

HARYANA URBAN DEVELOPMENT AUTHORITY
SECTOR-6, PANCHKULA.

Reys,
No. HUDA-CCF-Acctt-II-2014/ 2622-26238
To

Dated: 11/11/14

1. Sh. Mahabir Singh S/o Late Sh. Laxman Singh,
Resident House No.-974, Sector-43,
Gurgaon.
2. Smt. Nandita Mehta W/o Parveen Mehta,
Resident of House No.-171, Sector-43,
Gurgaon.
3. Sh. Jagdish S/o Sh. Ram Saran,
House No.-982, Sector-43,
Gurgaon.
4. Sh. Parkash Chand Garg S/o Late Sh. P.C. Garg,
House No.-573-P, Sector-43,
Gurgaon.
5. Smt. Anita Yadav W/o Sh. Lalman Yadav,
House No.-77, Sector-43,
Gurgaon.
6. Sh. Lalman S/o Sh. Hem Chander,
House No.-82, 83, 344, Sector-43,
Gurgaon.
7. Sh. Sanjay Gupta S/o Sh. Brij Mohan Gupta,
House No.-538, Sector-43,
Gurgaon.
8. Smt. Nirmala Devi W/o Sh. Chandra Bhushan Prasad,
House No.-561, Sector-43,
Gurgaon.
9. Smt. Sunita Jain W/o Sh. Anil Jain,
House No.-567, Sector-43,
Gurgaon.
10. Smt. Anuradha Jain W/o Sh. Naveen Jain,
House No.-723, Sector-43,
Gurgaon.
11. Sh. Sanjiv Kumar S/o Sh. Jagwant Singh,
House No.-5644, Sector-43,
Gurgaon.
12. Sh. Kishore Kumar S/o Sh. Girdhari Lal,
House No.-663, Sector-43,
Gurgaon.
13. Smt. Shakuntla Kadian W/o Sh. S.S. Kadian,
House No.-912-P, Sector-43,
Gurgaon.
14. Sh. Monil Aggarwal W/o Sh. Sunil Aggarwal,
House No.-623, Sector-43,
Gurgaon.

P.T.O.


15. Sh. Rajeev Gupta S/o Sh. Janak Raj,
House No.-785, Sector-43,
Gurgaon.

Subject: Speaking order in respect of recovery of enhanced compensation for sector-43, Gurgaon in pursuance of order dated 03.12.2013 in CWP No. 24213 of 2013 titled as Mahabir Singh and others.

Please refer to the subject cited on above.

Find enclosed herewith the copy of speaking order passed on 30.10.2014 by the Committee constituted for this purpose and it is for your information please.

DA/As above:



(Manohar Lal),
Sr. Accounts Officer,
For Administrator (HQ),
HUDA, Panchkula.

Endst.No.HUDA-CCF-Acctt-II-2014/- 26239

Dated:- 11/11/14

A copy of the above is forwarded to the Estate Officer-II, HUDA, Gurgaon for information and necessary action.

DA/As above:


(Manohar Lal),
Sr. Accounts Officer,
for Administrator (HQ),
HUDA, Panchkula.

**Passed in compliance with the orders of Hon'ble Punjab & Haryana High Court
in CWP No. 24213 of 2013**

This speaking order is being passed in compliance of the orders dated 03.12.2013 passed by Hon'ble Punjab & Haryana High Court in CWP No. 24213 of 2013 in case of Mahabir Singh and others pertaining to demand raised by HUDA in respect of sector-43, Gurgaon on account of enhancement in the compensation awarded to original land-owners. The orders dated 03.12.2013 are reproduced as under:-

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"4. It was not disputed by the learned counsel of the parties that the issue raised herein is concluded by order dated 28.8.2013 passed by this Court in CWP No.12107 of 2012(Sanjay Burman Vs. State of Haryana and others) and other connected petitions. This Court while deciding CWP No.12107 of 2012 and other connected petitions had recorded as under:-

" 7. After hearing learned counsel for the parties and in view of the above, in our opinion at this stage, as the parties are agreed, the writ petition can be disposed-of by directing the concerned Authority to pass a detail speaking order after affording an opportunity of being heard to the petitioner in accordance with law. Ordered accordingly. It is not controverted by learned counsel for respondents No.2 to 5 that the needful shall be done within two months from the date of receipt of certified copy of this order. It is, however, clarified that till the speaking order after hearing the petitioner(s) is passed, no recovery of enhanced compensation shall be affected from the petitioner(s). It shall be open to the petitioner(s) to approach this Court again this case they are aggrieved by the speaking order to be passed by the Authority.

8. Needless to say that the respondents while passing the speaking order after hearing the petitioner(s) would not be influenced by the observations made in the earlier part of the order."

5. In view of the above, the present writ petition is disposed of in the terms of order dated 26.08.2013 passed in CWP No.12107 of 2012."

Discussion and finding of the Committee issues raised in CWP:-

As per order of the Hon'ble Court, hearings were fixed on 24.03.2014, 4.4.2014 and 19.5.2014 to discuss the issues raised in CWP but the same were not

attended by the petitioner. So the issues raised in the writ petition are taken up for decision as under:-

1. **Para: 1:** That the petitioners have contended that they are the residents of Sector-43, Gurgaon; who had been allotted the plots by the Haryana Urban Development Authority way back in the year 2000-2002 or so, pursuant to the land having been acquired by HUDA in late 1990s. The allotment letter contained one clause that the sale consideration was tentative, which would be subject to further enhancement in the cost of land; awarded by the competent authority under the land acquisition act, 1894. Subsequent to that, inspite of the fact that the entire sale consideration has been paid by the petitioners; prior to the handing over of the possession by the HUDA now in 2012, the demand was raised by the HUDA on account of the enhanced compensation which works out to be even more than the entire sale consideration paid at the time of allotment. The present controversy and the grievance of the petitioners is qua the wrong calculation of the aforesaid demand being raised by the HUDA on account of enhancement in the compensation awarded to the original land owners whose lands had been acquired which has been wrongly calculated.

Comments: - Plots are allotted by the HUDA on the basis of Tentative 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 compensation.

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.

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 under Regulation 10(2) of The Haryana Urban Development (Disposal of Land & Buildings) Regulations, 1978.

The Sector-43 Gurgaon was acquired and planned in 2 phases. The 1st Phase of Sector-43 (Part-1), Gurgaon was acquired in March 1993 along-with Sec.44, Gurgaon and was planned for Group Housing Societies. These societies were floated in the year 1998 and they are liable to pay the enhancements of the acquisitions of 1993 and the same was issued vide this

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office letter No.HUDA-CCF-Acctt-II-Acctts-2013/38520 dated 24.09.2013. The 2nd phase was acquired and planned separately after the floatation of 1st Phase in the year 2000, on this land, compensation was enhanced by Hon'ble Court of ADJ and High Court for Rs.717/- per Sq.yd. and 1520/- per Sq.yd respectively. The enhancement of phase-2 (Sec.43) was conveyed vide this office letter No.HUDA-CCF-Acctt-II-Acctts-2012/43488 dated 15.11.2012.

2. **Para 2:** The petitioner has submitted that inspite of having already taken the perceived enhancement from the petitioners right at the time of allotment, the HUDA is now charging the exorbitant amount by levying charges under the Heads, which are not applicable at all thereby unfairly and illegally raising the present demand, in view of the law laid down by the Hon'ble Supreme Court in the case of "Shrilekha Vidyarthi Versus State of Uttar Pradesh" (1991) 1 SCC 212, LIC of India Versus Consumer Education and Research Centre (1995) 5 SCC 482 and "Central Inland Water Transport Corporation versus Brojonath Ganguly" (1986) 3 SCC 156, that it is the philosophy of the Constitution that the action of the State in the contractual field must be meant for public good and be expected to be fair and just and even in the contractual matters, exclusion of Article 14 cannot be contemplated as non arbitrariness is the basic rule to the law and every action of the State must appear to be reasonable and just on the touchstone of Article 14. Hence, the present writ petition.

Comments:- As already stated under comments to para 1 above, Plots are allotted by the HUDA on the basis of Tentative Price. 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 compensation. The impugned demand of enhanced compensation is being recovered from the allottees under Regulation 10(2) of the Haryana Urban Development (Disposal of Land & Buildings) Regulations, 1978. The demand was 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. The action taken by HUDA is fair and just as per existing provisions of Law.

3. **Para 3:** The petitioner has objected that the lands had been acquired at a Price Rs.177.38 per sq. yards and when the allotment was made to the petitioner @ Rs.4500/- per sq. yd., the component of the perceived enhancement in compensation had already been factored into, as the plots were allotted @ Rs.4500/- per sq. yd. as against the rate of acquisition of Rs.4177.38 per sq. yd. In their reply in the similar writ petitions, the HUDA for the first time has come up with the calculation sheet denying therein that no cost covering the perceived enhancement amount was added at the time of

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price fixation of sector-43, Gurgaon. The petitioner humbly submit that the calculation provided by HUDA regarding the original sale price contains grave errors and illegalities committed by then for which the kind attention of this Hon'ble Court prayed for.

Comments:- The tentative price of a particular sector is fixed under Regulation -4 of the Haryana Urban Development (Disposal of Land & Buildings) Regulations, 1978 .In addition to the cost of land, it also includes estimated cost of development, cost of buildings and other direct and indirect charges. The perusal of the initial price fixation for Sector 43 reveals that the initial cost was fixed while taking the original land cost which was announced by Land Acquisition Officer, Gurgaon @ Rs.177.38 per sq. yd. It did not include any enhancement compensation.

4. **Para 4:** The petitioner has submitted that the petitioner are citizens of India and residents of sector-43, Gurgaon, in the state of Haryana and, as such are competent to invoke the extra-ordinary writ jurisdiction of this Hon' ble Court under Articles 226/227 of the constitution of India.

Comments:- Matter of record. No Comments.

5. **Para 5:** The petitioners have not enclosed some relied upon documents with the writ petition for brevity .

Comments:- Matter of record. No Comments.

6. **Para 6:** The petitioners have simply quoted Clause 9 of the allotment letter dated 31.05.2002 issued to petitioner no.-9 *which says 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. The additional price determined shall be paid within thirty days of its demand."*

Comments:- Matter of record. No Comments.

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7. **Para 7:** The petitioners have stated that petitioner no.-9 was issued the possession letter by the Junior Engineer for Estate Office, HUDA, Gurgaon dated 01.06.2002.

Comments:- Matter of record. No Comments.

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8. **Para 8:** The petitioner has stated that the land was acquired by the State originally at the basic rate of Rs. 177.38 per sq. yd. and after adding the statutory benefits as per the Land Acquisition Act, 1894 i.e. solatium @ 30% under section 23(2) and additional amount @ 12% P.A. under section 23(1A) of the Act ibid, the cost of the land worked out to be Rs. 294.30 per sq. yd. Therefore, the land which was acquired admittedly @ Rs. 294.30 per sq. yd. was allotted @ Rs. 4,500/- per sq. yd. after adding all the charges, which as

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per the petitioners also included the perceived enhancement which was incorporated as clause 9 in the allotment letter.

Comments:- As already stated under comments to para 3 above, the initial price fixation for Sector 43 was done while taking the original land cost which was announced by Land Acquisition Officer, Gurgaon @ Rs.177.38 per sq. yd.

It did not include any enhancement compensation. In addition to the cost of land, it included the estimated cost of development, cost of buildings and other direct and indirect charges.

9. **Para 9:** The petitioner has simply reproduced the calculation sheet provided by HUDA for fixation of tentative price of sector-43, Gurgaon.

Comments:- Matter of record. No Comments.

10. **Para 10:-** The petitioners have stated that many of charges have been levied time and again, which has illegally multiplied the burden of the petitioner.

Comments:- The tentative price of a particular sector is fixed under Regulation -4 of the Haryana Urban Development (Disposal of Land & Buildings) Regulations, 1978 .In addition to the cost of land, it also includes estimated cost of development, cost of buildings and other direct and indirect charges, as determined by the Authority from time to time. Therefore, it is clarified that all the charges included have been appropriately levied as per methodology approved by the Authority.

11. **Para 10A, 11 and 12 :-** The petitioners have reproduced provisions of Section 2(e), Section 2(g) , Section 2(hha), Section 2(i), and Section 2(ii) of the Haryana Development and Regulation of Urban Areas Act, 1975

Comments:- Matter of record. No Comments.

12. **Para 13 & 14:** The petitioner has contended that definition of external development works under Sections 2(g) of the 1975 Act, specifically cover grid sub-station. But the cost of same has also been included in the internal development works in the price fixation table under heading "Development Cost" at serial no. "B", the sub serial no. 5 & 23 again have included cost of "electrification" (including grid substation) and "new grid station" respectively.

Also in para 14, the petitioner has contended that since charges under sub serial no. B-5 & B-23 are not leviable ,there should not be 5% increase on these charges under sub serial No. C-4 of Price Fixation Formula.

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

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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 dis-jointed 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. But charges on internal development works are accounted for under "Development Cost" in the price fixation formula for the sector. These are two charges for mutually exclusive development works so the contention of double charging is not acceptable.

13 **Para 15:** The petitioner has contended that the head "indirect charges" at C-2 and C-4 of the price fixation table are repetitive in nature. They are one and the same thing. C-2 is the additional price escalation @ 5% for two years on the development cost, whereas C-4 is the additional unforeseen charges @ 5% on the development cost.

Comments:- These charges are levied as per the price fixation formula approved by the Authority under Regulation 4 of the Haryana Urban Development (Disposal of Land & Buildings) Regulations, 1978. The impugned issue in this case is demand of additional price defined under Regulation 2(b) of the Regulations, which is determined sector wise on account of the enhancement of compensation of any land in the same sector by the Court. This has no relation to the "indirect charges". Therefore, the plea of the petitioner is rejected.

14:- **Para 16:** The petitioner has contended charging of conversion charges under C-6 of price fixation formula.

Comments:- that conversion charges are collected on the behalf of Govt. by HUDA and deposited with the State Government. It has no relevance to the land cost. The impugned issue in this case is demand of additional price defined under Regulation 2(b) of the Regulations, which is determined sector wise on account of the enhancement of compensation of any land in the same sector by the Court. This has no relation to the conversion charges. Therefore, the plea of the petitioner is rejected.

15: **Para: 17:** The petitioner has objected to levy @ Rs. 400/- per sq. yd. as infrastructure development charges and Rs. @ 1100/- per sq. yd. as additional infrastructure development charges though the land was acquired in 1990s by the HUDA and thereafter allotted to the petitioners at various dates starting from the year 1997 to 2004. Their contention is that "**infrastructure development charges**" was inserted in the 1975 Act in the year 2007 by way of Haryana Act No. 5 of 2007. It is intriguing as to how the charges defined in Section 2(hha) and 2(ii) of the 1975 Act, the infrastructure development charges came into existence in the year 2007 could be levied or perceived at the time of allotment made in the year 2000-2002.

Comments:- The infrastructure development charges were levied as per the decision of the State Cabinet taken in its meeting held on 27.03.1997 and

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the decision of the Authority taken in its 70th meeting held on 23.04.1997. Therefore these charges have been charged as per the decision of the Government/Authority and are not illegal.

16. **Para: 18:** The petitioner has objected that the entire enhancement is being divided between the Allottees of the residents areas and the Allottees and/or would be Allottees of the commercial areas; in the same manner, whereas the price of the commercial area fetched to the State is about 100 times than the price fetched to the State for the residential area in Gurgaon. Thus, the enhancement to be charged from the Allottees of the residential area has to be proportionately balanced between the value in terms of revenue generated by the State, from the residential and commercial areas,

Comments:- The residential plots are allotted by draw of lots under procedure prescribed by Regulation -5 of Haryana Urban Development (Disposal of Land & Buildings) Regulations, 1978. The allotment is on the tentative price worked out on costing method prescribed under Regulation 4 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(Regulation 6(1) read with policy instructions available on page 322 of HUDA Policies and Instructions Book) and allotment is to the highest bidder by auction under Regulation -6 of Haryana Urban Development (Disposal of Land & Buildings) Regulations, 1978. The plotable area of commercial sites are very low i.e. 25-30% and the development cost is very high i.e. about 3 times than the development cost of residential plots and commercial area is sold after the habitation of the sector.

After allotment of plots, if any additional price is to be recovered on account of enhancement, the residential plot-owners who were allotted plots by draw of lots are required to pay the same under Regulation-10 of Haryana Urban Development (Disposal of Land & Buildings) Regulations, 1978. But no such recovery is made from commercial plot-owners who were allotted plots by way of auction.

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.

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

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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 area 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 filed 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

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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."

So the enhancement cannot be loaded based on proportionate sale price of residential and commercial plots. Accordingly plea of the petitioner is not tenable.

- 17. **Para 19:** The petitioner has stated that the Hon'ble High Court had passed the orders of enhancement in regular First Appeal No.1824 of 2010, amongst others, on 01.10.2010. Thereafter, the Chief Administrator, HUDA, Panchkula, vide communication dated 23.05.2011 bearing No.HUDA-CCF-Acctt-II-2011/17725, wrote to the Estate Officer, HUDA, Gurgaon, to issue recovery notices as per the HUDA policy in consonance with the calculation made by them.

Comments:- It is matter of record. But the land-owners had further filed appeal in the Hon'ble Supreme Court under SLP No.11659 of 2011 against the order of Hon'ble High Court and the same was dismissed by the Hon'ble Supreme Court on 25.07.2011 as under:-

"Although this Court has entertained the special leave petitions filed by the landowners for grant of enhanced compensation and issued notice, we do not find any valid ground or justification to entertain the petitioners' challenge to the fixation of market value by the High Court because the reasons assigned by the learned Single Judge for fixing higher market value of the acquired land do not suffer from any patent legal infirmity warranting interference under Article 136 of the Constitution.

The special leave petition is accordingly dismissed."

- 18: **Para 20:** The petitioner has objected that the same mode of calculation should not be adopted for the group housing society and for separate plot-owners for realizing the enhanced compensation.

Comments: The enhanced compensation has to be worked out as per Section 2(b) of 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 account of the enhancement of compensation in the same sector awarded by the Court. It has no relation to the fact whether residential plot is used by individual owner or by the group housing society. Accordingly plea of the petitioner is not tenable.

- 19: **Para 21:** The petitioner has contended charging heavy interest on the enhancement amount by HUDA .

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Comments: The interest is paid under section 23(1A)/ 28 of Land Acquisition Act, 1894 by the Collector to the farmers/land-owners from whom land was acquired. Once this amount has been paid by HUDA to land-owners, the same becomes the part of the cost for acquisition of land. Therefore, such cost of acquisition has to be recovered in the shape of additional price from the petitioners. Further as per Regulation 2(b) of Regulations, the additional price includes the amount of cost incurred in respect of Court's decision on reference made under Section-18 of Land Acquisition Act. Thus, HUDA has to recover full cost from the petitioners.

This 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 HUDA as per page-9 of the order made submissions that "*Payment of enhanced compensation is made by HUDA out of its own resources and no assistance from the State Government or financial institutions 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, it becomes difficult to make payment immediately after the announcement of the enhanced amount of 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 by the HUDA and its burden must fall on all the plot-holders.

- 20: **Para 22:** The petitioner has objected that they have been unfairly burdened with the enhancement, for the lands upon which such institutions like colleges, schools, hospitals etc. have been created which are still the ownership of HUDA and have only been leased on nominal amount to various schools, colleges etc.

Comments: As per HUDA policy 50% school sites is saleable and 50% to be transferred to Education Department @Rs.100/- per year which is very nominal. The benefit of saleable area is already given while making the calculation. The area of nursing home clinics is also saleable and the benefit of the same has already been given. The land of common facilities like college and schools which is transferred to education department cannot be sold by HUDA at any later stage because these are the common facilities for the public purpose.

21. **Para 23:** That the respondents have not calculated the enhancement of the external development charges proportionately between the commercial as well as the residential areas. In fact, without adjusting the enhancement qua the commercial areas, the enhancement is being saddled entirely upon the residents who have purchased the plots to construct their residences, which

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again is an action which is totally in favour of a certain section of the people and against the detriment of the resident of the area, who are facing the brunt of the enhancement alone, which is neither fair nor equitable. Furthermore, when the enhancement amount is adjusted towards the commercial areas, the present calculation is bound to be changed.

Comments: The issue in this matter is demand of additional price as per Section 2(b) of Haryana Urban Development (Disposal of Land & Building) Regulations, 1978, on account of enhanced compensation to be paid to farmers with respect to the land acquired for development of the same sector. The enhancement of external development charges has no relation to enhanced compensation of land.

- 22: **Para 24:** That the HUDA is charging land rate for commercial sites at the same rate charged to the plot owners, whereas, the HUDA while selling the commercial sites fixes the rate about 20 times higher as compared to the residential areas. So, if the rate charged in the residential area is about Rs. 5,000/- per sq. mtr. Then the likely rate to be charged by HUDA while selling commercial site is around Rs. 1.0 lac per sq. mtr. Thus, there is an uneven balance regarding the recovery of the EDC should be made in consonance with the value of their property, while the entire burden is being saddled upon the poor middle class house dwellers, who have pooled in the entire live savings and even taken loans to have a roof over their head and now almost a decade, are being saddled with heavy enhancement much to their dismay and discomfort.

Comments: The Section 3 of the Haryana Development and Regulation of Urban Areas Act, 1975 provides for recovery of proportionate development charges if the External Development Works (as defined in clause(g) of Section 2 of the Haryana Development and Regulation of Urban Areas Act, 1975) are to be carried out by the Government or any local authority. The rate of such development charges of External Development Works is also popularly known as External Development Charges (EDC). The said provision of Section 3, ibid, also provides for determination at the level of the Director General, Town & Country Planning Department, Haryana under Haryana Development and Regulation of Urban Areas Act, 1975, the proportion and the time within which such EDC payment is to be made.

The EDC charges are fixed by the Director General, Town & Country Planning Department, Haryana (DGTCP). HUDA is only collecting EDC charges on behalf of the DGTCP. Therefore, this issue is not relevant for demand of additional price as per Section 2(b) of Haryana Urban Development (Disposal of Land & Building) Regulations, 1978, on account of enhanced compensation to be paid to farmers with respect to the land acquired for development of the same sector. The enhancement of external development charges has no relation to enhanced compensation of land.

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23. **Para 25:** The petitioner has objected that the HUDA has not yet calculated the EDC by including the revenue which is likely to accrue while charging the establishments which are in the process of coming up like hospitals, colleges and schools which will be sold by HUDA on commercial basis.

Comments: Same as above in reply to para 24 of CWP. The EDC is to be determined by the DGTCP and not by HUDA. Therefore, the point raised is not relevant.

24. **Para 26:** The petitioner has objected that the principle of proportionately has not been applied by UDA while calculating the enhanced compensation for the Bandh area, which had been constructed to safeguard the other sectors from floods.

Comments: The bandh falls in Sec.43 and it is for the protection of this sector. The amount of demand on account of additional price defined under Regulation 2(b) of the Haryana Urban Development (Disposal of Land & Building) Regulations, 1978, is determined sector wise on account of the enhancement of compensation of any land in the same sector by the Court. Therefore, plea taken by petitioner is not acceptable.

25. **Para 27:** The petitioner has objected that this Hon'ble Court had decided the regular First appeals in October, 2010 and the HUDA had issued the letters enhancement after a period of 1 ½ years, for which period also, the interest is being unfairly levied upon the residents of the areas, for which none of the petitioners was responsible in any manner.

Comments: This 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 HUDA as per page-9 of the order made submissions that "*Payment of enhanced compensation is made by HUDA out of its own resources and no assistance from the State Government or financial institutions 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, it becomes difficult to make payment immediately after the announcement of the enhanced amount of 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 by the HUDA and its burden must fall on all the plot-holders.

26. **Para 28:** The petitioner has objected that the external development charges have already been appropriated by the State from the various

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developers and on the same lands again, the external development charges are being levied, which turns the present case into a case of double jeopardy. The respondents, in an unfair manner, are demanding and covering the external development charges twice over, which is impermissible in law and against the principal of equity and good conscious.

Comments: Same as above in reply to para 24 of CWP. The EDC is to be determined by the DGTCP and not by HUDA. It is recoverable from the plot holders as well as from the developers. The external development charges recoverable from the plot holders of Sec-43 only for the area of this sector and it was not recovered from developer of other area.

27. **Para 29:** The petitioner has objected that the calculation of the enhancement was in itself ingrained in the original allotment price, which was manifold, the price at which the land was acquired at the prevalent time. Till date, the respondents have not explained as to how that huge gap between the actual expenses incurred in acquiring the land and the excessive amount already charged from the petitioners and other residents at the time of allotment of the plots have occurred. The respondents have not given any calculation sheet regarding the calculation of the price of the plots at the time of allotment and the various heads under which they were charging the price, which goes on to show that the same was being charged for the impending enhancement and in fact the enhancement being charged from the petitioners now has already been charged to a great extent in the original allotment price itself.

Comments:- Same as above in reply to para 3 of CWP.

28. **Para 30:** The petitioner has objected that the Hon'ble Supreme Court in the case of "**Sadhu Ram Versus Pulin Bihari Sarkar**" reported as AIR 1984 SC 1471, had held that in certain situations, social justice must prevail over the technical rules. In the present case, the citizens are facing extreme hardship on account of unfair rates of enhancement being levied upon them. Not only the principal amount is exaggerated, but also they are being levied with very harsh rates of interest and interest upon interest also, and that too not only for the periods pursuant to the allotment of the plot, but prior thereto also, which is simply not sustainable in the eyes of law. There are cases where old retired couples have constructed their houses putting in the entire savings into the same and are now being subjected to this torture and are putting themselves under heavy loans, just to remain under the roof of their own home. In the aforesaid case, the Hon'ble Supreme Court had held that as between two parties, if a deal is made with one party, without serious detriment to the other, then the court would lean in favour of the weaker section of the society. Thus, social justice as recognition of the greater good to

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the greater number without the deprivation of any right to anybody, was established as a principle of public law review.

Comments: Plots are allotted by the HUDA on the basis of Tentative Price. 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 compensation. The impugned demand of enhanced compensation is being recovered from the allottees under Regulation 10(2) of the Haryana Urban Development (Disposal of Land & Buildings) Regulations, 1978. The demand was 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. The action taken by HUDA is fair and just as per existing provisions of Law.

- 29 **Para 31 & 32:** The petitioner has reiterated that the mode of calculation of the enhancement qua the petitioner is absolutely arbitrary and it includes public utilities, which are used by the residents of the other sectors and the public at large, viz. even the private developers like DLF, UNITECH, ANSAL etc. They have contended that they have been burdened with the liability to pay the enhanced compensation even for the sites, which absolutely fall in the domain of the public utilities like, colleges, hospitals, community centers, electric sub-stations, police stations etc. The colleges and electric sub stations are town level facilities and not the sector level facility. Furthermore, the ownership of the community centers, colleges, schools as well as electric sub stations created in the area is still with the State i.e. HUDA. Thus, it is extremely unreasonable on the part of the respondents to ask for the enhanced compensation from the petitioner for even the institutions which are owned by them.

Comments:- Same as above in reply to para 13, 14 & 22 of CWP.

30. **Para 33:** The petitioner has contended that the respondent, HUDA, has recovered external development charges as well as the enhancement from the various developers in respect of colleges, hospitals, fire stations, grid sub stations and regarding all these facilities. Thus, the enhancement which the official respondents have already recovered from the developers, how can the same be recovered again from the resident of the area in a totally illegal and arbitrary manner by accruing double benefit to the state which is charging the enhancement for the same cost, twice, once from the developers and now again from the residents of the area.

Comments:- The petitioners have primarily contested the calculation of EDC. It has already been clarified that EDC is determined by DGTCP and not by HUDA. The EDC rates as determined by DGTCP are applicable uniformly to whole of the urban estate. There are many sectors in the urban estate. No

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distinction is made between the developer or the HUDA plot -holder. The cost of EDC facilities is distributed proportionately over whole of the urban estate. Each one is liable to pay EDC . There cannot be any double charging.

31. **Para 34:** The petitioner has objected that the compensation for the land from the petitioner, and on the other hand, the respondents are charging external developers, which also includes the enhanced external development charges. The respondent are demanding enhanced compensation from the petitioner as well as the enhanced compensation from the private developers, which is clothed in the external development charges being charged by them. The action of the respondents amounts to fraud on the public and is totally capricious, arbitrary and unsustainable in the eyes of law.

Comments:- Same as above in reply to para13,14 & 22 of CWP.It is submitted that the enhancement compensation and external development charges are different. The external development charges are charged for the development of Urban Estate. Whereas the enhancement compensation is calculated sectorwise against the enhanced cost of land acquired for developing a particular sector .

- 32 **Para 35:** The petitioner has reiterated his contention that the buildings/land which are owned by HUDA are also included in the present enhancement.

Comments: Reply is already given in preceding paras.

33. **Para 36 to 42:** The petitioner has re-iterated the issues raised earlier in the above paras.

It is ,therefore, held that the enhanced compensation worked out by HUDA is correct and there is no merit in the representation of the petitioners. A copy of the order may be conveyed to the petitioner under registered cover.


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Panchkula


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CE, HUDA
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CCF, HUDA
Panchkula


Administrator, (HQ)
HUDA, Panchkula.