

From

Principal Secretary to Government Haryana,
Town and Country Planning Department,
Chandigarh.

To

Director General,
Town and Country Planning Department,
Haryana, Chandigarh.

Memo No. Misc-26/2013/8/3/2013-2TCP

Dated: 18/03/2013

Subject:- Scheme for grant of occupation certificate in Ardee City, Gurgaon in compliance of orders dated 24.09.2012, 15.10.2012 and 08.01.2012 of Hon'ble Punjab and Haryana High Court in CWP No. 22761 of 2010-Ardee City Resident and Flat Buyers Association Versus State of Haryana.

While hearing the CWP No. 22761 of 2010- Ardee City Resident and Flat Buyers Association Versus State of Haryana on 24.09.2012, Hon'ble High Court has directed Department/DGTCP, Haryana to devise a scheme so that members of petitioner association may not suffer in a manner except for the violation committed by them and action be taken against erring licensee/builders who have constructed these premises in violation of building bye laws contained in Chapter 7 of Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Rules, 1965.

Numbers of plot owners requiring Occupation Certificate.

In Compliance of the orders dated 24.09.2012, Senior Town Planner, Gurgaon was asked to conduct a detailed survey to determine as to who has got the premises constructed and to assess the quantum of violation of building bye laws in the Ardee City, Gurgaon. As per the survey, there are 1416 plots in Ardee City, out of which 744 are constructed/ built up and 372 constructed plots have obtained occupation certificate. Remaining 372 plots are yet to take occupation certificate which includes 367 already occupied plots. Out of these 372 plots, construction on 211 plots has been done by the licensee (respondent no. 5 in the writ), 127 by the builders (some of the them are respondent no. 7 to 19 in the writ) & 34 plots have been constructed by individuals.

Compounding provisions of the Act of 1963.

It is sometimes seen that some unintentional minor alteration/modification in violation of building bye laws occurs during construction of building. To cater to such situations, there are provisions for composition of offence under section 14 of Act of 1963. The composition policy dated 08.08.2001 formulated under the aforesaid section of the Act of 1963 provides for composition of excess covered area and zoning violations upto a maximum limit of 5% of permissible covered area and of setback line, respectively. Subsequently, compoundable limits of violation of building bye laws on account of excess coverage and zoning violation were increased to 10% vide composition policy dated 16.3.2006. The composition of zoning violation and excess coverage upto 10% over and above of permissible limits is more than adequate to cater for unintentional minor

alteration/ modification which might occur during construction phase. It would not be out of context to mention here that owners of premises/buildings more especially in Gurgaon are taking aforesaid compoundable limits as a matter of right rather than exception. Past experience has shown that as the Department increased the compoundable limit of the offence, owners of building started including compoundable limit into permissible limits as a matter of right and same is invariably violated on account of unintentional deviations/ additions made in building during construction. Thus, very purpose and object of making violation of building bye laws compoundable upto certain extent gets defeated.

Main grievance of the petitioners:

One of the conditions imposed while approving building plan is that the applicant/owner shall obtain occupation certificate as required under Rule 47 of Rules of 1965 before occupying the premises. However, licensee/builder allowed allottees to occupy the premises without obtaining occupation certificate of the premises constructed by them. Thus, main grievance of the petitioners is regarding grant of occupation certificate of premises constructed by licensee/builder, who allotted and offered possession without obtaining occupation certificate as required under Rule 47 of Rules of 1965.

2. Scheme for redressing the Grievance of the petitioners:

After detailed survey, 372 plots referred at sr. no. 2 above, have been divided into three categories depending upon their compoundability/ extent of violation of building bye laws and following scheme is finalised for grant of occupation certificate in respect of aforesaid 372 premises.

a. This scheme is based on the principle that the licensee/builder or individual who has committed the violation during construction of building shall pay composition fees for compoundable violations and shall also be responsible for rectifying non-compoundable violations. The licensee/builder/individual who is responsible for construction has already been identified by the STP, Gurgaon in his survey report.

b. In case premises are constructed by builder/licensee, the allottee shall also be eligible for making application for grant of occupation certificate, however, onus of payment of composition fees and that of rectifying non-compoundable violations shall squarely lie upon builder/ licensee who has constructed the premises. Failure to pay composition fees shall invite proceedings under the provisions of Act of 1963 and Act of 1975.

c. Apart from the composition fees for violation of building bye laws, composition fee for illegal registration of sale deed of independent floors before 27.03.2009, if any shall be levied as per policy dated 17.05.2012 upon violator i.e. licensee/builder/individual who had executed conveyance deed in favour of allottee. Non-payment of aforesaid composition fees shall invite proceedings under the provisions of Act of 1975.

d. There are 204 premises wherein violations are totally of compoundable nature. Applicant-licensee or builder or individual or allottee as the case may be, shall submit fresh application within 30 days from the date of issue of notice by Senior Town Planner, Gurgaon on Form BR-IV (a) alongwith requisite documents such as completion certificate by an Architect/Engineer on Form BR-V(I) or BR-V(2), affidavit regarding installation of

rain water harvesting system and affidavit regarding non-use of basement for other than domestic storage.

e. There are 126 premises where violations are of non-compoundable nature but can be rectified with minor changes/ alterations. These non-compoundable violations are typical in nature depending upon the agency involved in their construction. Accordingly, licensee/builder/individual who had constructed the premises or allottee, shall submit fresh application on Form BR-IV (a), alongwith requisite documents after rectifying the non-compoundable violations, within 90 days from the date of issue of notice by Senior Town Planner, Gurgaon. The person/agency liable for removal of non-compoundable violations as per 5(a) shall be required to remove these violations within two months from the date of issue of such notice.

f. There are 42 premises where violations are of non-compoundable nature which can be removed with engineering intervention. Rectification of non-compoundable violation in these 42 premises would require structural alteration like removal of load bearing wall, construction of retaining wall etc. Accordingly, licensee/builder/individual who had constructed the premises or allottee, shall submit fresh application on Form BR-IV(a) alongwith requisite documents after rectifying the non-compoundable violations within 180 days from the date of issue of notice by Senior Town Planner, Gurgaon. The person/agency liable for removal of non-compoundable violations as per 5(a) shall be required to remove these violations within five months from the date of issue of such notice.

g. After submission of application within the specified period, a show cause notice will be served upon the applicant for rectification of compoundable violations of building plans. The applicant shall either remove/rectify the compoundable violations or given consent for composition of the same within three weeks time.

h. After receipt of consent for composition of violations, demand notice will be issued for payment of composition fees within a period of 15 days time. On payment of the composition fees, occupation certificates shall be issued within a week time.

i. After approval of the scheme by the Hon'ble High Court the scheme will be displayed in the office of petitioner association and also published in one English and one Hindi newspaper. The cost of publication would be borne by the colonizer namely, Ardee Infrastructure Pvt. Ltd.

j. STP, Gurgaon will issue notice in respect of 5(d), 5(e) and 5(f) within ten days of the approval of this scheme by the Hon'ble High Court.

This is being issued with the approval of competent authority.

Sd/-
Secretary,
for Principal Secretary to Govt. Haryana
Town & Country Planning Department,
Haryana, Chandigarh