

**IN THE COURT OF SH. SHIV KUMAR
DISTRICT JUDGE -02,
WEST DISTRICT: TIS HAZARI COURTS, DELHI.**

Civ DJ 110/2024

Tripti Chaturvedi

Versus

Delhi Development Authority & Ors.

ORDER

- 1) Vide this separate order, I shall decide the application under order 39 rule 1 & 2 CPC r/w 151 CPC filed by the plaintiff against defendant no. 1 & 2.
- 2) It is averred in the plaint by the plaintiff that the plaintiff is bona fide purchaser of built up Flat no. 1206, Block no. 5, 12th Floor, situated at Shivaji Marg, Moti Nagar, New Delhi-111015, colony known as Capital Greens. (hereinafter referred to as "Suit property").
- 3) It is averred in the plaint by the plaintiff that defendant no. 1 is DDA and defendant no. 2 is an agency engaged by defendant no. 1 for maintenance of the flats in colony

including the suit property. Defendant no. 3 is the seller of the suit property who has sold the suit property to the plaintiff against valuable consideration.

- 4) It is further averred by the plaintiff that the suit property has been allotted to one Mr. Pawan Kumar as he has applied for for allotment of an EWS Flat in the year, 2015 and after allotment of suit property, Mr. Pawan Kumar made payment of disposal cost of the Flat to defendant no. 1. Thereafter, defendant no. 1 raised demand for charges for water and sewer connection vide demand letter dated 08.10.2020 and Mr. Pawan Kumar deposited said amount on 08.10.2020 itself. After that, defendant no. 1 handed over actual and physical possession of the suit property to Mr. Pawan Kumar at site by handing over possession letter as well inventory of fitting and fixtures on 19.10.2020.
- 5) It is further averred that Mr. Pawan Kumar, for his bona fide need and requirements transferred the suit property in favour of defendant no. 3 by executing registered agreement to sell, general power of attorney and special power of attorney, all dated 10.11.2020 duly registered with the Sub-registrar.
- 6) It is further averred that Mr. Pawan Kumar had transferred physical possession as well as all original documents in respect of the suit property to defendant no. 3. It is further averred that Mr. Pawan Kumar by executing aforesaid

documents had also authorized defendant no. 3 further sell, transfer or alienate the suit property to any third party as well as to obtain all kind of documents, conveyance deed, sale deed etc. in respect of suit property under the signatures of defendant no. 3.

- 7) It is further averred that since defendant no. 1 has not yet opened up the process for execution of conveyance deed by converting the flats in the colony from lease hold to free hold as such no sale deed could be executed.
- 8) It is further averred that the plaintiff and her husband were looking to purchase a flat in the area of Moti Nagar and in that process, the plaintiff and her husband were introduced to Mr. sunny Gupta by Mr. Satish Gupta, a local property dealer having his office at DLF, Moti Nagar Delhi. It is further averred that defendant no. 3 represented that he has a clear marketable title to the suit property, having purchased the same from the original allottee by virtue of registered agreement to sell, general power of attorney and special power of attorney all dated 10.11.2020.
- 9) It is further averred that after verification of original documents which were available with Mr. Sunny Gupta as well the record of DLF and defendant no. 2, plaintiff and her husband agreed to purchase the suit property for a total sale consideration of Rs. 26 lacs.

- 10) It is further averred that plaintiff made payment of entire agreed consideration amount to the defendant no. 3 and defendant no. 3 executed registered agreement to sell general power of attorney and special power of attorney, all dated 17.06.2022 and duly registered with the office of Sub-Registrar of assurance on 17.06.2022 itself. It is further averred that apart from execution of aforesaid documents had also executed an affidavit, possession letter and Will all dated 17.06.2022 as well as handed over actual physical possession of suit property was handed over by defendant no. 3 to the plaintiff in the presence of officials of defendant no. 2 on said day itself. It is further averred that presently plaintiff is in possession of the suit property through her tenant.
- 11) It is further averred that the plaintiff and prior to plaintiff, defendant no. 3 was making payment of maintenance charges to defendant no. 2 who is looking after maintenance of the colony/complex including the suit property on behalf of under authority of defendant no. 1. However, to the shock and surprise of plaintiff, defendant no 1 has got affixed a common notice dated 31.01.2024 with subject “show cause notice to vacate DDA EWS flat in capital Green, Shivaji Marg, Moti Nagar, New Delhi-110015” misrepresenting that the suit property including other flats mentioned in said notice are in possession of DDA.

- 12) It is further averred that defendant no. 1 has received payment of entire premium from the original allottee and possession letter along with actual physical possession of the same was handed over to the actual allottee by the defendant no. 1 on 19.10.2020 and even the defendant no. 2 has received maintenance charges in respect of suit property, it does not lie in the mouth of defendant no. 1 to claim that possession of the suit property is with the defendant no. 1.
- 13) It is further averred that plaintiff being bona fide purchaser of the suit property has reasonable apprehension that the lower rung officials of defendant no. 1 are hand in glove with the local property dealers are intending to deprive plaintiff to the suit property which has been purchased by plaintiff and her husband using their life savings. It is stated that officials of defendant no. 1 with malafide intention are threatening to deprive plaintiff of her property by abusing their official position.
- 14) It is further averred that even the officials of defendant no. 2 are threatening to disconnect the essential services i.e. water and electricity supply to the suit property in gross violation of the fundamental rights of the plaintiff and her tenant, who is presently residing in the suit property. It is further averred that the plaintiff is being threatened of being dispossessed forcibly on the strength of show cause notice dated 31.01.2024 despite the fact that neither reasonable time has

been afforded to represent the facts before the defendant no. 1 nor any reason for demanding the possession back from the plaintiff has been assigned.

15) It is further averred that the plaintiff is a bona fide purchaser of the suit property without notice of any inconsistency in the official records of defendant no. 1 as such plaintiff cannot be deprived of her property without following due process of law. Thus, the show cause notice dated 31.01.2024 issued by the Executive Engineer Dwarka Maintenance Section V DDA on behalf of the defendant no 1 deserves to be declared as null and void and the defendant no. 1 deserved to be restrained from proceedings with the threatened action of forcible dispossession of the plaintiff without following due process of law as the plaintiff being owner of the possession of the suit property cannot be evicted without following due process of law.

16) Reply of the present application has been filed on behalf of respondent no. 1/DDA.

17) It is contended by defendant no. 1 in the written statement that vide an application, one Mr. Pawan Kumar had applied for allotment of Flat in DDA House Scheme, 2014 and in draw of lots held on 25.11.2014 and he was allotted the suit property. It is further contended that demand cum allotment letter dated 31.12.2018 and 20.05.2019 was issued to the

aforesaid allottee Sh. Pawan Kumar, which was later revised at his request vide letters dated 28.07.2020.

- 18) It is further contended that possession letter dated 19.12.2022 was also issued to the aforesaid allottee, Mr. Pawan Kumar, however, he did not take over the possession of the suit flat within the time and had to be re-validated at the request vide letter dated 01.06.2023. However, once again, the allottee did not take over the possession of the suit property nor the conveyance deed thereof had been executed in favour of allottee.
- 19) It is further contended that it is relevant to submit that allotment of the suit flat is regulated, controlled & managed in accordance with terms & conditions of the Allotment, as prescribed in, DDA Housing Scheme Brochure 2014.
- 20) It is further contended that as per clause 16 (b) of the DDA Housing Scheme Brochure 2014, the allottee had absolutely no right to transfer the suit flat to any person and any such transfer is invalid, illegal, void ab-initio and absolutely not binding upon the defendant/DDA.
- 21) It is further contended that the possession letter had been issued by DDA for the handing over the suit flat, however, the physical possession thereof had never been handed over and

the alleged possession slip filed on record is forged, fabricated and bogus and not been issued by the DDA.

22) It is further averred that the plaintiff has illegally and unauthorizedly occupied the suit flat in collusion with the aforesaid Sh. Pawan Kumar and a notice dated 31.01.2024 has already been issued to him to vacate the suit flat.

23) It is further averred that plaintiff has no locus standi to file the captioned suit as the plaintiff and the original allottee have violated the terms & conditions of the allotment and have entered into an agreement in gross violation thereof, therefore, not only the said agreement is illegal, invalid and void ab-intio, but the allotment itself stood cancelled automatically and the plaintiff has no locus standi to file the captioned suit. It is further contended that neither there is any privity of contact between the plaintiff and the defendant/DDA nor the defendant had ever allowed the plaintiff to purchase the suit flat nor to use nor to occupy the same, therefore, also there is no locus-standi in favour of the plaintiff to seek any relief against the defendant/DDA.

24) Arguments heard. Case filed perused.

25) *In a case titled as “Dalpat Kumar And Anr. vs Prahlad Singh And Ors, AIR 1993 SC 276”, Hon’ble Apex Court has discussed the principles for dealing with interim injunction*

application moved under Order 39, rules 1& 2 CPC and held in Para No.5 t as follows: -

26) “ 5. Therefore, the burden is on the plaintiff by evidence aliunde by affidavit or otherwise that there is "a prima facie case" in his favour which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established, on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that it is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject-matter should be maintained in status quo, an injunction would be issued. Thus, the Court has to exercise its sound judicial discretion in granting or

refusing the relief of ad interim injunction pending the suit.”

- 27) Defendant no. 2 has been served on 29.02.2024 but none appeared on its behalf and no written statement has been filed on behalf of defendant no. 2. Vide order dated 10.05.2024, defendant no. 2 was proceeded ex parte.
- 28) It is admitted fact by the defendant no, 1 that suit property was allotted to Mr. Pawan Kumar by DDA in DDA Housing Scheme, 2014. As per defendant no. 1, Mr. Pawan Kumar did not take the possession of the suit property, despite issuance of possession letter dated 19.12.2022 and letter dated 01.06.2023.
- 29) As per defendant no. 1, the plaintiff has illegally and unauthorizedly occupied the suit property in collusion with Mr. Pawan Kumar and show cause notice dated 31.01.2024 has been given to Mr. Pawan Kumar.
- 30) From the pleading of the parties, it is established that Mr. Pawan Kumar is the allottee of the suit property and at present, the plaintiff through his tenant is in possession of the suit property.
- 31) It is further contended that as per clause 16 (b) of the DDA Housing Scheme Brochure 2014, the allottee had absolutely no right to transfer the suit flat to any person and

any such transfer is invalid, illegal, void ab-initio and absolutely not binding upon the defendant/DDA.

32) As per plaintiff, Mr. Pawan Kumar has sold the suit property to defendant no. 3 and the defendant no. 3 has further sold the suit property to the plaintiff through registered agreement to sell, GPA and other documents.

33) It is settled law that the ownership can be transferred only on execution of registered sale deed/conveyance deed and the property cannot be sold through agreement to sell, GPA, SPA and other documents relied upon by the plaintiff.

34) The contention of the defendant no. 1 that the allotment in the name of Mr. Pawan Kumar of the suit property has been automatically cancelled due to selling of suit property by Mr. Pawan Kumar to defendant no. 3 and further by defendant no. 3 to the plaintiff.

35) The defendant no. 1 has the right to adopt legal course for cancelling the allotment of Mr. Pawan Kumar. In the present proceedings, it cannot be decided that the allotment of Mr. Pawan Kumar has been cancellation due to execution of agreement of sell, GPA and other documents. The documents relied upon the plaintiff are not conveyance/sale deed, so, it cannot be said that the ownership of the suit property has

been transferred by Mr. Pawan Kumar to defendant no. 3 and by defendant no. 3 to the plaintiff.

36) The electricity and water supply are the essential services, which are required for living as a human being.

37) The plaintiff is in possession of the suit property and documents regarding possession are also in his favour. The defendant no. 1 has no right to take law into its hands and forcefully dispossess the plaintiff from the suit property. The defendant no. 1 cannot adopt indirect means by disconnecting the electricity and other supplies of the suit property in order to take the possession of the suit property from the plaintiff. The defendant no. 1 has the right to avail legal remedies for seeking possession of the suit property from the plaintiff.

38) In view of the foregoing discussions, it is held that the plaintiff has prima facie case and balance of convenience also lies in favour of the plaintiff for granting stay order.

39) The plaintiff will suffer irreparable loss, if injunction order is not passed in his favour and on the other side, no irreparable loss will be caused to defendant no. 1 as defendant no. 1 has the right to seek legal remedies for recovery of possession of the suit property from the plaintiff. Accordingly, the defendant no. 1 & 2 and their representatives are restrained from dispossessing the plaintiff from the suit

property without taking legal re-course and they are further restrained from disconnecting the electricity and water supplies of the suit property till the plaintiff regularly deposited the charges of the said supplies. The stay order shall remain continue till disposal of present suit. Nothing has been expressed in this order on the merit of the case. ***Application stands disposed off accordingly.***

Announced in open Court
today on 01.05.2025

(SHIV KUMAR)
DJ-02 (W) THC:Delhi