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

Judgement reserved on: 13.07.2022

% *Judgement pronounced on : 10.02.2023*

\+ **LPA 67/2020**

NARENDER KUMAR WADHWA ..... Appellant

Through: Mr Siddharth Dutta with Ms Gunjan Malhotra, Advocates.

versus

DELHI DEVELOPMENT AUTHORITY ..... Respondent

Through: Ms Kritika Gupta, Advocate.

CORAM:
HON'BLE MR JUSTICE RAJIV SHAKDHER
HON'BLE MS JUSTICE TARA VITASTA GANJU

JUDGMENT

TARA VITASTA GANJU, J.:

1. This Appeal is directed against the Judgment dated 16.12.2019 passed by the learned Single Judge in W.P.(C) 384/2013 (hereinafter "the Impugned Judgment") whereby the learned Single Judge upheld the cancellation of allotment of Plot No.48, Pocket-1, Block-C, Sector 27, Rohini, New Delhi (hereinafter "the Rohini Plot") allotted to the Appellant by Delhi Development Authority (hereinafter "DDA"), by its communication dated 04.03.2005.

2. The brief undisputed facts are as follows:-

2.1 The Rohini Residential Scheme, 1981 (hereinafter "the Rohini Scheme") was floated, by DDA, for allotment of plots to persons in need thereof.

2.2 Perpetual leasehold rights in the allotted plots were created by the

Rohini Scheme.

2.3 The Appellant registered under the Rohini Scheme on 23.04.1981 and booked a 90 sq. mts. MIG Plot. The Rohini Scheme assured a handover of plots to allottees within a period of 5 years.

2.4 The Appellant was provisionally allotted the Rohini Plot consequent to a draw of lots conducted on 05.01.2004, after a lapse of almost 23 years.

2.5 The demand-cum-allotment / provisional allotment letter as issued by DDA on 19/27.01.2004 (hereinafter "Allotment Letter") required the Appellant to make a payment in the sum of Rs. 4,08,672/-. Since an amount of Rs. 12,944/- had been paid previously by the Appellant, payments were made to DDA in terms of the Allotment Letter on the following dates:

(i) On 26.03.2004 - Rs. 1,30,091/-

(ii) On 21.05.2004 - Rs. 2,04,336/-

(iii) On 12.08.2004 - Rs. 61,401/-

2.6 The Appellant also gave an Affidavit as well as an Undertaking, in the format as prescribed by DDA, towards the allotment. It is not disputed that the Affidavit and an Undertaking, although affirmed on 25.03.2004, were filed with DDA on 14.10.2004.

2.7 Shortly thereafter, a show-cause notice dated 14.12.2004 was issued to the Appellant by DDA (hereinafter "the SCN") *inter-alia* setting out that the Appellant also owned another property being Plot No. 217, Deepali Enclave, U.P. Samaj Co-Operative House Building Society, Pitam Pura, New Delhi, admeasuring 180 sq. mts., (hereinafter the "Deepali Enclave Plot"). It was stated in the SCN that

such ownership was in violation of the Rohini Scheme. The SCN required the Appellant to show cause as to why the allotment of the Rohini Plot be not cancelled, as the Appellant had filed a false affidavit with DDA.

2.8 The Appellant submitted a response to the SCN. A copy of the said response as available on the record of the learned Single Judge, *inter-alia,* set forth that the Deepali Enclave Plot had already been sold by the Appellant, prior to submitting the requisite documents with DDA. A copy of the Sale Deed dated 06.09.2004 evidencing the sale of the Deepali Enclave Plot (hereinafter "Sale Deed"), was enclosed with this reply. The Appellant further averred that he had waited for almost 23 years for the allotment of this plot from DDA and due to this delay the Appellant was forced to purchase a flat from the open market to reside in. The Appellant requested that the SCN, issued to him, be withdrawn as on the date of submission of documents to DDA (14.10.2004) the Affidavit filed was not false.

2.9 However, DDA, by communication dated 04.03.2005, addressed to the Appellant (hereinafter "Cancellation Letter") cancelled the allotment of the Rohini Plot. The Cancellation Letter further stated that, since the Appellant had resorted to concealment of facts, he would neither be entitled to allotment of another plot from DDA, nor refund of the amounts deposited.

2.10 Aggrieved by this cancellation, the Appellant had approached this Court, by way of a Writ Petition, praying that the Cancellation Letter issued by DDA be quashed and DDA be directed to grant him possession of the Rohini Plot. In the alternative, the Appellant had

prayed that DDA be directed to return the amounts deposited by the Appellant for the Rohini Plot.

2.11 The learned Single Judge was however, not inclined to interfere under Article 226, and dismissed the Petition of the Appellant by the Impugned Judgment *inter-alia* holding that there was no irregularity in the cancellation of the allotment at the instance of the Appellant, who is guilty of having sworn a false Affidavit containing mis-statement of facts.

2.12 Aggrieved by the Impugned Judgment, the Appellant has filed the present Appeal.

3. The matter was heard by this Court on 13.07.2022, when judgement was reserved and parties were directed to file written submissions and citations relied upon. Both parties have since filed their written submissions.

3.1 The learned Counsel for the Appellant has *inter-alia* made the following submissions on behalf of the Appellant :

(i) The "*eligibility criteria*" under Clause 1(ii) of the Rohini Scheme, cannot be termed as a "*disqualification*" from allotment and was intended to exclude only such persons who already had purchased or acquired an alternate plot from DDA under its concessional allotment Scheme. The Appellant contended that the Deepali Enclave Plot was purchased from the open market and not under any beneficial Scheme of DDA and if such an interpretation, as is sought to be argued by DDA is given to this clause, a person would be barred for life-time from purchasing a plot or flat once he is an Applicant under any

Scheme of DDA. It was contended by the Appellant that the condition set out under the head "*eligibility*" in the Rohini Scheme by DDA has been interpreted by the Supreme Court and this Court to mean *"eligibility"* at the time of application under the Rohini Scheme.

(ii) It was further contended that the Appellant was required to purchase an alternate flat to meet the needs of his family and provide them a home. Since, DDA itself failed to comply with the terms of the Rohini Scheme which were to provide allotment of a flat within a period of 5 years from the date of application, which instead of 1986 was done after almost 23 years in 2004. After failing to comply with the terms of allotment, DDA cannot fault the Appellant for purchasing a plot from the open market.

(iii) It is settled law that private builders are liable to compensate home buyers if they fail to comply with contractual deeds and possession with damages/refund with penal interest. DDA should not be immune to such judicial interpretations.

(iv) The Affidavit as submitted by the Appellant, under the Rohini Scheme cannot be declared false as, at the time of submission of the said Affidavit on 14.10.2004, the Deepali Enclave Plot was already sold by the Appellant by a registered sale deed dated 06.09.2004. DDA while acknowledging this sale cannot be permitted to cancel the allotment.

3.2 In support of his contentions, the Appellant has relied upon several judgments of the Supreme Court and this Court including *Chandigarh*

Housing Board v. Major General Devinder Singh (Retd.) & Ors.[1]; *DDA v. Jitender Pal Bhardwaj* [2], *Jai Kanwar Jain v. DDA*[3], *DDA v Jai Kanwar Jain*[4], *DDA v. Dhanesh Kumar Jain*[5] upheld by the Supreme Court in *DDA v. Dhanesh Kumar Jain & Anr.*[6] and *DDA v. BB Jain*[7].

4. The learned Counsel for DDA on the other hand submitted that:

(i) The Writ Petition filed suffers from severe delay and latches as the allotment was cancelled on 04.03.2005, however the Writ Petition came to be filed only in January, 2013.

(ii) It was submitted that as on the date of allotment i.e. 05.01.2004, the Appellant was the owner of another property in Delhi which admeasured more than 65 sq. mts. and a false affidavit was filed by him to secure the allotment from DDA. It was further contended that at the time, the affidavit was affirmed by the Appellant, there was suppression of facts regarding the Deepali Enclave Plot. This suppression is akin to playing a fraud upon DDA and hence the Appellant's allotment was liable to be cancelled on this ground as well.

(iii) It was contended that clause 1(ii) of the Rohini Scheme containing the *"eligibility"* clause has already been interpreted

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[1] **(2007) 9 SCC 67**
[2] **(2010) 1 SCC 146**
[3] **2008 SCC Online Del 1358**
[4] **2009 SCC OnLine Del 613**
[5] **2013 SCC Online Del 4279**
[6] **SLP(Civil) CC 5159/2014**
[7] **2013 SCC Online Del 891**

by the Supreme Court in the *Jitender Pal Bhardwaj* case (supra) to hold that the wordings of the Rohini Scheme have a specific reference to *"an eligibility"* criterion and when such term of exemption is *"specific"* and "*unambiguous"*, it is not possible to restrict its applicability or read any other meaning into such clause.

(iv) The total area of the Deepali Enclave plot was 180 sq. mts and not within the exception to the Eligibility Clause i.e. *"less than 65 sq. mts"*, hence, the Appellant was not entitled to any allotment by DDA.

(v) The learned Counsel for DDA also contended that the reliance placed by the Appellant on the foregoing judgments is misconceived as these are inapplicable in the present case and sought to distinguish them.

(vi) Lastly, it was submitted that the learned Single Judge has rightly dismissed the Petition of the Appellant upholding the cancellation by DDA.

5. We have considered the contentions of both the parties and the judgements relied upon by them. It is necessary to advert to the specific terms and conditions governing the Rohini Scheme which form part of the Application Form. Sub-clause (ii) of Clause 1 of the terms and conditions of the Rohini Scheme, which set out the conditions for *"eligibility"* (hereinafter "Eligibility Clause") thereof, reads thus:

"1. Eligibility

.....

> *(ii) The individual or his wife/her husband or any of his/her minor children do* ***not own in full or in part on lease-hold or free-hold basis*** *any residential plot of land, or a house or have not been* ***allotted on hire-purchase, basis a residential flat in Delhi/New Delhi*** *or Delhi Cantonment. If, however, individual share of the applicant in the jointly owned plot or land under the residential house is less than 65 sq. mts., an application, for allotment of plot can be entertained. Persons who own a house or a plot allotted by the Delhi Development Authority on an area of even less than 65 sq. mts.* ***shall not, however, be eligible for allotment****."*
>
> [Emphasis is ours]

5.1 Clause 8 of the terms and conditions of the Rohini Scheme contain the *"lease conditions"* and sub-clause (vii), thereof, stipulates that if the lease of the plot was obtained by any misrepresentation, misstatement or fraud, or if there was any breach of the conditions of the lease, the lease would be terminated, the Flat would be re-possessed by DDA and the lessee would not be entitled to any compensation. Clause 8(vii) reads as follows:

> *"8 (vii) If the lease of the plot is obtained by any mis-representation, mis-statement or fraud or if there is any breach of the conditions of the lease, the lease will be determined and the possession of the plot and the building thereon will be taken over by the lessor and the lessee will not be entitled to any compensation."*

5.2 An affidavit and an undertaking were required to be submitted by every applicant under the Rohini Scheme. A sample proforma was provided with the Rohini Scheme. Paragraph 1 of the Affidavit reads as follows:

> *"That neither I nor my wife/husband or any of my minor children* ***own in full or in part on lease-hold or free-hold basis*** *or on hire-purchase basis* ***any residential plot of land or a house or have been allotted a residential flat in Delhi, New Delhi, Delhi Cantonment****."*
>
> [Emphasis is ours]

5.3 The operative part of the undertaking reads as follows:

> *"That I or my wife undertake that we or any one of our minor children till they obtain the age of majority, would not acquire any other lease hold/free hold residential Plot/Flat from the Delhi Development Authority/President of India/Municipal Corporation of Delhi."*

6. As discussed hereinabove, by the Impugned Judgment, the learned Single Judge dismissed the petition of the Appellant *inter-alia* giving a finding that there was no irregularity in the cancellation of allotment by DDA.

6.1 The learned Single Judge after distinguishing the judgments relied upon by the Appellant sought to rely upon the judgment of a coordinate Bench of this Court in the matter of *B.B. Jain* case (supra) to hold that the affidavit as submitted by an allottee would have to be reckoned as on the date of provisional allotment and since the provisional allotment was in January 2004, the Affidavit filed on 14.10.2004 was false. The relevant extract of the Impugned Judgment is below:

> "*36. The main dispute in B.B. Jain was entirely different, viz. whether allotment of plot would be bound by the terms of the Rohini Residential Scheme, or by the terms of the Delhi Development Authority (Disposal of Developed Nazul Land), Rules 1981. The DDA had refused allotment on the basis of terms of the Scheme. The learned Single Judge of this Court held that the Nazul Land Rules would apply and that, in terms thereof, the respondents before it, were entitled to allotment of plot. Letters Patent Appeals, preferred there against, by the DDA, were dismissed. While doing so, the Division Bench clearly held, in para 7 of the report, [sic: case] that "the crucial date on which the eligibility of the applicant is to be examined is the date on which the allotment of a plot is made by DDA". Further, the Division Bench entered the following cautionary, but important, caveat, at the concluding paragraph of its judgment:*

> *"... We are, however, in agreement with the learned counsel for the appellant that irrespective of whether the respondent was eligible for allotment of a plot under the Rohini Residential Scheme or not, he ought not to have submitted a false affidavit at the time of obtaining allotment of plot from DDA. We, therefore, make it clear that dismissal of these appeals will not come in the way of DDA taking such action as is open to it in law, on account of the respondent having filed a false affidavit, at the time of obtaining allotment from DDA, stating therein that neither he nor his wife or any of his children owned in full or in part any residential plot or flat in Delhi."*
>
> *(Emphasis supplied)*
>
> *37. In the afore-extracted paragraph,* ***the DDA has clearly held that the affidavit would have to be reckoned as on the date of provisional allotment of the plot.*** *In the present case,* ***provisional allotment of the plot,*** *in favour of the petitioner,* ***admittedly took place on 5th January, 2004.****"*

[Emphasis is ours]

7. The Rohini Scheme, as applicable in the present case, has been the subject matter of decisions of the Supreme Court as well as the High Court. In the *Jitender Pal Bhardwaj* case (supra), the Supreme Court, while discussing the wordings of the eligibility provision (Clause 1(ii) of the Rohini Scheme), had dismissed the Appeal filed by DDA and upheld the allotment as the 2nd flat owned by the allottee was less than 65 sq. mts. The Supreme Court also held that if DDA wanted to prevent everyone who owned a plot, house or flat from securing an allotment, the Eligibility Clause should have stated as such. It was held that:

> *"9. Though the intention of Development Authorities in general is to allot plots to the houseless, the policy and scheme has to be given effect with reference to the specific wording of the eligibility provision.* ***If DDA wanted to bar everyone owning a plot/house/flat from securing an allotment, it could have made its***

> ***intention clear by simply providing that "anyone owning or holding a long-term lease, any plot/house/flat*** *in Delhi/New Delhi/Delhi Cantonment area,* ***will be ineligible for allotment under this Scheme****". But DDA chose to make the eligibility clause subject to an exemption. If it chose to exempt certain categories, such exemption has to be given effect to...."*
>
> [Emphasis is ours]

7.1 A Coordinate Bench of this Court in the *Dhanesh Kumar Jain* case (supra) has, with reference to the wordings of the Eligibility Clause held that the wordings of the clause point to *"an applicant being eligible at the stage of his making the application and lodging it with DDA"*. The applicant in the *Dhanesh Kumar Jain* case (supra) had made an application under the Rohini Scheme in the year 1981. Pursuant to the allotment of a flat by DDA in 2004, the allottee had requested DDA to transfer a 2nd plot previously allotted, in the name of his son, so as not to be hit by the Eligibility Clause. Instead, DDA issued the applicant a show-cause notice stating ineligibility for the allotment and thereafter cancelled the allotment on the ground of concealment of facts. The applicant, in that case, had also acquired a property from the open market *albeit* in the name of his son, after applying for a flat under the Rohini Scheme. DDA had cancelled the allotment contending that the fact that the allottee had another property offended the essential Eligibility Clause of the Rohini Scheme.

7.2 After discussing the decisions in the *Jitender Pal Bhardwaj* case (supra) and *Jai Kanwar Jain* case (supra), the Court in *Dhanesh Kumar Jain* case (supra), upheld a decision and directed DDA to

handover the allotted plot as follows:

> *"7. This Court is unable to agree with DDA's interpretation.* ***Clause 1(II) of the brochure is one of the eligibility conditions and has been held to be so in the previous Division Bench rulings. The argument of DDA now seems to be that it is not mere eligibility condition but also a disqualification****. Such interpretation, in the opinion of the Court, is fraught with serious if not dangerous consequences, as it would amount to arming the Authority with the power to cancel the allotment if the allottee acquires, subsequent to the allotment or possession, a property in excess of 65 sq. metres.* ***The wording of Clause 1(II) of the brochure clearly points to the applicant being eligible on the condition that at the stage of his making the application and lodging it with DDA (which in this case was in 1981), he did not own a plot or flat etc. the area of which exceeds 65 sq. metres****. The same condition applies in the case of joint property; the portion falling to the share of the applicant should not exceed 65 sq. metres.* ***This Court is alive to the circumstance that the applicants are made to wait for inordinately long time and even decades during which they will either be constrained or fortunate enough to acquire property. That circumstance alone should not, in the absence of clearly spelt-out disqualification conditions render their application ineligible as is sought to be suggested****.*
> *8. For the above reasons, the Court sees no merit in the appeal..."*
>
> [Emphasis is ours]

7.3 The decision of the Coordinate Bench in the *Dhanesh Kumar Jain* case (supra) was carried to the Supreme Court by DDA and was upheld by the Supreme Court[6].

8. In order to better appreciate the present case and for the purpose of reckoning the impact of the Affidavit, it is necessary to set out the dates as applicable in the present case:

(i)	Date of filing Rohini Scheme Application	:	23.04.1981
(ii)	Date of assurance of flat allotment	:	By April, 1986
(iii)	Date of purchase of Deepali Enclave Plot	:	16.06.1988
(iv)	Date draw of lots was held by DDA	:	05.01.2004

(v)	Date of provisional allotment by DDA	:	19/27.01.2004
(vi)	Dates money was deposited by the Appellant for provisional allotment	:	26.03.2004 to 11.08.2004
(vii)	Affidavit /Undertaking executed by the Appellant for provisional allotment	:	25.03.2004
(viii)	Deepali Enclave Flat sold on	:	06.09.2004
(ix)	Affidavit/Undertaking/other documents filed with DDA for provisional allotment	:	14.10.2004
(x)	Date of provisional allotment cancellation	:	04.03.2005

8.1 As can be seen from paragraph 8 above, there are different dates at play in the Rohini Scheme. There's an application date, a date when the draw of lots was held for the Rohini Plot, a date when the Allotment Letter was issued (provisional allotment date), payment date(s) and allotment documents submission date. All these are steps leading to provisional allotment only.

8.2 Additionally, the '*provisional*' Allotment Letter, although sets forth the allotment of a specific plot, the same was not final and subject to the fulfilment of conditions of eligibility as well as payment of premium by an allottee. The penultimate paragraph of the Allotment Letter also shows that *"services/building activities"* in the Flats would be available later. This can be seen from the extract of the Allotment Letter dated 19/27.01.2004 as below:

*"**ALOTMENT-CUM-DEMAND LETTER***
PROVISIONAL ALLOTMENT

FILE NO. F40(85)2004/RHN/85 DATED 19/1/2004
TO 27/1/2004

TO,
NARENDER KUMAR WADHWAS [sic: WADHWA]
RP WADHWA.
217, DEEPALI F.F. PITAM PURA

APPLICATION NO. 111552

Priority no. 6280
Plot category MIG

Quota General

Sub: Allotment of plot no. 48, pocket nb, 1 block no. C Sector No. 27, measuring 60.00 sq mtr. In Rohini phase IV residential scheme.

Dear sir/madam,

Directed to Inform you that in the computerized draw held on 5/1/2004 ***you have been allotted the above mentioned plot on perpetual lease hold basis subject to fulfillment of the terms and. conditions of eligibility as contained in the brochure of registration.*** *The allotment has been made at provisional rate for the year 2003- 2004. You are required to pay the premium as per the following schedule:-*

(a)	*premium of the plot @ Rs.6192 (provisional) for 60 sq mtr.*	*Rs.371,520.00*
(b)	*Corner Charges 10% of (a) above*	*Rs.37,152.00*
(c)	*Location Charges if plot is located on a road of 24 meter wide or more 10% of (a) above*	*Rs. 00.00*
	Grand Total	*Rs. 408.672.00*
f.	*35% of the premium of the plot*	*Rs.143,035*

Deduction

1.	*Registration Amount*	*Rs.5,000.00*
2.	*Interest on Registration Amount*	*Rs.7,944.39*
		Rs.12,944.39

Net amount to be deposited within 60 days from the date of issue of this letter i.e. latest by 27/3/3004[sic : 27/3/2004] *Rs.130,091*

(ii) 50% of the premium to be deposited by 26/5/204[sic : 26/05/2004] *Rs.204,336*
(iii) 15% of premium to be deposited on receipt of further communication *Rs.61,301*

(issue the building activities in phase IV ***other than sector 28***

> ***Block A and Sector 29 Block A-III, will be released by 1st July, 2004*** *and the services will be available by 31.12.2004, the building activates in sector 28 block A and Sector 29 Block A-III will be released by 1.1.2005 and the services will be a available by 31.3.2005."*
>
> [Emphasis is ours]

8.3 The term "*provisional*" means temporary – existing only until permanently replaced. This word appears to have been carefully chosen as the "*actual*" or final allotment of a flat can only happen upon the execution of a formal Lease Deed with DDA.

8.4 This appears to be the understanding of DDA as well. Possession of the Rohini Plot and execution of a Lease Deed is stated in Clause 9 and 10(i) of the terms and conditions of the Rohini Scheme, which discusses that delivery and possession of the Rohini Plot and execution of the Lease Deed, shall be made only after all other formalities are complied with. The relevant extract is below:

> *"9. DELIVERY OF POSSESSION OF PLOTS:*
> *(i) The possession of the plot will be handed over after receipt of the balance premium of land (i.e. the balance after adjusting the earnest money and interest therein already received). After receipt of the full payment and completion of all the formalities the possession of the plot will be handed over. The allottee will have to take over the possession on the date fixed for the purpose and Rs.50/- will be charged as penalty every month upto six months after which allotment will be liable to be cancelled if the possession is not taken.*
>
> *(ii) The lease-deed will be executed and duly registered after receipt of the full premium and other amounts payable in respects of the plot allotted to the successful applicant, and after handing over possession of the plot.*
>
> *10. EXECUTION OF LEASE DEED:*
> *(i) The covenants and conditions under which the plot will be held are contained in the form of the perpetual lease deed which will have to be executed by the purchaser.*
> *....."*

8.5 As can be seen from the paragraphs above, the various steps taken before execution of a Lease Deed do not constitute a legal transfer of title of a flat to an allottee. The conclusion of contract between the parties takes place and it is only after receipt of full payment and completion of all formalities, that the possession of a Flat is handed over and a formal Lease Deed executed by the DDA.

9. It is not disputed that on 23.04.1981, the Appellant did not own any other plot and hence was "*eligible"* for the Rohini Scheme. The Appellant purchased the Deepali Enclave Plot on 16.06.1988 and sold it on 06.09.2004. DDA issued the '*provisional*' Allotment Letter for the Plot on 19/27.01.2004. The Affidavit, Undertaking and other documents filed by the Appellant with DDA were filed on 14.10.2004. Admittedly, as on 14.10.2004, the Appellant did not own an alternate plot.

9.1 The learned Single Judge, relying on the *B.B. Jain* case (supra) held that the date of reckoning of the affidavit is 05.01.2004 and hence the affidavit filed on 14.10.2004 would have to be reckoned from 05.01.2004. Based on this date, the Impugned Judgment returned a finding that on 05.01.2004, since the Appellant was owner of the Deepali Enclave Plot, the Affidavit filed on 14.10.2004 was false and that DDA had rightfully cancelled the allotment.

9.2 We are unable to persuade ourselves to agree with the reasoning of the learned Single Judge in appreciation of the ratio of the Division Bench judgment in *B.B. Jain* case (supra). The issue involved in the *B.B. Jain* case (supra) was the relevant date to determine eligibility of an applicant in the context of allotments made under the Rohini

Scheme after coming into effect of DDA (Disposal of Developed Nazul Land) Rules, 1981 (hereinafter "Nazul Land Rules"), and consequently, whether such allotment would be governed by the provisions of Nazul Land Rules or by the Rohini Scheme. While holding that the Nazul Land Rules will apply, the Division Bench in paragraph 7 of the *B.B. Jain* Case (supra) held that a binding contract would come into force between the allottee and DDA when the offer is accepted by an allottee. The Court in that context held that the date of submission of an application to DDA could not be the date a binding contract came into existence. The relevant extract of the *B.B. Jain* case (supra) is below:

> *"7. The first question to be examined by us in this regard is as to what would be the* ***relevant date to determine the eligibility of the applicant under the Scheme, whether it would be the date on which the application is submitted or it would be the date on which the allotment is made.*** *Indisputably, mere submission of application to DDA for allotment of a plot under its Rohini Residential Scheme, 1981 does not constitute a binding contract between the parties for allotment of a plot to the applicant under the aforesaid Scheme.* ***A binding contact would come into force only when a specific plot is offered and such an offer is accepted by the applicant under the Scheme. If no binding contract between the parties came into force merely on submission of an application under the aforesaid Scheme,*** *it would be difficult for us to say that the date of submitting an application would be the crucial date to determine the eligibility of the applicant for allotment of a plot."*
>
> [Emphasis is ours]

9.3 There is nothing on record to show that rights of the parties in the present case, stood settled or crystallized in 1981 or even in January 2004, since there was no actual transfer of a flat at that time, but only an offer of a temporary/provisional allotment, which culminated into

an acceptance of the provisional allotment on 14.10.2004 by the Appellant.

9.4 Further, in *B.B. Jain* case (supra), the Coordinate Bench ruled against DDA and while dismissing its Appeal, it added what appears as a prelude to the judgment, as below:-

> *"11. For the reasons stated hereinabove, we find no merits in the appeal [sic: appeals] and the same are hereby dismissed. We are, however, in agreement with the learned counsel for the appellant that* ***irrespective of whether the respondent was eligible for allotment of a plot under the Rohini Residential Scheme or not, he ought not to have submitted a false affidavit at the time of obtaining allotment of plot from DDA****. We, therefore, make it clear that dismissal of these appeals will not come in the way of DDA taking such action as is open to it in law, on account of the respondent having filed a false affidavit, at the time of obtaining allotment from DDA, stating therein that neither he nor his wife or any of his children owned in full or in part any residential plot or flat in Delhi."*
>
> [Emphasis is ours]

9.5 The Impugned Judgment relied on the *B.B. Jain c*ase (supra) to hold that the averments made in an affidavit submitted on 14.10.2004 should be construed as having been made on 05.01.2004, i.e., the date when temporary/provisional allotment was made by DDA.

9.6. In our opinion, that was not the import of the *B.B. Jain* case (supra). The issue of the Affidavit filed being false can only come into play if the date of reckoning of the Affidavit is taken as 05.01.2004. As discussed above, the *B.B. Jain* case (supra) only decided the relevant date of eligibility in the context of a conflict between the Nazul Land Rules and the Rohini Scheme.

9.7 In any event, no binding contract came into force between the Appellant and DDA on 05.01.2004, as that was just the date on which

the draw of lots was held by the DDA.

10. We are fortified in our view by the judgment in the *Dhanesh Kumar Jain* case (supra). The Coordinate Bench decision in the *Dhanesh Kumar Jain* case (supra) has held that firstly, the eligibility condition cannot be construed as a condition for disqualification. Secondly, that the relevant date for eligibility would be *"at the stage of his making the application and lodging it with the DDA"*, which in the *Dhanesh Kumar Jain* case (supra) was 1981. Admittedly, this date in the present case was 23.04.1981.

10.1 As on 23.04.1981, the Appellant did not own any other plot. The Deepali Enclave Plot was sold on 06.09.2004, prior to submission of documents for the provisional allotment. There was no concluded contract between the Appellant and DDA until submission of the documents for provisional allotment which were finally submitted on 14.10.2004. There was no opportunity of a "*final*" allotment/execution of Lease Deed in favour of the Appellant in the present case, as the DDA cancelled the provisional allotment on 04.03.2005.

10.2 Therefore, the cancellation of allotment by DDA cannot be sustained.

11. The contention of DDA that because the affidavit's affirmation was carried in March 2004, and therefore, the intent of the Appellant to perpetrate a fraud was established is untenable in our opinion. Fraud, ordinarily would mean and include an act committed by a person or his agent or with his connivance with an intent to deceive or induce another person to enter into a contract or a transaction. The commission of the act is an important facet, which would have

occurred in the instant case only on submission of the Affidavit on 14.10.2004, and on that date, no alternate Plot was owned by the Appellant.

11.1 Sale of immovable does not happen overnight. It may well be possible that before the affidavit was sworn in March 2004, negotiation for sale of Deepali Enclave Plot may have commenced. If the learned Single Judge's finding is sustained, it could also result in DDA being impelled to trigger penal measures against the Appellant.

12. Insofar as concerns the challenge led by DDA on the issue of delay and laches, admittedly there has been a delay on the part of the Appellant in approaching the Court as the Appellant filed the Writ Petition after about 8 years post cancellation of his Plot by DDA.

12.1 The explanation given by the Appellant in the Writ Petition and the Appeal was that the Appellant repeatedly approached DDA on open hearing days in the week, being Monday and Friday, but received no assurance, clarification or response from DDA.

12.2 DDA, with its counter-affidavit, placed on record two representations filed by the Appellant and has referred to them in paragraph 4 as well. These have admittedly not been responded to by DDA.

13. One of the factors which are to be borne in mind when discretion under Article 226 of the Constitution is to be exercised is the fact that normally, the Court will not come to the rescue of a litigant who has approached the Court after an inordinate delay. However, *inter-alia* to prevent an illegality or where there is an infraction of rights, the Court will not hesitate to grant relief.

13.1 The Supreme Court in the case of *Tukaram Kana Joshi v. MIDC*[8], re-affirmed by the Supreme Court in the case of *Sukh Dutt Ratra v State of H.P.*[9], has held that the issue of condoning delay in a Writ action would be a matter within the discretion of the Court and such discretion, must be exercised fairly so as to promote the ends of justice and upon substantially equitable principles.

> *"13.* ***The question of condonation of delay is one of discretion and has to be decided on the basis of the facts of the case at hand, as the same vary from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226, nor is it that there can never be a case where the Courts cannot interfere in a matter, after the passage of a certain length of time. There may be a case where the demand for justice is so compelling, that the High Court would be inclined to interfere in spite of delay. Ultimately, it would be a matter within the discretion of the Court and such discretion, must be exercised fairly and justly so as to promote justice and not to defeat it. The validity of the party's defence must be tried upon principles substantially equitable.*** *(Vide P.S. Sadasivaswamy v. State of T.N. [(1975) 1 SCC 152 : 1975 SCC (L&S) 22 : AIR 1974 SC 2271] , State of M.P. v. Nandlal Jaiswal [(1986) 4 SCC 566 : AIR 1987 SC 251] and Tridip Kumar Dingal v. State of W.B. [(2009) 1 SCC 768 : (2009) 2 SCC (L&S) 119])*
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> *14.* ***No hard-and-fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. Discretion must be exercised judiciously and reasonably. In the event that the claim made by the applicant is legally sustainable, delay should be condoned. In other words, where circumstances justifying the conduct exist, the illegality which is manifest, cannot be sustained on the sole ground of laches.*** *When substantial*

[8] **(2013) 1 SCC 353**
[9] **(2022) 7 SCC 508**

> *justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in the injustice being done, because of a non-deliberate delay. The Court should not harm innocent parties if their rights have in fact emerged by delay on the part of the petitioners. (Vide Durga Prashad v. Chief Controller of Imports and Exports [(1969) 1 SCC 185 : AIR 1970 SC 769] , Collector (LA) v. Katiji [(1987) 2 SCC 107 : 1989 SCC (Tax) 172 : AIR 1987 SC 1353] , Dehri Rohtas Light Railway Co. Ltd. v. District Board, Bhojpur [(1992) 2 SCC 598 : AIR 1993 SC 802] , Dayal Singh v. Union of India [(2003) 2 SCC 593 : AIR 2003 SC 1140] and Shankara Coop. Housing Society Ltd. v. M. Prabhakar [(2011) 5 SCC 607 : (2011) 3 SCC (Civ) 56 : AIR 2011 SC 2161] ."*
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> [Emphasis is ours]

13.2 In the present case, DDA floated a scheme in the year 1981 wherein it assured applicants that flats would be allotted within a period of 5 years, i.e., on or before 1986. However, this was not done. DDA issued the Allotment Letter in January, 2004, after a delay of almost 23 years.

13.3 This Court cannot lose sight of the fact that DDA, which is a statutory body, has failed to perform its duty within a reasonable timeframe. No justifiable explanation has been submitted by DDA as to why DDA delayed in making the allotments of the Plots under the Rohini Scheme beyond 1986. Clearly, the huge delay caused by DDA would have to be taken into account. The Court cannot repel the action of the Appellant merely on the ground of failure on the part of the Appellant in approaching the Court at an earlier date given the fact that it would be palpably unfair and not equitable.

14. In view of the aforegoing discussion, we set aside the Cancellation Letter dated 04.03.2005. Resultantly, DDA is directed to allot the

Rohini Plot or an alternate flat to the Appellant. However, keeping in mind the principles of equity, DDA is permitted to charge the Appellant the rates applicable for similar plots as prevalent in the year 2013, the year the Appellant filed the present action, after giving the Appellant credit for the payment already made.

14.1 Accordingly, the Appeal is allowed, the Impugned Judgment is set aside. Given the circumstances, however, there shall be no order as to costs.

(TARA VITASTA GANJU)
JUDGE

(RAJIV SHAKDHER)
JUDGE

FEBRUARY 10, 2023/SA