(2022) 11 DEL CK 0142

In the Delhi High Court

Case No : Letter Patent Appeal No. 528 Of 2022, Civil Miscellaneous Application No. 40351 Of 2022

Delhi Development Authority APPELLANT

Vs

Dinesh Kumar RESPONDENT

Date of Decision : 24-11-2022

Acts Referred:

Constitution Of India, 1950 — Article 14

Citation : (2022) 11 DEL CK 0142

Hon'ble Judges : Rajiv Shakdher, J;Tara Vitasta Ganju, J

Bench : Division Bench

Advocate : Ashim Vachher, Ashok Agarwal, Kumar Utkarsh, Manoj Kumar

Final Decision : Dismissed

Judgement

Tara Vitasta Ganju, J

1. The present Appeal has been filed against Judgment dated 11.07.2022 (hereinafter referred to as "the Impugned Judgment") wherein the learned Single Judge has set aside the demand raised by the Appellant/Delhi Development Authority (hereinafter referred to as "DDA") to pay interest on balance 10 % disposal cost to be paid for of an allotted Flat.

2. The brief relevant facts are as follows:

(i) The Appellant had launched a Housing Scheme for approximately 25,000 flats in the category of Low Income Group (hereinafter referred to as "LIG") under DDA Housing Scheme 2014 (hereinafter referred to as "the Scheme").

(ii) Subsequent to a draw of lots, the Respondent was allotted Flat No. 14, 3rd Floor, Block B-11, Pocket -3, Sector G-8, Narela, New Delhi-110040 (hereinafter referred to as "the Flat") on 25.11.2014.

(iii) On 19.01.2015, a demand letter was received by the Respondent, wherein a payment of Rs. 12,19,237/- which amounted to 90% of the cost of the Flat, was demanded by DDA. The Respondent made that payment and an Agreement to Sell dated 17.06.2015 was executed between the Respondent and DDA.

(iv) Thereafter, on 11.07.2021, the Respondent received a letter dated 01.07.2021 from DDA wherein a demand for the balance consideration of 10% for the Flat was made as well as a demand for interest was made from the Respondent in the sum of Rs. 84,416/-, being the interest payable on the balance consideration of 10% paid after 5 years. The Respondent paid the balance sale consideration but paid the interest component of Rs. 84,416/-, under protest.

(v) The Respondent filed a Writ Petition i.e. W.P.(C) 8552/2021, challenging the levy of interest on this balance consideration of 10% stating that the same was arbitrary and unjustified and seeking an appropriate direction that the letter dated 01.07.2021 be withdrawn by DDA or a direction be passed for the refund of Rs. 84,416/- to the Respondent.

(vi) As discussed above, the learned Single Judge has set aside the impugned letter dated 01.07.2021 and directed DDA to issue a new letter of demand stating the amount, required to be paid by the Respondent.

(vii) Aggrieved by these directions, DDA has filed the present Appeal.

3. It was submitted by learned Counsel for DDA that the terms and conditions as contained in the (i) Brochure, (ii) Demand cum Allotment Letter and (iii) Agreement to Sell which are all part of the contractual terms between DDA and an allottee. The interest on balance 10% disposal cost of the Flat as levied is part of the contract and documents executed by an allottee and Respondent has agreed to these terms at the time of the allotment. Reliance has been placed on Clause 16(c) of the Scheme which provides that interest on the 10% balance consideration of an allotted Flat is to be paid after five years.

3.1 It was further submitted by the learned Counsel for DDA that the clause envisages delay in payment of balance 10% consideration of a flat was inserted in the Scheme, so that genuine end-users and not unscrupulous elements and property brokers obtain flats from DDA. It was also submitted that the reason for charging the interest is based on the fact that DDA had to recover the cost of capital that was incurred by DDA on account of cost of construction of the Flats. Furthermore, it was submitted that by the Circular No. F1(303)N&C/H/2013/ Pt.1/150 dated 25.01.2019 issued by DDA (hereinafter called the "2019 Circular"), the embargo on execution of Conveyance Deed till after 5 years has now been removed.

4. On the other hand, it was argued by learned Counsel for the Respondent before the learned Single Judge that interest on the 10% balance consideration payment is arbitrary and illegal. It was submitted that DDA could not as a matter of right includes, a condition that the Respondent has to pay the balance amount after a period of five years and then charge interest on the same. In view of the

fact that the Allotment Letter itself provides for a payment after five years, DDA gives no option to an allottee to pay it earlier. Hence, the Respondent submitted that the Scheme envisages that interest should be levied and may be charged by DDA only if there is a delay in payment of the balance 10% consideration and not for the entire 5 years.

5. To better understand this “balance 10% payment”, it is relevant to refer to the Scheme. Clause 16(a) and (c) of the Scheme reads as follows:

“(a) To prevent speculative applications and to ensure that only genuine persons apply, as per demand-cum-allotment letter a successful allottee, including an allottee under the EWS and PD category making payment on cash down basis, upon payment of 90% of the cost of the flat and completion of other formalities/ submission of documents, execute an Agreement to Sell with DDA in the prescribed format which shall be registered with the Sub-Registrar as per law whereupon the possession of the flat shall be handed over to such allottee.

……

(c) A Conveyance Deed in the prescribed format transferring the title of the flat shall be executed in favour of the original allottee, which shall be registered with the Sub-Registrar as per law, upon receipt of a request from the original allottee, after a period of 5 (five) years from the date of handing over possession subject to payment of the balance 10% cost of the flat alongwith interest as per policy and the conversion charges and all other dues provided the original allottee has not in any manner sold, transferred or alienated the whole or any part of the flat by any agreement of whatsoever nature and parted with possession thereof.”

[Emphasis is ours]

5.1 As can be seen from the aforegoing clause, in the first instance, an allottee is required to make a payment of 90% of the cost of the Flat and complete other formalities including submission of documents in order to execute an Agreement to Sell with DDA.

5.2 Thereafter, after a period of five years from the date of handing over of possession, and on a payment of the balance 10% cost of the Flat and interest on this balance 10% consideration and other charges, can a Conveyance Deed be executed in favour of the allottee.

5.3 Therefore, as per the Scheme, an allottee has no option to make 100% payment at once, but is required to make 10% balance consideration payment after a period of five years.

6. This lock-in period of five years was done away with by DDA when it introduced its Housing Scheme in 2017 called “DDA Aawasiya Yojana 2017” (“2017 Scheme”). In order to bring parity between the Scheme and the 2017 Scheme, the 2019 Circular was issued which modified Clause 16(c) and 16(d) of the Scheme and removed the embargo on execution of “Conveyance

Deed" till after five years of issue of a possession letter for all the allottees of the Scheme.

6.1 The modified Clause 16(c) forms part of the Impugned Judgment and is reproduced below:

"Clause 16(c) - Upon receipt of a request from the original allottee a 'Conveyance Deed' in the prescribed format transferring the title of the flat shall be executed in favour of the respective allottee upto a period of 6 (six) years from the date of the handing over possession subject to payment of the balance 10% cost of the flat along with simple interest @ 10% p.a. and the conversion charges and all other dues provided the original allottee has not in any manner sold, transferred or alienated the whole or any part of the flat by any agreement of whatsoever nature and parted with possession thereof. All such allottees who would apply for execution of conveyance deed after a period of 06 years from the date of possession may be charged applicable penal interest on the balance 10% cost of the flat. The expenditure on è-stamping and other expenses on account of registration of conveyance deed shall be borne by the allottee."

[Emphasis is ours]

6.2 However, the provision for interest on the balance 10% was contained in this clause as well, with the modification that the interest on the balance 10% of the cost of the Flat was now to be paid at the rate of 10% per annum as a simple interest.

7. The Learned Single Judge after hearing detailed contentions of both the parties has opined as follows:

"14. A perusal of the above clauses indicates that the interest on the balance 10% payment could have been charged by the Respondent-DDA only if the Petitioner had paid the balance amount after five years of possession of the flat in question. An interpretation of the clauses would give an inference that the interest could only be levied if the Petitioner had delayed its payment of the balance amount. The Respondent-DDA cannot, as a matter of right, institute a condition for the Petitioner to pay the balance amount after a period of five years and then charge interest on the same. If the interpretation as sought to be given by the DDA is accepted then it will mean that the DDA on the one hand is refusing to take 10% of the amount and then forcing the allottee to pay interest even if the allottee is prepared and willing to pay that 10% prior to five years. Such an interpretation would be, per se, a violation of Article 14 of the Constitution of India and the Circular has to be read in a way that it does not find fault with Article 14 of the Constitution of India. A condition which forces an allottee to pay interest even though the allottee is ready and willing to pay the interest amount in the first instance, cannot be accepted. Such a condition places the Petitioner at a disadvantage as it imposes the payment of interest despite the Petitioner being in a position to pay the balance 10% payment prior to five years. The Agreement for Sale saddles the allottee with interest without any reason. It is well settled that interest is implied on the delayed payment of money. When the allottee does not want to delay the payment then he cannot be forced by the DDA to pay interest."

[Emphasis is ours]

7.1 The Learned Single Judge has also held that levying of a mandatory 10% simple interest on the 10% balance amount does not have any justification as follows:

"While this Court is not entering into the constitutionally of the Circular, it must be noted that levying of mandatory 10% simple interest on the balance amount does not have any justification and the reasoning provided by the Respondent-DDA that the simple interest is being levied to discharge the capital costs incurred by the Respondent-DDA does not hold any water."

7.2 The Learned Single Judge, while allowing the Writ Petition has directed that the levy of interest on balance 10 % disposal cost of the Flat in question is untenable and hence set aside the payment of Rs. 84,416/- as interest.

8. We are in complete agreement with the learned Single Judge and the conclusion that he has arrived at. Clause 16(c) would roil against Article 14 of the Constitution if it is construed in the manner proposed by DDA.

8.1 So far as it concerns the grievance of the Respondent qua the fact that he was allotted an EWS Flat instead of an LIG Flat which was applied for (as referred to in our order dated 13.09.2022), we have noted that paragraph 2 of Impugned Judgement refers to the fact that a Single Judge of this court is already seized with the issue in W.P.(C) 9356/2019, titled as Association of Allottees (R) 2014 & 2017 v. Delhi Development Authority. Hence, we are not required to adjudicate the said aspect in the instant Appeal.

9. In view of the aforegoing, we find no merit in the Appeal. The Appeal is accordingly dismissed. All pending Applications stand closed.

