

CHAPTER-18

BREACHES (CHANGE OF PURPOSE OR UNAUTHORISED CONSTRUCTION)

Where a breach of unauthorised construction misuse is noticed a show cause notice shall be sent to the lessee asking him to remove the breach with in 30 days from the date of notice. This period of notice may however, be extended to 60 days if the lessee gives cogent reasons to the satisfaction of the lessor. Where, however, the lessee neither removes the breaches nor sends any communication to the satisfaction of the lessor after the receipt of the notice, action shall be taken to re-enter upon the property whereupon the lease will stand forfeited. The re-entry order shall be communicated to the lessee requesting him to hand over possession of the leased premises to the nominated official of the lessor. If the lessee does not hand over possession to the said officer, action under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 for the eviction of the ex-lessee shall be initiated in the Court of Estate Officer in addition to the recovery of Govt. dues including damages charges etc.

Any communication from the lessee that the breach will be removed at a future date shall be disregarded. However, on receipt of intimation from the lessee indicating the specific date of 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.

The formulae for calculation of charges for change of use are as under:-

		Misused		Present		The land
Size		area		commercial		rate on
Of the	X	-----	X	rate of	(-)	the date X 10 ½ %
Plot		Permissible		land for		of last
		covered		the purpose		transaction

area	for which	for which
	the property	land was
	is misused.	Leased

From 1.4.1981 to 31.8.1981, the percentage multiplier in the above formula was 12 ½ & from 1.9.1989 onwards it is 13.9.

In the case of the residential leases in Rehabilitation Colonies, misuse charges recoverable from 5.5.1982 onwards shall be in accordance with the following formula:-

Size	Misused	Present pre-	Present Pre-
Of the	area	determined com-	determined
Plot	X ----- X	mercial value of (-)	value of X 10 ½ %
	Permissible	the land for	land for the
	covered	the purpose	purpose for
	area	for which	which it was
		the property	leased.
		is misused.	

In cases where whole of the premises is under misuse, the misused area shall be taken as the total built up area i.e. plinth area including thickness of all the walls, garages and servant quarters. In cases of misuse of part of the premises, the misused area shall be calculated according to actual measurements of the area under misuse, such area being assessable/verifiable from the building plan as sanctioned by the local municipal body.

The rates of damages charges for different areas/localities shall be fixed by the Government from time to time.

In addition to misuse charges for change of user and damages charges for unauthorised construction, 10 % penalty shall also be recovered as under:-

- (i) Non re-entered cases on misuse charges only;
- (ii) Re-entered cases both on misuse charges as well as on damages charges.

These charges may be paid in lumpsum or in monthly instalments not exceeding 24 for which interest at the rates as fixed by the Government shall be charged.

The facility of payment by instalments shall be further subject to the condition that:-

- (i) in the case of non re-entered premises, the lessee shall be required to execute a bond.
- (ii) in case if re-entered premises, the ex-lessee shall be required to execute a supplementary lease, and
- (iii) in conversion cases, the applicant shall be required to furnish a bank guarantee for the total amount of charges.

Where the lessee/ex-lessee files suit for eviction against defaulting tenants on receipt of the notice from the lessor for misuse and is successful in eviction of such tenants, on percent of the charges shall be recovered as token penalty in consultation with the Ministry of Urban Development and Finance.