D.O.No.578-609 684-707 dated 18.01.2008

Sub: - Preparation of Replies/Written Statements to be filed on behalf of HUDA.

Dear HUDA Panel Advocate,

I solicit your cooperation in improving the defence of HUDA in court/complaint cases. It has been observed that some of the Counsels of HUDA are not preparing the replies to the complaints filed before the Courts/ Consumer Forum properly. Preliminary objections are not being properly drafted and the same are also not being pleaded in an emphatic manner.

The following are certain preliminary objections which need to be contested strongly by the counsels for HUDA:-

1. ISSUE OF LIMITATION:

It has been seen that in some cases complaints are being entertained and decided even after the expiry of prescribed period of limitation under the Consumer Protection Act. In the reply filed by the concerned E.O., Preliminary issue of complaint being time barred explaining clearly the whole facts and the relevant provision of Consumer Protection Act is not taken in an emphatic manner. Therefore, care should be taken in this regard and cases should be contested on the ground of limitation in view of the provision contained in Section 24-A of Consumer Protection Act, 1986.

2. MAINTAINABILITY:

It has been observed that some complaints which are not even maintainable for one reason or the other are also being entertained and have been decided by the Consumer Courts. It is most relevant to note that when a person adopts one course of action, he cannot change it later on. It has been observed that a person files an appeal against an order of EO before the concerned Administrator and thereafter on his own approaches the Consumer Court by filing a complaint under section 12 of the consumer Protection Act and the consumer courts are entertaining and deciding such complaints without going into the issue of maintainability. This kind of "Forum hopping" is not allowed and has been dismissed by National Consumer Forum in a case titled as Surinder Mohan Vs. Municipal Corporation and another, III 2006(I) CPJ 136. We have recently won many cases pertaining to plot No. 2110-A, Sector-4, Gurgaon (RBT No.101/2007) in Complaint No.12 of 2000 from he Consumer Disputes Redressal Commission (UT), Chandigarh on this ground alone. (Copy enclosed at Annexure-'I'). Therefore, wherever a complainant had earlier approached any Court or Forum under Section 17 of the HUDA Act, this law laid down by National Commission and upheld by the State Commission in numerous cases should be cited as a preliminary objection to get the case dismissed on this ground alone. Moreover, the Consumer Forum cannot sit as a court of appeal over the courts empowered under the HUDA Act. In addition,

….2/-

whenever a complainant approaches the Consumer Courts without approaching the authorities for availing the alternative remedy available under Section 17 of the HUDA Act, a preliminary objection should be taken that the complaint is pre-mature because the complainant has not taken recourse to a remedy, which is available under the Act itself. On this ground also, the complaint can be got dismissed by taking it as a preliminary objection.

3. TERRITORIAL JURIDICTION:

Sometimes the preliminary objection regarding territorial jurisdiction is not taken and pleaded in an emphatic manner in the reply filed by the concerned Estate Officer as also during the course of hearing. It is relevant to note that what is to be pleaded emphatically is that against whom a person is claiming relief. It has been observed that in cases of allotment, resumption, interest on delayed payments etc. though the order of the EO is under challenge, the Chief Administrator is also made a party just to file a complaint before a specific Consumer Forum. This issue should be pleaded very strongly and an application should also be filed in such matters before the concerned Consumer Forum to treat this issue as preliminary issue and decide it initially before proceeding further in the matter, to enable HUDA to file revision if need be, against any adverse order of the Consumer Forum. Reference may be made of the case decided by the Haryana State Commission in Estate Officer, HUDA, Hissar Vs. Smt. Swatantra Bala Jain 1998 (2) CLT (copy enclosed at Annexure-II).

4. GENERAL POWER OF ATTORNEY:

It has been observed that the complaints are being filed through general power of attorney of the owner whereas in certain matter the plot had been purchased by executing the general power of attorney for saving stamp duty and thereby causing loss to the State Exchequer. The general power of attorney holder who has purchased the plot is not a consumer of HUDA and this point is to be emphatically pleaded before the Consumer Forum. The issue of deciding whether the plot has been purchased by executing the general power of attorney can be settled by going through the contents of the general power of attorney. If it is mentioned that the same is irrevocable it is a case of sale through general power of attorney. Hence in such matters the counsels should insist that the general power of attorney be placed on record, a statement obtained from the complainant/GPA that no consideration has been paid to the owner of the plot who has executed GPA in his favour and copy given to them before filing the reply to the complaint.

…3/-

5. INTEREST ON DELAYED PAYMENTS:

It may be pointed out that the Hon'ble Apex Court has held 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 that HUDA can charge compound interest @10% P.A. on delayed payment even if the allotment letter is silent on this point qua the period prior to 03-04-2000 since instructions have been issued to charge simple interest w.e.f 3.4.2000. This fact should be incorporated in the replies pertaining to the issue of interest on delayed payments. Substance of this decision has already been sent to all Advocates vide this office Memo No.5903 dated 04.09.2007. Regarding charging of simple/compound interest, we have obtained advice from Shri Sanjiv Sharma, Senior Advocate and on that basis, a letter No. HUDA-Acctts-Acctt-I-2007/653-75 dated 8.1.2008 has been sent to all the Administrators/Estate Officers. Copy of this circular is enclosed for information and necessary action at Annexure-III.

6. PECUNIARY JURISDICTION:

It has been observed that the cases in District Consumer Forum are not generally well contested on behalf of HUDA on the issue of pecuniary jurisdiction. The issue of pecuniary jurisdiction needs to be contested both at the time of filing of reply and also at the time of arguments. Attention in this regard may be drawn towards sections11 (1) of the Consumer Protection Act.

7. SUBSEQUENT PURCHASER:

It has been held by the State Commission, Haryana on 10-06-2002 in FA No. 3367 of 2001 titled as HUDA vs. Shashi Sahni (copy enclosed at Annexure-IV) that the subsequent purchaser cannot plead non development of the area since at the time of purchasing the same he or she was well conversant with the development of the area.

8. Completion of Development Works before Offer of Possession:

Some DCDRFs have decided complaints against HUDA on the basis that some of the amenities like Shopping Centre, Schools, Post Office, Telephone Exchange etc. had not been provided in the Sector before making the Offer of Possession of plot to the complainant. These facilities can not be termed as a condition precedent in terms of the pronouncement of the Hon'ble Supreme Court of India in case Municipal Corporation, Chandigarh & Ors. Etc. v. **M/s. Shantikunj Investment Pvt. Ltd. Etc. J.T. 2006 (3) SC 1.** wherein it was observed as under:

…4/-

> "Therefore, the term mandate in the context of real estate is to mean facility as provided under Section 2 (b) of the Act, but it can never be treated to mean that it is a condition precedent. It is for the better use of allotted piece of land but does not mean that it should be provided first as a condition precedent in the matter of the present case."

It was further laid down that once the allotment of the land has been made in favour of the allottee, he can take possession of the property and it does not mean that all facilities should be provided first for so called enjoyment of the property.

The ratio of this case has been relied upon by Hon'ble SCDRC, Haryana in many cases, one of which is HUDA Vs. Ramesh Lal (FA No. 29 of 2007) in respect of which decision dated 10.9.2007 is enclosed at Annexure-V.

It has also been observed that the replies are being filed in Consumer Courts/Courts without approval of the competent authority as laid down in para No. 6 of the instructions issued vide Memo No.3179 dated 28.5.2007, a copy of which has already been e-mailed to you. It is, therefore, requested that before filing the reply, it must be ensured that the reply is approved by the Competent Authority.

I am sure that if the replies are prepared properly, there will not be any occasion for HUDA to lose the cases. However, wherever we are at fault, same may also please be informed so that we can implement the decisions and take corrective action instead of engaging the allottees into needless litigations. In the year 2008, we hope to bring litigations to minimum possible extent with your cooperation.

Hoping for your cooperation in this endeavour and all the best wishes for a New Year.

Yours sincerely,

Encl: as above

(T.C. GUPTA)

All Advocates on the panel of HUDA

Copy is forwarded to all the Administrators/Estate Officers for information and necessary action.

(**Annexure-1)**

THE CONSUMER DISPUTES REDRESSAL COMMISSION,
UNION TERRITORY, CHANDIGARH

R.B.T.NO. 101 OF 2007
IN
Compliant No. 12 of 2000

Smt. Saroj Bala w/o Sh. Ved Parkash r/o H.No.2110-A, Sector 4, Urban Estate, Gurgaon.

.... Complainant.

Versus

Estate Officer, HUDA, Gurgaon, Sector 14, Gurgaon.

....Respondent.

BEFORE: Hon'ble Mr. Justice K.C.Gupta, PRESIDENT.
Maj. Gen. S.P Kapoor (Retd), Member
Mrs. Devinderjit Dhatt, Member.

Present:- Sh. Harish Bhardwaj, Advocate for the complainant.
Sh. Raman Gaur, Advocate for the respondent.

Complaint Under Section 17 of the Consumer Protection Act, 1986.

Justice K.C. Gupta.

Briefly stated the facts are that she is owner-in-possession of house constructed on plot No. 2110-A, Sector 4, Gurgaon. The said plot was allotted to Shri Kuldeep singh Bakshi resident of Janak Puri, New Delhi by

the Op vide allotment letter dated 23.02.89 by way of sale by auction. The price of the said plot was Rs. 4,81,603/- Rs. 54,000/- were deposited by sh. Kuldeep Singh Bakshi at the time of bid and vide allotment letter Sh. Kuldeep Singh Bakshi was asked to remit an amount of Rs. 66,402/- within 30 days from the date of receipt of allotment letter so as to make 25% of the price of the plot. The balance amount was to be paid by installments as mentioned in the allotment letter (Annexure C-1). The amount of Rs.66,402/- was deposited by Sh. Kuldeep Singh Bakshi on 20.03.89.

It was next averred that Sh. Kuldeep Singh Bakshi executed a General Power of Attorney regarding the plot in favour of one Sh. Iqbal Singh resident of Raja Garden, New Delhi and through Sh. Iqbal Singh, GPA, the complainant purchased the house constructed on plot No. 2110-A, Sector-4, Gurgaon from the original allottee. It was represented to her at that time that all the installments had been paid uptodate.

It was further averred that subsequently, she came to know that resumption order had been passed by the OP regarding the house in question for default in making payment of the installments. Accordingly, her husband Sh. Ved Parkash filed appeal before the Administrator, HUDA against the order of resumption and also sent demand draft of Rs. 3 Lacs dated 10.05.95 drawn on Oriental bank of Commerce, Gurgaon payable to Estate Officer HUDA . The Administrator vide order dated 17.07.98 accepted the appeal and set aside the order of resumption of the plot and directed the complainant to make payment of the entire amount due within a period of three months of the demand being conveyed to her by the OP. The copy of the order is Annexure C-2. The OP vide memo dated 13.08.98 conveyed to her that an amount of Rs. 16,36,378/- towards balance price of the plot be paid and the draft sent by her of Rs. 3 Lacs was returned to her by memo dated 13.08.98 whose copy is Annexure C-3. It was further averred that action of the OP in raising a demand of Rs. 16,36,378/- was totally illegal, arbitrary and contrary to HUDA bye laws

as the said demand was not raised earlier and further the amount of Rs. 3 Lacs sent to her was unnecessarily returned.

Alleging deficiency in service, the complaint was filed on 28.01.2000.

The OP contested the complaint and filed written reply. He denied the allegations of the complainant and stated that there was no deficiency in service on its part and as such, the complaint was not maintainable. He next stated that plot No. 2110-A, Sector 4, Gurgaon was allotted to Sh. Kuldeep Singh Bakshi vide allotment letter dated 23.02.89 who had purchased it in an open auction and he had deposited 25% of the amount but failed to pay the remaining balance of 75% in six half yearly installments and as such, show cause notices under section 17(1) and (2) dated 12.02.98 and memo No. 1627 dt. 27.03.92, memo No.2612 dt. 1.05.92 and memo No.406 dated 17.07.92 were issued to the allottee but the balance amount was not paid and as such, the plot in question was resumed by the office vide memo No. 869 dated 22.01.93. The allottee had filed an appeal under section 17(5) if HUDA Act before Administrator, which was decided on 17.07.98 and the plot was restored and as per decision of the appeal, the allottee was required to deposit Rs.16,36,378/- , which were not deposited and rather filed complaint before the District Forum, Gurgaon. He further stated that Smt. Saroj Bals had no locus-standi to file the complaint as there was no power of attorney executed in her favour by Sh. Kuldeep Singh Bakshi. He also stated that the complaint should be dismissed.

The parties adduced their evidence by way of their affidavit.

We have heard counsel for the complainant Sh. Harish Bhardwaj, Advocate, counsel for the OP Sh. Raman Gaur, Advocate and carefully gone through the file.

Annexure C-1 is the copy of allotment letter dated 23.02.89. It shows that plot No. 2110-A, Sector 4, Gurgaon was allotted to Sh. Kuldeep Singh Bakshi resident of Janak Puri, New Delhi vide memo No.

1260. Its area was 334.45 Sq. Mtr. and it was allotted @ Rs. 1440/- per Sq. Meter and the total tentative price was Rs. 4,82,603/-. Rs. 54,000/- were deposited as bid money at the time of bid and he was required to deposit Rs. 66,402/- within 30 days from the date of acceptance of the bid so as to make 25% of the price. There is no dispute about it that the said amount of Rs. 66,402/- has been deposited. However, according to Clause 5, the balance amount of Rs. 3,61,206/- was either to be paid in lumpsum without interest within 60 days from the allotment of letter or in six annual installments and the first installment was to be paid after one year of the date of the issue of allotment letter, Each installment was to be recovered together with interest on the balance price at 10% per annum on the remaining amount. The interest was to accrue from the issuance of allotment. It is further stated in Clause 24 that the allottee could take possession on any working Wednesday on payment of 25% price. It is further stated in Clause 25 that if installment is not made in due date then interest @18% will be charged for the delayed period. There is no evidence on file that the allottee Sh. Kuldeep Singh Bakshi or his successor-in-interest had deposited the amount of any installments. The copy of the order (Annexure C-2) dated 17.7.98 passed by Administrator, HUDA, Gurgaon shows that Sh. Ved Parkash husband of Smt. Saroj Bala and a General Power of Attorney had appeared and argued the case on behalf of Smt. Saroj Bala and Sh. Kuldeep Singh Bakshi was the appellant. This appeal was filed against the resumption order. The Administrator had accepted the appeal and restored the plot to

Sh. Kuldeep Singh Bakshi and directed him to make the payment of the entire amount due along with interest. The Estate Officer was directed to convey the amount due along with interest to the General Power of Attorney within one week of the receipt of the order. He could make the payment of the entire amount as conveyed to him within three months of conveying of the due amount to him by the Estate Officer. A perusal of copy of letter (Annexure C-3), which was addressed by the Estate Officer, HUDA, Gurgaon to Smt. Saroj Bala wife of Sh. Ved Parkash regarding plot NO. 2110-A, Sector 4, Gurgaon shows that he had requested the complainant to deposit Rs.16,36,378/- immediately. He had further returned demand draft dated 10.5.95 of Rs. 3 Lacs sent by Smt. Saroj Bala. This demand draft was rightly returned because it was not of the full amount along with interest as ordered by the Administrator vide order dated 17.7.98. The Administrator had ordered Sh. Kuldeep Singh Bakshi to pay the entire balance amount within three months of conveying of the due amount by the Estate Officer along with interest. Copy of the letter (Annexure C-4) further shows that vide letter dated 10.7.99, Smt. Saroj Bala had sent demand draft of Rs. 6,34,,648.90 Ps to the State Officer, which was returned vide letter (Annexure C-5) dated 17.4.99 as the matter had already been referred to Head Quarter for taking further necessary action. This amount was sent beyond a period of three months because vide letter dated 13.8.98, the Estate Officer had conveyed the amount due and it was to be paid till 13.11.98, which was not paid. Since the amount was not paid as per order of the Administrator, HUDA dated

17.7.98, so, in default the resumption of the plot and forfeiture of the 25% of the price of the plot made by the Estate Officer stands.

Counsel for the complainant contended that earlier the District Forum, Gurgaon had passed the order in favour of the complainant. May be that an order had been passed by the District Forum, Gurgaon but the same was set aside by the Haryana State Commission vide order dated 17.11.1999 in appeal filed by the Estate Officer, Gurgaon on the basis of pecuniary jurisdiction and the order of District Forum was quashed. The copy of the irrevocable / registered General Power of Attorney alleged to be executed by Sh. Kuldeep Singh Bakshi in favour of Smt. Saroj Bala, as mentioned in her affidavit, has not been produced on file. In the absence of General Power of Attorney, Smt. Saroj Bala has no locus standi to file the complaint. Otherwise also on merits , the complainant has got no case. Against the order of the Administrator, the complainant could have filed appeal to the Secretary, Urban Development & Planning and after rejection of the appeal by the Secretary the writ could have been filed in the Hon'ble High Court challenging the resumption order. The complaint filed under the provisions of Consumer Protection Act, 1986 after availing remedy of appeal before the Administrator, HUDA , Gurgaon is not maintainable in view of the law laid down by the Hon'ble National Consumer Dispute Redressal Commission, New Delhi in the case of Surinder Mohan Vs. Municipal Corporation and another , III 2006 (1) CPJ 136. In the said authority, it was observed that Section 3 if the C.P. Act provides additional remedy and it is not in derogation of any other law but

where the appellant had availed his remedy before the Chief Administrator and then before the Advisor to Chief Administrator, then, he had to persue his to the end from that agency and cannot file a complaint before the Fora as the Commission is not a revisional or appellate authority against the order passed by the Administrator or advisor to the Chief Administrator . To the same effect is the authority of Hon'ble National Commission in the case of Haryana urban Development Authority Vs. Ashok Kumar, III 2006 (1) CP J 436. In view of the said order, the complaint is not maintainable.

Hence, in view of the discussion above, we hold that the complaint is not maintainable and as such, it is dismissed with costs of Rs. 1,000/-.

Copies of this judgment be sent to the parties free of charge.

Pronounced.

30th August 2007.

Sd/-
[K.C.Gupta]
President

Sd/-
[MAJ. GEN.S.P. KAPOOR (RETD.)]
Member

Sd/-
[MRS.DEVINDERJIT DHATT]
Member

(Annexure-II)

HARYANA STATE CONSUMER DISPUTES REDRESSAL COMMISSION CHANDIGARH

M.R. Agnihotri, President Mrs. Sushil Paul and A.D. Malik, Members

FA No. 128 of 1998 Decided on 30th April, 1998.

Estate Officer Haryana Urban Development Authority, Hisar and another.

Appellants

Versus

Smt. Swatantra Bala Jain Respondent

For the Appellants: - Mr. Prabodh Mittal, Advocate.

For the respondents: - Mr. Suman Jain, Advocate.

Consumer Protection Act, 1986 Section 11(2)- Territorial Jurisdiction . Plot situated outside the territorial jurisdiction of Panchkula District. Demand for some additional payment had been made at a place outside its territorial jurisdiction. The mere fact that the complainant had impleaded the Chief Administrator of HUDA as opposite party whose head office happen to be at Panchkula , was not enough to confer jurisdiction on the District Forum at Panchkula.

ORDER

M.R. Agnihotri, President.- Haryana Urban Development Authority has come up in appeal against the order dated 3.12.1997 passed by the learned District Consumer Forum, Panchkula , whereby the complaint of an allottee Smt. Swatantra Bala Jain, the owner of plot no. 1675-P in Urban Estate II, Hissar, alleging deficiency in service against HUDA , has been allowed.

2. According to the complainant, HUDA had issued a demand notice for a sum of Rs.27, 862.50 on 15.06.87 followed by another demand notice for Rs.19,352-30 on 18.02.88. Since the complainant had not deposited the said amounts, another demand notice for Rs.1,61,310/- was received by the complainant but without any statement of accounts, which was arbitrary. In their reply, HUDA pleaded that demands were on account of enhanced compensation under the Land Acquisition Act, which the complainant was bound to pay. Thereafter, on 5.11.97 the complainant submitted an application before the learned Forum that she was ready to pay interest at the

rate of 15% PA after the date of demand notices. She was also ready to forego all other prayers. Accordingly, the learned District Consumer Forum, Panchkula, disposed of the complaint by issuing the following directions:-

> "Therefore, the present complaint is disposed of with the direction that if there is any discrepancies in the statement of accounts regarding interest of calculation then the same may be got corrected and fresh statement of accounts be prepared @ 15% simple interest under the head of enhancement within seven days from the receipt of this order and if complainant pays the amount, No objection Certificate be issued to the complainant with in seven days from the receipt of the payment. No order for the cost. Let order be complied. Copy of this order will be sent to the parties free of costs."

3. In the appeal before us, the learned counsel of HUDA has vehemently contended that apart from the merits of the case, it was evident that the plot in question was situate at Hissar and the demands had also been made by the Estate Officer HUDA Hissar. In view of this factual position, the complaint was not maintainable before the learned District Consumer Forum, Panchkula, at all. It was further contended that this objection had prominently been taken as the very first preliminary objection in the followings words:-

> "That the Hon'ble Forum has got no territorial jurisdiction to try and entertain the present complaint because the plot in question is situate in Hissar."

Again, in the body of the written statement in para 10, the objection was repeated as under:-

> "That the para No. 10 of the complaint is wrong and hence denied. The Hon'ble Forum had got no jurisdiction to try and entertain the present complaint because the plot in question is situated at Hissar and the office of the respondent No. 1 is also situated at Hissar and the record of the plot in question is also at Hissar."

It is strange that despite this the learned District Consumer Forum Panchkula, assumed jurisdiction and proceeded to decide the complaint on merits without first appreciating the preliminary objection, much less to deal with the same.

4. After hearing the learned counsel and having gone through the record, we are of the considered view that the appeal deserves to be allowed and the impugned order is liable to be set aside on the short ground; that the District Consumer Forum

at Panchkula lacked territorial jurisdiction to adjudicate upon a dispute arising out of a certain plot situated outside the territorial jurisdiction of Panchkula and regarding which demand the some additional payments had been made at a place outside its territorial jurisdiction. The mere fact that the complainant had impleaded the Chief Administrator of HUDA as one of the opposite parties, whose head office happens to be at Panchkula , was not enough to confer jurisdiction on the District Consumer Forum at Panchkula. Resultantly, the appeal is allowed and the order passed by the learned District Forum is set aside. The complaint is returned to the complainant – respondent to present the same, if so advised before the District Forum, Hissar. In the circumstances of the case, there shall be no order as to costs.

Announced in open court.

Appeal allowed

(Annexure-III)

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

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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 sub-section (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 section15, 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.

Xxxxx

(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 regulation5*.

[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 fields 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 pe 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 ejectment from the plot in question.

The petitioners have challenged the impugned notices/orders by contending that the respondents cannot change 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 then 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 36th 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 37th 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]

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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 fand 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 shich 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 allotttee 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 latches 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 DEVELOPMET AUTHORITY, PANCHKULA

No. HUDA-Acctts-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. Kamlendra 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 SUPEREME 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 d01.12.2003 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

(Annexure-IV)

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
HARYNA, CHANDIGARH**

FIRST APPEAL No. 3367 of 2001
Date of Decision : 10.06.2002

Haryana Urban Development Authority through its Estate Officer, HUDA, Gurgaon & another.

Appellant(s)

Vs.

Shashi Sahni son of Tilak Raj Sahni R/o Punjabi Bagh, New Delhi.

Respondent(s)

Present : Mr. Raman Gaur, Advocate for the appellant.

BEFORE :

Hon'ble Mr. Justice Amarjeet Chaudhary, President.
Mrs. Shakuntla Devi Sangwan, Member.

ORDER

Amarjeet Chaudhary J. (Oral)

Haryana Urban Development Authority has come up in appeal against the order of the District Forum, Gurgaon dated 06.08.2001 vide which the District Forum on a complaint filed by Sh. Shashi Sahni had issued direction to the opposite parties to allot original plot No.231-P of Sector-12A, Urban Estate Gurgaon to the complainant if lying vacant and unallotted or to allot any plot either in the same sector or in the adjoining sector or of the sector of the choice of the complainant at the same rate at which the original plot was allotted to him. The opposite parties were further directed to pay interest over the deposits made by the complainant at the rate as per HUDA policy which is to be calculated after two years from the date of deposit till the date of delivery of possession.

Notice of the appeal was issued. Service is complete. However, there is no appearance on behalf of the respondent.

We have heard the counsel for the appellant and have also perused the impugned order. From the record, it is seen that the original plot No.231, Sector-12-A, Gurgaon was allotted to one Daulat Ram in the year 1986 but due to litigation, possession could not be delivered to the complainant and an alternative plot No.1764, Sector-45, Gurgaon was offered to Sh. Daulat Ram, which was duly accepted by him. Subsequently, in the year 1997 the said plot was transferred by Sh. Daulat Ram to the complainant – Shashi sahni. Since the complainant had purchased the alternative plot No.1764, Sec-45, Gurgaon from the original allottee, she should not have purchased the plot with closed eyes and should have seen the situation/location of the plot and should have verified whether area is fully developed and all the facilities are available or not. Once the complainant had repurchased the plot in the year 1997 from the original allottee, she can not make any grouse regarding price of the alternative plot. It was incumbent upon the District Forum to have gone through the entire record before issuing direction to allot the alternative plot. It is pertinent to note that the complainant had not filed any replication to the written statement and as such, the plea raised by the opposite parties is deemed to have been admitted by the complainant that possession of alternative plot No.1764 was accepted by the original allottee- Daulat Ra, from whom the complainant had re-purchased the plot. In view of the above discussions, the appeal is allowed, impugned order is quashed and the complaint is dismissed.

June 10, 2002

-sd/-
(Justice Amarjeet Chaudhary)
President

-sd/-
(Shakuntala Sangwan)
Member

(Annexure-V)

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
HARYNA, CHANDIGARH**

FIRST APPEAL No. 29 of 2007
Date of Institution : 04.01.2007
Date of Decision : 10.09.2007

1. Haryana Urban Development Authority through its Chief Administrator, Sec-6, Panchkula.

2. The Estate Officer, Haryana Urban Development Authority, Panipat.

Appellant(s)

Vs.

Ramesh Lal S/o Sh. Hem Raj, Resident of House No.1033, New Housing Board Colony, Panipat through General Power of Attorney Sh. Pawan Kumar son of Sh. Nand Lal R/o House No.1417, New Housing Board Colony, Panipat.

Respondent(s)

BEFORE :

Hon'ble Mr. Justice R.C. Kathuria, President.
Mr. Banarsi Dass, Member
Mrs. Shakuntla Yadav, Member.

For the Parties :

Mr. Ravinder Hooda, Advocate for appellants.
None for respondent.

ORDER

R.C. Kathuria, President

This appeal is directed against the order dated 22.8.2006 passed by the district consumer Disputes Redressal Forum, Panipat whereby while accepting the complaint of the respondent-complainant direction has been given to the appellants-opposite parties to allot the original allotted plot No.1490, Sector-18, HUDA, Panipat & if the same was still lying vacant and not to hand over the same to other person. In the alternative if the said plot had been allotted to some other person, then the opposite parties shall allot an alternative plot to the complainant of same size and in same sector, in the same terms and conditions on which the original plot was allotted to the complainant. Further the direction was issued to the complainant to pay the remaining cost of the plot with interest and penalty as per the rules of the HUDA.

In order to focus to controversy involved in the present appeal, the facts as set out in the complaint need to be noticed briefly. Plot no.1490 measuring 8 Marlas located in Sector-10, Urban Estate, Panipat was allotted to the complainant as per letter bearing memo No.9648 dated 30.7.1998 on a tentative price of Rs.4,99,187/-. Thereafter the opposite parties demanded the enhanced price of the plot on account of enhanced compensation from the complainant. The complainant was also informed as per separate letter for taking possession of the said plot. The complainant instead of making the payment of the enhaced price of the plot demanded from his submitted a letter of request dated 24.10.2002 surrendering the plot in question with request to refund the amount deposited by him with the opposite parties. The opposite parties after deducting 10% of the cost of the plot, refunded the amount of Rs.2,83,950/- through cheque bearing No.1036558 dated 11.2.2003 drawn on Union Bank of India, Panipat. Thereafter the complainant instituted the present complaint on 26.5.2006 taking a stand in the complaint that at the time when the offer of possession of the plot was made to him, the development work in the sector was not complete whereas the opposite

parties demanded an huge amount of enhanced price of the plot and started charging possession interest which caused mental agony to him and for that reason he had surrendered the plot to the opposite parties. The opposite parties were unjustified in making deduction of 10% of the price of the plot and for that reason he had approached the opposite parties to refund the same including the deducted amount but no action was taken by the opposite parties, which forced him to file the present complaint. Accordingly, he claimed that direction be given to the opposite parties to make the allotment of the alternative plot of same size in Sector-18, HUDA, Panipat and to adjust the deducted amount alongwith interest towards the price of the alternative plot and to receive the balance sale consideration from the complainant as per HUDA policy. Further direction was sought against the opposite parties to pay interest @ 18% per annum on the deposited amount till the date it was refunded and also to pay Rs.1,00,000/- on account of deficiency of service. In addition Rs.20,000 was claimed as compensation on account of mental agony and harassment caused to him and Rs.5500/- as litigation expenses. Claim was contested by the opposite parties. A preliminary objection was raised with regard to the complaint being barred by limitation as it has been filed after refunded amount of Rs.2,83,950/- was received by the compensation vide cheque No.1036558 dated 11.2.2003. Further pleas of estoppel, locus standi and ant of jurisdiction of the District Forum to try the complaint and non-maintainability of the complaint were also raised. On merits, it was stated that the possession of the plot was offered to the complainant after completion of the development work in the area and the enhanced price of the land was claimed from the complainant as per the rules of the opposite parties and in terms of the allotment letter issued to the complainant. They justified the deduction of 10% of the cost of the plot as the complainant had voluntarily surrendered the same after accepting the refunded amount. He had relinquished all his claims against the said plot. Accordingly, it was prayed that the complaint merited dismissal. Taking into account the respective stands of the parties

and evidence adduced on record, the District Forum accepted the complaint and issued the directions as per order dated 22.8.2006 noticed above. It is against the said order the present appeal has been filed by the appellants-opposite parties.

Learned counsel representing the appellants-opposite parties had been heard at length. None has chosen to appear to argue the matter on behalf of the respondent.

The Distrct Forum has primarily accepted the complaint on the ground that the offer of possession of the plot made to the complaint was illegal because all the basic amenities had not been provided at that point of time and for that reason offer of possession letter was termed as paper possession. With regard to the surrender of the plot made by the complainant, it was held to be involuntarily. Learned counsel representing the appellants-opposite parties while assailing the above finds of the District Forum contended the District Forum had totally overlooked the factual and legal position brought on record. He assailed the order on three counts. Firstly, that the complaint was barred by limitation and the district Forum had not dealt with the specific plea raised in this regard in the written statement filed. Secondly, that the complainant had voluntarily surrendered the plot and after accepting the refunded amount as per cheque bearing No.1036558 dated 11.2.2003, as such the complainant had no locus standi to file the complaint. Thirdly, that the complainant himself had not deposited the enhanced price of the land and put up a concocted version of non-development of the land in area where the plot in question is located in order to overcome his default. The submission made, as such, cannot be faulted. It is admitted by the complainant himself that after the opposite parties had demanded the enhanced price of the land on account of land compensation, he had no financial position to pay the demanded price of the land alongwith interest and for that reason he had chosen to approach the opposite parties for

the surrender of the plot. Except the assertion of the complainant in the complaint, no other evidence has been adduced on record as to what were the compelling reasons for him to surrender the plot. It is not his case that the opposite parties had any role to play in this regard. The opposite parties were justified in making the demand of the enhanced amount in terms of the Clause-19 of the allotment letter which clearly provide that the price written in the allotment letter was tentative to the extent that any enhancement of the cost of the land awarded by the competent authority under the Land Acquisition Act shall be payable proportionately so determined by that authority. So, this liability was bilateral liability which the complainant was duty bound to pay. Therefore, having decided not to pay the additional price of the land, he had chosen to forfo the plot in question by moving an application dated 24.10.2002 for surrender of the plot to the opposite parties. The opposite parties after making the deduction fo 10% of the cost of the plot had refunded the amount to the complainant. The action of the opposite parties cannot be termed as illegal and unjustified under the circumstances of the case, rather, the complainant has accepted the refunded amount. The deduction of 10% of the total cost of the plot was fully justified under the circumstances of the case, rather, the complainant has accepted the refunded amount. The deduction fo 10% of the total cost of the plot was fully justified as per HUDA policy. The position of law in this regard has been well settled in civil **Writ Petition No.13951/2003 Naresh Kumar Solanki Vs. Haryana Urban Development Authority,** wherein the facts were that the petitioner had expressed his inability to pay the enhanced price and for that reason had chosen to surrender it. The respondent refunded the amount paid by the petitioner after making deduction of Rs.50,069/- representing 10% of the total sale consideration. The action of the respondents was challenged on the ground that 10 % deduction could not be made only on the tentative price of the amount of Rs.2,71,092/- and not on account of the enhanced price determined thereafter. The stand taken by the petitioner

was rejected by coming to the conclusion that the deduction had been made in accordance with the policy of Haryana Urban Development Authority, which had come into force after allotment of the plot in the present case. The ratio of the above mentioned case would fully apply to the present case as well. Therefore, there is absolutely no merit in the claim made by the complainant that the plot in question was not surrendered voluntarily. The findings of the district Forum in this regard cannot be sustained.

As already noticed, the surrender of the plot was accepted and the amount of Rs.2,83,950/- was refunded to the complainant through cheque bearing No.1036558 dated 11.2.2003 drawn on Union Bank of India, Panipat which was accepted by the complaint and while the present complaint came to be filed on 26.5.2006. Manifestly, the complaint on the date when it was filed was barred by limitation in terms of the provisions contained in Section-24-A pf the Consumer Protection Act, 1986. The District Forum was duty bound to take into account the above stated provisions while deciding the complaint. It is not even the case of the complainant that he had moved an application seeking condonation of delay. Therefore, the complaint filed by the complainant was clearly barred by times and for that reason it was liable to be dismissed on that account as well.

Lastly, the basis of the stand taken in the complaint is that all the amenities had not been provided to the complainant when offer of possession of the plot was made to him as per letter bearing memo No.6707 dated 6.7.2001. The District Forum in its order has noticed that basic amenities of roads, electricity, water and sewerage had been provided but still decided to return a finding against the opposite parties mainly on the ground that shopping centre, schools, post office, telephone exchange had not been provided in the Sector before making the offer of possession of the plot to the complainant. These facilities cannot

be termed as a condition precedent in terms of the pronouncement of the Hon'ble Supreme court of India in case **Municipal Corporation Chandigarh & Ors. Etc. Vs. M/s Shantikunj Investment Pvt. Ltd. Etc. J.T. 2006(3) SC1,** wherein it was observed as under :-

"Therefore, the term mandate in the context of real estate is to men facility as provided under Section 2(b) of the Act, but it can never be treated to mean that it is a condition precedent. It is for the better use of allotted price of land but does not mean that it should be provided first as a condition precedent in the matter of the present case."

I was further laid down that once the allotment of the land has been made in favour of the allottee. He can take possession of the property and it does not mean that all facilities should be provided first for so called enjoyment of the property. The ratio of the above mentioned case would fully apply to the present case. The district Forum has totally overlooked the legal and factual position in this regard and for that reason this finding also cannot be sustained.

For the aforesaid reasons while accepting the appeal, the impugned order is set aside and the complaint is accordingly dismissed.

Announced: 10.09.2007.

-sd/-
Justice R.C. Kathuria
President

-sd/-
Mr. Banarsi Dass
Member

-sd/-
Mrs. Shakuntla Devi
Member