
(2013) 04 DEL CK 0186
In the Delhi High Court
Case No : Writ Petition (C) 7792 of 2011

M.M. Ajwani

APPELLANT

Vs

DDA and Another

RESPONDENT

Date of Decision : 17-04-2013

Acts Referred:

Citation : (2013) 04 DEL CK 0186

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : S.K. Rungta, With Mr. Prashant Singh, for the Appellant; Arun Birbal, Advocate for R.1 Mr. V.C. Jha and Ms. Sonia Sharma, Advocates For R.2, for the Respondent

Judgement

V.K. Jain, J.—The petitioner claims to have purchased residential flat bearing No. 50, 2nd and 3rd floor, duplex in Pocket "F" Sheikh Sarai, New Delhi which was allotted by DDA to Shri Davendra Prakash Goel. Shri Davendra Prakash entered into a transaction with one Shri Shakti Chand Rana for transfer of the aforesaid flat to him and executed the documents, such as, Agreement to Sell and registered General Power of Attorney in his favour. In turn, he entered into a transaction with the petitioner for sale of the aforesaid property to him and on the strength of the documents which had been executed by the allottee in his favour, he executed the documents such as Agreement to Sell and registered Power of Attorney in favour of the petitioner. The petitioner applied for conversion of the aforesaid property into free hold, in terms of the policy of DDA for converting lease hold properties into free hold. The aforesaid request was rejected by DDA, vide its letter dated 3rd August, 2011 on the ground that the policy for conversion envisaged conversion of lease hold rights into free hold only in respect of the transactions which had been carried out on or before 30.9.2001. The aforesaid rejection is in challenge in the present writ petition. The petitioner is also challenging the conversion policy of DDA to the extent it limits the conversion of lease hold rights into free hold only to those properties which were subject-matter of transactions carried out on or before 30.9.2001. On the basis

of the newspaper reports and public notices in newspapers, the learned Senior Advocate for the petitioner states that during the pendency of this writ petition, DDA has modified the conversion policy. and it is now allowing conversion of lease hold rights into free hold rights even in respect of those properties where the transaction took place later than 30.9.2001, provided that it had taken place on or before the last date specified by DDA in this regard.

2. The second issue involved in this petition is with respect to refund of the 20% surcharge which DDA had levied and recovered in respect of the residential flats allotted by it in South Delhi. The decision of DDA to levy the said surcharge was quashed by the Apex Court in Delhi Development Authority vs. Joint Action Committee Allottees of SFS Flats and Ors. in Civil Appeals No. 6668-6698 and 6700-6732/2000 decided on 13.12.2007 and this was noted by a Division Bench of this Court in its order dated 18.1.2008 passed in LPA No. 890/2003 and connected matters, including LPA No. 355/2004 filed by Davinder Kumar Goel. The aforesaid decision of the Apex Court was not complied by DDA in respect of those persons who had purchased the flat on the basis of documents, such as, Agreement to Sell and Power of Attorney etc. The act of DDA in denying the refund of the surcharge to such persons was challenged before this Court and a Division Bench of this Court, vide order dated 20.10.2011 passed in LPA No. 875/2011, held that DDA has been liable to refund the aforesaid surcharge even in such cases. The order passed by the Division Bench was challenged by DDA before Supreme Court in SLP No. 9156/2012. Notice in the aforesaid SLP was issued by the Apex Court on 11.5.2012, a stay of the refund, as directed by this Court was ordered and the matter is stated to be pending in the Supreme Court.

3. The third issue involved in this petition is with respect to payment of interest by DDA on account of delay in construction of the flats allotted by it. The only plea taken by DDA in respect of the aforesaid charges is that the said charges have already been refunded by it to the original allottee Shri Davinder Prakash Goel. Mr. Rungta, on instructions, disputes the aforesaid statement made in the reply of DDA. In these circumstances, this writ petition is disposed of with the following directions:-

i) The application of the petitioner for conversion of property bearing Flat No. 50, 2nd and 3rd floor duplex in Pocket "F" Sheikh Sarai, New Delhi into free hold shall be examined afresh by DDA, as per its revised policy and a decision thereon shall be taken within a period of three months from today and the decision so taken shall be communicated to the petitioner within one week thereafter;

ii) In the event of the Apex Court dismissing the Special Leave Petition/Appeal filed by DDA against the decision of this Court in LPA No. 875/2011, the amount of the surcharge shall be refunded to the petitioner within four weeks from the date of dismissal of the SLP/Appeal alongwith interest on that amount @ 10% per annum with effect from 1st May, 2013. If, however, the aforesaid amount is refunded to the petitioner within four weeks of the application for conversion of the lease hold rights into free hold being allowed in favour of the petitioner, no

interest would be payable it to the petitioner. In the event of application of the petitioner for conversion of leasehold rights into freehold not being allowed, DDA would be liable to refund the surcharge to the original allottee Shri Davinder Prakash Goel. If the SLP/Appeal filed by DDA is allowed, there would be no question of refund of the aforesaid surcharge to the petitioner;

iii) As regards, refund of the Belated Construction Interest (BCI), considering the stand taken by DDA in its reply, I am not inclined to pass any direction for payment of the aforesaid amount of the petitioner, even in the event of his application for conversion of the aforesaid property into free hold being allowed in his favour. DDA, however, is directed to file an affidavit within four weeks giving particulars of the refund of the aforesaid amount to the original allottee along with the documents evidencing the refund, after serving copy of the said affidavit on the petitioner through counsel.

The writ petition stands disposed of.

Copy of this order be given dasti to both the parties.