

Government of India
Ministry of Housing and Urban Affairs
Land and Development Office
Nirman Bhawan, New Delhi.

File No. 24026/4/2019-CDN/169

Dated: 20/05/2019

Office Order No. 5/2019

Subject: Clarification of previous Office Orders on Inspection of Leased Premises and issue of breach notice thereon.

The issue under consideration relates to issuance of breach notice in stipulated time frame so that timely recovery of breach charges can be done from the date when they first came into cognizance of this office.

2. It is pertinent to mention that this office vide Office Order No.21/80 dated 5.8.1980 had stipulated that due to pending consideration of certain policy matters, it has been decided to forthwith stop inspection of properties and issuance of notices regarding misuse, unauthorised construction and other breaches of terms of the lease. The matter was re-considered and it was decided vide Office Order No.7/81 dated 22.4.81, to carry out inspection of the premises in cases of grant of sale permission, transfer or gift and/or multi-storeyed building/commercial and group housing societies.
3. Thereafter, vide Office Order No.32/81 dated 17.08.81 it was decided to carry out inspection in respect of commercial nazul leases administered by this office. Thereafter, vide Office order No.6/82 dated 17.03.82 inspection was allowed in respect of residential nazul leases. On 24th December, 1982, this office was directed by the Ministry that issue of notices for inspection and actual inspection may be resumed with immediate effect where a complaint has been received from a neighbour about serious unauthorised constructions which is likely to endanger the safety of the buildings or about activities likely to create a nuisance.
4. It is in this context, Office Order No.3/85 dated 6.2.85 was issued which inter-alia stated:
"I have come across a case in which even though certain misuse was noticed in an inspection, no notice was issued on the pretext that there was a ban on inspections/issue of notices. Since no notices had been issued, we cannot claim any charges etc. Hence I want that in all such cases where inspections were made but no notice issued, notices may be issued forthwith on the basis of the previous inspections."
5. In respect of rehabilitation properties there was a ban on inspections except in case of request for sale permission or where complaints were received. Thereafter, vide Office Order No.2/98 dated 26.2.98, the ban on inspection in rehabilitation colonies were lifted and as per above order action was to be taken as per terms of the lease deed.

6. This office had issued comprehensive instructions for inspection of leased premises vide Office order No.11/05 dated 10.01.2005 (illegible) and Office Order No.14/2009 dated 30th October, 2009. The Office Order No.3/85 was issued under specific circumstances when the ban on inspection of residential and commercial properties situated on nazul land was lifted and it was stipulated that pending breach notices which could not be issued due to ban may be issued forthwith. This order has lost its relevance with efflux of time and instruction issued vide Office Order No.11/5 and 14/2009 has to be followed in letter and spirit. From the reading of these orders it comes out that (i) the breach notice has to be issued within a period of 15 days from the date of receipt of inspection report in the concerned lease/property section, (ii) even if due to certain reasons breach notice is not served or is served late or in subsequent inspection the same breaches are noticed in such situation the crucial date to calculate damages/misuse charges will be the date of refusal or the date on which the premises were found locked or they first came into cognizance of this office.

7. It is further clarified that the breaches will be treated to have come into existence from the date of inspection whether the breach notice has been issued or not to the lessee. Subsequent to issue of breach notice, on receipt of intimation from the lessee indicating the specific date of the removal of the breach, the premises shall be inspected again as soon as reasonably possible and if the breach is found removed at the time of such inspection, charges for the breach shall be recoverable upto one day before the date of receipt of intimation about the removal of the breach. However, if such date is earlier than the date of issue of breach notice, the lessee had to produce substantive proof indicating that he has removed the breaches on such date. In these cases, the final decision to fix the crucial date of removal of breaches shall be decided by this office with the approval of Land & Development Office.

8. Previous instructions which are in contradiction to instructions contained in this Office Order as well as Office Order No.11/05 and 14/09 stands superseded.

9. It is again reiterated that it is the responsibility of the concerned dealing hand to ensure that the file for inspection is forwarded to technical section and thereafter breach notice is issued within stipulated time frame. In case of any failure, responsibility will be fixed and the action will be taken against such delinquent officials.

10. This issues with the approval of Land and Development Officer.


(S. K. Babbar)
Deputy Land and Development Officer

To
All Officers/ Section

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