

**Rita Rastogi Vs. Delhi Development Authority and anr.**

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**Court :** Delhi

**Decided On :** Nov-29-1990

**Reported in :** 43(1991)DLT111

**Judge :** B.N. Kirpal and; Santosh Duggal, JJ.

**Acts :** [Constitution of India](#) - Article 226; [Evidence Act, 1872](#) - Sections 115

**Appeal No. :** Civil Writ Appeal No. 1908 of 1990

**Appellant :** Rita Rastogi

**Respondent :** Delhi Development Authority and anr.

**Advocate for Pet/Ap. :** Swalantar Kumar,; Geeta Mittal and; S.K. Kaul, Advs

**Judgement :**

**B.N. Kirpal, J.**

(1) The challenge in this writ petition is to the cancellation of the allotment of flat No. 2223, Category Iii, Sector C, Pocket, li Vasant Kunj, New Delhi.

(2) Briefly stated, the facts are, that on 13th August, 1982 the petitioner had got herself registered for a Category 11 flat under the Fifth Self-Financing Housing Registration Scheme, 1982. The petitioner deposited the requisite amount of Rs. 10,000.00 . Thereafter on 8th February, 1984 she made an application to the

respondent to the effect that she would prefer allotment under Category lii instead of Category II. On 16th July, 1984 the request of the petitioner for the change from Category li to Category lii was accepted and on a draw of lot conducted on 15th June, 1984 the petitioner was allocated a flat. According to the petitioner, and this is borne out from the record, the petitioner paid the Installments asked for and also paid a further sum of Rs. 5000.00 being the differential in the initial deposit between category li and Category III. This differential had been demanded by the respondents. Further Installments were also paid by the petitioner. On 12th January, 1987 the respondents wrote a further letter to the petitioner stating that the earlier flat which had been allocated to the petitioner had not been constructed and another flat on the ground floor would be allotted to her. Pursuant thereto on 22nd April, 1988 a fresh draw of lots was held and the aforesaid flat No. 2223 was allotted to the petitioner. Vide - a letter dated 27th June, 1988 the petitioner was informed about the said allotment and she was also required to pay a further sum of Rs. 12033.60. This amount was paid on 22nd July, 1988. According to the petitioner, all other formalities which were required to be completed by her were completed. The possession of the flat was, however, never handed over to the petitioner though she had paid a sum of Rs.2,77,000.00 by now. On a complaint being made on 16th November, 1989 with the Consumer Protection and Redressal Forum, Tis Hazari, Delhi, the respondents on 5th March, 1990 filed a reply to the effect that the allotment to the petitioner had been made by oversight. According to the respondents, she was entitled to registration only in category li and a flat had been wrongly allotted to her in category III. The petitioner has now filed the present petition impugning the aforesaid action of the respondents.

(3) The facts enumerated above have not been denied by the respondents. It is, however, stated that the petitioner was not eligible to get an allotment in category III.

(4) In our opinion, the action of the respondents, besides being callous, is indefensible. The petitioner was informed way back in 1984 that she had been successful in a draw of lots for allocation of a flat in category III. It is after a period of over 5 years that the petitioner was faced with the situation where she was told that the allotment had been wrongly made to her. It is not as if the allotment was

made to her only in 1984, in fact the present flat No. 2223 was allotted to her as a result of a subsequent draw of lots which had taken place on 22nd April, 1988 and, therefore, on two different occasions draw of lots in respect of category lii flat took place and the petitioner was successful. The petitioner has been paying the demands as and when raised by the respondents without the respondents ever raising any objection thereto. The said flat is alleged to have been cancelled vide a letter dated 24th November, 1989 and 19th December, 1989 written by the Deputy Director to the petitioner in which it is stated that the aforesaid allocation of category lii flat and the allotment thereof has been cancelled as the petitioner was registered under category II. In our opinion, the said letters dated 24th November, 1989 and 19th December, 1989 have been issued contrary to the facts on the record. The respondents themselves, in 1984, had received Rs. 5000.00 as additional charges for converting the petitioner's allocation from category li to category III. We cannot help but feel that the impugned letters have been written for an ulterior purpose, the purpose being to somehow or the other cancel the allotment in favor of the petitioner. The callousness of the Dda is further evident from the fact that in the impugned letters of 24th November, 1989 and 19th December, 1989 they informed the petitioner that she could make application for allocation under category li as and when flats for allocation are offered by DDA. This is really adding insult to injury having received over Rs. 2,77,000.00 between the period 1984 and 1988. Suddenly to turn round, without any prior show cause notice, and to write a letter dated 24th November, 1989 smacks of utter non-application of mind. One should not expect such type of action by a Public Authority but it is most unfortunate that such actions by the Dda have, in recent times, become the norm rather than the exception. Even if it be assumed, though we are not satisfied in this regard, that the petitioner may not have been eligible for allocation of a category lii flat, nevertheless the principles of promissory estoppel would be clearly applicable in the present case. The petitioner's request for change of category was accepted, enhanced amount was received, payment for the flat in question was made and still the petitioner has not been handed over the flat in question even though formal letter of allotment had also been issued.

(5) For the aforesaid reasons, we issue a writ of mandamus quashing the letters dated 24th November, 1989 and 19th December, 1989 with the result that the

allotment of aforesaid flat No. 2223, Category Iii, Sector C, Pocket Ii, Vasant Kunj, New Delhi would stand restored.

(6) At this stage, it has been brought to our notice that the said flat has already been allotted to another person and possession handed over. In order that an unwary purchaser may not be dislocated, we had asked the respondents to indicate if any other ground floor flat can be made available to the petitioner in the same vicinity. After considerable difficulty, we have today been informed that some of the flats in Vasant Kunj on the ground floor are available. One of the flats which has been offered to the petitioner is flat No. 1398, Ground Floor, Sector C, Pocket I, Vasant Kunj, New Delhi. This fiat is acceptable to the petitioner. We, therefore, issue a writ of mandamus directing the respondents to give to the petitioner formal letter of allotment of flat No. 1398, Ground Floor, Pocket I, Sector C, Vasant Kunj, New Delhi within one week from today and we further issue a writ of mandamus directing the respondents to give vacant physical possession of the said flat to the petitioner within a fortnight thereafter. The petitioner will be entitled to costs of this petition. Counsel's fee Rs. 5000.00 .

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