SUPREME COURT OF INDIA

Delhi Development Authority, N.D.

Vs.

Joint Action Committee,Allottee of SFS Flats

(S.B. Sinha and Harjit Singh Bedi JJ.)

13.12.2007

JUDGMENT:

S.B. SINHA, J :

1. Leave granted in all the Special Leave Petitions. CIVIL APPEAL NOS. 6666, 6667, 6668-6698, 6799-6732 & 6733 of 2000 CIVIL APPEALS @ SLP (CIVIL) NOS. 25385 OF 2005, 1003, 8033 OF 2006 AND 13512 OF 2006 :

2. This batch of appeals arising out of a judgment and order dated 23.07.1999 passed by a Division Bench of the Delhi High Court, inter alia, in Writ Petitions No. 793 of 1993 as also a judgment and order dated 22.07.2005 passed by a Full Bench of the Delhi High Court in Letters Patent Appeal Nos. 844 of 2003 etc. were heard together and are being disposed of by this common judgment.

FACTS :

3. Delhi Development Authority (for short, the Authority) has been constituted under the Delhi Development Act, 1957 (for short, the Act). Indisputably, it develops different areas in the town of Delhi and constructs houses for all groups of people.

4. Principally it allocates flats under six different schemes viz : (i) Self Financing Scheme (SFS); (ii) Higher Income Group Scheme (HIG Scheme); (iii) Middle Income Group Scheme (MIG Scheme); (iv) Lower Income Group Scheme (LIG Scheme), (v) Janata Scheme; and (vi) Expandable Housing Scheme.

5. The flats constructed and allocated under the SFS Scheme are distinct and different from the other five schemes launched by the Authority. We shall advert to the said distinction a little later.

6. Suffice, however, it to say that not only costs of such schemes are calculated on different basis but the rights and stipulated liabilities thereunder are also different. Cost of flats vary from scheme to scheme. Under one of the schemes, applications were invited by the Authority from 22.12.1992 to 11.01.1993.

7. We may notice some of the provisions containing the terms and conditions on the basis whereof such an offer was made. 5.10 the details of the flats and tentative cost etc. are available in Annexure-B. The cost of the flats mentioned therein is tentative and subject to revision on account of escalation in the value of land and cost of construction. Please note that there is a possibility of

upward revision of the tentative cost.

5.11 Those who are successful for a ready built flat will be called upon to make the payment in lump sum within 60 days. Others who are successful for a flat where the work is already in progress will be asked to deposit within 30 days a specified percentage anything upto 90% of the estimated disposal price representing the expenditure already made and the amount required for construction of flats in next 3 to 4 months. Applicants successful for new allocations are asked to pay 25% the estimated cost of the flat by way of 1st instalment payable within 30 days. In each of the case 60 days time is further given to remit the amount with prescribed interest.

11.2 The demand-cum-allocation letters issued will indicate the prescribed dates by which the payments will be required to be made. The demand letter for final instalment for the flats in progress and new allocations will be issued separately and this may also include the possible increase in the cost of the flat. No separate letters will be issued for any of the subsequent instalments. It will be obligatory on the part of the allocatees to make the payments and deposit the requisite documents before the due dates indicated. In the event of default the allocation/allotment of the flat in the scheme will be liable to be cancelled. If submission of documents as demanded are delayed, maintenance charges will be leviable provided the delay in submission of documents is regularized.

12.2 If the allotment of flat is cancelled (either on the allottees own request or due to the non-fulfilment of the terms and conditions of allocation by the allottee) after the expiry of 1, 2, 3 and 4 months from the date of issue of demand-cum- allocation letter, interest calculated @ 12% p.a. for the 1st month and 18% p.a. for the 2nd, 3rd and 4th month on the amount demanded in the demand letter shall be charged in addition to the amount of penalty specified above.

14.1 The allottee shall be entitled to take delivery of the possession only after he has completed all the formalities, paid all dues and furnished/executed all the documents as required in the allotment-cum-demand letter of the Delhi Development Authority.

8. Appellants in the first batch of cases and the respondents in the second batch (hereinafter referred to as the registrants) applied for allocation of flats under the SFS Scheme. The said scheme was floated in terms of Item No.112 of 1992. For the said purpose, brochures are issued. Those who desired to have allocation of such flats were asked to opt therefor at three different places. Allocation of flats under the said Scheme is made upon 90% payment of the estimated costs. However, allotment is made on draw of specific number of flats. Allocation of flats may be made in respect of areas, floors and/or the pockets. On receipt of the letter of demand-cum- allocation by the registrant, the schedule of payment commences. Estimated cost for construction is calculated on the basis of the value of the land and likely cost of constructions.

9. The letter of demand-cum-allocation issued to successful registrants contains a condition which may be noticed for the purpose of these cases and read as under :

4. The amount demanded should be paid on or before the due date mentioned in para 2 and 3 above. Extension of time for making payment of the amount demanded in column 7 of para 3 above upto a maximum period of 90 days from the due date is admissible. An allottee need not apply for extension but he will have to pay interest @ 12% p.a. for the first month and @ 18% p.a. for the subsequent period. In case payment of the amount asked for in the demand letter is not made within

90 days of the due date, the allotment shall stand cancelled automatically. However, cancellation due to non-payment of first 4 instalments during the stipulated period can be got restored on payment of dues with interest along with cancellation and restoration charges for each cancellation due to non-payment, subject to availability of the allocated flat. The cancellation due to non-payment of final instalment within 120 days of the date of issue (letter of the block date) of the demand letter for 5th instalment shall not be restored under any circumstances.

10. It may be useful to notice some other clauses containing terms and conditions of allocation, which are as under : 1. No separate demand letters will be issued for 2nd, 3rd and 4th instalments. It will be obligatory on your part to make the payment before the due date indicated at page-1; failing which the allocation is liable to be cancelled.

2. The estimated cost of the flats as given in this letter is provisional and subject to revision on the completion of the flat. Any price difference between the estimated cost and the cost as it comes out on completion as per costing formula then in vogue would have to be paid along with the 5th and final instalment. There would be no review of the cost of the flat in the intermining period. Interest @ 7% on the amount deposited will be payable for the period beyond 3= years to the date of issue of possession letter if the construction of the houses is not completed by then.

3. The amount demanded should be paid on or before the stipulated due date failing which the allotment shall be liable to be cancelled without notice. In case, due to unavoidable reasons, the allottee is not able to make the payment within the due time, then he must ensure that his acceptance of the allotment reaches the Housing Department before the due date of payment with a request for extension.

11. Registrants are said to have defaulted resulting in purported automatic cancellation of their allotments. Show cause notices were issued to them. Some of them allegedly expressed their difficulties in regard thereto. Decisions impugned

12. The Vice-Chairman of the appellant who is said to be delegated with the power of the Authority to which reference would be made hereinafter took a policy decision which is reflected from Office Order issued on 16.8.1996, the relevant clauses whereof are : 2. With the approval of L.G. a decision was taken that the current price for South Delhi flats will be worked out by adding a surcharge of 20% from the price worked out as per old formula. The approval of L.G. to this decision was granted on 12.07.1996.

3. There are presently cases in the Housing Department where there have been delays in the making of the payments of the flats allocated/allotted in South Delhi under SFS. Before the aforesaid revision took place, delays of one year or so were being regularised with usual charges, i.e., on payment of 18% interest per annum and restoration charges, etc. in few cases where delays are unusually long, current price has also been demanded.

13. The aforementioned Office Order dated 16.8.1996 was reiterated in a resolution dated 27.8.1996 wherein a further decision was taken to impose a surcharge of 20% over and above disposal price only in respect of registrants who had been allotted flats in South Delhi. The said decision was taken to balance the reduced cash flow of the Authority. It reads as under :

1. On the basis of the aforesaid resolutions of the Authority, 50% flats are proposed to be offered to

the public. It is also being proposed to offer to public the unavailed flats if any out of the 50% flats being reserved for Govt. organisations/PSUs. In this manner, number of flats to be offered to the public can be beyond 50%. XXX XXX XXX

4. To balance the reduced cash in-flow because of the proposed discount it will be necessary to charge premium in the areas where the real value in the market of DDA flats is much more than what DDA is charging as per its costing formula in the demand letters. It would be in the fitness of thing to charge premium of 20% over the disposal cost worked out for the flats in South Delhi

SFS.

14. Yet again, on 5.11.1998, a purported clarification was issued in regard to regularization of flats where there had been delay in payment of first four instalments, stating :

While issuing allocation/allotment letters to the registrants of various schemes announced by DDA, a demand is raised from the concerned allottees specifying the amounts to be paid with due date of payment. However, sometimes on account of the problem faced by the concerned allottees the payment received by the DDA are later than the scheduled date. Such cases are usually examined on merits and the delay is regularised if there is merit in the case as non- regularisation of delays in deserving cases may be resulted by the allottees. The following shall be the rules applicable to the allottees of all category of flats in case there payments are delayed and are regularised by the competent authority.

A. Competent Authority to regularise the delay: Period of delay Designation

i) Upto 30 days Jt./Dy. Directors

ii) Beyond 30 days but upto 90 days Director (Housing)

iii) Beyond 90 days but Commissioner upto 1 year (Housing)

iv) Beyond 1 year but upto Principal 1 year 6 months Commissioner

v) More than 1 year 6 months Vice-Chairman B. Price of the Flat :

i) If the allocated/allotted flat is in South Delhi where the construction has been undertaken by the South East Zone and South West Zone of the Engineering Wing Except Dwarka (being in West Delhi) the Price of the flat if restored, would be Old Cost interest or current cost whichever is higher.

ii) In case where allottees of the localities mentioned (i) above default a small percentage of demand amount upto 10% beyond the due date,

this delay, if regularised would be on Old Cost- interest.

iii) In other cases of all category flats i.e. where the construction of flats has been undertaken by other zones of Engineering Wing the restoration shall be at Old Cost-interest.

2. A decision exists that while working out the current cost for flats in South Delhi, a surcharge of 20% from the price worked out as per old formula, will be added. This surcharge will continue to be added for South Delhi flats. The interest rates in the above case shall be @ 18% per annum on the default amount.

C. RESTORATION CHARGES :

In addition to the above, the allottees/allocatees whose allotment is restored by the competent authority, shall be liable to pay Restoration Charges @ 2.5% of the registration money of the respective scheme.

15. Another office order dated 31.3.1999 was issued in regard to imposition of 20% surcharge over and above disposal price only in respect of registrants in South Delhi, relevant portion whereof reads as under : 2. Price of the flat

i) In cases (pertaining to any locality) where demanded amounts were received prior to 22.08.1996 by DDA, the restoration of allotment/regularisation of delay, if considered would be on old cost interest. ii) In case where allottees default a small percentage of total demanded amount upto 10% beyond the due date, the delay if regularised, would be on old cost + interest.

iii) If the allocated/allotted flat is in South Delhi i.e. where the construction has been undertaken by the South East Zone and South West Zone of the Engineering Wing except Dwarka (being in West Delhi), the price of the flat, if restored, would be old cost + interest or current cost, whichever is higher. This clause will be applicable in cases for which demanded amount by DDA is received after 22.08.1996 and the delay is regularised.

iv) In other cases of all category flats i.e. where the construction of flats has been undertaken by other zones of Engineering Wing, the restoration shall be at old cost + interest.
3. Sur Charge

The premium of 20% over the disposal cost

worked out on current cost or old cost for the SFS flats in South Delhi, where the real value in the market of DDA flats is much more than DDA is charging as per its costing formula, shall be charged.

16. The said orders were issued in purported supersession of the previous orders on the subject and were to come into force with immediate effect. Some of the registrants made payments pursuant thereto or in furtherance thereof. Some had made payments although, according to them, aforementioned resolution will have no application to their case.

17. The said resolution was given a retrospective effect and retroactive operation.

Proceedings :

18. Several writ petitions were filed at that stage questioning the legality and/or validity of the said purported resolutions.

19. A learned Single Judge of the Delhi High Court allowed the said writ petitions in part quashing the policy of charging current cost and upholding the policy of charging 20% surcharge. Letters Patent Appeals were preferred thereagainst. A Division Bench of the High Court, having regard to conflict in decisions operating in the field referred the matter to a larger Bench.

20. The Full Bench of the said Court by reason of the impugned judgment modified the judgment and order of the learned Single Judge in respect of current cost holding that the Authority had the requisite jurisdiction also in respect thereof. The validity of levy of 20% surcharge was also upheld.

Contention before the Full Bench :

21. Before the Full Bench, the registrants, inter alia, raised a contention that levy of an additional amount over and above the disposal price on the allocatees or flats in South Delhi was wholly unjustified. It was also urged that adoption of current cost formula being contrary to the regulations was also not sustainable in law inasmuch as rights of the writ petitioners crystallized on issuance of the allocation letter and not when the actual allotment of flat took place. Levy of surcharge amounts to a levy of tax or cess, wherefor there is no authority in law.

22. Relying on or on the basis of a decision of this Court in Premji Bhai Parmar and Others v. Delhi Development Authority [AIR 1980 SC 738] as also on Delhi Development Authority v. Pushpendra Kumar Jain [AIR 1995 SC 1], the respondents, on the other hand, contended that the right of registrants gets crystallized only upon final allotment and not at the stage of issuance of allocation letter. Relying furthermore upon a Full Bench decision of the High Court in Smt. Sheelawant v. Delhi Development Authority [1995 (1) AD (Delhi) 725], its jurisdiction to delve into the price fixation policy was also questioned.

Issues raised before the Full Bench :

23. Two principal issues which were raised before the High Court are : (i) Whether the action of the Development

Authority in levying 20% surcharge from the registrants of the South Delhi is justified ? (ii) Whether demand for payment of current cost as calculated by the Delhi Development Authority from the defaulter registrants could be said to be justified?

Findings of the Full Bench :
24.

(i) Levy of 20% surcharge is within the competence of the Authority in view of the definition of the disposal price as contained in Regulation 2(13) of the Delhi Development Authority (Management and Disposal of Housing Estates) Regulations, 1968 (for short, the Regulations), in respect whereof a decision was taken by the Vice- Chairman on 22.08.1996.

(ii) The said Regulations governing the field exclusively permits the Authority to decide and fix the price which would include surcharge being in the realm of contract, the relationship between the parties was clearly contractual; surcharge being a component of the price of the flat.

(iii) It is also to be noted that most of the Appellants were defaulter who had defaulted in making

payments of the first four instalments on time and therefore there was delay in making payments in their cases. Since there was an automatic cancellation clause in the agreement the original contracts stood cancelled.

(iv) Regulation 2(13) of the DDA Regulations defined disposal price or hire purchase price in relation to a property to mean such price as may be fixed by the authority. Hence the levy of surcharge was within the competence of the authority.

(v) DDA could include surcharge in its pricing formula which would be in the realm of contract as the relationship was purely contractual. (vi) The meaning of the word cost and price has been settled by the Full Bench of the Delhi High Court in Sheelawant v. DDA which was upheld by the Supreme Court and reaffirmed in DDA v. Ashok Kumar Behl [(2002) 7 SCC 135].

(vii) The present case was different from the case of P.N. Verma v. Union of India [AIR 1985 (Delhi) 417]

Submissions of the learned counsel on behalf of the registrants :

25. Mr. Rungta, Mr. Maninder Singh and Mr. Shekhar, learned counsel, submitted :

(i) Having regard to the admitted fact that all allocations were made during the period 1991 and 1994 and all of them having paid the instalments except the fourth one, prior to taking of the purported policy decision dated 22.08.1996, the Authority had no jurisdiction either to recalculate the current cost or impose a levy of 20% surcharge.

(ii) As the impugned Levy comprises of three elements, namely, (i) the current cost which is determined; whereover (ii) 20% over the actual cost is taken into consideration, and again (iii) 20% surcharge is required to be paid, the same is unreasonable. (iii) The Full Bench wrongly applied P.N. Verma (supra), R.K. Sacher (supra) and Premji Bhai Parmar (supra), which were decided on wholly different set of facts as the scheme(s) involved therein was for low income group of people in terms whereof payments were to be made on completion of construction; whereas in the case of SFS, instalments of payment is sought for immediately after the allocation. (iv) Restoration of allotment in the case of defaulter having been the subject-matter of contract, the terms and conditions thereof could not have been altered or modified by the Authority unilaterally. (v) In any event, the impugned policy decision can not be given retrospective effect or retrospective operation. (vi) Classification for value of flats being income-wise, area-wise, time- wise and scheme-wise as has been laid down in Premji Bhai Parmar (supra), any micro classification introduced by the impugned policy decision insofar as the registrants of South Delhi alone had been asked to pay a higher amount must be held to be discriminatory in nature. (vii) The purported cut-off date being 22.08.1996 creates a class between those whose allotments, although cancelled, had been restored on the terms of the contract and those who had applied for restoration thereafter.

(viii) As policy did not prescribe any rational basis and the same having wrongly been applied, the same is wholly without jurisdiction and, thus, a nullity.

(ix) Clause 5.10 of the brochure has wrongly been applied by the Full Bench insofar as value of the land and cost of construction were also existing in P.N. Verma (supra), R.K. Sacher (supra) and Premji Bhai Parmar (supra).

(x) The policy decision having been taken on the basis of lack of cash flow, the stand taken by the Authority in its counter affidavit, that a large sum of money was invested for rehabilitation of the migrants from Jammu & Kashmir and Punjab is wholly untenable. (xi) As the current cost of the flat was required to be determined in terms of the definition contained in Regulation 2(13) of the Regulation, any other mode or method adopted in respect thereof was wholly illegal. (xii) Had such value been required to be arrived at having regard to the nature and time of the project when it was launched, the impugned policy decision is barred under the principle of promissory estoppel. (xiii) By reason of an Executive Order, levy cannot be imposed with retrospective effect.

(xiv) The Full Bench of the High Court misconstrued and misinterpreted the decision of the Division Bench of the Delhi High Court in P.N. Verma (supra), which covered the case of registrants.

26. Mr. Arun Jaitley and Mr. Sunil Gupta, learned senior counsel, appearing on behalf of the respondents, on the other hand, submitted : (i) The relationship between the parties being contractual, the writ petitions were not maintainable.

(ii) Price fixation of flats being within the exclusive domain of the Authority, the High Court has rightly refused to interfere therewith. (iii) The findings arrived at in P.N. Verma (supra) falling in the line of Pushpendra Kumar Jain (supra), on the one hand, and Premji Bhai Parmar (supra), on the other, are strictly not applicable in this case as the policy decision adopted by the Authority on 22.08.1996 was a new one in terms whereof having regard to the equitable principle in mind, the Authority adopted a policy dehors clause (4) of the letter of allotment.

(iv) This Court not only in Premji Bhai Parmar (supra) but also subsequently having upheld the decisions of the Delhi High Court in P.N. Verma (supra) and Sheelawanti (supra) and in D.D.A. v. Ashok Kumar Behl [(2002 (7) SCC 135], the same constituted a binding precedent.

(v) Sections 5 and 6 of the Act read with Regulation 5 having authorised the Authority to fix the price of the flats, the validity of impugned restoration policy comprising payment of surcharge of 20% and the interest on the said rate or current cost whichever is higher, could not have been questioned in writ proceedings.

(vi) As the policy was formulated on the representations made by the registrants, the registrants are estopped and precluded from questioning the validity of the same.

(vii) In a case of this nature where interpretation of clause of contract is involved, judicial review is not permissible. (viii) Levy of surcharge for the subsidised schemes for weaker sections of the society having, inter alia, been upheld in Premji Bhai Parmar (supra), the impugned policy decision must be held to be reasonable so as to satisfy the tests of Article 14 of the Constitution of India. (ix) Cost of the land even in South Delhi having been worked out on the valuation of the land situated in Dwarka, classification made in respect of the allocation at South Delhi where market rates were much higher from the actual cost, the scheme for restoration of flats in that area cannot be held to be arbitrary or discriminatory.

Statutory provisions :

27. The Act was enacted to provide for the development of Delhi according to plan and for matters connected therewith or ancillary thereto. Interpretation clause is contained in Section 2 of the Act. Section 2(h) defines the term Regulation to mean a Regulation made under this Act. Section 3 provides for constitution of the Authority consisting of a Chairman, who shall be the Lieutenant Governor of the National Capital Territory of Delhi, ex-officio, a Vice-Chairman to be appointed by the Central Government, amongst others. Section 4 provides for staff of the Authority. Section 5-A provides for constitution of Committee in the following terms :

5-A. Constitution of Committee.-(1) The Authority may constitute as many Committees consisting wholly of members or wholly of other persons or partly of members and partly of other persons and for such purpose or purposes as it may think fit.

(2) A Committee constituted under this Section shall meet at such time and place and shall observe such Rules of procedure in regard to the transaction of business at its meetings as may be determined by Regulations made in this behalf.

(3) The members of a Committee (other than the members of the Authority) shall be paid such fees and allowances for attending its meetings and for attending to any other work of the Authority, as may be determined by Regulations made in this behalf. Section 6 provides for objects of the Authority, in the following terms: 6. Objects of the Authority.- The objects of the Authority shall be to promote and secure the development of Delhi according to plan and for that purpose the Authority shall have the power to acquire, hold, manage and dispose of land and other property, to carry out building, engineering, and manage and dispose of land and property, to execute works in connection with supply of water and electricity, disposal of sewage and other services and amenities and generally to do anything necessary or expedient for purposes of such development for purposes incidental thereto :

Provided that save as provided in this Act, nothing contained in this act shall be construed as authorizing the disregard by the Authority of any law for the time being in force. Section 52 of the Act reads as under :

52. Power to delegate .- (1) The Authority may, by notification in the Official Gazette, direct that any power exercisable by it under this Act except the power to make Regulations may also be exercised by such officer or local Authority or committee constituted under Section 5-A as may be mentioned therein, in such cases and subject to such conditions, if any, as may be specified therein.

(2) The Central Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act, except the power to make Rules may also be exercised by such officer as may be mentioned therein, in such cases and subject to such conditions, if any, as may be specified therein.

(3) The Lieutenant Governor of the National Capital Territory of Delhi may, by notification in the Official Gazette, direct that any power exercisable by him under this Act, except the power to hear appeals, may also be exercised by such officer as may be mentioned therein, in such cases and subject to such conditions, if any, as may be specified therein.

Section 57 (1)(f) of the Act reads as under : 57. Power to make Regulations. (1) The Authority, with the previous approval of the Central Government, may, by notification in the Official Gazette, make

Regulations consistent with this Act and the Rules made thereunder, to carry out the purposes of this Act, and without prejudice to the generality of this power, such Regulations may provide for

(f) The terms and conditions subject to which user of lands and buildings in contravention of plans may be continued.

28. Indisputably, in exercise of its regulation making power contained in Section 57 of the Act, the Central Government made regulations known as Delhi Development Authority (Management and Disposal of Housing Estates) Regulations, 1968.

Regulation 2(13) thereof defines disposal price in the following terms :

2(13) disposal price or hire purchase price in relation to property means such price as may be fixed by the Authority for such property.

Sub-sections (25) and (30) of Section 2 of the Act define penalty and Scheme respectively, as under :

2(25) penalty means an additional amount as laid down in the relevant agreement payable by the allottee or hirer as a consequence of his default in the payment of prescribed dues;

2(30) scheme means a scheme prepared by the Authority for the creation of one or more housing estates;

Regulation 3 empowers the Vice-Chairman to administer the Act subject to general guidance and resolutions of the Authority, who may delegate his powers to any officer of the Authority. Regulation 5 provides for disposal of the property which may be effected by either hire-purchase or sale or in such other manner and subject to such terms and conditions as may be decided by the Authority from time to time. Regulation 6 provides for fixation of price to be one which may be determined by the Authority.

Regulation 8 provides for the manner of payment of disposal price. Chapter III of the Regulations provides for the procedure for disposal of property. In terms of Regulation 30 of the Regulations, the Authority is mandated to prepare an allotment register in which names and other particulars of the registrants are to be entered. The names of the persons on the waiting list should also be entered in a separate section of the same register in the order in which their names appear in the draw of lots. Power to decide representations has been conferred upon the Committee in regard to the selection of applicants for allotment of property. Regulation 37 provides for handing over of possession of the property.

Regulation 59 provides for delegation of all or any of the powers of the authority under the Regulations to the Vice-Chairman or to a whole time member.

Functions of DDA :

29. In Premji Bhai Parmar (supra), a Bench of this Court noticed that the Authority had adopted a resolution delegating its power to the Vice- Chairman and the power to fix disposal price was said to

have been delegated to the Vice-Chairman.

30. At the outset, we may notice that the stand taken before us by Mr. Jaitely that the scheme in question was a new one which had to be framed keeping in view the exigencies of the situation arising out of the representations made by the registrants, whose allotment had been cancelled, had not been raised before the High Court. Such a stand, in fact, had never been taken.

31. The Authority issues an invitation through its brochure.

32. The 5th SFS Scheme was announced in the year 1982. Any person could himself get registered upon payment of fees prescribed therefor. The brochure published by the Authority indicated the tentative cost of different flats in different scheme category-wise. Pursuant thereto, an intending allocattee applies thereunder, and if in the draw of lots he is declared successful, an allocation-cum-demand letter specifying the locality and the floor is communicated to him. It is not the case of the parties that the estimated cost or the tentative cost was the final one. The Authority indisputably has the jurisdiction to fix the disposal price finally upon taking into consideration all relevant factors. In terms of the letter of allotment the estimated price is to be paid in four equal instalments. Admittedly, question of the final cost is communicated to the registrants who is asked to pay the balance amount after deducting the payment made in four instalments together with the 5th instalment. The estimated cost, according to the Authority, itself should be worked out having regard to the following parameters.

1. Cost of construction

2. Community facility charges

3. Floor equilization for ground floor and subsidised for upper floors

4. Departmental charges

5. Administrative charges

6. Cost of land (Land Rate on the date of allocation letter is taken).

The land rates of the project area are determined on the basis of break even rates arrived on cost benefit analysis which includes cost of acquisition, enhanced compensation and future realisations. This rate is approved by the Government of India. The land rates approved by the Government of India for Dwarka is also applied on flats in South Delhi. They are predetermined rates on actual break even basis.

7. Surcharge @ 20% w.e.f. 16.8.96.

33. Indisputably again, other components for determining the cost remains the same every year. The only change which was effected, is the change in the land rate, which is approved by the Government. Other parameters for calculating the material cost were approved by the Vice-Chairman of the Authority.

34. Delhi Development Authority has been created under a Parliamentary Act. It, indisputedly, is a

State within the meaning of Article 12 of the Constitution of India. Being so, the provisions of Part III of the Constitution of India must be applied by it. Undisputedly, again, it has also the duty to strive hard for giving effect to the Directive Principles of State Policy as contained in Part IV of the Constitution of India.

35. Objects of the DDA is stated in Section 6 of the Act. We may notice that although the heading of Section 6 states about the object of the Act, the main provision contain both its objects and powers. It is also curious to notice that its power to constitute a scheme so as to provide housing facilities to the citizens of India and, in particular, those belonging to lower income group as also coming from lower strata of the society has not been mentioned which we would find pari materia in statutes framed by other States. [See Chairman, Indore Vikas Pradhikaran v. M/s. Pure Industrial Cock & Chem. Ltd. & Ors. 2007 (8) SCALE 110]

36. It is accepted that although the Act was enacted in the year 1957, the idea of providing for implementation of such housing scheme started much later. The Rules, as noticed hereinbefore, were framed only in the year 1968 and implementation of actual housing schemes are said to have been started in late seventies or early eighties.

37. While acting as a State within the meaning of Article 12 of the Constitution of India, it is imperative that D.D.A., while implementing its statutory power, upholds the fundamental rights of the citizens and strive hard to give effect to their Directive Principles of the State Policy. We, however, cannot also shut our eyes to the fact that in terms of Article 37 of the Constitution of India whereas the provisions of Part III are justiciable, the provisions of Part IV are not. Only when an action of the State is taken to give effect to any of the provision of Part IV of the Constitution of India which is not otherwise ultra vires the Constitution or offends the principles embodied in Part III of the Constitution of India, the same may be upheld, having regard to the provisions contained in Part III thereof. The action of the State, therefore, must at the first instance be adjudged on the touchstone of the principles of Fundamental Rights and then the provisions contained in the Parliamentary Act, the regulations framed thereunder as also the terms of the contract entered into by and between the parties.

38. We may or may not agree with the submission of learned counsel for the appellants that the right of housing arising out of such a scheme is a fundamental right within the meaning of Articles 19(1)(e) and 21 of the Constitution of India, but there cannot be any doubt whatsoever that the action of a State must satisfy the principal requirements of Article 14, viz., treating persons similarly situated equally and grant of equal protection to them. Reasonableness and fairness is the heart and soul of Article 14 of the Constitution of India. Keeping the aforementioned principles in mind, we may consider the points involved herein.

Scheme

39. The basic fact that the scheme was floated in the year 1991 being SFS is not in dispute. It has also not been denied or disputed before us that the said scheme in its application is fundamentally different from those of the others schemes, viz., MIG, LIG, Janta and Expandable Housing Scheme. There is also not much dispute as regards the fact that in terms of the said scheme, estimated costs as well as rights and liabilities of the parties are laid down in the invitation to offer. Allocation of the area, floor etc. ought to be notified on acceptance of the offer by the registrants. Such allocation again undisputedly is made on the basis of draw of lot having regard to the specific number of flats

available. The registrants have no choice in that behalf. Although he might have exercised his right of option in relation to the area or the floor but then he, in fact, has no hands thereover. The letter of allotment contains the schedule of payment as also other terms and conditions in support thereof.

40. We, in this batch of appeals, are principally concerned, inter alia, with the interpretation of clause 4 of the Letters of Allotment.

41. This scheme, ordinarily, was to operate within a time frame. DDA was expected to complete the constructions within a period of 2= years. Four six-monthly instalments were required to be paid by the registrants within the aforementioned period which would include the grace period.

42. Whereas ninety days time is not taken into consideration for the purpose of computing the default clause, indisputably, again the power of the authority to regularize the default on receipt of interest @ 18% per annum on the amount due to and owing to an allottee is specifically provided for. The period of 2= years vis-`-vis the six-monthly interest must have been laid down keeping in view the fact that whereas the amount deposited by the registrants by instalments would be invested for construction of the flats. 18% interest is prescribed for default both on the part of the DDA as also on the part of the registrants. No time limit is fixed for completion of the scheme. The only penalty which the scheme prescribes is payment of interest. So far as area of SFS is concerned, a registrant has no role to play. Admittedly, constructions have been completed in the year 2000.

43. For interpretation of clause 4 of the scheme, the aforementioned background is required to be borne in mind. Ingredients of clause 4 are :

(a) The allotment letter would indicate the four due dates on which the first four installments are to be paid. The fifth installment would be paid on demand.

(b) 90 days delay in the first four installments is condonable subject to payment of prescribed interest.

(c) After the expiry of 90 days if payment is not made for first four installments there would be automatic cancellation.

(d) This automatic cancellation can be restored on payment of interest and other charges subject to availability of the flat.

(e) The cancellation due to non-payment of final installment will be made if the payment is not made within 120 days with no provision of any further extension.

44. It has not been denied or disputed that although the registrants defaulted in making payments but the flats were available. In fact, when the default took place, the flats were not constructed. They have, thus, not been allotted to the persons on the wait list.

45. It may be true that recourse to clause (d) should be undertaken by the allocattees within a reasonable time. What would be a reasonable time would, however, depend on the facts and circumstances of each case. No hard and fast rule can be laid down therefor.

46. In a given case, it may be a few months but in another having regard to the conduct of DDA, it

may be one year or more. What would constitute a reasonable period must also be considered keeping in view the rights of the parties as also the fact that in terms of clause 4 of the offer of allotment there does not exist any prohibition to pray for regularization upon default, even after a period of 120 days. In a situation of this nature, it may not be unjustified to arrive at the conclusion that such a right can be exercised, if not, when the flats were ready for handing over actual possession, but at least when there has been a substantial progress. We must also take into consideration that the scheme, the letter of allotment, the contract between the parties to pay interest in case of default to each other leads to a conclusion that DDA in its wisdom thought that payment of 18% interest shall subserve the purpose. We, however, hasten to add that it does not mean that DDA must entertain such an application for restoration and/or condonation of default despite lapse of time. It has its own right in relation thereto which may be invoked. The right to allot the flat to a person who is on the wait-list as a result whereof a seal of finality can be put, the right of the registrants or registrants even the whole or a part of the advance or other amounts deposited by him stand forfeited.

Interpretation of the Act :

47. DDA functions through the Committees constituted in terms of Section 5A of the Act. Power has been delegated in favour of its Chairman and the Vice-Chairman. Such delegation of power, however, as provided for under Section 52 of the Act does not extend to make regulations. What, therefore, cannot be done by way of regulation, cannot be done by executive order.

48. It has not been denied or disputed that having regard to clause 5.10 of the brochure and clause 4 of the letter of allotment, the term tentative cost must be given its natural meaning.

49. It varies from time to time as it is not a one time process. The price difference between the estimated cost and the initial cost as it worked out on the completion as per costing formula in vogue would have to be paid along with the 5th and final instalment.
Notifications :

50. The impugned circulars have three distinct elements :

1. Price of South Delhi flats would be worked out by adding 20% surcharge in terms of the office order dated 16.8.1996 duly approved on 22.8.1996.

2. 20% surcharge will have to be paid in case where there is a small delay, in which case only interest has to be paid.

3. In all other cases original cost + 18% or the current cost whichever is higher would be payable.

51. Legality and/or validity of the said circulars is in question. We may, at the outset, notice that there is nothing on record to show that the Office Orders dated 16.8.1996, 27.8.1996 and 21.3.1999 were published in the Gazette or were otherwise brought to the notice of the registrants. Conduct :

52. Conduct of the parties may be noticed from the case of Manjit Singh. Admittedly, the registrants failed to pay instalments within the stipulated period. A notice dated 23.4.1997 was served on him which is in the following terms :

WHEREAS you had been allocated a second floor category II, SFS flat in Pkt. F, Sheikh Saria Residential Scheme vide allocation cum demand letter dated 31.3.93 under the DDA (Management & Disposal of Housing Estates)

Regulations 1968 against your registration under the 5th SFS 1982.
AND WHEREAS as per the allocation cum
demand letter the following installments were to be paid as per the following schedule :-
Installments Amount Due Date Installment Challan paid on No.
1st Rs.1,35,867/- 30.4.93 24.5.93 032601
(Rs.1,35,867)
IInd Rs.1,25,060/- 30.10.93 30.10.93 112025 31.05.94 (Rs.43,675)
(Rs.50,000)
IIIrd Rs.1,56,325/- 30.4.94 24.11.94 010243 (Rs.50,000)
IVth Rs.1,25,060 30.10.96 25.07.96 010245
(Rs.50,000)
From the perusal of the above chart, it can
be seen that you have not deposited the installment as per schedule indicated in the allocation cum demand letter.

AND WHEREAS as per the terms and conditions of the allocation cum demand letter as contained in Clause 4 the allocation was liable to be cancelled if the installments are not made as per the schedule.

AND WHEREAS it is evident that you failed to deposit the installments as per the schedule and thus have committed the breach of the terms and conditions of the allocation cum demand letter dated 31.3.1993 Therefore, I, Dy. Director (SFS) hereby inform you that the allocation made to you vide letter dated 26.3.93 31.3.1993 stands automatically cancelled due to the breach of the terms and conditions of allocation.

It is further inform (sic) that the 5th SFS Scheme 1982 stands already closed, therefore, you are advised to return all the original FDR, Demand cum allocation letter and third copy of challan so that your case can be processed for the refund of the amount deposited by you.

53. He submitted a representation praying for condonation of default. In his representation, he stated:

Immediately on receipt of the DDA letter I ran hither and thither for financial loans from relatives, friends, and well wishes and was able to deposit Rs.2,12,770/- vide challan No.039576 dated 12.5.97 (Annexure F) bringing the total payment to DDA to 90% of the cost of flat. The flats are yet to be completed. I now, therefore, humbly APPEAL to you to condone the delay in the payment of installments for reasons stated above, on humanitarian and compassionate grounds and to regularise the allocation of the flat for which act of kindness I shall ever pray. I am also ready to pay any amount yet due in the form of interest.

54. The said representation was accepted by DDA in terms of a letter dated 10.12.1998 which reads as under :

It is our pleasure to inform that you have been allotted SFS Flat with the following details through a

computerized draw held on __/10/1998:- Flat No. 61

Floor SEC

Category II

Sector

Block

Pocket

Type

Locality SHEIKH SARAI

We are advising the Housing Acts

Department to issue the 5th and Final Demand Letter to you at the earliest.

55. It allotted the flat. No condition therefor was put. It did not ask for payment of any surcharge. The original terms were not deviated from. It did not ask for any extra-cost. The delay in payment of instalments was condoned and the allocation of flat which stood cancelled in terms of the aforementioned notice dated 23.4.1997 stood restored. DDA, thus, acted strictly in terms of the original scheme. The offer of the allocattee was accepted relying on or on the basis of clause 4, viz., the amount of default and an interest charged thereupon @ 18% per annum. It is only when the 5th and final instalment was directed to be paid in terms of demand letter dated 15.2.1999, the current cost computed in terms of the office order dated 16.8.1996 and subsequent office orders was included. The allocattee at that stage might not have any other option but to pay the same for obtaining possession. But by reason thereof, he never gave up his right to question the action on the part of DDA. Rule of estoppel, therefore, has no application.

56. It was, on the other hand, DDA who having accepted the offer of the allocattee by restoring the allotment, in our opinion, is estopped and precluded from raising a plea as regards application of office order dated 16.8.1996. It may be noticed that even contents of those letters were not disclosed to the allocattee.

Was it a Restoration Scheme ?

57. The office orders, on the basis whereof the purported impugned policy had been taken, do not refer to the scheme as a restoration scheme. The resolutions do not say so. Had it been so, DDA would have issued a fresh notification or at least made its stand clear to the allocattees either by way of public notice or by informing each of such defaulters individually. Had such conditions for the purpose of restoration being made known, the allocattees would have accepted it or rejected it. Evidently, it is a part of the original scheme. It is not a new one. It is well known principle of law that a person would be bound by the terms of the contract subject of course to its validity. A contract in certain situations may also be avoided. With a view to make novation of a contract binding and in particular some of the terms and conditions thereof, the offeree must be made known thereabout. A

party to the contract cannot at a later stage, while the contract was being performed, impose terms and conditions which were not part of the offer and which were based upon unilateral issuance of office orders, but not communicated to the other party to the contract and which were not even the subject matter of a public notice. Apart from the fact that the parties rightly or wrongly proceeded on the basis that the demand by way of 5th instalment was a part of the original scheme, DDA in its counter affidavit either before the High Court or before us did not raise any contra plea. Submissions of Mr. Jaitley in this behalf could have been taken into consideration only if they were pleaded in the counter affidavit filed by DDA before the High Court.

58. We have also reservations that in absence of any provision contained in the Act or the Regulations, the delegatee on its own could frame such a new scheme. If not, the purported restoration policy would be ultra vires. We, therefore, cannot persuade ourselves to agree with the contention of DDA that the restoration policy cannot be tested on grounds of terms and conditions of the original scheme. If it is a new scheme, it would bear repetition to state, the terms contained therein should have been known to the allocattees. We, thus, have no other option but to proceed to consider the legality and/or validity of such imposition on the premise that the impugned policy decision is a part of the original scheme and does not contain any new policy.

Policy Decision :

59. An executive order termed as a policy decision is not beyond the pale of judicial review. Whereas the superior courts may not interfere with the nitty gritties of the policy, or substitute one by the other but it will not be correct to contend that the court shall like its judicial hands off, when a plea is raised that the impugned decision is a policy decision. Interference therewith on the part of the superior court would not be without jurisdiction as it is subject to judicial review.

60. Broadly, a policy decision is subject to judicial review on the following grounds :

(a) if it is unconstitutional;

(b) if it is dehors the provisions of the Act and the Regulations; (c) if the delegatee has acted beyond its power of delegation; (d) if the executive policy is contrary to the statutory or a larger policy.

61. The stand taken by DDA itself is that the relationship between the parties arises out of the contract. The terms and conditions therefor were, therefore, required to be complied with by both the parties. Terms and conditions of the contract can indisputably be altered or modified. They cannot, however, be done unilaterally unless there exists any provision either in contract itself or in law. Novation of contract in terms of Section 60 of the Contract Act must precede the contract making process. The parties thereto must be ad idem so far as the terms and conditions are concerned. If DDA, a contracting party, intended to alter or modify the terms of contract, it was obligatory on its part to bring the same to the notice of the allocate. Having not done so, it, relying on or on the basis of the purported office orders which is not backed by any statute, new terms of contract could thrust upon the other party to the contract. The said purported policy is, therefore, not beyond the pale of judicial review. In fact, being in the realm of contract, it cannot be stated to be a policy decision as such. Price Fixation

62. We would assume that the office orders were issued by DDA keeping in view the representations made by a large number of defaulters. The plea taken by DDA gives rise to a

dichotomy. If it is a case of contract qua contract, the provisions of the Contract Act must be taken recourse to. If DDA was exercising a statutory power, the same must be tested on application of doctrine of ultra vires. Floating a scheme for providing housing facilities to a group of people, although is governed by statute, power under the statute by an executive not only can be tested on the touchstone of Article 14 of the Constitution of India, but can also be tested on the touchstone of source of the power under the statute. No provision either in the Act or the Regulations was brought to our notice which makes the allocattee bound by the purported policy decision taken by DDA. Even if it is so, the superior courts may exercise its power of judicial review as the power which is sought to be exercised by a statutory authority is not under the contract but under a statute. When a contract emanates from a statute or is otherwise governed by the provisions thereof, the superior court can also exercise the power of judicial review.

63. In Gujarat State Financial Corporation v. M/s. Lotus Hotels Pvt. Ltd. [(1983) 3 SCC 379 : AIR 1983 SC 848], it is stated that such contracts can be subject to judicial review.

64. Regulations 5 and 6 should not be very liberally construed. Concededly, the manner in which power is to be exercised is governed by the past practice. Norms have been fixed for computing the disposal cost. Although, the superior courts ordinarily would not interfere in the price fixation but there does not exist any absolute ban. In a case where fixation of price is required to be made in a particular manner and upon taking into consideration the factors prescribed and if price is fixed de hors the statutory provisions, judicial review would be permissible.

65. Strong reliance has been placed upon the residuary power conferred upon the Authority to determine the cost of construction.

66. When the same is done having regard to the relevant factors on the basis of which brochure as well as the notice inviting tender was issued, the superior courts may not interfere; but the same must be done in terms of the original contract and not de hors the same. The authority, even while exercising its residuary power, is required to act within the four corners of the contract. While doing so, the terms of the contract cannot be altered to include any other factors which were contemplated thereunder. While computing the extra cost, no additional factor, thus, can be taken into consideration. If such a power is conceded in the authority, the same would give rise to exercise of arbitrary power. It is not contemplated in law. When construing a provision delegates a power on an authority under a statute, the constitutional provisions must be kept in mind.

67. At the time of calculation of the amount which would be the subject matter of demand of 5th and final instalment, the jurisdiction of DDA is to keep itself confined only to the factors on the basis whereof, the brochure has been issued and offer was made. No additional factor, thus, could be taken into consideration at the time of issuing notice other than the ones on the basis whereof offer was made by the registrants. Imposition of equalization charge also falls within the said purview.

68. There may be some charges like conversion charges which per se may or may not be bad. Conversion charges levied by the DDA pursuant to the directions issued by the Central Government which in terms of Section 41 of the Act is binding on DDA for converting the leasehold into freehold. However, such a power also must be exercised reasonably and fairly. Conversion of the property from leasehold to freehold is a separate transaction. The same has nothing to do with the actions, qua contract. Imposition of conversion charges, therefore, even if, per se, may not be held to be bad, the said factor cannot be taken into consideration for the purpose of computing

construction costs. The High Court has struck down the inclusion of such conversion charges in the costing of the flats. After 1996, the ordinary cost of construction of a flat was Rs.2,00,000/-, in South Delhi but not only it framed the basis for computing the final cost but also 20% additional amount as also 20% surcharge were claimed thereupon. Sometimes interest also was charged as and when applicable. Thus, so long the conversion charge is charged by way of a separate transaction, no exception can be taken. But, purported price fixation as has been done in the instant case cannot receive our approval. The same is, thus, in our opinion, bad in law.

Applicability :

69. The scheme in question was floated in 1992-93. The purported default on the part of the registrants took place prior to the purported adoption of the policy decision. The purported office order dated 16.8.1996 discloses shows that an internal decision had been taken to condone the delay in making payments of first four instalments. The authorities mentioned therein had been delegated with the power for the period(s) mentioned as under:

Director (H)-1 Upto 3 months Commissioner (Housing) Upto 1 year Principal Commissioner From 1 year to 1 = year Vice-Chairman Full powers Clause 3 of the said office order reads as under : There are presently cases in the Housing Department where there have been delays in the making of the payments of the flats allocated/allotted in South Delhi under SFS. Before the aforesaid revision took place, delays of one year or so were being regularized with usual charges, i.e., on payment of 18% interest per annum and restoration charges, etc. in few cases where delays are unusually long, current price has also been demanded.

70. Thus, a decision in that behalf had not only been taken but also was made applicable both in the case where the delay is of one year or so and the delay which was unusually long. By reason of the said circular, delay in making payments of instalment was to be condoned on payment of either current price or old price whichever is higher. From a perusal of the Resolution dated 27.8.1996, it appears that 20% surcharge was levied over the disposal cost worked out for the flats in South Delhi SFS. It does not show that any subsidy was proposed to be granted for the migrants from Jammu and Kashmir or Punjab. The policy was taken only with a view to balance the reduced cash in-flow. DDA, thus, had in view commercial aspect of the matter and not the social justice aspect.

71. Again, by reason of the office order dated 31.3.1999, the delegation of power in favour of various authorities was redefined. The Vice-Chairman could deal with delay or default even if it exceeds one year and six months. 22.8.1996 was prescribed as the cut off date for the purpose thereof. Price of the flat was to be calculated on the basis of either current price or old price whichever is higher. It was sought to be applied irrespective of the extent of delay. On what basis 22.8.1996 was taken to be the cut off date has not been disclosed. We would, however, assume that the said date was taken into consideration in view of the Resolution dated 27.8.1996.

72. An executive officer, in absence of any provision of a statute, cannot apply his own decision with a retrospective effect. A delegatee is bound to act within the four corners of the delegation and not beyond the same.

73. Delegation of power in favour of an authority under a statute must also be tested in terms of the statutory provisions. No provision under the Act or the Regulations has been brought to our notice which empowers the delegatee to alter the terms and conditions of the contract with retrospective

effect. The purported policy decision must, therefore, be tested not only having regard to the provisions of the statute but also having regard to clause 4 of the offer.

74. Current cost has been calculated upon computing 20% over and above the actual cost. A provision for surcharge had also been made in terms whereof a premium of 20% over the disposal cost was worked out on current cost for the SFS flats in South Delhi. Imposition of surcharge is subject to the condition that the real value in the market of DDA flats would be much more than it had been charging as per the cost formula. Parameters of computation of disposal price have been laid down which we have noticed supra. The authority having itself adopted a formula for computing the disposal cost, the same was binding upon the delegatees. A delegatee cannot take any action contrary to or inconsistent with the factors laid down for computation of disposal cost as defined in Section 2(30) of the Act. Regulations 5 and 6 do not authorize the delegatee to apply a formula which was not contemplated by the Authority itself. If an Executive Authority in absence of any statutory provision cannot apply a decision with retrospective effect, the same would be ultra vires.

75. In Vice Chancellor, M.D. University, Rohtak v. Jahan Singh [2007 (4) SCALE 226], this Court observed:

The Act does not confer any power on the Executive Council to make a regulation with retrospective effect. The purported regulations, thus, could not have been given retrospective effect or retro-active operation as it is now well- settled that in absence of any provision contained in the legislative Act, a delegatee cannot make a delegated legislation with retrospective effect.

[See also Ashok Lanka and Another v. Rishi Dixit and Others, (2005) 5 SCC 598]

76. A definite price is an essential element of binding agreement. A definite price although need not be stated in the contract but it must be worked out on some premise as was laid down in the contract. A contract cannot be uncertain. It must not be vague. Section 29 of the Indian Contract Act reads as under :

Section 29 - Agreements void for uncertainty Agreements, the meaning of which is not certain, or capable of being made certain, are void.

77. A contract, therefore, must be construed so as to lead to a conclusion that the parties understood the meaning thereof. The terms of agreement cannot be vague or indefinite. No mechanism has been provided for interpretation of the terms of the contract. When a contract has been worked out, a fresh liability cannot thrust upon a contracting party.

78. It is well settled that a definite price is an essential element of a binding agreement. Although a definite price need not be stated in the contract, but assertion thereof either expressly or impliedly is imperative. Impugned Judgment :

79. The Full Bench of the Delhi High Court has placed strong reliance on P.N. Verma (supra). One of the fundamental errors which has been committed by the Full Bench, with respect, is applying P.N. Verma (supra) without noticing the distinction between the provisions contained in the clauses of the Brochure in the present case and those obtaining therein. In the present case Clause 5.10 of the DDA Brochure stipulates that the price mentioned in the allocation letter is only the estimated

price and it could be changed only on the basis of escalations in the price to be determined by DDA on the completion of flats. In P.N. Verma (supra), however, the price was to be fixed on allotment of flats. It gives rise to a lot of difference in determining the issue.

In P.N. Verma (supra), the High Court observed: 24 If the stand of the DDA is that the price they demand is only on the same formula as was announced and that the increased price demanded is only due to escalation in cost of construction and fluctuation in other cost factors, then the issue will only be whether the fixation of price is in accordance with the contract and that can be gone into, both by reason of principle and because it will involve complicated factual investigations, only in a suit. This is the alternative stand of the DDA which we will discuss later. But if the DDA says, whatever we may have said earlier, we can fix the price or any basis and that cannot be questioned at all because it is a contractual matter, the argument is fallacious because this stand of the DDA means going behind the contract and revising the earlier formula of price fixation which means travelling back to the pre-contractual statutory stage

It was also stated:

46That actual cost was tentatively fixed at a figure 'which was announced subject, however, to variations in cost factors. It is not open to the DDA to alter this basis for the determination of the disposal cost. So long as the DDA adheres to this basis in fixing the disposal cost, court will not interfere. It will not interfere even if there should be some mistakes or exaggerations in the calculation of the components of the figure arrived at, as that would be a matter for determination after evidence and investigation in a suit. Even if an item should be included in the cost components, about the inclusion of which as one of the cost factors there could be some doubt, the writ court may not interfere and may leave the parties to fight out their battle in a regular suit. But where the disposal cost is fixed on a basis totally different from that announced earlier or where the components taken into account cannot be described by any stretch of imagination as cost factors or where a component of the cost is shown to have been fixed arbitrarily and without any basis whatsoever, the Court has no option but to quash the determination of the disposal cost so fixed and direct the DDA to undertake afresh a proper determination thereof in accordance with the terms of the original contract or after excluding the items unwarrantedly included therein or after re-determining the value of any component on a proper and reasoned basis

On legal principle, therefore, ratio of P.N. Verma (supra) is not very different from what has been held herein.

80. Another fundamental error committed by the Full Bench was to approve para 29 of the judgment of the Division Bench of the Delhi High Court in R.K. Sachar v. DDA (LPA No. 727 of 2002 decided on 15.12.2003) opining that this Court had already approved the contention of the DDA that it was entitled to recover such a charge in the light of the decision in Premji Bhai Parmar (supra).

81. The Full Bench failed to notice that in P.N. Verma (supra) surcharge over and above the disposal price titled equalization charge purporting to provide subsidy for construction of flats for weaker sections of the society in trans Yamuna area was held to be ultra vires and that the said decision has been approved by this Court. P.N. Verma (supra), therefore, was misread and misconstrued.

82. In Premji Bhai Parmar (supra), surcharge was a component of the disposal price. The disposal

price was known to the registrants at the time of conclusion of contract. As the contract was found to be binding on the parties, levy of surcharge, thus, was held to be vitiated in law.

83. In this case, the case of the appellant is not that they are not bound to pay the binding contractual stipulation as contained in Clause 4 of the letter of allotment. They are and they must. But what cannot be thrust on them is the price determined on the basis of factors which were not contemplated in the original contract.

84. In Premji Bhai Parmar (supra), this Court did not record a finding that even if a surcharge was not a part of Brochure, still the same could be imposed without any sanction in law so as to bind the allocates to pay the same although neither they were made aware thereof nor did they give their consent for payment of surcharge as a part of the contract. The Full Bench of the High Court wrongly relied upon R.K. Sachar (supra). In the light of the decision of this Court in Premji Bhai Parmar (supra), the nature of levy should have been held to be completely distinct and, thus, Premji Bhai Parmar (supra) had no application to the fact of the present case.

85. The Full Bench also misdirected itself insofar as it failed to take into consideration that levy of 20% surcharge was in effect and substance a compulsory exaction to augment the revenue requirements of the DDA and, thus, could not have been a part of the contract. Any compulsory exaction should be viewed in the light of Article 265 of the Constitution of India, unless it comes within the sphere of contract.

86. It may be reiterated that it is only those components which fall within the Brochure of the DDA or within the purview of the statutory requirements can be included in the exercise of price fixation. To the said extent are the decision of the Delhi High Court in P.N. Verma (supra), Narsingh Jain v. Union of India [(80) 1999 DLT 742] and DDA SFS Flat Owners Society v. UOI [AIR 2001 Del 39].

87. Against the said judgment of the Division Bench of the High Court in P.N. Verma (supra), an appeal was preferred by the DDA before this Court. This Court in the said appeal titled as DDA v. SFS Assn. and Ors. [Civil Appeal No. 4402 of 1985] rejected the contention of the DDA that under the terms of the Brochure related to the said scheme it was empowered to recover from the registrants an additional amount over and above the disposal price by way of equalization charges in the following terms: The lengthy and elaborate judgment of the High Court under appeal makes instructive reading in prohibiting the DDA from adding to the prices of the named flats on escalation termed as equalisation and ad hoc charges. From the terms of the model contract entered into by the DDA with the people who opted for the self-financing scheme, charging of the said equalization and ad hoc charges is evidently totally missing. The DDA in support thereof has banked upon the justness of its cause and demand, and has no where been able to project that to begin with, it was part and parcel of the cost factor. The High Court has seen through its design and has termed the venture as a camouflage. We see no reason to take a different view than the one taken by the High Court.

The said decision of this Court is binding upon the DDA. Conclusion :

88. For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly. The appeals are allowed with costs. Counsels fee assessed at Rs. 25,000/- in each case. Appeals filed by the DDA are dismissed.