

Som Nath Manoch Vs Delhi Development Authority

Court: Delhi High Court

Date of Decision: Nov. 13, 2002

Hon'ble Judges: Sanjay Kishan Kaul, J

Bench: Single Bench

Advocate: Rajinder Wali, for the Appellant; M. Dutta, for the Respondent

Judgement

Sanjay Kishan Kaul, J.
Rule.

2. With the consent of learned counsel for the parties the matter is taken up for final disposal.

3. The petitioner registered himself under the New Pattern Scheme of 1979 of DDA for a MIG flat and deposited the registration amount. An

allotment letter was issued to the petitioner on 16.2.94 allotting a MIG Flat at the cost of Rs. 3,67,600/- in terms of his priority number 11342.

The said flat was an incremental flat and in view thereof the petitioner was not willing to accept the same. The petitioner wrote to the respondent on

19.5.1994.

4. The issue of incremental flats was decided in CW No. 2298/94 Mohan Singh Ahluwalia v. DDA decided on 24.3.1995 where a statement was

made by the counsel for DDA admitting that the flats were incremental flats and for those of the petitioners who were not interested intimation can

be given to the DDA within four weeks. The Division Bench directed that for those of the petitioners who would not opt for the flats of incremental

category, their names would be considered in their due turn in accordance with the scheme. To the same effect is the order of the Supreme Court

in SLP No. 7661/95 Kuldeep Rai Khattar v. Union of India and Ors. decided on 21.4.1995.

5. It is stated in the petition that certain draw of lots were held on 29.3.1996 and 7.8.1996 but the name of the petitioner was missing in the same

and thus the petitioner addressed a letter dated 19.8.1996 representing against the same. A reminder was also sent on 27.1.1997. In view of these

representations the respondent included the name of the petitioner in the draw of lots and an allotment letter dated 10.7.1998 was issued to the

petitioner allotting flat No. 83, Sector 23, Pocket-1, Rohini, Delhi on a cash down basis at a total cost of Rs. 7,01,315.40. The petitioner

deposited the confirmation amount of Rs. 20,000/- before the due date of 13.8.1998 and made a representation dated 10.9.98 against the cost of

the flat. It may be noticed that this representation was made before the last date for making the payment which was to expire on 12.10.98.

6. The principal contention raised in the representation was that similarly situated persons as the petitioners with lower priority number had been

given flats on lesser costs since their names were included in draw of lots earlier and the petitioner was being made to pay higher cost thought it

was the fault of DDA in not including the name of the petitioner in the draw of lots. It may be noticed that thereafter a number of representations

were made by the petitioner right up to August 2000. The decision on the representation was taken by the respondent only on 5.5.2001 and it was

decided that the cost of the flat would be as in August, 1996. This appears to be so in view of the representation of the petitioner having been

made for the first time in the said month for inclusion in the draw of lots. The cost was stated as Rs. 5,72,800/-. However, interest @ 12% per

annum was added for the period from 1.7.1998 to 31.12.2000 amounting to Rs. 1,71,840/-. Certain other charges were also included. It may

also be noticed that no interest was calculated on the amount deposited by the petitioner as the confirmation amount of Rs. 20,000/-. The

petitioner again represented against the same and has finally filed the present writ petition seeking directions against the respondent to fix the rates

applicable in the year 1994 according to the priority number of the petitioner and to quash the subsequent show cause notice issued to the

petitioner asking as to why the flat should not be cancelled. The petitioner has also claimed compensation of Rs. 5 lacs for harassment caused to

him.

7. In the counter affidavit the factual position is not disputed. It is, however, stated that in view of the deposit of the confirmation amount of Rs.

20,000/- the petitioner had accepted the said allotment at the price. It is further stated that the respondent realised its mistake and "immediately

rectified the same" by issuing the revised demand letter dated 5.5.2001. It is stated that the petitioner should have deposited the amount in terms of

the earlier demand letter which could have been refunded back and interest had not been charged till 1998 when the allotment letter was issued but

only thereafter.

8. I have considered the submissions advanced by the learned counsel for the parties.

9. Learned counsel for the petitioner confines his relief to the exclusion of the component of interest included in the demand letter dated 5.5.2001

amounting to Rs. 1,71,840/-. I find force in the contention of learned counsel for the petitioner that the said interest amount could not have been

charged from the petitioner. Admittedly, the mistake was of the respondent in not including the name of the petitioner in the draw of lots against

which petitioner made a representation in August, 1996. What the respondents state to be as immediate rectification is a period of three years. The

petitioner can hardly be penalised for this delay on the part of the respondent in deciding the representation of the petitioner. It is also to be

appreciated that the petitioner has been deprived of the enjoyment of the flat during this period of time. Once the respondent admits the mistake of

non-inclusion of the name of the petitioner in the draw of lots as per his priority number there can be no question of charging any interest and

burdening the petitioner for the fault of the respondent. Not only this, as stated above the respondent has taken three years time to decide the

representation of the petitioner.

10. In view of the aforesaid position I am of the considered view of that the petitioner is entitled to the flat in question on the price stated in the

letter dated 5.5.2001 excluding the component of interest of Rs. 1,71,840/-. The net amount thus payable would be Rs. 5,80,544/-. It is directed

that on the petitioner depositing the said amount within a period of six weeks and on completing the necessary formalities the possession of the flat

shall be handed over to the petitioner by respondent within a period of four weeks thereafter.

11. Writ petition is disposed of in the aforesaid terms leaving the parties to bear their own costs.

CM 924/2002

12. No further orders are required to be passed in this application in view of the disposal of the main writ petition itself.

13. Application stands disposed of.