

Shri Surinder Kumar Sood Vs. Delhi Development Authority and ors.

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Court : Delhi

Decided On : Sep-09-2002

Reported in : 101(2002)DLT110

Judge : Sanjay Kishan Kaul, J.

Appeal No. : CW No. 4289/1998

Appellant : Shri Surinder Kumar Sood

Respondent : Delhi Development Authority and ors.

Advocate for Def. : Alpana Poddar, Adv.

Advocate for Pet/Ap. : Amit P. Deshpande, Adv

Judgement :

Sanjay Kishan Kaul, J.

1. Rule.
2. With the consent of learned counsel for the parties, the matter is taken up for disposal.
3. The petitioner got himself registered under the New Pattern Scheme, 1979 (NPS) and on 26.3.1993 he was allotted a MIG flat at Narela. The petitioner was aggrieved by the fact that the charges asked for the flat were higher and also the

flat was not of the MIG category for which the petitioner was registered.

4. There were number of petitioners having similar grievances arising from allotment of such flats. These flats were under the incremental category where by the allottees had the right to construct further. These writ petitions were disposed of vide order dated 25.4.1995 in CW No. 4989/1993. The order is in the following terms:

'CW 4989 & C.M.No. 8775/1993

The challenge in this writ petition is to the allotment of flats to the petitioner at the impugned rates. Learned counsel for the petitioners also submitted that flats allotted to the petitioners are of incremental category. Regarding flats of incremental category, the stand of D.D.A. is that it is for the allottees to accept the allotment or wait for their due turn for allotment of flat of regular category. In this view, we direct that in case the flats allotted to the petitioners are of incremental category as stated by their counsel, it will be open to the petitioners to exercise option within a period of four weeks to accept or not to accept the allotment of such flats. Such of the petitioners who exercise option not to accept the allotment of flats of incremental category would be allotted by D.D.A. regular flats of their entitlement in accordance with the scheme on their due respective turn. The aspect of rates of the flats is covered by the Full Bench decision of this court dated 3rd February, 1995 in Civil Writ Petition No. 1121 of 1991. In case some of the petitioners are not interested in the flats at the rates which are being demanded by the D.D.A., they may return the relevant documents and complete all other formalities for the refund of their amounts. Within four weeks of return of documents and completion of formalities, the amounts deposited by such allottees/petitioners would be refunded by D.D.A. In case the amounts are not refunded within four weeks, it would carry interest of 18 per cent after expiry of four weeks.

With these directions, the petition is disposed of.' (emphasis supplied).

5. It is also stated in the petition that the petitioner was not interested in incremental category of a flat and vide letter dated 15.5.1995 sought refund of the

amount deposited by the petitioner but the refund was not made.

6. A draw was held on 24.8.1996 in which name of the petitioner was included and the petitioner was allotted flat No. 404, Section 19, Pocket 3, Dwarka, New Delhi. The petitioner conveyed his acceptance for the same and also deposited amounts since 1996 but the possession of the flat was not handed over and thus the petitioner approached this Court for redressal of his grievances.

7. In counter affidavit it is admitted that the petitioner had applied for refund on 15.5.1995 but when the issue of flat allotted to the petitioner in 1996 was raised by the petitioner, it was found that the dealing assistant had erroneously not processed the case of the petitioner as a consequence where the petitioner had been included in the draw of lots held in 1996. A cheque dated 22.4.1999 for Rs. 4,33,577.72 was sent as a refund to the petitioner but the same was returned back in view of the pendency of the present writ petition.

8. Learned counsel for the petitioner contends that since the application submitted by the petitioner dated 15.5.1995 was never accepted by the respondents, the request for withdrawal by the petitioner cannot be treated to be valid and in view of the allotment being made in favor of the petitioner, the petitioner is entitled to flat.

9. I am unable to accept the submission of the learned counsel for the petitioner. Admittedly the petitioner exercised the option vide letter dated 15.5.1995 in pursuance to the orders passed on 25.4.1995 in CW No. 4989/1993. The order makes it clear that there was no question of any acceptance by the DDA. It was the unilateral option to be exercised by the allottees. On the allottees exercising the option, the refund had to be made within a period of four weeks failing which the consequence was that interest @ 18% was liable to be paid after the expiry of the said period. It is also not disputed that the petitioner never sought to withdraw his request dated 15.5.1995 at least till the stage when the allotment was made in 1996 though a letter has been placed on record dated 9.9.1996 after the allotment seeking to withdraw the earlier letter. In view of this position, I am of the considered view that the petitioner has no right to allotment of the flat in question but certainly has a right of refund of the amount along with interest @ 18% p.a.

10. The matter did not rest at this since the petitioner deposited further amounts by depositing Installments in pursuance to the allotment letter dated 24.8.1996. Another factor which has taken into consideration is that in terms of the counter affidavit filed by respondent the flat which was allotted to the petitioner in 1996 already stood allotted to one Shri Mool Chand Jain in the draw held on 29.3.1996.

11. In view of the aforesaid, I consider it appropriate to direct the respondents to refund the amount deposited by the petitioner prior to the order dated 25.4.1995 in terms of the said order along with interest @ 18% p.a. after the expiry of four weeks from the date when the petitioner claimed refund i.e. 15.5.1995.

12. In view of the fact that the petitioner deposited further amounts in pursuance to the allotment letter dated 24.8.1996 for which the petitioner cannot be faulted, the petitioner shall be entitled to refund of all the amounts deposited in pursuance to the said letter within a period of four weeks from today. The petitioner shall further be entitled to interest @ 18% p.a. from the date of deposit of the Installments till date of repayment as aforesaid in respect of the Installments deposited prior to the refund made on 22.4.1999.

13. The aforesaid amounts be refunded to the petitioner within a period of four weeks as stated above.

14. However, in view of the fact that it is stated by learned counsel for the petitioner that the flat in question is still available since it was not taken by Mool Chand Jain as also by reason of the fact that certain Installments had been paid by the petitioner, it will be open to the respondents to allot the same flat or any other similar flat at the same price in the same locality as an alternative to refund the amount as aforesaid.

15. Writ petition is disposed of in the aforesaid terms leaving the parties to bear their own costs.

C.M.Nos. 8038/1998, 2859/1999

16. No further orders are called for in these applications in view of the disposal of the writ petition. Applications stand disposed of.

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