

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 11th JULY, 2022

IN THE MATTER OF:

+ **W.P.(C) 8552/2021**

DINESH KUMAR

..... Petitioner

Through: Mr. Kumar Utkarsh, Mr. Manoj
Kumar, Advocates

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Ms. Shahana Farah, Ms. Devika
Mohan, Advocates for DDA with Mr.
Kрати Jindal, AAO

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This petition under Article 226 of the Constitution of India, 1950, has been filed with the following prayers:

"i. issue any appropriate writ, order or direction directing the respondent DDA to withdraw the impugned letter dated 01.07.2021 (Annexure P-1) to the extent it lays down wrongful demand of Rs 84,416/- as interest on Balance 10% disposal cost;

ii. issue any appropriate writ, order or direction directing the respondent DDA to refund Rs 84,416/- paid by the petitioner under protest with rate of 24% p.a from 16.08.2021 till the payment is made;

iii. issue any appropriate writ, order or direction directing the respondent DDA to allot proper size of LIG flat to the petitioner as per DDA Housing Scheme 2014; and

iv. pass any other, order or direction or such further orders or directions as this Hon'ble Court may deem fit and proper in the interest of justice."

2. The facts, in brief, leading to the instant petition are as under:-

- i. It is stated that the Petitioner had applied for the allotment of a Low Income Group (LIG) flat under the DDA Housing Scheme 2014, and was accordingly allotted LIG Flat No. 14, 3rd Floor, Block - B11, Pocket-3, Sector G-8, Narela, New Delhi – 110040 (*hereinafter referred to as 'flat in question'*) on 25.11.2014.
- ii. On 19.01.2015, the Petitioner received a demand letter seeking for the payment of Rs. 12,19,237/-, i.e. 90% of the total amount of the LIG flat. An amount of Rs. 12,31,262/- was ultimately paid by the Petitioner due to delay in approval of loan. An agreement for sale was also executed on 17.06.2015.
- iii. It is stated that in April 2019, the Petitioner was made aware of the fact that instead of LIG flats, Economically Weaker Section (EWS) flats were being allotted to drawee/allottees of the DDA Housing Scheme 2014. Along with other allottees of the LIG flats, the Petitioner wrote an application letter dated 04.06.2019 registering their protest against the same. Consequently, the Respondent-DDA waived off 50% of the maintenance charges, i.e. R. 72,676/- for all the allottees.
- iv. The Petitioner received a possession letter dated 07.04.2021 which stated that the flat in question was to be handed over to the Petitioner within 90 days of the issuance of the letter. It is stated that the size of the flat in question allotted to the

Petitioner was 29 sq.mts. instead of 33 sq.mts. and was in the nature of an EWS flat.

- v. On 11.07.2021, the Petitioner received a letter dated 01.07.2021 from the Assistant Director of the Respondent-DDA whereby the Petitioner was requested to pay Rs. 1,68,247/-, which includes an interest of Rs. 84,416/- on the balance 10% disposal cost of Rs. 1,28,227/-. It is stated in the letter that the amount is to be paid by 18.08.2021, failing which the interest would increase by Rs. 1070/- per month. In response to the letter dated 01.07.2021, the Petitioner wrote a representation dated 12.07.2021 requesting for a waiver of the interest, however, no response was provided by the Respondent-DDA to the same. Thereafter, the Petitioner served the Respondent with a legal notice dated 22.07.2021. *Vide* letter dated 03.08.2021, the Respondent-DDA informed the Petitioner that there was no policy of waiver of interest and requested the Petitioner to make the payment in accordance with the letter dated 01.07.2021.
- vi. It is stated that the Petitioner, seeing no other option but to pay the interest for possession of the flat in question, made the entire payment of Rs. 1,68,247/- (+ Rs. 5,350/- on account of extra penalty amount) under protest and recorded the same in their letter to the Respondent-DDA *vide* letter dated 06.08.2021.
- vii. Aggrieved by the demand of interest on balance 10% disposal cost as well as the allotment of an EWS instead of an LIG flat as per the DDA Housing Scheme 2014, the Petitioner has approached this Court by way of the instant writ petition.

2. At the outset, it is pertinent to note that this Court is seized of **W.P.(C) 9356/2019** titled as Association of Allottees (R) 2014 and 2017 v. Delhi Development Authority, wherein the principal grievance that has been raised by the Petitioner-Association therein is that despite the payment for allotment of LIG category flats, allotment of flats which fall within the EWS category has been made. The next date of hearing in the said writ petition is 26.09.2022. The learned Counsel for the Petitioner has not made any submissions on this aspect of the writ petition. This Court shall, therefore, at this juncture, refrain itself from delving into the prayer pertaining to the allotment of an alleged EWS category flat instead of an LIG category flat, and shall restrict itself to whether the Petitioner was liable to pay interest on the balance 10% disposal cost even after the clause of lock-in period of 5 years was done away with by the DDA.

3. Mr. Kumar Utkarsh, learned Counsel appearing for the Petitioner, submits that the demand of Rs. 84,416/- as interest on the balance 10% disposal cost is illegal and arbitrary in view of the fact that the demand-cum-allotment letter dated 19.01.2015 categorically states that the balance 10% is to be paid after a period of five years, and the interest on the same is to only be levied if there is a delay in the payment of the balance amount. Mr. Utkarsh submits that DDA cannot charge interest on the balance 10% of the amount of the flat in question right from 2015 after stating in its demand letter that the Petitioner can deposit the balance amount after five years.

4. Mr. Utkarsh draws the attention of this Court to the Order dated 17.08.2021 whereby this Court had sought response of the Respondent-DDA as to why there has been a reduction of size of the flat as well as the rate of interest that was being charged on the pending 10% amount of Rs. 1,28,227/-. He states that in response to the grievance of reduction in the

size of the flat, the maintenance charges had been reduced by the DDA by 50%. Accordingly, the balance amount that was to be paid by the Petitioner was Rs. 55,551/-, along with interest and conversion charges. The learned Counsel for the Petitioner submits that the calculation done by Respondent-DDA has been opaque in nature and the Respondent-DDA has failed to justify as to how the interest charged could amount to Rs. 84,416/-.

5. The learned Counsel for the Petitioner further argues that the reasoning of the Respondent-DDA to charge simple interest on the balance amount payable as per their Circular dated 25.01.2019 is unconscionable as the agreement between the Petitioner and the Respondent-DDA dates back to 2015, and the DDA cannot now illegally and arbitrarily levy simple interest of 10% per annum on the balance 10% of the disposal cost in order to recover the capital cost that was purportedly blocked.

6. *Per contra*, Ms. Shahana Farah and Ms. Devika Mohan, learned Counsels appearing for the DDA, submits that the Petitioner is feigning ignorance with regard to the payment of balance 10% of the disposal cost and interest charged on the same as it was categorically mentioned in the demand-cum-allotment letter itself, along with the Agreement for Sale. Ms. Farah submits that the representation and the Legal Notice of the Petitioner dated 12.07.2021 and 22.07.2021, respectively, had been duly considered by the Respondent-DDA whereby the request of the Petitioner had been rejected on the grounds that there was no policy of waiver of interest. She further submits that the modified Clause 16(c), as per Circular dated 25.01.2019, removed the embargo of the lock-in period of five years and stated that the Conveyance Deed could be executed in favour of the allottee within a period of 6 years, subject to deposit of the balance 10% disposal cost, along with simple interest @ 10% per annum.

7. The learned Counsel for the DDA, submits that the DDA does not have any policy for waiver of interest. She refers to the demand-cum-allotment letter dated 19.01.2015 to showcase that the terms for the payment mention that 10% balance payment is to be made after a period of 5 years and that the interest on the same shall be done as per the prevailing rate. She has also relied upon Clause 16 of the Brochure for the DDA Housing Scheme, 2014 and Clause 7(i) of the Agreement for Sale to argue that the DDA is entitled to charge interest on the capital cost incurred by it on account of the cost of construction. The learned Counsel for the DDA submits that the Petitioner has entered into the contract with DDA being fully aware of the terms of payment and cannot now turn its back on the same.

8. Heard Mr. Kumar Utkarsh, learned Counsel for the Petitioner, Ms. Shahana Farah, learned Counsel appearing for DDA, and perused the material on record.

9. DDA had launched their Housing Scheme in 2014 wherein around 25000 flats belonging to different categories, i.e. HIG, MIG, LIG, EWS, etc. were being offered for allotment. In spite of the intention of the Housing Scheme-2014 to increase affordable infrastructure/housing in Delhi, numerous problems were raised by the successful allottees; one grievance has been recorded in the aforementioned W.P.(C) 9356/2019 regarding the size of the flats allotted to those seeking LIG flats. Moreover, issues pertaining to levying of interest on the balance 10% disposal cost have also been flagged by the allottees.

10. As per the brochure of the Housing Scheme-2014, Clause 16(c) categorically notes that a Conveyance Deed in the prescribed format transferring the title to the flat shall be executed in favour of the original

allottee, which shall be registered with the Sub-Registrar as per law, upon the request of the allottee, after a period of five years from the date of handing over possession of the flat, subject to the payment of the balance 10% cost of the flat, along with the interest as per policy and the conversion charges. However, this execution of the Conveyance Deed would be done only if the original allottee has not sold, transferred or alienated the whole or any part of the flat by any agreement of whatsoever nature and parted with the possession thereof. In simple terms, a lock-in period of five years was introduced by the DDA in their Housing Scheme-2014 in order to prevent speculative buying and, as per this clause, the Conveyance Deed would only be executed by the DDA after a period of five years with the allottee being rendered incapable of selling, transferring, alienating any part of the flat for the said period. For ease in comprehension, Clause 16(c) has been reproduced as follows:

"16 (c) A Conveyance Deed in the prescribed format transferring the titled to the flat shall be executed in favour of the original allottee which shall be registered with the Sub-Registrar as per law, upon receipt of a request from the original allottee after a period of 5 (five) years from the date of handing over possession subject to payment of the balance 10% cost of the flat alongwith interest as per policy and the conversion charges and all other dues provided the original allottee has not in any manner sold, transferred or alienated the whole or any part of the flat by any agreement of whatsoever nature and parted with possession thereof."

11. The lock-in period of five years was done away with by the DDA when it introduced its Housing Scheme in 2017 ("DDA AwasiyaYojna 2017"). In order to bring parity between the DDA Housing Scheme 2014 and the DDA AwasiyaYojna 2017, vide Circular dated 25.01.2019, the DDA

removed the embargo on execution of “Conveyance Deed” up to 5 years of issuance of possession letter for the allottees of the DDA Housing Scheme 2014. The following modification was made to Clause 16(c) of the brochure:

"Clause 16(c) - Upon receipt of a request from the original allottee a 'Conveyance Deed' in the prescribed format transferring the title of the flat shall be executed in favour of the respective allottee upto a period of 6(six) years from the date of handing over possession subject to payment of the balance 10% cost of the flat along with simple interest @ 10% p.a. and the conversion charges and all other dues provided the original allottee has not in any manner sold, transferred or alienated the whole or any part of the flat by any agreement of whatsoever nature and parted with possession thereof. All such allottees who would apply for execution of conveyance deed after a period of 06 years from the date of possession may be charged applicable penal interest on the balance 10% cost of the flat. The expenditure on è-stamping and other expenses on account of registration of conveyance deed shall be borne by the allottee."

12. As per the modified Clause 16(c), a Conveyance Deed would be executed in favour of the respective allottee up to a period of six years from the date of handing over possession, subject to payment of the balance 10% cost of the flat, along with simple interest @ 10% per annum. It further states that allottees who apply for execution of the Conveyance Deed after a period of six years from the date of possession would be charged applicable penal interest on the balance 10% cost of the flat. Apart from the modified Clause 16(c) of the brochure, the Respondent-DDA is relying upon Clause 7 of the Agreement for Sale dated 17.06.2015 and Clause 13 of the Demand-Cum-Allotment Letter dated 19.01.2015 to justify the interest that is being charged on the balance 10% disposal cost.

13. Clause 7 of the Agreement for Sale dated 17.06.2015 and Clause 13 of the Demand-Cum-Allotment Letter dated 19.01.2015 have been reproduced as under:

"7. (i).After completion of a period of 5 (Five) years, or 15 (fifteen) years in the case of allotment in favour of any reserved category from the date of handing over of physical possession of the Flat as stated above, the allottee/vendee shall submit a request in writing to DDA for execution of a Conveyance Deed in her/his favour.

(ii). Upon receipt of such request from the allottee/vendee, DDA will execute a conveyance Deed in the prescribed format transferring the title of the Flat in favour of the allottee/vendee as per law, subject to the receipt of balance 10% (ten percent) cost/consideration, interest, if any, and conversion charges and other dues, provided the allottee/vendee has not, in any manner, sold, transferred or alienated the whole or any part of the Flat by any agreement of whatsoever nature and parted with possession thereof.

(iii). DDA will execute the Conveyance Deed within a period of 90 days in the prescribed format upon receipt of the request and subject to receipt of balance consideration, applicable interest, if any, payment of all charges/fees and completion of the requisite formalities in all respects, as mentioned above."

"A. You have been successful for allotment of a flat in the draw as per details given below. The allotment is subject to terms and conditions given herein and enclosed, given in brochure of the scheme and DDA (Management and Disposal of Housing Estate) Regulation, 1968.

Date of Draw: 25/11/2014
Mode of Payment: Cash Down
Locality: Narela
Flat Category: LIG
Flat No.: 14
Floor: Third
Sector: G-8
Pocket: 3
Block: Block B11

B. The disposal cost of the flat is given below:

1. Disposal Cost

<i>a. Land Cost</i>	272658.00
<i>b. Construction Cost</i>	1009610.00
<i>c. Total (a+b)</i>	1282268.00
<i>d. Add surcharge</i>	00.00
<i>e. Less subsidy/rebate</i>	00.00
<i>f. Any other item (s)</i>	00.00
<i>g. Total disposal cost (c+d-e+f)</i>	1282268.00

2. One time maintenance charges (i/c of all taxes)

<i>a. Civil Maintenance</i>	105351.00
<i>b. Electrical Maintenance</i>	40000.00
<i>c. Service tax @ 8.65%</i>	19844.00

3. Service Tax @ 3.09% on Construction cost.00

4. Ground rent capitalized, if any (N.A. on FH allot)

5. Fire risk cover, if any .00

6. Other Charges etc. .00

7. Total (1+6) 1447463.00

8. Total excluding 7-2(c) & 3 1427619.00

9. Less TDS U/s 194-IA to be deducted by alt @ 18 of consideration (7-2(c)-3) .00

10. Less

a. Registration money 100000.00

b. Interest on regn money .00

c. TDS .00

d. Net (a+b-c) 100000.00

11. Net due (7-10(d)) 1347463.00
 12. Demanded amount 1219237.00
 13. Balance 10% to be paid after 5 years from issue to this demand 128226.80
 14.

<i>Demanded amount payable by (**)31-Mar-15</i>	<i>Demanded amount if paid by</i>	<i>Payable including interest</i>
10-JAN-15	31-MAR-15	1219237.00
01-APR-15	19-APR-15	1219237.00
20-APR-15	19-MAY-15	1231262.00
20-MAY-15	18-JUN-15	1243288.00
19-JUN-15	18-JUL-15	1255313.00
19-JULY-15	17-AUG-15	1267338.00
18-AUG-15	16-SEPT-15	1279364.00
17-SEP-15	16-OCT-15	1291389.00
17-OCT-15	15-NOV-15	1303414.00
16-NOV-15	15-DEC-15	1315440.00
16-DEC-15	19-JAN-16	1329469.00

15. Automatic cancellation, if demanded amount is not paid, by 19-JAN-16

(*) After 5 years allottee is required to pay conversion charges 6 interest on balance 10% payment at the rate prevailing on that time.

(*) TDS shall be deducted/deposited by allottee, if consideration amount as per 0 above is more than rupees fifty lacs. A proof is required to be submitted by the allottee within fifteen days from the due date of depositing tax.

(**) If the demanded amount is not paid by this date, the allottee is liable to deposit it before the date of automatic cancellation given in column 15 along with interest @ 12% p.a. compounded as on 31 March, failing which notice/intimation will be

given by the DDA for cancellation.

(Required documents for taking possession can be downloaded from DDA website and submitted after making payment. All additional liabilities/demands towards taxation etc. will be borne by the allottee which may be intimated later on. "*

14. A perusal of the above clauses indicates that the interest on the balance 10% payment could have been charged by the Respondent-DDA only if the Petitioner had paid the balance amount after five years of possession of the flat in question. An interpretation of the clauses would give an inference that the interest could only be levied if the Petitioner had delayed its payment of the balance amount. The Respondent-DDA cannot, as a matter of right, institute a condition for the Petitioner to pay the balance amount after a period of five years and then charge interest on the same. If the interpretation as sought to be given by the DDA is accepted then it will mean that the DDA on the one hand is refusing to take 10% of the amount and then forcing the allottee to pay interest even if the allottee is prepared and willing to pay that 10% prior to five years. Such an interpretation would be, *per se*, a violation of Article 14 of the Constitution of India and the Circular has to be read in a way that it does not find fault with Article 14 of the Constitution of India. A condition which forces an allottee to pay interest even though the allottee is ready and willing to pay the interest amount in the first instance, cannot be accepted. Such a condition places the Petitioner at a disadvantage as it imposes the payment of interest despite the Petitioner being in a position to pay the balance 10% payment prior to five years. The Agreement for Sale saddles the allottee with interest without any reason. It is well settled that interest is implied on the delayed payment of money. When

the allottee does not want to delay the payment then he cannot be forced by the DDA to pay interest.

15. Furthermore, the Circular modifying Clause 16(c) was issued on 25.01.2019, i.e. four years after the Petitioner had entered into the contract with the Respondent-DDA. The modified Clause 16(c) states that upon request of the allottee within six years from the date of possession, the Conveyance Deed shall be executed, subject to the payment of the balance 10% disposal cost with 10% simple interest per annum and other charges. The modified clause also notes that if an allottee applies for execution of the Conveyance Deed after six years, then a penal interest would be applicable on the 10% of the balance amount. While this Court is not entering into the constitutionality of the Circular, it must be noted that levying of mandatory 10% simple interest on the balance amount does not have any justification and the reasoning provided by the Respondent-DDA that the simple interest is being levied to discharge the capital costs incurred by the Respondent-DDA does not hold any water. Applying the Circular brought out in 2019 by the DDA to the facts of this case, it will amount to changing the rules of the game after the game has begun which is not permitted in law.

16. In the case of Sharma Transport v. Government of Andhra Pradesh and Ors., (2002) 2 SCC 188, the Supreme Court had defined the expression “arbitrary” to be something done in an *“unreasonable manner, as fixed or done capriciously or at pleasure, without adequate determining principle, not founded in the nature of things, non-rational, not done or acting according to reason or judgement, depending on the will alone”*. Article 14 of the Constitution of India, 1950, is a guarantee against arbitrariness exercised by the State and is meant to ensure that an individual is protected with the aid of the thread of reasonableness that runs through our

Constitution.

17. In the instant case, the Respondent-DDA has failed to justify the reason as to which the Petitioner has been charged the interest on the balance 10% disposal cost of the flat in question. Having stipulated the conditions of payment in the contract for the allotment of the flats under the DDA Housing Scheme, 2014, the Respondent-DDA cannot after four years institute new conditions of payment and allotment as doing so gravely infringes the Petitioner's Article 14 under the Constitution of India. Even if the modified Clause 16(c) is kept aside, interpreting the Demand-cum-Allotment Letter and the Agreement for Sale in a manner that would lead to levying of interest on the 10% balance amount for no fault of the Petitioner would also be untenable.

18. In wake of this, the impugned Letter dated 01.07.2021 seeking Rs. 84,416/- as interest on the balance amount is set aside. The Respondent-DDA is directed to issue to the Petitioner within a period of one week from the date of this Judgement a new letter of demand recording the balance amount, along with the conversion charges, that is to be paid by the Petitioner.

19. In view of the above observations, the instant writ petition is allowed to a limited extent. All pending application(s), if any, stand disposed of,

SUBRAMONIUM PRASAD, J.

JULY 11, 2022

Rahul