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Charanjit Vs. D.D.A.

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Court : Delhi

Decided On : Apr-08-2013

Judge : Reva Khetrapal

Appellant : Charanjit

Respondent : D.D.A.

Advocate for Def. : Ms. Shobhana Takiar

Advocate for Pet/Ap. : Mr. R.K. Saini, Mr. Sitab Ali Chaudhary

Judgement :
* IN THE HIGH COURT OF DELHI AT NEW DELHI + W.P.(C) 3352/2010 CHARANJIT ..... Petitioner Through: Mr. R.K. Saini and Mr. Sitab Ali Chaudhary, Advocates versus D.D.A. % ..... Respondent Through: Ms. Shobhana Takiar, Advocate Date of Decision : April 09, 2013 CORAM: HON'BLE MS. JUSTICE REVA KHETRAPAL JUDGMENT : REVA KHETRAPAL, J.

1. The Petitioner in this writ petition is aggrieved by the allotment of a flat, being Flat No.158, Third Floor, Peera Garhi, New Delhi in a dilapidated condition. The Petitioner is also aggrieved by the fact that the DDA has charged the Petitioner for the said flat for a plinth area of 100.80 sq. mtrs. whereas the actual plinth area of the demised flat is 78 sq. mtrs.

2. The facts briefly delineated are that the Petitioner had applied under general category for allotment of MIG flat under the DDA Housing Scheme, 2008 by

depositing the required amount of ` 1,50,000/- as registration deposit. She was issued an Allotment-cum- Demand Letter dated 23.11.2009 allotting her Flat No.158, Third Floor, Peera Garhi at a total cost of ` 28,27,828/-. The said amount, after adjustment of registration money of ` 1,50,000/-, i.e., ` 26,77,828/- was payable by 21.2.2010 and with interest it could be paid latest by 22.5.2010, whereafter there was to be an automatic cancellation. On enquiries made, the Petitioner came to know that the approximate plinth area of the demised flat was only about 78 sq. mtrs. and that the same flats were offered to the general public by the DDA under Self Financing Scheme VIII (25.5.1995 4.7.1995). The Petitioner accordingly made a representation to the DDA on 3.12.2009 complaining about the same. It was further pointed out by the Petitioner that in RTI reply dated 9.2.2009 given to one Shri Ashok Kumar, DDA had admitted that the plinth area of MIG flats in Peera Garhi Residential Scheme were approximately 78 sq. mtrs. It was, therefore, requested that the matter be looked into and a correct demand letter by revising the cost of the demised flat on the basis of the correct plinth area (78 sq. mtrs.) be issued to the Petitioner.

3. In response to the aforesaid representation of the Petitioner, the DDA by a cryptic reply dated 8.2.2010 informed the Petitioner that the plinth area of the demised flat is 98.49 sq. mtrs., as per costing file, as supplied by Engineering Wing. This according to the Petitioner is also not correct as a similar flat under the same Scheme and the same area was allotted to one Smt. Treesha Antony at the cost of ` 22,43,955/- vide demand letter dated 23.11.2009, i.e., at a difference of ` 5,83,873/-.

4. The Petitioner submits that in the aforesaid circumstances, sometime in the month of March, 2009, she decided to visit the demised flat herself and check the area. However, when she visited the block in which the demised flat is situated, she discovered to her shock that the whole block was in a ruined and dangerous condition, which was evident from the fact that steel pillars had been erected by the DDA to support the columns/beams. The exterior walls, staircase, floors, ceiling in the corridors were all falling apart. This was mainly on account of the fact that the flats were constructed way back, around 1995, and had turned into ruins. Photographs showing the dangerous condition of the flats and copies of several

complaints made from time to time by the residents already living in these flats have been enclosed with the petition to substantiate the contention that the flats are in an uninhabitable condition and dangerous to live in. The Petitioner has also enclosed a copy of his latest representation made to the Respondent/DDA dated 10.05.2010 with its acknowledgment receipt, stating therein that since the flats at Peeragarhi were beyond repair and since the last date for payment as per the demand letter of the flat in Peera Garhi was 22.5.2010, the Petitioner may be allotted some other MIG flat in the West Zone (Madipur and Paschim Puri) which were still vacant and available with the DDA for allotment. The DDA having failed to respond to the aforesaid representation of the Petitioner, the Petitioner preferred the present writ petition praying for the same relief.

5. By an order dated 17.5.2010, this Court granted stay of the cancellation of the demised flat to the Petitioner subject to the Petitioner making the payment within the time allotted. DDA was also directed to repair the flat in question and make it habitable within two months from the date of the passing of the order. It was further directed that status report would be filed by the DDA with photographs to show that necessary repairs had been carried out.

6. From the flow of subsequent events, it appears that the aforesaid order was not complied with either by the DDA or by the Petitioner. The DDA evidently carried out no repairs in the aforesaid flats nor filed any status report as directed by this Court. The Petitioner on his part did not deposit the demanded amount, leading to the vacation of the interim orders on August 16, 2011. It may be noted, however, that in the Counter-Affidavit filed by the DDA much thereafter, the DDA maintained flat is in satisfactory condition as per the report submitted by the engineers present at the site. No such report was enclosed with the Counter-Affidavit. It may also be interesting to note that the very next sentence containing the words recent photographs are annexed as Annexure-I Colly. hereto has been carefully deleted.

7. In the course of hearing, Ms. Shobhana Takiar, learned counsel for the Respondent/DDA though sought to urge that the flats were in a habitable condition failed to substantiate her contention or to dispute the fact that the photographs placed on the record and the complaints of the residents clearly showed that the

flats were in a dilapidated condition. Even otherwise, the fact that this Court directed the DDA to repair the flats and to file a status report in respect thereof, and the DDA failed to do so, shows that the DDA has no intention of carrying out the repairs in the flats. It is also not disputed by the DDA that the flats were constructed in the year 1995 at the time when the DDA offered the Self Financing Scheme VIII and evidently the construction material being of a poor quality the flats are literally falling apart. This being so, the Petitioner cannot be blamed for not depositing the demanded amount for the demised flat.

8. The only other contention raised on behalf of the Respondent/DDA was that the Scheme had since been closed and that flats cannot be given at the old cost. Upon this, Mr. Saini fairly conceded that the Petitioner if allotted a flat in the West Zone in lieu of the demised flat, she would be willing to pay the current cost of the flat. Mr. Saini also did not press the grievance of the Petitioner with regard to the plinth area of the flat. He pointed out that Flat No.144 (Third Floor), Category II, Madipur was as on date vacant and prayed that the same may be allotted to the Petitioner in lieu of the flat earlier allotted to her. In this context, he relied upon the judgments of this Court rendered in W.P.(C) No.5757/2002 titled Sohan Lal vs. DDA and W.P.(C) 13013/2004 titled Onkar Giri vs. Delhi Development Authority.

9. The facts in Sohan Lals case (supra) were identical to the facts in the present case. The Petitioner was aggrieved by the allotment of flat to him in a dilapidated condition. The flat allotted was situated at Sarai Khalil and as in the present case had been constructed about 20 years prior to the date of allotment. The Petitioner approached this Court by filing W.P.(C) No.5757/2002, which petition was disposed of vide order dated 06.01.2003. DDA was directed to repair the flat allotted to the Petitioner and after completing the repairs notify the Petitioner that the flat had been made fit for occupation. Within three weeks of being put to notice, the Petitioner was to exercise an option whether to retain the flat at Sarai Khalil or opt for another flat. DDA did not complete the repair work within the stipulated time leading to the filing of a second writ petition, being W.P.(C) No.13013/2004, wherein it was alleged that DDA was in the process of allotting various flats and if allotment was effected, Petitioner would be adversely affected. It was stated that the Petitioner was not interested in the flat at Sarai Khalil and the

Petitioner be allotted another flat and at the cost at which the earlier flat was allotted to the Petitioner at Sarai Khalil. A learned Single Judge of this Court (Honble Mr. Justice Pradeep Nandrajog) held as under:7. Petitioner has to get a flat from DDA. DDA has not indicated to the petitioner within reasonable time the repair effected, if at all, to the flat at Sarai Khalil. In terms of the order passed in the earlier writ petition filed by the petitioner, petitioner has a right to opt for another flat.

8. Petition stands disposed of with a direction to DDA to include the name of the petitioner at a draw of lots to be held within 2 months from today and include name of the petitioner for allotment of a MIG Flat. Needless to state the flats entered at the said draw of lots would not include the flats at Sarai Khalil.

9. Learned counsel for the petitioner states that DDA has some un-allotted flats at Jahangir Puri which were constructed long time back and are in the same condition as were the flats in Sarai Khalil.

10. Accordingly it is directed that even the flats at Jahangir Puri, would not be included at the draw of lots at which name of the petitioner is put. Needless to state on payment of the demand as per Demand-cumAllotment letter and on completion of formalities, possession of the flat allotted would be handed over within 30 days thereafter. Further, on the petitioner paying the requisite stamp duty on the conveyance deed and resubmitting the conveyance deed for registration to DDA, registration would be effected by DDA within 60 days of the petitioner submitting the conveyance deed evidencing payment of stamp duty.

11. No costs.

10. Having carefully considered the matter from all angles including the fact that the DDA has failed to comply with the orders of this Court for repair of the dilapidated flats one of which has been allotted to the Petitioner and to file status report as directed, I am inclined to hold that the Petitioner has a right to opt for another flat. Reliance is placed in this regard upon the judgments of this Court rendered in Sohan Lal and Onkar Giri (supra).

11. Before parting with the case, however, it may be noted that the reliance placed by the learned counsel for the DDA upon the judgment of this Court in K. Bhattacharjee vs. Delhi Development Authority reported in 1996 (38) DRJ (DB) 343 is not apposite. In the said case, the question which arose for consideration before the Court was: 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. In answering the aforesaid question, the court drew a distinction, fine but definitive in nature, between flats which were not habitable on account of structural or constructional defects which would render them unsafe, such as the flat in the present case, and those in which external facilities and amenities are not available such as roads, sanitation, electricity and water supply, sewerage, etc. The Court then proceeded to hold that in a case falling in the latter slot, two options would be open to the allottee. He may put an end to the contract and seek a refund of the amount paid by him, also hold DDA liable for breach of contract, or he may take delivery of possession and then compel performance by the DDA of its unfulfilled obligations. The present case is clearly distinguishable as it pertains to allotment of a flat which is not habitable on account of structural or constructional defects, i.e., internal defects. It is the settled position in law that an allottee cannot be compelled to accept allotment of a flat which is structurally unsafe and not fit for human residence. While taking possession of the flat, the allottee has a right to insist upon the flat not being dangerous and unsafe. The Petitioner therefore, cannot be faulted for his insistence upon allotment of a flat which is structurally safe and habitable.

12. The petition is accordingly disposed of with the direction to DDA to allot to the Petitioner Flat No.144 (Third Floor), Category II, Madipur, which is stated to be a MIG flat and is vacant till date, at the current cost as prevalent in the year 2010, as agreed by the Petitioner. A fresh Demand-cum- Allotment letter shall be issued to the Petitioner in respect of the said flat within four weeks from today and on completion of formalities and on the Petitioner making the payment, possession of the flat allotted would be handed over within 30 days thereafter.

13. W.P.(C) 3352/2010 stands disposed of in the above terms. No order as to costs. REVA KHETRAPAL (JUDGE) April 09, 2013 km

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