

**Ashok Kumar Behal and Another Vs. Union of India and Others**

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**Court :** Delhi

**Decided On :** Aug-25-1993

**Reported in :** AIR1994Delhi49; 1993(27)DRJ82

**Judge :** D.P. Wadhwa and; Vijender Jain, JJ.

**Acts :** [Delhi Development Act, 1957](#) - Sections 21; [Constitution of India](#) - Articles 12, 14, 32 and 226; [Essential Commodities Act, 1955](#)

**Appeal No. :** Civil Writ No. 3267, 3198, 3456 and etc. of 1991

**Appellant :** Ashok Kumar Behal and Another

**Respondent :** Union of India and Others

**Advocate for Def. :** Ravinder Sethi and ; N.K. Kaul, Sr. Adv.

**Advocate for Pet/Ap. :** Hardev Singh and; Ajit Singh, Sr. Adv

**Judgement :**  
ORDER

**Vijender Jain, J.**

1. Delhi Development Authority (hereinafter referred to as DDA) announced a scheme called the registration scheme on New Pattern 1979 of intending purchasers of flats to be constructed by the DDA. The object of the scheme was to

reduce the sale price of Middle Income Group/Lower Income Group (for short MIG/LIG) and Janta flats so as to be within the reach of the common man. To facilitate the payment by such registrants the mode was also made easier. The registration scheme was opened on 1st September, 1979 and was closed on 30th September, 1979. Annual income of MIG category in a financial year 1978-79 was to be taken at Rs. 7201/- to Rs. 18,000/-. An applicant was required to deposit Rs. 4500 / -. The areas where flats were likely to be constructed were mentioned in the scheme and the likely cost of a flat was indicated at Rs. 42,000/-. DDA constructed flats at different times. According to DDA the term for allotment of petitioners came in 1991. Draw of lots were held from 1983-84 onward for allotment of specific flats to the registrants.

2. According to the petitioners on 18th February, 1991 draw of lots in respect of allotment of flats under the scheme took place for them. Clause 9 of the scheme is important and is reproduced here below :--

'The allotment of flats under this scheme will be by draw of lot like that of Self Financing Scheme. All the applicants who register between September 1, 1979 and September 30, 1979 will have equal seniority.'

Another salient feature of this scheme was that 40 per cent of the MIG flats were to be allotted on cash down basis and 60 per cent of the flats on hire-purchase basis. LIG/Janta flats were to be disposed of on the basis of 25 per cent on cash down basis and 75 per cent on hire-purchase basis. In case of flats allotted under hire-purchase basis, the cost of the land plus 20 per cent of the balance cost of the flat was to be recovered as initial deposit at the time of allotment and balance amount was to be recovered in monthly Installments spread over a period of 7 years in case of MIG, 10 years in case of LIG and 15 years in case of Janta flats, though in this writ petition the challenge is not on cash down or hire-purchase scheme or its non-implementation by DDA.

3. The petitioners in this writ petition numbering 33 have challenged the quashing of the demand made by the respondent-DDA vide their letter of demand received by the petitioners in September 1991. According to the impugned demand letter the cost of MIG flat on the first floor was Rs. 3,45,300/-, second floor Rs.

3,33,300/-, on ground floor Rs. 4,05,400/- . third floor Rs. 3,17,500/-.

4. The petitioners represented to the respondent-DDA that the allotment of the MIG flats both at Jahangirpuri and Paschim Vihar at different floors was made by respondent-DDA without asking for their consent/choice and in an area which was not specifically mentioned in the original scheme of 1979. The petitioners further represented that the prices of the flats now sought to be demanded by the DDA were astronomically high and were 10 times more than the prices which were offered by the DDA. According to the petitioners this demand, apart from being arbitrary and illegal, was untenable in view of the fact that for registrants of 1979 scheme in draw of lots held on 13th January, 1989 an MIG flat at Shalimar Bagh at ground floor was allotted by DDA on payment of Rs. 1,66,500/- and on the third floor for Rs. 1,49,000/-. Similarly, in a draw of lot held on 5th April, 1989 for the registrants of 1979 scheme, at Sarita Vihar in South Delhi the price for a flat of MIG category was Rupees 2,87,000/- and Rs. 2,79,100/- respectively. It has been further alleged by the petitioners that the draw of lot held on 31st August, 1989 for the said category of registrants the DDA has demanded in Dilshad Garden (East Delhi) for MIG flats on ground floor Rupees 2,00,600/-.

5. According to the petitioners there is no justification for the DDA to ask more price in 1991 for the same category of registration at a higher price than those stated above. Even otherwise, the said increase is arbitrary, irrational and without any basis. The increase is not on account of cost of construction or change in plinth area as per the scheme, argued the counsel for the petitioners. In any event of the matter, the learned Counsel for the petitioners has argued that three times prices escalated in cost of construction which can be recovered by the DDA. According to him this is as per CPWD rate schedule.

6. According to DDA, construction of these houses under the scheme had been taken up in 1980. In 1983 flats some defects were noticed by the Quality Control Cell. Since the contractor did not rectify the defects the contract was rescinded. On the other hand, learned Counsel for the petitioners argued that the petitioners had to wait for 12 years when DDA allotted flats to them. The delay in allotting the flats for 12 years was not on account of the petitioners but solely on account of

DDA. According to the petitioners the increase in the cost of flats is illegal, arbitrary, irrational and unwarranted. According to the petitioners they had acted upon the offer made in the Scheme in 1979 and have done all that required to be done on their part and the respondent-authority cannot be allowed at this stage to go back from the scheme and unilaterally abrogate their obligation.

7. The learned Counsel appearing for the petitioners vehemently argued that respondent-authority is constituted under the Act of Parliament for providing amongst other things housing to the population of metropolitan city of Delhi at no profit no loss basis. The authority cannot be allowed to act in a manner of an unscrupulous private developer/builder wholly unrestrained by constraints of public welfare. Moreover, in view of the objective of the scheme to reduce the sale price of MIG/LIG and Janta Flats, the increase in price is wholly unjustifiable. Even otherwise, the demand made by the petitioners was too exorbitant and totally unconnected with the reality and actual circumstances let alone matters of public policy.

8. The counsel for the petitioners has also urged that the raising of such high demand for MIG and other categories flats for different section of the population has made the scheme and its objects nugatory as it has become out of the reach of the people who were registered under the said scheme. According to the petitioners Clause 26 of the Scheme which inter alias lays down as under :--

'The above terms and conditions will be followed generally but the D.D.A. reserves its right to alter any of them in its discretion as and when considered necessary.'

9. According to the petitioners, the above clause was limited to the right of the respondent-authority to revise and modify terms and conditions depending upon the exigencies of layout, cost of construction but will not encompass in its fold power to disregard the scheme altogether and make exorbitant demand as has been done in this case. Respondent-DDA has argued that in view of Clause 26 of the brochure DDA reserves its right to alter any terms and conditions in its discretion as and when considered necessary. According to them, the prices demanded are totally reasonable and there is nothing unreasonable about the same. In para 10 of their counter, respondent has admitted that the flats offered by

the DDA are on no loss no profit basis. They have further stated that there has been tremendous increase in the cost of land, labour, material construction etc. over the years. therefore, it is totally unreasonable to accept the cost in 1991-92 for the flats to be allotted at the tentative prices prevailing in the year 1979. It is further argued by learned Counsel for DDA that on account of tremendous rush under the 1979 Scheme a priority list was prepared according to which flats were allotted from time to time as per draw of lots according to seniority list. The stand of the DDA is that prices of the flats have been arrived at after meticulous calculations and after taking into consideration all relevant considerations and there is nothing arbitrary or irrational about the same. Counsel for the DDA has also relied upon *Barclay Development Authority v. Ajay Pal Singh*, : [1989]1SCR743 and has argued that on that basis once the petitioner willingly enters into a contract with the public authority fully aware with the terms and conditions the petitioners are estopped from challenging the terms and conditions of the contract. Lastly, respondent has also contended that in view of Clause 15 of the brochure wherein some of the areas where construction was likely to be undertaken or flats were constructed were mentioned, that would not create a bar for construction being undertaken in other areas. The learned Counsel for the DDA has also cited judgment of this Court in *CW 2265/91 Smt. Veena Saxena v. Delhi Development Authority* and *CW 2787/90 J. K. Dhingra v. Delhi Development Authority*, to support his arguments.

10. It is in this background that we have to examine the facts of this case. At the outset it should not be forgotten that in the Union Territory of Delhi all land for the purpose of development DDA is the only agency. There is no private colonizer as no land is available for construction of houses in the hands of private individual. Delhi Development Authority is the monopolistic monolith. Citizens of Delhi have no other option but to look at Delhi Development Authority for land for residential, commercial, industrial, non-residential and non-industrial purposes. The land in Delhi has been acquired by the Central Government from time to time. There is an averment by the petitioner in the present case that the land was acquired by Delhi Development Authority much prior to the induction of Scheme of 1979 where the flats have been constructed. Time and again we asked the counsel for DDA to tell us as to when the land in question was acquired where the petitioners are being

allotted respective flats. This was an important factor so as to understand the objective and policy of the DDA which time and again has stated in their counter-affidavit that the flats are offered on no profit no loss basis. Nothing was made available before us to indicate that the land was acquired in 1979 or 1980 or thereafter, or any period earlier to that. The irresistible conclusion which we draw is that the land was acquired much before the formulation of the Scheme of 1979. The stereo-type argument advanced by the counsel for DDA that DDA is a big organisation and acquisition of land is a continuous process does not cut much ice as the land under the scheme of the flats where the petitioners are being allotted the flats was acquired earlier than 1979. We are discussing this aspect in order to understand the basis on which the DDA has enhanced the prices of flats in question.

11. There are three essential components which may have bearing in escalation of cost, the land rate which includes cost of acquisition, future cost and additional price which State has to incur on account of enhancement of compensation cost of construction and cost of administrative expenses which may include profit to the contractor if it is to be constructed by the outside agency particularly speaking these are the basic cost which are essential for determining the fixation of price apart from other incidental cost which may not vary the cost to a large extent.

12. The petitioners have filed the rejoinder in which specific instances were given which are :--

(A) Mr. Balkrishan Sharma registered under the same Scheme called New Pattern Registration Scheme (NPRS) 1979. By the lot drawn on 15th December, 1989 he was allotted flat No. 55, Block 'B', Pocket 7, Sector 10, 3rd floor in Rohini. This category of flat is also M.I.G. and the demand in respect thereof was for Rs. 1,55,700/- cash down. It may be stated that the area of Rohini is a much better locality as compared to Jahangirpuri and some other areas where flats have been offered to the petitioners. A flat offered to the petitioner on 3rd floor, in ' the area of Jahangirpuri is for Rs. 3,17,600/-. The only difference is that the draw in case of the petitioner was held on 18-2-91.

(B) Mr. Ashok Kumar Agnihotri, who is also petitioner No. 10 in C.W.P. No. 3198 of 1991, was offered flat No. 289 A, Ground Floor, Pocket J & K, Dilshad Garden lots were drawn on 31-3-89 for Rs. 1,72,600/-. Mr. Agnihotri requested that a flat could be allotted to him somewhere in North Delhi. He deposited the balance of the amount on 28-2-90 amounting to Rs. 1,65,768.78 P. In the draw of lots on 18-2-91 flat No. 251, Ground Floor in Jahangirpuri was offered to him at Rs.4,05,400/-.

(C) Mr. Dharamvir Kapoor was offered in Retired Persons Scheme (RPS Scheme) by lots drawn on 13-11-89 flat No. 61, 'D' block, C/A Shalimar Bagh, 3rd Floor for Rupees 1,66,500/-. This flat is also in M.I.G. category. Mr. Kapoor protested and by demand dated 29-6-89 the authorities scaled down the price to Rs. 1,49,000/-.

(D) Mr. Kailash Nath Dixit was offered on 5-4-89 under Self Financing Scheme V in Sarita Vihar flat No. 322 category 2, 3rd floor for Rs. 2,80,700/-. This flat is not only in much better locality but is of a much bigger area being 101 sq.m. i.e. about one and a half time more than that of M.I.G. flats offered to the petitioners. Even the construction in this respect is much superior. Mr. Kapoor protested and revealed that the Chairman of the Delhi Development Authority a month earlier approved much lower price, i.e., Rupees 2,27,110/-. By demand dated 15-6-89 the flat was then offered to Mr. Kapoor for Rupees 2,27,100/-.'

13. The DDA was afforded an opportunity to file additional affidavit to explain the circumstances under which aforesaid flats have been allotted, but nothing substantial was filed to controvert what has been stated by the petitioner, except that meticulous calculations were taken into consideration. The DDA has given some figures in additional affidavit filed by them. They have shown the total expenditures on various heads and divided by number of flats thereby arriving at the cost of one single flat. One of the major components for increase in the price of flat is the revised land rate/land premium charged by the DDA. An interesting argument was raised that the land rate/land premium charged from the petitioner is perfectly valid and justified. According to the DDA the revision in land rate was well considered policy decision and there is nothing arbitrary or illegal about the same. It is not for us in normal course to go through the policy regarding fixation of land rate or land premium but in the instant case fixation of land rate by the DDA is

so arbitrary and without any basis that we have to discuss this in detail.

14. Some statement of figures which has been filed by DDA along with additional affidavit show that this astronomical increase in the cost of the flats is on account of revision of land rate. In this connection they relied upon letter No. E14(4)/81/PT.III dated 6-12-90 from Financial Adviser (Housing) which is a circular and reads :--

'Lt. Governor, Delhi has approved the land rates to be charged for the flats (including left out flats as approved by Vice-Chairman, DDA) and fully developed land for allotment to various registrants in respect of plots as under :--

Rates of land to be charged for housing categories (Flats). Rates of fully developed land for allotment to various registrants in r/o plots (excluding Rohini Resdl. Scheme)

|                          |                        |
|--------------------------|------------------------|
| 1. EWS Rs.500/- persq. m | 1. EWSRs. 825/- psm.   |
| 2. LIGRs. 660/-          | --do--2. LIG R.1075/-  |
| --do--3. MIGRs. 970/-    | --do--3. MIGRs. 1400/- |
| --do--4. SFSRs 1700/-    | --do--4. SFSRs 1700/-  |

In r/o flats, equalisation charges on plinth area at the following rates will also be charged.

Zones

Rates

|                                       |                                  |
|---------------------------------------|----------------------------------|
| 1. South & Central Rs.; 100/- pers.m. | 2. North and West Delhi Rs. 50/- |
| ---do---                              |                                  |

|          |             |                                   |
|----------|-------------|-----------------------------------|
| Category | Area        | Pre-determined rates per sq. mtr. |
| EWS      | 26          | Rs. 498/-                         |
| LIG      | 32 & 48     | Rs. 662/-                         |
| MIG      | 69 & 90     | Rs. 996/-                         |
| MIG      | 140 & above | Rs. 8486/-                        |

The above rates will take effect immediately.'

15. It shows that rate which has been charged from the petitioners are at the rate of Rs.996/- for MIG and Rs.662/- for LIG with effect from 6-12-90. This also finds corroboration from page 69B of the paper book where in relation to ground floor flat in Jahangirpuri the land rate has been shown at the rate of Rs. 930/- per sq.mtr. We fail to understand that when initially the DDA in the brochure has estimated cost to be worked out as Rs. 42000/- for MIG category this estimated cost obviously had taken into account all possible items of expenses including the

land which had been acquired, cost of construction and other administrative expenses. According to the petitioner the land had been acquired much earlier and the land rate prevalent till 6th December 1990 had been Rs. 62/- per sq.mts. We cannot understand how the land premium had been raised from Rs. 62/- per sq.mtr. till 6-32-1990 to Rs. 930/- per sq.mtr. after that date. No material whatsoever in spite of our insistence as to what were the factors which were taken into consideration by Lt. Governor who happened to be the Chairman of the DDA and the Vice-Chairman of DDA for enhancing the land premium and before unilaterally issuing letter dated 6-12-90. Neither any reply nor any material was shown to the Court except on harping that it is a policy decision and the Court cannot go into this process. We are afraid we cannot sit with folded hands in writ jurisdiction and let the petitioners to be at the mercy of DDA, which under the garb of its position as a State wearing the hat of the power of the State can exploit the citizens. It will be fallacious to assume that the citizen is not even in a position to know as to how and on what basis the revision of land premium and land rate has been applied to his case. That will make mockery of law.

16. The main thrust of the argument of the learned counsel for the respondent was that the petitioner was not entitled for a flat in the year 1981 as per seniority list. Secondly even though the construction of the flats may have been delayed on account of disputes between the respondent and the contractor but the amounts so spent on account of delay of construction was totally not passed on to the petitioners. Thirdly, according to the learned counsel for the respondent no allottee could claim that he has an entitlement to a particular set of land rate which was prevailing at different times. According to him, it is a matter of policy decision to be determined by respondent authority as to what rate would apply for which year and court cannot go into the method of costing.

17. Shri Sethi learned counsel for the DDA has argued that the Court cannot go into the pricing policy of the respondent DDA as the same has been arrived at after due deliberation by respondent-authority. In his support he has cited the case *Premji Bhai v. Delhi Development Authority*, : [1980]2SCR704 . We are afraid that this proposition cannot be of any help to the respondent as in that case the challenge was to a surcharge levied by the DDA as part of purchase price of the

flat and petitioners before the Supreme Court were already allotted flats and Supreme Court observed in that case that the real purpose of the petitioners to file the petition before the Supreme Court was to get back a . part of the purchase price of the flats paid by the petitioners after flats have been secured by them. thereforee, the Supreme Court in paragraph 8 thus observed :---..Even if there may be any merit in this contention, though there is none, such a relief of refund cannot be the subject-matter of a petition under Article 32. And Art. 14 cannot camouflage the real bone of contention. Concerning for this submission that the authority has the trappings of a State or would be comprehended in other authority for the purpose of Article 12, while determining price of flats constructed by it, it acts purely in its executive capacity and 'is bound by the obligations which dealings of the State with the individual citizens import into every transaction entered into in the exercise of its constitutional powers. But after the State or its agents have entered into the field of ordinary contract, the relations are no longer governed by the constitutional provisions but by the legally valid contract which determines rights and obligations of the parties inter se. No question arises of violation of Art. 14 or of any other constitutional provision when the State or its agents, purporting to act within this field, perform any act. In this sphere, they can only claim rights conferred upon them by contract and are bound by the terms of the contract only unless some statute steps in and confers some special statutory power or obligation on the State in the contractual field which is apart from contract'. Petitioners were under no obligation to seek allotment of flats even after they had registered themselves. They looked at the price and flats and applied for the flats. This they did voluntarily. They were advised by the brochure to look at the flats before going in for the same. They were lucky enough to get allotment when the lots were drawn. Each one of them was allotted a flat and he paid the price voluntarily. They are now trying to wriggle out by an invidious method so as to get back a part of the purchase price not offering to return the benefit under the contract, namely, surrender of flat. The Authority in its affidavit in reply in terms stated that it is willing to take back the flats and to repay them the full price. The transaction is complete, viz., possession of the flat is taken and price is paid. At a later stage when they are secure in possession with title, petitioners are trying to get back a part of the purchase price and thus trying to reopen and wriggle out of a

concluded contract only partially. In a similar and identical situation a Constitution Bench of this Court in *HarShankar v. The Dy. Excise and Taxation Commr.*, : [1975]3SCR254 has observed that those who contract with open eyes must accept the burdens of the contract along with its benefits. Reciprocal rights and obligations arising out of contract do not depend for their enforceability upon whether a contracting party finds it prudent to abide by the terms of the contract. By such a test no contract would ever have a binding force. The jurisdiction of this Court under Article 32 of the Constitution is not intended to facilitate avoiding of obligations voluntarily incurred. It would thus appear that petitions ought not to have been entertained. However, as the petitions were heard on merits the contentions canvassed on behalf of the petitioners may as well be examined.'

the Supreme Court further observed :--

'.....What is forbidden by Art. 14 is discrimination amongst persons of the same class and for the purposes of allotment of flats scheme-wise, allottees of flats in the same scheme, not different schemes in the same income bracket, will have each such class there is unequal treatment or unreasonable or arbitrary treatment, the complaint that Art. 14 is violated cannot be entertained.'

18. In the aforesaid case the Supreme Court was considering the levy of surcharge on the basis of the arguments advanced that DD A is meeting out discriminatory treatment inasmuch as no surcharge was levied on the flats in MIG Scheme constructed and allotted prior to November 1976 and the January 1977 MIG flats involved in these petitions were constructed and were available for allotment in November, 1976 and the lots were drawn in January 1977. According to the petitioners before the Supreme Court there was another scheme of MIG flats Munirka where allotment took place at and about the same time where no surcharge was levied. The amount of surcharge was only a couple of thousands rupees. While considering these circumstances of this case the Supreme Court held that levy of surcharge was not violative of Article 14 of the Constitution, whereas in the present case the revision of land premium or land rate is an exercise by the DDA under its statutory rights not depending on the terms of

contract. Petitioners have, as a matter of fact, have fulfilled their objections under the contract. It is evidenced by DDA of its obligation under the contract taking the shield of its pre-contractual position of strength emanating from its power as a statutory authority.

19. Learned counsel for DDA has also cited *Union of India v. Cynamide India Ltd.* : [1987]2SCR841 and *M/s. Shri Sitaram Sugar Company Limited v. Union of India* : [1990]1SCR909 . These authorities do not help the case of the respondents as the Supreme Court was considering the validity of S. 3(3-C) notification dated 28-11-1974 regarding prices fixed for various grades of sugar with reference to geographical-cum-agro-econo-mic consideration and average cost profiles of factories located in respective zones. In that case the Supreme Court was of the opinion that on account of exhaustive study by experts and conclusions reached by Government, it was not shown to be either discriminatory or unreasonable or arbitrary or ultra virus and price fixed on account thereof was a matter of policy and not within the province of the Court. Supreme Court further laid down that judicial function is exhausted when there is found to be a rational basis for conclusions reached by concerned authority. From the aforesaid observations in *Shri Sitaram Sugar Company's case (supra)* it is dear that the scope of judicial review in cases like the present one relating to fixation of price is limited but as stated earlier it would be only when it is found that there is a rational basis for the conclusion reached by DDA for fixation of price as has been done in the instant case, in our opinion, the respondent-authority had no basis for arriving at the rates fixed what to talk of rational basis. The authority *G. B. Mahajan v. Jalgaon Municipal Council*, : AIR 1991 SC1153 is not at all applicable to the case of the respondent as the question before the Supreme Court was whether the Municipal Council, Jalgaon could enter into an agreement with a private developer for financing and execution of project. Counsel for the respondent has also cited *M/s. Prag Ice and Oil Mills v. Union of India* : 1978 CriLJ1281a . We are afraid that this authority does not help the case of the respondent. Rather, it supports the case of the petitioners, as the Supreme Court held that in fixation of prices of essential commodities Court should be guided by presumption of constitutionality and object of the action and effect of the action on prices a legitimate consideration in upholding the order, reasonable profit of dealer is not a sine qua non but interest

of consumer a primary consideration. In this case the Supreme Court was dealing with case of fixation of price under the Essential Commodities Act where the ultimate interest of the consumers was the primary consideration for upholding the order of fixation of prices of essential commodities. thereforee, this authority, if at all helps, helps the case of the petitioners. The benefit of fixation of price must pass to the petitioners.

20. . Learned counsel for the petitioners cited M/s. Moti Lal Padampat Sugar Mills Co. Ltd. v. State of Uttar Pradesh, : [1979]118ITR326(SC) and argued that DDA is estopped from charging any higher price than mentioned in the brochure when the petitioners registered themselves and he argued that the time has gone when promissory estoppel as a doctrine has to be used only as a measure of defense. According to him in view of the judgment of the Supreme Court in that case the respondents are duty bound and they are estopped in law from charging any other price except for reasonable increase on account of cost of construction.

21. Learned counsel for the petitioners also cited Central London Property Trust, Ltd. v. High Trees House, Ltd. (1956) 1 All ER 256 and (1854) 3 HLC 471 in support of his proposition.

22. Learned counsel for the respondent has also cited Sanjay Place Group Housing Associations v. Agra Development Authority : AIR 1992 SC1598 . This authority is of no help to the case of the respondent as Court was examining altogether different issue involved in the matter. To fortify his argument the learned counsel for the respondent has cited Abhimanyu Kumar Sethi v. DDA, 42 (1992) DLT 295, which is a short judgment and has followed another judgment of this Court in Civil Writ No. 2265/91 (Veena Saxena v. DDA). In Venna Saxena's case in paragraph 7 the Court while discussing the justification for escalated rates has stated as under :--

'As regards the question of payment on escalated rates, we find that Clause 14 of the Scheme specifically states that the plinth area of the flats indicated and the estimated price mentioned in the brochure are illustrative and are subject to revision/modification depending upon the exigencies of layout, cost of construction etc. The petitioner has entered into a contract with the Delhi Development

Authority being fully aware of the terms and conditions of the contract.'

23. After this the Court in paragraphs mentioned that the case is covered by the judgment of Bareilly Development Authority v. Ajay Pal Singh, : [1989]1SCR743 , and on this short ground dismissed the petition.

24. Before dealing with Bareilly Development Authority's case we would like to mention the brief facts of Veena Saxena's case in this regard. The Court did not take into consideration in Veena Saxena's case the true import, effect and scope of Clause 14 of the Scheme which is as follows :--

'It may please be noted that the plinth area of the flats indicated and the estimated prices mentioned in the brochure are illustrative and are subject to revision/modification depending upon the exigencies of layout, cost of construction etc.'

25. The Division Bench in Veena Saxena's case did not consider the arbitrary revision of land premium rates hiked by respondent-authority from Rs. 62/- per sq. mtr. to Rs. 930/- per sq. mtr. Even the land rates are not mentioned in Clause 14 on the basis of which the authority could revise the rate of the flat in question. As a matter of fact, in Veena Saxena's case the Court was considering as to whether 40 per cent flats which were allotted on cash down basis under the scheme and 60 per cent of the flats on hire-purchase basis which were not put so. No assurance was given to any registrants that he will be allotted a flat on hire-purchase basis. therefore, this authority is also of no help to the respondent-DDA. Another fallacy in the argument of learned Counsel for the respondent that there is no seniority of the registrants of the scheme is contrary to their own Clause 9 of the scheme which is reproduced as under :

'The allotment of flats under the scheme will be by draw of lot like that of Self Financing Scheme. All the applicants who register between September 1, 1979 and September 30, 1979 will have equal seniority.'

26. Counsel for the respondent has argued that in view of Bareilly Development Authority's case : [1989]1SCR743 , the writ petition itself is not maintainable. The

learned Counsel overlooked the fact that Bareilly Development Authority (for short BDA) dealt with cases where allottees after voluntarily accepting the conditions imposed by the Bareilly Development Authority have entered into the realm of contract purely and simple with the BDA and hence allottees could only claim the right conferred upon them by the said contract and was bound by the terms of the contract. In the Bareilly Development Authority's case : [1989]1SCR743 , the note given in the brochure clearly stated that the cost shown therein is only an estimated cost and would increase or decrease in the price only at the time of completion of the house/flat. Many persons got themselves registered for allotment of flats/houses. A notice was subsequently issued by the BDA increasing the price of houses, the amount of Installment and interest. The allottees were asked to send their written acceptance of the revised price/Installment to the Bareilly Development Authority. Most of the allottees except few unequivocally accepted the revised demand. It was in these circumstances that the Supreme Court held that it was in the realm of contract pure and simple, more so the petitioner before the Supreme Court was highly educated and has accepted the revised terms of the BDA, therefore, and he was not entitled to any relief as the contract entered into between the State and the persons aggrieved was non-statutory and purely contractual and, therefore, the rights were governed only by the terms of the contract. The Supreme Court held that no writ or order can be issued under Article 226 of the [Constitution of India](#). The flats were constructed within three to four years in that case.

27. Here we are confronted with the situation where the enhancement of one component of cost is on account of land rate/land premium from Rs. 62/- per sq. mtr. to Rs. 930/- per sq. mtr. The same has been done by the Delhi Development Authority without notice to the registrants. No notice was issued to the petitioners informing them of the revision of prices, no acceptance was asked for by the DDA from the petitioners as was done in the case of BDA, rather nothing has been brought on record by DDA as to how this land rate/land premium has been raised from 1989 to 1991 from Rs. 62/- per sq. mtr. to Rs. 930/- per sq. mtr. The revision of land rate/land premium is without any reasons, none has been disclosed to this Court. We cannot understand as to how, on one fine morning, the Lt. Governor of Delhi who is also the Chairman of DDA by stroke of pen could enhance the land

rate from Rs. 62/-per sq. mtr. to Rs. 930/-per sq. mtr. effecting the cost of the flats of the petitioners who registered themselves since 1979. How this revision of rates which adversely affected their rights could be notified at their back without petitioners having any say. This revision cannot be said to be in the realm of non-statutory and purely contractual matter. Can DDA without wearing the hat of the Government or exercising its statutory powers enhance this huge amount without notice to the registrants is a main question. The DDA has not asked from these unfortunate petitioners who are waiting since 1979 that DDA is revising the land premium to such an extent, whether the petitioners are still interested in the Scheme or not. To agree with the proposition advanced by the DDA, will amount to give license to a public authority to play havoc with the citizens of Delhi. It will amount to giving a license to DDA to charge whatsoever amounts taking the plea of non-statutory contracts. Are courts so powerless under Article 226 of the Constitution, that when such a mischief so apparent is committed under the statutory powers, that the citizen can be non-suited on the pretext that it falls in the realm of contractual obligations and this Court under Article 226 of the Constitution is a silent spectator.

28. We once again emphasise that in Delhi it is the DDA alone which deals with lands in Delhi. There is no other authority whether public or private which is authorised in the law to sell or dispose of land whereas in Uttar Pradesh the land does not belong to any single authority like BDA. Even in Bareilly there are other authorities/individuals owning lands for residential, agricultural and commercial purposes. The DDA has put further rider that once a person applies in any scheme for owning a flat/plot, he becomes disentitled for applying or owning any flat or plot of land in the Union Territory of Delhi. Look at the fate of these registrants who came from poor or middle class strata of Society, applied in response to the scheme of DDA in 1979 for LIG, MIG and Janta category flats. DDA did not allot them flats till the year 1991. They could not have applied in any other scheme of allotment nor could have purchased any other flat and today they are in a situation that initially a flat which was costing to them Rs. 43,000/- as per the scheme, the DDA is charging exorbitant amount of over Rs. 4 lacs. Is a citizen to suffer for non-construction of flats by the DDA or for delay in construction on account of substandard flats, or for any reason whatsoever. If this is accepted then that would

be perpetuating illegalities and same cannot be sustained in the eye of law. We take strong exception to the stand of DDA that if the petitioners are not interested to get the allotment of flats on the increased rate, they are free not to take it. It smacks of not only monopolistic arrogance but exploitative stance of public authority. We strongly deprecate these kinds of arguments advanced before us by the DDA. Counsel for the DDA has also brought to our notice a recent decision of the Full Bench in case *Ramanand v. Union of India* in Civil Writ Petn. No. 623 of 1993, in support of his contentions. We are of the opinion that the question involved in that case is not similar to the one raised before us. This Court had the occasion to deal with the issue raised before it in *P. N. Verma v. Union of India*, AIR 1985 Del 417, which reads as under (at pp. 431 and 434 of AIR) :--

'20. We shall proceed now to consider the applicability of the above principles to the situation before us. But, for doing that, we should first try to see what exactly it is that is happening here. The DDA is a public authority which is entrusted, inter alia, with the responsibility of providing houses to the citizens of Delhi. The statute and the regulations lay down the modalities by which the DDA can dispose of properties by way of sale or hire. The drawing up of scheme, the modes of registration and allotment, the fixation of a price and the mode of its payment, the execution of a deed and the conditions of transfer are all provided for in these 'regulations. There is nothing in the regulations that compels the DDA to provide houses free of cost or at concessional rates or even at the cost of construction. It is open to the DDA to fix such price for the flats as it may deem fit. In doing so, it can keep a margin of profit for itself. It takes into consideration its overall working, considers the picture of town planning as a whole and offsets deficits in one scheme while completing another and so on. In short, it is as free in fixing the price of flats as any private contractor will be, except only for the limitations of fair play and the need to avoid arbitrariness and discrimination that fetter the hands of a public authority which is amenable to Art. 226. So long as it conforms to these regulations, its actions cannot be challenged. But once some regulation is infringed or any arbitrariness or invidious discrimination creeps in, its action is liable to challenge under Art. 226. For example, if the DDA does not fix a price or the principles for its determination or if properties are sought to be allotted otherwise than the lots when there are more claimants than houses or plots or

there is arbitrariness in allotment, the action of the DDA can be challenged in a writ petition. Perhaps even where the price is fixed arbitrarily and without any basis for it, it can be challenged in writ proceedings. This is a pre-contractual statutory stage. Thereafter, when the DDA announces a scheme in conformity with these regulations and applications are received allotments are made and accepted, the general public scheme yields place to individual contracts between the DDA and each allottees. Now we reach the contractual stage in the domain of private law. It replaces the earlier stage of statutory obligations which was in the domain of public law. Here, any action by any one or more of the allottees to enforce the terms of the contract or to complain of their breach on the part of the DDA will lie, at general law, by way of a suit and not by way of a writ petition. To put it in other words, any complaint or grievance pertaining to the pre-contractual statutory stage can be aired under Art. 226 but any complaint or grievance pertaining to the contractual stage can be agitated only in a civil suit.

25. But it is argued for the DDA, this is also, at worst, only a breach of contract by the DDA. All that be said is that the DDA agreed originally to give the flats at cost but now they refuse to do so and demand a higher price. For this it is open to the petitioners to sue the DDA for specific performance of the contract on the original terms or for damages for breach of contract or for other appropriate relief. A writ will not be maintainable. This argument, we think, is untenable; it attaches undue importance to the form and ignores the substance of the stand taken by the DDA. In all these matters, the Court should look at the real effect of what has been done. The decided cases referred to above show that, if what is done is really an enforcement of the contractual terms, the affected party cannot be allowed to camouflage its grievances in the garb of fundamental rights or by attributing to the action of the authority a statutory flavour and seek redress by means of a writ petition. It should equally follow. We think, per contra that where what the authority has done is in effect a variation of the incidents of the pre-contractual stage, it cannot be rendered immune from proceedings under Article 226 merely because it can be dressed up or described as a mere breach of contract. So, in our opinion, where the DDA revises the earlier policy of price fixation and substitutes a new one, it is truly interfering with a step in the statutory stage amenable to writ jurisdiction and a writ petition cannot be dismissed as not maintainable merely on

the ground that the result of the action also results in a breach of the original contract for which remedy is available in the ordinary civil Courts. Looked at in the proper perspective, this is a case where the grievance of the petitioners falls under the second category of cases referred to in Radhakrishna Agarwal's case, : [1977]3SCR249 .'.

29. The unilateral revision of land rate/ premium whereby affecting the price of flats without any reasons is arbitrary and unreasonable. The action of the DDA in revising the estimate on that basis otherwise than on the terms of the original contract is, therefore, illegal and is liable to be quashed. We hold that by revising land rate/land premium the DDA in fact has varied the terms of pre-contractual stage, therefore the respondent is not immune from proceedings under Article 226 of the Constitution. We hold that this writ is maintainable as it deals with the stage which alter the parameter of statutory stage in the contract.

30. Even otherwise, the income groups on the basis of which DDA formulated the said scheme remains unchanged. That is to say, still the petitioners would fall in the same MIG/LIG categories as in the year 1979. When the petitioners applied for registration under the Scheme in 1979 they had a reasonable as well as legitimate expectation that they will be allotted the flats within a span of reasonable time. By no stretch of imagination 12 years taken by DDA can be construed as a reasonable time for allotment of flats to the petitioners. Having come to the conclusion that the revision of land premium is irrational, arbitrary and unreasonable the next question we have to answer is as to what should be the cost which should be paid by the petitioners to the DDA. DDA has not produced before us the cost of the individual flat worked out by them, though they have given some details, according to them, of the total expenditures incurred by the DDA. We feel it is not proper for us to go into this aspect of costing in this writ petition. This is the job of the DDA. But should we allow the DDA to work out the final cost and ask the petitioners to wait for more time, that would be unfair to , them in law as well as in equity.

31. Considering all the relevant circumstances including the Scheme of 1979 and the price of flats charged from various registrants under this scheme in the year

1989, we are of the opinion that the petitioners should be required to pay four and a half times the price of the flat as was mentioned in the year 1979 scheme. This demand would be on provisional basis subject to further directions as hereinafter given. Accordingly, we issue mandamus directing the DDA to handover possession of the flats to the petitioners on their making payment at the rate of Rupees 1,89,000/- for MIG flat, Rs. 81,000/- for LIG flat and Rs. 36,000/- for Janta flat. The demand letters issued earlier are set aside and fresh demand letters shall be issued to the petitioners who shall make payment in terms of the demand calculated on the basis of the price above mentioned. In terms of those demand letters possession shall be handed over to the petitioners forthwith. We make it clear that the terms mentioned in the demand letters except for the price fixed by us shall remain the same.

32. We further direct that the DDA shall constitute an Expert Committee to go into the costing of these flats taking the land rate at Rs. 62/- per sq. mtr. The Expert Committee will take the actual cost of construction spent by the DDA on construction of the said flats. If the Expert Committee after working out the cost on the basis of aforesaid works out cost to be more than the price that has been provisionally fixed by us the DDA shall give such revise cost and its intimation to the petitioners who within one month from the date of intimation shall pay the same to DDA. We further direct that till the revised demand is paid by the petitioners, the petitioners shall not alienate, transfer or otherwise create anycharge on their respective flats in question.

33. With these directions, the petition is allowed. The parties are left to bear their own costs.

34. Petition allowed.