

# **INSTRUCTIONS REGARDING INTEREST RATES**

Copy of letter No HUDA Acctts-78/8371—92 dated 13.10.1978 from Chief Administrator HUDA Chandigarh to All the subordinate of HUDA (in the Haryana state)

**Subject: Rate of interest.**

The question of adopting a uniform policy regarding rate of interest on outstanding dues of HUDA has been engaging attention of the Authority. It has now been decided that in future the rate of interest on all type of outstanding dues shall be @10% P.A. In allotment letters/ agreements a condition for charging interest @10% P.A should be imposed in all price fixation cases, the interest will be calculated @ 10% P.A.

This will however not affect outstanding dues in respect of the allotments /agreements already made.

HARYANA URBAN DEVELOPMENT AUTHORITY, CHANDIGARH

NO. HUDA-Acctts. -85/5707

Dated: 2.3.1985

To

1. The Administrator HUDA Panchkula/Faridabad /Gurgaon
2. The Chief Engineer HUDA Panchkula
3. All the Superintending Engineers  
HUDA (In the State)
4. All the Executive Engineers  
HUDA (In the State)

**Subject: Rate of Interest**

After thorough consideration a uniform policy regarding charging of interest on the outstanding dues of HUDA was adopted and instructions were issued vide this office No HUDA-Acctts-78/8371-82 dated 13.10.1978 (copy enclosed). It was thus laid down that the rate of interest on all type of outstanding dues shall be 10% P.A. In all allotment letters/ agreements a condition for charging interest 10% P.A should be imposed and that in all price fixation cases the interest be calculated @ 10% P.A.

A doubt has arisen in certain quarters whether interest should be charged at simple rates or it has to be compounded after one year.

In this connection it is clarified that simple interest may be charged in respect of all the dues but in case of defaulted payments compound interest @ 10% P.A may be charged. Other conditions envisaged in this office letter dated 13.12.1978 will remain the same.

Receipt of the letter may be acknowledged

Sr. Accounts Officer  
for Chief Administrator,

HUDA, Chandigarh

**Annexure-A**

**HARYANA URBAN DEVELOPMENT AUTHORITY**  
SCO No 841, Manimajra

NO. HUDA-Acctts. 07/1398-1408

Dated: 15.1.1987

To

All the Estate Officers  
HUDA (In the State)

**Subject: Revised rates of interest on instalments of plots holders.**

It was under the active consideration of the Authority to charge higher rate of interest on the delayed payment. It was observed that the recovery of chanced compensation and instalments are not being affected from one plot holder in time because of lower rate of interest. The matter has been examined in detail and it has been decided that following rates of interest may be charged from the plot holders who do not make the payment in time;-

- |    |  |   |
|----|--|---|
| a) | Normal rate of interest                            | 10% P.A   |
| b) | Interest for the delayed<br>Payment of instalments | 18% P.A<br>(Which includes 10%<br>P.A. normal interest) |

Due date means the last day on which the payment falls due thus interest at 18% P.A is to be charged if payment is not made after even one day after the due date. However after the expiry of one year from due date the resumption proceedings may be initiated.

In the case of amount due on account of "Enhanced compensation" the interest pattern of charging 10% interest from the due date will continue as such.

One notice should be issued to the plot holder regarding charging of this interest. This notice may be issued immediately after the due date if instalment has not been deposited. These instructions will come into force with immediate effect.

Please acknowledge the receipt.

Controller of Finance  
for Chief Administrator  
HUDA Panchkula

All the Administrator HUDA (In the state) for information & necessary action please.

# HARYANA URBAN DEVELOPMENT AUTHORITY

NO. HUDA-Acctts. S.O-I-91/23860

Dated: 18.11.1991

To

All the Subordinate Offices,  
of HUDA (In the State)

**Subject: Increase in the rate of interest.**

Reference this office letter No-HUDA-Acctts-78/9371-92 dated 13.10.78 on the subject cited above.

The matter regarding increase in the rate of interest had been engaging the attention of this office from some time past. The matter was placed before the Authority in its 51<sup>st</sup> meeting held on 9.10.1991. A copy of the agenda item No A-51 (18) and extract of minutes is enclosed.

It has been decided that in future in all the allotment letters/ agreements, a condition for charging interest @ 15% per annum instead of 10% p.a should be imposed and in all the price fixation cases the interest be calculated @ 15% P.A. However, on delayed payment of instalment interest @ 18 % p.a. will continue to be charged.

This will however be applicable to the new sectors floated in future.

DA/As above

Sr. Accounts Officer  
for Chief Administrator,  
HUDA Manimajra

All the Branch Incharge of HUA HQ

# HARYANA URBAN DEVELOPMENT AUTHORITY

NO. HUDA-Acctts-S.O-I-2000/24564-84

Dated: 22.9.2000

To

All the Administrators,  
HUDA (In the State)

All the Estate Officers,  
HUDA (In the State)

**Subject: Policy regarding charging of interest on delayed payment.**

Please refer to the subject cited above.

The Authority in its 79<sup>th</sup> meeting held on 29.8.2000 has decided to charge simple interest @ 18% per annum on delayed payments of instalments and simple interest @ 15% p.a on delayed payments of enhanced compensation prospectively i.e. from 1.9.2000 on the outstanding dues worked out as on 31.8.2000.

The outstanding dues as on 31.8.2000 may be segregated under the head principal and interest separately. The payment made after 31.8.2000 may be first adjusted against interest. In case of delay in payments after 31.8.2000, the interest on the rates stated above may be calculated and charged only on the outstanding amount of principal till its receipt. You are requested to take further necessary action accordingly.

Accounts Officer  
for Chief Administrator,  
HUDA Panchkula

Endst No HUDA Acctts S.O-I 2000/24585-98

Dated 22.9.2000



A copy of above is forwarded to the following for information  
& necessary action.

1. Joint Director, legal
2. CTP, HUDA Panchkula
3. Chief Engineer HUDA Panchkula
4. ADO HQ Panchkula
5. All the branch Incharge HUDA (HQ)

Accounts Officer,  
for Chief Administrator,  
HUDA Panchkula

# HARYANA URBAN DEVELOPMENT AUTHORITY

NO. HUDA-Acctts. Acctt-I-2002/- 35240-65

Dated: 17.12.2002

To

1. All the Administrators,  
HUDA (In the State)
1. All the Estate Officer's,  
HUDA, (In the State)
2. The Engineer-In-Chief  
HUDA, Panchkula
4. The Chief Engineer  
HUDA, Panchkula
5. The Chief Town Planner,  
HUDA, Panchkula

**Subject: Revision of rate of interest.**

It is intimated that HUDA Authority in its 86<sup>th</sup> meeting held on 13.11. 02 has decided to reduce the rate of interest on delayed payments/ possession interest as follows:

The possession interest on the balance amount of instalments has been reduced from 15% to 11% p.a and interest on delayed payment of instalments has also been reduced from 18% to 14% p.a (simple). However, the rate of interest on enhanced compensation will continue to be charged at the existing rate of interest 15% p.a (simple) in view of the fact that same rate of interest is being paid to the land owners by HUDA as per the Land Acquisition Act. These rates will be applicable

on all the price fixation cases, new allotments, 0agreements, updation of price etc.

It has also been decided by HUDA to implement these rates of interest w.e.f. 15.11.2002.

Chief Controller of Finance  
for Chief Administrator  
HUIDA Panchkula

Cc:-

1. PS/CA for the information of Worthy Chief Administrator HUDA Panchkula
2. PA/Adm. (HQ) for the information of Administrator HUDA (HQ)

# HARYANA URBAN DEVELOPMENT AUTHORITY

No. HUDA-Acctts-Acctt-I-2006/ 2408-27

Dated: 23.1.2006

To

1. All the Administrators,  
HUDA (In the State)
2. All the Estate Officers,  
HUDA (In the State)

**Subject: Revision of Rate of Interest.**

Please refer to this office memo No 35240-65 dated 17.12.2002 vide which decision of the Authority to reduce the possession interest on the balance amount of instalments from 15% to 11% p.a and interest on delayed payment of instalments from 18% to 14% (simple) w.e.f. 15.11.2002 was conveyed to you.

The Authority in its 96<sup>th</sup> meeting held on 29.12.2005 has decided to further reduce the rate of interest on the delayed payment of instalment from 14% to 12% p.a (simple). And the possession interest from 11% to 9% per annum (simple) However, the interest on the delayed payments of enhanced compensation will continue to be charged at the existing rate of interest i.e. 15 % (simple). The new rates will come into force with effect from 1.1.2006.

Chief Controller of Finance  
for Chief Administrator  
HUDA Panchkula

Endst No HUDA Acctts.Acctt-1-2006/2428-33      Dated 23.1.2006

A copy is forwarded to the following for information and necessary action.

1. PS/CA for kind information of Chief Administrator HUDA.
2. PS/Admn. for kind information of Administrator HUDA (HQ)
3. Engineer-In-Chief HUDA Panchkula
4. Chief Town Planner HUDA Panchkula
5. Secretary HUDA Panchkula
6. District Attorney (HQ) HUDA Panchkula

Chief Controller of Finance  
for Chief Administrator  
HUDA Panchkula

# HARYANA URBAN DEVELOPMENT AUTHORITY

No. HUDA-Acctts-Acctt-I-2006 /2381-2401

Dated: 27.1.2006

To

1. All the Administrators,  
HUDA (In the State)
2. All the Estate Officers,  
HUDA (In the State)

**Subject: Revision of Rate of Interest.**

Please refer to this office letter No 24564-84 dated 22.9.2000 vide which the decision of the Authority to charge simple interest at the rate of 18% p.a on delayed payment of instalments and simple interest @15% p.a on delayed payment of enhanced compensation prospectively i.e. from 1.9.2000 on the outstanding dues worked out as on 31.8.2000 was conveyed to you.

The Authority in its 96<sup>th</sup> meeting held on 29.12.2005 has decided to charge the simple interest w.e.f. 3.4.2000 instead of 1.9.2000 on the outstanding dues worked out as on 2.4.2000.

Chief Controller of Finance  
for Chief Administrator  
HUDA Panchkula

Endst No HUDA Acctts.Acctt-1-2006/2402-07      Dated 23.1.2006

A copy is forwarded to the following for information and necessary action.

1. PS/CA for kind information of Worthy Chief Administrator HUDA.
2. PS/Admn. for kind information of Worthy Administrator HUDA (HQ)
3. Engineer-In-Chief ,HUDA, Panchkula
4. Chief Town Planner, HUDA, Panchkula
5. Secretary HUDA, Panchkula
6. District Attorney (HQ), HUDA, Panchkula

Chief Controller of Finance  
for Chief Administrator  
HUDA Panchkula

HARYANA URBAN DEVELOPMENT AUTHORITY, PANCHKULA

No. HUDA-Accts-2007/5903

Dated: 4.09.2007

To

1. All the Administrators,  
HUDA (in the State).
2. All the Estate Officers,  
HUDA (in the State).

Subject: **Charging of compound interest on the delayed payment of instalment.**

Please refer to the instructions issued by this office letter No. 2381-2401 dt. 23.1.06 wherein it was intimated that simple interest @ 18% p.a. on the delayed payment of instalment will be charged from 3.4.2000. These instructions were issued keeping in view the judgment passed by the Hon'ble High Court in the case of Kanta Devi Budhiraja Vs HUDA wherein the appeal filed by HUDA in the Hon'ble Supreme Court was dismissed on 2.4.2000. Therefore, the instructions to charge simple interest were made applicable from 3.4.2000.

2. The issue regarding charging of compound interest prior to the period of 2.4.2000 has been causing attention of the Authority and in number of cases the Hon'ble Courts have decided to charge the simple interest on the basis of judgement passed in the case of Roochira Ceramics Vs HUDA & others. HUDA has been fighting the cases in the various Courts and has been pleading that prior to 3.4.2000 compound interest is chargeable on the delayed payment of instalments as per policy of the Authority.

3. Now in the SLP No. 12084, 12085, 12087, 12167, 12169, 12170, 12168 of 2004 arising out of CWP No. 2099, 10422, 6280 of 2003, 19098, 18344, 19099 of 2002, the Hon'ble Supreme Court of India has ordered to charge the compound interest @ 10% p.a. The facts of these cases are given below:-



These cases relates to allotment of commercial sites which were auctioned during the year 1989 to 1991. Clause-5 of the allotment letter stipulates that “the balance 75% amount of the auction price can be paid in lump-sum- without interest within 60 days from the date of issue of allotment letter or 8 half yearly instalments. The first instalment will fall due after the expiry of six months of the issue of this letter. Each instalment would be recoverable together with interest on the balance price @10% interest on the remaining amount. The interest shall however, accrue from the date of offer of possession”. No other clause of charging of interest was mentioned in the allotment letter. In these cases the Hon’ble High Court has ordered to charge interest on the delayed payment of instalments on the basis of orders passed by Hon’ble Supreme Court of India in the case of Roochira Ceramics Vs HUDA & others (2002) 9 SCC 599. The SLPs were filed in these cases. The copy of orders of the Hon’ble High Court which were challenged, question of law, grounds of appeal, grounds for interim relief etc. filed in one of these cases in Hon’ble Supreme Court of India is enclosed herewith for ready reference. From this it may be seen that under the questions of law, the question has been raised whether the ratio of Roochira Ceramics case is applicable in the facts of the present case? Similarly under the grounds of appeal grounds has been taken that the Roochira Ceramics case is totally different from the present case as in the case of Roochira Ceramics, interest @ 10% p.a. is chargeable if the installments are paid in time by the allottee. The allotment letter is silent with regard to the rate of interest being chargeable on the failure to pay the installments in time. It is only in case of the failure of the allottee to deposit the installments on the due date that interest @ 18% p.a. is chargeable in accordance with the policy of the Authority. Keeping in view the submissions made by HUDA in these cases, the Hon’ble Supreme Court of India has ordered as follows:-

“The question arising in these cases is as to what is the rate of interest to be paid by the respondents for delayed payment to the petitioner-HUDA. We make it clear that the respondents are liable to pay compound interest @ 10% p.a. in these cases. We further make it clear that this direction is only confined to these cases. In other cases, HUDA would be at liberty to charge interest on the defaulting parties in accordance with law. The special leave petitions are disposed of accordingly. No costs”.

The copy of the order of Hon’ble Supreme Court of India is enclosed herewith.

You are, therefore, requested to quote these orders in all the cases of similar nature pending in the Courts/Forums/Commission and invariably attach the copy of these orders alongwith the reply filed in these cases and specifically bring it to the notice of the Courts during arguments. In cases where replies have already been filed, these facts may be brought to the notice of the Courts/Forums/Commissions by either filing amended replies or Civil Misc. Application. These instructions will be applicable in only those cases where specific rate of interest or policy regarding charging of interest on delayed payment is not mentioned in the allotment letter. These instructions may be followed in letter and spirit.

Acknowledgement of receipt of these instructions should be sent by each office.

(Chhattar Sing)  
Legal Remembrance  
for Chief Administrator  
HUDA Panchkula

Endst No 5904

Dated 4.9.2007

A copy of the above is forwarded to All HUDA counsels for their kind information and with the request to defend the pending cases on the basis of above judgement.

(Chhattar Sing)  
Legal Remembrance  
for Chief Administrator  
HUDA Panchkula

No.3477 S.Court Cell D.12

Dated 8.8.2007

From:

The Assistant Registrar (Civil & Judl.)  
Punjab and Haryana High Court,  
Chandigarh.

To

State of Haryana through the Commissioner and Secretary  
to Govt. of Haryana, Town and Country Planning Deptt.  
Haryana.

1. The Administrator, HUDA Sector 6, Panchkula
2. The Chief Administrator HUDA Sector 6, Panchkula
3. The Estate Officer HUDA, Sector 6, Panchkula

**Subject: - S.L.P No. 12085, 12084, 12087, 12167, 12170, 12169 & 12168 of 2004.**

Arising Out of CWP No. 2099, 10422, 6280/03, 19098,  
18344, 19099/02

HUDA

...Appellant(s)

Versus

Raj Kumar Goyal & others etc.

...Respondent (s)

Sir,

I am directed to forward herewith a copy of Record of  
proceedings dated 9.7.2007 passed by Hon'ble Supreme Court of India in  
the above noted case for information and necessary action.

Yours faithfully

Superintendent S.Court Cell  
for Assistant Registrar (Civil & Judl.)

ITEM NO.43

COURT NO.1

SECTION IVB

S U P R E M E C O U R T O F I N D I A

085789

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).12085/2004

(From the judgement and order dated 24.11.2003 in CWP No. 2099/2003 of The HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

H.U.D.A.

Petitioner(s)

VERSUS

RAJ KUMAR GOYAL & ORS.

Respondent(s)

WITH SLP(C) NO.12084 OF 2004

SLP (C) NO. 12087 OF 2004

SLP (C) NO. 12167 OF 2004

SLP (C) NO. 12170 OF 2004

SLP (C) NO. 12169 OF 2004

SLP (C) NO. 12168 OF 2004

(With prayer for interim relief and office report)

Date: 09.07.2007 These Petitions were called on for hearing today.

CORAM;

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE R.V. RAVEENDRAN

For Petitioner(s)

Mr. D.P. Singh, Adv.

Mr. Sanjay Jain, Adv.

For Respondent (s)

Mr. Ravindra Sana, Adv.

Mr. Pardeep Gupta, Adv.

Mr. K.K. Mohan, Adv.

Mr. Sureh Bharati, Adv.

Mr. S.K. Sabharwal, Adv.

Mr. Sanjeev K. Pabbi, Adv.  
Ms. Shikha Ray Pabbi, Adv.

Mr. Chander Shekhar Ashri, Adv.

Mr. Bimal Roy Jad, Adv.

Mr. Ajay Jain, Adv.  
Mr. Jinendra Jain, Adv.  
Mr. Kamalendra Mishra, Adv.

UPON hearing counsel the Court made the following

### **O R D E R**

The question arising in these cases is as to what is the rate of interest to be paid by the respondents for delayed payment to the petitioner-HUDA. We make it clear that the respondents are liable to pay compound interest @ 10% p.a. in these cases. We further make it clear that this direction is only confined to these cases. In other cases, HUDA would be at liberty to charge interest on the defaulting parties in accordance with law. The special leave petitions are disposed of accordingly. No costs.

(G.V.RAMANA)  
Court Master

(VEERA VERMA)  
Court Master

TO,

THE HON'BLE THE CHIEF JUSTICE OF INDIA  
AND HIS COMPANION JUSTICES OF  
THE SUPREME COURT OF INDIA.

THE HUMBLE PETITION OF THE  
PETITIONER ABOVE NAMED.

MOST RESPECTFULLY SHOWETH;

That the humble petitioner above named seeks Special Leave to Appeal arising from the final Judgement & Order dated 01.12.2003 passed by the High Court of Punjab and Haryana at Chandigarh in CWP No. 19098 of 2002, whereby the Hon'ble High Court has been pleased to allow the Writ Petition.

**2. QUESTIONS OF LAW:**

The following substantial questions of law arise for consideration by this Hon'ble Court.

I. Whether the ratio of Roochira Ceramics case is applicable in the facts of the present case?

**3. DECLARATION IN TERMS OF RULE 4 (2):**

The Petitioner states that no other petition seeking leave to appeal has been filed by them against Judgement & Order dated 01.12.2003 passed by the High Court of Punjab and Haryana at Chandigarh in CWP No. 19098 of 2002.

**4. DECLARATION IN TERMS OF RULE 6:**

The Annexure P-1 to Annexure P-6 produced alongwith the Special Leave Petition are the copies of the pleadings/documents which formed part of the records in the High Court and Courts below against whose order the leave to appeal is sought for in this Petition.

**5. GROUNDS:**

Leave to appeal is sought for on the following grounds:

The present case is totally different from the Roochira Ceramics case as in the case interest @10% is chargeable if the installments are paid in time by the allottee. The allotment letter is silent with regard to the rate of interest being chargeable on the failure to pay the installments in time. It is only in case of the failure of the allottee to deposit the installments on the due date that interest @18% is chargeable in accordance with the policy of the petitioner.

That this Hon'ble Court has recently held that enhanced rate of interest is chargeable from the date of the decision/ amendment. A copy of the judgment reported as 2003(3) SCC 125 is annexed with this petition.

That the purpose of new policy was not to charge more interest but to compel defaulter to pay installments in time so that the petitioner which is a non-profit organization should not have scarcity of funds required for the development work.

That the new policy of the petitioner is applicable to all the defaulters without any discrimination whatsoever.

**6. GROUNDS FOR INTERIM RELIEF:**

That the petitioner will suffer irreparable loss and injury incase the operation of the impugned order dated 01.12.2003 is not stayed.

- (a). That the balance of the convenience also lies in favour of the petitioner: and
- (b.) That the petitioner has a good case on merits and hope to succeed in the matter.

**7. MAIN PRAYER:**

It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- (a.) Grant Special Leave to Appeal under Article 136 of the Constitution of India against from the final Judgement & Order



dated 01.12.2003 passed by the High Court of Punjab and Haryana at Chandigarh in CWP No.19098 of 2002; and

- (b.) Pass such other further Order or Orders, as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case and in the interest of justice.

**8. PRAYER FOR INTERIM RELIEF:**

It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- (a.) Grant ad-interim Ex-parte stay operation of Impugned final judgment and order date 01.12.2003 passed in CWP No. 19098 of 2002; and

- (b) Pass such other further Order or Orders, as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case and in the interest of justice.

AND FOR THIS ACT OF KINDNESS, YOUR HUMBLE PETITIONER AS IS DUTY BOUND SHALL EVER PRAY.

Drawn by:  
D.P. Singh  
Advocate

Drawn on: 19.2.2004  
Filed on: 9.3.2004

Filed by

(SANJAY JAIN)  
Advocate for the Petitioner

# **HARYANA URBAN DEVELOPMENT AUTHORITY,**

## **C-3 SECTOR-6 PANCHKULA**

**No. HUDA-Acctts-Acctt-I-2007/ 653-75**

**Dated: 8.1.2008**

To

1. All the Administrators  
HUDA (in the State)
2. All the Estate Officers,  
HUDA (in the State).

**Subject: Guidelines for defending the court cases in respect levy of compound interest by HUDA on the delayed payment of installments.**

This is in continuation to letter No.HUDA-Acctts-2007/5903 dated 04.09.2007 vide which the orders of Hon'ble Supreme Court of India in SLP No.12084, 12085,12167,12169,12170,12168 of 2004 arising out of CWP No.2099, 10422, 6280 of 2003, 19098, 18344, 19099 of 2002 to charge compound interest @10% p.a. was brought to your notice with the request to quote these orders in all the cases of similar nature pending in the Courts/Forums / Commission and invariably attach the copy of these orders alongwith the reply and specifically bring it to the notice of the Courts during arguments.

2. The increasing number of court cases in respect of levy of compound interest on the delayed payment of installments is causing great concern to the Authority. In this regard the advice of Senior Advocate Sh. Sanjiv Sharma was obtained in order to defend the cases properly in the courts to safeguard the interest of the Authority. Sh. Sanjiv Sharma has analyzed the various judgments announced by the various courts in respect of levy of compound interest and has given valuable suggestions to defend such cases in the court. The copy of the advice is enclosed for ready reference.

3. In nut shell, Ld. Advocate has advised that HUDA can charge the differential rate of interest i.e. normal rate of interest and penal rate of interest in respect of two kinds of allottee i.e. those who opt to pay in installments and those who are defaulters. Although on the question of compound interest, Ld. Advocate has advised that HUDA can not charge the compound interest but in this regard the instructions issued by L.R., HUDA vide letter No. HUDA-Acctts-2007/5903 dated 04.09.2007 may be followed keeping in view the judgement of the Hon'ble Supreme Court of India in the above said cases.

4. The judgement in the case of Sh. Gian Inder Sharma vs. HUDA & others in CWP No.16497 of 2001 was delivered on 11.11.2002 and judgement in the case of Smt. Kanta Devi Budhiraja v/s. HUDA was finalized on 02.04.2000. Accordingly HUDA Authority decided to charge simple rate of interest w.e.f. 03.04.2000 i.e. immediately after the announcement of the judgement by the various courts to charge simple rate of interest. The Ld. Advocate Sh. Sanjiv Sharma was also requested to advice on the question of charging interest keeping in view the following factors:-

1. Where limitation period has been expired.
2. Where no due certificate has been issued.
3. Where full payment has been made and conveyance deed/sale deed has been executed.
4. The compound interest has been charged as per the orders of the competent Authority passed in the judicial/quasi judicial capacity.

On these issues, the Ld. Advocate has advised as under:-

**1. Where limitation period has expired:**

There are two cases under this category (i) where relief has been sought to levy simple interest and to recover the excess payment made by the allottee. (ii) Where restraint has been sought against HUDA from demanding the compound interest.

In both these cases the provision of limitation Act 1963 will apply. In both the cases the limitation period would be three years except for (ii) above where the limitation would commence from the date of demand of interest. However, any demand made for reconciliation of accounts beyond a period of 3 years after the last payment may not be tenable. Therefore, in all the court cases, the point of limitation may be examined and may be taken as preliminary objections invariably while filing the reply.

**2. & 3. Where no due certificate has been issued. Where full payment has been made and conveyance deed/sale deed has been executed:**

The same situation will prevail as described in para (1) above. In such cases where no due certificate has been issued and where full payment has been made and conveyance deed/sale deed has been executed, the limitation Act 1963 will apply. In such cases also, point of limitation may be examined and taken in the preliminary objections invariably while filing the reply.

**4. The compound interest has been charged as per the orders of the competent Authority passed in the judicial/quasi judicial capacity.**

In such cases where compound interest has been charged based upon the orders of the judicial/quasi judicial authorities, the compound interest may be charged as per the orders of the above said authority and no relief is required to be given in such cases.

You are, therefore, requested to examine the above said points while filing the reply in the courts in respect of case of levy of

compound interest by HUDA and also take all these points in the preliminary objections as well as forcefully argue in the courts. In case replies have already been filed, amendment can be done on above lines. You are also requested to bring these points to the notice of the Advocates who are defending such cases in the various courts so that these comments are properly incorporated in the reply/argued in the Courts.

Chief Controller of Finance,  
for Chief Administrator, HUDA.  
Panchkula.

**Copy to :** All panel Advocates to take these pleas in the replies to be filed/amended as well as at the time of arguments.

**Sanjeev Sharma Advocate**

Former Additional Advocate General Punjab  
# 28, Shiwalik Enclave  
NAC Manimajra,  
Chandigarh  
India  
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EX-PARTE OPTION ON LEVY OF COMPOUND INTEREST BY HUDA ON  
DELAYED PAYMENTS OF INSTALLMENTS

1. The Honorable High court disposed off CWP 3737 of 2007 on 8.5.2007 by passing a direction that:-

“Haryana Urban Development Authority shall uniformly apply the guidelines issued in Gian Inder Sharma case (Supra) to all affected and also in the case of the petitioners. Respondents are further directed to decide each case of petitioners within a period of eight weeks from today.”

2. Gian Inder Sharma’s case was decided on 11.11.2002. The operative part of the judgement reads as:

“We are of the opinion that the respondents are not entitled to charge compound interest on the delayed payment of additional price of the plot in question. They can charge only simple interest at the rate of 15% per annum on the said amount. The case of the petitioner is squarely covered by division Bench decision of this Court in M/S Bhatia brothers’ case (supra). Learned counsel of the respondents could not point out to us any provision of law under the Act and the 1978 Regulations or any condition in the allotment letter, which authorized the respondents to charge compound interest on the delayed payment. As per clause 6 of the allotment letter, the respondents are entitled to

charge 10% interest on the amount of instalment. The contention of the petitioner that he is liable to pay simple interest at the rate of 15% per annum on the delayed payment of additional price of the plot in the question is totally justified. The respondents, in spite of the decision of this Court, are illegally demanding the compound interest on the aforesaid delayed payment from the petitioner. We find that action of the respondents in demanding compound interest from the petitioner is totally unreasonable and arbitrary and without any authority of law. Therefore, we direct that the respondents can charge only simple interest at the rate of 15% per annum from the petitioner on the delayed payment of additional price of the plot in question. Since the petitioner has already deposited Rs. 2,10,000/- under protest with the respondents towards the additional price, the respondents are directed to calculate the additional price with 15% simple interest and adjust the same towards the above payment made by the petitioner. If there is any excess amount the same shall be refunded to the petitioner within a period of three months. It is, however, made clear that no penalty can be charged from the petitioner on account of delayed payment of additional price. However, if there is any other amount due against the petitioner, the same shall also be adjusted against payment already made by him and after making adjustment, if any amount is found due towards him, the same can be recovered from him.”

3. The aforesaid case relates to allotment on 22.5.1987, of a residential plot bearing number 1615, sector-7, Karnal on freehold basis. The total cost of the plot, was Rs. 90,597/-. The petitioner deposited 25% of the amount of the cost i.e. Rs. 22,649.25 on 15.5.1987 after which an allotment letter dated 22.5.1987 was issued. The balance amount of Rs. 67,947.75 was to be paid either in lump sum within 60 days from the date of issue of allotment letter or in 6 annual instalments. Each

instalment was to be recovered with interest on the balance amount at the rate of 10%. While payment towards the initial cost of the plot was made in full, two demands on account of additional price of the plot were made on the petitioner. The first was made on 19.4.1990 for an amount of Rs. 31,448.65 and the second on 10.12.1991 for Rs. 17,650/-. These additional payments were to be recovered from the petitioner in the same manner as instalments were to be recovered. It appears, that the demand made by HUDA contained an element of compound interest and therefore, when the statement of account was issued on 17.6.2001, which is ten year later, a total amount of Rs. 2,13,306/- was demanded of which Rs. 1,76,350/- was on account of additional price with interest up till 6.6.2001 and Rs. 36,956/- on account of extension fees until 31.10.2000. Under threat of resumption, the petitioner deposited the money however he made a request on 29.8.2001 that only simple interest be charged and not compounded interest. According to the petitioner, only Rs. 85,065/- was payable in case simple interest was levied.

4. CWP 2278 of 1999 M/S Bhatia Brothers had already been decided on 14.2.2000 holding that HUDA cannot charge compound interest as there is no provision under the Haryana Urban Development Authority Act, 1977 or Haryana Urban Development (disposal of Land and Buildings) regulations, 1978 and the conditions of allotment to do so. The Special Leave petition filled by HUDA against the aforesaid judgement was dismissed on 11.9.2000. Thus, based on Bhatia Brothers' case, the decision in Gian Inder Sharma's case came to be passed on 11.11.2002.
5. It is the aforesaid decision in Gian Inder Sharma's case that has been followed in the case of CWP 3737 of 2007.



6. In this background, I have been asked to render advice on the question of charging interest and compliance of the judgement dated 8.5.2007.
7. Before addressing the query, it would be appropriate to briefly recapitulate as to how compound interest came to be charged in the first place and whether there is any provision under the HUDA Act, 1977 that can be referred to as the source of such power.
8. The first provision that calls for notice is section 15 of the Act.

15. Disposal of land.

1. Subject to any directions given by the State Government under this Act and the provisions of sub-section (5), the Authority may dispose off-
  - (a) any land acquired by it or transferred to it by the State Government without undertaking or carrying out any development thereon; or
  - (b) any such land after undertaking or carrying out such development as it thinks fit, to such persons, in such manner and subject to such terms and conditions, as it considers expedient for securing development.
2. Nothing in this Act shall be construed as enabling the authority to dispose off land by way of gift, but subject to this condition, reference in this Act to the disposal of land shall be construed as reference to the disposal thereof in any manner, whether by way of sale, exchange or lease or by the creation of any easement right or privilege or otherwise.
3. Subject to the provisions hereinbefore contained, the Authority may sell, lease, or otherwise transfer whether by auction, allotment or otherwise any land or building

belonging to it on such terms and conditions as it may, by regulations provide.

4. The consideration money for any transfer under subsection (1) shall be paid to the Authority in such manner as may be provided by regulations.
5. Notwithstanding anything contained in any other law, for the time being in force, any land or building or both, as the case may be, shall continue to belong to the authority until the entire consideration money together with interest and other amount, if any due to the Authority on account of the sale of such land or building or both is paid.
6. Until the conditions provided in the regulations are fulfilled, the transferee shall not transfer his right in the land or building except with the previous permission of the Authority, which may be granted on such terms and conditions as the authority may deem fit.
9. Thus, under Section 15 regulations may provide for the terms and conditions of sale/lease/transfer. The next provision to be examined is Section 17 which reads as:

### **Section 17**

Resumption and forfeiture for breach of conditions of transfer:-

1. Where any transferee makes default in the payment of any consideration money, or any instalment, on account of the sale of any land or building, or both, under section 15, the Estate Officer may, by notice in writing, call upon the transferee to show cause within a period of 30 days, why a penalty which shall not exceed 10 percent of the amount due from the transferee, be not imposed upon him.

2. After considering the cause, if any, shown by the transferee and after giving him a reasonable opportunity of being heard in the matter, the Estate officer may, for reasons to be recorded in writing, make an order imposing the penalty and direct that the amount of money due along with the penalty shall be paid by the transferee within such period as may be specified in the order.
3. If the transferee fails to pay amount due together with the penalty in accordance with the order made under subsection (2) or commits a breach of any other condition of sale, the Estate Officer may, by notice in writing call upon the transferee to show cause within a period of 30 days, why an order of resumption of the land or building, or both, as the case may be and forfeiture of the whole or any part of the money, if any, paid in respect thereof which in no case shall exceed 10 percent of the total amount of the consideration money, interest and other dues payable in respect of the sale of land or building or both, should not be made.
4. after considering the cause, if any, shown by the transferee in pursuance of a notice under subsection (3) and any evidence that he may produce in support of the same and after giving him a reasonable opportunity of being heard in the matter, the Estate Officer may, for reasons to be recorded in writing make an order resuming the land or building or both, as the case may be, and direct the forfeiture as provided in subsection (3) of the whole or any part of the money paid in respect of such sale.
5. any person aggrieved by an order of the Estate Officer under section 16 or under this section may, within a period of 30 days of the date of the communication to him of such order, prefer an appeal to the Chief Administrator in such form and

manner, as may be prescribed: Provided that the Chief Administrator may entertain the appeal after the expiry of the said period of 30 days, if he is satisfied that the appellant was prevented by sufficient cause from filling the appeal in time.

6. The Chief Administrator may, after hearing the appeal confirm, vary or reverse the order appealed for and pass such order as he deems fit.
7. The Chief Administrator may , either on his own motion or on an application received in this behalf at any time within a period of six months from the date of the order, call for the records of any proceedings in which the Estate Officer has passed an order for the purpose of satisfying himself as to the legality or propriety of such order and may pass such order in relation thereto as he thinks fit. Provided that the Chief Administrator shall not pass any order under this section prejudicial to any person without giving him a reasonable opportunity of being heard.
10. From the words used in section 17 it shows that the Chief Administrator may pass such order as he deems fit while confirming, varying or reversing an order passed by the Estate Officer. Thus, he may in a given case require payment of interest at a rate higher than what has been stipulated in the terms of allotment since, the parties may no longer be bound by the same.
11. The power to make Regulations is contained in Section 54 which is :-

Section 54: Power to make regulations. – The Authority may, with the previous approval of the State Government, make regulations consistent with this Act, and without prejudice to the generality of this power such regulations may provide for –

xxxx

[3] xxx

[e] the terms and conditions in which transfer of any right, title and interest in any land or building may be Permitted.

12. Haryana Urban Development [Disposal of Land and Buildings] Regulation, 1978

Regulation 2 Definitions – [e] “price” means the amount paid or promised for the transfer of immovable property on freehold basis.

Regulation 3. Mode of disposal. – Subject to any direction issued by the State Government under the Act and to the provisions of subsection [5] of section 15 of the Act: --

Xxx

[c] The Authority may dispose of its land or building by way of sale or lease either by allotment or by auction, which may be by open bid or by inviting tenders.

**Regulation – 4**

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

(2) An extra 10% and 20% of the price/ premium shall be payable for ‘preferential’ and ‘special preferential’ plots respectively.

**Regulation 5.**

Procedure in case of sale or lease of land or building by allotment. –

Xxx

(2) No application under sub regulation (1) shall be valid unless it is accompanied by such amount as may be determined by the Authority, which shall not be less than 10 percent of the price/ premium in the form of a demand draft payable to the Estate Officer, and drawn on any scheduled bank situated in the local place of the Estate officer concerned or any other such place as the Estate Officer may specify.

Xxxxxx

(6) The payment of balance of the price/ premium shall be made, in the manner as may be communicated, in lumpsum or in such number of annual, 1/2 yearly equal instalments not exceeding 10, as may be decided by the Authority from time to time. The amount of first instalment shall be payable within one year or six months from the date of allotment and subsequent installments shall similarly accrue every yearly/ half yearly on the due date, as the case may be:

(7) each instalment would be recoverable together with interest on the balance price/ premium, at the rate as may be decided by the Authority at the time of allotment. The interest shall, however accrue from the date of offer of possession of land/ building. No interest shall be payable if the whole of the balance price/ premium is paid in full, within 60 days of the offer of possession. If at any time the transferor opts to make the balance payment in full, he shall be entitled to do so and interest shall be charged on the balance amount only for the period from the date the last instalment was due to the date he makes full payment.

#### **Regulation 6.**

Sale or lease of land or building by auction: –

(1) In the case of sale or lease by auction, the price/ premium to be charged shall be such reserve price/premium as may be determined taking into consideration the various factors as indicated in sub regulation [1] of regulation 4 or any higher amount determined as a result of bidding in open auction.

[2] 10 percent of the highest bid shall be paid on the spot by the highest bidder in cash or by means of a demand draft in the manner specified in sub regulation [2] of regulation 5. The successful bidder shall be issued allotment letter in form 'CC' or 'CC-II' by registered post and another 15 percent of the bid accepted shall be payable by the successful acceptance of the bid by the Chief administrator; failing which the 10 percent amount already deposited shall stand forfeited by the Authority and the successful bidder shall have no claim to the land or building auctioned.

[3] the payment of balance of the price/premium, payment of interest chargeable and the recovery of interest shall be in the same manner as provided in sub regulation [6] and [7] of regulation 5.

[4] The general terms and conditions of auction shall be such as may be framed by the Chief Administrator from time to time and announced to the public for auction on the spot.

Regulation 13. Delivery of possession.- The possession of the land shall be delivered to the transferee or lessee as soon as development works in the area where the land is situated are completed:

Provided that in the case of sale/lease of undeveloped land/building possession thereof shall be delivered within 90 days of the date of allotment.

13 Clauses of the letter of allotment issued in Form C, CC and others prescribed by the 1978 Regulations, reflect the statutory provisions and can be seen however for ease of appreciation their provisions are on the following lines:-

Your application/bid for plot No. \_\_\_\_\_Sector \_\_\_\_\_at \_\_\_\_\_  
has been accepted and the plot/ building as detailed below has been allotted to you on free-hold basis as per the following terms and conditions and subject to the provisions of the Haryana Urban Development Authority Act, 1977 (hereinafter referred to as the Act) and the rules/regulations applicable there under and as amended from time to time including terms

and conditions as already announced at the time of auction and accepted by you.

The plot is preferential ...../OR

The sum of Rs. \_\_\_\_\_ deposited by you as bid money at the time of bid will be adjusted against the said plot/building.

In case you refuse to accept this allotment, you shall communicate your refusal.....OR

You are requested to remit Rs. \_\_\_\_\_ in order to make the 25% price of the said plot within 30 days from the date of issue of this letter. The payment shall be made by a bank draft payable to the Estate Officer, HUDA, \_\_\_\_\_, and drawn on any scheduled bank at \_\_\_\_\_. In case of failure to deposit the said amount within the above specified period, the allotment shall be cancelled and the deposit of 10% bid money deposited at the time of bid shall stand forfeited to the Authority, against which you shall have no claim for damages.

The balance amount i.e. Rs. \_\_\_\_\_ of the above price of the plot/building can be paid in lump sum without interest within 60 days from the date of issue of the allotment letter or in 8 half yearly instalments. The first instalment will fall due after the expiry of six months of the date of issue of this letter. Each instalment would be recoverable together with interest on the balance price at \_\_\_\_\_ % interest on the remaining amount. The interest shall, however, accrue from the date of offer of possession.

Xx xx xx xx x

You will have to complete the construction within two years of the date of offer of possession after getting the plans of the proposed building approved from the competent authority in accordance with the regulations governing the erection of



buildings. This time limit is extendable by the Estate Officer if he is satisfied that non-construction of the building was due to reasons beyond your control, otherwise this plot is liable to be resumed and the whole or part of the money paid, if any, in respect of it forfeited in accordance with the provisions of the said Act. You shall not erect any building or make any alteration/addition without prior permission of the Estate Officer. No fragmentation of any land or building shall be permitted.

*Note. For the exact words used in the forms Kindly refer to the same.*

14. A reading of the statutory provisions as noticed above, the substantive portions of which are incorporated in the letter of allotment, clearly shows that allottees are required to pay 25% of the price before the delivery of possession and the balance price in lump-sum without being required to pay interest or to pay the same in 8 instalments with interest. The failure of the allottees to deposit 25% of the price within 30 days could entail cancellation of allotment and forfeiture of 10% of the bid money. For paying the balance price representing 75% of the total price, the allottees are given two options. The first option was to pay total balance price in lump-sum within 60 days from the date of issue of allotment letter. In that case, they were not to pay interest. The other option available to them was to pay the balance price in 8 half yearly instalments with interest @ 10% payable from the date of offer of possession.
15. It is therefore safe to suggest that HUDA has power to demand interest on the balance price when instalments are opted for.
16. From a perusal at page 12 of the noting sheet it appears that the Authority decided to charge interest on late payment of

instalments at a rate of 18% per annum and instructions in this regard were issued on 15.01.1987. Similarly, a decision to charge interest on delayed payment of enhancement at the rate of 15% per annum was also taken on 02.04.1987. The noting sheet does not however disclose as to whether the decision of the Authority was to charge compound or simple rate of interest. Be that as it may, the levy of compound interest became the subject matter of challenge in the number of cases and while it would be difficult to identify in exactly which case this levy was first struck down, suffice to notice that one of the cases was that of Aruna Luthra reported as 1998 (2) PLR 687 In which it is held that HUDA is entitled to charge interest in terms of the contract that is the allotment letter but not according to HUDA Policy. Thus, it stood settled that what could be recovered is interest as provided by the terms of the allotment as well as the regulations and the Act itself. Policy decisions would not be applicable unless it could be shown that they had sanctity of law. This judgement of Justice N.K. Sodhi & Justice Iqbal Singh is reproduced below for easy appreciation.

“In an auction held on 30.10.1980 the petitioner purchased S.C.F No 33, Sector-7 in Faridabad and an allotment letter was issued to her on 5.12.1980. the price of the building was Rs. 2,83,100/- and 25% of this amount including the amount deposited at the time of auction was to be paid within 30 days from the date of issue of the letter and the balance amount was payable in half yearly instalments. Each instalments was to be paid together with interest on the balance price @ 10% on the remaining amount. Interest was, however, to accrue from the date of offer of possession. According to clause (22) of the allotment letter all disputes and differences between the parties arising out of or

relating to the allotment were to be referred to the sole arbitration of the Chief Administrator, Haryana Urban Development Authority (for short HUDA) or any other officer appointed by him. After purchasing the building the petitioner wrote to the Estate Officer, HUDA, Faridabad to hand over vacant possession of the same. It appears that the building was occupied by some unauthorized occupants and, therefore, its possession could not be delivered to the petitioner. It was only on 4.5.1987 that the possession was delivered to her. At the time of delivering possession to the petitioner it was found that the building had been damaged and there were breakages. A statement about the details of damages and breakages as found in the building was prepared. The petitioner continued representing to the respondents that the damage caused to the building by the unauthorized occupants be repaired so that the same becomes habitable. It was also represented by the petitioner that interest on the balance amount payable to the respondents should be charged only from the date when the defects in the building were removed. Since the respondents did not pay any heed to the representations of the petitioner, she invoked the arbitration clause and filed a petition under Section 20 of the Arbitration Act in the Court of Senior Sub Judge, Faridabad. This application was allowed on 26.7.1989 and the Chief Administrator was appointed the arbitrator to settle the disputes between the parties and he was directed to pronounce his award within four months. The parties were also directed to file their claims and counter-claims before him within the time schedule fixed by the Court. The Administrator exercising the powers of the Chief Administrator decided the matter as per his order dated 21.5.1990 and directed the Revenue Officer, Faridabad to get the deficiencies removed which had been found at the time of delivering possession to the petitioner. In addition, the petitioner

was directed to pay interest on the balance instalments from the date of delivery of possession. It is stated that the deficiencies have not been removed so far and the premises are lying unused. The petitioner applied to the respondents for transfer of the building in the name of one Surinder Nischal and in response to her application she was informed that a sum of Rs. 14,77,660/- was payable by her to HUDA. It is submitted that the petitioner then verified from the office of the respondents as to how this amount was due. She also submitted the details of the payments made by her. A copy of the letter dated 24.4.1996 addressed to the Estate Officer in this regard is Annexure P-12 with the petition. A perusal of the payment schedule as contained in this letter would show that the petitioner delayed the payment of instalments for which she is liable to pay interest. The petitioner also requested that a conveyance deed be executed in her favour. It was then that the present petition was filed under Article 226 of the Constitution for quashing the demand made by the respondents requiring the petitioner to deposit a sum of Rs. 14,77,660/-. It is also prayed that the respondents be directed to execute the conveyance deed in favour of the petitioner.

2. In the written statement filed on behalf of the respondents, it is pleaded that an amount of Rs. 14,77,660/- is due from the petitioner and that interest @ 18% per annum has been charged as per HUDA policy. It is admitted that a sum of Rs. 2,30,490/- was deposited by the petitioner on 19.4.1996. It is denied that the petitioner is entitled to any damages as claimed.
3. We have heard counsel for the parties and from their pleadings it is clear that the possession of the S.C.F. was delivered to the petitioner on 4.5.1987. As per the decision of the Administrator, HUDA dated 21.5.1990 the petitioner is

liable to pay interest only from the date of delivery of possession. This is also in accordance with clause (6) of the allotment letter. Even according to Regulation 5 (7) of the Haryana Urban Development (Disposal of Land and Buildings) Regulations, 1978, interest on delayed payments has to accrue only from the date of offer of possession of the building. The question that, however, arises for consideration is at what rate is the interest payable. According to the respondents, HUDA had prepared some policy on the basis of which interest is being charged @ 18%. On the other hand, the learned counsel for the petitioner strenuously urged that in terms of Clause (6) of the allotment letter, the instalments were recoverable together with interest on the balance price @ 10%.

4. Having given our thoughtful consideration to the rival contentions of the parties, we are of the opinion that the petitioner is liable to pay interest at the agreed rate of 10% as stipulated in the letter of allotment. Allotment of S.C.F. through an open auction was the result of a contract between the parties whereby it was agreed between them that the unpaid instalments would be recoverable together with interest at the rate of 10% on the balance price. Clause (6) of the allotment letter contains this stipulation. In the light of this clause, it is not open to HUDA to claim and charge interest @ 18% as is being done in the instant case. All that is stated in Para 14 of written statement is that the petitioner is liable to pay interest @ 18% per annum as per HUDA policy. What is that policy, under which provision of law has it been framed and whether it can override the contractual stipulation contained in Clause (6) of the allotment letter has not been spelt out in the written

statement. No provision of any law or the aforesaid regulations has been brought to our notice whereby HUDA could charge interest at a rate exceeding the agreed rate of interest.

5. in the result, it has to be held that the petitioner is liable to pay interest @ 10% as agreed between the parties and that too w.e.f. 4.5.1987 on which date the possession of the premises was delivered to her. Consequently, the communication dated 11.4.1996 (Annexure P11 with the writ petition) insofar it requires the petitioner to deposit a sum of Rs. 14,77,660/- is quashed and respondents 2 to 4 are directed to work out afresh the total amount, if any, payable by the petitioner together with interest @ 10% per annum w.e.f. 4.5.1987 and intimate the same to the petitioner who shall have to pay the same. The amounts deposited by the petitioner will, of course, be taken into account and she shall be given credit for the same. The amount as worked out is deposited by the petitioner, the respondents shall execute the deed of conveyance in her favour in accordance with law.
6. another grievance of the petitioner is that in spite of a direction given by the Administrator on 21.5.1990 the damage caused to the premises by the unauthorized occupants which was subsisting at the time of delivery of possession has not been repaired so far and premises are lying unused as they are not capable of being inhabited. This averment of the petitioner has not been specifically denied in the written statement. We, therefore, direct that the petitioner should serve one last notice on the respondents pointing out all the deficiencies and damage in the building requiring them to repair the same. If such notice is received, respondents 2 to 4 may have the premises inspected through

their staff and clause the repairs to be made within three months from the date of receipt of the notice failing which it will be open to the petitioner to have the premises repaired on her own at the cost of these respondents. This direction has become necessary because we find that the Administrator, HUDA itself while giving its decision on the disputed issues between the parties had given a direction to the Revenue Officer to get the deficiencies removed and damage repaired which were found at the time of delivery of possession of the premises.

7. The writ petition stands allowed in the above terms. No costs. Petition accepted.”

17. What needs to be noticed is that in the aforesaid case the allotment was not cancelled and there was no resumption. Furthermore, the Court held that a lawful binding contract came into being, the terms of which could be changed unless law permitted it. The essential difference that I wish to draw attention to is that power under Section 17 was not exercised.

18. While in the aforesaid case it was held that the policy of HUDA would not be applicable on the question of rate of interest, in another case a contrary view was taken. This is the case of Ram Kishan Gulati v. State of Haryana, (P&H)(D.B.) G.S. Singhvi and Mehtab Singh Gill, JJ. In C.W.P. No. 15746 of 1997 decided on 2.6.1999. This judgement took into consideration the following cases and its operative part reads as:

Cases referred:

- I Aruna Luthra v. State of Haryana and others, 1997(2) PLJ 1.
- ii Baij Nath Garg v. The Chief Administrator, HUDA and others, 1995 (2) RRR 27 (P&H).

- ii     Ajit Singh and others v. Chandigarh Administration through Administrator, Union Territory and others, C.W.P. No. 9503 of 1996, decided on 29.8.1996.
- iv     Sukhpal Singh Kang and others v. Chandigarh Administration and another, I.L.R. 1999(1) Punjab and Haryana 141.
- V     Haryana Urban Development Authority and another v. M/s Roochira Ceramics and another, 1997 (1) RCR (Civil) 696 (SC).
- Vi     Manju Jain and another v. HUDA and others, C.W.P. No. 4405 of 1998 decided on April 2, 1998
- Vii    Ashwani Puri v. HUDA, C.W.P. No. 2363 of 1996, decided on 3.12.1996.

“The facts necessary for deciding this petition filed by Ram Kishan Gulati and three others for quashing of the notices and orders issued by the Estate Officer and the Chief Administrator, Haryana Urban Development Authority, Panchkula (hereinafter referred to as “HUDA”), are that on the basis of highest bid of Rs. 9,55,500/- given by them in the auction held by respondent No.3, Show- room Plot No. 7, Sector 11, Panchkula measuring 574.75 sq. metres was allotted to Sh. Agya Ram and others (predecessor-in-interest of the petitioners). They deposited 10% price of the plot at the fall of hammer but delayed the deposit of remaining 15% as required by clause 4 of the letter of allotment. A part of 15% of the price was deposited on 22.9.1986 and the balance was deposited on 11.10.1986. Notwithstanding this default, possession of the plot was delivered to the allottees on 21.6.1988. Thereafter, they constructed the building and occupied the same. Due to non-payment of instalments in accordance with clause 5 of the letter of allotment, *proceedings under Section 17 of the Haryana Urban Development Authority Act, 1977 (hereinafter referred to as ‘the Act’)* were initiated against Sh. Agya Ram and others. Notices under Section 17(1) to 17(4) of the Act were issued to them but they did not deposit the instalments of the price. Instead, Sh. S.R. Suri, Advocate who appeared on their behalf before the Estate



Officer, Panchkula (hereinafter described as 'respondent No. 3') pleaded that interest may not be charged because the development works were not complete at the site. This plea of Sh. Suri was rejected by respondent No. 3 who observed that the development work had, in fact, been completed. He further held that the allottees are evading the payment of outstanding dues. On that premises, he ordered resumption of the site and forfeiture of Rs. 2,30,143/- out of amount deposited by the allottees. The relevant portion of the order passed by respondent No. 3, which we have taken from the original file produced by Sh. R.S. Chahar is reproduced below:-

"As per condition No. 5 of the allotment letter, it was incumbent upon the allottee to pay the due instalments on due dates, but they did not deposit the due amount. Therefore, the following regd. Notice u/s 17 of HUDA Act for recovering a sum of Rs. 9,10,000/- on account of outstanding dues were served upon the allottees.

Notice U/s 17(1) vide memo No. 18819 dated 7.10.89 for Rs. 9,10,000/-.

In response to the above notice, reacting sharply the allottees have resorted to frivolous correspondence and contended the non-completion of development works and charging the alleged interest on account thereof. While replying to the notice vide their reply dated 1.11.89. They have also supported their reply with the copy of undertaking given by the then Administrator, Miss Leena Nair dated 17.2.88 stating that no interest on the principal shall be charged if shops from the residential premises were not vacated. Since this undertaking was not held valid by the Chief Administrator, HUDA because she was not competent to give such undertaking. Therefore, both these representations were not considered satisfactory being not based on facts having any authenticity. Since the development works were complete at site at the time of allotment of this site, therefore, by rejecting their

representations the further notices U/s 17 of HUDA Act as per detail given below were again served upon them.

Notice U/s 17(2) vide memo No. 22216 dated 13.12.89.

In response to the above notices neither the allottees have appeared for hearing nor they have deposited even a single penny against the outstanding dues. This negligence was viewed seriously and the Estate Officer had imposed a penalty of Rs. 91,000/- vide this office memo No. 462 dated 11.1.90 and further directed them to make the payment of outstanding dues within 30 days. But the allottees have filed an appeal before the Administrator, HUDA, Panchkula against these orders. The appeal has also been rejected by the appellate authority and the order issued by the Estate Officer, HUDA, Panchkula is upheld. However, a lenient view was again taken and to give them further opportunities the process of notices was again adopted and the notices u/s 17(3) were again served upon them.

Notice U/s 17(3) vide memo No. 546 dated 11.1.93 for Rs. 19,54,783/-.

Notice U/s 17(4) vide memo No. 7922 dated 21.5.93 for Rs. 21,23,850/-.

In response to the above mentioned notices the Advocate of the allottee Sh. S.R. Suri appeared for hearing on 8.6.92 and he has given a representation that the development works were not complete at the site. Therefore, the interest should not be charged against the outstanding dues. It is not out of place to point out here that the development works were complete at site when it was sold and the allottees are evading the payment of outstanding dues by resorting to these frivolous contentions. It is also pertinent to mention here that since the allotment of site the allottees remained grossly defaulter in making the upto date payment of instalments. Whereas, all 8 Nos. half yearly instalments had already been elapsed on 19.8.90 and the amount of outstanding due has

accumulated to Rs. 20,62,680/- upto 8.6.93. Whereas the Show Room is constructed at site and the allottees are deriving all the benefits after occupying the same without obtaining occupation certificate from this office on the one hand, but evading payments of outstanding dues on the other. This clearly shows that non-seriousness of the allottees in clearing outstanding dues.

From the facts mentioned above it is clear that allottees are willfully defaulting in making the due payment in spite of various notices issued by this office from time to time. Whereas, repeated opportunities have been given to them. Hence, I am of the considered opinion that the allottees have violated the terms and conditions of the allotment letter by not making the due payments in time. **Hence, I order the resumption** of Show Room site No. 7, Sector-11, Panchkula under powers conferred upon me U/s 17 of the HUDA Act. I also order the forfeiture of Rs. 2,30,143/- out of the amount deposited by them.

Sd/-

Estate Officer,

HUDA, Panchkula,

Endst. No. 8617 Dated 9.6.95.”

By an order dated 4.2.1997, the Administrator HUDA, Panchkula (exercising the powers of the Chief Administrator, HUDA) dismissed the appeal filed by the petitioners. The relevant extract of the appellate order is reproduced below:-

“Keeping in view the arguments of both the parties and facts on record, it is clear from the record that the appellants have retained the Show Room in question after paying almost 25% of the tentative price only. A number of notices has been issued to the appellants but they did not bother to pay any amount against the outstanding instalments which have become due. Moreover, the appellants had constructed the building over the Show Room in question and occupied illegally without obtaining Occupation certificate as required under the Erection of Building

Regulations, 1979. Therefore, I find no illegality in the order of Estate Officer which is quite in accordance with terms & conditions of allotment and as per provisions of HUDA Act, 1977. Order of Estate Officer is upheld and the appeal is dismissed.

Announced in the open Court on 4.2.97.

Sd/-  
Administrator,  
HUDA, Panchkula  
(Exercising the powers of C.A. HUDA)”

The revision petition filed by the petitioners was dismissed by the Commissioner and Secretary to Government, Town and Country Planning Department, Haryana, who expressed his concurrence with respondent No. 3 and the appellate authority in the following words:-

“I have heard both the parties, it is admitted fact that not a single instalment was deposited by the allottees till 24.4.95. If the instalments were paid on due times then the entire price of the plot would have been deposited by August, 1990. During the course of arguments the learned counsel of the petitioners admitted **that they were ready to deposit the outstanding dues alongwith interest** within three months if the site in question was restored to them. Keeping in view the facts and circumstances of the case, **I hereby order that HUDA would arrive at the outstanding dues afresh by levying 10% interest on the instalments till 19.8.90 and, thereafter, interest as per the policy of HUDA.** Calculation sheet so prepared will be supplied to the petitioners by 15.4.97 and they will deposit the amount within three months from 15.4.97. If they fail to deposit the amount within the stipulated date, the site shall stand resumed immediately after the expiry of the period.

Announced on 11.4.97

Dated 11.4.97

Sd/-

(Bhaskar Chartterjee)

Commissioner & Secretary to Govt.

Town & Country Planning Department,

Haryana, Chandigarh.”

The application dated 9.5.1997 filed by the petitioner under Section 151 C.P.C. with the prayer that the revisional order may be modified by directing the respondents to charge interest from the date of completion of work was filed by the Chief Administrator with the observation that the said order was passed with the consent of the petitioners.

In the meanwhile, proceedings under Section 18(1)(b) of the Act were initiated against the petitioners and after issuing notice to them, respondent No. 3 passed order Annexure P.6 dated 18.03.1997 directing their ejection from the plot in question.

The petitioners have challenged the impugned notices/orders by contending that the respondents cannot charge interest from them because they failed to develop the site in accordance with the provisions of the Act and the Regulations framed thereunder. Another contention urged by them is that the demand of interest over and above the rate specified in clause 5 of letter of allotment is without jurisdiction. They have pleaded that after having agreed to charge interest @ 10% on the delayed payment of instalments, the respondents are stopped from charging interest at higher rates.

The respondents have contested the writ petition by stating that the development works were completed before issuance of the letter of allotment and possession was given to them after providing all the amenities. They have defended the resumption of plot on the ground that the allottees willfully defaulted in the payment of instalments. They have

averred that after having secured the restoration of allotment by making a statement before the revisional authority that they will pay the outstanding dues with interest, the petitioners cannot turn around and question the jurisdiction of the respondents to levy interest as per the policy of the HUDA. The respondents have further averred that the construction of the show room and occupation thereof by the petitioners even without obtaining required certificate under the Haryana Urban Development Authority (Erection of Buildings) Regulations, 1979 (hereinafter referred to as the 1979 Regulations) belies their claim that the development work has not been carried out.

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We are further of the view that the condition requiring the allottee to pay interest on the balance price, if he/she decides to pay the same in instalments, is based on simple but sound logic and is quite rational. If an allottee pays the balance price in lump-sum then the respondents can deposit the amount in a bank and earn interest. This is not possible if the balance price is paid otherwise than in lump-sum. In that event, money remains with the allottees who can utilize the same for his/her benefit and even earn interest on it by keeping the same deposited in the bank. Therefore, charging of interest @10% on the balance price cannot be termed as arbitrary, unreasonable, unconscionable or illegal. The condition incorporated in clause 5 of the letter of allotment that interest shall be payable from the date of offer of possession operates as a safeguard for the allottees against any possibility of exploitation. In view of this condition, the allottee is not put to the burden of interest before he gets an opportunity to take the possession. We, therefore, do not find anything inherently wrong in the levy of interest on the balance price in a case in which an allottee decides to pay the balance price in instalments.

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The issue which remains to be decided is whether the respondents can charge **18% interest from the petitioners as a condition for**

**restoration of the plot.** The argument of Sh. Kapoor is that in view of the express provision contained in the letter of allotment, the respondents cannot charge interest at a rate higher than 10% per annum. According to him 10% is the outer limit of the rate at which the interest is to be charged for normal as well as delayed payments and, therefore, the decision of the respondents to charge interest @ 18% from the petitioners should be declared as without jurisdiction, arbitrary and illegal. He strongly relied on the observations made in Aruna Luthra's case in support of his submission that the respondents do not have the authority to charge interest @ 18% per annum. In our opinion, the contention of the learned counsel is wholly untenable and merits rejection. At the cost of repetition, we deem it appropriate to observe that 10% interest which the allottees were liable to pay is not an interest on delayed payment. Rather, it is an integral part of the price determined by the respondents. The allottees and their successors were required to pay balance price in lump-sum without interest or to pay the same price in 8 half yearly instalments with interest. They adopted the second course and in this manner, they incurred the liability to pay interest @ 10%.

In our considered opinion, Regulations 5(6) & (7) and 6(3) of 1978 Regulations read with Clause 5 of the letter of allotment which deal with payment of balance price and interest in case the allottee opts to pay the balance price in instalments do not have any application to the cases in which the allottees commit default in the payment thereof on due dates. The cases of this category are to be dealt with under other provisions of the Act and the Regulations. Section 3 of the Act, which deals with the constitution of the HUDA, declares that it shall be a body Corporate with power to acquire, hold and dispose of property. In terms of Section 3(3) of the Act, the Authority consists of a Chairman, a Vice-Chairman, a Chief Administrator and maximum of 12 other members to be appointed by the government. Section 13 of the Act lays down that the objective of the Authority shall be to permit and secure development of all or any of the

areas comprised in an urban area. For that purpose, the authority has been vested with the power to acquire by way of purchase, transfer, exchange or gift, hold manage, plan, develop and mortgage or otherwise dispose of land and other property and to carry out by itself or through any agency, building, engineering, mining and other operations, to execute works in connection with supply of water, disposal of sewerage, control of pollution etc. Section 15 deals with disposal of land. Section 30 lays down that the Authority shall carry out the directions, as may be issued, by the State Govt. for efficient administration of the Act. Section 53 empowers the State Govt. to make rules for carrying out the purpose of the Act and Section 54 empowers the Authority to make Regulations, which may provide for the various things enumerated in the said section including the terms and conditions on which transfer of any right, title and interest in any land or building may be permitted. A cumulative reading of these provisions generally and Section 15 in particular shows that the transfer of property vesting in HUDA, by way of allotment, is governed by the Regulations framed under Section 54 and policy to be framed by the HUDA from time to time. The exercise of the various powers vested in HUDA is subject to the directions which the State Govt. may issue.

The issue whether penal interest should be charged from the allottees who default in the payment of price was considered in the 36<sup>th</sup> meeting of the Financial Committee of the HUDA held on 14.8.1987. the proposal put up before the Finance Committee was that in the case of default interest shall be charged @18% instead of the normal interest @10%. This proposal was approved by the Finance Committee vide agenda item No.. XXXVI(17) and on that basis circular No. HUDA-Acctts-87/1398-1408 dated 15.1.1987 was issued by the Chief Administrator. That circular read as under:-

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The decision contained in the above reproduced circular was reiterated in the 37<sup>th</sup> meeting of the HUDA held on 29.3.1988 under the Chairmanship of the Chief Minister. The decision taken and the agenda item No. A-XXXVII(2) was that for the delayed payment interest @ 18% should be charged. The relevant extract of that decision is reproduced below:-

“It was further decided the payment schedule in respect of residential/industrial plots will be as under:-

- (i) 10% bid money at the fall of hammer;
- (ii) 15% within 30 days from the date of issue of allotment letter; and
- (iii) Balance 75% in six half yearly instalments.

However, for payment in instalments interest @10% per annum may be charged from the date of offer of possession with **provision to charge 18% interest on delayed payments.”**

In our opinion, these policy decisions govern the case of the petitioners and other cases of delayed payment of instalment/default in the payment of instalments and, therefore, no illegality has been committed by the respondents in charging 18% interest as a condition for restoration of the plot.

We are further of the opinion that the petitioners cannot question the levy of penal interest at a rate higher than 10% because theirs is not a case of simple delayed payment. Their plot was resumed by the competent authority because of the non-compliance of the conditions of allotment. That order was upheld by the appellate authority and when the revision came up for hearing before the Commissioner and Secretary, Town & Country Planning Department, the counsel appearing for the petitioners stated that his clients will pay the dues of instalments alongwith interest, which necessarily means that the interest payable in accordance with the policy of HUDA. In our opinion, after having given an unequivocal undertaking before the revisional authority to pay the

dues of the instalments with interest, the petitioners cannot turn around and challenge the jurisdiction of the respondents to charge interest @18% in accordance with the policy. The plea of the petitioners that they cannot be asked to pay interest @18%, if accepted, will lead to anomalous results. In that situation, no allottee of the HUDA land would pay the price in accordance with the conditions of allotment and feel relief against the resumption of plot by stating that he/she/it is ready to pay the entire price with interest at the normal rate. Otherwise also, it sounds wholly incongruous that an allottee who has defaulted in the payment of instalments of the price is treated at par with the one who regularly pays the instalments with interest. [Important]

Xxxxxxxx

A reading of the judgement of Aruna Luthra's case (supra) shows that S.C.F. No. 33, Sector 7, Faridabad, was allotted to the petitioner on 5.12.1980. However, possession of the site was delivered to her some time in 1990. The Administrator, HUDA, exercising the powers of the Chief Administrator (acting as Arbitrator) issued direction in this respect. After some time, the petitioner applied for transfer. At that stage, the respondents demanded **penal** interest @18%. This Court held that the petitioner cannot be made to pay interest because the possession of premises was delivered to allottee on 4.5.1987. The relevant portion of that decision is extracted below:-

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Manju Jain's case (supra) was decided on the basis of the judgement rendered in Aruna Luthra's case (supra). In Ashwani Puri's case (supra), the following order was passed by the Court:-

"The petitioner has deposited Rs. 3.64 lacs and undertakes to deposit the balance amount, if any, intimated by the respondents through registered post AD as undertaken by them, with 10% interest within one month from the receipt of intimation.

In view of this stand taken by counsel for the parties, the writ petition is disposed of.”

19. Soon after the aforesaid decision the case of Kanta Devi Budhiraja came to be decided on 16.11.1999. by relying upon the judgement in the case of Ram Krishan Gulathi the Honourable court was pleased to hold in paragraphs 16 to 19 as under:--

“16. By applying the ratio of Ram Kishan Gulati’s case (supra) of the case of the petitioners, we hold that the decision of the respondents to charge interest @18% from the allottees for the period of default does not suffer from any legal infirmity.

17. However, there is merit in the argument of Sh. Harbhagwan Singh that the respondents cannot charge compound interest from the petitioner. Neither the Act nor the 1978 regulations nor the resolutions passed by the HUDA empower respondents No. 2 and 3 to charge compound interest from the allottees in respect of the period of default. Therefore, to this extent, relief deserves to be given to the allottees.

18. In view of the our conclusion that the allottees are not entitled to get any relief except to the limited extent indicated hereinabove, we do not consider it proper to non-suit them on the ground of improper impleadment of the parties. The allottees would have been well advised by their counsel to change the description of the parties. However, this lapse cannot be made a ground to non-suit them.

19. For the reasons mentioned above, the writ petition is dismissed subject to the direction that the respondents shall not charge compound interest from the allottees in respect of the period of default. We also direct respondents No. 2 and 3 to communicate to the petitioner the amount due from the allottees (instalments of the price plus interest @ 18%) within a period of two months, the petitioner/allottees shall pay the amount specified in that communication failing which the order of resumption shall stand revived and the respondents shall be free to take possession thereof in accordance with law. If it is found that the

petitioner has already paid excess amount, then the same shall be refunded to the allottees alongwith interest at the end of four months period in terms of the order of this Court dated 24.9.1998.”

20. Admittedly, the appeal that was filed against this judgment in the Supreme Court came to be dismissed on 03.04.2000. Thus, the validity of levy of compound rate of interest was struck down for the first time by the Hon’ble Supreme Court on 03.04.2000.

21. In this background, the Authority in its meeting held on 29.08.2000 decided that simple interest may be charged and accordingly instructions were issued to do so with effect 01.09.2000.

22. Soon thereafter, the case of Roochira Ceramics was decided on 29.11.2000 holding that HUDA can charge 10% interest per annum as provided in the allotment letter and not 18% per annum.

23. It appears that notwithstanding the decision in the case of Kanti Devi Budhiraja as well as Roochira Ceramics clearly holding that compound interest could not be charged, HUDA continued to do so.

24. The case of Gian Inder Sharma that is CWP 16497 of 2001 is one such case which highlights this fact. It is specifically seen from the facts of this case that HUDA continued to charge compound interest. It is under the circumstances that the judgment dated 11.11.2002 as noticed above, came to be passed.

25. Apart from this petition, from Page 13 of the noting sheet it is disclosed that CWP 7172 of 2003 was also filed in which the levy of compound interest prior to 01.09.2000 was challenged. In this context, it was also questioned as to why HUDA was not refunding the excess amount that had been charged on account of compound interest which, was against legal provisions. In this context, advice of the Advocate General Haryana was obtained and he was of the view that the amount of compound interest at the 18% by HUDA deserves to be refunded upon representation by the original allottee in that regard. Moreover the original allottee would be entitled to seek a refund of the amount of

compound interest in the date of transfer of property by him in favour of a third party.

26. One last factor which is required to be noticed is that a decision was taken on 29.12.2005 which stands implemented, to charge simple interest with effect from 03.04.2000 that is, the date on which the appeal filed by HUDA against the judgment in the case of Kanti Devi was dismissed by the Hon'ble Supreme Court.

27. Having noticed the relevant facts and judicial pronouncements it is important to again refer to the decision in CWP 3737 of 2007 which was decided along with nine other petitions all of which laid challenge to the levy of compound interest. From these it is evident that despite numerous judicial pronouncements and the complete absence of any legal provision to levy compound interest, HUDA continued to do so leading to situation where the direction that has been passed in CWP 3737 of 2007 has had to be issued.

28. In the aforesaid background, I have been asked to render advice on (1) the question of charging interest, whether compound or simple and from what date and (2) compliance of the judgment dated 08.05.2007 keeping in view the following factors;

Cases where:

- (a) limitation period has expired
- (b) no due certificate has been issued
- (c) full payment has been made and conveyance deed/sale deed has been executed
- (d) Compound interest has been charged as the orders of the competent authority passed in judicial/quasi judicial capacity.

29. I however find that there is another aspect of the matter. There are two categories of cases which form two distinct classes of

allottees. The first case is that of a person who has chosen to pay in instalments and the other that of one who is a defaulter and the plot stands resumed. Therefore, the question of levying interest has also to be seen in this context since both these situations have been dealt with distinctly by the Courts.

30. The first aspect which is to be seen is whether compound interest can be levied. The answer stares one in the face in view of the catena of judgments only some of which have been referred to above. Thus, only simple rate of interest can be levied unless and till such time, the HUDA Act 1977, or its Regulations of 1978 allow for compounded rate of interest.
31. Having settled the first aspect, the next question that arises is whether there can be a differential rate of interest? This is in context of the two kinds and class of allottees-those who opt to pay in installments and-those who are defaulters.
32. keeping in view the decision in the case of Ram Kishan Gulati v. State of Haryana, (P&H) (D.B.) G.S. Singhvi and Mehtab Singh Gill, jj. in CWP No. 15746 of 1997 decided on 2.6.1999, the answer is again in the affirmative. When a distinct class of allottee is identified, each will be governed by its own terms. The Allottee who is not in default will be bound by the terms of the allotment letter read alongwith the relevant provisions of the HUDA Act, 1977 and the Regulations of 1978. The other category is a defaulter in whose case the policy guidelines laid down by the Authority to deal with such category of persons would be applicable. With these observations, the question that I have posed in paragraph 29 above stands answered.
33. To arrive at a date from which the interest at simple rate is to be charged, it would be safe to determine 03.04.2000 as the cut off date as this is date on which the Hon'ble Supreme Court finally decided the question. Therefore, levy of interest post this

date has to be based on a simple rate of interest. There cannot be any difficulty in this because even the Authority had taken a decision on 29.12.2005 to levy simple interest with effect from 03.04.2000. In case there is a case of an allottee who has been charged compound rate of interest after 03.04.2000, this action by HUDA would be against its own decision and hence can be corrected by HUDA itself by revision the accounts.

34. The Hon'ble High Court has directed Haryana Urban Development Authority to uniformly apply the guidelines issued in Gian Inder Sharma's case to all affected and also in the case of the petitioners. HUDA has been directed to decide each case of the petitioners within a period of eight weeks.
35. As already noticed, in Gian Inder Sharma's case a direction was issued to charge only simple interest at the rate of 15% per annum from the petitioner on the delayed payment of additional price of the plot in question and to calculate the additional price with 15% simple interest and adjust the same towards payment made by the petitioner, further to refund any excess amount to the petitioner within a period of three months. Additionally no penalty can be charged from the petitioner on account of delayed payment of additional price. Any other amount due can also be adjusted against the payment already made and after making such adjustment, if any amount is found due the same can be recovered.
36. From a perusal of the direction that has been issued in CWP 3737 of 2007 it is not clear as to what the facts of this case were however, it is more than obvious that the Hon'ble Court has made it crystal clear that compound interest cannot be charged. In case, it has been, in that event the amount due is to be recalculated by charging simple rate of interest and thereafter in case any other amount is due from the allottee,

after adjusting the same, the balance amount if any, is to be refunded to the allottee.

37. The question of limitation as a defence to refuse to carryout this re-calculation has not been decided. However, it would be useful to notice the words used while disposing of CWP 3737 of 2007. It speaks of granting the same relief to others who are similarly situated. This would obviously mean only such allottees who have raised a dispute with regard to levy of compound interest and the facts of whose case are *pari materia* to that of the petitioners.
38. In context of the other criteria that is to be addressed as stated in paragraph 28, essentially, the relief that is claimed while demanding levy of simple interest is one of recovery of excess payment or a restraint against HUDA from demanding an illegal amount. For both, the provisions of the Limitation Act 1963 will apply. The limitation would be 3 years for both, except that for the latter, it would depend upon when the demand to deposit the interest is made, it is from this date that limitation would commence. Thus, demands for reconciliation of accounts, made beyond a period of three years after the last payment has been made may not be tenable. I would, however qualify this by stating that since a levy of compound interest has been found to be illegal *per se* it would always be open to an allottee to come forward and state that he has only recently discovered that he had been made to pay an illegal amount. In such a case, the Hon'ble High Court may be approached under its extra ordinary writ jurisdiction to which the strict provisions of the Limitation Act 1963 do not apply and only delay and laches can taken as a defence. This risk will have to be considered as, it cannot be lost sight of that the very levy of compound interest is unlawful



and therefore, there may be cases where limitation may not stand as a foolproof defence.

39. In view of that has been stated in paragraph 38 above, the same situation would cover cases where a 'no due certificate' has been issued and also where full payment has been made and conveyance deed/sale deed has been executed.
40. In those cases where compound interest has been charged based on orders of judicial/quasi judicial authorities, it would not be possible for HUDA to grant any relief on its own. However, it would always be open to the aggrieved party to file a revision under Section 30 of the HUDA Act, 1977 or for the State Govt. to Suo Moto take notice of the illegality and grant relief. In such cases, where the matter is sub-judice, any decision taken now pursuant to the directions of the Hon'ble High Court order dated 08.05.2007, would be binding and hence all pending litigation on the question of compound rate of interest, wherever it may be pending, can be brought to an end by charging simple rate of interest.

Thursday, October 11, 2007

(Sanjeev Sharma)

HARYANA URBAN DEVELOPMENT AUTHORITY, PANCHKULA.

No.HUDA-CCF-Acctt-I-2008/

Dated:

To

1. All the Administrators,  
HUDA (in the State)
2. All the Estate Officers  
HUDA (in the State)

**Subject: Civil Appeal No.4436 of 2008 (Arising out of the Special Leave Petition No.13644 of 2005 ) HUDA V/s Raj Singh Rana ( Memo No.426 dated 16.2.2005, Plot No.833/13, Karnal.**

This is in continuation of letter No.HUDA-Acctts-2007/5903 dated 4.9.2007 wherein it was intimated that simple interest @18% p.a. on the delayed payment of installment will be charged from 3.4.2000. These instructions were issued keeping in view the judgement passed by the Hon'ble High Court in the case of Kanta Devi Budhiraja V/s HUDA wherein the appeal filed by HUDA in the Hon'ble Supreme Court was dismissed on 2.4.2000. Therefore, the instructions to charge simple interest were made applicable from 3.4.2000.

2. This issue relates to charging of interest on the delayed payment of enhancement as in some cases the Hon'ble Courts have ordered to charge same rate of interest as provided in the allotment letter in respect of delayed payment of installments.

3. In Civil Appeal No.4436 of 2008 (Arising out of the Special Leave Petition No.13644 of 2005) titled as HUDA V/s Raj Singh Rana, Hon'ble Supreme Court has ordered that in the absence of any specific rate/clause in the allotment letter, HUDA can charge simple interest on the basis of prevailing current rate of interest on the delayed payment of enhanced compensation. The brief facts of this case are given as follow:-

i) Plot No.718 (later on re-numbered 883) measuring 14 marla in sector-13 was allotted to Sh. Baldev Singh Nagar which was further transferred to Sh.Raj Singh Rana. According to the terms & conditions of the allotment letter, the price of the plot was tentative subject to variation with reference to the actual measurement of the plot as

well as in case of enhancement of compensation of acquisition cost of land of this sector by the court or otherwise, the allottee was required to pay the additional price of the plot, if any, as determined by the Department within 30 days from the date of demand.

ii) No rate of interest was mentioned for the delayed payment of enhancement of compensation but it was mentioned that interest @ 7% per annum shall be charged on the unpaid amount of installments.

iii) In this case the District Consumer Disputes Redressal Forum, State Commission as well as National Commission decided that HUDA cannot charge interest more than 7% p.a. on the delayed payment of enhancement of compensation as the same rate of interest was provided in the letter of allotment. HUDA filed appeal in the Hon'ble Supreme Court of India arguing that the rate of interest of 7% p.a. indicated in the allotment letter was only with regard to default in payment of instalments for the tentative sale price and not with regard to the default in payment of enhancement of compensation of acquisition cost of the land, for which no rate of interest was stipulated.

iv) It was argued that the District Consumer Disputes Redressal Forum, State Commission and National Commission had erred in co-relating the rate of interest mentioned in the allotment letter, which was only applicable in respect of default in payment of instalments for the tentative price initially fixed, therefore the rate of interest of 7% p.a. should not be made applicable for the delayed payment of enhancement of compensation.

v) The Hon'ble Supreme Court of India observed that the concept of levying or allowing interest is available in almost all statutes involving financial deals and commercial transactions, but the provision empowering courts to allow interest is contained in the Interest Act, 1978. Section-3 of the said Act, inter alia, provides that in any proceeding for the recovery of any debt or damages or in any proceeding in which a claim for interest in respect of debt or damage already paid is made, the court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest, for the whole or part of the periods indicated in the said section.

vi) It was further observed that in the instant case the provision of the allotment letter appears to have been wrongly interpreted by the Consumer Fora since the stipulated rate of interest only takes into consideration payment of the total tentative price of the plot and it does not take into consideration the additional price of the plot. Therefore, the Hon'ble Supreme Court of India agreed with the arguments of the learned counsel of HUDA and ordered that HUDA is entitled even in terms of the allotment letter to charge interest on the balance dues of enhancement of compensation at a rate which was different from rate of interest stipulated in the allotment letter.

vii) In this case Hon'ble Supreme Court of India has observed that the case of Ghaziabad Development Authority V/s Balbir Singh (2204(5) SCC 65) gives an indication of the matters which are required to be considered by the courts while granting interest where there is no mutual understanding or agreement with regard to the rate of interest that could be charged. As was mentioned in the Balbir Singh's case and, thereafter, in HUDA vs. Prem Kumar Agarwal and another (2008(1) SCALE 484); Bihar State Housing Board vs. Arun Dakshy (2005 (7) SCC 103); Haryana Urban Development Authority vs. Manoj Kumar (2005 (9) SCC 541) and Krishna Bhagya Jala Nigam Limited vs. G. Harishchandra Reddy and another (2007 (2) SCC 720) the rate of interest is to be fixed in the circumstances of each case and it should not be imposed at a uniform rate without looking into the circumstances leading to a situation where compensation was required to be paid.

4. Under the aforesaid circumstances, the Hon'ble Supreme Court of India has decided to charge simple interest on the basis of prevailing current rate of interest as defined under section-3 of the Interest Act, 1978. The copy of the judgement of Hon'ble Supreme Court of India is enclosed for ready reference.

5. Your attention is also invited to the Section 28 of the Land Acquisition Act, 1984 which 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.”

From the above, it may kindly be seen that interest @ 9% p.a. for the first year and interest @ 15% p.a. for the subsequent years is required to be paid in respect of payment of enhancement of compensation. Therefore the current rate of interest as defined under section-3 of Interest Act, 1978 could be linked with the above provisions of Land Acquisition Act according to which interest @ 15% p.a. is payable in view of the fact that payment of enhancement of compensation is a continuous liability of HUDA and after payment of enhancement of compensation, HUDA recovers the same from the allottees in the shape of addition price/additional premium as defined under Section 2 (b) of the Haryana Urban Development (Disposal of Land & Building) Regulations 1978.

6. You are, therefore, requested to quote these orders in all the cases of similar nature pending in the Courts/Forums/Commission and invariably attach the copy of these orders alongwith the reply filed in these cases and specifically bring it to the notice of the Courts during arguments. In cases where replies have already been filed, these facts may be brought to the notice of the Courts/Forums/ Commissions by either filing amended replies or Civil Misc. Application. **These instructions will be applicable in only those cases where specific rate of interest or policy regarding charging of interest on delayed payment of enhancement is not mentioned in the allotment letter.** These instructions may be followed in letter and spirit.

Acknowledgement of receipt of these instructions should be sent by each office.

(S.C. Kansal)  
Chief Controller of Finance,  
for Chief Administrator, HUDA,  
Panchkula

Endst.No.HUDA-CCF-Acctt-I-2008/

Dated:

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

1. Legal Rememberancer, HUDA, Panchkula.
2. Urban Branch-I & II HUDA H.Q. Panchula.
3. All HUDA counsels - for their kind information and with the request to defend the pending cases on the basis of above judgement.

(S.C. Kansal)  
Chief Controller of Finance,  
for Chief Administrator, HUDA,  
Panchkula

HARYANA URBAN DEVELOPMENT AUTHORITY, PANCHKULA

No. HUDA-CCF-Acctt-I-2008/ 36457-79

Dated: 25/1/08

To

Display in website

1. All the Administrators,  
HUDA (in the State)

2. All the Estate Officers,  
HUDA (in the State)

**Subject:** Civil Appeal No.4436 of 2008 (Arising out of the Special Leave Petition No.13644 of 2005 ) HUDA V/s Raj Singh Rana ( Memo No.426 dated 16.2.2005, Plot No.833/13, Karnal.

This is in continuation of letter No.HUDA-Acctts-2007/5903 dated 4.9.2007 wherein it was intimated that simple interest @ 18% p.a. on the delayed payment of installment will be charged from 3.4.2000. These instructions were issued keeping in view the judgement passed by the Hon'ble High Court in the case of Kanta Devi Budhiraja V/s HUDA wherein the appeal filed by HUDA in the Hon'ble Supreme Court was dismissed on 2.4.2000. Therefore, the instructions to charge simple interest were made applicable from 3.4.2000.

2. This issue relates to charging of interest on the delayed payment of enhancement as in some cases the Hon'ble Courts have ordered to charge same rate of interest as provided in the allotment letter in respect of delayed payment of installments.

3. In Civil Appeal No.4436 of 2008 (Arising out of the Special Leave Petition No.13644 of 2005) titled as HUDA V/s Raj Singh Rana, Hon'ble Supreme Court has ordered that in the absence of any specific rate/clause in the allotment letter, HUDA can charge simple interest on the basis of prevailing current rate of interest on the delayed payment of enhanced compensation. The brief facts of this case are given as follows:-

i) Plot No.718 (later on re-numbered 883) measuring 14 marla in sector-13 was allotted to Sh. Baldev Singh Nagar which was further transferred to Sh. Raj Singh Rana. According to the terms & conditions of the allotment letter, the price of the plot was tentative subject to variation with reference to the actual measurement of the plot as well as in case of enhancement of compensation of acquisition cost of land of this sector by the court or otherwise, the allottee was required to pay the additional price of the plot, if any, as determined by the Department within 30 days from the date of demand.

ii) No rate of interest was mentioned for the delayed payment of enhancement of compensation but it was mentioned that interest @ 7% per annum shall be charged on the unpaid amount of installments.

iii) In this case the District Consumer Disputes Redressal Forum, State Commission as well as National Commission decided that HUDA cannot charge interest more than 7% p.a. on the delayed payment of enhancement of compensation as the same rate of interest was provided in the letter of allotment. HUDA filed appeal in the Hon'ble Supreme Court of India arguing that the rate of interest of 7% p.a. indicated in the allotment letter was only with regard to default in payment of instalments for the tentative sale price and not with regard to the default in payment of enhancement of compensation of acquisition cost of the land, for which no rate of interest was stipulated.

iv) It was argued that the District Consumer Disputes Redressal Forum, State Commission and National Commission had erred in co-relating the rate of interest mentioned in the allotment letter, which was only applicable in respect of default in payment of instalments for the tentative price initially fixed, therefore the rate of interest of 7% p.a. should not be made applicable for the delayed payment of enhancement of compensation.

v) The Hon'ble Supreme Court of India observed that the concept of levying or allowing interest is available in almost all statutes involving financial deals and commercial transactions, but the provision empowering courts to allow interest is contained in the Interest Act, 1978. Section-3 of the said Act, inter alia, provides that in any proceeding for the recovery of any debt or damages or in any proceeding in which a claim for interest in respect of debt or damage already paid is made, the court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest, for the whole or part of the periods indicated in the said section.

vi) It was further observed that in the instant case the provision of the allotment letter appears to have been wrongly interpreted by the Consumer Fora since the stipulated rate of interest only takes into consideration payment of the total tentative price of the plot and it does not take into consideration the additional price of the plot. Therefore, the Hon'ble Supreme Court of India agreed with the arguments of the learned counsel of HUDA and ordered that HUDA is entitled even in terms of the allotment letter to charge interest on the balance dues of enhancement of compensation at a rate which was different from rate of interest stipulated in the allotment letter.

vii) In this case Hon'ble Supreme Court of India has observed that the case of Ghaziabad Development Authority V/s Balbir Singh (2204(5) SCC 65) gives an indication of the matters which are required to be considered by the courts while granting interest where there is no mutual understanding or agreement with regard to



rate of interest is to be fixed in the circumstances of each case and it should not be imposed at a uniform rate without looking into the circumstances leading to a situation where compensation was required to be paid.

4. Under the aforesaid circumstances, the Hon'ble Supreme Court of India has decided to charge simple interest on the basis of prevailing current rate of interest as defined under section-3 of the Interest Act, 1978. The copy of the judgement of Hon'ble Supreme Court of India is enclosed for ready reference.

5. Your attention is also invited to the Section 28 of the Land Acquisition Act, 1984 which 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."

From the above, it may kindly be seen that interest @ 9% p.a. for the first year and interest @ 15% p.a. for the subsequent years is required to be paid in respect of payment of enhancement of compensation. Therefore the current rate of interest as defined under section-3 of Interest Act, 1978 could be linked with the above provisions of Land Acquisition Act according to which interest @ 15% p.a. is payable in view of the fact that payment of enhancement of compensation is a continuous liability of HUDA and after payment of enhancement of compensation, HUDA recovers the same from the allottees in the shape of addition price/additional premium as defined under Section 2 (b) of the Haryana Urban Development (Disposal of Land & Building) Regulations 1978.

6. You are, therefore, requested to quote these orders in all the cases of similar nature pending in the Courts/Forums/Commission and invariably attach the copy of these orders alongwith the reply filed in these cases and specifically bring it to the notice of the Courts during arguments. In cases where replies have already been filed, these facts may be brought to the notice of the Courts/Forums/ Commissions by

ADA (RM)  
RK-5 (KC)

29/7/08

1-11A

28/7/08

IN THE SUPREME COURT OF INDIA

R-332/08

UR

CIVIL APPELLATE JURISDICTION

201975

CIVIL APPEAL NO. 4436 OF 2008

(@ Special Leave Petition (Civil) No.13644 of 2005)

29-7-08  
14215

H.U.D.A.

...Appellant

Vs.

Raj Singh Rana

...Respondents

J U D G M E N T

Altamas Kabir, J.

1. Leave granted.

2. One Baldev Singh Nagar was allotted residential plot No.718 (later on re-numbered 883) measuring 14 marlas in Sector 13 of the Urban Estate at Karnal under the provisions of the Punjab Urban Estate (Development and

Certified to be true copy

Assistant Registrar (Judl.)

Supreme Court of India


Regulation) Act, 1964, which was repealed by the Haryana Urban Development Authority Act, 1997. The said plot was subsequently transferred to the respondent herein, Shri Raj Singh Rana, as will be evident from the letter dated 22.3.1974, addressed to the respondent by the Estate Officer, Urban Estate, Karnal. In the said letter various conditions have been set out in respect of the said allotment, of which we are concerned with the condition nos. 1, 2, 3, 4, 8 and 15, which are reproduced hereinbelow:

"From  
The Estate Officer,  
Urban Estate,  
Karnal.

Transferred vide Memo No.E.O.(M)- 76/5235  
Dated 01.10.1976 with condition No.16

To  
Shri R.S.Rana  
S/o Shri A.S.Rana,  
V.P.O. Garhi  
Distt. Sonapat.

Memo No.1664/718/14/E.O/K.  
Dated : 22.3.1974



Subject : Allotment of Residential plot in the Urban Estate,  
Karnal.

Reference your application dated 25.9.1971 for the allotment of  
residential plot in the Urban Estate at Karnal.

1. Plot No.718 measuring 14 Marlas in Sector 13 of the Urban Estate at Karnal is hereby allotted to you. The total tentative sale price of said plot is Rs.12250/- against which you have already deposited Rs.6,125/- of the price mentioned in part 1 above is Rs.Nil.
2. The plot is preferential one and an additional price at the rate of 10 per cent of the price mentioned in para 1 above is Rs. Nil.
3. The total tentative sale price of this plot (normal plus preferential cost) is Rs.Nil.
4. The above price of the plot is subject to variation with reference to the actual measurement of the plot as well as in case of enhancement of compensation of acquisition cost of land of this sector by the court or otherwise and you shall have to pay this additional price of the plot, if any, as determined by the Department within 30 days from the date of demand.
5. ....
6. ....
7. ....
8. Balance 50 per cent of the total tentative sale price shall be payable either in lumpsum within 60 days from the date of issue of allotment letter without interest or in 2 equated instalments with interest at the rate of 7 per cent per annum. The first and remaining instalments of the balance amount together with interest at the rate of 7 per cent per annum on the unpaid amount of the total tentative sale price shall fall due to payment as under and no notice shall be served upon you to pay the same but in case an instalment is not paid in time, you will be served with a notice to pay by same within a month together with a sum not exceeding the amount of the instalment as may be determined by the undersigned, by way of penalty. If the payment is not made within the said period of such extended period as may be determined by the


undersigned, not exceeding three months in all from the date on which the instalment was originally due, the same will be recovered as an arrear or land revenue or action will be taken under Section 10 of the Punjab Urban Estate (Development and Regulation) Act, 1964 :-

No. of instalment	Due date on which the Payment is to be made
First 2958.93+28.75 = 3387.68	21.3.1975
Second 3166.07+221.61 = 3387.68	21.3.1976
Third	
Fourth	
Fifth	
Sixth:	

9. ....
10. ....
11. ....
12. ....
13. ....
14. ....
15. This allotment is subject to the provisions of the Punjab Urban Estates (Development and Regulation) Act, 1964 and the rules framed there under as amended from time to time and you shall have to accept and abide by them.
16. ....
17. ....

Sd/-  
Estate Officer  
Urban Estate  
Karnal

3. There is no dispute that the entire amount, as initially computed as tentative sale price, was fully paid by the respondent, together with further amounts on account of



enhanced compensation paid for the plot, on the basis of the demand notices issued to the respondent from time to time. The problem arose when in addition to the above, the Estate Officer, HUDA, Karnal, by his Memo dated 15.6.2001 raised an additional demand of Rs.71,800/-- by imposing simple interest @ 10 per cent per annum up to 31.3.1987, 15 per cent per annum up to 15.1.1988, compound interest @ 15 per cent up to 31.8.2000 and thereafter again simple interest @ 15% per annum up to 31.8.2001. According to the respondent, the rate of interest as indicated in the allotment letter being 7 per cent simple interest per annum, the appellant had acted illegally in demanding interest at the higher rates, indicated hereinabove and such demand being arbitrary could not be sustained.

4. Aggrieved by such demand, the respondent filed complaint case No.591 of 2002 before the

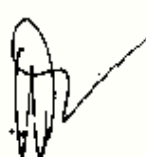


District Consumer Disputes Redressal Forum  
praying for refund of Rs.35,200/-, which  
according to the respondent was the excess  
amount of interest charged over and above the  
rate of interest at 7 per cent indicated in the  
allotment letter. The respondent also prayed  
for interest @ 12 per cent on the refund amount  
from 2.11.2001, when the interest amount was  
demanded and paid under protest, until  
repayment. The District Forum accepted the  
submissions made on behalf of the respondent  
herein and held that the appellants could  
charge interest only at the stipulated rate  
mentioned in the allotment letter, namely, 7  
per cent per annum and directed the appellant  
to calculate the interest @ 7 per cent on the  
3<sup>rd</sup> and 4<sup>th</sup> enhancements and to refund the extra  
amount charged to the complainant/respondent  
with interest at the rate of 7 per cent from  
the date of the complaint till its refund. The

decision of the District Forum was confirmed by the State Commission, and ultimately, the appellant herein took the matter in revision to the National Commission in R.P.No.2217 of 2004. The National Commission, while confirming the view taken by the District Forum and the State Commission as to the rate of interest which could have been charged by the appellant, considered another aspect relating to charging of compound interest @ 15 per cent per annum from 16.1.1988 to 31.8.2000 and held that the appellant was not entitled to charge such compound interest.

5. It is against the said order of the National Commission that this appeal has been filed by the Haryana Urban Development Authority (hereinafter referred to as "HUDA").

6. On behalf of the HUDA it was strenuously urged that the rate of interest @ 17 per cent per annum, as indicated in the allotment



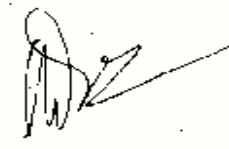


letter, was only with regard to default in payment of instalments for the tentative sale price and not as regards the additional amounts required to be paid in case of enhancement of compensation for acquisition cost of the land, for which no rate of interest had been stipulated. It was submitted that on account of default in payment of the instalments of the enhanced compensation, on account of the low interest which was being charged, a decision was taken by HUDA on 15.1.1987 to increase the normal rate of interest to 10 per cent per annum and interest for the delayed payment of instalments to 18 per cent per annum, which would also include the normal interest of 10 per cent. It was submitted that it was on account of such revised policy that HUDA had charged interest at the rates indicated hereinbefore to ensure that instalments were paid in time. Apart from his aforesaid




submissions, learned counsel for the appellant could not justify charging of compound interest as was done in the instant case.

7. It was urged that enhancement of rate of interest being a matter of policy to prevent default in payment of instalments the Fora below had erred in co-relating the rate of interest mentioned in the allotment letter, which was only applicable in respect of default payment of instalments for the tentative price initially fixed, to the defaults committed in respect of the payment of the enhanced compensation on account of increase in the acquisition costs. It was also submitted that since the rate of interests stipulated at 7 per cent per annum has no application to default in payment of enhanced compensation, the Fora below had erred in directing that interest on the latter default be also charged at the rate of 7 per cent per annum. It is




submitted that the understanding of the terms and conditions of the allotment letter and the decision rendered by the consumer forums on the basis thereof, was wholly erroneous and was liable to be set aside.

8. On behalf of the respondent it was contended that apart from the fact that the rate of interest demanded was arbitrary, it was also extremely high and ought not to have been levied from the date of allotment inasmuch as, the tentative sale price had been fully paid and such demand could not operate retrospectively, interest on the unpaid amount could, if at all, have been raised for periods only after the payment was made. In addition it was submitted that it is well settled that when a contractual rate of interest has been agreed upon by the parties, no amount by way of interest in excess thereof could be raised. It was submitted that following the said



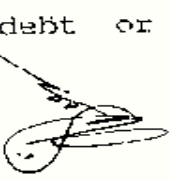
principle, first the District Forum, and, thereafter, the State and National Commissions had awarded interests on the delayed instalments at the rate of 7 per cent per annum as mentioned in the allotment letter referred to above. It was contended that condition No.8 enumerated in the letter dated 22.3.1974 written to the respondent by the Estate Officer, Karnal, would have to be considered and understood in such light. It is submitted that the orders of the consumer Fora was in consonance with the provisions of the allotment letter and did not, therefore, warrant any interference by this Court and the appeal was liable to be dismissed.

9. Having heard learned counsel for the parties and having perused the documents relied upon by them, we are of the view that the width of the dispute is rather narrow, being confined only to the question as to whether it was



within the competence of the appellant to charge interest on delayed payments at the rate at which it has been charged and whether compound interest could have been charged without there being any mutual agreement between the parties to that effect.

10 The concept of levying or allowing interest is available in almost all statutes involving financial deals and commercial transactions, but the provision empowering Courts to allow interest is contained in the Interest Act, 1978, which succeeded and repealed the Interest Act, 1839. Section 3 of the said Act, inter alia, provides that in any proceeding for the recovery of any debt or damages or in any proceeding in which a claim for interest in respect of debt or damage already paid is made, the Court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the




person making such claim, as the case may be, at a rate not exceeding the current rate of interest, for the whole or part of the periods indicated in the said Section.

11. What is important is the mention of allowing the interest at a rate not exceeding the current rate of interest. Such a provision is, however, excluded in respect of the interest payable as of right by virtue of any agreement as indicated in sub-section(3) of Section 3. In other words, where there is an agreement between the parties to payment of interest at a certain stipulated rate, the same will have the precedence over the provision contained in sub-section(1) which provides for the Court to allow interest at a rate not exceeding the current rate of interest.

12. Yet another provision which is basic in its operation is contained in Section 34 of the Code of Civil Procedure which also, inter alia,


provides that where and insofar as a decree is for the payment of money, the Court may in the decree order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit, till the date of the decree in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding 6 per cent per annum as the court may deem reasonable on such principal sum from the date of the decree till the date of payment or to such earlier date as the court thinks fit.

15. The rates of interest charged by the appellant, purportedly in accordance with their policy decisions, appear to have been influenced by the provisions of the Interest Act and also the Code of Civil Procedure on the supposition that the payment of additional price on account of enhancement of compensation



was not covered by the provisions of the allotment letter relating to payment of interest. The view expressed by the District forum have been accepted by the State and National Commissions.

14. It is no doubt true that the law relating to allowing interest and the rates thereof has been considered and settled in the case of Ghazlabad Development Authority vs. Balbir Singh (2004 (5) SCC 65), which has since been followed in various subsequent decisions. The said decision was also one rendered under the provisions of the Consumer Protection Act, 1986, though in the said case it was a reverse situation in which the authorities were held to be liable to compensate for misfeasance in public office. In the said case interest was allowed @ 18% per annum which was unacceptable to this Court which observed that the power to award compensation does not mean that





irrespective of the facts of the case compensation can be awarded in all matters at a uniform rate of 18 per cent per annum. This Court noticed that the National Forum had been awarding interest at a flat rate of 18 per cent per annum irrespective of the facts of each case. The same was held to be unsustainable. In the said state of facts this Court observed in para 8, as follows:

"However, the power and duty to award compensation does not mean that irrespective of facts of the case compensation can be awarded in all matters at a uniform rate of 18% per annum. As seen above, what is being awarded is compensation i.e. a recompense for the loss or injury. It therefore necessarily has to be based on a finding of loss or injury. No hard-and-fast rule can be laid down, however, a few examples would be where an allotment is made, price is received/paid but possession is not given within the period set out in the brochure. The Commission/Forum would then need to determine the loss. Loss could be determined on basis of loss of rent which could have been earned if possession was given and the premises let out or if the consumer has had to stay in rented premises


then on basis of rent actually paid by him. Along with recompensing the loss the Commission/Forum may also compensate for harassment/injury, both mental and physical. Similarly, compensation can be given if after allotment is made there has been cancellation of scheme without any justifiable cause."

15. Applying the aforesaid principle laid down in the aforesaid case, it was the duty of the Consumer Fora to consider the circumstances of the case and keep in mind the provisions of Section 3 of the Interest Act in awarding the high rate of interest, without linking the same to the current rate of interest. As was mentioned in Balbir Singh's case, and, thereafter, in HUDA vs. Prem Kumar Agarwal and another (2008(1) SCALE 484); Bihar State Housing Board vs. Arun Dakshy (2005 (7) SCC 103); Haryana Urban Development Authority vs. Manoj Kumar (2005 (9) SCC 541) and Krishna Bhagya Jala Nigam Limited vs. G.Harischandra Reddy and another (2007 (2) SCC 720) the rate



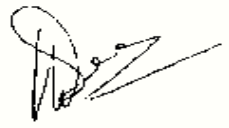
of interest is to be fixed in the circumstances of each case and it should not be imposed at a uniform rate without looking into the circumstances leading to a situation where compensation was required to be paid.

16. In the instant case, the provision of the allotment letter dated 22.3.1974 appears to have been wrongly interpreted by the Consumer Fora since the stipulated rate of interest only takes into consideration payment of the total tentative sale price while Condition No.4 of the allotment letter mentions that the total tentative sale price was subject to variation in certain circumstances and that the allottee would have to pay an additional price for the plot as a consequence thereof. It does not mention that interest at the rate of 7 per cent per annum would be payable also in respect of the additional price required to be paid on account of increase of the acquisition cost.



The said position is further clarified by condition No.8 which also speaks of payment of the total tentative sale price and the rate of interest at 7 per cent per annum on the instalments to be paid in respect thereof. There is nothing further in the agreement which provides for the rate of interest to be levied on the additional price on account of the enhancement of the acquisition cost.

17. On such score we are inclined to agree with the learned counsel for the appellant that the appellant was entitled, even in terms of the allotment letter to charge interest on balance dues at a rate which was different from that stipulated in the allotment letter. At the same time, we are in agreement with the views expressed in Balbir Singh's case (supra) which gives an indication of the matters which are required to be considered by the Courts while granting interest where there is no

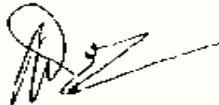


mutual understanding or agreement with regard to the rate of interest that could be charged. While we also agree that for unpaid dues the appellant is entitled to charge interest, such an exercise will have to be undertaken within the parameters of circumstances and reason and the rate of interest should not be fixed arbitrarily. In the decisions referred to hereinabove, this Court has sounded a note of caution that rates of interest fixed by the Courts must not be arbitrary and should take into account the current bank rates which in recent years have shown a tendency to slide downwards. In fact, in many of the aforesaid cases, the rate of interest has been reduced substantially.


16. In the aforesaid circumstances, even though the rate of interest indicated in the allotment letter dated 22.3.1974 may not have application as far as payment of the additional



price is concerned, the District Forum has erred on the side of reason and has allowed interest at the rate of 7 per cent per annum upon holding that the demand made by the appellant at the higher rate was contrary to the mutual agreement contained in the allotment letter. In our view, even though a policy may have been adopted by the appellant for imposing a deterrent rate of interest on defaults committed by allottees in payment of their dues, such imposition has to be in keeping with the provisions of Section 3 of the Interest Act, 1978 and not in a unreasonable manner. It may perhaps be even more pragmatic if a condition regarding charging of interest at the prevailing banking rates were included in the allotment letters, having regard to the provisions of sub-section(3) of Section 3 of the said Act.



19. We, therefore, allow this appeal, set aside the orders dated 10.3.04 passed by the District Forum, Chandigarh in Complaint Case no. 591 of 2002, as affirmed by the State Commission, Chandigarh, on 9.7.2004 and the order passed in Revision by the National Commission on 19.11.2004, which is the subject matter of this appeal, and quash the additional demand of Rs. 71,800 raised on behalf of the appellant vide Memo No. EO 8682 dated 15.6.2001 and direct that the appellant will be entitled to impose simple interest on the basis of the prevailing current rate of interest for the purpose indicated in para 6 of the complaint filed by the respondent (Complaint Case No. 591 of 2002) before the District Forum, Chandigarh. Such a computation is to be completed within a month from the date of receipt of this order. Since, we have been informed at the Bar that the entire amount by



way of additional demand has been deposited upon protest, any amount which is in excess of the amount to be computed on the basis of this order, shall be refunded to the respondent within two weeks of such computation.

20. In the facts and circumstances of the case, the parties will bear their own costs.

*21/7/08*

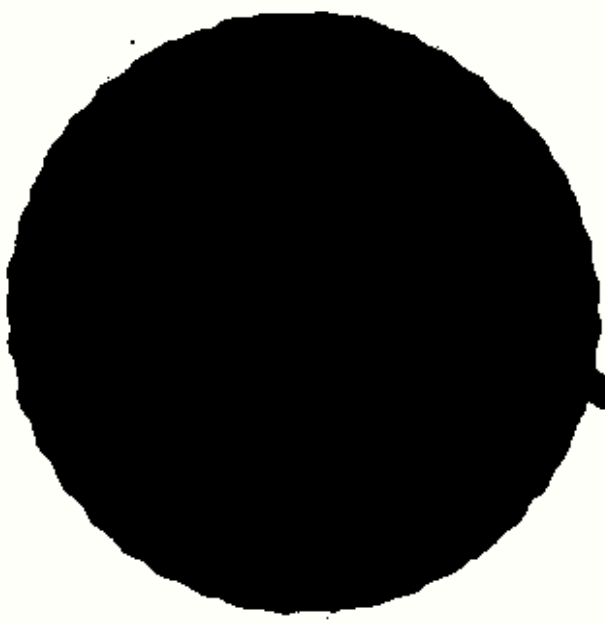
*20/* ..... J.  
(ALTAMAS KAHIR)

*20/* ..... J.  
(MARKANDEY KATJU)

New Delhi  
Dated: July 16, 2008



3



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EDITIONING COURT OF INDIA  
Central Court of India

Matter No. Civil Apped No. 4436/2008  
HODA vs. Raj Singh Rana

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Section Officer  
Supreme Court of India  
23/7/08

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23/7/08

**HARYANA URBAN DEVELOPMENT AUTHORITY, SEC-6, PANCHKULA**

NO. HUDA.CCF.ACCTT-I-2009/7092-7120

DATED: 17.3.09

To

1. All the Administrators,  
HUDA, (in the State).
3. All the Estate Officers,

HUDA (In the State).

**Subject:- Revision in the rate of interest.**

Please refer to this office memo.no.2408-27 dated 23.1.06 vide which the decision of the Authority to reduce the possession interest on the balance amount of installments from 11% to 9% p.a and interest on delayed payment of installments from 14% to 12% p.a.(simple) w.e.f. 01.01.2006 was conveyed to you.

The Authority in its meeting 102<sup>nd</sup> meeting held on 24.2.2009 has approved to revise the rate of interest as follows:-

1. The rate of interest on the delayed payment of installment(s) has been increased from 12%(simple) to 15% p.a(simple).
2. The rate of interest after the offer of possession of plots have been increased from 9% p.a to 12% and the same will be incorporated in all the future allotments.

The new rates will come into force with effect from 1.4.2009.

**(S.C.Kansal )**

Chief Controller of Finance,  
for Chief Administrator, HUDA,  
Panchkula.

Endst. No. HUDA.Accts.Acctt-I-2009/7121 -29

Dated: 17.3.09

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

1. PS/CA for kind information of Chief Administrator, HUDA.
2. PS/Admn for kind information of Administrator HUDA H.O.

# HARYANA URBAN DEVELOPMENT AUTHORITY, PANCHKULA.

No. HUDA-CCF-Acctt-I-2009/15695-717

Dated:5-5-2009

To

1. All the Administrators,  
HUDA (in the State).
2. All the Estate Officers,  
HUDA (in the State).

**Subject: Comprehensive policy in respect of interest on the delayed payment of enhancement of compensation pursuant to the orders of Hon'ble High Court in CWP No.15289 of 2007.**

Please refer to the subject cited above.

In this regard, it is intimated that the Hon'ble High Court in CWP No.15289 of 2007 in the case of M/s Nanda Goods Transport Company Panipat V/s HUDA and others have directed to frame a comprehensive policy to the effect of charging of interest on delayed payment of enhancement of compensation in order to avoid further litigation as HUDA is expected to apply the rate of interest uniformly to all the effected persons.

2. HUDA has been charging the interest on the delayed payment of enhancement of compensation as per the rates given below:-

Interest type	Rate of interest per annum (%)	Compound/ simple interest	Period	
			From	To
Interest on delayed payment of enhanced compensation	7%	Compound	1.1.72	12.10.78
	10%	Compound	13.10.78	17.11.91
	15%	Compound	18.11.91	2.4.2000
	15%	Simple	3.4.2000	till date

3. In this regard, the following terms & conditions of the allotment letter are reiterated in respect of charging of enhancement of compensation:

“The price of plot 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. ”

No rate of interest was mentioned in the allotment letter for the delayed payment of enhancement of compensation. Although the enhancement of compensation was recoverable within 30 days of its demand, but

5. In another Civil Appeal No.4436 of 2008 (arising out of special leave petition No.13644 of 2005) titled as HUDA V/s Raj Singh Rana, the question of charging of interest on the delayed payment of instalment was again challenged in the Hon'ble Apex Court of India. In this regard, attention is invited to this office letter No.HUDA-CCF-Acctt-1/2008/36457-78 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 statutes 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 on the delayed payment of enhancement of compensation is as per the judgement 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.

6. Attention is also invited to this office letter No.HUDA-Acctts-2007/5903 dated 4.9.07, wherein the orders of Hon'ble Supreme Court of India in SLP No.12084, 12085, 12087, 12167, 12169, 12170, 12168 of 2004 arising out of CWP No.2099, 10422, 6280 of 2003, 19098, 18344, 19099 of 2002 were conveyed to charge compound interest @ 10% p.a. although charging of compound interest was not provided in the allotment letter.

7. Attention is also invited to this office letter No.HUDA-Acctts-Acctt-1-2007/653-75 dated 8.1.08 vide which advice of Sh. Sanjiv Sharma. Advocate was circulated, wherein the learned Advocate has advised that HUDA can charge differential rate of interest i.e. normal rate of interest and penal rate of interest in respect of two kinds of allottees i.e. those who opt to pay in instalments and those who are defaulters. Therefore different rate of interest can be charged in respect of allottees who pay the amount in time and those who are defaulters. Authority has been revising the rate of interest from time to time, keeping in view the rate of interest prevailing in the financial markets in the interest of recovery of its dues. For defaulters the rate of interest charged upto 2.4.2000 was compound thereafter it was made simple from 3.4.2000.

8. Therefore, you are requested to charge the same rate of interest as intimated from time to time on the delayed payment of enhancement of compensation. You are also requested to bring the above said judgements to the notice of various courts and also indicate the quantum of delay in depositing the amount of enhancement of compensation so that Hon'ble Courts may appreciate the delays committed by the allottees in depositing the amount of enhancement of compensation and awarding the differential rate of interest to the defaulters than the normal rate of interest distinguishing between the allottees who pays enhanced compensation in time and those who are defaulters

HARYANA URBAN DEVELOPMENT AUTHORITY, 870 NO. 841, MANIMAJRA.

No. HUDA-Accots-87/ 9660-73 Dated: 2-4-87

To

All the Estate Officer,  
HUDA (in the State).

Recovery of enhanced compensation from the plot-holders.

For quite sometimes in the past, it has been observed that pace of recovery of enhanced compensation from the plot-holders has been slow partly because of the reason that the amount of enhanced compensation recoverable was sometimes heavy and plot-holders were experiencing great difficulty to pay the amount in lump-sum. Representations from various individuals/institutions were also received in this regard for recovering the amount of enhanced compensation in some suitable instalments. After due consideration of the matter, it has been decided to recover the enhanced compensation from the plot-holders in instalments as per details given below :-

a) Where the enhancement is 10% of the original price of the plot. Payment in lump-sum within 30 days of the issue of demand notice.

Where the enhancement is more than 10% but less than 30% of the price of the plot.

- i) First 10% within 30 days of the issue of demand notice.
- ii) Second 10% or part thereof within 6 months of the issue of notice.
- iii) Third 10% or part thereof within one year of the issue of notice.

c) Where the enhancement is more than 30% but less than 50%.

Payment may be made as follows:-

- i) First 12% within 30 days of the issue of notice.
- ii) Second 12% within 6 months of the issue of notice.
- iii) Third 12% within one year of the issue of notice.
- iv) Fourth 12% within one & half year of the issue of notice.
- v) Fifth 12% or part thereof within two years of the issue of notice.

d) Where the enhancement is more than 50% of the original cost of the plot.

Payment may be made as follows :-

- i) First 15% within 30 days of the issue of notice.
- ii) Second 15% within 6 months of the issue of notice.
- iii) Third 15% within one year of the issue of notice.



- iv) Fourth 15% within 1½ year of the issue of notice.
- v) Fifth 15% within two years of the issue of notice.
- vi) Sixth 15% within 2½ years of the issue of notice.
- vii) Seventh 15% within three years of the issue of notice.

Interest @ 15% per annum may be charged on the balance amount in view of the fact that HUDA is paying interest @ 15% enhanced compensation as per new Land Acquisition Act.

Accordingly, you are requested to effect the recovery of enhanced compensation in suitable instruments as per details given above. These instructions may also be incorporated/attached in the recovery notices.

*Shamsul*  
Controller of Finance,  
for Chief Administrator, HUDA.

- i) All the Administrators, HUDA, for information & necessary action.
- ii) Secretary, HUDA, for information.
- iii) D.A./HUDA.