

SPEAKING ORDER No.5/2014.
Passed in compliance with the orders of Hon'ble Punjab & Haryana High
Court in CWP No. 10289 of 2013 read with COCP No.2675 of 2014.

1. This speaking order is passed in respect of Sector-57, Gurgaon in compliance of the orders dated 02.05.2014 of Hon'ble Punjab & Haryana High Court in CWP No.10289 of 2013 in matter of Plot Owners Welfare Association and others Vs. State of Haryana and others. The orders dated 02.05.2014 are reproduced as under:-

“Such an issue came to be resolved by a coordinate Bench of this Court vide order dated 04.10.2011 passed in CWP No.18681 of 2011 (Resident Welfare Society, Sector-26, Panchkula Vs. HUDA & Ors.) whereby the respondent-authorities were directed to constitute a Committee who was then to consider the objections received from the aggrieved plot holders. We, thus, dispose of this writ petition in the same terms with a direction to the respondents that let a Committee be constituted to consider the objections already submitted or which may be supplemented by the petitioner Association within a period of one month. The said Committee shall then hear the petitioner Association as a representative of the plot holders and determine their objections by passing a speaking order. The needful shall be done within four months from the date of constitution of such Committee.”

2. In compliance of above orders of High Court, a committee was constituted by the Chief Administrator, HUDA, Panchkula vide Endst.No.3277-3279 dated 11.08.2014 consisting of

- (a) CCF, HUDA,
- (b) E.O-II, Gurgaon, HUDA (Member Secretary)
- (c) Land Acquisition Officer, Gurgaon

The COCP has been filed in the Court on the grounds that committee has not passed speaking order so far. This COCP is now listed for hearing on 22.01.2015.

3. Before passing the speaking order, it is relevant to mention that discuss the following important clauses/provisions made in the Allotment letter issued to the society, 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 buildings and other direct and indirect charges as may be determined by the Authority from time to time.

(c) Regulation-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) Regulation -2 (b) of The Haryana Urban Development (Disposal of Land & Building) Regulations, 1978 further provides as under:-

"ADDITIONAL 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.”

Records of Personal hearing

4. As per the orders of the Hon'ble High Court, the committee was to consider the objections to be given by the petitioners within one month of passing of high court order i.e. by 02.06.2014. But no objections were filed by the petitioners. In order to abide by the High Court order, the committee fixed personal hearing in the case 20.11.2014. During the hearing, the petitioner conveyed that they will submit a letter by dated 21.11.2014. The petitioner submitted a letter on 21.11.2014. This letter nowhere gave the details of any objections to be decided by the Committee.

Vide this office letter no.27460-62 dated 28.11.2014, the petitioner was again requested to submit the objections to be decided by the Committee as per directions of Hon'ble High Court order.

The petitioner has submitted the representations dated 05.12.2014 giving the points to be decided by the Committee.

Discussions and Findings

5. The **discussions and findings** of the Committee on the objections raised are as under:-

Para 1: The petitioner has objected that why non formation of Committee on time: The order dated 02.05.2014 was passed by the Hon'ble High Court of Punjab & Haryana in the above mentioned Writ Petition, filed by the plot holders of Sector-57, Gurgaon/ challenging the demand for enhancement in allotment price of land demanded by HUDA, vide its notice. HUDA was directed by the Court to constitute a Committee within one month. The Committee was directed to consider the objections already filed and those which may be supplemented by the Plot Holders Association. The Committee was directed to give opportunity of hearing to the Plot Holders Association, determine their objections, and pass a speaking order within a period of 4 months from date of constitution of Committee. We bring to your kind notice that in spite of the order of Hon'ble Punjab and Haryana High Court, the Committee to hear our grievances was not formed even after more than 4 months of the Court order. The demand of enhancement cost of land is arbitrary, as the sufficient information/details is not provided in the demand letter to the plot owners of Sector-57, Gurgaon.

Comments: A committee was constituted by the Chief Administrator, HUDA, Panchkula vide Endst.No.3277-3279 dated 11.08.2014 in compliance of the High Court order. The Committee was to consider the objections to be given by the Petitioner Association with the one month of the High Court order i.e. by 02.06.2014. As objections were not filed by the petitioner, hearing was fixed for 20.11.2014. They were again reminded Vide this office letter no.27460-62 dated

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28.11.2014, to submit the objections to be decided by the Committee as per directions of Hon'ble High Court order.

Now the petitioner has submitted the representations dated 05.12.2014 and same is being decided under this speaking order.

Para 2: The petitioner has objected that why Additional Interest Burden? As the delay in formation of Committee is on the part of HUDA, hence the interest for the delay period should not be borne by the Plot owners.

Comments: The charging of interest is not linked to the formation of the Committee. In Civil Appeal No.4436 of 2008(arising out of special leave petition No.13644 of 2005) titled as HUDA V/s Raja Singh Riana, the question of charging of interest on the delayed payment of instalment was challenged in the Hon'ble Apex Court of India. In this regard, attention is invited to this office letter No.HUDA-CCF-Act-1/2008/3654/7-78 dated 25.10.08 vide which the details of the case and charging of interest on the delayed payment of enhancement of compensation were conveyed.

In this case, the Hon'ble Supreme Court of India observed that the concept of levying of interest is applicable in almost all statues involving financial deals and commercial transactions. Therefore, HUDA is entitled to charge interest on the balance dues of enhancement of compensation at a rate which is different from the rate of interest stipulated in the allotment letter. Under these circumstances, the Hon'ble Supreme Court of India allowed to charge simple interest on the basis of prevailing current rate of interest as defined under section-3 of the Interest Act, 1978. Therefore, charging of 15%p.a. rate of interest as defined on the delayed payment of enhancement of compensation is as per the judgment of Hon'ble Supreme Court of India in the case of Sh. Raj Singh Rana V/s HUDA as the same rate of interest is provided in the Land Acquisition Act, 1894.

Para 3: The petitioner has objected that why the detailed calculation enhancement cost of land of Rs. 575.61 crs is not provided to the Plot owners?: In the calculation sheet filed in the Hon'ble High Court by HUDA, it is claimed that enhancement compensation to the tune of Rs. 575.61 crores has been paid as per the ADJ awards. Kindly give details how the enhancement amount of Rs. 575.61 crs is computed for raising demand from the plot holders?

Comments: It is submitted that the recovery of enhanced compensation of Sector-57, Gurgaon for amounting to Rs.575.00 crores was worked out on the basis of award of Hon'ble ADJ Court, Gurgaon where under differential amount @253/- per sq. yd., 717/- Per sq. yd., 888/- Per sq. yd., 1697.83 Per Sq. yd., 2106/- Per sq. yd. was to be paid to the farmer. As intimated by Administrator, HUDA, Gurgaon vide his letter No.18513 dated 19.10.2012, the detail of rate wise payment of enhanced compensation of Sector-57, Gurgaon release upto 30.09.2012 as below:-



Award No.	Date of Award	Rate Per sq.yd. (in Rs.)	Total amount (in Rs.)
11	21.07.2003	253/-	3059757.00
1,12,13 & 14	29.03.09, 21.07-2003	717/-	229899855.00
10	21.7.2003	888/-	1099591300.00
9	21.07.2003	1697/-	41933256000.00
16	20.12.2005	2106/-	230334548.00
Grand Total			5756141460.00

Para 4: The petitioner has objected that why non deduction of basic land cost from the enhancement cost of land?: The residents have also paid the basic land cost at the time of allotment of the plot. We understand that basic land cost is Rs.15 lakhs per acre. This basic price of land has not been deducted from enhancement demand of Rs.575 crores. Why this basic land cost has not been not reduced from the enhancement cost of land of Rs.575.61 crores?

Comments: The differential amount of Rs.575.61 crores was paid upto 30.09.2012 as enhanced compensation in respect of Sector-57, Gurgaon as confirmed by Administrator, HUDA, Gurgaon vide his letter No.18513 dated 19.10.2012. The Urban Estates Department acquires the land on which the sectors are developed by HUDA. The tentative price of the plot under Regulation 4 of The Haryana Urban Development (Disposal of Land & Buildings) Regulations, 1978, for allotment is fixed by considering the cost of acquisition of land. If subsequently the land-owners are awarded higher compensation by the court in appeal procedures, the additional amount is liable to be paid by HUDA. In turn, such cost needs to be passed on to the allottees of the same sector. Regulation 2(h) of The Haryana Urban Development (Disposal of Land & Buildings) Regulations, 1978 stipulate that fixation of sale price/premium has to be done sector-wise. Similarly, additional amount of compensation to be paid after court's orders is also to be distributed over the same sector as per Regulation 2(b) of The Haryana Urban Development (Disposal of Land & Buildings) Regulations, 1978. Therefore, the cost incurred by HUDA for acquisition of land has to be distributed over the same particular sector.

Para 5: The petitioner has objected that why are the cost of common area, roads and common facilities not allocated to the private builders? The total area of the Sector-57 is 806.43 acres, which includes the private builders, HUDA allotment land and open area, Out of the total area of 806.43 acres, the private builders' land is 439.16 acres and saleable area of HUDA is 213.97 acres. The area of total open space and common facilities amounting to 150.67 acres is loaded only on 213.97 saleable acres, which comes out 70.41% of the saleable area, which the common facilities will also be used by the private builders. The roads which have maximum area of 137 acres approx. will also be used by the private builders. But no cost of enhancement is being loaded to them. This burden should be loaded on private builders also or this burden should be borne by HUDA, as they have charged fees of Rs.60.42 lakhs per acres on account of "External Development Charges" while granting a license to them under Section

3, The Haryana Development and Regulation of Urban Area Act, 1975. The "External Development Charges" is defined under Section 2(g) of the said Act as follows:

"external development works" include water supply, sewerage, drains, necessary provisions of treatment and disposal of sewage, sullage and storm water, roads, electrical works, solid waste management and disposal slaughter houses, colleges, hospitals, stadium/sports complex, fire stations, grid sub-stations etc. and any other work which the Director may specify to be executed in the periphery of or outside colony/area for the benefit of the colony/area.

Comments: There are two tiers of development process in an urban estate. The first tier relates to providing and integration of town level facilities and services under external development works. This component is funded through levy and recovery of external development charges (EDC). The second tier relates to facilities within the sector under internal development works, this is recovered in the form of internal development charges (IDC). Both these tiers play a complementary role for development of urban estate. Any development without second tier alone in absence of first tier would only create stand alone and disjointed islands and defeat the purpose of planned development of urban estate. The charges on account of external development works are divided proportionately on all the sectors in the urban estate i.e. both private colonizers as well as HUDA plot owners. But charges on internal development works are to be accounted for under "Development Cost" in the price fixation formula for the sector. Therefore as area of 137.50 acres for road/park/open space is for IDC, the cost is to be recovered from the HUDA plot owners.

Para 6: The petitioner has objected that why Cost of 34.46 acres merged with Sector-52, Gurgaon is not reduced from the enhancement cost of land of R. 575.61? An area of 34.46 acres acquired for Sector-57 has earlier been merged with Sector-52 and the cost recovered from plot holders of Sector-52. The detail of this change is contained in Speaking order passed by HUDA Committee dated 15.04.2014. HUDA cannot charge cost of this land from plot owners of both sectors-52 & 57. Kindly confirm whether the cost of 34.46 acres given to Sector-52 from Sector-57 has been reduced from the enhancement cost of land of Rs. 575 crores of Sector-57. Please inform what amount has been calculated to be recovered for this 34.46 acres from plot holders of Sector-52.

Comments: The cost of land of sector-52, Gurgaon is not the part of the layout plan of Sector-57, Gurgaon. Only the land for sector-57 has been taken for calculation of additional price on account of enhancement.

Para 7: The petitioner has objected that why the Cost of land of 2.18 acres allotted to Indian Oil is not charged from them?: About 2.18 acres of land is allotted to Indian Oil to lay the pipes as Indian Oil is a commercial Public Undertakings therefore, the basic cost of land as well as cost of enhancement

should be borne by them also. As per section 15(2) of HUDA Act, no commercial land can be given free/gifted by HUDA.

Comments: In the earlier Speaking Order No.2/2014 passed in compliance of the orders dated 23.11.2012 of Hon'ble Punjab & Haryana High Court in CWP No. 6643 of 2012 titled as Vishal Kaushik and Others (Sector-52, Gurgaon), the committee has held that as per norms right of way (ROW) has been reserved for existing IOC pipeline and such area is to be accounted for as the area under open spaces/roads for the respective sector. Therefore no benefit is given in this case also.

Para 7: A) Based on objections no. 5, 6 and 7 only, the calculation of reduction in enhancement works out as under:

Enhancement demand: **Rs. 575.61 crores**

- a) Less Cost of 34.46 acres given to Sector-52
@ Rs. 1,56,72,779 per acre = Rs. 53.94 crores
- b) Less Cost of 2.18 acres allotted to IOC
@ Rs.1,56,72,779 per acre = Rs.3.47 crores
- c) Less load of cost of common areas like open space and roads, common facilities like 50% of school, community Centre, Police Station, dispensary etc., being 150.65 acres @
Rs.1,56,72,779 per acre = Rs.53.94 crores

Less total deduction (a+b+c) = Rs.293.53 crores
Balance enhancement = Rs.282.08 crores.

Comments: As already dealt in reply to Para 5, 6&7 as above, the petitioner's contention is not admissible.

Para 8: The petitioner has objected that why the burden of cost of common area is not allocated to commercial area?

Comments: Yes, the Committee agrees to this contention and benefit may be given if not already accounted for in the calculations.

Para 9: The petitioner has objected that why external development charges are not loaded to private builders? The above said charges were paid to HUDA, under the said Act, as a Local Authority for the development external roads, water facility and other related activities which are required for any residential colony. If it is not loaded to Private Builders, it will amount to profit making by HUDA to provide basic facilities. The total cost of land as well as the cost of development is being loaded only to the resident and amount recovered from private builders are not shared with the other resident. As per newspapers report, HUDA is having fixed deposit of Rs.17000 crores being, the amount received from the private builders on account of External development charges. It will be worth to bring to the kind notice of the HUDA that the private builders will get the power from the sub-station installed in the Sector-57 for the residents, the water supply to the residents of the private builders will be from

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the water tanks constructed for the other resident of the sector HUDA cannot take plea that permission is granted under different Act and the enhancement cost land is demanded under HUDA (Disposal of land and Buildings) Regulation.

Comments: It is submitted that same as above is reply to objection 5, the EDC and IDC are mutually exclusive charges. The IDC are payable by the HUDA plot owners of the particular sector whereas EDC are paid proportionately by all the users of the Urban Estate i.e. both private colonizers as well as HUDA plot owners.

Para 10: The petitioner has objected that why there is difference between the enhancement cost of land to be recovered from the plot holder and the payment to the land owners? Under the Land Acquisition Act, the solatium charges are payable on ADJ award less LAO award, as per enhancement calculation of Rs. 575.61 crs, it includes the solatium charges on ADJ award. But as per working sheet of each land owners, the compensation amount i.e. statutory charges are paid on the difference of ADJ award and LAO award. It amounts to profit making by HUDA though cheating the resident of Sector-57.

Comments: The recovery of enhanced compensation of Sector-57, Gurgaon for amounting to Rs.575.00 crores was worked out on the basis of award of Hon'ble ADJ Court, Gurgaon where under differential amount @253/- per sq. yd., 717/- Per sq. yd., 888/- Per sq. yd., 1697.83 Per Sq. yd., 2106/- Per sq. yd. was to be paid to the farmer.

Para 11: The petitioner has objected that why there is difference of allotment price between Group Housing Societies and individual plot holders?

Comments: The enhanced compensation to be recovered from the allottees, is worked out by the Chief Administrator as per Regulation 2(b) of Haryana Urban Development (Disposal of Land & Building) Regulations, 1978. This amount is calculated sector-wise and is applicable for the full sector. The additional price on account of enhancement is same for both Group Housing Society as well as individual plot holders.

Para 12: The petitioner has objected that why the area of Group Housing Societies is considered 90% instead of 100%? This issue was decided by Hon'ble High Court in HUDA Vs. P R Bansal, that no area can be left out while considering load of enhancement.

Comments: The area of Group Housing Societies is considered 90% as per HUDA policy.

Para 13: The petitioner has objected that why Non deduction of Cost of open space and Roads, common facilities at the time of allotment?: While computing the allotment price of individual plots as well as the Group Housing Societies, the cost of common area is also allocated but not adjusted in the demand of enhancement cost of land. If so provide us the detailed calculation.



Comments: The committee finds that the area under roads and open spaces is treated as common area and load of enhancement compensation of common area is loaded proportionately on individual plots as well as Group Housing Societies.

Para 14: The petitioner has objected that why 15% rate of Interest charged after date of award? There is a delay of almost 9-10 years between passing of ADJ award and raising of enhancement demand. A high rate of interest of 15% is being charged from plot holders for this period which is much higher than provided in Interest Act and interest rate in Land Acquisition Act can be applicable only till date of award and not afterwards. In RSA No. 1860 of 2008 (O&M) titled HUDA & another Vs. P R Bansal & others, which was decided on 26.11.2009, the Hon'ble High Court of Punjab and Haryana at Chandigarh ordered to recover the rate of interest as per rate of interest in allotment letter and excluded interest for the period between passing of award & raising of enhancement demand, due to long delay in issuing enhancement notice. Accordingly, why HUDA has not followed the decision of the Hon'ble high court in calculating the enhancement cost of land for our sector-57, Gurgaon. The Hon'ble High Court observed as follows: "In these circumstances, as per the said clause, the price of the plot was payable in installments with interest @10%. Hence, the Courts below rightly held that the interest charged @15% per annum on the enhanced amount of compensation was on the higher side. The notices qua the enhanced amount of compensation were not issued immediately after the passing of the award dated 14.10.1993 and the allottees have been burdened with unnecessary interest. The aspect regarding reduction of compensation by this court was also not taken in consideration while calculating the enhanced amount of compensation as the said amount was to be recovered by the defendants from the original land owners. In these circumstances, the courts below have ordered that the defendants should re-calculate the additional price keeping in view the provisions of the Haryana urban Development Authority Act and the regulations and the according to the observations made by the Court. Whether the revised calculations have been worked out in terms of the impugned judgment and decree would be examined by the executing court in case any such necessity arises. The Courts below, after appreciating the evidence led by the parties on record, have directed the authority to re-calculate the enhanced compensation."

Comments: The contention of the petitioner to charge 15% interest almost 9-10 years between passing of ADJ award is not correct. The petitioner is referring to the date of Award and not the date of order of ADJ. The dates of passing of ADJ order vis-à-vis date of award are as under:-

Award No.	Date of Award	Date of ADJ Order
11	21.07.2003	15.12.2011
1,12,13 & 14	29.03.09, 21.07-2003	25.11.2009, 26.11.2010
10	21.7.2003	03.04.2010
9	21.07.2003	23.08.2011
16	20.12.2005	09.12.2011

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Para 15: The petitioner has objected that why interest amount after the date of award of ADJ is not applicable to the plot holders to whom the possession of the plots are not given?

Comments: The Urban Estates Department acquires the land on which the sectors are developed by HUDA. The tentative price of the plot under Regulation 4 of The Haryana Urban Development (Disposal of Land & Buildings) Regulations, 1978, for allotment is fixed by considering the cost of acquisition of land. If subsequently the land-owners are awarded higher compensation by the court in appeal procedures, the additional amount is liable to be paid by HUDA. Similarly any cost on account of interest payment by HUDA has also to be passed on to the person who is ultimately allotted the plot.

VIII. No liability of payment of interest by plot holders after the announcement of award by the learned District judge

Comments: Any cost on account of interest payment by HUDA has also to be passed on to the person who is ultimately allotted the plot.

Para 16: The petitioner has objected that why interest should not be paid to them on amount paid from date of payment till date of possession? The National consumer Commission has ordered on 31.08.2001 for payment of interest @ 18% for delayed possession of plot/flat in HUDA Vs. Darsh Kumar. This decision has been upheld by 3 member bench of Hon'ble Supreme Court. The same issue has been decided by National consumer Commission in HUDA Vs. R P Chawla in Revision Petition no. 547 & 548 of 1997. The interest payable to plot holders should first be adjusted towards enhancement demand. This matter is directly connected with enhancement demand and not a non-connected issue.

Comments: As per policy dated 25 01.2007 issued under No.HUDA-Acctts-Acctt-1-2007/ 2912-47, it will be made clear in the application form as well as allotment letter that HUDA will offer the possession of the plot within a period of 3 years of allotment. In case the possession of the plot is not offered within the prescribed period of 3 years from the date of allotment, HUDA will pay interest @ 9% p.a. (or as may be fixed by Authority from time to time) on the amount deposited by the allottee after the expiry of 3 years till the date of offer of possession. In this case the allottee will not be required to pay the further installments. The payment of balance installment will only start after the possession of the plot is offered to the allottee.

Therefore, the committee finds that any delay giving possession of plot is already duly compensated to the plot owner and the same benefit on account of delay cannot be again given in the demand of additional amount on account of enhanced compensation worked out by the Chief Administrator as per Regulation 2(b) of Haryana Urban Development (Disposal of Land & Building) Regulations, 1978



Para 17: The petitioner has objected that why EWS plot holders are allowed more than 20% discount? As per the decision of Hon'ble Court decision in the judgment mentioned in objection 15 where it was held that the EWS plots rate cannot be lower than 20% of the original rates.

Comments: The burden of EWS category has been loaded on allotted on plot holder proportionately as Court order in CWP No. 1483/1997 in the case of Bishan Savroop and others, which got finality in the Hon'ble Supreme Court of India on 11.02.2000.

Para 18: The petitioner has objected that why realization from sale of commercial land in the Sector is not first adjusted towards enhancement demand? The land acquired for the entire sector does not get paid any differential price for land which is earmarked for commercial use and land for residential use. The decision Sharde has been upheld by 3 member bench of Supreme Court in case with same title, reported as (2004) 5 SCC Pg. 87. The decision in Punjab & Haryana High Court vide order dated 08.07.1996 in CWP 1270/1985 in Urban Estate Welfare Association (Registered), Karnal Sector 13 Vs. HUDA is now not applicable on this aspect and HUDA is bound to adjust amount realized from sale or future sale of commercial rate, for which minimum sector rate is to be considered, against the enhancement demand and only balance can be claimed from plot owners. In HUDA Vs. P R Bansal, the Court has affirmed that as per Section-15(2) of HUDA Act, no land can be given as gift and commercial land cannot be given free.

Comments: As per Regulation 3 (c) of the Haryana Urban Development (Disposal of Land & Buildings) Regulations, 1978, the plots are given either by allotment or by auction. The residential plots are allotted on the tentative price worked out on costing method on basis of initial acquisition cost of land, prescribed under Regulation 4 of Haryana Urban Development (Disposal of Land & Buildings) Regulations, 1978.

The procedure of allotment is by draw of lots prescribed by Regulation -5 of Haryana Urban Development (Disposal of Land & Buildings) Regulations, 1978. But in case of commercial plots, tentative price of land so determined is taken as 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.

Therefore, the allotment of residential plots and commercial plots are governed by entirely two separate methods. For the purpose of calculation of additional price, the incidence on account of commercial area is not cross subsidized and passed on to the residential plot-holders. Any amount payable on account of enhanced compensation of the commercial area is born by HUDA and is taken outside the purview of the calculations made for determining the additional price payable by the residential.

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Similar issue has already been decided by the Hon'ble Punjab and Haryana High Court vide order dated 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 (Registered), Karnal sector-13, Karnal where under it was held on page-13 of the order :-

"It was next contended by the learned counsel for the petitioners that the stand of the HUDA is that they are working on the principle "no profit no loss" basis, that area has been reserved as commercial area and for nursery, that from the sale of some commercial sites, huge amount has been earned by HUDA and that the enhanced amount of compensation paid by HUDA with regard to the commercial are is also being charged from the plot holders. According to the learned counsel, the incidence of the enhanced amount of compensation regarding commercial area or for the area which has been shown as "undetermined use" cannot legally fall on the plot holders and that this incidence should be borne by HUDA itself. At the initial stage when this argument was advanced, we felt very much impressed and were tentatively of the view that the incidence of the enhanced amount of compensation regarding the commercial area should not be borne by the plot holders. Dr. Rajinder Singh, learned counsel appearing for HUDA, controverted the contention and submitted that its incidence was not falling on the plot holders and was being borne by HUDA. This argument of the learned counsel did not find any support from the pleadings as in the written statement, no specific averment had been made in this respect, with the result that Shri Rajinder Singh, prayed for time to enable him to file an additional affidavit. The prayer was allowed and written statement in the shape of additional affidavit, dated 31st march, 1986, was filled by Shri I.M. Khunger, Dy. Secretary. To the pleas taken in this written statement, detailed reference has already been made in the earlier part of the judgment. In this written statement, it has been clearly stated that for the purpose of calculation of additional price, the incidence on account of commercial area is not chargeable to the plot-holders. Any amount payable on account of enhanced compensation of the commercial area is debited to HUDA and is taken outside the purview of the calculations made for determining the additional price payable by the plot holders, as is clear from the statement of account attached with the additional written statement filed. With regard to the area shown as "undetermined use", it is averred that wherever an area gets shown as "undetermined use", as it happened in the case of Sector-14, Gurgaon (which is presently maintained as an open space), the land use may not be changed and the

area will not be utilized for any other purpose till the plan is modified and approved by the State Government. In view of this specific averment made in the written statement, no merit is left in the contention of the learned counsel for the Petitioner is concerned, so far as the area which is shown as "undetermined use" the same has to remain as it is till the plan is modified and approved by the State Government. In this situation for this area the incidence of compensation must fall on the plot holders. So far as the commercial area is concerned, it has been brought out clearly in the written statement that the amount of enhanced compensation payable in respect of the commercial area is debited to HUDA and is taken outside the purview of the calculation made for determining the additional price payable by the plot holders. In view of this specific averment it cannot be justifiably argued that incidence of the enhanced compensation of the commercial area is falling on the plot holders. Consequently, the contention of the learned counsel has no force."

Para 19: The petitioner has objected that why enhancement on area covered by external roads of Sector-57 amounting to about app. 6 Km. in length with varying width at different lengths not shared with adjoining sectors as per HUDA policy and why it is imposed only on Sector-57? The roads are for use by adjoining sector also, who have to bear half burden of the area used in roads. A rough map of measurement of external roads totaling app. 6 Km. is attached as Annexure-B.

Comments: The Committees agrees that the enhancement on account of external roads dividing two sectors should be equally shared by the two adjoining sectors. The benefit should be given if not already granted.

Para 20: The petitioner has objected that why HUDA has not followed Supreme Court order in HUDA Vs. Raje Ram in CA No. 2381 of 2003 titled HUDA Vs. Raje Ram (I(2009) CPJSC). In this case, SC has allowed charging of interest on payments due to late delivery of plots only to those owners who were allotted plots on old rates. SC has made a distinction between possessions given at old rates to re-allottees plot holders: "Their cases cannot be compared to cases of original allottees who were made to wait for a decade or more for delivery and thus put to mental agony and harassment.

Comments: This case being dealt by the Committee pertains to recovery of additional price from plot owners on account of enhancement of compensation to the land owners whose land was acquired for development of this particular sector. But the case law quoted by the petitioners apparently pertains to late handing over of plots by HUDA.

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[Signature]

Para 21: The petitioner has objected that why question no 6 of FAQs: on HUDA website claims rate of interest of 15% as valid? Payment of interest as per interest act; allows only the prevalent rate, which is as per RBI circular and usually the Bank rate of interest on fixed deposits interest under LA Act is not envisioned under Interest Act. 15% interest cannot be charged.

Comments: The charging of 15%p.a. rate of interest is as per the HUDA policy framed on basis of the judgment of Hon'ble Supreme Court of India in the case of Sh. Raj Singh Rana V/s HUDA.

Para 22: The petitioner has objected that why award no. 16 of 20.12.2012 (after allotment of sector) is taken into account for Sector-57. It is the award at highest rate and is so high because after a sector is announced, the land rate goes up. This award should not be included in enhancement demand.

Comments: The petitioner is quoting wrong date of award. As per records award No.16 was announced on 20.12.2005 and not on 20.12.2012 as quoted by the petitioner.

Para 23: The petitioner has objected that why enhancement is so heavy? Supreme Court has held in Kanpur Development Authority Vs. Smt. Sheela Devi & Others, AIR 2004 SC page 400, that the increase of tentative cost of House from Rs.48000 to Rs.208000 is not mere escalation but is a multiplication almost 4 and half times, which is not permissible. In our case the increase is close to 175%, which cannot be permissible. Similarly in Kerala State Housing Board & Others Vs. Kerala State Housing Board Housing Society Allottees Association and others, 200 (10) SCALE page 437, Hon'ble Supreme Court deplored the levy of interest @Rs.15% on enhanced price demanded. Also, in Dalbir Singh Bhagat Vs. Chandigarh Administrator, 1993 HRR 514 (DB), it was viewed that enhancement of price of allotted plot from Rs.4 lacs to Rs.6.25 lacs is not justifiable.

Comments: Matter of record. The Urban Estates Department acquires the land on which the sectors are developed by HUDA. The tentative price of the plot under Regulation 4 of The Haryana Urban Development (Disposal of Land & Buildings) Regulations, 1978, for allotment is fixed by considering the cost of acquisition of land. If subsequently the land-owners are awarded higher compensation by the court in appeal procedures, the additional amount is liable to be paid by HUDA. In turn, such cost needs to be passed on to the allottees of the same sector.

A copy of the order may be conveyed to the petitioner under registered cover.


CCF, HUDA


E.O.-II, Gurgaon


LAO, Gurgaon