

**OFFICE OF THE SPECIAL REGISTRAR COOPERATIVE SOCIETIES
GOVT OF NCT OF DELHI
OLD COURT BUILDING, PARLIAMENT STREET, NEW DELHI-110001**

F.Spl.RCS/U/s-28/2022/1437-1438

Dated: 30/09/22

Smt. Prem Toteja
Flat No. 42, Suruchi CGHS Ltd.
Plot No.31, Sector-10, Dwarka,
New Delhi-110075

Versus

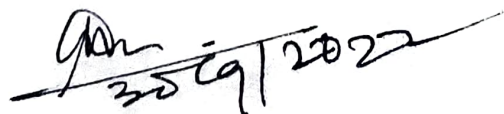
The President/Secretary,
Suruchi CGHS Ltd.
Plot No.31, Sector-10, Dwarka,
New Delhi-110075

ORDER

This order shall dispose of the Representation dated 11.07.2019 filed by Sh. Anuj Sethi, Secretary of Suruchi CGHS Ltd. regarding seeking direction in the matter of transfer of membership to Smt. Prem Toteja Wife of Late Sh. Narinder Kumar, Allottee and owner of Flat No.42, Suruchi CGHS Ltd. Plot No.31, Sector-10, Dwarka, New Delhi-110075 and complaint dated 08.10.2021 having diary no. 36552 filed by Smt. Prem Toteja Wife of Late Sh. Narinder Kumar before the Ld. Secretary (Coop)-Cum Registrar.


In the complaint filed by Smt. Prem Toteja following has been submitted is as under:

1. That, her husband Late Sh. Narinder Kumar who was a Central Government Employee working in the then Planning Commission, now NITI Aayog, superannuated on 31.07.2003 and he expired on 03.03.2018. That, during his service period, Shri Narinder Kumar registered himself as member in a newly formed Suruchi CGHS Ltd. in 1982, at the time when the marital status of the deceased Narinder Kumar was single/bachelor. Under the column of nominee, he filled up the name of his brother, Shri Prabhu Dayal. A copy of the share Certificate No. 60 is enclosed with the application. The


30/09/2022

death certificate of Late Shri Narinder Kumar is also enclosed. The society at that time was governed under the Delhi Cooperatives Societies Act, 1972 and the Delhi Cooperatives Societies Rules, 1973 which were subsequently repealed in 2003 when the new The Delhi Cooperative Societies Act, came into force.

2. The marriage of the complainant was solemnized on 08.10.1984 with Shri Narinder Kumar. A photocopy of the Complainant's wedding invitation card is provided. That out of the wedlock, two sons were born, namely, Hemant Toteja and Rohit Toteja. The complainant further stated that herself and the sons automatically became the members of the family of the deceased and obtained the status of legal heirs of her deceased husband.
3. Under the DCS Act, 2003 and DCS Rules, 2007, it is incumbent upon members of the society to furnish duly filled form 17 of Nomination (Sub-Rule(1) of the Rule 91 of the Rules); which Shri Narinder Kumar could not submit to the Suruchi Society during his life time the revised nomination for reasons best known to himself, thereby, making the earlier nomination under the Act 1972 which stood repealed, and hence rendering defective the said nomination, as far as the DCS Act, 2003 and Rules are concerned.
4. After the death of Shri Narinder Kumar on 03.03.2018, the said nominee though defunct nominee, failed to approach the society with an "Application within one hundred and eighty days of the death of the deceased member to any person specified in the application who is so qualified" under Section 28(1)(ii) of Dcs Act captioned as "Transfer of interest on death of member" and thereby, forfeiting his claim as nominee of the Flat No. 42.
5. The complainant addressed a communication 28.04.2019 to the Secretary of the Suruchi CGHS Ltd. enclosing requisite documents for granting her membership of Flat No.42 after the death of her husband. The Hony. Secretary Shri Anuj Sethi wrote a communication dated 17.07.2019 to the Ld. Registrar of Cooperative Societies, seeking directions in this regard. A subsequent reminder dated 05.10.2020 was sent to the office of the Registrar by the complainant. The office of the Registrar vide communication dated 21.10.2020, advising the President/Secretary "to take necessary action in the instant matter as per DCS Act & Rules". The management committee in violation of the above advise of the office of the RCS, requested the complainant "to submit the NOC from the existing nominee of the to enable the society management to consider her request for transfer of the membership in respect of Flat No.42". The complainant stated that no such requirement has been stipulated anywhere in the DCS Act 2003 or DCS Rules 2007. The complainant files complained dated 08.10.2021 in this office. The complainant informed that photocopies of all the above documents are already annexed with the above complainant.


35/9/2022

In the the last Complainant seek indulgence of this Ld. Office to issue specific directions to the society to give membership of Flat No. 42 to the complainant.


Accordingly notices were issued to appear before the court of undersigned with the following hearing dated 12.08.2022, 26.08.2022, 09.09.2022.

During hearing representative Respondent Society submitted that Late Sh. Narinder Kumar H/o Smt. Prem Toteja has nominated his borther Sh. Prabhu Dayal on as nominee on 1982 at that time when the marital status of deceased was bachelor and after marriage of Late Sh. Narinder kumar solemnized with the complainant namely Smt. Prem Toteja on 08.10.1984 deceased had not interchanged/transfer nominee to his wife/complainant or two sons/Surviving members namely Sh. Hemant Toteja and Sh. Rohit Toteja (vide Surviving members Certificate No. 906600002792 issued by Revenue Department, Govt of NCT of Delhi).

Whereas, society vide letter dated 17.07.2019 submitted that Smt. Prem Toteja is in occupation of the Flat No. 42 and there has been no claim / dispute from any person regarding her stay in the flat till date. Both Late Sh. Narinder Kumar and Smt. Prem Toteja had been staying together in the above flat for more than a decade there is not even a iota of evidence that Late Sh. Narinder Kumar wanted to deprive his wife Smt. Prem Toteja or his two sons, from acquiring ownership of flat no. 42, Suruchi CGHS Ltd., after his death.

Whereas, DEED OF INDEMNITY dated 16.12.2020 by Smt. Prem Toteja W/o Smt. Narinder Kumar permanent resident of flat no.. 42, Suruchi CGHS Ltd., Plot No. 31, Sector-10, Dwarka, New Delhi-110075 referred as "The EXECUTANT" submitted the following:-

1. The Executant is the wife of Late Sh. Narinder Kumar, S/o Late Sh. Hukam Chand. Sh. Narinder Kumar possessed Membership No.60 and was the absolute owner and in physical possession/ resident of flat no. 42, Suruchi CGHS Ltd., Plot No.31, Sector-10, Dwarka, New Delhi-110075 and who died on 03.03.2018 intestate and without submitting the requisite Nomination Form to the Society's Management, leaving behind his three legal heirs, namely (1) Smt. Prem Lata (Executant), wife: (2) Sh. Hemant Toteja, Son and (3) Sh. Rohit Toteja, Son: vide the Legal Heir Certificate issued by the office of the District Magistrate, Dwarka, South West District, New Delhi.


35/9/2022

2. The NO OBJECTION CERTIFICATE for giving Membership to the Executant and INDEMNITY BONDS indemnifying the Society, being executed by the other two legal heirs, namely (1) Sh. Hemant Toteja request to grant Membership of the society to the Executant.
3. The Executant has applied with all the requisite documents to the Society Management requesting transfer of Membership in the name of the Executant.


Whereas, DEED OF INDEMNITY dated 5.01.2021 executed at Hayward California USA by Sh. Hemant Toteja has separately executed Affidavit swearing his NO OBJECTION for allowing Membership of the society to Executant's mother Smt. Prem Toteja in lieu of Membership No. 60 of Executant's late father Sh. Narinder Toteja in respect of Flat no. 42, Suruchi CGHS Ltd. Plot No.31,. Sector-10, Dwarka, New Delhi as and when his mother applies for the same.

And DEED OF INDEMNITY dated 12.12.2022 executed at Owings Mills, Maryland USA by Sh. Rohit Toteja has separately executed Affidavit swearing his NO OBJECTION for allowing Membership of the society to Executant's mother Smt. Prem Toteja in lieu of Membership No. 60 of Executant's late father Sh. Narinder Toteja in respect of Flat no. 42, Suruchi CGHS Ltd. Plot No.31,. Sector-10, Dwarka, New Delhi as and when his mother applies for the same.

In this case it is pertinent to mention here that the complainant it seems that the original member of the flat (property in question) has nominated his brother as nominee of his whenever he taken the membership of the society and also before his marriage. And as per provision available in Section-28 of DCS Act 2003, in case of the death of a member, a co-operative society shall transfer the share or interest of the deceased member to the person nominated in accordance with the rules made as per Section 28 of DCS Act 2003 reiterated below:-

Transfer of interest on death of member.

- 28.(1) On the death of a member, a co-operative society shall transfer the share or interest of the deceased member to the person nominated in accordance with the rules made in this behalf, or, if there is no person so nominated, to such person as may appear to the committee to be the heir or legal representative of the deceased member or pay to such nominee, heir or legal representative, as the case may be, a sum representing the value of


30/9/2022

such member's share or interest as ascertained in accordance with the rules or the bye-laws:


Provided that –

- (i) such nominee, heir or legal representative, as the case may be, may require payment by the co-operative society of the value of the share or interest of the deceased member ascertained as aforesaid; or
 - (ii) the co-operative society shall transfer the share or interest of the deceased member to such nominee, heir or legal representative, as the case may be, being qualified in accordance with the rules and bye-laws for membership of the cooperative society, or on his application within one hundred and eighty days of the death of the deceased member to any person specified in the application who is so qualified; and
 - (iii) no such transfer or payment shall be made except with the consent of the nominee, heir or legal representative, as the case may be.
- (2) A co-operative society shall, subject to the provisions of section 45 and unless within three hundred and sixty five days of the death of member prevented by an order of a competent court, pay to such nominee, heir or legal representative, as the case may be, all other moneys due to the deceased member from the co-operative society.
- (3) All transfers and payments made by a co-operative society in accordance with the provisions of this section shall be valid and effectual against any demand made upon the co-operative society by any other person.

Rule-92 of DCS Rules, 2007

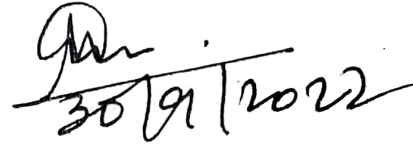
92. Restriction on transfer of share or interest of a member:

- (8) In case the committee fails to take a decision within prescribed time or rejects the application the applicant may file an appeal before the Registrar, who shall decide it within ninety days time.


35/9/2022

In the light of the above facts and documents available herein, I am of the opinion view that as nominee is never approached to the society for grant of membership in his favor and no claim / dispute from any person regarding stay of complainant has been seen in any forum as mentioned by the society in letter dated 17.07.2019. Therefore as per section 28(2) of DCS Act 2003 and Rule 92 (8) of DCS Rules, 2007 society is directed for grant of membership to complainant/petitioner namely Smt. Prem Toteja W/o Late Sh. Narinder Kumar permanent resident of flat no. 42, Suruchi CGHS Ltd., Plot No. 31, Sector-10, Dwarka, New Delhi-110075 within 7 days of receipt of this letter under the intimation of this department.

The case is disposed of in the above terms.



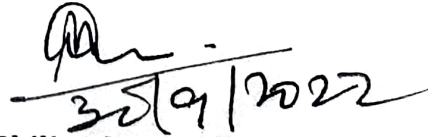
(Dr. T Philip Thanglienmang)
Special RCS

Copy to :

1. President/Secretary, Suruchi CGHS Ltd., Plot No.31, Sector-10, Dwarka, New Delhi-110075.
2. Smt. Prem Toteja, Flat No.42, Suruchi CGHS Ltd., Plot No.31, Sector-10, Dwarka, New Delhi-110075

3. AR (~~Banking~~) Section - 7

4. In - Charge (Computer Cell)



(Dr. T Philip Thanglienmang)
Special RCS