



2025:DHC:47



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

% **Order reserved on : 28 October 2024**  
**Order pronounced on : 08 January 2025**

+ W.P.(C) 7050/2024

AJAY KUMAR & ORS. ....Petitioners

Through: Mr. Akash Khurana and Ms.  
Ishita Kumar, Advs.

versus

DELHI DEVELOPMENT AUTHORITY THROUGH VICE  
CHAIRMAN ....Respondent

Through: Mr. Wattan Sharma, Adv. for  
applicant.

Mr. Arun Birbal and Mr. Varun  
Gupta, Advs.

**CORAM:**  
**HON'BLE MR. JUSTICE DHARMESH SHARMA**

**ORDER**

**CM APPL. 54529/2024 (For vacation of stay)**

1. This application has been filed on behalf of the applicant/  
respondent/DDA<sup>1</sup> (*hereinafter referred as the 'applicant'*), seeking  
vacation of the interim order passed on 16.05.2024 in the present writ  
proceedings, whereby this Court directed the applicant to reserve 50%  
of the EWS<sup>2</sup> dwelling units in the Group Housing constructed by the  
DDA in Pocket 5, Sector 14, Dwarka, under the *Diwali Special  
Housing Scheme, 2023 (First Come First Serve Basis)* in favour of the

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<sup>1</sup> Delhi Development Authority

<sup>2</sup> Economically Weaker Section



non-applicants/petitioners as well as the other apartment owners of the said group housing.

2. To recapitulate, the DDA had constructed a total of 1,640 dwelling units under the MIG<sup>3</sup>, LIG<sup>4</sup> and EWS categories in Group Housing at Pocket 5, Sector 14, Dwarka, and proceeded to allot the same to the public under two Schemes, firstly the *Diwali Special Housing Scheme, 2023 (Mode of disposal: e-auction)* and secondly, the *Diwali Special Housing Scheme, 2023 (Mode of disposal: First Come First Serve Basis)* both dated 19.11.2023.

3. Attention of this Court has been drawn to notification dated 13.04.2013 bearing S.O No. 1215 (E), besides notification dated 23.09.2013 bearing S.O. No. 2889 (E) and S.O. No. 2895 (E), issued by the Ministry of Urban Development (Delhi Division), by virtue of which the Developers Entity [**DE**] is required to retain, reserve, and offer 50% of the EWS housing stock of a total of 1,008 dwelling units, i.e., 504 dwelling units, specifically only to the non-applicants/petitioners and other apartment owners of Pocket 5, Sector 14, Dwarka, to house the Community Service Personnel [**CSP**] working for the said owners/residents. The relevant portion of the notification dated 23.09.2013 reads as under:

“(v) The developer shall ensure that minimum 15% of the proposed FAR to be constructed for Community-Service Personnel/ EWS and lower category. Such flats should have a carpet area between 25-40 sqm. This 15% of the proposed FAR for Community Service Personnel/EWS and lower category housing would be over and above 200 permissible FAR and density of 200 DUs. Employer

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<sup>3</sup> Middle Income Group

<sup>4</sup> Low Income Group



Housing of Central Government. State Government and other Government Agencies are not required to follow the requirement of FAR or Dwelling Units for Community Service Personnel/EWS and lower income category 50% of the EWS Housing Stock shall be retained by Developer Entity (DE) and disposed only to the Apartment owners, at market rates, to house Community Service Personnel (CSP) working for the Residents/Owners of the Group Housing. These will be developed by DE at the respective Group Housing site/premises or contiguous site. Remaining 50% of DUs developed by DE to be sold to DDA for EWS housing purpose will be sold to DDA/ Local Bodies at base cost of Rs. 2000 per sq. ft. as per CPWD index of 2013 (plus cost of EWS parking) which shall be enhanced as per CPWD escalation index at the time of actual handing over and can be developed by DE at an alternate nearby site. Necessary commercial and PSP facilities shall also be provided by the DE for this separate housing pocket. The EWS housing component created by the DE shall be subject to quality assurance checks, as prescribed in this regard by Govt/DDA. The final handing/taking over of this component shall be subject to fulfilling the quality assurance requirements. The DE shall be allowed to undertake actual transfer/transaction of sealable component under its share/ownership to the prospective buyers only after the prescribed land arid EWS housing component is handed over to the DDA.”

4. The case set up against the DDA by the non-applicants/petitioners, being the successful bidders and allottees of the MIG and LIG dwelling units, is that without offering 50% of the EWS dwelling units to them, as stipulated in notifications dated 13.04.2013 and 23.09.2013 issued by the Ministry of Urban Development (Delhi Division), the DDA has arbitrarily invited online applications for the allotment of 100% of the EWS housing stock in open market on “first-come-first-serve basis”. It is contended that the DDA has constructed the said Group Housing in the capacity of the “DE” as well as the “local body”. Hence, the present writ petition came to be filed before this Court *inter alia* seeking quashing of the



*Diwali Special Housing Scheme, 2023 (First Come First Serve Basis)* to the extent of illegal invitation for allotment of 50% of the EWS housing stock on first come first serve basis.

5. Upon the initiation of the present writ proceedings, this Court on 16.05.2024 granted interim relief to the non-applicants/petitioners by staying the process of allotment of 50% of the EWS housing stock i.e., 504 dwelling units in the said Group Housing.

6. Aggrieved by the said interim order dated 16.05.2024, the *bona fide* purchasers/allottees of the EWS dwelling units, by way of CM NO. 45660/2024, 50349/2024 & 54559/2024 (which are still pending for consideration), seek impleadment in the present writ petition on the ground that the directions of this Court dated 16.05.2024 directly affect them inasmuch as it is claimed that the impugned order has put them under a severe financial strain and being *bona fide* purchasers, they ought not be made to suffer for no fault of theirs.

7. In the aforesaid backdrop, this Court is considering the application bearing CM APPL. 54529/2024 seeking vacation of the stay order dated 16.05.2024 passed by this Court.

**LEGAL SUBMISSIONS:**

8. Leaned counsel for the applicant in CM APPL. 54529/2024 has stated that third party rights have been created and therefore, not vacating the stay would be unfair to such persons of EWS category who have been declared as successful allottees under the said Scheme on *first come first serve basis*. Accordingly, it is urged that the stay order be vacated so that the DDA can proceed with the handing over of possession of the EWS flats to the *bona fide* purchasers/allottees of





floated for allotment under the Scheme “*Diwali Special Housing Scheme, 2023 (Mode of disposal: First Come First Serve Basis)*”, which had a fixed price.

12. The impugned interim order was passed on the plea that 50% of the EWS housing stock of 1008 dwelling units at Sector-14, Dwarka be kept specifically for the allottees of the MIG and LIG Flats in Sector-14, Dwarka, for which reliance was placed on the order dated 06.02.2024 in W.P.(C) 1607/2024 and a notification dated 23.09.2013 issued by the Ministry of Housing & Urban Development. However, what was clearly not brought to the notice of the Court, or suppressed deliberately or otherwise, is that the notification dated 23.09.2013 had been amended *vide* gazette notification dated 16.11.2020 and after modification, the relevant clause reads as follows:

"Chapter 4: Shelter; Para 4.4.3 B. Residential Plot - Group Housing (v) ... **Remaining 50% of DUs developed by DE to be sold to the eligible beneficiaries identified by DDA/ local bodies as per DDA policy.** These can be developed by DE at an alternate nearby sites. Necessary parking, commercial and PSP facilities shall also be provided by the DE for this separate housing pocket. The EWS housing component created by the DE shall be subject to quality assurance checks as prescribed in this regard, by Govt./ DDA. The final handing/taking over of this component shall be subject to fulfilling the quality assurance requirements. **The DE shall be allowed to undertake actual transfer/transaction of saleable component under its share/ownership to the prospective buyers only after the prescribed land and EWS housing component is sold/transferred to the eligible beneficiaries identified by DDA/ local bodies at the rates prescribed by DDA**".

{bold emphasis supplied}

13. A bare perusal of the aforesaid notification would show that that stipulation relating to the sale of 50% dwelling units to categories



specified by the DDA is only applicable to the DE. In other words, the DDA is only enjoined upon to act as a policy maker and facilitator. The flats in question have been evidently built by the DDA, and therefore, the stipulation as to disposal of 50% of the flats constructed or developed for the EWS category is inapplicable to the DDA. Meaning thereby, the DDA is at liberty to dispose of all the flats in terms of the brochures/relevant Schemes.

14. There is merit in the plea raised by Mr. Arun Birbal, learned counsel for the applicant, that the status of the DDA cannot be equated to that of the 'DE' since the DDA is a statutory body in terms of the provisions of the Delhi Development Act, 1957 and is entitled to dispose of dwelling units in terms of the Delhi Development Authority (Management and Disposal of Housing Estates) Regulations, 1968.

15. At this stage, without going into the merits of the case, there are sufficient grounds to assume that the provisions for earmarking of 50% of the dwelling units as CSP units for apartment owners and remaining 50% as EWS units for eligible beneficiaries are mandated to be followed by the DE and by no stretch of imagination, the DDA, which has the legal privilege of allotting housing units based on different Schemes as approved by multiple authorities.

16. Be that as it may, the plea of the non-applicants/petitioners, who are allottees of MIG and LIG flats, that 50% of the EWS housing stock be reserved for them is misplaced as such a provision is extendable to housing schemes which are in premium segments having flats of the categories of Penthouses (5 BHK), Super HIG (4



BHK) and HIG (3 BHK) with different earmarked areas much larger than what is provided in the case of MIG and LIG Flats.

17. It is in the aforesaid background that one has to consider the order dated 06.02.2024 passed in W.P.(C) 1607/2024 which pertains to Sector-19B Dwarka, where the housing scheme is with regard to premium segments.

18. In view of the aforesaid discussion, this Court *prima facie* finds that the non-applicants/petitioners have no legal right to demand that 50% of the EWS Housing stock of 1,008 dwelling units at Sector-14, Dwarka be specifically kept for allotment to them, being the apartment holders of MIG and LIG categories in Sector-14, Dwarka.

19. It goes without saying that the present petition has been filed without impleading a large number of *bonafide* allottees who have made substantial payments, obviously incurring interest liabilities and yet deprived of allotment and physical possession of the dwelling units as the per the DDA's Scheme in Sector-14, Dwarka, Delhi. Moreover, there is a delay of almost eight months by the non-applicants/petitioners in approaching this Court after allotment of the flats to a large segment of people who also fall in the EWS Category.

20. Under the aforesaid circumstances, the present application moved by the applicant/DDA is allowed and the interim order dated 16.05.2024 is hereby vacated.

21. CM APPL. 54529/2024 stands disposed of accordingly.

22. Re-notify the matter before the Roster Bench on 10.02.2025 for hearing the parties on the applications for impleadment bearing CM

