

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

F.No.: 47/Pt.File/498/GH/RCS/2023/III/ 2305-2310
CD No.: 107751523

Dated.: 26/02/24

IN THE MATTER OF:

Anil Chander Bagga & Ors.

.....Complainants

Versus

Jyoti CGHS Ltd.,
(through President & Secretary) & others

.....Respondents

ORDER UNDER SECTION 61 OF DCS ACT 2003

By the present Order I shall dispose off the proceedings initiated under Section 61 of the DCS Act 2003 against the society Jyoti CGHS Ltd., and its past Office Bearers on complaint dated 27.02.2023 by various persons.

BRIEF FACTS OF THE CASE

Proceedings under section 61 of DCS Act 2003 have been initiated on a complaint dated 27.02.2023 requesting to appoint Administrator on account of malpractice and monopoly adopted by Sh.Vijay Kamra - President, Ashwani Kumar Batra - Vice President, Saroj Bala - Secretary, Kamlesh Dhawan - Ladies Executive Member, J.K Kalra - Joint Secretary, Iqbal Singh Nain - Cashier in the Managing Committee of Jyoti CGHS Ltd. (Regd. No. 498 GH) and to set up an enquiry.

The complainants have averred the following facts and complaints:-

- That the Society was registered on 17.01.1980 under registration no. 498 GH. Land measuring 1.55 acre was allotted to the Society on 23.05.1988. The plan of Society was approved by DDA on 28.08.1991 vide letter no: F.23 (6) 89/ Bldg./

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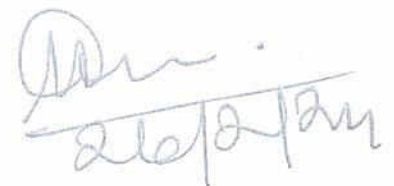
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showing total 93 flats (A-Type - 16 No., B Type - 48 No. and C-type Flats - 29) along with 2 Society office.

ii. This society has been governed by two persons mainly i.e Vijay Kamra and S.R Gautam right from its formation of the society i.e from 17.01.1980 and holding the post of President/Secretary by rotation till the death of Sh. S. R. Gautam i.e on 01.12.2019. After death of Sh. S.R. Gautam, Mrs. Saroj Bala, the real sister of Vijay Kamra, was nominated as the secretary of the MC. Most of the members of MC like Ashwani Kumar Batra, Saroj Bala, Kamlesh Dhawan, J. K. Kalra are relatives of Sh.Vijay Kamra. Sh. Iqbal Singh Nain is continuously holding the post of Treasurer from 2007 to till date who is a close friend of Sh. Vijay Kamra.

iii. That the management headed by two persons namely Sh. Vijay Kamra and Late Sh. S.R. Gautam has failed to maintain the accounts of the Society. Starting from 17.01.1980, there is no record of accounts from 1980 to 1989. They have manipulated the books of accounts for the F.Y 1989-90, F.Y 1990-91, F.Y 1991-92, F.Y 1992-93, F.Y 1993-94 and were prepared in the year 1996 and got audited only on 20-05-1996 by Sharma Garg & Bansal, Chartered Accountants, Laxmi Nagar, Delhi. It is clearly the violation of section 53 of Delhi Co-operative societies Act, 1972.

It is surprising that audit of five years i.e F.Y 1989-90, F.Y 1990-91, F.Y 1991-92, F.Y 1992-93, F.Y 1993-94 has been done in one go that is on 20.05.1996 that too after two years of last financial year ending. This is again really surprising that it was never objected and no action was taken by RCS and even the same MC was allowed to continue. It seems that RCS was mere spectator in that case with the reason best known to them. The financial accounts for the F.Y 1994-95, F.Y 1995-96, F.Y 1996-97 were prepared in the year 1998 and again audit was late i.e on 07-12-1998. The same story was repeated which is again violation of section 53 of Delhi Co-operative societies Act, 1972.

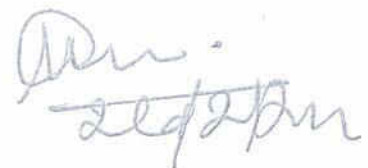
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The audit reports clearly mentions that:-

- a. Cash Balance retention limit has not been fixed.
- b. Share allotment register has not been maintained and share certificate has not been issued to all the members.
- c. The society is not filing Income Tax Return with the Income Tax Department
- d. TDS has not been deducted properly as per Income Tax Act and TDS returns has not. been filed with the Income Tax Department.
- e. TDS which has been deducted from payments made to contractors, has not been deposited in time.
- f. Date of receipts issued are not in serial order.

We would like to inform you here that all the Audited Balance Sheets were provided in a reply to a RTI by a member, the balance sheets were never displayed on the Notice Board.

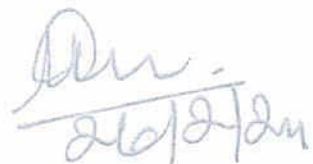
iv. Now, in fact, so called MC has been puppet in the hands of only one person i.e Vijay Kamra. Sh. Vijay-Kamra along with his relatives Ashwani Kumar Batra (brother in law), Saroj Bala (real sister), Kamlesh Dhawan (real sister), J.K. Kalra (cousin) and IqbqI Singh Nain (close friend) are dishonest, corrupt, manipulator and are indulged in the act of forgery, misappropriation of funds, and mismanagement of the society. They have given many false, manipulated and fabricated documents, declarations and affidavits in the RCS and in other courts. It has happened only because literally no elections have ever been conducted in the Society since year 1980 to till date. In fact only persons mentioned above had managed to show off an election, whereas no election in fact was conducted. The date of election or any information regarding the conducting of election was never displayed on Notice-board.

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v. That the draw of lots of flats was done in the Society on 09.09.2000. The advance information regarding the said draw was given to the members vide advertisement dated 08.09.2000 in two News-papers just one days before the draw of lots. It is violation of DCS Act, 1972

vi. It is worthwhile to mention here that the management had tried to grab 12 flats of the Society using forged documents and affidavits produced before RCS. The modus operandi adopted by the management is simple what they have done is, forged some letters of request from Tom, Dick and Harry stating that they had transferred their membership in the name of these 12 existing members of the Society, whereas, as a matter of fact these members have never acquired membership by any such transfer. An affidavit before RCS had been filed by them that they are in possession of the affidavits of the transferees to that effect but still as a matter of fact, till today they have not produced any such affidavit anywhere. All the story of transfer is bogus. An FIR No: 882/04 was lodged against Sh. Vijay Kamra and Sh. S.R. Gautam in P.S. Prashant Vihar u/s 406,420,467,468,471,120-B,34 IPC. Even the lower court has not accepted the anticipatory bail and had ordered them to give possession of the flats to the members whose documents have been forged with conspiracy. It shall be pertinent to submit that order dated 15-07-2005 passed by Ld. Additional Session judge on the bail application by these two persons (F.I.R No. 822/2004: P.S, Parshant Vihar) reads as under:

"Heard. The case against the applicants is that they had forged the letter of Santosh Kumari showing that she had transferred the membership to Alka Gupta. IO had produced the letter of Santosh Kumari that she had not written any such letter. Santosh Kumari is the sister-in-law of the applicant S.R.Gautam, President of the Society and even before the Registrar affidavit submitted on behalf of the society is that Alka Gupta is a bonafide member. Prima facie, there is a case of committal of forgery on the part of the applicants.

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No further indulgence can be given. The applications are dismissed."

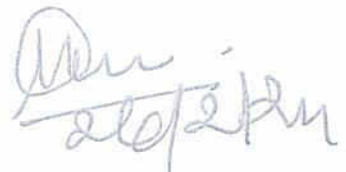
vii. Aggrieved by this F.I.R both Sh. Vijay Kamra and Sh. S.R. Gautam filed W.P. (Crl.) No. 1292/2004 before Hon'ble High Court of Delhi. The same W. P.Crl.) No. 1292/2004 was dismissed by Hon'ble High Court of Delhi with the following observation:-

" 5. It is apparent from these facts that prima facie a fraud was played upon the complainant's wife by the accused persons in connivance with Smt. Santosh Kumari who seems to be a party to entire fraud because of writing a false and forged letter. It is not a case where no offence is disclosed from the complaint. The accused persons prima facie played dubious role by issuing original share certificate and accepting the payment as original member. The order of Registrar Cooperative Societies does not help the accused persons rather brings to file the role played by the accused persons.

6. An FIR can be quashed only if a complaint prima facie does not disclose commission of an offence or it is barred under some law. The plea taken by the petitioner that the claim of the complainant about membership would be decided by the Registrar Co-operative Societies alone and criminal complaint was barred, is a misconceived argument. The criminal complaint is not in respect of membership dispute but the complaint is in respect of fraud played upon the complainant's wife. Membership issue is not to be decided by Criminal Court. I find no force in the petition. The petition is hereby dismissed."

viii. That it shall be pertinent to submit that during the proceedings of various court cases (of various members of the society) against society, S.R. Gautam, Vijay Kama, the courts/ Hon'ble High Court of Delhi was pleased to observe:-

a) Order dated 28.02.2008 passed by Delhi Co-operative Tribunal, Delhi in appeals 75,76,77,78 & 289/2003 - DCT; reads as under:-

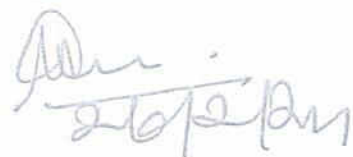


"According to them (Appellants), they were enrolled as new members and were issued fresh share certificates and the society's new stand of 'transfer' is based on forged/fabricated documents. This allegation prima facie appears to be true as the society has only produced one or two letters of the original members saying that the 'transferee' was their brother. No other supporting document like the affidavit and indemnity bond and relinquishment deed etc. of the new member showing the relation with the old member has been produced.

Curiously, the society has also been changing its stand from time to time. This is clear from the fact that society in the year 2000, had not included the names of the appellants for inclusion in the draw of lots, but in year 2001 and again in the year 2005 also the society has informed the RCS these people should be treated as regular members and should be allotted flats. However, in the hearings on the appellants claims the society is refuting their claims. The RCS office without asking the society as to why it was changing its stand from time to time and also without verifying the documents has decided to treat them as transferees and has referred the case to L.G for regularization of 'transfers'. For obvious reasons, the request has been turned down because has not been correctly presented."

b) order dated 20-03-2008 passed by the Hon'ble High Court of Delhi in WP (C) 7226/2003 read as under :-

"16. As noticed above, in the counter-affidavit filled by the respondent no.3 in W.P (C) 4387/2001, the issuance of share certificate to the petitioner has been admitted by the respondent no. 3 though it is sought to be urged that the same was issued only for the purpose of raising a loan. On behalf of the respondent no.3, it has also been admitted before us that the share certificate filed by the petitioner is not a forged one as pleaded in the reply to the show cause notice filed in the present case. Thus, it is an admitted fact that that a share certificate

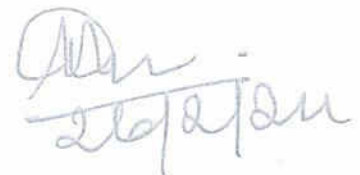


was issued to the petitioner as an original member of the respondent No 3 Society

"23. In view of the aforesaid, in our considered opinion, it is crystal clear that the petitioner was an original member of the respondent no. 3 Society and was sought to be deprived of the flat which should rightfully have been allotted to her as far back as on 09.09.2000.. The case has a chequered history and a long and protracted battle has been fought by the petitioner from September, 2000 till date on account of the stand taken by the respondent no. 3 Society in respect of the petitioner's membership and the membership of certain other members, two of whom are petitioners in the connected writ petitions. We are satisfied that the petitioners are entitled to the allotment of the HIG flats in category B as opted by them. We accordingly set aside impugned order dated 19.09.2003 in W.P. (C) 7224/03 and 7266/2003. Similarly the impugned order dated 06.11.2003 passed by the respondent no.2 and order dated 04.03.2004 passed by the Presiding Officer, Delhi Co-operative Tribunal in W.P.(C) 18492/04 are also accordingly set aside. We further direct the respondent no. 3 to allot and deliver to the petitioner the actual physical and vacant possession of a three bed room HIG flat in category B built on plot no. B-2, Sector - 14, Extension, Rohini, Delhi to the petitioners as per their entitlement not later than 1st May, 2008. We further direct the respondent no. 3 to pay the cost of Rs. 20000/- to the petitioner, which shall be paid to the petitioner within two weeks. In case of possession of the requisite flat is not handed over to the petitioner pursuant to this judgment, liberty is granted to seek further directions from this Court.

c) Order dated 25-05-2010 passed by the Hon'ble High Court of Delhi in W.P (C) 11395/2009 and W.P. (C) 13848/2009 reads as under: -

"12. The writ petitions are allowed with the directions to the society to hand over the possession of the flats within a week to the petitioners. Each of the petitioners



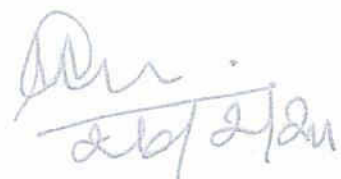
will be entitled to costs of Rs. 50000/- in view of para 37 of the judgment of the Supreme Court in Salem advocate Bar Association Vs. Union of India (2005) 6 SCC 344. We are informed that there are 10 members of the managing committee of the Society. The cost will be personally borne in equal shares by these ten members which would amount to Rs. 25000/- per member of the Managing Committee and the cost will not be borne by the Society as otherwise the liability will fall ultimately on the members of the Society.

Hence from the above quoted judicial pronouncements it is clear that as to how much corrupt and unscrupulous are these persons who claim that they are the elected members of the Management Committee, but no elections of the Society have ever been conducted by an independent authority i.e Administrator.)

ix. That almost 11 members out of the detained 12 members of the Society got possession of the flats in the society after a long legal protracted battle fought by them against the Society, which was unnecessarily imposed on them by this corrupt, dishonest and manipulator management. In most of the cases this management even went to the Hon'ble Supreme Court of India, but losing all the cases and wasting hard earned money of the Society members. The false, fabricated and forged documents and affidavits submitted in various agencies and Courts lead to unnecessarily litigation by this management Committee, which resulted into more than 80 court cases and financial loss to the Society for which only this management committee is responsible.

x. The land cost of the society is Rs. 7580/- which can not increase/change, however it was increased to Rs. 8500/- to Rs. 10,000/- without any. reason. Similarly, common goods fund was increased from Rs. 2,500/- to 15,000/- to 20,000/- without any reason and without any AGM/GBM.

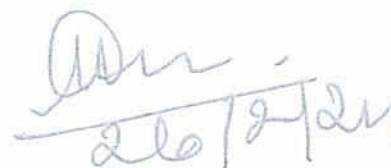
The costs of flats was escalated by them thrice that too without any AGM/GBM and without the knowledge of members e.g the cost of

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HIG flat i.e category 'B' was increased from Rs. 3,60,000/- to 4,40,000/- to 6,07,000/- and finally to 7,48,500/-. It is further needed to point out that the last increase of Rs. 1,41,500/- was even after the allotment of flats (allotment was done on 09-09-2000). It will be worthwhile to point out here that this increase is about 25% of the final cost, however it is clear that no draw of lots can be held till 90% of the construction work is completed.

All the members were told to pay the escalated cost. The members of management committee threatened that if not, they would not be given possession. Number of members protested against the escalation of cost and they suffered for couple of years. It would be worthwhile to mention here that members were allotted raw flats without gates and windows, electric fittings, water tanks, sanitary fittings and even flooring in many flats etc., though the management committee charged for the same. The cost of Transformer, Central TV System, Fire Fighting System, ESS Equipment and Cabling cost, Central Telephone System was also included in the cost of flats, though the said facilities were never made available to the members of the society.

xi. They have charged Rupees 32.55 Lakhs in the name of Electrical Transformer, but in fact that has been installed by the contribution of the Society members. They have charged Rs 12,46,000/- + Rs. 4,62,396/- total amounting to Rs. 17,08,396/- as common expenses which are never been accounted anywhere. They have charged Rs. 24,77,442 + Rs. 14,20,671/- total amounting to Rs.38,98,113/- as sanitary charges however the flats have been given in raw condition. They have charged Rs. 24,88,000 + Rs. 15,23,000/- total amounting to Rs.40,11,000/- as electrical charges however the flats have been given in raw condition. They have also charged for laying of pavers in the society, however the pavers have been laid by the contribution approx. 35000/- from each member / resident of the society in the year 2018-19. No receipt have ever been issued by the Management Committee. The misappropriation of funds is done by this


26/2/24

management committee which is a puppet in the hands of Sh Vijay Kamra as there is no election in the society since 1980 to till date.


xii. It is pertinent to mention here that the so called management committee has stopped to make payments to NDPL, Delhi Jal Board, Securities Agencies to harass the members/residents, then the members/residents of the Society ultimately decided to collect the funds themselves, from 18.05.2004 to Aug' 2007, and cleared the outstanding dues due to non-cooperation of this management. This amount to Rs. 9,00,000/- .

xiii. Further, it is submitted that an enquiry was also setup by the Registrar of Co-operative Societies, New Delhi on number of complaints filed by the residents / members of the society. Sh. P.C. Jain, Joint Secretary (GAD) was appointed as inspecting officer. He submitted his report vide letter no. PA/JS(GAD)/inquiry/RCS/ 2007/388 dated 12.10.2007.

II). The grievance in regard to non -holding of election and not getting the account audited seems to be true. As a matter of fact the same person have been in the management committee right from the beginning and either there have been no election or even if there has been attempt to hold the election, the same has been marred with number of serious complaints against the R.O and the Managing Committee itself.

During the proceedings, there was no evidence brought before me, which could dispel the allegation regarding the up-to-date preparation of account and audit of the society. It seems that for quite in past, neither proper books and accounts are being maintained nor are the regular audits taking place.

III) Although the society has stated that regular GBMS have been called yet no evidence to this effect was shown.

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IV) It also seems correct that the society is not having its office in the premises of the Society itself and this might have resulted into poor attention being paid to the day to day maintenance of the society

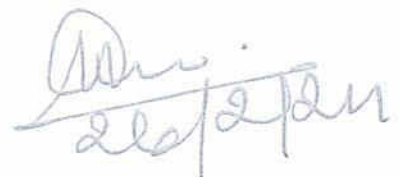
V) There was no direct documentary evidence brought during the proceedings, which could prove the allegation of mis-appropriation of funds of the Society or the illegal acceptance of huge amounts from the new buyers.

VI) The issue of membership to the power of attorney holders has also been hanging fire primarily because of the two reasons (1) according to the society, the most of the applicants are defaulters, (2) the Society has been insisting upon the submission of original title documents.

This is quite bewildering to note that society is asking for the submission of original title documents in order to consider the pending request of power of attorney holders for transfer of membership. The instruction of the office of RCS have been quite clear in this regard and to my mind, the attested photocopies should suffice to be filed by the applicants and wherever Society feels necessary. The original documents can just be shown to the society instead of filling these original document to the society.

The issue of pending dues against theses power of attorney holders also needs to be looked into dispassionately -may be the help of good Chartered Accountant who could go deep onto the various alleged pending dues against the members as the members have claimed that they aged already cleared there legitimate dues.

To some extent, it appears that the delay in deciding the application for

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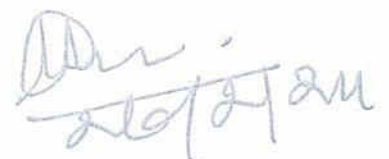
transfer of membership is deliberate on the part of Management Committee of the society. They should be asked to decide these application without further loss of time as it alone can bring a wider representation in the election of the Managing Committee of the Society, otherwise, of a total of 93 flats there are only 15 original members. Thus there is every possibility of usurping the reins of power in the management of the society by the same group again and again as power of attorney holder are not being permitted to acquire the membership in the Society to have the voting / election rights.

Beside it is also suggested that after the membership issues of all these POA applicants are decided, the election of the society should be got held in the presence of a senior functionary of the office of RCS so that the election is held in a transparent and democratic environment without being beset with allegations of irregularities.

This is surprising that in spite of this report and various Court orders no action has been taken by The Registrar of Co-operative Societies, New Delhi against this corrupt, manipulator, fraudster Management of the Society.

14. That Sh. Ashok Kumar Sharma Asstt. Registrar (NW) on behalf of your office was pleased to pass the following order It clearly says:-

"Now therefore Shri T.C. Rana, is hereby appointed as Administrator in Jyoti Coop. Group Housing Society Ltd. With the direction to hold the election of the management committee of the Society within 90 days from the date he assumes the charge as Administrator" In accordance with the above said order, Sh. T.C. Rana started working in furtherance of the welfare of the Society. He has conducted number of meetings with the Residents/Members of the Society. He selected four members from the Residents/Members of the Society and constructed a committee to assist him. They all were working towards the welfare



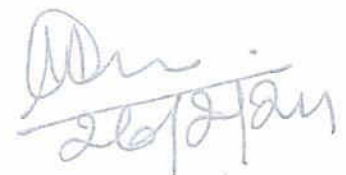
of the Society for holding genuine elections in the Society. The Residents/Members of the Society were fully satisfied/happy with the working of the Administrator and all the Residents/Members of the Society were fully co-operating with the Administrator.

It is worthwhile to mention here that after this appointment, the learned counsel for RCS informed the Hon'ble High Court of Delhi that the Administrator has been appointed and he will conduct the elections within the specified period of 90 days. The true copy of the proceedings of the Hon'ble High Court of Delhi dated 05.08.2010 in C.W (P) No. 10234/2009 are reproduced as under:-

"In view of the possession of flat in question having been handed over to the petitioner, the grievance of the petitioner does not survive. Learned counsel for RCS also states that the Administrator has been appointed and he will conduct the elections within the specified period of 90 days. Learned counsel for R-2 states that there are certain claims. which the Society has against the petitioner. If that be so, it is open to the Society to prosecute the claims in accordance with law. The same would be the position in case the petitioner has any claims against the Society."

It is really surprising that how the proceeding recorded in Hon'ble High Court of Delhi can be nullified? Only Office Bearers of RCS can reply to this question.

xv. That there are 93 members/residents of the society, out of which only 35 original members are left. All the remaining members have sold their flats after taking NOC from this management committee by greasing their palms and paying their unnecessary demands. Now this management committee is not giving membership to the new comers as already reported by Sh. P.C.Jain Joint Secretary (GAD) - Inquiry Officer and it has been already mentioned in the para no. 13 of the this complaint.

Handwritten signature and date: 26/8/2011

Out of these 35 original members, they have declared 18 members as defaulters and this management committee is not clearing their dues, however all the members are ready to pay their justified dues. Out of these many members have gone under litigation u/s 71 of DCS Act, 2013 and have won. Still they are not accepting the amounts from them.

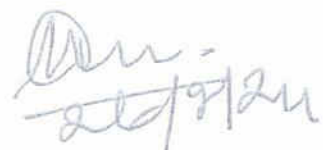
Now this management committee in connivance with the RCS officials get appointed Sh. V.S. Bhandari as Returning Officer since 24.12.2006 to till date to conduct the elections, as it has come to the knowledge of residents/members now. However, in fact, no elections have ever been conducted in the Society. As there are only 17 members in the society. How elections can be held in 17 members in a Society of 93 members? It is also clear from report of Sh. Sh. P.C.Jain Joint Secretary (GAD) - Inquiry Officer dated 12-10-2007. This report is annexed with the complaint and states as under:

"VII. Regarding the allegations of irregularities in the election held on 24.12.2006, it is the office of RCS to look into this aspect as this election was got conducted under the supervision of one Shri V.S. Bhandari, Returning Officer."

xvi. That Sh. V.S. Bhandari as Returning Officer since 24.12.2006 to till date has conducted the elections only on papers, however his reports to conduct the elections, Accounts of the Society, Defaulters list etc. etc. has not been neither displayed on the notice board nor Shown to any members of the Society. In fact no election have been conducted ever. For example Sh. Iqbal Singh Nain is continuously holding the post of Treasurer since 2006 to till date.

xvii. This Management Committee officials have filed number of false and fabricated civil as well as criminal cases against the members to threaten them to extort money from these members and to shut their mouths.

xviii. As already discussed in para 1 of the complaint, there were two flats of the

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Society namely S-1 and S-2, which were for the common use of the society has been transferred/allotted/sold to their own persons after got filing false and fabricated cases against the society and losing them. The name and address of these persons is not known to the members of the society. No AGM/GBM has ever been conducted since 9.9.2000 including this matter. The money received from transfer/allotment/sale of these flats is not accounted for. This was clear cut violation of the DCS Act,2003 and DCS Rules, 2007. This matter alone needs proper investigation.

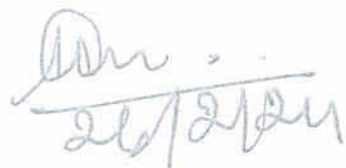
xix. Aggrieved by all these irregularities/misappropriation of funds by the management, the members filed RTIs and sought information under RTI Act and DCS Act Section 139, but no response has been received. Then these members filed appeal under section 139(2) of DCS Act, 2003, which are also not been addressed till date by the RCS.

Four members of the Society also filed applications to Jyoti CGHS Ltd. Under Rule 14 of the DCS Rules,2007 to inspect the record of the society, again there is no response from the management committee. Then these members also filed complaint with the RCS Office.

xx. That this is also important to mention here that there are a community hall and a rest room for drivers in the Society. Those are in the possession of Smt. Saroj Bala and Kamlesh Dhawan (both real sisters of Sh. Vijay Kamra) since 09.09.2000 to till date. The reason best known to the members of Managing Committee.

2xxi. In a RTI filed by Sh. Mridul Bowmik vide ID no. 741 dated 05.12.2022 with RCS, the incomplete reply given by MC of Jyoti CGHS Ltd. that there are 11 court cases pending in various courts with the Society. We would like to inform here that out of these 11 cases, three cases namely:-

a) Alka Gupta Vs S.R Gautam & ors. case in Tis Hazari Court

Handwritten signature and date: 26/12/24

- b) Alka Gupta Vs S.R Gautam & ors. case in Rohini Court
Actual case name: State Vs S.R Gautam & ors. in Rohini Court
c) Dipak Singh in High Court.

All these three cases are against Sh. Vijay Kamra in his personal capacity and it is clear from their RTI reply this management committee is booking expenses of these from society fund. This is again a case of misappropriation of society funds.


xxii. In the RTI's filed by Sh. Omkar Sharma vide ID no. 745,746 and 747 both dated 09.12.2022 with RCS, the incomplete reply given by RCS under wrong ID no. i.e 57, 58,59 dated 13.12.2023 that only audit report of four financial years is available, balance are not traceable. It shows the casual approach of Asstt. Registrar (Audit). It has become clear now that the elections are being manipulated and even Audit Reports are not submitted with RCS.

xxiii. This complaint is in brief. There could not be end to this representation.

The complainants have prayed that:-

1. An administrator should be appointed immediately, to conduct the fair election in Society after sorting out all the issues mentioned above in the application.
2. A detailed independent enquiry may be conducted by the officer other than RCS office to look into the malpractice, fraud, misappropriation of funds and cheating done by Management Committee and to book the culprits under criminal law.
3. Any other appropriate direction/ order deemed fit and proper by this good office may also kindly be passed.


REPLY OF THE SOCIETY:-


26/2/24

In response to the complaint, the society submitted a reply.

The society made following Preliminary Submissions:-

- A. In the notice it is mentioned that there are total 43 alleged signatures on the alleged complaint dt. 27.02.2023, but in the memo of parties only names of 5 defaulters members are given against whom arbitration cases are pending. So far 43 signatures in previous complaint u/s 37 was concerned only 15 signatures were of members whereas rest are either power of attorney holders or their relatives or tenants having no legal right in the affairs of the society and therefore cannot invoke the provisions of the DCS Act, 2003 and DCS Rules, 2007. Thus, the paragraph No.2 of the show cause notice dt.05.01.2024 which says that the complaint dt. 27.02.2023 has been filed by 44 members (S.no. 42 is blank) of the society is totally incorrect and contrary to the records and also legal provisions and has thus totally vitiated the show cause notice, which on this ground alone is liable to be withdrawn / dropped.
- B. It is important to point out that most of the signatures seem to be forged and fabricated, this is without prejudice to the fact that most of the signatories are non-members and therefore not eligible and entitled to invoke the provisions of DCS Act and Rules.
- C. Even out of 15 members (leave alone non-members), 13 are defaulters and out of 13 defaulters, recovery cases are going on against 9 defaulters' members and the present complainet is nothing but a counter blast to avoid payment of their legitimate dues of the society.
- D. It is further pertinent to mention here that 04 signatories of the alleged complaint have already given in writing that their signatures on the alleged complaint dt.27.02.2023 were taken on plain paper on the pretext that a representation is being made in respect of repair and cleaning work in the society and they have not signed any complaint against MC as they have


26/2/24

no grievance or complaint against the MC. They have sent their writing at the email of concerned Assistant Registrar arcsggh3@gmail.com

In view of above it is important to first verify the genuineness of the signatures of the alleged complainants and since they do not meet the criteria, the alleged complaint is liable to be rejected on this ground alone.

The society made Preliminary Objections:

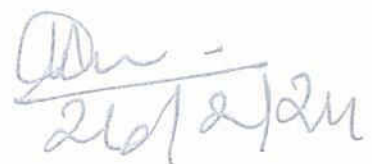
1. At the outset it is submitted that on the same false and frivolous complaint dt.27.02.2023, the complainants earlier sought the supercession of the erstwhile MC u/s 37 of the DCS Act, 2003. Although the RCS office in a routine manner issued the show cause notice to the erstwhile MC u/s 37 of the DCS Act, 2003 but after going through the reply and other documents of the society the RCS did not proceed further.
2. That the complainants after having failed in their attempts to get the erstwhile MC superseded, now on the same complaint dt.27.02.2023 is seeking an inspection u/s 61 of the DCS Act, 2003 despite the fact that the present case is not at all fit for inspection.
3. That the allegations levelled in the complaint dt.27.02.2023, on the basis of which the RCS office issued the show cause notice dt.05.01.2024 u/s 61 of the DCS Act, 2003, are not only false and frivolous bald accusations but also malafide and mischievous which is evident from the bare perusal of the said allegations.
4. It is submitted that most of the allegations made in the alleged complaint dt.27.02.2023 are 20 to 25 years old which cannot legally be the basis of any lawful inspection.
5. That most of the allegations by the complainants in their complaint dt.27.2.2023 are against the office of the RCS as well. If the complainants

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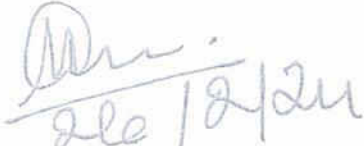
have grievance and allegations against RCS office, then how can RCS office look into such complaint. The Complainants should have approached some other forum.

6. It is submitted that there is a group of few members /POAs who have been making same false and frivolous allegations against the MC to different authorities besides RCS for the last many years with the sole motive to harass the members of the MC and to avoid payment of their legitimate dues to the society.
7. Same group of disgruntle persons when could not succeed in their previous tricks have filed this complaint levelling same allegations which were / are already subject of other proceedings. Even the complainants themselves admitted in their alleged complaints that most of the charges are subject matters of other proceedings pending before different authorities / courts and in the absence of final outcome in those proceedings, the same cannot legally be used to carry out the inspection. The relevant documents showing same issues were raised by the complaints in the past before different forums / authorities are enclosed herewith.
8. That the RCS earlier also issued a show cause notice dt. 14.07.2017 u/s 37 of the DCS Act, 2003 on some incorrect facts and information which was later on withdrawn by the Ld. RCS vide its recent order dt.31.05.2023 after hearing the stand of the society to the said show cause notice.

The society has denied the complaint on merits by giving a para wise reply. It has stated that the affairs of the society have always been governed by the Managing Committee duly elected by the General Body of the Society after every three years as per the provisions of DCS Act, 2003 and Rules, 2007. It is pertinent to mention here that under the old DCS Act, 1972 and DCS Rules, 1973, one could

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not contest for same post for more than two consecutive terms and therefore the then office bearers were contesting / being elected for different posts which was completely legal. Even if it is presumed for a second, though specifically denied, that the said practice was not permissible or there was something wrong in that, then in that situation, the aggrieved member ought to have challenged the said election then and there and cannot now after 15-20 years raise any dispute / issue about the election of the then office bearers under old Act or Rules. In N K Jain Vs. Govt of NCT of Delhi, a Division Bench of Hon'ble High Court of Delhi authoritatively held that any dispute of election can only be looked into and adjudicated through arbitration and it is pertinent to mention here that the same complainants have already filed an arbitration case challenging the last elections held in the society on 15-10-2023 and therefore, the complainants cannot raise the same issue for carrying out inspection or supersession of the duly elected MC. In fact, the very fact that one is repeatedly being elected in the MC clearly shows and proves that he has full faith and support of the members of the Society. It is not out of place to mention here that same group of disgruntle persons had already raised this issue of same persons being elected in the MC before different authorities / Courts but did not get any relief from there and are therefore illegally trying to raise the same false and frivolous issue again in the present proceedings. The complainants cannot raise an issue after expiry of 25-27 years. If there was anything wrong in the so-called delay in conduct audit of those FYs under the Old DCS Act or Rules, the objection ought to have been raised then and there and not after 25-27 years. It is pertinent to mention here that the husband of Smt. Alka Gupta had taken the certified copies of audit reports from the office of the RCS and also annexed with various complaints to different authorities but no one took any cognizance thereof. As per the procedure prescribed under DCS Act and Rules, the society has to choose an auditor from the panel of the RCS and get his appointment approved from RCS office / AR (Audit) and thereafter the auditor has to conduct his audit and submit his report in the office of RCS and on the basis of which the appointment of auditor for the next financial year is approved by RCS. Had there been anything wrong in the said audit, the RCS ought to have


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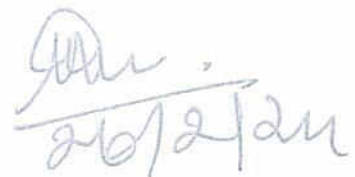
taken the corrective action and would not have approved the same and given the permission for audit of the next year. It is not out of place to mention here that the same group of complainants on same allegation got an inspection carried out in the society in which the inspection officer gave his inspection report dt. 12.10.2007. However, inspection officer very clearly held that in the absence of any direct documentary evidence the allegations of mis-appropriation of funds of the society or the illegal acceptance of huge amounts from new buyer could not be established. The complainants cannot therefore raise same false allegations seek another inspection after 7 years. This clearly proves the malafide intention of the complainants who all are not even the members of the society. The alleged emphasis by the complainants on certain discrepancies pointed out by the auditor in the audit report for FYs 1996-97 as reproduced on page 3 of the complaint are totally misconceived, misleading and mischievous as most of them were rectified in subsequent years. Even otherwise, the alleged discrepancies are of minor nature and do not amount by any stretch of imagination as misappropriation of funds of the society by the then MC, for which now after more than 25 years can an inspection be ordered especially when earlier inspection officer did not find any misappropriation of funds of the society. As stated above, the Managing Committees have been elected in the elections legally being conducted as per the DCS Act and Rules and the fairness of the elections held in the society is evident from the fact that none of the elections has ever been challenged by anyone. It is for the first time now that the same complainants have challenged the last elections of the society which were held after intervention of the Hon'ble High Court of Delhi as RCS under pressure from complainants tried to stopped the elections. It is submitted that elections were duly being conducted under the provisions of the Old DCS Act, 1972 and Rules, 1973. When New DCS Act, 2003 was notified on 01.04.2005, it was the duty of the RCS to appoint Returning Officers for conduct of elections in all the societies and accordingly, the RCS appointed one Sh. V.S. Bhandari, a service Govt. Officer, as Returning Officer for conducting fresh elections of the MC. Sh. V. S. Bhandari accordingly got conducted the elections on 24.12.2006. In the meantime, Section 35 of DCS

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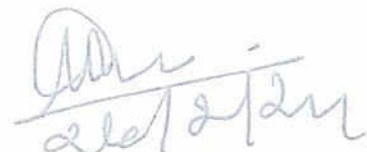
Act, 2003 was amended and power to appoint Returning Officer in those societies where allotment has been made is given to the Managing Committee itself. So, the then Managing Committee society appointed one Sh. Ghanshyam Goel as Election Officer, to conduct election. It is submitted that Sh. Ghanshyam Goel thereafter smoothly and as per law conducted fresh elections on 25.12.2009. Copy of the election result and submission of election report in RCS office are annexed herewith. However, the RCS office without taking cognizance of the aforesaid said election dt.25.12.2009 passed an illegal order dt. 29.07.2010 appointing an Administrator u/s 35 (5) of the DCS Act, 2003 for holding fresh election of the MC of the society within 90 days. The respondent society challenged the said order dt.29.07.2010 before the Financial Commissioner, Delhi by filing a Revision Petition (Case No.223 of 2020) u/s 116 of the DCS Act, 2003. Ld. Financial Commissioner, Delhi was pleased to stay the operation of the impugned order dt. 29.07.2010 vide order dt. 10.09.2010. In the same Revision Petition, the same group of complainants, who have filed the present complaint dt. 27.02.2023, got themselves impleaded as respondents and opposed the Revision Petition of the society on the same grounds which are being raised now in the present complaint. However, the complainants failed to get any major relief from the Court of the Financial Commissioner, Delhi. The said Revision Petition continued for 4-5 years and in the meantime fresh elections were conducted in the society and the said Revision Petition became infructuous and accordingly, the society moved an application for withdrawal of the said Revision Petition on 29.09.2014 on the ground that fresh elections have already been conducted and impugned order became infructuous. That after 2009, elections have been conducted in 2013, 2016 and 2020 of which due intimations were given to the RCS office and no objection whatsoever was received from any one against any of those elections. Most of the complainants, who are POAs and Tenants, were not in the picture in 2000 and therefore, they cannot legally have any valid grievance in this regard. The complainants themselves admitted that the issue of forgery of documents is pending in FIR No.882/2004 and case is pending in the competent criminal court and it is also a matter of fact that no final decision has


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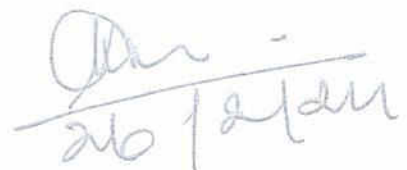
been passed therein and the case is still sub-judice. It is the basic principle of criminal law jurisprudence that an accused is innocent until he is convicted by the court. As stated above, the said criminal case is still pending and no final decision has been passed yet against the accused therein. No inspection can be ordered by the RCS on an issue which is sub-judice before the competent court of law as that would amount to unnecessary interfering in the administration of justice. Here the question is whether the complainants do not have faith in the judicial system and that is why want to initiate some other parallel proceedings in violation of law. It is not out of place to mention here that it was RCS office which raised the objection and detained the names of 12 persons on the ground of out of blood transfer, whereas the then MC had recommended their names with other members. It was RCS office which put up their case before Hon'ble LG for relaxation but the Hon'ble LG rejected the proposal of the RCS. However, later on, RCS changed its stand and put the blame on the then MC. Again, these things pertain to a period of 2000 to 2008 i.e. more than 15 years ago and thereafter, number of elections held and MC changed and therefore this cannot be used as a ground to carry out the inspection of the present MC after 15 years especially the whole problem was created by RCS when it detained the names of 12 persons on the ground of out of blood relation transfer and most importantly, society never asked for detaining of the names of those 15 members. In fact, LG of Delhi rejected the proposal of the RCS for regularization of their memberships. It is submitted that most of the cases were filed by those 12 members and whenever the then MC, again more than 15 year ago, thought it fit to challenge an order passed against the society, the said MC exercised its legal right to challenge the same. Again, the decision was taken collectively by the then MC which were later on approved by GB also and therefore, the present MC cannot be held responsible for the same which happened more than 15 years ago. The cost of flats of different categories in the society was finally fixed and approved in GBM held on 25.03.2001. Increase in tentative cost is a normal feature of any construction work. The complainants who are mostly POAs or tenants were not even in pictures and they have purchased their flats in the society much

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thereafter with their open eyes and without any involvement of the society. When the original members from whom the POAs have purchased flats or taken on rent have not raised any objection against the cost of the flats and paid the cost of their flats without any objections, then how can their POAs can raise any objections in this regard. It is wrong and specifically denied that any member was threaten nor could anyone be threatened like this. Members in the GBM held on 25.03.2001 decided to take their flats as it is in raw conditions so that they can carry out the finishing work as per their requirements and budget and in this way further increase in the cost of the flats could also be stopped. All members, except one Sharma, got their flats in the same raw condition. No common good funds were ever charged from any member, though it was wrongly written by the then Treasurer namely Rakesh Nayyar in one of the circulars which was never acted upon. Society has charged cost of land only as per DDA demand. If anyone had any objection with any of the increase in the cost or common good funds or maintenance charges, then he/she was / is free to challenge the same as per law. However, the same cannot be a ground to supersede the present MC or to carry out any inspection now after 25 years. Electrical Transformer was installed prior to 2007 in the society and the complainants now want supersession or inspection of the present MC on the said unsubstantiated allegation without any proof after more than 15 years. It is specifically denied that the society charged any amount without accounting for the same in its accounts which have regularly being audited. Cost of the flats and Flats were given as per the GBM resolution which has never been challenged and rather accepted and acted upon by all. It is specifically denied that there was any misappropriation of funds of the society by present or past MC. Even earlier complainants failed to prove any misappropriation of funds before inquiry officer. Elections are regularly being held in the society and decisions are being taken collectively. It is submitted some residents tried to form some illegal RWA. However, the society took the necessary steps and has been providing the maintenance services to its members. All these allegations were also made by the complainants to different authorities but they failed to get desired results and that is why they are again digging out old and

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stale things which have no relevance or merit. It is submitted that Sh. P.C. Jain was appointed as inspection officer and not enquiry officer who in its report dt. 12.10.2017 held that the complainants (who are same group of complainants who have filed this complaint) failed to provide any direct documentary evidence in support of their allegation of misappropriation of funds etc. so far as his observations on other points like elections, audit, GBMs etc. are concerned, the same are without any basis as he himself has admitted that he has not seen the records of the society for which he was assigned the job. The observations of the inspection officer on transfer of membership are also against the provisions of DCS Act and Rules as persons applying for membership has to clear all the dues pertaining to the flat. It is pertinent to mention here that most of the sale purchase of flats by the complainants are without any valid NOCs and therefore, they are responsible to face the consequences of not making adequate enquiry before purchasing the flats and not clearing the dues of the society. The reliance on the order dt.5.8.2010 in WP (c) No. 10234/2009 is misplaced and misleading as the said case was pertaining to the personal case of one member namely Sh. Naresh Kumar Sharma. So far as the appointment of Sh. T.S. Rana as Administrator who was appointed to conduct elections in the society is concerned, it is already submitted in the preceding paras that society challenge his appointment before Financial Commissioner who was pleased to stay the operation of the impugned order dt. 29.07.2010 vide order dt. 10.09.2010 and thereafter the society conducted fresh election and therefore the said order dt. 29.07.2010 passed by Sh. Ashok Kumar Sharma became infructuous. Again, complainants are making allegations against officials of RCS. It is reiterated that the society has been conducting elections regularly and as per law and due intimation thereof are being given to the RCS. It is for the court to decide whether the case is false or not and this cannot be a ground for the RCS to hold inspection on an issue sub-judice before competent court of law especially the alleged cases / complaints pertain to 2007 - more than 15 years ago. The said extra flats were attached by the courts before 2010 in favour of the claimants who filed the cases against the society. Complainants cannot raise the matter of some other court in present

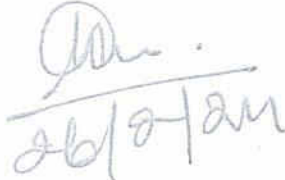
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proceedings as RCS is not an appellate authority over the civil courts. The allegations are against the office of the RCS which society cannot replied. So far as inspection of the society's records is concerned the society has not denied any member the inspection of its relevant records. 20. There is no community hall or rest room in the society as alleged by the complainants. The complainants have not filed any proof in support of their allegation. Husband of the Smt. Alka Gupta, Sh. G D Gupta is behind all these false, frivolous and vexatious litigation and complaints to unnecessary harass the officials of the society. It is for the Office of the RCS to give reply to the allegations made against its by the complainants.

It is thus clear from the above submissions that the allegations made in the complaints by the complainants are 20-30 years old and were subject matter of different proceedings during those periods and therefore, no fault can be found with the present MC elected recently in 2023. Thus, no inspection can be ordered on such false and frivolous allegations which 20-30 years old. Most of the complainants are not even the members of the society. Complainants are in the habits of making false and frivolous complaints and the present complaint is nothing but a illegal pressure tactic to pressurize the present MC to accept their illegal demands. Further no proof in support of alleged allegations has been filed with the complaint by the complaint and therefore no such bald, vague and baseless should be entertained and the complaint filed by the complainants may kindly be dismissed.

In view of the submissions made above it is most respectfully prayed that the alleged complaint dt.27.02.2023 filed by the complainants may kindly be rejected being false, frivolous and misleading besides being legally untenable.

Hearings were held on 11.01.2024 and 13.02.2024. Arguments were heard on 13.02.2024.

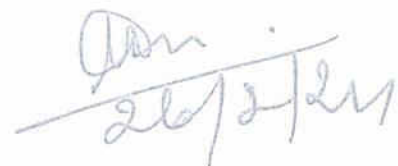

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✓ OBSERVATIONS:-

- a. There is no doubt that there is a history of numerous complaints and court cases amongst the members of the society, its MC Members and the society. Office of the RCS has on numerous occasions initiated action under section 37 of DCS Act 2003 and has also ordered inspection under section 61 of DCS Act 2003. Most of the present complaints are similar in nature as those based on which actions were initiated previously by RCS under various sections of DCS Act 2003 and DCS Rules 2007.

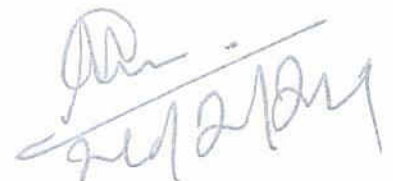
- b. The law of limitation has been prescribed as the time limit which is given for different suits & proceedings to the aggrieved person within which they can approach the court for redress or justice. The basic concept of limitation is relating to fixing or prescribing of the time period for barring legal actions. The main objective of the Limitation Act, 1963 is to provide a specific time frame in which a person can file a suit in a court or initiate appropriate proceedings. If such law does not exist then it will lead to never ending litigation as the person can initiate proceedings for the cause of action which was done many years back. Even the maximum time limit prescribed under section 70 of DCS Act 2003 is six years. An Inspection Report under section 61 of DCS Act 2003 has already been submitted in 2007. Most of the complaints in the complaint dated 27.02.2023 are previous to six year and even going way back to 1990. There can be no justification for complaints which are prior to six years going upto more than 30 years.

- c. The main back bone of the present complaint pertains to audit of years 1989-1990 to 1996 to 1997, non conduct of elections, non grant of membership, alleged false and fabricated affidavits submitted in RCS, orders passed by various Hon'ble Courts like DCT and Hon'ble High Court

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of Delhi and RTI Applications and appeals under section 139 of DCS Act 2003.

- d. Late conduct of audit and/or any complaints based on findings of audit reports or non conduct of proper audit cannot be a basis for inspection under section 61 of DCS Act 2003.
- e. Allegations regarding false and fabricated affidavits filed in judicial and quasi judicial proceedings cannot be a subject matter of inspection under section 61 of DCS Act 2003.
- f. Questioning proceedings before different judicial and quasi judicial proceedings cannot be a subject matter of inspection under section 61 of DCS Act 2003.
- g. RTI applications under section 139 of DCS Act 2003 and appeals filed under section 139 of DCS Act 2003 cannot be a subject matter of inspection under section 61 of DCS Act 2003.
- h. There is a specific provision for appeal under section 91 of DCS Act 2003 for non grant of membership by a society within stipulated time period.
- i. For non conduct of elections within specified time, action can be initiated by Office of RCS under the provisions of section 35 of DCS Act 2003.
- j. Inspection under section 61 of DCS Act 2003 cannot be ordered for cause of action against which proceedings are pending before various Court of Law, civil or criminal.
- k. The complainants besides making allegations against the society, its Ex MC Members and MC Members have also made allegations against the Office of RCS in the complaint dated 27.02.2023. Certainly the complaints

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against the Office of RCS cannot be a subject matter of inspection under section 61 of DCS act 2003.

CONCLUSION:-

In view of the above observations, material on record and law on the subject, I am of the considered opinion that no case for initiation of Inspection under section 61 of the DCS Act 2003 is made out on the issues raised in the complaint dated 27.02.2023 under consideration.

It is ordered accordingly.

Dr. T. Philip Thanglienmang
26/02/2024

(Dr. T. Philip Thanglienmang)
Special Registrar Cooperative Societies

Copy to:-

1. Sh Anil Chander Bagga & Ors., 44-B Jyoti Apartment, Plot No.: B-2, Sector-14 Extn. Rohini, Delhi-110085 (with a direction to provide copy of this order to other complainants).
2. Sh Harbans Singh Walia, 13-B Jyoti Apartment, Plot No.: B-2, Sector-14 Extn. Rohini, Delhi-110085
3. Sh G D Gupta, 33-B Jyoti Apartment, Plot No.: B-2, Sector-14 Extn. Rohini, Delhi-110085
4. Sh Mridul Bhomik, 41-B Jyoti Apartments, Plot No.: B-2, Sector-14 Extn. Rohini, Delhi-110085.
5. Jyoti CGHS Ltd., (Through President/Secretary), Plot No.: B-2, Sector-14 Extn. Rohini, Delhi-110085
6. AR(Section-3)
7. In-charge (Computer Cell) for uploading on website

Dr. T. Philip Thanglienmang
26/02/2024

(Dr. T. Philip Thanglienmang)
Special Registrar Cooperative Societies