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SPEAKING ORDER

This speaking order is being passed in compliance of order dated 03.02.2009 passed by Hon'ble Punjab and Haryana High Court in CWP No.1725 of 2009 titled Om Parkash and others V/s HUDA and another. Order of the Hon'ble High Court is as under:

“Having heard Learned Counsel for the Petitioners and without going into merits of their claim, I deem it appropriate to dispose of this writ petition with a direction to the Estate Officer, HUDA at Karnal to consider the petitioners' representation dated 15.5.2008 in terms of the judgment of this Court in the case of Mohan & Ors. (supra) and dispose of the same by passing a reasoned order within a period of two months from the date of receipt of a certified copy of this order. Needless to say that in case the Estate Officer finds that the petitioners are entitled to the refund of compound interest, the needful shall be done within a period of one month thereafter”.

Hence in view of the direction, the case of the petitioners was to be decided within a period of two months from the date of receipt of a certified copy of the order. Copy of the said order was received by this office on 16.2.2009.

Before proceeding to decide the case of the each petitioner, it would be appropriate to divulge the circumstances under which HUDA was compelled to charge compound interest from its allottees.

HUDA charges interest on due payments from its allottees as per Rules and Regulations, instructions amended from time to time. It was noticed that due to higher rate of interest paid

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by the Banks or due to other considerations, the allottees preferred not to deposit outstanding amount within stipulated period. This practice resulted into huge outstanding against the allottees. Hence, it was decided vide policy letter dated 19.09.1985 that compound interest may be charged from the allottees on outstanding payments. However, rate of interest were slashed by the Banks in due course of time and it was decided that the allottees shall be liable to pay simple interest at stipulated rates on all types of outstanding dues w.e.f. 01.09.2000. Hence the allottees are liable to pay interest as per amended Regulation/instructions.

Moreover, the allottees are willing to avail benefit of simple interest as per instructions dated 22.09.2000 but they are not ready to pay compound interest as per instructions dated 19.09.1985. This view of the allottees is not justified that anything beneficial to them based on instructions, they are ready to accept but anything which is against their interest, they are not ready to accept them. Whereas charging of compound interest or simple interest depends upon the circumstances and policies prevailing at the relevant time.

Moreover, the decision taken by the HUDA to charge compound interest finds justification in the judgment passed by Hon'ble Supreme Court of India titled S.M.S.Sandhu V/s Chandigarh Administration and others, AIR 2003 SC 1138 in which the Hon'ble Apex Court held as under:-

"Capital of Punjab (Development and Regulation) Act (27 of 1952) Ss. 3,22 Chandigarh Leasehold of sites and building rules(1973), R-112(3)-Allotment of sites-delay in payment of installments-interest-rate increased subsequent to transaction in question-Applicability-Appellant-allottee enjoying site for a decade by paying only $\frac{1}{4}$ of the price has constructed building complete and was earning rental income.

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Levy of interest at amended rate of 24% on delayed payments from date of amendment-not interfered with time, however granted time to appellant to make payment of balance of interest amount."

Hence, HUDA is justified in charging interest as per its instructions framed/amended from time to time.

However, in view of the direction of the Hon'ble High Court in CWP No.3737 of 2007 titled Mohan Dass and others V/s HUDA, to decide the case of the each petitioner in the light of the Gian Inder Sharma's case.

I have gone through all the relevant documents. It is pertinent to mention here that in all the allotment/re-allotment letters of the petitioners, it is clearly mentioned as under:-

"Your application has been considered and a residential plot/building as detailed below has been allotted to you on freehold basis as per the following terms and conditions and subject to the provisions of 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".

Hence, the allottees/petitioners are liable to pay interest as per the instructions framed from time to time.

The petitioners in the present CWP, have prayed to issue a writ in the nature of mandamus for direction to the respondents for issuance of directions to the respondents to refund the excess amount paid by the petitioner on account of compound interest as per their demand on the outstanding dues against the allotment of commercial plot in Urban Estate, Karnal and the petitioner has also prayed for issuance of direction to the respondents to decide the representation dated 15.5.2008 which is still pending for consideration by the respondents. The decision of the Hon'ble High Court in Gian Inder Sharma's case is restricted towards payment of interest on enhanced compensation only. The

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issue of payment of interest on delayed payment was not raised and considered in Gian Inder Sharma's case. Hence, it would be appropriate to decide case of the petitioners regarding payment of interest on enhanced compensation in view of the Gian Inder Sharma's case as per direction of the Hon'ble High Court.

It has been brought to my knowledge by the dealing officials that out of 2 petitioners, petitioner No.1 is the allottee and another is re-allottee of the plots. Detail of both the plots is mentioned in the **Annexure-A** attached herewith.

The petitioner No.1 is bound by the terms and conditions of allotment letter and the petitioner No.2 has tendered undertaking before re-allotment of the plot in the form of affidavit as under:-

"That I accept terms and conditions relating to the allotment of plot and of incidental open space, if any, and shall abide by the provisions of Haryana Urban Development Authority Act 1977 and the rules/regulations applicable thereunder and amended from time to time."

Hence, the plots have been allotted/re-allotted and the undertaking given by the above mentioned petitioners/allottee/re-allottee is a contract with HUDA. Now, the petitioners can not go back from the terms and conditions of the allotment letter and undertaking given in the shape of affidavit. Although it has been mentioned in the allotment letter/re-allotment letter that simple interest will be charged. But no payment has been made on account of petitioner No.1 whereas the payment of enhanced compensation was made by Gian Inder Sharma himself in his case. Hence the case of the petitioner No.2 is distinct from Gian Inder Sharma as mentioned above. It is made clear that simple interest has been charged from the petitioner No.1 w.e.f. 1.9.2000.

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The facts mentioned above make the cases of the allottee/petitioners distinct from Gian Inder Sharma's case. Moreover, proposition of law is different with the facts of each case as well as judicial pronouncements by various courts from time to time. The Hon'ble Apex Court in the SLP No.12084, 12085, 12167, 12168, 12169, 12170 of 2004 arising out of CWP No.2099, 10422, 6280 of 2003, 19098, 18344, 19099 of 2002 has ordered as under:-

"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".

Hence, the Hon'ble Apex Court has decided on 09.07.2007 that HUDA can charge compound interest in case of delay.

It is pertinent to mention here that the Civil Writ Petition No.3737 of 2007 titled Mohan Dass and others V/s HUDA as well as present writ petition No.1725 of 2009 titled Om Parkash and another V/s HUDA and another were decided by the Hon'ble Court before the written statements could be filed in both these cases.

HUDA has already formulated a policy dated 22.09.2000 to charge simple interest on outstanding amount w.e.f. 01.09.2000 and the simple interest @ 15% is already being charged on enhanced compensation. Although in view of detailed submissions made above, I am of the considered view that HUDA is entitled to charge compound interest from the allottees. **In the case of present petitioners (Om Parkash and Vijay Kumar, Snehlata), there is inordinate delay in payment of enhanced**

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compensation and these case are squarely covered by the judgement passed by Hon'ble Apex court mentioned above. Moreover the petitioner No.1 has not deposited the entire amount of enhanced compensation till today. However, in view of the directions of Hon'ble High Court it is decided that simple interest @ 15% on enhanced compensation will be charged w.e.f. 01.09.2000, whereas, the petitioners are not found entitled for the relief in view of the submissions made above.

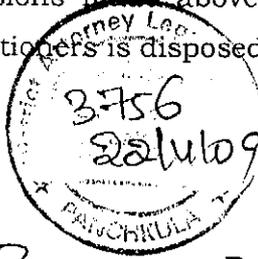
It is pertinent to mention here that the petitioner No.2 has already filed a CWP No.19474 of 2006 titled as Arvind Kumar and others Versus HUDA and another and the said CWP was decided vide order dated 8.12.2006 and in the compliance of said order a speaking order was passed by the then Estate Officer, HUDA, Karnal vide order dated 3.4.2007 and thereafter, the petitioner No.1 preferred a Civil Misc. vide No.7052 of 2008 in the aforesaid CWP which has already been dismissed by the Hon'ble High Court on 9.1.2009 with the following order:-

"After hearing the learned counsel for the applicant and perusing the averments made in the application, we are of the view that there is no ground to accept the prayer made in the application. Accordingly, the same is dismissed".

Moreover, the Hon'ble Supreme Court in case titled HUDA versus Raj Singh Rana, AIR 2008, 3035 has held that the petitioner can not be exempted from payment of penal and compound interest which are part of the bilateral contract and also keeping in view the inordinate delay and repeated defaults by him towards payment of the installments/enhanced compensation. On the basis of said citation, the Hon'ble High Court has decided the CWP No.17573 of 2007 titled as Sanjay Gupta Versus HUDA and CWP No.17576 of 2007 titled as Sudha Singal Versus HUDA vide order dated 19.2.2009.

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Hence the petitioners are not found entitled for the relief in view of the submissions made above. The representation dated 15.5.2008 of the petitioners is disposed off accordingly.



[Signature]
Estate Officer
HUDA, Karnal

Endst. No: 6397

Dated: 16/4/09

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

- [Handwritten marks: 2R4, 21/4, LTC M2, 11-5 (SS)]*
1. The Chief Administrator, HUDA (Legal Cell), Panchkula w.r.t. his memo No.2009 dated 23.3.2009.
 2. The Administrator, HUDA, Panchkula.
 3. The Accounts Officer O/o E.O., HUDA, Karnal.
 4. Shri Om Parkash son of Shri Gian Sarup, resident of House No.117, Sector-8, Urban Estate, Karnal.
 5. Shri Vijay Kumar son of Shri Om Parkash and Sneh Verma wife of Shri Vijay Kumar, residents of House No.295, Sector-8, Urban Estate, Karnal.

[Signature]
Estate Officer
HUDA, Karnal

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Annexure-A

Sr. No.	Name of Original Allottee	No. & date of original Allotment	Plot No. and Sector.	Name of Present owner Petitioner	Due date of Payment of Last installment/ Enhancement	Date of Last payment deposited against installment/ Enhancement	Re-allotment No. & date	Whether Petitioner is Original Allottee or re-allottee
1.	Shri Om Parkash son of Shri Gian Saroop	117 16.9.84	117/8	Shri Om Parkash son of Shri Gian Saroop	16.9.90/ 13.12.91	22.11.90/ 11.12.2008	N.A.	Original Allottee
2.	Sushil Rani wife of Shri Kuldip Chand	235, 16.9.84	295/8	Shri Vijay Kumar and Smt. Sneh Lata	16.9.90/ 13.12.91	1.10.93/ 4.10.93	273 dated 7.1.2002	Re-allottee

Estate Officer,
HUDA, Karnal