

**GOVT. OF NATIONAL CAPITAL TERRITORY DELHI**  
**IN THE COURT OF THE REGISTRAR COOPERATIVE SOCIETIES**  
**OLD COURT BUILDING, PARLIAMENT STREET, NEW DELHI-110001**

F.47/ARH/SEC-II/GH/RCS/2017/ 5480 - 85

Dated: 18/7/23

**Order**

In the matter of:-

Sh. Bharat Bhushan Allahabadi

.....Complainant

VERSUS

Sh. Sunil Aggarwal

Sh. Amit Garg

Sh. Tarun Lekhi

(In reg: Ekta CGHS Ltd.)

.....Respondents

1. This order shall dispose of the proceedings initiated vide Show Cause Notice dated 16.08.2018 issued against Sh. Sunil Aggarwal, the then President, Sh. Amit Garg, the then Treasurer and Sh. Tarun Lekhi r/o Ekta CGHS Ltd. u/s 118(7) of DCS Act, 2003 r/w section 121 of DCS Act, 2003.

**Brief history of the case**

2. Whereas, Ekta Cooperative Group Housing Society Ltd. (Regn. No. 306/GH) is registered with this department under the provisions of DCS Act, Rules & registered bye-laws framed there under.
3. A complaint was filed by Mr. Bharat Bhushan Allahabadi, seeking permission for lodging First Information Report against (1) the then President Sh. Sunil Aggarwal (2) the Treasurer Sh. Amit Garg (3) Sh. Tarun Lekhi S/o Sh. Krishan Gopal, wherein it has been stated that: -
  - (i) Sh. Govind Ram S/o Sh. Ramji Dass (Membership No. 117) was the member of above said society. He executed GPA, SPA and Deed of Will in favour of Smt. Kanta Devi W/o Lt. Sh. O.P. Gupta on 04.05.1998. Thereafter Smt. Kanta Devi executed GPA, SPA and Deed of Will in favour of Sh. Tarun Lekhi S/o Lt. Sh. Krishan Gopal Lekhi on 03.06.2000. Smt. Kanta Devi never applied for membership in the society and she never took the membership of the society and till date Smt. Kanta Devi never took the membership no. 117 of the society and she was never approved as the member of the society. Hence in these circumstances GPA executed in favour of Sh. Tarun Lekhi is null and void ab-initio.
  - (ii) After the execution of GPA by Sh. Govind Ram he got the flat allotted in his name by draw of lots by DDA. Therefore, the flat pertains to Sh. Govind





Ram and the agreement with the society is also executed in between the society and Sh. Govind Ram and this fact is in the knowledge of the present executive committee of the society. Against the above fact and without Smt. Kanta Devi becoming the member of the society one Sh. Tarun Lekhi, who in the circumstances could never become the member of the society, after deceiving the society and in connivance with the executive committee of the society, more fully the then President Sh. Sunil Aggarwal and the treasurer of the society Sh. Amit Garg acting upon the GPA executed by Sh. Govind Ram S/o Sh. Ramji Dass in favour of Smt. Kanta Devi got issued the NOC on 12.11.2013 in favour of Sh. Tarun Lekhi and on the basis of which the conveyance deed was executed on 20.12.2013 in the favour of Sh. Tarun Lekhi S/o Sh. Krishan Lal vide registered No. 28600, in Block No. 1. vol. No. 5,056 on pages 179-180 Sub Registrar VII in connivance with official of Ekta CGHS Ltd.

4. Whereas, Sh. Anil Kumar, Advocate for Sh. Sunil Aggarwal and Sh. Amit Garg filed an application u/s 151 CPC for dismissal of the complaint as well as for dropping the SCN dated 16.08.2018 issued u/s 118 of DCS Act, 2003. The respondent submitted that though the respondents are not the members of the Managing Committee of the Society. However, without prejudice to the rights of the respondents, it is submitted that even on the basis of the complaint as lodged by the complainant the offence under Section 118(7) of the DCS Act, 2003 is not made out against the respondents. The relevant provisions of Section 118(7) of the DCS Act, 2003 reads as under:

"118(7) If any allotment of plot or flat is made by the committee in contravention of the provisions of sub-section (1) of Section 77, the committee and its members responsible shall be punishable with imprisonment which may extend to seven years and shall also be liable to fine."

5. It is to submit here the provisions of Section 77 of the DCS Act, 2003 are related to the allotment of plots and flats through draw of lots. It is to submit here that in the present case the draw of lots with regard to the flat bearing No.C-9 in the name of Sh. Govind Ram was held on 11th March, 2001 and at that time none of the respondents Nos.1 and 2 were the members of the Managing Committee of the Society. Hence, the question of either violating the provisions of Section 77 of the DCS Act, 2003 by the respondents Nos.1 and 2 does not arise as such no offence is made out under Section 118(7) of the DCS Act, 2003 against any of the respondents as such the show cause notice as issued by this Hon'ble Court is not sustainable in the eyes of the law and the present proceedings are liable to be dropped accordingly.



6. On the proceeding dated 12.03.2021 before the predecessor of this court it has been noted as under:

*"Present Sh. Ayush Negi, Advocate for the complainant/petitioner Sh. Bharat Bhushan Allahbadi member of Ekta CGHS Ltd. vide membership no. 54. His contention is that he is seeking prosecution sanction of Sh. Sunil Aggarwal who was the then acting President and Sh. Amit Garg the then Treasurer and Sh. Tarun Lekhi. He had filed certain additional documents as directed during the last proceedings which are on record. A copy thereof shall be given to the Advocate of the other parties.*

*Sh. Anil Kumar, Advocate present for the respondents has filed an application stating that the petition is not maintainable as his clients are nowhere responsible for the allegations attributed to them. On directions Sh. Ayush Negi has agreed to file an amended claim petition precisely specifying the nature of alleged offenses, their respective designations at the relevant point of time with the copy to the persons whose prosecution is being sought. The proceedings shall be initiated only on receipt of such amended petition."*

7. Thereafter Sh. Ayush Negi, Advocate for complainant has filed an amended petition wherein he has submitted as under:
- (i) That on 14.08.2012 Mr. Tarun Lekhi approached the Ekta Cooperative Society through the complainant being the Secretary for granting of NOC of Flat No C-9 along with GPA & SPA dated 4th May 1998 and alleged GPA of Smt. Kanta Devi dated 3.06.2000 for execution of transfer deed from DDA. Thereafter Mr. Bharat Bhushan after making some inquiry from the office of the Society found out that Mr. Govind Ram was the initial member having membership number 117 who had executed GPA and will dated 4th May 1998 in favour of Ms. Kanta Devi, but his membership was never legally cancelled or transferred in favour of Ms. Kanta Devi.
  - (ii) Therefore during the allotment of the flats by draw of lots the name of Sh. Govind Ram treating him to be the member of the society was sent to the office of DDA through RCS office Delhi and thereafter the flat was against the membership No. 117 of Mr. Govind Ram was allotted by draw of lots only on 22.5.2001 and thereafter the possession of the flat was given to Mr. Govind Ram on 16.2.2002.
  - (iii) That the GPA executed by Mr. Govind Ram in favour of Mrs. Kanta Devi dated 9.5.1998 and Mrs. Kanta Devi in turn executing her GPA & Will in favour of Mr. Tarun Lekhi before the actual allotment by draw of lots is null and void because a member can only transfer his membership and



execute GPA only after the execution of the sale deed and in the present case the GPA was executed by Mr. Govind Ram in favor of Smt. Kanta Devi who subsequently executed further GPA in favour of Sh. Tarun Lekhi prior to the actual allotment by draw of lots. Therefore, Mr. Tarun Lekhi in any case on the basis of the GPA executed prior to the allotment by draw of lots cannot get his membership of the Society.

- (iv) That in the present case Mrs. Kanta Devi never became the member of the society and was never allotted any share certificate in lieu of the transferred membership of Mr. Govind Ram in the aforesaid circumstances Sh. Tarun Lekhi also was not entitled to get any membership in lieu of membership of Sh. Govind Ram.
- (v) That the conveyance deed in favour of Mr. Tarun Lekhi was executed after an NOC was given to him by an illegal devise and exercise done by Mr. Sunil Aggarwal who was then the President and Mr. Amit Garg who was the treasurer. It is relevant to note that that no NOC could be issued to Mr. Tarun Lekhi by the society as there no GPA could be executed for transfer by Mr. Govind Ram or Ms. Kanta Devi before the actual allotment of the membership to Mr. Govind Ram vide allotment letter dated 22.5.2001.
- (vi) That a perusal of the Conveyance deed as produced/filed before this Hon'ble court Sh. Tarun Lekhi has mentioned that he has acquired the membership vide a Power of Attorney dated 2.6.2000. The GPA as alleged in the conveyance deed is before the date of actual allotment and as such no such allotment or NOC could have been issued by the then president of the society Mr. Sunil Aggarwal and no membership fees could have been collected by the treasurer Mr. Amit Garg at the time of issuance of the NOC.
- (vii) That Sh. Sunil Aggarwal had moved an application before the Court of Spl. Registrar Cooperative for withdrawal of the resolution date dated 01.07.2013, where by the membership of Sh. Govind Ram was disqualified and thereafter the membership was illegally transferred to Mr. Tarun Lekhi after withdrawal of the Resolution passed by the earlier resolution which was also signed by Sh. Sunil Aggarwal.
- (viii) That the complainant through RTI application dated 534, dated 14.05.2015 and through letters No.F.No.47/ARH/CIC/Sec-11/GH/RCS/2019/54599 dated 27.11.2019 had received a detailed response where by a copy of the letter issued by Sh. Rajesh Kumar Kapur, President Ekta Coopertaive Housing Society had provided certified copy of NOC issued by the society to flat No C-9 for getting the flat freehold and certified copy of the GBM dated 28.9.2014. A perusal of the same shows that Mr Sunil Aggarwal had signed the NOC and also signed the GBM as Chairman. Thus it is incorrect



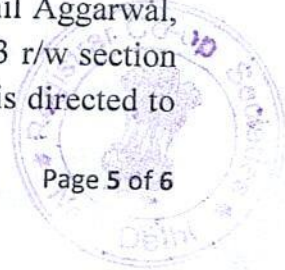
to say that Mr. Sunil Aggarwal was not the President at the relevant point of time.

### **Findings**

8. On perusal of the petition, reply filed by the respondent no. 1, 2 and amended petition filed by the petitioner, it is noted that Sh. Govind Ram S/o Sh. Ramji Dass (Membership No. 117) was the initial member of above said society and a flat was allotted to him by draw of lots only on 22.5.2001 and thereafter the possession of the flat was given to him on 16.2.2002. However, before allotment of flat Sh. Govind Ram, executed GPA, SPA and deed of will in favour of Smt. Kanta Devi, W/o Lt. Sh. O.P. Gupta on 04.05.1998 and subsequently Smt. Kanta Devi executed GPA, SPA and Deed of Will in favour of Sh. Tarun Lekhi, S/o Lt. Sh. Krishan Gopal Lekhi on 03.06.2000. It is stated by the petitioner that Smt. Kanta Devi never took the membership of the society and in these circumstances GPA executed in favour of Sh. Tarun Lekhi is null and void ab-initio. Further, Sh. Amit Garg acting upon the GPA executed by Sh. Govind Ram in favour of Smt. Kanta Devi issued the NOC on 12.11.2013 in favour of Sh. Tarun Lekhi and on the basis of which the conveyance deed was executed on 20.12.2013 in the favour of Sh. Tarun Lekhi.
9. Further, it is pertinent to mention that Sh. Tarun Lekhi, respondent no. 3, neither appeared nor filed any reply before this court and Advocate for respondent No.1 and 2 also appeared only once and filed a reply and thereafter no one appeared before this forum despite giving many opportunities.

### **Conclusion:**

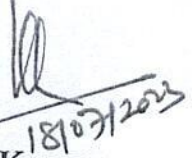
10. In view of the submissions by the parties and after perusal of the case file. I am of the view that Sh. Govind Ram, executed GPA, SPA and deed of will in favour of Smt. Kanta Devi, W/o Lt. Sh. O.P. Gupta on 04.05.1998 before actual allotment of flat. However, as per submissions by the petitioner it is noted that the actual allotment of flat was made to Sh. Govind Ram on 22.05.2001 and thereafter the possession of the flat was given to him on 16.2.2002. Section 77 of DCS Act, 2003 deals Allotment of plots of land, flats, houses or other dwelling units made by the Managing Committee of the society to the members by draw of lots and such draw shall be conducted by the lessor of the land in accordance with the terms and conditions of lease and in this case allotment of flat has been made to the original member as per the provision of section 77. Hence, there is no violation of section 77 of DCS Act, 2003. Therefore, no prosecution sanction can be granted against Sh. Sunil Aggarwal, Sh. Amit Garg, and Sh. Tarun Lekhi u/s 118(7) of DCS Act, 2003 r/w section 121 of DCS Act, 2003. However, the ARCS( Housing Section-2) is directed to



administratively verify the facts of the petition related to transfer of membership and various GPAs, SPAs executed before actual allotment of flat by the member and thereafter put up for appropriate action as per DCS Act, 2003 and Rules, 2007, if any.

Ordered accordingly.

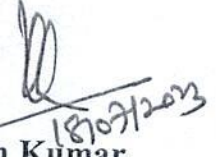


  
18/07/2023  
**Krishan Kumar**

**Registrar Coop. Societies**

Sent To:-

1. Sh. Sunil Aggarwal, R/o Flat No. E-5, Ekta CGHS Ltd. Plot No. 23, Sector-13, Rohini, Delhi-110085.
2. Sh. Amit Garg, R/o Flat no. F-5, Ekta CGHS ltd. Plot no. 23, Sector-13, Rohini, Delhi-110085.
3. Sh. Tarun Lekhi, R/o Flat no. C-9, Ekta CGHS ltd, plot no. 23, Sector-13, Rohini, Delhi-110085.
4. Sh. Bharat Bhushan Allahabad, R/o B-218, Ekta CGHS ltd, Plot no. 23, Sector-13, Rohini, Delhi-110085.
5. ARCS Housing Section-2 O/o RCS.
6. Incharge Computer Cell to upload on Department Website.

  
18/07/2023  
**Krishan Kumar**

**Registrar Coop. Societies**