From

Estate Officer-II, HUDA, Gurgaon.

To

Sh. Bhupendra Chaturvedi & others R/o H. No. E-340, Greater Kailash-2, New Delhi.

Memo No.

11962

dated:

12/11/14

Subject:

COCP No. 561 of 2014-Bhupender Chaturvedi and others Vs. Narender Yadav.

With reference to the above mentioned subject, it is intimated that in compliance of orders dated 26.07.2013 passed by the Hon'ble Punjab and Haryana High Court in CWP No. 16003 of 2013 titled as Bhupender Chaturvedi and others Vs. HUDA, speaking order has been passed by the undersigned on 12.11.2014. A photo copy of the speaking order is attached herewith for your information please.

DA/ As above.

Estate Officer-II, HUDA, Gurgaon

Endst No.

dated:

A copy along with a copy of speaking order is forwarded to the following for information and necessary action please:-

- 1. The Chief Administrator, HUDA (Legal Cell), Panchkula.
- 2. The Administrator, HUDA, Gurgaon.
- 3. The Chief Controller of Finance, HUDA, Panchkula.
- 4. Sh. Raman Gaur Advocate R/o H. No. 380, Mamta Enclace, Zirakpur.

DA/ As above.

Estate Officer-II, HUDA, Gurgaon

No 11961 D7 · 12/11/14

SPEAKING ORDER

This Speaking Order is being passed in compliance of the orders dated:26.7.2013 or Hon'ble Punjab and Haryana High Court in CWP No. 16003 of 2013 titled as Bhupende Chaturvedi and others Vs. Narender Yadav, with the direction to consider and decide the representation dated: 17.1.2013 (Annexure P-9) in accordance with law, by passing a speaking order, expeditiously.

Before passing speaking order, this office has given opportunite of hearing to the petitioner on 30.10.2013 vide this office No.9721-32 dated 17.10.2013. The petitione submitted objection vide representation 06.11.2013 which have also been taken into consideration. The case was referred to H.Q. vide letter dated: 21.11.13 and the H.Q. sen the requisited information/comments vide letter dated: 12.8.2014 (copy enclosed) after examination of the matter.

Point wise findings on the representation dated: 17.1.2013 of the petitioners are as under:-

1. Para No.1: The petitioner has submitted that even though they have not been issued possession of plots, yet they have been called upon to pay for the enhanced compensation. Further, the notices are contrary to the principles of natural justice, firstly it does not indicate the reasons for enhancement, nor any details are coming forth as to under which case, the acquisition cost of land was enhanced, the copy of the award/judgement thereof furnished. Secondly, the petitioners were not associated in any manner as to how the calculation has been calculated vide which the enhanced amount has been claimed. It is well established by law that the allottee has to be apprised the bifurcation and on the basis of which the enhancement is sought to be claimed. Further, it is also to be taken in to account the price which the HUDA will get after selling the property which are commercial in nature, for the purposes of hospitals, school etc.

In this regards it is stated that plots are allotted by HUDA on the basis of Tentatve Price. This is clearly mentioned in Clause No.9 of the allotment letter which is as under:-

"The above price is tentative to the extent that any enhancement in the cost of land awarded by the competent authority under the Land Acquisition Act shall also be payable proportionately, as determined by the Authority. The additional price determined shall be paid within 30 days of its demand"

Also Regulation 2(i) of the Haryana Urban Development (Disposal of Land & Buildings) Regulations, 1978 clarifies that tentative price does not include any enhancement that may be awarded by the courts on a reference made under Section-18 of Land Acquisition Act. Therefore, the prices quoted in the allotment letter were tentative and did not include any enhancement compens ation.

The enhanced compensation to be recovered from the allottees, has to be worked out by the Chief Administrator as per Regulation 2(b) of Haryana Urban Development (Disposal of Land & Building) Regulations, 1978, on account of the enhancement of compensation in the particular sector awarded by the Court. There is no condition that the allottees of the particular sector should be associated at time of such calculations.

Regarding the issue raised by the petitioner about passing the enhancement cos on the commercial area, it is clarified that the commercial area of 19.56 acres was loaded with enhancement cost while making calculations of additional price on a/c of enhancement vide letterNo.HUDA-CCF-Acct-II-2012/42609-10 dated: 7.11.2012.

The enhancement is being paid to the land owners against the award announced by the Hon'ble Court and the same are recoverable from the allottees. However the enhancement is chargeable from the allottee under Regulation 10(2) of the Haryana Urban Development (Disposal of Land & Building) Regulations, 1978, because they are the owner and there is no relevancy with possession of the plot.

Para No.2: The petitioner has objected that vide notification under Section 4 of the Land Acquisition Act was acquired for commercial, residential, institutional and open space area for different Sectors viz. Sector-26/A, Sector-27, Sector-28, Sector-52, Sector-57 & Sector-58 Gurgaon. Section 6 notification was issued on 7.4.1998 and the Collector award dated 6.9.2000 assessed the market value @ 12.00 lac per acre for Chahi land, 9.60 lac per acre for Allabarani land. The HUDA authorities calculated the value of the Collector rate as Rs. 177.38 per sq.yd.

Relating to this para, as per Regulation 2(h) of the Haryana Urban Development (Disposal of Land & Building) Regulations, 1978, the fixation of price of the plots is to be done sector wise. The land is acquired for the development of the sector, under various awards. Full calculation of the allotment price, the total amount paid under various awards for the acquired land of the sector, is averaged out. As a result, this averaged out amount was @ Rs. 295.23 per sq.yd. and he same was adopted at the time of price fixation under Regulation 4 of the Haryana Urban Development (Disposal of Land & Building) Regulations, 1978.

3. Para No.3: The petitioner has objected that Sector-57 was carved out plots were allotted to the general public @ Rs. 4500/- to Rs. 4500/-per sq.yd. whereas in respect of preferential plots and S.P. Plots, HUDA Authorities charged 20% extra. As per the information available with the petitioners, HUDA authorities carved out Sector-57 (excluding sector roads and bandh) and out of this area, HUDA authorities had kept land for shopping centre, community centre, school sites, and Nursing Homes/Clinics etc. Remaining land was to be used for development of residential area, which included development of the houses for economically weaker sections (EWS category):

In this regards no contention is raised by the petitioner.

4. Para No.4: The petitioner has stated that undisputedly, the residential plots were allotted to the general public through draw of lots whereas the school sites, nusing homes/clinic as well as commercial sites are allotted through aucion. Further, it cannot be disputed that the residential plots are not sold for the purposes of commercial profits, venturs etc;, since the profit if any, has to be done through selling of commercial plots i.e. shopping centre, schools, nursing homes/hospitals etc. which are sold through public auction, whereas the residential plots are allotted through public draw at a fixed price.

In this regards no contention is raised by the petitioner.

5. Para No.5: The petitioner has stated that though the Sector was floated in the year 200 and allotment letters were issued to the successful applicants in the year 2005. At the allotment, the allottees were required to pay 25% of the cost of the plot and remainin 75% was required to be deposited by them in installments.

In this regards no contention is raised by the petitioner,

6. Para No.6: The petitioner has stated that as such there is complete commercializatio when areas like shopping centre, schools and nursing homes/hospitals etc. which ar sold through public auction, while residential plots are allotted through public draw at fixed price. However, till date the development has not been completed. Neither all th schools have been started nor community centre has been constructed nor the commercial sites have been auctioned so far.

It is undisputed fact that HUDA is an organization established on no prof no loss basis for systematic development of the cities and to provide houses to the resdent without earning any profit.

In this regards it is stated that the contention of development raised by the petitioner is not relevant for the issue being dealt in this Speaking Order. The issue here is determination of additional price under Regulation 2(b) of Haryana Urban Developmen (Disposal of Land & Building) Regulations, 1978 on a/c of enhancement awarded by the court. This has no relation to the development works.

7. Para No.7: The petitioner has stated that the total cost for development of the Sector is to be determined by the authority under Haryana Urban Development (Disposal of Lanc & Building) Regulations, 1978, by taking into consideration the cost of land, cost of development, cost of buildings (Such as community centre) and other direct and indirect charges. The specification for development fixed for HUDA are uniform throughout the State, however, the cost of the land may vary from place to place keeping in view the location of the land, rate of acquisition etc.

In this regards no contention is raised by the petitioner.

8. ParaNo.8: The petitioner has stated that though the HUDA authorities have charged Rs. 3500/- per sq.yd. from the residents of Sector-57, Gurgaon in the year 2004, but elsewhere the charges climed from the residents were lesser even in Gurgaon. For instance for developmet of Sector-2 at Palwal, the plots were sold @ Rs. 1723/- per sq.yd. in the year 2004 i.e. just one year prior to the allotment of the plots in question.

Relating to this para, it is stated that in view of Regulation 2(h) of the Haryana Urban Development (Disposal of Land & Building) Regulations, 1978,a "Sector" means an area of land which forms the unit for purpose of fixation of sale price/premium. Therefore, it is clear that sale price of the plot is to be decided sector wise. The sale price of plot in one sector cannot be regarded as basis to compare sale price of plot in another sector. This is also relevant that Palwal is separate urban estate under Fariabad District since 2004. The comparison of Sector-57 Gurgaon with Sector-2, Palwal is not justified because these sectors are of different Urban Estates and land cost/development cost is different from each other.

9. Para No.9: The petitioner has stated that HUDA authorities have already charged the expected enhanced cost of the land from the allottees of Sector-57, in the year 200 itself, but still now they have given an illegal, arbitrary, exorbitant demands of enhanced compensation to the tue of Rs. 6712.91 per sq./mtr. It is relevant tht Sector-27 which is at the vicinity of Sector-57, therein though the enhancement was claimed at the fir instance @ Rs. 4993.77 per sq.yd. However, when the Resident Welfare Association of Sector-27 filed the writing petition in the Hon'ble High Court, then directions were issued that the members of the Society should deposit the amount @ Rs. 1500/- per sq.yd. and while the Committee would be constituted to re-examine the matter for the purpose of recalculation of the enhance amount, till then enhanced demand beyond that will not be claimed. Further, various directions were issued in CWP No. 581 of 2012, Army Welfare Housing Organization Vs. HUDA and others, decided on 15.3.2012, which were to be dealt with i.e. the basis for demanding enhanced price of plots, give the exact particulars of acquired land and land reserved for various other purposes, furnish particulars which would be just and propr for the adjudication of the case etc.

In this regards it is stated that the enhanced compensation has to be worked out as per Section 2(b) of the Haryana Urban Development (Disposal of Land & Building) Regulations, 1978 according to which the enhanced compensation is to be determined in respect of a sector on a/c of the enhancement of compensation in the same sector awarded by the Court. Therefore the plea of the petitioner to compare the enhanced compensation of Sector-57 with Sector-27, Gurgaon cannot be accepted, because enhancement for each sector has to be worked out separately.

10. Para No. 10: The petitioner has stated that the demand notice of the alleged payment of enhanced compensation has been issued by the HUDA authorities on the basis of the enhancement awarded, however nothing has been spelled out as to what is the award number/RFA number on the basis of which enhancement notices have been issued by HUDA authorities. HUDA has not mentioned the order of the Hon'ble High Court etc. in their demand notices/letters as such the demand notice is without jurisdiction and based upon wrong facts and liable to be withdrawn.

In this regards the enhancement has been calculated on the basis of amount disbursed to the land-owners. The award wise details is given below:-

Award No.	Date	Rate per sq.yd (in Rs.)	Total amount (in Rs.)
11	21.7.2003	253/-	3059757.00
1,12,13 & 14	29.3.09, 21.7. 2003	717/-	229899855.00
10	21.7.2003	888/-	1099591300.00
9	21.7.2003	1697/-	41933256000.00
16	20.12.2005	2106/-	230334548.00
	Grand Total	5661	5756141460.00

11. Para No.11: The petitioner has staed that in the demand notice, the HUDA authorities have claimed interest @ 15% from the allotees, however, the petitioners are not liable to pay interest in view of policy dated 21.12.2006 for the lapses on a/c of HUDA and its officials. As per the said policy, when there is no stay against the enhanced compensation, 100% payment is to be released to the land owners/farmers, subject to furnishing of adequate security or bank quarantee. So that in the event of reduction in

the enhanced compensation by the higher courts, the enhanced amount could easily k recovered and the paymet of the interest, which is @ 15% could be saved. In the calculation, the HUDA authorities have shown the price of the plot allotted to the petition @ 6712.91 per sq.mtr. Further in addition HUDA authorities have charged 20% premius from the allottees of preferential and special preferential plots as referred above.

This issue has already been decided by the Hon'ble Punjab and Haryana High Couvide order dted 8.7.1986 in CWP No. 1270 of 1985 read with CWP No. 1283, 297 and 5794 of 1985 in the matter of Urban Estate Welfare Association (Regd.), Karn Sector-13, Karnal where under HUDA as per page-9 of the order made submission that "Payment of enhanced compensation is made by HUDA out of its own resource and no assistance from the State Govt. or financial institution is available to the Organization for this purpose. Since this amount is to be subsequently recovere from the allottees from over a period of times, it becomes difficult to make payment immediately after the announcement of the enhanced amount of compensation to the District Courts/High Courts. The investment made by HUDA towards the payment of enhanced compensation from its own resources further strains the commitment or development works in other areas. Consequently, a certain amount of delay is inevitable."

The Hon'ble Court held that the amount of enhanced compensation has been paid be HUDA and its burden must fall on all the plot-holders.

12. Para No.12: The petitioner has stated though undisputedly, the school sites, hospitietc. have been sold in open auction, but the amount collected from the auction or the future auctions to be conducted have not been set off against the cost and even the enhanced compensation has not been put on the schools sites, hospitals etc. which are for the purpose of commercial use and would be sold as such. The cost and compensation of the commercial sites cannot be charged from the residents. Similarly the burden of community center and the area allotted to economically weaker section in to be taken in the calculation for the cost of the land and the petitioners cannot be burdened for the same. The HUDA authorities have not included the load of road and open space on the shopping centre area which is also part material for the adjudication of the present case.

First issue: The contention that higher amount collected from auction of school sites an hospitals should be set off against the price of the residential plots. But this issue ha already been decided by the Hon'ble Punjab and Haryana High Court vide order date 8.7.1986 in CWP No. 1270 of 1985 read with CWP No. 1283, 2975 and 5794 of 1985 in the matter of Urban Estate Welfare Association (Regd.), Karnal Sector-13, Karnal where unde HUDA as per page-13 of the order:-

Regarding the second issue raised by the petitioner that the enhanced compensation has not been put on the schools sites, hospitals etc. which are for the purpose of commercial use, it is clarified that the commercial area of 33.33 acres and 5.40 acres for primary/nursery school and nursing home has been loaded with enhancement cost while making calculations of additional price on account of enhancement vide letter HUDA-CCF-Acct-II-2012/42609-10 dated: 7.11.12.

13. Para No.13: The petitioner has stated that though the HUDA authorities are bound to auction the commercial sites an adjust the earning against the total cost of the

development of the sector, but the HUDA authorities have not done so till today thou the sector was floated in the year 2004.

In addition, the HUDA authorities are charging extension fee, transfer fee etc. wh is also the earning from the sector and is liable to be adjusted against the total cost the sector which has to be set off from petitioners especially once it is not promaking agency with a commercial angle.

First issue: The contention is that higher amount collected from auction of commercial si should be set off against the price of residential plots. But as already stated above in a comments as para No.12, this contention has already been turned down by the Hon'l Punjab and Haryana High Court vide order dated 8.7.1986 in CWP No. 1270 of 1985 re with CWP No. 1283, 2975 and 5794 of 1985 in the matter of Urban Estate Welfa Association (Regd.), Karnal Sector-13, Karnal.

Regarding the second issue raised by the petitioner that extension fee, transfer if etc. earned by HUDA from the sector and should be adjusted against the total containing charged from the residential plots of the petitioners, the same is not acceptable because HUDA has also to undertake maintenance and special repairs of roads end other public utility services on regular intervals and extension fees are used fund such maintenance and special repairs. Also planning of the services is sewerage and water supply etc. are done according to number of plots planned a running maintenance charges are to be recovered from the residents of plot. If sor plots remain vacant, running charges are not paid by such plot-holders and a borned by HUDA. In such cases, extension fee and transfer fee etc. are also us for funding of such costs borne by HUDA. The transfer fees are administratic charges and it cannot be utilized for paying the enhancement compensation of the plots.

14. Para No.14: The petitioner has stated that as pointed earlier, the HUDA authoriti have already charged excess amount from the petitioners, as compared to the allotte of Sector-2, Palwal. Also the HUDA authorities have already charged the cost construction of community centre etc. way back in year 2005, but has not construct the same till date, consequently the enhanced amount claimed is bad for the act of the HUDA. As such the said amount is also lying with the HUDA authorities in the bal accounts and the HUDA authorities are enjoying the interest thereon, which is also the property of the members of the petitioners association.

First issue: The petitioners have tried to compare the prices charged for Sector-5 Gurgaon with the residential prices charged from the allottees of Sector-2, Palwi but this plea is not acceptable, because in view of Regulation 2(h) of the Haryar Urban Development (Disposal of Land & Building) Regulations, 1978, a "sector means an area of land which forms the unit for purpose of fixation of sa price/premium. Therefore, it is clear that sale price of the plot is to be decided sector wise. The sale price of plot in one sector cannot be regarded as basis to compasale price of plot in another sector. This is also relevant that Palwal is separa urban estate under Fariabad District since 2004. The comparison of Sector-8 Gurgaon with Sector-2, Palwal is not justified because these sectors are of differe Urban Estates and land cost/development cost is different from each other.

Second issue: The petitioners have stated that the cost of construction of community centre etc. was collected by HUDA way back in year 2005, but has not constructed the same till date. As such the said amount is also lying with the HUDA authorities in the bank accounts and the HUDA authorities are enjoying the interest thereon.

The Committee observed that this is demand of additional price defined under Regulation 2(b) of the Regulations, is determined sector wise on a/c of the enhancement of compensation of any land in the same sector by the Court. This has no relation to the development works. Therefore, the plea of the petitioner is not tenable.

15. Para No.15: The petitioner has objected that as per Section 26 of the Haryana Urbar Development Act, 1977, the HUDA authorities are bound to maintain the proper accounts and other relevant records and prepare an annual statement of accounts including the balance sheets in the prescribed manner. Further, the accounts of the HUDA authorities are bound to be audited annually by the Accountant General of the State Government. The HUDA authorities did not supply the details of he accounts amounts lying in their accounts annually audited accounts. The accounts of the HUDA authorities would establish that nothing is recoverable from the petitioners.

As per Section-26 of HUDA Act, 1977, HUDA is maintaining proper accounts and prepares balance sheet in the prescribed format. These accounts are duly audited by the Accountant General of Haryana Government. There is no prescribed procedure to supply these accounts to the allottees.

16. Para No. 16: The petitioner has objected that at the first instance only when the land of the land owners were acquired, the HUDA authorities were bound to pay adequate compensation to the land owners and not to compel them to approach the courts to waste the valuable time, money not only of the land owners, but that of tax payers in the shape of the courts time. Now at one hand the HUDA authorities have made the land owners to suffer and on the other hand the HUDA authorities are further putting this agony on the public i.e. allottees residing in HUDA sectors. As such, no interest it payable by the petitioners. The interest, if any, is liable to be recovered from such officers/officials/authorities/authorities, who failed to perform their duties in an efficient dedicated and promptly.

This issue has already been decided by the Hon'ble Punjab and Haryana High Courvide order dated 8.7.1986 in CWP No. 1270 of 1985 read with CWP No. 1283, 297 and 5794 of 1985 in the matter of Urban Estate Welfare Association (Regd.), Karna Sector-13, Karnal where under HUDA as per page-9 of the order made submission that "Payment of enhanced compensation is made by HUDA out of its own resources and n assistance from the State Govt. or financial institution is available to the Organization for this purpose. Since this amount is to be subsequently recovered from the allottees from over a period of times, becomes difficult to make payment immediately after the announcement of the enhanced amount compensation by the District Courts/High Courts. The investment made by HUDA towards the payment of enhanced compensation from its own resources further strains the commitment or development works in other areas. Consequently, a certain amount of delay is inevitable."

The Hon'ble Court held that the amount of enhanced compensation has been paid be the HUDA and its burden must fall on all the plot-holders.

17. Para No. 17: The petitioner has stated that some of the petitioner have made deposits of the amount demanded by the HUDA authorities though under protest.

Regarding this para, no contention is raised by the petitioner.

18. Para No. 18: The petitioner has cited the issue of recovery of enhanced compensatior raised by the resients of Sector-25 to Sector-28, Panchkula.

Plea of this para is not relevant, because as stated above, sale price of the plot is be decided sector wise. The sale price of plot in one sector cannot be regarded basis to compare sale price of plot in another sector. This is also relevant the Panchkula is separate urban estate. These are different Urban Estates and la cost/development cost is different from each other.

Findings on representation dated: 6.11.2013:

1. Para No.1: That this is undisputed fact that HUDA is an organization establish under no profit no loss basis for the systematic development of the cities and provide houses to the resident and profit (if any) to be done by selling commerc sites namely shops/shopping complexes, school sites, GHS, Commercial area a Petrol Pump etc. done through open auction since the residential plots etc. can be no stretch of imagination be considered within the purview of profit to be earned HUDA specially when they have the commercial sites etc. to achieve at purpose.

It is submitted that HUDA is a no profit no loss organization but the amount realizerom commercial sites school sites and petrol sites cannot be utilized for the payment of enhancement compensation as the matter is already explained in earlier para.

2. Para No.2: In this para, the petitioner has objected that while distributing the to enhancement amount of Rs. 571.46 Cr. For Sector-57, HUDA having 364.62 at area, after loading the Sector-57 unsaleable area, HUDA have loaded majority of t enhancement load 78.13% on proportionate basis to the residential area.

The load on a/c of non-saleable area of roads/parks/open spaces has be distributed proportionately on the saleable area i.e. commercial area and resident area of the sector. As per the details of land planned for Sector-57, Gurgaon t total saleable area is 213.97 acres out o which 167.18 acres are plottable resident area. So the plottable residential area is 78.13% of the total saleable area of sect Accordingly, 78.13% load on a/c of enhancement has been passed on the plottal residential area accordingly.

3. Para No. 3, 4 & 5: The petitioners have re-iterated their contention that high amount collected from auction of commercial sites should be set off against the pri of the residential plots.

This plea of petitioners is not acceptable as already explained in the preceding paras.

6. Para No.6: The petitioners have re-iterated the various issues already raised by them in their earlier representation dated 17.1.2013 (Annexure P-9 of the writ petition).

These issues have already been explained in the preceding paras.

Conclusion:

Accordingly the representation is disposed of and speaking order may be communicated to the petitioners by registered post on the correct addres.

Estate Officer-II, HUDA, Gurgaon



From

Estate Officer-II HUDA, Gurgaon

To

Sh. Raman Gaur, Advocate H.No.380, Mamta Enclave,

Zirakpur-Shimla NH-22 (Zirakpur).

Ph. 9417376898

Memo No. 12013

Dated: |3|11|14

Sub: -

COCP No. 561 of 2014 - Bhupendra Chaturvedi & others Vs. Narinder Yadav, Estate Officer-II, HUDA, Setor-56, Gurgaon. Fixed on 18.11.2014.

The above mentioned COCP is pending before the Hon'ble High Court which is fixed for 18.11.2014. You had already been engaged as counsel to defend this case on behalf of HUDA. It is submitted that CWP No. 16003 of 2013 was decided by the Hon'ble High Court on 26.07.2013. The Hon'ble High court gave directions to the respondent No. 3 to consider and decide the aforesaid representation dated 17.01.2013 in accordance with law, by passing a speaking order, expeditiously.

The matter was considered fully in accordance with the provisions of the HUDA Act. And the HUDA policies and only thereafter a speaking order was passed on 12.11.2014. The delay for passing the speaking order was not intentional but due to the elections for Parliament of India and thereafter for the Haryana Assembly. A copy of the speaking order is attached for your further necessary action. The respondent Sh. Narinder Yadav the then Estate Officer-II, HUDA, Gurgaon had already been transferred in the month of August, 2014. The Estate Officer-II, HUDA, Gurgaon is a law abiding public servant and cannot think of disobeying the orders passed by the Hon'ble Courts in any manner. The undersigned had joined as Estate Officer-II, HUDA, Gurgaon and passed the speaking order in due course of law and the orders 26.07.2013 passed by the Hon'ble High Court in CWP No. 16003 of 2013 had been fully complied with.

It is, therefore, requested that the proper reply may kindly be filed in this case.

Estate Officer-II HUDA, Gurgaon

Endst. No.

Dated:

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

- 1. The Chief Administrator, HUDA (Legal Cell), Panchkula
- 2. The Administrator, HUDA, Gurgaon

Estate Officer-II