

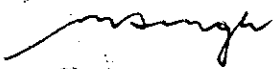
No. 05

Dated: 10/01/2018

**CIRCULAR/ORDER**

The Chandigarh Administration has issued **Circular No. 45/5/22-UTFI(5)-2017/14805 dt. 19/12/2017 (Copy enclosed)** in order to give clear instructions to all the agencies of Chandigarh Administration to follow a uniform practice/procedure to regulate transfer of properties by way of GPA/SPA/WILL (GPA transactions). In the said circular, the Chandigarh Administration has issued the instructions in pursuance of the directions of the Hon'ble. Supreme Court of India in the case of Suraj Lamp & Industries Pvt. Ltd. vs. State of Haryana & Another {2011 (4) RCR(Civil)669} and as well as interim order dated 29.08.2017 in IOIN-CRM-N-19874 of 2017 titled as Avneet Kaur vs. State of Punjab.

The above said Circular of Chandigarh Administration is hereby adopted.

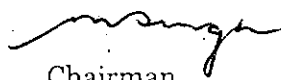
  
Chairman,  
Chandigarh Housing Board,  
Chandigarh.

Encls. No. HB(S)/EA-III/2018/57

Dated:- 10/01/2018

A copy is forwarded to the following for information and necessary action: -

1. The Chief Engineer-I/II, CHB.
2. The Superintending Engineer- I/II, CHB.
3. The Executive Engineer-I/II/III/IV/V/VI/VII/VIII/I.T/Enf./Arch., CHB.
4. The Chief Accounts Officer, CHB.
5. The Senior Law Officer, CHB.
6. The Accounts Officer-I/II/III/IV/ADMN/Reception, CHB.
7. The Section Officer-I/II/III/IV/V, CHB.
8. The Chief Liaison Officer, CHB.
9. The Computer In-charge CHB.
10. PA to Chairman/Chief Executive Officer/Secretary, CHB, for kind information of the officers please.
11. Office Order file.

  
Chairman,  
Chandigarh Housing Board  
Chandigarh.

by  
10/1/18

For uploading  
the same of CHB website

Shalu

# FINANCE DEPARTMENT ESTATE BRANCH

No. 45/5/22-UTFI(5)-2017/14803

Dated 19.12.2017

## CIRCULAR

Subject: Transfer of property by way of GPA/SPA/WILL : Instruction.

The matter related to transfer of immovable properties by way of SPA/GPA/WILL has been seeking the attention of the Chandigarh Administration as well as Hon'ble Courts. The Estate Office and different development agencies follow different practices and procedures to regulate the SA/GPA/WILL transactions, therefore, it is felt that a clear instructions are required to be issued so that all the agencies of Chandigarh Administration follow a uniform practice/procedure to regulate such transactions. In a landmark judgment dated. 11.10.2011 passed in the case of Suraj Lamp & Industries Pvt. Ltd. Vs. State of Haryana & Anr., the Hon'ble Supreme Court had observed as under :-

15. Therefore, a SA/GPA/WILL transaction does not convey any title nor create any interest in an immovable property. The observations by the Delhi High Court, in *Asha M. Jain v. Canara Bank - 94(2001) DLT 841*, that the "concept of power of attorney sales" have been recognized as a mode of transaction when dealing with transactions by way of SA/GPA/WILL are unwarranted and not justified, unintendedly misleading the general public into thinking that SA/GPA/WILL transactions are some kind of a recognized or accepted mode of transfer and that it can be a valid substitute for a sale deed. Such decisions, to the extent they recognize or accept SA/GPA/WILL transactions as concluded transfers, as contrasted from an agreement to transfer, are not a good law.

16. We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of 'GPA sales' or 'SA/GPA/WILL transfers' do not convey title and do not amount to transfer, nor can they be recognized or valid mode of transfer of immovable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognized as deeds of title, except to the limited extent of section 53A of the TP Act. Such transactions cannot be relied upon or made the basis for mutations in Municipal or Revenue Records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered Assignment of Lease. It is time that an end is put to the pernicious practice of SA/GPA/WILL transactions known as GPA sales.

17. It has been submitted that making declaration that GPA sales and SA/GPA/WILL transfers are not legally valid modes of transfer is likely to create hardship to a large number of persons who have entered into such transactions and they should be given sufficient time to regularize the transactions by obtaining deeds of conveyance. It is also submitted that this decision should be made applicable prospectively to avoid hardship.

# FINANCE DEPARTMENT ESTATE BRANCH

18. We have merely drawn attention to and reiterated the well-settled legal position that SA/GPA/WILL transactions are not 'transfers' or 'sales' and that such transactions cannot be treated as completed transfers or conveyances. They can continue to be treated as existing agreement of sale. Nothing prevents affected parties from getting registered Deeds of Conveyance to complete their title. The said 'SA/GPA/WILL' transactions may also be used to obtain specific performance or to defend possession under section 53A of TP Act. If they are entered before this day, they may be relied upon to apply for regularization of allotments/leases by Development Authorities. We make it clear that if the documents relating to 'SA/GPA/WILL' transactions has been accepted, acted upon by DDA or other developmental authorities or by the Municipal or revenue authorities to effect mutation, they need not be disturbed, merely on account of this decision.

19. We make it clear that our observations are not intended to in any way affect the validity of sale, agreements and powers of attorney executed in genuine transactions. For example, a person may give a power of attorney to his spouse, son, daughter, brother, sister or a relative to manage his affairs or to execute a deed of conveyance. A person may enter into a development agreement with a land developer or builder for developing the land either by forming plots or by constructing apartment buildings and in that behalf execute an agreement of sale and grant a Power of Attorney empowering the developer to execute agreements of sale or conveyances in regard to individual plots of land or undivided shares in the land relating to apartments in favour of prospective purchasers. In several States, the execution of such development agreements and powers of attorney are already regulated by law and subjected to specific stamp duty. Our observations regarding 'SA/GPA/WILL' transactions, are not intended to apply to such bonafide/genuine transactions."

Therefore, in pursuance of the above directions of the Hon'ble Supreme Court in Suraj Lamp's case and as well as order dated 29.8.2017 in IOIN-CRM-M-19874 of 2017 'Avneet Kaur Vs. State of Punjab', the following guidelines are hereby issued for regulating the transactions on the basis of SPA/GPA/Will by the concerned offices i.e. Estate Office, Chandigarh Housing Board, & Municipal Corporation, Chandigarh and the same shall be observed meticulously while handling such cases -

- (i) The GPA/SPA cannot be treated as instrument of transfer of title as per the Transfer of Property Act. Therefore, no transfer of title or mutation shall be carried out merely on the basis of GPA/SPA. The Wills executed along with such GPA/SPA shall also not be considered for effecting mutation.
- (ii) These instruments (GPA/SPA/Will) can be used for getting the conveyance of title deed executed/registered and only on the basis of such conveyance deeds executed by the GPA directly or by an order of a Court, the mutation shall be carried out. In case of leasehold properties also, mutation shall be affected only on the basis of a registered Transfer Deed of leasehold rights.

**FINANCE DEPARTMENT  
ESTATE BRANCH**

- (iii) The GPA transactions entered on or before 11.10.2011 shall be considered only for regularization of title/ownership in respect of any immovable property by executing deeds of conveyance. The mutation already entered before 11.10.2011 on the basis of GPA/SPA/Will shall not be disturbed or unsettled in any way due to issuance of these instructions.
- (iv) The GPA/SPA executed in favour of a family members/relatives or any other person for valid purposes for management of properties or to execute deed of conveyance or a land developer or builder for developing the land or any other similar purposes, shall not be affected by these instructions.

These instructions shall be followed meticulously in letter and spirit and its non-compliance shall be viewed seriously.

Administrator  
Union Territory, Chandigarh  
(By order and in the name of Administrator)

Date 15.12.2017

No. 45/5/22-UTFI(5)-2017/14200

Dated 19-12-2017

A copy is forwarded for information and necessary action to the following:-

1. Chairman, Chandigarh Housing Board, Chandigarh
2. Estate Officer, UT, Chandigarh
3. Commissioner, Municipal Corporation, Chandigarh
4. Secretary Cooperation, Chandigarh Administration
5. Registrar, Cooperative Societies, UT, Chandigarh
6. Collector, U.T, Chandigarh

Additional Secretary (Estate)  
For Secretary Estate  
Chandigarh Administration

*pl. take up immediately  
22/12/17*

*CAO*