

From

The Chief Administrator,
Haryana Urban Development Authority,
Panchkula.

To

1. All the Administrators,
Haryana Urban Development Authority.
2. All the Estate Officers,
Haryana Urban Development Authority.

Memo No.UB/A-6/2011/19771-93
Dated: 14.06.2011

Subject: Instructions regarding resumption of plot.

It has been observed that in some cases order of resumption of a plot/site under section-17 of the HUDA Act 1977 (hereinafter called the Act) does not stand the scrutiny of Law because of certain defects in the process and the order passed by the Estate Officer. Some of the shortcomings observed in such orders are as under:

- i) The notices under section-17 of the Act are not sent on the address given by the allottee.
- ii) The notices under section-17 of the Act do not clearly specify the violations/breach of the conditions of sale. Only vague terms like misuse are mentioned.
- iii) A proper opportunity of hearing is not afforded to the allottee.
- iv) The defence taken by the allottee in his reply/hearing is not discussed in the resumption order.

As a result of such like defects it becomes difficult for HUDA to defend the action of the Estate Officer in the courts of Law. This matter

has been considered in detail and it has been decided to issue suitable instructions for the guidance of the Estate Officers while passing the resumption order. The Estate Officers shall keep in mind the following points while passing the resumption order:

- i) The notices under section-17 (1) or 17 (3) of the Act should clearly specify the breach of conditions of sale. For example in case of notice under section-17 (1) of the HUDA Act, the exact amount due from the allottee as on a specified date should be mentioned and in case of notice under section-17 (3) of the Act, details of the violations like unauthorized construction, use of building for purpose other than the purpose for which plot was allotted etc. should be clearly mentioned, inter alia, the extent and period of misuse.
- ii) It shall be the duty of Estate Officer to ensure that the notice is sent on address available in the record, and the process prescribed for service of such notice is followed and recorded.
- iii) The reply submitted by the allottee in response to the notices should be carefully considered by the Estate Officer and in case the reply submitted by the allottee is satisfactory or it requires some verification by site inspection then the same should be done first rather than issuing the notice under section-17 (4) of the Act. In case after such consideration or inspection of the site, the Estate Officer comes to the conclusion that the allottee has taken sufficient steps to ensure compliance with the conditions of sale then he should drop the resumption proceedings and inform the allottee accordingly.
- iv) In case the Estate Officer after consideration of the reply comes to the conclusion that misuse/violations are continuing then he should issue the notice under section-17 (4) of the Act in which

he should give the reasons why he has rejected the reply given by the allottee.

- v) In case during personal hearing under section 17 (4) of the Act the allottee satisfies the Estate Officer that he has ensured the compliance of the conditions of sale and he produces sufficient evidence in support of his contentions then the Estate Officer may drop the resumption proceedings after verification of the evidence produced by the allottee.
- vi) In case the Estate Officer is satisfied that allottee has failed to comply with the conditions of sale in spite of sufficient notices to him then he should pass the resumption order stating therein the details of the violations of the conditions of sale, proper service of notices to the allottee, careful consideration of the reply submitted by the allottee before issuing the notice under section-17 (4), the statement made by the allottee during personal hearing, the facts available on the file and finally the detailed reasons for passing the resumption order.
- vii) The resumption order should clearly state the amount to be forfeited which shall not exceed 10% of the total amount of the consideration amount, interest and other dues payable in respect of sale of the land/building or both. The order should also clearly state the amount to be refunded and the cheque number by which it is being refunded and the said cheque should accompany the resumption order.
- viii) The Estate Officer shall ensure that the account of the allottee is up-dated immediately and he shall endorse one copy of the resumption order to GM (IT) and Manager of concerned authorized banks with the advice that payment in respect of said plot may not be accepted. If inadvertently payment is still

accepted by the banks then it shall be the duty of Estate Officer to return the deposited amount immediately to the erstwhile allottee and the factum be so recorded.

It may be understood by the Estate Officer that courts have held that order of resumption is an extreme and last step to be taken. Therefore, it should not be passed in a casual manner in total disregard of the principles of natural justice.

Action to be taken by the Estate Officer after service of resumption order.

After the resumption order has been served, the persons occupying the site/building become unauthorized occupants and therefore a notice is required to be served upon them under section-18 of the Act. This notice should be served by the Estate Officers themselves where they have been given the powers of Collector under section-18 of the Act and in other cases the Estate Officer should request the Collector of the concerned district to issue the notice under section-18 of the Act. After the completion of process as prescribed under section-18 of the Act, the Estate Officer should take the possession of the building/site and a commensurate entry be made in the records.

The general impression among the Estate Officers is that the possession of the resumed plot/site cannot be taken during the pendency of the appeal at different forums against the order of the resumption. The necessary instructions in this regard have already been issued and it is reiterated that the Estate Officer should take the possession of the plot/site immediately after the passing of the resumption order unless the dispossession of erstwhile allottee has been stayed by the court of competent jurisdiction.

After taking over the possession of the plot the Estate Officer should take immediate steps to dispose off the plot/building by way of floatation/open auction as the case may be.

It has also been observed that file containing the resumption proceeding is not page marked and as a result it becomes easier for vested interests to cause damage to the HUDA interest. The Estate Officer should ensure that the complete file including the resumption proceedings are page numbered.

For Administrators

Almost all the resumption orders are challenged and appeal is filed before the Zonal Administrator exercising the powers of CA HUDA under section-17 (5) of the Act. A copy of the appeal is then sent by the Administrator to Estate Officer for sending his comments. In case of delay at the level of Estate Officer the reminders are sent and disposal of the appeal gets delayed. In order to avoid unnecessary delay and to ensure quicker justice to the appellant it is suggested that the Administrators may call for the file containing resumption proceedings and start the process of hearing as early as possible.

The Administrators should first decide the question of limitation in case the appeal has been filed after the expiry of the stipulated period of 30 days of the date of communication of the resumption order. If the appeal has not been accompanied by an application for condonation of delay then he should reject the appeal on the grounds of limitation. However, before rejecting the appeal on ground of limitation an opportunity of hearing may be given to the appellant. In case the delay in filing the appeal is condoned by Administrator then he should proceed to hear the appellant on the grounds of appeal taken by him. After hearing the appellant, Administrator should pass his order as required under sub section-6 of section-17 of the Act i.e. he may confirm, vary or reverse the order against which appeal has been filed. **The Administrator in his**

order should give his findings on each ground of appeal taken by the appellants. The order passed by the Administrator should invariably contain on the right top portion the date of institution of appeal and date of decision of appeal.

It is once again made clear that Administrator has no jurisdiction to review his own order. The order passed by the Administrator under sub section-6 of section-17 of the Act can only be challenged under sub section-8, section-17 of the Act.

It is also made clear that Administrator has no jurisdiction to hear any appeal against the order of the Estate Officer by which he has ordered the cancellation of plot on account of failure of the allottee to deposit 15% earnest money within stipulated period of 30 days.

All the Administrators/Estate Officers are requested to keep in view the above said guidelines while passing the orders under section-17 of the Act.

Sd/-
Administrator, (HQ)
For Chief Administrator,
HUDA, Panchkula.

Endst. No.UB/A-6/2011/19794

Dated: 14.06.2011

A copy is forwarded to Financial Commissioner & Principal Secretary to Govt. Haryana, Town & Country Planning Department, New Secretariat, Sector-17, Chandigarh for information.

Sd/-
Administrator, (HQ)
For Chief Administrator,
HUDA, Panchkula.

Endst. No.UB/A-6/2011/19795-98

Dated: 14.06.2011

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

1. Chief Controller of Finance, HUDA, Panchkula.
2. District Attorney, HUDA, Panchkula.
3. Enforcement Officer, HUDA, Panchkula.
4. General Manager, (IT), HUDA, Panchkula.

Sd/-
Administrator, (HQ)
Chief Administrator,
HUDA, Panchkula.

For

