

\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment delivered on: 30th June, 2015*

+ **W.P.(C) No. 6857/2011**

RAMJI PANDEY

.....Petitioner

Represented by: Mr. Shantanu Singh, Advocate.

Versus

DELHI DEVELOPMENT AUTHORITY & ANR.Respondents

Represented by: Ms. Shobhana Takiar, Advocate.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Vide the present petition, the petitioner seeks directions whereby directing the respondent No.1(DDA) to deliver the physical possession of Flat No.156, Pocket B2, Loknayakpuram, Delhi.

2. Brief facts of the case are that on 15.09.2008, the petitioner applied for booking of an LIG Flat and deposited an amount of Rs.1,50,000/- as booking amount. On 20.11.2009, the petitioner was informed by the respondent No.1 that he has been allotted a LIG Flat

mentioned above and asked him to deposit a sum of Rs.9,76,141/- by 19.05.2010.

3. On 22.04.2010, the respondent No.2 (Axis Bank) intimated the petitioner about the details such as rate of interest, loan sanctioned, mode of payment and amount of monthly instalments etc. in respect of the application submitted by him for obtaining the Home Loan. Accordingly, on 26.04.2010, the petitioner sought permission from the Assistant Director, DDA, for mortgaging the flat in question with the Axis Bank in order to get the Home Loan of Rs.8,00,000/-. The said letter is annexed as Annexure P-6 at page 36.

4. The remaining amount of Rs.1,76,141/- was deposited by the petitioner with the respondent No.2 (Axis Bank) vide Bank Draft No.405849 issued by the City Bank dated 18.05.2010. Accordingly, the respondent No.2 assured the petitioner of sanction of Home Loan for an amount of Rs.8,00,000/- in respect of the aforesaid flat and further assured that the total amount of Rs.9,76,141/- will be deposited in the designated Bank Account of the respondent No.1 on or before 19.05.2010, which was the last date of depositing the balance amount.

5. However, the respondent No.2 informed the petitioner that the aforesaid amount of Rs.9,76,141/- could not be deposited in the Bank Account of respondent No.1 (DDA) due to 'Upgradation of Bank Core Banking System'. The respondent No.2 further assured the petitioner that the pay order will be issued as soon as possible.

6. On 22.05.2010, after receiving the aforesaid information, the petitioner went to the office of respondent No.1 and met the then Commissioner (Housing) DDA and narrated the entire problem as was told by the respondent No.2 who could not deposit the said amount on 19.05.2010. However, on 22.05.2010, the respondent No.2 deposited two Bank Drafts bearing Nos. 405849 dated 18.05.2010 and 543342 dated 20.05.2010 for an amount of Rs.1,76,141/- and Rs.8,00,000/- respectively. Thus, the respondent No.2 had deposited the total amount of Rs.9,76,141/- with respondent No.1.

7. Learned counsel appearing on behalf of the petitioner submitted that despite depositing the aforesaid amount, on 26.09.2010, the petitioner received a letter of cancellation dated 18.08.2010 alongwith a cheque of Rs.50,000/-. Thereafter, petitioner sent a legal notice on 14.01.2011 through his counsel calling upon the respondent No.1 to mend his aforesaid illegal and arbitrary action and requested to deliver the possession of the flat in question. In reply thereto, it was informed to the petitioner on 25.04.2011 that the petitioner failed to comply with the terms and conditions of the allotment-cum-demand letter which resulted into cancellation of allotment and further stated that the registration amount of Rs.50,000/- after deducting Rs.1,00,000/- as cancellation charges has already been refunded back to the petitioner.

8. Learned counsel further submitted that petitioner took Home Loan from the respondent No.2/Axis Bank for the aforesaid flat and continued to pay the instalments to repay the loan amount to the Bank

mentioned above. The petitioner again sent a legal notice dated 30.05.2011 through his counsel to the respondent Nos. 1 and 2 for considering his grievances and further stated that the delay was caused due to the lapses on the part of the Bank, i.e., the respondent No. 2 for which the petitioner is neither liable nor responsible.

9. Learned counsel for the petitioner argued that the respondent No.1/DDA did not issue any show-cause notice for cancellation of the Flat allotted. Moreover, if there was delay of three days in depositing the amount, the respondent No.1/DDA was only entitled for the interest on delayed payment. In such circumstances, there was no occasion for DDA to cancel the flat in question and allot the same to some other person. Therefore, the cancellation letter dated 18.08.2010 may be set aside and respondent No.1 may be directed to allot some other flat of the same category in the same locality or in some other part of Delhi.

10. On the other hand, learned counsel appearing on behalf of the respondent No.1/DDA submitted that the petitioner was allotted the aforesaid flat in draw held on 16.12.2008 on cash down basis. Accordingly, the allotment-cum-demand letter was issued to the petitioner on 20.11.2009 to deposit the cost of flat as per Schedule mentioned below:-

Sr.No.	Initial deposit if paid by	Payable including interest
1.	21.11.2009 to 18.2.2010	941017.00

2.	19.2.2010 to 20.3.2010	952619.00
3.	21.3.2010 to 31.3.2010	956872.00
4.	1.4.2010 to 19.4.2010	964343.00
5.	20.4.2010 to 19.5.2010	976141.00

11. In the said letter, it is further stated that if the aforementioned amount was not paid by 19.05.2010, it will lead to automatic cancellation. Since, the petitioner had failed to deposit the cost of flat within the stipulated period of six months, therefore, the allotment of flat in question was cancelled by the respondent No.1/DDA vide letter dated 22.06.2010. Moreover, the amount of Rs.50,000/- towards registration money was refunded by the respondent No.1 vide Cheque No. 39868 dated 18.08.2010 and same has been encashed by the petitioner. The petitioner is entitled only to refund of an amount of Rs.9,76,141/- as per policy. However, case of the petitioner is not covered under any policy of restoration.

12. I have heard the learned counsel for the parties.

13. It is not in dispute that the allotment-cum-demand letter was issued to the petitioner on 20.11.2009 to deposit the cost amount of flat as per the Schedule mentioned above. Thus, as per the Schedule, the petitioner was to deposit the total cost of the flat, i.e., Rs.9,76,141/- by 19.05.2010, to which the petitioner had failed.

14. It is also not in dispute that as per the allotment-cum-demand letter, if the petitioner fails to deposit the amount by 19.05.2010, there was automatic cancellation. As argued by the counsel for the respondent No.1/DDA that the respondent No.1 had applied the said automatic clause and accordingly, cancelled the allotment of flat in question and thereafter allotted the same to some other person, namely; Shri Alam Chand Jain in the draw held on 21.04.2011.

15. The petitioner has failed to establish that the flat in question can be restored under any policy. Since the aforesaid flat has been allotted to above named person, therefore, the cancellation cannot be restored and the flat cannot be allotted to the petitioner. Moreover, the subsequent allottee mentioned above has not been made a party in the present petition, therefore, the respondent No.1/DDA cannot be directed to allot the said flat to the petitioner.

16. It is also not disputed that the amount of Rs.9,76,141/- is refundable to the petitioner which is lying with respondent No.1. Admittedly, the petitioner had taken a loan from respondent No.2 (Axis Bank) and has been paying the instalments on the said amount with interest thereon. Therefore, ends of justice would be met if the respondent No.1/DDA is directed to refund the said amount with interest to the petitioner.

17. Accordingly, this Court directs the respondent No.1 to refund the amount of Rs.9,76,141/- within four weeks from the receipt of this

order in favour of the petitioner with interest at the rate of 12% *per annum* from the date of deposit till the actual payment. Failing which, the respondent no. 1 shall be liable to pay interest @ 18% *per annum* on delayed payment.

18. In view of the above, the petition is disposed of with no order as to costs.

**SURESH KAIT
(JUDGE)**

JUNE 30, 2015
sb/jg