
(2006) 05 DEL CK 0163

In the Delhi High Court

Case No : Reported CM No. 11941 of 2005 in LPA No. 447 of 2004

DDA

APPELLANT

Vs

Ramesh Chander Goel

RESPONDENT

Date of Decision : 19-05-2006

Acts Referred:

Citation : (2006) 05 DEL CK 0163

Hon'ble Judges : S. Ravindra Bhat, J;Dr. M.K. Sharma, J

Bench : Division Bench

Advocate : Anusuya Salwan, for the Appellant; S.K. Rungta, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—By these proceedings, the applicants seek clarifications and appropriate directions in respect of the judgment dated 19.8.2004 disposing off LPA No 447/2004

2. The applicant had approached this Court, complaining arbitrariness in the costing of flats allotted to him (by the Delhi Development Authority (the respondent hereafter called "DDA")). The writ Petition was disposed off by a single judge, in a large batch of cases (Renu Bali v. DDA, and connected petitions).

3. The DDA appealed to the Division Bench. One of the principal contentions raised by the DDA was that the applicant-Petitioner's writ petition had to be disposed off, following an earlier Division Bench ruling in R.K. Sachar v. DDA (LPA 727/2002). The judgment in the Sachar batch of cases was delivered on 15-12-2003; the Division Bench had held as follows:

30. It cannot be denied that the DDA has been allotting flats to weaker sections at rates lower than the actual cost of construction of flats incurred by it and housing schemes as a whole are running in heavy deficit which led to the decision by the Hon'ble Lt. Governor/Chairman, DDA to continue to levy this

surcharge. It may also be pointed out that a Division Bench of this Court in the case of DDA Self Finance Flats owners Society (Regd.) and Others Vs. Union of India and Others, had an occasion to deal with this aspect once again with same results. In this judgment also the Division bench has scanned through the entire case law of the costing of the flats as well and upheld the action of DDA after taking notice of all possible judgments on the subject, including those which we have referred to above. In view of these authoritative pronouncements and particularly after specific approval of the Supreme Court on levy of such surcharge, the demand for this surcharge by the DDA cannot be countenanced. We cannot give narrow meaning to the policy dated 16.08.96 as sought to be given by the learned Counsel for the appellants. It also cannot be accepted that all this levy is in the nature of equalization charges. P.N. Verma (supra) and Narasingh Jain (supra) would, Therefore, have no application. Those cases dealt with altogether different nature of charges sought to be levied by the DDA termed as Equalization Charges.

31. Thus, we do not find any merit in these appeals. Before parting, however, we may note that Mr. Chawla had submitted that in the case of the appellant to whom he was representing (LPA No. 859/2002) there was some arithmetical mistake in calculating and demanding the amount of cost. Mr. Sabharwal in reply stated that this aspect would be re-examined by the DDA and in case any mistake is found that would be corrected. Mr. Chawla had also cited the example of one Subhash Batra who was allotted the flat @ Rs. 14.86 Lacs, although according to Mr. Chawla he was similarly situated. To dispel this impression. Mr. Sabharwal had produced the original file which showed that he was not similarly situated. After examining this file, Mr. Chawla was satisfied that case of Subhash Batra was different in nature and, Therefore, it is not necessary to deal with this aspect.

The denouement : - These appeal have necessarily to fail. They are accordingly dismissed. However, there shall be no orders as to costs.

Sd/-

(A.K. Sikri) Judge

December 15, 2003

Sd/-

Chief Justice.

4. The DDA's appeal in these cases was disposed off in terms of the following order, on 19.8.2004:

Learned counsel for the parties are agreed that the issue raised in writ petition, out of which the present appeal has arisen stands concluded by the decision of this Court dated 15.12.2003 in LPA No. 727/2002 (R.K. Sachar v. DDA). Learned counsel for the DDA states on instructions from Mr. Prahlad Singh, Assistant

Director, Housing that fresh demand letter shall be issued to the respondent in terms of said judgment and further orders, if any in that judgment within two weeks. Mr. S.K. Rungta, learned Counsel for the respondent states that on receipt of the said demand notice payment in terms thereof shall be made.

In view of the above, we direct that the possession of the flat shall be delivered to the respondent within two weeks from the date of deposit of the amount in terms of demand letter and completion of other formalities.

The appeal is dismissed as not pressed. The application for interim relief is also disposed of accordingly.

5. The applicant contended, through his counsel, Shri S.K. Rungta, that the amounts demanded by the DDA had been deposited in October 2004 and he was entitled to possession of the flat; yet the DDA was unjustifiably, and unreasonably, taking the position that the flat would be handed over only on condition that interest, at 18% p.a. on the amounts sought, was deposited with it.

6. It was averred, and contended on behalf of the applicant that the demand for 18% was unlawful, because the Division Bench, in Sachar's case (which was followed in this case) had later clarified that the rate of interest payable by the allottees was 8% and not 18%. Counsel placed reliance upon the order dated 26-3-2004 clarifying the main judgment, and lowering the rate of interest to 8%.

7. Ms. Anasuya Salwan, counsel for the DDA resisted the application. She contended that the order dated 19-8-2004 disposing off these appeals, arising from judgments in the applicants' writ Petition, was clear in its terms. It was urged that the applicant could not claim benefit of the later, calefactory order in Sachar's Case, because, in express terms, that order was confined to the appellant-applicants, who had also paid the principal amounts, in compliance with the demands of DDA. . The factual matrix here was different; although the applicants' cases were dealt with and disposed off in terms of the main judgment in Sachar's case, yet, they could not be treated on par with all those appellants or applicants.

8. The order dated 26-3-2004 clarifying the main judgment in Sachar's case reads as follows:

4. In this application, the applicant prays that he be allowed to deposit the amount, as per the allotment letter, without payment of interest as money was not deposited because of the pendency of the appeals. This prayer has been opposed by the DDA on the ground that this Court had not granted any stay in so far as payment of money as per the allotment letter is concerned. It is also stated that these flats are allotted to the appellants under the Self Financing Scheme and, Therefore, appellants are liable to pay interest on delayed payments. It may be noted that the DDA has claimed interest at the rate of 18 per cent per annum for the period from the expiry of four weeks from the date of

judgment of the learned Singh Judge till the payment made by the applicant.

5. Having considered respective submissions, we deem it proper that in order to balance the equities the applicant should pay some interest although it may not be at the rate demanded by the DDA, in the peculiar facts and circumstances of the case and more so when the appeals were filed against the judgment which were admitted for hearing and stay of cancellation was also granted. We, therefore, direct that the DDA shall charge and the applicant shall pay the interest at the rate of 8 per cent per annum for the aforesaid period.

6. We may note that when this application was filed, before entertaining the same, we had observed that request of only those persons would be considered to make the payments of the principal amount as demanded. Only 18 persons have made the payments as per the allotment letters. This order shall, Therefore, ensure to the benefit of these persons only.

7. The DDA shall accordingly calculate the interest and send demand notices to these persons who shall make the payments within two weeks of the demand. The possession of the flats allotted to these applicants shall be handed over immediately on making the aforesaid payments and completion of other formalities, if any.

9. The original files were produced by the DDA, in relation to the applicant. We have considered the contentions and the documents. As on the date of demand, made originally in December 2001, the applicant was required to pay the sum of Rs. 18,15,346/-. He did not comply with the demand; nor did he deposit any part of the amount. The order disposing off the LPA pertaining to the petitioner was disposed off on 19-08-2004. The applicant however, deposited the amount of Rs. 18,15,000/- on 15-10-2004. He also deposited Rs. 2,90,045/- (being interest for the period 11-10-2002 to 30-9-2004); these were in compliance with the initial demand issued on 16-9-2004. Later, however, the DDA took the position that interest calculated was at 8%, which the applicant was not entitled to; according to it, he had to pay interest for the 2 year period, at 18%.

10. The applicant's grievance is premised upon the basis that the clarificatory order dated 26-3-2004 enabled allottees to pay a lower interest rate. However, a close look at the order of 26-3-2004, particularly paras 6 and 7 show that the benefit of 8% interest was restricted only to those 18 appellants in the cases, who had deposited the principal amounts, as demanded. The order further stated that "This order shall Therefore, ensure to the benefit of these persons only". This clarifies beyond any doubt that the order was one in personam, for the benefit of a few appellants before the court; it did not have general application.

11. In view of the above circumstances, we are of the opinion that the applicant's grievances are unfounded. Although the DDA initially demanded amounts by calculating 8% interest, which were deposited, nevertheless, later, it took the position that the calculation was based upon an erroneous

understanding of the order dated 19-8-2004 disposing off these appeals. It Therefore, insisted that the applicant should pay interest for the relevant period, at 18%. The differential amount works out to about Rs. 3,76,689/-. In view of the above discussion, we are of the opinion that no Classification or direction is called for. However, since the applicant was informed about enhancement, after the demand was met with by him, we are of the view that the DDA should grant him a reasonable period to pay the differential amount. A limited direction, is Therefore, issued to the DDA to issue a demand for the differential amount, for the period 11-10-2002 to 30-9-2004 at the rate of 18%, granting three months time to the applicant to pay the same.

12. The application is Therefore dismissed, subject to the directions in the preceding paragraph. No costs.