

**(2008) 02 DEL CK 0271**

**Delhi High Court**

**Case No:** Writ Petition (C) 18429 of 2006

Prem Prasad Saklani

APPELLANT

Vs

D.D.A.

RESPONDENT

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**Date of Decision:** Feb. 8, 2008

**Hon'ble Judges:** Sanjiv Khanna, J

**Bench:** Single Bench

**Advocate:** Gitanjali Chauhan, for Richa Kapoor, for the Appellant; C. Mohan Rao, for the Respondent

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### **Judgement**

@JUDGMENTTAG-ORDER

Sanjiv Khanna, J.

The petitioner was registered under the Janta Housing Registration Scheme, 1996. In March, 2003, he was allotted a Janta Flat bearing No. 356, First Floor, Pocket 7, Category B, Nasirpur, Dwarka. As per allotment letter, the last date of making payment was 04.11.2003 by which date the petitioner was required to deposit Rs. 2,40,031/-. The demand cum allotment letter sent to the petitioner was however, returned back to DDA with the remark "left". Another letter sent to the occupational address of the petitioner was also returned back with the report that no such person was available at the said address.

2. On 4th June, 2004, a show cause notice was issued to the petitioner why her registration could not be cancelled. The petitioner made a representation on 03.8.2004 stating that during the course of public dealing, she had come to know about the aforesaid allotment. She further represented that her allotment may be restored and she was ready to make payment of all the necessary charges. Another representation dated 10.1.2005 was made stating that the petitioner at the time of her registration under 1996 Scheme was residing at Kashmere Gate, New Delhi but thereafter had shifted to the address given in the said letter. A number of similar representations were made by the petitioner.

3. By letter dated 25.5.2005, the respondent/DDA informed the petitioner as under:

Sub.:- Allotment of Janta flat No. 356, Cat B Pocket 7 Nasirpur Phase-1

With reference to your letter dated 9.3.05 on the subject mentioned above. In this connection, it is intimated that your request has been considered by the competent authority subject to payment of demanded payment, restoration charge of Rs. 5,000/- and interest on demanded amount within 30 days from the date of issue of this letter, otherwise/filing which your registration cum allotment will cancelled.

Sd/-

Asstt. Director

Janta Housing

Encl: DAL with documents.

4. After receiving the above letter, the petitioner applied to Canara Bank and obtained loan for payment of consideration to purchase of the said flat. The said loan was duly sanctioned on 23.6.2005. Accordingly, Canara Bank issued a bank draft of Rs. 2,40,031/- towards purchase value of the flat.

5. One can appreciate and understand the efforts, time and energy that the petitioner would have made to get the said loan sanctioned within the time limit of one month. It is also apparent that the petitioner complied with all the terms and conditions of the letter dated 25.5.2005 and had deposited the entire amount as demanded by the DDA within one month. A concluded and binding contract came into existence between the petitioner and the respondent/DDA. Even if the petitioner had committed any default, in payment of the amount, the said default was condoned and waived, when the DDA issued letter dated 25.5.2005 asking the petitioner to deposit the restoration charges of Rs. 5,000/- and demanded the entire amount within 30 days. The respondent/DDA could not have thereafter re-examined the matter unilaterally or cancelled the contract on the ground that the petitioner had failed to comply with the terms and conditions of the allotment letter issued in March, 2003.

6. DDA however, did not hand over possession of the said flat to the petitioner and on 3rd March, 2006, wrote to the petitioner stating that restoration of the flat has not been allowed by the competent authority. This letter is contrary to the earlier letter dated 25.5.2005, which has been quoted above. The respondent/DDA cannot be permitted and allowed to turn around and claim that letter dated 25.5.2005 was issued without obtaining permission from the Vice-Chairman as was required as per their internal guidelines. Internal guidelines were within the knowledge of the respondent/DDA and not in the knowledge of the petitioner. As far as the petitioner is concerned, he had received letter dated 25.5.2005 and had duly complied with the same, resulting in a binding and a concluded contract between the parties. If there

was any default or violation of internal guidelines by an Officer of DDA, suitable action should have been taken against the said Officer. The petitioner cannot be penalized and a concluded contract between the petitioner and the respondent/DDA reopen on the basis of internal guidelines of the DDA. It is admitted that delay in payments can be condoned. By letter dated 25.5.2005 delay has been condoned. The stand taken by the DDA is that for delay beyond one year, Vice-Chairman is competent authority to condone the delay and not the Commissioner (Housing). This is entirely an internal matter of the DDA over which the petitioner had no control. Moreover in the present case, the petitioner had written letter dated 3.8.2004 seeking extension of time in making payment. This letter was written within one year of last date of payment i.e. 4.11.2003. The petitioner wrote a number of letters and then the respondent/DDA agreed to restore his allotment subject to conditions. On the other hand, the petitioner was made to change his position and obtain loan from Canara Bank. He deposited the entire amount in terms of the letter dated 25.5.2005. Payment was accepted. In case DDA is allowed to wriggle out of their letter dated 25.5.2005, prejudice shall be caused to the petitioner in form of penalty and interest which shall have to be paid to the said Bank from where the petitioner has obtained loan.

7. In these circumstances, I allow the present writ petition and also award Rs. 10,000/- to the petitioner, which will be paid within four weeks from today. DDA will complete all formalities within four weeks and hand over possession of the flat in question to the petitioner. In case the respondent/DDA is not able to complete all formalities within four weeks, any interest levied by the Bank for default and delay in submission of the original documents of title after four weeks will be borne and paid by the respondent/DDA.