

# DELHI HIGH COURT

DDA Self Finance Flats Owners Society (Regd.)

Vs.

U. O. I, (Delhi)

C.W. No. 3324 of 1982

(Anil Dev Singh and Dr. M.K. Sharma, JJ.)

24.10.2000

## JUDGMENT

**Anil Dev Singh, J.**

1. This is a writ petition whereby the petitioners seek quashing of the letters of demand issued by the DDA to the petitioners in respect of 5th and final installments for the flats allotted to them on the ground that the same have been determined arbitrarily.
2. The first petitioner is a Society of flat owners, registered with the Registrar of Societies. Remaining petitioners totaling 125, are the members of the Society who were allotted flats by the third respondent, DDA under Self Financing (Housing Registration) Scheme. Fourth respondent, the Deputy Director (H-1) is the functionary of DDA. While the first respondent is the Union of India, the second respondent is the Administrator of the Union Territory of Delhi and is the ex-officio Chairman of the third respondent.
3. The third respondent came out with Self Financing House Registration Scheme. This Scheme was announced and advertised in the edition of Hindustan Times dated August 28, 1977. An announcement was also made by the DDA in the form of a pamphlet titled "Your Investment for Your House" (for short "Announcement"). The Announcement indicated that flats were to be constructed in Basant Enclave, Munirka, Hauz Khas and Sidharth Enclave. The prospective allottees were required to apply for the registration with the DDA from September 15, 1977 to November 30, 1977. Subsequently, the DDA extended the closing date of the Scheme till March 31, 1978. As per the Announcement applications for allotment of flats to persons registered under the aforesaid Scheme were required to be invited by the DDA in accordance

with para 8 thereof. Para 8 of the Announcement reads as under:

"Applications from persons registered under this Scheme will be invited as soon as specific schemes have been prepared and construction is about to start."

4. The estimated cost of the flats were to be announced whenever specific schemes for construction of flats were to be prepared taking into consideration the location of the proposed flats, their specifications and design, cost of construction prevailing at the time of execution of the Scheme and fluctuation depending upon other relevant factors. As per para 6 of the Announcement, the following payments were required to be made by the applicants to the DDA :

- i) A sum of Rs. 10,000/- as deposit with the request for allotment of the flat;
- ii) 25% of the cost of the flat (inclusive of the amount paid as registration deposit) at the time of acceptance of the application for allotment of the flat under the concerned Scheme;
- iii) Half yearly payments after acceptance of the application for the scheme concerned to be paid as per below :
  - (a) 20% at the end of six months.
  - (b) 25% at the end of one year.
  - (c) 20% at the end of one and a half year.
- iv) 10% at the time of taking over possession.

5. According to para 7 of the Announcement, the DDA was required to pay interest @ 7% per annum on the registration deposit up to the date of the acceptance of the application under the concerned Scheme. The DDA, however, was not liable to pay interest on the payments made by the applicant in respect of the cost of flat provided; the flat was made available to the allottee within two and a half years of the acceptance of the application for the Scheme under which he/her had applied. In case the flat was made over beyond a period of two and a half years, the DDA was liable to pay interest @ seven and a half per cent till the date flat was offered with possession to the allottee.

6. Pursuant to the Announcement the petitioners other than the first petitioner applied for registration. After their registration, applications were invited on formulation of a specific Scheme. The Scheme was contained in a Brochure which is at page 58 of the Court record. The Brochure indicated the details of location of the flats, number of flats which were to be constructed category-wise, the building plans etc. The Brochure also gave information with regard to the estimated cost of each category of flats.

i) Total estimated cost of the flat	Rs. 1,15,000/-
ii) Amount of Its installment	Rs. 28,750/-
iii) Amount already deposited vide Deposit Receipt No. 2665 (-)	Rs. 10,000/-
iv) Interest accrued on the above deposit upto the date of specified draw (-)	Rs. 606/-
Total (iii) + (iv) (-)	Rs. 10,606/-
v) Net amount payable	Rs. 18,144/-

7. The petitioners applied under the Scheme for allotment of various categories of flats as per their choice and paying capacity, in Housing Complex proposed at Basant Enclave. The indicated estimated cost for Basant Enclave flats varied from Rs. 45,000 to Rs. 1,15,000 depending upon the size and category of flats. The allotment of flats were to be made on the basis of draw of lots. After the draw of lots, the DDA issued letters of allotment to the petitioners signifying allocation of specific flats in their favor and other relevant information. As a sampler, reference can be made to the letter of allocation dated September 18, 1979 issued by the DDA in favor of one of the petitioner, Sri J. M. Sharma, which is placed at page 90 of the Court record. As per the letter Sri J. M. Sharma was allotted duplex type flat of category III in Basant Enclave. The allocation was subject to the terms and conditions stipulated in DDA (Management and Control of Housing Estates) Regulations, 1968. The estimated cost of the flat was indicated as Rs. 1,15,000/-. He was requested to deposit a sum of Rs. 18,144/- as per the following details :

8. The letter specifically mentioned that the estimated cost was subject to revision on completion of the flat. It also stated that the actual cost would be finalized after the completion of the flat and the difference between the estimated cost and the completion cost, if any, would be payable by the allottee along with the 5th and last installment before handing over possession of the flat. The other petitioners also received similar letters of allocation in which estimated cost of the flat allotted to them were indicated. According to the petitioners the estimated cost of various categories of flats as disclosed by the DDA in its Brochure pertaining to Basant Enclave was as follows:

Sl. No.	Name of the Scheme	Category	Floor	Plinth Area	Provisional Estimated Cost Rs.
1.	Basant	I	Ground Floor	53.18	50,000.00

		sq.mt.	
I	First Floor and Second floor (including the scooter shed)	57.26	45,000.00
II	Ground	94.70	90,000.00
III	First and Second Floor (Duplex)	134.24	90,000.00

9. There appears to be no dispute between the parties regarding the payment of 1st, 2nd 3rd and 4th installments based on estimated cost of flats. The DDA in respect of these installments, issued demand letters to the petitioners. According to the petitioners, pursuant to the demand letters payments were made. The dispute between the parties pertains to the 5th and final installment which was demanded by the DDA. The demand letters are at pages 98 to 138 of the Court record. As a sampler, demand letter dated August 24, 1982 addressed to petitioner Sri J. M. Sharma may be referred to. In the letter it was stated that the construction of the flat had been completed and in accordance with the terms and conditions of Allocation and Allotment, the payment of the 5th and final installment as per the following details be made by him to the DDA :

- |  |                |
|--|----------------|
| 1. Total cost of the flat  | Rs. 1,68,200/- |
| 2. Amount already demanded towards cost. (excluding interest If any) | Rs. 1,03,500/- |
| 3. Balance amount as 5th and final installment of the flat           | Rs. 64,700/-   |
| 4. Do mental (sic) charges   | Rs. 45/-       |
| 5. Ground rent for the first two years @ Rs. 1 per year              | Rs. 2/-        |
| 6. Service charges for one year                                      | Rs. 312.50     |
| 7. Total amount payable  | Rs. 65,059.50  |

10. The petitioners on receipt of the aforesaid communications, represented to the DDA against the demand, for enhanced cost of the flats. The DDA, however, did not favorably react to the representations of the petitioners, even though it is claimed by the petitioners that Minister for Works and Housing informed the Lok Sabha that there would be no increase in the cost of the flats. The petitioners feeling aggrieved by the demand letters, claiming higher price for the flats allocated to them, have filed the instant writ petition.

11. We have heard learned counsel for the parties. Ms. Anjali Arora, learned counsel for the petitioners vehemently argued that the impugned demands are against the spirit of the Scheme pursuant to which the petitioners applied for allotment of flats and

made payments. She submitted that the petitioners having acted on the basis of the Scheme issued by the DDA by making payments of four installments and part of the 5th installment, the DDA is stopped from acting contrary to the Scheme. She argued that it was an established principle of law that when a party alters its position pursuant to a promise or assurance of another party, the latter cannot be allowed to go back on the promise or assurance which were extended to the former. She contended that DDA has enhanced the prices of the flats on the basis of a criteria different than the one mentioned in the Scheme. Ms. Arora further submitted that the impugned demands are arbitrary and are not based on valid and legal considerations. She referred us to the decision of Division Bench of this Court in *P. N. Verma v. Union of India*, <sup>1</sup> and claimed that the fact situation in both the cases is similar and therefore, the instant petition deserves to be allowed in the light of the decision rendered in the aforesaid case, where jacked up price demanded by the DDA from the allottees of the flats, who had applied under a similar Scheme, was struck down. She pointed out that the decision of this Court in *P. N. Verma's case* (supra) was upheld by the Supreme Court and the Special Leave Petition filed by the DDA was dismissed by a speaking order. It was also contended by the learned counsel that cost of the flats was increased because of the expenditure incurred by the DDA for providing shelter to the weaker sections of the society. According to her the cost incurred by the DDA on account of providing houses to the weaker sections of the society cannot be legally recovered from the petitioners. She submitted that hike in the price of flats was patently unreasonable as petitioners cannot be burdened with the cost incurred by the DDA in respect of the flats for lower income groups. In support of her submission she relied upon a decision of the Madhya Pradesh High Court in *Smt. Sadhana Agrawal v. Indore Development Authority, Indore*, <sup>2</sup> and a decision of the Supreme Court in *Indore Development Authority v. Sadhana Agarwal* <sup>3</sup>. Finally learned counsel for the petitioners urged that the price of the flat is to be determined with reference to the prevailing rates as on the date of draw of lots and not on the date of allotment thereof.

12. On the other hand, learned counsel for the DDA submitted that the demand for higher price from the allottees was due to the increase in the cost of the construction of the flats. It was pointed out that the price of a flat indicated in the Brochure was provisional in nature and was subject to change in keeping with the circumstances prevailing at the relevant time. Learned counsel contended that the final price demanded by the DDA was neither arbitrary nor unreasonable and was based on the actual cost which the DDA had to incur under the Scheme. According to the learned counsel the case of the petitioners was not governed by the decision of this Court in *P.*

N. Verma's case as it stands on a completely different footing than the instant case. He alluded to the fact that the matter of price fixation does not fall within the jurisdiction of a writ Court. In this regard learned counsel relied upon the decision of the Supreme Court in *Premji Bhai Parmar v. Delhi Development Authority*,<sup>3</sup> He also contended that the transaction between the parties being of a contractual nature, the same cannot be subject-matter of the writ petition. He canvassed that the writ petition should be dismissed.

13. We have considered the submissions of learned counsel for the parties. The first question which requires determination is whether or not the prices indicated in the Brochure were final and binding on the parties. In order to resolve the issue, it will be necessary to refer to the relevant term contained in the Brochure having a bearing on the question. It reads as under:

"Estimated Provisional Cost

The estimated provisional cost of the proposed flats has been given at Annexure IX. This provisional estimated cost is subject to change in due course as per the circumstances prevailing at that time."

14. Thus it is clear from the aforesaid clause that the cost of the flats indicated in Annexure IX of the Brochure is estimated provisional cost thereof. While indicating the price, Annexure IX refers to it as "provisional estimated cost" of the flats. Therefore, the petitioners at the time of making applications on the basis of the Brochure were fully conscious of the fact that the prices of the flats indicated therein were provisional in nature and were subject to change in consonance with the prevailing circumstances at the relevant time. Besides the aforesaid condition, the Brochure also recites to the following effect :

"The above terms and conditions will be followed generally but the DDA reserves its right to alter any of them in its discretion if and when considered necessary. The altered terms, if any will supersede these terms and conditions."

15. Even this clause in no uncertain terms indicates that the terms and conditions contained in the Brochure were alterable and were subject to change. Even looking to the practical aspect of the matter, it appears to us that the estimated cost of the venture, which was to be completed in future, was merely indicative of probable or approximate cost thereof. In case during its execution prices of material and labour went up and if the excess cost was not to be recovered from the allottees, DDA will be running the housing scheme in deficit, which is not desirable. It needs to be noted that

DDA is a public authority. The money which it utilizes for construction of flats is public money. The DDA is not supposed to offer the flats to the allottees at rates lower than the cost of construction of flats incurred by it. In case the cost of construction is higher than the estimated and projected cost of flats, the difference needs to be recovered from the allottees in order to save tax payers money. Therefore, it seems to us that the price indicated in the Brochure was liable to change according to the cost incurred by the DDA for the construction of the flats under the Scheme. This being the position we fail to appreciate how the principle of promissory estoppel will apply to the facts of the instant case. There was no categorical assurance by the DDA to the proposed purchasers that the flats will be sold at the price indicated in the Brochure. Rather the DDA had amply clarified that the price was tentative and was subject to change. Even in the demand-cum-allotment letters issued by the DDA to the allottees it was categorically stated that the actual cost of the flats will be finalised after the completion of construction of the flats and the difference, if any, would be payable by the allottees along with the 5th and last installment before handing over possession of the flats. The allottees accepted the condition without demur at that stage. In the circumstances, therefore, the contention of the learned counsel for the petitioners based on promissory estoppels fails and is hereby rejected.

16. The next question which needs to be determined is whether or not the price demanded by the DDA was arbitrary, irrational and unreasonable. The DDA in its various affidavits has explained the reason for issuing the impugned demand letters to the petitioners. It has been inter-alia stated in the affidavits that amount of difference between the actual cost and the provisional cost does not contain any element of profit. What is being demanded from the petitioners is the actual cost of the flats incurred by the DDA. The price of a flat depends upon variety of factors including price of land, labor charges, price of material which goes into construction thereof, supervision and management charges and the cost incurred for providing amenities to the buyers. All these factors are not constant and are liable to change. It has been asserted by the DDA therein that while DDA is not precluded from making some profits from the disposal of flats, it has in fact not earned any profit whatsoever from the disposal of flats situate at Basant Enclave.

17. At this stage it will be apposite to set out para 6 of the counter affidavit affirmed on behalf of the DDA on January 29, 1983 and part of para 3 of its affidavit dated January 10, 1984 to appreciate the reason for escalation in prices of the flats :

Para 6 of affidavit dated January 29, 1983

"That in reply to para 6 of the petition, it is submitted that the demand of fifth and final installment made by the DDA was not arbitrary or otherwise as alleged in the para. The demand is based on actual expenditure including the anticipated liabilities and not on adhoc basis. The increase in the cost of the flats has been owing to various factors including increase in plinth area. The plinth area and cost of the land as given in the brochure and as per execution are as under:

<b>Category III</b>		<b>Category II</b>		<b>Category I</b>	
<b>Units (Duplex)</b>		<b>Units</b>		<b>Units</b>	
Size in sq. mt.	Cost Rs.	Size in sq. mt.	Cost Rs.	Size in sq. mt.	Cost Rs.
As per Brochure :					
134.24	115000	94.70	90.000	53.18	50,000
(FF and SF)		(G. F.)		G. F.	
				57.26	45,000
				FF and SF	
				(including s / shed)	
As per Execution :					
144.22	168200	94.93	114200	53.76	66,600,
					67,000
					68,700
142.95	166800	94.04	113200	61.83	69,300
					67,900
					(including S/shed)

It would thus be seen from the above that the difference of plinth area is sizeable in case of category I, First Floor and Second Floor and category II flats. In case the difference of cost of the plinth area of the flats now available is excluded from the plinth area of the flats now available the cost of flats in each category would work out as under :-

	Cat III	Cat. II	Cat. I
	F.F and S.F.	G.F.	
Disposal cost as per area shown in the brochure	1,15,600	114200	65900 S. F.



providing shelter to those who cannot afford to have the same in the competitive albeit harsh market of demand and supply nor can afford it on their own meagre emoluments or income, a little more from those who can afford for the benefit of those who need succour, can by no stretch of imagination attract Article 14."

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"Respondent No. 1 has been able to point out that the Authority's housing scheme as a whole has been running in a heavy deficit because flats including such as those of the petitioners actually cost much more than the initially determined estimates and by the time flats are ready for occupation initial estimates founded on prevalent market prices of materials and labour escalate and revised estimates have to be made. It is also shown that till Municipal authority takes over municipal services the Authority spends for the same and incurs cost. Apart from that petitioners have not been able to show that the Authority is actuated by commercial profit oriented approach in its overall working."

19. Keeping in view the aforesaid discussion, we are unable to hold that the demand of enhanced price for flats by the DDA is arbitrary, illogical, irrational or unreasonable.

20. Another question which calls for answer is whether under Article 226 of the Constitution of India, High Court can interfere with the fixation of price of flats. In Premji Bhai's case (supra) it was held that in the matter of price fixation the executive has wide discretion and it is not the function of the Court to sit in judgment over such matters. A Full Bench of this Court in *Smt. Sheelawanti v.*<sup>4</sup>, where the petitioners' grievance was that instead of price quoted in the Brochure issued by the DDA, it was demanding enhanced price for the flats which amounts were highly exorbitant, it was held that the scope of judicial review in the case involving costing and fixation of prices is very much limited. In this regard it was observed as follows:

"This Court having no expertise, knowledge or wherewithal to evaluate the cost aspect is not concerned with the correctness or otherwise of the price fixed and will not interfere."

21. The facts presented by Sheelawanti's case (supra) and the instant case are somewhat identical. In both the cases higher prices have been charged by the DDA than the ones indicated in the Brochure. On the parity of reasoning therefor when the Full Bench declined to interfere in the matter of price fixation and costing of flats, we cannot take a contrary view on the basis of the decision rendered by the Division

Bench in P. N. Verma's case. In any event the decision in P. N. Verma's case (supra) is distinguishable as there the Division Bench quashed the demands on the ground that the DDA in its final estimation of costs of the flats included equalization charges which were beyond the terms of its policy. In the instant case it has not been shown that DDA has made any demand on account of equalization charges or on account of factors which were not in conformity with the express terms and conditions of allotment. Therefore, the learned counsel for the petitioners cannot draw any support from the decision of P. N. Verma's case (supra).

22. It also appears to us that the writ petition is liable to be dismissed on the ground that the matter relating to costing of flats is a contractual matter and since the price demanded from the petitionersMISSING PARAcAn only claim the right conferred upon them by the said contract and are bound by the terms of the contract unless some statute steps in and confers some special statutory obligations on the part of the BDA in the contractual field. In the case before us, the contract between the respondents and the BDA does not contain any statutory terms and/or conditions.

xx xx xx xx xx

"There is a line of decisions where the contract entered into between the State and the persons aggrieved is non-statutory and purely contractual and the rights are governed only by the terms of the contract, no writ or order can be issued under Article 226 of the Constitution of India so as to compel the authorities to remedy a breach of contract pure and simple : *Radhakrishna Agarwal v. State of Bihar*, <sup>5</sup> *Premji Bhai Parmar v. Delhi Development Authority*, <sup>6</sup> and *D.F.O. v. Biswanath Tea Company Ltd.*, <sup>7</sup> "

23. In view of the authoritative judicial pronouncements of this Court is the series of cases dealing with the scope of interference of a High Court while exercising its writ jurisdiction under Article 226 of the Constitution of India in cases of non-statutory concluded contracts like the one in hand, we are constrained to hold that the High Court in the present case has gone wrong in its finding that there is arbitrariness and unreasonableness on the part of the appellants herein in increasing the cost of the houses/flats and the rate of monthly instalments and giving directions in the writ petitions as prayed for.

24. Learned counsel for the petitioners relied upon the decision of the Madhya Pradesh High Court in *Smt. Sadhna Aggarwal v. Indore Development Authority* (supra) in support of her submission that fixation of prices by the Authority was

subject to judicial review of the High Court under Article 226 of the Constitution. An examination of the decision reveals that the High Court came to the conclusion that the escalated cost demanded from the allottees was arbitrary and therefore, the same was quashed. In appeal by the Indore Development Authority it was held by the Supreme Court that a Development Authority has no absolute right to demand higher price for a flat than the one initially announced as an approximate cost thereof. But at the same time it was held that High Court in such a dispute while exercising the writ jurisdiction has not to examine every detail of the construction with reference to cost incurred. On the basis of material on record, the Supreme Court found that one of the reasons for the increase in the price of a LIG Flat from Rs. 60,000/- to Rs. 1,16,000/- was on account of increase in the area of the flat. In the circumstances, therefore, the Supreme Court did not find the demand of higher price of the flats from the allottees to be arbitrary. In result the order of the Madhya Pradesh High Court was set aside by the Supreme Court.

25. It appears to us that a Development Authority cannot arbitrarily increase the price of the dwelling units from the initial approximate cost envisaged at the launch of a housing scheme, but where the actual cost incurred by the Development Authority goes up during the execution of the project due to various factors, the Development Authority is not precluded from enhancing the price of the dwelling units. By this we should not be understood to mean that a Development Authority can only charge actual price incurred by it for construction of a dwelling unit. Besides the actual price it can also recover little more for subsidizing the housing for the weaker sections of the society and for meeting its legitimate organizational expenses so that it does not depend upon tax payers money for its survival.

26. Coming back to case in hand, we have already found that the demand for enhanced price of flats is not arbitrary. This being so, the matter relating to costing of flats being purely a contractual matter, cannot be agitated by invoking the writ jurisdiction of this Court.

27. We also do not subscribe to the submission of learned counsel for the petitioners that the price of the flats obtaining on the date of draw of lots should be charged from the allottees. The argument of the learned counsel runs counter to the view of the Supreme Court in *Delhi Development Authority v. Pushpendra Kumar Jain*,<sup>8</sup> wherein it was held as follows (Para 8) :

"Now coming to the other ground, we are unable to find any legal basis for

holding that the respondent obtained a vested right to allotment on the draw of lots. Since DDA is a public authority and because the number of applicants are always more than the number of flats available, the system of drawing of lots is being resorted to with a view to identify the allottee. It is only a mode, a method, a process to identify the allottee. It is only a mode, a method, a process to identify the allottee, i.e. it is a process of selection. It is not allotment by itself. Mere identification or selection of the allottee does not clothe the person selected with a legal right to allotment at the price prevailing on the date of draw of lots. The scheme evolved by the appellant does not say so either expressly or by necessary implication. On the contrary, clause (14) thereof says that "the estimated prices mentioned in the brochure are illustrative and are subject to revision/modification depending upon the exigencies of lay-out, cost of construction etc." It may be noted that registration of applicants under the said scheme opened on 1-9-1979 and closed on 30-9-1979. About 1,70,000 persons applied. Flats were being constructed in a continuous process and lots were being drawn from time to time for a given number of flats ready for allotment. Clause (14) of the scheme has to be understood in this context - the steady rise in the cost of construction and of land. No provisions of law also could be brought to our notice in support of the proposition that mere draw of lots vests an indefeasible right in the allottee for allotment at the price obtaining on the date of draw of lots. In our opinion, since the right to flat arises only on the communication of the letter of allotment, the price or rates prevailing on the date of such communication is applicable unless otherwise provided in the scheme. If in case the respondent is not willing to take or accept the allotment at such rate, it is always open to him to decline the allotment. We see no unfairness in the above procedure.

(Underlining supplied)

28. Thus we do not find any force in the argument of the learned counsel for the petitioners.

29. Before parting with the case, we would like to place on record our appreciation for the hard work put in by the learned counsel for the petitioners and the ability with which she presented the cause of her clients before us.

30. In view of the aforesaid discussion, the writ petition fails and is hereby dismissed.

Petition dismissed.

Cases Referred.

1. AIR 1985 Delhi 417
2. AIR 1986 Madhya Pradesh 88
3. AIR 1980 Supreme Court 738.
4. DDA, AIR 1995 Delhi 212
5. (1977) 3 SCR 249 ,
6. (1980) 2 SCR 704
7. (1981) 3 SCR 662 .
8. 1994 Supp (3) SCC 494