24th May, 2012

From:
H.Kumar
A-63, Golf View Apartments
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To,
Shri Kamal Nath ji,
Urban Development Minister
Ministry of Urban Development,
Nirman Bhavan, New Delhi

MPD 2021 Reviewed

Subject: DDA policy on the Addition (s)/ Alteration(s) in DDA flats- Reg

Respected Sir,

I would like to bring to your kind notice that the Ministry of Urban Development has allowed certain addition (s) /alteration (s) in DDA flats, as per DDA booklet on Policy & Procedure for Permission and Regularization of Additions/Alterations in DDA Flats. Para 4 of the IIIrd category of the said booklet relates to permission by the DDA/MCD for the construction of a barsati on the roof terrace (Annexure 'A')

However in the absence of clarity in the said para, the interpretations are being done by the DDA/MCD official in favour of top floor. Not only the permissions are being given by DDA/MCD officials to the top floor owners for the construction of barsati without the consent of other flat owners of the same vertical stack but they are also being obliged with their exclusive right to use the entire roof terrace, with limited usage rights for the other 3 owners of the same vertical stack, ignoring the following facts.

i) DDA had not given roof terrace rights to the top floor owners especially in Vasant Kunj area, in their allotment letter/ conveyance deed at the time of allotment of the flat.

ii) The Hon'able High court in its judgment in case of BihariLalJalan, Wg. Cdr. Madan ... vsDDA AndOrs. on 18 February, 2003, has clarified in para 18 of its judgment that the top terrace is a common portion as described in the DDA Regulations of 1968 and the use of the same is not exclusive to the top floor owner' and cannot be grabbed by any particular allottee or group of allottees for their exclusive use. Copy of the relevant portion of the judgment is enclosed for reference as annexure 'B'.

iii) Further, as per the said DDA booklet, all the additions/alterations and additional coverage will be governed by 5 basic principles. One of these 5 principles to be followed while granting the permission is that 'there is no infringement of other's rights". With no roof terrace rights for a common

area, granting permission for the construction of a barsati by DDA/MCD and that too, without no objection certificate from the other 3 flat owners in the same vertical stack, is a clear violation of the said principle.

iv) It is noteworthy to mention that neither the technical committee nor the review committee constituted for the purpose of formulation on policy on addition/alterations in DDA flats has mentioned any where in their report about the grant of permission to the top floor owner only for the construction of barsati or about their exclusive rights on the roof terrace.

With permission from DDA/MCD for the construction of just a barsati, the top floor flat owners claim their exclusive right on the roof terrace and tend to undertake all other kinds of additions/alterations as per their desire. They are going to the extent of grabbing the entire roof terrace and denying/limiting access to the other flat owners by converting their flats into a duplex flat or into two separate flats, which is in contravention to all laws/ by laws of DDA/MCD.

Absence of clarity in the said rule, is leading to disputes between the top floor owner and the other 3 owners of flat in the same vertical stack. This is not only causing disharmony amongst the neighborhood but is also encouraging corruption amongst the police and MCD departments, who turn a deaf ear to the complaints by the affected residents.

In view of above, you are requested to intervene in the matter and kindly issue necessary directions to bring about requisite changes in para 4 of the IIIrd category of the DDA booklet as under:

a) Since it is a common area as per the original terms of allotment of all flat owners, no new construction including barsati should be allowed by any flat owner on the terrace of the top floor.

b) If at all it is to be permitted then being a common area, permission by the DDA/MCD for the construction of barsati should be granted only with the written consent of all the other flat owners of the same vertical stack, and the fact that the roof terrace is a common area for all the flat owners in the same vertical stack, should be clearly mentioned in the said para.

I solicit your kind cooperation in the mater.

Thanking you,

Yours sincerely,

H.Kumar

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Annexure A

Book No.....

6502

Policy & Procedure

For

Permission and Regularization

of

Additions / Alterations

in DDA flats

DELHI DEVELOPMENT AUTHORITY

4. Removal of original structure and reconstruction with due permission in the case of single storeyed built up flats only subject to the satisfaction of building bye-laws and prior approval of the local authority.

III) ADDITIONAL COVERAGE PERMITTED WITH PRIOR PERMISSION:

1. Covering of courtyard and floor level terraces is allowed subject to fulfillment of building byelaws and structural safety.

2. In three or four storeyed flats the owners at upper floor shallhave the right to cover the area available as a result of coverage of courtyard/terrace of floor below. In such cases the residents of DDA flats in a vertical stack served by the same staircase should give their consent and jointly apply for permission.

3. In two storeyed flats the allottee at first floor will have no right of construction above the courtyard built by ground floor allottee. The upper floor allottee of two storeyed flat can use the roof terrace for extra coverage as permissible.

4. A barsati on the roof terrace of the top floor in addition to mumty is allowed. This barsati should preferably be adjoining to the mumty and equivalent to the size of the room below so that construction of wall over wall is ensured at terrace level. This will be subject to the provision of access to the residents of the block for maintenance of water tank, plumbing system, fixing of TV/Cable antennas etc.

All the addition/alteration(s) and additional coverage will be governed by 5 basic principles:

1. There is no encroachment on the public land.

2. Structural stability of the building is ensured.

3. Light and ventilation of the habitable rooms is ensured as per the building byelaws.

4. There is no infringement of other's rights.

5. The service elements such as manhole, rainwater fittings, sanitary fittings etc. are not disturbed and remain exposed for periodical inspection and maintenance.

Annexure 'B' 79.

Hon'ble High Court Judgem

Bihari Lal Jalan, Wg. Cdr. Madan ... vs Dda And Ors. on 18 February, 2003

Equivalent citations: 2003 IIIAD Delhi 93, 104 (2003) DLT 53, 2003 (68) DRJ 593

Author: B D Ahmed

Bench: D Gupta, B D Ahmed

JUDGMENT

Badar Durrez Ahmed, J.

1. These petitions concern the residential colony of Basant Enclave, SFS Flats, (hereinafter referred to as "Basant Enclave") New Delhi. The questions that arise for consideration in these petitions being common were heard together and are being disposed of by a common judgment. The issues involved pertain to the unauthorised building activities past, present and future, in the said Basant Enclave and the alleged inaction on the part of the respondent Authorities which include the DDA and the MCD in curbing this menace.

2. These petitions which have been filed at different points of time starting from 1992 to 2001 have a chequered history inasmuch as several orders during the pendency of these petitions have been passed by this Court and several reports of various authorities have been filed on the record. We need not go into detail of all these orders and/or reports. However, in order to appreciate the nature of the issues involved and to finally dispose these matters, it would be necessary to deal with each of the petitions.

CWP 2034.1992.

3.1. This was the first petition with regard to Basant Enclave that was filed before this Hon'ble Court and it was argued as the main or lead matter. In this petition a writ of mandamus was sought for directing the respondents and particularly the DDA and the MCD to discharge their obligations as provided under the laws and building bye-laws for preventing illegal and unauthorised building activities in the said Basant Enclave. Inter alia, a mandamus was also sought against the respondents to take action by

communicated vide the said letter dated 22.3.2000 not to relax the condition, or allow more construction in DDA Flats.

15. Lastly, we come to Point No. (iii) [user of Common Portions] referred to in paragraph 8 above. The said DDA Regulations 1968 in Clause 2(9) thereof defines "Common Portions" as those portions of the plot or premises which are in common use and includes the land, gateway, enclosure, compound walls, parks, open ground, passages, corridors, stair-cases, fitting, fixture, lift, if any, any installation whether for water supply or drainage or lighting or any other purpose and all such facilities which are used or intended to be used in common. The same regulations by virtue of Clause 2(17) defines `Flat' to mean a portion of building, which can be delineated with definite outline on plan and which can be definitely marked on site, and which is a dwelling unit. From the above it is clear that the common portions of the said Basant Enclave are those portions which are not included in the expression `Flat'. While common portions are for the use of all the residents, the `flat' is for the exclusive use of the flat owner. As such, no flat owner can be permitted to extend the boundaries of his flat and encroach upon portions which are for common use of all the residents.

17. In view of the aforesaid provisions, it is clear that in the scheme of things the role of the registered agency as regards maintaining of the sanctity of common portions is very important. Unfortunately, we find that all the flat owners, though they are required to do so, are not members of the said welfare association. More importantly, the association also has not been mindful of its duties in preventing its members and other residents from encroaching upon common portions. The entire responsibility of the encroachments on common portions cannot be foisted on the DDA and MCD. A substantial portion of the responsibility also lies with the welfare association and the individual flat owners.

18. Common areas or common portions must remain common to all the allottees and cannot be grabbed by any particular allottee or group of allottees for their exclusive use. Insofar as exclusive use of the top portions by the top floor owner is concerned, we feel that the top terrace is a common portion as described in the DDA Regulations of 1968 and the use of the same is not exclusive to the top floor owner.