

CHAPTER 24

SALE PERMISSION

Most of the leased premises administered by the Land and Development Office are restricted i.e. permission of the lessor (the Land & Development Office) is a precondition for assignment or transfer of lease hold rights by the lessee. Hence in restricted leases it shall be obligatory for the lessee to obtain prior permission of the lessor where required, can be granted to the lessee or his duly authorised attorney.

2. PERSONS WHO CAN APPLY FOR SALE PERMISSION:

- (i) The person or persons whose names appear on the records of the Land & Development Office as lessee(s); and
- (ii) Duly authorised attorney(s) of the lessee(s).

3. PROCEDURE FOR MAKING AN APPLICATION FOR SALE PERMISSION:

A lessee or his duly authorised attorney can make an application for sale permission of the leased premises administered by the Land & Development Office in the prescribed format. The application complete in all respect and signed by the lessee(s) or duly authorised attorney(s) of the lessee(s) as the case may be can be sent by Registered post or delivered at the Central Receipt Counter of the Land & Development Office.

If the application is made by attorney(s) of the lessee(s), it shall accompany:-

- (i) An attested copy of the Power of Attorney duly executed under the Indian Registration Act;
- (ii) Consent affidavit in the prescribed format of the lessee to the effect that the General Power of Attorney has not been revoked and he/she has no objection to the sale permission being given to the attorney; and

- (iii) Nominee's Affidavit in the prescribed format, where sale permission is to be in favour of the Attorney's/Intending Purchaser's nominee.

4. DOCUMENTS TO BE ENCLOSED TO THE APPLICATION:

Apart from the documents listed above in cases where the Attorney of the lessee(s) applies for sale permission, the following documents shall accompany the application:-

- (i) Certified copy of the Agreement to sell, duly registered under the Indian Registration Act;
- (ii) In case of residential Properties where the intending purchaser is an individual or a HUF, an affidavit in the prescribed form of the intending purchaser/transferee duly sworn before a Magistrate/Sub-Judge with verification clause duly completed to the effect that he or any member of his family do not own any residential plot or house in Delhi. A photograph of the deponent or intending purchaser shall be affixed on this affidavit;
- (iii) Where the intending purchaser is a company, a copy each of :-
 - (a) Memorandum of Association;
 - (b) Articles of Association;
 - (c) Certificate of incorporation;
 - (d) Resolution empowering one or more of the Directors to purchase the property for the company.
 - (e) List of the present Directors;

(All duly attested by the Company Secretary, Director, a Gazetted Officer or a Notary Public)
 - (f) An affidavit (in the prescribed form) to the effect that the property shall be used for residential purposes (applicable in respect of residential leases), duly attested by Magistrate Ist Class.

(iv) Where the intending purchaser is a Firm, a copy each of:-

- (a) Deed of Partnership duly registered with the Registrar of Firms;
- (b) Resolution empowering one or more of the partners to purchase the property for the firm;
- (c) List of present partner;

(All duly attested by a Gazetted Officer or a Notary Public), and

- (d) An affidavit (in the prescribed by the requisite documents, the same shall be returned at the receipt stage. An acknowledgement slip as shall be given to the applicant or his messenger by the Receipt Clerk in case of complete application as a token of its receipt by the Land & Development Office.

5. PROCEDURE FOR GRANT OF SALE PERMISSION:

An application for grant of sale permission receive in the Land and Development Office shall on the date of its receipt, be date-stamped and diarised by the Central Receipt Cell to indicate the date of its receipt. The same shall, therefore, be passed on to the section concerned which shall in the first instance scrutinise the same in order to ascertain whether it is complete in all respects or not. Incomplete application shall be returned to the applicant within seven days of its receipt.

If the application is complete in all respects, the necessary calculations shall be completed and the terms for sale permission shall be offered on the basis of the available information on record, within one month of the date of receipt of complete application. The applicant or lessee(s) shall be given 30 days time from the date of the letter to comply with the terms officered for grant of sale permission. It shall also be made clear in the terms letter that without compliance of the terms, no correspondence shall be entertained and if the representation is made against the terms, and on consideration of the representation, if there is no change in the original terms, the original application for sale permission shall be treated as disposed of and the crucial date will be shifted to the date of such representation. Such representation shall be disposed of in 30 days, by offering the fresh terms.

If the applicant or lessee does not make the payment within the stipulated 30 days period from the date of offering the terms, the terms, the application for sale permission shall be treated as closed.

If the applicant or lessee makes the payment after the expiry of the stipulated period, the crucial date shall be shifted to the date of such payment and if there is change in the land rates during intervening period, the applicant or lessee(s) shall be liable to pay the difference in the unearned increase etc. before granting of the sale permission.

If the payment is made by the applicant or lessee(s) through a Bank Draft or a Banker's Cheque, the sale permission shall be issued by the Land & Development Office within a week of receipt of the Bank Draft/Banker's Cheque. In case where the payment is received through a personal cheque, the sale permission be issued within a week of realising the amount through the Bank.

6. UNEARNED INCREASE:

The date of receipt of complete application in the Land & Development Office shall be the crucial date for calculation of unearned increase. The unearned increase shall be calculated by taking the date of receipt of complete application as the crucial date and the original premium/last transaction value as the case may be and the notified land rates applicable for the crucial date as the relevant factors.

In the case of first sale of rehabilitation properties, neither any unearned increase is payable nor is the ground rent to be revised. In such a case the formal letter of grant of sale permission shall be issued immediately after the documents are received and found in order. Such files shall not be referred to Internal Audit Cell.

7. FORMULA FOR WORKING OUT UNEARNED INCREASE:

The amount of unearned increase with reference to the crucial date shall be arrived at as under:-

Plot area X (Present day value of the land minus last transaction value) X $\frac{1}{2}$

N.B.: The terms "Last Transaction Value" means the original premium where the lease premises or any part thereof has not been sold/assigned or the value on the date of last sale/assignment where the leased premises was sold/assigned in full or part.

[M/o UD letter No. 13019/1/93-LD dated 11.03.1994]

8. TERMS FOR GRANT OF SALE PERMISSION

After the calculation unearned increase, terms for grant of permission for sale shall be drawn and referred to the Internal Audit Cell for concurrence. The terms shall comprise of the following:-

- (i) amount of unearned increase payable by the lessee;
- (ii) amount of enhanced ground rent payable by the intending purchaser from the date of execution of sale deed;
- (iii) amount of ground rent upto the ensuing 14th January or 14th July, whichever is earlier, if not already paid;
- (iv) amount of damages for breaches upto ensuing 14th January or 14th July whichever is earlier, if the breaches are not removed and the intending purchaser furnishes the requisite undertaking;
- (v) amount of penalty recoverable, if any; and
- (vi) amount of interest recoverable, if any,

The rights and responsibilities accruing from sale permission accorded to a lessee on certain terms and conditions which were to be fulfilled by him before his death, are inherited by the heirs of the deceased lessee. It shall not, therefore, be necessary to work out any fresh terms and conditions in such a case. The case shall be processed further on the basis of old terms after carrying out mutation in the name of the heirs.

9. INSPECTION OF THE PREMISES:

There shall be no need to conduct fresh inspection of the permission for considering sale permission application. Terms shall be finalised only on the basis of the available information to ensure that there is no undue delay.

10. GRANT OF SALE PERMISSION:

On the terms being complied with in full, sale permission to the lessee or attorney, as the case may be, shall be granted by the Land & Development Office through a letter in the prescribed format. The lessee or attorney shall execute the sale deed within the valid period of sale permission and shall get it registered with the Sub-Registrar having jurisdiction over the area in which the property is situated. One copy of the registered sale deed duly attested by the Sub-Registrar shall then be furnished to the Land & Development Office. If the sale deed is found to be in order, mutation letter in favour of the purchaser shall be issued. In case of delay in getting sale permission terms or mutation letter, the lessee or attorney, as the case may be, may contact the Public Relation Officer with prior appointment.

11. DURATION FOR WHICH SALE PERMISSION SHALL BE VALID:

If the land rates valid as on the crucial date are not in force at the time of issue of the terms or these rates are not likely to be in force for more than 6 months, the sale permission shall be valid for a period of 6 months.

12. EXECUTION OF SALE DEED:

The sale permission letter also contain that if the sale deed is executed after the expiry of the time limit specified in the sale permission letter, the mutation will be carried out only on payment of the difference in the unearned increase either by the lessee(s) or by the purchaser. A copy of the sale permission letter shall also be marked to the intending purchaser.

If the sale deed is executed within the valid period of the sale permission, the mutation shall be carried out on the basis of certified copy of the sale deed.

If the sale deed is executed after the expiry of the time limit, the demand of the difference in the unearned increase due to revision of land rates shall be raised and realised before carrying out the mutation. However, if the sale deed is executed after the expiry of the time limit and the revision

of land rates has become due but the revised land rates have not been notified when the purchaser approaches for mutation, the mutation may be carried out after obtaining an undertaking from the purchaser agreeing to pay the difference in unearned increase.

[M/o UD letter No. J-13019/1/93-LD dated 11.03.1994].

13. SALE WITHOUT PERMISSION:

A lessee shall not sell lease-hold without permission of the lessor where such permission is required and sale without the lessor's permission shall be a breach of the terms of the lease for which the lessor may re-enter the property and the lease-hold rights shall stand forfeited to the state. Such breach may be regularised on payment or penalty in addition to the payment of unearned increase, if recoverable.

If the sale deed is executed without prior permission of the lessor and an application is made for mutation of property, the date of intimation of transfer alongwith certified copy of the sale deed shall be the crucial date for purposes of calculating unearned increase. Though in the normal course, the demand of unearned increase shall be on the lessee, in such cases where the sale deed has already been executed and if the purchaser is willing to pay the amounts, there shall be no objection in raising the demand on the purchaser before carrying out the mutation. In all such cases a penalty of Rs. 3,000/- per annum shall be levied.

N.B.: Transfer of his/her rights in the leased premises by one co-lessee to another co-lessee through a sale/gift/release deed, does not require the permission of the lessor even in restricted leases and therefore such a transfer shall not be treated as a breach of the terms of the lease. No unearned increase shall be recovered in such cases.

[M/o UD letter No. J-13019/1/93-LD dated 11.03.1994]