

Genesis of AWCHSL

Army Welfare Housing Organisation (AWHO)

Army personnel suffered for years after independence because even when close to retirement, they seldom got a posting to the city of their choice; and even if they did, it was never for a sufficiently long enough period to enable them to build a house. To overcome this problem, the Army Welfare Housing Organisation (AWHO) was created by the Army and registered in New Delhi under the Societies Registration Act XXI, 1860.

Aim of AWHO

Its aim of AWHO was to promote appropriate housing schemes at various stations for serving personnel and ex-servicemen within the rules and regulations of concerned civil authorities.

The Welfare Aspect

‘Welfare’ implied the following: -

AWHO would procure land from state governments / UTs/ private owners and build houses for army personnel in major cities all over India; on ‘no profit no loss’ basis.

The homes / flats would be constructed as per standard approved drawings to meet various requirements of all ranks of the army; and offer them to service personnel on ‘first come first served’ basis

Convenient modes of payment were offered and housing loan could readily be obtained from HDFC/AGIF.

If the allottee happened to still be in service, the MES would rent the dwelling unit (DU) for use of other military personnel in station and make it available it to him whenever required.

Needless to add, the scheme became immensely popular and AWHO-constructed complexes sprang up in several cities in India. Pune was one such city where there was sufficient demand for AWHO to consider constructing a residential colony; which is how Salunke Vihar (the first of three AWHO colonies in Pune) came into existence

Land

In pursuance of its mandate, in 1980, AWHO approached the Government of Maharashtra for allocation of land, for the purpose of building a residential

complex at Pune. The Govt. Of Maharashtra while allotting the land made three stipulations which were reproduced by the Collector of Pune in his land Allotment order mentioned below.

See Appendix A for Govt of Maharashtra letter on the subject.

Details of Land Allotted.

The Government of Maharashtra was pleased to accord sanction for an area of land measuring 33 acres and 40 ares (i.e. 33 acres and 20 guntas), at Survey No.19/1/2 at Kondhwa Khurd, Taluka Haveli, Pune; at a provisional occupancy price of Rs 3,35,000/- vide its Revenue and Forest Department Memorandum No. LND/3479/5121-G-3 dated 11th June 1980. This price was later confirmed as then current market rate by the Town Planning Dept.

Stipulations by the Government of Maharashtra

The Government of Maharashtra while allotting the land made certain stipulations: -

- a) Number of Dwelling Units (DUs) – The number of members to be accommodated shall not be less than 1728.
- b) Clearance Under ULCA. Necessary clearance shall be obtained under the Urban Land (Ceiling and Regulation) Act 1976, from the concerned corporate authority.
- c) Payment of Interest on Difference in Initial and Final Payment. 8% interest shall be paid on the difference between the provisional occupancy price and the final occupancy price. (There was however, no payment of interest because the provisional occupancy rate and current market rate were later confirmed by the authorities to be the same).

The Collector was free to impose any other conditions he deemed fit, as necessary.

Occupancy Price

Collector's Land Allotment Order. Collector Pune granted the subject land vide his Order No. PRN-348-III dated 30th June, 1980 (see Appendix 'B' for full text of the order). This order contained 19 conditions including the three specified by the Government of Maharashtra. The Order also directed the Tehsildar, Haveli to receive the provisional occupancy price and hand over possession of the land to AWHO.

The provisional occupancy price of Rs 3,35,000/- was paid by AWHO on 30th June 1980 and receipt obtained. The land was physically handed over to AWHO on 3rd July 1980 and necessary entry made in the revenue records accordingly.

After re-ascertaining the market price, the Government of Maharashtra confirmed to AWHO that the final occupancy price remained Rs 3,35,000/- .Since there was no difference between the provisional and final occupancy price, the condition of payment of 8% interest was waived.

Designated as Occupant Class II

The payment of full market rate is of importance because Clause 13 of the Collector's Order reads "that the Society shall hold the land on inalienable and impart tenure as Occupant Class II". This was unfair since AWHO had paid the full market rate and had every right to demand that it be treated as a Class I occupant. However, for reasons best known to AWHO alone, AWHO did not contest the clause at that stage and accepted it along with all the other clauses of the order. The implication of being a Class II occupant was that AWHO/AWCHS had to go back to the Collector every time and obtain his approval for even the slightest administrative action concerning the society like renting of flats or taking on new members. This has proved irksome and successive management committees have been trying, unsuccessfully to date, to have some of the undesirable clauses removed.

Two other important implications are that

- a) should the society ever want to convert to Occupant Class I (meaning that the land becomes a free- hold purchase), it will need to pay 'Nazrana' amounting to crores of rupees.
- b) Being Class II occupant and subjected to Collector's approval for all matters relating to land ensures that neither the society nor its individual members can commit any hanky-panky for illegal gain. The society felt comfortable with this clause since it protected its interests and hence was not keen to pursue the matter. AWCHS continues to remain a Class II occupant to date.

Other Important Clauses of the Collector's land Allotment Order

The other important clauses deserving of particular attention are briefly: -

- The Society should prepare layout plan and building plans and get both approved from the Collector as well as from the PMC.
- The land shall be used for housing purposes only and for no other purpose whatsoever.
- The land or any part thereof shall not be sold, mortgaged, leased, transferred or in any other alienated except as provided in Sec 36(4) of the M.L.H. Code 1966, without prior written permission of the Collector.
- No new members shall be enrolled without the prior permission of the Collector.
- Any breach of condition shall make the land resume-able without compensation.

- Society shall execute an agreement to the effect on Form XII.
- That the society shall not enrol any new member without the prior permission of the Collector.
- That the houses in the society shall not be rented out without the prior permission of the Collector.
- That the society shall not sub-divide the land or any part thereof, nor shall sublet, transfer, assign or in any way alienate the land or any part thereof or its interest therein without the prior permission of the Collector and the Collector may if he so considers while granting permission impose such conditions including payment of premium to government as considered appropriate.
- That the grant is subject to reservation of the right of Government to all mines and mineral products and quarries in the land and the Government shall be at full liberty to free access the same as provided for in MLRC 1966.
- If the land or any portion thereof is required by the Government at a future date, it shall have the right to resume such land and pay compensation for land and property as decided by the Executive Engineer Public Works of Housing Division, whose decision shall be final.
- That the society shall pay the N.A.A. for the land regularly as informed by the Collector from time to time.
- That the society or its members shall not utilise the land directly or indirectly for commercial, business or professional purposes.
- That the society will plant, within two years of allotment of the land suitable species of trees at the scale of one tree per 100 sq metres.
- That the society is liable to be evicted, and land and property confiscated without payment of any compensation if any conditions are violated,
- That if any member commits a breach of any of the conditions laid down and the society fails to remedy the breach, the society itself will be treated as the offender and make itself to liable to action as mentioned in (o) above.

Because of the Collector's condition that the land cannot be sub-divided in any manner, AWCHSL had no choice but to apply to be a Tenant Co-partnership Society.

Changes Sought in Conditions

Immediately after taking possession of the land, AWHO initiated two immediate actions:-

- 1) It set in motion the process with civil authorities/PMC for obtaining commencement certificate for construction work.

- 2) It approached the Collector for changes in certain conditions which it found difficult to implement.

AWHO requested the Collector's office for the following: -

- a) It was not possible to construct 1728 DUs because of topographical conditions.
- b) Members had paid for the land; as such the society to be formed by the members should be made initial allottee in place of AWHO.
- c) Condition about transfer of land required to be modified so that its transfer on completion of the project to the society to be formed by the members was facilitated.
- d) Condition of renting the house should not be included as serving service personnel may not be able to occupy their DUs immediately due to service requirements.

'Tenure' Clause Included in Form XII by Collector.

According to this clause, AWHO could transfer the land either to its members or the society formed by its members. Since the Agreement between AWHO and the Collector was signed by the Collector himself this constituted 'prior permission' of the Collector for effect of the transfer and no separate permission needed to be sought for effective transfer.

Commencement Certificate Issued

Consequent to the representation made by AWHO, a series of discussions were held by AWHO officials and members with the revenue authorities to resolve these problems so that all actions AWHO (or later AWCHS) would be within the framework of conditions laid down by the Collector. Due procedure was followed by AWHO with civil authorities and commencement certificate was issued by PMC vide their letter No DPO/663 dated 10th July 1981.

Phases of the Project

Construction was planned in phases and completed as indicated below:-

Phase I – Completed in 1985.

Phase II – Completed in 1986.

Phase III – Completed in 1988.

Phase IV – Completed in 1990.

Occupancy Certificates for Phase IV

AWHO started handing over possession of DUs to allottee members as and when each Phase was completed. Allottee members of Phase I started occupying their DUs in 1985.

While occupancy certificate for Phases I, II and III were obtained by AWHO, PMC was unwilling to hand over the occupancy certificate for Phase IV since some of the members of the earlier phases had in the meantime carried out additions / alterations to their houses. This was regularised by allotting additional FSI in some cases and through resolution passed in the AGM. This resulted in the 1994 PMC approved layout plan. PMC was finally persuaded by AWCHSL to delink the earlier three phases since they were already complete, and deal only with Phase IV.

Since AWCHS was pressurising AWHO to hand over the land and property, AWHO insisted that in that case, AWCHSL should take on the responsibility of obtaining Phase IV occupancy certificate from PMC directly, which was accepted by AWCHSL, in good faith, and is so mentioned in the sale deed.

AWCHSL applied to PMC to take the benefit of an amnesty scheme announced by PMC and necessary development charges were paid. However PMC maintained that amnesty scheme applied to individuals and not to entire societies. Consequently, Occupancy certificate for Phase IV could only be got issued by PMC on 25 Oct 2016. PMC waived the payment of penalty. This was possible mainly due to the efforts of the Kondhwa Corporator, Smt Nandatai Lonkar and her husband Shri Narayan Lonkar of the NCP.

However there is still a problem with two buildings K-6 (4 DUs) and B-8 (3 DUs) and also the 35 Car Garages and 12 Scooter Garages in addition to the construction made through additional FSI granted to several MSBs and Twin Units.

The PMC worked out the details and submitted a demand of more than Rs 3 Crores to regularise the so called illegal construction of two flats in B-8 block and four flats of K-6 Bldg. Our pleas to exempt the penalty or declare another amnesty scheme fell on deaf ears.

Finally, the Society sought the help of Shri Sharad Pawar, NCP leader, who was kind enough to hold high level meetings in the Mantralaya attended by the Revenue Secretary and representative of Commissioner PMC. Shri Pawar directed that being a military society, penalty be reduced to the minimum. This was agreed. As of date (June 2022) indications are that the penalty will work out to about Rs 25 lakhs subject to its being passed by the PMC General Body.

The PMC Commissioner has promised to act promptly once the resolution is passed by the GB of PMC. AWCHSL on its part has expressed its willingness to pay the reduced penalty of Rs 25 lakhs and settle this contentious issue once and for all.

As of 2nd June, 2022, the issue is yet pending.

Types of Co-operative Housing Societies

In MCS Act 1960 there are three types of co-operative housing societies specified:-

- Tenant Ownership Housing Society. In this type of society the land is divided into plots and distributed to the members on lease basis, along with the property. This does not apply to AWCHSL since the land cannot be divided among its members nor disposed of by them. The land has to be held as an undivided whole; as one entity.
- Tenant Co-partnership Housing Society. This type of society implies collective ownership, since all the land and property has been paid for by respective members of the society. The 7/12 extract for the land is held by the society on behalf of the members and members get Index 2 to prove allotment of their DUs. The land belongs to AWCHSL & not to AWHO.
- Both AWHO and AWCHSL have submitted to the Revenue Minister who heard our case to transfer the title of the land back to AWCHSL. In Feb 2017 the final decision of the Hon. Revenue Minister regarding ownership of the land has been received in writing.
- Other Housing Society. This is applicable to Mortgaging / construction type of societies and not to AWCHSL.

There is no such thing as a Maintenance Society. That name merely describes one of the functions of a society.

AWCHS Comes Into Being

Discussions over transfer of land to the members continued with the revenue authorities. In a meeting held with the Commissioner (Major) Sidhu in April 1984, the Commissioner advised AWHO to get the members to form a cooperative housing society and offered one of two solutions:-

Leasing of land by AWHO to the society. (This option was not feasible because land was paid for by the members and not by AWHO. Hence such leasing would be legally improper). Or

Apply to the Collector to allow the land to be transferred to the society.

The Regional Director of AWHO recommended to AWHO to have the members of the Pune Scheme to form a cooperative society under the MCS Act.

Soon thereafter AWHO wrote to all AWHO projects to have form cooperative societies and have them registered under the rules of the respective state governments.

Promoters of the Society

On 17th March 1984 a Promoters Group for forming a society was convened by the following:-

Lt Col P. Nath – Chairman

Maj S. S. Walia – Secretary

Capt Chandrashekhar – Head Clerk

Lt Col P Nath was thus the first person to become Chief Promoter. He, however, resigned and at a meeting of the promoters on 18 Sep 1985, Lt Col P V Padsalgikar was elected as the Chief Promoter in his place.

The list of promoters on Page 43, of the very first bye-laws, approved by the Deputy registrar, includes the following 22 names –

Col S Ambre (J/26), Lt Col D L Mahajan (E4/7), Brig B S Badhwar (B7/11), Lt Col S V Edke (D6/6), Brig K P Mehwala (D12/3), Capt D N Gurav (A11/4), Capt V N Joshi (D16/4), Maj Gen S Krishnamurthy (D10/5), Lt Col Vasant kale (F4/6), Sub Shivaji Nikam (A10/3), Sub Maj A Dhamal (B11/10), Hav P G George (A4/12), Lt Col Sathe A P (A8/4), Brig K B Malik (E3/5), Brig G S Ahlowalia (J3), Hav A A Thakar (A12/9), Lt Col R C Joshi (E5/6), Brig P S Uberoi (C1/3), Lt Col V G Athavale (C3/7), Lt Col B K Rajput (Retd) (H2/6), Sub Maj G George (B10/8) and Lt Col S S Bonsor (G15)

Registration and Name of the Society

Since AWHO would have to hand over the land to AWCHSL as required by the MCS Act, AWHO approached the then Commissioner Pune, (Major) Sidhu for advice on how to go about it. On 17th April 1984, the Commissioner confirmed that it was possible to change the allotment of land from AWHO to our society. He felt that AWHO had two alternatives -

- Hand Over the Land on Lease to the Society. This option might have been feasible if AWHO had paid for the land. But it had not. The land was paid for by the members who registered with the AWHO for allotment of houses in Pune project of the society. This option was therefore discarded by AWHO.
- Form a Cooperative Housing Society and Approach Collector for Notification. The Commissioner felt that it would be best if the members formed a cooperative housing society and the land was transferred to them with the Collector's approval.

Consequently AWHO was contemplating formation of a society (Salunke Vihar). The Regional Director gave his views on the subject vide his letter No. B/03003/4/SR/AWHO dated 18 August 1984. He recommended that at Pune, a cooperative housing society should be formed. AWHO vide its letter No. B/03001/60/AWHO dated 11 March 1985 also informed all its members that the co-operative housing society for AWHO complexes will be registered under respective States Co-operative Societies Act. On 19 March 1985 the Chief Promoter of Army Welfare Cooperative Housing Society submitted an Application to Dy. Registrar Co-operative Societies, Pune City for registration of our society under the provisions of Sec. 8 of Maharashtra Co-operative Societies Act (MCS Act) 1960 and Rules 1961.

The Dy Registrar of Co-Op Societies approved the application and the Society was registered vide Registration Certificate No. PNA/ (PNA)/ HSG (OH)/331/ 85-86 dated 09 April 1986.

The allottee members had started occupying their DUs in 1985. Vide a letter dated 11th March 1985, AWHO New Delhi, informed all its members of various housing schemes that that cooperative societies for the AWHO complexes are to be registered under respective state cooperative acts. Accordingly on 19th March 1985 these founder members acting as promoters decided to name the cooperative society as ARMY WELFARE CO-OPERATIVE HOUSING SOCIETY LTD (AWCHSL), with sub-classification 'Tenant Co-partnership Housing Society' for obvious reasons of conditions of allotment of land, and applied accordingly to the Dy Registrar of Coop Societies, Pune City for registering the name.

The Dy. Registrar of Coop Societies, Pune City vide letter No. 1191/Pune City/D-II/HSG(P) Army Welfare/Bank-ACT/ 85 dated 20TH March 1985 (the letter is in English script) informed the promoters that the name ARMY WELFARE COOPERATIVE HOUSING SOCIETY is reserved for the proposed society. The letter of the Dy Registrar Cooperative Societies, Pune City, however, stipulated that the registration proposal be submitted within a period of three months. He also granted permission to open a bank account on the same name with Pune District Central Coop Bank Ltd. Camp Branch, Pune.

At a meeting held on 11th May 1985, the Dy. Registrar Cooperative Societies, Pune City was requested to further extend the period of three months. The promoters followed up the request with a written letter dated 3rd June 1985. The Dy Registrar Cooperative Societies, Pune City extended the period for submission of the proposal up to 20th September 1985 vide his letter No. Pune City/Nond. Kra./Griha Ni /(Ni)Army Welfare/Bank Acct/85 dated 3rd June 1985.(This letter is in Devnagri script). The letter confirmed the name as well as permission to open the bank account. Being in Devnagri script, the proposed name was indicated as "ARMY WELFARE SAHAKARI GRIHA RACHANA SANSTHA MARYADIT".

The Chief promoter of AWCHSL submitted the proposal on Form 'A' on 11th December 1985. A registration certificate No. PNA/(PNA)/HSG(OH)/331/85-86 dated 09 April 1986 was issued in the Devnagri script by the Dy. Registrar Cooperative Societies, Pune City. It registered the name of the Society as "ARMY WELFARE SAHAKARI GRIHA RACHANA SANSTHA MARYADITH".

This original certificate was taken away by the Pune Police as evidence in the case of assassination of Gen A S Vaidya and as on date (17th Feb 2017) a CTC of the original certificate obtained from the Dy Registrar of Cooperative Societies, Pune City hangs framed in the Chairman's office for the time being. The original Registration Certificate was signed by Shri S B Bangal, the then Dy Registrar of Cooperative Societies, Pune City, and the copy of the said certificate is in the 'A' File of the Dy-Registrar's office .

In September 1985, AWHO had submitted to the Registrar of Cooperative Societies that the land and the property thereon was being transferred to AWCHSL. This was in compliance with Rule 4(c) of Maharashtra Cooperative Societies Rules 1961. Since AWCHSL was registered in April 1986, a meeting of founder members who had already occupied their DUs was held on 20 May 1986 to approve the first set of Bye Laws.

The MOFA Model

Agreement between the MOFA Model and Sub Classification. The Society is registered under the Maharashtra Co-operative Societies Act 1960 with classification as 'HOUSING SOCIETY' with sub-classification as 'TENANT CO-PARTNERSHIP HOUSING SOCIETY' as approved by the Registrar of Societies. In the AGM of 11th November 1990 the matter of registering of flats was discussed and it was resolved that we opt for Maharashtra Ownership of Flats Act 1963 (MOFA) model which was in keeping with collective ownership of land and property by AWCHSL implying 'Tenant Co-Partnership Housing Society' as the sub-classification. The bye-laws of the Society were approved by Dy. Registrar Pune City vide his letter no. 331/7/93 dated 6th November 1993. These Bye laws also indicate sub-classification as 'Tenant Co-partnership Housing Society'. This also accords with the Land grant order of the Collector Pune dated 30th Jun 1980 which forbids the division of land into plots, which is a basic requirement of 'Tenant Ownership Housing Society(plot Type)'.

Brig G S Ahluwalia, the then Chairman of the Society, wrote a DO letter to the MD AWHO explaining the implications of Acts under which to transfer land and assets to AWCHSL. In addition, a referendum was held by AWHO to obtain opinion of allottee members, in a letter addressed to them, as to whether to use MOFA 1963 or Maharashtra Apartment Owners Act (MAOA) 1970, to transfer land and assets held by them to AWCHSL. An overwhelming majority opted for MOFA 1963 model.

A Special GB meeting called by some members of the society (led by Lt Col B F Chaudhari) on 29th Jan 2017, as a consequence of a criminal court case against AWHO by Ex-Capt P S Chandiok, the society, and certain past MC members, resolved to reaffirm and reiterate the decision taken in the General Body of 11th November 1990 regarding registering the property collectively on the basis of the MOFA (Maharashtra Ownership of Flats Act 1963) model. The conveyance deed executed in pursuance thereof, also accords with the sub-classification of the Society as ‘tenant co-partnership housing society’, which also implies collective ownership.

Adoption of Bye Laws

The very first General Body Meeting held on 20 May 1986 had resolved to accept the bye laws for a housing society with sub-classification as “Tenant Co-partnership Housing Society” which implies collective ownership. This was approved by Dy. Registrar – Pune City (2) vide his letter No. Administration/House Building/331/7/1993 dated 6th November 1993.

This problem of differing descriptions of the society in the bye laws and the registration certificate was resolved in December 2004 by the Dy. Registrar Pune City (1) after ratification by the GB and as of today the society is a classified as ‘HOUSING SOCIETY’ with sub-classification of ‘TENANT CO-PARTNERSHIP HOUSING SOCIETY’. However approval of our latest amended bye-laws and new registration certificate are awaited.

It is of interest to record a Bombay High Court ruling in the case of Apsy Chenoy and Others vs the Govt of Maharashtra (Writ Petition No. 713 of 2001). In effect, the court ruled that “----- Although it has been classified by the Registrar as a General Society it answers to the description of a tenant co-partnership society found in Rule 10(1)(5) of the rules framed under the MCS Act 1960 --- and would for all purposes be legally treated as a cooperative housing society”. See Appendix N.

The MC decided to resubmit the Adoption of New Model Bye Laws to the Society with some few changes as per the Classification of the Society and Eligibility Criteria.

Controversy About the Name of the Society - Appeal by Lt Col (Retd) V K Johar and Ex-Capt P S Chandiok

Lt Col (Retd) V K Johar and Ex-Capt P S Chandiok submitted an application on 3rd August 2010 before the Divisional Jt. Registrar, Cooperative Societies, Pune complaining that the Managing Committee was functioning under the name Army Welfare Coop. Hsg. Society whereas the registered name is “Army Welfare Sahakari Griha Rachana Sanstha Maryadith”.

The Divisional Jt. Registrar, Cooperative Societies, Pune heard the case and ruled that as per records, the name of the society was Army Welfare Sahakari Griha Rachana Sanstha Maryadith (i.e. Army Welfare Coop. Hsg. Society). Since both names were applicable and meant the same, he rejected their application on 29th march 2012.

The Divisional Jt. Registrar of Cooperative Societies also advised the Society to put up an appropriate proposal before the Dy. Registrar of Coop. Societies to resolve the issue under the provision of law. Accordingly the society submitted on 28 Feb 2012 a proposal for change of name to the Dy. Registrar of Coop. Societies, Pune City(1). The Dy. Registrar of Coop. Societies, Pune City (1) advised the society vide letter dated 13th March 2012 to forward the case duly supported by a general Body resolution. The GB passed the resolution to the effect that the name of the society shall be Army Welfare Cooperative Housing Society, at a SGM held on 20th May 2012.

In the meantime, Lt Col (Retd) V K Johar and Ex-Capt P S Chandioke have appealed against the decision of the Divisional Jt. Registrar, Cooperative Societies, Pune and gone to the Minister for Cooperation, of the Government of Maharashtra, on this issue. The case was heard (in 2014?) and ruling given by the Minister in Jan 2016 is in favour of the society that the name of the society is Army Welfare Cooperative Housing Society Limited.

Sale of DUs by Members Restricted Only to Service Personnel.

One important decision initially adopted by the AGM in May 1986, (and reiterated in three subsequent AGMs) requires members of AWCHSL to only sell their DUs to other serving or retired personnel or widows of such personnel. In this manner, the nature of AWCHSL as a society for the Defence Services and would be perpetuated for a considerably longer period and the service ethos of the colony maintained. Of course there would be no bar on civilian children inheriting property as per applicable property laws. However since personnel paid from the Defence Services Estimates include certain categories of civilians (MES, DGOF, DGQA etc.) amended bye-laws revised in Aug 2014 (consequent to issue of new model bye laws) proposed to restrict transfer of DUs to only uniformed members of the three services, whether serving or retired and their widows. The Dy. Registrar only approved the composition of the MC having elected members of the society in Feb 2017. The other provisions of the amended bye-laws submitted by the society are yet to be approved by the Dy. Registrar.

Sub Classification Of The Society

There are three types of cooperative housing societies defined in the MCS Act/Rules

- Tenant Co-partnership Housing Society.
- Tenant Ownership Housing Society
- Other Housing Society.

Change of Sub Classification. Even though the society had applied for sub classification 'Tenant Co-partnership Society' the original certificate indicated the classification as Housing Society and sub classification as 'Other Housing Society' (possibly because the society was neither having the land nor the property built on it, in its name, at the time of registration). When it was noticed the society brought it to the notice of the Dy Registrar to amend the registration certificate. The Dy Registrar agreed to do so but requested an GB resolution with a statement of case to do the needful. The society passed a resolution to that effect in a general body meeting in December 2004,. The proposal for change of sub-classification was submitted with the general body resolution to the Dy. Registrar who after making enquiries passed an order to the effect changing the sub classification to 'tenant co-partnership society'.

In the meantime, because the original registration certificate was taken by the police as evidence in the Gen A S Vaidya assassination case and is lodged in the Supreme Court, as an interim measure, a CTC of the original certificate has been obtained from the authorities and kept securely in the cupboard in the Chairman's office. This certificate is un-tampered in any way. A case is now pending with the DJR & Dy Registrar for issue of Fresh Registration Cert with change in the Sub-Classification and correct name of the Society.

Tenant Cooperative Housing Society

Some disgruntled members of the society are desirous of changing the nature of the society from a cooperative housing society to either a tenant ownership type or have a tripartite agreement between AWHO, Maharashtra Government and the allottee alike the NOIDA AWHO model. They would want the society to be a mere welfare society. Neither option is possible for the following reasons.

Tenant Ownership Type of Society. This type of classification is not applicable to Salunke Vihar because the ground cannot be sub-divided into plots. Vide the Collector's land allotment order, the 33.5 acres of land cannot be sub-divided between owners or be resold. The integrity of the land as one entity has to be maintained as per agreement signed by AWHO with the Collector. Hence the entire land was transferred by AWHO by a conveyance deed to AWCHSL and 7/12 extract was issued in the name of AWCHSL accordingly.

NOIDA Type Tripartite Agreement Not Applicable to Salunke Vihar

Lt Col V K Johar (Retd) had forwarded to this Society Office, a copy of a Supreme Court judgement relating to the AWHO colony built at NOIDA and insisting that it is mandatory for AWCHSL also to follow this tri-partite model. Copies of the Supreme Court order were also sent to some members of AWCHSL.

All members were informed that tenant co-partnership housing society is a legally approved type of society as per the MCS Rules. At the time of creating the society, AWHO had formally ascertained from the then members of the Pune Scheme regarding the type of society they desired to form. The vote was overwhelmingly in favour of a tenant co-partnership housing society. AWHO had also directed AWHO-built complexes to register their society under the cooperative housing rules of their respective states. Accordingly, the sub classification as “Tenant co-partnership housing society” was adopted by AWCHSL and incorporated in its bye-laws.

The tenant co-partnership society was also necessitated by the fact that the Collector whilst allotting the land had stringently laid down that the land cannot be sub divided, leased, rented etc for any other purpose. The ownership and title of the entire 33acre and 20 gunthas and property was transferred by AWHO to AWCHSL by a perfectly legal sale (conveyance) deed. AWHO had paid full occupational price at the then existing market rate for the land and had also paid full stamp duty at the time of transfer. The status granted to us is that of Occupant Class II, meaning that the society requires prior approval of the Collector in all land cases.

The Tripartite Agreement or the NOIDA model, as it is colloquially referred to, is not applicable to this Society and there is no cause for reviewing the formation of AWCHSL Salunke Vihar as a tenant co-partnership society. As inferred from the Supreme Court case, In the case of NOIDA, NOIDA has leased the land to AWHO who in turn has sub-leased it to the owners, necessitating a tri-partite agreement between the lessor, lessee and sub lessee. Also the Supreme Court order refers to Rules/Acts applicable to the state of Uttar Pradesh whereas AWCHSL is controlled by rules enacted by the Government of Maharashtra.

A lease implies a contract granting use of or occupation of property for a specific period in exchange for a specified rent and as per agreed. Whereas, the land belonging to the Society, was paid for as per the market value. The Society has received no orders from AWHO that in view of the Supreme Court order, that societies in all AWHO colonies need to resort to tripartite agreements. Nor does the Supreme Court order mention such universal applicability.

It is a myth that future generations will face problems for lack of clear ownership. In the tenant co-partnership model, all members buy shares from the society which entitles them occupancy rights to their allotted DUs in perpetuity.

The DUs were allotted by AWHO initially and Index II is attached to the Sale Deed. In addition, the Society has issued Allotment Letters re-confirming allotment of the DU to all concerned. So no one need have any fears on this accord. The DU is theirs for all purposes, for all time to come. They have the right to will it to their nominee, or to sell it to a person paid from the Defence Services Estimates as per approved bye-laws.

DUs/garages have been passed on to NOK or sold since the Society was formed. Some DUs have changed hands three to four times. There has not been a single problem, legal or otherwise, in registering the transfer, from either the society or from the stamp duty authorities. On transfer of property, after payment of stamp duty, the new owner receives the Index II in his/her own name.

Residents were therefore advised not to pay heed to any correspondence on this matter emanating from individuals. As far as the society is concerned the matter brooks no further discussion”.

Please see Appendix N for extract of judgement defining status of member in tenant co-partnership housing society.

Efforts to Change Sub-classification From Tenant Co-partnership Housing Society to Flat Owners Society (Sagne Case)

Col C M Sagne, a retired officer of the Corps of Signals, in D15/2 objected to construction of a lift in his block. When all his efforts to stop its construction failed, he turned his sight on other matters; namely converting sub classification of Salunke Vihar from a Tenant Co-partnership Housing Society into a Flat Ownership type of society.

Ms Rajani Sagne, his daughter, approached AWHO who in turn asked for our comments. Our comments are reproduced at Appendix K for record.

See also Appx L for comments from Lt Col B C Joglekar.

Brig S A Deshpande has produced a paper on sub classification of the society and related issues. The paper is reproduced at Appendix M.

AWHO Projects in Maharashtra to be Registered Under MCS Act of 1960
Though not directly concerning AWCHSL, the following information is of relevance whenever members demand that our society must be changed from a coop hsg soc into a purely welfare society.

One of the points discussed at the 121st meeting of the Executive Committee of AWHO held on 18 Aug 2011 in the AG's Branch Conference Room in South Block, Army HQ, New Delhi was Registration of AWHO Societies in Maharashtra under MCS Act of 1960

During the meeting chaired by the AG, Lt Gen Mukesh Sabharwal, PVSM, AVSM**, VSM, Ex officio Chairman, it was brought out that the User Committees of three AWHO projects of Tucker Vihar, Pune, Chain Vihar, Pune and Pratap Vihar, Nashik whose societies were yet to be registered, were demanding registration as Coop Hsg Socs under the MCS ACT of 1960. Besides, Dara Enclave, Nerul, Navi Mumbai wanted to deregister itself from a Welfare Society and re-register as a Coop Hsg Soc under the MCS Act of 1960.

Views of HQ Southern Command were sought since all the concerned projects were located in Maharashtra. HQ Southern Command opined that all housing projects in Maharashtra be registered as Coop Hsg Socs under the MCS Act on account of the following: -

- The act is legislated by the state government.
- The act empowers original allottees.
- The act is more detailed in content.
- Sale of surplus FSI/FAR will be used for welfare of the allottees themselves.
- Prevention of illegal sale or other anomalies can be done by having checks and balances in terms of regulations/bye laws which must be approved by the majority in the elected members of the Housing Societies.

Based on the recommendations of HQ Southern Command, the AWHO Executive Committee permitted registration of the two Pune based projects as Coop Hsg Socs under MCS Act of 1960. In the other two cases, at Nashik and Nerul also, the Executive Committee permitted registration of those projects as Coop Hsg Socs on completion of pending court cases.

Revision Appeal 49 of 2006

Elections to the Managing Committee were held in December 2003. The newly elected Committee assumed the office on 04 January 2004. It was noticed that the sub classification recorded on the Registration Certificate read “Other Housing Societies”.

In 1986 in the first General body meeting, the Society had opted for sub classification “Tenant Co-partnership Housing Society”. It was necessary that the Registration Certificate be amended to include “Tenant Co-partnership Housing Society” as sub classification in place of “Other Housing Society”. On 12 April 2004 the Society wrote to Dy. Registrar Coop. Soc. Pune City (1) to amend the Registration Certificate accordingly. The Dy. Registrar advised vide his letter dated 13 July 2004 that a proposal for change of sub classification be submitted duly supported by a General body resolution to this effect.

The General body had already opted for “Tenant Co-partnership Housing Society” in its very first meeting in 1986. The was discussed with the Dy. Registrar on 10 September 2004 and a Statement of Case was put to the Dy. Registrar to change registered sub classification “Other Housing society”. The Dy. Registrar changed the sub classification under his powers acquired U/S 12 (2) of MCS Act vide his Order dated 20 December 2004.

Lt. Col. Johar and Ex. Capt. Chandiok challenged this vide their Appeal dated 21 August 2006 before the Div. Jt. Registrar Coop. Soc. Pune.

The Society applied on 10 October 2006 to the Div. Jt. Registrar for admission as Third Party.

Applicants Lt. Col. Johar and Ex. Capt. Chandiok remained continuously absent during successive hearings of their application. As a result Div. Jt. Registrar disposed off the application on 03 October 2007. On 20 October 2007 the Applicants prayed for restoration of their Appeal and submitted a fresh ‘say’.

On 03 August 2010 Lt. Col. Johar and Ex- Capt. Chandiok challenged the jurisdiction of the Society on the ground that Army Welfare Cooperative Housing Society is not the registered name of the Society. The proceedings were held in abeyance vide Div. Jt. Registrar Cooperative Societies Order dated 27 December 2010 till disposal of Application dated 03 August 2010. Div. Jt. Registrar Coop. Societies called for a Report from the Dy. Registrar Coop. Societies Pune City (1). Dy. Registrar Coop. Societies Pune City (1) submitted his Report on 20 March 2011. He confirmed that there was no change in the registered name of the Society.

Div. Jt. Registrar Cooperative Societies rejected the Application of the Complainants vide his Order dated 04 February 2012. He also ordered that hearing should continue.

Implication of Tenant Co-Partnership Housing Society

The implication of being a tenant co-partnership type of society is that all the land and property constructed thereon in such a society belongs to the society. Members buy shares in the society on the basis of which they are permitted to occupy their flats / houses in perpetuity. AWCHS passed a resolution in an AGM in ----- that members could only sell their DUs to other service personnel; since the land was sought from the Maharashtra Government solely for the purpose of constructing residential accommodation for service personnel.

Many residents would prefer tenant ownership type of society in which they are owners of the land and the DU and can sell it at will to anybody they choose.

AWCHS has to compulsorily be a tenant co-partnership society because the Collector’s order which expressly prohibits any breaking up or sub allotment of

land. Also AWHO handed over the entire land as one undivided entity to AWCHS.

Facts About Salunke Vihar As Recalled by Brig S A Deshpande, VSM (Retd), Former Chairman AWCHSL:-

“In accordance with its charter AWHO initiated a scheme for housing at Pune. In 1975/76 AWHO approached GoM for grant (allocation) of land for its Pune scheme.

In July 1977 GoM passed a resolution for allocation of land to AWHO. The then Market value of land in around Survey No. 19 at Kondhwa, PUNE was obtained from Town Planning Dept. PUNE. The estimated Market Value at that time was Rs. 25,000/- per hectare. Thus the provisional cost of the land was Rs. 3,35,000/- The GoM issued instructions on 11 June 1980 to Collector, PUNE to allot the land to AWHO.

On 30 June 1980 the Collector, PUNE issued his order for allocation of the land. The order contained a number of conditions. The mails on this subject have addressed these conditions. I will address only two points. Condition 19 lays down that AWHO has to execute an Agreement on FORM XIII (In fact it is FORM XII) given in the MLRC Rules 1971. Secondly the Tehsildar Haveli was asked to hand over the possession of the land after recovering the provisional Occupancy price.

AWHO made the required payment on 30 June 1980. The possession of the land was given on 03 July 1980 and necessary entry was made in the Revenue records (extract of 7/12) vide Mutation Entry No. 1740 date 03 July 1980. AWHO had realized that on completion of the project the land will have to be transferred to the Co-OP Society formed by the members. AWHO was of the view that the land be allocated to the Society so formed and hence did not execute the Agreement on FORM XII immediately on getting the possession of the land. Instead AWHO took up the matter with the then Commissioner. In 1984 the Commissioner advised AWHO to form the society so that the matter can be taken up to change the allocation in the name of the society in place of AWHO.

The PUNE Project was planned to be executed in IV Phases. Even though the Project was not complete it was decided by the allottee members of the initial phase to form the C-Op Society under the MCS Act 1960. The initial members who were given possession of their DUs formed a promoters Committee. This Committee took up the matter to register a cooperative housing society.

In 1985 AWHO issued a letter to its members of all the projects that they register their society under the Cooperative Societies Act of the respective States. Accordingly the PUNE society was required to be registered under MCS

Act 1960. As per Rule 10 of MCS Rules 1961 a housing society has to have land/ buildings or both for registering itself as a housing society. In March 1985 the Users Committee applied to the Registrar Cooperative Societies for reservation of the name as “Army Welfare Cooperative Housing Society Ltd” (AWCHSL). The requested name AWCHSL was reserved for our society. As per Rule 4 (1) (c) a society can be registered provided it will be acquiring the property either through purchase or transfer. In September 1985 AWHO gave an undertaking to the Registrar of Cooperative Societies that the land will be transferred to the AWCHS. The society was registered on 09 April 1986.

Construction work of Phase IV of the project was nearing completion in 1989. In view of this AWHO decided to complete its obligation to execute an Agreement on FORM XII. Accordingly a draft of the Agreement was forwarded to the Collector, PUNE in December 1989 for his approval. The Project Director, PUNE personally met the Collector, PUNE and discussed the proposed draft with the Collector. The draft took care of the aspect that the land would be transferred to AWCHSL at a later date. This met the requirement of transfer of land as laid down in Condition No. 6 of the Collector’s Order dated 30 June 1980. The Agreement was executed in September 1990 and the Collector countersigned the same to record his approval.

There were some problems regarding Occupancy Certificate for Phase IV. In 1993 the GoM announced an Amnesty scheme for payment of Stamp Duty and Registration of the property. AWHO and AWCHSL agreed that the conveyance of the land and the property be done to save subsequent penalty. Accordingly in 1993, AWHO forwarded the details of members, their allotted DUs and the cost as per AWHO records to AWCHSL for verification and updating. After verification and corrections in 1995, both AWHO and AWCHSL jointly submitted these documents with the required Affidavits to IG Stamp Duty and Registration for assessment of Stamp Duty. Gen. Krishnamurti and Col. S. Ambre relentlessly made efforts with IG Stamp Duty and Registration, to get the assessed Stamp Duty. The final orders were obtained in 1996.

For completing the formalities AWHO asked the society to delete certain bye laws as they were not consistent with AWHO conditions. In June 1996 the requirements of AWHO were met at a Special General body Meeting. In August 1996 the Stamp papers were purchased by the society. These papers were valid for a period of six months. It is to the credit of Gen. Pandit that these six months were utilized to accommodate maximum members so that they can avail this concession. The society submitted the Conveyance Deed for registration on 20 February 1997.

The Deed has two Schedules attached to it. Schedule I gives the details of the land and Schedule II gives the details of our DUs. These details include the title to the DU in the name of the respective member. The Conveyance Deed is a registered legal document and the Schedule II clearly establishes member’s title to his DU leaving no doubt regarding the ownership of the DU.

The committee which was in the office from 2010 to 2012 was seized with this problem. The MC approached the Stamp Duty Authorities for issue of Index II for individual DUs. This was not permissible under the Rules. The MC obtained an authenticated copy of the Conveyance Deed including the copy of Schedule II. This copy is held in the society office and a member can always obtain a certified extract pertaining to his DU.

The mails in circulation are dealing mainly with conditions in the Collector's letter pertaining to the land. AWHO had handed over the DUs to individual members on the following conditions:-

- The land will be transferred to the society (AWCHSL).
- The Allottee will become a member of AWCHSL before the Society issues Allotment Letter of his\her DU.
- The Allottee will hold his DU in trust of AWHO / AWCHSL till the land issue is resolved.

All members have agreed to the transfer of land to AWCHSL.

The Committee which was in the office from 2010 to 2012 has issued the Allotment letters to members granting Occupancy Rights of their respective DU. This should put to rest any doubt regarding ownership of the DU.

The sale deed (conveyance deed) dated 20th February 1997 by which the land and property was transferred by AWHO to AWCHSL and got so registered, is a legal and valid document. It was discussed in many GB meetings during 1995 – 1997. The society has paid full stamp duty on the cost of construction as determined by AWHO and the IG Stamp Duty. The legality of this document cannot be challenged before the revenue authorities (decision given by the Revenue Department on 12th March 2015).

Pune Project Named Salunke Vihar

AWHO names its projects after famous decorated soldiers. This practice was also followed in naming the Pune project. On completion of construction, the project was named Salunke Vihar after Sepoy Pandurang Salunke of 15 MLI who was posthumously awarded the Mahavir Chakra on 6th December 1971. He heroically sacrificed his life during the 1971 Indo-Pak conflict. He was mortally wounded by enemy fire after single handedly destroying Pakistani tanks in the western theatre. His brave action removed the impediment to the battalions advance.

A bust of Sepoy Salunke was made and installed on a pedestal right at the entrance to Salunke Vihar. The surrounding garden and clean and serene environs gives the memorial a certain degree of sanctity. The area is always well maintained.

6th December is observed as Veer Salunke Divas by all residents of Salunke Vihar. The bust is garlanded to the accompanying sound of bugles while a 'samman guard' presents arms. Wreaths are placed by leading dignitaries; his inspiring sacrifice in war is recounted. Patriotic songs are sung. The ceremony is followed by a cup of tea for all attending.

Application For Transfer Of Land

Application by AWCHSL As advised by the revenue authorities in 1984, AWCHS submitted an application to the authorities in 1989 for transfer of land to its name as initial allottee. AWHO also supported the move by giving a no objection certificate for transfer of land to AWCHS.

Delay in Execution of Agreement. Members of AWCHS had paid for this land and AWHO was to transfer it to AWCHS on completion of the project. Since the transfer was yet awaiting finalisation AWHO had pended executing the agreement on Form XII under MLRC 1971. AWHO felt that as and when AWCHSL was made the initial allottee the agreement on Form XII could be executed by AWCHS directly. However, since there was no Government decision on AWCHSL application and time was passing, AWHO decided to sign the agreement. A draft of the agreement was sent to the Collector in 1989 for his approval.

The Agreement. The agreement between AWHO and the Collector (see Appendix B) was executed on 20 Sep 1990 with a proviso for transfer of land to its members or to the society formed by them. Under Rule 42 of MLRC 1971, the Collector is empowered to add modify any clause in Form XII. Accordingly, Clause 6 'Tenure' was incorporated. By this clause Collector Pune explicitly permitted AWHO to transfer the land to its members or the society formed by them.

AWHO Decides to Transfer Land to AWCHSL. Since subdivision of land was expressly forbidden, AWHO decided to transfer the land 'in toto' to AWCHSL and to so inform each member at the time of his allotment.

AWCHSL Application Forwarded to Secretary Revenue. Processing of the application submitted by AWCHSL was finally completed in 1992 and in November 1992, the Collector forwarded the same to Divisional Commissioner, Pune for forwarding to the Secretary Revenue in the Mantralaya. The Collector also recommended relaxation of certain conditions.

In February 1993, the Divisional Commissioner in turn forwarded the entire file of 167 pages to the Secretary Revenue of State govt also supporting the recommendations of the Collector to relax certain conditions. He further opined that the transfer of land from AWHO to AWCHSL would not attract the provision of 'Nazrana'. The case continues to yet be with the Government.

Announcement of Amnesty

Even as the application was undergoing processing at the Mantralaya in Mumbai, the Government of Maharashtra announced in 1996, an amnesty scheme for registration of property. In the interest of members, the then management approached AWHO to transfer the land and property so that it could take the benefit of the scheme.

Conveyance Deed

Consequently, AWHO conveyed the entire land and property (incl buildings constructed on the land) to AWCHSL through a deed (conveyance/sale deed) on 20th February, 1997. (See Appendix C). The deed also placed on AWCHS the responsibility for obtaining the occupancy certificate for Phase IV construction from the PMC.

Land and Property Registered

The land and property was registered in the name of AWCHS by IG Stamp Duty on 3rd November 1997.

Amazingly the file containing the application as recommended by the Collector and the Commissioner went missing at Mantralaya and efforts to reconstruct it were frustrated since the file in the Collector's office was untraceable and that in the Mantralaya believed to be inadvertently destroyed.

In 2000 AWCHS applied to Talathi Katraj for transfer of land and issue of '7x12 Uttara' extract. Mutation entry 11877 was issued on 16th September 2000. The document refers to an order of the Tehsildar.

Revision of Bye Laws

Before the first set of bye laws could be adopted by the AGM, AWHO insisted that these bye laws be vetted by them to ensure that these were in keeping with AWHO requirements. However conforming to the subsequent changing requirements of the society and changes in rules in the MCS Act, bye laws of AWCHSL were also revised from time to time.

In the meantime, in Feb 2013 the Government of Maharashtra revised the MCS Act to bring it in line with directions issued by the Government of India. New model bye-laws were issued to the public. A committee headed by Brig F T

Rangwala the Vice Chairman studied the changes required to be incorporated in the society's existing bye-laws. The exercise took two entire years. After approval by the GB, the new bye laws were submitted to the Dy Registrar. However due to opposition to 'tenant co-partnership housing society' by vested interests the Dy. Registrar played it safe and approved only those clauses which were as per model bye laws. AWCHS has appealed to the DJR to approve some essential clauses as recommended which affect the nature and functioning of the society.

Composition of Society Changed

One of the important changes brought about by the new model bye laws was the change in the number of elected members in the society. AS against 11 elected members earlier the society was now authorised to have 19 members as under;-

General category – 14
Reserved women's category – 2
Reserved SC Category – 1
Reserved ST Category – 1
Reserved OBC Category – 1.

Another feature of the election was that it was no longer conducted by the society itself but by the state authorities.

Elections to the committee (headed by Col J A Nadkarni) which took over in Feb 2016, were conducted accordingly.

Allotment of FSA

The Managing Committee (MC) of AWCHS formed a committee called LAFCOM (Land Use, Alterations, Additions, Modifications (AAMs) and allocation of Floor Space Index (FSI) to resolve various issues /disputes in the society and laydown guidelines for future use. The committee was headed by late Lt Gen Ashok Chaki (Retd) and had Brig G Athmanathan (Retd) as one of its four members.

The terms of reference were laid out in AWCHS letter No. SV/100 dated 28th December 2004.

Based on the PMC approved '94 layout plan and other AGM resolutions (2000 and 2004), the committee determined the availability of free FSI for further distribution as follows:-

Total area -	1,35,969.92 sq m.
Area under roads -	19,943.00 sq m.
Open space -	14,115.97 sq m.
Common amenities -	7,190.00 sq m.

Net plot area -	94,720.95 sq m.
Area utilised till 1994 -	80,302.59 sq m.
Balance for DUs -	14,418.36 sq m.
Ear marked for Phase IV -	5,471.72 sq m.
Unutilised FSI -	9,013.55 sq m.(incl 66.91 for flour mill and security gate not utilised)
FSI earmark in 94 plan - (part utilised)	5,999.04 sq m.
Balance available -	3,014.51 sq m.

No Further allotment of FSA has been made. In view of the fact that the 7/12 extract again transferred title of the land to AWHO. Members were informed in the AGM in Sep 2013 that no additional FSA can be allotted till the land is restored to AWCHSL

However following submission of petitions by three multi-storey building residents for allotment of FSA, the MC decided, in August 2014, to hasten up the process of further allotment by taking the following steps: -

- Obtaining approval from MD AWHO direct to allot additional FSA.
- Identify and appoint a new society architect.
- Engage in talks with the PMC so that issue of Phase IV occupancy certificate is not unduly held up.

PMC has refused to consider any proposal for allotment of FSA or for sanctioning any works till the OC question was first settled and also till a new layout plan was made and got approved. Of date (May 2022) the question of allotment of additional FSA remains unsettled and pending