



\$~63

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

% *Judgment Delivered on:26.03.2025*

+ **W.P.(C) 2221/2025 & CM APPL. 10428/2025**

M/S QUANTUS MANAGEMENT SYSTEM PVT LTD THROUGH
DIRECTOR MR SAURAV KUMAR SINGHPetitioner

Through: Mr. Vibhor Garg and Ms. Diksha
Kakkar, Advs.

versus

DELHI DEVELOPMENT AUTHORITY THROUGH ASSISTANT
DIRECTOR LAND SALES BRANCH RESIDENTIAL

.....Respondent

Through: Ms. Shobhana Takiar, Standing
Counsel for DDA with Mr. Kuljeet
Singh, Mr. Prateek Dhir and Mr.
Shivam Takiar, Advs. for DDA.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J (ORAL)

1. The present petition has been filed seeking following relief:

“1. Issue a Writ of Mandamus or Certiorari or any other appropriate writ, order, or direction, quashing of Demand Notice dated 03.5.2019;

2. Issue a Writ of Mandamus or Certiorari or any other appropriate writ, order, or direction, quashing of letters



dated 08/07/21 & 08.09.2021 cancelling allotment of residential plot bearing no. 104, Block B-2, Kondli Resettlement Colony Delhi along with forfeiture of the Earnest Money Deposit;

Or

3. in the alternate, this Hon'ble Court may be pleased to Direct Respondent to refund the Earnest Money Deposit of Rs. 8,85,660/- made by the Petitioner along with simple interest; and"

2. However, during the course of hearing on 12.03.2025 the learned counsel appearing on behalf of the petitioner had confined his prayer only to the alternative relief i.e. refund of Rs.8,85,660/- which was deposited with the DDA as earnest money.

3. Mr. Vibhor Garg, learned counsel appearing on behalf of the petitioner submits that on 21.01.2019 e-auction was conducted by the respondent for the allotment of residential plot bearing no. 104, Block B-2, Kondli Resettlement Colony, Delhi measuring 26 sq. meters (hereinafter referred to as 'the plot'). The petitioner made a bid of Rs.35,42,640/- which was accepted being the H1 bid and Letter of Intent (hereinafter referred as 'LOI') dated 30.01.2019 was issued by the respondent/DDA.

4. He submits that the petitioner deposited the processing fee of Rs.39,713/- on 31.01.2019 which was followed by further deposit of Rs.8,12,087/- on 14.02.2019 as first stage earnest money in terms of LOI. He submits that it is not in dispute that the petitioner had deposited a total amount of Rs.8,85,660/- which comes to 25% of the bid premium.

5. He further contends that on 03.05.2019 the respondent issued a Demand Notice to the petitioner for payment of remaining balance amount of Rs.26,57,080/- by 16.06.2019, which notice was received by the



petitioner only on 10.05.2019.

6. He submits that the petitioner was not given 90 days period to make the balance 75% amount/premium in terms of clause 2.4.4 as per Document for E-auction (2018-19) of Residential Properties on 'as is where is basis' (hereinafter referred to as 'e-auction document') published by respondent/DDA. The said Clause is reproduced hereinbelow for ready reference:

“2.4.4 After deposit of second stage EMD, the DDA shall issue a Demand- cum-Allotment Letter for the plot to the bidder whose bid has been accepted through registered post calling upon him to remit the balance 75% amount/premium of the bid offered within 90 (ninety) days of issue of this Letter.”

7. He contends that after receiving the said demand letter, the petitioner immediately sent a letter to the respondent/DDA on 24.05.2019 requesting therein issuance of fresh demand notice in terms of the e-auction document. This request was followed by another reminder dated 01.08.2019. The said request and the reminder did not, however, fetch any response from the respondent.

8. On 15.12.2021, the petitioner received two letters, one dated 08.07.2021 and another dated 08.09.2021. In the first letter dated 08.07.2021, the respondent DDA had asked the petitioner to furnish the complete details of payment made in the stipulated time, within 15 days from the date of issuance of the letter. It was further mentioned in the said letter that in case such details are not furnished, it will be presumed that the petitioner had not deposited the demanded amount and action as deemed fit shall be initiated as per e-auction documents.



9. The second letter dated 08.09.2021 is the impugned letter issued by the DDA *vide* which the allotment made to the petitioner was cancelled and EMD (first and second stage) was forfeited on account of petitioner's failure to deposit the balance 75%.

10. Inviting attention of the Court to the tracking reports of the said two letters, he contends that both the letters were dispatched by the respondent/DDA on 07.12.2021 which indicates that the letters, i.e. letter dated 08.07.2021 and the impugned cancellation letter dated 08.09.2021 were ante-dated.

11. He further contends that since the letters have been ante-dated, no meaningful opportunity was afforded to the present petitioner to pay the balance payment in terms of the e-auction document. He thus, submits that the cancellation of allotment made to the petitioner was done without following principles of natural justice since no proper show-cause notice was issued to him. He places reliance on the judgment passed in ***SP Kureel and Another v. Delhi Development Authority, 2013 SCC OnLine Del 4504.***

12. He also draws attention of the Court to Clause 2.4.5 of the e-auction document to contend that the said Clause itself makes it apparent that in case the payment of balance premium is not received within the stipulated period of 90 days as indicated in Clause 2.4.4 and in the demand-cum-allotment letter the bid shall stand automatically cancelled. For ready reference Rule 2.4.5 is also reproduced hereinbelow:

“2.4.5 In case the payment of balance premium is not received within the stipulated period as indicated above and in the Demand-cum-Allotment Letter, the bid shall automatically stand cancelled and the entire EMD (25% of premium offered) shall stand forfeited without any notice. In



that eventuality, DDA shall at liberty to re-auction the plot.”

13. He submits that the time period granted in the demand-cum-allotment letter was contrary to Clause 2.4.4 of the e-auction document which created the entire confusion.

14. He, therefore, urges the Court to allow the writ petition and refund the earnest money deposited by the petitioner.

15. *Per contra*, Ms. Shobhana Takiar, the learned counsel appearing on behalf of the DDA submits that the present writ petition suffers from delay and laches in as much as the impugned cancellation order is of 08.09.2021 which was admittedly received by the petitioner on 15.12.2021. However, the writ petition came to be filed only on 18.02.2025. In this regard, she places reliance in the decision of this Court in judgment dated 06.04.2022 passed in W.P.(C) 5696/2022, titled '**Chanchal Kochar v. Delhi Development Authority**'.

16. She further contends that the reading of e-auction document more particularly clause 2.4.4 thereof, clearly shows that there is no confusion. The said Clause in fact, in unambiguous terms, provides that the balance 75% of the amount/premium of the bid has to be deposited within 90 days from the date of issuance of the Demand-cum-Allotment Letter, therefore, the petitioner cannot take advantage of the due date of payment, i.e., 16.06.2019 which has been mentioned in the Demand-cum-Allotment Letter. She also relies upon the judgment of a Coordinate Bench of this Court in **Veena Garg v. Delhi Development Authority, 2022 SCC OnLine Del 1127**.



17. Inviting attention of the Court to Clause 2.5 of the e-auction document, she contends that even otherwise, the maximum period for keeping the offer of acceptance open is 180 days and that the Demand-cum-Allotment Letter is valid for 180 days from the date of its issuance.

18. She submits that the Demand Notice itself shows that the original date of issuance mentioned therein was 19.03.2019 which was struck off and the new date i.e. 03.05.2019 was inserted but the dealing clerk inadvertently did not make corresponding correction in the due date of payment mentioned in the said demand letter.

19. She further contends that it is not the Demand Letter, rather the e-auction document which should have been followed by the petitioner. She therefore urges the Court that the petition be dismissed.

20. In rejoinder, Mr. Garg submits that the claim for refund of earnest money is well within limitation. Further, this Court while exercising its constitutional jurisdiction has discretionary powers to condone the delay to do substantial justice depending on the facts and circumstances of the case. He places reliance upon ***Dharnidhar Mishra (D) and Another v. State of Bihar and Others, (2024) 10 SCC 605.***

21. Having heard the learned counsel for the parties, it is important to note that Clause 2.4.4 of the e-auction document clearly provides that balance 75% amount/premium of the bid offered has to be remitted by the bidder within a period of 90 days of issuance of Demand-cum-Allotment Letter.

22. In the present case, the Demand-cum-Allotment Letter is dated 03.05.2019, although the same was received by the petitioner only on



10.05.2019. A perusal of the said Demand-cum-Allotment Letter shows that the due date of demand has been mentioned therein as 16.06.2019, which does not afford 90 days period to the petitioner. In fact, the time period calculated from 03.05.2019 till 16.06.2019 comes only to 45 days. The period of 90 days calculated from 03.05.2019 would have expired on 31.07.2019.

23. It is in this backdrop that the petitioner immediately sent a letter dated 24.05.2019 to the respondent/DDA requesting issuance of fresh Demand Notice in terms of the e-auction document, which was followed by another reminder dated 01.08.2019. The letter dated 24.05.2019 of the petitioner reads thus:

“Dear Sir,

This is to inform and share to the cutting and over writing of date of issue of the Demand Notice (Demand notice copy attached), hence discrepancy arise in the demand notice bearing file no F5(30/2019/LSB(R)/743 issued on dated 03.05.2019 of cutting and over writing and received by the allottee/recipient vide speed post dated 10.05.2019 at the address of the noticee.

As per the Chapter 1 of ‘e- auction details’ of DDA Document of E-auction 2018-19 for Residential Properties on ‘As is where is basis’, in Clause 2.4 sub-clause 4, it is mentioned that “After deposit of second stage EMD. The DDA shall issue a Demand - Cum-Allotment Letter for the plot to the bidder whose bid has been accepted through registered post calling upon him to remit the balance 75% amount/premium of the bid offered within 90 (ninety) days of issue of this letter.

Hence, this is to humbly request you to kindly issue and dispatch a fresh Demand Letter with proper date of issue and the relevant due date (Post 90 days of issuance of fresh demand notice) for submission of balance 75% amount to the Allottee as



per your suitability. Looking forward for the positive response and for the needful”

24. The receipt of these two letters has not been disputed by the respondent/DDA. Intriguingly, the same were never responded to by the respondent/DDA at any point of time.

25. Thereafter, there remained silence for about two years and three months from both the sides, although, this Court can take judicial note of the fact that this was the period of COVID-19 Pandemic, when all commercial activities world over had come to a grinding halt. It is only on 15.12.2021 that the petitioner received two letters from the respondent/DDA dated 08.07.2021 and 08.09.2021.

26. The letter dated 08.07.2021 calls upon the petitioner to furnish complete details of the balance payment made in the stipulated time, within 15 days from the issuance of the letter. Notably, the said period of 15 days had already elapsed when the said letter was received by the petitioner on 15.12.2021. By virtue of the second letter dated 08.09.2021, the respondent had cancelled the allotment of the plot made to the petitioner and forfeited the EMD (first and second stage) on account of petitioner's failure to deposit the balance 75% bid amount.

27. The attention of the Court was drawn by the petitioner to the tracking reports of the said two letters, which show that the said two letters were, in fact, dispatched by respondent/DDA on 07.12.2021. The respondent/DDA has not disputed the said tracking reports.



28. This being the position, this Court finds some substance in the submission of the learned counsel for the petitioner that letter dated 08.07.2021 and the impugned cancellation letter dated 08.09.2021 were ante-dated, or at least they were never dispatched to the petitioner prior to 07.12.2021.

29. As noted above, the petitioner has already given up its challenge to the cancellation of allotment and has confined its prayer only to refund of earnest money paid by it, therefore, the only short question which needs to be addressed in the present petition is the legality of respondent/DDA's action to forfeit the earnest money.

30. The law is well settled that once the State or instrumentality of a State is party to a contract, it has an obligation in law to act fairly, justly and reasonably which is the requirement of Article 14 of the Constitution of India. The Hon'ble Supreme Court in **ABL International Ltd. & Another v. Export Credit Guarantee Corporation of India Ltd. and Others, (2004) 3 SCC 553** held as under:

“23. It is clear from the above observations of this Court, once the State or an instrumentality of the State is a party of the contract, it has an obligation in law to act fairly, justly and reasonably which is the requirement of Article 14 of the Constitution of India. Therefore, if by the impugned repudiation of the claim of the appellants the first respondent as an instrumentality of the State has acted in contravention of the abovesaid requirement of Article 14, then we have no hesitation in holding that a writ court can issue suitable directions to set right the arbitrary actions of the first respondent.”



31. In the present case, a reading of the clauses relied upon by both the parties indicates that the material date in the Demand-cum-Allotment letter is not the due date written therein, but the date of issuance of the said letter since the period for depositing the balance 75% premium starts running from the said date. However, the date of issuance mentioned on the impugned Demand Letter itself has been struck off and changed by writing another date with a pen while no corresponding change in the due date was made in the letter. The contention of the Respondent/DDA that the petitioner ought to have deposited the balance amount not as per the due date mentioned in the Demand Letter, but as per the e-auction document is unreasonable in the facts of the present case for the following reasons:

- a. If the original date of the demand letter i.e. 19.03.2019 is considered as the actual date of issuance as per Clause 2.4.4 and 2.4.5, then the due date for payment of the balance amount would be 16.06.2019 i.e. after 90 days. However, by the time the petitioner received the letter on 10.05.2019, 53 days had already elapsed.
- b. On the other hand, if the new hand-written date on the letter is to be considered, then the due date written on the demand notice would itself become contrary to the e-auction document relied upon by the respondent/DDA as it gave only 45 days' time to make the balance 75% amount of the bid as against the 90 days period provided under Clause 2.4.4.
- c. Although, as noted above, the material date is the date of issuance in the demand letter, however, the due date in the letter also



assumes relevance in view of Clause 2.4.5 which provides that the ‘*stipulated period*’ would be as indicated in the preceding clause (i.e. Clause 2.4.4), as well as, the one in the Demand-cum-Allotment Letter.

- d. The Respondent/DDA having changed the date of issuance of the demand letter, cannot expect the reader (allottee) to ignore the due date mentioned therein, which now is stated to have not been corrected inadvertently, and assume correctness of the issuance date without providing any clarification in that regard.
- e. In absence of any authorization to the change in date of issuance and there being no corresponding change in the due date, which *prima facie* is contrary to the contract, any prudent man would have an apprehension regarding authenticity of the change in the date of issuance, as well as, the letter itself. The same could have been avoided by an endorsement in the letter itself that the said change has been made with the approval of a competent officer.

32. Admittedly, the due date for payment of the balance 75% amount was inadvertently not corrected by the dealing clerk after making the correction in the date of issuance. Therefore, there is an error apparent on the face of the demand notice which created reasonable apprehension and confusion in the mind of the petitioner/bidder which was never dispelled by the DDA despite petitioner’s multiple communications. Therefore, the respondent DDA cannot be permitted to take advantage of Clauses 2.4.4, 2.4.5 and 2.5 to justify its stand of automatic cancellation and forfeiture of earnest money, when the demand letter itself was faulty.



33. From a perusal of the documents filed along with the petition, it appears that even after the letters dated 08.07.2021 and 08.09.2021 issued by the respondent/DDA, the petitioner further sought clarifications/rectifications *vide* letters dated 29.12.2021, 31.12.2021 and 10.01.2022 whereby it also agreed to pay the balance amount within 15 days, but to no avail.

34. During the course of arguments, on a specific query posed by this Court as to whether the plot in question in the present case has been re-auctioned or not, the learned counsel appearing for the petitioner submits that the plot has, in fact been re-auctioned by the DDA, which position was not disputed by the learned counsel for the respondent/DDA.

35. In view of the above discussion, this Court finds that the Demand Letter itself was not in accordance with the E-auction Document and was thus, illegal. The right of the petitioner under the contract was being affected due to the error in the said letter and in absence of any clarification or rectification by the respondent/DDA to address the legitimate apprehension expressed by the petitioner/bidder, it cannot be said that any occasion arose for the petitioner to make the balance payment of the total bid amount. Therefore, breach of contract cannot be attributed to the petitioner.

36. Respondent/DDA placed reliance on the decision of a Coordinate Bench of this Court in ***Veena Garg*** (*supra*). In the said case, the bidder was required to deposit 20% of the bid amount within 7 days of the issuance of the Letter of Intent, however, 3 days after expiry of the 7 days period, the bidder sought extension for depositing the said amount. The request of the bidder was rejected by the DDA and earnest money deposited till that date



was forfeited. In the present case, the petitioner/bidder not only sought clarification with regard to the demand letter within the supposed period it was required to make the payment, but the demand letter received was in itself faulty.

37. Having regard to the factual scenario of the present case and the entire discussion above, it is held that the action of respondent/DDA to forfeit the earnest money is unreasonable and arbitrary.

38. Insofar as the objection raised by the learned counsel for the respondent/DDA that the present petition suffers from delay and laches is concerned, it may be noted that the impugned cancellation letter is dated 08.09.2021 which was dispatched only on 07.12.2021, during which period the entire world had been taken under the grip of the deadly COVID-19 Pandemic and considering that everyday life and commercial activities have been brought to a complete halt across the globe, the Hon'ble Supreme Court *vide* order dated 10.01.2022 passed in ***Suo Motu Writ Petition (C) 3/2020*** had directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purpose of limitation.

39. In ***Prakash Corporates v. Dee Vee Projects Limited, (2022) 5 SCC 112***, the Hon'ble Supreme Court clarified that when the period is excluded, as a necessary consequence, it results in enlargement of time, over the above the period prescribed. It was further expounded in ***Arif Azim Company Limited v. Aptech Limited, (2024) 5 SCC 313***, that as a result of the directions given in ***SMWP No.3 of 2020***, the period from 15.03.2020 to 28.02.2022 will have to be excluded for the computation of limitation and the balance period of limitation as available on 15.03.2020 would become



available from 01.03.2022. This means that the limitation for claiming refund of earnest money would run from 01.03.2022.

40. Thus computed, the present writ petition having been filed on 18.02.2025, the claim of the petitioner for refund of earnest money cannot be said to be barred by limitation. Even otherwise, it is trite that this Court while exercising its constitutional jurisdiction can condone delay and laches in deserving cases. Reference in this regard may be had to the decisions of the Hon'ble Supreme Court in ***Vidya Devi v. State of Himachal Pradesh, (2020) 2 SCC 569*** and ***Dharnidhar Mishra (supra)***.

41. Reliance placed by the respondent/DDA in ***Chanchal Kochar (supra)*** would not come to its aid since in the said decision, the delay sought to be condoned was of approximately 11 years and this Court, even then, observed that the discretion to condone delay must be exercised judiciously based on the facts and circumstances of each case.

42. This Court is of the view that the claim for refund of earnest money is within the period of limitation and the present writ petition, in the given circumstances, ought not to be dismissed on the ground of delay and laches. Thus, the earnest money deposited by the petitioner is liable to be refunded to the petitioner.

43. Although the claim is not barred by limitation, but the facts and circumstances of the case show that the petitioner has also not acted with promptitude, therefore, this Court is not inclined to award pre-litigation and *pendente lite* interest.

44. Resultantly, respondent/DDA is directed to refund the amount of Rs.8,85,660/- to the petitioner within a period of eight weeks from today,



2025:DHC:2556



failing which the respondent/DDA shall be liable to pay simple interest @7% per annum on the said amount.

45. The petition along with pending application, is disposed of in the above terms.

VIKAS MAHAJAN, J

MARCH 26, 2025/N.S. ASWAL