

Form

The Chief Administrator,
Haryana Urban Development Authority,
C-3, Sector-6, Panchkula.

To

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

Memo No. DA/2012 1490-42 Dated: 20/3/12

Subject :- Scope of Power of Attorney- SLP (C) No. 13917 of 2009 titled Suraj Lamp and Industries Pvt. Ltd. Vs State of Haryana and Another and SLP (C) No. 31841 of 2011 titled as Ved Parkash Kathuria Vs Haryana Urban Development Authority and Another.

The Hon'ble Supreme Court in the case of Suraj Lamp and Industries Pvt. Ltd. vide order dated 11.10.2011 has reiterated the law that a transfer of immovable property by way of sale can only be made by a deed of conveyance (sale deed) and in the absence of such a deed (duly stamped and registered as required by law), no right, title or interest in an immovable property can be transferred. A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is creation of an agency whereby the grantor authorizes the grantee to do the acts specified therein, on behalf of the grantor, which when executed will be binding on the grantor as if done by him (See Section 1A and Section 2 of the Powers of Attorney Act, 1882). It is revocable or terminable at any time unless it is made irrevocable in a manner known to law. Even an irrevocable attorney does not have the effect of transferring title to the grantee.

2. Transactions of the nature of '**GPA sales**' or '**SA/GPA/WILL transfers**', which were evolved to avoid prohibitions/ conditions regarding certain transfers, to avoid payment of stamp duty, registration charges, income tax and wealth tax, do not convey title and do not amount to transfer, nor can they be recognized as valid mode of transfer of immovable property. The courts will not treat such transactions as

completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. Such transactions cannot be relied upon or made the basis for mutations in Municipal or Revenue Records. What is stated above applies not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. The Hon'ble Court observed in the ibid judgment that it is time to put an end to the pernicious practice of SA/GPA/WILL transactions known as GPA sales. However, if the documents relating to SA/GPA/WILL transactions have already been accepted/ acted upon by Development Authority etc., they need not be disturbed, merely on account of this decision. The Hon'ble Court has also clarified that the observations are not intended to in any way affect the validity of power of attorney executed in genuine transactions, e.g., a person may give a power of attorney to spouse, son, daughter, brother, sister or a relative to manage his affairs or to execute a deed of conveyance.

3. The Hon'ble Supreme Court in Ved Parkash Kathuria's case decided on 14.11.2011 has observed that it is most upsetting that the appellate authority did not even bother to take note of the fact that in majority of cases, the appeals have been filed by the allottees through their General Power of Attorney. The Hon'ble Court took Judicial notice of the fact that in large number of such cases the property dealers pay certain amount to the allottees, get the power of attorney executed in their names and then involve HUDA and other similar authorities with the hope that they may succeed in persuading the higher administrative authorities to give relief to them. Such appellate orders cannot be made basis for recording a finding that the petitioner has been subjected to discrimination.

4. The matter has been considered in the light of the ibid legal position and it has been decided that the Zonal Administrators, while hearing appeals u/s 17 (5) of the HUDA Act, 1977 (exercising the powers of Chief Administrator, HUDA), shall first decide the issue of

locus standi if an appeal has been filed by the allottee through General Power of Attorney. The concerned Zonal Administrator may direct the allottee as well as GPA holder to submit affidavits that the plot/property in question has not been sold/ purchased and consideration money has not passed from the GPA holder to the allottee, to ensure that the case is not of GPA sale. If the case is found to be of GPA sale, the concerned Zonal Administrator shall reject the appeal in limine.

5. Further, the Estate Officers, HUDA, in the State shall also follow the ibid procedure while granting the transfer permissions.

6. These instructions be brought into the notice of all concerned for strict compliance.

J 19/3/12
(Anil Aggarwal)
District Attorney,
for Chief Administrator
HUDA, Panchkula

Endst No. DA/2012

1423-51

Dated:- 20/3/12

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

1. The Administrator, HUDA (HQ).
2. The Chief Engineer/Chief Engineer-I, HUDA, Panchkula.
3. The Chief Controller of Finance, HUDA, Panchkula.
4. The Chief Town Planner, HUDA, Panchkula.
5. Sr. Architect, HUDA, Panchkula.
6. The Secretary, HUDA, Panchkula.
7. The General Manager, IT, HUDA, Panchkula.
8. The Deputy ESA, HUDA, Panchkula.
9. PS/FCTCP, New Haryana Civil Secretariat, Chandigarh for the information of FCTCP.

J 19/3/12
(Anil Aggarwal)
District Attorney,
for Chief Administrator
HUDA, Panchkula