



\$~49

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

+ LPA 112/2025 & CM APPL. 8724/2025

VED PRAKASH THAKUR

.....Appellant

Through: Mr. Dhananjay Jain, Mr. Raghav Narayan, Ms. Pallavi Dubey and Mr. Madhur Narayan, Advs.

versus

DELHI DEVELOPMENT AUTHORITY .....Respondent

Through: Mr. R.K. Dhawan, SC for DDA with Ms. Nisha Dhawan and Mr. V.K. Teng, Advs.

%

*Date of Decision: 13<sup>th</sup> February, 2025*

**CORAM:**

**HON'BLE THE CHIEF JUSTICE**

**HON'BLE MR. JUSTICE TUSHAR RAO GEDELA**

**JUDGEMENT**

**TUSHAR RAO GEDELA, J : (ORAL)**

**CM APPL. 8725/2025 (Exemption)**

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

**LPA 112/2025 & CM APPL. 8724/2025**

3. Present appeal has been filed by the appellant against the order dated 10.02.2025 passed by the learned Single Judge in CM APPL. 7779/2025 filed in W.P.(C) 1596/2025 titled as "*Ved Prakash Thakur vs. Delhi Development Authority*" whereby the learned Single Judge did not accede to the prayer for grant of interim relief of stay on auction of flat in question allotted to the Appellant.

4. Mr. Dhananjay Jain, learned counsel for the appellant submits that



the appellant has undisputedly deposited a sum of Rs.1.04 crores which according to him is 75% of the sale consideration of the flat in question. He also states that the said amount was deposited by the appellant on 31.12.2020 which was the date extended by the respondent/DDA keeping in view the COVID-19 pandemic situation. Learned counsel submits that while the appellant had sufficient time to deposit the balance amount of the demanded amount, the respondent *vide* the notice dated 10.02.2021 had stated that the allotment shall be deemed to be cancelled in case the entire sum was not paid on or before 31.12.2020. It is the contention of the learned counsel that the said notice is contrary to certain clauses of the brochure issued by the respondent/DDA under the “Housing Scheme 2019”. In particular, he states that the sub clause (ii) of clause 9 of the brochure permitted further time of six months over and above the 90 days period initially provided for deposit of 75% of the total demand. He states that the remaining 25% could have been easily paid within the six months period after the 90 days period was over. In the present case, according to learned counsel the 75% deposit having been made on 31.12.2020, the appellant under the aforesaid clause had time uptill 30.06.2021 to make the balance payment. He states that the deemed cancellation stipulated in notice dated 10.02.2021, therefore, is contrary to the sub clause (ii) of clause 9 of the brochure. That being the position, according to learned counsel, the learned Single Judge ought to have evaluated the “*Triple Test*” theory and granted interim stay against the proposed auctioning of the flat in question. He prays that this Court may allow the present appeal and protect the interests of the appellant during the pendency of the writ petition before the learned Single Judge.

5. *Per contra*, Mr. R.K. Dhawan learned standing counsel appearing



for the respondent/DDA, on advance notice, vehemently refuted the submissions made by learned counsel for the appellant. Learned counsel invited our attention to the demand notice dated 20.09.2019 which categorically stipulated in clause 11 that the flat in question would be automatically cancelled without further notice if demanded amount was not paid by 18.03.2020. According to learned counsel, since admittedly 75% payment was tendered on 31.12.2020, the allotment was automatically cancelled without any further notice since the said payment was beyond the date stipulated in the demand letter i.e., 18.03.2020.

6. Moreover, learned counsel submits that as per his instructions, the flat in question, post the cancellation has been put up for auction already, though he fairly admits that he is not aware of the current status of auction proceedings. He, therefore, prays that the present appeal keeping in view the aforesaid violation of the terms of allotment is bereft of any merits and having regard to the fact that auction process has already commenced, no order restraining the said auction may be passed and the appeal consequently be dismissed.

7. We have heard the learned counsel for the parties and examined the record including the impugned order.

8. Undoubtedly, sub clause (ii) of clause 9 of the brochure issued by the respondent/DDA clearly extends the time to a period of six months to the allottees subject to payment of simple interest @ 10% per annum. It is also not disputed that the appellant had, in fact, deposited a sum of Rs.1.04 crores, which tantamount to 75% of the original demand on 31.12.2020. It is also not doubted that the respondent/DDA itself had extended the date of payment to 31.12.2020 keeping in view the



difficulty and financial hardship that the allottees may have undergone while tendering payment after allotment of flats. It was only in pursuance thereto that the appellant had made the deposit of 75% of the demanded sum on 31.12.2020. In this undisputed factual situation, if one were to apply the provisions of sub clause (ii) of clause 9 of the brochure, it is apparent that the appellant would automatically enure the benefit of further time of six months to pay the outstanding balance amount subject to payment of interest @ 10% per annum.

9. To the submission of learned counsel for the respondent/DDA regarding automatic cancellation on non-payment of the demanded amount by 18.03.2020, we find that the same is contrary to the facts on record. Though it is correct that clause 11 of the demand letter dated 20.09.2019 stipulated payment of the demanded amount by 18.03.2020, failure whereof would entail automatic cancellation without any further notice, however we find that the respondent/DDA itself varied this condition by extending the date of deposit to 31.12.2020. This extension of time has not been disputed by the learned counsel for the respondent/DDA. Thus, once the respondent/DDA itself extended the stipulated date, it cannot now fall back upon the pre extended date to contend that non-payment had ended up in automatic cancellation giving right to it to put the flat in question to auction. Thus, this submission in that context is unmerited and we do not accept the same.

10. Having regard to the aforesaid analysis, it is apparent that the appellant would have six months from 31.12.2020 to make the balance outstanding amount of 25% with the applicable interest to the respondent/DDA. Thus, the letter dated 10.02.2021 would not be an impediment to the appellant making the balance payment. That apart,



the brochure of the respondent/DDA being the primary document containing the terms and conditions, cannot be varied by any letter or notice of the respondent, particularly, letter dated 10.02.2021.

11. So far as the prayer for interim stay on auctioning of the flat in question is concerned, we find from the record and which has not been disputed, that the appellant had made a payment of 75% of the demanded amount as far back as on 31.12.2020; if in such a situation the flat in question is auctioned, irreparable loss and injury would occur to the appellant and balance of convenience too, is in favour of the appellant keeping in view the specific provisions of the brochure.

12. Learned counsel appearing for the appellant, on instructions, states that the appellant is willing to deposit the balance amount with the interest stipulated in sub clause (ii) of clause 9 of the brochure as per the directions of this Court.

13. Having regard to the aforesaid analysis and the statement made by learned counsel appearing for the appellant, binding the appellant to the same, we direct as under:-

- (a) The appellant shall deposit the balance outstanding amount of 25% of the sum demanded along with interest accrued thereon @ 10% per annum as per sub clause (ii) of clause 9 of the brochure within a period of one month from date with this Court in the name of Registrar General who shall invest the same in an interest bearing FDR with an auto renewal clause;
- (b) In case the auction proceedings has not been held, the respondent/DDA is restrained from initiating the same till the pendency of the underlying writ petition and;



2025:DHC:925-DB



(c) In case the auction proceedings have been held and such proceedings have not culminated into final allotment to the auction purchaser, there shall be a stay of further proceedings during the pendency of the underlying writ petition;

(d) Payment to be made by the appellant under this order shall be subject to final order which may be passed by learned Single Judge in the underlying writ petition.

14. The present appeal is disposed of at the admission stage itself with the aforesaid directions. However, we make it clear that the observations made hereinabove shall not tantamount to any expression on the merit of the case of the respective parties in the underlying writ petition.

15. All rights and contentions of the parties are left open.

**TUSHAR RAO GEDELA, J**

**DEVENDRA KUMAR UPADHYAYA, CJ**

**FEBRUARY 13, 2025/ms/rl**