

HARYANA SHAHARI VIKAS PRADHIKARAN

Memo No.HSVP/CCF/Acctt-II/2018 157670

Dated: 6/8/18

To

Sh. Mahabir Singh Malik,
S/o Sh. Dharam Singh,
#1342, Sector-24, Panipat.

Subject:- Speaking order passed in compliance of the order issued by the Hon'ble High Court in CWP No.29370 of 2017 titled as Sh. Mahabir Singh Malik and ors. V/s State of Haryana and others.

1. Please refer to the subject cited above.
2. Please find enclosed herewith the copy of speaking order No. 18/2018 passed by the Administrator, HSVP (HQ), in case of CWP No. 29370 of 2017 titled as Sh. Mahabir Singh Malik and ors. V/s State of Haryana and others, in compliance of Hon'ble High Court vide order dated 17.01.2018.

DA/As above:


Chief Accounts Officer,
For Chief Administrator,
HSVP, Panchkula

Endst.No.HSVP-CCF-Acctt-II-2018/-


Dated:

15767172 6/8/18

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

- i. The Estate Officer, HSVP, Panipat.
- ii. The District Attorney, HSVP, Panchkula.

DA/As above:


Chief Accounts Officer,
For Chief Administrator,
HSVP, Panchkula

This speaking order is being passed in compliance of the orders dated 17.1.2018 of Hon'ble Punjab & Haryana High Court in **CWP No. 29370 of 2017 titled as Mahabir Singh Malik and Ors. V/s State of Haryana and other** in respect of Sector-24, Panipat. The orders dated 17.01.2018 are reproduced as under:-

"After hearing learned counsel for the petitioners, perusing the present writ petition and without commenting anything on the merits of the case, the present writ petition is disposed of by granting liberty to the petitioners to file a detailed and comprehensive representation collectively, raising all the pleas as raised in the present writ petition before respondent No.2 within one month from the date of receipt of certified copy of this order. In case, such a representation is filed, the same shall be decided by the said authority by passing a speaking order and after affording an opportunity of hearing to the petitioners within next two months in accordance with law."

Records of Personal hearing

The representation of the Society through Sh. Sanjiv Gupta, Advocate Office cum residence # 1029, Sector-21, Panchkula dated 06.02.2018 received on 01.03.2018 and notice was issued for hearing on 18.05.2018 at 3.30 P.M. The meeting was held with the representatives Sh. Sanjiv Gupta, Advocate & allottees Sh. Mahabir Singh Malik with regard to the points raised in the notice dated 06.02.2018. The main points on which are as under:-

1. That now the enhancement after a gap of 7-1/2 years is made and delay has not been explained and without serving any show cause notice straightway the recovery has been fastened upon the applicants and as such the impugned demand/notice dated 31.05.2017 is liable to be withdrawn. That even otherwise in case 'Charanjit Vs State of Haryana etc.' it has been held that plot holders are not liable to pay interest for a period of compensation and issue of notice. If the authority does not take prompt action in making recovery or deposit the enhanced amount of compensation then the plot holders cannot be made to suffer on that account. The similar view was expressed in Chanderkanta Vs. State of Haryana also and in another case titled as Krishan Gopal Vs State of Haryana etc.
2. In the present case when the plots were floated all these facts were taken into consideration and the rate were fixed as per provisions of HUDA Act. However, while notice dated 31.05.2017 was issued, there is not even a whisper as to how the rate are fixed.
3. That so far as impugned notice dated 31.05.2017 is concerned that is apparently perverse because the calculation for claiming enhancement of amount has been made including the total area whereas the claim has been made against the persons belonging to the allottees of plots. The entire burden has been put upon the allottees of general category whereas your goodself has been considered the HUDA Act and the Rules framed there under. HUDA has kept the commercial sites for sale by way of auction and even the institutional sites such as shopping centre, institutions, Clinic, Nursing home sites, site for petrol pump and a very handsome amount was earned which amount now calculated is higher than the original allotment rates. However, that income has not been adjusted while making calculation for claim enhanced compensation and still there are many more sites,

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residential/commercial sites which are left unsold which will be sold in future by respondents and that proposed amount has not been adjusted. If any enhancement can be claimed the same needs to be worked out after deducting the aforesaid amount.

4. That burden of EWS plot holders also put on shoulders of general category plot holders which is unconstitutional/illegal as to why General Category plot holders will bear the expenses of EWS category in enhancement.

Discussions and Findings

In respect of the issue regarding interest on the enhancement after a gap of 7½ years. The Hon'ble High Court has already settled the law on the issue of charging interest in CWP No. 9202 of 2014 titled as Hindustan Marbles and tiles Industries and ors Vs Haryana State Industrial Development Corporation Ltd. and ors. and held that:-

"It is difficult to understand this grievance. The respondents could undoubtedly have demanded the amount immediately upon enhancement by the Reference Court at least in order to indemnify and secure themselves. They were, however, not bound to do so. Infact by not doing so the respondents were fair to the petitioners. The respondents had challenged the enhancement granted by the Reference Court before this Court by filing a first appeal. This appeal was infact for the benefit of the petitioners. For had the respondents succeeded, the liability of the allottees/petitioners would have been reduced. As far as the respondents are concerned, they could not have demanded the additional price as a consequence of the enhancement in compensation awarded by the Reference Court or even by this Court for by filing the appeal the respondents did not accede to the landowner's right to the same. The time or the occasion to make a demand in turn from the allottees had, therefore, not arisen for the respondents' contention was that the same is not payable. Indeed the respondents could have demanded the amount even before the conclusion of their appeal whether before this Court or even before the Supreme Court by way of indemnity/security and the allottees/petitioners would in any event have been bound to comply with the demand. However, by not having demanded the amount earlier, the respondents cannot be deprived of the interest.

The reliance placed on behalf of the petitioners upon the judgment of a Division Bench of this Court in Charanjit Bajaj and others v. The State of Haryana and others, is not well founded. Hence, this plea is not sustainable in the light of above order of Hon'ble High Court.

There is a lot of litigation and queries from the plot owners about the manner of determination of additional price. A need has been felt to notify the procedure required to be followed while determining the additional price under Regulation 2(b) of Haryana Urban Development (Disposal of Land & Building) Regulations, 1978. Therefore, a policy has now been approved by the HSVP Authority in its 111th meeting held on 27.7.2016 at Agenda item No.22. For the guidance of the public, the guiding principles on the basis of which enhancement is calculated by HSVP are very available on HSVP Website under the link

[https://www.huda.org.in/ layouts/CCF/Recovery of Additional price development of sector 24](https://www.huda.org.in/layouts/CCF/Recovery_of_Additional_price_development_of_sector_24)

Panipat.pdf

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That the petitioners have raised an issue that the revenue from commercial sites ought to be considered and adjusted against the demand of the additional price. This contention is meritless because the additional price is apportioned proportionately on the saleable area which comprises residential as well as commercial area and any other saleable area. It is further submitted that in case of commercial plots, tentative price of land so determined as per Regulation 4 of Haryana Urban Development (Disposal of Land & Buildings) Regulations, 1978, is taken as minimum initial reserve price of auction and allotment is to the highest bidder by auction under Regulation -6 of Haryana Urban Development (Disposal of Land & Buildings) Regulations, 1978.

That a co-joint reading of the aforesaid regulations makes it clear that disposal of land by sale or lease through process of auction is entirely different from disposal of land by sale or lease through process of allotment, with different procedure. The residential plots are being disposed of, through the process of allotment whereas commercial plots are sold by auction. There is no legal provision to recover enhanced compensation from plot-owners to whom allotment was made as a result of auction. Therefore, the amount collected from disposal of the commercial sites through auction by very scheme of the Act and regulations do not affect the determination of the additional price chargeable from the allottees of the residential plots.

But for the purpose of calculation of additional price, the incidence of enhanced compensation on account of commercial area is not cross subsidized or passed on to the residential plot-holders. Any amount payable on account of enhanced compensation of the commercial area is borne by HUDA and is taken outside the purview of the calculations made for determining the additional price payable by the residential. Therefore, for this reason also, the amount recovered from auction of commercial sites is and cannot be taken into account while determining the additional price which is charged from allottees of residential plots.

EWS is subsidized scheme. The Hon'ble High Court in CWP NO. 1483 of 1997 titled as Bishan Sawrup and Ors. Vs State of Haryana and ors. as held that the members of EWS category and those belonging to other categories and if so interpreted, it would mean that the members of the EWS category can be asked to pay enhanced cost in the same proportion in which they had paid the tentative price fixed at the time of allotment.

Conclusion:-

The Calculations of additional price of Sector-24, Panipat have been made reviewed and found as per the above said HSVP policy (Supra).

However, despite of providing full opportunity of hearing, providing information, material regarding method of calculations, policies & guidelines of HSVP in this matter, representative Society fail to brought facts in their support. Therefore, I am of the considered view that the demand notices issued by the Estate Officer, HSVP, Panipat are strictly in accordance with the terms and conditions of the allotment letter and policies of HSVP. Accordingly, the representation is disposed off and no relief is granted to the petitioner.

Hence the orders of Hon'ble Punjab and Haryana High Court dated 17.1.2018 is compiled with.


**Chief Administrator,
HSVP, Panchkula.**