

Dda Vs. Sh. Atul Gupta and Others

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Court : Delhi

Decided On : Dec-09-1996

Reported in : AIR1997Delhi155

Judge : Mohinder Narain and; M.S.A. Siddiqui, JJ.

Acts : [Delhi Development Act, 1957](#) - Sections 57; Delhi Development (Disposal of Development Nazul Land) Rules, 1981 - Rules 29 and 32; Delhi Development Authority (Management and Disposal of Housing Estate's) Regulations, 1968 - Regulation 8

Appeal No. : RFA No. 2 of 1995

Appellant : Dda

Respondent : Sh. Atul Gupta and Others

Advocate for Def. : Valmiki Mehta, Adv.

Advocate for Pet/Ap. : R.K. Khanna, Adv

Judgement :

ORDER

M.S.A. Siddiqui, J.

1. The short point which needs to be decided in this appeal is whether the appellant DDA (for short the 'Authority') is entitled to forfeit the entire amount of Rs. 3,71,250/- deposited by the respondents at the time of auction or would it be only entitled to forfeit 20% of disposal price of the flat No. A-32, Asian Games Village Complex.

2. The aforesaid question arises on these undisputed facts :

By the advertisement published in newspapers, the appellant-Authority offered residential flats constructed by it in the Asian Games village for sale by auction. At an auction held on 29-8-1986, the respondents made the highest bid of Rs. 14,85,000.00 for the flat No. A-32, which was accepted and the respondents paid 25% of the bid amount i.e. Rs. 3,71,250.00 to the appellant. The respondents failed to pay the balance amount despite receipt of the demand letter dated 8-9-86 as a result whereof their bid was cancelled by the appellant. Thereafter, respondents demanded refund of the amount paid by them, which was refused by the appellant treating it as forfeited for breach of the contract.

On 12-10-1988, the respondents filed a suit for recovery of Rs. 2,98,000.00 with interest on the ground that the appellant could forfeit only an amount equal to 20% of the disposal price of the flat in question.

The appellant contested the suit on the plea inter alia, that the respondents having participated in the auction under the terms and conditions as notified, are bound by the terms and conditions and they cannot now be permitted to wriggle out of the consequences flowing from the terms of the contract. It was further averred that the entire amount of earnest money i.e. Rs. 3,71,250.00 paid by the respondents was forfeited in accordance with the terms and conditions of the contract.

3. On a consideration of the rival contentions of the parties, learned single Judge came to the conclusion that the dispute is governed by the Regulation 8 of the Delhi Development Authority (Management and Disposal of Housing Estate's) Regulations, 1968 (for short 'the Regulations') and according to Regulation 8(3) of the Regulations, appellant was not entitled to forfeit an amount exceeding 20% of the disposal price of the flat, which comes to Rs. 59,400/- only, and, after

deducting the said amount from the amount of Rs. 3,71,250.00 paid by the respondents, the appellant was under obligation to refund the balance amount of Rupees 3,11,850.00 to the respondents. However, the respondents having confined their claim to recovery of Rs. 2,98,000/- only the same was decreed along with interest.

4. Feeling aggrieved, the appellant Delhi Development Authority, has now come up in appeal.

5. The nub of the points stressed by the learned Counsel of the appellant is that the respondents, having participated in the auction under the terms and conditions of auction (Ex. D-2) are bound by them and they cannot be permitted to challenge entitlement of the Authority to forfeit the whole amount of earnest money deposited by them in accordance with sub-para (vi) of para 4 of the terms and conditions of the auction, and Regulation 8 of the Regulations, which permits a deposit of 20% of the disposal price and its forfeiture, in case of default, is not applicable in this case. Alternatively, he submitted that the earnest money deposited in this case is 25% of the bid amount and this is referable to 25% amount mentioned in Rule 29 of the Delhi Development Authority (Disposal of Developed Nuzul Land) Rules, 1981 (hereinafter referred to as the Rules) and if that be so, Rule 32 thereof permits the forfeiture of the entire earnest money. He also pointed out that the deposit in this case has been made by the respondents pursuant to an application (Ex. D.1) for allotment consequent to the highest bid at the auction. The application (Ex. D.1) states that it is being made under the Rules and it mentions that the earnest money is Rs. 3,71,250/- and as such the conditions of auction (Ex. D.2) are governed by the Rules.

6. Learned Counsel for the respondents, on the other hand, contended that the power of forfeiture of only 20% amount of disposal price has been incorporated in Regulation 8 of the Regulations, which governs the disposal of a housing estate. According to the learned Counsel, the forfeiture of 20% of disposal price in terms of Regulation 8(3) can be made if the purchaser opts out of a contract by expressing his inability to complete the sale in a housing estate and there is no provision in ' the Regulations empowering the authority to forfeit any amount

exceeding 20% of the disposal price. He further submitted that the application (Ex. D-1) does not contain terms and conditions of the auction and the conditions of auction have been stipulated in Ex. D-2, which are governed by the Regulations and the Rules can never be applied to a housing estate or flat as defined in Regulation 2(17) and (23) respectively as those Rules are applicable only to a Nuzul land that is assigned to an allottee.

7. We may mention here that the following advertisement was published by the Authority for sale of residential flats :

'Delhi Development Authority offers Residential Flats in the Asian Games Village for Auction.

DDA has decided to offer a few flats for auction in the Asian Games Village Complex.

Indian nationals both residing in India or abroad. Private Companies/Public Ltd. Companies would be eligible to bid in the auction.

25% of the bid amount shall be payable in cash/bank draft, at the fall of the hammer.

The balance of 75% shall be payable by cash/bank drafts, within 60 days.

Persons who hold a bank draft of Rupees 10,000/- in favor of DDA would only be permitted in the Auction Hall for participating in the auction.

The bids would be subject to confirmation/ acceptance by the Vice-Chairman, DDA.

The flats can be inspected on all working days between 10 a.m. to 12 noon by contacting the Assistant Engineer at site.

Terms and conditions of the auction, can be obtained from the Forms Sale Counter on the Ground Floor, 'D' Block, Vikas Sadan, New Delhi from 11.00 a.m. to 1.00 p.m. and 2.00 p.m. to 4.00 p.m. on all working days from 28th July, 1986 onwards, on payment of Rs. 5/-.

For further information, please contact Special Counter, Delhi Development Authority, Ground Floor, 'D' Block, Vikas Sadan (Near IN a Colony), New Delhi-110023.

Date of Auction : 29-8-1986. Time : 11.00 a.m. Venue : DDA's Auction Hall 'D' Block, Vikas Sadan, New Delhi. It is significant that it was not disputed before the learned single Judge that the auction of the flat in question was governed by the Regulations. The appellant sought to make out a case at the appellate stage that the respondents had agreed to purchase the flat in question in accordance with the procedure prescribed therefore in the Rules, as there is a land sale component in sale of each flat. It is a fact that the applicability of Rules is not incorporated in the terms and conditions of auction (Ex. D.2) which Rules have not been mentioned in the letter of allotment dated 9-9-1986 issued by the authority. On the contrary, the terms and conditions of auction (Ex. D.2) had been notified on the basis of which the said auction was held. It is stated in the terms and conditions of auction (Ex. D.2) that :

'The allotment is subject to terms and conditions framed under provisions of Delhi Development Authority (Management & Disposal of Estates Regulations, 1968) as amended from time to time.'

From a bare reference to the aforesaid condition, it is apparent and explicit that the terms and conditions of auction clearly conceived and contemplated that the auction would be held subject to the provisions contained in the Regulations.

8. It has to be borne in mind that the Authority is a statutory body established under the provisions of the Delhi Development Act. In Section 57 of the Act, it is provided that the Authority shall, with the approval of the Central Government, make regulations to carry out purposes of the Act. The Regulations have been made by the Authority in exercise of powers conferred by Section 57 *ibid*. Regulation 1(2) of the Regulations clearly lays down that the regulations shall apply to those schemes in which built up properties are to be disposed of by way of sale or tender purchase. It is well settled that a rule or a regulation made in exercise of a power conferred by a statute being in the nature of subordinate legislation. The expression 'built up properties' used in Regulation 1(2) is of wide

amplitude and it embraces within its fold a dwelling unit, flat and a housing estate. Dwelling Unit has been defined in Regulation 2(15) as under:

'Dwelling Unit' means a building or a part thereof which is used or is intended to be used by a family for habitation;

'Flat' has been defined in Regulation 2(17) as under :

'Flat' means a portion of building, which can be delineated with definite outline on plan and which can be definitely marked on site, and which is a dwelling unit;

'Housing Estate' has been defined in Regulation 2(23) as under :

'Housing Estate' means a group of houses built by the Authority for dwelling purposes and may comprise all or any of the following namely :

a) a dwelling unit;

b) land under and appurtenant to such dwelling unit;

c) roads and paths, sewers, storm water drains, water supply and ancillary installations, street lighting and other similar amenities;

d) open spaces intended for recreations and ventilations;

e) convenient shopping, schools, community hall or other amenity for common use.'

9. The aforesaid definitions make it clear that the regulations shall apply to a dwelling unit, flat or a housing estate which are to be disposed of by the Authority by way of sale or hire purchase.

10. Chapter 11 of the Regulations deals with terms and conditions of disposal of property. If the property is disposed of by sale, Regulation 8 provides :

'MANNER OF PAYMENT OF DISPOSAL PRICE'

(1) When a property is disposed of by sale, every applicant shall deposit a sum equal to 20 per centum of disposal price, of the property rounded to the next hundred along with the application. Such deposit shall be non-interest bearing.

(2) An applicant to whom the property has been allotted shall have to pay the balance amount of the disposal price (i.e. after adjusting the deposit) within such period as may be specified in the allotment letter.

(3) If the applicant fails to pay the amount within the specified period, the allotment shall be cancelled and a sum of money equal to 20 per centum of the deposit shall be forfeited and the balance refunded.

(4). In the case of such applicants as have not been allotted any property, the deposit specified in sub-regulation (1) shall be refunded.

(5) Authority shall have the sole and exclusive right over the deposit till it is adjusted or refunded with or without deduction as provided in these regulations.'

11. Regulation 8 lays down that in case of a sale, and an auction is a public sale; and sale price is the disposal price and that 20% of the disposal price has to be deposited at the time of auction, which amount can be forfeited in case of breach.

12. Thus rights and obligations of the parties would be governed by the provisions of the Regulations and any condition contained in terms and conditions of auction (Ex. D.2) offending any provision of the Regulations has to be ignored as has been done by the learned single Judge.

13. Since terms and conditions of auction (Ex.D.2) have to accord with the provisions of the Regulations, the appellant cannot be permitted to invoke Rule 29 or Rule 32 of the Rules for forfeiting the entire amount deposited by the respondents as the Rules are not applicable in this case. In any case, the Rules do not apply to the auction in this case because land having been developed as 'flats' it ceases to be Nazul land to which the Rules apply.

14. Learned Counsel for the appellant, relying on sub-paras (iii), (v) and (vi) of para 4 of the terms and conditions of auction (Ex. D.-2), contended that the

respondents having participated under those terms and conditions, are bound by them and they cannot be permitted to challenge entitlement of the Authority for forfeiting the amount in question. Sub-paras (iii), (iv) and (vi) of para 4 of the terms and conditions of auction (Ex. D-2) are extracted herein below in extenso for better appreciation of the point in issue.

(iii) The Officer conducting the auction shall normally accept subject to confirmation by the Vice-Chairman the highest bid offered at the fall of hammer at the auction and the person whose bid has been accepted shall pay as earnest money a sum equivalent to 25% of his bid either in cash or by Demand Draft in favor of the Delhi Development Authority (Housing); If the earnest money is not paid, the auction already held in respect of the flat shall be cancelled by the Officer conducting the auction.

(v) After the acceptance of the bid, the bidder will be informed of such acceptance in writing and the bidder shall, within 60 (sixty) days thereof pay to the Delhi Development Authority, the balance amount of the bid by bank draft in favor of the Delhi Development Authority (Housing), if the bid is not accepted, the earnest money will be refunded to the bidder without any interest unless it may have been forfeited under para (vi) below.

(vi) In case the bidder fails to pay the balance 75% of the amount of his bid to the Authority within 60 days of acceptance of the bid, the bid will stand cancelled and the earnest money shall be forfeited.'

15. On a bare perusal of the terms and conditions (Ex. D-2) and Regulation 8, it is obvious that acceptance of the highest bid of the flat in question is subject to the conditions of holding the auction and the right of the highest bidder and powers of the Authority to forfeit the amount, in case of breach, have to be examined in the context of Regulation 8 under which the said auction was held. It is undisputed that respondents were highest bidder of the flat in question and according to sub-para (iii) of para 4 of the conditions of auction (Ex. D-2) they deposited 25% of the bid amount. Whereas Regulation 8(1) clearly mandates that such deposit should be only 20% of the disposal price of the property. Similarly, sub-clause (v) stipulates that in case the bidder fails to pay the balance of 75% of the amount of

his bid to the authority within 60 days of acceptance of the bid, the bid will stand cancelled and the earnest money shall be forfeited. On the contrary, in such a situation, Regulation 8(3) places an upper limit on the powers of the Authority to forfeit a sum of money equal to 20% of the disposal price only. It follows that stipulations in sub-para (iii) and (vi) of para 4, naming the amount to be deposited at the time of auction and its forfeiture in case of breach, are ultra virus to Regulation 8 of the Regulations. The limit on the power of forfeiture of the amount specified in Regulation 8(3) will remain unaffected, and will not be affected by any agreement or document signed by the respondents. Consequently, the learned single Judge has rightly held that the Authority had no power to forfeit an amount exceeding 20% of the disposal price of the flat in question.

16. For the foregoing reasons, we are of the considered view that the learned single Judge has not committed any error of law warranting our inference. The appeal is accordingly dismissed with costs.

17. Appeal dismissed.