ('DD Act') i.e., without inviting objections from the public. In this regard, he relies upon Agenda No. 29/2020, dated 14th July, 2020, placed before the Committee for carrying out amendments to the said Clause and the text of the Notification dated 14th February, 2020, placed in the public domain for inviting objections to the amendment.



6.4. He states that the amendment to Clause 4.4.3B(v) of the MPD carried out vide Notification dated 16th November, 2020, wrongfully deprives benefits and concessions to the allottees under the EWS category.

7. In reply, learned standing counsel for Respondent No. 1 states that the amendment carried out to Clause 4.4.3B(v) in year 2020 is in strict conformity with Section 11A of the DD Act and is beneficial to the EWS allottee.

7.1. He states that initially in a Group Housing Project a DE sold the EWS flats to DDA and thereafter, DDA allotted the said flat to the EWS beneficiary. He states that since these are two separate transactions, it attracted levy of stamp duty twice over and this cost of stamp duty levy was being borne by EWS allottees. He stated that to reduce this burden of dual stamp duty so as to make the housing affordable, the DDA proposed the amendment whereby the DE was then directed to directly sell the unit to the allottee identified by DDA so that the transaction attracts payment of stamp duty, once only. He states that the EWS allottee has therefore, benefitted from the said amendment.

7.2. He states that the term of CPWD cost index which finds mention in the unamended Clause 4.4.3B(v) of the MPD became redundant since the conveyance deed has to now be executed by the DE directly in favour of the EWS allottee. He states that the CPWD cost index was applicable only for determining the sale consideration when the transaction was initially between DE and DDA.

7.3. He states that the Notification dated 14th February, 2020, issuing public notice for amendment to Clause 4.4.3B(v) of the MPD categorically declared that flats will be allotted to EWS allottees at the rates prescribed by



DDA. He states that the final amendment dated 16th November, 2020, is in conformity with the Notification dated 14th February, 2020.

7.4. He states that the demand letters issued to the Petitioners is in conformity with the tentative disposal price declared by Respondent No. 1 in its brochure for Scheme of 2023. He states that the challenge laid by the Petitioners to the demand after having secured the allotment is untenable.

8. We have heard learned counsel for the parties and perused the record.

9. The primary challenge in the present petition is to the amendment of Clause 4.4.3B(v) of the MPD vide Notification dated 16th November, 2020. The Petitioners contend that the amendment was carried out without inviting objections from the public as mandated by Section 11A of DD Act. The Petitioners have set out a three-column comparison of the (i) original provision, (ii) text of the proposed modifications provision in the notification inviting objection and (iii) the final version amended provision Clause 4.4.3B(v) of the MPD to buttress the said submission. The comparison as set out in the petition² is useful and is set out hereinbelow:

Clause 4.4.3B as it stood on 23 rd September, 2013	Proposed Modification vide notification dated 14.02.2020	Amendment brought forth in the MPD, 21 vide notification dated 16.11.2020
Remaining 50% of the DUs developed by DE to be sold <u>to DDA for the EWS housing purpose will be sold to DDA/Local Bodies</u> at base cost of Rs. 2000 per sq. ft. as per as per CPWD index of 2013 (plus cost of EWS parking) which shall be enhanced as per CPWD	Remaining 50% of the DUs developed by DE to be sold <u>to the eligible beneficiaries identified by DDA/Local Bodies as per DDA Policy</u> at base cost of Rs. 2000 per sq. ft. as per as per CPWD index of 2013 (plus cost of EWS parking) which shall be enhanced as per CPWD escalation index at the time	Remaining 50% of the DUs developed by DE to be sold <u>to the EWS housing purpose will be sold to DDA/Local Bodies as per DDA Policy</u> at base cost of Rs. 2000 per sq. ft. as per as per CPWD index of 2013 (plus cost of EWS parking) which shall be enhanced as per CPWD escalation index at the time

² At pages 10 and 11 of the List of date and events.



escalation index at the time of actual handing over and can be developed by DE at an alternate site. Necessary commercial and PSP facilities shall also be provided by the DE for this separate housing pocket. The EWS housing component created by the DE shall be subject to quality assurance checks, as prescribed in this regard by Govt./DDA. The final handing/taking over of this component shall be subject to fulfilling the quality assurance requirements. The DE shall be allowed to undertake actual transfer/transaction of saleable component under its share/ ownership to the prospective, buyers only after the prescribed land and EWS housing component is <u>handed-over to-the DDA.</u>	of actual handing over and can be developed by DE at an alternate site. Necessary commercial and PSP facilities shall also be provided by the DE for this separate housing pocket. The EWS housing component created by the DE shall be subject to quality assurance checks, as prescribed in this regard by Govt./DDA. The final handing/ taking over of this component shall be subject to fulfilling the quality assurance requirements. The DE shall be allowed to undertake actual transfer/transaction of saleable component under its share/ ownership to the prospective, buyers only after the prescribed land and EWS housing component is <u>sold/transferred to-the eligible beneficiaries identified by DDA/local bodies at the rates prescribed by DDA.</u>	of actual handing over and can be developed by DE at an alternate site.* Necessary commercial and PSP facilities shall also be provided by the DE for this separate housing pocket. The EWS housing component created by the DE shall be subject to quality assurance checks, as prescribed in this regard by Govt./DDA. The final handing/ taking over of this component shall be subject to fulfilling the quality assurance requirements. The DE shall be allowed to undertake actual transfer/transaction of saleable component under its share/ ownership to the prospective, buyers only after the prescribed land and EWS housing component is <u>sold/transferred to-the eligible beneficiaries identified by DDA/local bodies at the rates prescribed by DDA.</u>
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** (the portion struck off is to show what the Respondents have omitted in the final gazette notification without following the procedure under Section 11 A of the Delhi Development Act, 1957)*

10. The facts and consideration which led DDA to propose the amendment of Clause 4.4.3B(v) of the MPD are set out in the agenda dated 14th July, 2020 (Agenda Item No. 29 of 2020). The Respondent No. 1 by way of this amendment proposed to discontinue the dual process of, first the DE of the Project transferring the EWS flats in favour of DDA and thereafter, DDA transferring the EWS flat to the eligible EWS allottee. This dual



process, in practice, attracted levy of payment of stamp duty twice and since the burden of the stamp duty was passed on to the end allottee, the process was done away with to reduce the final costs to be borne by the allottee of the EWS flat. Pertinently, the Petitioner has not challenged this object of the modification and it is admitted that now as a matter of fact, the transfer of the EWS flat is affected directly from the DE to the EWS allottees as identified by DDA.

10.1. In addition, the proposal that the transfer from DE to the EWS allottee identified by DDA, shall be at the rates prescribed by DDA was duly published in the Notification dated 14th February, 2020, proposing modification to the original Clause 4.4.3B(v) of the MPD, as required under Section 11A of the DD Act. It is the stand of DDA that the price for the EWS flat of the Project in question are as per the rates prescribed by DDA policy, which is in conformity with the final amended Clause 4.4.3B(v) of the MPD and these prices per flat were duly disclosed in the brochure for the Scheme of 2023.

10.2. The Respondent No. 1 has stated that the condition in the original Clause 4.4.3B(v) of the MPD with respect to determination of cost as per the CPWD costs Index was for the purpose of determining the value of initial transfer of the EWS flat between DE and DDA. It is stated that with the initial transfer from DE to DDA having been discontinued as a matter of policy, the said condition of determination of costs was superfluous and had been rendered redundant; and therefore, was struck out from the final amended Clause 4.4.3B(v) of the MPD. It is stated that the said cost determination was not the basis for fixing the sale price of the transfer to the EWS allottee.



10.3. A perusal of the Notification dated 14th February, 2020, proposing the amendment to Clause 4.4.3B(v) of the MPD discloses that the intention of the DDA was to henceforth, allot the EWS flats at the rates prescribed by DDA by a direct transfer between the DE and EWS allottee. The said Notification was duly published for inviting office objections as per Section 11A of the DD Act.

10.4. So also, the submission of DDA that with the aforesaid proposal of direct transfer between the DE and the EWS allottee, the prescription of the CPWD rates became redundant and superfluous stands to reason. The said condition in the original Clause 4.4.3B(v) of the MPD did not regulate the price of transfer between DDA and EWS allottee.

10.5. Thus, the amendment carried out to Clause 4.4.3B(v) of the MPD vide Notification dated 16th November, 2020, is in conformity with Section 11A of the DD Act.

11. The brochure for Scheme of 2023 (in question) duly declared the tentative price for disposal for each EWS flat in this Project at Rs. 26 lakhs and the final demand notice received by the Petitioners is Rs. 25,28,675/- lakhs and is therefore, in conformity with the Scheme as well as Clause 4.4.3B(v) of the MPD. To this extent, the Petitioners admit the facts.

11.1. The Petitioners have not raised any tenable grounds to maintain a challenge to the price fixed by the Respondent No. 1 for the EWS flats.

11.2. In our considered opinion, the Petitioners participated in the Scheme of 2023 without any reservation to the said price declared in the brochure and the challenge now laid in the present proceedings to the impugned demand enumerated in the allotment letter(s) is therefore, untenable and is an afterthought.



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12. Accordingly, the present petition is without any merits and is dismissed along with applications.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

MAY 7, 2024/hp/msh/sk