(1999) 04 DEL CK 0062

In the Delhi High Court

Case No : C.W.P. No. 3157 of 1991

S/Sh. Tajeshwar Kumar Sharma and Others — APPELLANT

Vs

Union of India (UOI) and Another — RESPONDENT

Date of Decision : 21-04-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 226, 38

Citation : (1999) 79 DLT 254 : (1999) 49 DRJ 677

Hon'ble Judges : Chander Mohan Nayar, J

Bench : Single Bench

Advocate : P. Chakraborty, for the Appellant; R.K. Khanna and Dilip Singh, for the Respondent

Judgement

C.M. Nayar, J.—This petition has been filed by the petitioners impugning the Demand Notices issued by Delhi Development Authority during the period August 22, 1991 to August 31,1991 and for issuance of a writ of mandamus directing the respondents to revise the cost of the tenements on the principles of "No Profit No Loss" basis as applicable to the tenements allotted to EWS (Economically weaker section) category.

It is alleged in the writ petition that Delhi Development Authority, respondent No. 2 is responsible for constructing and for allotment of tenements to various categories of registered persons including the EWS and according to the policy and practice of the respondents the cost of such flats are subsidised from the profit earned from disposal cost of houses allotted to middle and higher income groups of the Society and other sources. The registration scheme which concerns the petitioners was opened from November 21, 1985 to December 30, 1985 which period was extended subsequently. The details of the scheme as well as the averments made by the petitioners are incorporated in paragraphs 7 to 16 of the writ petition which may be reproduced as follows:

"7. That in Clause 1 of the brochure it was stated by respondent No. 2 that the objective of the scheme was to provide built up tenements to the people residing in Slum areas, JJ Clusters, Unauthorised colonies Urban villages and other sub-standard areas on easy terms and conditions and keeping in view the affordability of the beneficiaries of the scheme and the overall objective of the scheme was to improve the quality of life of the people living in the sub-standard areas mentioned above.

8. That under the scheme 27693 persons were registered on payment of initial deposit of Rs. 3000/- per applicant.

9. That according to Clause 5(2) of the Brochure issued by respondent No. 2 the estimated cost of the tenements under the scheme was fixed at Rs. 35000/- (approx) per unit. This price was however, subject to revision in view of escalation in the cost of construction.

10. That believing in good faith in the representation made by respondent No. 2 that the cost of the tenements would be Rs. 35000/- approximately and further the policy of the respondent that Janta tenements for the EWS category are to be allotted on ''No profit no loss'' basis, the petitioners got themselves registered under the scheme on depositing the initial amount of Rs. 3000/-.

11. That all the petitioners were issued registration certificate and deposit slips in respect of the amount deposited by them.

That according to the norms prescribed by the CPWD and followed by respondent No. 2, the normal time taken for construction of group houses is 18 months.

12. That respondent No. 2 agreed to pay 7% interest on the initial deposit and adjust the principle and the interest against the cost of the tenements at the time of actual allotment of tenement.

13. That respondent No. 2 collected about Rs. 8.5 crores from the initial deposits and kept them in time fixed deposits and earning 10% interests on the deposits.

14. That according to Rule 6(2) of the DDA (Disposal of developed naxul land) Rules, 1981 even residential plots for persons belonging to the lower-income group are to be allotted at pre-determined rates (no profit no loss basis) if they are living in Slum areas and other congested areas.

15. That the petitioners under the circumstances stated above did not make any effort to acquire any built up tenements of residential land in the Union Territory of Delhi from any other source and were eagerly waiting for allotment of tenement under the scheme of respondent No. 2.

16. That under the scheme of 1985 50% of the tenements were to be allotted on cash down and balance 50% on hire purchases basis."

2. On November 2, 1990 respondent No. 2 issued a Press notice inviting applications for allotment of 92 tenements at Inderlok on cash down basis only and since the petitioners needed the same urgently they applied for allotment. It is not in dispute that the cost of the tenements was not given in the Press notice.

The petitioners on the basis of draw of lots held on January 30, 1991 were issued demand notices for the block dated August 22,1991 to August 31,1991 for cash down payment of Rs. 1,28,000/- to Rs. 1,47,600/- per Unit depending on the plinth area and date of completion of construction and the aforesaid amount was to be paid during the period September 1, 1991 to November 30, 1991 failing which the allotment would be automatically cancelled. The petitioners were not happy with the demand notices as they were expecting the cost of tenements at Rs. 35,000/- approximately per unit. It also came to the notice of the petitioners that the tenements allotted to them were left over flats out of two lots of flats constructed in the year 1975-76 and 1982-83. The other averments with regard to alleged tenements and the alleged pricing are referred to in paragraphs 23 to 26 of the writ petition which may be reproduced below:

"23. That in the lot of houses constructed in the year 1975-76 there were 960 tenements and they were allotted to evictees of Slum areas from 1976 onwards.

In the second lot constructed in the year 1982-83 there were 128 tenements.

24. That the 92 left over tenements were earlier allotted to the evictees of Sarai Khalil near Sadar Bazar and they fall vacant when the evictees of Sarai Khalil were refocused under the Sarai Khalil Slum-refocusing scheme. These tenements remained under occupation of the evictees of Sarai Khalil for a number of years. Thus the petitioners are the second allottees of the 92 tenements.

25. That hi the year 1984 the Government of India decided to liquidate the Slum tenements on perpetual lease hold basis in favor of the allottees and even unauthorised occupants and the cost of tenements at Inderlok were fixed as under:

(i) 128 tenements constructed in 1982-83 : Rs. 38400 per unit

(ii) 960 tenements constructed in 1975-76 : Rs. 29700 per unit

26. That the petitioners further came to know that the actual cost including, development charges came to Rs. 24000/- only (approximately)."

3. The petitioners inspected the tenements allotted to them and they found them in the state of total disrepair and non-maintenance and urgent and extensive repairs were needed to make them habitable. Some of the tenements were even in dilapidated condition. The petitioners represented against the excessive cost of the tenements allotted to them with a request to review the same and also made an alternative prayer to withdraw from the draw and surrender the flats subject to consideration of the names for the subsequent draws. The present writ petition has been filed to impugn the action of respondent No. 2.

4. Notice was issued and operation of the impugned demand notices was stayed vide order passed by the Division Bench on November 25, 1991 which has continued to operate till date.

5. The learned counsel for the petitioners has vehemently contended that the

demand notices issued by the Delhi Development Authority, respondent No. 2, cannot be sustained as it has always projected that the flats will be allotted on the actual cost and "No Profit No Loss" basis at the time they were constructed. The relevant extract from the Brochure of Special Housing Scheme-1985 as well as the related advertisement are filed as Annexures A and B respectively to the writ petition which may be reproduced as follows:

"Annexure A

EXTRACT FROM THE BROCHURE OF SPECIAL HOUSING

SCHEME-1985

SLUM WING--DELHI DEVELOPMENT AUTHORITY

REGISTRATION SCHEME-1985 FOR ALLOTMENT OF RESIDEN-

TIAL FLATS TO SLUM DWELLERS AND OTHERS

l. Objectives and purpose of the scheme

The main purpose of the scheme is to improve the quality of life of the people living in notified slums under the Slum areas (Improvement & Clearance) Act, 1956 and people living in JJ colonies un authorised colonies, urban villages by providing them with residential flats on easy terms and according to their affordability on cash down or hire purchase basis. The scheme has been prepared keeping in view the cost effectiveness and the financial capacity of the beneficiaries of the scheme.

2. The period of registration under the scheme.

Registration under the scheme shall remain open from 21st November, 1985 to 30th December, 1985.

5.2 The estimated cost of the flats to be constructed under the scheme shall be Rs. 35000/- per unit. This price is, however, provisional and the final cost shall be subject to escalation in the cost of construction."

Annexure ''B''

SLUM WING DELHI DEVELOPMENT AUTHORITY

"Pledged to improve the quality of life of Slum Dwellers".

NOTICE

Applications are invited from registrants under the "Residential Flats Registration Scheme for Slum Dwellers & others- 1985" for allotment of 92 slum tenements at inderlok on ''cash down'' basis. The interested registrants may send their application in the format given below by 15th November, 1990. No application after 15.11.1990 will be entertained. Allotment will be made by draw of lots. It may be noted that the successful applicants in draw of lots shall be debarred from future allotment under the Registration Scheme-1985.

(RAVI MALIK)

Commissioner (Resettlement)

Format of application for allotment of slum tenement on ''cash down'' basis to the registrants of "Residential Flats Registration Scheme for Slum Dwellers and Others-1985".

To

The Joint Director (Housing)

Slum Wing, DDA

B Block, Vikas Kuteer,

I.P.Estate,

New Delhi 110 002

Sir,

I hereby opt for allotment of a flat at Inderlok and am willing to accept allotment on ''cash down'' basis. I have also noted that if I am successful in the draw of lots, I shall stand debarred for future allotment under the Residential Flats Registration Scheme for Slum Dwellers and Others-1985. My particulars are as under:

1. Name TAJESHWAR kUMAR SHARMA

2. Father''s/Husband''s Name BHAGWAN SARUP SHARMA

3. Registration No. 49341

4. Priority No. 3881/G PHOTO

5. Present address

15 Krishan Kunj Ext.Part II

Laxmi Nagar, Delhi 110 092

SIGNATURE OF THE APPLICANT"

Reference is also made to a Brochure with regard to "RESIDENTIAL FLATS REGISTRATION SCHEME FOR SLUM DWELLERS AND OTHERS-1985" as issued by Delhi Development Authority, paragraph 5.2 has been referred to to reiterate the price to be around Rs. 35,000/-. This Clause 5.2 reads as follows:

"5.2 The likely cost of the flat constructed under this scheme will be around Rs. 35,000/-. The price is indicative and does not represent the final cost. This is subject to revision depending upon market fluctuations. The final delivery price of the residential flats will be determined on the basis of cost at the time of completion & other components as per procedure."

The cost of the tenements with which the present petitioners are concerned has been stated to be worked out by respondent No. 2 on the basis of which demand notices have been issued on the following basis:

COSTING IN R/O 92 LEFT OUT FLATS AT INDERLOK For 960 Tenements

1. Year of Completion

1976

2. Plinth area per unit G.F. F.F. S.F. T.F.

29.48 39.68 34.58

3. Cost of construction @ 2435/25 per sq.m. 71791 96631 84210

4. Deptt. charges @ 6.5% p.a. on (3) 4666 6281 5474

76457 102912 89684

5. Interest @ 12.6% p.a. for 20 months (on S.NO. 3 & 4) 16056 21612 18834

6. Equalisation charges @ 50/- per sq.m. (rounded off to next hundred) 1500 2000 1800

7. Cost/Premium of land @ 635/-per sqm. 18800 25200 22000

112813 151724 132318

8. Less Depreciation Charges i.e. @ 1% p.a. from dt. of completion to preceding month of costing (rounded to next half yr.) on previous Disp. cost- Cost of land For 960 T/S-on 26800/-Apr. 76- Jun'' 91 i.e. 15-1/2 yrs. for128 T/S on 32480/- (Aug'' 83- Jun'' 91) i.e. 8 yrs. 4154 4154 4154

108659 147570 128164

DISPOSAL COST Say 1,08,700/- 1,47,600/- 1,28,200/-

GROUND RENT P.A. 470/- 630/- 550/-

For 128 Tenements

1. Year of Completion 1983

2. Plinth area per unit G.F. F.F. S.F. T.F.

29.48 39.68 34.58

3. Cost of construction @ 2435/25 per sq.m. 71791 96631 84210

4. Deptt. charges @ 6.5% p.a. on (3) 4666 6281 5474

76457 102912 89684

5. Interest @ 12.6% p.a. for 20 months (on S.NO. 3 & 4) 16056 21612 18834

6. Equalisation charges @ 50/- per sq.m. (rounded off to next hundred) 1500 2000 1800

7. Cost/Premium of land @ 635/-per sqm. 18800 2520 22000

112813 151724 132318

8. Less Depreciation Charges i.e. @ 1% p.a. from dt. of completion to preceding month of costing (rounded to next half yr.) on previous Disp. cost-Cost of land For 960 T/S-on 26800/-Apr. 76- Jun'' 91 i.e. 15- 1/2 yrs. for 128 T/S on 32480/- (Aug'' 83- Jun'' 91) i.e. 8 yrs. 2599 2599 2599

110214 149125 129719

Disposal Cost say 1,10,300/- 1,49,200/- 1,29,800/-

Ground Rent P.A. 470/- 630/- 550/-

Sd/- Sd/- A.O.(H) ACCTT.(HAU)

STATEMENT SHOWING THE DETAILS OF AREA AND COST OF LAND

Gross Area =

53740 sq.m. (45/C)

Less Area under

a) L.S. 0.32 Acre

b) N/School 0.27

c) Mosque 0.45

1.04 Acre

4208 sq.m. (45/C)

Net Area

49532 sq.m.

Total Plinth area

(272 x 29.48) = 8018.56 G.F. (45/C)

(544 x 39.68) = 21585.92 I & IInd Floor

(272 x 34.58) = 9405.76 IIIrd Floor

1088 39010.24 sq.m.

Cost of Land = 49532 X 500

39010.24

= 634.85

Say 635/- per sq.m.

Sd/-

Sd/- Sd/-

AO(H)

ACCTT.(H)"

The petitioners have next contended that another person who is similarly situated was allotted a flat at lesser price than now being demanded from the petitioners. This is so stated in paragraph 27 of the writ petition which reads as follows:

" That the respondent DDA allotted some flats out of the two lots mentioned above to some EWS categories in the year 1990 at a total cost of Rs. 46,563.50 per unit. It seems Therefore that the respondent has no accountability in the matter of cost fixation."

The allotment made to one Qamar Khan is for the total amount of Rs. 46,563.50. This is borne out from the Communication dated December 5, 1990 which reads as follows:

"DELHI DEVELOPMENT AUTHORITY

SLUM WING

Vikas Kuteer

I.P.Estate

New Delhi-2

No.D/1092/CES/A/90 Dated 5.12.1990

To

Sh.Qamar Khan

S/o Sh. Inayat Khan

H.No. 689, Jama Masjid,

Delhi.

Sub:Regarding additional cum provisional out turn allotment of Slum Re

housing flat at Inder Lok.

Sir,

I am directed to inform you that the L.G.Delhi has been pleased to allot you above mentioned flat subject to payment of cost of flat in Lumpsum & surrender of your claim for allotment of slum flat against Registration Scheme 1985 in which you have registered yourself vide Registration No. 2470. You are, Therefore, requested to deposit a sum of Rs. 46563.50 as under:

1. Total cost of Flat at Inderlok (yet to be allotted) Rs. 47,600/-

Less amount deposited under Reg. Scheme, 1985 Rs. 3,000/-

Rs. 44,600/-

2. G.Rent in advance @ 73/-PA 73/-

3. Documental charged 70/-

4. Plumbing charges 1,683/-

5. Share money at Registration Agency 100/-

Rs. 46,526/-

6. Out of turn charges 1,000/-

Rs. 47,526/-

7. Less interest as per report from Accountant (HAU at page 10/N 962/50

Total Rs. 46,563/50

The said amount be deposited within 15 days from the date of issued of this letter, in cash or by Demand Draft drawn in favor of the Commissioner (S&JJ) II DDA in CBI Extn. Counter, Vikas Kuteer, I.P.Estate, New Delhi. Through challan available in the Bank A/C 1997 and furnish the IIIrd copy of the said challan to this office.

Besides the above amount all other ancillary expenses connected with it, will be borne by you separately. You are also liable abide by the terms & conditions of allotment.

You are again requested to deposit the above mentioned amount within the stipulated time, in case of default it will be presume that you are no more interested in the said allotment and the case will be closed without further correspondence.

Yours faithfully,

Sd/-

Dy. Director (CE&A)"

6. The learned counsel for the respondent Delhi Development Authority, on the other hand has contended that the petitioners and other similarly situated persons are being offered allotment on ''No Profit No Loss'' basis and it will not be open for this Court to fix the price as such matters are left to the discretion of the Authority. So far as the case of Qamar Khan is concerned it has been stated that he has also been asked to pay the same amount of money as is being

demanded from each of the petitioners i.e. Rs. 1,46,600/- plus interest and no distinction is made in his case in comparison to the claims of the petitioners.

7. The learned counsel for the petitioners has placed reliance on the judgment of the Supreme Court as reported in P.G. Gupta Vs. State of Gujarat and Others, to reiterate the proposition that the right to residence and settlement is the fundamental right under Article 19(1)(e) of the Constitution of India. Paragraph 11 of this judgment reads as follows:

"11. As stated earlier, the right to residence and settlement is a fundamental right under Article 19(1)(e) and it is a facet of inseparable meaningful right to life under Article 21. Food, shelter and clothing are minimal human rights. The State has undertaken as its economic policy of planned development of the country and has undertaken massive housing schemes. As its part, allotment of houses was adopted, as is enjoined by Articles 38, 39 and 46, Preamble and 19(1)(e), facilities and opportunities to the weaker sections of the society of the right to residence, make the life meaningful and live able in equal status with dignity of person. It is, Therefore, imperative of the State to provide permanent housing accommodation to the poor in the housing schemes undertaken by it or its instrumentalities within their economic means so that they could make the payment of the price in easy installments and have permanent settlement and residence assured under Article 19(1)(e) and 21 of the Constitution....."

8. Next reliance is placed on the judgment reported as Indore Development Authority v. Smt. Sadhana Agarwal and Ors. 1995 (2) Scale 37 where the question of escalation has been dealt with. Paragraphs 9,10 and 11 of this judgment read as under:

9. This Court in the case of Bareilly Development Authority and Another Vs. Ajay Pal Singh and Others, , had to deal with a similar situation in connection with the Bareily Development Authority which had undertaken construction of dwelling units for people belonging to different income groups styled as ''Lower Income Group'', ''Middle Income Group'', ''Higher Income Group'' and the ''Economically Weaker Sections''. The respondents to the said appeal had registered themselves for allotment of the flats in accordance with the terms and conditions contained in the brochure issued by the Authority. Subsequently, the respondents of that appeal, received notices from the Authority intimating the revised cost of the houses/flats and the monthly Installment rates which were almost double of the cost and rate of installments initially stated in the General information Table. But taking all facts and circumstances into consideration this Court said that it cannot be held that there was a mis-statement or incorrect state merit or any fraudulent concealment, in the brochure published by the Authority. It was also said that the respondents cannot be heard to say that the authority had arbitrarily and unreasonably changed the terms and conditions of the brochure to the prejudice of the respondents. In that connection, it was pointed out that the most of the respondents had accepted the changed and varied terms. Thereafter they were not justified in seeking any direction from the Court to allot such flats on the

original terms and conditions. Recently, the same question has been examined in the case of Delhi Development Authority Vs. Pushipendra Kumr Jain, . In respect of hike in the price of the flats, it was said :-

"Mere identification or selection of the allottee does not clothe the person selected with a legal right to allotment at the price prevailing on the date of drawl of lots. The scheme evolved by the appellant does not say so either expressly or by necessary implication. On the contrary, Clause (14) thereof says that "the estimated prices mentioned in the brochure are illustrative and are subject to revision/modification depending upon the exigencies of lay out, cost of construction etc."

Although, this Court has from time to time taking the special facts and circumstances of the cases in question has upheld the excess charged by the development authorities, over the cost initially announced as estimated cost, bit it should not be understood that this Court has held that such development authorities have absolute right to hike the cost of fiats, initially announced as approximate or estimated cost for such flats. It is well known that persons belonging to Middle and Lower income Groups, before registering themselves for such flats, have to take their financial capacity into consideration and in some cases it results into great hardship when the development authorities announce an estimated or approximate cost and deliver the same at twice or thrice of the said amount. The final cost should be proportionate to the approximate or estimated cost mentioned in the offers or agreements. With the high rate of inflation, escalation of the prices of construction materials and labour charges, if the scheme is not ready within the time frame, then it is not possible to deliver the flats or houses in question at the cost so announced. It will be advisable that before offering the flats to the public such development authorities should fix the estimated cost of the flats taking into consideration the escalation of the cost during the period the scheme is to be completed. In the instant case, the estimated cost for the LIG flat was given out at Rs. 45,000/-. But by the impugned communication, the appellant informed the respondents that the actual cost of the flat shall be Rs. 1,16,000/- i.e. the escalation is more than 100%. The High Court was justified in saying that in such circumstances, the Authority owed a duty to explain and to satisfy the Court, the reasons for such high escalation. We may add that this does not mean that the High Court in such disputes, while exercising the writ jurisdiction, has to examine, every detail of the construction with reference to the cost incurred. The High Court has to be satisfied on the materials on record that the authority has not acted in an arbitrary or erratic manner.

10. So far as the facts of the present case are concerned, it is an admitted position that in the proforma attached to the application for registration, the appellant said that the price mentioned by them was a probable and estimated cost, the definite price shall be intimated at the time of the allotment. The after, the appellant had been informing the respondents and others who had got

themselves registered, from time to time regarding the escalation in the cost of the flat. One of the reasons for the rise of the price for the LIG flat from Rs. 60,000/- to Rs. 1,16,000/- appears to be the. increase in the area of the flat itself from 500 sq.ft. to 714.94 sq.ft. from 1982 to 1984, possession of the flats could not be delivered because of the dispute pending in the Court which also contributed to the increase in the cost of the flat. Admittedly, the respondents came in possession of the flats in the year 1984. In the facts and circumstances of the case, we are satisfied that no interference was called for by the High Court.

11. We are informed that respondents have not paid the balance amount as demanded by the appellant from them, because of the pendency of the writ application before the High Court and appeal before this Court. The appellant has claimed the said amount with interest at the rate of 15% since the date the possession was delivered, till the balance amount is paid. As the respondents are in possession of the flats since 1984 without payment of any rent to the appellant, they should not have any grievance in making payment of the balance amount with interest. Still taking all facts and circumstances into consideration, we direct the respondents to make payment of the balance amount Along with simple interest at the rate of 6% per annum from the date of obtaining possession of the flat until payment."

9. The law is settled that it will not be open for this Court to go into the question of pricing. In similar circumstances the question came up for consideration by a Full Bench of this Court in Sheelawanti and Another, Retired/Retiring Public Servants Forum, Joginder Kumar Sharma, Alam Singh and Others, Gurpiari Jolly, Prem Chopra, Dwarka Dass and Ravi Kher Vs. Delhi Development Authority and Another, . Paragraphs 24,25 and 36 of this judgment may be reproduced as under:

"24. In view of the terms and conditions, (Clauses 13 and 14) in the brochure it cannot be said that pricing is one time process and the D.D.A. having fixed in the brochure some price could not revise it or that the nature or character of the scheme is engaged thereby. Obviously, it is a continuous process. Different sectors/colonies come into being at different times with continuous spiralling escalation in prices, the costing would naturally materially vary. It is true that housing accommodation is a vital requirement for a proper living and a city like Delhi, where State controls the land and regulate the development activities, the instrumentalities of the State, like the D.D.A. has a responsibility to act fairly and reasonably while fixing the price for sale of the land, houses or the flats belonging to it, however, it cannot he said that the D.DA. is obliged to sell them at a price that may result in loss to it or at a price which does not contain any profit element. It has been held by the Supreme Court in The Oil and Natural Gas Commission and another Vs. The Association of Natural Gas Consuming Industries of Gujarat and others, etc. etc., that generation of some commercial profit to the public undertakings is not prohibited. Similar view has been expressed in Premji Bhai Parmar and Others Vs. Delhi Development Authority and Others, . In view of it, it cannot be said that taking into account of some profit element, if any, which the D.D.A. denies to have taken in account while fixing the price, per s''e, renders the price fixed as arbitrary or unreasonable. 25. Even otherwise, the Scheme itself contemplates varying rates depending upon the class to which an allottee belongs - such as economically weaker section, Low Income Group or Middle Income Group. But, in each case, the consideration payable for the flat is referred to as the "cost". In other words, even to those who belong to the economically weaker sections, the consideration payable is called the "cost" of the flat. If the basic cost (i.e. the actual expenditure incurred by the DDA) is to be the "cost" for the flats then, the same rate should have been uniformly applied to all the classes of allottees. Admittedly, it is not so. Therefore, the word "cost" referred in the Scheme cannot be equated to the basic expenditure incurred by the DDA. The term has a wider significance and is used to convey the meaning of the term "price".

36. We may now advert to the questions referred to the Full Bench. In keeping with our observations and findings recorded above, we are of the opinion that, in view of Clauses (13) and (14) of the brochure and the transaction being contractual, this Court cannot interfere under Article 226 of the Constitution in the matter of pricing/coming of flats, including escalation of cost of land, etc. The answer to the first question has to be in the negative."

10. Similarly, the Supreme Court has analysed the rights of the allottees as co-related to the price or rates as determinable in Delhi Development Authority Vs. Pushipendra Kumr Jain, in paragraph 8 which reads as follows:

"8.Now coming to the other ground, we are unable to find any legal basis for holding that the respondent obtained a vested right to allotment on the drawl of lots. Since D.D.A. is a public authority and because the number of applicants are always more than the number of flats available, the system of drawing of lots is being resorted to with a view to identify the allottee. It is only a mode, a method, a process to identify the allottee, i.e. it is a process of selection. It is not allotment by itself. Mere identification or selection of the allottee does not clothe the person selected with a legal right to allotment at the price prevailing on the date of drawl of lots. The scheme evolved by the appellant does not say so either expressly or by necessary implication. On the contrary, Clause (14) thereof says that "the estimated prices mentioned in the brochure are illustrative and are subject to revision/modification depending upon the exigencies of lay out, cost of construction etc." It may be noted that registration of applicants under the said scheme opened on September 1, 1979 and closed on September 30, 1979. About 1,70,000 persons applied. Flats, were being constructed in a continuous process and lots were being drawn from time to time for a given number of flats ready for allotment. Clause (14) of the Scheme has to be understood in this context - the steady rise in the cost of construction and of land no provision of law also could be brought to our notice in support of the proposition that mere drawl of lots vests an indefeasible right in the allottee for allotment at the price obtaining on the date of drawl of lots. In our opinion, since the right to flat arises only on the communication of the letter of allotment, the price of rates prevailing on the date of such communication is applicable, unless otherwise provided in the Scheme. If in case the respondent is not willing to take or accept the allotment at such rate, it is always open to him to decline the allotment. We see no unfairness in the above procedure."

11. The short question which arises for consideration in this case is as to whether the impugned demand notices are liable to be set aside on the ground that respondent No. 2 is obliged to give flats to the petitioners at a fixed price of Rs. 35,000/- per unit on ''No Profit No Loss'' basis. The demand notices indicate the purchase price at the rate of Rs. 1,28,200/- to Rs. 1,47,600/-. The basic reasoning in fixing-the price for Rs. 35,000/- is two fold. Firstly, that the respondent Authority cannot charge more than the amount which has been spent on the construction of the fiats and secondly it was categorically stated in paragraph 5.2 of the registration scheme that the likely cost of the flat constructed under this scheme was estimated around Rs. 35,000/-. This argument is fallacious as respondent Authority is not obliged to sell the flats at a price less than what it has cost taking into consideration all the relevant factors. The relevant clause as referred to does not finally settle the price but categorically states "the likely cost of the fiat constructed under this scheme will be around Rs. 35,000/-. The price is indicative and does not represent the final cost. This is subject to revision depending upon the market fluctuations." The reading of Clause 5.2 nowhere binds the Authority to sell the flats at a price of Rs. 35,000/- per unit. It is now settled by the Full Bench judgment of this Court in Smt. Sheelawati and Anr. (supra) as well as of the Apex Court in Delhi Development Authority v. Pushpendra Kumar Jain (supra). The Supreme Court was interpreting similar clause and has clearly held that mere identification or selection of the allottee does not clothe the person selected with a legal right to allotment at the price prevailing on the date of drawl of lots. The other contention that the action of the respondents is vocative of Article 14 of the Constitution of India as one Qamar Khan is allotted a flat at a cheaper price is also without any foundation. The respondent DDA has already raised a bill for the said allottee vide letter dated December 15, 1997 which has been placed on record and reads as follows:-

"SLUM & JJ DEPARTMENT

MUNICIPAL CORPORATION OF DELHI

Vikas Kuteer,

I.P.Estate, N.Delhi

No.D/1022/Jt.Dir(Allot)/97 Date 15.12.97

Sh.Qamar Khan,

s/o Sh.Inayat Khan,

r/o Flat No. B-3/21-A,Inder Lok, Delhi

Sub: Regarding payment of difference of premium/cost and ground rent in respect of flat No. B-3/21-A, Inder Lok, Delhi.

Slum flat bearing No. B-3/21-A, Inder Lok was allotted to Shri Qamar Khan s/o Sh.Inayat Khan (Registrant of Housing Scheme 1985) under the term "Out of Turn Basis" with prior approval of L.G. Delhi vide allotment order No. D/1333/ Allott/91 dt.7.3.91. The allotment was made subject to payment of difference of premium cost and ground rent fixed by the S&JJ Deptt. from time to time. The premium cost and ground rent of the said flat has been finally worked out by the S&JJ Deptt. as Rs. 1,47,600/- and Rs. 630/-p.a. respectively. As such Sh.Qamar Khan allottee of flat No. B-3/21-A, Inder Lok, is required to make payment of differences of premium cost and unto date ground rent amounting to Rs. 1,05,031/- as detailed below:

Revised cost of flat No. B-3/21/A, Inder Lok 1,47,600.00

Ground rent w.e.f. 7.3.91 to 6.3.98 @ 630 p.a. 4,410.00

Plumbing charges 1,683.00

Out of turn charges 1,000.00

Share money of Regn. Agency 100.00

Documental charges 70.00

Balance of Interest on belated payment (2092-1398) 694.00

1,55,557.00

Less already paid (-) 50,526.00

Balance amount payable by allottee. 1,05,031.00

The said amount be deposited within 30 days from the date of issue of this letter in the Extt. counter of Central Bank of India Vikas Kuteer, I.T.O. New Delhi in the A/C No. 735. Besides the above amount, all other ancillary expenses connected with it, will be borne by the allottee.

In case the payment is not made within the stipulated time, usual interest will be charged on belated payment, if any.

Yours faithfully,

sd/-

JOINT DIRECTOR (ALLOTMENT)

10/12

Copy to:

A.O.(H) for information please.

JOINT DIRECTOR(ALLOTMENT)"

12. In view of the facts as stated above, the demand raised by Delhi Development Authority cannot be faulted and the petitioners are liable to pay the amount as claimed which is stated to be assessed on the basis of the calculation of cost in terms of Resolution No. 51 dated July 9, 1990. The flats, admittedly, are not yet ready and are in dilapidated stage and this fact is not denied by respondent No. 2. They are not in habitable condition for the petitioners to move immediately. The present petition is, Therefore, disposed of by issuing the following directions:-

A. The respondent Authority shall repair the flats and put them in habitable condition within a period of six months commencing from the date of this judgment;

B. The price shall be fixed on the basis of Resolution No. 51 dated July 9, 1990 and on the same basis as has been claimed from Qamar Khan who has also been sent a revised Demand dated December 15,1997;

C. The petitioners having only paid a sum of Rs. 3,000/- as initial deposit for allotment they shall now further pay a sum of Rs. 47,526/- on the same basis as the other allottee who has paid the amount on 1st March, 1991. Therefore, the petitioners shall pay interest with effect from that date at the rate of 12.6 per cent per annum till the date of payment. The respondent Authority shall also offer to the petitioners payment by installments provided they are willing to pay interest at the rate as determined by the Authority in similar cases;

D. In case the petitioners decline to take the allotment this will not act as bar for consideration for future allotments which will be subject to draw of lots in terms of priority in accordance with the rules. The present petition is disposed of in the above terms. There will be no order as to costs.

