



हरियाणा शहरी विकास प्राधिकरण

HARYANA URBAN
DEVELOPMENT AUTHORITY

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Panchkula

To

The President,
Haryana Excise & Taxation Welfare Organization,
Opp: D.L.F., Centre court, Sector-43,
Gurugram.

NO.HUDA-CCF-ACCTT-II-2017/- 65457

DATED:- 12/4/17

Subject:- Speaking order passed in compliance with the orders of Hon'ble Punjab & Haryana High Court in CWP No. 2327 of 2015- Haryana Excise & Taxation Welfare Organization Vs HUDA.

1. Please refer to the subject cited above.
2. Please find enclosed herewith the copy of speaking order No. 11/2017 passed by the Chief Administrator, HUDA, Panchkula on dated 12.04.2017 in compliance of Hon'ble High Court order dated 22.12.2016 in CWP No. 2327 of 2015- Haryana Excise & Taxation Welfare Organization Vs HUDA.

DA/As above:


Chief Accounts Officer,
For Chief Administrator,
HUDA, Panchkula

Endst.No.HUDA-CCF-Acctt-II-2017/-

Dated:- 12/4/17

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

- (i) District Attorney, Legal Cell, HUDA, Panchkula.
- (ii) Estate Officer-II, HUDA, Gurugram.

DA/As above:


Chief Accounts Officer,
For Chief Administrator,
HUDA, Panchkula

Passed in compliance with the orders of Hon'ble Punjab & Haryana High Court in CWP No. 2327 of 2015 titled as Haryana Excise & Taxation Welfare Organization, Gurgaon Vs Haryana Urban Development Authority and others.

1. This speaking order is passed in respect of Sector-43, Gurugram in compliance of the orders dated 22.12.2016 of Hon'ble Punjab & Haryana High Court in CWP No. 2327 of 2015 titled as Haryana Excise & Taxation Welfare Organization, Gurgaon Vs Haryana Urban Development Authority and others. The order dated 22.12.2016 is reproduced as under:-

"The issue pertains to the calculation of the enhanced price. The respondent have fairly agreed to reconsider the extent of the enhancement, in the light of what is stated in the petition.

The petition is, therefore, disposed of, in terms of the above statement. Needless to add that the petitioner is always at liberty to challenge any fresh order. The fresh decision shall be taken without being influenced by the impugned order. The interim order shall continue till the passing of the fresh order and for a period of six weeks after service thereof upon the petitioner. The order shall be passed after affording the petitioner an opportunity of being heard."

2. Before passing the speaking order, it is relevant to discuss the following important clauses/provisions made in the Allotment letter issued to the society, The Haryana Urban Development (Disposal of Land & Building) Regulations, 1978 and The Land Acquisition Act, 1894.

(a) Clause no. 9 of the allotment letter provides as under:-

"The above price is tentative to the extent that any enhancement in the cost of land awarded by the competent authority under the Land Acquisition Act shall also be payable proportionately, as determined by the Authority. The additional price determined shall be paid within 30 days of its demand."

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

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

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

- i) In the case of sale/lease of land/building by allotment the transferee or lessee shall be liable to pay to the Authority, in addition to the tentative price/premium, the additional price/premium, if any, determined in respect there to under these regulations.
- ii) The additional price/premium shall be payable by the transferee or lessee within a period of thirty days of the date of demand made in this behalf by the Estate Officer without interest or in such number of installments with interest as may be determined by the Chief Administrator.

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

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

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

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

Provided that the award of the Court may also direct that where such excess or any part thereof is paid into Court after the date of expiry of a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of such

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excess or part thereof which has not been paid into Court before the date of such expiry."

Records of Personal hearing

3. As per the orders dated 22.12.2016 of Hon'ble High Court in CWP No. 2327 of 2015 titled as Haryana Excise & Taxation Welfare Organization, Gurgaon Vs Haryana Urban Development Authority and others, an opportunity of hearings was afforded to the petitioner society on 22.3.2017. A representation was made by the petitioner society and requested to pass a speaking order on the points raised in their representation.

Discussions and Findings

4. Before taking up the matter, it is clarified that additional price on account of the enhanced compensation to be recovered from the allottees, is worked out by the Chief Administrator as per Regulation 2(b) of Haryana Urban Development (Disposal of Land & Building) Regulations, 1978 on account of the enhancement of compensation of any land in the same sector by the Court. This amount is calculated sectorwise and is applicable for the full sector.

5. The discussion and finding of the committee on issue raised in the representation of Haryana, Excise and Taxation Welfare Organization, Gurgaon as under :-

Para a of the representation:- That the Society was given an alternative group housing plot in Sector-43 (Part), Gurugram, measuring 10142.59 Square Metres, vide Estate Officer, HUDA, Gurugram memo No. A-GHS 754/2002/5267 dated 26.03.2002 in lieu of group housing plot GH-88 in Sector-54, Gurugram, allotted by draw originally under the Group Housing Scheme, 1998 because the original group housing plot (GH-88 in Sec.54) was non-existent on the ground. The Society was charged price of land @ ₹ 2711/- per Sq. meter for the alternative plot which was same price as fixed by HUDA in respect of group housing plots in Sector 54/55/56, Gurugram under the 1998 Scheme. That HUDA raised a demand for ₹ 6,29,01,447, vide Notice No. 5721 dated 8.5.2012 and again a demand of ₹ 5,67,51,645, vide Notice No. 8602 dated 21.7.2014, on the society for recovering purportedly the enhanced amount of compensation that was awarded by the reference court vide order dated 19.1.2009 and by the Hon'ble High Court vide order dated 1.10.2010 to the evacuee of land of Sector-43 (part).

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The Society submits that in the circumstances narrated above, HUDA's long held policy had been to charge price of the alternative plot of land given in the adjacent sector on the same rate and terms and conditions of the original plot. It was for this reason that HUDA charged price for the existing alternative plot in Sector 43 (Part), Gurugram at the rate of ₹ 2711 per sq. mtr which was same as fixed by HUDA for group housing plots in sector 54/55/56, Gurugram under the Group housing Scheme, 1998. Therefore, the Society contends that it cannot be burdened with enhanced price of the alternative group housing plot of land in Sector 43 (part), Gurugram. In this regard, the Society may draw the attention to HUDA's policy circulated vide memo no. CVO/AU-1/2007/43162-84 dated 10.12.2007, wherein it is stated at para b, as under:

"If the plot is not available in the same sector then alternative plot may be given in the adjacent sector on the same rate, terms and conditions of the original plot".

The above policy has been reiterated vide Memo No.U.B.-A-6-2013/7934-57 dated 18.02.2013. The Society submits that cause of action in its case arose on receiving the notices issued by HUDA dated 08.05.2012 and 21.07.2014 for enhancement of price of the alternative plot of land given to the society. So HUDA's policy spelled out in the two documents dated 10.12.2007 and 18.02.2013 mentioned above is applicable. The society prays that it be charged price of the alternative group housing plot of land given to it in sector-43(Part), Gurgaon on the rate, terms and conditions of the original group housing plot in sector-54/55/56 allotted to the society under the Group Housing Scheme, 1998. This is the first and foremost contention of the society because if this issue is settled in favour of the society, then the other contentions raised hereinafter would not survive.

Findings :-In this regard, necessary instructions No.2/HUDA/Finance has been issued vide Endst. No. CCF-Acctt.II/2015/2790-91, dated 09.02.2015 in which it is mentioned that the office has already issued clarification vide this office memo no. HUDA-Acctt-II-2013/43644-45 dated 26.11.2013 on the basis of High Court decision dated 8.08.2013 in CWP No. 2759 of 2013 titled Mahender Pal Jain Vs HUDA that in respect of allotment of alternative plot in the adjoining/different sector, the enhanced price shall be charged of the sector where alternative plot has been allotted. The above said



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instructions have also been uploaded on the website of HUDA under link https://www.huda.org.in/_layouts/CCF/Interest_on_deposit_of_additional_price_against_original_plot_on_account_of_enhancement.pdf.

In this case petitioner society was allotted an alternative plot in Sector-43, Gurugram. Therefore, the enhanced compensation of Sector-43, Gurugram has rightly been charged from the petitioner society as per the above said policy.

Para B of the representation:- That HUDA decided to adopt the following formula for fixation of price of land for GHS, vide approved agenda item No. A-44 (28) dated 24.1.1990 of 43rd meeting held on 18.10.1989:

FORMULA:

$$\begin{aligned} &\text{Price of land for group housing} \\ &= \frac{\text{Land Cost}}{\text{Percentage of plotable area of the sector}} \times \text{FAR of group housing plot} \\ &+ \text{Dev.cost} \times \frac{\text{Density of group housing scheme}}{\text{Ruling density}} \end{aligned}$$

That the above formula was applied for fixation of prices of residential plots vis-a-vis group housing plots is evident from the prices of residential plots given in the brochure titled 'Freehold Residential Plots' dated 09.11.2001 and the prices of group housing plots given in the brochure titled 'Group Housing Scheme, 2001' dated 11.01.2001. The prices are given below for comparison:

Rates of free hold residential plots in Gurgaon

Category of plots (Size in meters.)	Rate per square yard (₹)
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14 Marla (13X22)	4500
10 Marla (10X22)	4500
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Rates of plots in Group Housing Scheme, 2001 for Gurgaon

Category of GHS	Rate per square yard (₹)
250 PPA	2961
400 PPA	3628

It is seen from the above formula that 'Land Cost' is the first determinant in calculating the price of land for group housing. The 'land cost' after

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announcement of the awards by the courts in respect of the land acquired for the sectors is the one that was awarded finally by the courts. The Society prays that the enhanced price of land for the group housing plots be computed by application of the above formula.

Findings :-The tentative price of the land to be allotted to the GHS is computed on the basis of the above formula approved by the Authority but enhanced compensation is recovered from the allottees, as worked out by the Chief Administrator as per Regulation 2(b) of Haryana Urban Development (Disposal of Land & Building) Regulations, 1978 on account of the enhancement of compensation of any land in the same sector by the Court. This amount is calculated sector wise and is applicable for the whole sector. Hence, the additional price on account of enhancement has been determined properly as per HUDA Regulations.

Para C of representation :- That the agreement in Form 'A' executed between the Society and HUDA for completion of development work on the group housing plot states vide clause 2, sub-clause (i), as follows:

"However, if the organisation completes the construction within 3 years of the date of offer of possession as mentioned above, 20% rebate on price of land would be given and would be adjusted towards the future instalments". It is a matter of record that the society completed the construction within the above said period of 3 years and was given rebate of 20% of the price of land. At that time the price of land calculated on the basis of award given the collector for acquiring the land was tentative. Price of land is actually the price determined by the courts finally (It is for this reason that HUDA charges interest on the enhanced price of the land, as determined by the courts, from the date of the acquisition of the land), therefore, the rebate of 20% of price of the land determined finally. The society prays for computing the same accordingly.

Findings:- As per the terms of agreement, petitioner society was to be deposited 25% of the tentative cost of the land as initial deposit and further agrees to pay the remaining 75% of the tentative cost in 5 equal annual instalments alongwith interest @ 15% p.a. on the balance amount. Any Further enhancement in the cost of land awarded by the competent authority under the Land Acquisition Act shall be payable proportionately as determined by the Authority from time to time. However, if the

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organisation completes the construction within three (3) years of the date of offer of possession, 20% rebate on price of land would be given and would be adjusted towards the future instalments. As per Section 2(i) of the Haryana Urban Development (Disposal of Land and Building) Regulations, 1978 "Tentative Price" or "tentative premium" means such price/premium as may be determined by the Authority in terms of Regulations 4 for disposal by allotment in which the cost of land included is based on the compensation awarded by the collector under the Land Acquisition Act, but does not include any enhancement that may be awarded by the court on reference made under section 18 of Land Acquisition Act, 1894".

As such 20% rebate is admissible only on the tentative cost of the land which was initially deposited at the time of allotment.

Para D of the representation:- That while the reference court announced the award vide order dated 19.1.2009 and the Hon'ble High Court vide order dated 1.10.2010, each enhancing the amount of compensation payable to the evacuees for acquisition of their lands, HUDA issued notices for recovery of the enhanced prices of the land on 8.5.2012 and 21.7.2014 respectively i.e. late by 3-4 years on which period HUDA has charged interest. This is wholly unjustified for the period of delay is solely attributable to HUDA. The Society cannot be made to pay for the delay on HUDA's part. If HUDA has failed to pay compensation to the evacuees immediately on announcement of the award by the Courts, ignoring the instructions issued vide Memo No. HUDA-Accts-II-2006/44451-55 dated 21.12.2006, the Society can not be made to pay for the delay on HUDA's part. The society prays for granting of relief from charging of interest for the period of the delay.

Findings:- The interest is paid under section 23(1A)/28 of Land Acquisition Act, 1894 by the Collector to the farmers/land-owners from whom land was acquired. Once this amount has been paid by HUDA to the land-owners, the same becomes the part of the cost for acquisition of land. Therefore, such cost of acquisition has to be recovered in the shape of additional price from the petitioners. As per the Regulation 2(b) of the Haryana Urban Development (Disposal of Land & Building) Regulations, 1978, the additional price includes the amount of cost incurred in respect of Courts'



decision on reference made under Section -18 of Land Acquisition Act. Thus, HUDA has to recover full cost from the petitioners.

This issue has already been decided by the Hon'ble Punjab and Haryana High Court vide order dated 8.7.1986 in CWP No. 1270 of 1985 read with CWP No. 1283.2975 and 5794 of 1985 in the matter of Urban Estate Welfare Association (Registered), Karnal Sector-13, Karnal where under HUDA as per page-9 of the order made submissions that ***"Payment of enhanced compensation is made by HUDA out of its own resources and no assistance from the State Government or financial institutions is available to the Organization for this purpose. Since this amount is to be subsequently recovered from the allottees from over a period of times, it becomes difficult to make payment immediately after the announcement of the enhanced amount of compensation by the District Court/High Courts. The investment made by HUDA towards the payment of enhanced compensation from its own resources further strains the commitment or development works in other areas. Consequently, a certain amount of delay is inevitable."***

The Hon'ble Court held that the amount of enhanced compensation has been paid by the HUDA and its burden must fall on all the plot-holders. Hence, interest is rightly charged from the concerned society.

Para E of the representation :- That in calculating the price of the land for residential plots in sectors 43 (Part), Gurgaon, Infrastructure Development Charges @ ₹ 400/- per square yard and Extra Development Charges @ ₹ 1100/- per square yard have added over and above EDC and the cost of development of infrastructure. This is evident vide HUDA's reply No. HUDA-Accts-Acctt-II-2013/1535 dated 27.5.2013 given under the RTI Act. The Society requested HUDA for supplying the details of these charges as also whether such charges have been included in fixing the price of the land in other sectors in Gurugaon or elsewhere in the State, vide application made under the RTI Act dated 1.4.2016. HUDA in reply thereto vide No. HUDA.CCF.ACCTT-I-2016/16319 dated 22.6.2016 has simply furnished a copy of Notification dated 28.1.2008 in support of development charges of ₹ 400/- per square yard without giving any details thereof. Further HUDA has not been able to furnish even a fig leaf of notification to justify Additional IDC of ₹ 1100/- and admitted that such



like charges are not part of price fixation of residential plots at any other place in the State except sectors 27, 28, 42 and 43 in Gurgaon. Thus, additional IDC are illegal ab initio. The Society prays for exclusion of these charges from the price of the land. A relief on similar ground have been given to the plot holders of sector 27 vide Memo No. HUDA-CCF-ACCTT-II-2016/25877 dated 6.12.2016.

Findings:-Infrastructure Development Charges for amounting to ₹ 400/-per sq. meter and Additional Infrastructure Development Charges for amounting to ₹ 1100/- per sq. meter has not been charged from the concerned society while fixing the tentative cost of the allotted land to the Society. The Society was allotted an alternative group housing plot in Sector-43 (Part), Gurugram, measuring 10142.59 Square Metres, vide Estate Officer, HUDA, Gurugram memo No. A-GHS 754/2002/5267 dated 26.03.2002 in lieu of group housing plot GH-88 in Sector-54, Gurugram, allotted by draw originally under the Group Housing Scheme, 1998 because the original group housing plot (GH-88 in Sec-54) was non-existent on the ground. The Society was charged price of land @ ₹ 2711/- per Sq. meter for the alternative plot which was same price as fixed by HUDA in respect of group housing plots in Sector 54/55/56, Gurugram under the 1998 Scheme whereas tentative cost of land under the Group Housing Scheme, 2002 in the year when the alternative plot was allotted was ₹ 3542/- per sq. meter . As such tentative cost of land has been charged on the same rate as applicable at the time of initial allotment of Group Housing plot in GH-88 in Sector-54, Gurugram.

Para F of the representation:- Computational error - In the document titled 'PRICE FIXATION IN RESPECT OF RESIDENTIAL PLOTS IN SECTORS-43, Gurgaon' appended to RTI reply dated 22.6.2016 under the heading 'B' Development Cost' the total of items mentioned against serial numbers 1 to 23 has been shown as 16.15 in place of the correct figures 14.90, thus increasing the cost by ₹ 1.25 lakh per acre. After adding 'INDIRECT CHARGES' computed at C) against serial number 1 to 4 in the document (18%+10%+15%+5%) the error escalates to ₹ 185000/- per acre. The same needs to be corrected.

Findings :-Regarding computational error in the 'PRICE FIXATION IN RESPECT OF RESIDENTIAL PLOTS IN SECTORS-43, Gurgaon' under the heading 'Development Cost' the total of items mentioned against serial numbers 1



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to 23 will be corrected after verifying the figures from the office of Chief Engineer, HUDA, Panchkula.

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

Place: Panchkula
Dated: 12.4.2017


Chief Administrator,
HUDA, Panchkula.