Jaln and Co. Vs. Delhi Development Authority

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Court : Delhi

Decided On : Jul-07-1997

Reported in : 74(1998)DLT825; 1998(44)DRJ13

Judge : R.C. Lahoti and; S.N. Kapoor, JJ.

Acts : Constitution of India - Article 226

Appeal No. : Civil Writ Appeal No. 2239 of 1992

Appellant : Jaln and Co.

Respondent : Delhi Development Authority

Advocate for Pet/Ap. : Hema Kohli,; Ravinder Sethi and ; Sumeet Bansal, Advs

Judgement :

R.C. Lahoti, J.

(1) In the year 1984, the respondent-DDA announced a scheme for construction of commercial flats which was known as DDA's First Self Financing Scheme for commercial flats (hereinafter, `the Scheme' for short). The object of the scheme was to provide commercial flats to individuals, firms, companies etc. in commercial building to be constructed by the Dda in its commercial centers through financial participation of intending purchasers. Registration under Scheme could be sought for by making an application accompanied by a deposit of Rs.20,000.00 . 25% of

the cost of the flat was to be deposited as initial deposit on allocation of the flat. The balance amount was payable in 5 six-monthly installments of 15% each commencing six months of the date of the allocation. Possession was to be given within six months of the last installment failing which interest @ 12% per annum was payable by the Dda to the allottee. Delay in payments by the allottee was to attract liability for payment of interest @ 18% per annum in addition to the risk of the allocation itself being cancelled on account of default in payment.

(2) On 12.4.84, the petitioner deposited Rs.20,000.00 and sought for registration in the scheme. On 27.12.84, the Dda informed the petitioner that it was declared successful for allocation of a flat under the Scheme (vide letter of allotment Annexure-B). In the allotment letter total estimated cost of the flat was set out as Rs.6,22,697/40p. Subject to adjustment of the amount already deposited plus the interest accrued thereon, the petitioner was asked to pay Rs.1,35,119/50p only as against Rs.1,55,674.35p being the amount of first installment. The remaining amount was payable in 4 installments of Rs.93,404/60 each on 4.3.85, 4.9.85, 4.3.86 and 4.9.86. The 6th final installment was to consist of 15% cost of the flat subject to adjustment for variation in the cost thereof. The rate was charged @ Rs.890.00 persq.ft. as was represented in the brochure published by the DDA.

(3) The petitioner deposited the amount demanded as under :-

DATE Amount 23.1.85 1,35,119.50 4.3.85 93,404.60 6.9.85 93,404.60 7.3.86 93,404.60 4.9.86 93,404.60

(4) Taking into account the amount of registration fee of Rs.20,000.00 , and Rs.584.85p the interest accrued thereon, the total payment made by the petitioner up to 4.9.86 came to Rs.5,29,292.75p.

(5) Though the total cost payable by the petitioner would have been Rs.6,22,697/40p @ 890.00 per sq. ft. for the flat on the first floor of the building to be constructed at Nehru Place. As already stated, the petitioner had deposited more than Rs.5.29 lacs by 4.9.86.

(6) It appears that proposed construction of the self financing flats by Dda did not materialise at Nehru Place. Without the consent of the petitioner, the funds were utilised by the Dda for raising construction elsewhere. Between 31.3.89 and 5.7.90, the petitioner wrote at least 5 letters, all sent through regd.A.D. post but without any consequence. On 20.2.90, about six years after the letter of allocation, the petitioner was informed that the amount paid by the petitioner was going to be adjusted for the allotment of Sfs commercial flats in Bhikaji Cama Place instead of Nehru Place.

(7) On 21.5.92, the respondent issue a fresh letter of allotment informing the petitioner of allotment of flat of Type-I on second floor in Madam Bhikaji Cama Place of a plinth area of 102.09 sq.mtrs. An amount of Rs.9,65,829/12P was demanded from the petitioner showing the cost of flat at Rs.12,60,812.00 .

(8) According to the petitioner, the flat allotted to the petitioner in Bhikaji Cama Bhawan was constructed by the Dda in 1987-88 and was lying vacant for about 4 years. It was not made clear how the cost of flat was arrived at while on the basis of the brochure the demand ought to have been much less. On 17.6.92 the present petition was filed seeking quashing of the demand raised by the Dda on the following grounds :-

(I)That the petitioner could not have been asked to pay more than Rs.9,77,155.00 as per the brochure and that too for a flat on a first floor. The price of the flat on the second floor would be lesser comparatively.

(II)That the impugned demand letter shows the figure of the amount already paid by the petitioner as Rs.4,15,333/40p whereas the amount paid by the petitioner was Rs.5,29,292/75p. On correct credit being given in the payment already made, the demand for payment of interest as also the ground rent would stand deflated.

(III)That on account of delay in construction of flat the petitioner was entitled to interest @ 18% Per Annu = or the period between June, 1987 to June, 1992 on the amount already paid by the petitioner, which amount would come to Rs.4,76,000.00 (approximately).

(9) According to the respondent the cost price of the flat was correctly calculated and costing of the flat is immune from judicial review.

(10) Along with the petition, an application seeking stay of the demand, also stay of cancellation of the allotment was filed registered as Cm 4241/92. On 10.8.93, the petitioner moved an application (CM 6008/93) seeking appointment of a local commissioner to visit the flat allotted to the petitioner and take its measurement. The grievance raised in the application was that the petitioner was greatly shocked to discover that the flat No.205, Second Floor, Bhikaji Cama Bhawan allotted by the respondent to the petitioner was having a total carpet area of 356 sq.ft. merely, while the plinth area should have been 1098.90 sq.ft. i.e. 102.09 sq.mtr. as mentioned in the letter of allotment, the price whereof was being asked for from the petitioner. According to the petitioner this act of the respondent- Dda amounted to playing a fraud with the petitioner.

(11) On 12.8.93, the Court directed Mr.Rajan Sharma, advocate to be appointed as local commissioner with a direction to visit the flat and take measurement of the carpet area and the total area including the walls and submit a report to the Court. The local commissioner has complied with the order and filed a site plan of the flat allotted to the petitioner. The relevant contents of the report of the local commissioner are not being reproduced here as they find a mention in the order of the Court dated 9.2.94 referred to with relevant excerpt reproduced shortly hereinafter. It appears that the Bench then seized of the hearing was inclined to resolve the controversy and as a step in that direction, on 11.10.93, the respondent's counsel sought time for taking instructions with regard to the distribution of common areas amongst various flats, particularly with regard to the common areas on the second floor where number of offices was less as compared to the number of offices on floors 3 to 6. After a few adjournment the matter was heard on 9.2.94. The Division Bench disposed of the two inter locutory applications referred to hereinabove. The Court accepted the report of the local commissioner, according to which the total carpet area of the flat which included a hall,a bathroom and a shaft case of 35.44 sq.mtrs. Thereafter the Court proceeded to hold as under :-

'AT present we are confining to the question whether possession of the said flat can be handed over to the petitioner, if so, on what terms? The respondent D.D.A. has filed a reply to the C.M. 6008 of 1993 in which it is admitted that the plinth area of 102.09 sq.mtr. mentioned in the demand letter dated 21st May 1992 should be read as covered area. According to the D.D.A. the actual plinth area under the flat in question is approximately 46 sq.mtrs. It is further stated on behalf of the D.D.A. that because of the architectural design of the building on the second floor, the common area is larger and, thereforee, the plinth area under the petitioner's flat is less. The report of the Local Commissioner, however, shows that actual plinth area under the flat in question is only 35.44 sq.mtr. From this it is clear that even according to the D.D.A. the plinth area under the flat in question is 46 sq.mtr. as against the plinth area mentioned in the impugned letter as 102.09 Sq.Mtr. This area is far too less as compared to the area of 65 Sq.Mtr. for which the petitioner was registered vide Annex. B, referred to hereinbefore. Even if the area of 102.09 sq.mtr. is to be treated as covered area, i.e. an area which also includes common areas, what the petitioner is getting exclusively in its flat is almost one third of that area. The petitioner is not in any way responsible for the architectural design of the building which according to the D.D.A. has resulted in larger common areas on the second floor and lesser plinth area for the flats. In fact the petitioner has asked for a flat with 102.09 sq.mtr. of plinth area which according to the D.D.A. it is unable to provide. On the basis of its original registration the petitioner may legitimately ask for an area of at least 65 sq.mtr. The impugned letter proceeds on the basis of a plinth area of 102.09 sq.mtr. as mentioned in the said letter. In the said letter it is stated that the petitioner has paid an amount of Rs.4,35,916.25p. However, it is now admitted by the respondent that the actual amount paid by the petitioner to the D.D.A. towards the flat in question is Rs.5,29,292.75p. As against this payment the petitioner is actually getting a plinth area of only approximately 36 sq. mtr. which shows that the petitioner is actually getting almost one third of the area even if we accept that 102.09 sq.mtr. is the total covered area offered to the petitioner. It will mean that the petitioner is getting one third area as its exclusive area and two third area will be common area. At the time of final hearing of the petition the point will arise for consideration before the Court whether the petitioner can be charged for covered area (which

includes common area) of 102.09 sq.mtr. when it is actually getting one third thereof as the plinth area of the flat?

LEARNED counsel for the respondent submits that in certain other cases relating to allotment of flats, this Court has directed full payment as per demand letters issued by the D.D.A. and on that condition possession of flats had been ordered to be handed over to the respective petitioners. For the same reason it is submitted that the petitioner should be asked to pay the entire demand in the event of possession of the flat being directed to be handed over to it.

LEARNED counsel, however, concedes that difference between the plinth area of the flats and the common area is not so much in any of such cases as it is in the present case. We have already noticed the enormous difference in the actual plinth area offered to the petitioner and the so called covered area with which the petitioner is being saddled. This is a peculiar feature of the present case and it distinguishes this case from the other cases. The petitioner has been offered a plinth area which is one third of the area mentioned in the impugned demand letter. Still the D.D.A. insists on full payment. This we feel is adding insult to injury. Because of this peculiar feature of the case, we are unable to persuade ourselves to direct the petitioner to pay the full amount as demanded by the respondent vide impugned letter dated 21st May 1992. Further the petitioner has already paid a sum of Rs.5,29,292.75p. This payment is almost half of the amount of total cost as per the said impugned demand letter while the plinth area now admittedly offered is almost one third of the area mentioned in the said letter. In fact the case of the petitioner is that it has paid much more than what it is liable to pay in the fact of the case.

UNDER the circumstances we direct that the D.D.A. will hand over to the petitioner the possession of flat No.205, type I, second floor, Bhikaji Cama Place, New Delhi, which already stands allotted to it, within one month from today. The petitioner need not pay the balance amount demanded under the said impugned letter at this stage. In the event of petitioner finally failing in the writ petition, the petitioner will be liable to pay such amount as the Court may finally determine as liability of the petitioner and as per the terms to be worked out at that stage. The petitioner

undertakes to abide by any such order that may be finally passed. The petitioner , however, reserves its right to claim any larger plinth area from the respondent or any compensation on account of lesser area being allotted or refund of extra payment with or without interest. With this order C.M.Nos.4241 of 1992 and 6008 of 1993 stand disposed of.(underlining by us)

(12) Having perused the above said interim order of the Court dated 9.2.94 and the nature of the controversies arising between the parties, scrutinised in the light of the contentions advanced, we are of the opinion that the interim order dated 9.2.94 in substance takes care of the grievances of the parties and provides a reasonable solution thereof. In fact, that order would have been enough to dispose of the petition itself fully and finally, but it appears that the petition continued to remain pending as the petitioner was pressing for the quashing of the demand raised by the respondent in its entirety while respondent was pressing for the dismissal of the petition itself in its entirety. During the pendency of this petition, adjournments were allowed to the respondent with a view to finding out a reasonable amicable settlement of the dispute, but none could be found out.

(13) The learned counsel for the respondent maintained that this petition was liable to be dismissed as the petitioner was seeking intervention of the writ court for settlement of contractual disputes and was also challenging the costing pattern of the respondent-DDA. We do not agree. Firstly, we are not examining, much less entering into, the costing pattern of the respondent-DDA. Secondly, so far as this Court's jurisdiction to interfere in contractual matters is concerned, it would suffice to notice a recent decision of the Supreme Court in Lic of India Vs . Consumer Education & Research Centre, : AIR 1995 SC1811 . Having made a review of the law available on the point, their Lordships have held (vide para 28) :-

TO the extent, challenge is made on the ground of violation of Article 14 by alleging that the impugned act is arbitrary, unfair or unreasonable, the fact that the dispute also falls within the domain of contractual obligations would not relieve the State of its obligation to comply with the basic requirements of Article 14. To this extent, the obligation is of a public character invariably in every case irrespective of there being any other right or obligation in addition thereto. An additional

contractual obligation cannot divest the claimant of the guarantee under Article 14 of non-arbitrariness at the hands of the State in any of its actions.'

(14) Respondent is a public authority. It cannot afford to behave arbitrarily. In the present case, the respondent held out attractive promises to the citizens including the petitioner by floating the scheme. The petitioner subscribed to the scheme. Having waited for an unreasonable length of time he was lucky enough to have a flat allotted to him. He promptly paid the amount demanded. Having received a substantial amount nearing 85% of the demand, the respondent once again went into deep slumber. After much efforts at awakening it, the respondent came out by offering possession over a flat to the petitioner, the area of which flat was much less - almost one third - than promised. It is true that while calculating the price of a flat, an allottee cannot insist on paying the price per square meter of his carpet area merely. The allottee must be prepared to share the cost incurred in providing common facilities though such sharing has to be proportionate. We are not satisfied that the respondent has reasonably, rationally and proportionately apportioned the cost of common facilities. We are not satisfied at all why the petitioner should be denied compensation by payment of interest for the period of delay between the date of payment (last date of installment paid being 4.9.86) and the date of delivery of possession over the flat (which would fall beyond 9.2.94). While passing the order dated 9.2.94 the Division Bench was satisfied that the amount paid by the petitioner entitled him to possession over the flat and that was a reasonable view taken of the dispute between the parties. In our opinion, with the passing of the order dated 9.2.94, the respondent-DDA should have withdrawn its demand for the balance and then the petitioner would also have been better advised to not to pursue the petition. Be that as it may, we are positively of the opinion that nothing survives for decision after the passing of the order dated 9.2.94 and that order deserves to be treated as a final disposal of the petition itself.

(15) A Division Bench of Delhi High Court has held in Yogesh Gurdasani v. Dda, 39 (1989) Dlt 29 that having received payment for allotment of a plot of a particular size the respondent-DDA cannot back out and offer a plot of smaller size while delivering possession.

(16) At least four things are clear. Firstly, the Dda has raised an apparently inflated demand. Secondly, the Dda has offered the petitioner a flat on the second floor instead of the first floor and that too of an area which has been found to be 1/3rd of the area stated in the allotment letter. Thirdly, the delay of about 7 and half years in delivery of possession from the date of payment entitles the petitioner to interest @ 12% p.a. as per the scheme. Fourthly, the petitioner is justified in staking a claim for damages too. In our opinion it would be appropriate to bury the controversy by making an equitable order so that the present litigation is brought to an end and future litigation is avoided that is what the Division Bench order dated 9.2.94 has done.

(17) For the foregoing reasons, the petition be treated as disposed of in terms of the order dated 9.2.94 passed by this Court. Neither the respondent would raise any further demand against the petitioner nor the petitioner shall press his claim for interest and or damages for the period of delay nor seek refund out of the amount paid by him. No order as to the costs.