

HARYANA URBAN DEVELOPMENT AUTHORITY
SECTOR-6, PANCHKULA.

No. HUDA-CCF-Acctt-II-2014/19084-85

Dated: 28/7/14

To

Sh. Vishal Kaushik,
House No. 4510, Sector-3,
Pocket 5 and 6 Basant Kunj,
New Delhi.

Subject: Regarding in respect of CWP No. 6643 of 2012 - Vishal Kaushik and others V/s State of Haryana.

Please refer to the subject cited on above.

Find enclosed herewith the copy of speaking order passed on 21.07.2014 by the Committee constituted for this purpose and it is for your information please.

DA/As above:

(Surjeet Singh),
Accounts Officer,
For Administrator (HQ),
HUDA, Panchkula.

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

Dated:-

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

DA/As above:

(Surjeet Singh),
Accounts Officer,
for Administrator (HQ),
HUDA, Panchkula.

Speaking Order passed in compliance of the orders dated 23.11.2012 of Hon'ble Punjab & Haryana High Court in CWP No. 6643 of 2012 titled as Vishal Kaushik and Others (Sector-52, Gurgaon)

1. The Hon'ble High Court had passed orders dated 23.11.2012 as under:-

"In view of orders passed in CWP No 10718 of 2012, this writ petition be tread as representation and the same be decided in the same terms as CWP No. 10718 of 2012".

2. In the CWP No. 10718 of 2012 (O&M) titled as Resident Welfare Association (Sector-27, Gurgaon), the Hon'ble High Court had passed orders dated 24.11.2012 as under:-

"Taking note of facts and circumstances of the case, we dispose of this writ petition with liberty to the respondents to decide representation filed by the petitioner. Let the said representation dated 02.03.2012 (Annexure P.7) be put up before the Committee to look into the dispute and after hearing the petitioner, an appropriate order be passed in the meantime. The members of the petitioner – Society are directed to deposit the amount at the rate of Rs. 1500/- per square yard for the land its possession, towards enhanced compensation, with the authorities within one month from today. The case be taken up for hearing only thereafter otherwise if it failed to do so, within the above said period, the authorities are at liberty to charge the amount as per calculation made by them. The representation be decided within two months from the date of deposit of the amount".

3. Discussions and findings of the Committee on the issues raised in the CWP are as below:-

Issues of CWP & the finding of the Committee:-

- i) Para 1:- It does not require any comments.
- ii) Para 2:- The Hon'ble ADJ, Gurgaon announced award and increased the amount by of Rs. 717/- per sq. yd. The amount of enhanced award is to be recovered from the plot-owners as the additional price in terms of Regulation 2(b) of Haryana Urban Development (Disposal of Land and Building) Regulations, 1978 (herein after referred as Regulations). Instead of recovering this amount from plot-owners in one go, HUDA has tried to recover the amount in two installments.

The 1st enhanced compensation @ Rs.1485.31 per sq. yd. was demanded from the petitioner after calculation made on the amount paid to the land—owners. It is intimated that the amount of Rs. 76,06,60,599/- was paid to the landowners as per letter no.189 dated 08.01.2010 received from Administrative HUDA, Gurgaon the copy of which alongwith the

details of payments is enclosed at Annexure-A, on the basis of which 1st enhancement of Rs. 1485.31 per sq. yd. was worked out. The calculation @ Rs. 1485.31 per sq. yd. is attached at Annexure-B. The 2nd enhancement of Rs 2395.39 per sq. yd. was on the basis of award of Hon'ble ADJ, Gurgaon of Rs. 717/- per sq. yd., due credit of Rs.76,06,60,599/- was given in the calculation sheet of enhanced compensation of Rs. 4215.89 per sq. yd. on the basis of award of the Hon'ble High Court wherein the compensation of this land was enhanced from Rs. 717/- per sq. yd. to Rs. 1216/- per sq. yd. The calculation sheet of 3rd enhancement of sector-52, Gurgaon is enclosed at Annexure-D. Therefore three notices of enhancement compensation were issued to the petitioner.

- iii) Para 3:- As already explained in para 2 above.
- iv) Para 4:- The petitioners have alleged that while issuing second enhancement, the benefit of amount demanded in the first enhancement has not been given.

The Committee finds that the contention of the petitioners is not correct as explained above, 2nd enhancement of Rs. 2395.39 per sq. yd. was issued. This calculation has been worked out on the basis of award of Hon'ble ADJ, Gurgaon of Rs. 717/- per sq. yd. and due credit of Rs.76,06,60,599/- has been given in per the calculation sheet enclosed at Annexure-C.

- v) Para 5:- The petitioners have alleged that area like commercial, licensed area and schools appeared in sector-52, Gurgaon. The burden of these areas on account of enhanced compensation should not be passed on to the petitioners by HUDA.

The Committee finds that as per Annexure B,C & D, the load of enhanced compensation on account of 12.8 acres of commercial area (shopping centre) has not been passed on to the plot-owners. The enhancement of commercial sites has been borne by HUDA in the 1st, 2nd and 3rd enhancement Rs. 4,85,65,388/-, Rs. 7,83,22,022/-, Rs. 13,78,47,219/- respectively.

Similarly, the licensed area is 19 acres. The total area of the sector-52 is 264.70 acres and licensed area of 19 acres have been debited from total area to arrive at the net planned area of sector as 209 acres. As such no enhanced amount of licensed area has been charged from the plot holders.

The Committee finds that area of 13.05 acres under city level facilities (college and police station) have been debited from total area to arrive at the net planned area of sector as 209 acres. As such no enhanced amount of college has been charged from the plot holders. As per HUDA policy the 50% educational sites should be sold by way of auction and remaining 50% should be transferred to education department free of

cost. So the benefits of 50% saleable area of school sites, if any, may given to the allottees as the matter already decided while passing the speaking order dated 18.01.2012 in CWP No.18681 of 2011. Therefore, the issue raised by the petitioner about school sites is not relevant.

4. The hearing was held on 8.4.2013. Sh. Sandeep Sharma, Advocate appeared on behalf of the petitioner. He submitted to decide the matter by treating the writ petition as their representation. Fresh hearing was fixed for 20.5.2014 in response, the petitioner vide e-mail dated 19.5.2014 has submitted written objections and requested to decide the matter.
5. Discussions and findings of the Committee on the issues raised in the representation dated 19.05.2014 are as below:-

- 1) Para 1:- The petitioner submitted that the amount realized that from sale of commercial site, school site, Nursing home etc. are to be utilized for the reimbursement of enhancement compensation.

The Committee finds that 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 it was held on page-13 of the order :-

"It was next contended by the learned counsel for the petitioners that the stand of the HUDA is that they are working on the principle "no profit no loss" basis, that area has been reserved as commercial area and for nursery, that from the sale of some commercial sites, huge amount has been earned by HUDA and that the enhanced amount of compensation paid by HUDA with regard to the commercial area is also being charged from the plot holders. According to the learned counsel, the incidence of the enhanced amount of compensation regarding commercial area or for the area which has been shown as "undetermined use" cannot legally fall on the plot holders and that this incidence should be borne by HUDA itself. At the initial stage when this argument was advanced, we felt very much impressed and were tentatively of the view that the incidence of the enhanced amount of compensation regarding the commercial area should not be borne by the plot holders. Dr. Rajinder Singh, learned counsel appearing for HUDA, controverted the contention and submitted that its incidence was not falling on the plot holders and was being borne by HUDA. This argument of the learned counsel did not find any support from the pleadings as in the written statement, no specific averment had been made in this

respect, with the result that Shri Rajinder Singh, prayed for time to enable him to file an additional affidavit. The prayer was allowed and written statement in the shape of additional affidavit, dated 31st march, 1986, was filled by Shri I.M. Khunger, Dy. Secretary. To the pleas taken in this written statement, detailed reference has already been made in the earlier part of the judgment. In this written statement, it has been clearly stated that for the purpose of calculation of additional price, the incidence on account of commercial area is not chargeable to the plot-holders. Any amount payable on account of enhanced compensation of the commercial area is debited to HUDA and is taken outside the purview of the calculations made for determining the additional price payable by the plot holders, as is clear from the statement of account attached with the additional written statement filed. With regard to the area shown as "undetermined use", it is averred that wherever an area gets shown as "undetermined use", as it happened in the case of Sector-14, Gurgaon (which is presently maintained as an open space), the land use may not be changed and the area will not be utilized for any other purpose till the plan is modified and approved by the State Government. In view of this specific averment made in the written statement, no merit is left in the contention of the learned counsel for the Petitioner is concerned, so far as the area which is shown as "undetermined use" the same has to remain as it is till the plan is modified and approved by the State Government. In this situation for this area the incidence of compensation must fall on the plot holders. So far as the commercial area is concerned, it has been brought out clearly in the written statement that the amount of enhanced compensation payable in respect of the commercial area is debited to HUDA and is taken outside the purview of the calculation made for determining the additional price payable by the plot holders. In view of this specific averment it cannot be justifiably argued that incidence of the enhanced compensation of the commercial area is falling on the plot holders. Consequently, the contention of the learned counsel has no force."

Also in the Speaking Order passed by the Administrator(HQ),HUDA, Panchkula in compliance of order dated 26.8.2013 of Hon'ble Punjab and Haryana High Court in CWP No.12107 of 2012 read with C.M.12117 of 2013 titled Sanjay Burman Vs. State of

Haryana and others and connected cases CWP No.24833, 25015, 25075, 25402, 25665, 25836, 26094, 26148-149 of 2012 and 18597 of 2013 has observed in para 19 of the Speaking Order that the burden of enhancement of commercial area alongwith area of proportionate common facilities has been borne by HUDA. Moreover, the plotable area of commercial sites are very low i.e. 25-30% and the development cost are very high i.e. about 3 times than the development cost of residential plots and commercial area is sold after the habitation of the sector. Therefore, the contention of the petitioner is not acceptable.

Accordingly, in view of the above decision of the Hon'ble High Court and Speaking Order passed by the Administrator(HQ),HUDA, Panchkula (*Supra*), the present Committee rejects the contention of the petitioner in the instant case also.

- 2) Para 2 :- The petitioner has alleged that some area of sector-52 was acquired under acquisition of sector-45, Gurgaon. They have requested to know what is the area of such land and whether HUDA has reduced this area while calculating demand on account of enhanced compensation for the planned area of sector-52.

The Committee finds that this issue had already been raised by the Progressive Citizens Welfare Association, Sector-52 Gurgaon in the CWP No. 1939 of 2013 before the Hon'ble Punjab and Haryana High Court. The High Court directed the HUDA authorities to pass Speaking Orders by treating the writ petition as representation. As a result, the Committee had passed Speaking Orders dated 15.4.2014 in compliance of the High Court's orders. In Para 3 (B) (2) of the order, the Committee has observed as below :-

"Award wise detail of Sector-52, Gurgaon are as under:

Award No.	Date	Area	Award of Sector
2	3-05-2000	193.16	52
3	3.5.2000	7.73	52
8	1992-93	43.00	45
9	2003-04	34.46	57
Un-acquired		(-)0.91	
Un-acquired		(-)0.40	
Un-acquired		19.00	Licensed Area
Un-reconciled area		1.51	
Total area of sector-52		297.55	

Lay out plan attached for revision of calculation as supplied by DTP/CTP

- As per above, 43 acres of land was acquired with the land of Sector 45 and planned as part of sector-52, Gurgaon
- 34.464 acres of land was acquired with the land of sector-57 and planned as part of sector-52, Gurgaon
- 19 acres of land was not acquired and is licensed areas.
- 1.51 acres of land could not be reconciled and it is a minor difference. So the enhancement be revised after identity the land that how much land out of above award was planned for sector-52 i.e. 228.975 acres (Planned area of sector-52)".

Accordingly, this Committee also agrees with the findings as above under order dated 15.4.2014 (*supra*) of earlier Committee.

- 3) Para 3 :- The petitioners has contended that adjoining sector 52A was also acquired by HUDA. Whether has paid compensation to the land-owners whose land was acquired for sector-52A. Whether such compensation has been passed on the plot-holders of sector-52A.

The Committee finds that the enhanced compensation has to be worked out as per Section 2(b) of Haryana Urban Development (Disposal of Land & Building) Regulations, 1978 according to which the enhanced compensation is to be determined in respect of a sector on account of the enhancement of compensation in the same sector awarded by the Court. Therefore, sector-52-A, Gurgaon is a separate sector and it does not relates to Sector-52, Gurgaon so the queries raised by petitioners are not relevant.

- 4) Para 4 :- The petitioner asked for the details of land exchanged with private developer like Ardee City etc. in sector-52, Gurgaon. They have contended that private builders should also be made to pay enhancement for the exchanged land.

The Committee finds that, acquired land falling in sector-52, Gurgaon has been exchange with M/s Ardee City on "Give equal and take equal" basis for the regularization of the boundaries. So enhancement of land given to M/s Ardee City is to be borne by sector-52 as the land given by Ardee City to Haryana Urban Development Authority does not involve any enhanced compensation being in the ownership of Ardee City.

- 5) Para 5 :- The petitioner ask why HUDA has included the area for sites such as multilevel parking of High School, College, Nursery School, Crèches and HUDA land etc. They have contended that the enhancement cost of these facilities should be distributed with private builders also.

The Committee finds that, all the common facility are available for sector-52, Gurgaon and the burden of these faculties should be borne by the plot holders. However, the benefit of high school/College has already been given while making calculation. As per HUDA policy the 50% educational sites should be sold by way of auction and remaining 50% should be transferred to education department free of cost. So the benefits of 50% saleable area of school sites, if any, may given to the allottees as the matter already decided while passing the speaking order dated 18.01.2012 in CWP No.18681 of 2011.

- 6) Para 6 :- The petitioner has objected that there is a lot of changes of site plan in sector-52, Gurgaon. Some of the land which was shown as released land has now been changed to residential plots numbering 1075 to 1103. Also there are changes in the sites like police station, N.S. Group

Housing Society etc. They have requested to adjust enhancement cost accordingly.

The Committee finds that the land under plot no.1075 to 1103 was acquired by HUDA. Initially this land was under exchange proposal with M/s Ardee City but the same was excluded from final exchange proposal, later on this land was planned for above said plots. Also the Committee agrees with the petitioner that the details of land have got changed since inception of sector. The land details as on now are as below:-

Sr. NO	Revised Area	
1	2	3
		Area in acres.
1	Total acquired land	297.85
2	Area under half of sector road	26.24 acres
3	Area under town level facilities.	21.889
4.	Area under Harijan Basti.	1.75
5.	Area under licence	19.00
6.	Net planned area.	228.97
	(a) Area under plots and clinics = 83.97 acres.	
	(b) Area under group housing = 46.71	
	(c) Area under Shopping Centre = 12.80 acres.	
	(d) Area under community facilities = 14.37 acres	
	(e) Area under roads and open spaces = 71.12	

- 7) Para 7 :- The petitioners submitted that the area of GHS is much more than 29.90 acres, which is shown in the calculation.

The Committee finds that the contention of the petitioner is correct. As per the current layout plan, the area under group society is now 46.71 acres.

- 8) Para 8 :- The petitioner submitted that why the load of enhancement of EWS housing have been loaded on plot holders.

The Committee has observed that plots under EWS category are allotted at concessional rates through cross subsidization from other allottees of the same sector. This issue has also been upheld by the Punjab and Haryana High Court in CWP No.1483/1997 in case of Bishan Sawrup and others and this also got finality in Hon'ble Supreme Court of India on 11.2.2000.

- 9) Para 9 :- The petitioner submitted that the calculation sheet indicate the green area/belt i.e. 69.19 acres.

The Committee finds that as per the current layout plan, area under roads and open spaces is 71.12 acres now.

- 10) Para 10 :- The petitioner has contended that the IOC pipe line fall in the sector-52, Gurgaon and how much area is covered by the pipeline and

whether this area under IOC pipe line has been removed while calculating the enhancement cost because it is a Govt. property and not served to the sectors.

The Committee finds that as per norms 18 mtr. Wide right of way (ROW) has been reserved for existing IOC pipe line. Approximately, 2.60 acres of HUDA land falls under this 18 mtr. wide ROW of IOC pipe line. These 2.60 acres is accounted for in the area under open spaces/roads.

11. Para 11 :- The petitioner submitted that HUDA has 12.80 acre of commercial land Hotels etc., which is to be sold and the current price of this land is very high, so HUDA should sold it to pay the enhancement to the farmers.

The amounts realized from commercial sites/Hotels cannot be utilized for the payment of enhanced compensation as the matter is already 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.

- 12,13 & 14) Para 12, 13 & 14 :- The petitioner submitted that land of sector Gurgaon was acquired in 1987 and was allotted in 2003 and thereafter HUDA is charging enhancement since 1997 alongwith heavy interest where as it should be from the date of allotment.

The Committee finds that, this interest of 9% or 12% or 15% is paid under section 23(1A)/ 28 of Land Acquisition Act, 1894 by the Collector to the farmers/land-owners from whom land was acquired. Once this amount has been paid by HUDA to land-owners, the same becomes the part of the cost for acquisition of land. Therefore, such cost of acquisition has to be recovered in the shape of additional price from the petitioners. In this regard the Committee also finds that as per Regulation 2(b) of Regulations, the additional price includes the amount of cost incurred in respect of Court's decision on reference made under Section-18 of Land Acquisition Act. Thus, HUDA has to recover full cost from the petitioners. The Committee is of the view that HUDA is not charging interest on interest as alleged by the petitioner.

This issue has already been decided by the Hon'ble Punjab and Haryana High Court vide order dated 8.7. 1986 in CWP No.1270 of 1985 read with CWP No.1283,2975 and 5794 of 1985 in the matter of Urban Estate Welfare Association (Registered), Karnal Sector-13, Karnal where under HUDA as per page-9 of the order made submissions that "*Payment of enhanced compensation is made by HUDA out of its own resources and no assistance from the State Government or financial institutions is available to the Organization for this purpose. Since this amount is to be*

subsequently recovered from the allottees from over a period of times, it becomes difficult to make payment immediately after the announcement of the enhanced amount of compensation by the District Courts/High Courts. The investment made by HUDA towards the payment of enhanced compensation from its own resources further strains the commitment or development works in other areas. Consequently, a certain amount of delay is inevitable."

The Hon'ble Court held that the amount of enhanced compensation has been paid by the HUDA and its burden must fall on all the plot-holders.

15) Para 15 :- The petitioner submitted that HUDA paid Rs.361/- per sq.yd. to farmers/land owners and allotted the land to plot owners at rates as high as rs.3400/- per sq.yd. provide us the calculation sheet explaining full details of the working.

The Committee finds that the price of the plot was fixed as per Section-4 of The Haryana Urban Development (Disposal of Land and Building) Regulations, 1978 and 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." Copy of price fixation is also attached.

16) Para 16 :- The petitioner submitted that, plot owners are wrongly made to pay for the delay and lethargic attitude of HUDA as it failed to calculate and pass on the enhancement to plot owners as and was Hon'ble Court pronounced verdicts to enhance compensation to farmers.

This issue has already been decided by the Hon'ble Punjab and Haryana High Court vide order dated 8.7. 1986 in CWP No.1270 of 1985 read with CWP No.1283,2975 and 5794 of 1985 in the matter of Urban Estate Welfare Association (Registered), Karnal Sector-13, Karnal where under HUDA as per page-9 of the order made submissions that "*Payment of enhanced compensation is made by HUDA out of its own resources and no assistance from the State Government or financial institutions is available to the Organization for this purpose. Since this amount is to be subsequently recovered from the allottees from over a period of times, it becomes difficult to make payment immediately after the announcement of the enhanced amount of compensation by the District Courts/High Courts. The investment made by HUDA towards the payment of enhanced compensation from its own resources further strains the commitment or*

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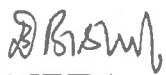
17 & 18) Para 17 & 18 :- The petitioner submitted that they want to know about khasra/Killa number of land acquired by HUDA for sector-52 including the area of sector-45,51 & 52 etc..

The Committee finds that the enhancement has been calculated as per provision of Section-4, 10, 2(b) of The Haryana Urban Development (Disposal of Land and Building) Regulations, 1978 and Section-28 of Land Acquisition Act, 1894. There is no need to provide Khasra wise details because enhancement is calculated sector wise. However the enhancement is being revised due to change in area detail as per speaking order passed in CWP No.1939 of 2013.

19) Para 19 :- The enhancement is being recovered as per term & condition no.-9 of allotment letter from the plot-owners as the additional price in terms of Regulation 2(b) of Haryana Urban Development (Disposal of Land and Building) Regulations, 1978 (**herein after referred as Regulations**).

20 & 21) Para 20 & 21 :- The petitioner has submitted that the enhancement of sector-43 and sector-27 were revised. They have requested to revise enhancement in respect of their sector-52 also.

The Committee finds that the enhanced compensation has to be worked out as per Section 2(b) of Haryana Urban Development (Disposal of Land & Building) Regulations, 1978 according to which the enhanced compensation is to be determined in respect of a sector on account of the enhancement of compensation in the same sector awarded by the Court. The revision of enhancement in respect of one sector has no effect on the other sector. However, the enhancement in respect of sector-52, Gurgaon of the petitioner shall also be recalculated based as per Speaking Order.


DA, HUDA
Panchkula.


CTP, HUDA
Panchkula


CE, HUDA
Panchkula


CCF, HUDA
Panchkula.


Administrator (HQ)
HUDA, Panchkula.