

From

Additional Chief Secretary to Govt. Haryana,
Town and Country Planning Department Chandigarh

To

1. Director General
Town and Country Planning Haryana
Haryana, Chandigarh
2. The Chairman
Haryana Real Estate Regulatory Authority
Gurugram
3. The Chairman
Haryana Real Estate Regulatory Authority
Panchkula

Memo No. Misc-862/2023/7/1/2023-2TCP/11689-91

Dated:24.04.2023

Subject:- Policy for phasing in licensed colonies and seeking 2/3rd consent from the allottees in case of revision in the layout plan /building plan.

Whereas, several inter-se coordination issues in the implementation of the statutory provisions of the authorities under the Haryana Development and Regulation of Urban Areas Act 1975, Real Estate (Regulation and Development) Act 2016 and Haryana Apartment Ownership Act 1983 come to notice of the Government. Accordingly, detailed and deliberate consultations have been held with the Chairmen, RERA Panchkula & Gurugram and the Director, T&CP Department in fulfillment of the requirements of the respective general and special statutes, including deliberations held in the Urban Development Conclave held on 25th-26th February, 2022.

Accordingly, this policy was in-principally approved by the Government. Thereafter, the draft of said policy was circulated for the information of general public and all other stakeholders for seeking suggestions through a public notice dated 18.07.2022. Accordingly, the suggestions received on the said policy were examined and same were also approved by the Government on 01.04.2023. Thereafter, the said policy was placed before Council of Ministers in its meeting held on 05.04.2023. The policy has been approved by Council of Ministers vide U.O. No.9/50/2023-2Cabinet dated 05.04.2023.

Now, in order to further streamline the processes involved, and, in exercise of the powers conferred under section 83(1) read with its proviso of the Act of 2016, as well as the powers conferred under Section 9A of the Act of 1975, the Governor of Haryana is pleased to issue the following policy instructions/ clarifications. These policy instructions/ clarifications are issued for coordinated functioning of statutory authorities under the Haryana Development and Regulation of Urban Areas Act 1975; Real Estate (Regulation and Development) Act 2016 and Haryana Apartment Ownership Act 1983.

1. PHASING & ITS APPLICABILITY: For a licensed colony or part of it, which is yet to be registered by RERA (though requiring registration before creation of third party rights), the coloniser shall disclose to the Director, its plan for development of such colony, or part of it, in phase(s). An undertaking from the coloniser regarding such non-registration of the colony or such part of it shall be considered adequate along with such disclosure.

1.1. NORMS & PARAMETERS: The following norms and parameters shall be followed for phasing in a licenced colony:

- i. such part of colony, which either stands completed/occupied or stands registered with RERA ,may be indicated as 'completed/ registered phase';
- ii. where benefit of additional FAR,under TOD/TDR or any other applicable policy, over such 'completed/ registered phase' is sought to be availed, requiring fresh RERA registration, such 'completed/ registered phase', may also be allowed to be designated as an independent phase(s);
- iii. community sites and commercial sites may be indicated as an independent phase(s) in the LOP/Site Plan;
- iv. a multi-storey building/tower shall not be sub-divided into multiple phases;
- v. EWS plots/flats are to be transferred to HBH, hence the same may not form part of any phase;

1.2. PROCEDURE TO BE ADOPTED FOR PHASING:

- i. The Developer shall disclose the proposed phase(s), without disclosing the timelines, on the layout plan/ site plan submitted for approval of Director;
- ii. The minimum area of each such phase shall be as prescribed in the policy dated 22.12.2009. The minimum area of a phase in case of NILP colony shall be determined as per the component of Group Housing/Plotted/Commercial availed vis-à-vis the norms as per above policy dated 22.12.2009.
- iii. No phasing shall be allowed in the cases pertaining to DDJAY.
- iv. The phase(s) shall be disclosed with, at least, commensurate essential services, viz., water supply, sewerage, drainage, roads, electricity etc.;
- v. The layout plan/ site plan/zoning plan approved by the Director, shall indicate such phase(s) disclosed by the colonizer clearly indicating the FAR utilized/intended to utilized or benefits of TOD/TDR in each Phase;
- vi. Such layout plan/ site plan showing the phase(s), if any, shall be submitted to RERA along with timelines at the time of registration of the project/phase under RERA Act, 2016.

2. INVITING OBJECTIONS/ SUGGESTIONS FOR REVISION/ AMENDMENT OF LAYOUT/SITE PLAN vs. SEEKING 2/3RD CONSENT: It has emerged that:

- 2.1. EXISTING POLICY:** Under the existing policy directives issued vide memo dated 25 Jan 2021, detailed mechanism for the purpose of considering objections / suggestions of the allottees has already been laid out, which have not only been found to be reasonable in protecting the rights of various stakeholders involved but also successful in maintaining a balance between rights of allottees to object versus ease of doing business.
- 2.2. PROCEDURAL ISSUES:** However, it has emerged that there is a lack of uniformity in procedures, since registration of few TOD/TDR granted projects have got immensely delayed despite the policy directives dated 25 Jan 2021 being followed.
- 2.3. RESOLUTION OF ISSUES:** In view of above, the prevailing processes have been reviewed to address all scenarios and workout a reasonable mechanism in this regard. To achieve such objective, it is essential to
 - 2.3.1. Define what constitutes as**
 - i. minor addition/ alteration in layout/ building plan, and as,
 - ii. revision of layout/ building plan
 - 2.3.2. Prescribe additional measures for seeking 2/3rd consent of allottees in case of revision of layout/ building plan, taking into account phasing plan;**

3. WHAT CONSTITUTES REVISION OF LAYOUT/ BUILDING PLAN OR OTHERWISE:

- 3.1.1. Revision of layout/ building plan would mean any amendment/ supersession/ modification in the approved layout plan as may be proposed by the coloniser.
- 3.1.2. However, additions or alterations in the layout/ building plan made on account of the following shall not be construed as revision of layout/ building plan, where:
- i. no third party rights have been created against the existing approved layout/ building plan;
 - ii. the existing layout/ building plan of the colony is getting amended on account of grant of license for additional area with changes limited to an area not exceeding five percent but not exceed 1 acres, without disturbing the green areas, of the amended combined layout plan to enable proper connectivity and proper planning;
 - iii. the area reserved for future expansion or un-determined use is only being planned or being assigned an use without any changes in the remaining layout/building plan;
 - iv. the existing layout/ building plan of the colony is getting truncated on account of de-licensing/ surrender/ migration of part licensed land with upto five percent change in the remaining layout/ building plan;
 - v. the existing layout/ building plan of the colony is getting revised on account of earmarking of essential services, like electrical infrastructure, solid waste management infrastructure, provision of UGT/STP etc.;
 - vi. additions/ alterations made on account of provision for green building measures under Haryana Building Code.
 - vii. unutilized FAR/saleable area is sourced from the existing phase(s), and utilized in subsequent phase of such project without affecting any change in the layout/ building plan for the existing phase(s) and requiring no revision of the Deed of Declaration, filed if any.
- 3.1.3. Wherever limits to amendment/ change of building plan is specified in the sub-section above, such limits shall pertain to amendment/ change in the overall covered area (FAR area) on all floors.

4. PARAMETERS GOVERNING TWO-THIRD CONSENT OF ALLOTTEES: The scenarios wherein there shall be an additional requirement of seeking two-third consent from allottees, as well as, scenarios where adherence to policy directives issued vide memo dated 25 Jan 2021 shall be governed by the following.

4.1. APPLICABILITY:

- 4.1.1. In cases where colony is proposed to be developed in phases, obtaining two-third consent, for revision of layout/ building plan shall be limited to the phase in which such revision is proposed.
- 4.1.2. In future addition of floors in an existing multi-storey building shall not be allowed without two-third consent of the allottees of the colony/ phase, as applicable.

4.2. 2/3RD CONSENT IS REQUIRED WHEN: Consent of at least two-third of existing allottees of a colony/ phase shall be necessary, in case a revision is proposed in a layout/ building plan, which results in, change in the plan which formed the basis for existing allottees to book their plots/ flats.

The in-principle approval in such cases shall be subject to, apart from other necessary requirements, the receipt of necessary consent of the allottees to be submitted alongwith the certified list of existing allottees of the applicable phase/ project.

4.3. 2/3RD CONSENT IS NOT REQUIRED WHEN: No such consent shall be required from any of the allottees in any phase, where the unutilized FAR/saleable area is sourced from the existing phase(s), and utilized in subsequent phase of such project without affecting any change in the layout/ building plan for the existing phase(s) and requiring no revision of the DOD, filed if any.

4.4. RESOLUTION OF LEGACY MATTERS: In such cases involving enhancement of FAR in existing projects or part thereof, approved earlier, under TOD/ TDR policy or any other applicable policy, without obtaining two-third consent, the allottees may seek the legal remedy under the provisions of the RERA Act 2016.

5. MISCELLANEOUS

- 5.1. The phasing in the colony shall in no case amount to either subdivision of licence or change in the beneficial interest and for all statutory purposes, under the provisions of the Act of 1975, the colony shall continue to be treated as a single entity.
- 5.2. For any revision in the sanctioned layout plan/ building plan in a colony, the provisions of the policy instructions dated 25.01.2021 shall continue to be applicable.
- 5.3. Further, the Occupation Certificate/ Part Completion Certificate for part of phase may be allowed only as per the approved layout plan.
- 5.4. Necessary amendments shall be carried out in the Act No. 8 of 1975 and Rules, 1976 for implementation of such provisions of the policy as considered necessary.

Sd/-

(Arun Kumar Gupta)

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

Endst. No. Misc-862/2023/7/1/2023-2TCP/11692

Dated: 24.04.2023

A copy is forwarded to the Secretary, Council of Ministers, Haryana with respect to U.O. No. 9/50/2023-2Cabinet dated 05.04.2023, affirming the implementation of the decision taken in the meeting of the Council of Ministers held on 05.04.2023 w.r.t the subject cited colony.

Sd/-

(Arun Kumar Gupta)

Additional Chief Secretary to Government
Town and Country Planning Department
Haryana, Chandigarh

