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OFFICE OF THE DIR (Plg.)
MPR/TC, D.D.A. N. DELHI-2
Dy.No. 3589
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Sh. A.K. Manna,
Director (Plg.),
Delhi Development Authority,
4th Floor, Vikas Minar,
New Delhi-110002.

Area/Cell/Plg. No. 4
Dated 15/4/12
R&D Section, Vikas Minar
Delhi Development Authority
Deating Asstt

Director (API-I)
Dy. No. 05/MPR-54
Date 21/5/12

Dear Mr Manna,

**Subject: Suggestion on Mid-Term correction & modification in MPD-2021
policy, Norms/Standards and implementation procedure**

We would like to humbly submit the following as our suggestions on mid term correction and modification in MPD-2021 in relation to unearned increase policy of the Delhi Development Authority ('DDA'):

DDA in its unearned increase ('UEI') policy has introduced a concept whereby the transfer of shareholding of a company has been equated with the transfer of land. This fiction is highly unreasonable as it restricts in inflow of capital, internal corporate and group restructuring. There should be no such condition in case of commercial plots which are auctioned at the market rate. Ostensibly the main objective of the UEI Policy was to provide clear guidelines and procedure to the lessee in case of transfer of leasehold right of the plot to third parties out of the family. The idea of charging UEI is to recover by DDA a portion of the profit/gain earned by the allottee/lessee of plot.

UEI Policy stipulates payment of UEI charges to DDA calculated at 50% of the difference value between the market price and the allotted price of the specific plot.

Lacunae in the UEI Policy:

1. After failing to control, and, rightly so the development and transfer of lands in NCT of Delhi, wherein all lands were de-facto lease hold but were being transferred including with the properties built thereon, through the Power of Attorney route, DDA and the Government of India decided to completely liberalize this regime and allow all lease hold plots to be converted to free-hold.

This liberalization should have been automatically extended to auctioned plots (while simultaneously removing the UEI Policy implications from these) whether residential or commercial, with prior effect, as keeping merely these out of the ambit of such liberalization thwarts the very purpose, of that programme. In the case of auctioned plots this is even more relevant because these are auctioned through commercial competitive mechanisms at the highest market rate and therefore to have them kept as lease hold with restriction on transfers is incorrect.

2. Within the rules of auction of plots, DDA allows the winning bidder to transfer the property by way of sale or any other methodology deemed appropriate but purports to restrict the change in structure of the entity that wins the bid. This is anomalous in as much as the winning bidder can realize value through alienation of the asset without DDA having any control on it, whatsoever, leading to creation of small and sub-optimally developed and maintained commercial developments as in Nehru Place, Bhikaji Cama Place, etc. The best practice of in fact having larger office/commercial floors with better centralized ownership and maintenance can be promoted by allowing change in the structure of the winning bidder through dilution of equity in case the winning bidder is a company or addition of new partners in case of partnership firm, etc. thereby promoting better quality of commercial real estate. The poor quality of commercial real estate in the city compared to all its global peers bears this point out.
3. The SEZ Board of Approvals in its meeting held on September 19, 2011, on the issue of change in shareholding pattern and dilution of equity in a developer company, has adopted a view point on the basis of clarification obtained from the Department of Legal Affairs, (Government of India) through Department of Commerce, (Government of India) that change in shareholding structure/pattern of a company can not be considered as a transfer of land of a company and the land continues to vest with that company. Further, while it may be considered as a sale/transfer of business of the company but the same can not be said as transfer/sale of the land. Extract of the said Minutes of Meeting of SEZ BOA is reproduced below for ready reference purpose:

“Item No. 48.10: Clarification on issues related to dilution of equity in the developer company, transfer of promoter’s equity etc.

Board was informed that a number of cases seeking clarification on issues related to dilution of equity in the developer company, transfer of promoter’s equity, transfer of developer JV, amalgamation / merger of developer company

etc. are being received from various SEZs. Similar requests, which were considered in the BoA meeting held on 25th March 2011 were not approved as the representatives of D/o Revenue reiterated their objection that these transactions would amount to sale of the land, which is not permissible under the SEZ Act/Rules.

In light of representations received in this regard, the D/o Commerce sought legal advice of D/o Legal Affairs as to whether change in equity structure through transfer / sale / amalgamation etc. are in the nature of sale of land barred by rule 11(9) of the SEZ Rules or it is a sale of business rather than sale of land. D/o Legal Affairs have clarified that identity of a company does not change with any change in management or pattern of shareholding. Further, a share is not a sum of money, it represents an interest measured by a sum of money. Therefore, change in equity structure through transfer / sale / amalgamation etc. and consequent change in the management cannot be said transfer or sale of land. The land would continue to vest in the company. It has also been clarified that while it may be considered as sale or transfer of the business of the company but not a sale of land."

Therefore, in view of the above clarification provided by the Department of Legal Affairs and the view adopted by the SEZ BOA, change in shareholding pattern of a company can not be considered as a transfer/sale of land and hence UEI shall not be applicable in such cases. The SEZ BOA is an inter-ministerial body of the Government of India and its views have been underpinned by the Department of Legal Affairs' ruling. Hence, for the DDA to continue to take a contrary view is incorrect.

- 4. The policy has not led to any significant revenue gain to the DDA but in fact has resulted in significant litigation and mis-utilization of Management time within DDA. Additionally, defaulters under the policy have continued without any penalty as DDA has not been able to resume any commercial plots. Hence, the policy breeds litigation with no result and in fact promotes breach of rules. Thus, this pernicious and non-productive policy needs to be removed from the lexicon of DDA.

We shall be grateful if our above mentioned suggestions are taken into consideration for Mid-Term correction and modification in MPD-2021.

Best Regards,

Yours Sincerely

Susmita

(Susmita Shekhar)