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SPEAKING ORDER

[Passed in compliance with the orders of Hon'ble Punjab & Haryana High Court in
CWP No.18681/2011 (O&M)]

The Resident Welfare Society Sector-26, Panchkula filed CWP No.18681/2011 (O&M) in respect of recovery of 4th enhanced compensation. The Hon'ble Punjab & Haryana High Court disposed of the writ petition vide order dated 4.10.2011 with the following directions:-

- (a) The committee constituted by the respondents, shall disclose to the petitioner the basis for the demand of the enhanced price of plots allotted to the petitioner's members;
- (b) While disclosing this amount, the respondents shall give exact particulars of the acquired land, land reserved for roads, common services, administrative buildings, educational/religious institutions and Ghaggar river etc.. The respondents shall also disclose to the petitioner the date of notification under section-4 and 6 of the Land Acquisition Act, the particulars of the award pronounced by the then Land Acquisition Collector, the date of deposit of compensation and the interest paid thereon etc. The respondents shall also furnish all other particulars as may be necessary for a just and proper adjudication of the objections raised by the petitioner;
- (c) The petitioner shall be entitled to an opportunity of hearing and for that purpose would be entitled to file fresh objections which shall be considered and decided by passing a speaking order and
- (d) In case any amount is found due from the petitioner's members it shall be paid within two months of the raising of such a demand or in such other manner as the respondents may deem appropriate.

Pursuant to the orders of the Hon'ble Punjab and Haryana High Court, following actions have been taken:-

- (A) The Committee consisting of CCF, CE, CTP, DA HUDA headed by Administrator (HQ), HUDA heard the petitioners on 17.11.2011.
- (B) The date of award, date of deposit of compensation, the details of interest paid on the principal amount, details of area, land allotted to HSEB, land reserved for roads, commercial and other administrative buildings, educational/religious institutions and Ghaggar River etc. have been provided to the petitioners vide No. 38984 dated 23.11.2011. The petitioners have also filed fresh objections on

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basis of objections filed by the petitioners. These issues were submitted to the competent authority for consideration and decision. The issue-wise findings on the basis of decisions taken by the competent authority are as under:-

(i) Amount on which the enhanced compensation is to be worked out

The recovery of enhanced compensation is to be worked out on the basis of actual payments deposited in the court as per "D" forms in respect of 1154.26 acres of land acquired for sectors 24, 25, 26, 27 and 28 Panchkula.

(ii) Area on which the enhanced compensation is to be worked out.

Enhanced compensation in respect of Sector-26 is to be worked out for the area of 328.04 acres which was actually acquired for Sector-26 and not for 369.14 acres. The calculations of enhanced compensation are required to be done as per the revised details of area provided by the DTP, Panchkula.

(iii) How to treat the common areas of the sector?

The common areas of sector i.e. area under communication zone, area under river Ghaghar and woodland, area under community facilities, area under health centre, 50% area under educational facilities (as 50% of area under educational facilities is allotted to the Education Department free of cost and 50% of area is sold by way of auction), area under police station/police post, area under religious buildings, area under community center, area under crèches, area under Ashiana Scheme and area under tube wells, roads and open spaces will be proportionately shared by the saleable area.

(iv) Enhanced compensation of the area under Ashiana Scheme and area under EWS plots.

The land is given free of cost in respect of Ashiana Scheme. Similarly, the plots under EWS category are allotted at the concessional rates through cross subsidization. Therefore, the burden of the land cost/subsidized land cost and its enhanced compensation is recovered from the other allottees through cross subsidization. The matter of charging the enhanced compensation from the allottees of EWS category was decided by the Hon'ble Punjab and Haryana High Court in CWP No.1483/1997 in the case of Bishan Sawrup and others which also got finality in the Hon'ble Supreme Court of India on 11.2.2000. Accordingly the burden of enhanced compensation of area under EWS plots/Ashiana Scheme needs to be charged proportionately from the sealable area of the sector.

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“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.”

Section-28 of Land Acquisition Act 1894

“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.”

Therefore, the interest as awarded by the reference court and paid to the land-owners on the reference made under section-18 of the Land Acquisition Act,1894 is a part and parcel of enhancement compensation and is recoverable.

It is also made clear that HUDA is not charging the compound interest as alleged by the petitioners in their objections. As per Section 2(b) of the HUDA(Disposal of land & Building) Regulation,1978 HUDA is entitled to recover the actual amount of enhanced compensation alongwith interest paid to the land-owners.

(vi) First, second and third enhancement may also be considered for re-determination.

... out on the above

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- (vii) HUDA had paid Rs.104,76,45,792/- as enhanced compensation till 2008 whereas recovery of amount of Rs.162,55,10,288/- has been recovered from the potholders.

These figures may be reconciled and recovery on actual payment basis may be worked out in respect of first, second and third enhancement and if any excess amount/less amount has been charged, the credit/debit for the same alongwith interest @ 15% p.a. be allowed and adjusted in the 4th enhancement.

- (viii) Area under HSEB (40.80 acres), land under River Ghaghar and Woodland area (67.68 acres) and land under communication zone (6.70 acres.) & Certain Common areas

a) Land under HSEB i.e. 40.80 acres was not acquired. Therefore, this may be excluded while working out the recovery of enhancement compensation.

b) Land under River Ghaghar and Woodland i.e. 67.68 acres was acquired for flood protection work in the absence of which the sectors falling along river Ghaghar may have to face floods. Therefore, enhancement of this land is chargeable to the saleable area of the sector on proportionate basis. 17.31

c) The land under communication zone is 6.70 acres. As per approved Periphery Development Plan, a communication zone of 300ft. (91.5M) vide was reserved along the NH-73, NH-22 and NH-21A. to which, the area was planned and acquisition proposal made as per the Periphery Controlled Area Plan. Layout Plan of sector-25, 26, 27 & 28 were prepared by reserving a communication Zone of 300 ft.(91.5M) width. This was reduced to 30 meter wide restricted belt later on in the explanatory note. Now as per approved Development Plan of Panchkula Extension the restricted belt has been kept as 30 meter except in sector 25, 26, 27 & 28 wherein the communication zone was not reduced since 400 KV HT line is passing through this zone and after reserving the influence zone the said H.T. line, balance area could not be put to any gainful use as no construction is permitted under the ROW of the said line which is 52M. 3


Therefore, the area of 6.70 acres falling in the communication zone is also recoverable from the saleable area of sector -26, Panchkula on proportionate basis.

d) Certain Common areas--Certain common areas such as area under

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The calculation of recovery of enhanced compensation may also be revised accordingly. Therefore, it becomes necessary to issue notices of 4th enhancement to the plot holders at the revised rate and essentially, therefore, the revised rate is the one which will become payable by the plot holders when HUDA had issued them the original notices of 4th enhancement. However, interest @ 15% p.a. may be allowed/charged on the excess amount/less amount paid by the plot holders. A copy of the order may be conveyed to the petitioners under registered cover.

Dated: 18.1.2012


(Surjeet Singh)
Administrator, (HQ)
HUDA, Panchkula.