

In the Matter of Jitender Yadav Vs. Dda

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Court : Delhi

Decided On : Mar-01-2012

Judge : The Honourable Ms. Justice Hima Kohli

Appeal No. : W.P.(C) 8434 OF 2010

Appellant : In the Matter of Jitender Yadav

Respondent : Dda

Judgement :

HIMA KOHLI, J.

(ORAL)

1. The present petition is filed by the petitioner praying inter alia for directions to the respondent/DDA to refund the entire registration amount after deducting surcharge as per clause 12 of the Brochure pertaining to the „DDA Housing Scheme, 2008?, alongwith interest payable @ 15% from the date when the petitioner had become entitled for the refund.

2. Learned counsel for the petitioner states that in the year 2008, the respondent/DDA had floated the „DDA Housing Scheme, 2008?. As per the Brochure, if a successful applicant wanted to surrender or seek cancellation of the allotted flat, he was required to pay cancellation charges in terms of Clause 12, which is reproduced hereinbelow:-

“12. SURRENDER/CANCELLATION The successful applicants shall have the option to surrender the flats before the issue of the possession letter. Flat will be automatically cancelled in case payments are not made within the prescribed period. Now show cause notice shall be issued for the purpose. In both the cases , amount deposited is refundable without any interest. However, cancellation charges as prescribed below shall be recovered:

S. No.	Surrender/Cancellation within following days From the date of demand letter		Rupees
1	Before issue of demand letter		nil
2	1 st day	Upto 29th day	1000/-
3	30 th day	59th day	5000/-
4	60 th day	89th day	20000/-
5	90 th day	119th day	40000/-
6	120 th day	149th day	60000/-
7	150 th day	179th day	80000/-
8	180 th day onwards i.e. date of automatic cancellation		100000/-”

3. In the present case, the petitioner had applied for allotment of a flat under the aforesaid Scheme by submitting his application form on 10.09.2008 alongwith a cheque of Rs.1,50,000/-. The draw of lots was held on 16.12.2008, wherein the petitioner was declared a successful allottee in respect of Flat No.955, Block-D, Type-B, Pocket-3, Bindapur (Dwarka), New Delhi. On 20.11.2009, a demand-cum-allotment letter was issued to the petitioner, wherein he was informed that the cost of the flat allotted to him was Rs.28,39,210.86 paise. After the petitioner visited the locality where the flat had been allotted to him, he did not find it habitable. As a result, on 16.02.2010, he applied to the respondent/DDA informing that he wanted to surrender the flat in question and requested it to refund the registration amount of Rs.1.5 lacs deposited by him alongwith his original documents.

4. It is the case of the petitioner that thereafter, he made a number of representations to the respondent/DDA and personally visited the office of the respondent/DDA for refund of the amount, but in July, 2010, the respondent/DDA

refunded only a sum of Rs.50,000/- to the petitioner, while deducting the balance sum of Rs.1 lac. The aforesaid cheque of Rs.50,000/- was, however, not encashed and was returned by the petitioner on the ground that the said amount was far short of the amount liable to be refunded to him by the respondent/DDA in terms of the conditions stipulated in Clause 12 of the Brochure. Thereafter, the petitioner repeatedly wrote to the respondent/DDA and waited patiently for a long time, but to no avail. Aggrieved by the aforesaid inaction on the part of the respondent/DDA, the petitioner approached this Court by filing the present petition on 16.12.2010.

5. Learned counsel for the respondent/DDA states that on 24.12.2010, a sum of Rs.1,30,000/- was ultimately refunded by the DDA to the petitioner after making necessary deductions in accordance with the terms and conditions laid down in the Brochure and that no further amount is payable to him. He further states that in terms of Clause 12 of the Brochure, the petitioner is not entitled to claim any interest on the amount refunded by the DDA.

6. The limited issue that arises for consideration here is as to whether the petitioner is entitled to receive any interest on the amount refunded to him upon his surrendering the flat. Admittedly, initially in July, 2010, the respondent/DDA had refunded a sum of Rs.50,000/- to the petitioner. The aforesaid figure was arrived at by DDA by miscalculating the date on which the petitioner had sought refund. Consequently, the refund amount was calculated by DDA on the assumption that the petitioner had sought cancellation of the flat after a period of 180 days from the date of issuance of the demand letter whereas, admittedly in the present case, he had sent a request for cancellation to the respondent/DDA within a period of 90 days from the date of issuance of the demand letter. As a result, the amount forwarded by the respondent/DDA in July, 2010 as refund amount was far short of the actual amount, to which the petitioner was entitled under Clause 12 of the Brochure, i.e. Rs.1,30,000/-.

7. In view of the aforesaid miscalculation on its part, only a sum of Rs.50,000/- was sought to be refunded by the respondent/DDA to the petitioner, vide letter dated 15.07.2010. The petitioner however refused to accept the said amount and

returned the cheque to the respondent/DDA with a request to re-examine his case. After re-examining his case, the respondent/DDA rectified its mistake and prepared a cheque dated 03.12.2010 for a sum of Rs.1,30,000/- in favour of the petitioner towards the refund amount and dispatched the same to him under cover of letter dated 24.12.2010, i.e. about a week after the petitioner had filed the present petition.

8. The petitioner could have very well encashed the amount of Rs.50,000/- forwarded to him by the respondent/DDA, in July, 2010 without prejudice to his rights and contentions to claim additional amounts in terms of the conditions stipulated in the Brochure alongwith interest for late payment. Instead, he returned the said cheque to the respondent/DDA by declining to accept the said amount on the ground that it was short of the actual refund amount. To the aforesaid extent, the claim of the petitioner for payment of interest on Rs.50,000/- is turned down.

9. Had the respondent/DDA correctly calculated the amount payable to the petitioner for refund, in the first instance, then the petitioner would have been entitled to a sum of Rs.1,30,000/- as on 15.07.2010. If the sum of Rs. 50,000/-, subject matter of the earlier cheque dispatched by the respondent/DDA to the petitioner in July, 2010, is deducted from the total refundable amount of Rs.1,30,000/-, the balance amount comes to Rs.80,000/-. It is not in dispute that the aforesaid amount of Rs.80,000/- ought to have been refunded by the respondent/DDA to the petitioner within a reasonable time from the date on which the petitioner had applied to the respondent/DDA for refund, i.e. on 16.02.2010. Even when the petitioner returned the cheque for Rs.50,000/-, to respondent/DDA, it had already taken five months to process the application of the petitioner for refund. Admittedly, DDA took yet another five months to refund the entire sum of Rs.1,30,000/- to the petitioner, as per the conditions stipulated in the Brochure.

10. In these circumstances, it is deemed appropriate to dispose of the present petition with directions to the respondent/DDA to pay to the petitioner simple interest on the balance refundable amount of Rs.80,000/- @ 12% per annum. The date from which the interest amount is to be calculated by the respondent/DDA shall be w.e.f. 15.07.2010, the date on which the earlier cheque of Rs.50,000/- had

been prepared and dispatched by the respondent/DDA, to the petitioner, till the date of dispatch of the second cheque, i.e. till 24.12.2010. After calculating the amount of interest payable, a cheque for the said amount shall be prepared in favour of the petitioner and dispatched alongwith a letter indicating the basis of calculation, within a period of four weeks from today. In case, the cheque for the interest amount is not forwarded by the respondent/DDA to the petitioner within a period of four weeks, the interest payable beyond the period of four weeks shall be calculated @ 15% per annum till the entire amount is paid to the petitioner.

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