

K. Bhattacharjee Vs. Delhi Development Authority

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Court : Delhi

Decided On : Jul-01-1996

Reported in : 63(1996)DLT467; 1996(38)DRJ343

Judge : R.C. Lahoti and; Lokeshwar Prasad, JJ.

Acts : [Constitution of India](#) - Articles 12, 14 and 226; Contract Act

Appeal No. : Civil Writ Petition No. 3431 of 1994

Appellant : K. Bhattacharjee

Respondent : Delhi Development Authority

Advocate for Pet/Ap. : R.K. Saini and; A. Salwan, Advs

Judgement :

R.C. Lahoti, J.

(1) In the year 1979, Delhi Development Authority announced a scheme known as Registration Scheme on New Pattern of Intending Purchasers of Flats to be Constructed by the Delhi Development Authority (hereinafter 'RSNP' or the 'Scheme'-for short). The object of the Scheme was to reduce the sale price of MIG/LIG and Janta flats so as to be within the reach of the common man with easier mode to facilitate payments. The Scheme opened on 1.9.1979 and closed on 30.9.1979. The original scheme is available on record of civil writ petitions.

Salient features thereof are noticed hereinafter.'

(2) The applicants to be eligible to apply under the scheme must not own any residential house or plot in full or in part on leasehold or freehold basis in the Union Territory of Delhi either in own name or in the name of spouse, minor and/or dependent children, dependent parent or dependent minor sisters and brothers.

2.1 The applicants were required to make deposits as under :- Category Income Range Registration Deposit

GENERAL	SC/ST	Rs.	Rs.	M.I.G.	7201 To 18000	4500.00	3500.00	L.I.G.	4201 To 7200	1500.00	1200.00	Janta upto4200	250.00	200.00
- 2.2 The income of the applicant relevant for the Scheme was relatable to the financial year 1978- 1979. The allotment of flats was to be by draw of lots like that of a financing scheme. Forty per cent of the Mig flats were to be allotted on cash down basis and sixty per cent on hire-purchase basis. The proportion in the case of Lig Janta flats was kept at 25% and 75% respectively. In case of flats allotted on hire-purchase basis, the cost of land plus 20% of the balance cost of the flat was recoverable as initial deposit at the time of allotment and balance amount recoverable in monthly installments spread over a period of 7, 10 and 15 years respectively in case of Mig, Lig, Janta flats. 2.3. Plinth area and accommodation of the flats was also notified tentatively. It was stated that likely cost of the flats constructed under the said scheme would be Rs. 42,000.00 , 18,000.00 and 8,000.00 for Mig, Lig and Janta flats respectively. 2.4 There are a few terms of the scheme which deserve to be extracted and reproduced as under:														

'14.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 lay out, cost of construction etc.'

'16.As and when a group of houses is ready for disposal an advertisement will be made in the Press. Only registered persons would be eligible to apply in the prescribed form quoting the number of their Registration Certificates and Deposit receipts.'

'24.The payment for the flat will be made by the allottees after adjusting the amount deposited by them at the time of registration and the interest due if any.'

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

'29.The allotments to be made under the registration scheme would be governed by the rules of the Delhi Development Authority (Management and Disposal of Housing Estates) Regulations, 1968.'

(3) The Delhi Development Authority took up the construction work of the flats in a phased manner. It appears that so far as the petitioners are concerned the Delhi Development Authority started holding draw of lots and issuing allotment letters in the year 1993. The flats are situated in different localities. We are concerned with the flats located in (i) pocket-C Jhilmil Phase-II, (ii) Jasola, and (iii) Jahangirpuri. A number of petitions have been filed. They are grouped as under: Pocket-C Jhilmil Phase II-CWPs 4859/95, 1458/95, 4640/95, 4509/95 5086/94, 706/95, 1506/95, 1507/95, 2437/94, 2438/94, 3364/94, 3365/94, 3429/94,3430/94, 3431/94 3432/94, 3921/94, 3948/94,2091/95 Jasola -CWPs 4124/94, 4244/94, 4245/94, 4246/94, 4247/94, 4248/94, 4326/94, 4327/94, 4328/94 4329/94, 4392/94, 4393/94, 4394/94, 4395/94, 4396/94, 4397/94, 4398/94,4852/94,971/95,972/95. Jahangirpuri CWPs 3548/94, 3550/94, 2837/94, 3513/94, 3515/94,3517/94,1711/94,1667/94, 1668/94,1669/94.

(4) The common grievances raised in all the petitions are twofold :- (i) the prices of the flats are abnormally high and certainly much beyond than what was notified in the scheme. (ii) The flats are not habitable for want of essential facilities such as electricity supply, water supply, sewage line and roads.

(5) It is submitted by the petitioners that the essential services having not been made available, the flats are not habitable. They may be called flats but are not flats in practical sense. Still the Delhi Development Authority has insisted on possession being taken over by the allottees which would be coupled with an obligation on the allottees to make the payment either cash down or by

installments-depending on the nature of allotment- under threat of cancellation of allotment, if the possession was not taken or payment was not made. We would shortly particularise the nature of grievances in the three groups of petitions. The fact remains that in practically all the petitions the petitioners have been protected by interim orders restraining the respondent Delhi Development Authority from cancelling the allotments.

(6) The stand of the respondent Delhi Development Authority has been that all the petitions are misconceived. The petitioners are seeking relief within the realm of contracts. They have also raised disputed questions of fact. Relief does not deserve to be allowed to any of the petitioners in exercise of writ jurisdiction of this Court. 5.1 Further pleas taken by the Delhi Development Authority may be summarised as under : (i) There is no merit in the averment that the price of the flats has been fixed arbitrarily. The Delhi Development Authority is charging actual cost of construction and other departmental charges on no profit no loss basis. The premium of land which is to be charged is fixed in accordance with the directions issued by the Central Government. The premium of land is totally subsidised and has no relation with the market rate. Moreover the question of costing stands concluded by a Full Bench decision of this Court and cannot be reagitated. ii) Delhi Development Authority works with 'no-profit no-loss basis' in its over-all working. It was specifically stated in the brochure that the figures mentioned therein as regards the disposal cost are tentative and are liable to be changed. The Dda, after the land is made available on being acquired, develops it and proceeds with the construction. Because of the large number of registrants under the Scheme the construction has been a long drawn and on-going process. As and when the flats are constructed the same are allotted to successful registrants. iii) So far as the provision of certain amenities is concerned it is under the jurisdiction of Mcd and Desu mostly and by the time flats are allotted all amenities have been provided for. However, in some cases where the amenities are in the process of being provided for by the concerned authorities, the Dda, in the interest of allottees and flat holders makes the allotment of flats for if it waits for the complete provision of all the amenities then the allottees would have to pay a price prevailing in the year when the allotments would be actually made. It is only for the benefit of the allottees that the Delhi Development Authority proceeds

to make allotments so as to enable the allottees paying the price prevailing on the date of allotment and not to be charged with the price of the land prevailing on later dates by which the prices are bound to increase. iv) The Delhi Development Authority by making allotments in anticipation or good hope of the works/amenities being completed by the concerned authorities, merely tries to benefit the allottee so as to save them from paying enhanced cost of land which goes on increasing every year. That apart supervision, watch and ward charges are incurred, administrative costs are also incurred which too add to the cost of the flats to be borne by the allottees ultimately.

(7) Apart from these general grievances and their reply we may now notice short grievances raised in the three groups and Explanationn offered by the DDA. Jahangirpuri Electricity and water connections have not been provided for. The sewage system and approach roads are yet to be completed. (see CWP. 1668/94) Jasola Approach road has not been constructed; and sewage, water and electricity are not available.(See Cwp 4247/94). Jhilmil Water and electricity are not available (see C.W.P 3431/94). In the above said petitions the Delhi Development Authority has filed affidavits by way of counter. According to him: 7.1 Jahangirpuri - Shri R.L. Shrivastava Director (H)- li, Delhi Development Authority states in his affidavit dt. 2.12.1995 (The Cwp 1668/94);- (i) in Jahangirpuri there are two approaches to Mig flats: one is from G.T. Karnal Road and the other from road No. 15 (outer Ring Road), through Bhalesawa village. As regards the third approach road, the portion belonging to Delhi Development Authority has been completed and the remaining portion of the road has to be completed by Delhi Administration. The Delhi Administration has refused to connect this road because from this point communication to outer Ring Road has been made by them (through Bhalesawa village). (ii) The work pertaining to sewerage was completed before allotment. However connection could not be made to Mcd manhole because sewer line belonging to Mcd was not in existence. The work of laying the sewer line has been started by the Mcd and as soon as it is completed the connection of the sewer shall be made to the Mcd line. The Delhi Development Authority has installed two diesel pumps to pump out the sewer water till the connection is made with the Mcd line. (iii) There was a minor problem in few flats with respect to drainage which was being attended to. 7.2 Jasola Shri R.L.

Srivastava - Director (Housing), Delhi Development Authority states in his affidavit dt 2.12.1995 (See Cwp 4247/94):- (i) The land on which the main approach road has to be constructed is the subject matter of litigation in the High Court in 22 civil writ petitions, details whereof are given in Annexure R-1(Cwp no. 4247/94). The approach road preceding the said area has been completed. The allottees have access even otherwise than the said approach road. The portion of the approach road which is covered by the stay orders in writ petition shall be completed, no sooner the stay orders are vacated. (ii) The estimate in respect of electrification of the area where the flats exist was received from the Desu in October, 1994 and the amount was deposited in November, 1994 . In normal course it was estimated that the electricity would be generated in December, 1994 or latest by January,1995. The delay has been occasioned because Desu did not fix the agency to get the work of electrification executed in the said area. (iii) The matters relating to electrification and water connection are being taken up with the concerned authorities. At present construction of sub station building to house the sub- station equipment has already been undertaken but the Desu is delaying the matter of providing electricity high tension cable, and Lt cables are yet to be laid and feeder pillars are yet to be erected by DESU. 7.3 JHILMIL-It is stated in the affidavit dated 22.8.1995 of Shri B.K. Roy, Chief Engineer Delhi Development Authority (see Cwp 3431/94):- Electricity and water supply, sewerage system and drainage were all available. Water supply was made available in the first week of November, 1994. Sewerage system and S.W. drainage system are existing since 1994. Electricity supply was made available in April, 1995. In the background of above said pleadings, we now deal with the twin questions arising for decision. They are :- (i) whether at the instance of the petitioners the court can enter into the question of costing of the flats as proposed by the DDA; (ii) whether the petitioners can be allowed to withhold the payment of price of the flats unless and until services and amenities have been provided or made available and whether they would not be liable to pay interest for delayed payments, in view of the Delhi Development Authority having failed in making available the flats in a habitable condition.

(8) So far the first question is concerned, it is a beaten track and need not detain us any longer.

(9) In *Delhi Development Authority v. Pushpendra Kumar Jain*, : AIR 1995 SC1 , the dispute reaching up to their Lordship of the Supreme Court was one arising on this very scheme i.e. RSNP-1979. Their Lordships have laid down the following principles: (i) an allottee does not obtain a vested right of allotment on a drawal of lots. The system of drawing of lots 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 allottee does not clothe the person selected with the legal right to allotment at the price prevailing on the date of drawal of lots; (ii) since the right to flat arises only on the communication of the letter of allotment the price or rate prevailing on the date of such communication is applicable unless otherwise provided in the scheme; (iii) the scheme does not prescribe the period within which allotment has to be communicated from the date of drawal of lots. It has of course to be done within a reasonable period. 9.2 The issue was also agitated before a Full Bench of this Court in *Sheelawati v. Dda* : AIR1995 Delhi212 . It was also a case arising under this very scheme. The Full Bench has examined the case from all possible angles and having reviewed the available law on the point, laid down the following principles :- (i) The writ court can only see and examine whether the pricing of flats demanded by the Delhi Development Authority for different categories of allottees is whimsical or arbitrary; (ii) Merely because the method of valuation suggested by the petitioner would be more fairer or logical, the method or basis adopted by the Dda cannot be struck down as arbitrary or whimsical; (iii) In view of the terms and conditions of the scheme it cannot be said that pricing is one time process and the Delhi Development Authority having fixed in the brochure some price could not revise it or that the nature or character of the scheme is engaged (sic.-changed) thereby. Obviously it is a continuing process. (iv) The Delhi Development Authority has a responsibility to act fairly and reasonably while fixing the price for sale of the and, houses or flats belonging to it. It cannot be said that the Delhi Development Authority 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. 9.3 In *Bareilly Development Authority v. Ajay Pal Singh*, : [1989]1SCR743 , a more or less similar scheme for allotment of dwelling units belonging to different income groups was floated. Challenge was laid to certain changes in the conditions subject to which the petitioners had applied for

registration and deposited the initial payment as also to the enhancement of cost of houses/flats. Their Lordships held :- 'When the contract entered into by the State is non-statutory and purely contractual the relations are no longer governed by the constitutional provisions but by the legally valid contract which determines the rights and obligations of the parties inter-se. In this sphere the parties can only claim rights conferred upon them by the contract in the absence of any statutory obligations on the part of the authority in the said contractual field. It is also settled that no writ or order can be issued under Art., 226 of the [Constitution of India](#) so as to compel the authority to remedy a breach of contract pure and simple. 9.4 In *Indore Development Authority v. Sadhana Aggarwal* : [1995]2SCR555 , also a challenge was laid to the escalation of final cost. The High Court having arrived at a finding that the development authority had been dealing with the allottees in an arbitrary, and dictatorial manner, directed the authority to deliver possession of the flats to the allottees on the basis of the estimated cost conveyed to them. In appeal the Supreme Court held :-

'In the facts and circumstances of the case having regard to the reasons for the hike in cost of no interference was called for by the High Court. However, 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. But 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 any arbitrary or erratic manner.'

We may usefully refer to the law laid down by the Supreme Court in *Shrilekha Vidyarthi v. State of U.P.* : 1991 CriLJ452 . Having reviewed the available Supreme Court decisions and other authorities on the point, the law as to the applicability of Article 14 of the Constitution in the field of contracts has been laid down in the following terms: It is now too well settled that every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Art. 14 of the Constitution and basic to the rule of law, the system which governs us. Arbitrariness is the very negation of the rule of law. Satisfaction of this basic test in every State action is sine qua non to its validity and in this respect the

State cannot claim comparison with a private individual even in the field of contract. This distinction between the State and a private individual in the field of contract has to be borne in the mind. '(para 35) The meaning and true import of arbitrariness is more easily visualised than precisely stated or defined. The question, whether an impugned act is arbitrary or not, is ultimately to be answered on the facts and in the circumstance of a given case. An obvious test to apply is to see whether there is any discernible principle emerging from the impugned act and if so, does it satisfy the test of reasonableness, '(para 36)

'Every State action must be informed by reason and it follows that an act uninformed by reason, is arbitrary. Rule of law contemplates governance by laws and not by humour, whims or caprices of the men to whom the governance is entrusted for the time being. It is trite that be you ever so high, the laws are above you'. This is what men in power must remember, always.'

(para 36)

(10) The scheme floated by the respondent Delhi Development Authority is a non-statutory scheme. Registration under the Scheme confers merely an eligibility to make an application for allotment which would be done pursuant to the draw held by the DDA. The letter of allotment issued by the Delhi Development Authority is an offer which the allottee may or may not accept. If he accepts, then a concluded contract comes into existence. The action of the Dda before or after entering into the contract can be tested on the touchstone of Article 14 only to find out if the Delhi Development Authority has acted arbitrarily, whimsically or capriciously. So far as challenge to the costing pattern of the Delhi Development Authority and escalation in the price of the flats is concerned, we do not find any reason to disbelieve the statement on affidavit made on behalf of the Delhi Development Authority that the cost of the flats was determined on no-profit-no -loss basis. No material has been brought on record to hold Delhi Development Authority having acted arbitrarily, whimsically or capriciously in the matter of costing of the flats. The case of the petitioners is that the Delhi Development Authority could not have revised the price upwards than what was announced in the scheme. The prices announced were only tentative and the Delhi Development Authority had reserved

its right to revise the same. It will itself be arbitrary to bound down Delhi Development Authority in the year 1993 to the tentative price tag of the year 1979. The challenge laid by the petitioners and covered by the first question, therefore, fails. The scheme has been floated under and is governed by the Delhi Development Authority (Allotment and Disposal of Housing Estate) Regulations 1968.(hereinafter referred to as the Regulations).

(11) The Regulations contemplate two types of modes of payment: (i) On cash down basis, and (ii) on hire purchase basis. In both the cases payments are to be made as determined. In the matter of handing over of possession of property, paras 36 and 37 of the Regulations provide as under : '36. Handing over of Possession of Property (Hire-Purchase).-(1) The possession of the property shall be handed over to the hirer on the completion of the following events :- (a) The hirer has paid the first Installment and such other dues as shall have been demanded by the Authority. (b) The hirer has executed the agreement mentioned in Regulation No. 35. (c) The Registered Agency of which the hirer is a member has been duly registered in the manner prescribed by Regulation 41 and such Agency has executed an agreement with the Authority as provided in Regulation No. 35 (2) The possession of the' common portions and common services shall be handed over to the Registered Agency after such Agency has executed the agreement prescribed in Regulation No.35. 37. Handing over of possession of property (Sale)- When the property is disposed of by way of sale, the possession of the property shall be handed over to the allottee, .after such allottee has made the required payments and the possession of the common portions and common services in the Housing Estate shall be handed over to the Registered Agency of which such allottee is a member after such Agency has been duly registered and the agreement with regard to common portions and common services has been executed as prescribed in Regulation No.55' Thus an obligation to hand over possession over the flats arises only on payment being made consistently with the terms of the scheme and letter of allotment. The cash down letter of allotment is accompanied by the following conditions, inter alia, of allotment :- '5. Time for making payment. 'If the allottee does not make payment within 60 days as specified in clause (2) of the demand letter, the allotment shall stand cancelled automatically. However, if the payment is made after 60 days from the date of

issue of the demand letter, he is liable to pay interest @ 12% for one additional month on not amount payable as specified in Clause (2) of the demand letter. For the purpose of interest, a broken period up to 15 days is taken as a half month while that exceeding 15 days as full month. No extension of time for payment as well permission as for change in make of payment full cash down to Hire Purchase will be allowed on any ground whatsoever.' (sic.) '7. Issue of Possession Letter: (a) The possession Letter will be issued by Delhi Development Authority only after full payment including arrears, interest and penalty if any has been issue of possession realised.(sic.) Before an allottee may file his/her claim for the issue of the possession letter, he/she will be required to furnish the following documents. (iv) Fdr duly discharged.....as mentioned in columns 2 & 4 of the terms of payment.... (v) 3rd copy/copies of challan in support of payments made by the Allottee. Letter of allotment on hire-purchase basis is also accompanied by terms and conditions. Clauses 5-8 thereof contain similar provisions. Clause 5 provides that failure to make payment in accordance with the schedule of payment set out in the letter of allotment would entail automatic cancellation of allotment. Clause 8 provides for letter of possession being issued only subject to payment by allottee of all the dues including interest and penalty. The allottee mayor may not accept the terms of allotment. If he accepts then a concluded contract comes into existence and the allottee is bound by the terms including those relating to payment and delivery of possession. is, thereforee, clear that the allottee cannot withhold payment unless and until the Delhi Development Authority delivers possession over the flat to him. It is the other way round. He has to make the payment and then only insist on possession being delivered to him on the allotted flat. In V.G. Duggal v. Dda, : 1996IAD(Delhi)1101 , an identical question had arisen for decision and having referred to Sections 51, 52 and 54 of the Contract Act which incorporates the rules for performance of reciprocal promises we have held :

'Full payment has to precede before the Delhi Development Authority may incur an obligation to deliver possession over the flat. If the petitioner fails to make the payment, the Delhi Development Authority is not obliged to issue possession letter and deliver possession.'

(12) We reiterate and reaffirm the view so taken. However, what is being contended in this batch of petitions raises an extended issue. Can the allottee refuse to make the payment if he is aware that the flat allotted to him and over which possession is being offered, is not accompanied by requisite facilities and amenities so as to make the flat habitable one as per allottee's hopes, if not high hopes. The learned counsel for the petitioners have forcefully appealed 'a flat' means a flat fit for human residence' and would not mean a flat for the sake of its name. The learned counsel are right to the extent of making this submission. The DDA being a public authority, having offered flats, must offer such flats as will be habitable by the allottees. However, the real question arising for decision is little different. Firstly, it is not the case of the petitioners that the flats by themselves are not habitable on account of say structural or constructional defects. They say that the external facilities and amenities are not available. What is being contended is that not the flats, but the colony or is not habitable. Secondly, we have already held that the question of delivering possession by the Delhi Development Authority would arise only when the allottee has made the payment. Having made the payment and having discharged his obligation under the contract, he would call upon the Delhi Development Authority to deliver the possession and while taking the possession the allottee would have every right to insist on the flat being habitable and fit for human residence. If the Delhi Development Authority fails in discharging its such obligation, two courses are open to the allottee. He may put an end to the contract and seek a refund of the amount paid by him, also hold Delhi Development Authority liable for breach of contract, or he may take delivery of possession and then compel performance by the Delhi Development Authority of its unfulfilled obligations. In the context of the scheme with which we are dealing, a few relevant considerations arise as have been pointed out by the learned counsel for the respondent DDA. It is pointed out that there are two types of amenities and services to be made available for the flats. There are services and amenities which are a part of the structure or construction without which a flat would not be a flat, for example, the quality of construction should be reasonably good, there should be doors and windows with shutters &c.; as is expected of the Delhi Development Authority (or any builder, for the matter of that) and as would make the flat habitable without any risk or inconvenience. It must have staircase,

doors, windows, requisite fixtures and fittings. Provision has to be made for drainage of rain water and waste water from inside the building. In other words, the flats have to be of a marketable quality. Then there are provisions to be made for roads, sanitation, electricity and water supply, sewerage line etc. This has nothing to do with the construction part of the flats. In order to make provision in this regard, the Dda has to depend on other public bodies such as Municipal Corporation and Electric Supply Undertaking, Administration etc. The Delhi Development Authority has to make liaison with them and carry its construction work in such a manner that by the time the flats come up and be ready for possession being delivered, these amenities and services are also available. This is not within the means of Delhi Development Authority by itself. Nevertheless, the Delhi Development Authority is a statutory authority and a public body and so it must synchronise its movements and projects with other public bodies and government or administration. It is further pointed out by the learned counsel for the Delhi Development Authority that though every possible effort is made to see that the external facilities and services become available by the time the flats come up and are offered for delivery of possession but odds and unforeseen events intervene which place the Delhi Development Authority in a tight corner. For all these facilities the Dda has to depend on the cooperation and wholehearted effort of other agencies over which the Delhi Development Authority does not have any control. Some times they do not cooperate and sometimes their plans fail in spite of their willingness to act. Sometimes the progress of such works is obstructed by legal disputes arising and court proceedings intervening. Laying of roads needs land to be acquired and land acquisition proceedings may be stalled by court proceedings intervening. The learned counsel also stated that in such events the Delhi Development Authority feels helpless. It has already brought up flats by making substantial investment and though the internal amenities and services are available, the allottees are not prepared to take possession over the flats. Two consequences flow. By delay in delivery of possession, the interest on investment made in the flats, supervision charges, watch and ward expenses, administrative overheads go on mounting up. The land cost also keeps on increasing in view of the inflationary tendencies. If possession is not taken over by the allottees then the cost price escalates and at the same time the flats lying

ready depreciate and deteriorate by natural factors. If they are occupied, then they are maintained by the occupants and otherwise inevitable wear and tear for want of maintenance is avoided. The Delhi Development Authority therefore offers the flats for allotment complete in all respects so far as the internal amenities and services are concerned, though they may be lacking to some extent as regards the external amenities and services. If the allottee may take possession, then he saves himself from the future escalation in cost price and at the same time saves the flat from the wear and tear which it would suffer otherwise. The Delhi Development Authority does not mind delaying delivery of possession over the flats but that would necessarily result in deterioration with the lapse of time. Despite all the above said limitations, drawbacks and hurdles the Delhi Development Authority, in our opinion, is under an obligation to ensure that essential facilities such like availability of drinking water, supply of electricity, sewerage, drainage are made available in the flats in question so as to make them habitable in true sense. If for any reason, for providing the above said facilities, some time is to be taken in that even the Delhi Development Authority must make some other stop-gap arrangement till permanent arrangements are made so that the occupants of the flats may be saved from facing avoidable hardship. The other facilities outside the flats such as making provisions for roads, road lights, providing public parks, public transport system, availability of medical facilities can however be provided in due course but that does not mean that the concerned authorities should be slack in taking steps in that direction too. The Delhi Development Authority has therefore made a statement on 22.3.1996 under signature of Shri R.L. Srivastava, (Director, Housing-11), which has been placed on the record of Cwp 4247/94, to the following effect : Delhi Development Authority is prepared to withdraw the letters of allotment in the cases of petitioners who have not made payment because of non-availability of electricity/water supply in the concerned housing pocket. Letters of allotment in cases of petitioner shall be treated as withdrawn. Dda will issue fresh letters of allotment at the then current cost viz. the one prevailing on the date of issue of fresh letter of allotment. Delhi Development Authority shall issue these letters on completion of above services. No fresh draw will be held and the petitioners will be issued fresh letters of allotment in respect of the same flats which have already been determined in

the draw already held. This statement will be restricted only in respect of the petitioners before this Hon'ble Court who have not taken the possession of their flats. This may not be treated as precedent.' We are satisfied that the stand taken by the Delhi Development Authority is very fair and reasonable. It is for the petitioners to accept the letters of allotment, take delivery of possession and wait for provision of external amenities and services being completed but then be also prepared for the consequences. The condition of the flats may deteriorate and the prices may escalate. Else they may refuse to take delivery of possession pursuant to the letters of allotment whereupon the Delhi Development Authority would withdraw the same and issue afresh, retaining the flat numbers allotted to the several petitioners pursuant to the draw of lots already held and then issue fresh letters of allotment on all the amenities and services being made available but subject to charging the price based on the cost incurred by the Delhi Development Authority on the date of issuing letters of allotment afresh. The third option is of course always there. Those allottees who are not interested in the allotment of flats and want to have their money back can have the refund of the amount due and payable to them by the Delhi Development Authority to their having declined to accept the offer made in the letter of allotment. The allottees having been delivered with letters of allotments, the dates appointed for payment of the amount due and payable by them in accordance with the letters of allotments must have expired during the pendency of these petitions. The Delhi Development Authority has also to extend the time for payment subject to payment of interest and penalty. The allottees shall have to pay that interest and penalty though in the matter of cancellation of allotment they stand protected by interim orders in this regard. The limited relief which they can be allowed and which we are inclined to allow as in terms of para 42 of Sheelawati's case (supra). The decision by the Full Bench in Sheelawati's case was pronounced on 3.2.1995. Till then there were a number of petitions being Filed by registrants for allotment of flats from Dda seeking twin reliefs, as are sought for herein too. The Pull Bench has settled major part of the controversy at least as regards the costing. Having noticed the uncertainty of legal position the Full Bench has allowed relief in payment of interest to the petitioners covered by the decision in Sheelwanti's case. Consistently therewith it is directed that the petitioners herein shall also not be charged with interest for the period

between the date of filing of the writ petition and the date of this judgment. No other statutory provision has been brought to our notice which may support the contention raised on behalf of the petitioners. All the petitions referred to in para 3 above are disposed of subject to the observations made herein above and in accordance with the following directions : (i) Each of the petitioners is allowed six weeks time from today for exercising his/her option in accordance with the offer made by the Dda on 22.3.96. Such of the petitioners who opt for accepting the allotment and delivery of possession pursuant thereto are allowed six weeks time for making the payment in accordance with the letters of allotment and on such payment being made in the manner stated above the Delhi Development Authority shall hand over possession of the flats in question to the concerned allottees other than the allottees of flats in Jasola group within a period of six weeks failing which the Delhi Development Authority shall be liable to pay interest at the rate of 12% p.a. to the concerned allottee from the date of the payment till the date of delivery of possession. (ii) Such of the petitioners who are not interested in allotment of the flats on the above terms may intimate so to the Delhi Development Authority within three weeks from the date of this order requesting for the refund of the amount and after the receipt of such an intimation/request the Delhi Development Authority shall within six weeks thereafter, refund the amount due and payable to such petitioners. If the Delhi Development Authority fails to refund the amount to such petitioners within the above mentioned time limit, in that event the amount to be refunded shall carry interest @ 12% per annum after the expiry of the above said period of six weeks till the date of actual payment. (iii) In so far as the flats in Jasola group are concerned, the respondent Dda is allowed two months time from the expiry of period of six weeks within which the petitioners have been allowed to make payment to see that electricity and water are made available on permanent basis or by making stop gap arrangement. The possession over the flats shall then be delivered to the allottees. If the Delhi Development Authority fails in securing finalization of water and electricity arrangement, within a period of two months as above said, the Delhi Development Authority shall be liable to pay interest @ 1.2% p.a. to the allottees who have made available payment from the date of making payment till the date of delivery of possession. (iv) Subject to the above directions all the interim orders passed in the petition stand vacated. Before parting we would

like to sound a note of caution to the DDA. The dismissal of these petitions should not be taken as a source for encouragement or protection for the lethargy, redtops and slackness, if any. It should not be lost sight of that the Preamble to the Delhi Development Act, 1957 speaks of an Act to provide for the development of Delhi according to the plan and for matters ancillary thereto. The very object for which the Delhi Development Authority has been constituted is to promote and secure the development of Delhi according to the plan and for that purpose the authority has been vested with power to acquire, hold, manage and dispose of land and built properly to carry out building engineering, building operations, to execute works in connection with the supply of water and electricity, disposal of sewage and other services and management and generally to do anything necessary or expedient for purpose of such development and for purpose incidental thereto. (See- S.6). The Delhi Development Authority is not only a 'local authority' but also a 'Slate' within the meaning of Article 12 of the Constitution. The avowed object of planned development of Delhi cannot be achieved if the Dda brings into existence such colonies or agglomeration of flats which though habitable from within may yet not be considered to be so for want of basic amenities, conveniences and infrastructure of public services outside the flats. As we have already noticed, the Authority may not by itself be responsible and empowered for generation and provision of such public services and conveniences, nevertheless it cannot be permitted to bring into existence such localities which though consisting of flats would be comparable to slums or something like that. Roads, sewage lines streetlights, drainage have all to be made available. The Delhi Development Authority while planning for development of any land and constructing flats thereon must synchronise its movements of steps in a rhythm with other local authorities and administration so that by the time the flats come up and time arrives for delivery of possession over the flats, the citizens occupying flats have no cause of complaint in the matter of such services and conveniences. It should not be difficult for the Delhi Development Authority to achieve such a planned development for it is headed by a high constitutional functionary like the Lt Governor. If other public bodies, institutions or administration may be lagging behind for no fault of the Dda, the officials of the Delhi Development Authority should not hesitate in bringing the facts to the notice of its Chairman who in his

capacity of Lt Governor would certainly be in a position to see that bottlenecks are removed. Needless to say that the citizens having occupied the flats would always be within their rights in demanding from such other authorities and administration the fulfillment of their respective obligations as they have failed to discharge or delayed in discharging. The court would also not hesitate in holding liable the Dda and/or its erring officials and fixing the responsibility followed by issuance of appropriate writ or direction on a case being made out for the purpose (which we do not find having been made out in the present batch of petitions where allegations are general and bald, merely alleging delay without more). No order as to costs.project

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