

ORDER

Subject: - Cancellation of license No. 6 of 1985 dated 09.04.1985 issued for setting up of residential plotted colony, Sector-49, Faridabad - The Ex-Sainik Karamchari Co-operative House Building Society Ltd. Faridabad.

This order is being passed in compliance of the orders dated 01.04.2016 passed by the Appellate Authority-cum-Additional Chief Secretary to Govt. Haryana Town and Country Planning Department Haryana in Appeal No. 28 of 2013.

1. Whereas, license no. 06 of 1985 dated 09.04.1985 was granted to the Ex-Sainik Karamchari Co-operative House Building Society Ltd for the development of residential plotted colony for an area of 109 acres 0 Kanal 15 Marla in sector-49, Faridabad. An agreement on Form LC-IV was also executed by the Society with the Director on 28.02.1985. Inter-alia, one of the conditions of the Agreement was that the Society shall pay proportionate development charges as and when required and as determined by the Director in respect of External Development Charges.

2. As per provisions of Rule 13 of Haryana Development and Regulation of Urban Areas Rules, 1976, the society was required to get the licence renewed at least 30 days before its expiry. The licence no. 06 of 1985 was renewed upto 08.04.1988. The licensee had applied for renewal of licence in March, 1988, Sep.1989, Nov.1990, July.1992, Dec. 2000, Feb. 2004 & 2011, but the renewal fee was not deposited as per Rule 13 (i) of Haryana Development and Regulation of Urban Areas Rules, 1976 .

3. In the agreement on Form LC-IV executed by the Society with the Director on 28.02.1985, condition at Sr. No. (e) was:

“That the owner shall pay proportionate development charges as and when, required and as determined by the Director in respect of external development charges”.

In this agreement, the tentative amount of Rs. 165.57 lacs on account of External Development Charges was fixed and it was also mentioned that in addition to this, the owner shall also pay any other charges, if any, on account of External Development Charges. The External Development Charges was revised for the town of Faridabad to 3.68 lacs per gross acres. Accordingly the Society was informed vide memo dated 18.12.1991. Against this demand notice, the licensee society had filed an appeal before the Appellate Authority-cum-Financial Commissioner and Principal Secretary to Govt. Haryana, Town & Country Planning Haryana on the ground that rates of External Development Charges of Rs. 3.68 per gross acre are excessive. The Appeal was dismissed by the Appellate Authority as being without merit vide order dated 22.06.1992. It was also observed that there was no reason to interfere in the orders dated 18.12.1991 passed by DTCP Haryana, so far as it relates to fixation of External Development Charges.

The licensee filed a CWP No. 129 of 1996 in Hon'ble High Court against the demand of EDC. The case came up for hearing on 16.07.1997 and the same was

admitted for regular hearing. No stay against recovery of this amount was granted by the Hon'ble High Court, which is still pending for decision.

4. The licensee had breached the terms and conditions of the licence by (a) not getting the licence renewed (b) non payment of outstanding External Development Charges dues (c) non compliance of Rule 24, 26(2), 27 & 28 of the Haryana Development and Regulation of Urban Areas Rules, 1976, hence **vide order dated 10.12.2009, the licence No.6 of 1985 was cancelled**. Public Notice was issued regarding cancellation of licence on the following grounds:-

- I. *The society has not deposited an amount of Rs. 3359.14 lacs outstanding as on 08.07.09 against the said licence.*
- II. *The society has not got the bank guarantee amounting to Rs. 65.63 lacs revalidated after its expiry on 17.7.1991 furnished on account of Internal Development & External Development charges.*
- III. *Licence No. 6 of 1985 was valid upto 08.04.1988, but the society has not got it renewed thereafter.*
- IV. *The society did not get the development works carried out at site according to the approved layout plan.*
- V. *The society has not obtained the completion certificate of the colony for the 'Internal Development Works' as per provision of Rule 16 of the Haryana Development & Regulation of Urban Areas Rules, 1976.*
- VI. *The Society has raised unauthorized construction at site, which is not permissible as per law.*
- VII. *The society has not complied with the terms and conditions of Rule 24, 26(2) & 28 of the Haryana Development & Regulation of Urban Areas Rules, 1976.*

5. The licensee society filed an **Appeal No. 48 of 2010** against the order dated 10.12.2009 of cancellation of licence before Appellate Authority-cum-Financial Commissioner and Principal Secretary to Govt. Haryana, Town and Country Planning Department. The Appellate Authority while passing the **order dated 26.11.2010** observed that the licensee society perhaps has committed the irregularities, therefore, action needs to be taken against the society. However, since personal hearing was given to the licensee society by the officer other than that one passing the order, hence, the case was remanded back to the Director with the direction to grant personal hearing to the appellant and pass appropriate orders.

6. In compliance of the Appellate Authority order dated 26.11.2010, an opportunity of personal hearing was granted to the licensee society on 10.01.2011, further adjourned on 09.02.2011. On 03.03.2011, while conveying all the irregularities/illegality committed by the society, show cause notice was issued with a direction to submit response within 15 days and also to appear on 28.03.2011 alongwith relevant record/document. The society submitted its reply vide letter dated 13.04.2011. The representative of the society appeared for personal hearing on 25.04.2011 and 16.05.2011. As desired by the representative of the society, the details of dues on account of renewal of licence fee and External Development Charges were also supplied to them.

The reply dated 13.04.2011 submitted by the licensee society with respect to the show cause notice issued on 03.03.2011 was examined and found to be unsatisfactory, therefore, **licence no. 06 of 1985 was again ordered to be cancelled vide order dated 27.09.2011**. However, vide these orders, the then DGTCP had also observed that he was willing to review the orders under section 21 of the Act, if:-

- (a) *You deposit the outstanding licence renewal fee as shown in the enclosed statement.*
- (b) *Provide a statement of accounts as on 31.3.2011 indicating the amount realized from each plot holder, the expenditure incurred on Internal and External Development Works separately of the colony with details thereof together with the amount due from each plot holder indicating their postal address in terms of Rule 26(2). This statement should be duly audited, certified and signed by a Chartered Accountant. I am willing to condone non compliance of Rules 24, 26(2), 27 and 28 till date provided you undertake to comply with the same in future.*
- (c) *Undertake to pay the due amount of EDC as per decision of the Hon'ble High Court alongwith applicable interest within six months of the decision of Hon'ble High Court in this regard.*
- (d) *Submit Bank Guarantee within 60 days of its communication for 25% cost of Internal Development Works and community building which are deficient by your own admission like Health Centre, Crech, Nursery School etc. as determined by the Chief Engineer, HUDA after inspection which will be done within 30 days of your submission of your review application alongwith above mentioned dues/undertaking.*

7. The licensee society rather than making compliances of order dated 27.09.2011 and filing review application before DGTCP, filed an appeal before the Appellate Authority-cum-Financial Commissioner and Principal Secretary to Govt. Haryana Town and Country Planning Department Haryana. The FCTCP Haryana vide **order dated 09.02.2012** had disposed off the Appeal. The operative part of the same is hereby reproduced:-

"I find that the elected Managing Committee has been recently constituted and will certainly require time to comply with the conditions that have been imposed in the order passed on 27.09.2011. Further the society has also asked for time to contest the issues raised vide their reply given on 28.01.2012 but their reply has not been taken into consideration while

giving the direction to STP Faridabad on 25.01.2012 to take over the society. It will be in the fitness of things if the society is given an opportunity to comply with the conditions as given in the order dated 27.09.2011 to qualify for review.

The case is remanded back to the Director General Town & Country Planning to consider all the pleas of the society and give them atleast a period of two months to come up with compliance, though the licensee society has only asked for a period of one month. The society will file the review application within a week's time. The order dated 25.01.2012 will remain stayed till the review application to be filed by the licensee society as aforesaid is decided by the Director General Town & Country Planning, Haryana.

With this direction, the appeal is disposed off."

8. In compliance of order dated 09.02.2012 passed by the Appellate Authority, a review application was filed by the society on 19.03.2012. The applicant society vide memo dated 07.05.2012 was directed to appear for personal hearing on 29.05.2012 to explain its position. No one appeared for hearing on 29.05.2012. On the request of the society, the case was adjourned to 19.11.2012, 18.12.2012, 04.03.2013, 01.04.2013, 08.07.2013, 02.09.2013 and 11.10.2013. This **review application was decided on 11.10.2013**, while deciding the application, the then DGTCP has observed that

"it is needless to say that the society seeking repeated adjournments on one pretext or the other only to delay the decision of the department in this case. The society has neither deputed its accountant to sort out the alleged differences, if any, in calculation of the amount of renewal of licence fee nor deposited the amount of renewal fee. It shows that society not interested in sorting out the matter."

In the order dated 11.10.2013, it was also observed that applicant society has failed to fulfill the terms and conditions of the licence, therefore, the submissions made by the society to review earlier order dated 27.09.2011 vide the review application dated 19.03.2012 has been dismissed being devoid of any merit.

9. The licensee has filed an **Appeal No. 28 of 2013** on 20.12.2013 against the order dated 11.10.2013 before the Appellate Authority-cum-Additional Chief Secretary to Govt. Haryana Town and Country Planning Department Haryana. The Appellate Authority in his **interim order dated 12.12.2014** had ordered that *"at this stage the Department is directed to calculate the fee after giving opportunity of hearing to the representative of the society, in a transparent manner."* In compliance of these interim order dated 12.12.2014, passed by the appellate authority while providing the calculation sheet on aspect of licence renewal fee and gazette notification on the basis of which the licence renewal fee was calculated, applicant society was requested to appear for

hearing on 27.08.2015, which was further postponed for 15.09.2015, but no one appeared for hearing, hence, adjourned for 21.10.2015 which was on the request of applicant society adjourned for 19.11.2015. While forwarding the proceedings of the hearing held on 29.11.2015, the calculation sheet of licence renewal fee was again supplied to the applicant society vide this office memo dated 04.12.2016. According to calculation sheet, the Society was liable to pay an amount of Rs. 10.06 Cr. as outstanding on 30.04.2015 on account of licence renewal fee. But, the applicant society has not deposited the said amount.

10. The Appellate Authority-cum-Additional Chief Secretary to Govt. Haryana Town and Country Planning Department Haryana decided the Appeal No. 28 of 2013 vide **order dated 01.04.2016**. The operative part of these orders is hereby reproduced:-

"In view of the stand taken by both the parties, the case is remanded back to the Director General to give an opportunity of hearing to the appellant and then pass a speaking order on merits, as per law. The parties are directed to appear before Director General, Town & Country Planning on 27.04.2016 at 3:00 PM".

Due to personal appearance of the then DGTCP in the Hon'ble High Court, hearing could not be held and adjourned for 27.06.2016. No one appeared for hearing on 27.06.2016 however, a last opportunity of hearing was granted for 30.08.2016. However, Sh. Jai Bhagwan Sharma, Member Managing Committee alongwith advocate Sh. Sushil Jain appeared before the DGTCP on 11.08.2016 and submitted a demand draft of Rs. 1.0 crore on account of outstanding licence renewal fee alongwith representation. In this representation applicant society requested that balance amount of renewal of licence fee would be paid through escrow account after sanctioning of the building plans of the neighbourhood market which the applicant society is planning to construct through a collaborator by selling of the units being constructed in this neighbourhood market. In this regard, vide memo dated 04.05.2018, the licensee society was informed that this proposal is not in accordance with the provision of Act/Rules, hence, cannot be considered.

11. The Government under the provisions of Section 23-A of the Haryana Development and Regulation of Urban Areas Act, 1975 has decided to transfer the possession of all roads, open space, public parks and public health services of this colony to Municipal Corporation, Faridabad on 'as is where is' basis. Accordingly, vide order dated 28.11.2016 Society was directed to ensure the compliance of above orders in letter and spirit with further direction to submit/revalidate the bank guarantees on account of IDW in favour of Commissioner, Municipal Corporation, Faridabad till the issuance of final completion certificate by this office. In compliance of these orders the society vide letter dated 11.03.2017 requested Commissioner, Municipal Corporation, Faridabad to take over the possession of aforesaid service.

12. In compliance of the orders dated 01.04.2016 of Appellate Authority, before passing speaking order an opportunity of personal hearing was again granted on

19.05.2018 vide this office **memo no 13740 dated 04.05.2018** and the following major deficiencies were conveyed:-

- i. An amount of Rs. 1983.47 lacs is outstanding against licence renewal fee as on 30.04.2018. The licence renewal application has been submitted upto 02.02.2004 without renewal fee and further application till date has not been submitted. The renewal application submitted on 11.08.2016 is neither on prescribed proforma nor with prerequisite renewal fee.*
- ii. An amount of Rs. 5062.34 lakh is outstanding against EDC as on 09.04.2018. You have neither deposited the original EDC nor make any efforts to pay the EDC dues.*
- iii. The documents in compliance of Rules 24, 26 (2), 27 & 28 of Rules, 1976 have not been submitted till date.*
- iv. You have failed to execute the development works, get the service plans estimates approved (public health and electrical) or to provide the amenities services to the allottees.*
- v. You have not taken any interest to get the completion certificate and is involved in illegal selling of licenced land without renewal of licence as many complaints are regularly received in this office.*

13. The hearing to be held on 19.05.2018 was adjourned for 21.05.2018. No one appeared on behalf of the society on 21.05.2018 and 24.05.2018, therefore, hearing was adjourned for 07.06.2018. While conveying the date of hearing for 07.06.2018, vide memo dated 26.05.2018, the society was again requested that for any clarification regarding the pending dues they may visit this office on any working day. On 07.06.2018 counsel of the Society Sh. Sushil Jain alongwith Sh. Rakesh Dhunna, President of the society appeared for hearing. They presented arguments regarding interest on licence renewal fee and also on External Development Charges payment as per order dated 27.09.2011 of the then DGTCP. The hearing was adjourned for 25.06.2018, which was rescheduled for 03.07.2018. On the request of society, hearing to be held on 03.07.2018 was again adjourned for 14.07.2018, while conveying the date of hearing vide this office memo dated 12.07.2018 society was informed that the aforesaid date of hearing i.e. 14.07.2018 shall be the final opportunity and thereafter appropriate decision shall be taken without any further intimation. The hearing to be held on 14.07.2018 was rescheduled for 20.07.2018.

14. On 20.07.2018, Sh. Sushil Jain, Advocate on behalf of society appeared and submitted a written statement, which has been taken on record. Rather than depositing any pending dues and informing about the compliance of other discrepancies as conveyed vide this office memo dated 04.05.2018, in this statement, society has again raised the same issue of calculation of licence renewal fee and interest applicable on delay in submission of licence renewal fee.

15. The licensee society has failed to get the licence no. 06 of 1985 renewed after 08.04.1988 due to non payment of licence renewal fee, External Development Charges, non compliance of Rule 24, 26(2), 27 & 28 of the Rules of 1976 and for not

taking completion certificate. Due to breach of these terms and conditions of the licence, it was initially cancelled on 10.12.2009. After 2009 upto till date, rather than making compliances of the terms and conditions of the licence, society has willfully dragging this case on one or other issue. Even as on last date of hearing, society has rather making the compliances raised the same issue which were already decided in the previous hearings. As per provision Rule 13 of Haryana Development and Regulation of Urban Areas Rules, 1976 in case a colonizer fails to complete the development works within the period specified in, sub rule (2) of rule 12 for the reasons beyond his control, he may apply to the Director for the renewal of licence in form LC-VI at least 30 days before expiry of the licence alongwith license renewal fee at the rate of 10% fee prescribed in Rule 3 for the issuance of license. As per Rule 3 the calculation of license renewal fee by taking complete licensed land of 109.093 acres as residential, the calculation sheet has already been provided to the society time to time. As far as interest on delay period is concerned, as per rule, the licensee is required to submit the renewal application alongwith requisite fee 30 days before the expiry of licence. Therefore, if licensee fails to deposit the same within time then for the facilitation of licensee to regularize the delay period the licensee is liable to pay the interest on delay period alongwith justification of delay in submission of the license renewal application. This facts has also been conveyed to the society during the hearing.

16. In view of reasons recorded above, as the society has failed to get its licence renewed after 1988 i.e. more than 30 years and till date the society is not showing any willingness to make compliances of terms and conditions of the licence. Hence, the order dated 10.12.2009, 27.09.2011 and 11.10.2013 passed by my predecessor are in order and the licence No. 06 of 1985 dated 09.04.1985 is again hereby cancelled under section 8 of Act 8 of 1975 and Rules framed there under as the colonizer has contravened the conditions of the licence and the provisions of Act/Rules *ibid*. Accordingly, it is directed to initiate proceedings under Rule 19 after cancellation of licence. The Rule 19 prescribes following:-

19. Development works to be carried out by the Director in the colony [Section 8]. — (1) After cancellation of the licence or permission the Director shall by notice in form LC-XI call upon the colonizer to furnish within a specified time an audited statement of accounts duly certified and signed by the chartered accountant showing the amount actually recovered by him from each plot-holder and the amount he has actually spent on development works in the colony. (2) The Director shall also ascertain from the plot-holders the amount, paid by them to the colonizer and the balance amount, if any, to be paid by each of them to the colonizer. (3) The Director shall intimate to the colonizer and the plot-holders the charges he may have to incur on development works in the colony and shall call upon the colonizer and the plot-holders in form LC-XII and LC-XIII to pay these charges within thirty days. In case they fail

to pay these charges, the Director, may recover these charges as arrears of land revenue.

Further, the provisions of Section 10A are independent of procedure to be followed in accordance with Rule 19. The Section 10A provides for recovery of outstanding dues, which is reproduced below:-

10A. Recovery of dues.—All dues payable under the Act, which have not been deposited within the time specified, shall be recovered as arrears of land revenue.

17. Further, the following actions be taken as the land of the licensee shall now deem to vest with the Government:-

- a) As all the three pockets of Town Planning Scheme of Ex-Sainik Karamchari Co-operative House Building Society Ltd. adjacent to the licenced land of licence no. 06 of 1985 are already taken over by Municipal Corporation, Faridabad and all the internal services of licence no. 06 of 1985 are also handed over to Municipal Corporation Faridabad vide order dated 28.11.2016. Therefore, the Commissioner, Municipal Corporation, Faridabad should take over the Administration of this licenced colony today itself on behalf of Director Town and Country Planning Haryana and should put up atleast 4 '**Notice Boards**' at site indicating that the Administration of this licenced colony has been taken over by them.
- b) A public notice may be issued in the newspapers which should be released by the CTP, Haryana indicating above fact.
- c) The licensee should be directed under Section 10A of the Act, 1975 to deposit all outstanding dues on account of EDC, IDC etc. and also to give the information of sold and unsold properties within a period of 15 days from today i.e. information in terms of rules 26(2) and 28 of Rules 1976 so that the unsold properties can be disposed to recover the government dues. The outstanding dues should be calculated till the date of cancellation of licence.
- d) A communication be sent to the Collector, Faridabad for declaring the dues as arrears of land revenue which may be recovered from them under the provisions of relevant Act either by sale of property or by resorting to other permissible methods including arrest of the licensees. In order to restrict 3rd party right on the instant licenced area Deputy Commissioner and Sub-Registrar may be directed not to register any sale deed against the licence land belonging to Ex-Sainik Karamchari Co-operative House Building Society. Regarding cut of date for registration of properties same may be taken as today i.e. the date on which Department has imposed an embargo on sale of property.

- e) The details of Accounts of the allottees is to be maintained at the level of the District Town Planner, Faridabad. An account may be opened in the name of Director in this regard. All the allottees if any, may deposit the balance installment with the District Town Planner, Faridabad who will maintain the account of each and every plot holder.
- f) File shall also be submitted to Government for designating Commissioner, Municipal Corporation, Faridabad as Director Town and Country Planning Department under the Haryana Development and Regulation of Urban Areas Act, 1975 and Rules 1976 for all facts and purposes pertaining to the said colony. All unsold properties, if any, available in the said colony shall also vests with Commissioner, Municipal Corporation, Faridabad.
- g) A file may be separately submitted for debarring the Ex-Sainik Karamchari Co-operative House Building Society for grant of any further licence in this State of Haryana. The desirability of issuing Show Cause Notices for cancellation of their existing licences, if any, may also be examined.
- h) As this licence is not renewed after 1988 and even all the allottees of this colony are suffering due to lack of facilities and non fulfillment of terms and conditions of licence, therefore, show cause notice be issued to all the office bearers of the society since 1988.

Place: Chandigarh

(K. Makrand Pandurang)
Director, Town and Country Planning,
Haryana, Chandigarh

Endst No. LC-20-JE (SK) - 2019/8918

Dated:-03.04.2019

A copy is forwarded to the following for information and further necessary action:-

1. Ex-Sainik Karamchari Co-operative House Building Society, Community Center, Sainik Colony, Sector-49, Faridabad, Haryana– 121001, Phone No-0129-2416034, E-mail ID:- sainiksocietysect49@gmail.com with the direction under section 10A of the Act, 1975 to deposit all outstanding dues on account of licence renewal fee, External Development Charges etc. and also to give the information of sold and unsold properties within a period of 15 days from today i.e. information in terms of Rule 26(2) and 28 of Rule 1976 so that unsold properties can be disposed to recover the Government dues.
2. The Commissioner, Municipal Corporation, Faridabad with the request to take over the administration of the licensed colony with immediate effect on behalf of DTCP and take all necessary action as per above orders of DTCP, Hr.
3. Chief Administrator, HSVP, Sector-6, Panchkula.

4. Registrar Co-operative Society, Haryana, Panchkula.
5. Deputy Commissioner, Faridabad with the request to recover the above said outstanding dues as arrears of the land revenue in accordance with the orders as above. In order to restrict third party rights on the instant licensed area, it may be ensured that no sale deed against the licensed land may be executed/registered in future.
6. Senior Town Planner, Faridabad.
7. District Town Planner, Faridabad.
8. Assistant Registrar, Co-operative Society, Faridabad with a request to provide the list of office bearers of the society since 1988 upto till date alongwith their name, designation, address and phone number, if any.
9. Executive Engineer, MCF, Faridabad.
10. Chief Account Officer of this Directorate with the request to communicate updates outstanding dues against the license to the licensee as well as to The Commissioner, Municipal Corporation, Faridabad and to STP, Faridabad.
11. Website Administrator with the request to update the status on Departmental website and upload these orders for information of General Public.

(Vijender Singh)
District Town Planner (HQ)
For Director, Town & Country Planning
Haryana, Chandigarh