

SPEAKING ORDER

This speaking order is being passed in compliance of the order dated 04.02.14 of the Hon'ble High Court in respect of CWP No. 10336 of 2013 (O&M) titled as Anita Dewan Vs HUDA & Anr. The Hon'ble High Court of Punjab and Haryana at Chandigarh vide its order dated 04.02.2014 has disposed of the writ with the following directions:-

"The petitioner is aggrieved against the order dated 31.12.2012 issued by the Estate Officer, HUDA, Gurgaon raising additional demand towards allotment price of Plot no. 1267-B, Sec-57, Gurgaon.

The additional demand has been raised on the basis of some award passed by learned Additional District Judge in land compensation case.

Learned counsel submits that there are several flaws in the demand raised by the respondents and if the objections dated 29.01.2013 (P-5) submitted by the petitioner are considered, the authorities are likely to withdraw the same. Reliance is placed upon a decision dated 04.10.2011 of this Court in CWP No. 18681 of 2011 (Resident Welfare Society, Sector 26, Panchkula Vs HUDA & Ors.)

Having heard counsel for the parties, it appears to us that the objections raised by the petitioner require objective consideration at the hands of the respondents. We consequently dispose of this writ petition in terms of the order dated 04.10.2011 passed in Resident Welfare Society, Sector 26 Panchkula's case [supra] with a direction to the respondents to treat this writ petition as a representation-cum-objections on behalf of the petitioner, to whom we grant liberty to supplement the same, if need be, which shall be placed before the Administrator, HUDA, Gurgaon in terms of the above cited order. The petitioner's objections shall be decided by passing a speaking order within three months and after granting him an opportunity of being heard.

Till the time objections are decided, amount, if any, shall be deposited by the petitioner without prejudice to her legal rights and the excess deposit shall be refunded with interest @9% per annum.

Disposed of. Dasti. "



(SURYA KANT)
JUDGE

February 04, 2014.
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(AMOL RATTAN SINGH)
JUDGE

In compliance of Hon'ble High Court order dated 04.02.2014, an opportunity of hearing to the petitioner was afforded by the Estate Officer-II, HUDA, Gurgaon vide letter Memo No. 10095-96 dated 11.09.2014 to appear on 19.09.2014 at 3:00 PM along with all relevant record of the case. The petitioner in response to opportunity of hearing, submitted letter dated 17.09.2014 and requested to pass the speaking order. However, Sh. P.C. Dewan representative of the petitioner was heard on 23.06.2014 by EO-II, HUDA, Gurgaon in response to the earlier letter issued by EO-II, HUDA, Gurgaon vide Memo No. 9805 dated 11.06.2014.

The entire matter of the present case was also referred to the Chief Administrator, HUDA, Panchkula vide this office Memo No. 552 dated 23.10.2015 and the competent authority at HQ supplied the relevant record vide email dated 15.02.2016 and further directed the Administrator HUDA Gurgaon to pass the speaking order accordingly.

The petitioner vide his representation dated 29.01.2013 in respect of residential plot 1267B of 6 Marla in sec-57 of Gurgaon has submitted that the demand suffers from many flaws. Like the effective date is mentioned as 14.12.2012 although the same has been dispatched on 31.12.2012. The first installment due date is shown as 12.01.2013 and not the correct date i.e. 29.01.2013. The awards of 2003 were given before floating the sector and have been included in the calculations of the enhancement compensation although the sector was floated in 2004 and those awards have already been included in the floating price of the sector part-II of Sec-57 in which the plot was applied and allotted to the applicant. The areas i.e. part-I or part-II to which the awards are related is not clear, award money has been paid by HUDA or not, the areas like temple, club, commercial land, HUDA land, old age home etc. have been excluded while calculating the per square yard rate of enhancement, the auction of commercial sites yield crores of rupees and such enhancement should be met from that amount, date of issue of notices have not been mentioned for land acquisition, the figure of 209 Acres as against 284 Acres residential area mentioned on page 3 of the calculation sheet has not been explained, the awards relate to sec-57 part-I or part-II or both is not given, only one award is mentioned as given in the year



2009 then why the earlier awards have been loaded on to the allottees of the plots in 2005, the approximate price including the rise should be indicated before floating the scheme, not entitled to interest at all. The petitioner ultimately requested for relief.

The representation of petitioner has been considered and before passing the speaking order it is relevant to discuss the following important clauses/provisions made in the allotment letter and the Haryana Urban Development (Disposal of Land & Building) Regulations, 1978 and the Land Acquisition Act, 1894.

a) Clause No.9 of the allotment letter provides 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."

b) Section-4 of the Haryana Urban Development (Disposal of Land and Building) Regulations, 1978, defines the tentative price as under:-

"The tentative price/premium for the disposal of land or building by the Authority shall be such as may be determined by the authority taking into consideration the cost of land, estimated cost of development, cost of building and other direct and indirect charges as may be determined by the Authority from time to time."

c) Section-10 of the Haryana Urban Development (Disposal of Land and Building) Regulations, 1978, defines the tentative price/premium as under:-

i) In the case of sale/lease of land/building by allotment the transferee or lessee shall be liable to pay to the Authority, in addition to the tentative price/premium, the additional price/premium if any determined in respect there to under these regulations.

ii) The additional price/premium shall be payable by the transferee or lessee within a period of thirty days of the date of demand made in this behalf by the Estate Officer without interest or in such number of installments with interest as may be determined by the Chief Administrator.



d) Section-2(b) of the Haryana Urban Development(Disposal of Land and Building) Regulations, 1978 further provides as under:-

"Addition price" and "Additional premium" means such sum of money as may be determined by the Chief Administrator in respect of the sale or lease of land or building by allotment which may become payable by the transferee or lessee with respect to land or building sold or leased to him in a sector on account of the enhancement of compensation of any land or building in the same sector by the Court on a reference made under section 18 of the Land Acquisition Act, 1894 and the amount of cost incurred in respect of such reference."

e) Section-28 of the Land Acquisition Act, 1894 provides as under:-

"Collector may be directed to pay interest on excess compensation, if the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of (nine per centum) per annum from the date on which he took possession of the land to the date of payment of such excess into Court;

Provided that the award of the Court may also direct that where such excess or any part thereof is paid into Court after the date of expiry of a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into Court before the date of such expiry."

Briefly stated plot No. 836 measuring 6 marla in sec-57 was originally allotted to the petitioner vide Estate Office HUDA Gurgaon allotment letter Memo No. 1100 dated 09.02.2005. Since this plot was found omitted at the time of physical demarcation of the sector therefore as per HUDA policy alternate plot No. 1267-B in the same sector was exchanged/allotted vide letter dated 03.10.2012 on the same terms and conditions. The possession of the plot stands offered to the petitioner vide Memo No. 295 dated 29.08.2013. As per the term and condition No. 9 of the allotment letter the petitioner is legally and contractually bound to pay the enhanced amount and accordingly the demand of the enhanced amount was issued to the petitioner vide letter dated 14.12.2012 that a sum of Rs. 9,06,243/- on account of enhanced compensation at the rate of Rs



6712/- per sq. mtr. In response to the demand of the enhanced amount the petitioner has already paid Rs. 10,52,800/- including interest. However an amount of Rs.4147/- on account of extension fee for the year 2016 is outstanding.

This recovery of the enhanced amount was issued as per order No. HUDA-CCF-Acctt-II-2012/42609-10 dated 07.12.2012 which is based on the Hon'ble ADJ, Gurgaon enhancement order dated 15.12.2011, 25.11.2009, 23.02.2010, 23.08.2011 and 09.12.2011. The rate of price fixation of Sec-57 Gurgaon was fixed in the month of 03/2004 based on award only, whereas the enhancement was raised in the month 12/2012. Hence the rate of enhancement is not included in the floatation rates.

HUDA has availed the remedy which is time consuming process, the demand was raised immediately as and when determined by the competent authority.

The Estate Officer-II, HUDA, Gurgaon was informed by the HQ to raise demand from the plot holders and accordingly as per the decision of competent authority, the Estate Officer-II, HUDA, Gurgaon issued the demand notice to the allottee's of sec-57 Gurgaon.

As per clause No.9 of the allotment letter it has clearly been mentioned that 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 and the after the decision of Courts, competent authority has determined the enhancement in accordance with the provisions. Further as per provisions of the Haryana Urban Development(Disposal of Land and Building) Regulations, 1978, "Addition price" and Additional premium" as may be determined by the competent authority is payable by the transferee or lessee with respect to land or building sold or leased to him in a sector on account of the enhancement of compensation of any land or building in the same sector by the Court on a reference made under section 18 of the Land Acquisition Act, 1894 and the amount of cost incurred in respect of such reference.


It is pertinent to mention here that detailed speaking order has already been passed by the competent authority regarding the same sector i.e. sec-57 Gurgaon having same issues in CWP No. 10289 of 2013 titled as Plot Owners Welfare Association Sec-57 Gurgaon Vs HUDA, CWP No. 16003 of 2013 titled as Bhupender Chaturvedi and others Vs HUDA vide detailed order dated 21.01.2015, 12.11.2014 respectively. These speaking order are very exhaustive and



covers all the relevant points in detail in respect of the issues raised by the present petitioner thus the same are not being discussed here separately to avoid repetition. The same may be read as part and parcel of the present speaking order as they relates to same sector i.e. sector - 57 Gurgaon where the petitioner's plot No. 1267-B also exists. The copies of the same are attached herewith as Annexure R-1, R-2. Therefore, the demand dated 14.12.2012 was issued by the Estate Officer-II, HUDA, Gurgaon strictly in accordance with the term and condition of the allotment letter and policy of HUDA. The petitioner may check the calculation, if any, in the O/o Estate Office-II, HUDA, Gurgaon, Chief Controller of Finance, HUDA, Sec-6, Panchkula for his satisfaction.

Accordingly the representation is disposed of in compliance of Hon'ble High Court order dated 04.02.2014 and speaking order may be communicated to the petitioner by registered post on the correct address and all concerned for further necessary action.

Endst No. Adm/Spl.-01 to 05


Administrator
of HUDA, Gurgaon
Dated: 15/2/2016

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

1. The Chief Administrator, HUDA, C-3, Sec-6, Panchkula.
2. The Chief Controller of Finance, Sec-6, Panchkula.
3. The Estate Officer-II, HUDA, Gurgaon.
4. The District Attorney, HUDA, C-3, Sec-6, Panchkula.
5. Anita Dewan W/o Sh. Amit Dewan, R/o H.No. 918, Sec-2, Panchkula.


Administrator
of HUDA, Gurgaon